

Titel:

The Appointment of the President of the European Commission 2019: A toothless European Parliament?

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Kurzzusammenfassung

This chapter scrutinises the processes that led to the appointment of the new Commission President after the European elections in 2019. The authors argue that the European Parliament did not show its teeth to the Member States and that the inter-institutional power balance shifted towards the European Council. Their findings further suggest that the European Parliament's legal veto position is a necessary condition for a power balance dominated by the Parliament. Only the combination of the Parliament's veto power and its internal cohesion can sufficiently explain situations in which the Parliament represents the primary EU institution.

Schlagworte

European Parliament, European Council, Spitzenkandidaten, Inter-Institutional Relations, European Elections

1. Introduction: Inter-Institutional Balance of Power Between Two Key Institutions

The relationship between the European Parliament (EP) and the European Council (EUCO) is characterised by both cooperation and rivalry (Müller Gómez et al. 2019, p. 54-55). The Lisbon treaty revision reinforced both institutions which are now perceived as “the primary poles of power in the post-Lisbon institutional system” (Monar 2011, p. 86). They each stand for a specific form of democratic legitimacy. While the EP is directly elected by the European citizens, the EUCO comprises the Heads of State or Government being the highest political representatives of the Member States (Van Middelaar 2013, p. 285). Although the inter-institutional balance of power between these two institutions is undertheorized in the literature, their relationship can be considered as dichotomous in the traditional sense of supranationalism and intergovernmentalism.

The ambiguous relationship between these two key institutions becomes apparent in the appointment procedure of the President of the European Commission. According to the EU treaties, both institutions are involved in the process (article 17 (7) TEU): First, by considering

the outcome of the EP elections, the EUCO has to nominate a candidate by qualified majority whom it then shall propose to the EP. Second, the EP has to elect the candidate by the majority of its component members. This new treaty text led to the Spitzenkandidaten process that was applied for the first time in 2014. In this context, the European political parties nominated lead candidates for the position of the Commission President in the run-up to the European elections. When the EP imposed Jean-Claude Juncker, Spitzenkandidat of the European People's Party (EPP), as Commission President in 2014, the EUCO was considered the institution that lost power in the inter-institutional conflict. Yet, the members of the EUCO stressed their prerogative in this personnel decision ahead of the 2019 European elections (see for instance, Tusk 2018). Moreover, when nominating Ursula von der Leyen as candidate for the presidency of the European Commission in 2019, the Heads of State or Government did not select one of the European parties' lead candidates. After the 2014 elections, there was a broad consensus that the EP strategically strengthened its power over the EUCO through the lead candidate process (see for instance, Hobolt 2014). However, the 2019 outcome indicates that the EP's victory was not permanent. With the EP not being able to mobilise a majority for any of the Spitzenkandidaten, it seemed toothless in the light of the appointment process of von der Leyen. Against the backdrop of these events, this contribution asks to what extent an inter-institutional shift of power occurred in 2019.

This chapter further seeks to fill the theoretical gap on the balance of power between the EP and the EUCO by empirically analysing the inter-institutional power struggle over the appointment of the Commission President. In order to operationalise the inter-institutional balance between the two key institutions in our qualitative study, we will refer to two theoretical models: the *federal model*, with the EP as the dominant institution in the EU system, and the *Union of sovereign States* model, which positions the EUCO at the top of the institutional architecture (Müller Gómez et al. 2019, p. 56-59).

In the following, we will first present the theoretical framework by introducing the two models and the explanatory variables. We will then scrutinise the process that led to the nomination and election of von der Leyen as President of the European Commission. Finally, we will conclude and refer to the mid- and long-term implications of the appointment of the Commission President in 2019.

2. Theoretical Framework: Two Models of Inter-Institutional Power Relations in the EU

In order to examine the 2019 appointment process, we will exploit two models of inter-institutional power relations between the EP and the EUCO: the *federal model*, which follows assumptions of (neo-) federalism, and the *Union of sovereign States*¹ model, which is based on (neo-) intergovernmentalist approaches. As Table 1 summarises, these two models grasp two different perspectives on the interaction of the two institutions, their respective role in the institutional architecture and the main mode of decision-making.²

Table 1: Models of inter-institutional balance of power

	<i>‘Union of sovereign States’ model</i>	<i>Federal model</i>
<i>Key institution/Principal</i>	European Council	European Parliament
<i>Central logic</i>	Intergovernmentalism	Federal parliamentarism
<i>Institution serving as a forum</i>	European Parliament	European Council

Source: Based on Müller Gómez et al. 2019, p. 59

From a federalist perspective on EU politics (see for instance, Pinder 1986), the EP can be considered the key institution within the EU’s architecture. As the only institution that is directly elected, it serves as the direct representation of the Union’s citizens and as the EU’s principal basis of legitimacy. Following the federalist logic, the EP is the EU’s primary decision-making body. It is equipped with extensive competences, determines the EU’s political agenda and has a strong or even the final saying in the appointment of the EU’s relevant office-holders. In terms of policy-making, the strong bond between the Commission and the parliamentary majority downgrades the Council to a secondary legislator with a very limited room of manoeuvre. In this *federal model*, the EUCO acts as a forum for exchanging national positions and as a collective presidency with ceremonial functions.

An intergovernmentalist conception of the EU (see Puetter 2014; Moravcsik 1993; Hoffmann 1966) positions the Heads of State or Government on the top of the EU’s institutional architecture. In this ‘Union of sovereign States’ model, the Heads of State or Government act rationally, and pursue and impose their national interests. Consequently, the EUCO exercises the prerogatives of leadership and represents the key locus of power in the EU. The Heads of

1 Following the German Federal Constitutional Court’s description of the EU as a “Staatenverbund” (Bundesverfassungsgericht 1993).

2 The following presentation of these two models represents a summary of Müller Gómez et al. 2019, pp. 56-59.

State or Government can be regarded as the collective *principal* vis-à-vis other institutions, which in turn serve as their *agents* (Moravcsik 1993). Notwithstanding that the EP cannot be regarded as a simple agent of the Heads of State or Government, it does not either represent a relevant rival to the EUCO. As a parliamentary assembly, it rather serves as a forum of deliberation with no actual relevance with respect to vital European decisions.

Based on existing studies (Müller Gómez et al. 2019), we expect that the EP can only assert itself against the EUCO when treaty provisions unambiguously stipulate its involvement in the respective procedure or its position as a formal veto-player that cannot be circumvented. The EP having strong legal competences can be expected to be a necessary condition for the federal model. Beyond the treaty provisions, we hypothesise that internal cohesion is a relevant factor for both the EP and the EUCO. In order to secure a strong position towards other EU institutions, the EP needs to mobilise large majorities. In the case of the EUCO, we expect that internal disagreement has a particular impact on its position in relation to the EP in cases in which qualified majority voting is possible.

3. Inter-Institutional Power Struggle Over the Appointment of the Future Commission President

In the following chapter, we will first look at the extent to which the EP and the EUCO attempted to inform the appointment process of the new Commission President before the 2019 EP elections. We will then examine the processes that eventually led to the nomination and election of von der Leyen as Commission President.

3.1 After the 2014 Victory of the European Parliament: Inter-Institutional Disagreement Over Future Procedures

Contrary to the impression that the EUCO lost its prerogative of selecting the Commission President after 2014, a sustainable shift of the balance of power towards the EP was not a matter of course. In general, it could not be expected that the Heads of State or Government would permanently give up their formal rights in the investiture of the Commission President, which they have always considered a high political priority (Nasshoven 2011, p. 75-80). More concretely, following the 2014 events, members of the EUCO did not stop expressing their criticism and reluctance to an automatic mechanism according to which the lead candidate of the European political party with the most seats in the incoming EP becomes the new Commission President. In February 2018, EUCO President Donald Tusk underlined that “[t]here is no automaticity in this process. The Treaty is very clear that it is the autonomous competence of the European Council to nominate the candidate, while considering the

European elections, and having held appropriate consultations” (Tusk 2018). Moreover, prior to the 2019 EP elections, the EUCO set the criteria for their personnel decisions. During their informal meeting in Sibiu in May 2019, the Heads of State or Government emphasised that they would follow the treaty articles and “reflect geographical balance as well as demographics, so that both larger and smaller countries are represented in the EU’s highest offices” (Tusk 2019a). No reference was made to the Spitzenkandidaten process.

By contrast, the EP sought a legal consolidation of the lead candidates process by means of a reform of the European Electoral Act (European Parliament 2015). However, the EP was internally divided and unable to mobilise a large majority for such a reform. With 224 votes against and 55 abstentions, only 315 members voted in favour of the EP’s resolution, which significantly weakened its bargaining position vis-à-vis the Member States (Müller Gómez et al. 2019, p. 66). Hence, in July 2018, the Council, which has been reluctant to transnationalise the electoral process, adopted several amendments of the European Electoral Act without including the Spitzenkandidaten process (Official 2018 Journal of the European Union 2018).

On the one hand, the developments between 2014 and 2019 showed that, despite its defeat in 2014, the EUCO was unwilling to give up its say in the selection of the Commission President. On the other hand, the EP was internally highly fragmented and unable to advocate ambitious initiatives, which would have strengthened its own position in the EU’s institutional architecture.

3.2 The Nomination and Election of Ursula von der Leyen: The Renaissance of the European Council

The European elections took place between 23 and 26 May 2019. Although the EPP with its lead candidate Manfred Weber won the relative majority of the seats in the EP, the election results indicated that a formation of a so-called *grand coalition* with the Social Democrats in order to constitute a majority in the EP would no longer be possible in the next legislative cycle.

Right after the European elections, the EUCO initiated the nomination procedure on 28 May 2019. President Tusk, who was mandated to start consultations with the EP and the Member States, emphasised again that “there can be no automaticity” (Tusk 2019b) for nominating one of the lead candidates as future Commission President. On the other hand, the Heads of State or Government were strongly divided over the candidate succeeding Juncker. During their meeting on 20 June 2019, they could not find a majority neither for Weber nor for one of the lead candidates from other European party families (Tusk 2019c). In accordance with Declaration 6 annexed to the Lisbon Treaty, Tusk emphasised that the EUCO would seek to

agree on a personnel package of the EU's top offices respecting the diversity of the Union and its Member States (Tusk 2019c). Although the treaty envisages only a qualified majority for this personnel decision (article 17(7) TEU), the members of the EUCO aimed at reaching consensus for nominating a candidate for the position of the future Commission President. French President Emmanuel Macron, but also Spanish Prime Minister Pedro Sánchez, who acted as spokesperson for the social democratic members of the EUCO, rejected Weber as candidate for the Commission presidency. At the G20 meeting in Osaka, the German chancellor Angela Merkel, Macron, Sánchez and the Dutch Prime Minister Mark Rutte negotiated a compromise that foresaw Frans Timmermans, lead candidate of the Party of European Socialists (PES), as Juncker's successor (Thieme & Wessels, 2019). However, the Visegrád countries and other conservative Heads of State or Government belonging to the EPP vetoed this proposal, as Timmermans as Commission Vice-President was responsible for triggering the article 7 procedure against Poland (Meta Beisel et al. 2019). Finally, after three days of intensive negotiations at a special meeting at the beginning of July 2019, the Heads of State or Government agreed on von der Leyen, then minister of defence of Germany, to lead the new Commission (European Council 2019). Von der Leyen was a surprise candidate proposed by Macron who aimed to find a way out of the deadlock. Being a member of the Christian Democrats in Germany, and consequently affiliated to the EPP, von der Leyen represents a compromise of the EU-28 in accordance with the treaty provisions. With this decision, the Heads of State or Government ignored the Spitzenkandidaten process, trying to strengthen their position towards the EP. The nomination of von der Leyen can be considered as a classic *package deal*, bridging the diverging interests of the members of the EUCO after often lengthy negotiations (Wessels 2016, p. 139-141).

As part of this package, the EUCO recommended to the EP considering a Social Democrat as the EP President in order to guarantee a party political balance among the EU top offices (Merkel 2019). Moreover, the Heads of State or Government expected von der Leyen "to ensure an appropriate geographical balance in the team of Vice-Presidents" (Tusk 2019d), and advised her to consider Timmermans and Margrethe Vestager, one of the lead candidates of the Alliance of Liberals and Democrats for Europe (ALDE), as well as candidates from Eastern Member States as Vice-Presidents of the new Commission (Merkel 2019). Following an intergovernmentalist logic, the EUCO as *principal* in the EU's system sought to interfere in intra-institutional personnel decisions of the EP and the Commission.

Not only the EUCO was initially divided over the Spitzenkandidaten process and the nomination of a candidate for the post of Commission President. The developments within the

EP displayed a similar situation. While in February 2019 the members of the EP still underlined that “the candidate must have been designated as a Spitzenkandidat by one of the European political parties and must have campaigned for the post of President of the Commission in the run-up to the European elections” (European Parliament 2019), this determination disappeared after the European elections. Although having stressed that the Spitzenkandidaten process would strengthen “societal legitimacy of the European elections and the supranational role of the European Parliament” (European Parliament 2019), the political party groups could not form a majority for any of the lead candidates. As the election results in May 2019 led to further fragmentation within the EP, and thus hampered its decision-making processes, the members of the EP struggled to find a majority for either Weber (EPP), Timmermans (PES) or Vestager (ALDE).

After the EUCO nominated von der Leyen, “a majority of its component members” (article 17(7) TEU) was needed for her election by the EP. Both the Social Democrats and the Greens expressed strong scepticism about the former German minister of defence. Under pressure, von der Leyen made relevant concessions to members of the Social Democrats, the Greens and the Liberals, including pledges for an ambitious climate policy and the creation of a European unemployment benefit reinsurance scheme. She further engaged to strengthen the EP and European democracy by launching a reform of the electoral system, which would establish transnational lists and strengthen the Spitzenkandidaten procedure, and by providing the EP with a de facto right of initiative (Von der Leyen 2019). The slight majority of 383 votes that elected von der Leyen indicates the internal division within the EP over the new Commission President. Further, despite the claim of the outgoing President of the EP that “[t]he European Parliament is an independent and autonomous body” (Brzozowski & Rios 2019), the EP followed the package solution adopted by the Heads of State or Government and elected in a second round the Italian Social Democrat David Sassoli into the office of EP President.

4. Conclusion: A Toothless European Parliament?

In 2019, the EUCO demonstrated that it is willing and able to take the lead and to agree on a package deal that can be accepted by all of its members. Although the Heads of State or Government were initially divided over the candidate for the presidency of the European Commission, they successfully restored unity. In contrast to 2014, the EP could not benefit from initial divisions among the members of the EUCO. Despite its legal veto power provided by the EU treaties, the EP did not impose a candidate upon the Member States. In other words: The members of the EP did not show their teeth. The main obstacle the EP was not able to

overcome was its internal fragmentation and lack of consensus among the party families on the future Commission President. While the EUCO took the lead, the EP only acted as a forum that allowed for deliberation and proved to be of no major relevance in such a vital decision for the EU. This change towards the ‘Union of sovereign States’ model indicates a major inter-institutional shift of power between the EP and the EUCO.

In theoretical terms, the comparison of the 2014 and 2019 events fosters previous findings on the inter-institutional power relations between the EP and the EUCO. First, a legal veto position of the EP can be considered a necessary condition for the ‘federal model’ of inter-institutional power relations. Second, the combination of the Parliament’s veto power and its internal cohesion can sufficiently explain situations in which the EP represents the dominant institution in the EU’s architecture.

In order to assess the mid- and long-term implications of the election of von der Leyen for the inter-institutional balance of power, the concrete actions of the in-coming Commission have to be accounted for. The pledges von der Leyen made to the EP would essentially strengthen the EP’s position in the EU’s system and refute the preliminary supposition that von der Leyen is the Commission President of the Heads of State or Government.

Literature

Bundesverfassungsgericht (1993). Urteil zum Maastricht-Vertrag, BVerfGE 89, 155.

European Council (2019). Special meeting of the European Council (30 June, 1 and 2 July 2019). Conclusions.

Brzozowski, A., & Rios, B. (2019). In defiance of European Council, Parliament elects Italian Socialist as new president. EurActiv. <https://www.euractiv.com/section/future-eu/news/in-defiance-of-european-council-parliament-elects-italian-socialist-as-new-president>. Accessed: 20. October 2019.

European Parliament (2015). European Parliament resolution of 11 November 2015 on the reform of the electoral law of the European Union (2015/2035(INL)).

Hobolt, S. B. (2014). A vote for the President? The role of Spitzenkandidaten in the 2014 European Parliament elections. *Journal of European Public Policy*, 21(10), 1528–1540.

Hoffmann, S. (1966). Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe. *Daedalus*, 95(3), 131–149.

Merkel, A. (2019). Pressekonferenz von Bundeskanzlerin Merkel zum außerordentlichen Europäischen Rat. 2 July 2019. <https://www.bundeskanzlerin.de/bkin-de/aktuelles/pressekonferenz-von-bundeskanzlerin-merkel-zum-ausserordentlichen-europaeischen-rat-1644498>. Accessed: 26. October 2019.

- Meta Beisel, K., Kolb, M., & Mühlauer, A. (2019, 1 July). Führt Timmermans die Kommission – oder kommt ein Joker?. *Süddeutsche Zeitung*. <https://www.sueddeutsche.de/politik/eu-kommissionspraesident-1.4506319>. Accessed: 14. September 2019.
- Monar, J. (2011). The European Union's Institutional Balance of Power After the Treaty of Lisbon. In European Commission (Eds.). *The European Union After the Treaty of Lisbon: Visions of Leading Policy-Makers, Academics and Journalists* (pp. 60-89). Luxembourg: Publications Office of the European Union.
- Moravcsik, A. (1993). Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach. *Journal of Common Market Studies*, 31(4), 473–524.
- Müller Gómez, J., Wessels, W., & Wolters, J. (2019). The European Parliament and the European Council: A Shift in the Balance of Power? In O. Costa (Eds.), *The European Parliament in Times of EU Crisis* (pp. 53-76). Basingstoke: Palgrave.
- Nasshoven, Y. (2011). *The Appointment of the President of the European Commission. Patterns in Choosing the Head of Europe's Executive*. Baden-Baden: Nomos.
- Official Journal of the European Union (2018). Council Decision (EU, Euratom) 2018/994 of 13 July 2018 amending the Act concerning the election of the members of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976.
- Pinder, J. (1986). European Community and Nation-State: A Case for a Neo-Federalism. *International Affairs*, 61(1), 41–54.
- Puetter, U. (2014). *The European Council and the Council. New intergovernmentalism and institutional change*. Oxford: Oxford University Press.
- Thieme, A., & Wessels, W. (2019). Europäischer Rat. In W. Weidenfeld & W. Wessels (Eds.), *Jahrbuch der Europäischen Integration* (pp. 101-108). Baden-Baden: NOMOS.
- Tusk, D. (2019a). Remarks by President Donald Tusk at the press conference of the informal summit in Sibiu, 9 May 2019.
- Tusk, D. (2019b). Remarks by President Donald Tusk at the press conference of the informal dinner of EU heads of state or government, 28 May 2019.
- Tusk, D. (2019c). Remarks by President Donald Tusk after the European Council meeting on 20 June 2019.
- Tusk, D. (2019d). Remarks by President Donald Tusk after the special meeting of the European Council on 30 June - 2 July 2019.
- Tusk, D. (2018). Remarks by President Donald Tusk following the informal meeting of the 27 heads of state or government on 23 February 2018.
- Van Middelaar, L. (2013). *Passage to Europe. How a Continent Became a Union*. New Haven and London: Yale University Press.
- Wessels, W. (2016). *The European Council*. Basingstoke: Palgrave.

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