



POLICY PAPER

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The Parliamentarization of the European Commission

Transforming the European Commission into a Federal Executive Government

ENoP
EUROPEAN NETWORK OF POLITICAL FOUNDATIONS

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PREFACE

This policy paper was written as a way to open up a conversation about one possible direction for the further democratization and federalization of the European Union. Views presented here do not necessarily reflect those of the European Network of Political Foundations (ENoP).

Coel Thomas

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EXECUTIVE SUMMARY

The way that power is divided among the main institutions of the European Union and how they operate is hard to understand for the average voter. The selection process of the European Commission is not as democratic as the selection process for the leadership of member states. Using the basic premise most parliamentary democracies use to create a government, which involves government negotiations among parliamentary parties, this paper suggests a reform of the Commission towards this direction.

The Commission would be transformed into a federal government of the EU, which is created through negotiations of European political parties and which must gain and retain the confidence of the European Parliament and the European Council. More power would be given to the directly elected European Parliament. The Council of the European Union and the European Council would be fused and the executive power of the former would be given to the Commission.

The main benefit of this reform would be increased democratic legitimacy.

The main benefit of this reform would be increased democratic legitimacy, which comes from removing one degree of delegation from the process of appointing the European Commission. Furthermore, simplifying the complex structure of the EU and the way its leadership is chosen can act as a way to gain trust among the citizens of the EU.

INTRODUCTION

The European Union has throughout its history kept developing into a more integrated and democratic system. Ongoing reform and treaty revision have been a central trend since the very beginning that European integration began. The European Commission and the process by which it is formed today has remained very similar to the way it was first created in the Treaty of Rome in 1957, which founded the first predecessor to the EU: the European Coal and Steel Community. This policy paper will look into one possible way of reforming the Commission by transforming it into a federal government of the EU, which is created through negotiations of European political parties and which must gain and retain the confidence of the European Parliament and the European Council. Possible benefits, drawbacks, and other effects of this reform will also be discussed.

This policy paper focuses on the legislative and executive powers at the federal level of the EU. Therefore, the European Court of Justice (ECJ), which holds judicial power on a Union level, and the independent courts of each member state, which hold judicial power in their respective countries, are outside the scope of this paper, as are any possible reform of national governments and parliaments.

This policy paper focuses on the legislative and executive powers at the federal level of the EU.

The current institutional framework of the EU is laid out in the Treaty on European Union and in the Treaty on the functioning of the European Union (European Union, 2010). The idea of an integrated political union, which already exists to quite a significant degree, has been around since a European Political Union was first suggested in the 1950s (Baldwin & Wyplosz, 2009). The EU is a federal union of states, which has supranational institutions operated in both a federal and intergovernmental manner. Intergovernmentalism is a way of governing, where all governments must accept decisions, while federalism generally means that a majority, or some sort of qualified majority, can make decisions on a cross-state level despite minority resistance.

The power to govern can be conceptually separated into three different branches: legislative, executive, and judicial. Legislative power means the power to make laws and is often exercised by a parliament; executive power allows an institution to enforce the laws created by the legislative branch and is usually held by the government

of a country; the judicial branch interprets the law and punishes offenders (Rhodes et. al., 2006).

In democracies, these powers are divided among different institutions, so that no one institution can seize absolute power or act unchecked (Persson et al., 1997). However, institutions in democracies sometimes hold both executive power and some legislative power. This is the case with the European Commission, which oversees the execution of EU law, but also has the exclusive right to propose legislation. Parliamentary democracies often have coalition governments made up of a party or multiple parties that hold a majority in the parliament, which in practice links the executive and legislative branches.

Legislative Power in the EU

Legislative power within the EU is held jointly by the European Parliament and the Council of the European Union, also often referred to as the Council of Ministers, on an EU level and by national parliaments on national levels. The Parliament and Council are often referred to as co-legislators, as both institutions have to approve new laws. The European Parliament consists of 705 Members of the European Parliament (MEPs) that are directly elected by the citizens of member states, therefore directly representing EU citizens. Elections take place in 27 national constituencies in member states, of which some are further divided into smaller constituencies. Member states are given a different number of seats according to their population skewed to give smaller countries more power relative to their size than the largest countries.

The Council of Ministers is made up of a minister from each member state, therefore representing national governments. It has a rotating presidency among member states on a six-month basis, which allows the member state holding the presidency to set the agenda and influence the priorities and consensus-building of the Union for their term. Since the Lisbon Treaty, qualified majority voting (QMV)¹ has been applied to almost all policy areas in the Council, which makes it less intergovernmental, as countries may have to accept outcomes they did not vote for. Foreign, social, fiscal, and budgetary matters still require unanimity. The composition of the Council

1 For a vote to pass at least 55% of member states that represent at least 65% of the EU population has to vote in favor (Egenhofer, 2011 p. 28)

changes based on the topic being discussed. For example, ministers of environment discuss environmental issues. Altogether there are 10 different compositions.

National parliaments legislate in their respective countries, but EU law has primacy over national law (Egenhofer, 2011). The ECJ established this a rule and it means that EU law has supremacy over national law, even in constitutional matters (Craig & Búrca, 2015, p.266). However, the EU does not have authority to legislate in all policy areas, as it only has limited competence in, for example, social and tax policies.

Executive Power in the EU

The European Commission is one of the strongest executive powers and it also has a monopoly on introducing legislation at a Union-level, which gives them the aforementioned limited legislative power as well (Egenhofer, 2011). However, the Commission has to make proposals requested by the Council of Ministers, under the 1957 Treaty of Rome, and by the European Parliament under the 1992 Maastricht Treaty (Garrett & Tsebelis, 1996). Legislative initiatives can also be influenced through citizens' initiatives and as well as lobbying. Therefore, practically, but also officially, the right of legislative initiative is not purely held by the Commission, as other institutions and parties may influence what the Commission proposes to the co-legislating bodies.

National governments exercise executive power in their respective countries, where they execute national and EU laws. However, every member state government has some executive power on the Union level as well. The European Council, made up of heads of state and government of member states, sets priorities and decides the direction of integration. Not to be confused with the Council of the European Union (one of the co-legislators), the European Council did not have an official institutional status before the Lisbon Treaty, as it was just seen as a convening of the heads of state and government of member states in what were, and still are, called European summits. The European Council also elects a president since the Lisbon Treaty, which was meant to increase the efficiency of the institution, as the president is responsible for facilitating consensus, agenda-setting, chairing summits, working with the President of the Commission, and representing the EU externally at the level of heads of state. Before, the European Council had a rotating presidency, which was only retained in the legislative Council of the EU.

The main executive branch, the Commission, is mandated to represent the interests of the Union as a whole. It is made up of one commissioner from each member state, appointed individually by the governments of member states. Each Commissioner heads a Directorate-General covering a different policy area, like ministries at a national level. The whole Commission, called a college, is negotiated and introduced by the European Council and has to be approved by the European Parliament. It can be dismissed as a whole by Parliament as well. The President of the Commission, who is also counted towards the one Commissioner per country quota, is appointed by the European Council, with regard to the outcome of the European Parliamentary elections.

In theory, this should mean that every political group in the European Parliament nominates a “lead candidate” for the Presidency of the Commission and that the candidate of the largest party becomes the President after elections. However, in practice, this has not been the case. After the 2019 European Parliamentary elections this system, also referred to as the “spitzenkandidat” -system, was abandoned. The candidate for the winning European People’s Party Manfred Weber did not become President of the Commission. The European Council proposed Ursula von der Leyen from the same party instead (Center for European Reform, 2019).

Representative Democracy and the Delegation of Power in the EU

The three main institutions of the EU are separated from the citizens of the EU to a varying degree, as seen in figure 1 and thus, represent different interests. The European Parliament is directly elected by the people, which means that in essence, it directly represents all EU citizens. The Council of Ministers is made up of government ministers, elected by national parliaments, which are elected by EU citizens. In the European Parliament, there is one instance of delegation of power: from the people to the MEP’s. In the Council of Ministers, there are two delegations of power: from the people to national parliaments and from there to national governments. The Commission has three instances of delegation, as a commissioner is appointed by a national government, which is elected in parliament, which is elected by the people.

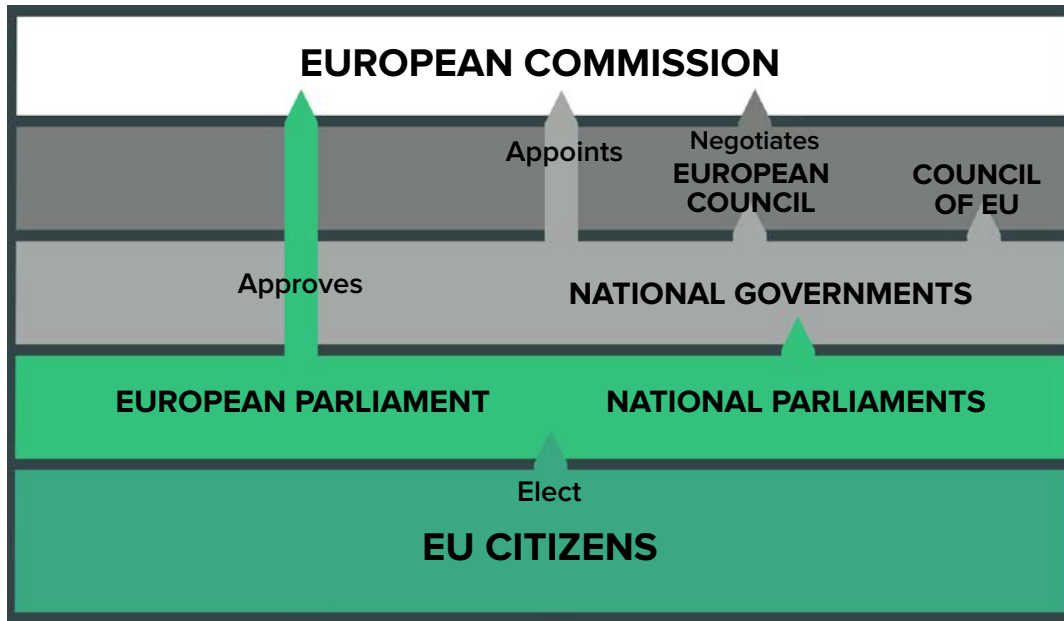


Figure 1: The current delegation of power from EU citizens to the European Commission

Commissioners tend to be some of the highest-ranking political figures in the biggest party of their own country and are given an area of policy they are at least somewhat knowledgeable in. Thus, it could be argued that this makes the Commission somewhat meritocratic and more centrist, as there has to be a wide consensus throughout the Union to appoint the Commission. The Parliament has the most democratic legitimacy because its members are directly elected. The Commission could be argued to have a lot of legitimacy when it comes to regulating the common market as, in addition to the point of meritocracy, it is an independent body required by treaty to do what is in the benefit of the entire Union. However, this is also why the Commission, and as an extension the entire EU, are criticized for having a lack of democracy as well as a distance from the voters in member states (Kratochvil & Sychra, 2019). Many people feel very distanced from the decisions made in Brussels both geographically and politically (Berezin, 2008)

In summary, the power to govern within the EU is distributed among many institutions on a national and EU-level to varying degrees of delegation of power from the voters. This introduction into the institutional framework and division of powers acts as the first step into understanding where reform could and maybe even should go from here. The aim of this policy paper is to explore the idea of reshaping the current division of power and institutional framework on an EU-level that revolves around

reforming the Commission from its current state into a government, which derives its power from the support of institutions that hold legislative power **and wields all executive power on the federal level of the EU.**

CREATING A DEMOCRATIC FEDERAL EU GOVERNMENT

There are many ways that a government can be formed in a parliamentary system. For the sake of argument, here is one way an EU government could theoretically be formed in practice:

1. All parties taking part in European Parliamentary elections nominate a candidate to lead government negotiations if their party becomes the largest in the European Parliamentary elections.
2. After elections, this candidate leads negotiations between European political parties in order to create a government platform. Negotiations also determine which political groups gain control of which DG, which in essence means which Commissioners they get to appoint. Parties would also nominate candidates for these positions. National governments should be included in this entire process to make sure their interests are heard, in order to pass the next step.
3. The European Parliament and European Council give a vote of confidence approving or dismissing the platform and government. Both Parliament and the Council decide through a simple majority vote.
4. If the lead candidate fails to get gain confidence of the co-legislative bodies, the lead candidate of the second biggest party shall attempt to form the Commission. If they also fail, a parliamentary majority will elect a person to lead negotiations. If these negotiations fail, a new election is held.
5. A vote of no-confidence from both the European Parliament and European Council during the term of the Commission would result in new negotiations. If these negotiations fail, a new election is held.

This is a simplified proposition for one way of reforming the current process of forming a commission from the current intergovernmental member state government-oriented system into a more federalist system revolving around direct European democratic elections and European political parties. For this type of reform of the executive branch of the EU to be successful or even possible, a reform to the legislative branch of the Union is also required, which will be discussed in the next section and can be seen in figure 2 below.

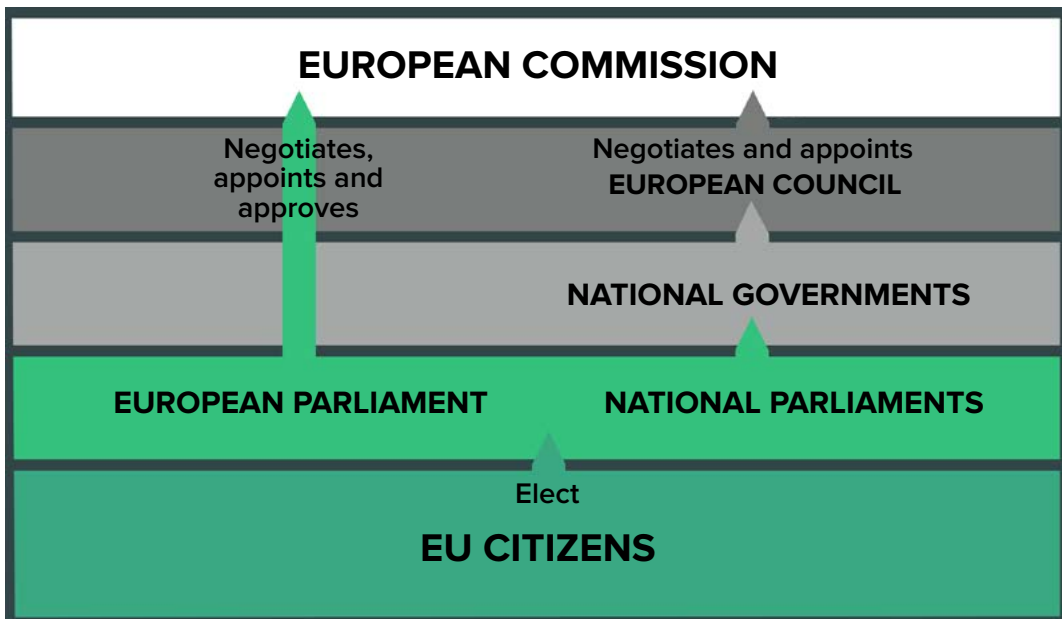


Figure 2: The delegation of power from EU citizens to the European Commission under the proposed reform

Reform of Legislative Institutions

The European Council, which again is the gathering of the heads of states or governments of all EU member states, would be officially combined with the Council of the European Union, which is the co-legislator also known as the Council of Ministers. This new institution is henceforth referred to as the European Council or just Council. This institution would be stripped of all executive power on the EU-level, and it would be transferred to the Commission.

In practice, the Council would have all the prior 10 configurations of the Council of Ministers, but a new one would be created called the composition of executive affairs.

This would in practice be the same as the European Council that exists today, but would only convene during negotiations for the Commission, the vote of confidence it requires and other matters of great significance to the EU, such as treaty revision or the accession of new member states.

In its current form, the Commission always has one commissioner from each member state, which would not necessarily be guaranteed in this proposed reform. Giving the Council the right to vote against the formation of the Commission would motivate negotiators to include a diverse college with commissioners from many member states. There should also be a formal way for governments to be included in the EU-level government negotiations, which would also help achieve this goal. A possible quota for commissioners from a certain share, or even all member states, could also be implemented.

A generalized abolition of unanimity within the EU regarding issues of a non-constitutional nature should take place. Parliament would rule through a majority vote as they do today. The Council would rule through majority rule as well, or its current system of QMV. This would practically mean the end of intergovernmentalism since by definition it requires countries to be able to opt out or veto decisions. However, the admission of new members to the EU and changes to the fundamental principles of the EU should still require all member states to agree and a $\frac{2}{3}$ majority in Parliament.

The European Parliament and Council would be given the right to propose legislation in addition to the Commission. This is something that has been proposed on multiple occasions by many parties and that the European Parliament has also called for (European Parliament, 2022a). The procedure for passing legislation would not change, except for this expanded right to propose legislation.

This type of reform could benefit from transnational electoral lists. In practice, this means the addition of a separate election alongside each individual national election. In this system, every EU citizen could give two votes: one for the national list and another for the transnational list. 28 seats would be decided in this election and $\frac{2}{3}$ of the seats would go to candidates from small and medium-sized countries. The European Parliament has already backed this type of reform within the current treaty framework (European Parliament, 2022b). All top candidates from each party would run in this constituency. This would address the claim that the Commission is headed by politicians not elected by the entire EU and give the institution more democratic

legitimacy. This also incentivizes European parties to explain to voters all across the EU who their top candidates are and what they stand for, instead of these candidates just focusing on elections in their own member states.

POSSIBLE BENEFITS AND DRAWBACKS

The Benefits of Parliamentarizing the Commission

Bringing the Commission closer to the voters increases the democratic legitimacy of the institution. The EU would also benefit from having a figurehead with more democratic legitimacy than the current President of the Commission.

This type of reform could be used to increase the relevance of the European Parliament.

This type of reform could be used to increase the relevance of the European Parliament, which now cannot propose legislation and has a nominal role in the formation of the Commission: approving of the entire Commission after national governments have appointed

Commissioners through negotiations. Parliamentarization of the Commission would also force more cooperation between European political parties and activate parties on the national level more towards the federal level of the EU. Turnout in European elections is low. Parties tend to campaign on national issues and it can be difficult to understand the EU and, for example, how the current Commission is appointed. This type of reform could improve these issues.

The Drawbacks of Further Federalization

Giandomenico Majone, professor of public policy analysis at the European University Institute, criticized one key aspect of this idea for a more federal EU, noting how the Commission is seen as an independent regulator of the common market, which gives it a lot of legitimacy in regulating the market (Majone,2002). The Commission is not a political body in essence, but a body tasked to represent the interests of the Union. Majone contends that making the Commission directly responsible to the European Parliament could damage the Commission's legitimacy as an independent regula-

tor. While others (see for example Castaldi, 2010) have called this type of reform an “urgent necessity”, Majone would advocate for a more incremental change over time. It should be noted, however, that the treaties of the EU have not been revised since The Treaty of Lisbon was signed in 2007.

When considering a reform like this, the legitimacy to regulate markets versus democratic legitimacy gained through a more direct selection of the Commission should be considered. Most national governments in the EU are elected and negotiated through this type of process and they gain their legitimacy to regulate markets by winning elections. Perhaps a shift in perspective is necessary. Maybe the EU should not be seen just as a Union meant mostly for economic cooperation, but instead a Union that requires democratic legitimacy in its own right throughout especially at the very highest levels.

There have been calls for reforming the European Council into a European Senate (See for example van der Schyff & Leenknecht, 2007). Senators could be chosen through direct elections, by national parliaments, or by a more complex system. This idea of a senate could also gain more traction, as a more federal system is envisioned. However, this would sever the link that national governments have to the EU, which could be argued to be a negative development. Having national governments included in the process of legislation and the formation of the Commission creates ownership for member states over EU legislation and grants national governments a say in EU affairs. Severing this could foster (further) resentment towards EU institutions within member states. The likelihood of development towards a European Senate is highly unlikely since even the most extreme case of integration has been predicted to rely on a federal structure that would retain national governments in the policy-making and implementation process (Kelemen, 2007). A move towards a European Senate, which would remove all power that national governments would have on the federal level, would require unanimity. Consensus would be practically impossible to achieve in this area.

DISCUSSION AND CONCLUSION

Reforming the European Commission into a government that is created through negotiations conducted by European political parties is an interesting goal for European integration that offers some key benefits compared to the status quo.

An increase in the democratic legitimacy to the leadership of the EU may increase the possibility that more power in fiscal and social policy could be transferred to the Union-level. Ideas such as a European minimum wage or even a European universal basic income could become more relevant or possible. Democracy is also a core value of the EU, which makes the increase in democratic legitimacy intrinsically a thing to be sought out.

Democracy is also a core value of the EU.

This extra democratic legitimacy is essentially gained by removing one degree of delegation from between the Commission and the voters. In its current form, the Commission goes through three degrees of delegation of power: from the people to their national parliaments, from parliaments to national governments and finally from governments to the commission. Simplifying this into the proposed format where power is essentially delegated from the people to the European Parliament, which then elects the Commission, removes one entire degree of delegation bringing the Commission much closer to the voters.

The simplification of this process also has value. The current framework of the EU and the way that the Commission is appointed is complex, hard to understand, and unlike that of any executive branch of its member states. Government negotiations and actually being able to vote for the people who take the top jobs of the Commission would remind many EU citizens of the political systems they are used to, especially if this system is combined with transnational lists. Understanding how one of the most powerful institutions in the EU is elected is an important determinant for trust in the EU. It should also not be difficult to understand the processes of representative democracy. This is a question of equal access and transparency as well.

This type of reform would require a revision of the founding treaties. This simplification of the structure and electoral process of the EU could therefore possibly coincide with the simplification of the current treaty framework and even a codification of a constitution for the EU. Therefore, there are obvious hurdles to a reform like this. The idea of an EU constitution was rejected by Dutch and French voters before the creation of the Treaty of Lisbon and it is very possible that a reform like this could be toppled as well. This reform would need the approval of the government of every member state and would most likely face many referendums as well.

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