The Structure of the EU System of Government

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Abstract

This paper identifies the essential structure of the EU system of government by focusing on the nature of the relationship executive-legislature (i.e. on how the confidence scheme works), and considering both the legal framework and the actual practice. As a brief analysis of the traditional general models shows, the new approach suggested here simplifies the study of regime types, but at the same time it is able to capture the main distinctive features of systems that belong neither to presidentialism nor to parliamentarism. As far as the EU is concerned, this perspective shows that, although the legal framework of the Treaties presents some elements of parliamentarism, the nature of inter-institutional relations is not parliamentary: if the role played by the European Council in the formation process of the Commission is not merely formal, its involvement entails a much more complex confidence scheme.

Keywords

Introduction

As it has been written, 'typologies are no ends in themselves, but tools of scientific discovery' (Ganghof, 2014, p. 656). If classifying means summarizing recurring features into categories, the classification of the EU model is an excellent strategy to capture its main distinctive aspects and explain in what extent it differs from the traditional regime types (presidentialism and parliamentarism). These questions are extremely topical, considering the political and institutional dynamics that, under the new rules of the Treaty of Lisbon, led to the formation of the Juncker Commission and the renewal of scholarly interest in this subject (see e.g. Fabbrini, 2015). Moreover, this kind of analysis might form the basis of further research, since it sheds light on other aspects of the EU experience. After all, classifying democratic regime types 'would be of little more than semantic importance were it not for the fact that writers postulate links between different regimes and different levels of social, political and economic performance' (Elgie, 1998, p. 220).

Some scholars prefer using the expression 'governance' instead of 'government' when they refer to the European Union. The idea is that while the latter 'evokes a political order similar to that of its component national states', the former fits better the 'diffuse' and multi-layered manner in which the European Union works (Schmitter, 2006, p. 158). However, also due to its vagueness and wide range (see Benz & Papadopoulos, 2006), the idea of governance, describing 'a method or mechanism for dealing with a broad range of problems/conflicts' (Schmitter, 2006, p. 161), does not seem able to capture the essential structure of the inter-institutional relations. This is why I believe that the two notions do not exclude each other, and that both are valid with regard to the EU. While the idea of governance describes the complex mechanisms of the Union's decision-making processes, the concept of system of government focuses, in a narrower sense, on its essential structure, i.e. on the 'horizontal relations' (Fabbrini, 2015, p. 572) among the political institutions.

The expression 'form' or 'system' of government indicates the structure of the power and of the relations among the bodies that exert power (Bobbio, 1995, p. 95), and this set of relations is the main object of this paper. In particular, I will focus on the possible variants of the confidence relationship between executives and legislatures; that is to say, on how the 'government's dependence on majority support in the legislature' (Huber, 1996, p. 269) works in the several regime types.

The aim of this paper is to understand the essential structure and provide a convincing classification of the EU model. In order to do so, I will firstly classify the democratic forms of government according to the different manners in which the confidence relationship can operate. Then, I will analyse

the EU experience, considering both the legal framework and the actual political practice, and I will verify if the structure that emerges is consistent with the 'traditional' systems of government or if it is possible to consider the EU as a distinct model.

Classifying regime types: the structure of the models

Scholars have studied the systems of government taking into account different variables, and the classifications provided are many and varied, especially with regard to models that belong neither to presidentialism nor to parliamentarism. To mention but a well-known example, while Lijphart (1984) has avoided considering semi-presidentialism as an autonomous model, Shugart and Carey (1992) have even divided that category into two subtypes (premier-presidential and president-parliamentary).

As argued elsewhere (Praino, 2014), not every feature is relevant when it comes to understand to which general model a specific experience belongs. For instance, the classification of the British system as parliamentary does not depend on how the power to dissolve Parliament is exerted. It does not matter if that power used to belong to the Cabinet as a whole (see Marshall, 1984, p. 45 ff.), if it is a prerogative of the Prime Minister alone, or if the Parliament 'dissolves at the beginning of the 17th working day before the polling day for the next parliamentary general election' and 'cannot otherwise be dissolved' (art. 3, Fixed-Term Parliaments Act, 2011): what matters is that the Cabinet needs the Parliament's support in order to remain in office. In brief, if several factors may affect the manner in which a system works or its overall performance, only some contribute delineating the essential structure of the model.

Elgie (1998) has distinguished between dispositional and relational properties: the former are features that do not depend on its constituent parts, while the latter are aspects that cannot be dissociated from the environment in which they are found. In the author's perspective, it is precisely because most studies of regime types juxtapose these two dimensions that they suffer from a conceptual ambiguity. Therefore, he has suggested focusing on dispositional properties alone.

In this paper I adopt the opposite approach. If the notion of system of government expresses 'the relationship between executives and legislatures' (Cheibub et al., 2014, p. 515), then the factors that must be taken into account are the relational properties that determine the nature of that relationship, which, as Samuels and Shugart (2010) suggested, may be characterized by fusion or separation. From this perspective, a property becomes relevant in the definition of a regime type only as long as it is able to affect the nature of the

inter-institutional relations. For instance, if on the one hand it is possible to agree that the list of presidential powers should be eliminated from the definition of semi-presidentialism (see Elgie, 2007, p. 4); on the other hand, the discretionary use of the power to dismiss the prime minister becomes a decisive factor when it alters the balance of the relationship between the government and the parliament.

Following the analysis carried out by Samuels and Shugart (2010), when it comes to classify regime types the main question is to what extent the executive (which may be 'single' or 'dual') depends on the legislature as far as its origin and survival are concerned. I agree with this approach, but I interpret the relationship between the two branches in a slightly different manner. In my opinion, the different combinations of fusion/separation express different confidence schemes, and each one of these schemes represents the essential structure of a distinct model. In other words, I believe that the notion of confidence is useful not only to distinguish between parliamentary and presidential systems – in parliamentarism 'the government's authority is completely dependent upon parliamentary confidence', while in presidentialism the executive is 'independent' of the legislature's trust (Linz, 1990, p. 52); but also to capture the essential structure of models that do not belong to these two 'traditional' categories. If on the one hand the accountability of the executive to the legislature means that the former needs a *permanent* confidence from the latter (i.e. for as long as it remains in office); on the other hand, when a body (in this case the government) is appointed, elected, or implicitly accepted, it means that it receives an *initial* confidence (cf. Luciani, 2010, p. 548). The combinations of these two types of trust determine different confidence schemes, each one of which corresponds to the structure of a distinct regime type. However, the possible solutions are more than four, since both the executive and the legislative branches may be composed of more than one body, and each body may participate in the confidence scheme differently: for instance, semi-presidentialism is characterized by a 'dual' executive whose one of the two 'heads' (Sartori, 1994) depends on the confidence of the other, while the peculiarities of the Australian and Japanese 'dual legislatures' have led an author to consider those systems as 'chamber-independent' (Ganghof, 2014).

In brief, when it comes to understand to which regime type a specific experience belongs, verifying what kind of confidence scheme exists between the executive and the legislature seems to be an excellent strategy. As a matter of fact, this perspective not only sheds light on the main distinct features of the general models, but it also simplifies the classification process, since it focuses on only one factor. In the next section I will adopt this approach to describe the structure of the main systems of government.

Classifying regime types: the different confidence schemes

If presidentialism is based on the idea of 'constitutional separation of origin and survival' (Samuels & Shugart, 2010, p. 15; see also Shugart & Carey, 1992, p. 19) among branches, from the perspective suggested in this paper we may say that presidential experiences are characterized by the *absence* of any confidence relationship: on the one hand, at the election stage, the chief executive receives its legitimacy by popular vote, not by the legislature; on the other hand, the latter cannot affect the permanence in office of the former with a vote of no confidence. From this point of view, it is worth highlighting that impeachment mechanisms do not alter the nature of this type of relationship. As a matter of fact, impeachment is not a tool that can be used in case of lack of political support, but a mechanism that is connected to specific criminal behaviours and that might involve also the judiciary. For instance, in the United States the President 'shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors' (art. II, sec. 4, US Constitution); the Chief Justice presides the trial in front of the Senate; and although 'Judgment in Cases of Impeachment shall not extend further than to removal from Office', in any case 'the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law' (art. I, sec. 3).

Parliamentarism, instead, is characterized by a scheme of inter-institutional relations that may be synthesized as a 'political fusion and institutional interdependence between the legislature and the executive' (Fabbrini, 2015, p. 572). Adopting the terminology suggested in this paper, that interdependence develops from a confidence relationship that is both *initial* and *permanent*: it is initial because the executive derives from the legislative, whereas it does not have an autonomous 'electoral origin' (Colomer & Negretto, 2005, p. 73); it is permanent because the former must have the support of the latter in order to remain in office. In other words, in parliamentary experiences the government is a 'permanent emanation' (Elia, 1970, p. 642) of the legislative branch, since it is both 'chosen by, and responsible to' it (Gerring et al., 2005, p. 571). It is important to notice that it does not matter if the parliament explicitly grants (and removes) its confidence with a vote, or if the trust (or lack of support) is simply implied in the political dynamics; what matters is that the parliamentary confidence is necessary both at an initial stage and for as long as the government remains in office.

If the main difference between parliamentarism and presidentialism is quite clear and widely accepted by scholars, as anticipated above, it is necessary to go beyond the simple distinction presence/absence of the need of parliamentary trust. The idea is that the confidence scheme may operate in several different manners, and each variant represents a distinct general model.

After all, 'there are myriad ways to design constitutions that vary the relationship of the voters' two agents to one another, as well as to the electorate' (Shugart & Carey, 1992, p. 1).

A parliamentary confidence scheme is not the only possible solution when the constitutional framework delineates the government's accountability to the legislature. In this regard, it is worth mentioning the unique model that existed in Israel between 1992 and 2001. In that experience, the Prime Minister was elected in national general elections, 'conducted on a direct, equal, and secret basis' (art. 3b, Basic Law: The Government, 1992), but was also subject (along with the cabinet) to parliamentary confidence. The distinctive feature of that system was exactly the peculiar nature of the executive-legislature relations (see Hazan, 1996, p. 33): the Prime Minister needed a *permanent*, but *not initial* confidence. The government's accountability to the Knesset created an institutional interdependence, but the executive was legitimized by popular elections, not by the legislature. It is interesting to notice that the coexistence between popular legitimacy and parliamentary control entailed that a vote of no confidence in the Prime Minister was considered as 'a Knesset decision to disperse prior to the completion of its period of service' (art. 19b).

A similar system is currently adopted in Italy at the regional level. The Italian Constitution delineates a general model (that has been implemented by the Regions in their Statutes) according to which the President of the Regional Executive is elected by universal and direct suffrage (art. 122), but is still subject to a motion of no confidence adopted by the regional legislature, i.e. the Regional Council (art. 126). Also in this case the formula *simul stabunt simul cadent* (together they stay, together they fall) stands: a motion of no confidence against the President, but also his permanent inability, death or voluntary resignation entail necessarily the resignation of the executive and the dissolution of the Council (art. 126). As far as the relationship between the executive and the legislature is concerned, the Italian Constitutional Court argued that between the two institutions there is not a parliamentary confidence scheme, but rather a relationship of 'political consonance' (decision n. 12/2006, para. 5).

The opposite confidence scheme is found in the peculiar Swiss model. In that experience, the members of the Federal Council are elected by the Federal Assembly (following each general election to the National Council), for a four-year fixed term of office (art. 175, Swiss Constitution). As it has been pointed out (see e.g. Klöti, 2001, p. 22; Kriesi, 2001, p. 59), also this peculiar system of government is neither presidential nor parliamentary: on the one hand, the executive has a fixed term of office, and a vote of no-confidence is not possible; on the other hand, it is chosen by the legislature, not by popular vote. It has been explained (Luciani, 2010, p. 548) that this type of inter-institutional

relationship is similar to a parliamentary confidence scheme, but in this case the confidence is merely initial, since it can be expressed only at the executive's formation stage and only with one act (the election of the Federal Council). From the perspective adopted in this paper, it is possible to say that in Switzerland the confidence relationship is *initial*, but *not permanent*: the legislature chooses the executive, but it is not able to affect its permanence in office, since once elected the latter cannot be 'brought down' (Dardanelli, 2005, p. 124).

Finally, a confidence relationship that concerns more than two institutions characterizes semi-presidentialism. In reality, also in this case the confidence scheme operates between the executive and the legislature, but as Sartori (1994) explained, the former has 'two heads', i.e. the president and the prime minister, and both of them are involved. What happens in those experiences is that a president (normally elected by popular vote) 'shares' the executive power with a prime minister that needs the parliament's support in order to remain in office; and that the prime minister may be 'caught between the president and the parliament' (Siaroff, 2003, p. 292), being appointed and dismissed at the discretion of the president. I believe it is possible to agree with Shugart and Carey (1992, p. 24) when they argue that a system in which the president both appoints and dismiss the government while the latter is still subject to parliamentary trust is a 'distinct type of regime' – although the approach adopted in this paper go beyond their well-known distinction between the two subtypes. This system of government is indeed based on a peculiar relationship scheme, which is characterized by a 'two-fold confidence' (Duverger, 1980, p. 178). More precisely, in semi-presidentialism the prime minister needs an *initial* and *permanent two-fold* confidence, since he or she is accountable to parliament but depends also on the 'confidence of the president' (Samuels & Shugart, 2010, p. 30), both at the appointment stage and for as long as he or she remains in office.

In brief, in this section I have identified five different confidence schemes; therefore, five general models of system of government: a) absence of any specific confidence procedure that involves the legislature in the origin and survival of the executive (i.e. presidentialism); b) initial and permanent confidence (i.e. parliamentarism); c) permanent but not initial confidence (Israel 1992-2001); d) initial but not permanent confidence (Switzerland); e) initial and permanent two-fold confidence, from the legislature and from the head of State (i.e. semi-presidentialism). As I will explain, the EU experience does not belong to any of these categories; indeed, it represents a sixth distinct model (see Annex I).

The relationship executive-legislature between legal framework and political practice

Before analysing the EU experience, it is necessary to highlight that the structure of the system of government might depend both on the legal framework and on the actual political practice. This happens because the factors that determine the way in which the confidence scheme works are usually described by legal sources, but at the same time they may be altered by how the political actors interpret the constitution and by their consequent behaviour. The legal rules concerning the system of government are in fact 'open' rules that may be 'qualified' by parties and integrated by the constitutional conventions that they create (Elia, 1970, p. 640). In brief, not only parties 'fulfill all the key functions of democratic governance' (Samuels & Shugart, 2010, p. 3), but they also may contribute to define the essential structure of the system in which they operate.

Certainly, the original framework of a system is defined by the law. Jennings (1943, p. 82) wrote that even the conventions that generated the British cabinet government 'assume the legal relations between king and Parliament', whereas they 'presuppose the law'. On this regard, it has been explained that formal rules constrain the possible behaviors of political actors, and thus the way in which the system works in practice (Luciani, 2010, p. 566).

In reality, in several experiences the structure of the system of government is already defined by the law and the political actors are not able to alter the nature of the inter-institutional relations, but only, in a less deep level, some minor aspects. This happens, for instance, in Switzerland, but also in several parliamentary systems (e.g. in Italy or Spain). But it may also happen that the actual nature of the inter-institutional relations differs considerably from what is delineated by the legal framework. This occurs when the flexibility of the constitutional norms allows a practice that modifies the manner in which the confidence scheme works.

In the UK, for instance, on the one hand the legal framework of the constitutional dimension is based on the Constitution of 1689, which focuses on the King's political authority; on the other hand, the party system has grown up and, without any formal change in the law, the balance of power among bodies has changed creating a model in which the general political control belongs to a cabinet of party members that is accountable to the House of Commons (Jennings, 1943, p. 67). In other words, 'a whole code of political maxims, universally acknowledged in theory, universally carried out in practice, has grown up' (Freeman, 1872, p. 107) delineating the confidence scheme that gave birth to parliamentarism.

It has been written that the constitutional dimension in the UK consists of two different parts, i.e. the legal framework and the set of political customs (Dicey, 1960, p. 469). This peculiar aspect of the British experience shows clearly that the overall political practice and the manner in which actors interpret legal norms are able to affect inter-institutional relations, and thus determine the main structure of the system of government.

In this regard, semi-presidentialism has been particularly pervious. On the one hand, it might happen that a written constitution gives the president notable powers, which, however, are not exerted in practice; on the other hand, it is possible the inverse, when the head of State exerts powers that are not explicitly conferred by the constitution. The first scenario occurs, for instance, in Austria, the second in France. In both cases the political context is an essential element in determining how the confidence scheme works.

In the Austrian experience, the President in practice never exerts the power of dismissal, which is the strongest power that he or she has towards the government (see Müller, 2003, p. 243 f.), and the presidential power of appointment is in reality 'driven' by the majorities in parliament. Duverger (1980, p. 167) wrote that the constitution of Austria is semi-presidential, while political practice in that country is parliamentary (the same happens in Ireland and Iceland). In brief, by neutralizing the presidential powers of discretionary appointment and dismissal, the party dynamics have excluded the President from the confidence scheme, which consequently operates only between the legislature and the government: the result is a system that functions as if it were parliamentary, even if 'the Austrian polity deviates from the ideal type of parliamentary democracy' (Müller, 2003, p. 221).

The inverse has happened in France. The French Constitution does not give great personal powers to the president (except the 'emergency' powers in art. 16), but mostly prerogatives related to the role of an 'arbitrator' that ensures the proper functioning of the public authorities and the continuity of the State (art. 5). In practice, however, much greater powers are exerted (Duverger, 1980, p. 170 f.), in particular the discretionary dismissal of the prime minister, which has become a *de facto* power: already in 1962, De Gaulle replaced prime minister Michel Debré with Georges Pompidou. This specific power, together with the discretionary appointment of the government (based on art. 8), is exactly what establishes the two-fold nature of the semi-presidential confidence scheme. Therefore, if parliamentarism in Austria depends on political practice, the same can be said with regard to semi-presidentialism in France.

In brief, the behavior of political actors is extremely relevant when it comes to classify the systems of government. After all, as Sartori (1994) noted, if we did not take into account the material constitution (and thus the political practice)

when classifying the different models, the UK would still be considered an absolute monarchy. In this sense, it is possible to agree with the idea that the constitutional conventions work as a 'vehicle' that brings the political dynamics into the structure of the system of government (Staiano, 2012, p. 13): they are indeed able to alter the manner in which the confidence scheme works.

Following these remarks, the analysis of the EU experience presented in the next sections will focus both on the legal framework delineated by the Treaties and on the political behavior of the main institutional actors. The aim is to understand what type of confidence scheme derives from the interaction of these two dimensions, and provide a precise classification of the EU system of government.

The system of government of the European Union: legal framework

If at the national level the structure of the system of government is defined by the confidence relationship between the executive and the legislature, at the EU level we must take into account the relations among the Commission, the Council (of Ministers), the Parliament and the European Council. As a matter of fact, those are the institutions that ensure the 'consistency, effectiveness and continuity' of the Union's policies and actions (art. 13 TEU), exercising power and carrying out the main 'constitutional' functions (production of law and control on its implementation).

Moving from the legal framework delineated by the Treaties, on the one hand, the European Parliament and the Council exercise together 'legislative and budgetary functions' (art. 14, para. 1, TEU), within a bicameral legislative branch (Kreppel, 2011, p. 173) – it has been also suggested that the national parliaments represent as a group a 'third chamber' (Cooper, 2013). On the other hand, there is a dual executive composed of the European Council and the Commission. The latter, which some have defined as a 'technical executive' (Fabbrini, 2013, p. 1005), promotes the general interest of the Union, exerts coordinating, executive and management functions, and has the power to propose legislative acts (art. 17, TEU); the former, which for some authors is the true 'political executive' (Kreppel, 2011, p. 170), 'shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof' (art. 15, para. 1, TEU). In brief, 'the Lisbon Treaty has set up a governmental structure organized around two distinct legislative chambers and two distinct executive institutions' (Fabbrini, 2013, p. 1005). Following the approach adopted in this paper, the structure of the system of government of the European Union is defined by the relations

among these institutions; more precisely, by how the confidence scheme between the executive and the legislative branches works.

The relevant norms are those concerning the appointment/election (initial confidence) and accountability (permanent confidence) of the two bodies of the executive. As far as the European Council is concerned, it consists of the heads of State or government of the member States, together with its President (who is elected by the European Council itself by a qualified majority for a term of two and a half years) and the President of the Commission (art. 15, TEU). Therefore, its legitimacy derives from the democratic schemes that operate at national level, and there is no confidence relationship established with the legislative branch of the Union.

As far as the Commission is concerned, instead, the general rules regarding its appointment are described by art. 17, para. 7, TEU, which delineates three stages: 1) the European Council, taking into account the elections to the European Parliament and after having carried out appropriate consultations, proposes a candidate for President of the Commission to the European Parliament, which elects the candidate by a majority of its component members (if this required majority is not reached, the European Council proposes a new name within one month); 2) the Council, in agreement with the President-elect, adopts the list of the other members of the Commission, who are selected on the basis of the suggestions made by the Member States; 3) the Commission is subject as a body to a vote of consent by the European Parliament, and, on the basis of this vote, it is appointed by the European Council with a qualified majority.

According to this procedure, the Commission derives both from the Parliament and from the European Council: on the one hand the Parliament elects the candidate for the presidency and subject the Commission as a body to a vote of consent – in other words, it gives, in two different stages, its initial confidence; on the other hand, it is the European Council the institution that chooses the candidate for the presidency and appoints the Commission, whose members are selected on the basis of the names suggested by the member States themselves. It is worth mentioning that the 'virtual' body composed of the national parliaments (Cooper, 2013) does not participate actively in this process, thus it is excluded from the confidence scheme. In brief, the Treaties link the Commission, at its formation stage, to the Parliament and to the European Council, delineating an initial two-fold confidence relationship.

In addition, the Commission needs also a permanent confidence, but this time exclusively from the EP. It is indeed 'responsible' to the Parliament, which may vote on a motion of censure (art. 17, para. 8, TEU) and entail its resignation (see also art. 234, TFEU). On the topic, I found it difficult to agree with

Fabbrini (2015, p. 578) when he argues that the EP can vote down the Commission only on the basis of moral and not political reasons. It is true that the Commission 'shall be completely independent' and its members 'shall neither seek nor take instructions from any Government or other institution, body, office or entity' (art. 17, para. 3, TEU); but it is also true that the merely moral character of the censure would not be consistent with the idea of a collective responsibility (i.e. of the Commission as a whole) to the Parliament, which, after all, is the branch of the legislature that exercises 'functions of political control' (art. 14, para. 1, TEU) and grants the Commission a vote of consent in its formation stage. Moreover, the letter of the Treaties does not seem to indicate that the censure should be based on a specific misconduct, while, according to the Rules of Procedure of the European Parliament, the motion have to be simply 'supported by reasons' (rule 119, para. 2). On this issue, Maduro (2013, p. 137) wrote that the independence of the commissioners 'must be interpreted as referring to independence from national governments and any other particular interests', while its accountability to the Parliament 'makes it clear that the Commission is no longer supposed to be an independent technocratic body, but a politically accountable one'. On the point, it is worth mentioning that the Annex XIII (Framework Agreement on relations between the European Parliament and the European Commission) of the Rules of Procedure of the European Parliament explicitly uses the expression 'political responsibility' with regard to the relationship Commission-EP. Certainly, the degree of the political control exerted by the Parliament on the Commission's activities might be rather low, especially considering that the possible motion of censure 'is carried by a two-thirds majority of the votes cast, representing a majority of the component Members of the European Parliament' (art. 234, TFEU); however, the possibility of a motion of censure and the idea of a political accountability are able to delineate a permanent confidence relationship between the EP and the Commission.

Therefore, the legal framework of the system of government of the European Union is characterized by an inter-institutional relationship scheme based on an *initial two-fold* confidence that links the Commission both to the EP and to the European Council, and on a *permanent* confidence relationship between the Parliament and the Commission. This structure is rather similar to the semi-presidential scheme; however, here the permanent confidence exists only with the legislature, since the power of censure belongs to the Parliament, but not to the European Council – while in semi-presidentialism, as explained above, one of the 'heads' of the executive (the president) has the discretionary power to dismiss the other one (the prime minister, who is also subject to the parliament's vote of no confidence).

The system of government of the European Union: actual practice

As some of the examples above (Austria and France) show, sometimes the confidence scheme delineated by the legal framework is altered by the actual political practice. In this sense, it has been written that the same formal scheme, in different contexts, may lead to different solutions, and that the behavior of political actors is often an essential element when it comes to understand to which system of government a specific model belongs (Rescigno, 1989, p. 22). This is why it is important to verify if the relationship scheme delineated by institutions, parties and national governments confirms the formal one, or if the latter has been altered by the practice.

Some scholars have suggested that the institutional prerequisites for a parliamentary government in the European Union already exist, but they require that political actors (parties, MEPs and national governments) act as if they were in a parliamentary system. More precisely, authors (see especially Hix, 2008) have focused on the practice according to which the European parties present, before the elections to the EP, candidates from their groups to compete for the role of President of the Commission. The idea is that, by choosing the legislature, voters are also able to 'politically' impose the President of the Commission, similarly to what happens in several member States, where the head of government is appointed by the head of State (in the EU context by the European Council), according to the result of parliamentary elections (Maduro, 2013, p. 136).

As a matter of fact, it is true that the legal framework delineated by the Treaties give the European Council the power to propose the President of the Commission (and to appoint the Commission as a body); but it is also true that similar schemes are present in several parliamentary experiences. In Germany, the Federal Chancellor is 'elected by the Bundestag without debate on the proposal of the Federal President' and then 'appointed by the Federal President' (art. 63, German Basic Law), while Ministers are 'appointed and dismissed by the Federal President upon the proposal of the Federal Chancellor' (art. 64). In Italy, the President of the Republic 'appoints the President of the Council of Ministers and, on his proposal, the Ministers' (art. 92, Italian Constitution), and only afterwards, within ten days of its formation, 'the Government shall come before Parliament to obtain confidence' (art. 94). In Spain, the King nominates for the Presidency of the Government a candidate who submits to the Congress the political programme of the Government he or she intends to form in order to seek the confidence of the House (sec. 99, Spanish Constitution). These different norms concern simply the specific order of formal acts of power, but in all cases the executive depends exclusively on the parliament's confidence, while the role played by

the head of State is mostly formal: in other words, all three experiences are parliamentary, regardless of the number of institutions involved in the government's formation process, because only two are involved in the confidence scheme.

The perspective of the consistent parliamentary practice has led to the conclusion that the transformation of the European Union into a parliamentary-like system of government 'can happen without any changes to the current treaties, demonstrating, yet again, the primacy of politics over law' (Weiler, 2013, p. 750). From this point of view, it has been written that even the involvement of the member States in the selection of the commissioners (art. 17, para. 7, second subparagraph, TEU) could be 'neutralized' by a consistent political practice: if the letter of the Treaties does not require a political link between those persons and the national governments, then it would be perfectly possible to establish the convention according to which all members of the Commission suggested by the member States have to support the political program that the President of the Commission presented (Maduro, 2013, p. 137).

The Parliament and the Commission themselves have formally suggested the practice of indicating the 'candidate' for the presidency of the Commission before the elections, and highlighted the need to strengthen the link between the two institutions. For instance, in 2012 the Parliament invited the European political parties to adopt that practice and the candidates to play 'a leading role in the parliamentary electoral campaign, in particular by personally presenting their programme in all Member States of the Union'. In that document, the EP stated 'the importance of reinforcing the political legitimacy of both Parliament and the Commission by connecting their respective elections more directly to the choice of the voters', and called 'for as many members of the next Commission as possible to be drawn from Members of the European Parliament' (European Parliament resolution of 22 November 2012 on the elections to the European Parliament in 2014). The Commission agreed, in several occasions, with this perspective: in 2013, for example, moving from the idea that 'European political parties, as transnational actors with a key role in articulating the voices of citizens at European level, are best placed to bridge the divide between EU politics and citizens', concluded that 'voters should be informed of the affiliation between national parties and European political parties before and during elections to the European Parliament', and that 'each European political party should nominate its candidate for President of the European Commission' (COM(2013) 126 final).

Not only this. The EP has even used its internal rule-making autonomy to create a procedure that allows it to exert control over the national government's nominees as commissioners (see Moury, 2007), reinforcing its

political role during the Commission's formation stage. According to the Rules of Procedure of the European Parliament, while the President-elect of the Commission may be invited 'to inform Parliament about the allocation of portfolio responsibilities in the proposed College of Commissioners in accordance with his or her political guidelines', the nominees as commissioners shall 'appear before the appropriate committees according to their prospective fields of responsibility', to make statements and answer questions (rule 118). The EP, in disagreement with national governments, has used this mechanism and the possibility of rejecting the Commission as a body to press for a reallocation of portfolios: to make but one example, in 2004, after public hearings, it forced the President-elect José Manuel Barroso to replace some of the nominees as commissioners, by threatening to reject the whole Commission (see Corbett et al., 2005, p. 262).

However, despite the increase of parliamentary powers regarding the investiture of the Commission, the role played by the EP in the nomination process remains merely confirmatory (Decker, 2014, p. 321); and despite the fact that before the 2014 parliamentary elections the main European parties have actually presented their *Spitzenkandidaten* for the presidency of the Commission, the political strength of the national governments in the Commission's appointment process is still extremely relevant. For this reason, it does not seem possible to argue that the confidence scheme at the investiture stage is confined only within the relations between Parliament and Commission – at least not yet. Certainly, it is true that by imposing in 2014 one of the *Spitzenkandidaten* 'the Parliament set an important precedent for the future which weakens the power of the European Council to select its own preferred candidates' (Hobolt, 2014, p. 1537). However, that precedent concerns only the choice of the President, not the list of the other members of the Commission (Fabbrini, 2015, p. 578); and it does not seem able to transform the role of the European Council into a merely formal appointment. As a matter of fact, the 'game' still depends on several factors, among which the binding rule of the strict numeric equality of all member States within the Commission, and especially the actual involvement of the national leaders in the choice of the commissioners (Decker, 2014, p. 320). After all, as it has been observed, the Juncker Commission is the result of a 'complex set of negotiations aimed to identify, also, the new president of the EP (the socialist, Martin Shulz) between the main EP parties and the governmental leaders of the European Council' (Fabbrini, 2015, p. 577). In other words, the European Council (i.e. one of the two bodies of the executive) still plays an important political (not only formal) role in the Commission's formation process: this means that the two-fold initial confidence delineated by the Treaties is confirmed by European politics.

Also the Commission's formal permanent accountability to the European Parliament seems to be confirmed, especially if we take into account episodes such as the crisis of the Santer Commission in 1999. Considering that the Commission resigned in that occasion to avoid that the EP voted a motion of censure, it seems possible to argue that, just as it happens in national parliamentary experiences, the possibility of such a motion might help encourage the executive arm of the Union to pay attention to the EP's viewpoint (cf. Corbett et al., 2005, p. 272 f.); and this might be proof of a political responsibility. In any case, the institutions have not developed a practice that excludes the accountability delineated by the Treaties. Moreover, as it has been written, in addition to many legal mechanisms of control and 'semi-parliamentary measures', also a specific routine relationship can be observed between the EP and the Commission, which are 'highly interwoven' in their daily lives: for this reason, the latter cannot be considered simply a 'technocratic body that finds itself relatively free from parliamentary oversight' (Egeberg et al., 2014).

In brief, the European actors (institutions, parties and national governments) have developed political dynamics that are overall consistent with the formal confidence scheme delineated by the Treaties. As shown in Annex I, this scheme is based on a *two-fold initial* confidence (the Commission derives both from the EP and from the European Council) and on a single *permanent* confidence (exclusively from Parliament).

Concluding remarks

In this paper I have moved from the idea that the essential structure of the system of government coincides with the confidence scheme that exists between the legislature and the executive; and that this scheme is delineated by the legal framework, but may be deeply altered by the actual political practice: therefore, both these dimensions should be taken into account. As a brief analysis of the traditional general models has shown, this approach not only simplifies the classification process, but it is also able to capture the most distinctive features of peculiar experiences.

It is wide-acknowledged that the supranational nature of the Union entails a rather unique institutional architecture. This paper sheds some light on that structure, and provides a new way to classify the EU system of government. In particular, it concludes that the EU model is based on a *two-fold initial* confidence and on a single *permanent* confidence relationship between the Parliament and the Commission.

Although the development of the European Parliament has exhibited (at least until the crisis) 'a clear trend towards a more explicit parliamentarism at the EU level' (Eriksen & Fossum, 2012, p. 325), the results of this paper show that the Union cannot be classified as a parliamentary system, if it is true that in parliamentarism the confidence relationship is always single (i.e. it exists exclusively between the government and the legislature). But neither it belongs to any of the other systems of government explained in the paper: in particular, contrary to what has been written by some authors (e.g. Kreppel, 2011, p. 170), it seems correct to argue that the EU does not represent a 'separation of powers system', whereas both the origin and the survival of the Commission depends on other institutions.

The approach suggested here also helps to understand better some other aspects of the overall EU experience, and might form the basis of further research on related topics. To make but one example, the results presented could shed some light on the wide-treated matter of the European democratic deficit.

It is worth spending some words in this regard. I believe it is possible to argue that the structure of the EU system of government is consistent with democratic values. This of course does not mean that the principle according to which 'the functioning of the Union shall be founded on representative democracy' (art. 10, para. 1, TEU) has been implemented: indeed, it has not. What it means is that the causes of the European democratic deficit do not derive so much from the structure of the model, but from the manner in which actors manage politics within that structure.

The structure of the EU system of government is indeed based on the coexistence of two specific channels of democratic representation – this aspect led Crum and Fossum (2009) to introduce the concept of 'Multilevel Parliamentary Field'. While citizens are directly represented in the EP, they are also indirectly represented in the European Council and in the Council, since the national governments that compose those institutions are themselves democratically accountable either to the national Parliaments, or to the citizens of the member States (art. 10, para. 2, TEU). In brief, considering that different institutional structures may generate different forms of democratic accountability (see e.g. Samuels & Shugart, 2003, p. 55), and that the complex supranational nature of the European Union entails a different way to interpret democratic principles (Fossum & Pollak, 2015, p. 36), it makes sense that the initial confidence that legitimizes the Commission derives both from the Parliament and from the European Council.

Nevertheless, the question 'How far do political parties structure voter choice in ways that help citizens exercise public control as equals?' (Lord, 2012, p. 45) cannot be answered positively with regard to the EU, considering that a real

contestation for political leadership and over policy is still missing (see Follesdal & Hix, 2006) – the awareness of the gap between voters and politics is clearly shown by the low turnout (42 per cent in 2014, the lowest since 1979) in European parliamentary elections (cf. Magnette, 2001, p. 309). Some scholars believe that the problem lies in the unpolitical way of policy-making at the European level and on the absence of a well-structured European party context (cf. Habermas, 2015), whereas both these factors exclude citizens from politics. With regard to the first aspect (the EU policy-making process), it is worth mentioning that the way the recent crisis has been handled 'has clearly weakened the democratic thrust', shifting 'the centre of gravity to the European Council and a more intergovernmental approach' (Fossum, 2015, p. 806). As for the latter, a well-functioning party system is vital for democracy (Lord, 2012, p. 44), since party systems affect the level of government stability, the frequency of gridlock situations, and the real possibility of party alternation (Duverger, 1951; Elia, 1970; Mainwaring, 1993); however, the EU is characterized by the absence of a distinct party system with fully-developed parties (Bardi et al., 2011, p. 348). In brief, so far European parties have not been able to form a European political awareness and express the voters' will (as they should have, according to art. 10, para. 4, TEU).

In conclusion, it is possible to agree that the citizens' right to participate in the democratic life of the Union (art. 10, para. 3, TEU) has not been fulfilled yet because the institutions, parties, and national governments have failed to fill the existing institutional structure with some political democratic content (Hix, 2008). The EU system of government presents a structure that is consistent with democracy; it is the overall behavior of political actors that leads towards a poor democratic performance.

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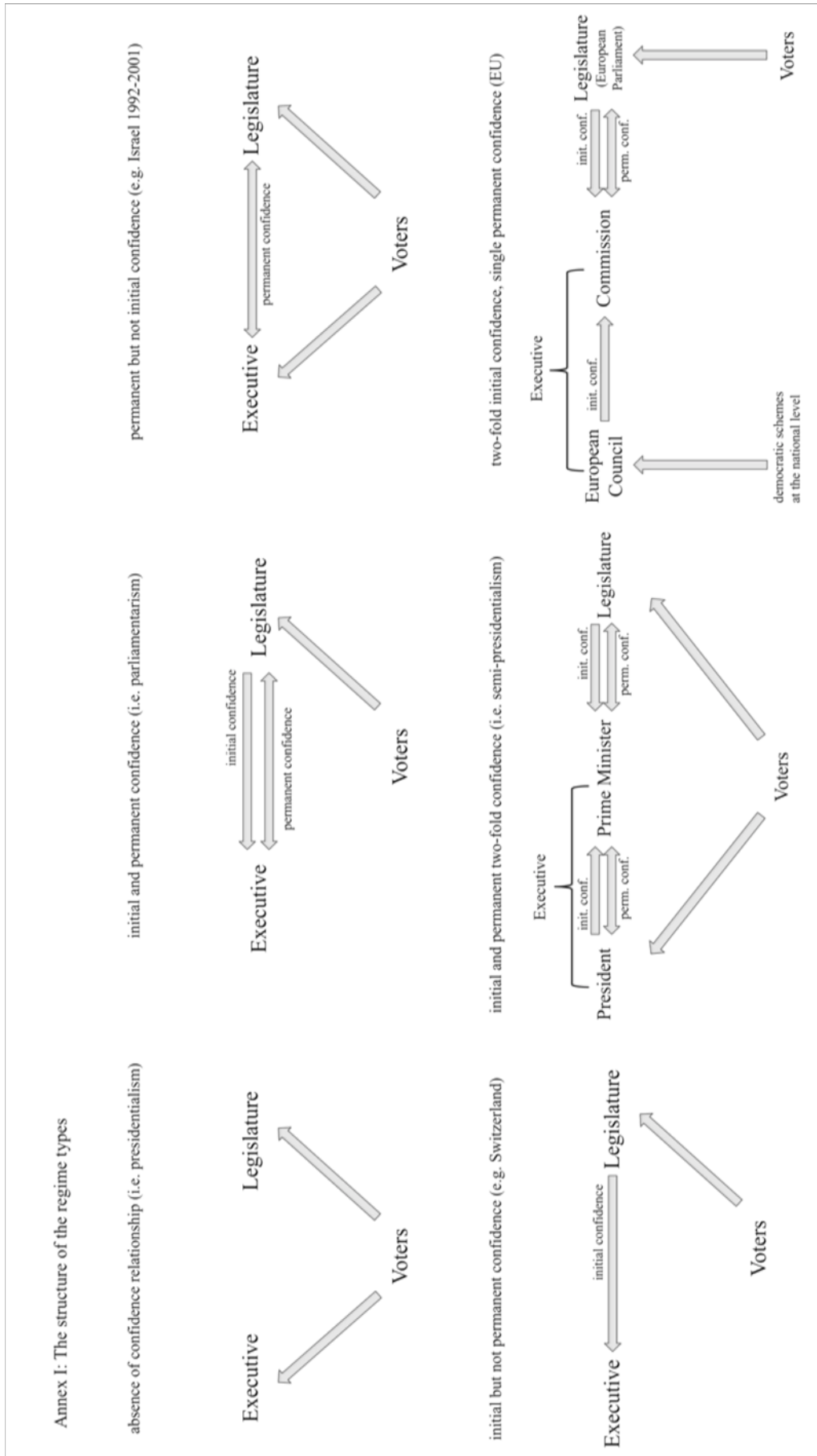
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Annex I: The structure of the regime types

absence of confidence relationship (i.e. presidentialism)

initial and permanent confidence (i.e. parliamentarism)

permanent but not initial confidence (e.g. Israel 1992-2001)

initial but not permanent confidence (e.g. Switzerland)

initial and permanent two-fold confidence (i.e. semi-presidentialism)

two-fold initial confidence, single permanent confidence (EU)

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