

## *Hearings of European Commissioners-designate*

### Frans Timmermans

#### *First Vice-President – Better Regulation, Inter-Institutional Relations, the Rule of Law and Charter of Fundamental Rights*

Hearing due to be held on Tuesday 7 October at 14.30 hours.



*Frans Timmermans, The Netherlands.*

#### **Vice-President**

Will steer and coordinate the work of all Commissioners in his areas of responsibility. Will also guide the work of the Commissioners for Justice, Consumers and Gender Equality; and Migration and Home Affairs.

#### **EP body responsible for the Hearing**

The Hearing will take the form of a meeting of the Conference of Presidents of Political Groups open to all Members of the European Parliament.

#### **Biography**

Born in 1961, Frans Timmermans holds degrees in French literature, European law and history. As well as service in the Dutch Foreign Ministry, he worked for European Commissioner Hans van den Broek. Since 1998, he has been a Member of the Dutch Parliament. He was Secretary of State for Foreign and European Affairs from 2007 to 2010, and Minister for Foreign Affairs from 2012 to 2014.

*This is one of a set of Briefings designed to give Members of the European Parliament an overview of major issues of interest in the context of the hearings of the Commissioners-designate. A full set of such Briefings can be found at:*

[http://epthinktank.eu/commissioner\\_hearings](http://epthinktank.eu/commissioner_hearings)

## Background

The post of First Vice-President, created by Commission President-elect Jean-Claude Juncker, is intended to be of a **distinctively horizontal nature** and entails a direct relationship with the President of the Commission. Frans Timmermans will steer and coordinate the Commission's work in the areas of Better Regulation, Inter-Institutional relations, the Rule of law, and the Charter of Fundamental Rights.

The mandate requires close cooperation with the other Vice-Presidents, and close coordination with all other Commissioners in the implementation of the **Better Regulation** agenda. Better Regulation is now placed at the centre of the political agenda, in particular the need to remove unnecessary 'red tape'. The First Vice-President will be responsible for verifying that all initiatives from other Commissioners meet Better Regulation requirements before they can be placed on the agenda of the College of Commissioners.

In addition to these horizontal tasks, Timmermans will guide the work of the Commissioners for Justice, Consumers and Gender Equality (Věra Jourová) and Migration and Home Affairs (Dimitris Avramopoulos).

### Better Regulation

The aim of Better Regulation is to promote the simplification of EU law, reducing the administrative burden, especially for business, and to ensure respect for the principles of subsidiarity and proportionality. It forms part of a broader debate about **Better Law-Making**, which led to the 2003 Inter-institutional Agreement on Better Law-Making, concluded between the Commission, the European Parliament and the Council. Better Law-Making covers the whole policy cycle – from the genesis of law through to its implementation and enforcement – and involves a series of tools which are aimed at linking both decision-making and legislative drafting more closely to empirical evidence. Before any EU measure is proposed, an ex-ante **impact assessment** explains the rationale for the measure (Including 'problem definition' and choice of instrument), examines its potential economic, social and environmental effects, and identifies the expected costs and benefits of the measure. Following **implementation**, the performance of EU initiatives is analysed by means of ex-post **evaluation**. Ideally, ex-post evaluation should feed into the decision by the Commission to update any law, completing the policy cycle. An essential aspect in these processes is **consultation** of stakeholders and civil society, the overall objective being to ensure that EU legislation is 'fit for purpose' and creates favourable conditions for economic development.

### Inter-institutional relations

Acting under the responsibility of the President of the Commission, the First Vice-President is responsible for strengthening and deepening relations with all other EU institutions, agencies and bodies. Particular emphasis is placed on the 'special partnership' with the European Parliament, defined by the Framework Agreement between the two institutions, as well as on coordinating and strengthening relationships of all Commissioners with the national parliaments.

### Rule of law

The rule of law is the backbone of any modern constitutional democracy and is one of the main founding values of the EU, which should also be protected and promoted by the EU Member States (Articles 2 and 49 TEU). However, whilst the EU has established a comprehensive framework to ensure that candidate countries satisfy the 'Copenhagen

criteria' set out in Article 2 TEU prior to accession to the Union, there is no adequate monitoring mechanism to ensure that those same states continue to uphold these standards after accession (the so-called '**Copenhagen dilemma**'). The political and institutional mechanism foreseen by Article 7 TEU which provides that Member States may be sanctioned and suspended from voting in Council in case of a serious and persistent breach of the EU values has never been used. As a result, currently, the Commission can only bring a case before the Court of Justice of the EU (CJEU) where there is a violation of specific EU measures, and has no means to assess systemic failures in Member States. This lack of systematic oversight can jeopardise mutual trust between the Member States, notably in sensitive policy domains such as migration, asylum, police and judicial cooperation.

### **Charter of Fundamental Rights**

Under the Lisbon Treaty, the EU Charter of Fundamental Rights, originally proclaimed in Nice in 2000, has the same legal value as the Treaties. Even if it does not extend the competences of the Union, it gives them a new 'soul' by focusing on the rights of the individual with regard to all EU policies. The Charter draws upon the European Convention on Human Rights (ECHR), the European Social Charter and other human rights conventions, as well as the constitutional traditions common to the EU Member States as recognised in CJEU case law. However, it also updates them by recognising new rights protecting individuals from new forms of abuses by public or private entities (such as rights to the protection of personal data and to good administration). The Charter is binding upon the EU institutions when enacting new measures, as well as for the Member States whenever they act within the scope of EU law (see CJEU judgment in Case C-617/10 *Åkerberg Fransson*).

The Charter is the reference not only for the CJEU but also for the EU's law-making institutions, in particular the Commission when launching new proposals which give 'specific expression to fundamental rights'. This is the case with EU policies dealing with anti-discrimination, asylum, data protection, transparency, good administration, or procedural rights in civil and criminal proceedings. Nevertheless, fundamental rights (and the Charter) may also come into play in EU legislation covering any other domain of EU competence, such as transport, competition, customs or border control. As these policies can also have an impact on the rights of citizens and individuals, such as human dignity, privacy, the right to be heard and freedom of movement, EU and Member State law should take the Charter into account when regulating these spheres.

#### *Accession to the ECHR*

An essential aspect of the EU's fundamental rights policy will be the Union's accession to the European Convention on Human Rights which has been made obligatory by the Lisbon Treaty (Article 6(2) TEU). This will complement the system of fundamental rights protection by making the European Court of Human Rights competent to review EU measures while taking account of the specific nature of the Union's legal order.

#### **Treaty base**

*Better Regulation and Better Law-Making:* Article 3 TEU (EU aims) 5 TEU (subsidiarity) and 7 TFEU (consistency) and Protocol 2 (subsidiarity); Articles 11-12 TEU and Protocol 1 (dialogue with civil society and national parliaments); Article 15 TFEU and 42 of the Charter (transparency, access to documents); Art 16 TFEU; Art. 298 TFEU and 41 of the Charter (good administration).

*Inter-institutional relations:* Article 4 TEU (principle of sincere cooperation); Article 5 TUE; Article 295 TFEU (inter-institutional agreements).

*Rule of law:* Article 2 and 7 TEU; Title II TEU (democratic principles).

*Charter of Fundamental Rights:* Art. 6 TEU, the Charter of Fundamental Rights of the European Union and Protocol 8 and 30 to the Treaty; These rights are mirrored in Article 10 TFEU and Part II TFEU (non-discrimination and citizenship of EU).

*Area of Freedom, Security and Justice:* Title V TFEU.

## Recent developments

### Better regulation

#### *Transposition and implementation*

In 2011, the Member States and the Commission adopted a **Joint Political Declaration on explanatory documents** in which Member States recognised the need to communicate precise information on national implementing measures to the Commission, accompanied, if need be, by additional explanatory documents. In a letter to the Commission in November 2011, Parliament's then-President Jerzy Buzek requested that the EP be systematically informed of the reasons for the Commission's decisions either to seek or not to seek such explanatory documents from Member States.

#### *Regulatory Fitness initiative*

The **Regulatory Fitness and Performance Programme** (REFIT), launched in December 2012 by the Commission, is a rolling programme aimed at simplifying EU law and making it less costly both for citizens and companies, with the aim of fostering economic growth. The main tools for achieving regulatory fitness are those already in place for Better Law-Making, namely effective use of **ex-ante impact assessment**, **stakeholder consultation** and the **ex-post evaluation** of implementation. In its REFIT Communication of June 2014, the Commission proposed a number of new initiatives for simplification and burden reduction, repeals of existing legislation and withdrawals of proposals pending before the legislature. It also undertook to cooperate closely with both the EP and the Council, to ensure that the REFIT programme has a direct impact upon the legislative process.

In parallel, the Commission is currently in the process of **reviewing its evaluation mechanisms**, as well as its internal guidelines for impact assessment and stakeholder consultation.

### Inter-institutional relations

With the entry into force of the Lisbon Treaty the inter-institutional framework has been simplified, thanks to the abolition of the pillared structure of the EU. At the same time, however, it has been made more complex, with the creation of new offices such as those of President of the European Council and High Representative for Foreign Affairs and Security Policy. The Commission's role has also been strengthened overall, as a consequence of the on-going financial crisis and the resulting new role for the Union in the coordination of Member States' public finances (European Semester), and the growing importance of EU economic and monetary policies.

The main tasks of the First Vice-President in this area include initiating the Union's 'annual and multiannual programming with a view to achieving inter-institutional agreement' on legislative and budgetary aspects – an important new, and so far under-used, provision of the Lisbon Treaty (Article 17(1) TEU) – acting as an 'honest broker' in relations with the EP and Council, verifying that delegated and implementing powers are exercised in compliance with the Treaties and CJEU case law, maintaining a regular dialogue with the European Economic and Social Committee (EESC) and with the

Committee of Regions (CoR), and facilitating relations with the national parliaments. Furthermore, the Commissioner in charge of inter-institutional relations seeks to improve the application of the principle of good administration by EU agencies and bodies, ensure greater transparency of interest groups active around the institutions, promote wider access to EU documents, and finally promote EU citizens' participation in the EU legislative process (European Citizens' Initiatives).

#### *Inter-institutional agreements*

In the seventh parliamentary term, several inter-institutional agreements were concluded by the Commission with the Council and the EP in order to implement the Lisbon Treaty.

The major text on EP-Commission relations is the **Framework Agreement** of 2010, which has strengthened the EP's participation in developing the Commission's work programme, and provided for new arrangements for delegated acts and the follow-up to EP requests for legislative initiatives (Article 225 TFEU). Since then, the Commission has been less responsive than the Parliament hoped in responding positively to the (14) legislative initiatives that the latter suggested in the 2009-14 parliamentary term.

An important inter-institutional agreement between the European Parliament, the Council and the Commission is that on **budgetary discipline, cooperation in budgetary matters and sound financial management** which accompanies the definition of the Multiannual Financial Framework for 2014-20.

Another significant agreement (for the moment limited to the EP and the Commission) is the 2011 **Agreement on a Common Transparency Register**, the aim of which is to increase openness in relations between registered lobbyists and civil society representatives and the EU institutions, both during discussion of proposed legislation and on other administrative matters. Registration is currently voluntary. The agreement was updated on 15 April 2014, and the EP has called upon the Commission to submit, by the end of 2016, a legislative proposal for the establishment of a mandatory register, on the basis of Article 352 TFEU.

#### *Delegated and Implementing acts*

The rules on implementing acts (Article 291 TFEU) were adopted in 2011, replacing the former 'comitology' procedure. The three institutions concerned have also reached some elements of understanding on the main principles to be followed when new delegated acts are required, but further work is needed to improve the procedure (Article 290 TFEU).

#### **Rule of law**

In 2013 and 2014, several political initiatives have been taken to overcome the difficulties linked with the activation of Article 7 TEU. In June 2013, the Justice and Home Affairs Council made clear that 'respecting the rule of law is a prerequisite for the protection of fundamental rights' and called on the Commission to propose a collaborative and systematic alert system to prevent possible infringements by Member States. This has been a recurrent EP concern since the entry into force of the Amsterdam Treaty, as soon as it became evident that it was practically and politically too difficult to trigger the alert system foreseen by Article 7. In several resolutions adopted in 2013 and 2014, the EP has emphasised the need to establish a permanent monitoring system for all Member States to complement the Commission's general duty



to assess the transposition of EU law (see, in particular, the Tavares Report, adopted in plenary on 3 July 2013).

### **Charter of Fundamental Rights**

Since the entry into force of the Lisbon Treaty and the Charter, the evaluation of the possible impact of new EU measures on fundamental rights has become stricter. At the beginning of the seventh parliamentary term, the Commission adopted a 'Strategy for the effective implementation of the Charter'. This strategy provides, inter alia, for the prior assessment of all new legislative proposals from the point of view of observance of the Charter. More detailed guidelines are contained in the Commission's operational guidance. Such evaluations are needed in particular when an envisaged EU measure limits a fundamental right. In such cases, a detailed examination of the necessity for, and proportionality of, these limitations is required, in accordance with Article 52 of the Charter. Furthermore, since 2010, the Commission has published annual reports on the application of the Charter.

### *Accession to the ECHR*

Following Article 6 TEU, the Commission has negotiated EU accession to the ECHR and submitted the provisional text to the CJEU for an opinion as to its compatibility with EU law. If the Court's opinion is positive, the Commission will sign the agreement, and the Council would then conclude it, subject to the EP giving its consent. However, it will enter into force only once it has been ratified by all EU and Council of Europe Member States. Several implementing measures will also be needed: the Commission has in particular to propose rules on the EU's representation before the European Court of Human Rights, as well as the procedures to be followed for the selection of candidates for the judge's post in that Court (to which the Union will be entitled).

## **European Parliament**

### **Better regulation**

In its 2011 resolution on guaranteeing independent impact assessments (Niebler report), the Parliament called for more consistent use of ex-ante and ex-post impact assessment as an aid to the decision-making process within the EU institutions. In the absence of any common independent EU body to scrutinise the Commission's ex-ante impact assessments, and in order to place greater emphasis on the potential 'added value' of appropriate EU policy initiatives, the Bureau of the Parliament responded by creating a new **Directorate for Impact Assessment and European Added Value** within the administration, to support committees in their own-going work in these fields. Since then, the Directorate has produced about a hundred pieces of work of various kinds.

In February 2014, the EP adopted its most recent annual **resolution on Better Law-Making**, calling, amongst other things, for a commitment by the other institutions to update the 2003 Inter-Institutional Agreement, so that it can take into account important changes over the last decade (such as the Lisbon Treaty), and a number of technical improvements in the operation of the Commission's ex-ante impact assessment process.

The Parliament adopted a legislative initiative report on 'Better governance for the single market' (Schwab report) in February 2013 calling for improved evaluation of the impact of legislation on the single market as well as for better implementation of existing rules. Moreover, a January 2013 legislative initiative report asked the Commission to propose a 'law of administrative procedure' for the Union, setting out

principles of good administration for relations between the EU administration and individual citizens (Berlinguer report). The Commission has so far strongly resisted this proposal.

### Inter-institutional relations

In the EU institutional framework, the EP is the only directly elected institution, made up of representatives of the EU's citizens (Article 10 TEU). Therefore, together with the Council (representing Member States), the EP is an important source of EU legitimacy. It exercises political control (Article 14 TEU) and approves the Commission. The Lisbon Treaty has widened the areas in which the EP is co-legislator with the Council (ordinary legislative procedure).

The new election procedure for the Commission President (involving the nomination of *Spitzenkandidaten* by the European political parties) has potentially strengthened the political relationship between the Commission and the EP. It is therefore more than likely that this new political interaction will be mirrored in new inter-institutional arrangements dealing with the major aspects of daily EU business.

The main relationship between the EP and the Commissioner responsible for inter-institutional relations has been with the Conference of Presidents (of political groups) and the Constitutional Affairs and Legal Affairs Committees. The latter committee deals in particular with issues regarding better regulation, subsidiarity, implementation of EU law, and implementing and delegated acts. In addition, the Budgets and Budgetary Control Committees are engaged with regard to negotiations on principles regarding EU agencies.

In the new mandate, Vice-President Timmermans would also need to build relations with the Civil Liberties Committee, which covers most policies implementing fundamental rights in the framework of the Area of Freedom, Security and Justice, as well as the alert mechanism under Article 7(1) TEU (risks of violation of the EU values and of the rule of law).

### Rule of law

The EP has addressed issues of the rule of law in a number of its resolutions, especially in the 2013 Report on the situation of fundamental rights in Hungary, as well as in three reports on the situation of fundamental rights in the EU, from 2010, 2012 and 2013 respectively. Especially in the most recent one (rapporteur Louis Michel) the EP stressed the need to overcome the 'Copenhagen dilemma'.

### Charter of Fundamental Rights

The EP has adapted its Rules of Procedure to better evaluate the impact of new legislation (and amendments) on fundamental rights (Rule 38), and regularly monitors possible violations of human rights in third countries. Each year the EP adopts a report on human rights in the world and EU policy on the matter. The most recent was adopted in December 2013.

## Priorities and challenges

In his mission letter, President-elect Juncker indicates that the main priorities of Vice-President Timmermans would include:

- taking stock of the **Better Regulation** experience and reporting to the College of Commissioners on how to strengthen it, within 12 months' time;
- ensuring an explicit focus on the **implementation** of legislation, **cutting red tape** for SMEs and putting Europe back on track to achieve **growth and employment**;

- ensuring that the 2010 **Framework Agreement** with the EP, creating a 'special partnership', is followed;
- coordinating work on **transparency** and preparing a proposal for an Inter-Institutional Agreement creating a mandatory lobby register covering the Commission, the EP and the Council;
- strengthening relations with **national parliaments**;
- leading a transparent dialogue with **religious and philosophical organisations**;
- coordinating the **Rule of Law** aspects of Commission activity,
- coordinating the **Cooperation and Verification Mechanism** for Bulgaria and Romania;
- concluding the EU's accession to the **ECHR**; and
- ensuring that all Commission proposals conform with the **Charter of Fundamental Rights**.

### Further reading

Commission Communication on [Regulatory Fitness and Performance Programme \(REFIT\): State of Play and Outlook](#), COM(2014) 368 final.

[Resolution on EU regulatory fitness and subsidiarity and proportionality – 19th report on Better Law-Making](#), European Parliament, 4 February 2014.

[2003 Inter-Institutional Agreement on Better Law-Making](#), OJ C231 of 31.12.2003.

[Update on the European Commission's REFIT programme](#), Ex-Post Impact Assessment Unit, EPRS, European Parliament, June 2014.

[European Parliament work in the fields of Ex-Ante Impact Assessment and European Added Value: Activity Report for June 2012-June 2014](#), EPRS, September 2014.

[Driving the EU Forward – Straight Talks with Maroš Šefčovič](#), Šefčovič, Maroš, London: John Harper Publishing, 2014.

[Challenges to electoral participation in the European elections of 2014. Restoring Electoral Faith: Prospects and Risks. Dialogue with Churches and Non-Confessional Organisations](#), Weiler, JHH, Policy Department C Study, European Parliament, 2013.

[The Triangular Relationship between Fundamental Rights, Democracy and Rule of Law in the EU: Towards an EU Copenhagen Mechanism](#), Policy Department C Study, European Parliament, 2013.

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