

# Patterns of Government Formation in Europe: The Role of the Head of State\*

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## Abstract

Analytical tools are presently lacking to study the role played by the head of state in the government formation process (GFP). To remedy this absence, this paper provides a detailed analysis of that role. Two variables are of major concern: a) the formal powers of the head of state in the GFP, and b) the control over the GFP held by the parliament. These two variables are used to construct a scheme that shows the pronounced heterogeneity exhibited by GFP patterns. The GFP is seen as the result of an institutionally structured bargaining process in which institutional variations make for major differences in expected outcomes. The analysis reveals a large number of GFP patterns. Examples of the GFP taken from several European countries show the patterns should not be subsumed under broad categories, since overgeneralization may lead to confusion and cause the role played by the head of state and political regimes in European countries to be misunderstood.

*Keywords:* head of state; government formation process; president; monarch; prime minister

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## 1. Introduction

The political regimes in most European countries are characterized by a dual executive structure, in which a head of state (the monarch or the president) holds power alongside a government (the cabinet) accountable to parliament.<sup>1</sup> These regimes differ in the way they distribute power between the head of state and the government. In most countries, the government plays the decisive role within the executive, but the head of state does retain some powers, key among these his or her role in the government formation process (GFP). The head of state, then, remains an important institution involved in the process that generates the key actor in the executive.

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Scant attention has been paid to the role played by the head of state in the GFP in European countries. The GFP itself has certainly attracted notice from political scientists (see, for example, Strøm et al. 1994; De Winter 1995; Mattila, Raunio 2004; Protsyk 2005a; Protsyk 2005b; Schleiter, Morgan-Jones 2005; Schleiter, Morgan-Jones 2010; Amorim Neto, Strøm 2006; Hloušek et al. 2013), but there has so far been no comprehensive analysis and classification of the various roles the head of state plays in the GFP.<sup>2</sup>

Scholars often neglect the head of state's role in the GFP because they implicitly assume the procedure lies entirely in the hands of the parliamentary parties. Indeed, as Schleiter puts it, 'the study of cabinet formation, in particular in parliamentary democracies, but to a significant extent also in presidential democracies, has become virtually synonymous with coalition studies' (Schleiter 2010; see also Schleiter, Morgan-Jones 2009).

In parliamentary monarchies, in which the monarch's role has been considerably scaled back, the monarch normally does not function as head of state but may sometimes do so under specific circumstances in the GFP (see Kozubík, Chytilék 2013). In republics with elected presidents, whether they are elected indirectly or by direct vote, the president generally plays a greater role. But even in these instances, there has been little written about the function of the head of state in the GFP.

There is thus a gap in the political science literature this article attempts to fill. I argue that the role played by the head of state in parliamentary as well as semi-presidential regimes in Europe should not be underestimated. Presidents in parliamentary republics and even monarchs in some parliamentary monarchies provide evidence that seemingly weak political actors may function decisively in the GFP, with far-reaching consequences for the way democratic parties work (see Hloušek et al. 2013). We must therefore gain a better understanding of the role played by the head of state in the GFP. Comparative analysis will allow us to do so.

The core of the study lies in analysing the formal powers apportioned to heads of state in the GFP in the constitutions of European countries. The results of this comparative analysis reveal significant heterogeneity among the constitutional provisions that regulate this particular feature of European polities, and show that existing classifications inadequately reflect it.

To be sure, the actual practice of the GFP is regulated by more than just formal rules. In some countries, it is subject first of all to various (constitutional) conventions. It is also conditioned by a number of political circumstances (e.g. Tavits 2011; Hloušek et al. 2013; Sedelius, Mashtaler 2013). Thus, the real nature of the GFP in some countries may significantly differ from the formal rules.

The procedure in this study is to focus the comparative analysis on the formal rules that regulate the GFP. This strategy is indispensable for understanding the various patterns the GFP takes in European countries and is the first step in analysing how the GFP functions in actual practice. But the ensuing picture based upon formal rules is complemented by a discussion of countries in which the formal rules do not jibe with actual constitutional practice (see Kozubík, Chytilék 2013; Hloušek et al. 2013).

The first section of the paper summarizes existing analyses of the role played by the head of state in the GFP and points up their inadequacies. The second section presents an analytical framework useful for the comparative analysis of GFP patterns in European countries. The third derives a simple scheme to capture various GFP patterns in terms of formal procedures. These sections are then rounded out by a number of examples showing the actual practice of

GFP in several European countries, to avoid a purely formalist approach to the topic. Examples are also included of cases in which disputes over the GFP have brought changes to the rules regulating it and, in one case, an attempt to impeach the president.

## 2. Head of state in the government formation process

There exist studies that take note of the role played by the head of state in the GFP. But it is often only a sideline in a broader analysis with different aims, and the role of the head of state in the GFP is not discussed in detail (Frye 1997; Shugart, Carey 1992; Metcalf 2000; Javůrek 2008). These studies catalogue presidential powers, but mostly to quantify their scope in presidential and semi-presidential regimes (e.g., McGregor 1994). Notice is taken of the different roles played by presidents in the GFP, but hardly any space is given to the heterogeneity of the GFP in a large number of democratic polities, including the European countries. Highly variant patterns also tend to be subsumed under single categories.

The inadequacy of the catalogues is three-fold.<sup>3</sup> First, they completely omit heads of state in parliamentary monarchies. Second, they overlook a number of GFP patterns present in many European countries. And finally, they lump together GFP patterns that significantly diverge from each other, and whose merger may cloud the roles played by heads of state in their countries. These problems may be elucidated using the classification offered by Metcalf (2000), whose study of presidential powers is one of the most frequently cited. Metcalf attempted to refine previous catalogues (e.g., Shugart, Carey 1992) by quantifying presidential powers in a number of areas – the GFP is only one element in the overall picture. The classification of the head of state's role in cabinet formation produces fairly general categories. Metcalf distinguished five patterns:

- 1) The president appoints ministers with no requirement for assembly confirmation
- 2) The president appoints ministers with the consent of assembly
- 3) The president names cabinet ministers subject to confirmation or investiture by the assembly
- 4) The president nominates the prime minister, who must gain the confidence of assembly; the prime minister appoints other ministers, possibly with the consent of the president
- 5) The president cannot name ministers except upon the recommendation of the assembly (see Metcalf 2000: 669).

The first two patterns (1 and 2) refer mainly to presidential regimes, where presidents are decisive actors in the GFP, while parliaments have little or no say in the process because the executive is not accountable to the legislature. This leaves only three patterns to classify European countries, whose political regimes are characterized by a dual executive, with the cabinet accountable to parliament. It will be seen below that the GFP in European countries exhibits striking heterogeneity, well beyond what can be captured by the classification above. How, for example, should the French case be classified? In France, the president appoints the prime minister and then, on the prime minister's recommendation, the president goes on to appoint the government (Art. 8). No vote of confidence from the National Assembly is required. This arrangement is not found in any of the above categories. One might argue that the first category fits the French case best, but the president can appoint other ministers only upon the

prime minister's proposal. The cabinet is usually composed from the parliamentary majority, and parliament may also force its fall. This constitutes an important constraint, even though in practice French presidents usually make their own decisions about cabinet ministers (Perotino 2008: 136–137). The first category was designed instead for presidential regimes with a single executive, in which the president appoints ministers independently of other bodies. It is debatable whether the French case may be classified under that category. Nor do any other patterns in the classification scheme make for a better fit.

Germany provides another example. There, the president nominates a candidate for prime minister, and this individual must then be elected by the members of parliament. Once this takes place, the president must officially appoint the candidate to the position (under Art. 63) and, with the prime minister's approval, appoint the cabinet (under Art. 64). Where does this procedure fit? Into pattern 3, 4 – or even 5? Similar problems arise with the GFP in most other European countries. All in all, the scheme Metcalf offers falls short of an unambiguous classification of real GFP patterns.

### 3. Government formation: a framework for analysis

We need a more nuanced framework that lets us distinguish a greater number of GFP patterns in European countries. Our analysis starts with the assumption that the government is answerable to the parliament,<sup>4</sup> which in turn may censure the government or pass a no-confidence vote on it. There is, in other words, an implicit assumption that governments serve at the behest of the parliamentary majority.<sup>5</sup> Following this approach allows the analysis to embrace all parliamentary and semi-presidential regimes in Europe.<sup>6</sup> The distinction between parliamentary governments and semi-presidential governments is not germane to the analysis. Including them would be a difficult task in any event; there are a number of competing definitions (Duverger 1980; Sartori 2001; Elgie 1999), not to mention authors who reject the concept of a semi-presidential regime altogether (Klokočka 1996; von Beyme 2000) or wish to create more subtle categories (Shugart, Carey 1992; Siaroff 2003). Instead, then, the analysis simply centres on European democratic polities with a dual executive, in which the government is accountable to the parliament.

Since the key to grasping the logic of the GFP consists in institutional rules, the analysis focuses exclusively on formal rules, almost all of which are constitutional. By government formation process, I mean rules that regulate the conditions under which the government, composed of the prime minister and ministers, is set up. This process may be invoked by regular or early elections, by the resignation or death of the prime minister, a vote of no-confidence or parliamentary rejection a government request for confidence, and so on. The particulars depend upon the formal provisions in force in that European country.

GFP patterns will be analyzed, compared, and contrasted from two perspectives. In the first, the GFP is conceived as the outcome of bilateral bargaining between the president and the parliament – the key actors<sup>7</sup> who control the procedure (Protsyk 2005a: 724; Protsyk 2005b: 137; Schleiter, Morgan-Jones 2010). In the second perspective, the GFP is analyzed as a sequence of three phases: nomination, appointment, and approval, with one or both actors involved. For analytical reasons, these two perspectives are first dealt with separately; later,

in Section 4, they are combined to create a classification scheme that elucidates the various patterns taken by the GFP in the European countries.<sup>8</sup>

### 3.1. The government formation process as a three-phase process

The GFP may be divided into three phases, although in some countries the process is considerably shorter (Carroll, Cox 2012: 3).

In the first stage, a candidate is formally nominated for prime minister (or candidates may be proposed for the entire government). This phase is important in that the actor with the power to nominate the candidate may assume the initiative in the GFP, gaining a ‘first move advantage’ in the process. The nomination may, however, later be rejected (Protsyk 2003; Protsyk 2005a: 724). In general, the constitutional rules governing this phase tend to tightly constrain the head of state’s role. But there are a number of countries in which the constitution does not regulate this stage in any way. The proposal is left to informal political negotiations directed by unwritten conventions.

The second phase of the GFP consists in the appointment of the prime minister and members of the cabinet, while the third and final phase is the ratification by Parliament, in which the parliament either explicitly assents to the proposed government with an investiture vote (usually a vote of confidence), or gives its implicit assent when a vote of no confidence fails. In this, the parliament possesses an important tool with which to control (by vetoing) the results of the GFP. In some countries, this third phase of the government formation process is formally missing from the constitution and the process terminates with the appointment or election of the prime minister and/or cabinet. search thesaurus

The simplest version of the process is found in France, Iceland, and Austria. In these countries, the constitution takes into account only the head of state as the sole actor involved in the GFP. Nor do these countries require that the government win a vote of confidence. In most parliamentary monarchies, the GFP is a very simple process in formal terms: the prime minister is appointed *de jure* by the monarch, even though the GFP is under the *de facto* control of the parliamentary parties.

The constitutions of the Czech Republic, Lithuania, Slovakia, Poland, and Croatia describe a two-stage process. In Slovakia, for example, the president appoints the prime minister, who then nominates the remaining members of the cabinet. The cabinet must then receive a vote of confidence from Parliament.

In several countries, the GFP is divided formally into three phases. These countries include Albania, Bulgaria, Ireland, and Romania. In Germany, the final phase consists not in parliamentary approval but presidential appointment. This follows on a parliamentary vote on the person nominated by the president to be prime minister. Here the third phase as defined above in fact comes formally before the second phase. And a similar logic controls the GFP in the constitutions of Hungary, Serbia, and Slovenia.

### 3.2. The government formation process: the actors’ perspective

The GFP may also be analyzed in terms of the formal powers at the disposal of both its actors: the head of state, and the parliament (Schleiter, Morgan-Jones 2005: 2). In general, it may be

maintained that there is a trade-off between the powers held by the parliament and those held by the head of state.

### 3.2.1. *Formal powers of the head of state*

The formal powers reserved for the head of state vary greatly. European constitutions differ in the discretion granted. Which phases of the GFP heads of state play a role in is another source of important variability.

This variability may be placed along a scale. At one end is the head of state who holds no formal powers in the GFP. There are only two such countries in Europe: Sweden, where the head of state's role was assumed by the speaker of the parliament under the 1975 constitution (Bergman 1999), and the Netherlands. The change in Holland is more recent, stemming from a change to the rules of procedure for the lower house of Parliament in 2012 (Art. 139a). Since the change, the nominee for prime minister has been chosen by the lower house, or speaker (House of Representatives of the Netherlands 2012). At the other end of the scale stand countries with no formal constraints on the head of state's power, in which the constitution gives no formal powers to the parliament. A case in point is France.

Most countries, however, fit somewhere between these two extremes. In some European countries, the head of state is involved in a single phase of the GFP, merely confirming by appointment the candidate for prime minister previously selected by the parliament. This pattern is found in Albania, Ireland, Liechtenstein, and Greece.<sup>9</sup>

Other countries in which the head of state's role in the GFP is formally very weak are Bulgaria, Hungary, Kosovo, Latvia, Slovenia, and Serbia. The presidents of these countries participate in only the initial stage of the GFP, by proposing the prime minister. With the exception of the Hungarian and Latvian presidents, they have very little discretion, and are obliged to consult their nominations with the parliamentary parties. The rest of the GFP is entirely up to parliament, which elects the prime minister and the government.<sup>10</sup>

In Estonia, Finland, Germany, Moldova, Montenegro, Romania, and Spain, the GFP is also highly regulated. In these countries, the head of state participates in the initial phase by nominating a candidate for prime minister, and in the final phase, by confirming the prime minister and/or his government after parliamentary approval. In Germany, for example, the president nominates a candidate for prime minister. This individual must then be elected by the parliament. And finally, the president appoints the nominee to the position under Article 63 and, under Article 64, the ministers in the cabinet approved by the prime minister. A similar role for the head of state is found in the constitutions of Estonia, Finland, Moldova, Montenegro, Spain, and Romania. In Spain, Moldova, Montenegro, and Romania, the head of state must consult the nominee for prime minister with the parliamentary parties before submitting an official proposal. In Finland, the president need only formally announce the nominee to the parliament. But the nomination itself results from an agreement between parliamentary parties.

Contrasted to these cases are the many European constitutions that empower their heads of state with relatively wide discretion during the GFP. Typically, the head of state appoints the prime minister and, upon the latter's proposal, the remaining ministers. The initial phase in the GFP is thus not formally regulated under the constitution. This gives the head of state relatively wide discretion because the nominee may be chosen at will. This arrangement

operates in Austria, Croatia, the Czech Republic, France, Iceland, Italy, Lithuania, Poland, Russia, Slovakia, Ukraine, and the monarchies of Belgium, Denmark, Luxembourg, Norway, and the United Kingdom.<sup>11</sup>

Portugal could also be included in this group. Its president has the right to appoint the prime minister but is partially restricted by a constitutional provision requiring the head of state to consult the parliamentary parties and take the results of parliamentary elections into account. In a similar vein, the head of state in Malta must choose a nominee for prime minister who has the best chance of winning the support of the parliamentary majority.

### *3.2.2. Formal powers of the parliament*

The second key variable in the analysis is the level of formal parliamentary control over the GFP. Even here, there is significant variety in the constitutional provisions that specify the parliament's role in the GFP. In some countries, the parliament is completely excluded from the GFP; elsewhere, it participates in all phases of the GFP and has the major say.

In some countries, the parliament is the key actor in the initial phase of the GFP. It nominates candidates for prime minister in Bulgaria, Ireland, Liechtenstein, the Netherlands, and Sweden. The Albanian and Finnish constitutions similarly speak directly of political parties or parties that form the parliamentary majority. Elsewhere, the head of state has the right to nominate candidates for prime minister, but is significantly constrained by the constitution. He or she must consult the parliamentary parties in Bulgaria, Serbia, Slovenia, and Spain. In Romania, under Article 103 of the Romanian constitution, he or she must consult the party that has 'obtained an absolute majority in the parliament, or, if no such majority exists, with the parties represented in the parliament'. A similar provision exists in Kosovo. In some countries – Bulgaria, Finland, Germany, Hungary, Kosovo, Serbia, Slovenia, and Spain – the candidate nominated must be formally elected by the parliament. In Finland, Romania, Germany, and Spain, the head of state subsequently confirms the cabinet by appointing its members. The same is true in Estonia, where the Pres.'s nominee is first approved by the parliament.

The parliament generally plays the greater role in the final phase of the GFP. In several countries, the government appointed by the head of state is not subject to a confidence vote (Negative Rules I) (see Bergman 1993; Mattila, Raunio 2004: 2). This pattern holds in Austria, Denmark, France, Iceland, Liechtenstein, Luxembourg, Malta, Norway, and the United Kingdom.<sup>12</sup>

But in most countries, the government nominated or already appointed is still subject to an investiture vote. Several variants may be distinguished. Under the first, which is very atypical, the rules of negative parliamentarism apply. The government is approved unless an absolute majority of MPs votes against it (Negative Rules II). This is the case for Sweden and Portugal.

In the remaining countries, the government must win a confidence vote. Once again, varying investiture patterns may be discerned. A few countries allow the cabinet to begin executing its functions immediately upon appointment. In a manner counter to the logic of parliamentary regimes, presidents may appoint 'their' governments without regard for the parliamentary majority. Such a government may not subsequently win a vote of confidence from the majority MPs but may remain in office until a new government is appointed (weak positive rules). This allows for the creation of so-called presidential cabinets.<sup>13</sup> This pattern is found in the Czech Republic and Slovakia, where the government must ask the parliament for its confidence

within thirty days of appointment; Poland, where the government must ask for a confidence vote within fourteen days; and in Greece, where the period is fifteen days.<sup>14</sup> In Greece, however, presidential cabinets are virtually impossible, because the president is obliged to appoint the prime minister, who has been chosen by the parliamentary parties.<sup>15</sup>

Other countries' constitutions require that the government receive the confidence of a majority of MPs and forget governments from taking office before the vote of confidence (strong positive rules). This is the pattern in Albania, Bulgaria, Estonia, Finland, Ireland, Latvia, Lithuania, Luxembourg, and Russia. In many other countries, the election of the prime minister or approval of the government requires an absolute majority of all members. This is true in Croatia, Germany, Hungary, Kosovo, Moldova, Montenegro, Serbia, Slovenia, Spain, and Ukraine (very strong positive rules).<sup>16</sup> Strictest of all are Italy and Romania, where the government must gain the confidence of both chambers of parliament (double positive rules).

#### **4. A typology of patterns of the government formation process in European countries**

We now describe a scheme that locates constitutional rules regulating the GFP in a space whose axes are the two variables above. The vertical axis shows the role played by the head of state in the GFP. Heads of state with no formal powers are located at the origin; those with exclusive, unfettered power to appoint the prime minister are at the top.<sup>17</sup> The horizontal axis shows whether the government or prime minister are subject to a parliamentary investiture vote and under what rules they must win that vote. 'Strong' heads of state should appear in the upper regions of the scheme, particularly in the upper left corner. The weakest heads of state should be found at the bottom: the Netherlands and Sweden. But most presidents in the Balkan countries are comparatively weak in the GFP as well, and show up in the lower right quadrant.

Most European countries apply positive formation rules that severely constrain heads of state. This corresponds to the logics of the regimes, where the cabinet is accountable to the parliament.

The scheme demonstrates that seemingly small variations in the GFP patterns may give rise to significant differences. As an example, the head of state in most European countries has the right to appoint the cabinet, while parliaments may censure it in a confidence or analogous motion. But under this general GFP template, several variant patterns may be found. The usefulness of such a nuanced typology may be illustrated using the Czech Republic.

On the face of it, the Czech constitution regulates the GFP in a manner similar to many other European countries. But contrary to most European countries, in the Czech Republic, the cabinet, appointed by the president, may take office before a confidence vote has been taken. The potential inherent in these rules – which may amount to a loophole in the Czech constitution – had not been explored until 2013. Previous practice corresponded to the logic of a parliamentary regime: presidents are generally expected to appoint a government that reflects the parliamentary majority and will be highly likely to win a confidence vote. But in June 2013, president Milos Zeman took advantage of this constitutional provision to appoint 'his own' presidential cabinet, contrary to the logic of the parliamentary regime and despite the preferences of the parliamentary parties. The cabinet failed to receive a confidence vote from

Scheme 1: Formal powers of the head of state in the government formation process

Unrestrained appointment	● FRA, ICE, LUX, AUS, NOR, DEN, UK	● CZE, POL, SVK	● LIT, RUS	● BEL, CRO, UKR	● ITA	
Almost unrestrained appointment	● MAL	● POR				
Proposal and confirmation			● EST	● GER		
Limited proposal and confirmation			● FIN	● ESP, MOL, MN	● ROM	
Proposal			● LAT	● HUN		
Confirmation	● FL	● GRE	● ALB, IRE			
Limited proposal			● BUL	● KOS, SLO, SRB		
No role	● NED	● SWE				
	Negative rules I	Negative rules II	Weak positive rules	Strong positive rules	Very strong positive rules	Double positive rules

**Note:** The vertical axis shows the level of discretion of the head of state in the GFP. *No role*: the head of state has no formal powers in the GFP. *Limited proposal*: the head of state has right to nominate a candidate for the prime minister, but must consult the nomination with the parties in parliament. *Confirmation* refers to the head of state's right to appoint the prime minister, but he or she appoints the individual defined under the constitution (mostly chosen by parliamentary parties). *Proposal*: the head of state has the right to nominate (propose) the candidate for prime minister. *Almost unrestrained appointment*: the head of state must consult the parliamentary parties and take into account the results of parliamentary elections, or choose the person with the best chance of winning the support of the parliamentary majority. *Unrestrained appointment*: the head of state is not formally constitutionally limited and may appoint the prime minister at will.

The horizontal axis refers to the different investiture rules. *Negative rules I*: no formal investiture vote. *Negative rules II*: the cabinet is subject to parliamentary vote but is approved in all cases except when the absolute majority of MPs votes against the government. *Weak positive rules*: the government is subject to vote of confidence, but the government may assume its functions immediately upon appointment. A parliamentary vote follows a few weeks later. *Strong positive rules*: the government takes office only after it has been approved by the majority of MPs in the parliament. *Very strong positive rules*: the government takes office only after it has been approved by an absolute majority of the parliament. *Double positive rules*: the government must be approved by both parliamentary chambers.

Note: The British case is very peculiar due to the country's 'unwritten' constitution, in which only some principles are codified, with many others derived from conventions and common law (for a discussion, see Kingdom 1991: 33–34).

Source: The author, based on constitutional texts and on Bergman 1993; Strøm, Müller, Bergman 2003; Carroll, Cox 2012, Hloušek et al. 2013.

the lower chamber and resigned. But in line with the constitution, the President authorized the cabinet to continue functioning until a new cabinet was formed. This did not take place until January 2014. Up to that time, the presidential cabinet was able to make a number of decisions the parliament could do very little about.<sup>18</sup>

This scheme may not always reflect the actual practice of the GFP. First, it is based solely on formal rules, but in some countries political practice differs significantly from those rules. In general, the role played by European monarchs in the GFP is of extreme importance from a formal standpoint, but in terms of real political power, their discretion is severely constrained by constitutional conventions (in, for example, Norway, United Kingdom, and Denmark).<sup>19</sup> Even some countries whose presidents are formally strong have seen constitutional conventions gradually emerge that have significantly weakened the presidential powers dictated in the constitution to the point that, in practice, they have become figureheads. This has happened in Iceland and Austria. In these countries, full respect is given to parliamentary reality, and the candidate selected by the parliamentary majority is ordinarily appointed. By contrast, in France, the formal rules correspond to actual political practice: the president is the key player in the GFP and, with the exception of cohabitation, determines not only the candidate for prime minister, but other members of the cabinet. Hence, constitutional conventions, the character of party systems, and the nature of the relationship between the head of state and parliament may significantly influence the outcome of the GFP.<sup>20</sup>

Second, the typology tracks only the role played by the head of state in the GFP; it does not take into account the overall set of formal or informal powers the head of state might possess that give him or her more leverage in the GFP. To be precise, the scheme does not differentiate those countries in which the head of state may dissolve the parliament if it repeatedly rejects nominees the head of state has nominated from those in which, prior to its dissolution, the parliament itself or its speaker may nominate a candidate for prime minister (or candidates for the entire government). The head of state wields a great deal more power in the first case than in the second. In Russia, for example, where the regime is characterized by strong positive formation rules, the president plays a more significant role in the GFP than the scheme would indicate. Although the government he or she appoints must be approved by the parliament, the president is still the one with more leverage in the GFP; if the parliament three times rejects the cabinet appointed, the president may dissolve it.<sup>21</sup> In the end, then, the Russian president can force the parliament to accept his or her nomination (see Sedelius, Mashtaler 2013: 111). The strong role is derived from the president's other formal powers. Ukraine also has a very powerful president (Protysk 2003). In the Czech Republic, by contrast, if the president makes two unsuccessful attempts to nominate the cabinet, prerogative passes to the speaker of the lower chamber. The president is thus constrained by the fact that the lower chamber can prevent its own dissolution and pressure the president to come up with a candidate respected by the parliamentary majority.

Third, the GFP is a dynamic process and may sometimes take on an unusual configuration. Contrary to expectation and prevailing political practice, under specific conditions heads of state may play a more vital role in the GFP. In general, if the parliament is constrained or weakened for any reason, the head of state naturally becomes stronger in the GFP. These specific conditions involved may involve political crises in which parliamentary parties find themselves unable to put together a cabinet,<sup>22</sup> or when there is an overabundance of potential competing compositions. Several examples may illustrate.

As indicated above, the Slovenian president's role in the GFP is highly restricted by the constitution (Slovenia is located at the lower right of the scheme). His actual role in fact corresponds to this formal description. But in 1997, the president's role took on greatly increased

significance. The Liberal Democratic Party, led by Janez Drnovsek, won the parliamentary elections – but only with a plurality. An opposing coalition of parties controlled forty-five of ninety parliamentary seats. This coalition was expected to form the new cabinet. However, president Milan Kucan nominated Drnovsek as Prime Minister. He failed to gain a majority in parliament, but the president gave him a second chance to form another cabinet. With the support of a single defector, Drnovsek eventually received the parliament's blessing (Protsyk 2005a: 737).

Italian presidents have generally functioned passively in the GFP. Between 1948 and 1992, 'presidents tended to ratify the choices of the Government and Prime Minister in a systematic way, exercising passive control over the concerns of the parliamentary majority' (Grimaldi 2011: 109). Their role was thus minimal (examples would be the presidencies of Segni, Leone, the last phase of Pertini's term of office and the first phase of Cossiga's term). But during times of political or economic crisis, the discovery of corruption or mismanagement, or a low level of legitimacy among political parties, presidents have taken on much more active roles, with significantly increased leverage over the GFP (Grimaldi 2011: 109–111; Verzichelli, Cotta 2000). For example, both Ciampi's (1993) and Dini's (1995) appointments as prime minister with non-partisan cabinets gave rise to what may be referred to as presidential cabinets, since these cabinets were not based on the prior support of the parliamentary majority. President Scalfaro demonstrated his control over the GFP, but the cabinet appointed by Scalfaro needed the parliament to pass a vote of confidence (Grimaldi 2011: 109–111; Pastorella 2013).

Active behaviour by otherwise passive, weak heads of state may also manifest itself in parliamentary monarchies, but this happens rarely. The important role played by monarchs still endowed with robust formal powers is particularly evident when a clear parliamentary majority is lacking. This situation is described in the United Kingdom as a 'hung parliament'. In 1931, for example, the monarch appointed Ramsey MacDonald after his labour minority government resigned over a lack of support for the government's plans to manage public expenditures. The monarch was then criticized when he appointed MacDonald as Prime Minister anew (Ball 1986, Kavanagh 2005: 185). Norway provides a similar example. There, the monarch is normally passive in the GFP (Strøm, Narud 2003), and since the establishment of parliamentary democracy in 1884, has usually appointed the candidate with the greatest parliamentary support. But in 1928, the King unexpectedly appointed Christopher Hornsrud, who formed the first-ever Labour cabinet. Although Labour was indeed the largest parliamentary faction, the King's move ran against the wishes of the outgoing Prime Minister. The public, too, was very concerned about the new government, which sought a socialist transformation of society. Several days later, Hornsrud's cabinet received a vote of no-confidence, but the King's behaviour indirectly led to an eventual strengthening of parliamentary practice and the monarch's own legitimacy (Redvldsén 2011: 16–17).

On the other side of the coin, efforts by the head of state to compel acceptance of his or her preferred composition for the government and to seize favourable political opportunities to the detriment of constitutional conventions may backfire by threatening the head of state's position or that of his or her successors (Cox, Carroll 2012: 16–17). In many countries, presidents have almost marginalized the parliament in the GFP, but this has led to constitutional changes to weaken the formal powers of the president. Examples are Antonio Eanes in Portugal,<sup>23</sup> Urho Kekkonen in Finland (Nousiainen 2000; Paloheimo 2007), and Lech Walesa in Poland

(Millard 2000). Finland's presidential powers were severely limited under the 2000 constitution, and the president's role in the GFP was reduced to that of a notary. Formal restraints are placed on the powers of heads of state in countries that are not republics as well. In Sweden, the 1975 constitution completely excluded the monarch from the GFP. In 2012, the Dutch monarch was deprived of her powers in the process, in reaction to the prior monarch's behaviour in the GFP. It had originally been the monarch's sole responsibility to appoint the prime minister. In the past, monarchs chose a representative of the largest parliamentary party. But Queen Beatrix moved beyond that traditional role to step directly into the GFP, clearly revealing her preferences. This aroused the resentment of the parliamentary parties. In 1994, she appointed Wim Kok in defiance of the parliamentary majority's expectations. In 2012, parliament altered its own rules of procedure to ensure that any subsequent government formation would take place with no involvement from the monarch. This was in reaction to the conviction of many MPs that Queen Beatrix had gone too far in the 2010 GFP. The Queen had allegedly made every effort to keep the anti-immigration Party of (Partij voor de Vrijheid) out of the deal-making process (see Dutch News 2012; see also Kozubik, Chytilék 2013: 493).

Another case of conflict between head of state and other key institutions over the GFP and the interpretation of the constitution arose in Romania. In 2004, and again in 2009, Romanian President Basescu used his powers in the GFP in an attempt to push through a candidate for prime minister from the electoral alliance he preferred. Until then, it had been customary for the president to nominate a representative of the party which had won the parliamentary elections. This effort, along with a number of cases in which he was accused of misusing his powers, eventually prompted the parliamentary parties to propose Basescu be suspended from office in 2007. But the referendum to remove him from office (Art. 95) failed, and he was able to remain in power. His ouster was attempted again in 2012, without success (Gherghina 2013: 266).

## 5. Conclusion

There has been a lack of comparative studies of the role played by the head of state in the government formation process. Several studies have attempted to quantify the head of state's powers in the process. However, the classifications these studies arrive at are too crude to reflect the diversity of GFP patterns in the European countries, most of which are characterized by a dual executive in which the government is accountable to the parliament.

Accordingly, this study has analyzed the constitutional texts of European countries to identify existing patterns in the government formation process. This fundamentally important process may be analyzed as a sequence of three phases – nomination, appointment, and approval – involving bargaining between the head of state and the parliament. This study has offered a classification scheme that reveals a number of patterns in the government formation process. It demonstrates that existing classifications are inadequate, and that seemingly unimportant differences in the formal rules regulating the government formation process may result in vastly different outcomes. A perfect case in point is the first-ever presidential cabinet in the Czech Republic, appointed in June 2013. The caveat applies that the classification scheme is based solely on the formal rules enshrined in European constitutions.

To be sure, the government formation process is regulated by the formal rules to a large extent. However, as several examples have shown, other informal, unwritten, and political conditions significantly influence the procedure. The need for further research remains.

### Notes:

1. Pursuant to Art. 113 the prime minister is responsible to the president of Ukraine, and is also accountable to the parliament. Either body may dismiss the cabinet. Similar provisions can be found in the Russian constitution.
2. A study by Carroll and Cox (2012) is an exception.
3. For a more rigorous approach to this issue, see Fortin 2012.
4. In Liechtenstein (Art. 78), Lithuania (Art. 96), and Ukraine (Art. 113), the government is also accountable to the head of state.
5. The government may not necessarily enjoy the explicit support or confidence of the parliamentary majority. Often, for various reasons, a parliamentary majority is absent. It is therefore sufficient that the government is at least tolerated by the parliamentary majority.
6. Therefore, the analysis does not include the directorial regime in Switzerland. Peculiar systems in Andorra (with a dual head of state) and the Vatican are excluded as well. Finally, Belarus is not included because its system is generally considered non-democratic.
7. Some constitutions explicitly refer to specific elements of the parliament – the chairman of parliament (Sweden), parliamentary groups or parties (e.g., Romania, Albania, Bulgaria, Slovenia, Kosovo, Serbia).
8. Unless otherwise stated, the analysis is based on the constitutional texts of the European countries.
9. There may be exceptions to this rule, however. For example, if parliamentary parties fail to form a viable cabinet, the president may entrust ‘the President of the Supreme Administrative Court or of the Supreme Civil and Criminal Court or of the Court of Auditors to form a Cabinet’ and dissolve the parliament (Art. 37).
10. In Latvia, the parliament formally expresses confidence in the government (Art. 59).
11. In practice, however, appointing a prime minister is constrained by various factors, such as constitutional conventions and the expectations of the parliamentary majority. On the other hand, in countries where the head of state has significant executive or legislative powers (e.g. the right to dissolve parliament), he or she may not feel bound by the opinion of the parliamentary majority.
12. There are, however, several borderline cases: Iceland, the Netherlands, Luxembourg and Austria. Although the formal vote of confidence in the new government does not exist, the government must be de facto supported, not just tolerated by a parliamentary majority. In the Netherlands and Austria, there is a parliamentary debate over the government’s policy program, which may be used as an opportunity by the parliament to express a vote of no confidence in the government. In Luxembourg, the parliamentary majority usually expresses confidence in the government after the debate over the policy program (see de Winter 1995: 134; Müller 2006).
13. In line with the principal-agent theory (e.g. Strøm 2000) it is possible to distinguish between parliamentary (assembly-based) cabinets and presidential cabinets. This distinction applies to both parliamentary and semi-presidential regimes, where cabinets are accountable to the parliament. Assembly-based cabinets result from an agreement by the parliamentary parties. They are formed without active participation of the president. By contrast, presidential cabinets reflect the presidential will, whereas assembly parties play no or a very limited role in the GFP (see Protsyk 2005a; Schleiter, Morgan-Jones 2005: 3; Schleiter, Morgan-Jones 2010: 1424).
14. Seen from this perspective, Italy falls into this category, but here the government must win a confidence vote in both parliamentary chambers within ten days of appointment (Art. 94). Presidential cabinets have been already established here, but rather as a consequence of deep economic and

- political crises in which parties withdrew from the GFP (see Grimaldi 2011: 109; Marangoni 2012; Pastorella 2013).
15. Presidential cabinets have been formed in Russia as well but in a different way. Cabinet ministers are appointed to their positions after the candidate for prime minister has been approved. But if the candidate for prime minister is rejected three times, the president has right to insist on his choice, dissolve parliament and call new elections (Art. 111 and 112). This strong position allows him to appoint cabinets that correspond entirely to his wishes. This practice was especially common during the presidency of Boris Yeltsin, who nevertheless got into a bitter conflict with parliament (e.g. Clark 1998; Morgan-Jones, Schleiter 2004; Protsyk 2005a: 746).
  16. In Germany and Slovenia, an absolute majority is necessary only for the first two attempts. If none of the candidates is elected by an absolute majority, a simple majority is sufficient in the third attempt to form a cabinet. In Spain, a simple majority is sufficient on the second attempt to form the cabinet.
  17. To be sure, the head of state's power in the GFP is not completely free. First, the head of state usually appoints the prime minister, but other ministers are appointed on the latter's recommendation. Second, the head of state usually takes account of the opinion of the parliamentary majority, which may take a no-confidence vote in the cabinet at almost any time.
  18. This kind of presidential cabinet is practically ruled out in many other countries. For example, the Romanian constitution prevented President Traian Basescu to appoint his presidential cabinet. In 2009, after the Social Democratic Party left the government led by Emil Boc, the parliament passed a motion of no-confidence in the cabinet (BBC 2009). President Traian Basescu took advantage of this situation and two days later (October 15) nominated a new government led by the non-partisan economist Lucian Croitoru. This nomination was backed only by the Democratic Liberal Party, which was prepared to support Basescu in the upcoming presidential election. Other parliamentary parties criticized this step and nominated their own candidate for prime minister: Klaus Johannis. Basescu, however, rejected this proposal and insisted on his candidate. The probability of a successful vote of confidence in the Croitoru cabinet was small, but the president decided to wait for the presidential elections (Salzman 2009). As expected, the parliament rejected the cabinet on 4 November (Wall Street 2009). President Basescu designated another candidate: Liviu Negoita. This government was very similar to the two previous cabinets, and was therefore called Emil Boc's Government No. 3 without Boc (Mediafax 2009). A successful confidence vote in the cabinet was again very unlikely, because the opposition controlled about 65% of parliamentary seats. The parliament eventually failed to vote on this cabinet, since Negoita gave up his candidacy. Several weeks later, the parliament passed a vote of confidence in the new cabinet formed by Emil Boc. But this time, the cabinet was composed of representatives of several parliamentary parties. It should be noted that all the time the original cabinet of Emil Boc was in office, since the presidential nominees were never approved by the parliament and the president and his attempt to form a presidential cabinet was defeated.
  19. For more on constitutional conventions, see Kysela 2008.
  20. Also, a ruling by a constitutional court may determine or specify a particular interpretation of a constitution. For example, the Lithuanian Constitutional Court laid stress on the responsibility of government to the parliament, which also determines the manner of procedure for the GFP. Hence, the president cannot choose his or her candidate for prime minister at will, because the government depends on the parliament's confidence (see Krupavičius 2013: 212).
  21. In political practice there might be exceptions, however. For example, Primakov was appointed only after the parliament rejected Yeltsin's candidate, Chernomyrdin. Yeltsin eventually deferred to the Duma. Moreover, Primakov was able to choose his personnel without presidential interference, in cooperation with the parliament (for details see Morgan-Jones, Schleiter 2004; Schleiter, Morgan-Jones 2010: 1416).
  22. A very specific manner of instituting a (caretaker) cabinet is anticipated in Art. 37 of the Greek constitution. If all attempts to form a partisan government fail, the president 'shall entrust the President

of the Supreme Administrative Court or of the Supreme Civil and Criminal Court or of the Court of Auditors to form a Cabinet as widely accepted as possible to carry out elections, and dissolve Parliament.' This has happened twice in Greece – in 1989 (Prime Minister Grivas) and in 2012 (Prime Minister Pikrammenos) (see Pastorella 2013: 17–10). These cabinets were formed without parliamentary influence. The president was not free to appoint his 'presidential' cabinet either, because the constitution offered him only three candidates for prime minister.

23. In 1978, after two short-lived cabinets resigned due to a lack of parliamentary support, president Eanes appointed 'presidential' cabinets, composed mostly of non-partisan ministers. However, these three governments between 1978 and 1980 were opposed by the major parliamentary groups, which saw these presidential cabinets as overt attempts to undermine both party and parliamentary control of government. The cabinets did not last long, and not surprisingly, this period witnessed the formation of a solid inter-party consensus on the need to curtail presidential powers (see Amorim Neto, Lobo 2008).

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