

LINKING NATIONAL POLITICS TO EUROPE

by Simon Hix

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EXECUTIVE SUMMARY

- What the EU needs is a new political arena, where a genuine debate can be conducted, where choices can be made about the EU policy agenda and where the outcome will be supported by a section of the elected representatives and the public in every member state.
- Electing the Commission President by a majority of governments (as proposed in the Nice Treaty) will not achieve this goal. This might produce more competition, but the winning candidate would not be considered legitimate in those member states on the minority side.
- Electing the Commission President by a majority in the European Parliament would not work. Because European Parliament elections are, and are likely to remain, about national rather than European policies and government, the European Parliament does not have a mandate to select the EU executive.
- A presidential model for the EU - with a separate contest for the Commission President - would be better than either of these quasi-parliamentary models, as it would prevent the fusion of legislative and executive powers in the EU.
- A direct election of the Commission President would not work. Such a contest would suffer the same problems as European Parliament elections - low turnout, fought on national issues by national parties, and with little public interest or debate.
- The best solution is an indirect contest, where the Commission President is elected by national parliaments.
- This contest would force a real debate about what the EU should be doing between national politicians, national parties, the national media and the public in every member state - who focus their attention predominantly on national parliamentary politics rather than the EU.
- If candidates can only stand if they secure a certain level of support (e.g. five per cent of MPs) in almost all national parliaments, the winning candidate would be guaranteed to be supported by a section of the political establishment throughout the EU.
- The most likely outcome would be a close contest between prominent centre-left and centre-right politicians, both advocating moderate policies.
- For the first time the Commission President would have the legitimacy to propose policies that could be adopted by a Council majority. If these policies fail, or if the elected President breaks commitments made to their national supporters, they can be 'thrown out' at the next election.
- If member states are allowed to introduce direct elections to replace their national parliament votes, there could be an evolution to a more direct form of presidential democracy in the EU, which responds to voters' demands rather than to the whims of Europe's elites.
- Because constitutional reform of the EU must be ratified by national parliaments, this proposal has a greater chance of being implemented than proposals that would dramatically alter the institutional balance in the EU or reduce the power of national parliaments - such as direct election, or election by the European Parliament.

SECTION ONE: THE EUROPEAN UNION'S LEGITIMACY PROBLEM, AND FOUR CRITERIA FOR REFORM

The European Union (EU) is not, and may never become, a 'state'. But whether most European citizens like it or not, the EU has all the traditional powers of a 'political system'.¹

Executive power - the power to propose legislation and implement policies - is mostly controlled by the European Commission (except in the areas of 'intergovernmental' decision-making, where this power resides with the national governments). *Legislative power* - the power to enact decisions - is shared between national governments and the European Parliament. *Judicial power* - the power to enforce decisions - is shared between the European Court of Justice and the national courts.

These powers are exercised over almost all areas of public policy, including monetary policy, market regulation, social policy, environmental policy, consumer protection, competition policy, agricultural policy, regional policy, transport policy, research and development, asylum policy, trade policy, public health and education, development aid, foreign policy, and even defence co-operation. The EU budget may be small compared to national government budgets at less than two percent of total EU Gross Domestic Product (GDP). But the real authority of the EU resides in its ability to 'regulate' the production, distribution and exchange of goods, services, capital and labour in the world's largest single market. These regulatory powers are formidable, touching almost all aspects of economic and social behaviour in Europe.

The problem for a growing number of European citizens is that this emerging political system seems beyond the control of the very people in whose interests it is supposed to work.

If executive and legislative powers resided solely with national governments, and all decisions were taken by unanimous agreement between these governments, nobody would raise the question of the legitimacy of the EU. National governments are highly visible to their citizens, chosen through competitive elections, and are accountable to the promises they make in these elections. Hence, if a decision could not be made without the consent of every government, all European citizens would have their interests protected by the EU.

But, for good reasons, the governments have collectively agreed in various treaty reforms to delegate increasing executive power to the Commission and to take many legislative decisions, particularly in these regulatory areas, by qualified majority instead of by unanimity.²

In the case of the Commission, the efficiency of 'intergovernmental' policy-making is greatly increased by delegating initiative and implementing powers to an independent authority.³ This enables the Commission to develop policy expertise, to act as an honest broker in legislative bargaining, and to monitor the enforcement of legislation by the member states. For example, without the Commission playing this role in the construction of the single market, the governments would not have trusted each other to propose the necessary Europe-wide standards, or to monitor each other's implementation of these standards.

The governments have also understood that, as the EU has developed, the unanimity rule is less efficient than majority rule.⁴ First, unanimity tends to prevent policy reform - in political science lingo, it tends to 'lock in sub-optimal policies'.⁵ Under unanimity, it takes just one government to benefit from the existing 'sub-optimal' policy to prevent policy reform that would improve the outcome for everyone else.⁶ Second, with more member states, unanimity is harder to achieve. On every item on the EU agenda, there is at least one government ready to veto. So, as the EU has enlarged, the governments have introduced qualified majority voting in a greater number of policy areas.

The Result: An Unaccountable Commission and An Undemocratic Council Majority

The result has been a gradual drift away from unanimous 'intergovernmental' agreements towards a highly undemocratic and illegitimate political system at the European level.

First, the Commission is the least accountable political executive in the democratic world. Selection of the Commission President is far removed from Europe's voters: voters elect national parties in national parliaments, who form governments, who then elect the head of the EU executive. As a result, the Commission President is not really elected by the 'member states', but rather by the parties who happen to be in government when the choice was made. For example, Jacques Santer was the choice of the British government after John Major had vetoed the clear choice of the majority in the Council. This did not stop the next British Prime Minister, Tony Blair, from refusing to accept any responsibility for Santer's actions.

In no sense, then, is there a democratic contest for the Commission President: where the policy agendas of rival candidates are compared by national politicians and publics, where there is an electoral choice in favour of one candidate over the other, and where the 'scoundrel' can then be thrown out of office if they do not deliver on their promises or if they fail to govern effectively.

Second, majority rule is not simply a device to increase decision-making efficiency. Political scientists have for a long time argued that majority rule is qualitatively different to unanimity rule. Under unanimity rule, it is impossible to make a decision against the interests of any single government. Majority rule, in contrast, will produce outcomes that benefit those in the majority and punish those in the minority.

In the EU, use of majority voting inevitably means that some governments are on the minority side. If the EU were a legitimate system this would not be a problem. The Council majority would be acting on a proposal from a legitimate executive. The problem, however, is that the majority in the Council acts on proposals from an unaccountable Commission. As long as European citizens see their own national governments as more legitimate than the Commission, the citizens of the states on the losing side in the Council will feel the EU is imposing policies against their interests.

The main response of the EU governments has been to increase the powers of the European Parliament - both in the legislative process (where the governments act by majority rule) and in the procedure for choosing the Commission President.

However, in contradiction to many of the optimistic prophecies at the time of the first direct elections, European elections have not produced a choice between rival policy agendas for the EU or a democratic mandate for a majority in the European Parliament. This is because European Parliament elections are not fought on European issues or the rival manifestos of Europe-wide parties. Instead, throughout the EU, European elections are similar to other 'mid-term' electoral contests - such as local or regional elections - and are dominated by 'national' issues, parties and personalities, and the successes and failures of the parties in power at the national level.

The European Parliament has proved very effective at scrutinising and improving the quality of EU legislation, and opinion polls show that a growing number of people see the European Parliament as a trustworthy institution.⁷ But this is not the same as commanding a democratic mandate to elect the EU executive or to control the EU policy agenda. As a result, a majority in the European Parliament may

never be a sufficiently legitimate counter-weight to an unaccountable Commission or an illegitimate majority in the Council.

What Can be Done: Four Criteria for Reform

Consequently, the EU faces a festering 'legitimacy crisis', just as it embarks on the most dramatic political and constitutional changes in its history. These will be discussed in the Constitutional Convention launched by the Laeken European Council in December 2001.

Neither a return to intergovernmental practices nor a reliance on existing supranational methods will solve the legitimacy problem. Intergovernmentalism, requiring unanimous agreement by the governments, is a recipe for gridlock and stalemate, especially with the prospective doubling in the number of member states. Supranationalism, with more agenda-setting powers by the Commission and more majority voting in the Council, is a recipe for increasingly angry electorates, as a growing number of national groups feel they are on the losing side in the EU.

In a fully integrated political system, with a single democratic identity (a 'demos'), a classic 'majoritarian' solution would probably be best, as this would ensure an efficient connection between voters' choices and the exercise of executive power and legislative action. In such a majoritarian model, either the Commission President could be chosen by a straight majority in the European Parliament (a parliamentary model) or through a Europe-wide direct election (a presidential model).

But 'unified majoritarian government', where the executive and the legislative majorities are from the same side of the political divide, can only work in homogeneous societies. In deeply divided societies, like the EU, policies will only be legitimate under either: (a) 'consensus government', where decisions are made with the broad support of each of the main groups in society (i.e. 'intergovernmentalism'); or (b) 'divided majoritarian government', where the executive and legislative majorities are from different sides of the political divide.⁸

From this analysis, the constitutional reform of the EU should meet four criteria:

- 1) There should be a contest for the Commission President and the EU policy agenda, which promotes an open and democratic competition, and enables the winner of such a contest to be held to their policy promises.

- 2) This contest should be organised in a way that creates real debate about the rival policy alternatives and candidates which is less about entrenched 'pro' and 'anti' Europe positions and more about what the EU should be doing. This debate must be conducted in every member state by national politicians, national political parties, national media, and national voters.
- 3) This contest should not divide along national lines, with some member states on the winning side and others on the losing side, as this would increase rather than reduce the EU's legitimacy problems.
- 4) There should be a reasonable possibility of divided government, where the majorities choosing the EU executive (the Commission) and governing in the legislature (in the Council and Parliament) are from different sides of the political divide. This ensures moderate policy outcomes and checks and balances on the power of any one political force.

With a real contest involving a broad political discourse on the future of Europe, non-majoritarian government, and a possibility of divided government, policies adopted at the European level - initiated by the Commission and ratified by a Council majority - would be guaranteed to command broad national and political support.

Also, legislative proposals made by the Commission to the Council could then be passed by a qualified majority with full legitimacy. This would endow the supranational policy process of the EU with new authority - and hence reduce the problems associated with transferring policy competences from the intergovernmental to the supranational method.

I will argue in this pamphlet that these criteria are best met by the introduction of an election of the Commission President by national parliaments. To present the case for this reform, this pamphlet is organised as follows. Section two analyses why existing reform ideas would not resolve the legitimacy problem. Section three sets out the proposal for electing the Commission President by national parliaments, and discusses a possible scenario of how this might work. Section four then explains why this reform would be in the interests of both pro-Europeans and those critical of the EU. The main elements of the argument are then summarised in the conclusion.

Finally, Annex 1 contains how this proposal could be inserted in the Treaty. Annex 2, appended to this document, contains a possible scenario of how the contest might work.

SECTION TWO: WHY EXISTING REFORM IDEAS WILL NOT SOLVE THE PROBLEM

The Constitutional Convention will discuss three potential models:

- The model of the draft Nice Treaty (signed in December 2000), where the Commission President would be chosen by a qualified majority of EU governments instead of by unanimity;
- A classic 'parliamentary model': where, after a European election, the new majority in the European Parliament would elect the Commission President;
- A classic 'presidential model': where the Commission President would be directly elected by EU citizens in a Europe-wide contest.

A presidential model would probably be preferable to either of the other two models, as it would produce more checks and balances in the EU. However, direct election of the Commission President would probably not work.

2.1 Election of the Commission President by a Majority of Governments

Since the Treaty of Rome, EU heads of government have been required to choose the Commission President by unanimous agreement. As discussed in the introduction, the unanimity rule tends to produce policy failure. Also, the need to reach unanimous agreement has made the choice of the President more akin to the selection of the head of an international agency than the election of a head of a political executive. Unanimous agreement has inevitably led to compromises, package deals involving other posts (both inside and outside the EU), and candidates that reflect the desires of the most belligerent member states.

For example, unanimity rule has often enabled the British government, as one of the most vocal opponents of European integration, to force its preference on the other member states. In 1984, Margaret Thatcher vetoed French President Mitterrand's first choice of Claude Cheysson in favour of Jacques Delors, whom she believed was closer to her views on economics and European integration. Similarly, in 1994, John Major vetoed Belgian Prime Minister Jean-Luc Dehaene, who was Kohl and Mitterrand's first choice. In return, Kohl vetoed Dutch Prime

Minister Ruud Lubbers. The member states finally agreed on the Luxembourg Prime Minister, Jacques Santer, who Major felt would be less integrationist than either Lubbers or Dehaene, and Kohl felt would be a loyal servant of the heads of government. Then, in 1999, Tony Blair managed to secure his preference, former Italian Prime Minister Romano Prodi, who may not even have been the first choice of the then Italian Prime Minister.

Of these three recent Presidents, Jacques Delors clearly stands out as the exception rather than the rule. Despite the need to reach unanimous agreement, and belying rather sceptical assessments of Delors' abilities when he was first chosen, he emerged as a dynamic political leader, determined to set a clear policy agenda and to enforce his will on the rest of the Commission. Regardless of whether one would agree or disagree with Delors' policies, a Commission President with a clear agenda and a high public profile is preferable in terms of the accountability of EU decision-making. With an activist, agenda-setting Commission, EU governments were able to establish the single market and negotiate a deal on economic and monetary union. Without a strong Commission since the Delors Presidency, though, governments have tried to set the medium-term policy agenda themselves in the European Council rather than delegating this to the Commission. But this has led to ever greater policy stagnation and ineffective policy-making by the heads of government.

Recognising this problem, the governments have tried to create a Delors-style President through institutional means. In the Amsterdam Treaty (implemented in 1999), the Commission President was given the right to be consulted on the governments' choices for the other Commissioners, and was given the authority to decide the overall policy agenda of the Commission. Under the draft Nice Treaty (signed in 2000, but yet to be ratified), the governments proposed that the Commission President be given the power to allocate and re-allocate portfolios and to fire individual Commissioners. Together, these reforms grant the Commission President powers similar to those held by any Prime Minister in the European model of parliamentary democracy - what Walter Bagehot, the famous British constitutional historian, called a 'first among equals'.⁹

In addition, in signing the draft Nice Treaty in December 2000, EU governments proposed to choose the Commission President by qualified majority in the Council rather than by unanimity. This reform was in response to the need to increase the efficiency of the EU in the face of enlargement in the next decade from fifteen to 27 member states - which forced the member states to extend qualified majority voting in a number of areas. The governments made no consideration of whether this would increase or decrease the legitimacy of the EU (intergovernmental conferences simply do not promote such fundamental reasoning).

On the positive side, increasing the authority of the Commission President over the rest of the Commission, and introducing a majority vote in the Council will probably increase competition for the office, as more candidates are proposed. With more competition, there will probably be more media coverage and more debate in the Council about the policy agenda of the Commission President, although this debate is unlikely to be covered extensively in the national press.

Also, a majority election in the Council will reduce the possibility of making the choice of the Commission President part of a wider package deal. No member state will be able to threaten to veto the Commission President if they do not get their way on another issue.

On the negative side, though, selecting the Commission President by a majority in the Council is likely to reduce rather than increase the legitimacy of the Commission President. Under the current unanimity rule, a candidate for Commission President must command the support of every EU member state to win office. This means the Commission President is not able to govern without the prior support of all member states.

With majority rule, in contrast, there will inevitably be losers - those governments in the Council on the minority side who presumably would have preferred another candidate. For the first time, the head of the EU executive - who will have the power to allocate portfolios, fire Commissioners, set the EU policy agenda, and drive legislation through a Council majority - will be able to govern without the prior approval of some of the member states.

Above all, such a reform will lead to a new government-opposition dynamic in the Council. In the 'governing' majority will be those member states who backed the Commission President and who then will vote through his/her legislative initiatives under the same qualified majority voting rules in the Council. In the 'opposing' minority will be the member states who were on the losing side in the choice of the Commission President, who, as a result, will most likely be on the losing side on most legislative issues (until the next chance to choose the Commission President).

For example, imagine the situation in 1994 had the qualified majority rule been in place. The British government would not have been able to veto Jean-Luc Dehaene. In terms of his political leadership ability, Dehaene may have been a better Commission President than Jacques Santer. However, Dehaene would have made many more legislative proposals than Jacques Santer that were opposed by the British government and most British voters. Supported by the same Council

majority for the adoption of legislation, many of these proposals would have been adopted against the interests of the British government. Just think what this would have done to the level of opposition to the EU amongst an already sceptical public and media in Britain.

From this analysis we can conclude, as before, that a contest for the Commission President can only be legitimate if: (a) the contest does not divide the EU along simple national lines, where some member states support the Commission President and others are opposed; and (b) there is a reasonable likelihood that the Commission President and the majority in the EU legislature (the Council and the Parliament) are from different political and partisan traditions.

2.2 A Parliamentary Model: Election of the Commission President by a Majority in the European Parliament

Since the mid-1980s, the EU governments have dramatically increased the powers of the European Parliament.

First, the Single European Act (implemented in 1987), the Maastricht Treaty (implemented in 1993) and the Amsterdam Treaty (implemented in 1999) reformed and extended the European Parliament's legislative powers vis-à-vis the EU governments. So much so that the European Parliament is now a genuine 'co-legislator' with the Council (under the so-called 'co-decision procedure') in most areas of EU legislation.

Second, in the area of executive selection powers, in the Maastricht Treaty the European Parliament gained the right to be consulted on the governments' choice of the Commission President. In the Amsterdam Treaty, the European Parliament was formally given the power to veto the governments' nominee.

But in practice, this right of veto over the Commission President is relatively weak, as the nomination for President is still controlled by the governments in the Council. Only after approval in the Council is the nominee presented to the Parliament as a 'take it or leave it' offer. Under these conditions, research has shown that it is unlikely that the European Parliament would ever reject a candidate from the Council, because the governments can put pressure on their MEPs to support their candidate.¹⁰

As a result, one of the proposals on the table in the Constitutional Convention is that the Commission President should be elected by a majority in the European

Parliament following each set of European elections.¹¹

This might not require a Treaty reform, as it could be introduced informally within the current procedure - thereby the Council would simply allow the European Parliament to propose a candidate for Commission President before than deciding on their formal 'nomination'. (The precedent for using such informal interpretation rather than a formal Treaty change would be the interpretation of the Maastricht Treaty rule to 'consult' the European Parliament on the Commission President nomination, which in practice was interpreted as a right of the European Parliament to veto the Council's nominee).¹²

Nonetheless, in reality, this would be a fundamental constitutional change - from an intergovernmental model for choosing the head of the EU executive to a classic 'parliamentary model', where the EU executive would be chosen by the winning majority in European elections. The main political groups in the European Parliament would propose rival candidates for the Commission President in European elections, and the group that 'wins' the European elections (emerges with the most seats, but is unlikely to command more than 50 percent of seats in the EP) would try to form a parliamentary majority to support their candidate.

This may sound a good idea, given the universal practice of parliamentary government at the domestic level in Europe.¹³ But there is a major problem in applying the parliamentary model to the EU: European Parliament elections do not provide, and may never provide, a legitimate majority for choosing the Commission President.

The direct election of the European Parliament was first introduced in 1979. At that time, there was widespread optimism that these elections would usher in a new period of democratic competition over the agenda of the EU, and a consequent mass identification with the European project. For example, Walter Hallstein, the former President of the European Commission, predicted:

Such a campaign would force those entitled to vote to look at and examine the questions and the various options on which the European Parliament would have to decide in the months and years ahead. It would give candidates who emerge victorious from such a campaign a truly European mandate from their electors; and it would encourage the emergence of truly European political parties.¹⁴

But this has not happened.

This is because European Parliament elections are what political scientists call 'second-order national contests'¹⁵. What this means is that European elections are exactly like other domestic mid-term contests, such as local and regional elections, or parliamentary by-elections. As in these other 'second-order national contests', European elections are dominated not by Europe-wide issues, parties and candidates, but by national parties, policies and political leaders, and the battle for national executive office.

National parties do not have an incentive to fight European elections on European issues. Instead, there are high incentives for national parties, and the national media, to treat these contests as measures of public support for the parties in government at the domestic level. Victory for the governing parties demonstrates approval of their policies, while defeat demonstrates opposition. Voters have an incentive to go along with this game, using European Parliament elections either to indicate which national party they intend to vote for in the next national election or to signal their preferences for policies not pursued by the governing parties. They do this by voting for single issue parties, like Green parties or anti-immigration parties.

This 'second-order national contest' nature of European Parliament elections has two consequences:

First, there is a much lower turnout in European Parliament elections than in national general elections. For example, in 1994, the difference in turnout between the European Parliament elections and the previous national general elections in each member state was 28 per cent.¹⁶ In the 1999 elections, voter turnout fell to below 50 per cent for the first time. The people who stay home from the polls tend to be from the parties in government at the national level, as they see less reason to go out to vote.

Second, voters vote differently than if the contests were a genuine 'European' contest or national general election. They either vote to punish the parties in national government (by voting for the main opposition party), or to signal their policy concerns to the main political parties (by supporting smaller or protest groups).

These two consequences have the same effect: European elections tend to see a fall in support for parties in national government and a rise in support for opposition, minor and protest parties. For example, in the 1989 election, when centre-right parties were in power in most member states, the second-order effect produced a centre-left majority in the European Parliament elections. Conversely, in the 1999 elections, when centre-left parties were in power in most member states, the second-order effect led to a victory for the centre-right in the European

Parliament elections.

Defenders of the parliamentary model argue that the situation would be very different if the European Parliament were given the power to elect the Commission President. Whereas in past elections there was very little at stake, if a parliamentary model were to come into operation voters would be able to see a connection between how they vote in European elections and the formation of 'government' at the European level. After all, this is how it works at the national level, so it would be easy to explain a similar structure at the European level.

There are two main problems with this argument:

First, a similar argument was made after the early elections to the European Parliament - they are second-order contests because few people vote. Few people vote because the European Parliament does not have much power. The European Parliament is therefore not relevant for voters. Therefore the only solution is to increase the powers of the European Parliament. However, as the powers of the European Parliament, both in the legislative arena and in the choice of the Commission President have increased, turnout in European elections has actually declined, and voters continue to use these elections to punish or reward national governing parties.

Second, and probably more significantly, giving the European Parliament the power to elect the Commission President would not change the incentive structure for national parties and voters. There would still be far more at stake for political parties, the media, and voters in national elections than in European elections. Being the head of a national government is a far bigger prize (in most member states) than being the President of the Commission. As a result, regardless of whether rival candidates for the position are proposed in European elections, it is highly unlikely that they would become the main talking point of the European elections in every member state - which would be essential to make the parliamentary model work.

Furthermore, these problems do not even touch on the drawbacks of the parliamentary model for the EU. For example, a majority election of the Commission President in the European Parliament would suffer from the same drawbacks as a majority election in the Council. In a parliamentary model, the same majority in the European Parliament would be able to elect the Commission President and then pass their legislative proposals into law. This would be 'unified majoritarian government' and would lead to alienation of the politicians, parties and voters on the minority side.

Finally, it would even be rather paradoxical if the European Parliament desired the introduction of a parliamentary model at the European level. It is widely accepted in political science that parliaments in parliamentary systems are much weaker than parliaments in separation of powers systems. In parliamentary systems, the parliamentary majority may choose the executive, but the executive ends up 'controlling' the parliamentary majority - for example, by threatening to resign unless supported by the parliamentary majority.¹⁷ As a result, most parliaments at the domestic level in Europe are simply ineffective 'talking shops', that rubber-stamp legislation proposed by the executive. In contrast, in the United States presidential system and in the current EU separation of powers system, the US Congress and the European Parliament are extremely effective legislating bodies - who are able to force the executive to amend legislation to incorporate their policy aims.

2.3 A Presidential Model: Direct Election of the Commission President

Growing appreciation of the failure of European Parliament elections to make the EU fully legitimate and the undesirability of choosing the Commission President by a majority in the Council have led to growing calls for the introduction of a classic presidential model for electing the Commission President: via a Europe-wide direct election.¹⁸

The logic behind all these proposals is the following:

As a large and multinational political system, it is not appropriate for the head of the EU executive to be chosen by a 'parliamentary model'. The parliamentary model works in most countries at the domestic level in Europe because they are relatively homogeneous nation-states (although this form of parliamentary majoritarianism is criticised by the various regional and national minorities in Europe - such as the Scots, Catalans, Corsicans, Lombards and Bavarians). In a much larger and more diverse polity, divided into separate national and ethnic polities, there needs to be a separation of executive and legislative power which would produce checks and balances on the power of the legislative majority (in the Council and European Parliament) as well as on the power of the majority that chooses the EU executive.

The conclusion, then, is that the EU should be based on a presidential rather than parliamentary system, where the EU executive is chosen by a separate constituency (in a separate electoral contest) to the constituencies that choose the two branches of the EU's legislature - the 'states' in the Council, and the 'people' in the European Parliament.

Following from this analysis, the logical next step, so most scholars and practitioners claim, is to propose a direct election of the Commission President by universal suffrage.

The most popular plan would be to elect the Commission President at the same time as electing the European Parliament. The strategy of electing the head of the executive and the legislature at the same time is a common recommendation of political scientists.¹⁹ This allows the terms of office of the two branches of government to run in parallel. More significantly, this design gives a choice to voters of whether they want divided or unified government. If voters want unified government, they can support the same political majority in both institutions. But if they want divided government, they can split their votes and support different political majorities for each institution.

I find the basic logic behind preferring a presidential model over a parliamentary model for the EU, and behind holding the contest at the same time as European Parliament elections, very persuasive. As discussed in the previous sections, it is probably not a good idea that the legislative majority in the EU - in either the Council or the European Parliament - gets to elect the head of the EU executive.

But the next step of the argument - that the Commission President should be elected by universal suffrage in a single European-wide contest - is highly problematic.

First, direct election of the Commission President would almost certainly suffer from the same 'second-order' problems as direct elections for the European Parliament (see above). As with European Parliament elections, there would be little incentive for national parties and the national media to fight an election for the Commission President on European issues. Instead, the contest would be dominated by the positions of the various national parties towards the prospective candidates. As in all second-order elections, the direct election of the Commission President would be little more than a series of separate national referendums on the popularity of the parties in national executive office.

Hence, just as with European Parliament elections, voter turnout in a direct election of the Commission President would be extremely low, as few people would be motivated to go out and vote. In addition, because governing party supporters would stay home and other voters would be motivated to signal their opposition to the policies of the national government, the candidate supported by the main opposition party in each member state would probably do considerably better than the candidate supported by the governing party. Consequently, the winning candidate would not be able to claim that they had a genuine popular mandate.

Second, the direct election of the Commission President would also suffer from some of the problems associated with majoritarian rule by the Council (see above). In a straight direct election of the Commission President, where every citizen's vote is treated equally, the outcome would be decided by the more populous EU member states. (Perhaps it is no surprise that the recent proposals have come from the most populous member state - Germany!). Candidates would only bother campaigning in the larger EU member states, in the knowledge that if they were to win majorities only in these states, this would outweigh a loss in all the smaller states. This calculation would not change even in an enlarged EU, as most of the EU's population would still live in the six largest EU states (out of the prospective total of 27).

As discussed above, such a majoritarian outcome would not be a problem in a highly politically integrated and homogeneous polity. However, the EU is a 'union of states'. Hence, an outcome whereby the head of the EU executive is elected by a majority in only a minority of states would not be legitimate for the citizens of most member states.

In a sense, then, direct election of the Commission President combines the problems inherent in European Parliament elections with the problems inherent in choosing the President by majority rule by a majority of governments. It might in fact be the worst of both worlds!

Even if one accepts the logic of the argument about a separation of executive and legislative majorities, we should conclude from this analysis that a contest for the Commission President would only work if: (a) the contest is not held by a direct election, but instead through some form of non-direct election, via an 'electoral college'; and (b) the contest produces a 'non-majoritarian' outcome, where the winner is supported by a section of the political leadership and the citizens in almost every member state.

SECTION THREE: A 'MIXED' MODEL: ELECTION OF THE COMMISSION PRESIDENT BY NATIONAL PARLIAMENTS

We can draw two main conclusions from the preceding analysis:

First, at the current stage of the EU's development - where voters, parties and the media are predominantly focused on the contest for control of the national, rather than the European, policy process, direct elections (either for the European Parliament or for the Commission President) will not increase the legitimacy of the EU.

Second, because Europe is divided into separate nation-states, and because there are large discrepancies in the size of these national groups, majority rule (either through a fusion of an executive and legislative majority or through simple election of the Commission President) will undermine rather than reinforce the legitimacy of the EU.

The best solution, then, is to establish a contest over executive and agenda-setting power in the EU that is both indirect and non-majoritarian, via the indirect election of the Commission President by national parliaments.

The proposal has five elements:

1) An electoral college composed of the lower houses of national parliaments

The most legitimate and efficient way of holding an indirect election for the Commission President is to allow the vote to be taken by the lower houses of national parliaments. National parliaments are the main democratic and sovereign bodies in Europe's representative democracies.

There is widespread concern that national parliaments have suffered as a result of European integration. By delegating more policy competences to the European level, national governments have transferred legislative power away from national parliaments to the executive branches of government in the EU: the European Council and the European Commission. At Laeken, the EU governments acknowledged this problem by putting the issue of the powers of national parliaments on

the agenda of the Constitutional Convention.

So, as well as allowing for a contest over the Commission President, giving national parliaments the right to choose the Commission President would be a very straightforward way of giving national parliaments a genuinely significant role in the EU system.

In terms of the contest itself, election by national parliaments would not suffer from the so-called 'second-order' problems inherent in the direct election of the European Parliament or in a direct election of the Commission President.

First, there would be a political debate in every national parliament about the choice for Commission President, and the candidates' respective policy agendas. In all likelihood, each of the candidates would be invited to present their manifesto to each national parliament. Since the media in every member state is predominantly focused on national parliamentary politics, these manifestos, and the ensuing positions of the various national parliamentary factions, would receive considerable media coverage. For the first time, there would be a real Europe-wide political debate on the policy direction of the EU.

Second, unlike European Parliament elections, a ballot of national parliamentarians would not be dominated by the policies and popularity of the parties in national government. Parties in national government will no doubt express their support for one or other of the candidates. But the outcome of a parliamentary ballot would not be an indication of which national party the public would vote for in the next national election.

Furthermore, an electoral college composed of national parliamentarians would be different from the US Presidential electoral college in two important respects: (1) the Commission President electors would reflect the balance of voters' choices in the previous national general election, rather than in a specific election for the Commission President; and (2) the Commission President electors would be full-time professional politicians, rather than party officials chosen for their party loyalty.

2) Ensuring a non-majoritarian and transnational outcome

a) Each national parliament (lower house) has a number of 'Electoral College Votes' equal to their member state's representation in the European Parliament

Having specified that ballots should be held in national parliaments, a decision needs to be made about how much weight to give to each MP's vote. To ensure a fair and non-majoritarian outcome, the best method would be to allow for the population of a member state to determine the share of the vote, but at the same time allow for some over-representation of the smaller member states.

In the EU this could be done by giving each member state a number of 'Electoral College Votes' (ECVs) equal to their number of Members of the European Parliament (see Table 1). Representation in the European Parliament has been specifically designed to balance population with states' rights, and is probably a better balance of these qualities than the allocation of votes in the Council.

For example, the largest member state, Germany, with a population of 82 million and 669 members of the Federal Parliament (lower house), would have 99 ECVs in the contest for Commission President. This would be one ECV per 800,000 German citizens and seven German MPs. At the other extreme, the smallest member state, Luxembourg, with a population of 450,000 and 60 members of parliament, would have six ECVs. This would be one ECV per 75,000 Luxembourg citizens and ten Luxembourg MPs.

Such a system would force candidates to campaign throughout the EU, as they would need to secure support beyond the largest EU member states. And, such a vote allocation would guarantee that the winner would have secured support in a majority of member states.

b) Candidates must secure support from at least five percent of MPs in at least two thirds of member states

Securing support in a majority of member states is not sufficient to produce a legitimate outcome. A non-majoritarian outcome, as set out as one of our criteria, can only be guaranteed if (a) the contest does not pit one national group against another, and (b) the winning candidate is supported by, and accountable to, a section of the elected representatives in every member state.

To achieve this, candidates should be required to gain support from a certain number of MPs in every member state. Ideally, candidates should have to secure backing in every national parliament. In practice, however, if candidates are required to gain formal backing (via MPs' signatures) in two thirds of parliaments, they would almost certainly receive support from some MPs in every parliament. Also, to limit the number of candidates and to ensure a reasonable level of support across the EU, the candidates should be required to gain a certain level of support in each of

these parliaments. Five per cent of MPs might be an appropriate figure.

The signatures of these MPs should be collected by a given date - such as one month before the European Parliament elections - which would be almost two months before the national parliament ballots, if the ballots were held a few weeks after the European Parliament elections (see the Annex).

c) The role of Europe-level political parties

The practical effect of these candidate-selection rules would be that candidates would be chosen by the main transnational political parties: the Party of European Socialists (PES), the centre-right European People's Party (EPP - Christian Democrats and Conservatives), the European Liberal, Democrat and Reform Party (ELDR), and the European Federation of Green Parties (EFGP). These so-called 'Euro-parties', which were established in the 1970s in the build-up to the first direct elections to the European Parliament, have evolved into organisations primarily for exchanging views and co-ordinating national party policies on EU issues. The main institutions of these Euro-parties are the 'party leaders' summits', which bring together the national party leaders, the party group leaders in the European Parliament, and other leading figures in each transnational party. These summits are held every couple of months, and immediately before every European Council (and often in the same venue).²⁰

These Euro-parties, meeting at the level of national party leaders, would be the ideal vehicles for building transnational political alliances behind a particular candidate, organising the collection of MPs' signatures to secure a candidate's selection, drafting and agreeing the manifestos of the candidates, and recruiting senior national political figures to their 'presidential campaign teams'. In other words, these Euro-parties would be essential lubricants of the electoral process.

Over time, the indirectly elected Commission President may emerge as the effective 'European Party Leader' of their particular Euro-party, attending every party leaders' summit, and making policy recommendations to their parties' group in the European Parliament and to their national party leaders in the European Council. In return, the elected Commission President would probably be held accountable to the manifesto that was agreed with the other members of their Euro-party. This would work since the national member parties could threaten to support a different candidate in the next election, and so undermine the chances of the Commission President from being re-elected if their candidate refused to abide by the manifesto agreed by the Euro-party.

This relationship between the transnational party federations and an elected Commission President could in fact be formalised in parallel with the adoption of the European Party Statute, which is currently being drafted and will regulate the organisation and funding of the Euro-parties. For example, a rule could be agreed that stipulates that a candidate can only be proposed by a 'European political party' as defined by the European Party Statute (which is likely to require that European parties must have member parties in a certain number of EU states, are internally democratic, have transparent financial arrangements, have a common political manifesto etc.)

3) When and how to hold the parliamentary ballots

a) On the same day

The national parliaments could hold their ballots on different days, as with the European Parliament elections. However, the ideal solution would be to hold the ballots on the same day, maybe the third Monday after the European Parliament elections. This would allow the term of office of the Commission President to be unchanged (see below).

Also, to avoid one national parliament ballot influencing how MPs vote in another parliament, the results from each ballot - and the consequent allocation of the Electoral College Votes - should not be announced until it has been confirmed that all national parliaments have counted their ballots.

b) In public, and recording how the MPs voted

A choice would also need to be made about whether the parliamentary ballots should be in secret or 'roll call' - where how each MP votes is recorded in the public record.

A secret ballot would prevent national party and parliamentary leaders from enforcing party discipline in the vote.

But the best solution in terms of the accountability of the Commission President would be to stipulate that all ballots should be by roll call, and that the direction of every MP's vote should be recorded in the official record of each parliament and in the Official Journal of the EU.

This would allow the media and the public to see which parliamentarians and party

factions supported each candidate. This is essential for the establishment of a connection between the Commission President and a section of the political leadership and their supporters in every member state.

This connection works both ways. On the one hand, the MPs who supported the elected President would be responsible for advocating 'their' President's policies to the media and public in their member state. On the other hand, if the President proposes unpopular policies, these MPs would be able to threaten not to support the President for re-election. This would be a significant improvement on the current system, where the Commission President is chosen in the Council, and where the governments do not claim any responsibility for their choice (as discussed above).

4) Counting the parliamentary ballots and electoral college votes

a) Proportional representation in each parliament, but allowing each parliament to decide which formula to use (or whether to hold a direct election)

One of the most politically difficult decisions would be how to allocate the Electoral College Votes to the candidates on the basis of the ballots in each parliament. This decision could be left to each parliament. However, to ensure that the influence of each parliament is proportionate, a single procedure should be used, or a single set of principles should be agreed, which could then be interpreted by each parliament.

For example, in US Presidential elections, electoral college votes are allocated on a 'winner takes all' basis, where the candidate who wins a simple plurality of the popular vote in a state wins all the electoral college votes of that state.²¹ But, as we saw in the 2000 Presidential election, this allocation method can produce a result where the candidate with the majority in the popular vote does not win the electoral college vote. The fact that this has only occurred on four occasions in American history is probably more a matter of luck than good constitutional design!

In addition, a 'winner takes all' allocation rule would not produce the non-majoritarian outcome we are seeking, where the winning candidate is supported by, and accountable to, a section of the electors in every member state.

A better method would be 'proportional representation' (PR): where the Electoral College Votes of a state are allocated to each candidate in proportion to their share of the ballot in that state's parliament. This way, if a candidate secures backing in

each state in order to stand in the election, they are likely to receive a certain number of Electoral College Votes from that state in the contest. Furthermore, with PR instead of 'winner takes all', it is almost certain that the winner of the 'popular vote' (of national MPs) would also win the highest number of Electoral College Votes.

There are a number of different methods under PR for translating votes into seats, or, in our case, parliamentary ballots into Electoral College Votes - for example, the 'largest remainder' or 'divisor' methods (such as d'Hondt or Sainte-Laguë).²² If a general principle of proportionality is accepted, each national parliament could choose separately which counting method to use.

Each parliament could also decide how to count abstentions - either not to count MPs who abstain in the ballots, or to allocate ECVs to 'none of the candidates' if there are enough abstentions to warrant this.

Another advantage of an election by each national parliament is that, over time, voters in each member state might demand that the Commission President should be voted directly by them, instead of by their national parliaments. As this is likely to occur in different member states at different times, each national parliament could be free to decide whether to hold a direct election on a case by case basis. This way, instead of a direct election being imposed on a public that is not interested in such a contest, it could be introduced in response to voters' demands. Presumably, if voters had demanded a direct election, it would be less likely to suffer from the second-order problems we discussed.

b) An absolute majority, and a run off between the top two

A choice would also need to be made about how to decide the winner.

For example, a simple plurality rule could be applied, whereby the candidate who receives the most Electoral College Votes wins the contest. However, if there are more than two candidates, the winner under a simple plurality rule is unlikely to obtain a 'majority' of the ECVs.

A better method, which is used in most direct presidential elections in the world, is to require that the winner must secure an 'absolute majority' (fifty percent plus one) of the ECVs. For example, in an EU with 21 member states (the number after the first phase of enlargement), the winner would have to receive 321 of the 640 ECVs to win the contest (see Table 1).

If no candidate achieves this, a second 'run off' contest would be held between the two candidates with the most ECVs in the first round. This run off could be held one week after the first vote, and under the same vote counting and allocation rules as the first contest.

5) Leave the Commissioner nomination and censure rules unchanged

Finally, the election of the Commission President by national parliaments would inevitably increase the authority and prestige of the Commission President. But any informal change in the balance of power between the EU institutions resulting from the indirect election of the Commission President could be limited if the other rules governing the nomination and censure of the Commission are unchanged.

This would also be important in maintaining the European Parliament's incentive to scrutinise policy implementation and administrative behaviour by the Commission. If the European Parliament were removed from the ratification and removal process, this incentive would disappear, and the EU would lose what has become a very effective watchdog for EU voters and taxpayers.

a) Term of office of the Commission

If unchanged, the term of office of the Commission President would run concurrently with the term of office of the European Parliament. This would allow the old appointment timetable to remain in place: with European Parliament elections held every four years in June, the Commission President elected by national parliaments in late June/early July, the appointment of the other Commissioners in September and October, ratification of the Commission as a whole in December, and the term of office of the new Commission beginning in January of the following year.

In addition, if left unchanged, the office of the Commission President would be renewable as many times as the candidate so desires - assuming, of course, that they can win re-election.

But introducing a system of indirect election for the Commission President might be the right time to introduce 'term limits', by stipulating that a Commission President can only stand for two terms, as in many presidential elections in democratic systems.

b) Selection and ratification of the other members of the Commission

If left unchanged, the selection and ratification of the other Commissioners would ensure a reasonable national and partisan representation in the College of Commissioners as a whole.

Under the Nice Treaty reforms, the other members of the Commission would be chosen by the national governments 'acting by a qualified majority in accord with the President'. In practice, the party in government in each member state would negotiate their nomination for Commission in consultation with the President-elect. As with the current non-elected system, if the member state of the President-elect has one Commissioner, they would not have a second nomination. If, on the other hand, the member state of the President-elect has two Commissioners, they would only have one other nomination.

Furthermore, under the Nice Treaty reforms, the President-elect would have an influential role in determining the initial allocation of portfolios between the other members of the Commission, would be able to re-allocate portfolios once the full Commission took office, and would also be able to force an individual Commissioner to resign in the face of serious allegations of misconduct or incompetence.

As in the current practice, these nominations would then be subject to scrutiny by the European Parliament in hearings before the relevant committees (who have consciously modelled this practice on the US Senate hearings of US Presidential nominations to his/her Cabinet).

And, as before, the Members of the Commission would be subject to a 'vote of approval by the European Parliament'.

However, the President-elect would need to be given a derogation from being subject to this parliamentary ratification, to avoid a potential conflict between the majorities in national parliaments and the European Parliament.

c) Censure of the Commission by the European Parliament

Finally, the European Parliament would still maintain the right to censure the Commission, which it has held since the Treaty of Rome (implemented in 1958).

Fitting with our model of a separation of executive and legislative majorities, the

right to censure the Commission by the European Parliament is more akin to the right to impeach a President (in a presidential system) than the requirement that a government command a 'working majority' in a parliament (in a parliamentary system).

A censure of the Commission President can only be passed in the European Parliament by a 'double majority': an absolute majority of all MEPs (regardless of how many MEPs take part in the vote), plus two-thirds of the votes cast. This ensures that only a 'super-majority' in the European Parliament can censure the Commission. In practice, a censure motion can only be carried for the equivalent in the EU of what the US constitution calls 'high crimes and misdemeanours'. For example, despite several attempts in the European Parliament, the only time a censure motion had a reasonable chance of being passed was in the case of the corruption and mismanagement scandals surrounding the Santer Commission in early 1999. On that occasion, facing the prospect of a censure vote in the parliament, the Commission chose to resign the day before the vote in plenary (rather like Nixon resigning before the prospective impeachment vote in the U.S. Senate).

If the rules regarding censure were maintained, and an elected Commission President were censured by the European Parliament, an interim Commission President (and full Commission) would be nominated by the European Council and approved by the European Parliament. This interim Commission would sit until the next proper election and selection procedure.

SECTION FOUR: TEN REASONS TO SUPPORT THIS PROPOSAL

The indirect election of the Commission President by national parliaments is preferable to the current status quo for at least ten reasons:

- 1) There would be a genuine debate about the future of the EU and the direction of the EU policy agenda. This debate would be covered in the national media because of their dominant focus on national parliamentary politics. For the first time, this debate would be about the actual policy direction of the EU, rather than whether or not the EU is a good thing.
- 2) There would be new checks and balances in the EU. In the current system, a Council majority can choose the head of the EU executive and then implement their legislative proposals. But if the Commission President is chosen in a separate contest, the head of the EU executive is more likely to be from a different political tradition than the Council majority, and would not be forced to propose only those policies supported by the governments that had voted for them during the election.
- 3) The Commission President would have supporters in every member state, who would then be accountable for their votes for the incumbent President. Because candidates can only stand if they secure a certain level of support in most national parliaments, it would be guaranteed that the winning candidate be supported by a section of the political establishment, and their supporters, throughout the EU.
- 4) EU policy-making would be open to full public scrutiny for the first time. The manifestos of the candidates would be picked apart by the national press across Europe. Also, since there would probably be enough MPs in enough national parliaments for a more EU-critical candidate to stand, anti-European voices would be heard throughout the EU for the first time.
- 5) There would probably be a run off contest between a leading centre-left and a leading centre-right politician. The battle would be over the policy agenda for the EU, with both candidates advocating moderate policies (as the scenario in Annex 2 shows). These politicians would already be well-known across Europe, and would probably become household names.

- 6) The sovereignty of national parliaments would be strengthened rather than weakened. Of all the proposals to involve national parliaments in the EU - such as allowing national parliaments to scrutinise EU legislation or creating a 'second chamber' of national MPs in the EU - this is the simplest and most efficient. Just as national executives are accountable to majorities in national parliaments, so too would be the head of EU executive. As a result, this proposal would have more chance of being ratified than more radical proposals - such as Europe-wide referendums, a direct election of the Commission President, or a full-blown federal system for the EU.
- 7) There would be a democratic brake on the 'unaccountable Brussels bureaucracy'. If the elected President strays too far from his/her manifesto promises, national parliaments would be free to 'throw the scoundrel out' at the next election.
- 8) Direct democracy in the EU could develop in response to public demand, instead of being imposed by Europe's elites through a Treaty reform. If national parliaments are free to replace a parliamentary vote with a direct election for the Commission President in their state, there would be the possibility of gradually moving to a Europe-wide direct election of the head of the EU executive.
- 9) The existing institutional balance in the EU would not be fundamentally altered. The formal power of legislative initiative and policy implementation by the Commission and the power of policy enactment by the Council would be unchanged, and the intergovernmental areas of decision-making would not be touched. Also, the national governments would retain the right to appoint the other members of the Commission, and the European Parliament would retain the right to adopt legislation in parallel with the Council and to censure the Commission.
- 10) Over time, a consensus on the bigger constitutional questions - about the basic design of the EU - might emerge through the contest for the Commission President. Initially, because the institutional balance would not be affected, an indirect election of the Commission President would not influence the debate about whether the EU should be based on a basic intergovernmental or federal model. But, over time, a dominant position might emerge as a consequence of the wider public debate and understanding of the EU that would result from the contest over the Commission President.

SECTION FIVE: CONCLUSION

When James Madison and Alexander Hamilton designed an indirect election for the US President, they argued that it was vitally important that there should be a contest for the most powerful executive office in American government. But they also believed that the United States at the end of the eighteenth century was not ready for direct democracy. The direct election of the President would be conducted separately in each state, rather than as a genuine 'continent-wide' contest.²³ When it came to adopting the constitution, the electoral college system was specifically designed to appease the smaller southern states, who feared that, if the electoral college votes were allocated purely on states' populations, the election would be dominated by the more populous northern states.²⁴

The logic developed in this pamphlet is somewhat similar:

To increase the legitimacy of the EU, and to improve the connection between the will of the EU citizens and the policies of the EU, there should be a contest over the policy agenda of the EU. The best way to do this is through a contest for the Commission President - who, in most policy areas, is exclusively responsible for proposing legislation to be adopted by the EU governments by only a qualified majority.

However, choosing the Commission President by a majority in the Council and/or the European Parliament - a parliamentary model - is not right for the EU. This would allow the majorities in the Council or Parliament to dominate the executive as well as the legislative process, and hence rule against the interests of the nation-states or political parties on the minority side. In the EU's heterogeneous society, such a 'majoritarian' solution would be a recipe for disaster.

As a result, a separate election of the Commission President - a presidential model - would probably be better for the EU. This would reduce the likelihood that a particular political majority would be able to dominate the EU system.

But direct election of the Commission President would probably not work. As direct elections for the European Parliament have repeatedly shown, such a contest would not lead to a debate over European-wide priorities and the virtues of the candidates.

The best solution is a middle way between these ideal types - an 'indirect' election of the Commission President via an electoral college composed of national parliaments.

As Table 1 shows, only an indirect election by national parliamentarians would meet the four criteria we set out in the introduction. There would be a contest for the highest political office in the EU. This contest would be covered in all the national press and so would facilitate an EU-wide political discourse about the policy agenda of the EU for the first time. The winner of the election would command the support of a section of the elected representatives in every member state. Finally, there would be a high likelihood of fair and balanced government in the EU - with no particular national group or political party family able to dominate the EU policy agenda.

HOW THIS MIGHT WORK IN PRACTICE

An example of how this proposal might work in practice is appended to this publication. If, for some reason, this is not included, please download a copy from www.network-europe.net or contact networkeurope@fpc.org.uk.

Table 1. The Four Reform Options

Compared against The Four Criteria for Reform

THE CRITERIA	Election of the Commission		President by...	
	...A MAJORITY IN THE EUROPEAN COUNCIL	...A MAJORITY IN THE EUROPEAN PARLIAMENT	...DIRECT ELECTION	...NATIONAL PARLIAMENTS
1) A contest?	YES More governments will propose candidates.	YES The EP party groups would propose rival candidates in European elections.	YES The European party federations would propose rival candidates.	NO The more populous member states would dominate the outcome.
2) Wider (national) debate on the future of the EU?	NO The decision will still be made behind closed doors in the Council, and without much more media coverage of the rival agendas.	NO EP elections would still be fought by national parties on national issues (the 'second-order' effect), and there would be no EU-wide debate.	YES The European party federations would propose rival candidates.	YES Candidates would have to command support in each member state, and the votes would be weighted to balance 'nation' and 'population'.
3) A cross-national majority (no member state on the losing side)?	NO By definition, some member states will be on the winning side, with others on the losing side.	YES The winner would command a cross-national majority because the EP party groups that support them would contain MEPs from every member state.	NO EP elections would still be fought by national parties on national issues (the 'second-order' effect), and there would be no EU-wide debate.	YES A separate election would increase the possibility that the Commission President and the majorities in the Council and EP are from different sides of the political divide.
4) Possibility of divided government?	NO The same majorities will choose the head of the EU executive and then be able to pass their legislative proposals.	NO By definition, the parliamentary model would unify the political majorities that choose the executive and then form legislation.	YES The media focus on national parliaments would ensure widespread coverage and debate, conducted by national politicians and media.	YES A separate election would increase the possibility that the Commission President and the majorities in the Council and EP are from different sides of the political divide.

ANNEX ONE. PROPOSED AMENDMENT

Italics indicate where wording would

Current Treaty - Art. 214 [ex 158] (as amended by the Nice Treaty)

1. The Members of the Commission shall be appointed, in accordance with the procedure referred to in paragraph 2, for a period of five years, subject, if need be, to Article 201. Their term of office shall be renewable.

2. *The Council, meeting in the composition of Heads of State or Government and acting by a qualified majority, shall nominate by common accord the person they intend to appoint as President of the Commission; the nomination shall be approved by the European Parliament.*

The Council, acting by a qualified majority and by common accord *with the nomination of the President*, shall adopt the list of other persons whom it intends to appoint as Members of the Commission, drawn up in accordance with the proposals made by each Member State.

The President and the other Members of the Commission thus nominated shall be subject as a body to a vote of approval by the European Parliament. After approval by the European Parliament, the President and the other Members of the Commission shall be appointed by the Council acting by a qualified majority.

OF ARTICLE 214 OF THE EU Treaty

change with the proposed reform

The

Proposed Reform

1. The Members of the Commission shall be appointed, in accordance with the procedure referred to in paragraph 2, for a period of five years, subject, if need be, to Article 201. Their term of office shall be renewable.

2. *The President of the Commission shall be chosen by the following procedure.*

Any citizen of the European Union can be a candidate for President if by one month prior to the election of the European Parliament he or she can demonstrate that they have the support of at least five percent of the members of the national parliament in at least two-thirds of the Member States.

On the third Monday following the election of the European Parliament, the members of the main chamber of the national parliament of each Member State shall vote on the candidates for President. How each parliamentarian votes shall be recorded in the Official Journal.

Immediately following the vote, each Member State shall exercise a number of Electoral College Votes equal to the number of Members of the European Parliament of that Member State. Each Member State shall award their Electoral College Votes to the candidates for President in proportion to the number of votes received for each candidate in the national parliament contest in that Member State.

A candidate is elected President of the Commission if he or she secures an absolute majority of the total number of Electoral College Votes. If no candidate secures an absolute majority, a run-off contest shall be held, exactly one week later and under the same procedure, between the two candidates with the most Electoral College Votes in the first contest.

3. The Council, acting by a qualified majority and by common accord with *the President*, shall adopt the list of other persons whom it intends to appoint as Members of the Commission, drawn up in accordance with the proposals made by each Member State.

4. *The other Members of the Commission* thus nominated shall be subject as a body to a vote of approval by the European Parliament.

Endnotes

- 1 See, for example, Simon Hix (1999) *The Political System of the European Union*, Basingstoke: Macmillan.
- 2 Qualified-majority voting is a system whereby the number of votes for each government is weighted (broadly in relation to its population, but with a deliberate over-representation for smaller states), and an oversized majority (of approximately 72 percent) is required for decisions to be made.
- 3 See Giandomenico Majone (1996) *Regulating Europe*, London: Routledge, and Andrew Moravcsik (1998) *The Choice for Europe*, Ithaca: Cornell University Press.
- 4 See Geoffrey Garrett (1992) 'International Cooperation and Institutional Choice: The European Community's Internal Market', *International Organization*, Vol. 46, No. 2, pp. 533-60.
- 5 On the EU see Fritz W. Scharpf (1988) 'The Joint Decision-Trap: Lessons from German Federalism and European Integration', *Public Administration*, Vol. 66, No. 3, pp. 277-304, and Paul Pierson (1996) 'The Path to European Integration: A Historical Institutionalist Analysis', *Comparative Political Studies*, Vol. 29, No. 2, pp. 123-63. On the general issue of veto-players and policy stability see George Tsebelis (1995) 'Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism', *British Journal of Political Science*, Vol. 25, No. 2, pp. 289-325.
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- 18 See Guy Verhofstadt (2000) 'A Vision for Europe', speech given to the European Policy Centre, Brussels, 21 September 2000, http://www.theepc.be/About_The_EPC/EPC_Documents/Communications_Doc/305.asp?ID=305. Also see Vernon Bogdanor (1986) 'The Future of the European Community: Two Models of Democracy', *Government and Opposition*, Vol. 22, No. 2, pp. 344-70, and Michael Laver, Michael Gallagher, Michael Marsh, Robert Singh and Ben Tonra (1995) 'Electing the President of the European Commission', Trinity Blue Papers in Public Policy: 1, Dublin: Trinity College.

19 For example, Matthew S. Shugart and John Carey (1992) *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*, Cambridge: Cambridge University Press.

20 On the emergence and role of the transnational party federations and the party leaders' summits see Simon Hix and Christopher Lord (1997) *Political Parties in the European Union*, Basingstoke: Macmillan.

21 Except in Maine and Nebraska.

22 For a clear and concise explanation of the difference between the 'largest remainder' and 'divisor' counting methods under proportional representation see David M. Farrell (1997) *Comparing Electoral Systems*. New York: Prentice Hall.

23 "Publius" (Alexander Hamilton) (1788) 'The Federalist LXVIII', *Independent Journal* (New York), March 12, 1788, in Bernard Bailyn (ed.) *The Debate on the Constitution, Part Two*, New York: The Library of America.

24 See Henry Chapel Jr. and William Keech (1989) 'Electoral Institutions in The Federalist Papers: A Contemporary Perspective', in Bernard Grofman and Donald Wittman (eds) *The Federalist Papers and the New Institutionalism*, New York: Agathon.

25 The political streams in Table 1 is based on the allocation of national parties to party families in the EU political space in Hix and Lord (1997), *op.cit.* (note 20). However, I have made two necessary changes from the Hix-Lord framework. First, the Conservative/Christian Democrat family is split in two - to reflect how the European integration 'cleavage' splits this family more than any other, and so might very well support different candidates for Commission President. Second, the Greens have been combined with the more leftist regionalist parties ('Left Regionalist'), as they sit together in the European Parliament and have very similar policies on European integration, and so would most likely support the same candidate for Commission President.

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Simon Hix
London
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NEXT GENERATION DEMOCRACY: LEGITIMACY IN NETWORK EUROPE

The 'Next Generation Democracy' project explores the theme of legitimacy in an enlarging Europe, organised around five themes: Matching Policies to Public Priorities, Accountability, Political Competition, Participation and Representation. 'Linking National Politics to Europe' is the first output in the 'Political Competition' theme.

The initial output of each theme will be a policy brief, which will aim to direct the thoughts of the next generation of policy makers towards solving key problems thrown up by debates about democracy, legitimacy and accountability in Europe. Policy briefs will engage key stakeholders throughout Europe, who may be from the political, academic, public, private or voluntary sectors, at local and national level.

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The policy briefs will be collected together, along with the best of the contributions from the online 'workshops', in a publication, entitled 'Next Generation Democracy: Legitimacy in Network Europe'. This will be launched at a conference, entitled Next Generation Europe which will take in November 2002, and will be the first in a series of yearly conferences bringing together the successor generation from across Europe.

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