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Konstitucinių reikalų komitetas

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PROJEKTO ATASKAITA

dėl rekomendacijų dėl Europos Komisijos svarstymo
(2005/2024(INI))

Konstitucinių reikalų komitetas

Pranešėjas: Andrew Duff

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PASIŪLYMAS DĖL EUROPOS PARLAMENTO REZOLIUCIJOS

dėl rekomendacijų dėl Europos Komisijos svarstymo (2005/2024(INI))

Europos Parlamentas,

- atsižvelgdamas į Europos Bendrijos steigimo sutarties 213 ir 214 straipsnius ir Europos Bendrijos atominės energijos steigimo sutarties 126 straipsnį¹,
- atsižvelgdamas į Konstitucijos Europai steigimo sutarties 26, 27, 28, 348 ir 350 straipsnius ir į 7 deklaratiją dėl Konstitucijos Europai 27 straipsnio, pridėto prie Tarpvyriausybinės konferencijos galutinio nutarimo,
- atsižvelgdamas į 1976 m. rugsėjo 20 d. nutarimo 10 straipsnį dėl Europos Parlamento atstovų rinkimų pagal visuotinę rinkimų teisę²,
- atsižvelgdamas į Pamatinį susitarimą dėl santykių tarp Europos Parlamento ir Komisijos,
- atsižvelgdamas į savo 2004 m. lapkričio 18 d. rezoliuciją dėl naujos Komisijos rinkimų³,
- atsižvelgdamas į savo Vidaus tvarkos taisyklių 45, 98 ir 99 taisykles,
- atsižvelgdamas į Konstitucinių reikalų komiteto ataskaitą (A6-000/2005),

kadangi:

- A. išankstiniai Komisijos kandidatų svarstymai, pirmą kartą panaudoti 1994 m. ir nuo to laiko išplėtoti, įgijo teisėtumo, kurį visiškai pripažįsta ne tik Parlamentas ir Komisija, bet ir Taryba bei valstybės narės;
 - B. Komisijos demokratinę atskaitomybę labai sustiprina Parlamento svarstymo procesas, kuris yra atviras, nešališkas ir nuoseklus, ir kuriame kiekvienas paskirtasis komisaras atskleidžia Parlamentui visą svarbią informaciją;
 - C. Konstitucija turi įsigalioti nuo 2006 m. lapkričio 1 d.;
 - D. atsižvelgiant į patirtį ir turint omenyje artėjančią konstitucinę reformą, jau dabar pageidautina peržiūrėti, kaip Parlamentas tvirtina Komisiją;
1. Priima šiuos principus, kriterijus ir susitarimus sudaryti visą Komisijos kolegiją, norėdamas gauti jos pritarimą:

Vertinimo kriterijai

¹ Pakeista pagal protokolo dėl Nicos sutarties išplėtimo 4 straipsnį, pakeista pagal 2003 m. balandžio 16 d. Prisijungimo akto 45 straipsnį (įsigaliojo nuo 2004 m. gegužės 1 d.).

² OJ L 278, 1976 10 08.

³ P6_TA(2004)0063.

- (a) Parlamentas įvertina paskirtuosius komisarus, remdamasis jų bendra kompetencija, įsipareigojimu Europai ir neabejotinu savarankiškumu. Jis nustato tinkamą žinių kiekį ir bendravimo įgūdžius.
- (b) Parlamentas atsižvelgia į lyčių pusiausvyrą. Jis gali pasisakyti dėl išrinktojo pirmininko posto pareigų perdavimo.
- (c) Parlamentas tikisi visiško informacijos, susijusios su finansiniais interesais, atskleidimo. Baudžiamieji nuosprendžiai arba baudžiamieji teismo procesai yra skelbiami viešai. Parlamentas kviečia kandidatus atskleisti savo narystę ir postus religinėse ir nereliginėse organizacijose.

Posėdžiai

- (d) Kiekvienas paskirtasis komisaras kviečiamas pasirodyti atitinkamam parlamentiniam komitetui arba komitetams atskiro trijų valandų svarstymo metu. Svarstymai yra vieši.
- (e) Svarstymus bendrai organizuoja prezidentų konferencija ir komiteto pirmininkų konferencija. Kuriami atitinkami susitarimai tiesiogiai susijusiems komitetams, kuriuose pareigos yra sumaišytos, sujungti. Komisijos išrinktasis pirmininkas yra konsultuojamas dėl praktinių susitarimų.
- (f) Parlamentas raštiškai pateikia klausimus paskirtiesiems komisarams tinkamu laiku prieš svarstymus. Vienam parlamentiniam komitetui raštiškai pateikiama ne daugiau nei penki esminiai klausimai.
- (g) Svarstymai vyksta tokiomis aplinkybėmis ir sąlygomis, kuriomis paskirtieji komisarai turi lygią ir garbingą progą pristatyti ir išreikšti savo nuomonę.
- (h) Prašoma, kad paskirtųjų komisarų žodinis išanginis pranešimas būtų ne ilgesnis nei dvidešimt minučių. Vadovavimu svarstymui siekiama suformuoti pliuralistinį politinį dialogą tarp paskirtųjų komisarų ir Parlamento narių. Prieš sesijos pabaigą paskirtiesiems komisarams leidžiama padaryti glaustą baigiamąjį pranešimą.

Ivertinimas

- (i) Rodyklinis svarstymų vaizdo įrašas yra prieinamas visuomenei per 24 valandas.
- (j) Komitetai nevėluodami susitinka po svarstymo ir atlieka paskirtųjų komisarų įvertinimą. Šie susitikimai yra slapti. Pranešimai apie įvertinimą yra paviešinami, tačiau pasilieka negalutiniais iki patvirtinimo prezidentų konferencijos ir komiteto pirmininkų konferencijos bendro susirinkimo metu.
- (k) Prezidentų konferencija ir komiteto pirmininkų konferencija, susitikę slapta, pateikia Parlamentui bendrą rekomendaciją pritarti ar nepritarti dėl paskyrimo į pirmininko, užsienio reikalų ministro ir kitų Komisijos narių postus.

2. Pasikeitimo arba Komisijos dispozicijos atveju, jai esant valdžioje, priima šiuos susitarimus:
 - (a) Jeigu atsiradusią laisvą vietą reikia užpildyti dėl atsistatydinimo, privalomo išėjimo į pensiją arba mirties ir kaip neatskiriama konsiliumo proceso, numatyto pagal konstituciją, sudedamąją dalį, Parlamentas kviečia kandidatą į Komisiją dalyvauti svarstyme tokiomis pat sąlygomis, kurios yra išdėstytos 1 dalyje.
 - (b) Pasipildymo nauja valstybe nare atveju, Parlamentas kviečia savo paskirtąjį komisarą dalyvauti svarstyme tokiomis pat sąlygomis, kurios yra išdėstytos 1 dalyje.
 - (c) Esminio postų pertvarkymo atveju komisarai, kuriuos tai liečia, yra kviečiami pasirodyti atitinkamiems Parlamento komitetams prieš užimdami savo naujas pareigas.
3. Pageidauja, kad Taryba perkeltų būsimų parlamentinių rinkimų terminą iš 2009 m. gegužės į birželio mėnesį, suteikdama naujam parlamentui galimybę pasirengti Europos Tarybos konsultacijoms prieš tai, kai Europos Taryba pateikia savo pasiūlymą Parlamentui dėl savo kandidato į Komisijos pirmininkus; primena, kad susitarimai dėl konsultacijų turi būti nustatyti tinkamu laiku bendru susitarimu tarp Parlamento ir Europos Tarybos¹.
4. Nurodo savo Pirmininkui remtis šia rezoliucija dėl Komiteto, atsakingo už vidaus tvarkos taisykles, siekiant pasiūlyti tinkamus pakeitimus dėl taisyklių prieš Konstitucijos įsigaliojimą.
5. Nurodo savo Pirmininkui persiųsti šią rezoliuciją Europos Komisijai, Europos Tarybai ir Ministrų Tarybai.

¹ 7 deklaracija dėl 27 Konstitucijos straipsnio

EXPLANATORY STATEMENT

How the European Parliament approves the European Commission

1. THE TREATY IN THEORY AND PRACTICE

It is worthwhile recalling that the current procedure as laid down by the Treaties - recently revised by the Treaty of Nice - is characteristically over-complicated. In successive IGCs the European Parliament has been concerned to assert that the Commission enjoys a dual legitimacy by being appointed by both the European Council and the European Parliament.¹ This has led to some tension between the Parliament and member states, a tension which emerged once more in the Convention.

The Treaty of Maastricht gave the Parliament the right to be consulted over the appointment of the Commission President and a vote of approval over the college as a whole.² The Treaty of Amsterdam extended the Parliament's power of approval to that of the President.³ The Treaty of Nice left the Parliament's powers substantively unaltered, but enabled the Council, acting at the level of heads of government, to decide by QMV in place of unanimity.⁴

It is clear from the existing Treaty that the European Parliament does not quite 'elect' the Commission. What happened in 2004 is this. In June, after the European Parliamentary elections but following an initial disagreement, the European Council nominated José Manuel Durão Barroso. In July, once the new Parliament had assembled, Mr Barroso met with the Conference of Presidents and toured the party group meetings. After hearing a statement from him, and following a lengthy debate spread over two days, the Parliament approved (by secret ballot) the nomination of Mr Barroso as President.⁵ The Council, acting by qualified majority vote and 'by common accord' with Mr Barroso, then adopted the list of persons who had been proposed by each member state. In theory, Mr Barroso could have rejected a candidate. More realistically, he tried to influence a number of prime ministers in making their choice, particularly with respect to gender. In his efforts to get more women into his Commission he promised them higher profile jobs. Limited though his powers are to choose his colleagues - Mr Barroso called it a 'blind date' - the President does now have discretion over the disposition of Commission portfolios.⁶

Although he does not have a free hand in the choice of his Commission, the Treaty of Nice gave the President the power both to appoint (and dismiss) Vice-Presidents and to insist on the resignation of any member of the Commission 'after obtaining the approval of the

¹ The right of investiture was first sought by the European Parliamentary Assembly as long ago as November 1960 (Rapporteur: Maurice Faure). The Parliament first voted to accept the Thorn Commission in 1979. After the Stuttgart Declaration in 1983, the Delors Commission waited until the Parliament had expressed itself before taking its oath in front of the Court of Justice.

² Article 158.2 TEC. This procedure was used for the incoming Santer Commission in 1994.

³ Article 214.2 TEC. This procedure was used for the incoming Prodi Commission in 1999.

⁴ Article 214.2 TEC revised. This procedure was used for the Barroso Commission in 2004.

⁵ There was even a short suspension between the end of the debate and the vote to accommodate group meetings. The vote, on 22 July, was 413 in favour, 251 against, with 44 abstentions. This compares with Romano Prodi's May 1999 election by 392 votes against 71, with 41 abstaining. Note that the secret ballot was only introduced by the Rules change in 2002.

⁶ Article 217.2 TEC.

college'.¹ The Commission would decide such matters by simple majority. During the terms of office of both the Santer and Prodi Commissions, the question of the political accountability of individual Commissioners was raised on a number of occasions. During the Barroso Commission hearings, the question of conflict of interest took on a fresh prominence. MEPs were understandably anxious to stress the need for candid disclosure of relevant information by all members and prospective members of the Commission. It is inevitable that each 'scandal' sparks calls for a further tightening of the rules. Despite the wide gap that exists in terms of political culture across the continent, European Parliamentary scrutiny of the Commission - seen at its sharpest during the approval process - is establishing EU norms of accountability that demand the highest standards of probity, integrity and candour. It is indeed perfectly proper that, when it comes to democracy, European integration settles on the highest common factors and not the lowest common denominators.

2. THE PARLIAMENT'S RULES OF PROCEDURE

In 1993 Parliament introduced Rules of Procedure concerning the appointment of the Commission to reflect its new powers under the Treaty of Maastricht. To accord with the very significant increase in Parliament's role and the Treaty amendments, its Rules of Procedure were altered in 1996, 1999 and 2002.

The relevant provisions are found in Rules 98 and 99. In the case of the election of Mr Barroso, the procedure in Rule 98 was followed to the letter, apart from the fact that the Council declined to take part in the July 2004 debate. Rule 99, concerning the election of the rest of the Commission, lacks a certain precision with respect to the hearings.²

3. THE HEARINGS

Auditions had first been held in 1994 and again in 1999. They were repeated in May 2004 for the ten new members of the enlarged Prodi Commission from the acceding states. Between 27 September and 11 October 2004, the Parliament held auditions of all members of the Barroso team. They were organised by the Parliament's Legislative Coordination service, a common service of DGs Internal Policies and External Policies under the auspices of the Conference of Committee Chairs (CPC). The Conference of Presidents became involved in the latter stages of the preparations.

There were two main changes from past practice, to the layout of the room and to the form of the questioning. It was decided to have 'ping-pong' questions, with the candidate answering immediately, as well as to allow all members of each committee - that is, all MEPs! - the chance to ask a question. The CPC suggested, as a guideline, that each question and answer plus supplementary question and answer should take five minutes, and that speaking time should be divided up according to the D'Hondt formula used for plenary sessions rather than the more flexible (and meritocratic) custom of committee meetings. Such a large number of speakers obliged each of the hearings to be three hours long, a duration which was stuck to rigidly despite the fact that a number of auditions ran into the sand. Despite a certain

¹ Article 217.3-4 TEC.

² There is also an element of wishful thinking in Rule 99: one looks forward to the day when the whole Council participates in a Parliamentary debate. The call for the President to present the Commission's 'programme' also seems misplaced. In practice, both Mr Barroso, like Mr Prodi before him waited until later to present his real work programme. That must be sensible, and should be reflected correctly in the Parliament's Rules.

longueur, the fact that every MEP can become involved in a Commission hearing is thought to contribute to the cohesion of the Parliament at the start of a new mandate.

The oral hearings of the 24 candidates were organised by 18 parliamentary committees, often working in tandem with other committees where sectoral responsibilities over-lapped. Three degrees of collaboration were permitted: a fully joint meeting, a partial joint meeting, or a subsidiary delegation. Liaison between committees was not however without its problems: where satisfactory agreement had not been reached there was a risk of fragmentation of the hearing. There was one regrettable exception to the agreed rule of one hearing per candidate as a result of a territorial dispute between the chairmen of the Civil Liberties and Legal Affairs Committees.

Each Commission nominee had to file for the Commission (but not the Parliament) a declaration on their financial and professional interests, which was then posted on the Commission website.¹ However, not all these declarations, which take the form of an annex to the Commission Code of Conduct, were made available to MEPs.

Prior to the oral hearings, each candidate was presented with a large number of written questions from the Parliament. The Parliament's Rules of Procedure make no mention at all of the written questions, let alone their purpose, focus or volume. Answering the written questions engaged many Commission officials for some weeks. The direct involvement of the Commission candidates in this process was not always self-evident. Moreover, it became obvious during the oral hearings that not every MEP had bothered to read the answers. The questions were in two parts: 16 general questions asked of all the candidates, followed by an open number of policy specific questions. The general questions were too vague to be meaningful, and, at any rate, invoked carefully coordinated answers from the Commission; the policy questions often delved into a level of minute detail that was inappropriate at the outset of the mandate of the Commission and before the college had been able to formulate substantively its future work programme. Although the CPC had tried to limit them, the number of policy questions differed widely per candidate, between half a dozen and almost 30. In any case, most of the committees had already begun to draft questions in July before the CPC took up the issue. (An ex-post selection of questions that had already been voted on in the committees would have been a delicate task.)

The Rules of Procedure are silent on the organisation, schedule, conduct and assessment of the hearings themselves. No objective criteria or special procedures are laid down. No guidance is given to committees as to what they should be looking for in their Commission candidate in terms of the balance between political skill, professional experience or technical knowledge. There is no systematic mechanism for assessing their responses to general political questions. Nothing is said about the declaration of financial and other interests over and above what the Commission itself requires. Worst of all, there is no provision for a coordinated procedure to ensure the horizontal scrutiny of the result of the hearings.

Unsurprisingly, the conduct of the oral sessions was variable. Some chairmen watched the clock and restricted each question and answer to five minutes regardless of content. Such a

¹ Although Commission-candidates are scrutinised for their financial interests, there is no kind of security screening comparable to that existing in most member states for newly appointed government ministers. The lack of an EU level security apparatus means that the Commission would have to rely on disparate and lengthy national security clearance procedures. It has chosen not to do so.

mechanistic approach succeeded only in bringing a breathless superficiality to the proceedings. Other chairmen succeeded in grouping questions by theme and in preventing any single Member asking two or three large complex questions at once. Some also allowed a more political dialogue to develop, and encouraged supplementary questions. Several Members, however, abused the notion of supplementary questions by raising a completely new topic.

Certain hearings became unduly dominated by questions about national politics from fellow nationals to the detriment of an overall European perspective. Others pursued personal answers to tough ethical questions, exposing thereby the very great cultural differences that co-exist within the EU.

Whereas all the hearings apportioned one question to all members of the committee, one or two managed to include a free round of questions at the end of the meeting which allowed for more political and even unexpected questioning. The more successful hearings were those in which MEPs consciously tried to influence the policy of the future Commission, suggesting some strategic preparation for the hearings on behalf of at least some deputies.

In previous hearings, the Commissioner-designate had sat alongside the chair and secretariat of the committee on the podium. This time he or she sat alone on a raised dais in front of the podium. But this layout, although an improvement, has also been criticised.¹ The candidates had their back to the chairman and the vice-chairmen of the committees, which was both impolite and inconvenient.

4. THE EVALUATION LETTERS

For logistical reasons, no verbatim transcript was produced of the hearings. Instead, each committee drafted a letter evaluating the outcome of its hearing. In its guidelines, the Conference of Committee Chairs attempted to capture in the letters the personal qualifications of the candidate, their ability to engage with the Parliament, and their competence in the relevant policy area. It was intended that each express policy commitment was to be recorded in the letter - possibly a counterproductive stipulation that inhibited candidates. In the event, the letters tend to record whether or not the candidate had a sense of humour and good communications skills. All also tried to assess the preparedness of the candidates.

In 1999 the letters had been sent in confidence to the President of the Conference of Committee Chairs which body had undertaken a horizontal scrutiny of the letters before transmitting them with a recommendation to the President of the Parliament.² In 2004 that sifting procedure in the clearing house of the CPC was eliminated, and the letters were sent directly, still ostensibly in confidence, from the chairmen of the individual committees to the President of the Parliament.

On 13 October the Conference of Presidents received the letters and sent them on without comment to Mr Barroso, inviting his reactions. At the same time, the letters were posted on the Parliament's website. Of the recommendations from the committees on the 24 candidates, three were non-committal and two were negative. Close observers have suggested that if all

¹ All in the windowless 1A2. A salle d'écoute was provided (3C50) and was well patronised by lobbyists and assistants.

² At the request of the Conference of Presidents, under Rule 26 of the Rules of Procedure.

candidates had got equivalent treatment four or five other candidates would have received uncomplimentary write-ups.

Lack of rules about timetabling led to another suspicion being raised to the effect that committees chaired by someone of one party persuasion delayed the production of their letter until after having seen the letter prepared by a committee chair of another party.

The confidential status of the letters is also controversial. The media was intensely interested in the hearings. The attempt to impose confidentiality excited the media into publishing leaked (and possibly distorted) versions of the truth. It was always improbable that absolute confidentiality could be maintained over the period of 17 days from the start of the hearings until the meeting of the Conference of Presidents: nor was it.

Once the content of the committees' letters was revealed, so were their uneven format, variable approaches and ambiguous messages. In the case of one candidate contradictory letters were received from the two committees contesting responsibility for his portfolio. As the approval process gathered pace, there was a growing number of MEPs who expressed reservations about the system which deprives them of the right to vote on individual candidates or to qualify their approval of the new Commission.

It is clear that the Conference of Presidents plays a crucial role in filling in the gaps where either the Treaty or the Rules of Procedure are silent. One notices that the Rules themselves are at best vague on the role of the Conference of Presidents in the matter of the appointment of the Commission. Rule 24.3 says that the Conference shall be 'the authority responsible for matters relating to relations with the other institutions and bodies of the European Union'. As is normal, it is often the case that in the Conference of Presidents, which usually meets in closed session, it is partisan considerations that prevail. With the best will in the world, the Conference of Presidents will find it hard to be objective if one or other candidate is targeted for especially heavy criticism. It may be regretted that Parliament has not seen fit to put in place an assured mechanism for assessing in qualitative terms the overall performance of the Commission nominees, either individually or collectively. Even today, the only criteria established for the appointment of members of the Commission is that of Article 213.1 of the Treaty which stipulates that the Commission shall consist of members "who shall be chosen on the grounds of their general competence and whose independence is beyond doubt".

5. ADVICE AND CONSENT

The European Parliament is allowed a 'vote of approval' on the Commission thus nominated by the Council. Parliament's vote is not the end of the matter. Once approved by the Parliament, the Commission is then formally appointed by the Council, acting by QMV. This final phase of the process is wholly formalistic, and is retained in the Treaty solely in order to feed the pomposity of the Council.

The inability of the European Parliament to reject individual Commissioners markedly differentiates the EU from that of the USA. There the role of the Senate in the confirmation process is defined in the Constitution. Article II, Section 2 provides that the President 'shall nominate, and by and with the Advice and Consent of the Senate, shall appoint high government officials'. Under the American system of advice and consent, the US Senate does not attempt a critical evaluation of the candidate but simply votes to accept or reject the nomination. (The Senate, which has to act within a strict timetable, can also reconsider its

decision within a couple of days, on a proposal from a Senator who voted with the majority.) The vote takes place in public unless the Senate decides otherwise. (Even in the exceptional circumstances of a closed vote, any Senator can choose to publicise his or her vote.)¹ Attractively simple as the US system is, if the EU Constitution continues to insist on collegial rather than individual approval of the Commission the European Parliament is obliged to continue to try to advise on each candidate in order to inform its final, collective consent. But this does not necessarily mean that the Parliament cannot follow the approach of the Senate in setting out its views on individual members of the college by a vote rather than by a statement.

In the present case, following Mr Barroso's presentation of his college to the House on 26 October, the various political groups tabled their motions for resolution under Rule 99.4. These motions made specific adverse references to a number of individual Commission candidates. In order to avoid retaliation on partisan grounds, a joint motion was then negotiated avoiding personal references. The joint motion was tabled by the Groups of PSE, ALDE, Verts/ALE and GUE/NGL. The substantive paragraphs of the short motion identified Parliament's 'various concerns as to the endorsement of certain candidates' as being 'political convictions contradicting basic values of the Union; lack of political skill and knowledge and commitment with regard to the portfolio proposed; unresolved problems or unanswered questions concerning conflict of interests or possible involvement in political and legal malpractice'. The joint motion sought to underline the 'democratic and legal validity of the approval process of which the hearings are a crucial part'. It concluded by insisting that 'all the institutions draw the political consequences' from the approval process, 'which might include resignation, reshuffle or withdrawal'. On the day following the tabling of this motion Mr Barroso withdrew his team.²

Fortunately, two gatherings of heads of government were already planned to take place in quick succession: the signing of the Constitution in Rome on 29 October and an ordinary meeting of the European Council on 4-5 November. The crisis over the approval of the Barroso I Commission figured largely in the discussions. The European Council, acting as the Council at heads of government level, agreed Mr Barroso's new team from which one member had resigned, another had been withdrawn by her government and a third reshuffled. New Parliamentary hearings were organised for the two new candidates as well as for the reshuffled candidate on 15-16 November during the plenary session at Strasbourg.³ On 18 November a Joint Resolution, tabled by the EPP, PES, ALDE and UEN groups, was adopted by a majority of 478 votes to 84 (with 98 abstentions). The Barroso II Commission was then approved by 449 votes to 149 (with 82 abstentions) and took office, three weeks late, on 22 November.

6. THE FRAMEWORK AGREEMENT

Before the final vote, Mr Barroso responded in detail to the substantive parts of the Joint Resolution that referred to revision of the Framework Agreement. The main result of the

¹ Rule XXXI of the Standing Rules of the Senate.

² The Joint Motion was not put to the vote, but it would surely have commanded a large majority.

³ Again, the LIBE and JURI committees insisted on having two separate hearings.

process of the European Parliament's approval of the Prodi Commission in 1999 had been the conclusion of a formal Framework Agreement between the incoming Commission and the Parliament, negotiated and approved by the Conference of Presidents.¹ The Framework Agreement was based on the resolution passed by the Parliament at the same time as it formally approved the Prodi Commission, according to Rule 99.4. Although the agreement ran to twelve pages, there was no mention of the Commission's appointment procedure. However, at the Parliament's request the Commission, after a struggle, agreed the following clause with regard to the resignation of a member of the Commission pursuant to Article 217.4 TEC:-

10. The Commission accepts that, where the European Parliament expresses lack of confidence in a Member of the Commission (subject to political support for such a view, in terms both of substance and of form), the President of the Commission will consider seriously whether he should request that Member to resign.

The Commission also agreed that, in the event of a reshuffle of portfolios pursuant to Article 217.2, affected Commissioners should appear before the relevant committee of the Parliament, as follows:-

11. The President of the Commission shall immediately notify the European Parliament of any decision concerning the allocation of responsibilities to any of the Members of the Commission. In the case of substantial changes affecting an individual Commissioner (such as the assignment of an entirely new portfolio or an important set of new responsibilities), he or she shall appear before the relevant parliamentary committee at its request.

The phrase in paragraph 10 of the Framework Agreement concerning a vote of no confidence in a member of the Commission - "subject to political support for such a view, in terms both of substance and of form" - may provide something of a clue as to what the Prodi Commission, at least, expected from the Parliament in circumstances in which relations between the two institutions were to reach a critical stage. It should be recalled that the Conference of Presidents accepted this formula on behalf of Parliament. One presumes that what was meant is, first, that the vote has to be carried by a large - that is, cross-party - majority, and, second, that the complaint must not be fanciful or glib.

Five years later, MEPs returned to the charge. The Commission and Parliament will emerge from the crisis surrounding the approval of the Barroso Commission with a refurbished Framework Agreement. The key provision of its resolution of 18 November 2004 stipulated that, where the Parliament voted to withdraw confidence in an individual member of the college, 'the President shall either require the resignation of that Member or justify his refusal to do so before Parliament'. A refusal to accept the Parliament's vote of no confidence, therefore, will risk the survival of the President himself. MEPs have found the escalator that will lead them, if necessary, to a position where they can use their constitutional 'nuclear option' – the power to sack the whole Commission.²

Lest this all sounds too bloodthirsty, it seems desirable to reassure the public that somebody

¹ The Framework Agreement, agreed on 29 June 2000, forms Annex XIII of the Rules of Procedure. It upgraded and replaced an informal code of conduct adopted in 1990 and amended in 1995.

² Article 201 TEC.

somewhere is responsible for running Europe. Arguably, those who brought about the crisis were those heads of governments who failed to provide Mr Barroso with the best possible raw material with which to build the strong independent executive that the EU needs. The laziness of the European Council had unintended consequences. The outcome of the political crisis surrounding the approval of the new Commission in 2004 is to have made the government of the Union a bit more parliamentary in character and a bit less presidential.

7. THE CONSTITUTION

The Parliament and the Commission must consider what changes might be necessary in view of the impending Constitution, which is intended to be in force in time for the appointment of the next Commission in 2009.

First, the Constitution adorns the criteria for membership of the Commission. Article I-26.4 reads:

The members of the Commission shall be chosen on the ground of their general competence and European commitment from persons whose independence is beyond doubt.

The main change made by the IGC is to the method of appointment of the President. Article I-27 reads:-

1. Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members.¹ If he or she does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure.

2. The Council, by common accord with the President-elect, shall adopt the list of the other persons whom it proposes for appointment as members of the Commission. They shall be selected, on the basis of the suggestions made by Member States, in accordance with the criteria set out in Article I-26(4) and (6), second subparagraph.

The President, the Union Minister for Foreign Affairs and the other members of the Commission shall be subject as a body to a vote of consent by the European Parliament. On the basis of this consent the Commission shall be appointed by the European Council, acting by a qualified majority.

3. 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 Union Minister for Foreign Affairs, from

¹ Note that, in contrast to Article 214.2 TEC, the Constitution says that the President shall be 'elected' rather than 'approved', and that an absolute majority of MEPs is now to be required.

among the members of the Commission.

A member of the Commission shall resign if the President so requests.¹ The Union Minister for Foreign Affairs shall resign, in accordance with the procedure set out in Article I-28(1), if the President so requests.

The Constitution means that the European Parliament is enjoined to play a very much more important role in the initial choice of presidential candidate. The Commission President-designate who enjoys the early backing of the European Parliament should be better placed than Mr Barroso was to reject unsuitable nominations for the college from member states.

If the prior consultation of the Parliament is to have any meaning, therefore, and on the assumption that, as now, the new Commission is destined to take office on 1 November, the new Parliament will have to establish its strategy with respect to the nomination in time for the late June European Council. Assuming no change to this end date, it would be wise to bring forward the elections by one month, to early May ('Europe Week'), in order to give it and the heads of government sufficient time to reflect on the best nomination for President of the Commission.² The institutions will also have to plan for the contingency that MEPs reject the European Council's first candidate. And they should try to arrive at a more structured concept of what the three criteria imply: general competence, European commitment and indubitable independence.

8. CONCLUSIONS

The current approval procedure has been accepted not only by the Commission and the Parliament but also by the Council and the Member States. It is an important exercise for the media. It is a legitimate process with political consequences. As President Barroso has said, the approval process is far more rigorous than anything pertaining to the appointment of national governments.

Nevertheless, it is clear that there is room for considerable improvement in the procedures if we are to ensure in the future a greater degree of fairness between the candidates, a more robust dialogue between the Commission and the Parliament, and a sharper verdict. In any case, some revision will be required to reflect the greater powers the Parliament will enjoy once the Constitution is in force.

The Constitutional Affairs Committee discussed a Working Document on which this Explanatory Memorandum is based on two occasions. Vice-President Wallström presented to the Committee the reactions of the Commission to their experience of the hearings process. The rapporteur also presented his findings to the Conference of Committee Chairs.

The main conclusions of the rapporteur are reflected in the accompanying Resolution. Once the Parliament has taken its position on the report, it will be necessary to consider if, and if so how, the agreed changes should be reflected in revised Rules of Procedure.

¹ Note that, in contrast to Article 217.4 TEC, the President will now not need the approval of the college in order to sack one of its members.

² A reversion to the original Commission start date of January would in any case require a change in primary law, viz. Article 45 of the Final Act of the Conference on the Treaty on Enlargement, 2003.