



EDITORIAL

THE EUROPEAN PARLIAMENT AT THE FIRST CRUSADE

On 21 October 2019, in a piece published on *Verfassungsblog*, twenty-nine influential experts in European affairs have harshly rebuked the European Parliament for rejecting the nomination of Sylvie Goulard to the new European Commission (*Fairness, Trust and the Rule of Law: Statement on the European Parliament's confirmation procedure concerning Sylvie Goulard*, www.verfassungsblog.de).

Noting that “the campaign against Sylvie Goulard has been widely understood as a political revenge against the French President”, who had successfully opposed the model of the *Spitzenkandidaten*, the co-signatories suggested that “[n]othing in the Treaties, yet, requires the application of this model”, and express their deep concern “not only regarding the fairness of the process in the given circumstances, and the respect of the rule of law, but also for the political consequences this way to proceed may have for the role of the European Parliament, its credibility in the eyes of citizens, and the EU in the future”.

This story vividly epitomizes – well beyond the personal destiny of the candidate, whose qualification and morality entirely remain beyond the scope of the present editorial – the turbulent passage which is following the May 2019 elections. The stakes are high and include values of public concern: the rule of law, the relations between the European Parliament and the European Council, the future of the EU. It is against these benchmarks that the legality and the soundness of the behaviour of two major actors of the EU institutional system must be assessed.

The procedure of appointment of the Commission is, notoriously, quite elaborate. This complexity mirrors the manifold role assigned to this institution and the varying degree of allegiance owed by the Commission to the other stakeholders of the EU political system. In particular, whereas all these stakeholders do have a say in that process, none can really claim the role of the king maker.

Art. 17, para. 7, TEU assigns to the European Council the power to propose a candidate for President of the Commission, who, however, will be elected by the European Parliament by absolute majority voting. Each Member State, acting individually, identifies one candidate for Commissioner, with a sort of *agrément* of the President and a formal consent of the Council. Finally, the Commission, as a body, is subject to a vote of consent by the European Parliament and, then, it is appointed by the European Council.

This quite baroque procedure bears some resemblance to procedures applicable to the appointment of the executive in parliamentary systems; yet, it breaks away from

them in other regards. In particular, the circumstance that, *de facto*, each Commissioner is selected by its Member State makes it implausible to have a politically cohesive Commission, at least along the lines of the national political dynamics.

Far from being an oddity of the system, the multiple allegiances of the Commission provide, paradoxically, the best means to preserve its independence. In turn, the independence of the Commission secures the performance of its main task, namely acting as the custodian of the Treaties and of the project of the “ever closer Union”. It is around this project that the Commission has, sometimes very successfully, created its internal political cohesion.

In turn, the degree of influence of the European Parliament on the political course of the Union greatly depends on its own internal cohesion and on its capacity to establish a close link with the Commission, and, in particular, with its leading figure. In spite of the swinging relations between these two institutions – each being a jealous custodian of its own prerogatives – they broadly share a common vision of the Union, opposed to that based on the dominance, or even the omnipotence, of the Member States.

This is the legal and political background against which the vicissitudes of the appointment of the President of the Commission, and, in particular, the *Spitzenkandidaten* system, must be assessed. At a superficial sight, this system may be regarded as a first step in a process of the parliamentarisation of the European political system. In the same vein in which the executive depends on the confidence vote of the Parliament, so the argument goes, the Commission takes office on the basis of the parliamentary election and will be dissolved by a sort of no confidence vote, called, in the European jargon, a censure. In this perspective, the duty of the European Council to propose a *Spitzenkandidat* as President of the Commission would be the equivalent to the duty of the president of the republic or of the monarch, to invite the winner of the parliamentary election to form a new government.

In spite of this vague analogy, however, it is apparent that the *Spitzenkandidaten* system does not bring the EU political system closer to a parliamentary system, whereby the executive is the expression of the majority in a parliament. The *Spitzenkandidaten* system is rather based on the underlying idea that the entire parliament, or at least its overwhelming majority, rallies behind a leading figure, which may unite the efforts of the two supranational institutions to progress the process of integration. Far from altering the institutional pluralism of the European form of governance, the *Spitzenkandidaten* system is a practical expedience to shift the balance of power in favour of the Parliament *vis-à-vis* the two Councils, and to attenuate the grip of the Member States on the process of integration.

In the aftermath of the 2019 elections, and of the rise of the populist parties, however, the implied premise of that system, namely the internal cohesion of the European Parliament, began to fade. The mechanism of the *Spitzenkandidaten* came to a gridlock and it soon became clear that none of the two main pretenders to the throne, the lead-

ers of the EPP and of the S&Ds, could have gathered sufficient consent from the Parliamentary rows to be imposed to the Council, as it took place in the 2014.

Possibly anxious to re-affirm its hold on the political system of the Union, the European Council went along its own path. It selected, in splendid isolation, Ms. von der Leyen as candidate for the Presidency of the Commission, and proposed her to the European Parliament.

The consequence of this path is well known. A few days after the proposal, the European Parliament only narrowly elected Ms. von der Leyen President of the Commission. Various political groups were torn apart, between bowing to the European Council and the chaos that could have ensued had the European Parliament voted otherwise. The process of appointment of the other members was dotted by parliamentary skirmishes and manoeuvrings and some of the candidates were rejected by the European Parliament after informal hearings, among them Ms. Goulard. Consequentially, the parliamentary vote of consent was postponed. At the time of writing, the new Commission is still unable to take office.

These events can be hardly told as a story about little paybacks and legal misconducts. This is a story about the evolving European Constitutional framework, about its fragilities, about its enduring contradictions.

In the *Editorial* published in the previous issue, this Journal expressed deep concern that the result of these elections, the rupture of the solidarity pact among the main forces of the Parliament, and the inevitable loss of weight of that institution, could disrupt the delicate institutional balance over which the political edifice of the EU has been built. At the first trial, hélas, this prophecy seems to come true.

There were a number of moves which the European Council could have attempted to prevent this rupture. From the holding of “appropriate consultations”, as suggested by Art. 17, para. 7, TEU to the exercise of the passive virtues, waiting for the European Parliament to find its internal balance. By so doing, the European Council would have demonstrated respect for the role of the European Parliament and longsighted political wisdom.

Far from being irreprehensible, thus, the unilateral choice of the future President of the Commission seems to have been inspired by the desire of the heads of State or Government of the Member States to re-take the full lead, at the expense of the European Parliament. By no means, however, this twist is a zero-sum game. In the complex institutional system of the EU, the loss of prestige, influence and power of one institution will hardly be compensated by the gain of another. The loss of influence of the European Parliament will fatally disturb the institutional balance, in such a way that it will be hard to recast it. If this is the first backlash of the populist wave in Europe, the process of the European integration is to have harsh days ahead.

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