Democracy-deficits Caused by Democratizing Legislation in the European Union

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Since the late 1970s, the European Parliament has the most developing competence among the European institution. This in part stems from the Treaty of Lisbon, in which the rules concerning the nomination of the European Commission were altered. Due to the new and ambiguous interpretational frameworks, a great opportunity was given to the European Parliament to enlarge its power. However, the ideal interpretation based on all the relevant legal factors does not result in drastic changes; therefore the realized nomination system in general is appropriate. Only a few amendments are required in the near future, because the uncertain contents can easily result in an overturn at the inter-institutional balance and also can place the European Parliament in a legally unconfirmed position.

Keywords: European Parliament, European Commission, European elections, institutional balance, Spitzenkandidaten

1. Introduction

The European Parliament (EP) is the fastest growing institution within the European Union (EU). The increase derives from two related processes: on one hand, the European legislators – realising the fact that the EU has several democratic and structural deficiencies – has and continues to provide ever-expanding jurisdiction through amendments of the treaties. On the other hand, the EP also strives to strengthen its position through the interpretation of these amendments. This dichotomy foreshadows a contingency. If the European legislators fail to adopt grammatically and logically unambiguous provisions, the EP's legal, but legally unspecified jurisdiction-widening mechanism can prosper and produce interpretations with divisive and questionable content, which can lead to enticing possibilities for the EP to enlarge its power. This essay seeks to address this problem, namely what does the ideal and well-reasoned nomination procedure of the European Commission President look like (the one, which should prevail over the realised and EP-supported interpretation of the *Lisbon novums*)?

2. Legal Uncertainties in the Nomination of the European Commission President

Nowadays, the EP is a fundamental actor in the European policy-making process. Because of the broadening competence of the institution, its impact on European decision-making grows continuously. The Lisbon Treaty also strengthened this tendency. However, the specific provisions on a more democratic EU, a more powerful EP partly resulted in different interpretations. The alterations concerning the nomination of the European Commission members and the EP's role in this procedure (or in other words

the *Lisbon novums*) and the possible interpretations and consequences of these modifications are current and significant examples for this problem.

2.1. Nomination of the European Commission Members after the Lisbon Treaty

The nomination of the Commission members is regulated by the Treaty on European Union (TEU). The legal framework of the procedure was created long before the Lisbon Treaty; however, the Treaty modified the mechanism with such provisions, which guaranteed dominant power for the EP.

Firstly, "taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members. If he does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure."[1] Secondly, "the Council, by common accord with the President-elect, shall adopt the list of the other persons whom it proposes for appointment as members of the Commission".[2] Thirdly, "the President, the High Representative of the Union for Foreign Affairs and Security Policy and the other members of the Commission shall be subject as a body to a vote of consent by the European Parliament".[3] Finally, "on the basis of this consent, the Commission shall be appointed by the European Council, acting by a qualified majority".[4]

As it was declared in the Treaty, the European Council's nominating activity shall function by taking into account the elections to the EP and after having held the appropriate consultations, as well as the President shall be elected (and not confirmed or declined) by the EP. These provisions gave the EP prominent status, but at the same time they led to an interpretational controversy.

2.2. Possible Interpretations of the Lisbon Novums

The uncertainties in the nomination of the European Commission President derive from the ambiguous phrasing in the TEU about the EP and its role in the nomination process. The expansion of the EP's jurisdiction had happened without the drawing of clear interpretational margins, therefore different readings were born concerning how far the EP's competence reaches in the post-Lisbon nomination system.

Since the European Council is the biggest loser of the EP's right-expansion, it is advisable to focus on the interpretations supported by these institutions. The EP, in relative unity, stated that the *Lisbon novums* necessitate a system where the Commission President must come from the parliamentary groups, namely the group(s) which can produce the required majority for election following the proposal of the European Council. Furthermore, the parliamentary group with the most votes (and strongest legitimacy) must attempt at first to produce the required majority. As a result, the parliamentary groups proposed candidates (*Spitzenkandidaten*)[5] on the basis of willingness and suitability to see them as the President of the

[1] TEU Art. 17(7), OJ 2012 C 326/01.
[2] *Ibid.*
[3] *Ibid.*
[4] *Ibid.*
[5] EP Resolution of 22 November 2012 on the elections to the European Parliament in 2014 (2012/2829(RSP)), http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2012-0462+0+DOC+PDF+V0//EN (25 September 2015).

Commission. On the other side, the European Council showed a divided approach. While some members approved the EP's interpretation, others rejected the fact that the European Council lost its consideration and it must nominate the candidate capable of producing the required majority. They based their concept on the wording of the Treaty, which clearly says that the freedom of nomination of the Commission President is in the hands of the European Council.[6]

The EP's concept resembles most of the national practices, where the competence to shuffle a government is given by the head of the state and belongs to the party leader with the most votes collected during the national elections. If the party leader fails to produce the required majority to get across his or her government, the competence will be passed to the party leader with the second most votes and so on. Therefore, according to the EP's interpretation the European Council (as *quasi* head of the state) must call upon the candidate with the most votes (the last time Jean-Claude Juncker) to measure whether he or she can provide the requested support in the EP. If yes, the European Council is bound to propose the candidate for President of the Commission. As the EP highlighted, this mechanism has several advantages: it creates a more democratic EU (because the European voters have real influence on the functioning of the Commission), it can stimulate the voters' willingness during the European elections (because the stakes during the elections are higher), and it can ease the acceptance of a parliamentary group for the voters (because the mechanism creates faces to the campaign).[7]

The European Council's concept was a response in order to retain its competences. The national leaders underlined that the European Council, acting by a qualified majority, shall propose a candidate to the EP for President of the Commission, which phrase – in conjunction with all the other provisions in the Treaty – cannot be interpreted in such a wide sense that it would mean that the EP has absolute freedom to narrow the European Council's right to propose a president.[8] Therefore, the taking into account of the European elections cannot result in an obligation for the European Council regarding the identity of the candidate. The leaders with other opinions than the EP's – the British, the Swedish, the Dutch and the Hungarian members of the European Council, as well as Angela Merkel and Herman van Rompuy at the beginning – believed that the EP's concept is antidemocratic in many ways: it violates the distribution of competences by the Treaty and creates a latent amendment of the TEU (because it declares that the European Council shall propose a candidate and not the EP, not even indirectly), it represses the aspiration of national leaders to become Commission President (because in the concept the president must emerge from the EP, where there must be a campaign, and if the candidate fails and the voters interpret this failure as a sign of weakness and incompetence, it can make his or her national duties more difficult), and it merges the control between the EP and the Commission (because the president may bring along the will of the EP).[9]

Basically, the question behind this jurisdictional debate is whether after the Lisbon Treaty the EP or the European Council owns the freedom of proposal regarding the Commission President. By grammatical interpretation, neither of the approaches can be rejected due to the ambiguous wording of the Treaty, and by logical interpretation, there are plenty of arguments to refer to on both sides. Furthermore, the EP has never stated that the freedom of proposal belongs to the EP, but it legitimates a situation where the European Council is under serious pressure, because it can choose its candidate from one single person. Regarding the effect, it is equivalent with a system where the candidate is defined by the EP, or more sensibly by the parliamentary groups and European voters. So the grammatical and logical interpretations are unable to

[6] http://brux.blog.hu/2014/05/28/a_vita_mar_regen_nem_junckerrol_folyik (28 April 2014).
[7] *Ibid.*
[8] *Ibid.*
[9] *Ibid.*

settle the controversy, therefore it is advisable to examine the debated provisions systematically, historically and teleologically. Unfortunately, the institutions have never applied these methods.

Regarding the final outcome, the EP's concept came into practice. As a result, the European Council is in now under constant pressure, because it must propose that parliamentary candidate for President of the Commission who holds the most votes and has the ability to produce the required majority to be accepted by the EP.[10] The first step towards this situation was taken in 2012 by the European Council when its members did not raise their voices immediately against the candidate-naming process of the parliamentary groups,[11] and as a result they allowed the parliamentary groups to propagate that the President of the Commission is chosen from the parliamentary candidates by the European voters. After this the declaration of any other argument would suggest inter-institutional crisis and misleading of the European voters.[12] Therefore it is irrelevant that the European Council was right about the EP concerning the rights it exercised during the European elections and thereafter which do not belong to the EP unambiguously – due to their omission, the national leaders virtually handed over the freedom of proposal to the EP which raised several questions on the future of the nomination process.

The most important of all is that whether the system can be altered into a less dividing, more compromised procedure before the European elections in 2019. The refinement is necessary, because the unarguable nomination of Jean-Claude Juncker for the President of the Commission was based considerably on the avoidance of an inter-institutional crisis and antidemocratic impressions.[13] However, any nomination system must rest on a clear legal basis, which has only one interpretation. To reach this, there are two different ways to go: the re-amendment of the TEU which is a long and complex procedure, and the compromised, well-reasoned re-interpretation of the current dubious phrasing. From these alternatives – keeping in mind that the willingness of the member states is divided in most cases – the latter one seems to be more capable to overcome.

But practically, this approach also has its impasse, because the European Council – besides the right to choose from those parliamentary candidates, who are bound to form a coalition[14] by necessity – relinquished its freedom to propose by tacitly accepting the EP's candidate-naming practice in 2012. To seize the remaining opportunity, if two or more parliamentary candidates are bound to form a coalition by necessity, it is advisable to let the European Council decide between the candidates. But if all the required votes are captured by one single parliamentary group, the exigence into which the European Council gets is a legitimate situation, because it is created by the European voters during the European elections. Regardless of these two options, the European Council has to take the consultations with the EP much seriously,[15] because with a motivated and well-prepared European Council President the national leaders may be able to compensate a part of their lost freedom.

[10] EC Conclusions of 26/27 June 2014 (EUCO 79/14), http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/143478.pdf (25 September 2015).

[11] In fact, the former Commission President José Manuel Barroso was even initiative about the parliamentary groups to name candidates [see Barroso's speech on year 2012 at the Parliament (SPEECH/12/596)].

[12] *Ibid* note 6.

[13] *Ibid.*

[14] This coalition has a similar mechanism of functioning as coalitions in the member states, but has different features in every other field (e.g. the united parliamentary candidates strive to reach the presidential position of the Commission, while the candidates in the national coalitions aspire to form a government).

[15] The appropriate consultations are legally undefined yet. It depends on the arrangement of the two institutions according to the Declaration on Article 17(6) and (7) annexed to the TEU, although this declaration is not legally binding (see Declaration on Article 17(6) and (7) annexed to the TEU, OJ 2012 C 326/01).

3. Ideal Interpretation of the Lisbon Novums

The ideal interpretation of the *Lisbon novums* shows how the proper and legally well-founded interpretation of the ambiguous provisions look like. In order to reach this, the first step is to create a systematic, historical and teleological interpretation of the provisions, and after that to sum up the results of each analysis.

3.1. Historical Interpretation of the Lisbon Novums

The historical interpretation strives to identify the ideological considerations, general ideas, and social-political-economic circumstances of the time when the provisions were created.[16] Genetical interpretation also belongs here, which means the examination of preparatory activities, drafts, solutions and indications in order to unfold the legislators' collective intention.[17]

3.1.1. From the Maastricht Treaty to the Draft Constitution

Although some principles of the parliamentary participation in the nomination of Commission President (namely the right of final acceptance and the requirement of binding consultations) appeared in the Maastricht Treaty,[18] considerable provisions did not emerge before the European Convention.

Between 2001 and 2003, the members of the Convent recognized that the EU was under pressure in three different ways: firstly by the member states to unify the EU, secondly from outside of the EU to define its status in the globalizing world, and thirdly in favour of the European citizens to make the integration more democratic, transparent and accessible.[19] The unification of the EU was inevitable because the expression of interests between the smaller and bigger member states was already problematic. The specification on the EU's role in the globalizing world was needed in order to increase the protection of integrational values on international level and to prepare against global terrorism. Finally, the EU's decision-making and functioning altered so much during the previous decades that the citizens were incapable of following the complex and distant mechanisms.[20]

It was obvious: if the integrational structure does not alter fundamentally, it can cause serious damage in the member states. Therefore, the Convent focused on three areas: the alteration of the EU into a more democratic, transparent and effective integration; the effective division of jurisdiction between the EU and its member states; and the re-conception and simplification of the treaties with the possible involvement of the Charter on Fundamental Rights.[21] The functioning of the Convent was not free of controversies, as in January 2003 a rupture evolved between the representatives of the smaller and bigger member states. The representatives of smaller member states believed that the derogation of the Commission's competence (which is based on equal representation) and the strengthening of the European Council and Council of

[16] József Petrétei, *The Fundamental Institutions of Constitutional Democracy*, Dialóg-Campus Publishing, 2009, p. 129.

[17] Petrétei 2009, p. 130.

[18] By this time the EP was allowed to vote on the Commission President, but its decision did not obtain legal binding until the ratification of Amsterdam Treaty (see Francis Jacobs, *The European Parliament's Role in Nominating the Members of the Commission*, http://aei.pitt.edu/6950/1/002956_1.pdf, p. 5.).

[19] Krisztina Vida, *Convent on the Future of Europe*, Hungarian Academy of Sciences Global Economy Research Center, 2002, p. 2.

[20] László Kecskés, *EU Law and Harmonization of Law*, 4th edn., HVG-ORAC Publishing, 2011, p. 168.

[21] Ernő Várnay & Mónika Papp, *The Law of European Union*, CompLex Publishing, 2010, p. 68.

Ministers (which institutions can easily be affected by the bigger member states) hide behind the optimization of the EU and the creation of a common foreign policy image.[22] They based their concept on a British recommendation saying it was advisable to abolish the rotation in the presidency of European Council and to elect a permanent president. As compensation to the Germans in return for their support of the British recommendation, the idea saying the Commission President has to be elected by the EP and not the national leaders was born.[23] Although the British recommendation received wide criticism, the German proposition was more than acceptable for the member states, especially for the smaller ones. They believed that if the EP obtains effective jurisdiction in the election of the Commission President, it can lead to the strengthening of parliamentary groups, European elections and legitimation of the Commission President, as well as to the democratizing of the EU.[24] As a result, the draft constitution formulated the concept saying the President of the Commission is elected by the EP, but the candidate is proposed by the European Council.[25]

3.1.2. From the Draft Constitution to the Lisbon Treaty

In June 2004, the member states approved the Convent's draft constitution, but due the French and Dutch referendums, it could never come into effect, thus the legislators started to negotiate on a reformatory treaty instead.[26]

The reconsidered draft treaty set the same objectives as the draft constitution: the realization of a sustainable, effective and fair EU, which serves primarily the interests of the citizens.[27] Although several phrases from the draft constitution (mainly those which considered the EU as an entity more similar to a federal union and the EU documents as constitutional norms) were removed, but the provisions on the Commission President's nomination were carried over to the Lisbon Treaty.

After all, it is clearly visible that the ambiguous phrasing in the Lisbon Treaty originates from the formulation of the draft constitution. Therefore, during the examination of the time when the provisions were created we have to take into account the circumstances of 2003, the Convent's term, and the reason why the drafter of the Lisbon Treaty did not modify these provisions. In 2003, the enlargement and democratization of the EU, the personification of a common foreign policy, the elimination of smaller member states' worries, the boosting of European elections, the better appreciation of European citizens and the stimulation of European economy were the main goals to achieve. It was logical to strengthen the EP's position because this move consolidates, democratizes and legitimizes in one step. Although the tempo of this strengthening was debated, its justification was beyond any doubt, even during the formation of the Lisbon Treaty, since many of these problems were still relevant and unsolved at that time.

[22] Györgyi Kocsis, *Post Enough: Controversies at the EU's Constitutional Assembly*, February 2003, HVG, No. 1, p. 17.

[23] Kocsis 2003, p. 18.

[24] However, it was clear that if the EP could elect the President of the Commission, it might lead to the loss of that's independency from the political groups. Nevertheless, it was the supporting approach which gained wider recognition among the member states and European institutions (see Paul P. Craig, *Institutions, Power and Institutional Balance*, in Paul Craig & Grainne de Burca (Eds.), The Evolution of EU Law, Oxford University Press, 2011, p. 79.).

[25] Draft Treaty Establishing a Constitution for Europe Art. 26(1), OJ 2003 C 169.

[26] Mónika Csöndes & László Kecskés, *The Lisbon Treaty Has Been Ratified*, 2008, Európai Jog, No. 1, pp. 3-4.

[27] Presidential Conclusions on the European Council Session at 21-22 June 2007 (11177/07 CONCL 2), https://www.ecb.europa.eu/ecb/legal/pdf/94932cor1.pdf (26 September 2015).

3.2. Systematic Interpretation of the Lisbon nvums

The systematic interpretation strives to determine the functional correspondence between a specific provision and the entire legal system.[28] Since the legal uncertainties were generated by the requirement of taking into account the elections to the Parliament, the systematic interpretation has to answer the following questions: what does EU law consider as 'taking into account' and how do the provisions on the competences of the European Council and the EP relate to each other. To give a coherent explanation, the interpretation has to cover the specific Lisbon provisions, the TEU and the Treaty on the Functioning of the European Union (TFEU), as well as the protocols, annexes and declarations attached to these treaties, and also the general principles of EU law.

3.2.1. Interpretation of the Phrase 'taking into account'

The phrase about having to respect of European elections causes the most difficulties. It raises two questions: what does the European Council have to take into account as European elections and what do the EU legal norms consider as taking into account?

The definition of elections chronologically consists of three stages: the pre-election activities *(e.g.* the campaign), the election itself, and the stage after the elections (the result of the elections and its consequences). The European Council, while selecting its candidate, must consider all three stages (because each of them can generate dubious conditions), and every other circumstance which relates to the elections and reveals itself for the European Council after the elections. Regarding the other parts of the *Lisbon novums* (*e.g*. the one which states that the EP has the right to elect the Commission President, as well as the one which declares that the EP has the authority to approve the Commission as a body), the concept on a comprehensive and wide definition of elections to the EP seems to be acceptable.[29]

The phrase 'taking into account' appears 49 times in the TEU and TFEU. The 3rd paragraph of Article 6 (1) of TEU is a notable example, which states that "the rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions".[30] In every other case the phrase means keeping in mind, deliberation, using in decision-making. Therefore, there are two different stages of taking into account: the traditional one which covers observation, and the intensive one which presumes a more extensive activity.

In the protocols, annexes and declarations attached to the treaties the abovementioned phrase appears 34 times. Article 15 of the Protocol on the Statute of the Court of Justice of the European Union states that "the duration of the judicial vacations shall be determined by the Court of Justice with due regard to the needs of its business",[31] and the Declaration on Articles 48 and 79 of the TFEU declares that "in the event that a draft legislative act based on Article 82 (2) would affect important aspects of the social security

[28] Petrétei 2009, p. 128.

[29] The German and Spanish versions of the Lisbon Treaty prescribe the respect of 'das Ergebnis', 'el resultado', thus the result of the elections. However, the difference is irrelevant, because the EU law does not apply the rule of hierarchy on the official languages.

[30] Another attributed version of the phrase appears in the Article 13 of TFEU, which declares that "in formulating and implementing the Union's agriculture, fisheries, transport (…) the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals" (see TEU Art. 6(1) and TFEU Art. 13., OJ 2012 C 326/01). Still, the full regard rather implies to the inclusivity of taking into account, than its intensity.

[31] Protocol on the Statute of the Court of Justice of the European Union Art. 15, OJ 2012 C 326/01.

system of a Member State (…) or would affect the financial balance of that system as set out in the second paragraph of Article 48, the interests of that Member State will be duly taken into account".[32] All the other phrases are traditional ones, therefore, the abovementioned dichotomy is a character of these documents as well. Moreover, the other fundamental documents (*e.g.* the treaties of accesion) show the same result, with approximately the same dichotomy.

According to Article 2 of the TEU "the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights".[33] Thus, the democracy holds a prominent status among the European values. At first glance, this means that the ambiguous provisions should be interpreted in favour of the EP. However, the EP differs from the national parliaments, and one of the basic specialities of the EU is that the member states (mainly through their governments) and the citizens (basically through the EP) simultaneously exist in the system.[34] By following this logic, the "absolutization" of the EP can easily lead to the devaluation of the national parliaments and governments, which is unfair having regard to the fact that EU is an integration community and not a federal state, and the member states are still the masters of the treaties.

3.2.2. Interpretation of the Provisions on the competences of the EP and the European Council

Contrary to the interpretation of 'taking into account', the interpretation of these competence-provisions does not go beyond the provisions in the TEU and TFEU.

It is advisable to note that at the beginning the EP did not hold any legislative competence, considering that its single role was to express the public opinion. Partly because of this, nowadays the EP is not the only actor of European legislation,[35] however, the Lisbon Treaty widely expanded its rights. Another right is that the EP and the Council of Ministers jointly establish the EU's annual budget, but it is the EP who has the right to give a discharge to the Commission in respect of the implementation of the budget.[36] As it was mentioned above, the EP has the rights to elect and accept a candidate in the nomination process of the Commission President. During the nomination of the European Court of Auditors (ECA) members, it is inevitable to ask for an EP opinion.[37] The EP plays an important role in the disputation of certain submissions and reports.[38] Finally, the EP has consultative functions in the Common Foreign and Security Policy and it can establish committees of inquiry on assumed violations of the EU law if the Court of Justice does not proceed in the case.[39]

The European Council determines the general directions and priorities, strategic interests and goals of the EU in order to foster its development and evolution. In connection with the EP, the European Council defines the EP's combination and exercises its above mentioned rights in the nomination of the Commission President. The European Council decides on whether a member state seriously breached European values,

[32] Declaration on Articles 48 and 79 of the TFEU, OJ 2012 C 326/01.

[33] TEU Art. 2, OJ 2012 C 326/01.

[34] Várnay & Papp 2010, p. 188.

[35] The EP and the Council adopt regulations, directives and directions together (see Várnay & Papp 2010, p. 115.).

[36] Though, on the recommendation of the Council (see TFEU art. 314 and 319(1), OJ 2012 C 326/01.).

[37] TFEU art. 286(2), OJ 2012 C 326/01.

[38] Relatively new methods of discussion are the EP hearings, which were popular during this year's Commission President election, and the EP's self-initiated reports.

[39] Várnay & Papp 2010, pp. 115-116.

it is entitled to determine conditions for the states aiming to join the EU, as well as defining the guidelines in the negotiation with the member states with the will to quit the EU.[40]

To sum up, the provisions on the competence of the EP were made to guarantee the direct involvement of citizens in the functioning and monitoring of European decision-making. On the contrary, the provisions on the European Council aim to grant I the power to determine the general directions, priorities and goals of the EU. Regarding the fact that the Commission's main role is to ensure and oversee the application of EU law, it is logical that the EP has dominant rights in relation with the Commission (see the rights to elect and accept a candidate), and the European Council does not (see the rights to propose and formally appoint a candidate), because the EP completes primarily legal (legislative, inquiring etc.) tasks, as against the European Council who performs mostly political duties. However, the composition of the EP is defined by the European Council and in practice every institution has a political character.

3.3. Teleological Interpretation of the Lisbon novums

Teleological interpretation aims to identify the purpose of a certain provision.[41] The Court of Justice declared that to decide whether the Treaty of Rome establishing a European Economic Community has direct effect in the member states or not, the nature, general structure and wording of the certain, questionable provision has to be revealed.[42] Therefore, the teleological interpretation has to focus on the nature of a certain provision, with due regard to its structure and wording.

Regarding the structure, the parts of Article 17(7) TEU give an important role to the EP in the nomination procedure (see the results of systematic interpretation). Considering the wording, the TEU provides the EP with rights to elect and accept , which are powerful entitlements. Consequently, the creators of the Lisbon Novums intended to give effective power to the EP, which means the provisions were born in the nature of involvement in the nomination procedure.

4. Synthesis of the Interpretational Conclusions

Before synthetizing the conclusions, the Preamble of the TEU has to be mentioned. Any preamble has legally binding content, which should be taken into account during the interpretation and implementation of the treaties.[43] The Preamble of the TEU declares that the member states "resolved to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity."[44] Therefore, the requirement of keeping the citizens as closely to the European decision-making as possible has to be respected in the synthesis.[45]

It is hard to debate that the *Spitzenkandidaten-system* has democratizing effect, since it creates a connection between the European Commission and the European citizens. However, it is not clear whether the system

[40] The list is non-exhaustive (see Várnay & Papp 2010, pp. 94-95.).

[41] Petrétei 2009, p. 130.

[42] Gunnar Beck, *The Legal Reasoning of the Court of Justice of the EU*, Hart Publishing, 2012, p. 208.

[43] Using the analogy developed in the case *Les Verts* (the Court of Justice referred to the fundamental treaties as constitutional charters, see Case 294/83, *'Les Verts' v. European Parliament*, [1986] ECR 1339, at para. 23.) see Petrétei 2009, p. 93.

[44] TEU Preamble, OJ 2012 C 326/01.

[45] This requirement appears in the Article 1 of the TEU as well (see TEU Preamble and Art. 1, OJ 2012 C 326/01).

will increase the Commission President's legitimation significantly or not, because if the participation in the European elections remains limited, the acceptance by the society will be limited too. However, since the parliamentary groups campaign with the faces of their candidates, it will be easier for the European citizens to sympathize with a parliamentary group.

The system may repress the aspirations of the national leaders to become Commission President, but if the definition of EP elections is comprehensive and wide, it is nearly impossible for the Commission President to come from elsewhere than the EP. Furthermore, the TEU granted powerful entitlements to the EP in the nomination procedure, but left the interpretation of taking into account open-ended. The phrase has two different forms in the EU norms, from which the traditional one is the more frequent. It may imply that the *Lisbon novums* prescribe a simple consideration, but due to the extreme difference between the numbers it is questionable whether the differentiation was deliberate by the legislators. The other part of the systematic interpretation shows that it is the EP, and not the European Council who has dominant rights in connection with the Commission.

During the drafting of the *Lisbon novums*, the EU was intent on dealing with certain social, economic and political problems. These problems and the solutions given by the Convent were still current and useful in 2007, therefore, the Lisbon Treaty took over most of the draft constitution's provisions.

Finally, the teleological interpretation showed that the *Lisbon novums* were created to guarantee powerful and effective jurisdiction for the EP in the nomination procedure.

To sum up, the interpretational consequences as a whole transform the EP into the centre of the nomination process. Therefore, the realized system appears to be a legally verifiable procedure, with one correction on the European Council's right to choose between the candidates in a parliamentary coalition.[46] Even if citizen participation in EP elections remains limited, a candidate coming from the EP (whether he or she is a member of the EP or not) has more legitimacy than a candidate simply appointed by the European Council. This also brings more proficiency to the European Commission, regarding the President must come from an institution with various legal tasks, than if he or she would be appointed by an institution with mainly political duties.

5. Concluding Remarks

The *Spitzenkandidaten-problem* is complex: it is a current and fundamental challenge for the EU, with strong impact on the European institutions, the deepening of the EU, the demand for democracy, the respect of diversity while unifying the EU and so on. The purpose of this essay is to warn the European legislators to formulate the provisions with due attention and precision. On the other hand, the method of creating an ideal interpretation may be useful for those implementing the law in order to reach a legally well-reasoned and comprehensive interpretation (if there will be more unambiguous provisions in the future). Furthermore, it strives to summarize the milestones of the debate and tries to introduce a possible alteration before the EP elections in 2019 to make the system more effective in serving its purpose.

[46] In this case the EP and the European citizens are so divided that they cannot unite and guarantee the required votes to one candidate. Therefore, there must be an intervention from outside the EP, which must come from the European Council (regarding the Treaty does not mention any other actor in the nomination process with active rights).