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Mustafa T. KARAYIGIT

Prof. Dr., Marmara University, The Institute of European Studies

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E-mail : bilgi@uidergisi.com.tr

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The Semi-Presidential EU Governmental System As A Constitutional Design

Mustafa T. KARAYIĞIT

Prof. Dr., Marmara University, The Institute of European Studies, İstanbul

E-mail: mtkarayigit@marmara.edu.tr

ABSTRACT

The article attempts to depict the governmental system of the EU on the basis of the characteristics of its executive institutions, intra-executive relationships, the relationships between the executive and legislative institutions, and the combination of supranational (the Community method) and intergovernmental nature of decision-making in the post-Maastricht period of European integration. Sui generis characteristics of the EU do not preclude a systemic configuration on the basis of comparative analysis with statal governmental systems. The article asserts that post-Maastricht European integration has led to the gradual establishment of a semi-presidential governmental system in the EU. This system accordingly involves particularly on the one hand the deliberative dual-executive authority in the EU, namely the European Council with accumulated prerogatives and the Commission with a subordinated role compared to the dominant position of the European Council, though being subject to legislative scrutiny, or the Council with an occasional executive role in certain fields, and on the other hand the expanded powers of the European Parliament, as the lower house.

Keywords: Dualism, Dual Executive Structure, Semi-Presidentialism, Intergovernmentalism, Supranationalism

Anayasal Bir Tasarım Olarak AB Yarı Başkanlık Hükümet Sistemi

ÖZET

Makale, yürütme organlarının, yürütme-içi ilişkilerin, yürütme ve yasama organları arasındaki ilişkinin ve Maastricht sonrası AB entegrasyon sürecinde Topluluk metodu olarak ulusüstü ile hükümetlerarası doğaya sahip karar alma kombinasyonunun karakteristiklerini incelemektedir. Bu karakteristikler temelinde de AB'nin hükümet sistemini analiz etme amacını taşımaktadır. Aslen AB'nin kendine özgü nitelikleri, devletlerin hükümet sistemleriyle mukayeseli sistemsel analize mani değildir. Bu çerçevede makale, Maastricht sonrası Avrupa entegrasyonunun, özellikle Avrupa Zirve Konseyi'nin artan ayrıcalıklı yetkileri ve Komisyon'un, Avrupa Zirve Konseyi'nin başat statüsüne nazaran ve yasama denetimine tabi rolü veya bir yandan Konsey'in bazı alanlarda arızı yürütme rolü, diğer yandan da Avrupa Parlamentosu'nun alt yasama organı olarak artırılmış yetkilerine vurgu yapmaktadır. Dolayısıyla makale bütün bu unsurlara dikkati çekerek, bilinçli şekilde oluşturulmuş ikili yürütme otoritesinin AB'de yarı başkanlık hükümet sisteminin tedricen inşasını ifade ettiğini iddia etmektedir.

Anahtar Kelimeler: Dualizm, Dual Yürütme Yapısı, Yarı Başkanlık, Hükümetlerarasıcılık, Ulusalüstüçülük

Introduction

The post-Maastricht period of the European integration has relatively reinforced the intergovernmental nature of the EU. The underlying ground of such a trend is the sovereignty concerns of EU member states that desire to be the center of gravity. The structure of decision-making regarding certain fields has therefore been defined in the literature as “new intergovernmentalism”,¹ “deliberative intergovernmentalism”,² “the intergovernmental Union”³ or “intensive transgovernmentalism”.⁴ The post-Maastricht centrality of the European Council in EU policy-making and driving new areas of EU activity outside the classic Community method are also described as the post-Maastricht integration paradox, i.e. the desire to achieve closer integration without significantly enhanced supranationalisation.⁵ It is a fact that the new fields conferred upon the EU, such as employment and social policy, justice and home affairs, economic and financial governance, and foreign and security policy deviate from the traditional Community method of supranationalism with both the European Council’s supervision and the curtailment of the Commission’s legislation initiative. The European Council’s attained “principal” status vis-à-vis other institutions⁶ has paved the way for such conceptions.

European integration, however, signifies a combination of supranational and intergovernmental methods of integration that are co-existing, mutually complementary, and balanced to be employed within the context of cohesion, cooperation, competition and cohabitation depending on the subject-matter, the nature of competences, legal basis and emergent circumstances. Communitarisation and intergovernmentalisation therefore have developed hand-in-hand in the post-Maastricht period. Simultaneous and reciprocal relationships between intergovernmental and supranational elements in the EU⁷ and the hybrid nature of European integration both with and without supranationalisation⁸ thus become the characteristic modes of European integration. The nature of the EU could thus be characterised by inter-institutional balance and power sharing rather than the strict separation of powers. Since those institutions - both intergovernmental and/or supranational - represent different

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- 1 Christopher J. Bickerton et al., “The New Intergovernmentalism: European Integration in the Post-Maastricht Era”, *Journal of Common Market Studies*, Vol. 53, No 4, 2015, p. 703-722.
 - 2 Uwe Puetter, “The European Council – The New Centre of EU Politics”, *SIEPS European Policy Analysis*, October 2013, No 16, p. 6.
 - 3 Sergio Fabbrini, “Intergovernmentalism and Its Limits: Assessing the European Union’s Answer to the Euro Crisis”, *Comparative Political Studies*, Vol. 46 No 9, 2013, p. 1003–1029; Uwe Puetter and Sergio Fabbrini, “Catalysts of Integration – The Role of Core Intergovernmental Forums in EU Politics”, *Journal of European Integration*, Vol. 38, No 5, 2016, p. 633-642.
 - 4 Helen Wallace and William Wallace, “Overview: The European Union, Politics and Policy-Making”, Knud E. Jørgensen, Mark A. Pollack and Ben Rosamond (eds.), *Handbook of European Union Politics*, London, SAGE Publications, 2007, p. 339-58.
 - 5 Sergio Fabbrini and Uwe Puetter, “Integration without Supranationalisation: Studying the Lead Roles of the European Council and the Council in Post-Lisbon EU Politics”, *Journal of European Integration*, Vol. 38, No 5, 2016, p. 481-495.
 - 6 Johannes M. Gómez et al. “The European Parliament and the European Council: A Shift in the Balance of Power?”, Olivier Costa (ed.), *The European Parliament in Times of EU Crisis Dynamics and Transformations*, Cham, Palgrave Macmillan, 2019, p. 53-76.
 - 7 Wolfgang Wessels “The EU System: A Polity in the Making – The Evolution of the Union’s Institutional Architecture”, *Teaching Companion Provided in the Course at the Department of Political Science and European Affairs*, Cologne, University of Cologne, 2013, p. 73.
 - 8 Adina Maricut, “With and Without Supranationalisation: The Post-Lisbon Roles of the European Council and the Council in Justice and Home Affairs Governance”, *Journal of European Integration*, Vol. 38, No 5, 2016, p. 541-555.

interests, i.e. member state interests, Union interests, or European citizens' interests⁹ and function on different prerogatives, the institutional balance thus reveals the balance of those interests¹⁰ and prerogatives within that construction but with mechanisms of checks and balances. Hence, through this embedded, deliberative, and systematic post-Maastricht trend, the constitutionalisation of new fields has developed differently than through the Community method.

To be precise, alongside the strengthened European Council, the synchronised reinforcement of the European Parliament, in particular with the power of governmental scrutiny, can also be witnessed in the post-Maastricht period. These distinct, but correlated trends together indeed denote the building stones of semi-presidentialisation of the EU political system. *Sui generis* characteristics of the EU do not preclude systemic configuration on the basis of comparative analysis with the statal governmental systems. Complementarily, supplementarily and interdependently coexisting, symbiotically and mutually influential and enabling approaches of supranationalism and intergovernmentalism, rather than approaches that are dichotomous, combating, contrasting, replacing and depriving of each other, depending on the fields, as well as the nature of allocation of vertical/horizontal competences and their underlying economic and political context to enable the entire European system to work together, thus resemble the characteristics of cooperation, competition and cohabitation in semi-presidential systems.

Dualism accordingly becomes the hallmark of the EU governmental system not only with its dual executive, but also with its dual legislature and judiciary, dual decision-making structure, dual accountability system (horizontal and vertical accountability) and dual legitimacy deriving from member states and citizens signifying entirely indeed the Union of States and citizens. Or, in the expression of Habermas, the polity of the EU derives its democratic legitimacy from "pouvoir constituant mixte", i.e. the dual constituent power of citizens of the member states and European citizens.¹¹ This dualism led Fabbrini to classify the European constitutional regime as the supranational (constitutional) and intergovernmental (constitutional) unions.¹²

Another hallmark of the EU governmental system becomes the collective or collegial nature of its institutions, not only to provide impartiality and independence for certain institutions, but also to spread the locus of power into the entire institution to be shared fairly by the constituent components, rather than to intensify it in a single person in order to collect broad support, provide commonality/integrity, establish institutional collective deliberation/identity/responsibility, and create institutional broad legitimacy. Collegiality becomes one of the fundamental principles governing the European institutional architecture. EU semi-presidentialism therefore becomes flavoured with both dualism abundant in the entire EU system and the collective/collegium/collegial nature of institutions.

9 Alberta M. Sbragia, "The European Community: A Balancing Act", *Publius*, Vol 23, No 3, 1993, p. 23-38; Paul Craig, "European Governance: Executive and Administrative Powers under the New Constitutional Settlement", *I-CON*, Vol. 3, No 2-3, 2005, p. 407-439; Youri Devuyt, "The European Union's Institutional Balance after the Treaty of Lisbon: 'Community Method' and 'Democratic Deficit' Reassessed", *Georgetown Journal of International Law*, Vol. 39, 2008, p. 247-325.

10 Tamara Takács, *Participation in EU Decision Making: Implications for the Hungarian Political Institutions*, The Hague, T.M.C. Asser Press, 2009, p. 73.

11 Jürgen Habermas, "Citizen and State Equality in a Supranational Political Community: Degressive Proportionality and the Pouvoir Constituant Mixte", *Journal of Common Market Studies*, Vol. 55, No 2, 2017, p. 171-182.

12 Sergio Fabbrini, "Between Power and Influence: the European Parliament in a Dual Constitutional Regime", *Journal of European Integration*, Vol. 41, No 3, 2019, p. 417-428.

The purpose of this article is to identify the primary patterns of semi-presidentialism in the EU governmental/political system. Several scholars have already discerned the basic patterns of semi-presidential system in European integration,¹³ alongside the divergent parliamentary,¹⁴ presidential¹⁵ or semi-parliamentary¹⁶ perceptions of the system. The structure of the article is as follows: first, it sets out the basic patterns of semi-presidentialism; second, it depicts the dual executive structure in the EU; third, it explains the relationship between the EU executive and legislative institutions under the principle of institutional balance; and, last, it offers concluding remarks.

Semi-Presidentialism

The concept of semi-presidentialism came into the academic literature during the French Fifth Republic. Semi-presidentialism is perceived not as a *synthesis* of the presidential and parliamentary systems, but as an alternation between presidential and parliamentary phases,¹⁷ as a truly mixed system of presidential and parliamentary systems¹⁸ or as a system borrowing from both parliamentary and presidential systems.¹⁹

It is significant to discover core patterns arising from semi-presidential systems. Duverger, providing the first delineation, states that

“[a] political regime is considered as semi-presidential if the constitution which established it, combines three elements: (1) the president of the republic is elected by universal suffrage, (2) he possesses quite considerable powers; (3) he has opposite him, however, a prime minister and ministers who possess executive and governmental power and can stay in office only if the parliament does not show its opposition to them”²⁰

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- 13 Joseph M. Colomer, “The New Semipresidential Europe”, 26 April 2010, <http://jcolomer.blogspot.com.tr/2010/04/new-semipresidential-eu-for-long-time.html>, (Accessed 10 February 2017); Sergio Fabbrini, “The Institutional Future of the European Union”, *CIES e-Working Paper*, No 109/2011, https://repositorio.iscte-iul.pt/bitstream/10071/2972/1/CIES-WP109_Fabbrini.pdf (Accessed 12 March 2017); Teija Tiilikainen and Claudia Wiesner, “Towards a Political Theory of EU Parliamentarism”, Pasi Ihalainen et al., (eds.), *Parliament and Parliamentarism – A Comparative History of a European Concept*, New York, Berghahn, 2016, p. 305; Claudia Wiesner, *Inventing the EU as a Democratic Polity Concepts, Actors and Controversies*, Cham, Palgrave Macmillan, 2019, p. 167 and 179; Jan-Herman Reestman and Leonard Besselink, “Editorial: Spitzenkandidaten and the European Union’s System of Government”, *EuConst*, Vol. 15, 2019, p. 609-618.
- 14 Walter Van Gerven, *The European Union: A Polity of States and Peoples*, Stanford, Stanford Uni. Press, 2005, p. 344-346; Paul Craig, “The Role of the European Parliament under the Lisbon Treaty”, Stefan Griller and Jacques Ziller (eds.), *The Lisbon Treaty - EU Constitutionalism without a Constitutional Treaty?*, Vienna, Springer, 2008, p. 127.
- 15 Véronique Charléty and Michel Mangenot (eds.), *Le système présidentiel de l’Union européenne après Lisbonne*, Strasbourg, Paris, Ecole Nationale d’Administration - E.N.A. / Professionnels de l’Europe, 2012; Jared Sonnicksen, “Democratising the Separation of Powers in EU Government: The Case of Presidentialism”, *European Law Journal*, Vol. 23, 2017, p. 509-522.
- 16 Philipp Dann, “European Parliament and Executive Federalism: Approaching a Parliament in a Semi-Parliamentary Democracy”, *European Law Journal*, Vol. 9, No 5, 2003, p. 549-574; Steffen Ganghof, “A new political system model: Semi-parliamentary government”, *European Journal of Political Research*, Vol. 57, 2018, p. 261-281.
- 17 Maurice Duverger, “A New Political System Model: Semi-Presidential Government”, *European Journal of Political Research*, Vol. 8, 1980, p. 165-187.
- 18 Giovanni Sartori, *Comparative Constitutional Engineering - An Inquiry into Structures, Incentives and Outcomes*, Hampshire, London, Macmillan 1994, p. 125.
- 19 Matthew S. Shugart, “Semi-Presidential Systems: Dual Executive and Mixed Authority Patterns”, *French Politics*, Vol. 3, 2005, p. 323-351.
- 20 Duverger, “A New Political System Model”, p. 166.

Sartori provides a more detailed explanation:

“a political system is semi-presidential if the following properties or characteristics jointly apply: i) The head of state (president) is elected by a popular vote — either directly or indirectly — for a fixed term of office. ii) The head of state shares the executive power with a prime minister, thus entering a dual authority structure whose three defining criteria are: iii) The president is independent from parliament but is not entitled to govern alone or directly and therefore his will must be conveyed and processed via his government. iv) Conversely, the prime minister and his cabinet are president-independent in that they are parliament-dependent: they are subject to either parliamentary confidence or no-confidence (or both), and in either case need the support of a parliamentary majority. v) The dual authority structure of semi-presidentialism allows for different balances and also for shifting prevalences of power within the executive, under the strict condition that the “autonomy potential” of each component unit of the executive does subsist.”²¹

Linz defines semi-presidentialism more succinctly as to “have a president who is elected by the people either directly or indirectly, rather than nominated by the parliament, and a prime minister who needs the confidence of parliament.”²² Elgie provides a similar definition: “[s]emi-presidentialism is the situation where a constitution makes provision for both a directly elected fixed-term president and a prime minister and cabinet who are collectively responsible to the legislature.”²³

As to its core patterns, semi-presidentialism introduces dualism into the executive. Semi-presidential systems therefore perform on a power-sharing basis. Executive power signifying a dual-authority structure is shared by the president, i.e. the head of state, with a prime minister, i.e. the head of government and the president functions independently from the legislature, but shares power with the prime minister, whose cabinet is dependent on the confidence and continuous support of the legislature and is therefore responsible to the legislature. The head of state should be elected either directly or indirectly, not in or by the parliament and thus be independent from it. The president therefore cannot be brought down by the legislature. In other words, one portion of the dual executive in terms of both origin and survival is separate from the legislature, whereas the other portion’s investiture and survival is fused with the majority of the legislature. Within the context of balances and shifting prevalences of power within the executive appearing as cooperation, competition or cohabitation, the president is not entitled to govern alone or directly and so has to rely on the prime minister and cabinet to make government function. Oscillations based on a flexible dual-authority structure within the system reflect the respective majority status of one over the other, i.e. the president and the prime minister. Namely, a bicephalous executive’s first head changes, though mostly the president remains the chief executive, even as the majority combinations change.²⁴

21 Sartori, *Comparative Constitutional Engineering*, p. 131-132.

22 Juan J. Linz, “Presidential or Parliamentary Democracy: Does it Make a Difference?”, Juan J. Linz and Arturo Valenzuela (eds.), *The Failure of Presidential Democracy – Comparative Perspectives*, Baltimore, The Johns Hopkins University Press, 1994, p. 48.

23 Robert Elgie, “Three Waves of Semi-Presidential Studies”, *Democratization*, Vol. 23, No 1, 2016, p. 49-70.

24 Duverger, “A New Political System Model”, p. 173; Matthew S. Shugart and John M. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*, Cambridge, Cambridge University Press, 1992, p. 23-24; Sartori, *Comparative Constitutional Engineering*, p. 121-125; Shugart, “Semi-Presidential Systems”; Robert Elgie, “What is Semi-Presidentialism and Where Is It Found?”, Robert Elgie and Sophia Moestrup, (eds.), *Semi-Presidentialism Outside Europe: A Comparative Study*, Abingdon, Routledge, 2007, p. 1 and 6; Krister Lundell, *The Origin of Electoral Systems in the Post-War Era – A Worldwide Approach*, Abindon, Routledge, 2010, p. 91.

Dual Executive Structure in the European Union

The EU has dual executive authority: on the one hand the European Council, as the collective,²⁵ collegial²⁶ or compound head of the Union; on the other hand, the European Commission or the Council of the EU as the government and president of the European Commission or presidency of the Council of the EU as the prime minister, on a rotating basis depending on the fields. The European Council shares the executive function with the Commission or the Council of the EU as the president shares the executive power with the prime minister in semi-presidential systems. The Lisbon Treaty formalised and institutionalised this dual executive structure with dual supranational and intergovernmental decision-making systems or constitutional regimes.²⁷ The deliberative establishment of separate hats in the Lisbon Treaty, i.e. the President of the European Council on the one hand and the President of the European Commission or presidency of the Council of the EU on the other, in that regard epitomises the locus of (dual) executive power²⁸ and semi-presidentialism with the dual executive authority in the EU.

The European Council as the Collective, Collegial or Compound Head of State/Union

Since from its inception in 1974, the European Council's importance within the EU governmental system has increased significantly. The European Council evolved from *ad hoc* meetings to a more structured pattern of summits.²⁹ It has reached the dominant position in the institutional structure of the EU as the key player in the multilevel system³⁰ and to the position of "the core of the EU's executive"³¹ or "the alpha and omega of executive power in the EU".³²

The Lisbon Treaty recognised the European Council formally as an institution of the EU under Article 13(1) the Treaty on European Union (TEU) and implicitly as a supreme and dominant executive body defining the general political directions and priorities under Article 15(1) TEU. General and vague formulations of the European Council's functions and tasks in the Lisbon Treaty reflect a role somehow superior to or at least independent of the other institutions.³³

25 Philippe de Schoutheete, "The European Council and the Community Method", *Notre Europe*, Policy Paper, No 56, 2012.

26 Amie Kreppel, "The Political Implications of the Institutional Reform - Executive-Legislative Relations in the European Union", University of Florida, Center for European Studies, Prepared for presentation at the 11th biennial European Union Studies Association Conference, Los Angeles, California, April 23rd-26th 2009, http://www.unc.edu/euce/eusa2009/papers/kreppel_07D.pdf (Accessed 20 May 2017); Fabbrini, "Between power and influence".

27 Sergio Fabbrini, *Which European Union? Europe after the Euro Crisis*, Cambridge, Cambridge University Press, 2015, p. 33; Fabbrini, "Between power and influence".

28 Paul Craig and Grainne de Búrca, *EU Law: Text, Cases, and Materials*, Oxford, OUP, 2011, p. 47.

29 *Ibid.*, p. 49.

30 Claudia Heffler and Wolfgang Wessels, "The Democratic Legitimacy of the EU's Economic Governance and National Parliaments", *IAI Working Papers*, No 13, 2013, <https://www.jstor.org/stable/pdf/resrep09694.pdf?refreqid=excelsior%3A6817e8555f440d9bf8aba8ce1758f47d> (Accessed 02 April 2017).

31 Peter Ludlow, *The Laeken Council*, Euro Comment, 2002, p. 5.

32 Deidre Curtin, "Challenging Executive Dominance in European Democracy", *Modern Law Review*, Vol. 77, No 1, 2014, p. 1-32.

33 Wessels "The EU System: A Polity in the Making", p. 33; Wolfgang Wessels, *The European Council*, London, Palgrave, 2016.

The European Council has power to adopt legally binding decisions,³⁴ including in the nature of quasi-constitutional or high politics, such as on the Council's configurations and the presidency of those configurations under Article 236 the Treaty on the Functioning of the European Union (TFEU); the composition of the European Parliament, on the initiative of the European Parliament and with its consent, under Article 14(2) TEU; altering the number of Commissioners and the rotation of Commissionerships between the member states under Article 17(5) TEU; nomination of the candidate for Commission President and its appointment pursuant to the consent of the European Parliament under Article 17(7) TEU; the appointment and removal of the High Representative of the Union for Foreign Affairs and Security Policy under Article 18(1) TEU; identifying the strategic interests and objectives of the Union within the context of the Union's external action under 22(1) TEU; recommendation to the member states for the adoption of a common Union defence policy under Article 42(2) TEU; defining the strategic guidelines for legislative and operational planning within the area of freedom, security and justice under Article 68 TFEU; discussing a conclusion on the broad guidelines of the economic policies of the member states and of the Union under Article 121(2) TFEU; adopting conclusions upon the employment situation in the Union under Article 148(1) TFEU; and determining the existence of a serious and persistent breach by a Member State of the founding values of the EU under Article 7(2) TEU.³⁵ As to system making, Article 48 TEU stipulating the revision procedures allocates significant gatekeeper functions to the European Council to be classified as the constitutional architect.³⁶ Moreover, as one of the executive functions, external representation of the EU on issues concerning its common foreign and security policy shall be ensured by the President of the European Council without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy under Article 15(6) TEU.

The European Council therefore has gradually developed into a central agenda setter, a type of default crisis manager, a settler of the EU's fundamental issues, a highest and major decision-maker, a drawer of general political directions, an ultimate policy-making authority, a steering body, a catalyst of integration, a coordinator of economic policies, a source of legitimacy, an ultimate polity-maker, a constitutional architect, an overall supervisor and an effective supervisor of the Council and a strategic guidance provider for the development of the EU and its core policies.³⁷

The European Council functions collectively as other institutions. Article 235(1) TFEU states that "Where the European Council decides by vote, its President and the President of the Commission shall not take part in the vote." According to Article 15(5) TEU, the European Council shall elect its President, by a qualified majority, for a term of two and a half years, renewable once. The President of the European Council discharges the power emerging from the authority of the European Council and uses the mandate given by it.

34 According to Article 15(1) TEU, the European Council however shall not exercise legislative functions and adopt legislative acts.

35 Michael Dougan, "The Treaty of Lisbon 2007: Winning Minds, Not Hearts", *Common Market Law Review*, Vol. 45, 2008, p. 617-703.

36 Wessels, *The European Council*, p. 174.

37 Curtin, "Challenging Executive Dominance"; Fabbrini and Puetter, "Integration without Supranationalisation"; de Schoutheete, "The European Council and the Community Method"; Wolfgang Wessels, "The European Council: a bigger club, a smaller role?", Edward Best et al. (eds.), *The Institutions of the Enlarged European Union: Continuity and Change*, Cheltenham, Edward Elgar, 2008, p. 17; Wessels, *The European Council*.

As a crucial point, the European Council has a distinct source of legitimacy based upon non-concurrent national elections separate from the European Parliament's and accordingly not being institutionally arisen out of it. Legitimacy of the European Council is provided indirectly through elections in the national systems and so by participation of national leaders democratically elected and responsible to their national parliaments and electorates. Its legitimacy accordingly derives from the peoples of Europe and the national democratic systems indirectly, and it is responsible to peoples in their national legal systems. Given direct suffrage does not arise as a necessary condition for the head of state in semi-presidential systems, indirect election of the members of the European Council does not deprive the European governmental system of its semi-presidential nature. In other words, the European Council's criterion of the popular election is fulfilled indirectly by universal suffrage at the national level for each member to constitute collectively the collegial institution. This fact fits with the characteristics of semi-presidential systems, which are variegated and display considerable variations and differences. In that regard to recall the fact that the president, in Finland, had not been elected between 1919 and 1994 by direct universal suffrage, but through a three-tiered vote by the Electoral College, which is elected by the citizens by proportional representation, did not deprive of its semi-presidential nature.³⁸ Nor did the 1962 amendment in France on the election of the president from being elected by an electoral college to the popularly direct election change the nature of the system. Namely, although it is an important element of semi-presidentialism, the popular direct election of the president does not emerge as a necessary criterion.³⁹

In the European institutional structure, the European Council has political leadership. "Political executive"⁴⁰ is the European Council, whereas the Commission is the "technical executive"⁴¹. The European Council is not, nevertheless, politically subject to the legislature and cannot be brought down by it, as the position of the president in the semi-presidential system, who is independent from and not responsible to the legislature. According to Article 15(1) TEU, the European Council shall not exercise legislative functions. This exclusion from the legislative procedure is envisaged to protect the prerogatives of organs taking part in the legislative process and reinforce the Community method.⁴² On the other hand, the European Council has acquired greater influence in the planning of the legislative agenda. In the times of economic and financial crisis, it has been the European Council playing the decisive role as the political head of the executive, driving the Commission to play a technocratic role.⁴³ Several tasks belonged in the past to the Commission, such as the role of legislative initiator and *de facto* supervisor of implementation, have been assumed to some extent in practice by the European Council, and the position of the Commission has progressively been weakened over the years,⁴⁴ gradually downgraded⁴⁵ and ordained to be subordinated to the European Council.

38 Duverger, "A New Political System Model", p. 166.

39 Carsten Anckar, "Which Countries Are Semi-Presidential?", Carsten Anckar and Dag Anckar, (eds.), *Comparisons, Regimes, Elections - Festschrift for Lauri Karvonen*, Åbo, Åbo Akademi University Press, 2012, p. 110; Carsten Anckar, "Are Powerful Presidents Always Popularly Elected? Implications for Separating Semi-Presidentialism from Parliamentarism", *Democratization*, Vol. 26, No 2, 2019, p. 327-342.

40 Amie Kreppel, "Looking 'Up', 'Down' and 'Sideways': Understanding EU Institutions in Context", *West European Politics*, Vol. 34, No 1, 2011, p. 167-179.

41 Fabbrini, "Intergovernmentalism and its Limits".

42 Wessels, *The European Council*, p. 73.

43 Fabbrini, "The Institutional Future of the European Union".

44 Curtin, "Challenging Executive Dominance".

45 Wessels, *The European Council*, p. 96.

This trend, i.e. political-core executive empowerment and centralisation of authority around the chief executive, which also occurs correspondingly in most developed countries including the member states⁴⁶ nonetheless does not lead the EU to pure presidentialism because of the absence of strict separation of powers between the executive and legislative institutions and the European Council's veto power on the one hand, and existence of the dual-executive structure, on the other.

Lastly, unlike a typical executive branch, the European Council has a limited set of procedures for implementing its decisions and overseeing compliance with them.⁴⁷ As being the tenets of semi-presidential systems, the European Council does not have implementation power, but requires the Commission or the Council of the EU depending on the subject-matter on a rotating basis to make the executive function. According to Article 235(4) TFEU, the European Council shall be assisted by the General Secretariat of the Council and thus its works are prepared⁴⁸ by the COREPER. The fact that the European Council has small office and needs the General Secretariat of the Council very well fits the semi-presidential system in terms of preparation work done by the government. The European Council's need for cooperation, coordination, the assistance and expertise of the Commission and in certain fields from those of the Council under its mandate, guidance and instructions resembles balance of powers, cooperation and cohabitation in the dual-executive authority in semi-presidential systems where the will of the president, who is not entitled to govern alone or directly, must be conveyed and processed via the government. This dual (though rotating triad) executive authority is "personified"⁴⁹ in the post of the High Representative of the Union for Foreign Affairs and Security Policy, as being Vice-President of the Commission, the chairman of the Foreign Affairs Council and taking part in the work of the European Council under Articles 15(2) and 18 TEU. The European Council thus signifies the central nave in the French gothic cathedral alongside the lower and even subordinated aisles of the Commission and the Council.

The European Commission as the Government

According to Article 245 TFEU, Commissioners may not, during their term of office, engage in any other occupation, whether gainful or not, unlike in the structure of the parliamentary system,⁵⁰ but similar to the structure of the semi-presidential system. For instance, the membership of the Commission is closer to the membership of the French government, as a well-known prototype of semi-presidential systems, since under Article 23 of the 1958 French Constitution "Membership of the Government shall be incompatible with the holding of any Parliamentary office, any position of professional representation at national level, any public employment or any professional activity."⁵¹

46 B. Guy Peters et al "Staffing the Summit – The Administration of the Core Executive: Convergent Trends and National Specificities", B. Guy Peters et al. (eds.), *Administering the Summit - Administration of the Core Executive in Developed Countries*, London, Macmillan, 2000, p. 7.

47 Wessels, *The European Council*, p. 74.

48 Article 2(3) of Council Decision No 2009/937. See Council Decision of 1 December 2009 adopting the Council's Rules of Procedure (2009/937/EU), OJ L 325, 11.12.2009, p. 35.

49 Craig and de Búrca, *EU Law*, p. 50.

50 In parliamentary systems, prime ministers and commonly ministers are also the members of the legislature.

51 Constitution of October 4, 1958, https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constiution_anglais_oct2009.pdf (Accessed 14 April 2020).

In regards to the Presidency of the Commission, i.e. the head of government, pursuant to taking into account the elections in the European Parliament and having held the appropriate consultations, the European Council, according to Article 17(7) TEU, shall propose by a qualified majority to the European Parliament a candidate for the President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members. The European Council exercises discretion in its nomination though by having taken into account legislative preferences. The European Council thus emerges directly as the head of government-maker and indirectly as the government-maker by designation.⁵² The President, the High Representative of the Union for Foreign Affairs and Security Policy and the other members of the Commission shall be subject as a collegiate body to the consent of the European Parliament. Based upon this consent, the European Council then shall appoint the Commission by a qualified majority. In other words, as being one of the tenets of the semi-presidential system, the European Council (the head of Union), nominates and appoints the president of the European Commission (the head of government) pursuant to whose election by the European Parliament by a majority of its component members and appoints by common accord with the President-elect the members of the Commission, who is capable of getting the consent of European Parliament, by a majority of the votes cast, whose status is very similar to *Assemblée Nationale* of France as being the mother of semi-presidential regimes.

The European Commission is therefore contingent on the confidence of the majority of component members of the European Parliament. Whereas in the investiture of the Commission, the dual confidence of the European Council and the European Parliament is required, its survival confidence which is subject to the European Parliament under Article 17(8) TEU is nonetheless singular. Namely, even though the European Council appoints the Commission with its president elected by the European Parliament, the authority to dismiss the Commission rests exclusively with the European Parliament. The European Council can dismiss neither the President of the Commission nor the Commission as a collegiate body, except merely the High Representative under Article 18(1) TEU as being its member. In that regard, the European semi-presidential experience appears closer to the form of premier-presidential regimes rather than to the form of president-parliamentary regimes. That is because in premier-presidential regimes the government is exclusively accountable to the parliament and so can only be dismissed by the parliament, whereas in president-parliamentary regimes, the government is dually accountable to the president and the parliament and so both have ultimate political powers over the appointment and dismissal of the government.⁵³ To be precise, since the complexion of the European Commission will be always compatible with the European Parliament because of its consent required to be appointed, that crucial distinguishing feature makes the governmental system of the EU also closer to premier-presidentialism.⁵⁴ Moreover, the lack of the European Council's veto power makes it closer to the premier-presidential systems, in which the presidents are more likely to have no veto or a weak veto.⁵⁵

52 The spitzenkandidat process, which was used in 2014 but discarded in 2019, however, increased the influence of the European Parliament, by enabling its largest political group to have a mandate to lead the Commission, and correlatively decreased the power of the European Council, which had to nominate the largest political group's candidate, in the election of president of the Commission.

53 Shugart, "Semi-Presidential Systems"; Tapio Raunio, "Presidents, Institutions, and the Quest for Coherent Leadership", Anni Kangas et al. (eds.), *Leading Change in a Complex World: Transdisciplinary Perspectives Presidents, Institutions, and the Quest for Coherent Leadership*, Tampere, Tampere University Press, 2019, p. 223-244.

54 Shugart, "Semi-Presidential Systems".

55 Ibid.

In regards to the definitive patterns of the EU governmental system, the composition of the European Commission does not therefore emanate from the election of the legislature and so does not reflect parliamentary system characterised by the fusion of legislature and executive. The European Commission's need for the twofold investiture confidence of the European Council and the European Parliament and for the single survival confidence of the European Parliament also distance it from parliamentary systems based upon the single investiture and survival legislative confidence. On the other hand, that one portion of the dual executive is contingent to the consent of the legislature, though the core executive is not subject to legislative confidence for both its investiture and tenure, also differentiates the EU governmental system from presidential systems, in which the (unitary) executive is independent from the legislature's confidence.

Within that construction, like in some national semi-presidential regimes⁵⁶ the European Council, with its overwhelming preoccupation with *domaine réservé* (domain reserved), is responsible in the area of high politics, such as foreign affairs, whereas the Commission, with primary concern, is responsible for the decision-making in the area of low politics, such as technical matters. In that regard, the relationship between the European Council and the Commission, as defined in literature within the context of the principal-agent approach⁵⁷ or the joint or common management of a fusion,⁵⁸ actually resembles the relationship between the President and Prime Minister/Premier in semi-presidential systems. To recall that the Commission is also defined as an administrative body, which puts political guidelines and priorities formulated by the European Council into concrete legislative proposals and implements the European Council's decisions.⁵⁹ Under the dual-executive structure, the Commission works under the supervision, mandate, instructions and direction of the European Council for the fulfilment of managerial tasks somehow and to some extent as a technocratic body, alongside its curtailed political functions in the process of European integration. Despite the subordinated characteristics of the Commission to the European Council, intra-executive conflicts might nevertheless be expected, as in the case of cohabitation in the semi-presidential systems, not on the basis of legislative majority opposition but of primarily their intergovernmental and supranational institutional nature which provides to some extent subsistence of its autonomy potential if especially the Commission takes Article 17(3) TEU seriously. However, such an occurrence is less likely because of the intra-executive constitutional balance. Cohabitation would not nonetheless cause governmental instability since the European Council lacks the power to dismiss the Commission unlike in president-parliamentary systems.

Within the framework of its functions, the Commission works under the direction of its president, who allocates portfolios and responsibilities among the Commissioners under Article 17(6) TEU. According to Article 17(6) TEU, a commissioner, including the High Representative of the Union for Foreign Affairs and Security Policy in accordance with the appointment procedure set out in Article 18(1), shall resign if the President of the Commission so requests. Under Article 17 TEU, the Commission shall promote the general interest of the Union with appropriate initiatives. It shall ensure the application of the Treaties and European measures. It also has the supervisory function as guardian of the Treaties on the member states for the enforcement of implementation of

56 Robert Elgie and Steven Griggs, *French Politics Debates and Controversies*, London, Routledge, 2000, p. 41.

57 Pierre Bocquillon and Mathias Dobbels, "An elephant on the 13th floor of the Berlaymont? European Council and Commission relations in legislative agenda setting", *Journal of European Public Policy*, Vol. 21, No 1, 2014, p. 20-38.

58 Ibid.; Wessels, *The European Council*, p. 20.

59 Bocquillon and Dobbels, "An elephant on the 13th floor of the Berlaymont?"

EU law. It shall execute the EU budget and manage programmes and exercise coordinating, executive and management functions. Article 17 TEU also confers on the Commission the competence to ensure external representation of the EU, with the exception of the CFSP and other cases enshrined in the TEU and TFEU. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements. It shall manage and implement EU policies. The Commission might also use legislative and executive (implementing) powers delegated by the legislature under Articles 290(1) and Article 291(2) TFEU.

According to Article 293 TFEU, legislative initiative primarily belongs to the Commission, which may alter its proposal at any time during the procedures leading to the adoption of a Union act, as long as the Council has not acted. The Council may amend its proposal only by acting unanimously, save exceptions. As clarified by the Court of Justice of the European Union (CJEU), the Commission has the power not only to submit a legislative proposal by determining its subject-matter, objective and content, but also, as long as the Council has not acted, to alter its proposal or even to withdraw that proposal with the obligation that it must state to the Parliament and the Council the grounds for the withdrawal with cogent evidence or arguments.⁶⁰

The monopoly of legislative initiative, however, is trimmed by some arrangements. Under Article 289(4) TFEU, legislative acts may be adopted on the initiative of a group of member states or of the European Parliament: under Article 76 TFEU, with regard to the Area of Freedom, Security and Justice, certain acts and measures shall be adopted also on the initiative of a quarter of the member states; under Article 11(4) TEU not less than one million European citizens may take the initiative of inviting the European Commission⁶¹ to submit any appropriate proposal on matters where citizens consider that an EU legal act is required; and under Article 225 TFEU, the European Parliament may request by an absolute majority the Commission⁶² to submit any appropriate proposal on matters on which it considers that a Union act is required; under Article 241 TFEU the Council, acting by a simple majority, may request the Commission⁶³ to submit to it any appropriate proposals.

The Council as the Occasionally Rotating Government in Certain Fields

The Council may perform executive functions on a rotational basis in certain fields. Article 16(1) TEU states that the Council shall carry out policy-making and coordinating functions. The executive functions of the Council are enshrined in Article 74 TFEU regarding the Area of Freedom, Security and Justice, in Article 329(2) TFEU regarding enhanced cooperation, in Article 121 TFEU regarding the economic policies of the member states and of the Union and in Article 291(2) TFEU regarding the implementation in the field of the CFSP.

60 Case C-409/13 *Council of the European Union v European Commission* EU:C:2015:217, paras. 74-76 and 96.

61 The CJEU found these initiatives not binding by stating that "the appellants' argument that the Commission is obliged, in all cases, to take action in response to proposals in an ECI that has been registered and that has obtained the required support cannot be reconciled with the discretion enjoyed by the Commission, under Article 17(1) TEU, in its task of promoting the general interest of the Union and taking appropriate initiatives to that end, and with the general obligation incumbent on the Commission, under Article 17(3) TEU, to be completely independent in the exercise of its power of initiative." See Case C-418/18 P *Puppinck and others v European Commission* EU:C:2019:1113, para. 62.

62 According to Article 225 TFEU, "If the Commission does not submit a proposal, it shall inform the European Parliament of the reasons."

63 According to Article 241 TFEU, "If the Commission does not submit a proposal, it shall inform the Council of the reasons."

The executive authority resides, for instance, in the field of the CFSP, in which the adoption of legislative acts is excluded under Article 24(1) TEU, with the European Council and the Council. Under Article 26 TEU while the European Council shall identify the Union's strategic interests, determine the objectives of the CFSP, define general guidelines for the CFSP and adopt the necessary decisions, on the basis of these general guidelines and strategic lines the Council shall frame the CFSP and take the decisions necessary for defining and implementing it. Under Article 291(2) TFEU, where uniform conditions for implementing Union acts are needed, those acts shall confer implementing powers in duly justified specific cases and in the cases provided for in Articles 24 and 26 TEU on the Council.

The intergovernmental decision-making process is primarily controlled by the European Council and the Council, the two intergovernmental institutions, with limited, marginal or subordinate participation or control by the supranational institutions, i.e. the Commission, the CJEU and the European Parliament.⁶⁴ In other words, primarily non-legislative, but political characteristics of acts are combined with the lack of legislative approval and the curtailed judicial supervision by the CJEU. In several fields such as foreign and security policy, economic, fiscal and monetary policies, employment and social policy, and asylum and migration policies, the Council, as being in fact the primary legislative body in the fields of Community method, therefore somehow transforms into an executive body both in decision-making and implementation and replaces the functions of the Commission in order to provide the implementation of European Council decisions. As not originally envisaged in the Rome Treaty, the Council therefore becomes operational in an executive manner and its executive functions go parallel to those of the Commission.⁶⁵ Ministers gather in specialised Council (informal) formations/forums, such as the Eurogroup, the Economic and Financial Affairs (ECOFIN) Council and the Foreign Affairs Council, scheduled alongside formal Council meetings to coordinate national policies via agreement between the member states and to collectively perform executive functions outside the framework of the Community method.⁶⁶ The Council emerges as a Chameleon⁶⁷ or as the double-headed-God Janus model of executive-legislative body with its dual role. It should be nevertheless noted that as a slight deviating characteristic of the EU from statal semi-presidential systems, occasional metamorphosis of the Council from legislative to executive body and so the governmental switch occur in the EU in certain fields. For that reason, the system of governance in certain fields is described by Fabbrini as the confusion of powers between executive and legislative branches.⁶⁸ Almost three decades ago, Lenaerts depicted that it appears impossible to categorise several EU institutions as holders of one or other power since analysis of their prerogatives does not reveal a clear-cut line between the legislative and executive branches.⁶⁹

If not incorrect to compare emergency and crisis management, where the very existence and survival of the (European) construction is at stake, in a governmental system,⁷⁰ some characteristics

64 Fabbrini, *Which European Union?*, p. 49; Fabbrini, "Between power and influence".

65 Curtin, "Challenging Executive Dominance".

66 Sergio Fabbrini and Uwe Puetter, "Integration without Supranationalisation: Studying the Lead Roles of the European Council and the Council in Post-Lisbon EU Politics", *Journal of European Integration*, Vol. 38, No 5, 2016, p. 481-495.

67 Helen Wallace, "The Council: An Institutional Chameleon?", *Governance*, Vol. 15, 2002, p. 325-344.

68 Fabbrini, *Which European Union?*, p. 49; Fabbrini, "Between power and influence".

69 Koen Lenaerts, "Some Reflections of the Separation of Powers in the European Community", *Common Market Law Review*, Vol. 28, 1991, p. 11-35.

70 Emergency law is considered, for instance, by Rodríguez the appropriate analytical framework for dealing with the EU response to the economic and financial crisis. See Pablo M. Rodríguez, "A Missing Piece of European Emergency Law: Legal Certainty and Individuals' Expectations in the EU Response to the Crisis", *EuConst*, Vol. 12, 2016, p. 265–293.

of European emergency and crisis management make the European system closer to the semi-presidential system than the parliamentary one.⁷¹ In that regard, governance of the crisis on a discrete constitutional logic within the intergovernmental institutional framework with the European Council's expanded powers in the crisis, establishment of emergency financial mechanism outside the institutional framework and the conclusion of international agreements by the member states outside the EU legal framework could be counted as such, given that strong emergency powers exhibit semi-presidential characteristics.⁷²

The Relationship between the EU Executive and Legislature: Institutional Balance

A bicameral system, which is unavoidable in a federal state where one house to represent the people, another to represent the component states, takes place in the case of the EU assembling both the member states and the people.⁷³ In the EU, the institution, the upper house, representing the member states rather than the institution, the lower house, representing European citizens have more influence in the legislative function. Under Article 289 TFEU, whereas under the ordinary legislative procedure, the Council and the European Parliament shall lay down rules together as co-equals, under the special legislative procedure, the Council lays down rules in consultation with the European Parliament or the European Parliament lays down rules in consultation with the Council. Moreover, the European Parliament has budgetary control power.

With regard to the relationship between the executive and legislature, semi-presidentialism is based to some extent upon the combination of the separation and balance of powers. The European Council constitutes the legislature-independent executive part, i.e. the collective head of Union, whereas legislature's confidence-dependent executive part, i.e. the government of the EU, is the Commission. The political accountability of the European Council is not deliberately regulated by the Lisbon Treaty as being a crucial aspect of semi-presidentialism. The control, accountability and dismissal mechanisms are almost absent for the European Council collectively at the EU level, but may exist individually for its members at the national level. The European Council is not therefore accountable to the European Parliament, which has no power to force it to resign. Parliamentary control is therefore absent with regard to the European Council whose President shall present a report to the European Parliament after each of the meetings of the European Council under Article 15(6)(d) TEU. This fact fits the crucial pattern of semi-presidentialism that the president cannot be brought down by the parliament.⁷⁴

71 See, for instance, the European Financial Stability Facility, which was established by Decision of the Representatives of the Governments of the Euro Area Member States Meeting within the Council of the European Union. See *Council document No 9614/10*, Brussels, 10 May 2010; See also Treaty Establishing the European Stability Mechanism, constituting an example of such international agreements, and relevant cases. Case C-370/12 *Thomas Pringle v Government of Ireland and Others* EU:C:2012:756, paras. 158-159; Joined Cases C-8/15 P to C-10/15 P *Ledra Advertising Ltd and Others v European Commission and European Central Bank (ECB)* EU:C:2016:701.

72 José A. Cheibub et al., "Beyond Presidentialism and Parliamentarism", *British Journal of Political Science*, Vol. 44, No 3, 2014, p. 515-544.

73 Van Gerven, *The European Union*, p. 332-333.

74 Ankar, "Which Countries Are Semi-Presidential?", p. 110.

The contrary would not even be imaginable in terms of the Council, which consists of national ministers, i.e. the inferior compared to Heads of State or Government of the member states when it performs executive functions. To be precise, the Council, with regard to its executive functions in certain fields, is not accountable to the European Parliament, but each member of which to its national parliaments and electorates merely. There is accordingly a slight divergence within the dual executive authority with regard to legislative accountability from the semi-presidential systems. The Council is not accountable to the European Parliament when it performs executive functions. This fact would nevertheless be considered compatible in substance with semi-presidentialism, given that the nature of high politics reserved to the presidents rather than to the government in semi-presidential systems keeps those politics indeed out of legislative accountability, as happens in certain fields in the EU.

The power of the European Parliament to control the European executive is formally structured, however, only for the Commission. Only one part of legislature, the lower house, i.e. the European Parliament, has that power. According to Article 17(8) TEU, the Commission, as a collegiate body, shall therefore be responsible and collectively accountable to the European Parliament, which represents primarily the interests of the European citizens. The European Parliament has power of budget rejection under Article 314 TFEU. Furthermore, under Articles 226 and 230 TFEU, in order to provide its supervisory function, the European Parliament may set up a temporary Committee of Inquiry to investigate and put written and oral questions to be replied by the Commission. The European Parliament may hold an extraordinary debate on a matter of major interest relating to EU policy.⁷⁵ It likewise examines reports on the activities of the Union sent by the Commission and petitions from European citizens under Article 227 TFEU. The Commission attends all the sessions of the European Parliament in order to explain and justify its policies as well under Article 230 TFEU. In accordance with Article 234 TFEU, the European Parliament may vote on a motion of censure of the Commission. If such a motion is carried by a two-thirds majority of the votes cast, representing a majority of the component members of the European Parliament, the members of the Commission shall resign as a collegiate body and the High Representative of the Union for Foreign Affairs and Security Policy shall resign from its duties in the Commission. It is significant that whereas confirmation of the Commission requires a majority of the votes cast, the motion of censure of the Commission requires under Article 234 TFEU two-thirds majority of the votes cast. Such a discrepancy between appointment and removability of the government is however unparalleled among parliamentary systems⁷⁶ the fact of which underlines the semi-presidential characteristics of the EU governmental system. Even though the European Parliament has no authority recognised by the Lisbon Treaty to force a member of the Commission individually to resign, one could assert that this authority is provided indirectly, since requirement of constant survival confidence is sufficient leitmotif to convince the President of the Commission to entail resignation of a commissioner. That is because, according to the Framework Agreement “[i]f Parliament asks the President of the Commission to withdraw confidence in an individual Member of the Commission, he/she will seriously consider whether to request that Member to resign, in accordance with Article 17(6) TEU. The President shall

⁷⁵ Rule 153 of European Parliament Rules of Procedure.

⁷⁶ Jared Sonnicksen, “Categorizing the EU System of Government Parliamentary or Presidential or None of the Above?,” IPSA International Conference Panel 3: Is Governance for Everybody? Exploring the Application of Governance Theory, Luxembourg, 2010, http://paperroom.ipsa.org/papers/paper_4104.pdf (Accessed 20 May 2016).

either require the resignation of that Member or explain his/her refusal to do so before Parliament in the following part-session”⁷⁷

Under the comitology, the Commission’s exercise of implementing powers, as being an executive function, is controlled by the member states. According to Article 291(3) TFEU, “the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by member states of the Commission’s exercise of implementing powers.” Namely, the legislative bodies scrutinise the executive body within the consideration of delegation.

It is asserted that the fact that removability is not contingent upon (party) political reasons, but on legal-judicial grounds signifying a sanction against the Commission or Commissioners’ legal or ethical misconduct to be used on legal-judicial grounds rather resembles an impeachment in the US system, is a typical feature of the presidential system.⁷⁸ Article 17(3) TEU states that “in carrying out its responsibilities, the Commission shall be completely independent. Without prejudice to Article 18(2) TEU, the members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity.” Fabbrini, for instance, considers that this Article contradicts the possibility of a political Commission⁷⁹ and defines power of censure of the European Parliament as used not on grounds of political disagreement, but on grounds of respecting governmental ethics.⁸⁰

As aforementioned, under Article 245 TFEU, the members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties, they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In case of any breach of the obligations arising from the membership of the Commission, in particular their duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits during and after their term of office, the CJEU, under Article 245 TFEU, may, on application by the Council acting by a simple majority or the Commission, rule the Member either compulsorily retired or deprived of his/her right to a pension or other benefits in its stead. Furthermore, under Article 247 TFEU if any Member of the Commission no longer fulfils the conditions required for the performance of his/her duties or if s/he has been guilty of serious misconduct, the CJEU may, on application by the Council acting by a simple majority or the Commission, compulsorily retire him. These features, so far, are in compliance with the typical nature of impeachment in the presidential system. However, this procedure is initiated either by the Council or the Commission, not by the European Parliament.

77 Article 5 of Framework Agreement on Relations between the European Parliament and the European Commission, OJ L 304/47, 20.11.2010 (Interinstitutional Agreements).

78 Frank Decker and Jared Sonnicksen, “The Direct Election of the Commission President. A Presidential Approach to Democratising the European Union”, ZEI Discussion Paper. No 192, 2009; Simon Hix and Bjørn Høyland, *Governmental System of the European Union*, Houndmills, Palgrave 2011, p. 44; Jared Sonnicksen, “The Government of the European Union. Toward a Presidential Separation of Powers System”, The 8th Pan-European Conference on the European Union Trento, Italy, 2016, <https://ecpr.eu/Filestore/PaperProposal/4b4cf2d8-298f-4828-ab63-fe2d5bc43cf8.pdf> (Accessed 15 March 2017).

79 Sergio Fabbrini, “The European Union and the Puzzle of Parliamentary Government”, *Journal of European Integration*, Vol. 37, No 5, 2015, p. 571-586.

80 Fabbrini, “Between Power and Influence.

Maduro, on the other hand, argues that the independence of the Commission in Article 17(3) TEU should be interpreted as referring to independence from national governments and any other particular interests, and its accountability to the European Parliament “makes it clear that the Commission is no longer supposed to be an independent technocratic body, but a politically accountable one”.⁸¹ Praino also supports such consideration. That is because, the mere moral character of the censure would not be consistent with the notion of a collective responsibility to the European Parliament, which in fact as being the branch of the legislature exercises the function of political control under Article 14(1) TEU. Furthermore, Articles 1 and 4 of Framework Agreement explicitly refers to the political responsibility of the Commission to be strengthened within the context of the relationship between the European Parliament and the Commission.⁸² In that regard, dissolution of the European Commission goes beyond the presidential system and resembles once again the fact that *Assemblée Nationale* of France, as the representative of people, has power to force the government to resign. Moreover, the Commission’s broad agenda-setting and policy initiative function likewise carries potentiality to act and be responsible politically. Enhancement of legislative accountability also increased the political character of the Commission compared to its technocratic character alongside its legitimacy. Lastly, the *Spitzenkandidaten* procedure discarded in 2019 would have potentialities to make the Commission more political.

Even though its political accountability is acknowledged to some extent, the Commission still remains institutionally separate from the legislature and does not thus reflect the fused character of executive with the parliament in parliamentary systems. Unlike traditional parliamentary systems, investiture legitimacy of the Commission derives dually both from the European Council and the European Parliament rather than singularly and exclusively from the Parliament. Not only does qualified majority requirement for the motion of censure make confidence relationship institutional with the European Parliament rather than with the majority part.⁸³ But also pursuant to motion of censure fixing the term of office of the new Commission to the remainder of the term of office of the replaced Commission and so tying one term life of the Commission to the parliamentary elections makes the life of Commission linked to the parliamentary elections and that institution to some extent a permanent “emanation” of the European Parliament.⁸⁴ Finally, let alone lack of control of the Council in the cases where it performs executive functions, on the one hand, non-sufficiently efficient scrutiny of the Commission because of shortcomings, such as lack of censure individually against the each Commissioner and the qualified majority requirement for the motion of censure against the Commission, on the other hand, missing right of the Commission to dissolve the European Parliament and the non-ability of the European Parliament to initiate legislation inevitably distance the Commission from being the parliamentary government.⁸⁵ Even though the EU governmental system

81 Miguel P. Maduro, “A new governance for the European Union and the Euro: Democracy and Justice”, *Yearbook of Polish European Studies*, Vol. 16, 2013, p. 111-140.

82 Diego Praino, “The Structure of the EU System of Government”, *ARENA Working Paper 5/2015*, 2015, <https://www.svuio.no/arena/english/research/publications/arena-working-papers/2015/wp5-15.pdf> (Accessed 5 May 2017).

83 This fact seems to be correlated with the collegial/collective nature of the institution.

84 Diego Praino, “A New System of Government? Defining the Confidence Relationship of the EU Model”, *Journal of European Integration*, Vol. 39, No 3, 2017, p. 319-332.

85 Teija Tiilikainen, “The Concepts of Parliamentarism in the EU’s Political System - Approaching the Choice between Two Models”, *FIIA Working Paper*, April 2019/108, 2019, https://www.fiaa.fi/wp-content/uploads/2019/04/wp109_eu-parliamentarism_2.pdf (Accessed 22 December 2019).

is described as semi-parliamentary system, even in the sense of mirroring semi-presidentialism⁸⁶ the lack of legislative initiative authority of the European Parliament alone in itself would preclude description of the EU governmental system with parliamentary characteristics, let alone the role of the European Council in the appointment of the Commission, the institutionally separate nature of the Commission, as the government, from the European Parliament which does not have the central position with the quality of subordinating the executive.

On the other hand, neither the European Parliament, nor the Council, when it performs legislative functions, can be dissolved by executive bodies of the EU. That is because the basic characterisation of semi-presidential system or its subtypes does not require a power of dissolution of the parliament by the president be present (or absent) on the basis of which the following national governmental/political systems are identified as a premier-presidential system: Senegal, Romania, Slovakia, Poland, Macedonia, Lithuania and Ukraine.⁸⁷ The European Council therefore has no counterweighting power to dissolve the European Parliament against its power to remove the European Commission to overcome legislative impasse unlike in many semi-presidential systems.

Conclusion

The article attempts to depict the governmental system of the EU as a semi-presidential system, which has gradually been constructed in the post-Maastricht European integration with intermingled supranational and intergovernmental elements among and within the institutions. The core and decisive patterns of semi-presidential systems are discerned as follows:

- the European Council (the collective head of Union) as the chief executive based upon indirect (popular) elections carried out at the national level and with legitimacy arising from the citizens of the member states and the national democratic systems;
- power sharing in the dual-executive structure between the chief and dominant (the legislature-independent) executive preoccupied with high politics, i.e. the European Council, which is independent from and cannot be brought down by the European Parliament, and the subordinated (legislature's confidence-dependent) executive preoccupied with low politics as the government, i.e. the Commission, which is collectively accountable to and can be dismissed by the European Parliament;
- no emanation of the government from the election of the legislature, non-concurrent membership status for the European Commission and the European Parliament and so no fusion of the executive and legislative powers;
- the dual confidence of the European Council and the European Parliament in the investiture of the Commission, singular confidence of the European Parliament in its survival;
- the feature of the European Council, with insufficient staff, which cannot govern alone or directly and therefore whose strategic guidelines and political framework are to be conveyed and processed via the Commission or the Council depending on the fields;

86 Steffen Ganghof, "A New Political System Model: Semi-Parliamentary Government", *European Journal of Political Research*, Vol. 57, 2018, p. 261-281.

87 Shugart, "Semi-Presidential Systems", p. 334.

- the characteristics of European Parliament with extended powers to scrutinise the European Commission (the government) and even to dismiss the European Commission, but with the nature of not being dissolved by the executive.

The only slight divergence, but compatible in substance, from semi-presidentialism is the lack of accountability of the Council to the European Parliament when it performs executive functions in certain fields which signify high politics reserved to the presidents rather than to the governments in semi-presidential systems to keep those fields out of legislative accountability. Given that “semi-presidentialism is not a coherent category to the same degree as parliamentarism or presidentialism”⁸⁸, thus “[u]nder the rubric of semi-presidentialism, there is much variation”,⁸⁹ “semi-presidential regimes encompass vast differences”⁹⁰, the fact of which provides great flexibility in the definition with regard to intra-executive and government-legislature relationships, the EU governmental system could be argued strongly reflecting core patterns of semi-presidentialism. The EU’s semi-presidential governmental system, the executive dualism, is however embedded in the dualism fabric of the EU with dual legislature and judiciary, dual decision-making structure with supranational and intergovernmental characteristics, dual (supranational/intergovernmental) constitutional regime, dual (vertical/horizontal) accountability system, dual constituent power and dual source of legitimacy deriving from the member states and citizens/communities of citizens of the member states and European citizens demonstrating the Union of States and citizens. As is the principle of collegiality/collectiveness embedded in the EU’s institutional structure.

88 Matthew S. Shugart, “Comparative Executive–Legislative Relations”, Roderick A.W. Rhodes et al. (eds.) *Oxford Handbook of Political Institutions*, Oxford, OUP, 2008, p. 344-365.

89 Shugart, “Semi-Presidential Systems”.

90 Jenny Åberg and Thomas Sedelius, “Review Article: A Structured Review of Semi-Presidential Studies: Debates, Results and Missing Pieces”, *British Journal of Political Science*, 2018, DOI:10.1017/S0007123418000017, p. 1-26.