

It has been reported that Ms Le Pen the French Front National leader may come to the UK to advocate Brexit, although she may now be reconsidering. As such please find below and attached a brief note on Ms Le Pen and her roles as an MEP.

I thought it would be interesting to look at what I think is the real problem with her visit - the growing influence she has as the leader of a group of MEPs over UK laws and the possibility she may use the growing power of the European Parliament to "stand" for European President. The only way to reduce her influence over UK laws and UK politics and to allow the Home Secretary to bar her or similar EU politicians from the UK is to leave the EU.



ERG: What influence does Marine Le Pen MEP have over UK laws?

- **Marine Le Pen MEP has said she may come to the UK to campaign for Brexit although she is reportedly “reconsidering” the plan.¹**
- **EU rules mean Marine Le Pen MEP cannot be barred from entering the UK**
- **Marine Le Pen is joint chair of the “Europe of Nations and Freedom” in the European Parliament which includes former UKIP now ENF MEP Janice Atkinson**
- **MEPs pass 60% of laws in force in the UK**
- **Marine Le Pen may stand as a “Spitzenkandidate” for President of the European Commission in 2019.**
- **The only way to reduce Marine Le Pen’s influence over UK laws is to Vote to Leave**

Background

Marine Le Pen MEP may come to London to advocate Brexit although it has been reported she is “reconsidering” the plan. If she comes she may be invited by her MEP Janice Atkinson, in which case she could be allowed to use European Parliament funding and the use of Europe House to publicise her event. Vote Leave has asked the Home Secretary to bar her from visiting, a request that was not taken up.²

Could Ms Le Pen be barred from entering the UK?

Under the EU’s free movement rules (Article 45 TFEU and the Free Movement Directive 2004) the UK would have to prove that Ms Le Pen’s personal conduct allowed for her to be blocked under Article 45 (3) on “public policy grounds, public security or public health”.³

In 2009 Dutch politician Geert Wilders from the same ENF group overturned a banning order put in place prior to a planned trip to talk in the House of Lords on Islam. The tribunal found that a banning order would have to be judged to the same standard as for a UK Citizen. As was held:

“It is difficult, very difficult in our view, to see that something which could be done with impunity by a British citizen (in the example we give, travelling towards a proposed

¹ Politico 28 April 2016; <http://www.politico.eu/article/marine-le-pen-puts-uk-trip-on-ice-brexit-far-right/>

² Vote Leave, 24 April 2016;

http://www.voteleavetakecontrol.org/home_secretary_admits_the_eu_makes_it_harder_to_control_immigration

³ Van Duyn v Home Office 1974; https://en.wikipedia.org/wiki/Van_Duyn_v_Home_Office

demonstration) is something which, when done by a non-UK national, poses a threat to the fundamental interests of society”⁴

It is very unlikely therefore that EU rules would allow Ms Le Pen could be barred from the UK.

- **European Parliament (taxpayer) funding for Ms Le Pen**

In addition to the funding Ms Le Pen MEP receives as an individual MEP her group will receive funding for its Parliamentary Group, its pan-European party and it's Political Foundation. This has been estimated to come to funding of €4,442,760.⁵

- **Ms Le Pen votes on the 61% of UK law that emanates from the EU**

The European Parliament has co-decision over all EU laws which according to the House of Commons library amount to 61% of legislation that affects the UK.⁶ Ms Le Pen will be allowed to vote on all of these laws where UK MPs cannot.

- **Ms Le Pen May stand for 'European President' as a Spitzenkandidate**

Ms Le Pen as the head of her European Parliamentary group may 'stand' to be President of the European Commission in 2019 as a 'spitzenkandidate' in the manner Jean-Claude Juncker was 'elected' in 2014.

Following the appointment of Jean-Claude Juncker as President of the European Commission in 2014 David Cameron stated that:

*"It is therefore important that the European Council has agreed today to review what has happened and to consider how we handle the appointment of the next Commission president next time around."*⁷

- **The President of the European Commission is one of the five Presidents of the EU. The European Commission has a near monopoly over proposals for most EU legislation and its repeal.⁸**
- **The President is decided by Qualified Majority Voting in the European Council, with the European Parliament having a veto.**
- **Post Lisbon the European Parliament has attempted to use its veto to turn the selection into a Presidential Election, with 'Spitzenkandidates' (lead candidates) from each group standing on political programmes.**

⁴ (GW (Netherlands) v Secretary of State for the Home Department, [2009] UKAIT 50
<https://tribunalsdecisions.service.gov.uk/utiac/2009-ukait-50>

⁵ Open Europe, A failed Experiment in Pan-European Democracy?;
http://archive.openeurope.org.uk/Content/Documents/140513_European_Parliament_briefing.pdf

⁶ House of Common's Library note to Anne Main MP 8 March 2016

⁷ UK Gov, 27 June 2014; <https://www.gov.uk/government/speeches/european-council-june-2014-david-camerons-speech>

⁸ [http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130619/LDM_BRI\(2013\)130619_REV2_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130619/LDM_BRI(2013)130619_REV2_EN.pdf)

- Under the Spitzenkandidate process the UK's influence over the system and ability to produce its own candidate is limited.
- The European Commission has a dual role overseeing the EU28 as well as policy areas the UK is not a part of such as Schengen and the Euro. This effectively bars the UK from holding the post.

What powers does the President of the European Commission have?

The President of the European Commission is the most powerful EU figure holding a veto over the appointment of the remaining commissioners, deciding their portfolios as well as being in overall control of the EU's legislative work programme.

The vague wording of the Treaties mean that the power of President of the Commission depends on a number of factors, the personality of the candidate, the level of political support the candidate has in the European Council and the relative strength of the President of the European Council, who chairs the EU28 heads of government meetings.

Giving the President a "democratic" mandate could over time increase its power vis a vis the member states represented in the European Council.⁹

What do the Treaties say?

The appointment of the President of the European Commission is set out in Art 17 TFEU (emphasis added)

*"Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. **This candidate shall be elected by the European Parliament by a majority** of its component members. If he does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure."*¹⁰

What happened in 2014

2014 was the first real test case for these new powers and the political blocks in the European Parliament (with the exception of the ECR group) set out to maximise their influence.

⁹ William Hague at the time of Lisbon eloquently set out his fears that the President of the European Council could in time become overly powerful – an argument that could equally apply to the President of the Commission. Hansard, 21 January 2008;

<http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080121/debtext/80121-0012.htm#08012131000274> ; <https://www.youtube.com/watch?v=fZ26SmDzxHE>

¹⁰ http://europa.eu/pol/pdf/consolidated-treaties_en.pdf

The political blocks appointed their own candidates internally, held 'Presidential' hustings and then presented the "winner" of the European Elections¹¹ to the European Council in a way that made it difficult for the member states to object.

Appointment of Juncker

1. Candidates set out their "policy programmes"¹² (no UK input)
2. Appointed by EPP as its "candidate" in an EPP meeting in Dublin. Michel Barnier came second.¹³ (no UK representation)
3. European Election Campaign. No major "spitzenkandidate" was endorsed by a UK party or visited the UK.
4. EPP "wins" European Election with 214 out of 751 seats (although not all allegiances were known immediately).
5. European Council led by EPP members Angela Merkel "appoints" Juncker as President. (UK votes against on principle)
6. Deal done in EP to give the second placed candidate the Presidency of the European Parliament (no UK input)

What will happen in 2019 in absence of reform?

If the process is left as it is or is allowed to embed itself the power shift from the member states to the parliament will continue. Within the Parliament the power resides with the main blocks and it is highly unlikely that the main blocks (EPP and S&D) will allow a non "spitzenkandidate" through.

The EU's unanswerable West Lothian Question: *Can a non-Euro state candidate become President of the European Commission?*

In addition to the process of Spitzenkandidates disadvantaging the UK there is, with the growth of Eurozone centric legislation and policies, a growing certainty that the President of the European Commission will have to come from a Eurozone state. The European Commission President has the following areas of responsibility over the Eurozone.

- The appointment of the Economic and Monetary affairs Commissioner (itself a mixed job effectively barred to UK holders).
- Initiation of financial regulations.
- Role in bail out Troikas
- EU budget measures aimed at Eurozone states.
- The stability and Growth pact.

¹¹ There is no clear definition of what "winning" the European Elections actually means, parties stand in national elections, parties can move groups after the elections and no block is capable of gaining an overall majority. It is unclear whether the number of seats or vote share would be the deciding factor.

¹² <http://juncker.epp.eu/my-priorities>

¹³ <http://openeuropeblog.blogspot.co.uk/2014/06/a-closer-look-at-junckers-popular.html>