

TOWARDS EFFECTIVE AND ACCOUNTABLE LEADERSHIP OF THE UNION OPTIONS AND GUIDELINES FOR REFORM¹

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*Rien ne se crée sans les hommes. Rien ne dure sans les institutions.
(J. Monnet)*

ABSTRACT: *The success of the Convention on the future of the EU will to a great extent depend upon its answers to the institutional questions. Among these questions, the issue of EU leadership plays a crucial role. In this paper, three challenges for the re-organisation of leadership in the Union are identified:*

- *Union leadership has to be more effective;*
- *Leadership in the Union should contribute to the democratic character of the Union;*
- *Leadership reform should not fundamentally distort the Union's institutional balance.*

In view of these three challenges, the authors consider the two main strands of debate that touch upon the issue of leadership in the EU: first, the debate on the election of the Commission President and, secondly, the different proposals for reforming the Council Presidency.

Introduction: In search of Union leadership

As European cooperation took off in the 1950s, it focused on concrete economic tasks. It did not require a strong central "government". Over the years, however, the nature of European integration has changed considerably. The establishment of the European Union by the Maastricht Treaty in 1992 complemented the former European Communities with two pillars of "real politics": a Common Foreign and Security

Policy (CFSP) and cooperation in the field of Justice and Home Affairs (JHA). The creation of an Economic and Monetary Union (EMU) has been another landmark. At this moment the Union is about to take another historical step: after several earlier rounds of enlargement, it will end the East-West divide of Europe by accepting a dozen or more new member states.

Yet, while European cooperation has evolved towards a truly political Union covering the entire continent, its institutional structure has

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undergone far less change. From the Treaty of Rome onwards, the European architecture has been built upon a remarkably stable institutional triangle: the (European) Council is the supreme political body, the Commission prepares legislation and coordinates its implementation, and the European Parliament monitors the Commission's performance and is involved in the legislative process. These fundamentals have hardly been touched.

By now, many signs indicate a pressing need to reconsider the institutions that serve the Union. Ten years after Maastricht, the need for European action in the areas of CFSP and JHA has become ever more urgent, but so far the tangible achievements in these fields fall short of the ambitions expressed. Moreover, the completion of EMU requires stronger economic governance (Jacquet and Pisani-Ferry, 2001). At the same time, enlargement from the current 15 to 25 and more member states is bound to magnify diversity within the Union that can only be handled if there is a corresponding increase in coordinating powers. Since previous attempts at tackling these challenges have failed, the European Council has convened a Convention on the Future of the EU "to consider the key issues arising for the Union's future development and try to identify the various possible responses" (European Council, 2001).

In this paper, we address one issue that is bound to play a key role in the eventual institutional framework that the Convention will have to develop: Union leadership. As stated above, there was little need for leadership within the Union architecture at its origins. In the first section below, we outline how leadership tasks have come to be allocated among the institutions in a rather ad hoc manner. This discussion shows

that a structural re-organisation of leadership is required. Drawing upon the analysis, we submit that any solution to Union leadership will need to be assessed in the light of three basic criteria: efficacy, democracy and the preservation of the institutional balance.

The core sections of this paper approach the question of leadership from two angles. First, we revisit the longstanding debate on the democratisation of the selection of the Commission President. Secondly, we turn to the more recent debate on a permanent president for the European Council. In each case, the various proposals are systematically analysed in the light of the criteria introduced. In the concluding section, the two debates are brought together, as we seek to identify a way of reorganising Union leadership that increases effectiveness, enhances democracy and preserves the institutional balance.

1. Union leadership: Past and prospects

1.1 Current leadership positions in the EU

Executive power in the Union is shared between the (European) Council and the Commission. As a corollary, executive leadership in the Union is divided between the presidencies of both institutions. More recently, the Presidency of the Council has been complemented by the creation of a High Representative of the CFSP who assists the Council Presidency in the external representation of the Union. An analysis of a more effective and accountable leadership of the Union has to start from a reconsideration of these three functions.

The Commission President

The European Commission is the most permanent embodiment of European political cooperation. The role of the Commission in the European political process has been characterised as being "rather more, and rather less" than "the civil service of the EU" (Nugent, 1999: 85). The Commission is "more" to the extent that it plays a prominent role as the agenda-setter in the legislative process and acts as the "guardian of the treaties". Furthermore, it plays a major administrative and regulatory role and manages the budget. The Commission is considerably "less" than a full-blown executive as its powers have been strictly circumscribed and apply only in a limited number of political fields.

Notwithstanding the collegial nature of the Commission, the position of Commission President has acquired considerable significance (Nugent, 1999: 106-7). Formally acting as a *primus inter pares*, the Commission President drafts the general policy programme of the Commission, represents the Commission vis-à-vis the other institutions and to the public and oversees the workings of the Directorates-General through the Secretariat-General. He/she also chairs the weekly meetings of the College, and exercises the deciding vote in the event of a tie in the College.

The powers of the Commission President have been revised in the Nice Treaty. The new Art. 217 formalises previous practice in providing that the President can freely allocate and reshuffle the responsibilities of the other Commissioners.²

Moreover, the Treaty provides that the Commission President can dismiss any Commissioner after obtaining the approval of the College.³ Finally, the Treaty now also foresees that the Council and the President nominee appoint the other Commissioners on the basis of proposals from each member state.

In the end, the powers of the Commission President find their limits with the remit given to the Commission. The member governments have so far carefully limited the Commission's authority in the common foreign and security policy, defence, economic policy, and police and criminal affairs. Instead the member states have preferred to scatter executive powers in these fields among the Council Presidency, the Council Secretariat, the High Representative and specialised agencies. As a result, the Commission President has been excluded from some of the most prominent European policies.

The Council Presidency

The Council is in many respects the bottleneck of the Union. Bringing together the governments of the member states, the Council commands the process by which European powers are allocated and exercised. The Council has both executive and legislative powers. It is the place where intergovernmental policies (CFSP, ESDP and cooperation in police and criminal matters) are decided and national policies are coordinated. Moreover, no legislative act can pass without the consent of the Council. And also after legislation has been passed, the Council retains a

² See Declaration no. 32 attached to the Amsterdam Treaty and Art. 3 of the Rules of Procedure of the Commission adopted on 16 September 1999.

³ Though this may appear as a strengthening of the powers of the Commission President, it can be argued that it actually constitutes a weakening, because under current practice a Commission member will resign if requested to do so by his/her President, without requiring the approval of a majority in the College (F Dehousse, 2001).

firm control on the executive process, through the national implementation of this legislation or by overseeing the implementation by the Commission through the committees it has installed ("comitology") (Joerges and Vos, 1999).

To look after its tasks in the various policy domains, the Council has evolved into a complex structure encapsulating various ministerial formations and numerous administrative committees. While at one time legislative activity was distributed across more than 20 ministerial Council formations, the Seville European Council in 2002 set their number at nine. The General Affairs Council is supposed to play a central coordinating role among these various formations. In practice, however, it has often failed to do so, and as a consequence ever more tasks have been put before the European Council.

The European Council serves as the platform for the heads of state and government of the European Union, on an informal basis from 1975 onwards and since 1986 on the basis of various treaty provisions. It provides the European Union with strategic guidelines and political impetus. In addition, the European Council gets involved in policy decisions when the respective Council formations fail to reach agreement or when the Treaties explicitly require it to act. The European Council has, moreover, taken an important role in foreign and defence policy (de Schoutheete and Wallace, 2002).

The „leadership“ of the (European) Council is assumed by the Presidency. The basic responsibility of the Presidency is the organisation and chairing of Council meetings (and its subordinate bodies) during the time of office. While this may be considered a mere procedural responsibility, the Presidency actually enjoys considerable powers by controlling the

timing and the content of these meetings. Moreover, the Presidency is also responsible for representing the Council vis-à-vis the other European institutions and for representing the Union vis-à-vis the rest of the world.

Each member state holds the Presidency of the (European) Council in turn for six months. A rotating Presidency is a well known device in international treaty organisations. It prevents the emergence of a strong permanent centre that may come to dominate the autonomy of the constituting members and ensures the basic equality of all members. At the same time, holding the Presidency may serve to stir up the commitment to the European project in each member state in turn.

The burden of the Presidency has increased significantly over time. In particular, the emergence of CFSP has put extra responsibilities upon the Presidency. Pressures on the organisation of the Presidency will rise even further after the next round of enlargement. Given the limited resources and experience of the countries joining, doubts have been raised whether their administrations are properly equipped to take on the Presidency. What is more, if the rotating scheme would be maintained, this would imply that any state would hold the Presidency only once in every 12 years.

The High Representative

As it emerged that the external representation of the Union required considerably more involvement than could be expected from the member government holding the Presidency, the Treaty of Amsterdam beefed up the role of the Secretary-General of the Council by introducing the function of High Representative (HR) of the CFSP. The HR assists

the Presidency in its external representation role. He/she also contributes to the formulation, drawing-up and implementation of political decisions by the Council. The HR is moreover responsible for the several CFSP committees and agencies. Finally, he/she can, at the request of the Presidency, act on behalf of the Council and conduct political dialogues with third parties. In 1999, Javier Solana was appointed as the first HR for a period of five years.

Formally, the function of the HR is an administrative rather than a political function: the HR has no official powers of his/her own and limited means. Moreover, the HR's powers only concern the CFSP; the other external policies are being dealt with by the Commission under the aegis of the Commissioner responsible for external relations (Relex). In practice, however, the HR is much more than an EU ambassador and the political nature of the function is hard to deny. This is partly the personal achievement of Javier Solana, who has been extraordinarily agile in making the most of his role within a web of often-conflicting pressures.

Indeed, the HR has to tread a thin line between acting on his own initiative and waiting for a specific mandate from the Council. Moreover, though formally under no obligation to the supranational institutions of the Commission and Parliament, he/she has to take care not to offend them and in particular to ensure that his actions do not conflict with those of the Relex Commissioner. In the end, however, the HR is first and foremost accountable to the Council. This particular relationship is the key difficulty that any move towards closer integration of the functions of the HR and the Relex Commissioner will need to overcome.

1.2 Reforming EU leadership: A triple challenge

The foregoing review of the current state of leadership in the Union reveals it to be problematic on several accounts. Above all it is clear that the current organisation fails to deliver effective leadership, while the need for it has steadily increased. However, any reconsideration of leadership in the Union has to take account of other values beyond *efficacy*. For a start any reform to improve efficacy needs to be matched by adequate measures to ensure *democratic accountability*. Finally we want to draw special attention to the fact that reorganisations of EU leadership need to pay respect to the precarious *institutional balance* that is maintained in the Union between, on the one hand, the idea of a general European interest and, on the other, the diversity of national interests. Hence, reforming EU leadership faces a triple challenge: it should be rendered more efficacious and more democratic, whilst respecting the Union's institutional balance.

Efficacy

The review of leadership in the EU reveals that the demand for it has steadily increased, as ever more executive tasks have been taken up at the European level. These also include, moreover, truly "governmental" tasks, such as macroeconomic management, foreign and defence policy and police matters.

Nevertheless, the present demand for EU leadership is not matched by an adequate supply. The current organisation of leadership tasks has come about in a rather ad-hoc fashion. Leadership tasks have been scattered around different positions and bodies, which complicates coordination among them. In turn, this hampers

the visibility and accountability of leadership positions in the EU. This especially holds for the Union's external presence, and leaves the EU a political dwarf on the world stage, despite its economic weight.

Hence the first challenge for the organisation of future EU leadership is to increase its *efficacy*. Leadership reform in the Union can contribute to a better overall running of the political processes within the Union. Most notably, effective leadership within the complex Union architecture should strengthen coordination powers across the institutional divides that currently exist. This is not only a matter of the formal attribution of powers; it also requires the position of leadership to be actually able to command support from the various Union institutions. In this context one also has to give due consideration to the question whether the organisation of leadership within the Union can be shaped in such a way as to ensure that the position(s) involved will attract the best-qualified people. Further, the lack of external presence is often pointed to as an important indicator of the deficiencies of Union leadership. A major test for leadership of the Union is thus whether international actors will recognise that it provides them with an equal and credible interlocutor.

Democracy

For some time now, observers have harboured serious misgivings about the democratic character of the European Union (cf. Weiler et al., 1995; Lodge, 1997; Dehousse, 1995; Moravcsik, 2002). The weak connection between Europe's citizens and its institutions is a direct reflection of the fact that, wherever power is exercised in the Union, citizens do not feel they have much of an impact on it. Any strengthening

of European leadership will thus need to be complemented by adequate mechanisms for democratic accountability.

Indeed, there is a clear pressure to have any strengthening of leadership in the Union combined with effective mechanisms of electoral choice through which the public can effectively influence the choice between one or another candidate(s).

To instil democratic accountability into the Union, however, will require more than the mere extension of the European Parliament's powers. For the moment, the democratic legitimacy of the Parliament remains disputed as long as its seats are contested in "second-order elections" with low turnouts, various national voting rules and voting behaviour reflecting mainly the national political situation (Reif and Schmitt, 1980; Schmitt and Thomassen, 1999). And even though the European Parliament has been able to increase its functional efficiency over time, its representative function remains underdeveloped as the expression of ideological differences is suppressed by its tendencies towards technocratic reasoning and decision-making by consensus (Magnette, 2001a).

Moreover, any assessment of the democratic potential of reforms of Union leadership should look beyond the electoral mechanisms to the broader context in which citizens engage with and appreciate the Union. Public appeal and engagement may in the end be more important democratic factors than the actual electoral procedure. Leadership reform might also contribute to the Union becoming more transparent and comprehensible (Magnette, 2001b). Furthermore, European leadership should be organised in ways that foster the emergence of European parties and the necessary

organisational and media infrastructure through which they can interact. Offering European citizens electoral choice may be instrumental in creating such a European public sphere, as the resulting politicisation of and competition for Union leadership will raise the salience of the EU in national political debates (Risse, 2002).

Institutional balance

These two groups of considerations – effectiveness and democracy – represent the dichotomy that pervades all literature on democratic institutional engineering (Dahl, 1994; Sartori, 1994; Scharpf, 1999). In the specific context of the European Union, we add a third perspective that is crucial to the distinct nature of the Union as a political system: the preservation of the Union's institutional balance. The Union is no longer a normal international organisation but neither is it a sovereign political system. It derives its powers (as well as the legitimacy to exercise them) from two sources: the governments of each member state represented in the Council and the citizens of these states as represented by the European Parliament (Dehousse, 1995).

Any attempt to reform Union leadership will have to respect the precarious political balance between on the one hand the idea of a general European interest and on the other the diversity of national interests (Prechal, 1998; Lenaerts and Verhoeven, 2002). As Convention President Giscard d'Estaing (2002) puts it: "If power is concentrated around the Council, the general European interest will no longer be taken into account, and the equality of citizens will be sacrificed to the equality of states. If a similar concentration of power takes place around the truly communitarian institutions – excluding the Council - it would be the interests of the member

states that would no longer be able to express themselves and (...) the equality of states, small or big, will no longer be recognised besides the equal representation of citizens".

One implication of this is that leadership selection in the Union cannot simply be subject to majority rule, because in a majoritarian ("fused") model the executive is able to dominate the legislature by commanding a secure majority in it ("dictatorship of the executive") (Hix, 2002b). As a consequence, certain member states might be permanently excluded from power, as they would only be represented in the minority. Rather than fusing legislative and executive powers, leadership in the Union should be subject to a system of checks and balances resembling the model of "divided government".

Thus, any reform of leadership in the Union will have to ensure that the relations with the intergovernmental and with the supranational institutions are properly looked after. With regard to the Council, structural guarantees are required to make certain that Union leadership will not be permanently alienated from any one member state. On the other hand, the European Parliament ought not to be monopolised by the executive, but should instead continue to play its independent role as "controlling parliament" (Dann, 2002).

Table 1. Three dimensions for evaluation

| Efficacy of office | Democracy | Institutional balance |
|--|--|--|
| <ul style="list-style-type: none"> - Coordinating powers - Embeddedness - (External) visibility - Selection by merit | <ul style="list-style-type: none"> - Comprehensibility - Openness - Electoral choice - Public appeal - European political and public sphere | <ul style="list-style-type: none"> - Harmonious institutional balance - Relations with intergovernmental institutions - Relations with supranational institutions |

In short, we submit that any reorganisation of leadership in the EU needs to be assessed from three fundamental perspectives: *efficacy*, *democracy* and the *institutional balance* (a full description of this framework is given in the annex). These three dimensions are neither logically exclusive nor fully comprehensive. There are some obvious respects in which they impinge upon each other. However, each of them catches a distinct line of argument for reorganising leadership in the Union. Any proposal for reform deserving of attention will need to demonstrate tangible benefits along at least one of these dimensions. At the same time, it should not impose severe costs on the other dimensions.

2. (S)electing the Commission

President

As the Commission has acquired ever more political prominence, there has been an increasing concern to subject its powers to political controls. Certainly from Jacques Delors onwards, the post of Commission President had been recognised as a (potentially) very powerful one. As a result, the appointment of the Commission President has come to receive ever more attention. In the European Council, the nomination of the Commission President has been the subject of heated debate.

At the same time, there has been increasing pressure to subject the selection of the Commission to democratic control. In national democratic systems, elections generally determine who is to hold executive office. Executives who fail to deliver are prone to be thrown out at the next elections. While the Commission has to some extent developed into a European executive, its composition is only in the most indirect way linked to the European citizenry. Since the European Parliament plays only a secondary role in the selection procedure, European elections do not have direct influence. National elections, on the other hand, are instrumental in determining the composition of the European Council, but their impact remains rather indirect and tangential as only governmental parties are represented and their decision is conditional upon the agreement of others. All in all, the selection of the Commission is at no point genuinely subject to electoral choice.

Given this shortcoming, proposals to elect the Commission President by the citizens (directly or indirectly) have been gaining ground. It is important to underline that the election of the Commission President does not amount to the election of the entire Commission. It is thus possible to elect the Commission President,

whilst sticking to the current provisions for designating the other Commissioners.

Democratising the appointment of the Commission President is bound to have repercussions on the whole institutional system. A more democratic selection procedure can increase the accountability and legitimacy of the Commission, as a whole as well as the decision-making procedures in which it is involved. It can also have substantial effects on the public perception of and the public involvement with the Union. What is more, the resulting politicisation of the position of the Commission President is likely to impact upon the roles of the Commission as a whole. In particular it may well affect the much-cherished political independence of the Commission (Franck, 2002). Finally, the relationship between the President and the rest of the Commission is likely to be affected.

The Laeken Declaration (European Council, 2001) enumerates three ways of appointing the Commission President: by a qualified majority in the European Council, by the European Parliament or through direct election by the citizens. Two other ways also merit consideration: election by the national parliaments or by a Congress of Parliamentarians.

2.1 The situation under the Treaty of Amsterdam

Prior to the Maastricht Treaty, the Commission President was chosen unanimously by the national governments. The Maastricht Treaty made a first step towards a more democratic system: it granted the European Parliament the formal right to be consulted on the choice of the

President.⁴ The European Parliament took this provision to mean that it was entitled to approve or reject the nominee for president. Surprisingly, at the first occasion in 1994 this rather opportunistic interpretation was approved by the President-in-office of the Council (Germany). The Parliament's interpretation was formalised by the Amsterdam Treaty, which explicitly gives the European Parliament the final approving vote on the European Council's choice for Commission President. The other Commission Members are then nominated by the national governments by common accord with the nominee for President. Finally, the entire College is subject to a vote of approval by the European Parliament.

Democracy

The consensus at the time was that the Amsterdam Treaty had pushed the EU further towards a parliamentary model of executive selection (Crombez, 1997; Nentwich and Falkner, 1997). Through the election of a legislature (the European Parliament), the EU citizens would also indirectly select the executive, i.e. the Commission and its President.

However, this expectation was not fully borne out in practice. The presidential candidate nominated by the European Council is unlikely ever to be rejected by the European Parliament, as the European Council is able to impose its choice in the European Parliament vote (Hix, 1997; Gabel and Hix, 2002). The governing parties that are part of the European Council press their MEPs to support the candidate nominated by the European Council, because a negative European Parliament vote would be seen

⁴ Still, the 1983 Stuttgart Solemn Declaration had already granted the European Parliament bureau a consultative role in the choice of the Commission President.

as an embarrassment. The national parties are able to impose their choice on their MEPs, because they control MEP candidate selection. The coalition of MEPs stemming from national parties in the European Council plus those MEPs with the same political colour as the presidential candidate is almost always going to beat the coalition of those parties that are not in the European Council and have different policy preferences.

Thus, voters' choices in the European Parliament elections have an only limited impact on who becomes Commission President. The same holds for the composition of the entire college, which tends to reflect more the composition of the Council than that of the European Parliament.⁵

In turn, the marginal impact of the European Parliament (EP) elections has reduced their public appeal. For the time being, EP elections remain to be fought as a re-run of the national general election (Reif and Schmitt, 1980): they are not fought on the competing agendas and by office-holders of Europe-wide parties, but on national issues and by national parties. Hence, the current system fails to exploit the public appeal of the President's appointment and does not lead the way to a European public-political sphere.

In the end, the selection of the Commission President remains under the firm control of the European Council. The actual decision-making process within the European Council continues to take place behind closed doors and remains largely opaque to the general public.

Institutional balance

The current voting procedure in the European Council – consensus – guarantees that the preferences of every member state are taken into account. Thus, the mandate of the Commission President derives clearly from all the member states.

Nevertheless, a good working relationship between the Commission and the European Council is not automatically ensured, also because the political composition of the European Council changes during the term of the Commission President. Moreover, once in office the Commission President is not really accountable to the body that actually appoints him/her. While the European Council and the Council are well placed to make or break a Commission, they do not enjoy formal powers to sanction it.

The European Parliament does enjoy the formal power to force the Commission to resign as a body. However, the exercise of this power is subject to exceptionally strict conditions, as is illustrated by the fact that none of the seven motions of censure ever submitted has carried (Lenaerts and Verhoeven, 2002). Notably in the one case that the (Santer) Commission did resign, it did so on its own initiative before the European Parliament was able to mobilise its formal powers. The exercise of the censure by the European Parliament is further complicated by the fact that if it succeeds, it has only rather limited means to control what Commission will be nominated in its stead.

One might argue that the high obstacles erected against the Commission being forced to

⁵ This is exemplified by the composition of the Prodi Commission: only 5 of the 20 members of the college are close to the PPE, despite the fact that the PPE had become the largest group after the European Parliament elections. On the other hand, 10 of them are close to the PSE, the socialists being indeed the dominant fraction in the Council at the time.

resign serve to protect its independence. The question arises, however, whether this situation remains appropriate in the light of the (political) responsibilities the Commission has taken on or whether more effective controls (by both Council and European Parliament) are required.

Efficacy

The main problem of the consensual appointment of the Commission President is that it opens the door for capture by one member state (Hix, 2002a: 11). The 1994 Corfu European Council serves as a good example. At this occasion, the UK vetoed the candidacy of Belgian PM Dehaene and Germany vetoed the candidacy of Dutch PM Lubbers. It was only at a next meeting that the European Council agreed on the nomination of Jacques Santer.

Thus, the consensus rule complicates the decision procedure within the European Council. In particular, it has the consequence that the eventual nominee may well be selected on the merit of not provoking a veto of any of the heads of state, rather than for being the best-qualified person for the job. Eventually, this way of proceeding reflects badly upon the nominee as well as on the European Council itself.

2.2 The Treaty of Nice: Election by a majority in the European Council

In the Nice Treaty (to enter into force on 1 February 2003), the EU governments have agreed to choose the Commission President by qualified majority voting (qmv) rather than by unanimity. As in the current situation, the European Parliament then has to approve the nominee.

Efficacy

The rationale behind the change at Nice is to improve the efficacy of the selection procedure. The nomination of a Commission President will no longer be compromised by the capture by one member state. At the same time, this reform reduces the possibility of making the choice of the Commission President part of a package deal. The new provisions make it possible that several heads of state propose a candidate. As a more open process of competition will ensue, the merits of the candidates are more likely to be a decisive factor. Above all, however, with the new voting system of Nice and the increase to 25 member states, the selection procedure is bound to become rather more complex.

While the move to qmv may thus have clear advantages, its implications in practice should not be overestimated. In many spheres in which the

The current situation leaves much to be desired in terms of democracy. As the selection process takes place under the firm control of the European Council, the impact of the electorate is marginal at best. What is more, the selection process is marked by opacity. The provisions on the selection and resignation of the Commission and its President protect the independence of the Commission. The question arises, however, whether the current responsibilities of the Commission do not require more effective controls. The efficacy of this selection procedure is hampered by the requirement of consensus in the European Council. As a consequence the eventual nominee may be selected mainly on the merit of not provoking a veto of any of the heads of state, rather than for being the best-qualified person for the job.

(European) Council can decide by qmv, actual decision-making still takes place in the shadow of a putative consensus (Golub, 1999). If there is a vehement opposition by any (major) member state, it is unlikely that the majority will persist on a nomination.

Democracy

The move from unanimity to qmv also has implications in terms of democracy. On the negative side, qmv makes it possible that whole electorates are cut off from the selection of the Commission President. Furthermore, the nomination will still be decided behind closed doors.

On the positive side, the move to qmv may well benefit the legitimacy of the decision in the Council. If member states indeed propose various candidates, there is likely to be a broad and substantial debate in the European Council on their merits and programmes. These debates may even spill over into the public sphere.

Most notably from the perspective of democracy, the move to qmv in the European Council may allow the European Parliament to put a much stronger mark on the selection process. Member states that have found themselves in the minority in the European Council will no longer press their MEPs for a positive vote. As a result, whereas the nominee was unlikely ever to be rejected by the European Parliament under the unanimity provisions (Hix, 1997), moving to qmv in the European Council significantly increases

the chances that the European Parliament can actually veto a candidate.⁶ Thus it becomes far more likely that voters' preferences expressed in the EP elections will actually come to bear upon the selection process.

Institutional balance

If the European Parliament can make itself more felt in the selection procedure, its role in the Union architecture will be much strengthened. It will increase its grip over the Commission, while at the same time contributing to the legitimacy the Commission enjoys. What is more, European party groups, especially the larger ones, may turn this power into a campaign issue in the EP elections by featuring a candidate for the Commission Presidency or opposing the President in office.

As for the Council, decision-making by qmv creates the risk that the competition between the candidates may turn into a competition between member states. If the President would indeed be nominated against the will of some member states, this might well have a negative impact on his or her relationship with the (European) Council. Thus, regardless of whether the EP's powers turn out to be increased, the Nice provisions lead to a politicisation of the appointment of the President, since it will be more difficult for "intergovernmental" member states to refuse an integrationist candidate, or for left-wing member states to refuse a right-wing candidate, and vice versa.

⁶ Consider for instance the Santer vote: of the 94 MEPs whose national party supported Santer and whose European Parliament party group opposed Santer, 47 voted with the national party. If the European Council is divided as a result of qmv, the national governing parties that are in the minority in the European Council will no longer press their MEPs for a positive vote. Hence, a larger number would vote with their European Parliament party group. If for instance in 1994 the Spanish Social Democrats would have been in a minority position in the European Council against the nomination of Santer, a negative vote of their 17 MEPs would have sufficed to shift the European Parliament majority against him.

A central issue here is whether being elected by a qualified majority will in the end make the President more or less dependent on the Council. Some have argued that the Commission President may well come to depend on a structural majority in the Council. Decision-making within the Council would then come to be characterised by a new government-opposition dynamic. In the "governing" majority would be those member states that backed the Commission President and would probably also support his/her legislative initiatives. In the "opposing" minority would be the member states that were on the losing side in the appointment of the President and could also be on the losing side on most legislative issues (Hix, 2002a).

These predictions are probably overstated, however. In practice, coalitions among the member states shift according to the subject matter, with each member state having its own specific preferences on each topic. Moreover, given the role of the European Parliament in the legislative process (dual legislative) and the appointment procedure (investiture vote), a generalised government-opposition dynamic appears rather unlikely.

2.3 Election by the European Parliament

While the involvement of the European Parliament in the selection procedure for the Commission President has gradually increased, its role remains secondary to that of the European Council. With a view towards democratising the selection procedure, it has been suggested that this division of roles might be reversed, making the European Parliament the prime actor in the selection procedure (Jospin, 2001; Convention, 2002/177; Commission of the European Communities, 2002). Concretely, after the European elections, the European Parliament would elect the Commission President.

If the European Parliament is to elect the Commission President, the nomination of candidates becomes a key issue. Obviously the boldest option would be that the European political parties indicate their candidate for President in the European elections (Jospin, 2001). These candidates might even compete as figureheads of their party's transnational list (Barnier, 2001). A less far-reaching alternative would be that the European Council drafts a list of candidates,⁷ from which the newly composed European Parliament would be required to choose a Commission President after the

The new Nice provisions facilitate a more effective selection procedure, although the actual impact may be relatively modest. More notably, however, they are likely to increase the power of the European Parliament in the selection procedure and thereby also the involvement of the electorate. Furthermore, qmv inevitably leads to a more politicised nomination vote in the European Council. While the changes will probably lead to a slight politicisation of the position of the Commission, the effects of these changes can be controlled by the checks member states exert upon each other and the role of the European Parliament.

⁷ Another possibility is a dual list, drawn up by the Council and the European Parliament (Lenaerts & Verhoeven 2002).

European elections.⁸ Finally, it is also possible to have the national parliaments designate a number of candidates. This would amount to a sort of "primary" at the national level (Attina, 1999).

This model carries the risks that the contest for the Commission President will only take place in the (bigger) member as they are crucial to the eventual outcome and are, hence, also probably the homeland of the most likely candidates. Thus, (smaller) member states might be alienated from the process. However, this danger can be warded off by inserting a requirement that any candidate be able to demonstrate support from among at least two-thirds of the national delegations in the European Parliament (cf. Hix, 2002a).

Democracy

Having the European Parliament elect the Commission President will have profound effects on European democracy. Above all, the choices of European citizens in EP elections will come to have much more weight. This could boost the participation rate in EP elections. Since most Europeans are well acquainted with this way of electing the executive, this proposal will also contribute to their understanding of the European political system. Moreover, by its very nature, the selection process will take place in public. In turn, this option is bound to enhance the public appeal of the Commission President. The debate on the merits of the candidates would probably combine with a much wider debate on programmatic issues, as the euro-parties will

present their election programmes at the same time. All this could in turn foster the emergence of a European political constituency.

Of course, in the medium run, EP elections are unlikely to fully ward off the shadow of national politics. National parties will still have an incentive to use the elections in their wider pursuit of national government office. Voters could still use these elections to signal their national concerns to the governing parties by voting for opposition or protest parties. Still, in the long run, the European dimension of EP elections is likely to be strengthened. (See Hix, 2002a, for a sceptical assessment of this view)

Giving the European Parliament the primacy in the nomination process may still fail to transfer the effective power of appointment, as parties in national government might still be tempted to impose their wishes on their MEPs. Hence, additional measures may be needed to ensure that EP party groups exercise a genuine choice over the candidates. In particular, the bond between domestic parties and MEPs should be loosened. This could be done by transferring the legal responsibility for selecting candidates in EP elections to other bodies, such as EP party groups, and/or regional party organisations.

This proposal will further strengthen the role of EP party groups. It stimulates them to organise around blocs each seeking to mobilise a majority for its own candidate (Franck, 2002). At the same time, the heterogeneity of Europe is unlikely to be fully absorbed in two major political blocs,

⁸ The EPP (2002) proposes to stick to the Nice provisions, whilst foreseeing that the European Council nominates the presidential candidate "in the light of the European Parliament elections". This would probably amount to a genuine election by the European Parliament, since the Nice provisions (presumably) make it possible that the European Parliament refuses a candidate nominated by the European Council. Still, it is a somewhat awkward compromise, which does not really give the European Council its own say in the appointment of the President. It is also doubtful whether the public would fully comprehend this process.

especially not as long as there remains a strong proportional element in the electoral procedures. Thus, the largest party in the European Parliament will not necessarily be able to secure its candidate for Commission President, as the final outcome will depend on the coalitions that can be formed.

Institutional balance

The position of the European Parliament vis-à-vis the Commission in this model deserves careful attention. On the positive side, one may argue that it is logical to boost the role of the European Parliament in the appointment of the Commission President, as it is the only institution that can effectively sanction the Commission (Lenaerts and Verhoeven, 2002). On the negative side, however, there is the risk that this model may in fact reduce the powers of the European Parliament vis-à-vis the Commission, relegating it to a mere rubber-stamping body (cf. Hix, 2002b). Experience with national parliamentary systems has taught us that executives selected by a parliamentary majority may well turn this majority into its will-less servant. If the Commission becomes an emanation of a parliamentary majority, the European Parliament risks losing its "critical distance", which now enables it to effectively exercise its supervisory role.

To counter this, some have proposed the requirement that the Commission President must be elected by a super-majority in the European Parliament (Lamoureux et al., 2002). But this option opens up the possibility of a deadlock in case the two biggest groups are unable to agree on a candidate. Such a situation would turn the selection of the Commission President again into an easy prey for dirty and opaque horse-trading between the political families.

In any case, it remains to be seen whether the Commission would really be able to bring about such a "dictatorship of the executive". This risk is mitigated by the fact that the executive would have to rely on a coalition of party groups that, given the under-development of European party-groups, are unlikely to be fully controllable all the time. Moreover, the election of the Commission President by the European Parliament does not amount to the election of the whole Commission by the European Parliament. One might well leave the power to nominate the other Commissioners to the member states. Furthermore, experience so far has shown that MEPs tend to interpret parliamentary mechanisms in such a way as to make them compatible with the non-majoritarian features of the EU. Technocratic and judicial scrutiny tends to superimpose ideological differences (Magnette, 2001a). Finally, the central role of the Council in the Union's decision-making process should be underlined. Since the Council is part of the executive and part of the legislature, a fully "fused-majorities" model is unlikely.

This brings us to the implications this model has for the Council. As the member states lose their control of the selection process, there is the risk that certain member governments become alienated from the Commission President, especially if he/she maintains a very close relationship with a parliamentary group in which certain states are less well represented. If the group of alienated member governments would turn out to be sufficiently large, the danger of inter-institutional deadlock looms.

To ensure a good working relationship between the Commission President and the Council as a whole, various measures can be envisaged. First, it appears desirable that, after the EP elections, the Commission President is

also approved by a qualified majority in the European Council. Further, member states opposing the President chosen may be satisfied through a balanced overall composition of the Commission itself, which they can assure through their right of nomination. More far-reaching possibilities are even conceivable. The Council can, for instance, be granted the right to censure the Commission (Commission of the European Communities, 2002; Dehousse, 1995).⁹ One risk of this, however, is that the Commission members fall victim to inter-state feuds. For that reason, individual accountability of the Commissioners vis-à-vis the Council is not desirable, but a collective accountability or, alternatively, focusing the accountability relationship on the position of the Commission President alone, may be possible. A further option is to give the Council the power to dissolve the European Parliament if the latter censures the Commission.

All in all, one can envisage several institutional measures to ensure a good working relationship between the Council and the Commission. Indeed, whatever flanking measures are adopted, care has to be taken that they do not overshoot this objective by actually compromising the position of the Commission and tilting the institutional balance again to the side of the member states.

Election of the Commission President by the European Parliament will have profound democratising effects. Its impact on the institutional balance requires attention both on the side of the European Parliament and of the Council. Whenever genuine dangers are apparent, however, flanking measures can be adopted to thwart them. Preserving a balanced relationship with the Council is also a precondition for this option to be efficacious.

Efficacy

There is some reason for concern with this model about how the changed relationship with the Council may affect the coordinating powers of the President. In terms of his remit, the Commission President gains little from a further strengthening of his bonds with the European Parliament. On the other hand, the loosening of ties with the (European) Council might lead to a reduction of the trust member states are willing to put in the Commission. Member states may be reluctant to delegate powers to an office that they are not sure they can control. If member states will become more guarded in their relations with the Commission President, his/her capacity to coordinate across the institutions is likely to be reduced.

There is reason to believe that this model will work towards the selection of candidates of high quality. European party groups will have a big interest in nominating well qualified candidates. MEPs can, moreover, be regarded as an expert constituency at the heart of the Union's decision-making process (Laver et al., 1995).

⁹ Note that the Treaty already provides the possibility for the Council to ask the European Court of Justice to retire a Commissioner if (s)he no longer fulfils the conditions required for the performance of his/her duties or if (s)he has been guilty of serious misconduct (Art. 213 TEC).

2.4 Election by the national parliaments

Beyond the options of having the Commission President elected either by the European Council or by the European Parliament, a third option may be to delegate the election to national parliaments. It has been argued that this option meets various needs at the same time (Hix, 2002a):

- it offers a democratic procedure for electing the Commission President;
- it circumvents the playing off of the European Council and the European Parliament; and
- it secures a substantial role for national parliaments in the European political process.

The election of the Commission President by the national parliaments would be organised as an Electoral College. Each national parliament would have a certain number of "electoral college votes" equal to its country's representation in the European Parliament (thereby allowing some over-representation of smaller member states). These votes could then be allocated to the different presidential candidates in proportion to their share in the ballot of each parliament. The candidate obtaining the absolute majority of the votes (if necessary after two ballots) would be appointed Commission President.

A major advantage of this model is that it can be structured to ensure a transnational outcome of the election. Each candidate for the post of Commission President would be required to secure at least a certain level of support in most/all national parliaments. Thus it would ensure that the Commission President would enjoy the support of party groups throughout all member states, instead of coming under the director of a limited number of member states.

Another notable feature of this option is that it might leave member states the freedom to move to a system in which their share in the electoral college is determined through direct elections by the people rather than by the national parliaments (Hix, 2002a). If eventually all member states would make this move, the system would be transformed into a direct election of the Commission President (see section 2.6).

Democracy

This proposal derives its strength from the fact that it draws upon the national parliaments, "the main democratic and sovereign bodies in Europe's representative democracies" (Hix, 2002a). The proposal can also draw upon the national public infrastructure to foster debates about what the EU should be doing. At the same time, it would bring out the truly European dimension of the election, since candidates would have to campaign throughout the EU. As a consequence, the proposal would probably go some way towards strengthening the role of Euro-parties, but not to the same extent as in the previous proposal.

Admittedly, this option involves somewhat more complex arithmetic than some of the other options (Hoffmann, 2002: 9). Still, these complexities do not appear prohibitive in the case of the election of the US President. What matters is that, contrary to the current selection by the European Council, the election takes place openly in a way that is controllable to the public.

A limitation of this model, however, is that while it does involve the national parliaments, it does not offer much reason to expect this involvement to spill over to the electorate. Especially when the national election and the election of the Commission President may well be

quite far apart in time, the choice of the new Commission President is unlikely to feature high among the issues at stake in the national elections. In that way, this option institutionalises the second-order national character of the investiture procedure, as the election for the institutions deciding the investiture procedure (i.e. the national Parliaments) are a-fortiori national-centred. Moreover, rather than sparking off a truly European political debate, election by national parliaments is more likely to stir up different national debates that will be centred around national issues (e.g. the Euro in the UK) and dominated by national party politics (Hoffmann, 2002).

Hence, though the idea of involving national parliaments does have a definite appeal, it has limited democratic credentials as it will not bring about much involvement of the citizenry. Nor can this option be expected to contribute towards the structural formation of a European political and public sphere. On the contrary, it reaffirms the primacy of national public spheres.

Institutional balance

As this option secures a substantial role for national parliaments within the Union architecture, it may well serve to rally a stronger engagement of national parliaments with the European project. Moreover, the appointment by national parliaments provides the EU executive with a distinct base of democratic legitimacy. In that way, the "fusion" of the executive and the legislative is avoided.

Quite likely, the candidate gaining the majority of support from the national parliaments will be able to enjoy considerable support in the European Council, as the composition of the latter reflects the composition of national

parliaments. This does not, however, make this option equivalent to selection by (the majority of) the European Council (contra Hoffmann, 2002: 11-12). Any successful candidate for Commission President will probably require the support of at least some opposition parties in national parliaments as well some small governing parties with a political colour that is not present in the European Council (e.g. the Greens). In any case, the fact that any successful candidate is likely to enjoy considerable support in the European Council is noteworthy, in that it provides an important source of inter-institutional stability.

Much more reason for concern comes from the relationship between the Commission President thus chosen and the European Parliament. Since the legitimacy of the President would derive from the national parliaments, he/she would be much less dependent on the support of the European Parliament. On the positive side, it could be argued that this guarantees the independence of both the Commission and the European Parliament. On the negative side, as the European Parliament's powers to influence the appointment of the Commission President are reduced, it may be more inclined to veto legislative proposals or to threaten to invoke censure. Moreover, the risk of institutional deadlock looms, as the majority in the European Parliament will not necessarily be the same as the aggregated majority in the national parliaments (and thus the Council). Thus overall this option seems to strengthen the role of the Council in the appointment of the Commission President, to the detriment of the role of the European Parliament.

Efficacy

If the Commission President were elected according to this method, he or she would come to claim an independent position with a distinct basis of legitimacy. Notably, however, there would be few mechanisms of accountability to constrain this independence. Already the election of the Commission President itself would not provide for accountability, as the composition of the electing body would not be determined by the performance of the President in office. Moreover, in between elections, his/her actions would only to a limited extent be subject to scrutiny (Hoffmann, 2002). Given their position in the multi-level system, national parliaments lack the resources and access needed to effectively monitor the European level (Dann, 2002). And even if they would command these resources, they would still lack the means to sanction the Commission President.

Hence, the President thus chosen might well skirt the Council and the European Parliament, invoking his/her accountability to the national parliaments, which would however be unlikely to join powers effectively. This political independence is all too likely to turn against the Commission President. Powers are likely to be withheld on grounds that the position is insufficiently embedded in the Union architecture.

2.5 Election by a Congress of Parliamentarians

Another option that has been gaining interest lately is to delegate the task of electing the Commission President to a Congress of Parliamentarians. This Congress would be a newly established European institution bringing together national parliamentarians from all member states with an equal number of Members of the European Parliament.¹⁰ As the Congress would be a new institution, its composition and working procedures would have to be decided up front.

Conceivably, the Congress might elect the Commission President by simple majority. However, to ensure that the successful candidate enjoys broad support, more demanding voting rules could be adopted. One might, for instance, require the winning candidate to enjoy the support of a majority among the EP representatives as well as among a majority of the member state representatives, or even of the majority in a majority of national parliaments.

Democracy

At first sight, the idea of a Congress is appealing. It would be the representatives of the European citizens, in their capacity as both national citizens and European citizens, who

The option of having the Commission President elected by the national parliaments scores badly on all three accounts. It falls short in terms of democracy as it fails to involve the electorate and reaffirms the primacy of national public spheres. While it may work out well with the member governments in the Council, it troubles the relationship between the Commission and the European Parliament. In the end, however, in the absence of accountability mechanisms, one may well wonder whether the Council and the European Parliament will actually be willing to entrust the Commission President thus chosen with any substantial powers.

¹⁰ Some French proposals suggest, however, a division of 2/3 national MPs and 1/3 MEPs.

would elect the President of the Commission.¹¹ Thus, one might hope that election by a Congress would combine the best of both former options (election by the European Parliament and by national parliaments).

A Congress is likely to stimulate the development of links between national parties and European party groups and will thus contribute to the development of a European political sphere. It would bring the election of the Commission President out into the open. Also, a Congress may well acquire a strong symbolic appeal across the European public spheres.

In practice, however, it appears more likely that the Congress will above all combine some of the problems attached to the former options. The idea of a Congress does little to involve the electorate directly. The fact that the EP elections will only partially determine who shall become Commission President will only have a slight effect on their public appeal. At the same time, the choice of the Commission President is unlikely to become a major issue in national elections amidst the national issues that are normally at stake.

Moreover, the fact that the Congress does not have an established place within the Union architecture is bound to leave it somewhat of a *fremdkörper* in the eyes of the public. Indeed, rather than exemplifying European democratic practice, this new and incidental institution might well be captured by established political forces behind the scenes (national governments, party-groups).

Institutional balance

Given the composition of the Congress, this option does not seem to favour either the Council or the European Parliament to the detriment of the other. As with the election by national parliaments, it is rather likely that the majority by which the Commission President has been elected will be of a similar political persuasion as the majority in the Council. At the same time, working relations with the European Parliament will be somewhat better than in the former option, as MEPs will have been part of the Congress.

Having an equal number of national MPs and MEPs is obviously crucial in this respect. However, much will also depend on the political colour of the members that represent the European Parliament and the national parliaments in the Congress. If the rules of designation of Congress members are such that only the dominant political tendencies in both constituents are being represented in the Congress, then divergence between the Congress and the European Parliament is more likely to emerge.

Efficacy

While the Commission President elected by a Congress may be able to establish effective working relations with the European Parliament and the Council, the question of accountability remains troublesome. If the Congress is to reassure on this score, it should be given the necessary powers (information, questions, and censure). Still, it will only be able to exercise them on the rare occasions when it does congregate. In between elections, it would fall to the European Parliament to scrutinise the Commission. However, there is an obvious tension between the

¹¹ We owe this interpretation to Prof. Dr. Koen Lenaerts.

role of the Congress and that of the European Parliament. Any extension of the powers the Congress enjoys in holding the Commission accountable would undermine the powers of the European Parliament in the same domain. This problem is not resolved by the fact that a substantial part of the Congress would be constituted by MEPs. Overall, a Congress would add a significant number of complications to an already "Byzantine" system.

collect an absolute majority of the votes cast. If in a first round no candidate would succeed in gathering such a majority, a second round may be organised along the lines of the French electoral system with a run-off between the two most successful candidates.

Alternatively (or additionally), votes from the various member states can be assigned weights, for instance according to each member state's share in the European Parliament. Hence, votes

The democratic credentials of having the Commission President elected by a Congress of Parliamentarians appear eventually rather spurious. Compared to the alternative of election by national parliaments, the establishment of a Congress would better preserve the institutional balance. Still, the option creates a potential tension between the Congress and the European Parliament and leaves clear problems of Commission accountability that may well impede its efficacy.

2.6 Direct election

In the final option, the Commission President would be directly elected by EU citizens in an EU-wide contest without any parliamentary mediation (Fischer, 2000b; Verhofstadt, 2000). Thus, the EU would be transformed into a (partial¹²) presidential system.

Various voting procedures can be considered to organise such a direct election. The leading consideration should be that any candidate chosen will need to command wide support across the Union in order to preclude the threat of a permanent alienation of certain minorities and/or member states from executive power (cf. Laver et al., 1995). Thus a candidate should not be able to win by gathering support in a limited number of member states only.

A first way to ensure broad support throughout the Union is to require any winner to

cast by electors from smaller member states would weigh more than votes cast by electors from bigger member states. This could ensure that the preferences of the voters in smaller member states are also taken into account. An objection against this solution, however, is that it runs rather blatantly against the "one man-one vote" principle.

A third alternative is an electoral-college type of arrangement, modelled on the US presidential elections but with virtual rather than genuine electors (Laver et al., 1995). In this system voters would determine the allocation of "presidential mandates". To favour smaller member states, each member state could have a number of presidential mandates (roughly) equal to its representation in the European Parliament. Furthermore, contrary to the practice of most American states, the distribution of presidential

¹² Partial, because part of the executive powers in the Union would still lie in the hands of the Council and the European Council.

mandates per member state should not be awarded on a winner-takes-all basis, but rather on a proportional basis. The candidate who would then receive the majority of presidential mandates would become Commission President. The main advantage of this method is that it makes it possible to take into account the population weights of the member states, whilst highlighting the number of mandates the various candidates win in each member state rather than blatantly according different weights to "raw" votes.

Further guarantees to ensure that the eventual winner will indeed draw upon a wide basis of support may be derived from the organisation of the nomination procedure. Each candidate might, for instance, have to demonstrate the support of a certain percentage of MPs in a certain number of Parliaments (Laver et al., 1995). This would guarantee that one section of the elite in every member state would be accountable to their electorates for the actions of the winning candidate.

By combining these various provisions, candidates can be prevented from "hunting where the largest ducks nest".

Democracy

Direct election of the Commission President has obvious democratic merits. It directly involves the European citizens in the selection of the executive and its basic design stands out in terms of simplicity and transparency (although this may vary depending on the finer details of the election procedure). Potentially, the public appeal of this option is high. Voters in some member states are also already acquainted with direct presidential elections (France, Ireland, Finland, and Austria).

However, one may dispute whether Europe's voters are ready and interested to vote in such an

election. Moreover, language barriers may make it difficult for the nominees to get their message across. With an immature electorate, this kind of election might end up as a "Eurovision contest" with voters preferring the candidate of the same nationality or the one of a "friend" country.

Still, we should not underestimate the electorate. Once this option is introduced, one might expect the public to pick up on it and to acquire a concrete sense of what it is voting for. Thus, the visibility and accountability of the Commission President would be much strengthened. At the same time, one would expect electoral turn-outs to reach levels comparable to those of national elections, as this method makes it very clear to the citizens that their vote matters. (Hix, 2002b, is sceptical.)

A crucial element for this option to work would be the evolution of a European political system with truly transnational party groups. Close collaboration between the national member organisations of the European party groups in a broad campaign, based upon a common manifesto, would be essential for winning the election. In turn, it would be much harder for national parties to turn the EP elections into a mid-term "beauty contest" for national governments. The election campaign would engage European public opinion around unequivocally European issues.

Institutional balance

For this option to succeed, proper working arrangements need to be put in place between the Commission President and the two legislative bodies, the Council and the European Parliament. As regards the relationship with the European Parliament, the Commission President would naturally be linked to one or more party groups.

Still, these relations would be considerably weaker than if they would have elected him or her. Indeed, the President will be less constrained by party affiliation, and may be able to rely on varying coalitions.

Relations with the Council and the European Council might well be more complex. Of all options reviewed, a directly elected President may pose the strongest challenge to the primacy of the member states in the Union architecture. Quite likely, there would be some member governments of the same political persuasion as the Commission President, but there would be no guarantee that he or she would be able to rely on a majority of them. In the end, much would depend on personal skills whether the Council would be willing to accept the Commission President as a useful partner or rather take a more envious stance towards this newcomer.

All in all, a directly elected Commission President is bound to put a lot of pressure on the institutional balance. It leaves the risk of institutional deadlock, so familiar from the French ("cohabitation") and US system (cf. Sartori, 1994; Linz, 1990; Duverger, 1980). To avoid this risk, release mechanisms may need to be put into place so that either legislative chamber would be able to force the Commission President to resign. Conversely, one might also consider giving the Commission President the power to call for new

EP elections. However, the use of such release mechanisms is bound to have its costs in terms of political stability.

Efficacy

Potentially this option invests the Commission President with a lot of power. Being directly elected by all European people, he or she will acquire an exceptionally strong mandate. The popular investiture will boost his/her authority vis-à-vis national leaders and the other EU institutions as well as abroad. Moreover, this option provides for a direct link of accountability, as the voters would now be able to "throw out the scoundrels".

In turn, however, this puts the President of the Commission under a lot of political pressure. Whether she or he can deliver will depend heavily on the willingness of member states to actually entrust the President with substantial powers and to develop a productive working relationship with that individual. Indeed, if the high expectations of the electorate fail to be met, a backlash may occur in terms of public credibility and overall legitimacy of the system. Experience in national political systems has taught us that a presidential system is unlikely to bring political stability to a polity still lacking in social stability (Linz, 1990). Hence, it is essential that the democratic legitimacy entrusted to this office is matched by the actual powers it commands.

Direct election of the Commission President is appealing for a number of democratic considerations. One may dispute, however, whether the European electorate is actually ready for it. The radical character of this proposal is bound to put a lot of pressure on the institutional balance, the implications of which are hard to predict. The Commission President, Council and European Parliament would have to redefine their working relationships. These will also determine whether this option can actually be made to work effectively. If the Council and the European Parliament failed to cooperate constructively with the Commission President, it would be likely that the Union's credentials would be undermined.

2.7 Preliminary conclusions on the selection of the Commission President

The first notable finding of this chapter is that the selection procedure of the Commission President as revised by the Treaty of Nice goes a long way towards satisfying the three criteria of democracy, efficacy and institutional balance. The move away from consensus to qualified majority voting allows a whole new political dynamic to unfold within the European Council, and boosts the role the European Parliament can play in the appointment procedure. Even under Nice, there will therefore be a more politicised appointment of the Commission President. Thus, the Nice procedures may in the end differ in little but formal proceedings from the election of the Commission President by the European Parliament.

Still, a move towards election by the European Parliament remains preferable from the perspective of democracy, because it would make the process more comprehensible and increases the likelihood that European party groups will actually free themselves from the control of national party organisations. As a result, the EP elections would become the core event for the appointment of the Commission President. The implementation of this option needs to be complemented by flanking measures that would ensure the full and equal involvement of the Council in the Union's political process. With such measures in place and given the

heterogeneous nature of the Union, there is little reason to fear the Commission developing into a dominating executive, as some (Laver et al., 1995; Hix, 2002a) have argued.

Direct election of the Commission President by the electorate would be an even more radical step towards democratisation. However, the democratic gains of this procedure need to be qualified given the as yet only nascent European public space and the necessity to calibrate such an election. Also the turn to a Presidential political system that this reform would imply would severely shake up the institutional balance, exposing the Union on the one hand to the risk of too strong a Commission President and, on the other, to a structural deadlock between the Commission, Council and European Parliament.

Finally, two options involving the national parliaments were considered. In the first of these, the national parliaments would actually act as an electoral college. This option was found to be problematic on all accounts: it offered few democratic merits, distorted the institutional balance and was unlikely to contribute to greater Union efficacy. Election by a Congress of Parliamentarians did slightly better, but the gains for the Union of the involvement of national parliamentarians in a Congress were found nevertheless to be slight while raising considerable complications in the balance between the Commission, Council and European Parliament.

Table 2. Six options for selecting the Commission President

| | Amsterdam | Nice | EP election | National parliaments | Congress | Direct election |
|-----------------------|-----------|------|-------------|----------------------|----------|-----------------|
| Efficacy | - | + | + | - | ± | ± |
| Democracy | - | ± | + | - | - | + |
| Institutional balance | ± | ± | ± | ± | ± | ± |

Whichever way the Commission President is selected, it is bound to have implications for the nature of the Commission. In section 1 we noted that the scope and the nature of the Commission's tasks have expanded over time. As a consequence, the image of the Commission as a technocratic, impartial broker simply can no longer be maintained (Lenaerts and Verhoeven, 2002: Part 2; Føllesdal, 2003). The Commission has become politicised over time and if it is to retain any political prominence in the future EU it will be politicised even more.

At the same time, recognising the Commission as a political body does not necessarily imply that it has to relinquish its role as guardian of the general European interest. Governmental institutions in national democratic systems are also expected to pursue the general interest rather than merely the interests of the electoral majority. Checks and balances can help to secure this orientation towards the general interest. Parliaments, especially when made up of different chambers, actually act as a buffer by checking executive action. Constitutions serve to delineate the remit of government and courts may act as their custodians.

Regardless of the selection procedure chosen, we need to assess the position of the President of the Commission in the wider context in which his/her powers are subject to countervailing measures. On the one hand, the powers of the President within the Commission should be strengthened, so as to enable the President to exercise genuine leadership. As the selection process bestows more legitimacy on the Commission President, her or his powers in the nomination and resignation of Commissioners

should increase.

On the other hand, the politicising effect from the election of the Commission President should be countered by a balanced composition of the Commission, in terms of party affiliation and nationality. Thus, while the composition of the College of Commissioners should be the prime responsibility of the President, this power might be subject to certain minimum requirements regarding geographical and demographic diversity and fair rotation¹³ and, possibly, to approval by the European Council and the European Parliament. Moreover, some of the quasi-judicial functions may be delegated to independent agencies (Majone, 1996). Thus, the Commission should continue to be able to perform its conciliatory role in the legislative process.

Still, the Commission's powers currently find their limits in the fields of cooperation that remain firmly in the hands of the member states. Whether a democratised Commission President will actually be in a position to give effective leadership to the Union thus depends on the overall organisation of executive leadership in the Union. With this caveat in mind, we next turn to the future of the Council Presidency as well.

¹³ Cf. Art. 4 of Protocol A. to the Treaty of Nice concerning the composition of the Commission after enlargement.

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Annex

The Normative Framework in Full

In this annex each of the three dimensions – efficacy, democracy and institutional balance – is elaborated and dissected in a number of more specific aspects. Together these aspects provide us with the normative framework with which the various proposals to reorganise leadership in the Union are evaluated.

Efficacy of office

Arguing for the reorganisation of leadership in the Union requires first and foremost that one expects it to contribute to a better functioning of the Union overall. The easiest way to demonstrate the issues at stake here is to draw upon the current situation (cf. section 1.1). The most striking characteristic of current leadership in the Union is that it is divided. Division of the leadership task is not a bad thing in itself and within the Union there may be pertinent reasons justifying it. Still, within the complex Union architecture, effective leadership requires well functioning *coordinating powers*. To be effective, leadership in the Union needs to contribute to the coordination of the political process by commanding powers that reach across the institutional divides that currently exist.

Effective leadership is not merely an issue of accumulating powers, however. Any formal exercise of power may well run hollow if it lacks authority due to ineffective lines of communication and accountability. The organisation of leadership needs to ensure that it is in a position to command support from the various Union institutions. Thus, a second aspect of the efficacy of leadership in the Union is a modicum of (internal) accountability, i.e. some degree of *embeddedness* within the Union architecture.

The support that Union leadership can gather from inside the Union will also need to be complemented by the recognition it receives from outside the Union. Indeed, the lack of *external presence* is often referred to as the major indicator of a lack of leadership in the Union. A major test for leadership of the Union is thus whether international actors – most concretely, the US President – will recognise that it provides them with an equal and credible partner.

Finally, whatever the formal powers and provisions made to organise leadership, its effectiveness will to a large extent depend on the people who are selected to take up the task(s). Hence, the future organisation of leadership within the Union will have to be shaped in such a way as to ensure that indeed the position(s) involved attract the best-qualified people. In the end a major aspect in shaping the efficacy of Union leadership will be the extent to which it fosters *selection by merit*.

Effective Union leadership is thus more than just a matter of *powers*. It also depends on its *embeddedness* in the Union architecture, its *external presence* and the *merits* of the people it attracts. All four aspects need to be taken into account when evaluating possible ways to organise Union leadership in the future.

Democracy

The democratic character of the European Union is seriously questioned on many fronts. There is a wide range of diagnoses of the presumed "democratic deficit" as well as a wide range of possible solutions (cf. Weiler et al., 1995; Lodge, 1997; Dehousse, 1995; Moravcsik, 2002). The reorganisation of Union leadership need not be a necessary ingredient of any solution. Still, quite a number of proposals to reform Union leadership suggest that it may contribute to democratising the Union, or at least to increasing the engagement of citizens with the Union. To analyse the democratic potential of reforms of Union leadership properly, we do not look simply at electoral mechanisms but assess them in the context of a broader conception of democracy involving the appreciation of and the engagement with the Union by the citizens.

A first way in which leadership reform may contribute to the democratic perception of the Union is by making it more transparent, or more specifically more comprehensible. A prime obstacle to popular engagement with the Union is the perceived complexity of its workings. Citizens are confronted with a range of institutions whose powers are all conditional upon each other and whose interaction varies from one issue to another. A proper attribution of leadership within the Union might make a considerable contribution towards alleviating this problem. People in positions of leadership may serve as reference points for the public, instilling a sense of control, confidence and accountability. Thus, institutional clarity may foster participation (Magnette, 2001b).

Besides being comprehensible, transparency also refers to the very way in which leadership responsibilities are assigned. Decision-making in the Union is generally regarded as opaque. In many cases, it is impossible to reconstruct how decisions are actually taken. This applies in particular to the intergovernmental settings of the Council and the European Council, where informal proceedings often prevail over formal decision-making rules (cf. Golub, 1999). Thus, democratising leadership in the Union also requires the very assignment of tasks and the selection of candidates to be characterised by *openness*. Openness requires not only that decision-making takes place in public; it also requires the public to be able to understand (and reconstruct) how the decisions have come to be reached.

It is only after the first two democratic preconditions – establishing a comprehensible and open system – are met that we come to the actual engagement of citizens in the process. For sure, the democratic norm within any political system is that citizens should be able to exercise direct influence on the choice of the people in power. In modern democratic systems, electoral mechanisms provide for the most direct means by which all citizens can exercise their influence equally. Deviations from the democratic norm must be justified with good reasons, and even if they can be justified, the means may need to be sought to ensure that the electoral will is taken into account. The weak connection between Europe's citizens and its institutions is a direct reflection of the weakness of the electoral mechanisms to which they are subject. Wherever power is exercised in the Union, citizens do not feel their preferences have much of an impact on it. Hence, there is a clear pressure to have any strengthening of leadership in the Union combined with effective mechanisms of *electoral choice* through which the public can effectively influence the selection of one candidate over another.

It would be a mistake, however, to suggest that Union democracy is merely a matter of offering

electoral choice. Falling turn-outs in elections all over Europe demonstrate this fact and indeed the elections for the European Parliament may well provide one of the strongest cases. Elections only seriously contribute to democracy if they have sufficient *public appeal*. Indeed public appeal and engagement and the power they exert through the public space may in the end be more important democratic factors than the actual electoral procedure. Public appeal itself is again influenced by a wide range of factors. One of the most important of these factors is probably the powers ascribed to the office for which elections take place. A second factor is the extent to which the public perceives that it enjoys a meaningful choice or whether it rather feels that the system has largely prejudiced its choices. This second factor is of much relevance when it comes to Union leadership, as there are strong national and supranational interests in retaining control of the selection process.

Public appeal may be triggered on an incidental basis and it may dissipate as swiftly as it has come about. In the context of the European Union, we have to take account of the more structural conditions beneficial for democracy. Many observers have pointed out that attempts to democratise the European Union suffer in the end from the structural absence of a European public sphere (Grimm, 1995). European politics is bound to stay out of touch with the citizens of Europe as long as there is no transnational public sphere to serve as a permanent mediator between them. To the extent that reform of the Union's leadership is argued to have democratic merit, we thus also have to assess the extent to which the process fosters *the emergence of a European political and public sphere*. Concretely, European leadership may be organised in such a way as to foster the emergence of European parties and the necessary organisational and media infrastructure in which they can interact with each other. Offering the European citizens electoral choice may be instrumental in creating a European public sphere, as the resulting politicisation of and competition for Union leadership will raise the salience of the EU in national political debates (Risse, 2002).

Thus we propose to take a broad perspective on the democratic dimension. We recognise the key role electoral choice may play. At the same time, however, we take aspects such as comprehensibility and openness to be of equal importance. Similarly, we submit that any full appreciation of the democratic impact of leadership reforms will need to take public appeal and the emergence of a European political and public sphere into account.

Institutional balance

This dimension concerns the specific institutional balance that needs to be observed in the Union (cf. Prechal, 1998; Lenarts and Verhoeven, 2002). The Union is no longer a normal international organisation but nor is it an autonomous, sovereign political system. It derives its powers (as well as the legitimacy to exercise them) from two sources: from the governments of each of the member states as represented in the Council, as well as from the citizens of these states as represented by the European Parliament. As a consequence of this, any re-organisation of Union leadership has to find a fine balance between those two sources of power.

As it is not the EU's vocation to become a centralised superstate replacing the member states, the Union will only be able to consolidate its own authority if it shows sufficient respect for the national

states (Dehousse, 1995). One implication of this is that Union decision-making cannot be simply subject to majority rule. The Union cannot afford to permanently antagonise a majority versus a minority of member states (or functional interests). Consensual decision-making thus has to ensure that minority rights are protected against the majority rule. However, a mere consensus rule is problematic, since this permits a single state that benefits from the status-quo to block any kind of policy change that would further the general interest (Scharpf, 1988).

Hence, in the EU, there needs to be a balance between majority rule and consensus-rule resembling the model of "divided government" rather than that of fused powers (Hix, 2002b). This system of "separated institutions sharing powers" (Neustadt, 1990) enables the legislature to check the executive, given the independent selection of the executive and the legislature. Indeed as long as the EU remains characterised by a dual executive and a dual legislature, it is unlikely ever to resemble a full majoritarian system.

The institutional balance in the Union is reflected in the fact that Union legislation takes place through a thoroughly checked process with oversized majorities in the institution representing the states (Council) and the institution representing the citizens (European Parliament). In the decision-making process, it is up to the Commission to mediate between the two institutions and to draw them to the general interest of the Union through its control over the drafting of legislative proposals.

The need to respect the institutional balance requires any re-organisation of Union leadership to find a fine balance between the need to effectively pursue the common interest and the need to duly respect the interests and liberties of the different actors involved. It follows from what has just been said that leadership selection in the Union cannot be simply the subject of majority rule. In a majoritarian ("fused") model, the executive is able to dominate the legislature by commanding a secure majority in it ("dictatorship of the executive") (Hix, 2002b). As a consequence certain member states might be permanently excluded from power as they would be only represented in the minority.

Rather than fusing legislative and executive powers, leadership in the Union should rather be subject to a system of checks and balances resembling the model of "divided government". Such checks can be built into the functioning of the institutional triangle. The role of the Council is crucial in this respect, as it is part of the legislature but also a part of the executive. Structural guarantees are required to ensure that Union leadership will not be permanently alienated from any one member state. At the same time the European Parliament ought not to be monopolised by the executive, but should instead continue to play its role as "controlling parliament" (Dann, 2002). Finally, as far as the Commission is concerned, its distinct and independent role should be preserved as much as possible.

Thus, any reform of leadership in the Union will have to ensure that the relations with the intergovernmental and with the supranational institutions are properly looked after. Moreover, the relationship between intergovernmental and supranational institutions should also be well balanced, with neither structurally dominating the other. In particular, any re-organisation will need to take account of the risk that intergovernmental and supranational institutions end up in a political deadlock in which European decision-making is immobilised by the two kinds of institutions vetoing each other's proposals.