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COLLABORATION:  
THE SPITZENKANDIDATEN  
PROCEDURE AS A TRANSPARENT  
BEST PRACTICE**

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# SHAPING A COLLABORATION: THE SPITZENKANDIDATEN PROCEDURE AS A TRANSPARENT BEST PRACTICE<sup>1</sup>

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***ABSTRACT:** The Spitzenkandidaten procedure has been described as a coup d'état of the parliament against the council; a counter-revolution of the S&D against the PPE; something short of an illegal move against the treaties. This paper addresses these concerns in the following way. Firstly, a description of the origins and the development of the Spitzenkandidaten procedure will be provided. A closer look at the process leading to this procedure will help to better understand its nature. The new procedure for the election of the president is neither a coup d'état of the parliament, nor a counter-revolution of the socialists; it is not opposed to the treaties, and it is not irreversible. To the contrary, the Spitzenkandidaten procedure enhances article 17(7). It represents the institutionalisation of a 'best practice', which was partially already there in the past, and it can still be overcome in extreme cases.*

## **Introduction**

After losing the vote on Jean-Claude Juncker's nomination as the next president of the European Commission at the European Council meeting on June 26, 2014, the British Prime Minister, David Cameron, predicted that the heads of state and governments of the European Union would "live to regret" (Daily Mail, June 29, 2014) the idea of top candidates or 'Spitzenkandidaten' for the presidency of the European Commission. What exactly is this new animal in town so despised by Cameron? The Spitzenkandidaten procedure is definitely something new in the short history of the European Union, but it has already raised many discussions, with many more discussions likely to come.

This paper will reflect on what this procedure is and is not. In doing so, I will summarize the main ways in which the new procedure has been described. Mainly, the Spitzenkandidaten

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<sup>1</sup> This paper has benefited from the debate on the Spitzenkandidaten started at the University of Agder's European Integration Summer School with the key note speech delivered by prof. Shackleton. The discussion led to a short CEPS Commentary written by Shackleton, Gänzle and me, titled [\*Overthrowing Secrecy: The Spitzenkandidaten experiment and a new chance for a European party system.\*](#)

has been considered a coup d'état of the European parliament, favouring the supranationalists; the victory of the S&D against the EPP; or an illegal move against the treaties. Then, this paper will look at the origins and development of the Spitzenkandidaten procedure. It will review how member states appointed the commission and the president under the EC Treaty, and how subsequent treaties changed it. Before the Convention for the Future of Europe, political parties had begun to think of linking EP elections with the appointment of the president. The result was a vague recommendation for the council to take into account EP elections when choosing the commission president. This recommendation was embedded in the Lisbon treaty, and opened the opportunity for the Spitzenkandidaten procedure in 2014.

Finally, this paper will assess this new procedure. I will show the reasons why it is not a coup d'état; a victory of the parliament, of supranationalists, of one party; or an illegal breach of the treaties., To the contrary, the Spitzenkandidaten procedure is the institutionalisation of a 'best practice', which creates real collaboration between institutions, as well as increases transparency.

### **The Debate about the Spitzenkandidaten Procedure**

The debate about the Spitzenkandidaten procedure has been extremely intense since 2014. In particular, discussions surrounding the procedure were spiced with resentment about the person who should actually be appointed president. Juncker has been the object of severe criticism, due to his curriculum, skills, and personality. Nevertheless, the concern of this paper will not focus on Juncker himself. Instead, the paper will focus on the real issue, which is the new procedure. The debate on this topic gave rise to three main interpretations of what happened.

For some, the choice of Juncker for president has been nothing short of a coup d'état against nation states themselves (Steinhauser, 15 July 2014) . This opinion is shared by Cameron, for whom the new procedure shifts power “from national governments to the European Parliament without voters' approval” (Cameron, 13 June 2014). Following this interpretation, the top candidate procedure represented a step toward a federalist Europe; the politicisation (Best and Sabina, 2014) and the 'presidentialisation' of the European Union (Glencross, 10 September 2014); and a victory of the surpanationalists in their eternal struggle with the intergovernmentalists.

A different interpretation of the new procedure looked at the struggle between the socialists and the conservatives in the European Parliament. For Josef Janning, the Spitzenkandidaten

procedure is the answer of Martin Schultz to the coup carried by the EPP in 2004. “In that year, EPP leaders successfully caucused before the European Council meeting to agree on placing their own candidate at the helm of the European Commission, overturning the previous consensus approach.” (Janning, 1 July 2014) Ten years later, Martin Schultz led the revolt from within the party in order to propose a top candidate for the election. “In 2013, the S&D proclaimed Schulz as “Spitzenkandidat”, the party’s choice for head of the European Commission. The Liberals and Greens followed suit with their own nominations, forcing the EPP to nominate their own frontrunner, tying their hands with regard to manoeuvring within the European Council”(Janning, 1 July 2014).

A third interpretation turned the attention from the actual perpetrators of this change to its legal importance. Following this interpretation, the Spitzenkandidaten procedure is not the victory of one group against another, whether supranationalists or the S&D. The new procedure is a loss for everybody, as it is a breach of the laws. It is something short of an illegal move against the treaties, which will jeopardize the entire mission of the European Union. This argument was supported by Cameron. Arguing against the procedure, he claimed that it “would be a green light for those who want to breach the EU’s rules by the back door. Rules that have been ratified by our national parliaments and laid down in international law. Whether you want more direct democracy in Europe or not, we should all be able to agree that first we must uphold the basic law”(Cameron, 13 June 2014).

In particular, this stream of thought claims that “the proposed arrangement is founded on an erroneous interpretation of article 17(7) TEU taken out of context of the Treaties and the interinstitutional balance established therein” (Kocharov, 2014:8). Excessive emphasis has been placed on that part of the sentence requiring to take into account EP elections. Declaration 11 on Article 17(6) and 7 of the Treaty of Lisbon reinforces the fact that the EP and the Council should collaborate in the election. In particular, the latter article states that the council should propose candidates. From this point of view, the spitzenkandidaten is equal to a reversal of the treaty’s procedures, and it would require a treaty change (Kocharov, 2014:8).

To conclude, what is the spitzenkandidaten procedure? Is it a coup d’état of the parliament, the victory of the supranationalists, of the S&D against the EPP, or an illegal move against the treaty? In order to enter this debate and attempt to answer these concerns, this paper refers back to the origins of the spitzenkandidaten procedure, or at least, to the point in time when it became part of the European debate.

## **The Origins: Before the Lisbon Treaty**

Originally, members from the high Authority of the European Coal and Steel Community, and later the commission, were appointed by governments of the member states, while the president was appointed by commission members. The Maastricht Treaty bucked this trend, claiming that the president should be appointed first, as he or she should then have a say in the selection of the other commissioners. Subsequently, at the end of the process, the EP should vote for the approval of the whole body. With the passage of the Amsterdam Treaty, nothing substantial changed. Indeed, “member states shall nominate by common accord the person they intend to appoint as president of the Commission,” and the parliament should be consulted, as the president should receive its approval. The Treaty of Nice introduced a key innovation. Indeed, Article 214(2) EC of the Treaty of Nice changed the procedure of appointment of the commission from unanimity to QMV in the council. Nevertheless, the procedure remained the same: “the Council [...] shall nominate the person it intends to appoint as President of the Commission; the nomination shall be approved by the European Parliament.”

After the Treaty of Nice, more and more voices at the EU level started to raise the issue of democratic deficit. This led to the Laeken Declaration in 2001. Despite the fact that “the Commission was accountable to the EP both as college and its individual members” (Kocharov, 2014:6), the Laeken Declaration pointed to the procedure of the president’s appointment as a problem of democratic deficit. Indeed, member states clearly expressed concern in that document about the way in which the president of the commission should be appointed, whether by the European parliament or by the Council, or even directly by the citizens.

The idea of reforming the commission president’s appointment process was shared by the main political parties. The Estoril Congress of the EPP, on 18 October 2002, produced a ‘Constitution for a Strong Europe’<sup>2</sup>. Point 47 states that “a candidate for the President of the European Commission should be proposed to the European Parliament by the European Council in light of the outcome of European election, and by qualified majority vote.” Of importance are the following sentences too, saying that “the European parliament should give or withhold its approval by majority vote. This would give European political parties the opportunity to present their own candidates in the framework of the campaign for European elections. It would ensure a more personalised election campaign and increase democratic

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<sup>2</sup> The documents related to the congress are available online at the address: [http://arc.eppgroup.eu/Press/peve02/eve30/congressdoc\\_en.asp](http://arc.eppgroup.eu/Press/peve02/eve30/congressdoc_en.asp) (last accessed 2/09/2014).

control and support of the European commission.” Point 48 went even further: “The President of the Commission should be granted the right to select members of the European Commission in accordance with needs. The Commissioners-designate selected by the President of the European Commission must be confirmed by the Council by qualified majority vote. The European Parliament must approve the President and the other members of the Commission thus nominated.” Thus, the EPP was strongly in favour of giving the EP more power in the president’s selection process. It is worth noting that there is no sign of an internal battle on the issue, even though both Viktor Orbán and the British Conservatives were present. Orbán was at the time one of the EPP vice-presidents in Congress. Moreover, the British Conservative Party was still in the EPP. They would leave only in 2009.

The same idea of solving the democratic deficit through a change in the appointment process of the president was expressed by the European Socialists. In the ‘Priorities for Europe’ document published in October 2002, they state that “the authority of the President of the European Commission should be enhanced, first by giving him or her a wider democratic legitimacy,” as well as by “conferring on him or her the right to allocate and re-allocate policy responsibilities for Commissioners, so that they are as competent a group as possible.”<sup>3</sup>

The same idea is expressed in the 2002 Guiding Principles for the Work of the Convention of the ALDE, at that time ELDR group. In that document it is written that the commission “should be the Executive of the Union. The Commissioners should be individually fully accountable to Parliament. Members of the Commission will be selected according to competence, and their nomination will be subject to approval of the European Parliament. The President of the Commission is elected by Parliament.”<sup>4</sup>

Thus, the idea of changing the procedure for appointing the commission president was shared by the main European political parties already in 2001-2. The Convention on the Future of Europe, created by the European Council and comprised of representatives of heads of state and governments, was selected as the ideal place to implement this change. During the discussion leading to the creation of a constitution, many ideas were put on the table, such as the direct election of the president or his/her nomination by the European Parliament. Already

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<sup>3</sup> Priorities for Europe, p. 4. The document can be found at the following address: <http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCEQFjAA&url=http%3A%2F%2Fwww.cap.uni-muenchen.de%2Fkonvent%2Fdownload%2FPSE-Priorities.pdf&ei=uMoGVIjjAY7naJ2LgrAO&usg=AFQjCNFOdesqiUD5wSviBoOKks314I34Qw> (last accessed 03/09/2014)

<sup>4</sup> P. 2. The document can be found at the address: <http://www.aldeparty.eu/en/values/european-democracy> (last accessed 02/09/2014).

in April 2003, the convention presidium claimed that the European Council should decide “taking into account the elections to the European Parliament.”<sup>5</sup> Particularly important was the revelation of the role of former Irish Prime Minister, John Bruton, in the Presidium, who took up the proposal of Jacques Delors in nominating candidates for the commission<sup>6</sup>. Instead, an amendment of the EPP to Article 18a of the Draft Constitutional Treaty, proposing to insert the reference to the *result* of the election, has not been included in Article 26 of the Draft Treaty establishing a Constitution for Europe<sup>7</sup>, and later in Article I-27 the Treaty Establishing a Constitution for Europe<sup>8</sup>. Indeed, Article I-27 of the constitutional treaty states: “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.”

Even if the Constitutional Treaty crashed against the no of France and the Netherlands, the change to the procedure remained. The vague recommendation calling on the European Council to take “into account the elections to the European Parliament” when proposing a candidate for commission president became part of Article 17.7 of the Treaty of Lisbon. In addition, Declaration 11 on Article 17(6) and (7) states that the EP and European council are “jointly responsible for the smooth running of the process leading to the election of the President of the European Commission.” Consultations between representatives of the two institutions are encouraged, and the focus should be on background of the candidate, “taking account of the elections to the European Parliament.”

From these few facts, it is clear that the discussion about the change in the appointment of the commission president was not a secret occurrence. Nothing was done behind closed doors, and member states were involved in the process. In addition, the topic was debated even outside the institutional spheres. The opportunities implied in the vagueness of the Lisbon Treaty were already clear, at least in the academic world. For instance, a study by Padoa-Schioppa, the IAI and other four European institutions, pointed out that the opportunity for European political parties to ‘nominate’ the candidates for the commission existed even before the entry into force of the Lisbon Treaty (Bonvicini, 2009). Thus, the book was an

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<sup>5</sup> <http://european-convention.europa.eu/pdf/reg/en/03/cv00/cv00691.en03.pdf>

<sup>6</sup> See J. Bruton, “A proposal for the appointment of the President of the Commission in art. 18 bis of the Draft Constitutional Treaty”, (Conv 476/03), European Convention Secretariat, Brussels, 2003.

<sup>7</sup> <http://european-convention.europa.eu/pdf/reg/en/03/cv00/cv00850.en03.pdf>

<sup>8</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1403021270711&uri=CELEX:C2004/310/01>

appeal to political parties and candidates to link the elections to the choice of the next commission president, signed by five institutes, the authors of the book, and other prominent European figures. In particular, one commitment requested to political parties was to take “the lead in the formation of the new Commission, its President, its programmes” (Bonvicini, 2009:8). The conviction of the book was that the active participation of the European parties will be highly beneficial to Europe in order to “stand out as a single effective policy actor capable of *taking* and *implementing* momentous decisions” (Bonvicini, 2009:7). Moreover, the study made clear that the vague recommendation included in the Treaty of Lisbon of taking into account the EP election could have important consequences, and even lead to the possibility of electing its president (Bonvicini, 2009:17).

### **2012: Barroso Speech and Parliament Resolution**

The following years provided the perfect background for a clear and bold definition of the way in which the president of the commission was appointed. The choice of giving Barroso a second mandate was in line with the auspices of connecting the elections with the nomination of the commission president. Moreover, the entry into force of the Treaty of Lisbon, with that vague recommendation of taking into account the elections and the precise request for cooperation between EP and Council, increased the chances for growth in the role of the Council in the process.

This background fostered the presumption that the vague recommendation of article 17 was tantamount to saying that the representative of the party that gained the most votes in the European election should be appointed commission president. This was the idea that José-Manuel Barroso put forth in his ‘State of the Union 2012’ speech, held on the 12th of September. Barroso was sure of the fact that the 2014 Elections were the perfect occasion to address the problem of deepening the “pan-European political debate,” as “we have to recognise the political debate is cast all too often as if it were just between national parties.” Besides, “the times of European integration by implicit consent of citizens are over,” and thus, there is the urgency to democratise Europe. Accordingly, “An important means to deepen the pan-European political debate would be the presentation by European political parties of their candidates for the post of Commission President at the European Parliament elections already in 2014. This can be done without Treaty change. This would be a decisive step to make the possibility of a European choice offered by these elections even clearer. I call on the political parties to commit to this step and thus to further Europeanise these European elections” (Barroso, 12 November 2012).



Two months later, it was published the “European Parliament resolution of 22 November 2012 on the elections to the European Parliament in 2014”. The parliament embraced in full Barroso’s idea, stressing the importance of “reinforcing the political legitimacy of both Parliament and the Commission by connecting their respective elections more directly to the choice of the voters.” At the same time, it stressed the importance of the fact that the council should take into account the EP elections. Indeed, the resolution “urges the European political parties to nominate candidates for the Presidency of the Commission and expects those candidates to play a leading role in the parliamentary electoral campaign, in particular by personally presenting their programme in all Member States of the Union.” In actual terms, the resolution tried to push the point even further, calling “for as many members of the next Commission as possible to be drawn from Members of the European Parliament, to reflect the balance between the two chambers of the legislature.”

The debate on the resolution is also helpful in understanding who was for and against the new procedure. Apart from the MEP Nicole Sinclair, arguing that “my constituents do not want their taxes spent in political campaigns and propaganda,” only the recently born ERC was contrary to the top candidate procedure. MEP Ashley Fox vaguely agreed with the need of improving procedures for the next EU elections, but rejected the idea of a top candidate, reasoning that the new commission should be chosen by member states because a centre-right majority in Council would never choose a centre-left president “just because socialist parties hold more votes than EPP parties in the European elections.”<sup>9</sup>

Outside the parliamentary debate, the words of Van Rompuy at a public conference in Brussels revealed uneasiness on the topic. The president of the European Council warned that direct election would lend legitimacy to the next president. However, this would represent a problem if the competence of the commission are not enhanced, as it would merely tend to organise disappointment in advance<sup>10</sup>. These words were not followed by facts or more discussions, however.

In spite of these few critiques, the idea of the new procedure did not meet real resistance, while both the speech and the recommendation showed the positive collaboration of council and parliament.

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<sup>9</sup> The European Parliament resolution of 22 November 2012 on the elections to the European Parliament in 2014, along with the debates, can be read on the internet at the address: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0462&language=EN&ring=B7-2012-0520>.

<sup>10</sup> <http://www.euractiv.com/future-eu/van-rompuy-opposes-direct-electi-news-516360>.

### **2013: Recommendation of the Commission and Resolution of the Parliament**

The Council of the European Union defined 2013 as a “year in-between.” The European Union was enduring a difficult moment in time, a sort of interregnum after the acute phase of the crisis, but “before the darkest clouds had cleared” (Dinan, 2014:109). The ideas raised by commission and parliament in the second part of 2012 did not receive any particular negative response, raising no debate on the topic. It is true that Angela Merkel and other national leaders expressed some disagreements with the establishment of the new procedure (Dinan, 2014:116). It is also true that on certain occasions Van Rompuy warned about thinking that having public candidates is not the panacea of Europe’s credibility.<sup>11</sup>

Nevertheless, everything progressed rather smoothly. Both the commission and the parliament continued to work on the issue without raising strong negative reactions. On the 12<sup>th</sup> of March 2013 the commission published both a Recommendation,<sup>12</sup> written by Vice – President Viviane Reding, and a Communication.<sup>13</sup> The message is explicit: political parties ‘should’ make known their candidates. The Recommendation states at point 3 that “European and national political parties should make known, ahead of the elections to the European Parliament, the candidate for the function of the President of the European Commission they support and the candidate’s programme.” Besides, “national political parties should ensure that their political broadcasts in view of the European Parliament elections are also used to inform citizens about the candidate for the function of President of the European Commission they support and about the candidate’s programme.”

The Communication backed in full the Recommendation, explaining clearly the ratio behind the Spitzenkandidaten procedure. Indeed, the Communication stated that this new procedure may be able to increase the electoral turnout. Besides, it will create a stronger link between candidate and citizens. Finally, it will confer additional legitimacy to both the president and to “the whole EU decision-making process.”

The new Recommendation and the Communication were answered a few months later by the Parliament, with another resolution of the 4<sup>th</sup> July 2013 on improving the practical arrangements for the holding of the European elections in 2014.<sup>14</sup> At point 5 and 6, the European Parliament called on European political parties to nominate their candidates “sufficiently well in advance of the election,” and through “democratic and transparent

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<sup>11</sup> For instance during a debate in Brussels. See: <http://www.euractiv.com/eu-elections-2014/van-rompuy-underlines-objections-news-531049> accessed on the 16/09/2014.

<sup>12</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2013.079.01.0029.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2013.079.01.0029.01.ENG)

<sup>13</sup> [http://ec.europa.eu/justice/citizen/document/files/com\\_2013\\_126\\_en.pdf](http://ec.europa.eu/justice/citizen/document/files/com_2013_126_en.pdf)

<sup>14</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0323+0+DOC+XML+V0//EN>.

procedures.” The auspice is to “mount a significant, European-wide campaign that concentrates in European issues,” so that the top candidate of the winning party is expected to be the first to be considered for the role of Commission President.

The work of commission and parliament has been shaped by the most important European parties, who were well aware of the outcome of their actions. Indeed, the President of the Parliament was Schultz, and the Secretary-General was Klaus Welle of the EPP. Assisting Schultz’s campaign was the former secretary-general Julian Priestly. For what concerns the commission, Reding was a member of the EPP group, as well as Martin Selmayr, who was head of Cabinet of Reding and later campaign director for the Juncker electoral campaign.

### **2014 EP Parliament Resolution, the Elections, and Juncker Presidency**

The year 2014 did not reveal any major surprises. Except for Cameron, no voices have been raised against the Spitzenkandidaten; although, Van Rompuy continued to cast doubt on the validity of the procedure, because “citizens knew that decisions were taken by national governments as well as by MEPs” (Taylor, 22 April 2014). Despite these remarks, the new procedure became reality.

In 2014, Barroso claimed that the Spitzenkandidaten procedure is a step in the ‘permanent reform’ of the EU. “We need a reinforced role of the political parties at the Union’s level, to aggregate political interests, to structure political priorities and to ensure political coherence throughout.” The new procedure is an important step in this direction, which can foster cooperation between EU institutions, and between these institutions and the member states (Barroso, 8 May 2014).

In this spirit, European political parties elected their own candidates for Commission President, well ahead of the European elections. The S&D chose Martin Schulz, who portrayed himself as a candidate the year before, on the 1<sup>st</sup> of March 2014 during the Congress of Rome, in spite of the abstention of the British Labour Party. ALDE chose Guy Verhofstadt on the 1<sup>st</sup> of February in Brussels; Jean-Claude Juncker won against Michel Barnier at the EPP Dublin Congress on the 7<sup>th</sup> of March 2014; Ska Keller and José Bové won the online Green primary elections at the end of January. They started low-profile campaigns across EU countries, culminating in a set of TV debates involving some of the presidential candidates.

The days of the elections came, but data and surveys on that event reduced dramatically the dreams of those who expected some real change. The expectations of the establishment were not shared by the European citizens. Indeed, voter turnout was far from stunning. For the

majority of European citizens, the Spitzenkandidaten procedure was not a ‘big deal’. Only 42.5% voted in the European Election, and around 8 per cent of voters could name Juncker (Open Europe, 2014). Thus, the new procedure did not increase the electoral turnout (Hobolt, 2014). Where it did increase turnout, that increase was due to the perception by voters that one of the candidates was associated with that country. This fact suddenly reopened the endless discussion about the possible causes of low turnout, such as low interest in EU affairs or the perception of the EP as weak or strong (Clark, 2014).

Nevertheless, the new procedure was not dismissed because of the disillusionment from the data results. After the European elections, the main political groups of the European Parliament supported Juncker in his bid to muster a majority in the Parliament since the EPP had won the largest share of seats. In spite of some disgruntled governments, the European Council mainly had no other choice than to propose him, if they wanted to avoid a major institutional crisis. Particularly fierce was the struggle against Juncker and the new procedure led by David Cameron. Nevertheless, his resistance was doomed to fail from the outset: most importantly, he had lost influence by withdrawing the Tories from the EPP group in 2009, and, even worse, in June 2014 the Conservatives admitted to their own European Conservatives and Reformists (ECR) group in the Parliament ‘Alternative for Germany’, a new challenger to Angela Merkel’s Christian Democrats.

### **Assessing the New Procedure: What it was not**

This short history of the Spitzenkandidaten procedure is necessary in order to enter the debate on its merits. This section will try to overcome the different interpretations suggested at the beginning of this article, on the basis of what has been found.

For a start, it is quite clear that the establishment of the Spitzenkandidaten procedure was not a coup d’état against the member states. Indeed, European governments were deeply involved, aware, and even participatory in the development of the Spitzenkandidaten procedure. The European Council clearly raised the issue in the Laeken declaration and created the convention. Between the members of the latter there were affiliates of national governments, as well as representatives of heads of state and governments. In the following years, the Council did not raise its voice against the new procedure, apart from the comments of Van Rompuy, during conferences. The member states even ratified the Treaty of Lisbon, which included the vague recommendation of article 17.

Even the claim that the new procedure represents a victory for the supranationalists over the intergovernmentalists is incorrect. The only supranationalist result has been the constitutional

treaty, which did not pass the referenda. To the contrary, the problems of the democratic deficit in the appointment of the president were raised in intergovernmental meetings. Moreover, national parties actively participated throughout the entire process. The 2014 election has never represented a struggle between heads of governments and state and political parties. Indeed, “the candidates were chosen by the very same HoSGs in their capacity as de facto ‘*grands électeurs*’ at their respective party congresses. It was the political families that decided to nominate the candidates, not the European Parliament” (Incerti, 2014).

If it was a struggle, then it was a fight totally internal to the PPE. Indeed, the group holds the majority in the council elected Juncker and supported him after the election. It is difficult to believe that the council was taken by surprise. In that case, the lesson by Secondat should be learnt. As he claimed, “the lessons of this episode are quite simple. If you do not want someone nominated, do not push that person to the top of the list. And if you do not want something to happen after the election, do not endorse it during the election. Because when the music stops you have to put your vote where your mouth has been, or risk serious problems” (Secondat, 2014).

Another opposing argument to the view that the new procedure represents a victory for supranationalists over the intergovernmentalists is that the result did not undermine the role of the council. The council can still choose and propose other candidates. It is not true that it would have been a coup d'état had the European Council rejected Juncker (De Matteis, 2014). Nevertheless, the role of proponent is now under the spotlight, and resembles more closely the way in which a head of state appoints the head of government in many European countries. The council should have justified a rejection of Juncker, and therefore of the results of the European elections, on the basis of serious arguments. The council can and should reject a candidate when the democratic element chose a person evidently unsuitable for that role.

The absence of any defeat of the council is counterbalanced by the absence of any politicisation or presidentialisation of the commission. Some argue that the Spitzenkandidaten represents a radical change “from a politically neutral European Commission to a Commission whose President is nominated by the political party that wins most seats in the elections” (Kocharov, 2014:1). While others claim that the new procedure may even reveal a *terra incognita*, with the politicisation of Europe (Weiler, 2013:751). However, the risks of politicising the commission (Best and Sabina, 2014) or presidentialising it are perhaps overstated. For a start, politics has already shaped the work of the commission well before the

new procedure. The president was nominated by the leaders of national political parties, and were approved by the European Parliament. Moreover, the European Council still holds the power to determine the policy agenda of the Union. It is this power that “makes the national governments, and not the European Commission, the real “government” of Europe” (Kocharov, 2014:2). For this reason, Kocharov warns that the new procedure risks giving more power to national governments. Indeed, “appointing an EU ‘face’ who could be sanctioned for failure of collective policies set by national governments on Union level would reduce their accountability further” (Kocharov, 2014:13).

Additionally, the risks associated with the presidentialisation are quite overemphasised. The problem is presented as the ‘politicisation’ of the commission, which would prevent the president from doing his/her job properly (Grabbe and Lehne, October 2013). Juncker responds *de facto* to the many who argue that a partisan president “might not be able to wrestle 28 governments appointing commissioners from other parties.” Up until now, we did not witness any substantial delay and disagreements. In the future, there may be dangerous situations in which the college of commissioners “might not necessarily follow the policies put forward by a partisan president”(Kocharov, 2014). Nevertheless, these kinds of worries do not take into account the fact that any policy changes will require the majority vote, which will hardly be of one party only. Moreover, the commissioner swears an oath at the beginning of the mandate, making it harder for him or her to be in opposition to the rest of the commission. Finally, a partisan president is surely aware that consensus should be achieved, because an eventual discharge of a commissioner is difficult, as they have been appointed by member states.

Briefly, the new procedure is neither a victory for the EP, or the supranationalists. Turning to the claims that the Spitzenkandidaten procedure was a political move of the S&D against the EPP, we can now understand that such statements are an unfair minimization of a much more complex issue. Indeed, since the beginning of the XXI century, at least all of the major parties have agreed on a change in the procedure of appointing the president. The party congresses before the convention wrote that PSE, PPE and ELDR all agreed on changing the way in which the president of the commission was appointed. Moreover, some of the key actors, such as John Bruton, Barroso, and others, pushing this change forward were from the EPP. While it may be asserted that the socialists tried to exploit the advent of the new procedure for political purposes; nevertheless, from the analysis done here it is evident that there was wide consensus concerning the Spitzenkandidaten.

Finally, the Spitzenkandidaten procedure was not an illegal move against the treaties, or a breach of EU laws. The treaty has not been turned upside down. As Kockarov reminds us, “neither commission communications nor resolutions of the European parliament produce legal effects.” This means that the court of justice cannot challenge them (Kocharov, 2014:7). Nevertheless, it also means that we are facing a political move, which those who now complain about it did have the chance to challenge for at least a decade. The analysis above showed that the vague article 17 has been shaped by political families as well as heads of state and government. Moreover, it was already clear that the vagueness of that article could have led to a change in the way the president was appointed. Finally, “the council did not issue any document in response to this initiative to express its formal opinion or consent” (Kocharov, 2014:7). As Incerti claimed, the match has been played entirely at the political level (Incerti, 2014).

What about Cameron? The fact that David Cameron did not support Juncker is understandable. The ECR decided not to nominate anyone, and are very active against the system. Nevertheless, this is not indicative of a sign that laws were breached. Incerti rightly noted that “‘taking into account’ also means acknowledging that the ECR has not won the election, so it is not entitled to nominate a candidate. Given that the European Council decides on this issue by qualified majority, it can only block the other names if it is able to muster a blocking minority”(Incerti, 2014:2). Thus, the appointment of Juncker was nothing more than the implementation of article 17.

To conclude, the Spitzenkandidaten procedure was not a coup d'état, the final politicisation of the commission, a struggle between parties, the victory of supranationalism, or the breach of any European law.

### **Assessing the New Procedure: What it is**

After having described what it was not, this section will propose an alternative description of the Spitzenkandidaten procedure. It is true that there has been a power struggle between those advocating a strong Europe, and those in favour of a ‘Europe of nation states’; the former believing in the link between the EP election and the Commission appointment, while the latter preferring to keep them separate (Kaeding, 2014:6). Nevertheless, nobody won; the new way of appointing the president of the commission is not anyone’s victory. The Spitzenkandidaten procedure is a new inter-institutional practice, which has been institutionalised in order to strengthen the EP and council, electors, nation states and EU institutions in general. This procedure will support the mutual sincere cooperation between

EU institutions, avoiding deadlocks due to personal resentment and domestic quarrels, without closing down the possibility to choose other practices in serious circumstances.

The commission has not changed its role as a mediator looking for consensus. This is visible in the fact that the programmes of Junker and the other top candidates did not differ much. Some critics pointed to the fact that the current candidates were unwilling to deliver important EU reforms. For instance, Weiler acknowledged that in Schultz' campaign there was nothing that the opposition would be unable to endorse (Weiler, 2013:750-1). Thus, he talked of "politics without 'politics'." However, this is exactly the role of the president of the commission, who should continuously look for consensus, without becoming embroiled in adversarial politics. This approach will remain the same even after the institutionalisation of the new practice. Citizens will have a choice between the different sets of priorities, but it is unlikely they will witness something similar to national single party agenda.

In order to exact the great novelty of the Spitzenkandidaten procedure, the process should be examined. The practice of selecting a candidate whose political party won the most seats in parliament was already in place in 2004 and 2009, with the nomination of Barroso (Shackleton, 2014:3). The Spitzenkandidaten procedure is merely the institutionalisation of this pre-existing best practice. It is a clear process of nomination by each party for their preferred candidate. Nevertheless, this novelty changed the status quo. The institutionalisation of this best practice of appointing a candidate from the party with the most seats provided Europe with a transparent procedure, which substituted for the old practice of horse-trading behind closed doors.

The effect of the institutionalisation is that the weaknesses of the old practice will be avoided. The first change introduced by the new procedure is that the primary elections, or at least the votes in the Congresses, will evade misbehaviours by political parties, opening up the possibility for candidates backed by the citizens to succeed. Besides, the second and, perhaps, more important change is that the council now must publically argue and justify an alternative choice. The QMV already avoids blocking one candidate on the basis of sympathy of a head of government or state. The new procedure makes it more difficult not to back a candidate previously supported. The members of the council would have to publicly refer to the reasoning behind their decision, and hold themselves publicly accountable. Moreover, it is clear that the new procedure will not avoid blocking minorities. However, the transparency of the process will dissuade countries to from blocking minorities in order to block candidates for domestic reasons, without any sound argument.



It is important to remember that under the new procedure, the council still maintains a key role in extreme cases, such as when the candidate does not gather a simple majority in the EP, or when there is a need for protecting constituents from unscrupulous candidates. For instance, what if the election were won by a majority invoking Le Pen as president? (Secondat, 2014). It is risky to pretend that the role is given to the top candidate of that political area. At that point, the member states would have to intervene, looking for alternative and more appropriate solutions. The real change is that all of these actions will be public, and the agents will have to debate the issues openly.

Thus, the top candidate procedure can be thought of as the institutionalisation of a sort of 'best practice'. Now, citizens, parliament and heads of state or government are strongly encouraged to cooperate. The parliament provides the council with candidates who do not emerge from behind a closed door, but surface from public debates and elections. At the same time, heads of governments and states recognise the choice of European citizens, and publically encourage them to engage in debates when a different choice for Europe is needed. In other words, with the adoption of the Spitzenkandidaten procedure takes a precise shape the request by declaration 11 of TEU to set up the 'most appropriate framework' for the consultation between Council and Parliament.

## **Conclusion**

This paper reflected on the merits of the so called Spitzenkandidaten procedure, which is a new method for appointing the President of the European Commission. In the heated debates surrounding this topic, the new procedure has been described as a coup d'état against nation states, as the victory of supranationalists against intergovernmentalists, of the S&D against the EPP, and even as a dangerous breach of EU laws.

In order to enter this debate, this paper traced the origin of the new procedure. The Laeken Declaration already detected that there was a problem of democratic deficit in the method of appointment of the president of the commission. The political Congresses of 2001 and 2002 of the major political parties backed this view, signalling that it was necessary to link the European Elections to the appointment of the president. The constitutional Treaty already included the obligation to take into account European elections, which passed without any change into the Treaty of Lisbon. In 2012 Commission and Parliament continue to issue statements and recommendations clarifying and supporting the idea of appointing as president the top candidate of the political group that would have won the most seats in the elections.

The description of the Spitzenkandidaten historical development provides background for the evaluation of the various descriptions above mentioned. The new procedure is not a coup d'état against nation states, as well as a victory of supranationalists over the intergovernmentalists. Moreover, the main political parties have jointly agreed since 2001 about the necessity of linking the EP elections to the appointment of the president. Finally, the new procedure was definitely not the breach of EU laws. Instead, this paper proposes that it is a political agreement, which was institutionalised in an already partially existing process, in order to shape more precisely the collaboration between the council and the parliament required by the Treaty of Lisbon itself.

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