Replacement of individual Commissioners

On 15 May 2023, following national elections in Bulgaria and after receiving the institutional mandate to form a new government in her home country, Mariya Gabriel formally submitted her resignation, with immediate effect, as European Commissioner for Innovation, Research, Culture, Education and Youth. That resignation was accepted by the Commission’s President, Ursula von der Leyen. For the interim period, she has asked Executive Vice-President Margrethe Vestager to take over responsibility for overseeing the innovation and research portfolio, and Vice-President Margaritis Schinas to take over the education, culture and youth portfolio. Subsequently, the procedure to replace Gabriel has started. In June 2023, the Bulgarian government proposed two candidates to replace her: Ms Iliana Ivanova and Mr Daniel Lorer. On 28 June, following interviews with both candidates, von der Leyen announced she had chosen Ivanova, a former Member of the European Parliament (during the 7th parliamentary term), currently serving as a member of the European Court of Auditors. She will be responsible for Innovation, Research, Culture, Education and Youth, the same portfolio as held by Gabriel. The European Parliament will be consulted – with the competent committees (ITRE and CULT) planning a hearing, before a plenary vote – opening the way to her formal appointment as Commissioner for the remainder of the current term.

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 be 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 (now Article 17(6)(2) TEU). 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 Parliament and the Commission provides for the possibility of 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 against making such a request must explain that decision to Parliament at 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

Replacement of individual members of the College applies for the remainder of the term of office (Article 246(2) TFEU). 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 departed is short (Article 246(3) TFEU), a possibility not provided for in respect of the Commission President. This situation arose for instance in June 2019, when Vice-President Andrus Ansip (Estonia) and Commissioner Corina Creţu (Romania) resigned from the Commission to take up their seats in the European Parliament following the European elections. The then-Commission President Jean-Claude
In this vein, Rule 125(9) of Parliament’s Rules of Procedure (RoP) provides that the candidate proposed to appointing the new Commissioner. It also requests the Commission President to inform Parliament in due utmost dispatch, for the Commission President to seriously consider Parliament’s position before time of any re-shuffling of portfolios to allow ‘relevant parliamentary consultations’ (point II.7).

Council decision on an individual replacement. Procedures in Parliament should be carried out ‘with 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).

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 Bulgarian 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. Procedures in Parliament should be carried out ‘with the utmost dispatch’, for the Commission President to seriously consider Parliament’s position before appointing the new Commissioner. It also requests the Commission 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 (RoP 125(3) and (4)) 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. During the current term, in September 2020 following the resignation of Commissioner Phil Hogan, Mairead McGuinness was appointed Commissioner for financial services, financial stability and the capital markets union, a portfolio previously attributed to Valdis Dombrovskis. The latter took over the trade portfolio permanently from Hogan (having already taken it temporarily in the interim) and continued in his role of Executive Vice-President. Hogan resigned after having attended a dinner with more than 80 people and thus violating COVID-19 restrictions in place at the time. In the Juncker Commission, Jonathan Hill (United Kingdom) and Kristalina Georgieva (Bulgaria) were replaced, by Julian King and Mariya Gabriel respectively. 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. Apart from these recent cases, other examples were also seen in prior mandates, mostly due to voluntary resignation.

This publication updates a previous ‘At a glance’ note by Micaela Del Monte and María Díaz Crego, published in September 2020.