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## DISCUSSION PAPER

# How to govern Europe better: Reflections on reform of the European Parliament, Commission and Council

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Donald Tusk, President of the European Council, has called an informal meeting of EU 27 on 23 February to discuss the EU's institutions. This will be the first time since 2014 that the leaders dedicate a whole session to constitutional questions. It is their opportunity to assess the damage that Brexit has done to the political mission of the Union, and to prepare for some important decisions later in the year about the future of the European Parliament, the Commission and EU finances. Emmanuel Macron wants to promote "*une Europe souveraine*" and has made a number of proposals to this end.

### Composition of the Parliament

Top of the list of decisions is to re-apportion seats in the European Parliament in good time before the elections in May 2019. The Treaty establishes that no state can have fewer than 6 seats or more than 96, and that the composition of the House shall be degressively proportional (Article 14(2) TEU). 'Degressive proportionality' is a good federalist principle that prevents the interests of the smaller states from being swamped by the larger. Such a constraint is important in a Union where there are 186 times more Germans than Maltese.

The recent report of the Parliament's Constitutional Affairs Committee (AFCO) defines degressive proportionality, somewhat laboriously, as follows:

"The ratio between the population and the number of seats of each Member State before rounding to whole numbers shall vary in relation to their respective populations in such a way that each MEP from a more populous Member State represents more citizens than each Member from a less populous Member State and, conversely, that the larger the population of a Member State, the greater its entitlement to a larger number of seats".<sup>1</sup>

Looking at the distribution of seats made at the last European elections in 2014, however, we find that the degression principle was widely disrespected. In column 4 in the table below, we see that the countries that find themselves disadvantaged by the current apportionment are France, Britain, Spain, Holland, Sweden, Austria, Denmark, Finland, Slovakia and Ireland.<sup>2</sup>

Aware of this deficiency, the Parliament and Council agreed to introduce a mathematical formula for the distribution of seats which would cater in every mandate for technical adjustment to be made to reflect demographic shifts, the churning of Europe's mobile population and the accession (and secession) of

member states. A team of mathematicians working at the invitation of Parliament devised what we call the Cambridge Compromise (CamCom), a formula which would rectify anomalies in a politically neutral way.<sup>3</sup> For illustrative purposes, in column 6 we show how this would affect each state if introduced at a stroke.<sup>4</sup>

1	2	3	4	5	6
Member States	Population 2017 (m)	MEPs 2014	Ratio 2014	EP proposal 2019	CamCom
Germany	82.800	96	862.500	96	96
France	67.025	74	<b>905.736</b>	79	90
UK	65.809	73	<b>895.085</b>	-	-
Italy	60.589	73	829.992	76	83
Spain	46.529	54	<b>861.648</b>	59	65
Poland	37.973	51	744.569	52	54
Romania	19.638	32	613.697	33	31
Netherlands	17.082	26	<b>656.981</b>	29	27
Belgium	11.366	21	541.229	21	20
Greece	10.757	21	512.252	21	19
Czechia	10.579	21	503.752	21	19
Portugal	10.310	21	490.933	21	19
Sweden	9.995	20	<b>499.760</b>	21	18
Hungary	9.798	21	466.552	21	18
Austria	8.773	18	<b>487.383</b>	19	17
Bulgaria	7.102	17	417.759	17	15
Denmark	5.749	13	<b>442.215</b>	14	13
Finland	5.503	13	<b>423.331</b>	14	12
Slovakia	5.435	13	<b>418.100</b>	14	12
Ireland	4.775	11	<b>434.073</b>	13	11
Croatia	4.154	11	377.655	12	11
Lithuania	2.848	11	258.900	11	9
Slovenia	2.066	8	258.238	8	8
Latvia	1.950	8	243.763	8	8
Estonia	1.316	6	219.267	7	7
Cyprus	855	6	142.467	6	7
Luxembourg	591	6	98.450	6	6
Malta	440	6	73.400	6	6
<b>Total EU</b>	<b>511.805</b>	<b>751</b>	<b>681.498</b>	<b>705</b>	<b>701</b>

When it came to the crunch, however, Parliament fought shy of proposing the mathematical formula that it and the European Council had agreed in principle to adopt. This refusal is explained partly by the unfamiliarity of most politicians with mathematics and partly by a rearguard action fought by those states that are at present over-privileged in terms of seats, notably Italy, Hungary and Portugal. This is a pity.<sup>5</sup> It means that the unseemly bartering over seats will recur again in the next mandate as the Parliament struggles to meet the criteria laid down in the Treaties.

Uncertainty over the imminent departure of the UK from the Union gave MEPs both the excuse they needed to prevaricate on the arithmetical formula and the opportunity to make some minimal adjustments to the distribution of seats to iron out the worst of the inequities. The Brexit dividend is to free up 73 seats in 2019. How Parliament proposes to use some of these vacated seats is shown in column 5.

Article 14(2) TEU provides that the European Council adopts the decision on seat apportionment by unanimity, "on the initiative of the European Parliament and with its consent". When they come next week to consider Parliament's new proposal, is it too much to hope that the European Council will return to the question of the formula? They may need to be reminded of their 2013 decision on the composition of the Parliament to establish a "system which in future will make it possible, before each fresh election to the European Parliament, to allocate the seats between Member States in an objective, fair, durable and transparent way".<sup>6</sup> The European Council should certainly undertake to guarantee the introduction of the formula in good time for the 2024 elections.

## **Transnational lists**

The second question before the leaders – promoted not least by President Macron – is the idea of establishing a pan-European constituency from which a certain number of MEPs would be elected from transnational lists. This idea has a long pedigree, supported by many academics and backed by most federalists in the belief that the reform will increase voter turnout at the elections and strengthen the legitimacy of the Parliament. Transnational lists would certainly Europeanise the elections which, to all intents and purposes, have until now been separate national elections fought by national political parties on national issues. Few national parties seem to have noticed that, at least in the more mature Western democracies, the electorate is dissatisfied at the incapacity of Europe's old nation states to tackle modern day problems. Nevertheless, while national party politics are tested and found wanting, European party politics have not yet presented a real alternative.

Although the large political families have long ago created EU level alliances of national parties, they are really cosmetic, Potemkin-style parties – good for show, and at organising congresses, but hopeless at electoral campaigning. Indeed, such are the absurd prohibitions on the activities of these European parties that they must not spend money to support their notional candidates in the course of the European Parliamentary election campaigns.<sup>7</sup> The lively politics of the political groups in the Parliament are not translated to the wider public domain. The European dimension of EU politics is obscured. Neither the media nor the electorate is really made aware of the competing choices of personalities or policies that divide the political families.

The EU parties publish, fairly discreetly, common electoral programmes that are swiftly archived. Elected MEPs owe next to no loyalty to the European political parties to which they are notionally attached: their careers are subject solely to the decisions of their national political parties which themselves have little vested interest in the success of their respective European family.

The introduction of a pan-EU constituency, so its advocates argue, would electrify the elections to the European Parliament. Each elector would be given a second ballot paper at their arrival at the polling station in addition to the traditional ballot for their national or regional MEPs, thereby offering a real prize for EU citizenship. In order to maximise appeal, candidates on the transnational lists would be selected by the EU parties to reflect Europe's contemporary diversity in terms of gender, ethnicity and geography. The new-style election would mark the coming of age of EU politics, creating that essential democratic sinew linking the citizen to the exercise of power at the EU level and vice versa. The reform would put flesh on the bones of the Lisbon treaty's definition of MEPs as being "representatives of the Union's citizens" (and not of their states), and its assertion that "citizens are directly represented at Union level in the European Parliament".<sup>8</sup>

Nevertheless, as is evident, parliamentarians are congenitally disposed to loathe electoral reform. On 7 February, by 368 votes to 274, the European Parliament voted down the AFCO proposal on transnational

lists. Nationalist MEPs were naturally opposed to the initiative. The conservative European People's Party (EPP) raised concerns about the introduction of two classes of MEP, and expressed fears that the EU level political parties would not be able to campaign effectively against radical populist movements of eurosceptic tendencies.

In the end, only one recital of the original AFCO report is retained by the plenary that refers to the support expressed by several states for the idea of a joint constituency. Those leaders known to be in favour of transnational lists, in addition to President Macron, include those of Belgium, Greece, Ireland, Italy, Luxembourg and Spain. And Commission President Jean-Claude Juncker will not be allowed to forget his statement to Parliament in September 2017 that transnational lists will bring to Europe "democracy and clarity". How the European Council deals with the matter on 23 February, however, is inextricably tied up with its attitude to the election of Mr Juncker's eventual successor.

### ***Spitzenkandidaten***

Back in 2014, too, the Parliament balked at the proposal from AFCO to initiate transnational lists. By way of compensation, the party groups in the Parliament decided to elect champions to lead their electoral campaigns. This experiment worked to some extent in stirring up interest among the press, and in those countries where the chosen '*Spitzenkandidaten*' were able to campaign. (They were barred from the UK.) The process came alive when Michel Barnier challenged Jean-Claude Juncker for the top job in the European People's Party Congress in Dublin, in March 2014.<sup>9</sup> Chancellor Angela Merkel, originally hostile to the whole exercise, accepted the result – as did Mr Juncker, whose initial preference was thought to be to succeed Herman Van Rompuy as President of the European Council. The rest is history.

In June 2014 the European Council nominated Mr Juncker by 26 votes to 2. The next month he was subsequently "elected" by the European Parliament, as the treaty so provides (Article 17(7) TEU).<sup>10</sup> His socialist rival *Spitzenkandidat*, Martin Schulz, became President of the Parliament. Although many claimed the adventure a great success, others, including Mr Van Rompuy, harboured misgivings at the inversion of the treaty procedure which charges the heads of government with the task of nominating the candidate (by qualified majority) and gives to the Parliament the right merely to approve or reject the nomination (acting by an absolute majority). The European Council agreed to return to the manner of choosing President Juncker's successor in due course. The meeting on 23 February is it.

The need to take another look at the *Spitzenkandidat* process is strengthened by the defeat of the proposal for the pan-European constituency. While the champions chosen to head up transnational party lists in a proper election campaign would have real credibility and authority, those chosen in the present circumstances by the Potemkin parties as their frontrunners will be a pale shadow of genuine *Spitzenkandidaten*. In order not to deceive the fairly sceptical electorate, it would be a mistake to exaggerate the representative capability of these people.

In 2014 it was simply agreed between the parties that the political group with the most seats after the election would nominate its *Spitzenkandidat* as Commission president. The largest group turned out again to be the EPP – but the EPP was still very much a minority group, with only 221 MEPs out of a total of 751. This time around, the opposition parties have wised up to the risk that if they stick to the same understanding as last time, there will in all probability be yet another Commission President from the EPP. While one understands the desire of the EPP to hang on to the top jobs in the EU institutions, the resolution passed by the Parliament in Strasbourg on 7 February modified its position from 2014 in order to avoid an automatic assumption of power by the EPP.<sup>11</sup> The MEPs now say, merely, that Parliament "will be ready to reject any candidate in the investiture procedure of the President of the Commission who was not appointed as a '*Spitzenkandidat*' in the run-up to the European elections".

Even that modification will not be enough to assuage the evident dislike of President Macron and others for Parliament's bid to extend its constitutional role beyond the Treaty. Opposition to a repeat of the 2014

experience is not just legalistic but also pragmatic. Serving heads of government with ambitions on the European plane will not desert their national posts in order to lead campaigns at the European elections in which they themselves are not, and realistically cannot be candidates.<sup>12</sup> It can be in nobody's interest to preclude the promotion of a good prime minister into the job of the Commission presidency. At the end of the day what really matters is to find the best possible successor to Mr Juncker, and that choice will be consensual between Parliament and Council.

So what seems to be clear is that although the EU level political parties will be justified again in nominating champions to front up their election campaigns, they would be foolish to assume that the European Council will pick any one of those to become Commission president. On 23 February, the question might be posed by the heads of government as to whether the Commission presidency is the right target for these *Spitzenkandidaten*, or whether competition for senior posts in the Parliament would make for a more credible alternative contest. Certainly the quality of leadership in the Parliament is an issue deserving of more attention and, indeed, competition.

## Balance of power

The controversy surrounding the *Spitzenkandidaten* has a direct bearing on a more fundamental question, namely the future of the two presidencies of the Commission and European Council. Jean-Claude Juncker is known to be frustrated at his ambivalent position *vis-à-vis* Donald Tusk. In the EU Treaties, as most recently revised by Lisbon, executive authority is deliberately shared between the Commission and Council, and there is no insistence on the clear separation of powers between executive and legislature.

Lisbon tried to delineate between the functions of the two presidents but it did not put in place a hierarchy between them, nor establish checks against the incursion on the prerogatives of the one by the other. The muddle is most evident in international affairs where an unhelpful distinction is drawn between common foreign and security policy at summit level on the one hand, and everything else at all other levels, on the other. This is a direct hangover of the pillarisation of the European Union between supranational and intergovernmental methods of working that had been entrenched in former treaties. The world looks on in amazement as both Mr Juncker and Mr Tusk turn up, alongside several EU national leaders, at meetings of the G7 and G20. If the two presidents disagree, there is an immediate political, even constitutional problem. Where the two agree, there is unnecessary (and costly) duplication. The division of powers between them is unclear both to the EU citizen and to third countries.

But is the answer to this clumsiness to merge the two posts? Mr Juncker favours such a merger, presumably hoping that the Commission President could steer the European Council effectively. But the opposite dynamic could also come into play, as it has to a large extent with the High Representative on foreign affairs and security policy who is also a Vice-President of the Commission and chair of the Council of foreign affairs ministers. It is suspected that Federica Mogherini, through no fault of her own, is now a captive of the member states. A powerful President of the European Council also chairing the Commission could easily reduce the Commission to little more than a secretariat, negating its prospective role as the Union's federal executive. A fusion of the two presidents would have much wider implications for EU governance than the mere blending of Articles 15(6) and 17(6) TEU, raising questions not least about the rotating presidency of the Council of Ministers and the autonomy of the Council as the second chamber of the legislature.

In any event, the refusal of the Parliament to have transnational lists coupled with the on-going dilemma over the *Spitzenkandidaten* alerts one to another possibility: that the Commission President should in the future be directly elected by universal suffrage. If the parliamentary route to the federalisation of EU politics and the creation of real political parties is blocked, perhaps it is time to try the federal presidential route, as the Americans did before us.

## Shape and resources

Another question for the heads of government as they return to institutional matters must be the size of the next Commission. Lisbon prescribed a college of only 18 members – that is, two-thirds of the number of states – but by way of a feeble compromise, it also included a let-out clause, which was, of course, immediately invoked (Article 17(5) TEU). I know nobody familiar with the working of the Commission who believes that the Juncker college of 28 members has achieved new levels of cohesion or direction. A proposal to revert to the Lisbon formula of a tighter Commission serving the common interest of the Union would be welcomed by those who want the Union to develop in the federal direction, just as it will be opposed by those who prefer to continue with a weaker executive body made up of national representatives.

The informal European Council on 23 February is also supposed to talk about the next Multi-Annual Financial Framework. It remains to be seen whether the European Parliament, so timid about constitutional matters, can be a wee bit bolder when it comes to money. Heads of government may feel entitled to pay no heed to hectoring from a Parliament that cannot reform itself, but they know that the Union's new financial deal, including the creation of fresh sources of revenue, requires Parliament's endorsement.

When it comes to EU financial reform, the default position is stagnation. This time, however, Brexit makes sticking with the status quo intolerable. With the loss of the UK, the shape of the budget has to change. The size of the EU budget has to grow in order to match the EU's new ambitions in security policy, its new responsibilities over immigration, and the imperative to shore up the banking union as well as to insure against the instability of the eurozone. In the long run, only the emergence of an EU treasury, grounded in the Commission, raising revenue by taxation will save national treasuries money.

## Who governs Europe?

Behind the dilemma over finance, the balance between larger and smaller states, the *Spitzenkandidat* and the dual presidency lies the deeper question of who in the long term is to govern the European Union. If the choice is to go in the federal direction towards a Union enjoying its own sovereignty, executive authority must be centralised in the supranational Commission. If confederal arrangements are preferred, and sovereignty is anchored in the member states, the part-time intergovernmental body of the European Council will find itself in charge.<sup>13</sup> Neither the European Council nor the European Parliament is ready to resolve that issue now: the best that can be hoped from the opening up of the debate is that the institutions realise their limitations and determine to get better prepared for the next constitutional Convention than they were, frankly, for the last Convention in 2002-03. As the next round of treaty amendment is likely to come, for various reasons, during the upcoming mandate, there is no time to be wasted in its preparation.<sup>14</sup>

In the light of next year's elections, it is not too early for think-tanks and political parties to be reflecting on these issues.<sup>15</sup> As the European Parliament has just demonstrated by its own reluctance to embrace reform, the EU institutions need enlightened prodding and cajoling.<sup>16</sup> One hopes that President Tusk is well prepared to manage the opening of the discussion among his peers about European governance and sovereignty. But he cannot and does not have all the answers. One sensible outcome of the meeting next week might be the convening of an independent group charged to reflect more fully on the strengths and weaknesses of the EU's current constitution: it might even be invited to scope the mandate of the next Convention.

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*The views expressed in this Discussion Paper are the sole responsibility of the author.*

## Endnotes

- <sup>1</sup> Report on the Composition of the Parliament, (Huebner-Silva Pereira Report), A8-007/2018. This was passed by the plenary on 7 February by 400 votes to 183.
- <sup>2</sup> Eurostat population figures updated in July 2017.
- <sup>3</sup> *Around the Cambridge Compromise: Apportionment in Theory and Practice*, Mathematical Social Sciences, Special Issue, Vol. 63, March 2012.
- <sup>4</sup> A modified version of CamCom could introduce the adjustment in a gradual way, minimizing disruption. See *The Composition of the European Parliament*, DG Internal Policies, PE 583.117, February 2017.
- <sup>5</sup> Parliament also rejected an amendment to the Huebner-Silva Pereira report by Guy Verhofstadt and others that would have introduced the formula on a phased basis without any state losing a current seat, installed a modest transnational list and cut the overall size of the House.
- <sup>6</sup> Article 4 of the European Council Decision of 23 June 2013 establishing the composition of the European Parliament, 2013/312/EU.
- <sup>7</sup> Statute of European political parties, Regulation No. 1141/2014.
- <sup>8</sup> Articles 14(2) and 10(2) TEU, respectively.
- <sup>9</sup> Juncker 382 votes; Barnier 245 votes.
- <sup>10</sup> By 422 votes to 250.
- <sup>11</sup> Revision of the Framework Agreement on relations between the European Parliament and the European Commission (Gonzalez Pons Report), A8-0006/2018.
- <sup>12</sup> Mr Juncker had just lost his job as prime minister of Luxembourg in 2014 but was not a candidate in the European Parliament elections.
- <sup>13</sup> Discussed further in my new book, *On Governing Europe: a federal experiment*, January 2018.
- <sup>14</sup> One notes Mr Macron's suggestion of a series of popular conventions.
- <sup>15</sup> For example, Guntram B. Wolff, *Difficulties and opportunities in reallocating European Parliament seats after Brexit*, Bruegel, February 2018; and Christine Verger, *Transnational Lists: a political opportunity for Europe with obstacles to overcome*, Jacques Delors Institute Policy Paper, February 2018.
- <sup>16</sup> To this end the Spinelli Group aims to publish a pre-election manifesto in September. Already one sees the New Pact for Europe, *Re-energising Europe: A package deal for the EU 27*, November 2017.

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