

# THE TANGLED WEB OF EU-INSTITUTIONAL REFORMS

## Executive Summary

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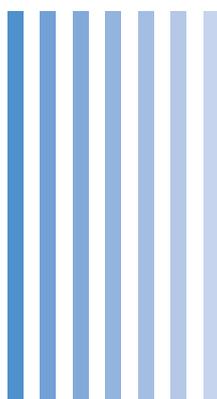
Ursula von der Leyen's election as President of the European Commission has revived the debate about institutional reforms. This Policy Paper examines the tangled web that is set to keep the EU busy over the coming years.

With respect to the question of how to propose and elect the Commission President, the Policy Paper revisits the Spitzenkandidaten process. It argues that, based on Declaration N°11 annexed to the Lisbon Treaty, common principles and procedural aspects should be defined for the consultations between the European Council and the European Parliament.

The "special relationship" between Commission and Parliament, announced by the Commission President-elect, would build upon an indirect right of initiative for the European Parliament and, possibly, on support for the introduction of transnational lists for the 2024 European Parliament elections. But one "special relationship" is not enough. The Commission will also have to build "special relationships" with other institutions and actors in the EU's political system.

Jean-Claude Juncker's advice to his successor includes a proposal to merge the roles of President of the European Commission and President of the European Council and to reduce the number of Commissioners. These ideas are, however, unlikely to materialise in the near future.

Finally, the Policy Paper argues that the "Conference on the Future of Europe" needs a strong mandate and clear guidance. The current struggles within and between EU institutions show that this exercise could be riskier than the Commission President-elect had initially thought.



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# 1. INTRODUCTION: THINKING ABOUT INSTITUTIONAL REFORMS

Was Jean-Claude Juncker, as he said during a press conference in Helsinki on 5 July 2019, “the first and the last Spitzenkandidat” who became President of the European Commission? Only time will tell. But the newly elected Commission President Ursula von der Leyen faces the task of revisiting the constitutional equilibrium of the EU.

In the Political Guidelines for the next European Commission,<sup>1</sup> Ursula von der Leyen devoted one section of the 15-page document to “A new push for European democracy”. She proposed that she would broker negotiations between the European Parliament and the European Council “to review the way we appoint and elect the leaders of our institutions.” In addition, a two-year “Conference on the Future of Europe” will start working in 2020. Together with several other announcements, this indicates that institutional reforms are on the agenda for 2019-2024.

Even though there is currently still no agreement about the direction and scope of institutional reforms, Ursula von der Leyen’s election has brought new momentum to the discussions on the “Future of Europe”. Those in favour of institutional reforms argue that it is necessary to move quickly and to take bold steps: The timeframe for undertaking institutional reforms is short and the current momentum might evaporate soon.

The key objective, however, should be to create a coherent reform package that is not a technocratic gimmick but appealing to citizens. This Policy Paper examines individual measures and their inter-institutional implications.

## 2. HOW TO PROPOSE AND ELECT THE COMMISSION PRESIDENT

The fate of the Spitzenkandidaten after the European elections of 26 May 2019 triggered vivid discussions about how the process to propose and elect the Commission President should be organised. The Lisbon Treaty had introduced the provision of “taking into account the elections to the European Parliament”, but the word Spitzenkandidat does not appear there.

While Jean-Claude Juncker, the Spitzenkandidat of the centre-right EPP, became Commission President in 2014, the candidate proposed by the European Council for that post five years later, Ursula von der Leyen, had not been running in the 2019 European elections.

Over the years, the European Parliament had been able to steadily expand its influence over the election of the Commission President: The Maastricht Treaty gave the European Parliament the right to be consulted on the election of the President of the Commission. In 1994,

1. Ursula von der Leyen, *A Union that strives for more. My agenda for Europe. Political guidelines for the next European Commission 2019–2024*. European Commission, 17 July 2019.

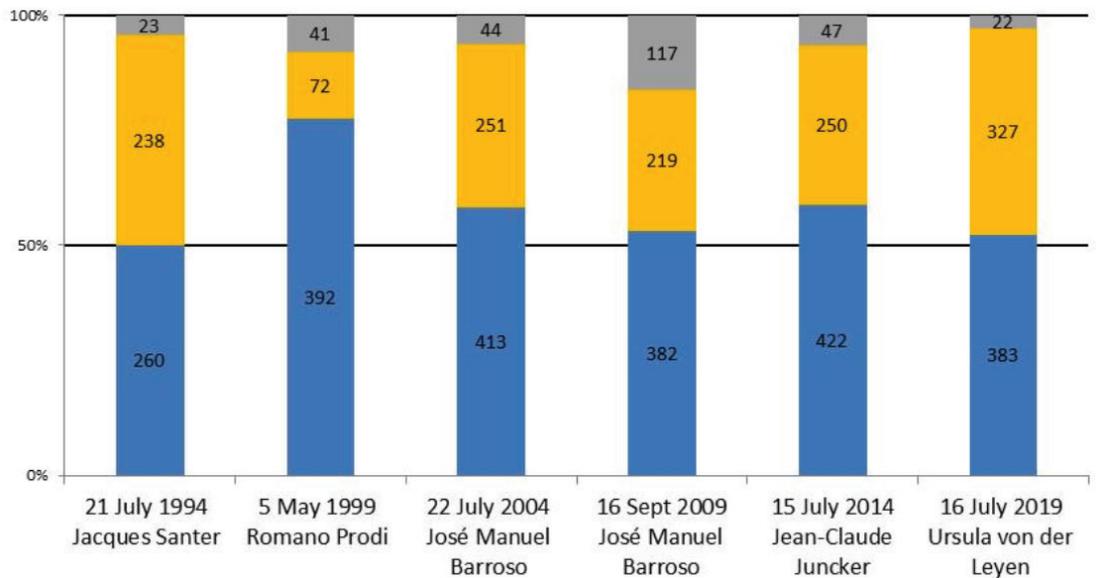


NEW MOMENTUM TO THE  
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“FUTURE OF EUROPE”

it was clear that if Jacques Santer had not been supported by a relative majority of MEPs, he would not have taken office. Ultimately, 260 MEPs voted for and 238 MEPs against him (see Figure 1).

After the 2019 European elections, the European Council proposed Ursula von der Leyen who subsequently obtained a majority in the European Parliament (383 votes in favour, 327 against, 22 abstentions). The European Council was able to impose her, in particular because the European Parliament had failed to unite behind a Spitzenkandidat.

**FIGURE 1 ■ Votes on the President of the European Commission in the European Parliament**



Source: Jacques Delors Institute Berlin (Chart of the Week by Paul-Jasper Dittrich and Valentin Kreilinger, 17 July 2019).

Data: European Parliament. "Yes" (blue), "No" (yellow) and "Abstention" (grey) votes on the proposed Commission President by MEPs 1994-2019. Majority requirement: Simple majority of the votes cast until 2009, majority of component members since the entry-into-force of the Lisbon Treaty.

Declaration N°11 on Article 17(6) and (7) of the TEU<sup>2</sup> foresees that representatives of the European Parliament and the European Council carry out consultations in the framework "that is considered the most appropriate" – before the European Council proposes a candidate for the post of Commission President. But what is the most appropriate framework? The institutions have not answered the question. The European Council reportedly plans to enter into talks with the European Parliament on this issue. In order to avoid a re-run of the events in 2024, common principles and procedural aspects should be defined for the consultations on proposing and electing the next Commission President.

2. See Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union – Protocols – Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, OJ C 326, 26 October 2012, p. 1–390.

### 3. A “SPECIAL RELATIONSHIP” BETWEEN COMMISSION AND PARLIAMENT?

The new Commission President stated in her Political Guidelines that she wanted to build a “special relationship with the European Parliament”.<sup>3</sup>

Ursula von der Leyen’s reference to a possible introduction of transnational lists is one element of this “special relationship”. The precise rules for the election of the European Parliament make a difference and are laid down in the 1976 Electoral Act, which was last amended in 2018 in order to modify the distribution of seats in the European Parliament after Brexit.<sup>4</sup> The European Parliament has the right of initiative on this issue, but any changes to the Act require a unanimous decision by the European Council.

In 2017, Emmanuel Macron had called for a two-step approach: He wanted to replace the cohort of the 73 MEPs elected in the UK with MEPs from transnational lists in 2019 and to have 50% of MEPs elected on transnational lists in 2024. His rationale has been to make the elections truly European and break the dominance of the existing pan-European political parties.

The European Parliament did not include transnational lists in its proposal for amending the Electoral Act in 2018: A majority of MEPs, most of them from the centre-right EPP, opposed the introduction of transnational lists and voted against having 27 MEPs elected on transnational lists (274 votes in favour, 368 against, 34 abstentions). Opponents criticised the idea as centralist, artificial and elitist.

Transnational lists are nevertheless still on the table. Ursula von der Leyen was applauded in the European Parliament when she said in her speech on 16 July 2019 that “we need to address the issue of transnational lists at the European elections as a complementary tool of European democracy.”<sup>5</sup> Combining transnational lists and the Spitzenkandidaten system would enable citizens to vote for their favourite Commission President in every EU member state, not just in the member state (or region) in which that Spitzenkandidat might be standing for election.

In addition, the “special relationship” between Commission and Parliament is set to build upon an indirect right of initiative for the European Parliament. It is often overlooked that, unlike most “normal” legislatures, the European Parliament currently does not have the right to initiate legislation. The monopoly of legislative initiative is with the European Commission. The new Commission President declared that she supported a right of initiative for the European Parliament. She refrained from promising something to MEPs that she could not deliver on her own: Ursula von der Leyen committed herself to responding with a legislative act, whenever the European Parliament adopted resolutions that requested from the Commission to submit a legislative proposal.

3. Ursula von der Leyen, *A Union that strives for more. My agenda for Europe. Political guidelines for the next European Commission 2019–2024*. European Commission, 17 July 2019.

4. Council Decision 2018/994 of 13 July 2018 amending the Act concerning the election of the members of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787 of 20 September 1976, OJ L 178, 16 July 2018, p. 1–3

5. European Commission, *Opening Statement in the European Parliament Plenary Session by Ursula von der Leyen, Candidate for President of the European Commission*, 16 July 2019.



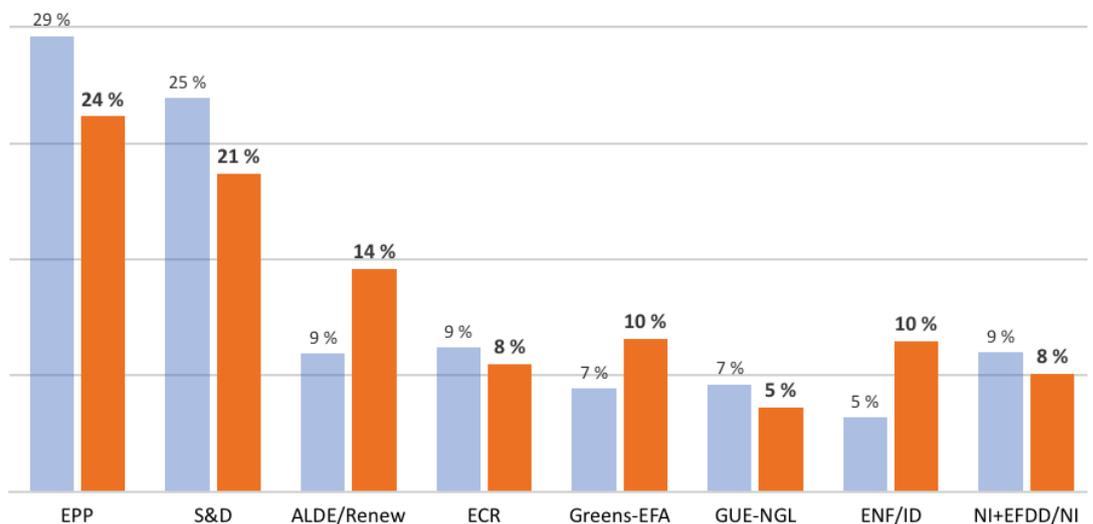
AN INDIRECT RIGHT  
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EUROPEAN PARLIAMENT

Such an indirect right of initiative strengthens the link between Commission and Parliament at the expense of the (European) Council. Although this move is quite popular in the pro-EU camp of the European Parliament, it creates resentments elsewhere in the EU's political system and changes the way in which the EU works. The new Commission should be careful not to distort the existing constitutional equilibrium.

## 4. ONE "SPECIAL RELATIONSHIP" IS NOT ENOUGH

Given the narrow majority of nine votes when Ursula von der Leyen was elected in the European Parliament, the new Commission President might be tempted to concentrate on expanding her support base in the European Parliament, which has become more fragmented after the May 2019 elections.

**FIGURE 2 ■ Relative strength of political groups in the European Parliament in 2014 and 2019**



Source: Own elaboration. The figure shows the seat share of political groups in 2014 (blue) and 2019 (orange).

For 2014, ENF is included while EFDD is added to NI: EFDD ceased to exist and has no successor in 2019.

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SOLELY CONCENTRATING  
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But solely concentrating on MEPs would be the wrong approach. The political system of the EU is not parliamentary in the sense that the Commission depends on a stable parliamentary majority for its day-to-day legislative work: Majorities are flexible, they vary from one policy area to the other.

Ursula von der Leyen should, as her proposal to “broker negotiations between the European Parliament and the European Council” suggests, not become the agent of the Parliament. Besides her “special relationship” with the European Parliament, she could also build “special relationships” with other institutions and actors in the EU’s political system. The Juncker Commission and the European Parliament agreed on many policy issues, but the Council blocked or was split. The migration dossiers are a telling example of this. Everything will depend on fostering consensus among member states and on good inter-institutional relationships.

This might occasionally imply deviating from the “Political Commission” approach that her predecessor had adopted. Some had perceived the Juncker Commission as partial; comments such as “parce-que c’est la France” on granting an exception for the French budget deficit have reinforced that picture. Ursula von der Leyen declared in one of the first newspaper interviews after her election that the Stability and Growth Pact contained a lot of flexibility and that nobody was perfect with respect to the rule of law.<sup>6</sup> The centre-right fears that she might loosen the fiscal rules, while the centre-left wants her to continue the tough line against Hungary and Poland with respect to Article 7 TEU.

In order to facilitate decision-making, the Lisbon Treaty contains several so-called “passerelle clauses” which allow to switch to qualified majority voting in certain policy areas.<sup>7</sup> The European Council must unanimously agree such a move. It will not be easy to convince member states to abandon the veto over sensitive issues such as taxation or foreign policy. But efficiency in the functioning of the EU institutions is a key issue for the coming years, especially in areas which von der Leyen has highlighted as essential: If the EU cannot deliver in foreign policy and if the “Geopolitical Commission” only relies on the EU’s economic power, its credibility is at stake. The new Commission should therefore work on a package of concrete measures which are supported by member states.

Finally, Jean-Claude Juncker had promised in 2014 “to forge a new partnership with national parliaments”. So far, Ursula von der Leyen has not explained how she sees their role. Her political guidelines only mention “full respect of the proportionality, subsidiarity and better law-making principles.” But national parliaments have a vital role to play as multi-level actors in the EU’s political system, alongside and together with the European Parliament. The engagement of the new Commission should go beyond merely visiting national parliaments and instead actively incorporate their priorities into its own policy planning.

## 5. JEAN-CLAUDE JUNCKER’S ADVICE TO HIS SUCCESSOR

Some of the previous proposals for institutional reforms had already been tabled by the previous Commission (for example, the expansion of qualified majority voting) and Jean-Claude Juncker had also expressed sympathy for other institutional reforms (such as the introduction of transnational lists).<sup>8</sup>

There are two further institutional reforms which Ursula von der Leyen has not envisaged until now, but which her predecessor has recommended: Merging the roles of President of the European Commission and President of the European Council; and reducing the number of Commissioners. The fact that Jean-Claude Juncker proposed these two reforms half-way through his term (merging the roles) respectively at the very end (reducing the number of Commissioners), makes them even more important as these two future-oriented proposals represent a sort of legacy.

6. Süddeutsche Zeitung, “Nicht die schärfste Drohung an den Anfang”, Ursula von der Leyen im Interview, 19 July 2019, p. 2.

7. European Political Strategy Centre, *A Union that Delivers. Making Use of the Lisbon Treaty’s Passerelle Clauses*, 14 January 2019.

8. European Commission, *President Jean-Claude Juncker’s State of the Union Address 2017*, 13 September 2017.

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The idea of merging the roles of President of the European Commission and President of the European Council is not new. It had already been discussed in the European Convention. Jean-Claude Juncker relaunched the idea when he said in his 2017 State of the Union speech that Europe would be easier to understand “if one captain was steering the ship.”<sup>9</sup> In fact, the terms of the Treaty do not rule out having both functions filled by one person.

However, there are unanswered inter-institutional questions, especially with regard to accountability and a possible censure of an “EU President” who holds both posts. The office holder might have to rely on a direct source of legitimacy, either via running on a transnational list or through a direct election. Although this reform could be triggered easily (by simply electing the same person to both posts), it would fundamentally change how the EU works. The reform would dilute the separation between the intergovernmental and the supranational sphere.

In the European Commission, each member state continues to be represented by one Commissioner. In reaction to the Irish referendum of 2009 and despite the provision of the Lisbon Treaty that the number of Commissioners was to be equivalent to two thirds of the number of member states from 2014 onwards, the European Council decided to maintain the principle of one Commissioner per member state. The current number of EU Commissioners, including the President, is 28. There have been numerous calls for reducing the number of Commissioners in order to increase the efficiency of the institution. A significant reduction, for instance to 15 members, as proposed by Emmanuel Macron, would require Treaty change.

In the short and medium term, these two ideas are off the agenda, because, as described above, they would turn the EU upside down. It remains to be seen whether they re-emerge at the “Conference on the Future of Europe”, but it currently seems unlikely that such far-reaching changes could be agreed there.

## 6. WHAT WILL THE “CONFERENCE ON THE FUTURE OF EUROPE” BRING?

Ursula von der Leyen restructured the incoming Commission and appointed three Executive Vice-Presidents: Frans Timmermans, Margrethe Vestager and Valdis Dombrovskis. There are five other (ordinary) Vice-Presidents. Three of them carry responsibilities in the area of institutions and democracy: Maroš Šefčovič (PES, Slovakia) for Interinstitutional Relations and Foresight, Dubravka Šuica (EPP, Croatia) for Democracy and Demography and Věra Jourová (Renew/ALDE, Czech Republic) for Values and Transparency. According to the Commission President-elect, Dubravka Šuica will lead the Commission’s work on the “Conference on the Future of Europe”.

The “Conference on the Future of Europe” is still an empty shell, but it is important to note that it is not a convention under Article 48 TEU: Ursula von der Leyen wants to “bring new impetus to Europe’s democracy”,<sup>10</sup> have the voice of citizens heard and let them participate in the way society is built. A possible model for this are the “citizen consultations” organised in 2018.

<sup>9</sup> European Commission, [President Jean-Claude Juncker’s State of the Union Address 2017](#), 13 September 2017.

<sup>10</sup> European Commission, [The von der Leyen Commission: for a Union that strives for more](#), Press release, 10 September 2019.



DUBRAVKA ŠUICA WILL LEAD THE COMMISSION’S WORK ON THE “CONFERENCE ON THE FUTURE OF EUROPE”

In the hearings of the Commissioners-designates, the European Parliament has already tried to nail the Commission's trousers to the mast. The Committee for Constitutional Affairs has for instance called upon the Commission to fully involve the European Parliament in the preparations for the Conference (in addition to the Conference being chaired by a Member of the European Parliament) and asked the Commission to include national parliamentarians as well.

The ultimate question, however, is: What form does the final institutional reform package have? It could be an inter-institutional agreement – or it could be a real institutional reorganisation that requires Treaty change.

## 7. CONCLUSION: THE CHALLENGE OF CREATING A COHERENT PACKAGE

The possible institutional reforms represent a kind of "shopping list". The EU's supermarket at Rue de la Loi has everything on offer, but the prices are sometimes high. Member state governments, political groups in the European Parliament, the EU's old and new leaders – all of them have different preferences. But they must unanimously agree on what to buy and on the meal to cook. Ideally, citizens will like the meal and give it a high rating at the next European elections in 2024.

The current in-fighting between and within the EU institutions, however, resembles the changing nature of conflicts in the EU: Party-politics, geography, climate change, the equal treatment of member states and the balance of power are issues that matter a lot. For the "Conference on the Future of Europe" this means that it needs a strong mandate, clear guidance and the broadest possible support base, because otherwise such struggles could tear it apart.

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