

Never mind the Spitzenkandidaten: It's all about politics

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No sooner were the European elections over but EU policy and decision-makers became embroiled in a rather bitter debate about the so-called 'Spitzenkandidaten' system. Once again, a lot of time, effort and ink have been expended on what is a rather technical institutional dispute.

The Spitzenkandidaten, or lead candidates, is the definition for the procedure by which the main European political families campaigned for the election; they put forward the name of the person they would name as President of the Commission in the event of success at the ballot box.

Such a mechanism has been adopted to implement the provisions of Article 17.7 of the Treaty of Lisbon, which stipulates that

"Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members."

Many commentators have argued that the article is formulated somewhat vaguely because "taking into account" does not mean that the winner of the election is entitled to nominate the president of the Commission, or even less that such a nomination should be automatic.

The fact that the wording is not precise, however, also allows a different interpretation, i.e. that in the logic of the system the candidate nominated by the winning political family should have priority in trying to gain the backing of a majority of the members of the European Parliament. And it is for the latter to elect (or not) the *proposed* candidate.

This reading of the article is even more cogent in some of the national translations of the Treaty: for example the Spanish version refers to the result (*resultado*) and the German version to the outcome (*Ergebnis*) of the European elections.¹

¹ At the time of the Convention German MEP Elmar Brok, German MP Jürgen Mayer, and the then Spanish Foreign Minister Ana Palacio had proposed amendments to "add emphasis" by inserting the word "results" in the article. Czech Senator Josef Zieleniec had tabled a proposal to the same end: see Doc. CONV. 709/03 of 29th May 2003.

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Indeed, as with many legal provisions, and especially those that constitute the EU's legal framework, the text is deliberately ambiguous. It is the result of a compromise between those who at the time of the Convention wanted to 'politicise' the election of the Commission president to strengthen its democratic legitimacy and to raise citizens' awareness about the EU and the elections, and those who objected to such a development. We are now witnessing the same debate all over again.

Opponents of the system today maintain that the fact that five candidates have campaigned for the post of Commission president is the result of a sneaky manoeuvre on the part of the European Parliament, which is ever eager to grab powers from the Heads of State and Government (HoSGs).

It is important to bear in mind, however, that the candidates were chosen by the very same HoSGs in their capacity as de facto '*grands électeurs*' at their respective party congresses. It was the political families that decided to nominate the candidates, not the European Parliament. The prime ministers belonging to, for example, the European Peoples' Party, in a sense ratified that interpretation of the Treaty by approving the respective Spitzenkandidat.

In this respect, the EPP is a good case in point because it is the only one of the three main parties that actually held a vote to select the candidate, and the runner up unexpectedly became a serious challenger to the nominee who was eventually chosen. It can be argued that this injected additional legitimacy into the process.

Had they felt so strongly about the system, the members of the European Council could have very simply decided not to name a candidate, and defend their reasons to the electorate. The fact that they decided not to do so proves that they themselves realised that the idea had its democratic merits (either that or they did not want to confront public opinion and make the case for the 'traditional' method of appointing the president).

The option not to subscribe to the lead candidate process was there, as proved by the European Conservatives and Reformists (ECR) family, the only one that decided not to nominate anyone and a choice for which many ridiculed ECR at the time. Interestingly, the most important leader within the ECR is now also the one that is more vocal in speaking out against the system. However, in this respect one could argue that 'taking into account' also means acknowledging that the ECR has not won the election, so it is not entitled to nominate a candidate. Given that the European Council decides on this issue by qualified majority, it can only block the other names if it is able to muster a blocking minority.

Indeed, in terms of political dynamics it should be noted that the current setup of the European Council also sees a predominance of centre-right Heads of State and Government belonging to the EPP family. Any alternative candidate that could be put forward now would therefore presumably be a representative of that (same) political family, which shows that in the end the disagreement is mostly about the name, and the symbolism of 'letting the Parliament encroach on a (ostensible) prerogative of the Council'.

Those who argue against the appointment of the candidate that had been put forward by the EPP also point out that, contrary to expectations, the Spitzenkandidaten have not led to increased awareness about the elections, and they remain largely unknown to the majority of European citizens.

The first point is debatable, however, because for the first time since direct parliamentary elections, turnout has not actually decreased. And in the countries where the debates were given ample space, notably Germany, participation increased more substantially than elsewhere. Media coverage has also been higher than in previous campaigns, thus giving

marginally more chance to voters to become informed about the European dimension of the elections.

As for the second point, it is immaterial, since it is highly debatable that any alternative candidate now chosen by the European Council would be better known outside European policy circles. Suppose, for example, that former Finnish Prime Minister Jyrki Katainen, or Irish Prime Minister Enda Kenny were appointed by the Heads of State and Government: would they have stronger name recognition across Europe than the name(s) that are currently on the table? How many outside Portugal knew José Manuel Barroso before he was appointed?

Finally, another argument that has resonated in the press is that the current candidates would not be the right ones because they cannot deliver the kind of 'EU reform' that, so the argument goes, has been demanded by the large numbers of people who voted for protest/Eurosceptic parties. It should be obvious that there is no inherent contradiction between the Spitzenkandidaten process and EU reform; it all depends on the candidates that are put forward. Incidentally, even the names that are currently in the race could deliver EU reform, unless the latter is narrowly interpreted as rolling back Brussels' powers. This in turn cannot be construed as the main message delivered by the elections – not in most member states at least.

All in all, it seems that the so-called technical and legal arguments that are being advanced against the lead candidates' selection mechanism actually boil down to political choices – choices that are set against the increasingly confrontational climate between the European Council and European Parliament that has characterised their dealings in recent years.

The mechanism is far from perfect, and the process will take several rounds of elections to be fine-tuned and for the voters to become properly aware of it, but setting the machine in motion need not be rejected as an affront to democracy, or a subversion of the EU's legal order.

Ideally, in future elections there will be a stronger focus on (common) programmes, the candidates will be chosen more carefully based on their commitment to these programmes, and there will be a more standardised electoral law (not to mention a day), but for that to happen you need to start somewhere.

Meanwhile, the lead candidates can by all means be disregarded, but the Heads of State and Government should make it clear that this is a political decision, and one that should arguably have been defended before the vote.