

The Spitzenkandidaten process in a more fragmented European Parliament:

A path towards EU democratic legitimacy?

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ABSTRACT

Since the 1990s, the EU faces criticism against its presumed democratic deficit, caused by the limited power of the European Parliament and the unreachable and technocratic image of the European Commission. The idea of a lead candidate process thus emerged in the European debate as a potential solution, giving a say to MEPs over the election of an EU executive and democratizing a College of Commissioners dominated by output legitimacy. After the long-standing empowerment process of the European Parliament, the *Spitzenkandidaten* system was gradually acknowledged by EU institutions and experienced in the 2014 elections, less successfully in 2019. This paper thus makes a comparison between the outcome of both elections to highlight the role of main actors and decisive criteria for the formalization of this new model. Above all, it analyzes the argument of democratic legitimation to assess the real motives behind the ongoing institutionalization of this procedure, and its potential to succeed in light of the most recent developments and the specificities of EU governance.

I. Introduction

In 2024, European citizens will once again have the opportunity to choose the members of the European Parliament (MEPs) for a 5-year mandate. As enshrined in the Treaties, the European Union (EU) is based on representative democracy: “citizens are directly represented at Union level in the European Parliament” (EP) and states by members in the European Council and the Council “accountable either to their national Parliaments, or to their citizens.”¹ The democratic legitimacy of EU institutions has therefore a dual origin: it comes from EU citizens and EU member states, via direct and indirect elections of their European representatives.

Yet the European Commission does not appear in these provisions. The early years of the European integration process and the creation of the High Authority of the European Coal and Steel Community (ECSC) were guided by the principles of bureaucracy and technocracy rather than democratic legitimacy (Featherstone, 1994, p.150). The Commission was granted executive powers and is composed of non-elected experts to fulfill duties in an independent manner. Its delegated authority is therefore justified by expertise and efficiency, which corresponds to “output” rather than “input” legitimacy (Schmidt, 2013). Even if it was first and foremost considered as a regulatory body isolated from democratic oversight (Nugent and Rhinard, 2019, p.205), the Commission always had both political and administrative functions since the Rome Treaty. The former shall be justified by democratic legitimacy, while the latter relies on power delegation (Featherstone, 1994, p. 163). Over the course of European integration and the deepening of the Community, national parliaments were progressively deprived of competencies, while political prerogatives of the Commission increased, hence the debate over its lack of accountability and legitimacy (Peñalver García and Priestley, 2015; Shackleton, 2014).

As argued by post-functionalist theorists, a transition has occurred since 1991 from a “permissive consensus” to a “constraining dissensus” on European integration (Hooghe & Marks, 2009, p.5). Before, integration was driven by decisions of elites isolated from public contestation (Lindberg and Scheingold, 1970). Then EU citizens became more skeptical and

¹ Consolidated version of the Treaty on European Union, TITLE II - PROVISIONS ON DEMOCRATIC PRINCIPLES, OJ C 202, 7 June 2016, Article 10, p. 20.

vocal about the development of the European Community, as illustrated by the difficult ratification process of the Maastricht Treaty, seen as a first overt opposition. The idea of a “democratic deficit” in the EU emerged, defined as “the gap between standards of democratic practice in national and Union politics [that] arises when powers are transferred from “more democratic” national institutions to “less democratic” European ones” (Lord, 1998, p.14). This transfer of competences from national to supranational bodies did not necessarily empower the European Parliament in priority, while it is the only EU institution directly elected since 1979 and the most legitimate one in terms of “input” (Schmidt, 2013). As contestation against the distancing from EU citizens increased, empowerment of the European Parliament appeared as the alternative to consolidate EU representative democracy in the EU outside of the intergovernmental mechanisms in the Council. Throughout the integration process, MEPs led a proactive strategy to maximize power gain and level the playing field with the Council. This incremental transformation, starting with informal and unilateral actions from the EP, then enshrined in EU law, is known as “interstitial institutional change” (Farrell and Héritier, 2007).

All these elements paved the way for the EP’s progressive involvement in the selection of the Commission President. Today, according to Article 17(7) of the Treaty on European Union (TEU), the European Council shall “take into account” European elections in the designation of a candidate, which must then be “elected” by a majority of MEPs.² One of the objectives behind the establishment of a link between a European legislative body and an executive one was to reinforce the democratic nature of EU governance and, more specifically, to increase the legitimacy of the Commission. In order to apply these provisions and materialize the EP’s empowerment, a debate on the so-called *Spitzenkandidaten* process unfolded. Based on the German expression and type of voting system, it corresponds to a competition for Commission presidency between personalities designated by each European political group. The logic implies that the one winning the highest number of seats should see its candidate nominated by the European Council and presented to win a majority in the EP. This process culminated in 2014 with the election of Jean-Claude Juncker, the lead candidate of the European People’s Party (EPP), who obtained a large support in both institutions. However, in 2019, divisions in the European Council and Parliament prevented any agreement on a *Spitzenkandidat*, hence why Ursula Von Leyen was instead elected as the head of the Commission. The European assembly is more powerful but also more polarized after the 2019 elections, hence the question of internal fragmentation (Ripoll, 2019, p.334). For the first time, the EPP and Socialists and Democrats (S&D) do not enjoy a majority of seats anymore. Ahead of the 2024 elections and in a more fragmented Parliament, to what extent can the lead candidate process be institutionalized and impact the democratic level of EU governance?

The first section will address the progressive empowerment of the EP to illustrate the steps towards the lead-candidate process and assess the democratic nature of the motives behind this “interstitial institutional change”. A second one will analyze the first experiment of the *Spitzenkandidaten* process, to compare the 2014 and 2019 elections and look into the recent institutional developments for the 2024 contest. Lastly, this paper will question the broader impact of this procedure on the democratic nature of EU governance.

² Consolidated version of the Treaty on European Union, TITLE III: PROVISIONS ON THE INSTITUTIONS, Article 17, OJ C 115, 9.5.2008, p. 25–26.

II. Democratization or power struggle: from a deal behind the European Council's closed door to the election of the Commission President by the European Parliament

Even if the first realization of the lead candidate process is linked with the 2014 elections, this idea goes back to the mid-1990s and results from the long-standing and progressive institutionalization of the EP's power gain (Hamřík and Kaniok, 2019, p.356). As early as 1963, the Faure Report called on an effective participation of the European Assembly in the designation of the executive.³ This request was included in proposals for an extension of powers held by this institution. Therefore, even if the EP rationale always referred to the need for the democratization of European governance, MEPs led a pro-active strategy aiming at increasing their own prerogatives vis-à-vis the other European bodies (Ripoll and Costa, 2021, p.132-133). This “interstitial institutional change” started with unilateral and informal actions from the EP, which were then formalized via inter-institutional agreements and treaty changes. Extensive interpretations of rules enabled a maximization of the EP's rise in power (Héritier et al., 2019, p.61). Member-state leaders eventually agreed with these changes due to MEPs' pressure, an attachment to parliamentary sovereignty for some of them, but also the narrative on an alleged democratic deficit that rendered the EP's empowerment inevitable (Ripoll and Costa, 2021, p.132).

At the beginning of the European Communities, it had no say in the designation of members of the Commission, nor the President. This role was attributed to governments of the member states. Early on, deputies adopted reports and resolutions that produced changes in their influence over the composition of the Commission. These unilateral moves created precedents, which were then validated by member state governments and formalized in European law. For instance, the Faure Report claimed for a debate on and a vote of confidence of the new Commission President, which was reiterated in 1972 in the Vedel Report⁴, as well as in 1975 in the Tindenmans Report.⁵ All these documents argued that the politization of this position would increase the authority, efficiency and democratic legitimacy of the executive institution.

From 1979, after the first direct European elections, the argument of input legitimacy became even more relevant and the debate reached the wider community. An EP resolution of the following year required the organization of a public debate in presence of the person designated for presidency, followed by a vote of confidence by a majority of votes cast in the assembly. Consequently, the Parliament turned this demand into reality since 1981 from the nomination of Gaston Thorn. On the occasion of the 1983 European Council in Stuttgart⁶, member-state leaders formalized this unilateral move and even more: they confirmed that the appointment of the Commission President should be preceded by an opinion of the enlarged Bureau of the European Parliament.⁷ These new modalities were then included in the rules of procedure of the EP in 1988. Member states ultimately accepted this change of inter-institutional relations, and the support of the European Commission quickly followed. Jacques Delors was President

³ Parlement Européen, Rapport fait au nom de la commission politique sur les compétences et les pouvoirs du Parlement européen (Rapport Faure), Documents de séance 1963-1964, Document 31, 14 juin 1963, p.26.

⁴ ‘Report of the Working Party on the Enlargement of the Powers of the European Parliament’ (Vedel Report), Bulletin of the European Communities, supplement 4/72, mars 1972.

⁵ ‘European Union: Report by Mr Leo Tindemans, Prime Minister of Belgium, to the European Council’, Bulletin of the European Communities, supplement 1/76, 1976.

⁶ European Council, “Solemn Declaration on the European Union”, 19 June 1983, Stuttgart.

⁷ The Enlarged bureau of the European Parliament is composed of the President of the European Parliament, the 14 Vice-Presidents and the five Quaestors, as well as the Presidents of all political groups.

from 1985 to 1995 and attached particular importance to the EP's support: he met representatives in different formats and answered MEPs' questions before each mandate. He received a vote of confidence three times, and even made his investiture conditional to this latter in 1989.

The European Parliament rise in power was consecrated at a later stage via treaty changes. In 1992, the Treaty of Maastricht enshrined its right of consultation before the nomination of the Commission President, the vote of approval of the College of Commissioners, as well as the alignment of the Commission's mandate with the Parliament's legislative term. Again, the European Parliament took a unilateral decision to consider its opinion binding (positive or negative) via another amendment to its rules of procedure, which was considered as an extensive interpretation of the Treaties (Hix, 2002). Nevertheless, the new modalities were applied for the first time to the Santer Commission in 1995 and the Treaty of Amsterdam recognized the vote of approval of the Commission President in 1997, meaning that the EP obtained a right to reject the nominee of the European Council. The question of the inter-institutional relations between the three European bodies was raised again during the Convention on the Future of Europe, created by the 2001 Laeken Declaration⁸ and aiming at greater democracy, transparency and efficiency in the EU. First acknowledged by an EP resolution, the "election" of the Commission President by the assembly was the preferred option of the parties involved (Hamřík and Kaniok, 2019, p.362). As a result, the draft Constitution for Europe enshrined the new modalities of the "election" of the Commission President, consisting in the nomination of a candidate by the European Council after consultations, "taking into account" the results of European elections, which is then "elected" by the Parliament by a majority of its members. The Treaty establishing a Constitution for Europe was rejected, but the Lisbon Treaty adopted the same wording in 2009 in Article 17(7) TEU.⁹

The rationale behind these treaty changes was to add democratic legitimacy to the leadership of the Commission President (Christiansen and Shackleton, 2019, p.45). In the 1990s, the difficulties faced during the ratification process of the Maastricht Treaty reflected the growing discontent among public opinion, as illustrated by opposition campaigns in some member states. According to Bogdanor and Woodcock, "the shortcomings of the Community lie in the feelings of remoteness and lack of influence and involvement on the part of many of its citizens" in 1991 (Featherstone, 1994, 149-150). Eventually, fifteen years later, a link between European citizens' vote and the head of a supranational body was created. The EU representative democracy developed a feature observed in parliamentary regimes since part of the executive power is now driven by elected representatives of the people (Shackleton, 2017, p.191). Nonetheless, Article 17(7) TEU left a legal vacuum and thus gave leeway regarding the practicalities of this link.

⁸ "Presidency Conclusions of the Laeken European Council (14 and 15 December 2001", Bulletin of the European Union, Luxembourg: Office for Official Publications of the European Communities, n°12, 2001, p. 19-23.

⁹ "Taking into account the elections to the European Parliament and after having held the appropriate consultations, 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. If he does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure." Consolidated version of the Treaty on European Union, TITLE III: PROVISIONS ON THE INSTITUTIONS, Article 17, OJ C 115, 9.5.2008, p. 25–26.

In a similar vein, the idea of a lead candidate system emerged in the 1990s and its concretization resulted from a long-standing debate. At that time, federalist circles and think tanks already discussed the idea of personalized representation at the EU level, since transfers of competences were not accompanied by a competition between supranational and personalized figures for the executive power as it would be the case in national democracies (Peñalver García and Priestley, 2015). Lead candidates would help to create a pan-European campaign involving European issues, rather than countrywide ones mobilized by domestic politicians tackling national topics. In order to include EU citizens in the choice of the Commission President, two options were available: a direct election or a lead candidate system. The former would require the direct support from heads of state and government via treaty change and amendments to national electoral laws, while a *Spitzenkandidaten* process could be first developed without such modifications (Peñalver García and Priestley, 2015). The debate was reactivated in the framework of the Convention for the Future of Europe in 2001: the EPP-ED (European Democrats) and Party of European Socialists (PES) were in favor of a personalization, and the PES specifically supported an election among several potential candidates, but these ideas did not lead to tangible results (Héritier et al., 2019, p.72).

In parallel, the evolution of the equilibrium of forces in the EP highlighted the growing importance of party politics in relation to the Commission Presidency, even before the Lisbon Treaty. After the Amsterdam Treaty, the political affiliation of the nominee became a major issue since the candidate needed an approval from the MEPs. After two decades of hegemony, the Socialist group left the majority to Christian Democrats in 1999, which has not changed since then. EPP-ED obtained 37.06% of seats, while PSE won 28.75% of them.¹⁰ Before the 2004 elections, the EPP congress asserted that it would only support a nominee from the winning political family, designated José Manuel Durão Barroso as its own candidate and invited other political groups to do the same (Peñalver García and Priestley, 2015). This symbolic decision formalized the substance of the subsequent treaty change in Lisbon, and laid the groundwork for the development of the future lead candidate system. It also favored the EPP as the latter always maintained its majority in the EP since 1999. Nevertheless, the risk of rejection of the European Council's nominee by other groups did not fade away, so the EPP still had to secure the support of other MEPs. But, first of all, the European Council had to back a candidate, hence why the EPP saw the election of Barroso in 2004 as the success of its strategy to impose a figure, despite the initial agreement on Guy Verhofstadt reached between some national leaders in the European Council before the elections (Westlake, 2016, p. 34-35). Yet the 2009 contest illustrated the importance of internal cohesion in the European Parliament. Barroso's reelection faced division in the EP, as only the EPP supported his candidacy, in spite of the support of all heads of state or government.¹¹ Even if the idea was envisaged, other political groups did not manage to designate an alternative candidate. They denounced the pressure exerted by the European Council to vote before the entry into force of the Lisbon Treaty¹², as well as the output of Barroso's first term. The vote of approval was eventually less favorable than in 2004, but this episode was considered as the early stages of the logic of the lead candidate process.

¹⁰ European Parliament, "European election results – 1999 – European Union, Results by political group".

¹¹ Stroobants Jean-Pierre, et Marion Van Renterghem, « Mobilisation au Parlement européen contre la réélection de José Manuel Barroso », *Le Monde*, 3 juillet 2009.

¹² A majority of votes cast was easier to obtain than a majority of MEPs.

Overall, the EPP was the most active proponent of the *Spitzenkandidaten* system since the Amsterdam Treaty. Notwithstanding their internal division, the Socialists were in favor of the designation of candidates. The frustration created after the 2009 reelection led them to take over the EPP's leading role after the Lisbon Treaty. Green and Liberal leaders managed to obtain the support of their MEPs, even if some Liberal members remained skeptical about it (Hamřík and Kaniok, 2019, p.357). From 2009 to 2012, the Liberals doubted the applicability of the system because of the need for the European Council's support and the fear of an EPP-PES competition (Peñalver García and Priestley, 2015). It took some years to find a common agreement in the Parliament but, in 2013, a resolution advocated for the first materialization of the *Spitzenkandidaten* system in the 2014 European elections, calling for the designation of a lead candidate by each political group and a vote on the lead candidate of the party winning the highest number of seats.¹³ In parallel, the supportive position of the Commission became clearer in the 2010s. In the 2012 State of the Union Address, President Barroso encouraged political parties to designate lead candidates for the 2014 elections as a “means to deepen the pan-European debate.”¹⁴ This request was included in a Commission recommendation the year after, calling European and national political parties to clarify “the candidate for the function of the President of the European Commission they support and the candidate's programme.”¹⁵ The position of the incumbent President ensured the lack of opposition in the College, even if some reluctant members expected a reject from the European Council (Peñalver García and Priestley, 2015). The same year, the General Affairs Council acknowledged the broad support around this innovation, and did not oppose it for the next ballot (Shackleton, 2017, p.197). At the dawn of the 2014 elections, the three EU institutions acknowledged or even supported the idea of lead candidates.

After decades of “interstitial change” to obtain its involvement in the designation of the Commission President, the European Parliament finally obtained the support of the institution concerned. Member states agreed to some changes under pressure from the EP, but cared about their dominant position in the process. The Commission clearly recognized the advantage of the democratic legitimization provided by the lead candidate, which could compensate the dominance of its output legitimacy, as well as its elitist and technocratic image related to its nature of an expert body. On the European Parliament's side, democratization of the EU decision-making process and governance was the rationale developed from the 1990s onwards in reaction to the growing contestation among the EU population. Yet, a better position in the EU's inter-institutional relations also motivated the several unilateral decisions, and European groups eventually took part in the process to maximize impact on EU politics and governance. Even before the ratification of the Lisbon Treaty, internal cohesion in the EP was proved crucial to the success of the system. Eventually, all the above-mentioned elements participated in the first materialization of the *Spitzenkandidaten* process in 2014.

¹³ European Parliament, Resolution on improving the practical arrangements for the holding of the European elections in 2014, 4 July 2013.

¹⁴ José Manuel Durão Barroso, State of the Union 2012 Address, Plenary session of the European Parliament, Strasbourg, 12 September 2012.

¹⁵ European Commission, Recommendation of 12 March 2013 on enhancing the democratic and efficient conduct of the elections to the European Parliament, OJ L79/29, 21 March 2013.

III. Assessment of a decade of Spitzenkandidaten: success and failure?

Prior to the 2014 European elections, five of the seven European party groups designated candidates. Alexis Tsipras was the first one nominated by the European United Left and Nordic Green Left (GUE/NGL) in December 2013. He was followed in 2014 by Guy Verhofstadt, Jean-Claude Juncker and Martin Schulz, who became the lead candidates of the Alliance of Liberals and Democrats for Europe (ALDE), S&D and EPP groups respectively. The Alliance of European Conservatives and Reformists (AECR) and Europe of Freedom and Democracy (EFD) did not designate any candidate, while Ska Keller and José Bové campaigned together for the Greens as a result of an online primary. These exceptions did not impact the top candidate process for these elections, because these parties did not expect to obtain the highest number of seats¹⁶. However, this questions the exact modalities of the system (i.e. the number of candidates each party group should put forward) and the cohesion needed among European party groups to secure the new system. Despite the short period of time between nominations and parliamentary elections, these events paved the way for the establishment of a new model.

Nevertheless, the European Council still had to be convinced and get on board. In 2013, Angela Merkel, Herman van Rompuy and Frederik Reinfeld were against the system. Opponents in the Council wanted to keep options open, disapproved the EP's interference with its nomination powers, and contested a change in the inter-institutional balance of powers. Yet European leaders were taken short and preferred to avoid the risk of institutional deadlock or backlash (Peñalver García and Priestley, 2015). They eventually accepted that personalization and respect for the citizens' democratic voice were needed.

In May 2014, the EPP obtained the highest share of seats (29,43%), followed by S&D (25,43%)¹⁷, which meant that the two dominant groups had a majority of seats in the assembly. The main change came from AECR, which arrived in third position (9,32%) and overtook ALDE (8,92%).¹⁸ A few days after the elections, leaders of the main groups asserted that a frontrunner should be nominated by the European Council, Jean-Claude Juncker getting first the opportunity since the EPP won. Despite the perceived attack on its authority and the inter-institutional balance, the European Council did not want to risk a conflict with the European assembly nor European citizens (Shackleton, 2017, p.198). The EPP's lead candidate was nominated by the European Council (only the UK and Hungary voted against) and then elected by the EP as Commission President with a large majority. Socialist and Green MEPs made their vote conditional upon the choice of Martin Schulz as EP President. Cohesion among the main political groups in the EP throughout the election process thus enabled the materialization of the *Spitzenkandidaten* system, considered "more democratic than (...) a fireside chat at a European Council meeting¹⁹", and this large support bolstered President Juncker's legitimacy. The 2014 elections were thus seen as a success for the EP's empowerment, the Commission's legitimization and European democracy.

Whereas conditions were favorable in 2014, they were different in 2019. First, the reiteration of the lead candidate system, and thus its legitimization and formalization, were at stake. MEPs Hübner and Leinen drafted a report for the Committee on Constitutional Affairs (AFCO) in

¹⁶ "Keller and Bové to campaign as Greens' duo", *Euractiv*, 29 January 2014.

¹⁷ European Parliament, "European election results – 2014 – European Union, Results by political group".

¹⁸ *Ibid.*

¹⁹ Christiansen, Thomas et al. "Election deserves more attention", *Financial Times*, 14 May 2014.

which they called for the codification of the selection process of lead candidates as part of election campaigns, including a deadline for their nomination.²⁰ As this request did not pass, the 2014 and 2019 elections followed the same modalities. Nevertheless, it was informally applied since the major European parties named at least one frontrunner. Manfred Weber was selected for the EPP and Frans Timmermans for the PES. In addition, the European Free Alliance (EFA) chose Oriol Junqueras. While Europe of Freedom and Direct Democracy (EFDD) maintained opposition to the system, the Alliance of Conservatives and Reformists in Europe (ACRE) changed its attitude and nominated Jan Zahradil. The first participation of Eurosceptics thus made the lead candidate system more representative of the political trends in the assembly. The essence of the system was nevertheless impacted by the nomination of multiple frontrunners by some European Parties. A duo was once more selected by the Greens, Ska Keller and Bas Eickhout, while GUE selected Nico Cué and Violeta Tomic. However, the main innovation came from ALDE, which created a “Team Europe” composed of seven people: Guy Verhofstadt, Katalin Cseh, Luis Garicano, Margrethe Vestager, Nicola Beer, and Violeta Bulc. In the end, the overall picture is rather positive due to the higher number of lead candidates compared to the precedent elections. Nevertheless, these initiatives do not align with the initial understanding of the system and not all party groups actually backed the process.

This time again, the European political spectrum faced several changes. Among the 751 deputies, 24,23% came from the EPP and 20,51% from S&D.²¹ For the first time, the two historical groups did not obtain a majority of seats, which meant that their alliance would not be sufficient for a coalition and that the support from other groups was required. Now called Renew Europe (RE), the liberal group was reinforced by the integration of French MEPs from *La République En Marche* and arrived in third position with 14.38% of seats.²² Greens/EFA reached 9.85%, Identity and Democracy (ID) 9.72%, ECR 8.26% and GUE/NGL 5.46%.²³

Compared to 2014, party politics had greater clout and cohesion around *Spitzenkandidaten* declined in the EP in 2019. Previously, Jean-Claude Juncker enjoyed a rather consensual endorsement both in the European Council and in the EP, where Christian Democrats were in majority. His experience was particularly appreciated too (Shackleton, 2017, p.200). In the EP, a deal was brokered between the two main political parties, EPP and PES, who secured a majority. In contrast, in 2019, Liberals were better represented in the European Council, which was also more prepared thanks to the several meetings organized to discuss the matter after the elections (Christiansen and Shackleton, 2019, p.49). Emmanuel Macron had reservations about the lead candidate system as it was, and claimed for the establishment of transnational lists. He clarified his position before the EP in 2018, saying he believes in the *Spitzenkandidaten* system but this latter needs to be completed to ensure the emergence of a European demos²⁴. In the Parliament, the EPP expected Manfred Weber to be nominated for a vote of approval, but other political groups (as well as leaders in the European Council) had doubts about his capacity to head the Commission. The main reason was his lack of experience at national executive level, and most of the Socialists found him too conservative (Ripoll and Costa, 2021, p.137). Yet,

²⁰ European Parliament, Draft report on a proposal for an amendment of the Act of 20 September 1976 concerning the election of the Members of the European Parliament by direct universal suffrage, 2015/2035.

²¹ European Parliament, “European election results – 2019 – European Union, Results by political group”.

²² Ibid.

²³ Ibid.

²⁴ Parlement européen, « 4. Débat avec le président de la République française, Emmanuel Macron, sur l’avenir de l’Europe », 17 avril 2018, Strasbourg.

political strategies also negatively impacted the reproduction of the 2014 success. Disagreements over transnational lists nurtured Renew's objection to the reproduction of the system. In addition, even if the Liberals did not expect to win European elections, their representation at the European Council opened the possibility for the nomination of a liberal candidate. Opposition was therefore a better opportunity for leadership than a repetition of the 2014 model (Christiansen and Shackleton, 2019, p.49). The designation of a team also illustrated a strategy on the allocation of top jobs at the EU level, such as the High Representative, the President of the European Central Bank or the President of the European Council. In a nutshell, all these elements of fragmentation weakened the integral completion of the lead candidate process. The European Council was in turn empowered to choose an alternative candidate that could win the support of a majority of MEPs. Negotiations led to the nomination of Ursula von der Leyen, who served the German federal government and is a member of the domestic and European Christian Democrats. This designation also resulted from the broader allocation of top jobs at EU level²⁵. On 16 July 2019, she was elected with only nine votes above the minimum required, which can be justified by MEPs' initial divisions or their opposition to the distancing from the *Spitzenkandidaten* process (Cloos, 2019, p.1).

Therefore, the lead candidate system is highly dependent on the political context in the absence of formalization via inter-institutional agreement or treaty change (Ripoll and Costa, 2021, p. 137). In the past, this innovation could have been seen as a blank check to the EPP, winning elections since 1999, but the increasing fragmentation and narrower majority in the EP illustrate that party politics in European elections can create difficulties. Cohesion among political groups is thus a determinant factor for the consolidation of the process.

On the threshold of the 2024 European elections, recent developments illustrate that the European Parliament aims at securing the system and its modalities. On 17 January 2022, the three main political groups (the EPP, S&D and Renew) reached an agreement confirming their support of the lead candidate process for the next European elections.²⁶ Few months later, based on the Ruiz Devesa report validated in AFCO on 28 March 2022, a legislative resolution adopted in plenary on 3 May 2022 specified an order for the nomination of candidates by the European Council: "the lead candidate whose European political entity has received the overall highest number of seats should be tasked first with forming a coalition majority in the newly elected Parliament as regards the nomination of a candidate for President of the Commission (...) in case a coalition majority cannot be reached, the task should be assigned to the next lead candidate²⁷." These provisions would be beneficial to avoid the development of strategies among EP political groups and would forge the link between EU citizens' vote and the candidate for the head of the European Commission. In order to enshrine this procedure, this resolution also calls for a formalization "by a political agreement between the European political entities and by an Interinstitutional Agreement between Parliament and European

²⁵ Charles Michel as President of the European Council, Christine Lagarde as President of the European Central Bank, Josep Borrell as High Representative.

²⁶ European Parliament, Agenda 2022-2024: Mid-term agreement between the EPP, S&D and Renew Europe "Our priorities for Europeans", 17 January 2022.

²⁷ European Parliament, Report on the proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage, repealing Council Decision (76/787/ECSC, EEC, Euratom) and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that decision (2020/2220(INL)), 19-0083/2022, 4 April 2022.

Council.”²⁸ Yet the special legislative procedure requires an approval from the Council via unanimity voting and from the Member states for these proposals to enter into force.²⁹

The European Parliament can also count on the support of the civil society, conveyed in the framework of the Conference on the future of Europe. On 11 October 2021, the Youth Ideas Report backed the enforcement of the *Spitzenkandidaten* system, arguing that it would connect the EU population and European Commission Presidents.³⁰ This request reflects the draft proposals of the Conference on “Democracy and elections”, whose objective includes a “strong link between citizens and their elected representatives.”³¹ More precisely, EU citizens request a “greater say” over the person elected as Commission President and back the lead candidate system (or a direct election) to do so.³² The Conference plenary adopted these measures by consensus on 30 April 2022. Among EP representatives, five political groups considered them as a “major political achievement” (EPP, S&D, Renew, Greens/EFA, and GUE/NGL), while ID and ECR warned that they would not support the proposals because according to them these latter do not reflect the opinion of the wider EU population.³³ But as institutional representatives included members from the European Parliament, the Council, the Commission and national parliaments, this development remains a positive sign for a future institutionalization of the procedure.

In a nutshell, the lead candidate process has gained momentum after a decade of actual experimentation. A comparison between the 2014 and 2019 outcomes must look at the broad picture and assess several elements. In 2014, the context was highly favorable for the election of Jean-Claude Juncker as Commission President and thus the enforcement of the lead candidate process: agreement between the two main political groups in the EP who enjoyed a majority of seats, pressure on an unprepared European Council, profile of the frontrunner acceptable for both EU leaders and MEPs. In 2019, conditions were different due to a more fragmented and less cohesive European Parliament, a change of majority in the European Council favorable to the third biggest political group in the EP, as well as a lack of support of the frontrunner from the EPP. Without a proper institutionalization of the lead candidate system, the outcome of the election of the Commission President will be highly dependent on the political situation. The election of Ursula von der Leyen might be seen as a failure of the EP in its inter-institutional power competition with the European Council, but not a failure of the process itself. A “nuanced understanding” of performance is required regarding this new procedure (Christiansen and Shackleton, 2019, p.47). In 2019, more political groups presented a frontrunner, negotiations between institutions took place, and the new President still matches the political affinities of the winning group. At that time, EU Treaties only forced the European Council to take into account the results of elections in the nomination of a candidate. Even if the Commission President was an “outsider”, the politicization of the election of an executive leader and the routinization of this practice differed from previous deals brokered behind the closed doors of the European Council (Ibid, p.45).

²⁸ Ibid.

²⁹ Consolidated version of the Treaty on the Functioning of the European Union, OJ2016, 7.6.2016, p.149, Art.223

³⁰ Youth Ideas Report for the Conference on the Future of Europe, Conference on the Future of Europe, European Youth Event 2021, 11 October 2021, p.23.

³¹ Draft proposals of the Conference on the Future of Europe, “European democracy”, 27 April 2022, pp.35-42.

³² Ibid.

³³ European Parliament, “Future of Europe: Conference Plenary ambitious proposals point to Treaty review”, 30 April 2022.

IV. Does the lead candidate process necessarily entails the democratization of EU governance ?

In the post-Maastricht era, the argument of the EU's democratic deficit has been repeated to justify the need for reforms at supranational level. As mentioned before, this rationale also impacted the debate around the lead candidate process, expected to inject democratic legitimacy in the system. Yet, the reality of this statement should be assessed in light of the actual impact of the first *Spitzenkandidaten* experiment and its potential for democratization of EU governance. According to the 1988 Toussaint Report, the European democratic deficit has two characteristics: a transfer of powers from the national level to the supranational one, and the replacement of national parliaments by non-parliamentary European bodies to use these powers at EU level (Featherstone, 1994, p.150). Therefore, EU democracy goes beyond the European Parliament and European elections, even if these latter must be evaluated.

Being directly elected, the assembly of MEPs might be considered as the most democratic body. Nevertheless, European elections lack of basic elements to become completely democratic and the lead candidate process cannot necessarily compensate them. First, the overall turnout has been decreasing over time from 62% in 1979 to 42.61% in 2014, then reached 50.66% in 2019.³⁴ Even if it is a common argument in favor of the system, no correlation between the personalization of the campaign and a higher turnout could be observed in 2014 (Cloos, 2019, p.5), and it remains too early to draw conclusions about the recent increase. However, electoral participation remains an important criterion for a real supranational democracy. For now, the results illustrate the “second-order” nature of European elections, meaning that their importance is considered lower compared to others such as national ones (Russack, 2019, p.51). To solve this problem, supporters of the *Spitzenkandidaten* process argue that higher stakes could transform them into “first-order” elections. In their view, participation would increase if a real and direct link was created between the votes of EU citizens and the election of the Commission President via a competition between frontrunners. People would then believe that their vote truly matters, EP elections would become more attractive, and the Parliament's and the Commission's decisions would be legitimized by a larger portion of the European population (Hamřík and Kaniok, 2019, p.357)

Nevertheless, a change of scale from national to supranational level is required. For now, campaign themes remain mostly domestic rather than European, while EU citizens are more familiar with politicians from their own countries rather than European ones (Russack, 2019, p.51). The promise of the lead candidate system is here to organize a competition between truly European figures, who would launch a pan-European campaign on supranational themes. In 2014 and 2019, some progress was made. Common topics such as Brexit or climate change also structured the campaign (Ripoll and Costa, 2021, p.140-141). Public and broadcast debates were organized between some or all frontrunners. Nevertheless, campaigns mostly revolved around domestic topics and European topics were still discussed from a national angle. The majority of EU voters was unaware of the *Spitzenkandidaten*, both as a system and as candidates for Commission Presidency (Russack, 2019, p.57-58). The level of information was higher in the countries of origin of the lead candidates and media marginally covered the frontrunners campaign (Hamřík and Kaniok, 2019, p.367). EU citizens also flagged the lack of European public sphere in the framework of the Conference on the future of Europe. For their

³⁴ European Parliament, Turnout – European Union, Results by year, 1979–2019.

greater involvement in European democracy, they called for public debates on EU topics during EP (and other) elections via political parties, civil society and social partners.³⁵

The transnational dimension of European elections can be enhanced by a real competition between lead candidates. Yet, this latter cannot compensate for the limitations of the current electoral system. Today, in the absence of an EU-wide ballot, European elections consist in the addition of results obtained in national constituencies. Consequently, for some time now, the introduction of transnational lists emerged as a solution to Europeanize EP elections. To start with, EU citizens would have two votes : one would consider the domestic constituency (be it national or regional), as it is already the case, while the other one would correspond to an EU-wide list. In the long run, the objective could be to keep a single European constituency on the EU territory. From 2011 until 2018, the proposal failed to win the support of a majority of MEPs (Russack, 2019, p.50-51). This failure provoked divisions in the European assembly since Liberals were strong supporters of the idea. In the European Council, Emmanuel Macron and Angela Merkel also expressed their backing (ibid).

Even if the electoral procedure remained the same in 2019, the 2024 elections might face some changes. In January 2022, the three main political groups in the EP already concluded a mid-term agreement supporting the combination of the lead candidate process and a certain number of seats allocated via transnational lists for the next ballot.³⁶ The Committee on Constitutional Affairs made it more concrete with the adoption of the Ruiz Devesa Report in March 2022, which mentions “the establishment of a Union-wide constituency in which lists are headed by each political family candidate for the post of President of the Commission” for a stronger European democracy and the legitimization of the Commission President.³⁷ The procedure for a reform of the EU’s electoral law thus started with the adoption of a legislative resolution by the EP on 3 May 2022. It includes the election of 28 MEPs on EU-wide lists, headed by lead candidates, as well as a unique election day on 9 May in all EU member states.³⁸ For the first time, actual transnational features would be added to EP elections, reducing their domestic character and enhancing the visibility of frontrunners for the EU’s executive power. The resolution also calls for the transparent and democratic nomination of *Spitzenkandidaten* at least twelve weeks before the election day³⁹, which would ensure them a minimum period for campaigning in the Union. An EU-wide constituency would thus give a better framework for the *Spitzenkandidaten* system to entrench itself and reinforce the potential for genuinely European campaigns and elections.

As mentioned in the long-standing debate around the lead candidate process, these measures are also expected to impact the Commission. Since the 1990s, the lack of democratic legitimacy of the EU decision-making process has been emphasized, and the European Commission aimed

³⁵ Draft proposals of the Conference on the Future of Europe, “European democracy”, 27 April 2022, p. 39.

³⁶ European Parliament, Agenda 2022-2024: Mid-term agreement between the EPP, S&D and Renew Europe “Our priorities for Europeans”, 17 January 2022.

³⁷ European Parliament, Report on the proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage, repealing Council Decision (76/787/ECSC, EEC, Euratom) and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that decision (2020/2220(INL)), 19-0083/2022, 4.4.2022

³⁸ European Parliament, “MEPs begin revisiting rules on EU elections, calling for a pan-European constituency”, Press release, 3 May 2022.

³⁹ Thus mid-February is a single one is decided at EU level; European Parliament legislative resolution of 3 May 2022 on the proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage.

at changing its image of unreachable institution via a better balance between input and output legitimacy (Calliess, 2021, p.14). As defined by Scharpf or Schmidt, both are necessary for democratic legitimacy: output legitimacy requires policies to work effectively via a problem-solving approach “while resonating with citizens’ values and identity”; input legitimacy corresponds to the “participatory quality” of the decision-making process via representative politics in which citizens can express their demands institutionally and deliberatively (Schmidt, 2013, p.7). According to the Commission, the link between European citizens’ vote and the choice of its leader would bring input legitimacy to the EU executive power (Peñalver García and Priestley, 2015). A counter-argument raised by the opponents to the lead candidate system is the undesirable politicization of the Commission, which is expected to remain independent from party politics and strive for effectiveness and efficiency in the conduct of its tasks (Cloos, 2019, p.5). According to Article 17(3) TEU, “the members of the Commission shall neither seek nor take instructions from any government or other institution, body, office or entity.”⁴⁰ The academic debate thus split between the qualification of regulatory body and the idea of a political authority (Peñalver García and Priestley, 2015). Yet the advancement of European integration expanded the Commission’s powers that imply political choices or margin of political appreciation, such as agenda-setting or competition oversight. An objective of the lead candidate process is actually a better reflection of public opinion preferences in the work of the Commission, to use a democratic rather than technocratic justification (Nugent and Rhinard, 2019, p.210). The European Parliament and the Commission President would have a closer connection, which was already noticeable in 2014 when Jean-Claude Juncker campaigned on five points before the European elections and completed them afterwards with five other items that reflected his exchanges with parliamentary groups (Shackleton, 2017, p.198). In this sense, the campaign of lead candidates would be a means to generate democratic legitimacy towards the Commission leader’s program, and potentially facilitate MEP’s support during a mandate thanks to a more stable majority (Calliess, 2021, p.13; Christiansen and Shackleton, p.45). Nevertheless, coalition building in the EP is based on several cleavages and follows a case-by-case approach contrary to domestic parliamentary majorities (Russack, 2019, p.54). The long-standing “grand coalition” between the EPP and S&D was transformed into a “super grand coalition” in 2014 with the inclusion of the Liberals, but the end of “the bloc” after two years and the increasing fragmentation of the EP add uncertainty to the relative cohesion of the European assembly (Ripoll and Costa, 2021, p.138).

By extension, the lead candidate process questions the nature of EU governance and the EU’s representative democracy. According to Article 10 TEU, the Union is founded on a dual democratic legitimation: EU citizens are directly represented in the European Parliament by its members, and indirectly represented in the European Council and Council of the European Union by the (elected) leaders of their member states⁴¹. These provisions do not mention the Commission and Commissioners are designated by national governments, even if the College of Commissioners must be approved by the EP. In the end, the lead candidate process does not really impact the democratic input of the entire institution, only the choice of its President. Furthermore, the EU is not a parliamentary system in which the government only derives its legitimacy from the support of the legislature to which it is accountable. Even with the

⁴⁰ Consolidated version of the Treaty on European Union, TITLE III - PROVISIONS ON THE INSTITUTIONS, OJ C 202, 7 June 2016, Article 17, p. 25-26.

⁴¹ Consolidated version of the Treaty on European Union, TITLE II - PROVISIONS ON DEMOCRATIC PRINCIPLES, OJ C 202, 7 June 2016, Article 10, p. 20.

institutionalization of the *Spitzenkandidaten* process, the choice of the Commission President remains in the hands of both the European Council and Parliament. The idea of a parliamentary system cannot be applied to the Union in a similar way as one of a member state.

Moreover, the nature of EU governance goes beyond the interaction between the Commission and the European Parliament, as the executive power in the EU is split between several institutions and bodies (Shackelton, 2017, p. 196). Since its recognition as an EU institution in 2009, the European Council has gained influence over the EU decision-making process, which illustrates the turn from supranational institutions to intergovernmental ones, as illustrated by new intergovernmentalism theories (Bickerton, Hodson and Puetter, 2015). Since the post-Maastricht era, *de novo* regulatory bodies and non-majoritarian bodies have more powers while they are neither directly elected nor managed by elected representatives (Scicluna and Auer, 2019, p.5-7). The sequence of crises faced by the EU in the last decade impacted the type of legitimacy on which EU governance relies. “Integration through crisis” replaced “integration through law”: it implies end-driven and extra-constitutional processes, as well as emergency rhetoric focusing on reactivity and efficiency (Ibid). As a result, EU governance turns more towards output rather than input legitimacy, which questions the democratic future of EU governance promoted by the lead candidate process.

V. Conclusion

The lead candidate system emerged in the European debate in the framework of the long-standing empowerment process of the European Parliament. It aims at creating a link between the results of EP elections and the choice of Commission President. Still preserving the European Council’s nomination power, it implies the designation of frontrunners by parliamentary groups, their competition during election campaigns, the nomination of the lead candidate from the winning group by the European Council, and an election by MEPs via majority voting. Since the Maastricht Treaty, the main discourse indeed revolved around the need for democratization of EU decision-making, particularly of the European Commission. Nevertheless, this innovation was also motivated by the inter-institutional competition between three main institutions: the European Commission, the European Parliament, and the European Council. In need for democratic legitimization to compensate its technocratic image, the Commission rapidly joined the Parliament’s side. The European Council was the most difficult institution to persuade since heads of state and government feared a decrease in power, but they gradually accepted changes due to popular pressure via treaty changes. The EP was thus successful in the institutionalization of its incremental and unilateral moves, as part of its “interstitial change” strategy. Today, Article 17(7) TEU provides that the European Council must take into account the results of European election in the nomination of a candidate for Commission Presidency, who then needs to be elected by a majority of MEPs⁴². The automatic designation of the lead candidate of the winning political group thus remains disputed. Yet recent developments illustrate that this idea could be institutionalized in the near future, such as the mid-term agreement between the three main political groups, proposals adopted by the Conference on the future of Europe, as well as the initiation of an electoral reform based on the Ruiz Devesa Report. All these elements still require the approval of member states

⁴² Consolidated version of the Treaty on European Union, TITLE III: PROVISIONS ON THE INSTITUTIONS, Article 17, OJ C 115, 9.5.2008, p. 25–26.

governments (at European or domestic level), so their application in 2024 remains uncertain only two years ahead of the next European elections.

The experiment of the *Spitzenkandidaten* process in 2014 and 2019 illustrated the importance of its recognition in EU law, without which the outcome highly depends on the political context and cohesion of the actors concerned. In 2014, the lead candidate of the winning political group enjoyed the support of the main European parties and a majority of leaders in the European Council. In 2019, the EP was more fragmented both on the idea of the *Spitzenkandidaten* and on the frontrunner of the winning party. It also faced a political strategy developed by the third parliamentary group, related to the change of political majority in the European Council. Lastly, this latter was less convinced by the lead candidates and more willing to circumvent the process with the nomination of an outsider. But this result did not mean the failure of the *Spitzenkandidaten* process, since a higher number of candidates was designated and political contestation played a bigger role in the election of the Commission President. The EU is thus witnessing a distancing from a deal brokered behind closed doors and a better alignment with the representative democracy it claims to be.

Together with an electoral reform including a transition to transnational lists and constituency, European elections have more potential to become “first-order” elections, involving a substantial EU-wide campaign and political contestation. Higher stakes could also increase the attractiveness of European elections and the turnout by extension, which would bring input democracy to the Commission’s executive power. Nevertheless, the impact of the lead candidate system remains confined to the inter-institutional relations between the Commission and the Parliament. The link between the result of elections and the head of an executive institution led to the idea of the securitization of a parliamentary majority in the EP, as well as the claim of a “parliamentarization” of the Union. Yet EU governance cannot be compared with the regime of a member state as the executive power is split between several bodies. The potential for democratic legitimation brought by the *Spitzenkandidaten* system is thus limited and even challenged by a change of paradigm in the last decade. The multiplicity of crises faced by the EU nurtured the turn to intergovernmental and non-majoritarian bodies rather than supranational and democratic institutions. “Integration through crises” mobilizes emergency rhetoric that requires output rather than input legitimacy. Following the economic and financial crises, Commission President Jean-Claude Juncker stated that “we now have a window of opportunity but it will not stay open forever”, calling for “a more united, a stronger, a more democratic Europe for 2025.”⁴³ The next few years and the 2024 European elections will tell whether the EU seized it or maintained a status quo.

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⁴³ Jean-Claude Juncker, State of the Union Address 2017, Brussels, 13 September 2017.

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