

Role and election of the President of the European Commission

The President of the European Commission (EC) has taken on an ever more prominent leading role within the College of Commissioners, with the increasingly presidential system eclipsing the principle of collegiate decision-making. With the European Council and European Parliament now together responsible for the appointment, the Presidency has not only become a much more politicised office, but the President has also gained greater influence vis-à-vis the other members of the Commission.

The Commission President plays a crucial role in relations between Parliament and Commission. Presenting the priorities for his Commission to Parliament ahead of his election sets the course for the whole term, on which the President will be called to account by Parliament. Building on this, Parliament has an increasingly prominent role in political agenda-setting, shaping the EU's legislative programming together with the Commission and the Council.

At the end of President Barroso's second term as Commission President, many criticise the lack of ambitious initiatives undertaken whereas others believe that the economic and institutional difficulties which the EU faced made this inevitable. The priorities set by President-designate Jean Claude Juncker during his electoral campaign point to revisiting the EU's monetary policy to give the Commission a stronger role relative to the European Central Bank, as well as to addressing the "UK question", while ensuring that the fundamentals of the single market are maintained.

As *Spitzenkandidat* (lead candidate) of the party which gained most seats in the European elections, Juncker is seen to benefit from greater legitimacy than his predecessors, but a President Juncker would also have to demonstrate to citizens that this strength will translate into a Commission programme addressing their needs.



Jean-Claude Juncker.

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Towards a presidential regime in the European Commission

The European Commission

The European Commission's President has a prominent role in the EU's institutional setting, which has evolved with advances in EU integration and the Commission itself. Besides the traditional vocation of the Commission to promote the general interest of the Union and to oversee the application of Union law, the Treaty of Lisbon expressly lists some of the (political) tasks already being undertaken by the Commission. These are the execution of the budget and the Union's external representation, as well as the Union's annual and multiannual programming and the coordinating, executive and management functions, as laid down in the Treaties (Article 17(1) TEU). In carrying out these responsibilities, the Commission as a whole, but also its members including the President, shall be independent and neither seek nor take instructions from any Government or other institution, body, office or entity (Articles 18(2) TEU, 245 TFEU).

This independence of the Commission and its President has led many to conclude that at EU level there are "policies without politics" resulting in shortcomings in the democratic legitimacy of EU decision-making. It is, however, argued that the European Commission is no longer a mere technocratic body, as is apparent from the political affiliation both of Commissioners and President. Moreover, its President is not depoliticised, as may have been the case at its origin.

The Commission President: no longer *primus inter pares*

The Commission is a collegiate organ meaning that decisions are taken collectively by the College of Commissioners (Article 1 [EC Rules of Procedure](#)), who are collectively responsible before the European Parliament. Commissioners submit their proposals to the College, which, in general, deliberates by consensus. The College may also take a vote, at the request of any Commissioner, with decisions taken by simple majority. In practice, however, decision-making has become more centralised – more so in an enlarged College. Important issues are increasingly handled by the President and the respective Commissioner rather than through discussions of the College.¹

Up until the Amsterdam Treaty (1997), the functions of the Commission President were mainly of organisational nature, except for the representative functions outside the Union and their participation in meetings of the European Council. With the Amsterdam Treaty the office of President was formally politicised by tasking them with providing "political guidance" for the work of the Commission (Article 219 [TEC Amsterdam](#)).

The Treaty of Nice (2001) further strengthened the role of the President in relation to the rest of the College. Until then, the collegiality principle prevailed in the work of the European Commission, with the President being to some extent *primus inter pares*. The Treaty of Nice however gave preference to the coherence and efficiency of the Commission decision-making processes over collegiality, shifting towards a more 'presidential' regime.² The presidentialisation of the EC is seen on one side as positive in terms of effectiveness and political accountability, and as negative on the other side for the defence of the 'general interest', for which the collegiality principle is a guarantee.³

Article 17(6) TEU

The President of the Commission shall:

- a) lay down guidelines within which the Commission is to work;
- b) decide on the internal organisation of the Commission, ensuring that it acts consistently, efficiently and as a collegiate body;
- c) appoint Vice-Presidents, other than the EU HR for Foreign Affairs and Security Policy, from among the members of the Commission.

The particular function of the President relative to the other Commissioners was further acknowledged in respect of the appointment procedure for the members of the Commission. The Treaty of Maastricht established that the governments of the Member States nominate the Commissioners in consultation with the nominee for Commission President (Article 158(2) [TEC Maastricht](#)), and later, with the Amsterdam Treaty, by common accord with him or her (Article 214(2) [TEC Amsterdam](#)). This process enables the President to issue political guidelines for the work of the Commissioners. The President-elect does not however themselves nominate fellow Commissioners, a power which rests with the Members States' governments – a process called by President Barroso, "a blind date".⁴ However, according to the [2010 EP-EC Framework agreement](#), Parliament will take into account the remarks of the President-elect when giving its consent to the new Commission.

Since the Treaty of Nice, the Commission President can seek the resignation of individual Commissioners. His agreement is necessary if the European Council intends to ask the High Representative of the Union for Foreign Affairs and Security Policy to resign (Articles 17(6), 18(1) [TEU](#)). The President also assigns portfolios to each Commissioner and can reallocate responsibilities to members of the Commission (Article 248 [TFEU](#)). He calls and chairs meetings of the College (at least once per week, Article 5 [EC Rules of Procedure](#)), and can assign responsibility for specific activities to Commissioners or set up working groups (Rule 3 [EC Rules of Procedure](#)).

The EC President normally sets the different portfolios before the nomination of the Commissioners, and these are used as a basis for the hearings before Parliament.

The majority of commentators argue that the President can not only give guidance for the work of the Commission, but even instructions to individual Commissioners within the scope of their duties. The fact that according to the Treaty, they "shall carry out the duties devolved upon them by the President under his authority" (Article 248 [TFEU](#)) is seen as a softening of the collegiality principle for the sake of an efficient and coherent functioning of the Commission.⁵

Furthermore, the President represents the Commission. In this capacity, he takes part in meetings of the European Council and of the Group of seven leading industrialised countries (G7), as well as in debates of the European Parliament and the Council of Ministers of the European Union.

Election of the Commission President

Historical development

Originally, the Commissioners were appointed by common accord by the Member States' governments, and the President of the Commission was then elected by the College from among the Commissioners (Article 161 [TEEC 1957](#)). The European Parliament was initially not involved in the appointment of the Commission President. It could only, once the Commission was in office, adopt a motion of censure of the entire Commission, obliging it to resign (Article 144 [TEEC 1957](#)). Parliament gained a role in the appointment procedure with the Maastricht Treaty (1992). Governments were to nominate by common accord a candidate for the EC Presidency, only after consulting Parliament. For the first time, Parliament would formally vote to approve the Commission as a body, though not the President as such (Article 158(2) [TEC Maastricht](#)).

This changed with the Amsterdam Treaty when Parliament was entrusted with approving the Commission President-nominee in advance of the College as a whole

(Article 214(2) [TEC Amsterdam](#)). The candidate for the post of Commission President is therefore confirmed twice by Parliament – once individually, and once as part of the Commission as a whole (see now Article 17(7)1, 3 [TEU](#)).

The Treaty of Lisbon strengthened the role of Parliament further. Whilst previously, the nomination of a Presidential candidate was merely "approved" by Parliament (Article 214(2) [TEC](#)), Parliament now **elects** the candidate (Article 17(7) TEU), which places particular emphasis on the political linkage between Parliament and Commission.

A major step was the change of the decision-making process in the European Council. Whilst until then common accord among national leaders was necessary to appoint a candidate for the Commission Presidency, the Treaty of Nice introduced the requirement of qualified majority, so avoiding the possibility for individual Member States to veto a specific candidacy.

The 2014 elections: further politicisation of the EU institutional setting

The Lisbon Treaty provides that the EP elects the Commission President on the basis of a proposal from the European Council taking into account the elections to the EP (Article 17(7) TEU). The provision applied for the first time in the 2014 elections. In order to '[Europeanise](#)' the elections and to boost the democratic legitimacy of EU decision-making, Parliament called on the political parties to nominate candidates for the Presidency of the EC allowing for citizens to influence directly, through their vote in the European elections, the choice of the head of the European executive. Five European political parties nominated their '*Spitzenkandidaten*' and argued that the candidate of the party winning the most [seats](#) be nominated by the European Council as candidate for the Presidency of the EC, so as to try and secure a sufficient majority in Parliament. For the first time, the [nomination](#) in the European Council was not made by consensus but through a formal vote, with 26 heads of state or government voting in favour of Jean-Claude Juncker (European People's Party) and two – UK Prime Minister David Cameron and Hungarian Prime Minister Viktor Orbán – voting against.

The election in Parliament is set to take place on 15 July 2014, with Juncker having met with each of the political groups in the EP the previous week. Parliament's President will request the candidate to make a statement and present his political guidelines to Parliament, followed by a debate, to which the European Council is also invited ([Rule 117](#) EP Rules of Procedure). The candidate is elected by an absolute majority (376 of the 751 MEPs) in a secret ballot. The Commission President-elect will then send official letters to the Member States' leaders inviting them to propose candidates for the Commissioner posts.

The *Spitzenkandidaten*-process, applauded by many experts and political actors as a step forward in the democratisation and politicisation of the EU decision-making process, has been criticised by others, including some heads of government, claiming that the Treaties entrust the European Council and not Parliament with the nomination of the Commission President candidate and arguing that the loss of control over the nomination process undermines Treaty provisions.⁶ On the other hand, the process is seen as natural since the Treaty requires Parliament to "elect" the candidate nominated by the European Council.

Relations with other institutions

Political accountability to Parliament

The Commission is responsible to the European Parliament as a body. In accordance with Article 234 TFEU, the European Parliament may vote on a motion of censure of the

Commission. If the motion of censure is carried by a two-thirds majority of the votes cast, representing a majority of all MEPs, the members of the Commission shall resign as a body and the High Representative of the Union for Foreign Affairs and Security Policy shall resign from the duties that he/she carries out in the Commission. A motion of censure must be lodged with the President of Parliament by at least one-tenth of Parliament's Members, and must be supported by reasons ([Rule 119](#) EP Rules of Procedure). Seven motions of censure have been tabled since Parliament was first directly elected in 1979; none has reached the necessary majority.

The Santer Commission

The resignation of the Santer Commission on 16 March 1999 was not the result of the motion of censure rejected in Plenary on 14 January 1999. Rather, it was the political consequence of the report on fraud and mismanagement in the Commission by a Committee of independent experts appointed by Parliament.

No motion of censure procedure is provided for in respect of individual Commissioners, including the President. An individual Commissioner is required to resign only on the express request of the President of the Commission. However, according to the [2010 EP-EC Framework Agreement](#), if Parliament asks the President of the Commission to withdraw confidence in an individual Commissioner, the President shall either require the resignation of that member or explain his/her refusal to do so before Parliament (para. 5). Furthermore, Parliament grants discharge to the Commission under the budget procedure (Article 319 TFEU). A refusal is equivalent to a motion of censure.

Whilst the motion of censure is a last resort instrument, Parliament may resort to other rights, including questions for oral or written answer (Article 230(2) TFEU) and committees of inquiry (Article 226 TFEU). Moreover, the President of the Commission is tasked in several instances with special reporting duties to Parliament. He shall, for example, report to it on the results of multilateral surveillance (Article 121(5) TFEU).

Legislative programming

The new rules for the election of the Commission President, taking into account the elections to the EP (Article 17(7) TEU), are seen by many as increasing Parliament's role in political agenda-setting. Many argue that this may entail discussion not only of a candidate's overall vision for the EU, but more detailed specification of the legislative programme for the entire mandate.⁷

Indeed, whilst the EC has a monopoly over formal legislative initiative, it "shall initiate the Union's annual and multiannual programming with a view to achieving **inter-institutional agreement**" (Article 17(1)5 TEU). The fact that EU leaders agreed during the 26/27 June 2014 Summit on a [Strategic Agenda](#) for the next political-institutional cycle, which "shall guide the institutions in the annual and multiannual programming as well as in legislative planning", shows the increasing claim of national governments to exercise control of agenda-setting.⁸ Moreover, under the [2010 EP-EC Framework Agreement](#) the Commission must take into account the priorities

EC President and European Council

The European Council increasingly includes in its conclusions 'policy requests' to the Commission. This practice, not established in the Treaties, has intensified with the calls for leadership at the peak of the economic crisis and the centre-stage role of the European Council. It led to quasi-legislative functions of the European Council, converting it into an informal initiator of legislation, and watering down the Commission's monopoly of legislative initiative. Indeed, the Commission President is also a member of the European Council and, as such, participates in drafting its conclusions.

expressed by Parliament and justify any departure from the proposals set out in the Commission Work Programme (CWP). In this way, Parliament's contribution towards shaping the CWP results directly in greater political influence on the legislative initiatives to be submitted by the Commission. There have been calls for further institutionalisation of this process in a new inter-institutional agreement between EP, Commission and Council.

The timetable for the CWP is set out in [Annex XIII to the EP-EC Framework Agreement](#). It envisages dialogue between the Commission and the corresponding parliamentary committees. On the basis of a summary report by the Conference of Presidents on the implementation of the CWP, Parliament adopts a resolution at the July part-session, outlining its position and including in it particular requests based on legislative initiative reports. Each year in the first part-session of September, the President of the Commission delivers a **State of the Union speech** to Parliament, taking stock of the current year and looking ahead to priorities for future years. In October, the Commission adopts its Work Programme for the following year. The Commission President presents it either to the Conference of Presidents or to plenary.

As a consequence, there is some dilution of the Commission's monopoly of initiative and a shift towards stronger political agenda-setting, with the active participation of Parliament. Some have called therefore for the Commission President not only to issue [political guidelines](#) but, at the beginning of his term of office, to present a five-year strategic work programme adopted by the Commission and both halves of the legislature – Parliament and Council – followed by more concrete action programmes.⁹

Parliament's [initiative reports](#) have already proved of great importance in influencing the law-making process, even if the Commission has not always provided a satisfactory follow-up. But Parliament has also recognised the potential of its increased role in the EU's agenda-setting long before the start of the legislative process and has placed itself in the position of being able to assess the needs for new legislation and the amendment of existing legislation based on the results of its implementation. Its recently established [European Added Value Unit](#) (EAVA) produces 'Cost of Non-Europe' [studies](#) looking into possible benefits of further EU integration. It also undertakes specific follow-up research on major legislative requests made by Parliament within the negotiations with the EC on the CWP. Furthermore, Parliament has started to examine itself Commission impact assessments and conduct ex-post impact assessments by organising systematic feedback from all relevant actors to be fed into the entire [legislative cycle](#), from the agenda-setting until the scrutiny phase.

Barroso's Presidency: passivity or cyclical downswing?



The two mandates of José Manuel Barroso at the head of the European Commission started in 2004 in a complex political and institutional environment. Enlargement from 15 to 25 Member States and the failure of the European Constitutional Treaty following the referendums in France and the Netherlands then dominated political discourse taking off the political agenda further European integration or any institutional changes. President Barroso was therefore, according to [many](#), well advised to refrain from any overly ambitious Commission initiatives, while [others](#) blame him for being too passive and for having eroded the Commission's monopoly of initiative in favour of the European Council and the Parliament.

Indeed, the direct negotiations between Parliament and Council, in trilogues under the ordinary legislative procedure, have marginalised the Commission to some extent often reducing it to mere "honest broker". This has led the Commission to refrain from submitting a legislative proposal if it expects one of the co-legislators, mostly the Council, to oppose it. Commentators argue therefore that the Barroso Commission's relative passivity was the consequence of a structural tendency to transform the Commission from "autonomous initiator" to "reactive initiator".¹⁰

President Barroso is said to have made the Commission more 'presidential', with his strong leadership and by taking personal ownership of key policy initiatives. A study among Commission officials rated him higher than his predecessors, second after Jacques Delors.¹¹

The Barroso II Commission had to face the challenges posed by the economic and financial crisis, with the European Council [taking leadership](#) over economic governance and anti-crisis measures. The creation by the Lisbon Treaty of the office of a permanent President of the European Council as well as of the EU HR for Foreign Affairs and Security Policy also contributed to the partial marginalisation of the Commission and its President in EU agenda-setting. The rise of intergovernmental decision-making, at the cost of supranationalism within the EU framework, particularly in budgetary and economic matters, protected by Member States as ultimate bastions of national sovereignty, led to a reduction in the Commission's power of initiative.¹² While some accused him of executing a "neo-conservative" agenda, President Barroso is [credited](#) for several initiatives in the course of the economic crisis, such as the [six-pack and two-pack](#) instruments for budgetary surveillance, as well as the [banking supervision](#) mechanisms. During his terms of office, the EC finalised negotiations on the [Services Directive](#) and the [REACH Regulation](#), as well as on the completion of the [Common European Asylum System](#).¹³ He engaged intensively in the "[Better Regulation](#)" initiative, launched by his predecessor Romano Prodi, which progressively generalised stakeholders' consultation and impact assessment.

According to a [study](#), the Barroso II Commission adopted 605 legislative proposals in the period 2010-2014, as well as another 2 074 initiatives including communications, guidelines, reports, recommendations, regulations, Green and White Papers. The number of initiatives gradually decreased as part of the rationalisation of legislation.

Outlook: President-designate Jean-Claude Juncker

Jean-Claude Juncker was [nominated](#) by the European Council as candidate for the EC Presidency during its summit on 26 and 27 June 2014. Before running as the European People's Party's *Spitzenkandidat* for the post, he had been Prime Minister of Luxembourg (1995-2013) – and therefore a member of the European Council – and president of the [Eurogroup](#) of euro area finance ministers (2005-2013).¹⁴ While many see him as more legitimate than his predecessors thanks to being the candidate of the party gaining most seats in the elections, it remains to be seen whether that strength translates into a Commission programme reflecting a majority across Parliament.

Politically, he is [said](#) to stand to the left of the EU's centre-right mainstream, for instance due to his support for a minimum wage in all EU Member States. In his [five-point plan](#) for his candidacy, he also argued that future bailout programmes should go through a "social impact assessment", not just a fiscal analysis.

He also argues for a re-balancing of the relationship between elected politicians and the European Central Bank (ECB) in the daily management of the euro area. According to

Juncker, the euro area should be managed by the Commission and by the Eurogroup, instead of the ECB.

The rest of his five top priorities as stated during the election campaign are: to put policies that create growth and jobs at the centre of the policy agenda of the next Commission; to build an Energy Union, by pooling Member States' resources, combining their infrastructures and uniting their negotiating power vis-à-vis third countries; a balanced trade agreement with the US, taking into account food safety concerns as well as EU data protection rules. Jean-Claude Juncker also promises to address the "UK question" stating, however, that his red lines are the integrity of the single market and its four freedoms, as well as the possibility "to have more Europe within the Eurozone".

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