

Olivier COSTA – College of Europe (Bruges, Belgium) / CNRS-Sciences Po (Paris, France)

The political regime of the EU through the prism of the confirmation of the von der Leyen Commission by the European Parliament

Contact: olivier.costa@cnrs.fr

Panel 11M: Is Europe Back in the Driver's Seat? The Union at a Turning Point in Time

EUSA CONFERENCE 2022

ABSTRACT

"European Studies", as a discipline dedicated to the analysis of the EU, is structured in various schools, which offer as many interpretations of what the EU is and what governs its progress. From this complex debate emerge three dominant visions – intergovernmentalism, neo-functionalism and post-functionalism – which can be used to better understand the current developments of the EU political system. For instance, they can shed light on the complex appointment process of the von der Leyen Commission. It has been quite conflictual and messy, and has highlighted the tensions that exist between various visions of the EU and the deep disagreement among actors on the role of the EP in the process. Some national leaders were expecting the EP to approve what was negotiated within the European Council with the elected President of the Commission. However, despite the failure of the *Spitzenkandidaten* process, or because of it, most MEPs intended to exert a real control over the commissioners-designate. This tension led to a peek with the rejection of French commissioner-designate Sylvie Goulard. This paper assesses this sequence through the lenses of the main theories of European integration. By doing so, it aims at improving our understanding of the existing institutional dynamics within the EU political system.

INTRODUCTION

The 2019 electoral sequence demonstrated the continued intense confrontation between different perceptions of, and approaches to, the European Union over very practical issues regarding the functioning of its institutions. Disagreements regarding the potential use of transnational lists, the renewal of the *Spitzenkandidaten* procedure or the ways in which the

electoral campaign might become more supranational, are all part of debates that date back to the early days of European integration. Admittedly, the themes and objects of discord have been evolving, and it is difficult to identify clear and coherent coalitions in this discussion, but one still finds the same binary dividing lines, opposing partisans of a more intergovernmental or more supranational European integration, supporters of a parliamentarisation of the Union's political system or those who wish to preserve its originality, advocates of a more consensual and (supposedly) effective or more openly conflictual and (potentially) democratic functioning. In the run-up to the 2019 elections, these tensions once again made it impossible to carry out the reform of the 1976 Act on the organisation of European elections called for by the European Parliament (EP).¹ They also thwarted the Spitzenkandidaten procedure since the top candidates did not play a central role in the campaign and the European Council chose a person who was neither a lead candidate nor even a candidate in the European elections to preside over the Commission.

These differing views on the nature of the Union's political system and on how it should operate were especially sharp during the Commissioners' appointment procedure. They came to a climax on October 10th, 2019, with the rejection of the nomination of Sylvie Goulard, the French candidate, by the competent parliamentary committees. This decision led to conflicting interpretations: described by some as a sign of democratic vitality and evidence of the Union's new electoral logic, it was criticised by others as a lowly partisan manoeuvre, unrelated to the qualities of Mrs Goulard's candidacy, perhaps even as a settling of scores by proxy with the French President. These discordant reactions, reflecting the existence of very diverse interests, are more fundamentally indicative of the ambiguities and ambivalence that mark the Union's political system and its operating rules.

Thus, beyond the potential bad faith and strategies of politicians and practitioners, the analysis comes up against the very real indeterminacy of the Union's political system. This explains why "European studies", defined as the discipline devoted to the analysis of European integration, has developed into several schools offering as many different interpretations of what the Union is and of what governs its operations. This complex debate, fuelled by multiple concepts and models, has given rise to three prevailing perspectives - intergovernmentalism, neo-functionalism and post-functionalism. These provide a better understanding of recent events, in particular the events leading up to the appointment of the von der Leyen Commission.

The first part of this paper will review these three theories, which are echoed in the world of politics, EU practitioners, and civil society. The complex sequence of the appointment of the von der Leyen Commission will then be retraced in the second section. How this turbulent procedure can be analysed using the three theories in question, and what this tells us about the nature of

¹ Olivier Costa, « Article 39 : droit de vote et d'éligibilité aux élections européennes », in Fabrice Picod, Cécilia Rizcallah, Sébastien Van Drooghenbroeck (dir.), *Charte des droits fondamentaux de l'Union européenne : commentaire article par article*, Bruxelles, Larcier, 2ème édition, 2020, p. 967-991

the Union's political system and the role played by the European Parliament within it, can then be explored.

1. Three theoretical visions of European integration

Since the end of the 1950s, researchers from a variety of backgrounds (international relations, public law, comparative politics, public policy analysis, sociology, political economy, etc.) have proposed multiple theoretical models to account for the process of European integration and the way in which the Community, and then the Union, functioned. This is a vast and complex debate, and is at times unnecessarily conflictual, as authors situate their considerations at different levels of analysis. Some focus on the *raison d'être* of European integration and on the reasons for deepening it. Others are more interested in the Union's political system and attempt to qualify it or theorise how it works. Others still are concerned with the dynamics governing the development and implementation of EU policies, without questioning the nature of the Union. Furthermore, European studies have gradually been structured by the epistemological schools of thought that have marked all social sciences in recent decades: neo-institutionalism, sociology of actors, constructivism, rational choice, cognitive approaches, etc. These intellectual currents strongly determine the work of many authors and give rise to lively controversy. However, they offer less a vision of the Union than indications on how it should be studied.

In this jungle of theories, concepts and paradigms, three approaches, which can be described as metatheories, deserve our attention. They offer a relatively exhaustive reading of European integration, putting forward a vision of the integration process, the nature of the Union's political system, the way it operates, and its interactions with national political systems. These are intergovernmentalism, neo-functionalism, and post-functionalism.

Intergovernmentalism

Intergovernmentalism appeared very early in the field of European studies. International relations specialists refused to see European integration as anything else than the creation of a classical international organisation as early as the 1950s. The "empty chair crisis", orchestrated by De Gaulle in 1965 and 1966 to oppose the federalist undertones of the Community method lead to a strong revival of this approach². Indeed, intergovernmentalists believed that this crisis had demonstrated that European integration was not irresistible and that its scope and progress

² Stanley Hoffmann, *Obstinate or obsolete? The fate of the nation-state and the case of Western Europe*, 1966.

were closely controlled by the representatives of the Member States³. Since then, intergovernmentalism has been a central analytical framework for European studies and has regularly undergone new adaptations such as liberal intergovernmentalism in the 1990s⁴ and new intergovernmentalism in the 2010s⁵.

In short, according to intergovernmentalists, European integration results from Member States seeking arrangements that are likely to be of collective benefit to them. They see it as a strategy for rebuilding and pacifying the continent, and then for dealing with the Cold War. More recently, the EU has been a means to manage new shared problems collectively - be it migration, security issues or climate change. Intergovernmentalists consider that states only delegate to the Union the competences that are strictly necessary to meet their needs and participate in the process only as long as they feel it serves their interests. These authors strongly disagree with the idea of the Union as a quasi-state or federation and persist in seeing it as an international organization whose main actors remain national politicians. According to them, supranational institutions have no real initiative or decision-making autonomy; they are bodies at the service of the states (Commission, European Central Bank), forums of negotiation between national representatives (European Parliament, Council, European Council) or mere arbiters (Court of Justice, Court of Auditors). European integration is therefore regarded as lacking its own dynamics: it is what the states make of it, and nothing more.

Neo-functionalism

Neo-functionalists have a completely different view of things. This school of thought emerged in the early days of European integration, when certain political scientists - particularly American ones - wanted to explain how this process avoided inter-state tensions, and how European institutions managed to acquire some form of autonomy from them⁶. Consequently, European integration is described as the product of the strategies and initiatives of various economic, political, and social forces, within states and at the supranational level, and not as the result of an adjustment of the preferences held by the representatives of the Member States. According to neo-functionalists, multiple actors from various sectors have agreed on the fact that there are

³ Piers Ludlow, « De-commissioning the Empty Chair Crisis: the Community institutions and the crisis of 1965-6 », 2006 ; Laurent Warlouzet, « Relancer la CEE avant la Chaise vide: Néo-fonctionnalistes vs. fédéralistes au sein de la Commission européenne (1964–1965) ». *JEIH Journal of European Integration History* 14, n° 1 (2008): 69–87.

⁴ Andrew Moravcsik, *The choice for Europe: Social purpose and state power from Messina to Maastricht*. Routledge, 2013.

⁵ Christopher Bickerton, Dermot Hodson, and Uwe Puetter. « The New Intergovernmentalism: European Integration in the Post-Maastricht Era ». *JCMS: Journal of Common Market Studies* 53, n° 4 (2015): 703–722.

⁶ Ernst B. Haas, *Beyond the nation state: Functionalism and international organization*. ECPR Press, 2008 (1964).

common functional needs that require that certain decisions be taken at the supranational rather than the national level, even if this means eroding state sovereignty. In this case, European integration is considered to be driven by an autonomous supranational movement. It tends to be strengthened by the steady increase in its competences⁷, the growing independence of its institutions supported by economic and civil society actors, the socialisation of national political and administrative elites in the European circles, and the centripetal dynamic that drives the whole process. Thus, in neo-functionalists' views, the states have partly lost control of the integration process, which has acquired a high degree of autonomy and is now largely based on the initiatives of supranational institutions - notably the Commission, the Court, and the EP.

Post-functionalism

Post-functionalism is the most recent meta-theory. It aims to integrate the developments in European integration after the Maastricht Treaty, and to theorise the subsequent rise of Euroscepticism⁸. Other theories do this as well. For instance, federalist authors underscore the emergence of a European-level public and political space, its growing interconnections with national spaces, and the deepening of European citizenship⁹. However, post-functionalism's capacity to reflect on the resistance that Europe generates sets it apart. It notes the growing tensions between the functional needs for integration expressed by European states and the concerns that this raises within these same states. Since the mid-1990s, European integration has been the subject of criticism which has led to a strong politicisation of the issue, both at the national and European level¹⁰. While it developed discreetly for 40 years, it is now strongly constrained by the hostility of certain political parties, large sections of public opinion and even certain national leaders. In other words, integration, which until relatively recently was the subject of a permissive consensus - a widespread support among the population that allowed national politicians to negotiate freely on the matter - is now giving rise to a binding dissensus - that is to say, differences of opinion that limit the room for manoeuvre of the national representatives within European bodies¹¹.

Post-functionalists also observe that European integration, which was largely focused on economic issues until the entry into force of the internal market and the Maastricht Treaty in

⁷ Voir notamment la notion de « spill over » chez E. Haas, op. cit.

⁸ Hooghe, L., & Marks, G. (2018). Re-engaging grand theory: European integration in the 21st century. *Robert Schuman Centre for Advanced Studies Research Paper No. RSCAS, 43*.

⁹ For example : Borriello, Arthur, and Amandine Crespy. « How to Not Speak the 'F-Word': Federalism between Mirage and Imperative in the Euro Crisis ». *European Journal of Political Research* 54, n° 3 (2015): 50224. <https://doi.org/10.1111/1475-6765.12093>.

¹⁰ Hobolt, Sara B., and Catherine E. De Vries. "Public support for European integration." *Annual Review of Political Science* 19, p. 413-432, 2016.

¹¹ Hooghe, Liesbet, and Gary Marks. "A postfunctionalist theory of European integration: From permissive consensus to constraining dissensus." *British journal of political science* 39.1 (2009): 1-23.

January and November 1993, now includes more sensitive issues such as defence, justice, migration, and taxation. Debates on the Union now refer to issues as fundamental as religion, culture, sovereignty and identity, and give rise to strong political divisions and national tensions that political leaders cannot ignore. As a result, while intergovernmentalism theorises a certain status quo of European integration, neo-functionalism anticipates its gradual deepening due to its own dynamics and repeated treaty reforms, and post-functionalism envisions the possibility of disintegration - as witnessed by Brexit and the multiplication of opt-out clauses - under the pressure of national political forces. However, it does not present this option as being inevitable, only theorises it as a possibility.

Competing and complementary theories

What explains these different patterns of interpretation? First of all, one must remember that European integration initially developed without a pre-existing model or roadmap, spurred on by pragmatism and a quest for efficiency removed from any political and theoretical consideration. Later, it was guided by the pursuit of new objectives, often at the whim of circumstances and exogenous constraints, with the constant objective of overcoming national and partisan divisions. Moreover, negotiations on the treaties and the broad orientations of European integration have always taken place within the very restrictive framework of the pursuit of unanimity: they have only been able to deliver results by maintaining certain ambiguities, mixing different approaches and inspirations, and granting political leaders some latitude in the interpretation of the concepts and objectives on which the Union is based. It is no coincidence that the key terms of European integration are vague or polysemic. Indeed, integration, Community, Union, Commission, Council, directive, regulation, are all terms that had the main virtue of not referring to anything specific. The name "Europe" was itself the subject of various interpretations and did not represent any objective geographical reality - unlike other continents¹². This vagueness allowed the protagonists of European integration - in the political world, civil society, and academia - to foster contrasting ambitions around it. While some were only interested in an integrated market, others hoped for the development of a European welfare state, an area of shared values or a European power.

The current treaties reflect this complexity, ambiguity, and indeterminacy, and thus lend themselves to the three theoretical explanations mentioned above, which emphasize, in turn, the diplomatic rationale, endogenous institutional dynamics, and political events. These different approaches, although they are not known to the general public, or even to many practitioners, refer to political conceptions of European integration, which have fed them in part. Intergovernmentalism reflects an understanding of European integration largely based on the relationships between national political leaders and on the primacy of unanimity; it is not

¹² Morin, E. (1987). *Penser l'Europe*, Paris: Gallimard.

necessarily Eurosceptic, but its emphasis on the idea that Europe is a matter of co-operation between national leaders gives it strong *Gaullist* undertones. Neo-functionalism embraces a very endogenous vision of European integration, as it exists in European circles; it is attached to the "Community method", majority decision-making, and the central role of supranational European institutions - in particular the Commission. Finally, post-functionalism coincides with an idea of European integration that is more sensitive to political issues and the points of view of citizens; it underlines the need for the Union's institutions to mind the concerns articulated in Member states' societies, including expressions of Euroscepticism, and sees the politicisation of European issues as beneficial.

These three schools of thought both compete and complement each other. They are complementary as they tend to focus on different aspects of European integration. Intergovernmentalists, for example, focus more on major events - such as the negotiation of a new treaty, major reforms or budgetary agreements - and pay particular attention to the activities of the European Council. Neo-functionalists are more interested in the adoption and conduct of day-to-day policies, thereby underlining the key role of the Commission. Finally, post-functionalists are particularly attentive to the constraints that national political life places on the Union's progress and are predominantly interested in the political games played within the EP and the Council, and between the national political spaces and the Union.

But these three approaches are also in competition when they offer divergent interpretations of the causes or meanings of a given event. Thus, they can present both complementary and competing readings of the recent appointment of the European Commission. Beyond the stylistic exercise and scientific controversies, an analysis that combines all three makes it possible to underline the indeterminacy of the political regime of the European Union, the conflicts this generates between the different actors in the system, and the new equilibrium that has been reached at the end of the sequence.

2. The difficult appointment of the von der Leyen Commission

For the second time in the history of the Union, the 2019 electoral campaign for the European elections was organised around the Spitzenkandidaten, i.e. the candidates of the main European parties aspiring to hold the Presidency of the Commission if their party should win¹³. However, there was not the enthusiasm and interest that there had been in 2014. The Liberals refused to nominate a sole candidate, as they had done five years earlier, because some of their leaders -

¹³ Priestley, Julian and N. Peñalver García. "The making of a European president." *UK: Palgrave Macmillan* (2015); Hobolt, Sara B. "A vote for the President? The role of Spitzenkandidaten in the 2014 European Parliament elections." *Journal of European Public Policy* 21.10 (2014): 1528-1540.

notably the French President - were opposed to the procedure. This was both a retaliation against the EPP, which had fought against introducing the transnational lists wanted by the Liberals, and a strategic choice, as they had no chance of coming out on top in the election, and thus of winning the Commission presidency through the Spitzenkandidaten. The procedure was also criticised because of the lack of democracy in the nomination process of the leading candidates of the various parties. As some observers pointed out, the procedure was tantamount to entrusting the 600 EPP delegates with the choice of the next President of the Commission - since it was likely that party would win once again¹⁴.

After the elections, it emerged that the leader of the EPP, the German Manfred Weber, did not have the support of the European Council¹⁵. His lack of political experience (he had never been a minister and had therefore never sat on the Council), his relatively conservative stance (which made him little compatible with the views of the Socialists and Liberals) and his insufficient fluency in French, and even English, were highlighted. Other candidates were then considered, including the Dutch Frans Timmermans, First Vice-President of the Juncker Commission. However, the EPP objected to having a Socialist as President of the Commission, given the obligation of the European Council to consider the results of the European elections in this matter (Art. 17.7 TEU). After some muddled debates, the European Council decided on Ursula von der Leyen, the German Defence Minister. Her name was put forward as part of the search for a more general equilibrium, the aim being for the three major pro-European political forces (EPP, PES and ALDE/Renew) to share the main positions of responsibility within the Commission and in the various institutions of the Union.

Mrs von der Leyen's candidacy was given a cool reception, especially in the EP. Not only had the Spitzenkandidaten procedure not been respected, but the European Council was choosing a politician who had not taken part in the European elections, had never sat in the EP, and had limited knowledge of the Union's institutions. She presented MEPs with a programme designed to unite the three main groups and keep the European Council happy, using key elements from the campaign programmes of the EPP, PES and ALDE/Renew, as well as the 'New Strategic Agenda' adopted by the European Council in June 2019¹⁶.

Despite these efforts, Mrs von der Leyen was only narrowly elected with 383 votes, barely 9 more than the majority required by the Treaty. The EPP, S&D and Renew groups had given her their support, and were expected to deliver a large majority, with a total of 444 votes, but a significant

¹⁴ Goldoni, Marco. "Politicising EU Lawmaking? The Spitzenkandidaten Experiment as a Cautionary Tale." *European Law Journal* 22.3 (2016): 279-295.

¹⁵ « Pourquoi Manfred Weber ne sera pas président de la Commission », Euractiv, 16 May 2019. <https://www.euractiv.fr/section/elections/news/why-manfred-weber-will-probably-not-be-elected/>

¹⁶ European Council, « A New Strategic Agenda 2019-2024 », 20 June 2019, <https://www.consilium.europa.eu/fr/european-council/role-setting-eu-political-agenda/>

proportion of their members decided otherwise, taking advantage of the secret ballot which released them from any voting discipline.

Once the President was elected, the representatives of the states proposed their respective candidates to the Commission. The exceptional European summit on July 2nd, 2019 was largely dedicated to this, allowing exchanges between the Heads of State or Government and the new President. However, the procedure dragged on throughout the summer due to the delicate political situation in several Member States, particularly in Italy and Romania. The list of Commissioners-designate was not approved by the President until September 9th. She then allocated the vice-presidencies and portfolios, in liaison with the European Council.

It was then up to the EP committees to interview the candidates within their jurisdiction. Even before the hearings, two candidates - Hungarian László Trócsányi and Romanian Rosana Plumb - were disqualified by the Legal Affairs Committee, which was charged with ruling on possible conflicts of interest. The auditions were eventful as MEPs were particularly pugnacious in their assessment of the candidates' probity, values, and qualifications. This was the case for Sylvie Goulard, the French candidate. After compelling her to attend a second hearing to clarify her involvement in the case of the parliamentary assistants of her party, the MODEM, in the European Parliament and her links with an American think tank, the Bergruen Institute, MEPs rejected her nomination, considering her answers to be unsatisfactory. The French President expressed his irritation and played for time to find a successor. To this end, he demanded assurances that France would keep the very large portfolio that had been secured for S. Goulard and that the main political groups in the EP would guarantee approval of the new candidate. The leaders of the EPP and PES refused this debate and in the end Emmanuel Macron nominated Thierry Breton, a businessman and former minister. Following a tense examination of his case by the Legal Affairs Committee - which approved his candidacy by only 12 votes to 11 - he was approved by the EP. The nomination of the new Hungarian and Romanian candidates was also confirmed.

Speculation had been running high in the run-up to the confirmation vote of the College of Commissioners. The result was not in doubt, since a majority of the votes cast was sufficient, unlike in the case of the election of the President, which had required the votes of a majority of the members. But limited support would have boded ill for the Commission's ability to implement its agenda and pass its legislative proposals throughout its term of office. Such a scenario was not impossible in view of the tensions that had arisen between the main political groups during the hearings of the Commissioners-designate and of their lack of internal cohesion. Some national delegations were openly critical of the alliance's strategy and expressed their mistrust of Commissioners from other formations. But it was also possible to predict a return to the calm and political configuration of 2014 given that the leaders and members of the EPP, S&D and Renew

groups were sufficiently aware of the stakes of the vote for the credibility of the Commission and the effectiveness of the Union, and of the need to close ranks against the Eurosceptics.

The second scenario prevailed: on November 27th, 2019, the von der Leyen Commission was easily confirmed, with 461 votes in favour, 157 opposed and 89 abstentions. It even scored better than the Juncker Commission had five years earlier (423 votes to 209, with 67 abstentions), which was unexpected. It received a higher number of votes in the EPP, S&D and Renew groups than the election of the President four months earlier. The Green group, for its part, refused to give its backing, considering the Commission's environmental commitments unconvincing and criticising the selection of certain Commissioners. On the other hand, the ECR Group, despite its sovereigntist views, voted overwhelmingly in favour of the new Commission.

3. Three theoretical perspectives on the appointment of the von der Leyen Commission

From an intergovernmentalist approach, the process of appointing the Commission is mainly a negotiation between the Heads of State or Government within the European Council. The Treaties entrust them with the task of choosing the President of the Commission; once the President is elected, each national representative nominates his or her candidate, obtains the President's approval and, possibly, negotiates a vice-presidency or a specific portfolio. From an intergovernmentalist point of view, the claims of the Member States cannot be equal in this respect; those with the greatest influence under the rules of qualified majority voting - based on their population - or because of historical considerations - as founding Member States - have a priori a decisive vote. The Treaty does not mention this and instead stipulates that the President may do as he/she sees fit, but practice and political reality dictate otherwise.

More broadly, and although there is no reference to this in the Treaty, the European Council is responsible for finding an overall agreement so that the appointment of the main leaders of the Union (Presidents of the Commission and the European Council, or even of the EP; High Representative of the Union; Governor of the European Central Bank) respects a political, geographical, and gender balance. Therefore, the real negotiation on the composition of the Commission takes place within the European Council, and the rest of the process is merely an institutional packaging designed to ensure the legitimization of the College of Commissioners by the EP.

From this angle, the rejection of Sylvie Goulard's candidacy is an anomaly, and even a serious setback. Indeed, her nomination, like those of all the Commissioners-designate, had been approved by the other national political leaders and the President of the Commission, with the full knowledge of the allegations against her. The French President had also obtained a broad portfolio for his candidate after his discussions with the President-elect of the Commission. As he

explained in the media¹⁷ - breaking the rule that the confidentiality of the European Council negotiations should not be betrayed - Ms von der Leyen reportedly told him that she had the approval of the leaders of the three main groups in the EP. The collapse of this agreement is therefore seen as an incident.

An unfortunate incident for intergovernmentalists

From an intergovernmentalist standpoint, Mrs Goulard's failure is understood to be the product of agreements and disagreements between the Member States, since this is the way in which the entire process underpinning the functioning of the Union is analysed. In Mr Macron's entourage, it was thus interpreted as resulting from the desire of MEPs from central and eastern European countries to protest the "double standard" - whereby Commissioners-designate from the "big" Member States enjoy a degree of immunity, while others are disqualified for minor reasons. Some have also argued that the French President had been punished, through the rejection of his candidate, for his iconoclastic positions on the Union, be it the idea of a two-speed Europe - something that eastern European countries dislike considerably -, refusing the enlargement to the western Balkans or rejecting the Spitzenkandidaten procedure¹⁸. These same reasons would explain the very short majority obtained by Thierry Breton after his hearing.

Intergovernmentalists also object to the EP's excessive claims to control the Commission's nomination process. In their view, this is a prerogative of the European Council, but it is clear that many MEPs are trying to interfere in these choices, through the Spitzenkandidaten procedure - on which the Treaties are silent - or by demanding, as they have been doing since 2004, changes in the composition of the Commission after the hearings - which the Treaties also fail to mention.

The EP's ultimate confirmation of the Commission by a large majority signals a return to normal from an intergovernmental point of view: the assembly falls in line and finally complies with its role of supporting the Commission's action. In this perspective as well, it is worth noting that national logics strongly structured the vote. The government parties, whose members are mainly from the three major groups, logically supported the Commission. Thus, even the very Eurosceptic MEPs of the Polish "Law and Justice" party voted in favour of the confirmation, not because of their support for the Commission's agenda, but because of their loyalty to the Polish Commissioner from their ranks. Conversely, the abstention of the French Socialist MEPs is difficult

¹⁷ « Commission européenne : l'échec de Goulard, un camouflet pour Macron », L'Express, 10 October 2019. https://www.lexpress.fr/actualite/monde/europe/commission-europeenne-l-echec-de-goulard-un-camouflet-pour-macron_2102599.html

¹⁸ « Candidature de Goulard rejetée : 'Il y a un côté vengeur' pour Stéphane Séjourné », *Le Parisien*, 10 October 2019 <http://www.leparisien.fr/politique/candidature-de-goulard-rejetee-il-y-a-un-cote-vengeur-pour-stephane-sejourne-10-10-2019-8170626.php>

to understand if one disregards the national political context, namely their hostility to President Macron and their refusal to endorse the choice of Mr Breton.

A fair process of checks and balances, according to neo-functionalists

Neo-functionalists would have a very different view of the summer 2019 episode. According to them, the Commission's appointment process is largely linked to autonomous decisions by its President and MEPs. First, the European Council must consider the results of the European elections when choosing a candidate for President. Once appointed, it is up to him or her to define his or her platform and present it to the EP, to be "elected" by it. When this is done, he or she must choose the Commissioners from among the names put forward by the European Council, and decide on their attributions, whether they be vice-presidencies or portfolios. In principle, national leaders no longer have a say at this stage. It is up to the EP to interview the Commissioners-designate, to see whether they have the required qualities and qualifications, and it is up to the EP alone to empower the College of Commissioners to assume its mandate. The European Parliament is also free to define the standards it intends to apply when assessing candidates. Although the Treaty does not specify this, the EP is in a position to ask the President of the Commission to change the composition of his or her team, since it has a de facto veto over the appointment of the College. In short, from a neo-functionalist point of view, the appointment of the Commission is largely based on the interaction between the two main supranational institutions - Commission and EP - in a system of checks and balances.

From this perspective, the EP merely did its job in 2019: its role was not to take into consideration the possible agreements negotiated within the European Council, but rather to scrutinise the profile of each Commissioner-designate and demand that those who did not meet all the guarantees of competence, probity or independence be replaced. This rigorous parliamentary scrutiny is essential to ensure that unelected Commissioners have the necessary legitimacy for their role. For neo-functionalists, this is the EP's *raison d'être*: to control and legitimise the Commission, an ad hoc organisation which does not conform to the traditional canons of democracy.

Seen in this light, MEPs had every right to reject certain Commissioners-designate. Similarly, they were justified in criticising the Polish candidate's lack of expertise on agricultural issues or in considering that the French candidate's portfolio was excessively wide-ranging. From a neo-functionalist point of view, there was no reason to consider that the EP's requests were an attack on French interests, nor to insist that Mrs Goulard's replacement inherit the same portfolio as her. Indeed, the Treaties gave the President the power to decide this on the basis of that person's profile and skills. And it is equally normal that Thierry Breton should have had to give Members

the necessary explanations and guarantees regarding possible conflicts of interest. Finally, still from a neo-functionalist understanding, the investiture of the Commission by a large majority of the EP is not a change in attitude: it comes as the conclusion of a procedure that was not the product of political attacks or a settling of scores, but of MEPs exercising their mission of parliamentary control. Having obtained the required commitments and accommodations, they could vote to confirm.

The virtues of a partisan debate, according to post-functionalists

Post-functionalists, for their part, will argue that the process of appointing the Commission is increasingly constrained by the political debates around European issues in the Member States. Not only are European issues becoming more prominent in the public arena, but they also create new dividing lines that challenge established partisan configurations. Politicians, now subject to a binding dissensus, can no longer go negotiate in Brussels without being answerable to anyone, as was the case until the early 1990s, when there was a permissive consensus.

The appointment of the Commission is now closely dependent on the outcome of the European elections, which enjoy increasing voter interest and in which different policies and views on European integration compete for votes. Besides, the Treaty stipulates that the President of the Commission is chosen in the light of the outcome of the elections and must then be "elected" by the European Parliament: the process is thus clearly politicised. Post-functionalists will also point out that, once the President of the Commission is elected, he or she must pay close attention to the partisan alignments resulting from the European elections in order to reach the necessary majorities in the EP. Similarly, given the growing level of sensitivity of citizens towards the Union's action, and the growing Euroscepticism throughout Europe, the Commission must consider the pressures stemming from public opinion.

The appointment of the von der Leyen Commission is, from a post-functionalist approach, a perfect illustration of this politicisation of the Union. The negotiations within the European Council have proven that national leaders are anxious to show their respective public opinions that they are not selling out national interests. They have also been largely governed by party politics. Indeed, following the European elections, the three main pro-European political forces (EPP, PES and ALDE) were encouraged to cooperate in the face of the rise of Eurosceptics and the populist right. This rationale did not stop with the EP: in the European Council too, state representatives agreed on the posts to be filled, following negotiations between Christian Democrats, Socialists, and Liberals.

The politicisation hypothesis is also supported by the fact that some EPP and S&D MEPs considered the exclusion of Mrs Goulard (Renew) as a fair counterpart to the disqualification of the Hungarian (EPP) and Romanian (S&D) candidates by the Legal Affairs Committee, at the

instigation of the Renew Europe group. In fact, the latter had rejected the non-aggression pact proposed by the EPP for the hearings and intended to fight it out with the Commissioners-designate considered to be Eurosceptic. In this respect, one may consider - as did the French President's entourage - that the EPP and S&D groups purposely placed the French candidate in difficulty, in order to make Emmanuel Macron pay for his refusal to allow their respective leaders (Manfred Weber for the EPP and Frans Timmermans for the PES) to become President of the Commission. In a post-functionalist perspective, the European Council caused some of the Commissioners-designate to face complications in the EP because it had rejected the Spitzenkandidaten process, which meant choosing the leader of the party that came first in the elections as Commission President. The crisis stems more particularly from the Liberal Party, and in particular from Mr Macron, who opposed the Spitzenkandidaten procedure and considered that it was up to the European Council alone to choose the future President. Understood in this way, Mrs Goulard's disappointment, followed by Mr Breton's challenging hearing, are part of the normal functioning of partisan institutions, in which various political forces develop dynamics of competition or of cooperation. And neither Mrs Merkel nor Mrs Von der Leyen could validly guarantee Emmanuel Macron that the French candidate would be confirmed by the EP.

To a post-functionalist, the confirmation of the Commission by a large majority is the logical conclusion of this sequence. Indeed, it was driven by the partisan developments within the EP, where the three main groups chose to keep their divisions quiet in order to empower the Commission to implement its agenda. One will point out that partisan alliances do not only govern the EP, but also dominate all the institutions. In fact, the nomination process for the various key posts in the Union is entirely governed by partisan balances: Christian Democrats secured the Presidency of the Commission, the Liberals the Presidency of the European Council and the Socialists the post of High Representative as well as the Presidency of the EP. In theory, the latter is the sole purview of MEPs, but in practice, the election of Mr Sassoli (S&D) was only possible because the EPP and Renew groups did not present a candidate. This decision follows a negotiation that goes beyond the scope of the EP, in fact the College of Commissioners also has an unprecedented balance between the three parties, both in terms of overall portfolios (9 EPP, 10 S&D, 5 Renew) and of the three "executive" vice-presidencies (one each). Finally, it is worth noting that, for the first time in its history, the European Council deliberated according to clearly partisan criteria in order to find a deal on the composition of the Commission; indeed, in the midst of the summit, its members mandated 6 negotiators - 2 for each party - to reach an agreement, which was then validated by the plenary institution.

Conclusion

As an atypical and syncretic political regime, the European Union has conflicting dynamics and is subject to differing interpretations. It is thus marked by a twofold, somewhat paradoxical, evolution towards a more intergovernmental mode of operation, on the one hand, and a strengthening of parliamentary and partisan logic, on the other. Because of its indeterminacies and ambiguities, by virtue of its constant evolution, the Union lends itself to different readings, allowing actors to favour whichever approach best serves their interests and ideas.

Two further factors make this political system difficult to understand. Firstly, it is meant to evolve continuously, as it has done since the 1950s. The various protagonists are thereby driven to promote their vision of things constantly, in a combined process of proposal and fait accompli. The institutional provisions of new treaties are in fact always part of a dual approach: on the one hand, they formalise existing practices in a spirit of *aggiornamento* while, on the other hand, they introduce genuine reforms to move the system towards a chosen model. Secondly, it is important to underline that the Treaties allow institutions and actors some freedom of initiative. Indeed, there are many interstices and grey areas lending themselves to innovations or particular readings¹⁹, and which allow the emergence of practices such as the hearings of Commissioners-designate or the Spitzenkandidaten. They fall mainly within the scope of the EP which, since its first direct election, has shown itself to be particularly apt at making the most of these loopholes and silences at the appropriate time.

These institutional dynamics are compatible if one considers, for example, the many different modalities for reducing the democratic deficit included in the Maastricht Treaty: strengthening the powers of the EP, recognizing the role of European parties, establishing European citizenship, creating the European Ombudsman, sharing information with national parliaments, stipulating the principle of subsidiarity, etc. However, they are mutually exclusive when it comes to determining who should define the broad orientations of European integration, or whether the appointment of the President of the Commission should be a matter for intergovernmental negotiation or a partisan competition tied to the European elections.

This detour through the theories of European integration is not a mere academic exercise: it invites us to pay attention to the ambivalence of the Union and avoid a simplistic and one-dimensional analysis of its functioning. Commentators and politicians should, as much as academics, take these different approaches to European integration into account for a more comprehensive and balanced picture. Moreover, theories are not only analytical frameworks providing an interpretation of the way the Union works and uncovering coherence where there appears to be only a tangle of rules, procedures, and strategies. They also have a normative dimension as they offer both an idealised understanding of the functioning of the Union which legitimises some practices and disqualifies others and provide specific ideas as to what changes are desirable.

¹⁹ Joseph Jupille (2007). Contested procedures: Ambiguities, interstices and EU institutional change. *West European Politics*, 30(2), 301-320.

Hence, theories are not pure objects of science but relate quite closely to a range of political attitudes to European integration. Inter-governmentalism is in line with the concerns of those who, whether or not they are Eurosceptics, believe that key decisions ought to be left to the representatives of the Member States, and that the Commission should be a mere instrument of their will. Neo-functionalism favours an approach to the Union which is that of many in the European microcosm, a system based on its own logic where the Commission has the central role and is essentially based on the Community method. Post-functionalism, finally, echoes those who believe that the Union should be responsive to the concerns of its citizens, and that national and European elections must determine the choice of its leaders and its political priorities.

Accordingly, the vicissitudes of the appointment of the von der Leyen Commission should not be interpreted as a serious political crisis affecting the Union, as a sign of intolerable tensions between states, parties and institutions, or as a reflection of unacceptable institutional disorder. Rather, this sequence is the result of interactions between contending conceptions of the functioning of the European Union, which compete to impose a specific reading of this political regime. Surely, they will be at the heart of the conference on the future of the Union in 2020.