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The EU Electoral Reform Efforts: Europeanising the 2019 Elections?

All across the EU, it has become quite common to label the *modus operandi* of the EU as **ineffective**, its institutional set-up as **undemocratic** and its politics as **far removed from European citizens**. Attempting to address these concerns, the President of the European Commission Jean-Claude Juncker called for institutional reforms in his 2017 **State of the Union Address**. In it, he endorsed the continuation of the *Spitzenkandidaten* experiment and the introduction of *transnational lists* in the 2019 European parliament (EP) elections. Knowing that 2019 will mark a **transition to a new institutional cycle**, the President of the European Council Donald Tusk gathered the EU27¹ leaders on 23 February 2018, at an **informal leaders' summit**, in order to discuss and decide whether to endorse, postpone or nullify the chances of survival of these proposals. Ultimately, both proposals failed to acquire unanimous support of the EU leaders, who instead opted for revisiting these issues in the future. In this regard, the purpose of this *Insight* is to present and examine both proposals in order to unravel what they might mean for the future of the EU. Last but not least, this *Insight* illustrates how these proposals would affect Serbia once it becomes an EU member state, with the aim to draw the debates on the EU institutional framework closer to the Serbian public.

The Uncertain Fate of the Spitzenkandidat Process

With its German name, the **Spitzenkandidaten process** – translating to 'lead candidate' – is not fully self-explanatory. Put simply, it represents a system which **"hands the Commission Presidency to the 'lead candidate' from the European political party² winning the most seats in the European Parliament"**.

The purpose of this procedure is severalfold. First, it gives the EU citizens an indirect choice over who can become the Commission President through their vote in the EP elections. To this end, Europarties designate their 'lead candidates' (typically one candidate per Europarty) in the run-up to the EP elections, after holding an intra-party competition. This makes the candidates known prior to the elections, rather than after as was practice in the past. Second, in the midst of

continuous low voter turnout the process strives to raise the stakes of the EP elections as a means of driving up the turnout. Third, Spitzenkandidaten process further "Europeanises" the electoral campaign as it incentivises the lead candidates to reach out and better acquaint citizens with themselves and their goals. It is expected that this would effectively introduce a **visibility contest** through EU-wide campaigns (e.g. visiting member states and participating in televised debates). Finally, it increases the importance of the Europarties and their political groups in the EP *vis-à-vis* the European Council (i.e. heads of state and government) and gives further sway to supranational tendencies in the Union.

In essence, the Spitzenkandidat process can be considered **quasi-revolutionary** in the context of the EU, where the position of the Commission President has not been reserved to the party winning the largest number of seats in the EP elections. However, the fact that the hands of the European Council are being tied to the election results, represents the most delicate and debated aspect of the Spitzenkandidaten process, as it significantly shifts the original procedure for the selection of Commission President.

Legally speaking, the Spitzenkandidaten process does not in fact find its place in the EU Treaties. According to **Article 17.7** of the Treaty on the European Union (TEU), the European Parliament (supranational body) elects the President of the Commission on the basis of a candidate proposed by the European Council (intergovernmental body) via qualified majority voting. Yet, space for different interpretations of this process was created after the Lisbon Treaty added in 2009 that the European Council will select its nominee after **"taking into account of the results of the EP elections"**.

Proponents of further federalisation of the EU and advocates of the need to increase EP's powers have used this article to their cause, by arguing that the European Council must not be allowed to act alone in the process of nominating the Commission President. Their goal was to avoid a possible scenario where the European Council simply 'takes into account' the EP results but nevertheless selects a candidate of its own, thus **disregarding** the will of EU citizens and Europarties.

1. Following the UK's notification of its intention to withdraw from the Union under Article 50 TEU in March 2017, the UK no longer participates in European Council discussions.

2. European Political Parties (Europarties) are transnational party-like organisations operating at the EU level.

Even though this process was already used once in 2014 and led to the appointment of Juncker, it remains uncertain whether it would be repeated in 2019, as some EU leaders have expressed [dissatisfaction](#) with the procedure, to which they had only reluctantly agreed back in 2014. Not only have they raised concerns that the Spitzenkandidaten process goes beyond the Treaties, but they have also argued that it is harmful to the interests of the member states as well, since it represents, according to them, a ‘power grab’ [at the expense](#) of the European Council. In other words, some leaders are worried that this process alters to a significant extent the carefully designed mixture of supranational and intergovernmental elements based on which the Treaties envisioned the Union to function. Some have even used the term ‘[constitutional coup](#)’ to describe what happened in 2014 and what they wish to prevent from happening in 2019.

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Therefore, in order to re-affirm its position against potential setbacks by the European Council, the EP has adopted a [resolution](#) on 7 February 2018, in which it has firmly rejected any back-door deals on the position of the Commission President. It has done so by strongly emphasising that the Spitzenkandidaten process “cannot be overturned” as it reflects an institutional balance between the EP and the European Council, and represents a contribution to transparency. By issuing such a warning, the EP has set forth its readiness to reject any candidate of the European Council, during the investiture procedure, who has not been appointed as a ‘lead candidate’ in the run-up to the EP elections. As evidence of commitment to the process, in April 2018, the European People’s Party (EPP) [agreed on internal party procedures](#) to choose its ‘lead candidate’ for the next year’s elections.

Despite the EP’s strong position on this issue and the Commission’s endorsement, the Spitzenkandidaten process has not acquired sufficient support at the informal leaders’ summit due to the visible divide among EU leaders. Having rejected the idea of re-introducing this process, the EU leaders sent a message that there would be [no automaticity](#) during the process of selection of the Commission President. In other words, when the time comes, the European Council will decide on whether to nominate the candidate whose party won the most seats in the EP elections or instead pick another candidate which the heads of state and government deem as a more suitable choice.

Such decision hints at the fact that the member states are not yet ready to further federalise the Union, nor are they willing to turn their back on the ‘intergovernmental’ aspect of the Union’s way of functioning and decision-making.

As the EP elections approach (May 2019), **it remains uncertain how the disagreement between the European Council and the EP will be resolved.** Unless the two sides reconcile their positions on the issue of the Spitzenkandidaten process, they risk ending up in stalemate and institutional gridlock. In case all Europarties or at least the major ones choose to select their ‘lead candidates’ for the next year’s election (which is highly likely), the EU27 leaders could be put into an uncomfortable position to repeat the 2014 scenario. If a clear disagreement occurs on who the next Commission President should be, that is, a discord on whether to follow through the Spitzenkandidaten process or not, a scenario where the EP rejects the European Council’s nomination is not far-fetched.

Whatever happens by 2019, the struggle to adopt the Spitzenkandidaten process will be remembered as one where the EP firmly stood its ground behind a proposal which might tilt the Union towards further federalization in the near or distant future.



Transnational Lists - moving closer to the citizens, or not...

The idea of introducing **transnational lists** envisions **establishing a pan-European constituency for a certain number of MEPs in the next EP elections**. It re-emerged as a potentially realistic option following Brexit, after 73 seats held by British MEPs necessitated redistribution for the purposes of the next electoral cycle.³

The EU27 rejected at the leaders' informal summit the idea of introducing transnational lists in the 2019 EP elections. Nevertheless, they agreed to come back to this issue in the future, thus leaving the window of opportunity open for the 2024 elections.

With transnational lists, citizens of the EU would be given the chance to **vote for the same MEPs** on those lists on the entire territory of the EU. As the Irish PM Leo Varadkar put it, transnational lists would create a situation where “people in cafes in Naples and restaurants in Galway will talk about the **same election choices**”. Therefore, according to proponents of this proposal, its main purpose would be to “breathe life into the **European dimension of electoral politics** and thereby strengthen the democratic legitimacy of the Parliament”.

This proposal allows voters to have two ballots, joint and national, whereas with the former they would vote for a portion of MEPs on the level of the EU as a whole, while the latter would represent MEPs voted based on their national constituency, as has always been the case. As current elections are made up of 27 national elections, the application of these lists for potential selection of all MEPs in the future would significantly change the current system by essentially introducing a party system on the level of the EU which currently does not exist. No wonder this proposal has stirred debate in the EU.

Despite the fact that transnational lists are not directly mentioned in the Treaties, proponents of this idea have argued that the TEU provides space for their introduction, more specifically, **Article 10.2** and **Article 14.2** of the TEU. The former article states that “citizens are directly represented at Union level in the EP”, and the latter specifies that the EP is to be “comprised of representatives of the Union’s citizens”. Therefore, according to this line of thought, what better way to represent the European citizenry than by having a pan-European constituency which would make the elected MEPs accountable to all EU citizens, regardless of the member states they come from.

Going in that direction, the Leader of the ALDE Guy Verhofstadt has even taken a step further by claiming that there is a firm **link** between the Spitzenkandidat process and the transnational lists, by arguing that the latter would give democratic legitimacy to the former: “It puts Spitzenkandidaten into a democratic process, so it is people who are deciding who is elected and then the European Council could never object anymore to the outcome of such an election”.

Yet, unlike the Spitzenkandidaten process, which represents a little more than a **handshake agreement** between the EU officials and national leaders, the introduction of transnational lists would be more burdensome to enact, as it requires **amending the current European electoral law** (albeit not the Treaties). Therefore, technically speaking, the work behind the transnational lists would require longer timeframes and complex coordination efforts, as amending the Law needs unanimity within the European Council, assent/approval of the EP, and ratification of national parliaments.

Namely, on 7 February this year, the **EP rejected** introducing transnational lists for the 2019 elections; the same day it adopted a resolution in support of the Spitzenkandidaten process in the upcoming European vote. What largely influenced the decision against transnational lists was the **opposition of the EPP**, the largest political group in the European Parliament. It was argued that this idea would in fact weaken the link between MEPs and their electorates as it implies a further centralisation of the EU, widening the gap between the smaller and larger member states, and nullifying the responsibility of the so-called ‘free-floating MEPs’ (i.e. MEPs chosen on the EU level and not national). In addition, concerns were raised that these lists would aid the populists to gather and increase their forces by appealing to the unsatisfied voters across the continent.

In the light of its negative decision on transnational lists, the EP decided to take care of the vacant 73 seats by closely aligning with a **Report** produced by the EP Constitutional Affairs Committee (AFCO). In it, the following three main changes to the existing composition of the EP were suggested: first, reducing the number of seats from 751 to 705; then, redistributing 27 seats to the slightly under-represented member states; and finally, leaving the remaining 46 unused seats “to accommodate potential future enlargements of the EU”. Originally, the Report included a proposal on establishing transnational lists and foresaw, using the 46 vacant seats to accommodate, not only the potential future enlargements of the EU, but also members elected on transnational lists in a joint constituency. As the latter solution was left out from the final EP resolution, the fate of the transnational lists was effectively sealed for the time being.

3. The decision of the UK to leave the EU inter alia implied the departure of UK officials from the EU institutions. After Germany and France, the UK accounted for the largest share of seats in the EP (i.e. 73 out of 751).

Following the EP's resolution, the EU27 rejected at the leaders' informal summit the idea of introducing transnational lists in the 2019 EP elections. Nevertheless, they agreed to come back to this issue in the future, thus leaving the window of opportunity open for the [2024 elections](#). Furthermore, unlike the sharp divide on the Spitzenkandidaten process, the European Council broadly supported shrinking the size of the EP, while keeping some of the vacant seats reserved for future member states, among which would be the countries of the Western Balkans.

Why should Serbia care?

Although the issue of EU institutional reform has attracted widespread attention among politicians and experts in the EU, the topic has remained largely unexplored in Serbia. Such lack of attention is unsurprising, as issues of this kind are first and foremost a concern of the Union's member states and are not part of the accession process *per se*. Nevertheless, **Serbia should not shy away from taking part in this debate, as these issues are important for the type of Union that Serbia will one day join.**

The Spitzenkandidaten process would allow Serbian officials and MEPs to take part in the process of deliberation and selection of a lead candidate, including the possibility of them running for this position in Europarties. This will, however, not happen anytime soon, as Serbia is likely to miss the 2024 electoral cycle. If Juncker's proposed [2025 perspective](#) for Serbia's entry to the EU becomes reality, Serbian officials could take part in this process only during the election cycle that would follow – 2029, at the earliest. Furthermore, as Europarties have so far most commonly selected leaders with substantial experience, both in national and EU arena, it would probably take a longer time before one of Serbia's officials is chosen as a lead candidate of a Europarty.

Meanwhile, if the EU27 were to have a change of heart on the idea of introducing transnational lists for a portion of seats, this would allow Serbian citizens to have two ballots when voting in the EP elections, possibly in 2029. On the one hand, they would be voting for candidates put forth by their domestic political parties, as has been the practice in the EU up until now. Therefore, the distribution of Serbian MEPs to European political groups would be determined by votes cast by Serbian citizens. On the other hand, the second, transnational, ballot would allow them to vote for a list comprising mostly of non-Serbian MEPs. As Serbia would be a young EU member state at the time of the 2029 elections, citizens' ability to vote with a high degree of confidence for these MEPs is likely to be low, thus potentially causing a significant level of abstention.

All in all, exploring EU-related issues of this kind is a necessity if the goal is to have an informed citizenry and political actors which could actively take part in EU affairs once Serbia joins the Union. As it is unlikely that domestic politicians will put EU debates high on their agenda, it is up to EU-oriented civil society organisations (CSOs) to take their place in informing the public.

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