

Procedural Issues concerning the Appointment of the European Commission

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Abstract

This paper addresses the issue of the appointment of members for the European executive, as a result of changes imposed by the Treaty of Lisbon. It envisages the double approval of the Commission by the European Parliament, under Article 17 of the Treaty on the European Union: the European Parliament initially elects the candidate nominated by the European Council for Presidency of the Commission; secondly, the Parliament approves the Commission as a whole. The procedure for electing the President of the European Commission is presented in detail in Article 117 of the Rules of Procedure of the European Parliament, while the procedure to approve the Commissioners by the European Parliament is extensively regulated by Annex XVI of the Rules of Procedure, in accordance with Article 17 of the Treaty on European Union.

Keywords: European Commissioners, mandate, competences, procedures, criteria, portfolios.

Preamble

The European Commission can be considered “the institution through which the technocratic character of the early European Union has manifested” [1], the Commission constituting the nucleus of the European Coal and Steel Community (ECSC), in which it was intended “to ensure the achievement of the objectives set out in the Treaty” [2].

The name “European Commission” has been used after the Maastricht Treaty which established the European Union; until then the name “Commission of the European Communities” was used. It is considered to be “*the most revolutionary*” institution of the EU, and the “engine of European integration”, the most original institution of the union system. But the role of the Commission, currently placed in the executive area, has been somewhat “sidelined” within the EU by the two institutions forming the Union legislature, the European Parliament and the Council.

The term “European Commission” refers, in a restricted sense, only to the College of Commissioners, and in a broad sense, to the entire organization that includes both the College and the administrative organization supporting it and serving its activity [3].

Procedures Applied in the Appointment of Members of the European Commission

Following the adoption and entering into the force of the Lisbon Treaty, according to paragraph 5 of Article 17 of Treaty on European Union (TEU), the Commission members are selected from nationals of the member states, in accordance with a system of strictly equal rotation between the member states, reflecting their demographic and geographical diversity. This system is established by the European Council, which, according to Article 244 of Treaty on the Functioning of the European Union (TFEU), decides unanimously.

The amendments brought by the TEU on the appointment of the Commissioners is very important because of the direct political connection it establishes between the European Parliament, democratically elected, and the Commission, a link strengthened by the establishment of the period of the Commission mandate as the duration of a parliamentary term. We believe that the Commission status has been revalued by TEU, being also strengthened in respect to a more noticeable democratic relation.

At its beginning, the Commission was designated (Article 9 and Article 10 of ECSC). The designation procedure was subsequently replaced by a procedure of election. Practically, it is *a double approval of the Commission by the European Parliament*, done under Article 17 of the Treaty on European Union: The European Parliament initially elects the candidate nominated by the European Council for Presidency of the Commission; secondly, the Parliament approves the Commission as a whole. To prepare the vote properly, the Parliament thoroughly studies the candidatures of the Commissioners proposed by the Council, in agreement with the President and given the portfolios that the latter may assign.

Paragraph 7 of Article 17 of TEU regulates *the election procedure for the President of the Commission*, also contained in Article 117 of Title V "Relations with other institutions and bodies" from the Rules of Procedure of the European Parliament. Thus, the European Council, acting by a qualified majority, shall propose a candidate to the European Parliament for Presidency of the Commission, taking into account the elections for the European Parliament, but only after appropriate consultations. The candidate is elected by the European Parliament through secret vote, by a majority of its component members. If the candidate does not meet the required majority, the

European Council, acting by a qualified majority, shall propose, within a month, a new candidate to be elected by the European Parliament, following the same procedure.

If the President of the Parliament and that of the Council are elected from the members of the respective institution, the President of the Commission has an important role in choosing its members, having the position of “Chief Commissioner”, above the other members, a function expressly established in the Treaties [4]. Originally, the President of the Commission was considered as a “*primus inter pares* in the college, but now he is very much a *primus*” [5]. The value of this function depends on the personality and vision of its owner [6]. The Commission shall achieve its mission under the political guidance of its President, who shall decide on its internal guidance in order to ensure the consistency, effectiveness and character of collegiality of his actions [7].

Regarding *the appointment of candidates for the position of European Commissioner*, each of the 28 member states appoint a Commissioner, the President of the Commission having the role to allocate portfolios among them.

The principles underlying the system of rotation by which the members of the European Commission are elected are the following:

- Strictly equal treatment applied to the member states regarding the determination of the rotation sequence and the time spent by their representative in the Commission; therefore, the difference between the total number of mandates held by nationals of two member states can never be more than one;

- Each successive Commission, in accordance with the above principle, it is constituted as to satisfactorily reflect the demographic and geographical range of the Member States.

The approval procedure of the Commissioners by the European Parliament is extensively regulated by Annex XVI of the Rules of Procedure [8]. The evaluation by the European Parliament of the appointed Commissioners is done based on their general competence, European commitment and personal independence of each. In addition, the Parliament may determine to what extent they are aware of their potential portfolio and their communication skills. Also, it must take into account, in particular, the criterion of gender balance, and it may express its opinion on the allocation of portfolios proposed by the elected President.

In order to take a decision related to the skills of future Commissioners, the Parliament may request all relevant information, thus receiving their Curriculum vitae and statements of financial interests.

The Presidents' Conference organizes the hearings of the Commissioners appointed before the concerned committee or committees, which are public; each appointed commissioner is invited to appear for a single hearing. If a mixed portfolio is envisaged, there are three cases [9]:

a) If the appointed commissioner's portfolio falls within the competence of a single committee, the designated Commissioner is heard only by that committee (the competent committee);

b) If the appointed commissioner's portfolio falls, in relatively equal proportions, within the competence of several committees, the designated commissioner is jointly heard by those committees (joint committees);

c) If the appointed commissioner's portfolio falls mainly within the competence of a committee and only to a small extent in the competence of at least one of the other committees, the designated commissioner is heard by the main competent committee, with the association of the other or others (associated committees).

Each hearing lasts three hours and is broadcast audio/video live. The hearings are conducted in circumstances and conditions that offer fair and equal opportunities for the appointed commissioners to present themselves and express their opinions, following the development of a pluralistic political dialogue between the appointed commissioners and the members of the European Parliament. Also, before the end of the hearing, the appointed commissioners are given the opportunity to make a brief final statement.

The President of the committee and the coordinators within each committee shall meet immediately after the hearing to proceed with the evaluation of each designated commissioner. For each of them, a single evaluation statement shall be done. The evaluation statements of the committees, adopted and made public within 24 hours of the hearing, shall be examined by the Conference of Committee Presidents and then transmitted to the Conference of Presidents. If the committees need more information to

complete the assessment, the President shall address, on behalf of those committees, a letter to the elected President of the Commission.

At a session of Parliament, when the President of the European Council and Council Chairman are invited, the elected President of the Commission shall submit the entire College of designated Commissioners together with its program. The presentation is followed by a discussion, and then any political group or a number of at least 40 members may submit a draft for resolution. After the vote on the draft resolution, the Parliament decides by a majority of the votes cast, Roll Call, whether or not it approves the appointment, as a body, of the elected President and designated commissioners. Following this, the new Commission can be formally appointed by the European Council by qualified majority.

“The qualified majority” is a majority of 73.9% of the votes of the countries, each country being assigned a fixed number of votes. For example, Romania is assigned 14 votes, taking into account the number of inhabitants. For a qualified majority, the voting conditions should be met for a minimum 55% of states, representing at least 65% of the EU population; therefore it must be at least 260 of the 352 votes of the 28 states [10].

In summary, *the procedural steps for appointing European Commissioners* consider, under paragraph 7 of Article 17 of TEU, the following aspects [11]:

1. In accordance with the criteria of paragraph 3 - general competence, commitment to the European idea, guarantees of independence, the system of rotation between the member states – the member states propose members of the Commission;

2. The Council, in agreement with the elected President, shall adopt the list of the other persons whom it proposes to be appointed members of the Commission, based on suggestions made by the member states;

3. The President, the High Representative of the Union for Foreign Affairs and the Security Policy, and other members of the Commission shall be subject, as a collegial body, to a vote of approval by the European Parliament;

4. The Commission, based on this approval, is appointed by the European Council, acting by a qualified majority.

The members of the Commission exercise their functions assigned by the President under his/her authority [12]. Based on this public authority, the Commission is

named after its president [13]. During their office, the members of the Commission may not exercise any other occupation, whether gainful or not [14].

At taking office, the members of the Commission solemnly undertake that, during their mandate, and after its termination, they comply with the obligations imposed by the mandate and, in particular, with the obligation of honesty and prudence in accepting, afterwards, certain appointments or benefits. In the event that these obligations are violated, at the Council referral that acts by a simple majority, or the Commission referral, the Court of Justice may decide, if necessary, to dismiss the respective member (under Article 247 of TFEU) or declare them revoked from the right to a pension or other equivalent benefits (Article 245 of TFEU).

More vice presidents, appointed from among the Commissioners, shall assist the President. The novelty introduced by the Lisbon Treaty is that a vice president has the function of High Representative of the European Union for Foreign Affairs and the Security Policy.

Membership of the European Commission 2014-2019

At the Summit in Brussels on June 27th 2014, Jean-Claude Juncker, the former Luxembourg Prime Minister, was designated, by 26 of the 28 heads of state and government within the EU, as the candidate for the presidency of the European Commission. He was elected by the European Parliament on July 15th 2014 with 422 votes “for”, 250 “against” and 47 abstentions.

Juncker, who only needed 376 to win the presidency of the EU executive, is the candidate of the European People’s Party which won the most mandates in the Europarliamentary elections and, according to the rules, which had the right to nominate its candidate. Juncker’s rival to the presidency of the European Commission, the Socialist Martin Schulz, remained president of the European Parliament, following an agreement between the populars and the social-democrats.

As the elected President of the European Commission, Jean-Claude Juncker presented on September 10th 2014 in Brussels the composition of the College of European Commissioners for the period 2014-2019 and distribution sector portfolios, stating: “*The European Commission that I present today is a political, dynamic and*

efficient Commission, ready to give a new impetus to Europe. I have given portfolios to individuals and not to countries. I place 27 players on the field. Each of them has a specific role to play. This is my winning team, the one to restore Europe on the path of creating jobs and economic growth [15]. *“I have decided to make some changes and speed up some things” ... “There are team leaders and team players. They shall work together in a spirit of collegiality and mutual trust”*, also said Jean-Claude Juncker.

The next European Commission will have seven vice presidents, who will coordinate the main areas of activity: Frans Timmermans (senior vice president of the EC, called “the right hand” by President Jean-Claude Juncker, will be responsible for inter-institutional relations and the rule of law), Kristalina Georgieva (budget and human resources), Andrus Ansip (digital single market), Alenka Bratušek (single energy market), Valdas Dombrovskis (euro and social dialogue), Jyrki Kaitanen (employment, economic growth, investment and competitiveness) and Federica Mogherini (who is also the EU High Representative for Foreign Affairs).

After the appointment of the former Polish Prime Minister, Donald Tusk, as the European Council president, in late August, it is noted that in the composition of the new European Commission, four of the seven positions of vice presidents were entrusted to Estonia, Bulgaria, Latvia and Slovenia, thus creating the image of “a Europe more open to the East” [16].

Jean-Claude Juncker also said that the new Commission is a political one, which contained five former heads of government and 13 ministers or former ministers, and also members of the European Parliament. The new Community Executive brings a new organization that aims to better concentrate on communitarian policies. Therefore, there will be teams of commissioners focusing on certain policies coordinated by vice presidents [17]. Each vice president will have the task of transmitting the President’s orders to the Commissioners under their authority and to report the results. We can say it resembles a pyramid operation, perhaps even more “political” than before.

Of the 28 nominated commissioners, nine are women. Overall, the European Commission is politically balanced: EPP - 14 commissioners, S&D - 8 commissioners, ALDE - 5 commissioners and ECR - 1 commissioner.

Six members of the Barroso II Commission will be included in future EU executive: Kristalina Georgieva (Bulgaria), Neven Mimica (Croatia), Gunther Oettinger (Germany), Johannes Hahn (Austria), Maros Šefčovič (Slovakia) and Cecilia Malmström (Sweden).

The European Commissioner appointed by Romania, who also had the quality of Vice President of the European Parliament, MEP Corina Cretu, will hold the regional policy portfolio in the next European Commission. It is considered a significant portfolio, given that it has one of the largest budgets allocated. For the period 2014-2020, the funds allocated to the regional and cohesion policy exceed 351 billion Euros. The regional policy portfolio will have in its subordination, for the first time, the General Directorate for Research and Innovation and will focus on economic growth, one of the principles announced as priorities in Jean Claude Juncker's political program.

Between September 29th and October 3rd 2014 the European future commissioners were heard in specialized Euro committees, the final vote on the composition of the European Commission being given on October 22nd. After the European Parliament gives its consent, the European Council formally appoints the new European Commission in accordance with Article 17 of the Treaty on European Union.

Although it does not possess the power to appoint commissioners, the Parliament can reject the proposed nominations as a whole or a part of them. For example, the European Commissioner from Hungary, Tibor Navracsics, which had been assigned the portfolio of Education and Culture, was rejected by the European Parliament, being considered unsuitable for this portfolio. He is the first European commissioner to be rejected by the new European Parliament with 14 votes against and 12 for. The competent Committee members who voted said that the MEP is suitable to be a European Commissioner, but not for the portfolio initially assigned; there is the possibility for him to receive a different portfolio.

Such situations also existed in 2010, when the Commissioner designated by Bulgaria was eliminated from the Barroso II team after a hearing regarded as less than anticipated by the members of the European Parliament.

Also, the former Prime Minister of Slovenia, Alenka Bratušek, proposed for the position of vice president of the European Commission for Energy, was rejected by a

large majority (112 votes against and 13 votes for), due to the unconvincing performance during the hearings. In her place Violeta Bulc, Commissioner for Transport, was proposed, who, along with Maros Šefčovič, the Slovakian candidate initially accepted for Transport, but promoted to the position of Vice President of the Energy Union, are heard on October 20th in Strasbourg.

The British Jonathan Hill, appointed Commissioner for Financial Services, did not receive a positive feedback following the hearing of October 3rd 2014 in the European Parliament. He is the first politician not to pass the test of the specialized committee, a mandatory step to validate the new European Commission. Jonathan Hill was recalled for hearings a week later, because during the discussions the British had vaguely answered several questions and admitted that he had not had the time to study very technical files in depth.

Regarding the candidate from Hungary, Tibor Navracsics, who was accepted by the Parliament for the position of Commissioner and not for the portfolio that was allocated - Education, Culture and Rights of Citizens, the situation remained ambiguous. In this respect, Jean-Claude Juncker's spokesman, Margaritis Schinas declared that the President of the European Commission would clarify this issue during the discourse to be held before the vote in plenary.

Conclusions

The Commission has always been "the political force most devoted to integration" [18], which permanently campaigned for meeting the goals of the Community. There is an optimistic view of the specialists in this field regarding the European Commission's role in the future, based on its influence and focusing on the importance of its bureaucracy.

The complex system of electing the Commission represents a mix of international and national elements [19]. Thus, the democratic legitimacy of the Commission results partly from the member states and partly from the European Parliament.

References:

- [1] R. Schütze, *Dreptul constituțional al Uniunii Europene*, Universitara Publishing House, Bucharest, 2012, p.115.
- [2] Art. 8 of Treaty regarding the European Coal and Steel Community (ECSC).
- [3] Ch. Hen, J. Léonard, *L'Union européenne*, 12e édition, La Découverte, 2007, p.47.
- [4] R. Schütze, *quoted opera*, p.117.
- [5] N. Nugent, *The European Commission*, Palgrave, New York, 2001, p.68.
- [6] J. Peterson, "The Santer era: the European Commission in normative, historical and theoretical perspective", *Journal of European Public Policy*, 6 (1)/1999, p.46-65.
- [7] P. Craig, G. de Burça, *Dreptul Uniunii Europene. Comentarii, jurisprudență, doctrină*, 4th edition, Hamangiu Publishing House, Bucharest, 2009, p.51.
- [8] *Annex XVI: guidelines for the approval of the Commission*, Rules of Procedure of the European Parliament, The 8th legislature - July 2014, updated on September 25th 2014, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20140701+ANN-16+DOC+XML+V0//RO&language=RO&navigationBar=YES>
- [9] Point 1, letter b of *Annex XVI* of the Rules of Procedure of the European Parliament.
- [10] M. Basarab, *Cum se desemnează comisarii europeni*, [On-line] <http://nazione.ro/2014/09/comisia-europeana-2014-2019.html>, 14.09.2014, accessed on October 3, 2014.
- [11] I. N. Militaru, *Dreptul Uniunii Europene*, Universul Juridic Publishing House, Bucharest, 2011, p. 243.
- [12] Art. 248 of TFUE.
- [13] For example, the last Commission was named after its president "the Barroso Commission".
- [14] Art. 245 of TFUE.
- [15] Jean-Claude Juncker, *Press release*, AGERPRES, [On-line] <http://www.agerpres.ro/externe/2014/09/10/jean-claude-juncker-a-prezentat-lista-comisarilor-europeni-si-portofoliile-repartizate-pentru-2014-2019-14-04-43>, accessed on October, 3, 2014.
- [16] Monica Basarab, *quoted location*, p.2.
- [17] V. Anghel, <http://romaniaregional.ro/2014/09/15/jean-claude-juncker-a-prezentat-componenta-comisiei-pentru-perioada-2014-2019/>
- [18] P. Craig, G. de Burça, *quoted opera*, p.59.
- [19] R. Schütze, *quoted opera*, p.117.