

## Conference on the Future of Europe

# Addressing unresolved questions around the Spitzenkandidaten procedure

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### Executive Summary

- > The Spitzenkandidaten procedure aims to link the choice of the European Commission President to the results of the elections for the European Parliament. In 2014, Jean-Claude Juncker became the President after running as a Spitzenkandidat, but in 2019, despite the nomination of Spitzenkandidaten, Ursula von der Leyen's election did not follow the process.
- > Two fundamental questions on the Spitzenkandidaten process therefore remain unresolved: whether the procedure should be used at all, and how precisely it is intended to work.
- > The Conference on the Future of Europe offers an exceptional opportunity to collect citizen input on both questions. Since these questions require concrete answers, tackling them provides also an opportunity for the Conference to produce tangible solutions to a policy problem – enhancing the value added of the Conference.
- > So far, the Spitzenkandidaten process has faced criticism for being a top-down invention remaining alien to citizens. The Conference can change this by raising awareness for the procedure and ensuring that it will be (re-)designed based on citizen participation.
- > Citizen input to the Conference should be sought and analysed to gauge the level of public support for the Spitzenkandidaten process and determine how the process should work to gain a maximum of public support. To this end, a Citizens' Panel of the Conference should take a leading role in providing citizen input by preparing a recommendation on the Spitzenkandidaten process. This recommendation and other input to the Conference should inform a memorandum of understanding between Europarties. In this document, Europarties should agree on a shared definition of the procedure and make commitments on the modalities of the electoral campaign.

In 2019, the bypassing of the 'Spitzenkandidaten procedure' enabled the former German Defence Minister Ursula von der Leyen to become the President of the European Commission (hereafter: the President) without publicly standing for the position before the European Parliament elections. After her nomination, von der Leyen expressed her commitment to 'improving' – rather than abandoning – the procedure ahead of the 2024 European elections.

Indeed, the Political Guidelines for the von der Leyen Commission, published in July 2019, tasked the Conference on the Future of Europe (CoFoE) with making a proposal for reforming the Spitzenkandidaten procedure "by summer 2020 at the latest" (von der Leyen 2019, 20). Also, in her hearing before the European Parliament in October 2019, the Commissioner-designate Dubravka Šuica promised that the Spitzenkandidaten procedure would be "the first topic on [the agenda of] the Conference" (European Parliament Committee on Constitutional Affairs 2019, 32). It was thus clearly the von der Leyen Commission's initial intention to address the (s)election procedure of the Commission President as a matter of priority within the framework of the Conference. With the launch of the CoFoE delayed until spring 2021, the original deadline for a new proposal by summer 2020 has already been missed. Nonetheless, the lack of clarity around the Spitzenkandidaten process persists, and the Conference remains a suitable arena for finding answers.

This policy brief discusses how the CoFoE could help fulfil the promise of improving the Spitzenkandidaten procedure. It does so by highlighting two hitherto unresolved questions about the procedure:

- Should the Spitzenkandidaten procedure be used for choosing the Commission President in the future?
- What is to be the exact definition of this procedure?

For one, the Conference can serve to gauge the citizens' interest in and support for the procedure. If citizen input to the Conference favours the application of the Spitzenkandidaten procedure, it will be easier for proponents of the system to argue that it represents the most legitimate way to choose the Commission President. At the conclusion of the CoFoE in 2022, the Commission should prepare a report on public perceptions on the Spitzenkandidaten process. Second, before the nomination of lead candidates for the next election begins around autumn 2023, the Conference still has time to incentivise Europarties towards adopting a memorandum of understanding on how the Spitzenkandidaten race is precisely meant to work.

### **Should the Spitzenkandidaten procedure be used in the 2024 European Parliament elections?**

The most important contentious question is whether the Spitzenkandidaten procedure should be used to select the Commission President in the first place. The procedure has had its opponents within both of the institutions involved in the choice of the President, that is, the European Parliament and the European Council. However, the notion of Spitzenkandidaten has particularly encountered resistance within the European Council, as the procedure strengthens the European Parliament's influence in the (s)election process while limiting the discretion of the heads of state and government.

A key argument in favour of the Spitzenkandidaten procedure is that it gives citizens a say in the choice of the President, thus strengthening the latter's democratic legitimacy. However, opponents of the procedure might respond by arguing that the citizens' awareness of the candidates remains low, and that the nomination of Spitzenkandidaten hardly influences the public's voting choices in the European elections. Moreover, the Spitzenkandidaten process is not mentioned in the Treaties: the current Article 17(7) of the Treaty on European Union (TEU) simply states that the European Council proposes a candidate for President, after which the European Parliament votes on that candidate. Therefore, the process may be criticised as an illegitimate top-down invention that seeks to change the EU institutional order through the backdoor, without any treaty reform. Greater citizen awareness and buy-in for the process would offer a direct response to the first objection to the Spitzenkandidaten process. Moreover, if the Spitzenkandidaten process enjoys public support, one can argue that the mismatch between the treaty provisions and real-life practice should be resolved by reforming the treaties, rather than by abandoning the Spitzenkandidaten system.

The Conference on the Future of Europe may raise public discussion on the Spitzenkandidaten process, and therefore explore whether citizens approve of the procedure. For example, in September and October 2021, the Conference will feature four Citizens' Panels, each consisting of randomly selected citizens. The topic of 'democracy' is specifically listed among the themes of one of the panels, which offers a clear opportunity to collect input on the Spitzenkandidaten process from that panel (European Parliament 2021; European Commission 2021b). If the conclusion of the relevant Citizens' Panel – and of citizen input to the Conference more broadly – is that the Spitzenkandidaten procedure is preferable to the European Council having an unconstrained choice on whom to nominate for President, proponents of the procedure could argue that Spitzenkandidaten as an idea enjoys public support. If the conclusions are inverse, opponents of the procedure would have reason to argue in favour of returning to pre-2014 methods of choosing the Commission President.

Indeed, one may argue that the Conference is a unique opportunity for gauging the level of popular support for the procedure. Even outside the Conference framework, one may use opinion polls that outline a number of alternative ways to choose the Commission President, and ask respondents to rank the alternatives in their order of preference. However, since the matter is complex, deliberative platforms like Citizens' Panels, other public events and discussions on the official online platform of the Conference can offer a deeper understanding of citizens' thoughts on the subject, to be complemented with opinion polling where appropriate. For instance, by revealing the main concerns that citizens have about the process, discussions on the deliberative platforms offered by the CoFoE can help the EU institutions and political actors identify how the process should be developed in order to enjoy the greatest public interest and support. In this way, the Conference can reveal whether the Spitzenkandidaten process enjoys public support, but also what kind of a Spitzenkandidaten race the public might consider most legitimate.

In sum, the Conference should not be missed as an opportunity to have a civic debate on the Spitzenkandidaten process. By the time that the Conference concludes in spring 2022, the institutional actors organising the Conference should have gathered sufficient input to draw up a report on how citizens perceive the procedure. The document should be presented to the Conference Plenary before the latter adopts its recommendations for the final conclusions of the CoFoE. The report could for instance be prepared by the European Commission, which can position itself as a neutral institutional broker between the European

Parliament, which has traditionally favoured the Spitzenkandidaten process, and the European Council, which has been comparatively sceptical.

Furthermore, by bringing the Spitzenkandidaten procedure on the public agenda outside the election period, the Conference itself might make citizens more aware of the contest during the 2024 elections. If the Conference seizes the opportunity to discuss the Spitzenkandidaten process, it may yield a number of newsworthy moments that could generate media attention for the subject. A timeline indicating the moments at which the Spitzenkandidaten procedure may receive public attention before the nomination of the candidates is outlined in Figure 1 below. The next section will first discuss the need to specify the modalities of the Spitzenkandidaten process.

### Defining the Spitzenkandidaten procedure

Though the concept of a Spitzenkandidaten procedure was introduced almost a decade ago for the 2014 European elections, political actors have failed to reach a clear, explicit consensus on how this process should work.

At the July 2019 European Council summit that nominated von der Leyen for President, the Irish Prime Minister (Taoiseach) Leo Varadkar eloquently explained the two main competing conceptions of the procedure (European Commission Audiovisual Service 2019). In some people's view, the procedure is only respected when the Spitzenkandidat of the largest political group in the European Parliament becomes the Commission President; others argue that any Spitzenkandidat could become the President if they can muster a majority in the European Parliament, which – in Varadkar's words – accounts for the possibility "that parties could team up and pick another Spitzenkandidat".

In 2019, the question of choosing between the two above conceptions of the process was not resolved before election day. As a result, once the issue arose, it was inseparable from the question of whether Manfred Weber as the lead candidate of the victorious European People's Party (EPP) was, according to the Spitzenkandidaten principle, the only legitimate contender for Commission presidency. Addressing the issue outside the election season makes it possible to treat it as a question of principle, rather than as a matter of partisan or personal politics. A principled discussion on the question is crucial to have, as each of the two conceptions of the Spitzenkandidaten process represents a different understanding of representative democracy. Automatically awarding the Commission presidency to the largest party's candidate amounts to the EU equivalent of a national presidential election – with the exception that the election is embedded within a parliamentary election,

as citizens cast their votes for a national or regional-level party or candidate rather than directly for a Spitzenkandidat. Even if the Spitzenkandidaten were to head EU-wide 'transnational lists' in the future, the choice of the President would occur through the European Parliament election, rather than constituting a separate presidential election. By contrast, admitting the possibility for a Spitzenkandidat to form a majority coalition within the European Parliament would be analogous to national elections in parliamentary systems where a runner-up party leader may (albeit rarely) end up as the Prime Minister. Each option can be argued to be a legitimate way of choosing the Commission President. However, given the important implications that different interpretations of the procedure have for our understanding of what type of political system the European Union is, it seems appropriate for an inclusive civic debate to inform the choice between the options. The Conference on the Future of Europe offers a suitable arena for such debate.

Within the European Parliament, the parliamentary groups are the relevant actors in determining which (if any) Spitzenkandidat has a majority. In turn, the parliamentary groups are connected to European political parties (Europarties), who are responsible for nominating the Spitzenkandidaten in the first place. However, party politics may hinder the Europarties from having a constructive debate on the question among themselves. The reason for this is the fact that the definitional question is not only significant for our understanding of representative democracy within the EU, but also has rather direct party-political implications. Since the EPP has come out as the largest parliamentary group from every election since 1999, a "winner takes it all" approach seems most beneficial to the EPP, and indeed this conception of the procedure has been particularly popular within the EPP (Van Hecke et al 2018).

Thus, it would be fruitful for a Citizens' Panel within the CoFoE to have its say on the question. Intended as a representative sample of citizens, the panel would be in a position to offer a non-partisan, citizen-driven perspective on how the Spitzenkandidaten process should work. The Citizens' Panel should then produce a recommendation on the Spitzenkandidaten process, which should explain which (if any) of the two abovementioned conceptions of the process the panel prefers.

Besides the definitional question, the Citizens' Panel is well-placed to discuss other modalities of the Spitzenkandidaten race so as to bring the process closer to citizens. For instance, the panel could lay out its views on how the Europarties ought to select their lead candidates, how long before the elections the parties should announce the names of their Spitzenkandidaten, and how often all candidates should convene for a televised election debate.

By giving its input for a more visible election race between the candidates, the Citizens' Panel would ensure that the Spitzenkandidaten process has been designed with bottom-up citizen participation. The recommendation of the Citizens' Panel could be published on the official online platform of the Conference on the Future of Europe, where other citizens would be able to discuss the Panel's proposals. In this way, the legitimacy of the recommendation would stem from the fact that it has been prepared by a small yet representative sample of the public, and thereafter subjected to a wider public debate.

Once the relevant Citizens' Panel has produced its recommendation on the Spitzenkandidaten process, the Europarties would be able to take stock of the recommendation and the subsequent citizen discussions. Before the 2024 European election campaign, Europarties supporting the Spitzenkandidaten procedure should then be brought to clarify the 'rules of the game' by reaching and publishing a memorandum of understanding on the topic. By drawing on the citizens' discussions held during the Conference, the Europarties would earn legitimacy for their final output, and demonstrate to the citizens that the Conference on the Future of Europe has been a meaningful and influential exercise. After the conclusion of the Conference in early 2022, the Europarties would have more than one year to reach an agreement before the first parties are likely to nominate their Spitzenkandidaten for the 2024 elections; ahead of the 2019 election, the first candidates were nominated in November 2018.

A non-legally binding memorandum of understanding would be a suitable instrument for an agreement between the Europarties, given that the Spitzenkandidaten procedure itself is based on an informal political agreement that is not codified in the EU treaties. However, if a future round of treaty reform leads to the Spitzenkandidaten process being referenced in the treaties, the memorandum of understanding may be used to inspire the wording of the relevant treaty provision.

In sum, the Conference on the Future of Europe may help ensure that political parties for the first time subscribe to a common, explicitly agreed definition of the Spitzenkandidaten process. Moreover, the Conference enables citizens to communicate their expectations for the conduct of the electoral race, such as the organising of electoral debates between the lead candidates. At its best, the CoFoE can contribute to turning the Spitzenkandidaten process from an opaque top-down invention into a clearly defined exercise which has been designed with input from citizens.

## Recommendations

Against the backdrop of the above discussion, this policy brief proposes that the Citizens' Panel discussions and other citizen input to the Conference should be actively sought and taken into due account to gauge public perceptions and the level of public support for the Spitzenkandidaten process. The input of the Citizens' Panel would take the form of a recommendation on the Spitzenkandidaten process, including on how the process is defined. In the spring of 2022, the European Commission should then prepare a report on citizens' views on the process, and submit the report to the Conference Plenary. The Europarties should subsequently be incentivised to follow up on the citizen input to the Conference by agreeing a memorandum of understanding on Spitzenkandidaten before the 2024 European election campaign begins (see Figure 1 below).

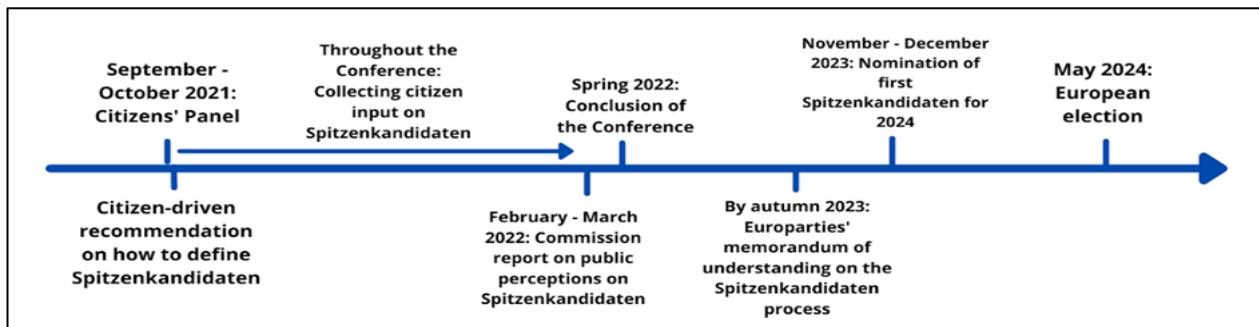
These actions would ensure greater ex ante transparency on the 'rules of the game', itself necessary for guaranteeing the democratic legitimacy of the Spitzenkandidaten process. Moreover, citizen input collected during the Conference would provide valuable insights into the fundamental debate on whether the Spitzenkandidaten procedure strengthens the Commission President's democratic credentials. What is more, the Conference may help political actors define the framework conditions for an electoral contest that citizens are most likely to regard as legitimate.

## Conclusion

Resolving unanswered questions around the issue of Spitzenkandidaten was originally foreseen as a priority of the Conference on the Future of Europe. As the Conference has now been launched, institutional actors have toned down their expectations for the exercise: for instance, at the opening event of the Conference on 9 May 2021, President Ursula von der Leyen emphasised that the Conference "is not a panacea or a solution to every problem" (von der Leyen 2021). However, in line with the Commission's original intentions, the Spitzenkandidaten procedure is one issue to which the Conference can and should bring solutions. If the EU institutions are committed to ensuring that the Conference does produce tangible results, they would thus be well-advised to direct their attention to the matter of Spitzenkandidaten now.



**Figure 1: Proposed timeline for upcoming deliberations on Spitzenkandidaten**



## Further reading

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