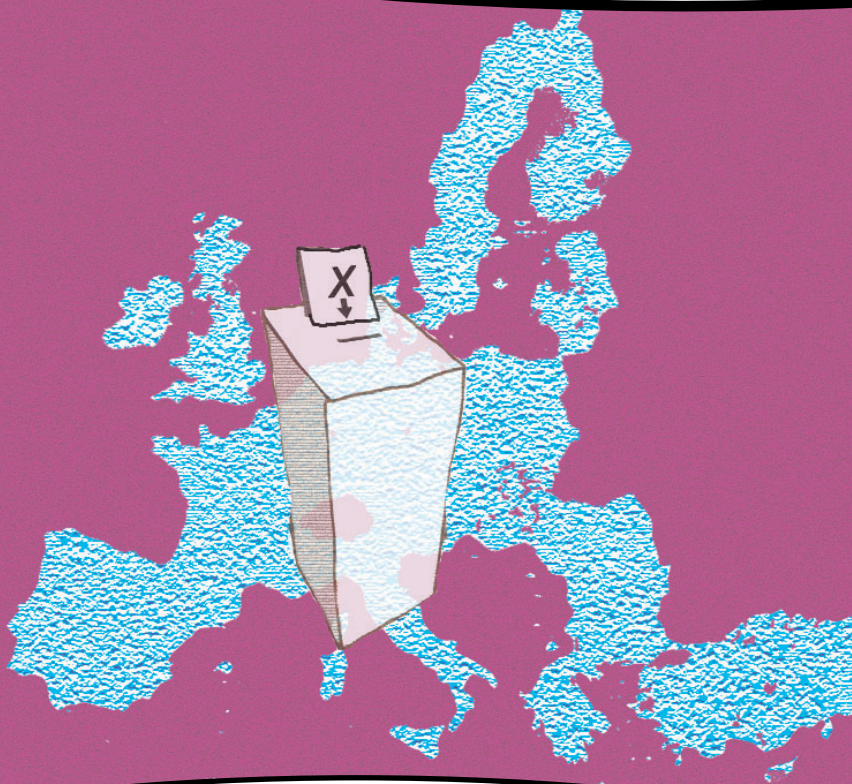# REINVIGORATING EUROPEAN ELECTIONS
The Implications of Electing the European Commission

Pre-Election Report

Julie Smith

THE ROYAL INSTITUTE OF
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Reinvigorating European Elections

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Acknowledgments

About the author

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Executive Summary

Europe's voters go to the polls in mid-June to elect 732 Members of the European Parliament.

In the past European Parliament (EP) elections have been characterized by low turnout, with an emphasis on national rather than European issues. The evidence suggests that this year's elections will be little different despite the enlargement of the Union on 1 May.

The lack of interest in EP elections arises because Europe's citizens do not believe that their votes will change much: they do not lead to a change of government in the EU and they do not directly change the direction of EU policies. And, at the same time, there is a strong sense that the EU interferes in areas where it has no business to be while failing to act on issues such as foreign policy and immigration, where voters would like it to act.

In order to enhance interest in EP elections, it is necessary to reform the Union so that it undertakes only those tasks that cannot be performed so well at the local or national level, and to ensure that it performs those tasks that it undertakes effectively. This will enhance popular support for the Union but will not on its own make EP elections more interesting to the voters.

Thus European elections should contribute directly to the formation of the European Commission, a key part of the Union's executive. This could be done by direct or indirect election of the Commission President or the whole College of Commissioners.

1

Introduction

> The Union needs to become more democratic, more transparent and more efficient.
>
> – The Laeken Declaration, December 2001

Europe's citizens will go to the polls in June 2004 to cast their votes in the sixth set of direct elections to the European Parliament (EP). Although voters in the EU-15 have become accustomed to such elections, it will be the first opportunity for citizens from the ten new member states to elect their Members of the European Parliament (MEPs).[1] This historic moment will highlight perhaps more clearly than any other the facts that the European Union (EU) has expanded to the east and south and now includes states that were formerly under communist rule. As a result, one might expect these elections to be accompanied by a high level of interest. Yet if past experience is anything to go by, turnout will be low in elections that focus on national rather than European issues.[2] And opinion polls ahead of the 2004 elections suggested that fewer voters than ever were inclined to turn out. Why is there so little

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[1] The new member states sent Observers to the EP prior to formal accession on 1 May 2004. They became full members at the plenary session held on 3 May 2004 but the first elected MEPs from the Ten are only due to arrive after the June elections. For details of EP membership, see Appendix 1.

[2] For a discussion of previous European elections see, *inter alia*, Karlheinz Reif (ed.), *Ten European Elections: Campaigns and Results of the 1979/81 First Direct Elections to the European Parliament* (Aldershot: Gower, 1985); Julie Smith, *Europe's Elected Parliament* (Sheffield: Sheffield Academic Press for UACES, 1999); David Butler and Martin Westlake, *British Politics and European Elections, 1999* (Basingstoke: Macmillan, 2000); Juliet Lodge (ed.), *The 1999 Elections to the European Parliament* (New York/ Basingstoke: Palgrave Macmillan, 2001).

interest in European elections? Should Europe's leaders be worried? What can be done about it?

LACK OF INTEREST IN EUROPEAN PARLIAMENT ELECTIONS

The European Union is unique in having a democratically elected transnational parliament. The European Parliament was originally composed of representatives of national parliaments who met periodically in Strasbourg. They were democratically elected but their mandates were national, not European, and thus the democratic legitimacy conferred on the then European Community was indirect.[3] Two of the aims of direct elections were, therefore, to enhance the democratic credentials of the European Community, in terms of enhancing the scope for popular participation, and to increase the legitimacy, or popular support, of the integration process.[4]

The very existence of periodic free elections contributes to achieving the first aim but the second is harder to achieve: any perception that elections or the institutions for which the elections are held do not have the support of the voters raises questions about the legitimacy of the Union in the eyes of its citizens. Low turnout may indicate this problem and, over the years, commentators have certainly remarked adversely on this aspect of EP elections.[5] This situation has been compounded by the paradox that since the introduction of direct elections in 1979, there has been an increasing sense that national elites are out of touch with their citizens, while the 'permissive consensus' enjoyed by the European Community in its early years seems to have all but vanished.[6]

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[3] The possibility of direct elections had been discussed prior to the creation of the Community, but they were a contentious issue and consideration of them was deferred until after the establishment of the Community. This issue is explored in detail in Julie Smith, 'Direct Elections to the European Parliament: A Re-evaluation', Unpublished DPhil thesis, Oxford University, 1995, Chapter 2.

[4] See, for example, Valentine Herman and Juliet Lodge, *The European Parliament and the European Community* (London: Macmillan, 1978).

[5] See, for example, Juliet Lodge, 'The 1984 Euro-elections: A Damp Squib?', *The World Today* , Vol. 40 (August/September 1984), pp. 333–40 (at p. 333).

[6] Writing in 1970, Lindberg and Scheingold argued that there was a 'permissive

This change was highlighted by Denmark's rejection of the Treaty on European Union in 1992 and Ireland's rejection of the Treaty of Nice in 2001, as well as by France's cautious '*petit oui*' to Maastricht in 1992, which was all the more significant by virtue of highlighting reservations to increased integration even in one of the founder states. Although the Danish and Irish results were later overturned by further referendums, Europe's leaders still appeared to be out of touch with many of their citizens. This has been clearly reflected by ad hoc referendums in certain member states and is perhaps indicated by the experience of EP elections over 25 years.

Elections to the European Parliament might have been expected to bring elites and peoples closer together, at least on European affairs. After all, such elections could, in theory, be fought on European issues, giving voters the opportunity to say whether they favour more or less integration, or to indicate the direction they think EU policies should take. In practice, the situation has been rather different, as EP elections have been fought in 15 separate states, each with its own electoral rules.[7] Despite the creation by the main party families of European-level political parties, which produce transnational manifestos, campaigns have typically been national rather than transnational, with national rather than European politicians to the fore. When they have participated, voters have tended to use the elections to punish incumbent national governments rather than to affirm the merits of candidates or parties in relation to European affairs. All these are classic features of second-order elections, i.e. of elections that are not perceived by voters to be in the main political arena.[8]

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consensus' whereby elites took decisions on the future of Europe, which their citizens were broadly willing to accept, even though they had not been explicitly consulted on them. For a further discussion of this concept, see Leon N. Lindberg and Stuart A. Scheingold, *Europe's Would-be Polity: Patterns of Change in the European Community* (Englewood Cliffs, NJ: Prentice-Hall, 1970), p. 39.

[7] Despite a commitment to having a common electoral system, member states have so far been able to converge only on a set of common democratic principles, with each member state choosing its own rules. The UK has two systems, one for Northern Ireland and another for England, Scotland and Wales.

[8] Karlheinz Reif and Hermann Schmitt, 'Nine Second-order National Elections: A Conceptual Framework for the Analysis of European Election Results', *European Journal of Political Research*, Vol. 8, No. 1 (1980), pp. 3–44 (at pp. 8–9).

Most voters continue to see domestic politics as more important than European politics. They pay greater attention to national than to EP elections, despite the important and growing role that the European Union plays in the lives of its citizens. This is natural given the longevity of national political systems and the national identities and loyalties that go with them, not to mention the fact that so few people realize the extent to which powers have already shifted to the European level. The shift of expectations envisaged by neofunctionalist theorists may eventually come about, but it is likely to take some time.[9] Yet although the situation is explicable, it is of concern to those who advocate the importance of European elections as part of the democratic legitimation of the EU in that they do not appear to have captured the heart or mind of the average European citizen. Why should this be so? Is it because the European Parliament is weak? Is it because EP elections appear to change little? Or does it arise from a lack of public awareness of the EP and/or the Union more generally?

Prior to the introduction of EP elections, there was a long-running debate as to whether people would bother to vote for an essentially powerless institution. If they did not, it was felt, low turnout might jeopardize the legitimacy that EP elections were intended to bring. At the same time, there was considerable resistance to increasing the powers of the EP prior to direct elections as it was deemed inappropriate to confer powers on a non-elected body, although the EP did acquire budgetary powers in the 1970s, before agreement on direct elections had been reached. Alongside the creation of the intergovernmental European Council, it was finally agreed in the mid-1970s that elections should be introduced, ostensibly in order to enhance the democratic credentials of the

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[9] Neofunctionalists believed that as they began to recognize that their interests were being met by decisions and actions at the European rather than the national level, people, notably interest groups, would begin to shift their expectations and activity to the European level. In reality, interest groups have shifted their attention to the European level, lobbying extensively in Brussels and Strasbourg, but this has not led to an unambiguous shift in loyalties. If anything, people have developed shared loyalties, recognizing their European identity and interests *in addition* to their national ones. For a discussion of neofunctionalist thinking, see Richard Corbett, *The European Parliament's Role in Closer EU Integration* (Basingstoke and London: Macmillan Press Ltd, 1998), pp. 20–35.

Community and to confer legitimacy on the European Commission, because that body was formally accountable to the Parliament. When the first elections were held, in 1979, 65.9 per cent of electors across the nine member states turned out to vote, despite the relative weakness of the institution that they were electing.

Over the years, the European Parliament has acquired significant powers in the legislative and budgetary fields: it can amend or veto much EU legislation and can reject the Community budget; it has the right to confirm the European Commission in office and to sack it; and it has the right to give its assent to international treaties and accession treaties.[10] Thus the EP is now just as powerful as, or more powerful than, most national parliaments in western Europe.[11] Yet, paradoxically, turnout has fallen as the EP's powers have increased: in 1999, it was only 49.4 per cent. There are many possible reasons for this decline.[12] After all, turnout has also been falling in national elections across western Europe, and has traditionally been low in two long-established federations: the US and Switzerland. But whereas in mature democracies low turnout is often deemed to be a sign of satisfaction with the regime, the same may not be true of EP elections. As Lousewies van der Laan put it, 'Commissioner Frits Bolkestein has argued that low turnout in parliamentary elections is a sign that citizens are happy with existing politics, but it is more likely that low turnout shows people are turning away from the Union.'[13] Certainly, the low turnout in the Netherlands in the 1999 EP elections was widely attributed to a feeling among Dutch voters that all the EU institutions were

[10] For a detailed analysis of the powers of the European Parliament, see Richard Corbett, Francis Jacobs and Michael Shackleton, *The European Parliament* (London: John Harper Publishing, 5th edn, 2003); see also Andreas Maurer, 'The Legislative Powers and Impact of the European Parliament', *Journal of Common Market Studies*, Vol. 41, No. 2 (April 2003), pp. 227–47.
[11] See Lousewies van der Laan, *The Case for a Stronger European Parliament* (London: Centre for European Reform, November 2003), p. 2.
[12] It should also be borne in mind that compulsory voting prevailed in a greater proportion of the member states in 1979 than in 1999. For a discussion of this, see Michael Steed, 'Choice, Representation and European Elections', in Roger Morgan and Michael Steed (eds), *Choice and Representation in the European Union* (London: The Federal Trust for Education and Research, 2003), p. 131.
[13] van der Laan, *The Case for a Stronger European Parliament*, p. 9.

tainted by corruption – not just the Commission, whose members had recently resigned over alleged financial impropriety. Rather than attempt to express their dissatisfaction at the ballot box, voters simply chose to stay at home. Low turnout in EP elections seems to be related to weak support for the Union and, coupled with a sense that these elections change little and its corollary, a lack of interest in them, has contributed to concern that the EU is in some way lacking in democracy, despite the existence of free and fair periodic elections.

DEMOCRACY AND THE CONVENTION ON THE FUTURE OF EUROPE

Although the European Union displays many formal aspects of democracy, limited popular support and a belief among some voters that 'Europe' is something done to them rather than something over which they have a say create problems for the legitimacy of the Union. European elections alone have not unambiguously imbued the Union with the legitimacy its advocates have hoped for, despite the elements of formal democratic legitimacy they bring to it. Enlargement is likely to exacerbate this problem, because the citizens of the ten new member states have less experience of EU institutions and decision-making than those of the current member states, and thus the prospects for disaffection are somewhat higher than in the EU-15. It is noticeable that voters in the new democracies in central Europe have a low tolerance threshold and often throw out the incumbent government after one term. In the case of the European Union, they will not find it so easy to 'throw the scoundrels out'.

Such problems were gradually recognized by the European Council in the run-up to the Treaty of Amsterdam in the late 1990s;[14] the need to do something was reconfirmed by the results of the 1999 EP elections, when turnout across the EU-15 fell to below 50 per cent. Meeting in Nice in 2000, it noted, *inter alia*, 'the need

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[14] See Christopher Lord and Paul Magnette, 'E Pluribus Unum? Creative Disagreement about Legitimacy in the EU', *Journal of Common Market Studies*, Vol. 42, No. 1 (March 2004), pp. 183–202 (at p. 197).

to improve and to monitor the democratic legitimacy and transparency of the Union and its institutions, in order to bring them closer to the citizens of the Member States'.[15] To this end, the Council called for a wide-ranging debate on the future of Europe that would bring in academics and representatives of national parliaments and of civil society, including from the candidate countries, prior to further treaty reform.[16]

A year later, in December 2001, the heads of state and government issued the Laeken Declaration at the end of the Belgian presidency of the Union. It stated that:

> The Union needs to become more democratic, more transparent and more efficient. It also has to resolve three basic challenges: how to bring citizens, and primarily the young, closer to the European design and the European institutions, how to organise politics and the European political area in an enlarged Union and how to develop the Union into a stabilising factor and model in the new, multipolar world.[17]

Clearly, then, there was a perceived need to reassess the democratic underpinnings of the Union and its inter-institutional relations. So how could such changes be brought about? The traditional method of revising European Union treaties, namely the Intergovernmental Conference (IGC), was perceived to be remote from the people and that of 2000, which resulted in the Treaty of Nice, had been particularly unfortunate, giving the impression that the views and interests of some states were being ignored in order to try to reach an agreement. Thus the member state governments decided to convene a Convention on the Future of Europe, which opened in February 2002, chaired by the former President of France, Valéry Giscard d'Estaing. Its remit was to consider possible reforms ahead of a formal IGC due to be opened in 2004 (in fact it was brought forward to October 2003). A key question for the Convention to address was how to 'increase the democratic legitimacy and transparency of the present institutions'.[18]

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[15] *Treaty of Nice*, Declaration 24 on the future of Europe, para. 6.

[16] *Treaty of Nice*, Declaration 23 on the future of Europe, para. 3.

[17] European Council, *Presidency Conclusions, European Council Meeting in Laeken, 14 and 15 December 2001*, Annex 1, 'Laeken Declaration on the Future of the European Union', SN 300/1/01 REV 1, Brussels, 2001, p. 21.

[18] 'The Laeken Declaration', European Council, *Presidency Conclusions*, p. 23.

The Laeken Declaration raised further specific questions relating to the institutional framework of the Union, which the Convention was to consider:

> How can the authority and efficiency of the European Commission be enhanced? How should the President of the Commission be appointed: by the European Council, by the European Parliament or should he be directly elected by the citizens? Should the role of the European Parliament be strengthened? Should we extend the right of co-decision or not? Should the way in which we elect members of the European Parliament be reviewed? Should a European electoral constituency be created, or should constituencies continue to be determined nationally? Can the two systems be combined?[19]

Although the Convention method helped to bring Europe a little closer to its citizens,[20] or at least to organized representatives of civil society (there was little scope for members of the general public to become involved, leading Danish MEP Jens-Peter Bonde to refer to 'Brussels talking to Brussels'), the discussions within the Convention did not place great emphasis on democracy or the institutional arrangements of the Union. Indeed, members of the Convention were angered by how little time they were given to debate institutional issues and by the fact that the proposals presented to them by the 13-member praesidium seemed to bear little resemblance to the views they had expressed during the two days' discussion of those issues. Some members, including Gisela Stuart, herself a member of the praesidium, were led to wonder whether they had attended the same convention as Giscard d'Estaing.

Despite the internal problems, the vast majority of the *conventionnels* did manage to agree to a Draft Treaty establishing a Constitution for Europe, which was presented by Giscard to the Thessaloniki summit in June 2003. The draft, which the European Council accepted as a good basis for their IGC deliberations, contained a section relating to institutions, Title IV on 'The Union's Institutions', and, perhaps rather oddly, a separate section on democracy, Title VI on the 'Democratic Life of the Union'. And although Title VI discussed general principles of representative

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[19] Idem.

[20] Giuliano Amato, Foreword: Don't Deprive the Citizens!', Europahaus Burgenland, *Bürgernähe durch Mitbestimmung – Schlussbericht*. Available at *www.europahausburgenland.net/Projekte/bdm_Handbuch_2.htm*.

democracy at the European level, it did not seem to relate to the institutional issues addressed elsewhere in the draft. The draft did make some progress towards strengthening the relationship between the EP and the Commission, asserting that the European Council's nomination for President of the Commission should take the results of EP elections into account. This is not a requirement under the provisions of the Treaty of Nice.[21]

In my view, the draft did not go far enough towards creating a system that would be comprehensible to the average European citizen: its approach to representative democracy at the European level was rather abstract and did not directly offer much scope for enhancing popular interest in the Union or its elections. This paper seeks to go further than the Draft Treaty in making suggestions for enhancing democracy within the EU and reinvigorating European elections. It argues that there is a mismatch between the policy areas in which the European Union currently enjoys powers and the areas in which decisions taken at the EU level could be most effective, and indeed in which its citizens would like the EP to act. There is a need to reassess which policies can appropriately be tackled at the European level and which would better be left to member states, and to review the way the Commission is appointed.

REINVIGORATING EUROPEAN ELECTIONS

The lack of interest in EP elections is, I believe, the result of a complex combination of three factors. First, there is a sense among some voters that EP elections change little.[22] They do not make or break a government (at least not a European government; they have sometimes contributed to the downfall of national governments), nor do they obviously affect the direction the Union takes on policy

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[21] European Convention, *Draft Treaty establishing a Constitution for Europe*, Article 26.1, 18 July 2003.

[22] It should be noted that this perception has already reached at least one accession state. A paper by the Polish Institute of Public Affairs claims that 'The European Parliament plays only a minor role in the present institutional make-up of the European Union. Elections to the European Parliament do not entail any obvious political consequences'. Mateusz Falkowski, 'Elections to the European Parliament 2004: Voter Attendance and Significance to the Polish Electorate and Political Landscape', in *Analyses and Opinions*, No. 11 (Warsaw: Instytut Spraw Publicznych), June 2003, p. 1.

issues. Secondly, there is a general lack of knowledge about the European Union, the roles of its institutions and their respective powers, leading to a sense of frustration among voters, who come to see 'Brussels' as alien and remote, something over which they have no control.[23] Thirdly, there is a perception among many voters that the EU interferes in areas of their lives where it has no business to be, while failing to produce effective policies in areas of direct concern to its citizens, notably immigration, foreign policy and defence.[24] Taken together, these issues ensure that, despite its democratic credentials, the European Union is weakened by a lack of popular engagement arising from a sense of frustration among its citizens that they can do little to affect what happens to them. This has led to a situation in which the European Union enjoys formal, i.e. legal, legitimacy but lacks what Joseph Weiler refers to as 'social legitimacy', 'a broad, empirically determined, societal acceptance of the system'.[25] There is a lack of popular support among Europe's citizens, and elections to the European Parliament in their current format are not sufficient to bring about that social legitimacy.

As will be shown in Chapter 2, the lack of interest in EP elections seems in part to reflect ignorance of the EP's powers. The traditional call of MEPs in response to the democratic deficit in the European Union, that the powers of the European Parliament should be increased, is no longer adequate. Instead, it is imperative that MEPs do more to make voters aware of their activities.[26] It is

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[23] As Peter Hain, the UK government's representative to the Convention on the Future of Europe, put it, 'The risk of projects as ambitious and complex as this one [European integration] is that people feel they are in a fast-moving car, without any influence over the controls.' Peter Hain, 'Introduction: Time for an EU Constitution', in Katinka Barysch et al., *New Designs for Europe* (London: Centre for European Reform, 2002), p. 1.

[24] Many of the papers submitted to the Convention on the Future of Europe asserted that European citizens tend to perceive the Union as too involved in some policy areas while not playing a sufficient role in other areas such as foreign policy and defence.

[25] J. H. H. Weiler, *The Constitution of Europe: 'Do the New Clothes have an Emperor?' and Other Essays in European Integration* (Cambridge: Cambridge University Press, 1999), p. 80.

[26] Many MEPs do spend a great deal of time in their constituencies and working with the public in other ways but their impact is reduced by the fact that EP constituencies are vast: most countries have a single national constituency; even in the UK, which has 12 constituencies, MEPs represent millions of people and are thus unlikely to be instantly recognized by voters, however hard they work to enhance their visibility.

also vital that national media and governments explain more clearly to voters (and indeed to national parliamentarians) the magnitude of decisions that are taken at the European level and the role that the European Parliament plays in making those decisions. Although greater knowledge about the intricacies of the European Union might spark citizens' interest, two fundamental questions remain. First, given the coalition nature of the Union, to what extent can voters in EP elections affect the outcomes of legislative decisions within the EU? Secondly, is the European Union engaged in activities of which its citizens approve *and* which they believe should be undertaken at the European rather than the national level? I shall argue for a reallocation of policies, restoring those best tackled locally, regionally or nationally to the member states and granting the EU powers in areas where national action is inadequate. This could enhance popular support for the European Union and potentially lead to greater interest in EP elections.

European elections are an important part of creating democracy at the European level but there are numerous problems in the present arrangements, in part because most citizens do not perceive the existence of a European politics.[27] There is no 'government' that is affected by the outcome of EP elections: the elections do not result in the formation of an EU executive or in any obvious alteration in the policy direction of the Union, which makes it hard for voters (and even politicians) to see their impact. This problem is compounded by the fact that European elections are held within national jurisdictions, with citizens electing MEPs from national (or regional) lists. This gives little sense of the European dimension either to voters or to the politicians who seek their votes, in turn ensuring that the elections are fought on national issues and frequently serve as little more than *de facto* plebiscites on the popularity of governing parties in the various member states. Giving the EU powers to act on issues such as a Common Foreign and Security

[27] This point was constantly repeated by MEPs and officials in interviews with the author in Brussels in February 2004. Graham Watson MEP did nuance this by saying that there are increasingly common European values and, in that sense, one can perhaps begin to see the emergence of European politics, albeit in a qualitatively different way from national politics.

Policy (CFSP) could help overcome the perception that there are no European politics, but on its own it would not be sufficient to engage the voters in European elections, unless they were aware of these powers and there was a chance that their vote could have an impact on the policies adopted in that area. Thus I believe that a second fundamental reform is required: a change in the method of appointment of the European Commission, the closest body to an executive that the EU has.

One possibility would be for European elections to lead to the formation of the College of Commissioners or the selection of the President of the Commission. In this case, the outcome in terms of personnel would be clear for all to see. As the European Commission also enjoys the sole right of initiative in many areas of European decision-making, including the internal market, as well as a more limited right of initiative in the areas of CFSP and Justice and Home Affairs (JHA), the results of the elections would also have an impact on the policy direction taken by the Union over the subsequent five years. In addition, direct or indirect elections would strengthen the democratic legitimacy of the European Commission more effectively than the current electoral arrangements. It would make it more accountable, either to the European Parliament or to the citizens more directly, and, in turn, generally improve public confidence in the Union and its institutions.

Chapter 3 outlines possible ways of appointing the Commission, including some of the proposals put forward but rejected by the Convention on the Future of Europe, and assesses the likely implications of six models of appointing the European Commission and its President:

(1) the status quo;
(2) the status quo plus;
(3) election of the Commission President by the European Parliament;
(4) election of the College of Commissioners by the European Parliament;
(5) direct election of the Commission President; and
(6) direct election of the College of Commissioners.

These models are not exhaustive, but the pros and cons associated with each provide an indication of the possible implications for the EU if the method of appointment of the Commission were modified.

No major reforms regarding the appointment of the Commission will formally be in place before 2009. In the final chapter, therefore, I briefly consider the prospects for the 2004 elections, assessing how the transnational parties may alter their approach to appointing the Commission even without formal treaty revision.

2

Changing the European public policy agenda

One of the conditions demanded of would-be new members of the European Union is that they should have functioning democracies.[1] This requirement was not raised explicitly prior to previous enlargements, although there was an implicit expectation that member states had to be democratic.[2] But although the EU requires democracy of its members, it is less clear that the Union is itself democratic. Indeed, it has been claimed that if the Union itself applied to join, it would fail the democratic criteria for membership[3] – and this despite the fact that for almost a quarter of a century the Union has had a directly elected parliament, which has repeatedly seen its powers increased.[4] So why are its democratic credentials in question and what can be done to overcome the democratic deficit within the European Union?

[1] The heads of state and government meeting in Copenhagen in 1993 outlined a set of criteria that would-be members must meet, including democracy, a functioning market economy, ability to compete within the internal market and the willingness and administrative capacity to implement the *acquis communautaire* in its entirety.

[2] In the case of Mediterranean enlargement, the prospect of EC membership was seen as a way of stabilizing the emerging democracies of Greece, Spain and Portugal, rather than democracy being a prerequisite for their joining. However, the three states were considered as potential members only after transition from their right-wing dictatorships.

[3] This argument has been attributed to David Martin MEP.

[4] As argued below, from its origins as a weak consultative assembly, the European Parliament has become a key player in the European legislative process, with the right to approve and dismiss the Union's executive body, the European Commission.

THE DEMOCRATIC DEFICIT

The European Community, now Union, has enjoyed one particular democratic element since its inception in the 1950s: a parliamentary assembly. Since 1979 it has had a second democratic element: free and fair direct elections to that assembly. So why is its democratic legitimacy frequently brought into question? Is it really lacking in democracy and, if so, are there ways in which the perceived problems can be overcome?

In its early years, the European integration process appeared to enjoy popular, if implicit, support among Europe's citizens. They were not asked to vote on whether or not they wanted integration but opinion polls indicated that they supported moves by governments to cooperate more closely. The benefits of integration also helped foster a degree of utilitarian support for integration and thus gave the European Community a degree of 'output' legitimacy among its citizens. Over the years, they have also begun to enjoy a degree of participation in European politics thanks to EP elections. Yet at the same time support for integration seems to have fallen and, as Eriksen and Fossum have argued, 'It has become a received wisdom that the EU suffers from a "democratic deficit".'[5] This is despite the fact that 'since the breakdown in the "permissive consensus" in the early 1990s, the EU has increased its commitment to democracy and legitimacy. The standards of legitimate government pertaining to openness, accountability and transparency have been raised.'[6]

The danger of a democratic deficit in the European Union was first raised by Charles Janssens, reporting on the evolution of the Community institutions in the 1960s. The problem at that stage in the integration process arose, Janssens felt, from the Council's failure to take the EP's views into consideration. He predicted that this would lead to a situation in which domestic legislation would increasingly be made by a non-parliamentary body, the Council, which was accountable to neither the European nor national

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[5] Erik Oddvar Eriksen and John Erik Fossum, 'Democracy through Strong Publics in the European Union', *Journal of Common Market Studies*, Vol. 40, No. 3 (September 2002), pp. 401–24 (at p. 401).
[6] Ibid., p. 402.

parliaments, with potentially disastrous results for democracy in the then Community.[7] The problem as outlined by Janssens has largely been overcome by a variety of means. These included the European Court of Justice's landmark 'Isoglucose' ruling of 1980, which ensured that the Council could no longer simply take its decisions without reference to the European Parliament, and moves to increase the EP's role in the legislative process in repeated treaty reforms.

The issue became a greater cause for concern with the expansion under the Single European Act of 1987 of qualified majority voting (QMV), which meant that ministers could be outvoted and thus that national parliamentarians could not effectively hold them to account. By contrast, it was argued, the EP, elected by Europe's citizens, was able to provide parliamentary oversight. Thus, as the Union took on more powers during the late 1980s and 1990s, repeated treaty reforms, from the Single European Act and the Treaty on European Union to the treaties of Amsterdam and Nice, all sought to reduce any democratic deficit, primarily by conferring new powers on the EP, especially in areas where the Council votes by QMV. This has led to a situation where much EU legislation is now the product of co-decision between the Council and Parliament; if MEPs do not like a proposal they ultimately have the right to veto it in most policy areas.

Ironically, even though the democratic deficit as originally conceived has largely been removed, the treaty reforms of the EU since the mid-1980s have led to a situation in which questions of legitimacy and democracy have become increasingly salient.[8] Despite the introduction by the SEA of the 'cooperation procedure', which gave MEPs the right to amend legislation in certain policy areas and was intended to mitigate the effects of extending QMV, MEPs argued in the 1988 Toussaint Report that a democratic deficit arose from the fact that decisions previously taken by national

[7] Paraphrase of 'Document de travail sur l'évolution des institutions communautaires et leur coopération en rapport avec les responsabilités croissantes de la Communauté' (Janssens Report) (Doc 101/1962/1963) (European Parliament, 1963), para. 8.
[8] This point was made by Richard Corbett, MEP at the Federal Studies Conference organized by the James Madison Trust, 4–6 July 2003.

parliaments were being taken at the European level but that in the European context it was national executives sitting in the Council of Ministers rather than parliamentarians who took the decisions.[9]

Ironically, it was precisely when the then Community started to try to remedy the problem of the democratic deficit that Europe's citizens also began to voice their concerns about the nature of European integration. Europe's apparent democratic deficit was suddenly complemented by a 'legitimacy deficit'. Such concerns are contested, however. In particular, Andrew Moravcsik has argued: 'Concern about the EU's "democratic deficit" is misplaced. Judged against existing advanced industrial democracies, rather than an ideal plebiscitary or parliamentary democracy, the EU is legitimate.'[10] His argument is based on the idea that much of the work of the European Union is essentially technocratic and thus not the stuff of which elections are made or in which voters are particularly interested. Moreover, he argues, 'Constitutional checks and balances, indirect democratic control via national governments, and the increasing powers of the European Parliament are sufficient to ensure that EU policy-making is, in nearly all cases, clean, transparent, effective and politically responsive to the demands of European citizens.'[11] In many ways Moravcsik is right: the mechanisms of decision-making in the Union are not in themselves undemocratic or illegitimate. The problem, however, is an increasing sense of frustration among Europe's citizens who do not find the Union 'politically responsive'. True, the Union is not unique in this regard. As Yves Mény has pointed out:

> The people might send messages of all kinds but not be heard by the representatives who are convinced they are choosing the right options. People's frustration derives partly from the incapacity to put their problems on the political agenda in spite of 'sending messages' to those who govern. Evidence of this dissatisfaction is plentiful and takes many forms: the evolution of public opinion, electoral absenteeism and political *anomie*, the

[9] See Vernon Bogdanor, 'The June 1989 European Elections and the Institutions of the Community', *Government and Opposition*, Vol. 24, No. 2 (1989), pp. 203–4.
[10] Andrew Moravcsik, 'In Defence of the "Democratic Deficit": Reassessing Legitimacy in the European Union', *Journal of Common Market Studies*, Vol. 40, No. 4 (2002), pp. 603–24 (at p. 603).
[11] Ibid., p. 605.

emergence of new forms of mobilization and political parties. Very few countries seem able to escape this common fate of democratic malaise.[12]

That national politics should also suffer from malaise does not mean that Europe's leaders should be complacent. The problems facing national politics are seen *a fortiori* at the EU level and the lack of tradition in the Union removes one legitimating factor relative to national democracies.

EUROPEAN PARLIAMENT ELECTIONS IN PRACTICE

There was an expectation prior to the introduction of direct elections that they would increase popular support for the integration process and also that they would foster closer links between political parties at the European level. The former has clearly not occurred. As already indicated, the loss of popular support for the integration process has occurred since the introduction of direct elections to the EP and has been seen both in declining interest in those elections and in the 'no' votes in referendums on EU issues in Denmark, Ireland and Sweden. By the 1990s, the EP was as powerful as many national parliaments, or more powerful, but this was not enough to inspire Europe's citizens to vote in large numbers. As stated above, turnout has been considerably lower than in national general elections in the member states and has been falling over time. Nor has there been any obvious increase in the European content of the election campaigns over the years, although this began to change in 2004, as Chapter 4 shows.

In terms of party political cooperation, there has been somewhat more progress. From the outset, MEPs sat with colleagues from ideologically similar parties rather than by nationality. In the 1970s the prospect of direct elections led parties from the main party families – the Socialists, the Christian Democrats, and the Liberal Democrats with their Radical colleagues – to create transnational party federations, which were technically distinct from

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[12] Yves Mény, 'De la Démocratie en Europe: Old Concepts and New Challenges', *Journal of Common Market Studies*, Vol. 41, pp. 1–13 (at p. 3). Available at *http://ssm.com/abstract=388512*.

(and far weaker than) the groups that sit in the European Parliament.[13] The federations have since revised their statutes to become parties – the Party of European Socialists (PES), the European People's Party (EPP) and the European Liberal Democrat and Reform Party (ELDR) – and in February 2004 the Greens also created a pan-European party, the European Green Party, but they all continue to play a less significant role than the groups within the EP.[14]

Although these transnational parties have fostered links between national parliamentarians, notably with leaders' eve-of-summit meetings, they have not played a major role in EP elections, which have been fought primarily as distinct national contests in each member state. It would be a rare voter indeed who believed him- or herself to be voting for the PES, the EPP or the ELDR rather than for the national party which happened to be a member of a transnational one. True, the transnational parties have produced common manifestos for EP elections, which some of their constituent parties have used, often supplemented with national manifestos. Yet the manifestos are often almost indistinguishable, offering voters no clear choice about the future direction of Europe – perhaps not surprisingly given that it is the Commission rather than the EP that sets the Union's legislative agenda, and voters are not electing that institution. Moreover, the heterogeneity of the

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[13] See, for example, Geoffrey Pridham and Pippa Pridham, 'The New European Party Federations and Direct Elections', *The World Today*, Vol. 35 (February 1979), pp. 62–70 (at p. 64).

[14] The party groups in the EP receive financial and secretarial resources in proportion to their size; larger groups also wield disproportionately more influence in committees. Thus there are considerable incentives for parties to cooperate. The three largest groups – EPP-ED, PES and ELDR – include MEPs from the member parties of their respective Euro-level parties, and the Green/EFA group similarly contains MEPs from member parties of the European Green Party as well as their regionalist allies. (For details of the member parties of each of the four EU-level parties, see Appendix 2.) The EPP group is somewhat broader than the EPP party, since it also includes British Conservatives, who sit as 'allied members' of what has now become the European People's Party-European Democrat (EPP-ED) Group. The Conservatives' links with the EPP do not run as far as joint manifestos, not least because the issues that divide the Tories most profoundly from the others in the EPP-ED group are constitutional and institutional. The other groups are typically even more hybrid, often coming together for pragmatic rather than ideological reasons.

European party families, even those with a fair degree of ideological convergence, means that the documents are the result of lengthy negotiations and may represent a lowest common denominator on which all member parties are willing to fight. Although the explanation is simple enough, it does little to ameliorate the fact that transnational party manifestos are frequently platitudinous statements of values or declarations of support for integration generally rather than clear statements of intent, and are thus unlikely to generate much interest among Europe's citizens.

Nor were the 2004 elections much different in this respect. The EPP's manifesto focused primarily on its general vision of Europe; there was no indication of what citizens might expect to occur if they voted for the EPP.[15] The EPP had perhaps the easiest time in drawing up a manifesto because of the ideological coherence among its Christian Democrat members. However, even though the British Conservatives remain formally outside the EPP and are therefore not involved in the manifesto negotiations, the presence among its ranks of conservatives from Greece, Spain and Scandinavia as well as the Forza Italia Movement of Italian Prime Minister Berlusconi means that the Party's Christian Democrat credentials and zeal for integration have been somewhat tempered compared with previous years. There was a suggestion that the Party of European Socialists would not produce a Europe-wide manifesto at all, ostensibly because people tend not to read them, although it was hinted that this had more to do with differences within the PES. In the event, the PES did produce a short, seven-page manifesto in April that focused on a clearly defined set of policy areas, rather more than on values.[16] In addition to its manifesto, the Party of European Socialists produced an 'election pledge card', stating four key commitments: 'sharing prosperity in a social Europe; more and better jobs; managing migration and

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[15] *The EPP: Your Majority in Europe*, EPP Electoral Manifesto, approved by EPP Congress of 4–5 February 2004.
[16] PES, *Growing Stronger Together: Five Commitments for the Next Five Years – Manifesto of the Party of European Socialists for the June 2004 European Parliament Elections* (Brussels: Party of European Socialists, 2004).

pursuing social integration; fighting terrorism and its causes'.[17] The ELDR produced a detailed manifesto which contained many specific policy points, perhaps reflecting the relative cohesion of that party. Although the Greens produced a manifesto, it was agreed only after lengthy negotiations, reflecting their internal differences, particularly over institutional issues. However the final document was a clear statement of policy on certain areas, primarily linked to environmental issues, as well as democracy within the EU.[18] Even though the parties differ on what constitutional settlement is desirable, they can agree on the problem.

EP elections have typically been fought on national issues such as education, with national politicians taking the lead. Moreover, voters have tended to use EP elections as a way of giving a vote of confidence or no confidence to their governments. With the exception of Denmark, which has seen the emergence of two Eurosceptic groupings that fight EP elections and referendums on European issues – the People's Movement against the European Union and the June Movement – there has been little scope for parties or movements fighting exclusively, or even primarily, on European issues. This situation has gradually changed as Eurosceptic parties have emerged in the UK (the Referendum Party fought the 1994 EP elections unsuccessfully; the UK Independence Party managed to gain representation in the 1999–2004 Parliament, thanks to the introduction of proportional representation in EP elections in the UK in 1999) and also in Sweden, where a new Eurosceptic party emerged to fight the 2004 elections. Even in the traditionally more pro-European states, Eurosceptic and Euro-cautious voices were increasingly heard in the late 1990s, offering some scope for debate about the future direction of the Union that would have been unthinkable in previous decades.

The EU's institutional arrangements remain a mystery to many citizens, who cannot see what impact their votes have on the

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[17] PES, 'The PES Election Pledge Card', Press Release, 27 April 2004. Available at *www.pes.org/scripts/NewsEvents/*; accessed 3 May 2004.
[18] European Green Party, *European Elections Manifesto 2004*, as adopted at 15th EFGP Council, Luxembourg, 8 November 2003. Available at *www.eurogreens.org/cms/default/rubrik/2/2063.manifesto.htm*; accessed 8 March 2004.

Union. There are two principal reasons for this. First, there is no discernible government at the European level and thus no distinct opposition either.[19] The European Commission has a right of legislative initiative, but it is not the Union's legislative body and cannot be construed as the Union's government, although it does perform certain executive functions. The national ministers who sit in the Council of Ministers do so as European legislators, not as European ministers, yet they too have some executive functions. In any case, under the rules enshrined in the Treaty of Nice, European Parliament do not elections change the composition of either body, even though the EP must confirm members of Commission in office.

Secondly, the party system in the European Parliament is fragmented and the elections do not tend to alter the main groupings sufficiently to lead to a clear 'victory' for any party. This is in part a vicious circle, because it is precisely the lack of tangible gains from EP elections that has ensured that the elections remain nationally focused and second-order. As a result, there is little incentive for the parties to cooperate transnationally beyond the adoption of election manifestos. And even if there were clearly a dominant party in the EU, under the present arrangements it would still have relatively little impact because it is the Commission that sets the European agenda, not the MEPs. Moreover, unlike traditional parliamentary models in which the government emerges from the legislature and can be assumed to reflect the legislature's wishes, the Commission does not emerge from the EP – indeed, their agendas may not coincide.[20] It is hardly surprising, then, that voters pay so little attention to European Parliament elections.

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[19] Many European states have coalition governments, and the issue of which parties to 'blame' or endorse at each election is a perennial problem because voters cannot always identify which governing parties are primarily responsible for the actions taken by the ruling coalition. In some cases, frustration with the system has led voters to give protest votes to far-right parties. The problem is compounded in the case of the EU, however, precisely because the elections do not lead to the formation of even a coalition government: they have no impact on the formation of the executive at all.

[20] In some parliamentary models, members of government are barred from sitting in the legislature. Nevertheless they still owe their positions to the elections and are to a greater or lesser extent bound to their parties in parliament. This is not the case in the EU.

The second-order nature of EP elections is not surprising, but it should be a cause for considerable concern. Public indifference to, or even disaffection with, the EU (as demonstrated in the low turnout in European elections), coupled with a perception that the institutions are tainted with corruption, leads to alienation from the whole process of European integration.[21] Europe needs to find a way to reconnect with its citizens if it is to enjoy social legitimacy. For public confidence in the EU to increase, people must see it functioning effectively, openly and democratically in their (perceived) interest. A first step in this direction could be to consider what the European Union actually does, whether that represents the most efficient distribution of powers and whether it accords with the wishes of its citizens.

WHAT CAN THE EUROPEAN UNION DO?[22]

'Who governs?' is one of the most crucial questions to be addressed by any political system. It is a question that the European Union managed to avoid for half a century but it was a key aspect of the deliberations of the Convention on the Future of Europe in 2002–3 and of the ensuing intergovernmental conference. It is one of the unusual features of the European Union that the division of competences between the Union and its component states is not clearly defined.[23] Although the Union may act only when granted the right to do so by the member states, it is frequently asserted that the Union or 'Brussels' plays too large a role in people's lives, delving into the 'nooks and crannies' where it is not wanted.[24] Yet

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[21] Corruption was a particular cause for concern in 1999 following the resignation of the College of Commissioners in March of that year. Despite the fact that the EP effectively forced the resignation, many voters perceived that body to be tainted as well.

[22] The first part of this section is adapted from the author's contribution to Julie Smith and Camilla Soar, 'Division of Competences in the European Union', CONVEU-30 Strategy Paper. Available at *http://www.riia.org/europe/publications.*

[23] As the Praesidium of the Convention noted, 'The existing system of delimitation of competence was established according to objectives to be achieved and means for achieving those objectives.' European Convention Secretariat, *Delimitation of Competence between the European Union and the Member States – Existing System, Problems and Avenues to be Explored*, CONV 47/02 (Brussels: 15 May 2002), hereafter CONV 47/02.

[24] European Council, *Presidency Conclusions*, 'The Laeken Declaration', p. 20.

at the same time, it seems that the citizens of Europe would like the Union to be *more* active in certain fields, notably in foreign policy, something that member state governments seem reluctant to accept in practice if not rhetorically.

That the powers or 'competences' of the Union are not well defined should come as no surprise to students of European integration. After all, the founding fathers, particularly Jean Monnet, favoured a form of 'functionalist federalism', or integration by steps, whereby the Union (the Community, as it then was) would gradually acquire more powers as the benefits of cooperating at the European level became clear and states gradually decided to work together in ever more policy areas.[25] Thus any increase in powers was expected to be incremental, not to arise from a vision of a federal or united Europe *per se*. Certainly the scholars of neofunctionalism who followed the development of the European Community in the 1950s and 1960s argued that an increase in powers would spill over from one policy sector to another, as initially seemed to happen with the progression of the Community's responsibility from coal and steel to atomic energy.[26] By the mid-1960s, however, it had become quite clear that integration would not progress as smoothly or automatically as some of the neofunctionalists had expected. Instead, member state governments continued to be the gatekeepers: the EC could exercise power only if the member states chose to grant it powers; in many areas they chose not to do so. Thus the

[25] This functionalist approach was first advocated by David Mitrany in *A Working Peace System* (Quadrangle Books, 1966), reprinted in Brent F. Nelsen and Alexander C.-G. Stubb (eds), *The European Union: Readings on the Theory and Practice of European Integration* (Boulder, CO: Lynne Rienner Publishers, Inc, 1994), pp. 77–97. However, Mitrany was not himself supportive of the process of European integration as it emerged because he believed it to be too institutionalized. For discussions of Jean Monnet's approach, see, for example, Roy Pryce (ed.), *The Dynamics of European Union* (London: Croom Helm, 1987), chapters 1 and 2; Kevin Featherstone, 'Jean Monnet and the "Democratic Deficit" in the European Union', *Journal of Common Market Studies*, Vol. 32, No. 2 (June 1994), pp. 149–70; William Wallace and Julie Smith, 'Democracy or Technocracy? European Integration and the Problem of Popular Consent', *West European Politics*, Special Issue on *The Crisis of Representation in Europe*, edited by Jack Hayward, Vol. 18, No. 3 (July 1995), pp. 137–57.

[26] On the neofunctionalist writers, see Lindberg and Scheingold (eds), *Europe's Would-be Polity*; and Ernst B. Haas, *The Uniting of Europe: Political, Social and Economic Forces, 1950–57* (London: Stevens, 1958).

development of EU power has not been linear, nor has it been based on a clearly defined delimitation of powers or competences as one would expect to see in a federal or confederal system.

Despite member states' apparent reluctance to cede sovereignty, over the years the European Union has acquired wide-ranging competences in many areas, notably those pertaining to the internal market. But at the same time, principles designed to limit the powers of the Union have also been adopted. In 1992, the Treaty on European Union (TEU) introduced the principle of 'subsidiarity' (decisions should be taken as close as possible to the citizen), and the Treaty of Amsterdam of 1997 contained the Protocol on the Application of the Principle of Subsidiarity and Proportionality.[27] This latter concept requires that 'any action by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty'.[28] Despite these provisions, which are intended to ensure that only those things which cannot be done nationally should be undertaken at the European level, the way in which powers or competences are allocated to the Union has remained opaque and apparently ad hoc, hard even for experts to understand, much less the average European citizen.

The European Council finally recognized the need to address

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[27] It is important to recall, however, that the subsidiarity principle is open to interpretation: how close a decision needs to be taken to the citizen is, to some extent, a value judgment. Moreover, as para (3) of the Protocol on the Application of the Principle of Subsidiarity and Proportionality states: 'The principle of subsidiarity does not call into question the powers conferred on the European Community by the Treaty, as interpreted by the Court of Justice. The criteria referred to in the second paragraph of Article 3b shall relate to areas for which the Community does not have exclusive competence. The principle of subsidiarity provides a *guide* as to how those powers are to be exercised at the Community level. Subsidiarity is a dynamic concept and should be applied in the light of the objectives set out in the Treaty. *It allows Community action within the limits of its powers to be expanded where circumstances so require, and, conversely, to be restricted or discontinued where it is no longer justified.*' Protocol on the Application of the Principle of Subsidiarity and Proportionality, reprinted in Andrew Duff (ed.), *The Treaty of Amsterdam – Text and Commentary* (London: Federal Trust for Education and Research, 1997), pp. 293–4 (emphasis added).

[28] Ibid, p. 292.

[29] The Treaty of Nice amending the Treaty on European Union, the treaties establishing the European Communities and certain related acts brought about fairly significant reforms in terms of the weighting of membership of the various institutions so as to prepare the Union for enlargement to 27 [provisions were made for the accession of

the issue at the 2000 IGC, which culminated in the Treaty of Nice.[29] Yet as with the question of the Union's democratic credentials, the heads of state and government deferred consideration of the matter. Rather than agreeing on fundamental reform of the Union at that time, they called instead for fresh discussions to be held at a later date, to address the issue of 'how to establish and monitor a more precise delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity'.[30]

The Laeken Declaration a year later noted the need to bring Europe 'closer to its citizens', but at the same time it noted the fundamental mismatch between what the Union actually does and what its citizens believe it should do.[31] This was not simply a case of saying that the Union had too many powers but rather that it was, or was perceived to be, too involved in details best left to member states and regions. At the same time, it was failing to address many issues that its citizens wanted to see tackled at the European level, notably

> justice and security, action against cross-border crime, control of migration flows and reception of asylum seekers and refugees from far-flung war zones … employment and combating poverty and social exclusion … foreign affairs, security and defence.[32]

For these reasons, the Declaration concluded that it was important to improve the divisions and definitions of competence in the EU and to make them more transparent. This, it acknowledged, might 'lead both to restoring tasks to the Member States and to assigning new missions to the Union, or to the extension of existing powers'.[33] But it was also necessary to determine whether there

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Bulgaria and Romania, as well as the ten states which joined the Union on 1 May 2004] but it did not undertake the sort of root-and-branch reforms to the Union's decision-making processes that many deemed necessary if the enlarged Union were to function effectively. The Declaration on the future of the Union may be found at the end of the Treaty of Nice.

[30] Declaration on the Future of the Union, para 5.

[31] European Council, *Presidency Conclusions, European Council Meeting in Laeken, 14 and 15 December 2001*, pp. 20–21.

[32] Ibid., p. 20.

[33] Ibid., p. 21.

should be a reorganization of competence, as there was the danger of creeping competence to the Union and the risk that the dynamic of integration could stall.[34] In order to clarify matters for the citizens, the Declaration distinguished between 'three types of competence: the exclusive competence of the Union, the competence of the Member States and the shared competence of the Union and the Member States'.[35] It thus set the framework for the first systematic analysis of the division of competences between the Union and its member states.

The Convention on the Future of Europe devoted a great deal of time to the question of competences and drew up a very clear set of guidelines for delimiting the powers of the Union. Title III of the Draft Treaty establishing a Constitution for Europe is on 'Union Competences'. Article 9 of the draft asserts that:

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Member States in the Constitution to attain the objectives set out in the Constitution. Competences not conferred upon the Union in the Constitution remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level …
4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution.[36]

In addition, the draft contains a protocol on the principles of subsidiarity and proportionality and outlines three types of

[34] Ibid., p. 22.
[35] Ibid., p. 20.
[36] European Convention, *Draft Treaty establishing a Constitution for Europe, submitted to the European Council Meeting in Thessaloniki* (Luxembourg: Office for Official Publications of the European Communities, 2003), Article 9.

competence – exclusive, shared and 'supporting, coordinating or complementary' – and the policy areas that would come under each. Finally, the draft puts forward separate articles relating to Union competence in the coordination of economic and employment policies (Article 14) and the Union's Common Foreign and Security Policy (Article 15).

The Draft Treaty did not propose any major changes to the areas where the Union can act, and in many ways it simply codified existing practice. The benchmarking of employment policies, for example, was introduced at the European Council meeting in Lisbon in spring 2000. However, the proposed clarification of the allocation of competences and, in particular, the specific mention of employment policy and foreign and security policies could be significant, because they would make it much easier to explain to voters what the Union is actually able to do *and* to demonstrate to them that the Union is acting in areas where they believe it should act. Larry Siedentop's remarks on federalism are apposite in this regard:

> At first glance federalism might seem the most obvious and 'natural' form of the state, in so far as its defining characteristic is the resolve to leave to each locality and region enough authority and power to manage its own affairs, while carrying to the centre only enough authority and power to deal with matters of general interest.[37]

Opinion polls consistently show that European citizens want the Union to tackle unemployment, migration and foreign policy. One snapshot is indicative of sentiments across the EU-25. In 2003, the regular *Candidate Countries Eurobarometer* survey found that 67 per cent of respondents in the EU-15 and 65 per cent in the 13 candidate states [the surveys include Bulgaria, Romania and Turkey] favoured a common foreign policy, while 75 per cent of respondents supported the idea of a common security policy.[38] Similarly, ahead of the 2004 EP elections, the three most impor-

[37] Larry Siedentop, *Democracy in Europe* (London: The Penguin Press, 2000), p. 94.
[38] European Commission, *Candidate Countries Eurobarometer 2003.2*, Brussels, 2003, p. 126 and p. 130 respectively. The data were based on surveys conducted in the EU-15 in October and November 2002 and in the candidate states in May 2003. They are in line with the data produced before and since.

tant issues listed by citizens in almost every EU-15 state were employment, crime and migration.[39] It is interesting to note too that many of the areas where voters would like the Union to have more powers are precisely those where cross-border and common policies could be most effective. This is certainly true for migration policy and international aspects of crime as well as for defence. Of course, one of the issues that typically brings together states to form federations or confederations is defence, and it is a mark of how far the Union is from being a federation that it does not have a common defence force or meaningful policy. Yet this is a policy which could be more effective if tackled at the European level and would appeal to some (although admittedly not all) voters.

Provisions in the draft Constitution such as the establishment of a European Union Foreign Minister, as well as proposals on combating terrorism, could thus help to make the Union more attractive to its citizens – assuming, of course, that the Union were able to deliver on them.[40] However, even if the Union were to begin actively to engage in areas where it could produce more effective policies than member state governments acting alone, and even if such policies accorded with the wishes of the voters, greater public interest in the elections might not be generated if voters still thought that the elections would not change anything.

WHAT CAN THE EUROPEAN PARLIAMENT DO?

As of late 2003, only 18 per cent of European voters believed that the EP had a great impact on people like themselves, compared with 42 per cent who believed that their national parliaments had a great effect and 50 per cent who believed this to be true of their national governments.[41] Thus although the EP has acquired significant legislative powers in many areas where the Union has

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[39] European Commission, *Eurobarometer 60 – Public Opinion in the European Union, Autumn 2003* (Brussels: European Commission, February 2004), p. 102. The data were collected in October and November 2003.

[40] On these two policy areas see, respectively, Draft Treaty establishing a Constitution for Europe, Article 27; and European Council, *Declaration on Combating Terrorism* (Brussels, 25 March 2004).

[41] European Commission, *Eurobarometer 60*, p. 94.

competence, its influence is currently not perceived by the voters. In part this is inevitable, given the number of people who freely admit that they are ignorant of the workings of the Union.[42] It is also the case that although almost all voters claim to have *heard* of the European Parliament,[43] few have much experience of it. In late 2003, some 44 per cent said that they had 'not seen or heard anything about or had any contacts with a member of the European Parliament' since the previous EP elections in June 1999. The EP clearly has an image, or rather visibility, problem that MEPs and political parties need actively to address if EP elections are going to serve the democratic purposes for which they were intended.

Even if the EP's visibility problem were overcome, the fragmented nature of the party system (if one can call it that) at the European level, which ensures that no party is ever likely to secure an absolute majority in the EP, would remain a problem. Coupled with the fact that legislative decisions are taken jointly with the Council, it is inevitably difficult for political parties to demonstrate precisely what they have achieved in the outgoing parliament or what they might achieve in the next one.[44] National parties have shown themselves able to work together within the framework of the European Parliament and often manage to maintain a fairly cohesive voting record.[45] However, the composition of the Parliament is such that traditionally the EPP-ED and PES groups have had to vote together if any decisions are to be made, and the ELDR frequently also votes with them. The PES and EPP-ED groups have also tended to share the presidency of the EP, an MEP from each holding the post for two and a half years of each five-year parliamentary term. This pattern was interrupted in the 1999–2004 Parliament, when the EP presidency was split between the EPP-ED and the ELDR groups. Essentially the political constellations in the EP leave voters with the sort of situation faced by Austrian

[42] In autumn 2003, only 27 per cent of respondents from the EU-15 felt that they had a 'relatively solid knowledge about the European Union'. Ibid., p. 17.

[43] Ibid., p. 21.

[44] While parties may face similar difficulties in differentiating themselves in national polities that have coalition government, as noted above, it is compounded in the EU case by the fact that EP elections do not directly appear to affect the governance of Europe.

[45] See Appendix 1 for details of the composition of the party groups.

voters in 1999, when there was a perception that the 'grand alliance' of Christian Democrats and Social Democrats would change nothing. This is often a recipe for apathy or extremism. In the EU's case, it seems that the lesser of the two evils, apathy, has prevailed.

To overcome this apathy, voters need to be convinced that the EP will actually change something. As a first step, it is important that the EU should undertake the tasks for which it is best suited and which its citizens wish it to undertake. Secondly, it is important that the EP's role in the associated decision-making should be evident for all to see. A clear shift towards elections that determine the outcome of a European government and allow for a real change in policy direction could potentially have a greater impact on voters. Such an idea is unlikely ever to secure the agreement of member states, but a step in that direction – the election of the European Commission – might serve the same purpose and move European elections beyond their current second-order status.

3

Changing the personnel: models for electing the European Commission

A fundamental reassessment of the European Union's powers that served to bring it into line with citizens' expectations would be a first step towards re-engaging citizens with the integration process. However, such a change is unlikely on its own to increase voters' interest in EP elections markedly: they would still not impact directly on the Union's policy priorities, because it is the *Commission*, not the Parliament, which sets the Union's legislative agenda, and because EP elections do not determine the composition of the European Commission.[1] Thus EP elections might still appear only to give voters the chance to confirm or reject lists of MEPs,[2] most of whom are in any case unknown to them, and to have some slight impact on the composition of the groupings in the European Parliament, which similarly mean little to the average voter, who would scarcely notice their impact on EU legislation.

If voters are to become engaged in the political process at the European level, further reform is needed that will make European elections meaningful for the average citizen. The European Com-

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[1] It is debatable just how important the right of initiative is: in the US, Congress initiates legislation; in most European states, governments propose the vast majority of legislation. What distinguishes the EU from traditional west European models, however, is that the Commission does not emerge from parliament in the way that governments do in parliamentary democracies, thereby ensuring that the agendas of government and the parliamentary majorities are broadly in line. In the EU case there is no guarantee that the Commission's proposals will suit the EP's agenda; indeed, given the process of appointing the Commission, they are more likely to reflect the Council's concerns.

[2] The exceptions to this are the Republic of Ireland and Northern Ireland, which use the Single Transferable Vote (STV) system offering voters the opportunity to support particular candidates rather than a party list.

mission, which is the closest the EU comes to having an executive body, currently emerges via nomination by the European Council rather than by election. It is confirmed in office by the European Parliament and is accountable to that body to the extent that the EP can dismiss the entire Commission.[3] Although the process of appointing the Commission is entirely legitimate, it does little to engage Europe's citizens, who typically view it as a rather remote body.

The relationship between the European Parliament and the European Commission is one of the most important in the Union. As discussed in Chapter 2, the EP is one arm of the Union's dual legislature, along with the Council; the Commission retains responsibility for legislative initiative. At the same time, the Commission is accountable to the European Parliament, which can dismiss it, even though it does not emerge from the Parliament.[4] My suggestion, therefore, is that the European Commission, or at least the President of the Commission, should emerge from European elections, either directly or indirectly. This could make European elections more interesting, mitigate concerns about the accountability of the European Commission and enhance its legitimacy. Commission elections could be conducted in a variety of ways, with one model in effect being a variation on the current practice whereby the Council nominates a candidate for President of the Commission, whom MEPs then ratify. Other models include directly electing the President or the entire College of Commissioners, or MEPs could choose the President or the

[3] The EP does not have the right to dismiss individual Commissioners. However, following the crisis in the Santer Commission, his successor as Commission President, Romano Prodi, extracted letters from each member of the incoming Commission to the effect that they would resign if asked to do so by the President. This effectively created an equivalent of individual ministerial responsibility, which had previously been lacking in the Union.

[4] Traditionally the EP's right to dismiss the European Commission was perceived as a rather blunt instrument, as it involved sacking the entire Commission with no certainty that member state governments would not simply renominate the same individuals immediately afterwards. The fact that the EP now has the power to confirm the Commission in office makes the power to dismiss rather more interesting, but it has yet to be used formally. The resignation of the Santer Commission was widely seen as a way of pre-empting a vote of censure by the EP: the EP did not use its powers on that occasion.

College, possibly subject to ratification by the European Council. There are several ways in which each model could be enacted. For example, direct election of the College of Commissioners could entail the citizens of each member state electing their own Commissioner or all states voting for a slate of Commissioners.

These proposals are controversial because they would inevitably alter the institutional balance in the EU, particularly the triadic inter-institutional relationship between the Council, the Commission and the Parliament. Election of the Commission President, whether directly or indirectly, would inevitably increase his or her authority *vis-à-vis* the other institutions, potentially changing fundamentally the way the EU works. The Commission is certainly perceived by the small states to be important as a guarantor of states' interest. However, the UK and France, backed by Spain, Italy and Germany, have argued successfully for the creation of an elected President of the European Council.[5] Although this may be desirable in terms of giving clear guidance to the Union, and perhaps enhancing efficiency, it may well strengthen the Council at the expense of the Commission and, probably, the Parliament. Nor does such a position appear to fit with any particular model of governance: it is hard to see why it would enhance the legitimacy of the Union, as the election would be conducted by heads of state and government, without a popular campaign.[6] Despite these concerns, voiced by the small countries and the new member states, which prefer to retain the rotating presidency of the Council, the concept of a fixed-term elected President found its way into the Draft Constitution and remained firmly on the agenda during the IGC.

The implications of such a position for the inter-institutional balance are not entirely clear, as the proposals do not attribute any

[5] European Convention, *Draft Treaty establishing a Constitution for Europe*, Article I-21: The European Council Chair.

[6] Peter Hain has argued that a fixed-term Council presidency could enhance democracy since the President would be elected by members of the European Council, who are accountable to their national parliaments. 'Peter Hain talks to Martha Kearney', The *International Affairs* Interview, *International Affairs*, Vol. 79, No. 5 (October 2003), pp. 951–61 (at pp. 951–2). However, while this would certainly help to legitimize the Council President, it is hard to conceive of this contributing to participatory democracy at the EU level.

significant functions to this proposed 'chair'. However, it is in the nature of politicians and bureaucracies to expand their roles, and it is likely that an elected Council chair or President would be no exception. In such circumstances the presence of an elected Commission President, whether directly or indirectly elected, could cause inter-institutional deadlock – especially, perhaps, if the two presidents came from different parts of the political spectrum.

If the Council remains determined to have an elected President of its own, it might be better not to elect the Commission President, in order to reduce the sort of gridlock problems seen in the US and in France during periods of *cohabitation*, in which the president and prime minister come from different parties. However, the possibility of increasing voters' interest in EP elections would then be lost, and it is far from clear that this loss could be offset by the election of the chair of the Council, over whose (s)election voters would have no direct say. Thus, if the Union is keen to get closer to its citizens, giving them a say in the formation of the executive is more valuable than the possible gains in efficiency from having a fixed-term chairmanship of the Council.

This chapter will focus on the pros and cons of various ways of linking the appointment of the Commission to the electoral process at the European level. Although I do not believe that European elections should necessarily resemble national models of representative democracy – indeed, it is not clear that this would even be possible – they *could* be amended in such a way as to bring Europe closer to the people, and election of the European Commission may be the way to bring this about. *Some* change is required; which, if any, of the models outlined here is to be preferred, however, is a value judgment, contingent on one's attitude towards the process of European integration.

APPOINTING THE COMMISSION: THE STATUS QUO

Under the provisions of the Treaty on European Union, the European Parliament was given the power to confirm the Commission in office on the basis of nominations from the European Council. In the wake of the TEU, MEPs altered their rules of procedure to

the effect that they would hold a separate vote on the proposed candidate for President of the Commission. Although this vote was non-binding, there was a general assumption that no candidate rejected by the Parliament would persist in his or her candidature. The European Council accepted the precedent set by the EP in its 1994 confirmation vote of Jacques Santer as President of the Commission and, in the 1997 Treaty of Amsterdam, the EP was formally granted the right to confirm the Commission President in office ahead of the confirmation of the rest of the Commissioners-designate.[7]

In theory, repeated treaty revisions have already given the EP a large say in the appointment of both the Commission President and the College of Commissioners, as well as the chance to flex its muscles and demonstrate its autonomy from the European Council and national party politics.[8] In practice, however, MEPs did not make their preferences clear either in the July 1994 vote for Santer or in that of 1999, when Romano Prodi was approved by the outgoing EP, whose mandate was arguably very weak by that stage. In addition, as MEPs are selected (and deselected) by national political parties, national rather than party political considerations are prominent in the confirmation process, particularly among MEPs from governing parties.[9] A prime example of this was the vote of confirmation for the Christian Democrat Jacques Santer in 1994, which rested on the votes of Spanish and Greek Socialist MEPs acting under orders from their national party headquarters.

[7] Treaty of Amsterdam, Article 158 (2), paragraph 1 reads: 'The governments of the Member States 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.' This was amended by the Treaty of Nice, to the effect that the European Council would decide its nominee for Commission President by qualified majority.

[8] Treaty of Amsterdam, Article 158 (2), paragraph 2 reads: 'The governments of the Member States shall, by common accord with the nominee for President, nominate the other persons whom they intend to appoint as Members of the Commission.' This was also amended by the Treaty of Nice to allow for nomination by QMV.

[9] For a discussion of the confirmation procedure for the Commission President, see Simon Hix and Christopher Lord, 'The Making of a President: The European Parliament and the Confirmation of Jacques Santer as President of the Commission', *Government and Opposition*, Vol. 31, 1996, pp. 62–76.

The system clearly favours the European Council by according it the right to nominate Commissioners-designate.[10] To date, the European Council's nominations have been decided by unanimity. This has the twin effects of reducing member states' incentives to reject nominees from other states[11] and putting a premium on securing confirmation of the Council's preferred candidate for Commission President. This is because its choice typically emerges as the product of complex bargaining between national leaders, who are inevitably from different party political backgrounds. It is for this reason that, since 1994, governing parties have sought to bring their MEPs 'onside' to confirm the Council's nominee, even if that person is from another part of the political spectrum.

A revision introduced by the Treaty of Nice (Article 214(2)) means that in future the European Council will decide on its nominees by qualified majority. This could have significant ramifications in terms of the EP's confirmation because those member state governments that find themselves in the minority may no longer have such a strong incentive to seek to persuade their MEPs to endorse the Council's nominee for Commission President. As the majorities in the EP and the Council are rarely congruent, this could generate a new dynamic in the political process if MEPs strengthened their resolve and rejected the Council's candidate, for example if s/he did not come from the same part of the political spectrum as the largest group in the Parliament. The full implications of this shift will not be apparent until after the 2004 EP elections, but there is certainly scope for the EP to increase its influence in the whole process. Although no changes will formally occur until 2009, even if the Draft Treaty is agreed and ratified by all member states, the EPP has already stated that the European Council should take the results of the 2004 EP elections into consideration when nominating its candidate for Commission President.[12]

[10] See Article 214 of the Treaty of Rome as amended by the Treaty on European Union and the Treaty of Amsterdam.
[11] The choice of Commission President in 1994 was an exception in this regard. On that occasion, German Chancellor Helmut Kohl blocked the prospective nomination of the Dutchman Ruud Lubbers; British Prime Minister John Major then vetoed the nomination of Belgian premier Jean-Luc Dehaene.
[12] Wilfried Martens, *Speech to the Sixteenth Congress of the European People's Party, 5 February 2004* (Brussels: EPP, 2004).

Following the introduction of the Treaty on European Union, MEPs also amended their rules of procedure so as to enable them to undertake 'hearings', based on the model used by the US Congress, of each Commissioner-designate. To date, no candidates have been rejected as a result of the hearings. This is not surprising given that the EP votes on the College of Commissioners as a slate rather than by confirming individuals in office. Although this is clearly in accordance with the treaties and with a belief in the principle of collegiality, it does weaken the significance of the hearings and the vote: as it is unlikely that MEPs would view the whole slate of Commissioners-designate as unappointable, they are consequently unlikely to reject any. The way around this would be to have separate votes on each Commissioner-designate. This would not weaken the principle of collegiality, which does not become effective until the Commission is in place, and it would ensure that the College of Commissioners, *separately and collectively*, had the support of the Parliament.

This proposal may be unorthodox in that it is not standard practice in parliamentary democracies. However, as the European Union is not a nation-state and does not adhere in other ways to the established norms of parliamentary democracy, I believe that it is an innovation worth considering. As with the original non-binding vote on the Commission President and the decision to hold hearings, a move to individual confirmation could be under-taken informally under the existing treaty arrangements. If MEPs were so minded, it would simply require a change in the EP's rules of procedure. Thus, even within the existing framework, the EP could begin to wield greater influence on the formation of the Commission than it does at present.

Nevertheless, there have been proposals by MEPs, and by the Convention on the Future of Europe, for further treaty reform in order to strengthen the EP's role in the appointment of the Commission. The Convention proposed that in future the European Parliament should 'elect' the President of the European Commission. However, since MEPs already do this according to their rules of procedure the change from the status quo may mean little in practice, possibly resulting in no more than a 'status quo plus'.

THE STATUS QUO PLUS

The Convention proposed that:

> Taking into account the elections to the European Parliament, the European Council, deciding by qualified majority, shall put forward to the European Parliament its proposed candidate for the Presidency of the Commission. This candidate shall be elected by the European Parliament by a majority of its members. If this candidate does not receive the required majority support, the European Council shall within one month put forward a new candidate, following the same procedures as before.[13]

The European Parliament welcomed this proposal, saying it 'regards as positive the election of the President of the European Commission by the European Parliament and stressed that this is in any case an important step towards an improved system of parliamentary democracy at the European level'.[14] It also expressed the hope that election of the President would 'increase citizens' interest in the European elections'.[15] For its part, the Party of European Socialists referred to the move as 'strengthening [the Commission President's] democratic legitimacy'.[16]

Sections of the British press reacted negatively to this proposal, implying that an elected President of the European Commission was a highly undesirable innovation. However, the reality is that the Convention was proposing little more than MEPs do already: they would still be voting on the nominations put forward by the European Council rather than on their own nominees. The only variations on current practice are that the Council would be required to take the results of the EP elections into consideration and to undertake 'appropriate consultations' before making its recommendations.

Yet there would be considerable scope for MEPs to work with this proposal. Just as they revised their rules of procedure after the

[13] European Convention, *Draft Treaty establishing a Constitution for Europe*, Paragraph 1 of Article I-26, 'The President of the European Commission'.

[14] European Parliament Committee on Constitutional Affairs, *Report on the Draft Treaty establishing a Constitution for Europe and the European Parliament's Opinion on the Convening of the Intergovernmental Conference* A5-0299/2003, Brussels, 10 September 2003, p. 8.

[15] Ibid., p. 16.

[16] Party of European Socialists, 'Draft European Constitution: Priorities and Positions of the Socialist Family', Press Release, 13 June 2003.

treaties of Maastricht and Amsterdam, thereby creating precedents that were adopted by subsequent intergovernmental conferences, so they would be at liberty to adopt new rules following the adoption of a European Constitution. They could advocate a line indicating that they would accept the Council's nomination for Commission President only if it accorded with the parliamentary balance, as the EPP has already done. There may be scope even within the apparently limited framework outlined in the Draft Constitution for MEPs to begin a process of indirectly electing the President and, perhaps, ultimately the College of Commissioners. The expectation in this case would be that transnational parties would name their candidates for President prior to the elections, thereby giving the voters a much clearer sense of what is at stake in EP elections, particularly if candidates also distinguished their policy priorities effectively.

Although the Draft Treaty, if adopted, would potentially permit these changes – indeed in some ways it even encourages them – it is not inevitable that they will come about. It would require a determination on the part of MEPs to hold the European Council to the requirement that it take the results of EP elections into consideration, backed up by rejection of any nominee who did not come from the largest group in the Parliament. This might be an important change symbolically, but it is hard to believe that it would inspire the voters to turn out in much greater numbers unless it served as a catalyst for transnational parties to propose candidates for the presidency during the election campaigns. And it is far from clear that transnational parties would propose their candidates prior to elections, as their constituent parties remain closely linked to their national parties and are frequently unwilling to act autonomously. Thus any change would be likely to be modest at best.

By contrast, indirect election of the Commission or its President in which the MEPs rather than the Council had the right to nominate the candidate might give transnational parties a far greater incentive to centre their campaigns around 'their' candidates, giving a clearer focus to the elections. This could happen not least because parties and their candidates might finally feel able to campaign on European issues which the elections might actually

affect, since the Commission would set the agenda. Whether voters would respond to this or simply continue to consider national issues is, of course, unknown, but the altered dynamics are unlikely to lead to a *less* European focus.

The Benelux states felt that the proposals outlined in the Draft Treaty establishing a Constitution for Europe were better than the existing arrangements but that there remained room for improvement. This, they believed, could be achieved by 'intensifying the prescribed consultation between the European Council and the European Parliament'. They proposed a protocol on the election of the President of the European Council and other office-holders of EU institutions. It included the following clauses:

1. In the procedure for the election of the President of the European Commission, the European Council and the European Parliament are summoned to have appropriate consultations.
2. Appropriate consultations shall in any event include:
   – a joint debate by the European Parliament and the European Council on the President's profile; and, subsequently,
   – the drawing up of the profile by the European Parliament on the basis of which the European Council proposes a candidate.[17]

The Benelux states' concerns were reflected in the Italian presidency's revisions of the Draft Treaty, which inserted a Declaration on Article I-26 stating:

> Prior to the decision of the European Council, representatives of the European Parliament and of the European Council will thus conduct the necessary consultations in the framework deemed most appropriate. These consultations will focus on the backgrounds of the candidates for the Presidency of the Commission, taking particular account of the elections to the European Parliament, in accordance with Article I-26(1). The arrangements for such consultations may be determined in due course by mutual agreement between the European Parliament and the European Council.[18]

[17] Conference of the Representatives of the Governments of the Member States, *IGC 2003 – Contribution from the Benelux countries on the procedure for the election of the President of the European Council and other office-holders of EU institutions and the procedure for the election of the President of the European Commission*, IGC 53/03, Brussels, 24 November 2003, p. 4.
[18] Conference of the Representatives of the Governments of the Member States, *IGC 2003 – Intergovernmental Conference (12–13 December 2003) Addendum 1 to the Presidency proposal*, IGC 60/03 ADD 1, Annex 9.

This proposal goes further than those made by the Convention on the Future of Europe, by giving the EP a clear right of consultation, whereas the Convention draft leaves 'appropriate consultations' undefined. If the consultations did lead to nominations in line with the results of the elections and if the Parliament used its powers of approval effectively, this could lead to something akin to indirect election of the Commission.

ELECTION OF THE COMMISSION PRESIDENT BY THE EUROPEAN PARLIAMENT

Alasdair Murray has argued, 'The direct involvement of MEPs in the selection of the Commission President would strengthen the Commission's accountability to the Parliament, and make the appointment process more transparent.'[19] Certainly, there is interest among MEPs in the idea that they should elect the President of the Commission themselves, either from a slate proposed by the Council or on the basis of the leading candidate from the largest party group becoming president. On 13 November 2002 President Romano Prodi proposed that MEPs should nominate a candidate for approval by the heads of government. This would be a reversal of the current practice in which MEPs vote on the Council's nominees, and could again be seen as a variation of the status quo.[20]

Yet in practice the change could be significant. If the Commission President were nominated by MEPs and then ratified by the Council rather than the reverse, the outcome of the elections could be far more salient that at present, potentially creating greater interest among Europe's citizens and thereby enhancing legitimacy as well as democracy at the European level.[21] There would thus be a clear incentive for parties to nominate their candidate for the Commission presidency before the elections. This would give voters

[19] Alasdair Murray, 'The European Parliament's Path to Maturity', in Barysch et al., *New Designs for Europe*, p. 91.
[20] See *Financial Times*, 13 November 2002.
[21] This approach has been advocated by, among others, Richard Corbett in an Open Letter of 4 February 2003 to the President of the Convention, Valéry Giscard d'Estaing, and by Nick Clegg and Michiel van Hulten, *Reforming the European Parliament* (London: Foreign Policy Centre, 2003), pp. 4–5 and 26.

the opportunity to see who they would get if they voted in a particular way and even the policy direction that the EU might take were this party and individual successful in the elections. In addition, the expectation that candidates would be named prior to the elections, which is likely to emerge in this case, would necessitate the transformation of the current transnational European political parties into more effective organizations. Political parties at the European level are unlikely ever to resemble west European political parties as they have emerged over the last two centuries, but they could evolve into something similar to US parties, which are far looser.

The President of the Commission chosen in this way could then choose the rest of the College of Commissioners much as prime ministers choose their cabinets. However, in this case it would seem appropriate that the Commissioners-designate be subject to confirmation by the European Council (preferably voting by qualified majority), which would have the right to accept or reject the nominees separately or as a slate, and by the European Parliament, voting by an absolute majority on individual nominees.[22] As the European Council would have to endorse the College of Commissioners, the President would have to ensure a balanced list was presented so that no state, large or small, northern or southern, eastern or western, rich or poor, would consistently be discriminated against. This might calm the fears of the small states that their interests might be perpetually ignored.

In terms of the way the EP itself behaves, election of the Commission President by the MEPs need not differ fundamentally from either the *status quo* or the proposals for his/her appointment put forward by the Convention in its Draft Treaty. Each of these models offers some scope for the parties to put forward 'their' candidates for the presidency. But there is the problem of the formal transfer of power from the Council to the EP. Under the current provisions, the Council could ignore the

[22] As stated above, I believe that the situation in the EU is sufficiently different from those in national systems for this deviation from the standard practice of cabinet formation, which reduces the Commission President's autonomy in selecting his/her colleagues compared with that of prime ministers, to be acceptable.

results of EP elections entirely when nominating the President. This is certainly what has happened to date; after all, the Council did not even await the June 1999 EP elections before proposing Romano Prodi to replace Santer. The Convention's proposals make some progress compared with the current system, but the right of nomination would remain with the Council. The key difference with indirect election of the President is that the onus of selection would then be squarely on the EP; this method does not rely on MEPs altering their rules of procedure in order to maximize their impact on the Commission. Parliamentary election as a right need not depend on attempts by MEPs to tinker with the status quo model, but it would require the agreement or at least acquiescence of the European Council. However, it is hard to see the Council ceding this right willingly.

Simon Hix has argued that this model is flawed because 'European Parliament elections are, and are likely to remain, about national rather than European policies and government, [thus] the European Parliament does not have a mandate to select the EU executive'.[23] My contention is that it is precisely by altering the rewards of EP elections so that there is an impact on the formation of the executive that the dynamics of the elections would change and they would cease to be second-order national elections. If my hypothesis is correct, Hix's objections would be groundless. Of course, if he were correct, the legitimacy of the President would be in doubt. However, it is hard to see how an election fought on who should become Commission President could be perverted in such a way that national issues prevailed in the debate and the voting patterns, as has been the case in EP elections to date.

Hix has proposed another form of indirect election of the Commission President. He advocates election by national parliaments rather than the EP, asserting that this would foster genuine debate about the EU in national political circles and national media.[24] Hix's proposal might strengthen the legitimacy of the EU by giving national parliamentarians a real say in the government of

[23] Simon Hix, *Linking National Politics to Europe* (London: Foreign Policy Centre, 2002), p. 4.
[24] Idem.

Europe; whether it would bring Europe closer to the people is less clear. What is manifest is that his proposal would put debate on the formation of the executive squarely in the national arena, which might enhance the Commission's legitimacy but would not necessarily engage Europe's citizens in the process any more than is currently the case, particularly if the media failed to cover such elections fully.

A related idea has been put forward by Andrew Duff in his draft constitution and by Alasdair Murray. They have both proposed that the President should be elected by a combination of MEPs and national MPs.[25] This idea has more to recommend it than Hix's. It could engage Europe's citizens while bringing national parliamentarians into more direct contact with European politics, rather in the way the Convention on the Future of Europe was intended to do. The downside of this proposal is that the elections would be extremely complex and might also lead to an *impasse*, as the majorities in national and European elections are often at variance or even diametrically opposed. If that were to occur, voters might rightly wonder about the real effect of their vote in the EP elections. Thus, although the proposal is interesting in terms of offering ways to enhance inter-parliamentary cooperation and to involve national parliamentarians in the process of integration, its benefits could be outweighed by the loss of focus in the EP elections, which could in turn begin to undermine the legitimacy of the EP.

ELECTION OF THE COLLEGE OF COMMISSIONERS BY THE EUROPEAN PARLIAMENT

Electing the President of the Commission is probably the most important symbolic act that the European Parliament could undertake to attract popular attention. However, electing the College of Commissioners might be preferable in a complex polity such as the

[25] European Convention Secretariat, *Contribution by Mr Andrew Duff, Member of the Convention, 'A Model Constitution for a Federal Union of Europe'*, CONV 234/02, Brussels, 3 September 2002), and Alasdair Murray, 'The European Parliament's Path to Maturity', p. 91.

EU, given the importance of ensuring that states are all adequately represented. In this case, members of the College of Commissioners could be appointed according to the relative sizes of the parliamentary groups. This might lead to political parties focusing their electoral campaigns on particular candidates and platforms, and the Commissioners emerging from the elections could claim greater legitimacy than is currently the case. As with the direct or indirect election of the President, it is likely that political parties would begin to cooperate at the European level more systematically than in the past because the rewards of electoral success would be more tangible, and arguably more transparent. As with the other models, parliamentary election of the College of Commissioners would alter the inter-institutional balance in favour of the Parliament and the Commission at the expense of the Council.

There are objections to this model, not least that national governments and political parties are not yet ready to accept such a dramatic change – indeed, it is not clear that they would be willing to accept the idea of the EP nominating the Commission President. Thus indirect elections would necessitate a good deal of compromise and the formation of coalitions in order for the College of Commissioners to be broadly acceptable. This consideration might initially make acceptance of the model difficult for a British electorate used to two-party pendulum politics in which there is almost always a clear winner, but it would be no worse than the existing system. However, coalition governments are the norm in most countries with proportional representation, and the model could serve to give voters a very clear sense that their votes in EP elections really do affect policy. But even if this approach might win the support of MEPs and national leaders, Europe's citizens seem rather keener to elect the Commission President themselves. Such a move would be highly symbolic and might serve as a catalyst for the development of a European identity, which many would claim is essential if the democratic deficit is to be overcome.

DIRECT ELECTION OF THE COMMISSION PRESIDENT

During the deliberations of the Convention on the Future of Europe there appeared to be widespread but not unanimous support for election either of the President or of the entire College of Commissioners.[26] Yet advocates were divided over the form such elections should take. Some, including former Irish Prime Minister John Bruton, argued for a directly elected President. Commissioner Barnier suggested that 60 MEPs should be elected on a transnational list, with the candidate at the top of the winning list becoming the President.[27]

Interestingly, the idea of a directly elected Commission President wins support from Europe's citizens. A recent Eurobarometer poll asked citizens from the current member states and those who will join in 2004 how the President of the Commission should be chosen. Eleven per cent felt that s/he should be nominated solely by the heads of state or heads of government; 15 per cent felt that s/he should be elected solely by the European Parliament; 18 per cent favoured selection by both the EP and the heads of state and government; and 34 per cent favoured direct election by the citizens of the European Union.[28] Moreover, on average 40 per cent of citizens in the EU-25 incorrectly believe that if the Draft Treaty were to come into effect the Commission President actually would be directly elected; this figure rises to 69 per cent in Cyprus. Across the Union only 41 per cent said this would not happen, with the rest uncertain.[29] But in contrast to this public support for the idea of directly electing the President, national and European politicians are far more cautious.

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[26] Some, including Convention President Giscard, objected to elections on the grounds that they might politicize the Commission and make it 'subservient to a particular political majority in the European Parliament'. Corbett, Open Letter.

[27] See House of Commons European Scrutiny Committee, *Democracy and Accountability in the EU and the Role of National Parliaments*, 33rd Report of Session 2001–02: 12 June 2002.

[28] European Commission, *Eurobarometer 60*, p. 90.

[29] European Commission, *Flash Eurobarometer – The Future European Constitution* (Brussels: European Commission, February 2004), p. 16.

Neil Kinnock, a Vice-President of the Commission, has expressed opposition to the idea of direct elections, arguing that 'it would be a mistake to think that legitimacy is only achievable by election'.[30] The UK government's representative at the Convention, Peter Hain, rejected the idea of direct election of the Commission President. He told the House of Commons European Scrutiny Committee that it was not appropriate for the head of an executive to be directly elected. This seems odd given that the UK's close ally, the United States, has a directly elected executive. Hain also felt that people would not turn out to vote.[31] This is a rather more valid concern: one of the aims of directly electing the Commission President would be to interest voters; if it failed to do so the elected President would still claim the legitimacy of election, even though s/he might have only a limited electoral mandate, which would reduce rather than enhance accountability.[32]

Somewhat perversely, another criticism is that directly electing the President (or indeed the entire College of Commissioners) would politicize the Commission. It is certainly true that political parties would be likely to come together to propose their trans-national candidates for presidential elections – one of the advantages of this model, along with other models of electing the Commission, is precisely that it would bring together currently fragmented political parties at the European level. However, the criticism seems somewhat irrelevant: it is true that Commissioners are bound not to follow any national mandate but there is currently no prohibition on their being members of political parties. It has been the practice for the Commission presidency to alternate between Christian Democrats and Socialists, and latterly between the EPP-ED and ELDR groups, according to inter-party deals, and Commissioners from the three largest party groups attend eve-of-summit meetings with leaders of national parties. Thus the political

[30] *Financial Times*, 13 November 2002.
[31] See House of Commons European Scrutiny Committee, *Democracy and Accountability in the EU*, p. 35.
[32] These concerns parallel those heard prior to the introduction of direct elections, when some, such as the French Gaullists, feared that such elections would increase the Community's legitimacy, an outcome they did not want. Others feared that a low turnout would harm its legitimacy.

dimension is well established within the Commission. Moreover, further politicization of the Commission could be seen in a positive light. David O'Sullivan, its Secretary General, has argued that

> the Brussels executive cannot continue indefinitely to have a purely techno-cratic role … we have to demonstrate that what we do is relevant. Unless we move in that direction – a living European political debate – we will never get the adhesion of our citizens to the process.[33]

Another concern about direct election of the President is that it might lead to a nationalistic approach in which citizens from all member states strive to get a fellow national elected, resulting in the dominance of candidates from the large member states – a 'big boy's club' as an official of one of the party groups called it.[34] This would fundamentally undermine the ethos of half a century of European integration and is thus to be avoided. Finally, the direct election of the President would depart from the general European practice of a parliamentary executive and would significantly alter the inter-institutional balance at the European level, tending to strengthen the Commission at the expense of the Council and possibly also the Parliament – something which would appear to have few advocates at present.[35]

DIRECT ELECTION OF THE COLLEGE OF COMMISSIONERS

Like the direct election of the President of the Commission, directly electing the College of Commissioners might pave the way for the emergence of effective transnational political parties that served as electoral vehicles for the College of Commissioners. In this case, the parties might field lists comprising candidates from

[33] David O'Sullivan speaking to the European Policy Centre, quoted in *EUobserver.com*, 'Call for Commission to be more politicised'. Available at *www.euobserver.com*; accessed 28 March 2004.
[34] Off-the-record interview in Brussels, 16 February 2004.
[35] This view is disputed by Sir Stephen Wall, who told a House of Commons select committee that direct election would make the President 'an independent political figure on the European stage', but by affecting his/her neutrality it might reduce his/her ability to do the job. House of Commons European Scrutiny Committee, *Democracy and Accountability in the European Union*, p. 35.

each member state.[36] As with any other system of list proportional representation (the most obvious electoral system if such elections were to be run transnationally), the Commissioners would be drawn from the lists in proportion to the number of votes they received. This would entail a degree of politicization of the Commission, although the effects would be mitigated by the fact that the College as a whole would reflect the whole political spectrum. Indeed, given the pattern of voting in European elections to date, it is quite likely that its composition would be far more diverse than is the case now: as member state governments usually nominate Commissioners from their own parties, this tends to reinforce the position of Christian Democrats and Social Democrats, and to a limited extent the Liberals. Moreover, if elections were fought in all member states by transnational parties each seeking as large a number of Commissioners as possible, one would expect the focus of the elections to turn on European issues, in marked contrast to the current system. Although voters and politicians nationally might seek to revert to domestic issues, the very nature of the party slates would render this kind of debate fairly meaningless, as parties would be seeking to maximize their support across the whole EU.

An alternative way of directly electing the College of Commissioners would be for each member state to elect its own Commissioner. This approach, which is supported by the veteran Danish Eurosceptic MEP Jens-Peter Bonde,[37] would have the advantage of showing voters very clearly who or what they were voting for and would enable them to give a mandate to 'their' Commissioner, who would then be expected to represent his or her country in Brussels, rather than the reverse. Their greater ability to influence EU policy might enhance voters' interest in the elections and could increase the Commission's legitimacy in their eyes, as voters would technically have a clearer say in terms of selecting

[36] The precise number of candidates on each list would depend on the total number of Commissioners to be elected. It would be very simple in this model to reduce their number to fewer than that of the member states, and it would have additional benefits in terms of the efficiency of the Commission.

[37] Interview in Brussels on 16 February 2004.

their own Commissioner. However, this approach would also result in a clear nationalization of the process and to a weakening of the Commission's ability to identify the common interest, as Commissioners would be responsible for and to 'their' voters. The result could be to enhance democratic accountability while at the same time reducing the effectiveness of the Commission to set the Union's legislative agenda. For intergovernmentalists concerned with states' rights, this may well be desirable; for those concerned with creating a more effective Union, the costs in terms of strategic direction might be rather too high.

CONCLUSION

Direct or indirect election of the Commission, by whatever method, would have advantages over the status quo, primarily in providing a clear outcome and thus a sharper focus to the elections. However, even the status quo model could awaken citizens' interest in the elections if MEPs were to flex their muscles and refuse to accept the European Council's nominee unless s/he came from a political party represented in the largest grouping in the Parliament. The essential point is that each of these methods would give voters some say in executive formation at the European level, which is likely to help interest them in the elections and thus enhance democratic and social legitimacy at the European level. They might also result in voters being able to affect the policy direction of the Union. All this is likely to help generate political debate about issues of common concern and possibly a greater turnout in elections, and also to stimulate the development of European political parties that serve to mobilize popular interest in the elections.

Each model entails different advantages and risks. For example, the direct election of the President of the Commission would be the most powerful symbolically, provided citizens were sufficiently interested to vote; otherwise, this model would potentially be the one most likely to undermine rather than enhance the legitimacy of the Union. Direct election of one Commissioner in each state might increase voters' interest in what would be essentially national

elections and thereby enhance the democratic legitimacy of the Union, but this would be at the expense of creating an unambiguously intergovernmental Commission, lacking the ability to work for the common interest. Thus, as noted above, it is not possible to state categorically whether any one of these models is 'better' than any of the others, because they would each have different effects on the inter-institutional balance within the Union. The desirability of any model will inevitably depend on whether one favours a federal or intergovernmental Europe, and a parliamentary or a presidential model.

4

Conclusions and recommendations

The European Union does not lack democracy *per se*: the treaties enshrine democratic practices at the European level, even if not in full accord with the principles of representative government in that not all laws are enacted by, nor is budgetary responsibility granted to the citizens' elected representatives. As Mény puts it:

> It is not so much democracy that is at stake, but rather the main mechanism of western democracies, i.e. representation. The legitimacy of the system is weakened when citizens perceive their representatives as incapable of acting according to the messages they have sent through their votes, protest or other forms of mobilization.[1]

Voters feel distant from institutions over which they believe they have little control, and this in turn has been perceived to reduce the legitimacy of the EU. Popular support could be enhanced if the Union were reformed in such a way that its citizens felt that it dealt with the issues that mattered to them, increasing the Union's 'output' legitimacy, as discussed in Chapter 2. This could easily complement changes in the formation of the executive, or input legitimacy, as outlined in Chapter 3. It would be desirable if the two sets of reforms could be brought about simultaneously, as the work of the Convention on the Future of Europe sought to do. However, lack of progress in one area should not impede progress in the other. Thus, elections to the Commission should be introduced as soon as possible, even if a full review of the Union's

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[1] Mény, 'De la Démocratie en Europe', p. 4.

competences has not been completed.[2] These elections would, after all, be an important step in the direction of a more legitimate and democratic Union.

Almond and Verba have argued that:

> If a democratic political system is one in which the ordinary citizen participates in political decisions, a democratic political culture should consist of a set of beliefs, attitudes, norms, perceptions, and the like, which support participation. … If the norm of participation is not widespread, institutional change in the direction of fostering participation will not in itself create a participatory democracy.[3]

Elections are not, therefore, a sufficient condition for greater legitimacy but they are a necessary one. Elections alone are unlikely to alter people's attitudes: it is not enough simply to elect the European Commission if the public then perceives it to be a weak, ineffectual or corrupt body. Voters also need to feel that the elections will have an impact on their daily lives, but that impact should be in areas where they want the Union to be involved, not necessarily in all areas. Elections that generated the public's interest could do much to change public opinion and engender a sense of European interest, which in turn could contribute to the evolution of a European 'demos', or people. In order for this to happen, voters need to be convinced both that the European Union is dealing with issues that matter to them and that their vote will actually change something. To achieve this the Union and its member states need to consider systematically which policies can best be tackled at the Union level and which rightly belong at the national or sub-national level, and to act to ensure that powers are allocated accordingly. The problem is that neither the member states nor the central EU institutions are prone to view such matters objectively. The Draft Treaty outlines some ways in which these decisions could be reached but more work in this area is necessary if the Union is to serve its citizens effectively and efficiently.

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[2] The Draft Treaty establishing a Constitution for Europe went some way to delimit competences but, at the time of writing, member states remained divided on some fundamental issues.

[3] Gabriel A. Almond and Sidney Verba, *The Civic Culture: Political Attitudes and Democracy in Five Nations* (Boston, MA: Little, Brown, 1965), p. 134.

In addition to determining which policies are best dealt with by the Union, and repatriating powers to the member states if necessary, Europe's leaders should determine which function European elections are intended to serve. Are they intended primarily as a democratic symbol? Or are they actually intended to have a significant impact on the Union in terms of democratic legitimacy and popular support? Are they meant to serve as the basis for executive formation and/or as the forum in which public policy formation can be discussed in the expectation that their outcome will indeed have an impact on the direction of EU policy-making? At present, European elections do not have this clear impact on policy-making precisely because neither of the EU's agenda-setting institutions, the Council and the Commission, emerge from EP elections. It is unlikely that the member states would be willing to move to a system of direct election of the European Council, which represents the states *qua* states and on which each state is currently represented by its head of state or government, as this would appear to undermine national sovereignty. It would certainly reduce the ability of national governments to set the European agenda as they do at present. By contrast, the Commission, which initiates EU legislation and also forms part of the EU executive, could be elected, either directly or indirectly, with little direct impact on member states or their governments. This would give a clear *European* dimension to European elections, which in the past have been characterized by low turnout and a focus on national issues.

There are difficult questions associated with electing the European Commission. As noted above, many commentators and practitioners view the potential politicization of the Commission that might ensue as undesirable. However, the problem may be overstated because in order to secure the European Council's approval, and in all likelihood that of the EP as well, the Commission slate would have to be balanced politically and geographically. Thus it is unlikely that we would see the entire College of Commissioners coming from one political family. In any case, members of the Commission are already associated with their party families, attending meetings organized by their respective transnational parties, so the idea that they are independent of party politics is misguided.

And indeed, as O'Sullivan made clear, politicization of the Commission might even be a good thing in itself, as it might generate wider public interest in its workings.

Direct election of the Commission President could contribute to a bipolarization of European politics along the lines of that seen in the French Fifth Republic.[4] The electoral system would in part determine whether this came about. The shift in France was partly a result of the majoritarian two-ballot system, which is not something that could be easily adopted across the European Union, as it would require citizens to go to the polls twice rather than once. Instead, the alternative vote system might be more appropriate, were member states seriously willing to consider a move towards direct election of the President.[5] Whichever electoral system were chosen, the shift to direct election in itself could serve as a catalyst for change and help to reinvigorate European elections.

In practice, the idea of a directly elected President is unlikely to be taken up in the foreseeable future. Peter Hain's assertion that it is not appropriate to elect the head of an executive directly seems to be widely endorsed by Europe's elite, despite support for the idea among Europe's citizens. Nor does there seem to be great support for the direct election of the College of Commissioners. Some MEPs favour the idea of each member state electing its own Commissioner, but this would fall foul of the traditional principle that Commissioners must not accept a national mandate. It is impossible to see how in practice a Commissioner directly elected in the national political arena could avoid such a mandate.

Indirect election of the Commission or its President by the European Parliament carries a great deal more weight among parliamentarians, and it appeared to have the support of many

[4] The French party system was deeply fragmented until the advent, in the Fifth Republic, of direct elections for the President. This contributed to a bipolarization of politics between the 1960s and the mid-1980s, but did not lead to a two-party system. For further details of the development of the French party system, see Andrew Knapp and Vincent Wright, *The Government and Politics of France* (London: Routledge, 4th edn, 2001).

[5] The 'alternative vote', frequently mistaken for a form of proportional representation, is a single-ballot majoritarian system in which voters rank their preferred candidates. If no candidate secures an absolute majority, the lowest-ranking candidate is eliminated and his/her second-preference votes are redistributed. This continues until one candidate secures over 50 per cent of the vote.

members of the Convention on the Future of Europe; indeed the Convention's proposals speak of the Commission President being elected by the EP. It could give greater relevance to the EP elections by making them into something more akin to the elections in most European states, in which governments emerge from national parliaments. Indirectly electing the Commission President would be less likely than a direct election to yield a dominant figure who could potentially undermine the governments of member states. But it would confer a degree of legitimacy on the Commission, creating an additional level of accountability and giving voters a sense that European elections do actually change something. In turn, this could enhance interest in European elections and thus help to increase the EU's democratic legitimacy.

The proposals for election of the Commission President presented in the Draft Treaty establishing a Constitution for Europe, and further refinements put forward by the Italian presidency of the Council, do offer a move in this direction. In my view, however, they do not go far enough, as they effectively leave it to the European Parliament to take the initiative. They could lead to the development of effective transnational parties that would complement the party groups in the EP, but this is not certain, given the tendency of MEPs to defer to their national party leaders on matters relating to the appointment of the Commission. I would therefore advocate a bolder approach that stated clearly that the European Parliament should nominate the President of the Commission, who would then be confirmed in office by the European Council, preferably voting by qualified majority. Coupled with a clear delimitation of the EU's powers that accorded with the citizens' wishes, this could, I believe, act as a catalyst for genuine transnational campaigns fought on European issues. It would contribute to a dynamic political system at the European level. It is unlikely to mirror the sort of party politics that have emerged at the national level across western Europe over the past two centuries. Nonetheless, it could certainly help to enhance interest in the elections and increase support for the integration process, thereby reducing the Union's legitimacy deficit. Major reforms of this type will not be introduced before 2009 at the earliest, but some changes

could be introduced immediately if European politicians were so minded. What, then, are the prospects for change in the 2004 elections?

PROSPECTS FOR THE 2004 ELECTIONS AND BEYOND[6]

Given the failure of the Nice summit to introduce any fundamental changes to the Union's institutional arrangements or to the method of appointing the Commission,[7] it was inevitable that the 2004 elections would be fought broadly according to the same rules as in 1999. However, there were hopes in the second half of 2003 that the IGC would conclude in December of that year and offer an opportunity for politicians to campaign on the basis of a new constitution. This could have stimulated popular interest in the elections, even though the major institutional reforms were not due to come into effect until 2009 regardless of when the new treaty was agreed. In their draft electoral manifesto adopted in November 2003, the ELDR expressed the hope that the IGC would endorse the draft treaty 'in good time for the elections for the European Parliament in June 2004, so that the Constitution can provoke a wide public debate, the engagement of political parties and popular legitimacy'.[8] This sentiment was echoed in January 2004 by the vice president of the Socialist group in the EP, Klaus Hänsch, who argued: 'We need a constitution before the European elections. We have to give grounds for hope to the voters after the failure of the Brussels Summit.'[9]

[6] For further discussion of the 2004 elections, see Julie Smith, 'Making Votes Count', *The World Today* , Vol. 60 (May 2004), pp. 20–21.

[7] As noted above, the Treaty of Nice did increase QMV in certain policy areas, but these changes were less significant than previous treaty reforms. It also introduced QMV for the nomination of the Commission President, which, as noted in Chapter 3, could have significant ramifications. However, these would become apparent only after the 2004 elections, when the Council was due to nominate its candidate for this post.

[8] ELDR, *European Liberal Democrats Insight*, Special Edition Electoral Manifesto 2004, p. 4. Available at *www.eldr.org*.

[9] Party of European Socialists, 'Hänsch: "We Need a Constitution before Elections"', Press Release, 28 January 2004. Available at *http://www.socialistgroup.org/gpes/*; accessed 8 March 2004.

This statement assumed that voters would be interested in the idea of a European constitution and that its contents could form a useful basis for election campaigns on a European theme. There is certainly much to commend the sentiment and some indication that Europeans really do want a constitution.[10] The experience of the Maastricht ratification referendum in France might lead one to question whether voters would in fact be enthused by the nitty-gritty of any document like the proposed Draft Treaty, which remains couched in terms that make it difficult for any but the most ardent Europhile to digest. Yet the idea that Europeans should be drawn to the ballot box following debate about European issues is an important one and it would be a break with the past in most EU member states. Although the draft was not finalized in December it did serve as a catalyst for major discussions on the future of Europe ahead of the EP elections in some states. In the UK, Prime Minister Blair even conceded to demands for a referendum on the proposed treaty, assuming that it would be agreed by the European Council. Thus in some ways it seems that attempts to put Europe on the agenda in member states ahead of the 2004 elections had worked, even if the treaty was not agreed as rapidly as some had hoped. The issue of electing the Commission President was rather further down the agenda, however.

The European Greens espoused the idea of electing the Commission President well before the Convention endorsed it, declaring their candidate to be the veteran German radical Daniel Cohn-Bendit. This trial kite could have inspired other European political parties to nominate their candidates as way of giving a genuine focus to the elections. True, under the provisions of the Treaty of Nice the European Council would have no obligation to take any notice of MEPs' demands for 'their' presidential candidate, even if they have to bear in mind the need for the EP's approval. Nevertheless, if the major parties were to propose candidates and fight transnational campaigns that focused heavily on those candidates, there would be considerable pressure on the European

[10] In early 2004, 77 per cent of respondents in the EU-25 said that there should be an EU Constitution; in the UK 51 per cent were in favour, with 30 per cent opposed. European Commission, *Flash Eurobarometer – The Future European Constitution*, p. 21.

Council to nominate the candidate of the largest group in the EP. Even if, as has happened so frequently, the balance of political forces in the Parliament were opposed to the majority in the Council, the very facts that the EP elections were the more recent, that they were transnational *and* that they had been fought on the basis of promoting particular presidential candidates would lead many to accept the outcome of the elections. If this were to happen once it is possible that member states would consider revising the rules formally, just as they codified the EP's informal confirmation of the Commission President in the Treaty of Amsterdam.

None of the European political parties have shown any enthusiasm for the idea of naming their candidate for Commission President ahead of the June 2004 elections. Indeed, the Greens themselves had ceased to suggest that Cohn-Bendit, or indeed anyone else, was their candidate. In their case, it might have reflected a sense of realism: the prospects for the Greens in an enlarged Europe are not good, as the central and east European states have not embraced the post-materialist agenda to the extent seen in western Europe, so they were likely to secure fewer seats in the enlarged Parliament. By contrast, at one stage it seemed that the other major European parties – the European People's Party, the Party of European Socialists and the European Liberal Democrat and Reform Party – had, if anything, too many potential candidates. They ranged from serving and former prime ministers to incumbent MEPs, including for the Centre-Right Luxembourg Prime Minister Jean-Claude Juncker, Austrian Prime Minister Wolfgang Schüssel, and, at an early stage, former Spanish Prime Minister José Maria Aznar. On the Socialist side, the former Finnish prime minister Paavo Lipponen put himself forward as a candidate, and the influential Spinelli Group named the Portuguese Commissioner Antonio Vitorino as their favoured candidate. Among the Liberals, the names of Belgian Prime Minister Guy Verhofstadt and the President of the European Parliament, Pat Cox, were mentioned. Because some, such as Lipponen, were declared candidates, members of the party families were reluctant to endorse other potential candidates ahead of the elections. Thus a veil of silence prevailed and there was little scope for engaging voters on this

issue. The proliferation of candidates could have presented a major opportunity for interesting voters in European elections, namely primaries at which the parties would elect their candidates for the Commission presidency. In the event, several putative candidates ruled themselves out, either deliberately, as in the case of Juncker, or as a result of general dissatisfaction with their policy stance, as in the case of Aznar.

Apart from reluctance to be seen publicly supporting particular individuals from within the party families, two other major factors seemed to preclude a move towards nomination of candidates by the transnational political parties. The first was an unwillingness on the part of some constituent parties, particularly the British Labour Party, to be seen endorsing a candidate. They believed that this task should rightly be left to national leaders. The problem on the Centre-Right was that the EPP comprised 65 parties from the EU-25, some of whom were traditional integrationist Christian Democrats, others Conservatives.[11] This would have posed a problem had the EPP-ED group, which was even more hetero-geneous than the EPP Party, wished to nominate a candidate ahead of the elections: it is unlikely that the Christian Democrats would have accepted a Conservative candidate to represent them and even less likely that the Conservatives would have accepted a Christian Democrat, particularly given their differing approaches to further European integration.

But even though the transnational parties were not willing to name their preferred candidate for Commission President ahead of the elections, the EPP was happy to advocate a step that went well beyond the Treaty of Nice: the European Council should take the results of the 2004 European Parliament elections into account before nominating their choice for President. The party adopted the Resolution on the Appointment of the future President of the European Commission at its congress in February 2004. It stated:

[11] The EPP president Wilfried Martens vehemently denied that the size and composition of the EPP-ED group was a problem. See 'Martens slams "Banal Political Poker-Games"', EPP, Brussels, 3 March 2004. Available at *http://www.eppe.org/ default.asp*; accessed 8 March 2004. Yet even without ideological differences, it is clear that coordinating policy among 65 parties will create problems. The divisions between the Christian Democrats and the Conservatives exacerbate them.

The European People's Party, …

d) considering that the European Commission should reflect, in its composition, the political will of the European citizens;

   1. calls on the Irish Presidency to wait for the outcome of the European elections of June 2004 before making public proposals on whom to nominate for the future President of the Commission;

   2. underlines the need for the future European Commission to reflect the political landscape of Europe as given by the results of the European elections;

   3. calls upon the Heads of State and Governments to respect the spirit of Article 26 of the draft Constitutional Treaty for the nomination of the new President of the Commission of an enlarged Union at the European Council next June and to designate the candidate accordingly; …

   4. recalls that the EPP-ED Group in the European Parliament will not give its support for a candidate for the post of President of the European Commission, if this candidate does not come from the political family which gained the most support in the European elections.[12]

Their resolution drew explicitly on Article I-26 of the Draft Treaty, demonstrating a willingness on the part of Christian Democrats[13] to shift towards the new system even without formal treaty change.

    The EPP's enthusiasm for this change may have arisen in part from the belief that the Centre-Right would be the largest force in the EP after the 2004 elections, as they had been in the 1999–2004 Parliament. Certainly, this group's leader, Hans-Gert Pöttering, was frequently cited as arguing that the EPP-ED Group would reject a candidate who was not from the EPP-ED.[14] European Socialists greeted this argument with considerable scepticism, arguing that the EPP-ED grouping was a political ragbag and did

[12] Resolution adopted by EPP Congress, Brussels, 4–5 February 2004 on the 'Appointment of the future President of the European Commission'.

[13] The resolution came solely from the European People's Party, which comprises primarily Christian Democrats; their ally in the European Parliament EPP-ED Group, the British Conservative Party, did not participate in the congress and was not party to the resolution. The Conservatives differ from the EPP members of the group primarily over constitutional issues, and it is unlikely that they could support the sentiment of the resolution.

[14] Author's interviews in Brussels on 16 and 17 February 2004.

not constitute a cohesive political family as they did themselves.[15] Denis MacShane, the British Minister for Europe and vice president of the Party of European Socialists, hit out at 'the arrogance of German right-wing MEP leader Hans-Gert Pöttering in dictating who will be the next President of the European Commission'. Moreover, he claimed, 'the right-wing European People's Party will not have an absolute majority in Strasbourg. Mr Pöttering knows full well that British Conservatives will not support any of the ultra-federalist candidates who want a European superstate of the kind he favours.'[16] At one level this appears to be little more than party political rivalry, all part of the cut and thrust of everyday politics and perhaps even the stuff to enliven the EP elections. However, the concerns expressed by the Socialists go beyond this: they argue that the selection of the President of the European Commission should be above the cut and thrust of party politics.

Robin Cook, when president of the PES, and the leader of the PES group in the EP, Enrique Barón Crespo, have stated that 'the position of the President of the European Commission is not a party position but should go to a candidate with the appropriate qualifications and level of trust throughout Europe'.[17] MacShane elaborated further:

> The choice of the Commission President is not for factional party political manoeuvring in Strasbourg. We need the best-qualified candidate for the job, irrespective of party label or what previous posts they have held. …Europe as a whole – governments, MEPs and national parliamentarians – needs to reflect on the best man or woman for the job. Europe's future is too important to be left to cheap party political games by just one of the many Strasbourg political outfits.[18]

[15] It was against this background that Wilfried Martens made his vigorous speech arguing that the EPP-ED was, indeed, a coherent grouping based on certain core values and suggesting that 'none of the other transnational parties was even close to such a coherent position'. 'Martens Slams "Banal Political Poker-Games"'.

[16] Party of European Socialists, 'Europe's Right Wing Accused of "Arrogance" on Commission Presidency', Press Release, 4 March 2004. Available at *http://www.socialistgroup.org/gpes/*; accessed 8 March 2004.

[17] Party of European Socialists, 'PES Challenges Europe's Divided Right', Press Release. Available at *http://www.socialistgroup.org/gpes/*; accessed 8 March 2004.

[18] PES, 'Europe's Right Wing Accused of "Arrogance" on Commission Presidency'.

Again, the Socialists' rhetoric may have been no more than a reflection of the fact that they were out of office in most member states and were not, at the time the speeches were made, expected to be the dominant force in the 2004–9 Parliament either. Yet whatever their motivation, their words do indicate the extent to which the concept of the 'election' of the European Commission remains contested. Many fear the politicization of the Commission, despite the fact that Commissioners are already associated with political party families at the European level and participate in eve-of-summit meetings with these families. In addition to this concern, there is clearly another factor at stake, namely the current prerogative of the European Council to nominate its candidate for Commission President. Any overt moves towards direct or indirect election of the Commission or its President would weaken the Council's position. As of 2004, European politicians were not convinced that this was desirable. The Left and some on the Right believed that the role of national parties and governments should continue to prevail. This was perhaps a natural desire, but one that was bound to make it harder to move towards genuinely European elections.

APPENDIX 1

Party Groups in the European Parliament, May 2004

Party	EPP-ED	PES	ELDR	GUE/NGL	GREENS/EFA	UEN	EDD	NI	Total
Austria	7	6			2			6	21
Belgium[1]	5	6	5		6			3	25
Cyprus	2	1	1	2					6
Czech Rep.	13	7	1	3					24
Denmark	1	2	6	3		1	3		16
Estonia	2	1	2			1			6
Finland	5	3	5	1	2				16
France	21	18	1	15	9	4	8	10	86*
Germany	53	35		7	4				99
Greece	9	9		7					25
Hungary	12	10	2						24
Ireland	5	1	1		2	6			15
Italy	34	16	8	6	2	10		11	87
Latvia	5	1			2	1			9
Lithuania	3	5	5						13
Luxembourg	2	2	1		1				6
Malta	3	2							5
Netherlands	9	6	8	1	4		3		31
Poland	13	27				4		10	54
Portugal	9	12		2		2			25
Slovakia	7	2	1	1		1		2	14
Slovenia	3	1	3						7
Spain	28	24	2	4	5			1	64
Sweden	7	6	4	3	2				22
UK	37	29	11		6		3	1	87
Total	**232**	**175**	**52**	**49**	**45**	**23**	**17**	**32**	**727***

* 1 seat vacant out of a temporarily enlarged Parliament of 788. There will be 732 Members in the 2004–9 Parliament.

EPP–ED   Group of the European People's Party and European Democrats
PES   Group of the Party of European Socialists
ELDR   Group of the European Liberal, Democrat and Reform Party
GUE/NGL   Confederal Group of the United European Left/Nordic Green Left
GREENS/EFA   Group of the Greens/European Free Alliance (regionalists)
UEN   Union for a Europe of Nations Group
EDD   Group for a Europe of Democracies and Diversities
NI   Non-attached (Independents)

Source: European Parliament, 'Members of the European Parliament … 5th term: 1999–04'. Available at *wwwdb.europarl.eu.int/ep5/owa/p_meps2.repartition?ilg=EN&iorig=home*; accessed 3 May 2004.

APPENDIX 2

Membership of transnational parties

Full members

Christlich-Soziale Union (CSU) (Germany)
Austrian People's Party (ÖVP) (Austria)
Det Konservative Folkeparti (DKF) (Denmark)
Union pour un Mouvement Populaire (UMP) (France)
Nea Demokratia (ND) (Greece)
Partido Social Democrata (PSD) (Portugal)
Christen Democratisch en Vlaams (CD&V) (Belgium)
Centre démocrate Humaniste (CDH) (Belgium)
Kristendemokraterne (KD) (Denmark)
Kansallinen Kokoomus (KOK) (Finland)
Nouvelle UDF (France)
Christlich Demokratische Union (CDU) (Germany)
Fine Gael (FG) (Ireland)
Forza Italia (FI) (Italy)
Partito Popolare Italiano (PPI) (Italy)
Unione Democratici per l'Europa (UDEUR) (Italy)
Unione dei Democratici Cristiani (UDC - It) (Italy)
Chrëschtlech Sozial Volkespartei (CSV) (Luxembourg)
Christen Democratisch Appèl (CDA) (The Netherlands)
Unio Democràtica de Catalunya (UDC) (Spain)
Partido Popular - (PP) (Spain)
Moderaterna (Sweden)
Kristdemokraterna (KD) (Sweden)

[1] *Source:* EPP, 'Party Database: EPP PARTIES'. Available at *www.eppe.org*; accessed on 2 May 2004.

Associated members

Union of Democratic Forces (UDF-BG) (Bulgaria)
Krestanka a demokraticka unie (KDU-CSL) (Czech Republic)
Isamaaliit, Pro Patria Union (PPU) (Estonia)
Hoyre (Norway)
Ruch Spolenczny (RS) (Poland)
SKL-Ruch Nowej Polski (SKL-RNP) (Poland)
Platforma Obywatelska (PO) (Poland)
Partidul National Taranesc Crestin Democrat (PNTCD) (Romania)
Romániai Magyar Demokrata Szövetség (RMDSZ) (Romania)
Krestanskodemokraticke Hnutie Slovenska (KDH) (Slovakia)
Strana Madarskej koalície – MKP (Slovakia)
Slovak Democratic and Christian Union (SDKÚ) (Slovakia)
Nova Slovenija – Krscanska ljudska stranka (N.Si) (Slovenia)
Banu-People's Union (BANU-PU) (Bulgaria)
Democratic Party (DP-BG) (Bulgaria)
Democratic Rally of Cyprus (DISY)
Unie Svobody (US) (Czech Republic)
Fidesz Magyar Polgári Párt (Fidesz) (Hungary)
Magyar Demokrata Fórum (MDF) (Hungary)
Tautas Partija (TP) (Latvia)
Lietuvos Krikscionys demokratai (LKD) (Lithuania)
Homeland Union (TS-LK) (Lithuania)
Partit Nazzjonalista (PN) (Malta)
New Era (JL/NE) (Latvia)
Slovenian People's Party/Slovenska ljudska stranka
Slovenian Democratic Party (SDS)
Christlichdemokratische Volkspartei (CVP) (Switzerland)
Evangelische Volkspartei (EVP) (Switzerland)
Res Publica (RP) (Estonia)

B: MEMBER PARTIES OF THE PARTY OF EUROPEAN SOCIALISTS[2]

Full members

Sozialdemokratische Partei Österreichs (SPÖ) (Austria)
Parti Socialiste (PS) (Belgium)
Sociaal Progressief Alternatief (SPa) (Belgium)

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[2] *Source*: PES, 'How the PES works'. Available at *www.pes.org*; accessed 3 May 2004.

Appendix 2: Membership of transnational parties

KISOS (Cyprus)
Ceská strana sociálne demokratická (CSSD) (Czech Republic)
Socialdemokratiet (Denmark)
Sotsiaaldemokraatlik erakond (Estonia)
Sosialidemokraattinen Puolue (SDP) (Finland)
Parti Socialiste (PS) (France)
Sozialdemokratische Partei Deutschlands (SPD) (Germany)
Panellinio Sosialistiko Kinima (PASOK) (Greece)
Magyar Szocialista Párt (MSZP) (Hungary)
The Labour Party (Ireland)
Democratici di Sinistra (DS) (Italy)
Socialisti Democratici Italiani (SDI) (Italy)
Lietuvos Socialdemokratu Partija (LSDP) (Lithuania)
Parti Ouvrier Socialiste Luxembourgeois/Letzeburger Socialistesch (LSAP)
    (Luxembourg)
Partit Laburista (Malta)
Partij van de Arbeid (PvDA) (Netherlands)
Det Norske Arbeiderparti (DNA) (Norway)
Sojusz Lewicy Demokratycznej (SLD) (Poland)
Unia Pracy (Poland)
Partido Socialista (Portugal)
Zdruzena Lista Socialnih Demokratov (ZLSD) (Slovenia)
Partido Socialista Obrero Espanol (PSOE) (Spain)
Socialdemokratiska Arbetareparti (Sweden)
The Labour Party (UK)
Social Democratic and Labour Party (SDLP) (UK)

Associate parties

Latvijas Socialdemokratiska Strandnieku Partija (LSDSP) (Latvia)
Partidul Social Democrat (PSD) (Romania)
Partidul Democrat (PD) (Romania)
Strana Demoktratickej Lavice (SDL) (Slovakia)
Socialnodemokraticka Strana Slovenska (SDSS)
Sozialdemokratische Partei der Schweiz/Parti Socialiste Suisse (SP-PS)
    (Switzerland)
Cumhuriyet Halk Partisi (CHP) (Turkey)

C: MEMBER PARTIES OF THE EUROPEAN LIBERAL DEMOCRAT AND REFORM PARTY[3]

Democratic Alliance (Albania)
Partit Liberal (Andorra)
Liberales Forum (Austria)
VLD (Belgium)
Parti Réformateur Libéral (Belgium)
Liberal Democratic Party (Bosnia-Herzegovina)
Movement for Rights and Freedoms (Bulgaria)
NMSS (Bulgaria)
Croatian People's Party
United Democrats (Cyprus)
Det radikale venstre (Denmark)
Venstre (Denmark)
Estonian Reform Party
Estonian Centre Party
Suomen Keskusta (Finland)
Svenska Folkpartiet (Finland)
Freie Demokratische Partei (Germany)
Liberal Party (Gibraltar)
Alliance of Free Democrats (SzDSz) (Hungary)
Progressive Democrats (Ireland)
Italia dei valori (Italy)
PRI (Italy)
I Democratici (Italy)
Rinnovamento Italiano (Italy)
Partia Liberale e Kosoves (Kosovo)
Latvijas Cels (Latvia)
Liberal and Centre Union (Lithuania)
New Union (Lithuania)
Demokratesch Partei (Luxembourg)
Democraten 66 (The Netherlands)
VVD (The Netherlands)
Unia Wolnosci (Poland)
Partidul National Liberal (Romania)
New Democracy Liberals of Serbia (Serbia and Montenegro)
Alianca Nového Obcanca (Slovakia)
LDS (Slovenia)

[3] *Source:* ELDR, 'What's the ELDR Party?' Available at *www.eldr.org*; accessed 2 May 2004. Note, not all member parties are from EU member states.

Folkpartiet Liberalerna (Sweden)
Centerpartiet (Sweden)
Parti Radical Démocratique (Switzerland)
Liberal Democrats (United Kingdom)
The Alliance (Northern Ireland)

Affiliated members

Liberal Democratic Union (LDU) (Bulgaria)
Hrvatska Socijalno Stranka (Croatia)
Liberalna Stranka (Croatia)
Civic Democratic Alliance (Czech Republic)
Liberal Party of Macedonia (Macedonia)
Venstre (Norway)

D: MEMBER PARTIES OF THE EUROPEAN GREEN PARTY[4]

Full members

Die Grünen (Austria)
Groen! (Belgium)
Ecolo (Belgium)
Bulgarian Green Party
Cyprus Green Party
Strana Zelenych (Czech Republic)
De Grønne (Denmark)
Eesti Rohelised (Estonia)
Vihreä Liitto (Finland)
Les Verts (France)
Georgia Greens
Bündnis 90/Die Grünen (Germany)
Ecologists Greens (Greece)
Zöld Demokraták (Hungary)
Comhaontas Glas (Ireland)
Federazione dei Verdi (Italy)
Latvijas Zala Partija (Latvia)
Déi Gréng (Luxembourg)
Alternattiva Demokratika (Malta)
De Groenen (The Netherlands)

[4] *Source:* European Green Party, 'Member parties'. Available at *www.eurogreens.org/ peopleandparties/members.html*; accessed 3 May 2004.

GroenLinks (The Netherlands)
Miljöpartiet de Grønne (Norway)
Os Verdes (Portugal)
Federatia Ecologista din Romania (Romania)
The Interregional Green Party (Russia)
Strana Zelenych na Slovensku (Slovakia)
Confederatión de Los Verdes (Spain)
Miljöpartiet de Gröna (Sweden)
Grüne / Les Verts (Switzerland)
Partija Zelenych Ukrajiny (Ukraine)
The Green Party (UK)
Scottish Green Party (UK)

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