Replacement of individual Commissioners

On 26 August 2020, Commissioner Phil Hogan tendered his resignation to the President of the European Commission following controversy over his participation in an Oireachtas (Irish Parliament) Golf Society dinner attended by more than 80 people, despite the applicable Irish public health guidelines adopted to contain the spread of Covid-19 limiting gatherings to a fraction of that number. In addition, questions were raised as to whether he had complied with applicable restrictions on movements after his arrival in Ireland. Although President Ursula von der Leyen had not formally requested his resignation, she accepted it and thanked Commissioner Hogan for 'his tireless and successful work' during the current mandate as Trade Commissioner and in his previous mandate as Agriculture and Rural Development Commissioner. Consequently, the procedure to replace him has started, with President von der Leyen requesting that the Irish government propose both a female and a male candidate. On 4 September, the Irish government proposed two candidates to replace Phil Hogan: Mairead McGuinness, current European Parliament First Vice-President, and Andrew McDowell, a recent European Investment Bank Vice-President. On 8 September, President von der Leyen announced she had chosen Mairead McGuinness, and that she would take over financial services, financial stability and the capital markets union from Valdis Dombrovskis. The latter would take the trade portfolio permanently (having already taken it temporarily in the meantime), while continuing in his role of Executive Vice-President. Parliament is now expected to organise hearings with both.

The 'replacement' procedure

The procedure for replacing individual Commissioners during their mandate is governed by the second paragraph of Article 246 of the Treaty on the Functioning of the European Union (TFEU), and differs from the regular Commission appointment procedure in several aspects (Article 17(7) of the Treaty on European Union (TEU)). The latter applies only to the appointment of all members of the College as a whole, including its President, as most recently following the European elections of 2019.

Replacing individual members during the Commission's term

The Article 246 TFEU procedure applies to individual vacancies caused by the resignation, compulsory retirement or death of a Commissioner during the Commission’s term. Resignation may by either voluntary or compulsory, if requested by the Commission President (Article 17(6) TEU). This latter possibility was included by the Treaty of Nice, as a result of the series of events that led to the collective resignation of the Santer Commission on 15 March 1999, following the refusal of two of its members to resign. The original provision required the Commission President to obtain the approval of the College to request the resignation of an individual Commissioner (Article 217(4) Treaty on the European Community, TEC), but the Treaty of Lisbon reinforced the power attributed to the President by deleting that requirement. Although there is no legal basis in the Treaties for the European Parliament to force individual Commissioners to resign, Point II.5 of the Framework Agreement on relations between the European Parliament and the European Commission provides for the possibility of the European Parliament asking ‘the President of the Commission to withdraw confidence in an individual Member of the Commission’. Should this happen, the Commission President must consider whether to request that Member to resign, and if they decide not to must explain that decision to Parliament in the following part-session. Conversely, compulsory retirement may only be imposed by a decision of the European Court of Justice, on application by the Council (acting by a simple majority) or by the Commission, when a member of the Commission no longer fulfils the conditions required for the performance of their duties or is found guilty of serious misconduct (Articles 245 and 247 TFEU).

Completion of the term of office

It should be noted that replacement of individual members of the College applies for the remainder of the term of office. However, the Council may unanimously decide not to fill a vacancy in the College of Commissioners, further to a proposal from the Commission President, in particular if the remaining term of office of the member is short (Article 246 TFEU, third paragraph). This situation arose for instance in June 2019, when Vice-President Andrus Ansip (Estonia) and Commissioner Corina Crețu (Romania) resigned from
the Commission to take up their seats in the European Parliament following the European elections. The then-President Jean-Claude Juncker proposed not to fill these vacancies, as the remaining term in office was short (four months), the smooth functioning of the College could be ensured thanks to the practice of working in project teams, and to avoid unnecessary financial burden. The Council could not agree unanimously on his proposal, and the procedure to replace Commissioners Ansip and Crețu was launched, with the Estonian and the Romanian government proposing candidates. In the end, however, the Council did not appoint new commissioners. Five years earlier, following the resignations of Olli Rehn (Finland), Janusz Lewandowski (Poland), Antonio Tajani (Italy) and Viviane Reding (Luxembourg) to join the Parliament in July 2014, new Commissioners were appointed by the Council for the reminder of the Commission’s term of office – just three and a half months – (Jyrki Katainen (Finland), Jacek Dominik (Poland), Ferdinando Nelli Feroci (Italy) and Martine Reicherts (Luxembourg)). Conversely, in July 1999, the Council decided unanimously not to replace the resigning President, Jacques Santer, and Commissioners Martin Bangemann and Emma Bonino while the appointment of the new Commission, under Romano Prodi, was pending.

Parliament’s participation in the ‘replacement’ procedure
Unlike the regular appointment procedure for the Commission, the replacement procedure is a more expeditious process in which neither the Commission as a body nor the new individual candidate is subject to a vote of consent by Parliament before being formally appointed. Under Article 246 TFEU, the vacancy is to be filled by a new Commissioner of the same nationality. In this vein, after a suitable candidate has been put forward by the national government concerned (the Irish government in the present case), the new Commissioner is appointed by the Council, by common accord with the President of the Commission. The ‘replacement’ procedure only requires Parliament’s consultation. However, point II.6 of the Framework Agreement on relations between Parliament and Commission requires the Commission President to seriously consider the results of Parliament’s consultation before giving their accord to the Council decision on an individual replacement. It also requests the President to inform Parliament in due time of any re-shuffling of portfolios to allow ‘relevant parliamentary consultations’ (point II.7).

In this vein, Rule 125(9) of Parliament’s Rules of Procedure (RoP) provides that the candidate proposed to replace an individual Commissioner, and those to take a substantially changed portfolio following a re-shuffle, should be invited to participate in a public hearing with the appropriate parliamentary committee(s). These hearings are organised along the same lines as the ‘regular’ hearings prior to the Commission taking office, i.e. the declaration of financial interests presented by the Commissioner-designate is examined first, the candidate responds to the written questions submitted by the committee and, during the oral hearing, the candidate makes a statement followed by a question and answer session (Part I, Annex VII RoP). Once the hearing is closed and the candidate evaluated, Parliament then votes on the candidate in plenary session, approving or rejecting them by a majority of the votes cast by secret ballot (Article 10, Annex VII RoP).

Previous cases of replacement of individual Commissioners
There are a number of examples of Commissioners being replaced during their mandates, apart from the specific late-term cases mentioned above. In the Juncker Commission, Commissioner Jonathan Hill (United Kingdom) and Vice-President Kristalina Georgieva (Bulgaria) were replaced, by Julian King and Mariya Gabriel respectively. The former resigned in July 2016 due to the result of the referendum on the United Kingdom’s withdrawal from the European Union, while the second resigned in January 2017 to join the World Bank as Chief Executive Officer. The Barroso II Commission also faced a change because of the departure of the Commissioner for Health and Consumer Policy, John Dalli (Malta), who was replaced by Tonio Borg. The resignation of Dalli followed a report by the European Anti-Fraud Office (OLAF) arguing that Dalli had met several times with representatives of the tobacco industry without involving the appropriate Commission services. A court case ensued, with Dalli arguing that President José Manuel Barroso had forced him to resign during a meeting in October 2012, whereas the Commission argued that Dalli had resigned voluntarily. The General Court dismissed the action brought by Dalli (T-562/12) and the Court of Justice confirmed the ruling on appeal (C-394/15 P). Apart from these recent cases, examples of replacements of individual Commissioners before the end of the Commission’s term were also seen in prior mandates, in most cases due to the voluntary resignation of members of the College.