

ONE HAT FOR TWO HEADS: A COMPLEX SIMPLIFICATION PROCESS

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Jean-Claude Juncker has renewed the idea of merging the positions of President of the Commission and that of the European Council. A proposal which may seem politically attractive but which raises delicate institutional issues.

Jean-Claude Juncker spoke in favour of “a single President lead[ing] the work of the Commission and the European Council, having been elected after a democratic Europe-wide election campaign”. The President of the European Commission expressed this wish in the closing lines of his speech on the state of the Union, which he addressed to the European Parliament on 13 September. He also set a timeframe for this institutional overhaul: 30 March 2019, the date on which the United Kingdom will have left the European Union, in principle.

Was it the element of surprise? There were few immediate reactions. According to *Politico*, a negative reaction was recorded from the Dutch and Danish prime ministers, while the German MEP Elmar Brok (CDU) viewed the announcement with strong distrust. Yet, apart from these comments, we have a proposal which opens up a debate: is the proposed merger of the two positions promising in terms of potential progress, and is it achievable?

It should first be noted that the idea of merging the duties of the President of the European Council and that of the President of the Commission is not all that new. During the Convention on the Future of Europe presided by Valéry Giscard d’Estaing - from which resulted a “constitutional treaty” which was used as a matrix for the future Treaty of Lisbon, the French MP Pierre Lequiller (UMP) raised this proposal, in the autumn of 2002. There was hardly a response to this idea, in particular due to the fact that at the same time fierce debate focused on the possible creation of a “stable” presidential position for the European Council. Supported by “major member states”, in particular France, Spain and the UK, then under the leadership of Chirac, Aznar and Blair respectively, the idea of this position was opposed by most “small member states” (with lower population numbers) who feared that it would weaken the Commission which they viewed as a protective force. Ultimately, the European Council did get a stable president - precisely the position which would be merged in future with the position of President of the Commission.

Almost ten years later, on 9 May 2011, Michel Barnier, then European Commissioner (speaking in a personal capacity) to the Humboldt University in Berlin on the

theme “Towards a new Europe” declared: “One day a future president of the European Union, whoever he or she will be, should both preside over the European Council and chair the European Commission”. He then added: “The drafters of the Lisbon Treaty were careful not to rule out this major and symbolic step forward”. Once again, the proposal met with very little response.

Today, it is the President of the Commission himself who has taken the risk of relaunching the debate. It is likely that Jean-Claude Juncker recommends this institutional change because he feels that with two pro-European leaders in Berlin and Paris - Angela Merkel and Emmanuel Macron -, a long period without any major elections in Europe and the scheduled departure of the UK, traditionally opposed to any institutional reinforcement in Europe, there is a “window of opportunity” to take this step. To support his argument, Jean-Claude Juncker believes that, in addition to a greater level of efficiency, “Europe would be easier to understand if one captain was steering the ship”.

The advantages that this single presidency would provide are clear. For the European citizen, who readily complains about the complex nature of the EU’s institutional system, its opacity and therefore its democratic deficit, there would be a real sense of progress: the figure of a President embodying Europe, not only a face, but a stature, a voice, a seemingly clear responsibility...

By eliminating any proven or potential rivalry between the Presidents of the European Council and of the Commission, the merger into a single position would also improve the operation of these two key EU institutions, and therefore their efficiency. Progress would also be substantial with regard to the outside world. We remember the acerbic remark of Henry Kissinger: “Who do I call if I want to call Europe?”. The answer would now be clear. Over the duration of a five-year term, the world would learn to identify Europe with a person, a personality, as is the case for all national leaders.

The project is therefore appealing. To achieve this, though, several obstacles must be overcome. First of all, there are political obstacles. The personality resulting from the merger of the two positions would have a prominent standing:

- The members of the European Council, all Heads of State and of Government, could take offence and conflicts of authority could ensue,
- The European Council is originally an inter-governmental body, in which the most powerful States weigh more heavily than the others; the Commission is the driver of the Community - many member states fear that its role is being diminished to the benefit of the Council. The incumbent of the position could sway either way. That would depend on the profile selected.

Other difficulties are of a “constitutional” nature, in that they result from the provisions in the treaties in force:

- Article 15, § 5 of the Treaty on the European Union (TEU) provides for the appointment of the President of the Council: “The European Council shall elect its President, by a qualified majority, for a term of two and a half years, renewable once”;
- Article 17 § 3 (TEU) states that the term of office of the Commission is five years and that “In carrying out its responsibilities, the Commission shall be completely independent” and that “the members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity...”;
- Paragraph 7 states how the President of the Commission is appointed: “Taking into account the elections to the European Parliament [...] the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members...”. The text adds that, if this majority is not obtained, the European Council has one month to propose, acting by a qualified majority, a new candidate who will be in turn elected by the Parliament following the same procedure.
- Lastly, paragraph 8 states that the Commission, as a body, shall be responsible to the European Parliament which may vote on a motion of censure. If such a motion is carried, the members of the Commission must resign as a body.

These texts indicate that:

1. The duration of the terms of office of the two presidencies to be merged are not the same (two and a half years renewable once and five years

respectively). A minor difficulty: to overcome this, it would suffice to have the members of the European Council undertake amongst themselves to always renew the first term of office of the President they have elected. This is what they have done spontaneously up to now (with Van Rompuy, then with Tusk).

2. The obligation of independence for the President of the Commission with regard to any government, institution, etc. would become difficult to ensure in the event of the same person presiding the European Council, the very institution in which Heads of State and Government express their wishes.
3. The President of the Commission is elected by the Parliament (on the basis of a proposal from the European Council). The President of the European Council is elected by the members of the Council: how can this function if the two presidents are one and the same person? In the event of the President of the Commission wearing the cap of the President of the Council, this would mean that they would be appointed by the MEPs. It is hard to imagine that Heads of State and Government would consent to this. In the opposite scenario, members of the European Parliament would lose the hard-fought privilege of electing the President of the Commission, something they would likely refuse to accept.
4. Lastly, the Commission may be censured by the Parliament: in this case, the entire Commission as a body must resign, the President included. Therefore, if the two positions were merged, the President would also have to give up the presidency of the European Council - which would in practice extend the right of parliamentary censure to the head of the European Council. This option is barely credible. Otherwise, the President of the Commission would have to leave the members of the Commission to resign while remaining in appointment: an unthinkable idea for its chief officer.

The idea launched by Jean-Claude Juncker is appealing and would satisfy the aspirations of many citizens. Yet the legal conundrum raised by this merger requires clarification and therefore modifications. Under the treaties as they stand, the operation would be a difficult balancing act.