

III. LEGAL ANALYSIS OF THE OPERATIVE PARTS OF THE PROPOSAL^[9]

New Article 1 and new Article 6 (MPs as representatives of the citizens of the Union)

22. The proposed text for new Article 1 reproduces the existing provision of the 1976 Act but specifies that MEP shall be elected "*as representatives of the citizens of the Union*". Along the same lines, the European Parliament's proposal for Article 6 adds to the first indent of that Article a reference to the fact that MEP "*shall represent all Union citizens*".^[10]

23. In both cases the addition is unproblematic since the wording follows the one already used in Article 14(2) TEU, as modified by the Lisbon Treaty ("*the Parliament shall be composed of representatives of the Union's citizens*").

New Article 2a and Article 3f (joint constituency and Spitzenkandidaten)

24. New Article 2a and 3f aim at institutionalising a practice of "Spitzenkandidaten" with the main European Political Parties putting forward candidates for the post of President of the Commission. In particular, new Article 2a envisages the establishment by Council of a joint constituency in which "*lists are headed by each political family's candidate for the post of President of the Commission*". Article 3f provides for the deadline by which European Political Parties shall nominate their candidates for the Position of President of the Commission.

25. The EP justifies the new proposed Articles on the ground that the nomination of lead candidates for the office of President of the European Commission provides a link between votes cast at national level and the European context and increases the interests of citizens in European elections while reinforcing democratic legitimacy and strengthening accountability.^[11]

26. To start with, draft Article 2 does not provide any element substantiating the features of the proposed joint constituency (number of seats, relationship with national constituencies, composition of the list of candidates, etc.). Nor does the resolution to which the EP proposal is annexed provide more clarifications on the points that are obscure.^[12]

27. More crucially, the provisions are highly problematic for the respect of the institutional balance that results from the Treaties. In particular, the institutionalisation of a "Spitzenkandidaten" practice based on the so-called precedent of 2014 might end up encroaching on the institutional prerogatives of the European Council as defined in the Treaties.

28. This results from the fact that the provision states that each "political family" puts forward its candidate for the post of President of the Commission who will head the electoral list in the proposed joint constituency. However, according to Article 17(7) TEU, the prerogative to propose a candidate for President of the Commission rests with the European Council only. While there is no direct conflict between the text of the proposed Article 2a and Article 17(7) - Article 2(a) being technically about the presentation of electoral lists and not about the power to propose the President of the Commission -, it is nonetheless clear that, by allowing *via* the elections for the European Parliament a popular vote on the prospective candidates for President of the Commission, the proposal fundamentally alters the institutional balance established by the Treaties.

29. In the added value assessment of its proposal, the EP suggests that the institutionalisation of the "Spitzenkandidaten" method would be justified in light of the changes introduced to the procedure of appointment of the President of the Commission by the Lisbon Treaty. The EP mentions in particular the fact that the European Council is now bound to put forward its proposal "*taking into account the elections to the European Parliament*" and that the EP now elects and no longer merely approves the Commission President. According to the EP, the election by the European Parliament of the Commission President presupposes a political choice, rather than mere rubber-stamping of the selection made by the European Council.

30. The arguments put forward by the EP are unconvincing. Contrary to what the EP argues, the new wording of Article 17(7) TEU clearly defines the scope of the European Council's discretion, which has to be exercised taking into account the result of the elections, but is not otherwise limited. The authors of the Treaties left therefore to the European Council a wide margin of appreciation which is accentuated by the proportional character of their representation in the European Parliament (art. 14(2) TEU) and therefore of the difficulty of having clear cut electoral results. In such circumstances, the possibility for the European Council to indicate a candidate that is not the direct expression of a political force appears not only in line with the wording of the provision but also with the objective to secure an effective election of the President of the Commission.

31. As for the fact that the EP now "elects" rather than approves the election of the Commission President, the CLS underlines that the term is used in a non technical way, since the intervention of the European Parliament lacks the features that are generally associated with an election (*in primis* the plurality of candidates). According to the CLS, therefore, the new terminology is meant only to better reflect the political dimension of the relationship existing between the European Parliament and Commission but has no direct bearing on the institutional balance between the European Parliament and European Council when it comes to the appointment of the President of the Commission.