

The Barroso Drama*

Enhancing Parliamentary Control Over the European Commission and the Member States Constitutional Development Through Practice

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Appointment and Censure of the European Commission – Development of Rules of Constitutional Practice – Parliamentary committee hearings 2004 – Guidelines on Approval Procedure of the Commission – Framework Agreement 2005 between European Parliament and Commission – Clash between Parliament and Council on control of European Commission – Responsibility of individual Commissioners.

INTRODUCTION: THE BARROSO DRAMA AND CONSTITUTIONAL PRACTICE

This article discusses the role of the European Parliament in the Barroso Drama. Its first objective is to provide the relevant facts of the Parliament's role in the Commission investiture of 2004 and its aftermath. This explains the mostly chronological treatment of the subjects in this article.

Secondly, it will analyse the textual sedimentation of the facts of the Barroso Drama into two documents adopted after the investiture. On 1 December 2005 the European Parliament adopted guidelines for the approval of the Commission, including rules on the organisation, conduct and evaluation of the parliamentary committee hearings.¹ A commentary on the relevant elements of these guidelines

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¹ European Parliament resolution on guidelines for the approval of the Commission (2005/2024(INI)), P6_TA-PROV (2005)0465. This resolution is based on the Report on guidelines for the approval of the European Commission, Committee on Constitutional Affairs, A6-0179/2005, Rapporteur: Andrew Duff, 7.6.2005. In the remainder of this article this report will be referred to as the *Duff Report*. In case a prior version of the report is referred to, the date will be given.

is integrated into Part I of this article. On 26 May 2005 the European Parliament and the Commission concluded a new Framework Agreement on the relations between the two institutions.² Part II of this article discusses the position of Commission and Parliament in the negotiations of the Framework Agreement as well as the Council's opposition to it.

This article demonstrates and illustrates how constitutional practices supplement the formal legal framework provided by the Treaties focusing on the relations between Commission and Parliament. These practices can give rise to rules of constitutional practice (or constitutional conventions), which are more or less compelling, in the absence of a legally binding rule. Rules of constitutional practice as a source of constitutional development of the European Union exist next to the legal sources of constitutional development, namely treaty amendments and case law of the European Court of Justice. Whereas the amendment procedure of the Treaties is dominated by the member states, the creation of rules of constitutional practice has been a common and successful way for the European Parliament to increase its control over the Commission and the member states.

The Barroso Drama, including the withdrawal of Buttiglione and Udre and the change of portfolio for Kovács mostly on the basis of their performance in the hearings before the parliamentary committees, sheds new light on the practice of individual Commissioners-designate appearing for a parliamentary committee upon approval. Also, the individual changes made to the Commission require an analysis of the power of European Parliament to impose these changes. Both practices will be discussed in detail in this article, filling up a gap existent so far in the literature on the Commission investiture. Some of the questions to be addressed in the following discussion of the facts of the Barroso Drama will thus be: what constitutional practices have been confirmed, what new practices and rules have been established and how have they found their way into textual elements of the constitutional structure of the European Union?

PART I: THE APPROVAL OF BARROSO'S COMMISSION

Approving the Commission President

Although the President of the Commission is to be approved by the European Parliament, the negotiations leading to his or her nomination are heavily domi-

² Framework Agreement on relations between the European Parliament and the European Commission, not yet published in the *Official Journal*. In the European Parliament the agreement was subject to an examination in the Report on revision of the Framework Agreement on relations between the European Parliament and the European Commission, A6-0147/2005, Rapporteur: Jo Leinen, 12.5.2005. In the remainder of this article this Report will be referred to as the *Leinen Report*.

nated by the member states. In fact, there are several reasons to suggest that it will be difficult for the European Parliament to weaken the control of the member states over this first phase in the appointment of a new Commission.³

Nonetheless, the events of the nomination of José Manuel Barroso have shown an increasing influence of Parliament over the nomination. The most important example was the firm insistence by the EPP/ED Group that the President-designate was to reflect the outcome of the elections of the European Parliament. Soon after the elections on 10-13 June 2004, in which the EPP/ED was confirmed as the leading group, the leader of the EPP/ED, Hans-Gert Pötering, started to demand that the new Candidate would reflect the result. During a meeting on the eve of the European Council of 17-18 June, the EPP/ED decided to present Chris Patten as an alternative to Guy Verhofstadt, who had been proposed by Germany and France.⁴ After both candidatures had been rejected during an acrimonious European Council meeting, two things were clear. Firstly, Patten's candidature had killed the chances of Verhofstadt.⁵ Secondly, the next Commission President was to reflect the outcome of the parliamentary elections. The EPP/ED has thereby probably won a rule that anticipates Article I-27(1) of the Treaty establishing a Constitution for Europe, according to which the elections of the European Parliament are to be taken into account.

In some other respects the European Parliament was less successful in increasing its grip on the nomination of the Commission President. No prior consultation of the European Parliament as such has taken place. Also, the idea that each group in the European Parliament proposes its own candidate, forcing the member states to choose one of them as Commission President, has never been close to becoming a real initiative.

Furthermore, the approval of the Commission President has been subject to the practice of horse trading between the political groups in the European Parliament. A technical agreement was concluded between the EPP/ED and the PSE: the first would back Borrell's candidature for President of the European Parliament in exchange for Socialist support of Barroso.⁶

³ See, e.g., S. Hix, 'Executive Selection in the European Union: Does the Commission President Investiture Procedure Reduce the Democratic Deficit?', in K. Neuenreither and A. Wiener (eds.), *European Integration After Amsterdam: Institutional Dynamics and Prospects for Democracy* (Oxford 2000) p. 107.

⁴ *Agence Europe* No. 8728, Thursday 18 June 2004, p. 8.

⁵ P. Ludlow, 'The Barroso Commission. A tale of lost innocence', Briefing Note No. 3.4/5, Dec. 2004, p. 4.

⁶ *Agence Europe* No. 8752, Wednesday 21 June 2004, p. 5.

Parliamentary control over individual Commissioners

The practice of a Commissioner-designate appearing in a parliamentary committee hearing upon approval of the Commission by the European Parliament has existed since 1995. This practice was created on the initiative of the European Parliament in order to give substance to the new formal powers to approve the Commission, gained under the Maastricht Treaty in 1992.⁷ No legal obligation to undergo this form of parliamentary scrutiny exists; in fact the Treaties make no mention of the hearings.⁸ But the European Parliament has used its legal power of approval of the whole Commission to impose it. This creation of the European Parliament was first formalised in its Rules of Procedure and thereafter recognised in an Interinstitutional Agreement.⁹ According to Article 99 of the Rules of Procedure of the European Parliament, its President shall 'request the nominees proposed by the President-elect of the Commission and the Council for the various posts of Commissioners to appear before the appropriate committees according to their prospective fields of responsibility'. Formal recognition has taken place only recently and solely by the European Commission in the Framework Agreement on relations between the European Parliament and the European Commission.¹⁰ But in practice also the Council has been forced to accept it.

Two historical elements suggest that we are dealing with a *rule* of constitutional practice here. The institutional conflict that preceded the first round of parliamentary committee hearings held in 1995 shows that the practice has normative force in the sense that Parliament will sanction non-appearance politically by postponing approval of the Commission. The acceptance of the committee hearings was not at all clear during 1994. At the end of his last term Jacques Delors, who was openly sceptical about the introduction of the hearings,¹¹ told Parliament he could not guarantee that the next Commission President was going to accept them. In fact, a showdown between the new President-designate of the Commission Santer and the European Parliament followed. The latter threatened

⁷ European Parliament first expressed its claim through the adoption of the Froment-Meurice Report by the European Parliament in April 1994, *Agence Europe* No. 6217, Saturday 23 April 1994, p. 5.

⁸ The hearings are derived from US constitutional practice created by the Senate in response to its power of advice and consent to the appointment of high US officials.

⁹ P. Magnette, 'Appointing and Censuring the European Commission: The Adaptation of Parliamentary Institutions to the Community Context', 7 *European Law Journal* (2001) p. 295.

¹⁰ In the words of President-designate Barroso of the Commission in a letter to the President of the European Parliament dated 9 Sept. 2004: 'The hearings represent an essential step in the approval process of the new Commission'; <http://www.europarl.eu.int/hearings/commission/2004_comm/pdf/lt_barroso_borrell_en.pdf>. Art. 7 of the Framework Agreement on relations between the European Parliament and the Commission concluded on 26 May 2005 refers to the hearings as 'the procedures relating to the approval of the new Commission'.

¹¹ *Agence Europe* No. 6215, 21 April 1994, p. 6.

not to put the ratification of the Commission on its agenda until the hearings were held.¹² Eventually, it took a promise from Klaus Hänsch, President of the European Parliament, that no vote would be held in Parliament on individual Commissioners-designate for Santer finally to accept.¹³ According to Karel van Miert, Commissioner under Santer, the Santer Commission was willing to undergo the hearings, assuming that it would not undermine the principle of collegiality, meaning that only the entire college could be refused, not an individual Commissioner.¹⁴

The assumption of normative force has been strengthened by the willingness shown by a majority in the European Parliament to reject an entire Commission for some of its members' unsatisfactory performance during the hearings in October 2004. President-designate Barroso finally prevented this by withdrawing his proposed team.

No legal obligation exists and no legal enforcement is possible. But the consequences of a refusal to appear before a parliamentary hearing are clear. The person will not be acceptable to the European Parliament as a Commissioner. And since the President-designate in such a case had obviously not been willing to or capable of convincing the Commissioner in question to show respect of Parliament, rejection falls on the entire college of Commissioners. The sanction will thus be of a political nature. An actual sanction is not needed for the rule of constitutional practice to be established. In fact, the practice of the appearance before Parliament together with the fact that the Commissioners-designate consider themselves bound by a rule – or that they ought to consider themselves bound – can be seen as enough for this.¹⁵ The rationale behind the rule is the parliamentary scrutiny of one of the executive arms of the European Union, the Commission.¹⁶

The hearing of individual commissioners is characterised by a lack of formal organisation. In fact, only a little can be learnt about the procedure from Article 99 of the Rules of Procedure of the European Parliament. With regard to the hearings, it merely states that the nominees will be invited by the President of the European Parliament, that the hearings will be held in public and that the nominees are invited by the committee to make a statement and answer questions. The experience in the 2004 hearings has led to proposals for procedural rules on

¹² D. Marsh and D. Gardner, 'MEPs show little support for Santer', *Financial Times*, 14 July 1994.

¹³ J. Klaassen, 'Hier waakt het Europees Parlement', *De Volkskrant*, 7 Jan. 1995.

¹⁴ K. van Miert, *Mijn Jaren in Europa* (Lannoo 2000) p. 92.

¹⁵ The first Commissioners to accept and undergo this obligation were Yves-Thibault de Silguy, Manuel Marin and Marcelino Oreja who appeared before Parliament on 4 Jan. 1995.

¹⁶ According to Sir Ivor Jennings, 'A single precedent with a good reason may be enough to establish the rule', Sir Ivor Jennings, *The law and the constitution*, 5th edn. (University of London Press 1967) p. 136.

organisation, conduct and evaluation in a 'Report on Guidelines for the Approval of the European Commission' prepared by Rapporteur Andrew Duff in the Committee on Constitutional Affairs, adopted by the European Parliament on 1 December 2005. In the following description of the parliamentary committee hearings of 2004, the relevant elements from these guidelines will be discussed.

27 September – 11 October: Parliamentary committee hearings

Between 27 September and 11 October 2004, all 24 Commissioners-designate were heard by the responsible parliamentary committee(s). Only one hearing was to be organised for each Commissioner.¹⁷ An exception to this rule was created by a conflict between the chairmen of the Committee on Civil Liberties, Justice and Home affairs (LIBE) and the Committee on Legal Affairs (JURI), respectively Jean-Louis Bourlanges and Giuseppe Gargani, about the competent committee for the hearing of Commissioner-designate for Justice, Freedom and Security, Rocco Buttiglione. The outcome of the conflict over competence was that Buttiglione had to undergo two separate hearings, one by LIBE for three hours, and one by JURI for one and a half hours.¹⁸ In order to exclude two hearings for one Commissioner in the future, Bourlanges provoked the inclusion in the final version of the Duff Report of a restrictive enumeration of the three possible types of hearings: a normal hearing by one committee, a hearing by more committees jointly or a hearing by one committee, with the attendance of other committee(s).

The 2004 round of hearings drew unprecedented attention from the media, not least because of the weak performances of various Commissioners-designate. In the first week three candidates became controversial. On 28 September the Dutch candidate for Competition, Neelie Kroes, raised concerns on her independence and integrity, caused by her wide experience in business.¹⁹ One day later, MEPs questioned if the Greek candidate for Environment, Stavros Dimas, would attribute the necessary importance to the environment in relation to economic issues. But the performance of the Hungarian candidate for Energy, László Kovács, on Thursday 30 September was the most unsatisfactory of the opening week because of his lack of knowledge and preparation.²⁰

During the second week a commotion was caused by the Italian candidate for the Liberty, Justice and Freedom portfolio, Rocco Buttiglione. During the hear-

¹⁷ This resulted in (partial) joint meetings or presence of a subsidiary delegation in a number of cases where sectoral responsibilities overlapped. It happened with Figel (CULT/EMPL), Reding (ITRE/CULT), Borg (PECH/delegation TRAN), Udre (IMCO/ECON), McCreevy (IMCO/ECON), Kyprianou (ENVI/IMCO) and Kovács (IMCO/ECON).

¹⁸ Para. 1(e) of the European Parliament resolution on guidelines for the approval of the European Commission, *supra* n. 1.

¹⁹ M. van Keulen, 'Kroes At All Cost', 1 *EuConst* (2005), p. 214.

²⁰ E. Horváth, 'Brussels for Beginners', 1 *EuConst* (2005), p. 184.

ing on Tuesday 5 October MEP, Kathalijne Buitenweg (Verts/ALE), provoked him to make statements on homosexuality. Buttiglione among other things said that 'I may think that homosexuality is a sin but this has no effect on politics unless I say that homosexuality is a crime'.²¹ The original commotion was aggravated in the days after the hearing by another statement by Buttiglione that marriage existed to allow women to have children and for the protection of the woman by the man.²² Other candidates having a troublesome hearing that week were Danish Mariann Fischer Boel (Agriculture and Rural Development) for possible conflict of interests and Latvian Ingrida Udre (Taxation and Customs Union) for allegations regarding her party's finances.

After each hearing, the chairman of the committee responsible for the hearing (or chairmen in case of a joint meeting) is responsible for drawing-up and signing an evaluation letter, to be sent to the President of the European Parliament.²³ Usually on the same day or the day after each hearing, the committee convenes a meeting of the co-ordinators – the spokesman of each political group within the committee – in order to evaluate the candidate behind closed doors. This is the first moment that partisan views compete and agreement between different political groups can be sought. During these meetings the committee chairman tries to capture the opinion of the majority of the members of the committee, when necessary accepting the explicit mention of minority opinions. The only meeting in which this procedure failed outright was the meeting of the co-ordinators of the Committee on Civil Liberties, Justice and Home affairs (LIBE) after the hearing of Buttiglione on 5 October. During the evaluation meeting on 6 October 'the coordinators for the political groups represented (...) were unable to agree on a joint text assessing Mr Buttiglione'.²⁴ They decided to refer the matter back to the committee. Within the committee, attempts to agree on a joint text continued. In the negotiations between the different political groups there was strong pressure from the EPP/ED group co-ordinator to weaken the severe criticism in the draft evaluation letter. At a certain point the demands of the EPP/ED were so high that a majority of the committee members considered the risk of losing a vote on Buttiglione in the committee preferable to the soft evaluation text the EPP/ED wanted.²⁵ It was therefore decided to have a vote, which was held on 11 October.

²¹ An unofficial transcript of the hearing, from which this passage is taken, can be found on: <<http://www.acton.org/press/special/transcript1.pdf>>.

²² G. Sarcina, 'Buttiglione, attacchi sui gay e risposte in 5 lingue', *Corriere della Sera*, 11 Oct. 2004.

²³ Occasionally two evaluation letters were produced for one commissioner, in the case of Buttiglione even leading to opposite outcomes.

²⁴ LT\543567EN.doc PE 349.302/BUR/17, <http://www.europarl.eu.int/hearings/commission/2004_comm/pdf/lt_buttiglione_en.pdf>.

²⁵ Interview by this author with Edith Mastenbroek MEP, 20 June 2005.

The procedure for the vote had already been decided upon at the co-ordinators' meeting of 6 October. Two proposals were to be voted on:

1. Endorsement of Mr Buttiglione's nomination as Vice-President of the Commission in charge of the freedom, security and justice portfolio.
2. Endorsement of Mr Buttiglione's nomination as Vice-President of the Commission on condition that he be given a different remit.²⁶

The second proposal would be voted on only if the first one was rejected, which is what happened. By the thinnest margin, 27 votes against and 26 in favour, the proposal to endorse Buttiglione as Vice-President of the Commission in charge of the freedom, security and justice portfolio was rejected.

In a second vote the alternative proposal was also rejected, mainly because the EPP/ED members, who had voted in favour the first time, could not accept it. At that point, accepting even a transfer of Buttiglione would mean political defeat. The result was that as far as the LIBE committee was concerned, there was no place for Buttiglione in the Barroso Commission. Few had expected this outcome.

With hindsight, it seems that neither the order of the votes nor the formulation of the second proposal favoured Buttiglione's case. Judging from his successful amendment to the original Duff report on guidelines for the approval of the Commission,²⁷ Jean-Louis Bourlanges – committee chairman of the LIBE committee during the hearing of Buttiglione – would have formulated the proposals differently had he been given a new chance. In the future a vote will be held first on a Candidate's membership in the Commission and then on his or her suitability for the assigned portfolio.

Although some have found the decision to vote in the committee to be a logical solution when there is no consensus, others have criticised it for being a way for one committee to commit the whole Parliament. They argue that where the European Parliament can only approve or reject the Commission as a whole, it is not appropriate to vote on Commissioners-designate within a single committee. Clearly, the decision to vote on a single Candidate in a committee highlights the tension between the Council and Commission on one side – stressing the collegial nature of the Commission – and the European Parliament on the other – trying to increase its influence in the investiture procedure, though without demanding a formal right to vote on individual Candidates in plenary.²⁸

²⁶ LT\543567EN.doc PE 349.302/BUR/17, <http://www.europarl.eu.int/hearings/commission/2004_comm/pdf/lt_buttiglione_en.pdf>.

²⁷ PE 357.790v01-00.

²⁸ The only group that argued for such a plenary vote on individual Candidates was the Verts/ALE group, in its motion for a resolution B6-0088/2004, by Daniel Marc Cohn-Bendit and Monica Frassoni, 20.10.2004.

Judging the final text of the guidelines for the approval of the European Commission included in the European Parliament Resolution of 1 December 2005, voting is agreed on as a last resort. That is, in case parliamentary committees are unable to reach a consensus in stating 'whether the Commissioners-designate are qualified both to be a member of the college and to carry out the particular duties for which they have been nominated'.²⁹ This seems to be a small victory for those who advocate a right to vote on individual candidates.

The suspicion of a political answer to Buttiglione's rejection was raised only one day later on 12 October by the Committee on Industry, Research and Energy (ITRE). It rejected Commissioner-designate Kovács for the Energy portfolio, not through a vote but by assessing him in the following words signed to by the committee chairman Mr Chichester (EPP/ED) in the evaluation letter to the President of the European Parliament:

In general terms, most members of the Committee were not convinced by his professional competence in the energy field nor his aptitude to assume the high office he has been proposed for. However, one large group expressed their belief he would learn enough to cope once able to devote himself full-time to the job.³⁰

Partisan politics seemed to operate not only inside each committee, but also between the various committees. After the rejection of an EPP/ED supported Commissioner-designate by LIBE, a majority of the ITRE Committee decided that a Socialist candidate had also failed the test.

The rules of procedure do not contain any provisions on the co-ordination of horizontal scrutiny of the results of the hearings. In January 1995 the reports from the various committees had simply been commented upon by the President of the European Parliament in a press conference the day after the hearings had ended. In 1999 a horizontal scrutiny of the letters had taken place in the Conference of Committee Chairs, before they were transmitted to the President of the Parliament.³¹ This time a different action was taken. The co-ordinated horizontal scrutiny of the results was skipped and the letters were sent directly by the committee chairmen to President of the Parliament, Joseph Borrell. An extraordinary meeting of the Conference of Presidents was then convened to discuss the matter.

The lack of a co-ordinated horizontal scrutiny of the results of the 2004 hearings has been considered highly unsatisfactory and has led to draft proposals for a fixed procedure. Originally, rapporteur Andrew Duff proposed the introduction

²⁹ Para. 1(j) of the European Parliament resolution on guidelines for the approval of the Commission, *supra* n. 1.

³⁰ PE 349.302/BUR/12, <http://www.europarl.eu.int/hearings/commission/2004_comm/pdf/lt_kovacs_en.pdf>.

³¹ Duff Report, *supra* n. 1, p. 10.

of a Grand Committee, an *ad hoc* committee composed of senior members of the political groups supplemented by the chair and coordinators of the relevant programme committees.³² But in the final text what survived from this idea is only a joint meeting of the Conference of Presidents and the Conference of Committee Chairs.³³ The joint meeting, an abstract of the Grand Committee proposed by Duff, allows for a minimum of horizontal scrutiny of the evaluation results.

13 October: Extraordinary Conference of Presidents meeting

On 13 October an extraordinary meeting of the Conference of Presidents took place, with Joseph Borrell and the leaders of the political groups present. Faced with the rejection of Buttiglione and Kovács, the political leaders in the European Parliament had to decide their approach to the situation. Borrell offered to set-up a resolution in which the problem cases were explicitly mentioned, using the evaluation letters as a basis. This idea was not accepted by the group leaders.³⁴ Watson's (ALDE) explanation that 'I don't think we should force any one solution on Mr Barroso when there could be a number of possibilities',³⁵ represented the majority position in Parliament. Anyway, as none of the political groups had yet found a common internal position,³⁶ there was no way a deal could be reached. Also, the problems with the two Commissioners-designate, Buttiglione and Kovács, who came out worst from the committee hearings, were so fundamentally different in character that a solution to the effect that both could stay or that both had to go would be unacceptable to the Socialists.³⁷ It was decided to send the evaluation letters directly to Barroso without any recommendations, leaving it to the President-designate to decide on the necessary concessions.

At that point, the leaders of the three largest groups – Pötering, Watson and Schulz – probably hoped that some minor changes would suffice to prevent a no

³² Working Document: How the European Parliament approves the European Commission, Committee on Constitutional Affairs, Rapporteur: Andrew Duff, PE 350.005v03-00, 24/11/2004, p. 13.

³³ For the final text, see para. 1(j) of the European Parliament resolution on guidelines for the approval of the Commission, *supra* n. 1. Intended to 'ensure consistency in the conduct of the hearings as well as their coherent evaluation', the idea of a Grand Committee was not welcomed by the Parliament's hierarchy and deemed too revolutionary; Interview by this author with Andrew Duff MEP and his political assistant Guillaume McLaughlin, 24 May 2005.

³⁴ A second idea proposed by Borrell, to hold another extraordinary meeting of the group leaders before their planned meeting with Barroso on 21 Oct., was also rejected by a majority of the leaders of the groups; *Agence Europe* No. 8806, Thursday 14 Oct. 2004, p. 3.

³⁵ R. Minder, 'Barroso regains upper hand in battle over Buttiglione', *Financial Times*, 14 Oct. 2004.

³⁶ Interview by this author with Edith Mastenbroek MEP, 20 June 2005.

³⁷ Interview by this author with Jan Marinus Wiersma MEP and Vice-President of the Socialist Group in the European Parliament, 20 June 2005.

vote. But as time passed the determination of Liberal and Socialist backbenchers grew to see at least one of the Commissioners-designate go.

21 October: Conference of Presidents meeting with Barroso

The moment for Barroso to address the concerns in the European Parliament was to come on 21 October during a Conference of Presidents meeting. In the days before, Barroso had extensively consulted with the different political groups on their positions. A lot of exchanges and phone calls, mostly with Pöttering but also with Watson and Schulz, had taken place. On Monday evening 18 October, Barroso and Watson met in the Berlaymont building. 'Can I count on your votes?' Barroso wanted to know. Watson told him that by agreeing to six wishes of ALDE, his chances would seriously grow.³⁸

During lengthy talks with his group on 20 October, Schulz had come to understand that it was unacceptable to the Socialist MEPs to have Buttiglione as a Commissioner for Justice, Freedom and Security. The Verts/ALE Group in the meantime adopted a resolution proposing that the Commission could be approved by a separate individual vote for each commissioner. At that time, from the main groups, only Pöttering could give Barroso his full and unconditional support.

Momentum had thus been building-up in the days before the meeting of the Conference of Presidents. When Barroso met with the Conference of Presidents on Thursday, he only gave in on two of Watson's demands. Among these was his decision personally to chair a group of Commissioners concerned with fundamental rights and non-discrimination. Another concession was a letter from Buttiglione to Parliament in which he regretted the problems having arisen from his parliamentary committee hearing. To the Liberals this was not enough. Watson saw their support for the Commission fall from two thirds to only one third, even putting himself in a minority position within his own group.³⁹

Considering that the recommendations from the parliamentary committees were not yet formal decisions from the European Parliament and still left without a common position from the parliamentary groups, Barroso decided to go for a centre right majority in Parliament, including EPP/ED, a large part of ALDE and maybe a few PSE votes. He showed little sensitivity to the concerns expressed and did not accept the rejection of either Buttiglione or Kovács. Instead, he thought making some minor changes would suffice, such as taking away from Buttiglione

³⁸ Interview by this author with Graham Watson MEP and leader of the liberal group, 21 June 2005.

³⁹ Interview by this author with Graham Watson MEP and leader of the liberal group, 21 June 2005.

the responsibility for individual freedoms and non-discrimination.⁴⁰ But after the meeting it was not at all certain that he could muster a majority in Parliament. The EPP/ED confirmed its unanimous support through its leader Hans-Gert Pöttering, securing 268 votes.⁴¹ But combined with the 27 votes confirmed from the nationalist UEN members, this did not suffice to reach the 366 votes needed for a majority. For the PSE, as had become clear already on the day before the meeting, these cosmetic changes were not enough. Martin Schulz said he was going to recommend to his group to vote against the Commission, expecting an overwhelming majority to do so.⁴² More significant was the position of the ALDE group, which according to Andrew Duff now showed a three quarters majority against the Commission.⁴³ If this was to reflect the ALDE vote on the following Wednesday, or even if it were two thirds as Watson thought, Barosso would be in serious trouble.

On Monday 25 October, the day before the Plenary session started, all groups had agreed on their internal position. The Verts/ALE Group took the toughest position, asking for a replacement of Buttiglione and a change of portfolio for Kovács, Boel, Dimas, Kroes and Udre.⁴⁴ More or less the same position was taken by GUE/NGL.⁴⁵ On the other side of the spectrum, the EPP/ED Group and UEN supported the whole team and focused on the specific elements they wanted to have included in a renewed Framework Agreement between the Commission and Parliament.⁴⁶ In between these positions two variants were proposed. The PSE Group would have been satisfied with a change of portfolio for Buttiglione only and already expressed some wishes regarding the Framework Agreement.⁴⁷ A pragmatic ALDE motion simply noted the rejection of Buttiglione by the LIBE committee as well as the negative opinion on Kovács in the ITRE committee and

⁴⁰ According to Schulz, by doing so Barroso had gone back on an offer to strip Mr. Buttiglione of all responsibility for fundamental rights; J. O'Doherty and G. Parker, 'Barroso struggling for votes after bid to sway MEPs over Buttiglione fails', *Financial Times*, 22 Oct. 2004.

⁴¹ *Ibid.*

⁴² *Agence Europe* No. 8812, Friday 22 Oct. 2004, p. 5.

⁴³ Apparently the Italian, French and British ALDE MEPs were against the Commission, while the Dutch and Danes were still in favor, *Agence Europe* No. 8812, Friday 22 Oct. 2004, p. 6.

⁴⁴ Motion for a resolution B6-0088/2004, by Daniel Marc Cohn-Bendit and Monica Frassoni on behalf of the Verts/ALE group, 20.10.2004.

⁴⁵ Motion for a resolution B6-0099/2004, by Francis Wurtz on behalf of the GUE/NGL Group, 25.10.2004.

⁴⁶ Motion for a resolution B6-0090/2004, by Hans-Gert Pöttering on behalf of the EPP-ED Group, 21.10.2004, Motion for a resolution B6-0100/2004, by Cristina Muscardini on behalf of the UEN Group, 25.10.2004.

⁴⁷ Motion for a resolution B6-0098/2004, by Johannes Swoboda on behalf of the PSE Group, 25.10.2004.

insisted 'that all the institutions draw the political consequences from it, which might include resignation, reshuffle or withdrawal'.⁴⁸

26-27 October: Plenary meeting in the European Parliament

All the groups having established their internal position, the negotiations on a joint motion could be concluded. In a joint motion dated 26 October the PSE, ALDE, GUE/NGL and Verts/ALE Groups reached a compromise position representing a majority in Parliament. The two substantive parts of the motion stated that the European Parliament:

Identifies various concerns as to the endorsement of certain candidates: 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 conflicts of interests or possible involvement in political and legal malpractice;

Underlines the democratic and legal validity of the approval process of which the hearings are a crucial part, and insists that all the institutions draw the political consequences of it, which might include resignation, reshuffle or withdrawal.⁴⁹

Interestingly these sentences were almost literally copied from the earlier Verts/ALE motion (first sentence) and ALDE motion (second sentence). It was part of the compromise that the joint motion still did not mention the specific problem cases to be resolved. While the EPP/ED and UEN Groups were already wishfully thinking ahead on the renewed Framework Agreement to be adopted between Commission and Parliament, the other groups were demanding changes in a joint motion.

The motion was never put to the vote.

During the plenary session of Tuesday 26 October, Barroso made some new cosmetic concessions, but refused to reorganise his team. Provocatively he said: 'As you can see, I have listened carefully to Parliament's opinion. I have taken into consideration your major concerns and objections and have provided substantive replies'. It still took him a few hours to understand that a majority in parliament strongly disagreed and was ready to act on it. Only at the end of the day, on the eve of the planned vote, did Barroso understand that he was not going to get the majority needed for his team. That day the deadlock that had prevented the Con-

⁴⁸ Motion for a resolution B6-0093/2004, by Andrew Duff on behalf of the ALDE Group, 25.10.2004.

⁴⁹ Joint motion for a resolution RC-B6-0088/2004, replacing the motions by the following groups: Verts/ALE (B6-0088/2004), ALDE (B6-0093/2004), PSE (B6-0098/2004), GUE/NGL (B6-0099/2004) on the approval of the Commission, 26.10.2004.

ference of Presidents from reaching a common position on 13 October was confirmed. On Tuesday evening, after Barroso knew from Graham Watson that the ALDE group would vote overwhelmingly against the Commission and knowing that the PSE was going to vote against unanimously, Barroso finally reached for the ultimate remedy and called Berlusconi about a possible withdrawal of Buttiglione. But when Pöttering heard from his friend Buttiglione that he had been asked to withdraw, the leader of the largest group in Parliament threatened Barroso that he would order his group to vote against the college, if Buttiglione was not in it.⁵⁰ Barroso saw himself forced to postpone the proposal of his team planned for the following day.⁵¹ This way he could at least secure his own position.

For any change to this team Barroso now needed the help of the heads of state and government of the member states united in the European Council. On 29 October, while gathering to sign the Treaty establishing a Constitution for Europe in Rome, they decided that Buttiglione had to go, addressing the European Parliament's biggest concern. The later withdrawal of Udre on 30 October⁵² and the change of portfolio for Kovács, who had received continuous support from his own government,⁵³ completed the changes.

15-16 November: A new round of hearings

Only when Italy made known its new candidate Frattini on 4 November was Barroso able to present his new proposal to the European Council in Brussels. The Council approved the new list, and one day later Barroso met with the Conference of Presidents to present the changes. Although some MEPs were still not satisfied with the changes made,⁵⁴ the main problems had been addressed. On 12 November the spokesperson for the three main political groups in the European Parliament (EPP/ED, PSE and ALDE) said that they would support the new team of Commissioners, while the Greens still intended to vote against.⁵⁵ On 15-

⁵⁰ Buttiglione later admitted he had been willing to resign, but had not done so because Pöttering had implored him not to, *Agence Europe*, No. 8819, Wednesday 3 Nov. 2004, p. 8.

⁵¹ There is a strong resemblance with the events of March 1999 when Jacques Santer decided to act only once it had become clear from Paula Green that her Socialist Group would support the censure vote to be held the next day. Without letting it come to a vote, Santer and his team resigned collectively.

⁵² G. Parker, 'Latvian commissioner sacked in EU cull', *Financial Times*, 2 Nov. 2004.

⁵³ E. Horváth, 'Brussels for Beginners', 1 *EuConst* (2005), p. 182-188.

⁵⁴ Dissatisfaction was mostly expressed on the maintenance of Kroes at Competition. A letter from Bourlanges to Watson proved that within ALDE resistance to the team had not ceased, some MEPs being especially disappointed by the survival of Kroes (a Liberal herself); *Agence Europe* No. 8827, Tuesday 16 Nov. 2004, p. 4.

⁵⁵ *Agence Europe* No. 8826, Saturday 13 Nov. 2004, p. 6. The Greens were particularly unhappy with the survival of Kroes at Competition.

16 November 2004, a second round of hearings took place, after which the Committee chairmen sent their evaluation letters to President Borrell.

There were no surprises this time; no negative opinions were given.⁵⁶ Thus, more than three weeks after the EPP/ED had tabled its resolution calling for a new framework agreement, it was now the right time for the European Parliament to adopt a resolution on the renewal of the Framework Agreement between Commission and Parliament, inviting Barroso to comment on it.

Responsibility of individual Commissioners before approval

Above we have noted the tension between the European Parliament's right to approve the Commission *as a body* and the vote in the LIBE committee on 6 October 2004 on Buttiglione as an *individual* Commissioner. In fact, the events of the Barroso Drama ask for an analysis of the possible existence of rules of constitutional practice on the approval of individual commissioners.

It is here that we are confronted with the difficulty of defining rules of practice.

The formal legal framework is clear. The European Parliament approves the Commission as a body (art. 214 EC). Yet, if the European Parliament would reject an individual Commissioner whose candidacy would then be withdrawn, the existence of a *rule* of practice could be argued. In fact, some MEPs have argued that a right for European Parliament to reject individual Commissioners-designate has been established.⁵⁷

In this regard, one claim can be easily discarded, namely the possible establishment of a power of European Parliament to vote on individual Commissioners. This power has clearly not been established. A formal rejection of an individual Commissioner-designate has only taken place inside a parliamentary committee (Buttiglione, Kovács). The formal rejection of an individual Commissioner-designate in plenary has not taken place and, it is here argued, would not have taken place. True, there has been a credible threat of a vote rejecting the Commission as a body, leading Barroso to withdraw his proposed team. But voting on individual Commissioners in plenary has never been an option. In fact, in the joint motion for a resolution by the PSE, ALDE, Verts/ALE and GUE/NGL tabled for the plenary session of 27 October 2004, the problem cases were intentionally not mentioned. And, apart from the Verts/ALE Group, no group in Parliament has favoured to vote on individual Commissioners-designate. A vast majority in Par-

⁵⁶ A majority of the LIBE committee did reach agreement on the contents of the evaluation letter on Frattini, although the Greens and GUE could not agree to it. <http://www.europarl.eu.int/hearings/commission/2004_comm/pdf/lt_frattini1_en.pdf>.

⁵⁷ Cf. J.M. Wiersma MEP and M. Verhelst, 'Confrontatie met Barroso tekent volwassenheid Europees Parlement', 59 *Internationale Spectator* (2005) p. 148.

liament still agrees that it is not appropriate to approve the Commission by voting on individual commissioners.

Yet, two Commissioners-designate have been forced to withdraw (Buttiglione, Udre), and one has had his portfolio changed (Kovács). These precedents show that the Commission as a college is not immune to pressure from the European Parliament when it comes to its composition and that individual changes can be triggered on the basis of individual performance.

Does this mean that a power to reject individual Commissioners has been established? The following will try to put this claim into perspective. In order to do so, the facts of the Barroso Drama must be analysed.

These facts, described above, show that it is difficult to define the demands of the majority of Parliament in the Barroso Drama. Yes, the problem cases were more or less clear to the public, but from the beginning it was decided to leave Barroso discretion in finding a solution. Thus, neither the problematic candidates nor the solutions were explicitly mentioned. It is interesting to note that the rejection of Buttiglione and Kovács in the parliamentary committees was not given more weight in the joint motion mentioned than, for example, the concerns about a possible conflict of interest for Kroes.

The case for arguing the establishment of a right to reject an individual Commissioner would have been stronger had there been clear evidence that the acceptability of the Commission depended only on the acceptability of one Commissioner. On Tuesday 26 October, when it became clear that there would not be a majority for the Commission in a vote the day after, Barroso tested this hypothesis by opting for a withdrawal of Buttiglione. This attempt is an interesting precedent in itself, for it was only five years earlier that the then Commission President Santer opposed the resignation of an individual Commissioner, preferring the resignation of the whole Commission. Significantly, it was not Italy's Berlusconi who blocked Barroso's attempt, but EPP/ED leader Pöttering.

The dynamics of the events after Barroso withdrew his entire team suggest that an early withdrawal of Buttiglione would not have solved the problem for the whole Commission. They show that both to the Parliament and to the member states, the rejection of one single Commissioner would not have been acceptable. The fact that together with Buttiglione also Udre and Kovács had to be sacrificed shows that any change in the composition of the Commission will have to stand the test of European parliamentary politics, in which, for lack of a majority system, every interest has to be delicately balanced. Berlusconi determined the rules of the game for the member states when he stated that a *sacrificio* by Italy would be possible only if it were not the only member state having to make one.⁵⁸

⁵⁸ Marco Conti, 'Il premier cerca alternative a Buttiglione', *Il Messaggero*, 28 Oct. 2004. See T. Beukers, 'The Invisible Elephant. Member States' Collective Involvement in the Appointment of the Barroso Commission', 1 *EuConst* (2005), p. 223.

The most accurate conclusion is therefore that the events of the Barroso drama, while an important precedent of several Commissioners-designate being changed after scrutiny by the European Parliament, at the same time show the limits to the power of Parliament to reject an individual Commissioner. The unacceptability of an individual Commissioner is expressed through a vote – or in case it does not come to a vote, a credible threat with it – on the Commission as a body. This finally turns it into an issue between the Parliament and the President of the Commission, who is to decide whether to ask the individual Commissioner to resign or to risk defeat on the whole Commission. The President-designate then finds himself in a position in which he has to balance the interests of both parliamentary groups and member states, preventing so far the possibility to sack only one Commissioner.

Some modest lessons can be learned on the substance of Parliament's scrutiny. Interestingly, Buttiglione's political convictions did not directly relate to classical political dichotomies such as those around socio-economic topics. The political convictions of Buttiglione on homosexuality and the role of women in society have created polarisation in the European Parliament on an ethical, ideological issue related to 'basic values of the Union'.⁵⁹ Still, it could be argued that the main doubts about Buttiglione were specifically related to his competence as a Commissioner for the Justice, Freedom and Security portfolio. In other words, it can be argued that for other portfolios his ethical beliefs would not have been fatal – in fact, a majority could have been found for a change of portfolio including the votes of EPP/ED and PSE, had the EPP/ED not resisted any change concerning Buttiglione.

The replacement of the Latvian candidate, Udre, a reaction to her 'possible involvement in political and legal malpractice',⁶⁰ demonstrates the unacceptability of a candidate's membership of the Commission for a majority of Parliament when personal integrity is at issue. The scrutiny thus seems to concentrate partly on matters normally related to impeachment procedures, and partly on issues related to the competence of the Commissioner-designate. A rejection of a Commissioner-designate for socio-economic political convictions is still hard to imagine. Also, the Commission as a body is not judged on the basis of a political programme. Thus, it is fair to say that the process of hearing is still 'closer to an *a priori* censure than to a political deliberation'.⁶¹

In the guidelines for the approval of the Commission the European Parliament explicates five assessment criteria: general competence, indubitable independence, European commitment, knowledge of the relevant portfolio and communication

⁵⁹ Joint motion for a resolution RC-B6-0088/2004, 26.10.2004, *see supra* n. 49.

⁶⁰ *Ibid.*

⁶¹ P. Magette 2001, *see supra* n. 9, p. 299.

skills. The first two criteria are also laid down in Article 213 EC. Interestingly enough, the negative criteria 'political convictions contradicting basic values of the Union' does not return in this report. Apparently and wisely, it was preferred to limit the list to more objective criteria.⁶²

Conclusion

The events of the 2004 round of hearings both confirm and develop the constitutional relevance of the scrutiny by European Parliament of individual Commissioners. Through the hearings and their follow-up, the possible constitutional consequences of a negative vote of a parliamentary committee have been shown, as well as the consequences the EP is willing to give in plenary to negative assessments of individual Commissioner-designates. The European Parliament has demonstrated its willingness to use the 'nuclear option' of rejecting the entire Commission over individuals. The changes made to the composition of the Commission indicate a further development of the approval process of the Commission. At the same time, these changes show the limits to Parliament's power to reject an individual Commissioner. The historical analysis of the practice of Commissioners appearing before a parliamentary committee reveals that the tension with the principle of collegiality highlighted by the LIBE committee's vote on Buttiglione was already openly disputed before the first hearings were held in 1995.

Scholarship has commendably analysed the voting behaviour of MEPs in the approval of the President of the European Commission.⁶³ Not much attention has so far been paid to the analysis of MEPs' votes in the approval of the entire Commission, following the approval of its President. The case of the Hungarian, British and Spanish Socialists' intention to vote against their own Commissioner as well as against their own governments' position provides interesting material for further research on this subject. A first conclusion seems to be that the ideological split in the approval process of the Commission has proven that the inter-governmental factor can be less decisive and the hearings less technocratic than past experience has suggested.

The Barroso Drama has rightly led to the adoption by Parliament of new guidelines on the organisation of the hearings, the horizontal scrutiny of the results and criteria for assessing Commissioners. The next section will analyse how the above facts have landed in the Framework Agreement of 2005.

⁶² Para. 1(a) of the European Parliament resolution on guidelines for the approval of the European Commission, *supra* n. 1.

⁶³ S. Hix and C. Lord, 'The Making of a President: The European Parliament and the Confirmation of Jacques Santer as President of the Commission', 31 *Government and Opposition* (1995) p. 62-76; Hix 2000, *supra* n. 3, p. 95-111; P. Magnette 2001, *supra* n. 9, p. 292-310.

PART II: FRAMEWORK AGREEMENT BETWEEN EUROPEAN PARLIAMENT AND COMMISSION

Law and practice

On 26 May 2005, the new Framework Agreement on relations between the European Parliament and the European Commission was concluded,⁶⁴ updating the Agreement concluded in 2000.⁶⁵ This textual element in the constitutional structure of the European Union bears clear traces of the conflict in the Barroso Drama. It complements the Treaty provisions and governs the bilateral relations between Commission and Parliament, but falls outside the legal framework of the Union *stricto sensu*.

The Framework Agreements are the successors of the 1990 and 1995 Codes of Conduct.⁶⁶ The initiative for the first Code, of 1990, to a large extent lay with Commission President Jacques Delors. As discussions on it were taking place, the Council was invited to join, but it declined.⁶⁷ The main driving force behind the first Framework Agreement in 2000 was not the Commission but Parliament. It demanded an upgrade of the Code of Conduct to a Framework Agreement and particularly wanted to see the possibility of the resignation of individual Commissioners enshrined. As a result of the crisis over fraud in the Union and the resignation of the Santer Commission, the Parliament saw a chance to increase its control over the Commission. After the European Parliament had failed to establish individual responsibility of Commissioners under Santer in March 1999,⁶⁸ it made an increase of parliamentary control over individual Commissioners a condition for approval of the Commission in September that year. On 7 September 1999, Prodi agreed to Parliament's wishes. One week later, Parliament approved the Commission. One Commission term earlier Santer had been able to state on the Code of Conduct in the debate preceding approval that 'I have undertaken to renegotiate it, but if collegiality is to come into play, I cannot be expected to state a position today on the six to eight pages Parliament forwarded to me on this subject (...)'.⁶⁹ It is clear that the importance of a provisional agreement on the update of the agreement before approval of the Commission has increased notably, seen the detailed concessions that Prodi and Barroso have made upon ap-

⁶⁴ Leinen Report, *supra* n. 2, p. 10.

⁶⁵ *OJ* [2001] C 121/122.

⁶⁶ Code of Conduct of April 1990 between EP and Delors Commission, PE 139.82; Code of Conduct of 14 March 1995 between EP and Santer Commission, PE.188.641 13, *OJ* [1995] C 89/68.

⁶⁷ Sir William Nicoll, 'The "Code of Conduct" of the Commission towards the European Parliament', 34 *Journal of Common Market Studies* (1996), p. 276.

⁶⁸ Santer had refused to dismiss Cresson, on whom the main problems of fraud centred. When the European Parliament wanted to see Cresson go, Santer insisted that could only happen through censure of the whole Commission.

⁶⁹ *Agence Europe* No. 6400, Wednesday 18 Jan. 1995, p. 5 bis.

proval. Both the provisional and final agreement between Barroso and Parliament are analysed in this Part II.

The Council has never been formally involved in the negotiation and conclusion of either the Codes of Conduct or the Framework Agreements agreed on by Commission and Parliament. In fact, it has criticised both conclusion and contents of the agreement from the sideline. Since the Council is not a party to the Framework Agreement, the instrument can be seen as an element of autonomous constitutional development. Its negotiation and conclusion take place independently from the member states represented in the Council.

The treaties provide no legal basis for the conclusion of Interinstitutional Agreements of which the Framework Agreement between Commission and Parliament is one. Article 10 of the EC Treaty⁷⁰ is often seen as an implicit legal basis for the conclusion of Interinstitutional Agreements.⁷¹ Declaration No. 3 to the Nice Treaty of 2001 on Article 10 of the EC Treaty, in which the existence of Interinstitutional Agreements was for the first time officially recognised, is called in support of this argument. It states:

(...) In relations between those institutions, when it proves necessary, in the context of that duty of sincere cooperation, to facilitate the application of the provisions of the Treaty establishing the European Community, the European Parliament, the Council and the Commission may conclude interinstitutional agreements. Such agreements may not amend or supplement the provisions of the Treaty and may be concluded only with the agreement of these three institutions.

Article 10 EC is not entirely convincing as a legal basis for Interinstitutional Agreements. In fact, the Framework Agreement between the Commission and Parliament should not be understood as based on Article 10 EC. This ignores the competition between member states and Parliament over the establishment of constitutional rules. Since the relations between Commission and Parliament can develop independently from the member states, but influence them directly (as members of the Council), conflicts arise, especially in the struggle for control of the Commission. In this struggle member states are in a privileged position because of their formal monopoly in creating legal Treaty rules (Article 48 EU). But the European Parliament willingly uses powers and procedure – and ultimately its legitimacy based on direct elections – available to it to impose solutions through practice and convention, including the Framework Agreement. This agreement is

⁷⁰ The European Court of Justice has extended the application of the obligation of loyal cooperation laid down for member states in this Art. 10 EC to the institutions: ECJ 27 Sept. 1988, Case C-204/86, *Greece v. Council*. See J. Monar, 'Interinstitutional Agreements: The Phenomenon and its New Dynamics after Maastricht', 31 *Common Market Law Review* (1994) p. 702.

⁷¹ A. Maurer et al., 'Interinstitutional Agreements in CFSP: Parliamentarisation through the Backdoor?', *EIF Working Paper Series*, Vienna, 2004, Working Paper No. 5, p. 5.

thus better understood in terms of constitutional practice, created outside the strict realm of law. Neither the Codes of Conduct nor the Framework Agreements can be said to be legally binding.⁷² Both are political agreements, not enforceable in a court of law.⁷³ As is the case with rules of constitutional practice, these soft law rules are enforced through political sanctions.

To illustrate that the Framework Agreement is not founded in Article 10 EC, but in conflicts between the institutions, the events of the conclusion of the 2005 Framework Agreement will be given and analysed. Special attention is given to the attempt of the European Parliament to impose its wishes on the Commission, the attempts of the Commission to limit the development of constitutional practice invoking Treaty provisions and the Council's criticism to the Framework Agreement.

Parliament's initiative

During the plenary session of the European Parliament on 26 October 2004, Barroso expressed his willingness to negotiate a new Framework Agreement. At that time there had not yet been any majority position agreed on in the European Parliament about an update of the Framework Agreement. Only the EPP/ED and the PSE had specified their wishes in the group's motions on the approval of the Barroso Commission. The other groups either showed no interest or thought that it was not the right time to discuss this issue, with so many MEPs unsatisfied with the composition of the Commission.

In the joint motion on the approval of the Commission proposed by the centre left groups in the European Parliament on 26 October 2004, not a word was dedicated to the Framework Agreement.⁷⁴ Time was not ripe to discuss this matter; changes to the Commission had to be agreed to first.

Joint motion for a resolution centre left and (centre) right of 17 November 2004

In the joint draft resolution tabled by EPP/ED, PSE, ALDE and UEN on 17 November 2004, the central issue was the political responsibility of the Commission. The resolution contained a compromise between the positions on this subject expressed earlier in the individual motions.⁷⁵ The majority behind this

⁷² The 2000 Framework Agreement has in fact been published in the C-series, *see supra* n. 65. The same will happen with the 2005 version.

⁷³ From a legal point of view, there seems to be no difference between the earlier Codes of Conduct and the later Framework Agreements. In fact, in both the Codes of Conduct and the Framework Agreements parties agreed on what it contained.

⁷⁴ Joint motion for a resolution RC-B6-0088/2004, 26.10.2004, *see supra* n. 49.

⁷⁵ Joint motion for a resolution RC-B6-0151/2004, replacing the motions by the following groups: EPP/ED (B6-0151/2004), ALDE (B6-0168/2004), UEN (B6-0187/2004), PSE (B6-0188/2004) on the approval of the new Commission, 17.11.2004.

resolution is different from the majority that proposed the joined resolution of 26 October. The absence of the left wing groups Verts/ALE and GUE/NGL does not so much indicate a split over ideas on the substance of the Framework Agreement, as dissatisfaction with the composition of Commission that these groups still felt.

In the paragraphs on political responsibility all four issues brought up in the individual motions were included. Paragraph (a) demanded that in case of withdrawal of confidence in an individual Commissioner 'the President shall either require the resignation of that Member or justify his refusal to do so before Parliament'. Watson presented this as a victory for ALDE since his group had convinced the other main groups of the importance of this procedure.⁷⁶ But victory was not total, for the Liberals would have preferred that the President of the Commission had no discretion at all.⁷⁷ Also, the two thirds majority proposed by ALDE was not followed, so that a simple majority is enough to express lack of confidence.⁷⁸ That the Liberals were not going to make an issue out of this was shown by Watson when he himself arduously defended this paragraph in front of Barroso in plenary on 17 November.

Paragraph (b) and (c) of the joint motion asked for a validation procedure (hearing and vote in plenary) in case of replacement of a Commissioner and reshuffle of portfolios during the Commission's term of office, fully representing the wishes of the Socialists and Liberals on this point.⁷⁹

Paragraph (d) reflected the ALDE wish to have rules on responsibility for identifying a conflict of interest. The President of the Commission is to be responsible both for identifying a conflict of interest which renders a Commissioner unable to perform his or her duties and for taking subsequent action. In response to the unresolved problems with Commissioners Kroes en Boel, the liberals wanted to explicitly lay responsibility with the President of the Commission.

The resolution proposed by the Centre Left and (Centre) Right groups was adopted on 18 November, before the vote on the new Commission, by 478 votes in favour, 84 against and 98 abstentions. By giving a detailed list of points it wanted to see included in a renewed Framework Agreement, a majority of the European Parliament clearly indicated that some agreement on these issues was to be seen as a condition for approval.

⁷⁶ *Agence Europe* No. 8829, Thursday 18 Nov. 2004, p. 5.

⁷⁷ Motion for a resolution B6-0168/2004, by Andrew Duff on behalf of the ALDE Group, 15.11.2004.

⁷⁸ According to ALDE, the threshold for individual censure should be the same as that used in the censure vote of Art. 201 EC: a two thirds majority of the votes cast, representing a majority of the component Member of Parliament. See Art. 100(7) Rules of Procedure of the European Parliament.

⁷⁹ Motion for a resolution B6-0168/2004, by Andrew Duff on behalf of the ALDE Group, 15.11.2004; Motion for a resolution B6-0188/2004, by Martin Schulz and Hannes Swoboda on behalf of the PSE Group, 16.11.2004.

A provisional agreement between the European Parliament and the Commission

In fact, as detailed as the list of demands was, so was Barroso's reaction to it. In a statement following the adoption of the resolution, he minutely expressed the Commission's position on the Framework Agreement, closely following the list of demands from beginning to end and agreeing on Parliament's wishes with only a few reservations.

Barroso agreed on paragraph (a) of the resolution asking the Commission President to either ask for the resignation of an individual Commissioner or explain his refusal before Parliament in case of a withdrawal of confidence. But he agreed 'without calling into question the principle of collegiality for which, under the Treaty, the President of the Commission is guarantor'.

With regard to paragraphs (b) and (c) of the resolution Barroso agreed that both in case of resignation and reshuffle of portfolios, the Commissioners in question 'should not appear officially before this Parliament until they have met with the relevant parliamentary committee'. Negotiations would have to reconcile this with Parliament's position.

Barroso was obviously less happy with the demands made in paragraph (d) on conflicts of interest. He interpreted it as a suggestion that he had not taken the necessary steps to avoid such conflicts. All he agreed to was that he would 'make any further changes that prove necessary in the light of experience'. In fact, the issue would prove to be among the most controversial in the negotiations on the Framework Agreement that followed the approval of the Commission.

An analysis of the demands and concessions on the political responsibility of the Commission shows that Barroso did not have to commit himself in the debate to every letter of the resolution dealing with the Framework Agreement, but that he did have to agree on the main issues. In fact, in concluding his statement, Barroso said that generally speaking he considered the resolution a good basis for a renewed Framework Agreement. The European Parliament thus received a general commitment on the political responsibility of the Commission that it had, by majority, asked for.

But Barroso did make a marginal comment during the plenary session on his willingness to co-operate. '(...) I have to say that this will not be done to the detriment of the Commission. I could not let this happen, because in Europe, we all need an independent, credible and strong Commission, in full respect of the Treaties'.⁸⁰

⁸⁰ <http://www.europarl.eu.int/omk/sipade3?SAME_LEVEL=1&LEVEL=4&NAV=X&DETAIL=&PUBREF=-//EP//TEXT+CRE+20041117+ITEM-009+DOC+XML+V0//EN>.

Negotiating the final text

After the approval of the Commission on 18 November 2004, two lines of development continued separately. One was the negotiation between the Commission and Parliament of the final text of the Framework Agreement. The other was the examination of the Framework Agreement and preparation by the Committee on Constitutional Affairs in the European Parliament of a proposal for a European Parliament decision to adopt the Framework Agreement.

The negotiations between the European Parliament and the Commission of the final text of the Framework Agreement were carried out by Julian Priestley, Secretary-General of the European Parliament and David O'Sullivan, Secretary-General of the European Commission.⁸¹ Priestley was in close contact with the Secretaries-General of the political groups in Parliament and reported back on what he did to the Conference of presidents. Negotiations on the final text were thus carried out in the first place by technocrats, with those politically responsible, such as the Commissioner for institutional relations and communication strategy, Margot Wallström, on the Commission's side and the Conference of Presidents on the Parliament's side, in the background. But when a final deal needed to be struck, a Conference of Presidents meeting was convened. In March an attempt by Wallström and the Conference of Presidents to come to a deal on the Framework Agreement led to nothing, for parties could not reach agreement on the most controversial issues, including the disclosure of information by Commissioners-designate and the responsibilities in case of a conflict of interests.⁸² Finally, on 14 April 2005, a compromise was found.

Involvement of the Committee on Constitutional Affairs

The procedure leading to the 2005 Framework Agreement was different from that leading to the 2000 Framework Agreement as a result of changes in the Parliament's Rules of Procedure. In a general revision of the Rules of Procedure in 2002 an amendment was made to Article 54 on Interinstitutional Agreements. As a consequence Interinstitutional Agreements were now subject to an examination by the Committee on Constitutional Affairs, before approval by Parliament and signature by the President.⁸³ This change was also reflected in Annex VI to the Rules of Procedure, which enumerates the powers and responsibilities of standing committees.⁸⁴ Since Interinstitutional Agreements can imply modification or inter-

⁸¹ Interview by this author with Guillaume McLaughlin, political assistant to Andrew Duff MEP, 24 May 2005.

⁸² Interview by this author with Justus Schönlau, assistant to Jo Leinen MEP, 20 June 2005.

⁸³ Consolidated Art. 120 para. 1, Rules of Procedure of the European Parliament, 16th version July 2004.

⁸⁴ Rules of Procedure of the European Parliament, 16th version July 2004, Annex VI, Powers and responsibilities of standing committees, XVIII. Committee on Constitutional Affairs, para. 4.

pretation of Parliament's Rules of Procedure, the Committee on Constitutional Affairs was to be involved before the agreement is signed.⁸⁵ According to the justification cited in the Report by Rapporteur Richard Corbett this was to avoid gridlocked situations.⁸⁶

In a response to these new powers the Committee on Constitutional Affairs appointed its chairman, Jo Leinen, as Rapporteur on 19 January 2005. The appointment of the chairman of the Committee on Constitutional Affairs as Rapporteur on this issue can be seen as an attempt to increase the influence on the negotiating process as well as to show the importance given to the issue.

On 14 March 2005, the Committee on Constitutional Affairs held a debate on the revision of the Framework Agreement. On 8 April, Jo Leinen presented his draft report to that same committee, followed on 26 April by proposals for amendments from other members of the committee. By that time, the Conference of Presidents had already given its fiat to the result of the negotiations conducted between the Commission and Parliament. The definitive version of Jo Leinen's report is dated almost a month after the deal of 14 April. On 12 May the Committee on Constitutional Affairs adopted the Report. This confirms that the two lines of action, the negotiating of the final text and the examination by the Committee on Constitutional Affairs were clearly separate.

Procedure

It is clear from the procedure described above that the Committee on Constitutional Affairs was not involved in negotiating the contents of the Framework Agreement. Although this is not contrary to the letter of Article 120 of the Rules of Procedure, the procedure was criticised by a majority in the Committee. The procedure used in practice does not seem to violate Article 120. But in this article on Interinstitutional Agreements important elements in the procedure, such as the role of the Conference of Presidents and the fact that negotiations are carried out by the Secretary-General under the auspices of that same Conference of Presidents, are not mentioned. The Conference of Presidents seems to base its competence on Article 24(3) of the Rules of Procedure, which states that 'The Conference of Presidents shall be the authority responsible for matters relating to relations with the other institutions and bodies of the European Union (...)'. The involvement of the Conference of Presidents was considered problematic since it delegated the negotiations to the Secretary-General of the European Parliament. The role of the Committee on Constitutional Affairs of examining the Interinstitu-

⁸⁵ Consolidated Art. 120 para. 2, Rules of Procedure of the European Parliament, 16th version July 2004.

⁸⁶ Report on the General Revision of the Rules of Procedure by the Committee on Constitutional Affairs, A5-0008/2002, Rapporteur: Richard Corbett, 28.1.2002.

tional Agreement in practice amounted to no more than the preparation of the decision to adopt the agreement. The Committee on Constitutional Affairs' criticism on the procedure has found its way into the Proposal for a European Parliament Decision prepared by Leinen. Recital E of the decision states:

Whereas, in the light of the negotiating process which culminated in the conclusion of a political agreement, it is essential that the conduct of negotiations should be entrusted to holders of a political mandate.⁸⁷

When the European Parliament approved the Leinen Report, it confirmed the criticism on the procedure. It remains to be seen however if the European Parliament will follow up on this criticism by proposing amendments to the Rules of Procedure.

Who should these holders of a political mandate be? A majority of MEPs obviously wants a more direct influence of MEPs on the negotiations on the final text. The element of parliamentary representation must allow for flexibility needed in conducting negotiations with the Commission. This means that the number of people involved should be limited. The main candidates for more direct involvement in the negotiations seem to be the Conference of Presidents and a delegation from the Committee on Constitutional Affairs. One argument against the Conference of Presidents is the fact that their agenda hardly allows them to dedicate the time and energy necessary for this subject. An argument in favour of the Committee on Constitutional affairs is that it combines a political mandate with technical expertise.

Final text of the framework agreement: political responsibility

On 26 May 2005 the European Parliament adopted the Report on the revision of the Framework Agreement on relations between the European Parliament and the European Commission. By adopting the 'Proposal for European Parliament Decision on the revision of the Framework Agreement on relations between the European Parliament and the European Commission' contained in this report, the European Parliament also approved the Framework Agreement itself, which is annexed to the decision. After this indirect approval the President, following the procedure of Article 120 of the Rules of Procedure, put his signature to the Framework Agreement. The same was done by President Barroso on behalf of the Commission.

⁸⁷ Leinen Report, *supra* n. 2, p. 3.

2005 Framework Agreement, paragraph II: Political responsibility

What follows here are parts of the 2005 Framework Agreement on Political Responsibility (Paragraph II) and a short comment by this author.

ARTICLE 2. Each Member of the Commission shall take political responsibility for the action in the field of which he or she is in charge, without prejudice to the principle of Commission collegiality.

The President of the Commission shall be fully responsible for identifying any conflict of interest which renders a Member of the Commission unable to perform his or her duties.

The President of the Commission shall likewise be responsible for any subsequent action taken in such circumstances; if an individual case has been re-allocated, the President shall inform the President of Parliament thereof immediately and in writing.

Comment: The first sentence is taken from the 2000 Framework Agreement.⁸⁸ The remainder of this provision is new and, as has been noted above, was one of the controversial points in the negotiations between Commission and Parliament. Barroso in the end had to give in to Parliament's wishes, which meant a victory for the European Parliament and especially for the ALDE group, which had asked for it in the first place. Responsibility for any future problems is now clearly established.

The obligation for the Commission President to inform the European Parliament whenever a case originally under the responsibility of one of the Commissioners has been re-allocated, follows from the last sentence and is new compared to both the old Framework Agreement and the 18 November resolution of the European Parliament. Obviously, it is inspired by the re-allocation of a number of cases originally under the responsibility of Commissioner for Competition Kroes to President Barroso.

ARTICLE 3. If Parliament decides to express lack of confidence in a Member of the Commission, the President of the Commission, having given serious consideration to that decision, shall either request that Member to resign, or explain his or her decisions to Parliament.

Comment: This part of the Framework Agreement is particularly interesting for its potential impact on the constitutional structure of the European Union. The obligation to give serious consideration to Parliament's decision was conceded by Prodi in 2000.⁸⁹ But the European Parliament wanted the commitment to go

⁸⁸ Provision 9, Framework Agreement of 29 June 2000, *see supra* n. 65.

⁸⁹ Provision 10, Framework Agreement of 29 June 2000, *ibid.*

further. It wanted the President of the Commission either to request resignation or *justify* his or her decision to Parliament. Upon appointment Barroso accepted this formula, but the Commission has been able to weaken the justification to an explanation. The practical outcome seems to be the same. If Parliament does not like the explanation, it can use the 'nuclear weapon' of voting down the entire Commission.

It should be mentioned here that the clause 'subject to political support for such a view, in terms both of substance and of form' in the 2000 Framework Agreement, has been left out in the 2005 version. This part, which basically asked for the motives for the lack of confidence to be *bona fide* and the majority supporting it to be sufficiently high – without explicating what that means –, has not been replaced by a clearer threshold. It should be recalled here that the ALDE group had originally asked for a clear majority of two thirds of the votes cast, representing a majority of the component Members of Parliament. The final result is significant because it opens the possibility of conflict arising over a lack of confidence expressed by a simple majority, forcing Barroso – and possibly the European Council – to respond even without a two-thirds majority. The Commission President obviously has discretion here, but cannot simply ignore a lack of confidence.

ARTICLE 4. Where it becomes necessary to arrange for the replacement of a Member of the Commission during his or her term of office pursuant to Article 215 of the Treaty establishing the European Community, the President of the Commission shall immediately contact the President of Parliament in order to reach agreement on the manner in which the President of the Commission intends to ensure the presentation of the future Member before Parliament without delay and in full compliance with the prerogatives of the Institutions.

Parliament shall ensure that its procedures are conducted with the utmost dispatch, in order to enable the President of the Commission to be informed of Parliament's position in due time before the Member is called upon to exercise duties as the Commission's representative.

Comment: Parliament wanted a validation procedure for the nomination, including a hearing and a vote in plenary. Barroso on 18 November 2004 only conceded that the Candidate would meet with the responsible committee. Parliament finally got a presentation of the future Member before Parliament, for which the manner is still left to be decided. It has thus not been given a right to approve new Candidates during a Commission term. Legally a new Commissioner can start in office during a term after appointment by the Council through a qualified majority vote and without Parliament's approval. The Commission does not want to go any further than a hearing, referred to as 'procedures' and an evaluation letter, referred to as 'Parliament's position'. Of course, it remains to be seen what may happen, if Parliament would spontaneously organise a vote and reject a new Commissioner.

ARTICLE 5. The President of the Commission shall immediately notify Parliament of any decision concerning the allocation of responsibilities to a Member of the Commission. Where the responsibilities of a Member of the Commission are changed substantially, that Member shall appear before the relevant parliamentary committee at Parliament's request.

Comment: This provision is not new. It has only been slightly reformulated compared to the 2000 Framework Agreement.⁹⁰ Here, also, the European Parliament did not get the validation procedure it demanded in its 18 November resolution. The message to Parliament is: yes to a meeting with the Commissioner in question, maybe yes to an evaluation, but a clear no to a vote. Parliament's explicit approval is not needed here.

ARTICLE 6. Any changes to the provisions of the Code of Conduct for Members of the Commission relating to conflict of interest or ethical behaviour shall be sent immediately to Parliament.

The Commission shall take into account the views expressed by Parliament in that regard.

Comment: This provision is new and has been inspired on a different provision of the 2000 Framework Agreement.

ARTICLE 7. In conformity with Rule 99 of its Rules of Procedure, Parliament shall communicate with the President-designate of the Commission in good time before the opening of the procedures relating to the approval of the new Commission. Parliament shall take into account the remarks expressed by the President-designate.

The procedures shall be designed in such a way as to ensure that the whole Commission-designate is assessed in an open, fair and consistent manner.

The Members of the Commission-designate shall ensure full disclosure of all relevant information, in conformity with the obligation of independence laid down in Article 213 of the Treaty establishing the European Community.

Comment: This provision is completely new and has come up during the negotiation between Commission and Parliament after the approval of the Commission on 18 November. In fact, nothing of it derives from the 18 November resolution. Part one and two of this provision amount to a recognition by the Commission of the parliamentary committee hearings held during the approval process of a new Commission on the basis of Rule 99 of the Rules of Procedure of the European Parliament. The initiative for a reform of the procedure was taken by Parliament

⁹⁰ Provision 11, Framework Agreement of 29 June 2000, *ibid.*

through the adoption of the guidelines on the approval of the Commission, discussed in Part I of this article.

The third part on disclosure of information relates to the commotion about a past conviction of Commissioner Jacques Barrot for embezzlement, on which nothing was publicly known until the day of the Commission's approval when MEP Farrage brought it up in the plenary.⁹¹ This provision is meant to avoid such a situation in the future. It was one of the controversial issues in the negotiations between Commission and Parliament.⁹²

Clash between the European Parliament and the Council

The Council has always been opposed to the conclusion of the Framework Agreement between the European Parliament and the Commission. On 1 July 2005, the following statement of the Council was published in part C of the Official Journal of the European Union:

The Council has taken note of the framework agreement on relations between the European Parliament and the Commission signed on 26 May 2005 by the two institutions, notwithstanding the spirit of Declaration No 3 on Article 10 of the Treaty establishing the European Community contained in the Final Act of the Nice Treaty.

Recalling its statement of 10 July 2000, the Council is concerned at the fact that several provisions of the new framework agreement seek to bring about, even more markedly than the framework agreement of 2000, a shift in the institutional balance resulting from the Treaties in force. It regrets not being informed earlier, in a spirit of sincere cooperation, of the negotiations on this new framework agreement. It further regrets that the two institutions concerned did not feel the need to take account of the points on which it had expressed concern in its appropriate bodies, before the agreement was signed.

The Council would point out in particular that under the EC Treaty (Article 201), a motion of censure on the activities of the Commission can only be tabled against all the members of the Commission as a college, and not an individual member. Article 217 enshrines the principle of collective responsibility for Commission action. (...)

The Council stresses that the undertakings entered into by these institutions cannot be enforced against it in any circumstances. It reserves its rights and in particular the right to take any measure appropriate should the application of the provisions of the framework agreement impinge upon the Treaties' allocation of powers to the institutions or upon the institutional equilibrium that they create.⁹³

⁹¹ F. Mariatte, 'France: The Jacques Barrot Way', 1 *EuConst* (2005) p. 201.

⁹² Interview by this author with Justus Schönlaue, assistant to Jo Leinen MEP, 20 June 2005.

⁹³ *OJ* [2005] C 161/1. This statement was prepared in Coreper and preceded by a contribution from the Legal Service of the Council and one of the Groupes conjoints 'Antici/Conseillers juridiques'.

In this statement several elements of the Council's criticism can be distinguished. In the first place, the Council opposes the Framework Agreement as an autonomous instrument regulating the relations between the Commission and Parliament. It invokes Declaration No. 3 in the Final Act of the Treaty of Nice on Article 10 of the EC Treaty and, since the declaration is not legally binding, it emphasizes its spirit. It is highly questionable whether such an argument will stop Parliament from demanding constitutional agreements from the Commission.

Secondly, the Council deplores the lack of consideration for the Council's position shown by Commission and Parliament. It regrets not having been informed earlier of the negotiations on the agreement. Moreover, the Council regrets that the other institutions have not taken into account the substantial issues it raised. These arguments concern the Council's involvement and can therefore be seen as being of a procedural nature. One wonders whether the Council has not put itself outside the negotiations by its strategy of objecting to the instrument as such. By accepting it, the Council could decide on a more active strategy.

Thirdly, the Council raises substantial objections of which the one most relevant for this article has been cited. It concerns the principle of collective responsibility following from Article 217 EC Treaty. This principle would not allow a motion of censure against an individual Member of the Commission. As seen above, the Council finds the Commission on its side on this point. In fact, a direct right of censure against individual Commissioners has not been conceded.

Lastly, the Council stresses that the undertakings following from the Framework Agreement cannot be enforced against it. All its rights must be safeguarded and the Council in particular reserves the right to take necessary measures if the Framework Agreement leads to a violation of the allocation of powers or the institutional equilibrium laid down in the Treaties. Formally, both Commission and Parliament agree to this point. The penultimate recital of the 2005 Framework Agreement states that it 'does not affect the powers and prerogatives of Parliament, the Commission or any other institution or organ of the European Union but seeks to ensure that those powers and prerogatives are exercised as effectively as possible'.⁹⁴ In reality Parliament occasionally tries to stretch the formal provisions of the Treaty through the Framework Agreement.

Substance: Political responsibility

Through the Framework Agreement of 2000 and its 2005 update, Parliament has been able to create a mechanism for calling an individual Commissioner to account for his or her actions. But this cannot be done directly through a motion of censure on an individual Commissioner. It will have to go through the President

⁹⁴ Leinen Report, *supra* n. 2, p. 10.

of the Commission, who will be called upon to act by dismissing the Commissioner in question or explaining a refusal to dismiss (see provision 3). Through this mechanism a vote expressing lack of confidence in an individual Commissioner will only be effective if the importance attached to it is such as to provoke a motion of censure on the whole Commission in case the President of the Commission does not follow-up on Parliament's vote. The President of the Commission will have to make that assessment.⁹⁵

The construction via the Commission President agreed to here is analogous to the one applied in practice in the case of Buttiglione's withdrawal in October 2004. The experience with Buttiglione suggests that also during a Commission's term the President of the Commission will need the European Council to agree on the replacement of a Commissioner. And again he will have to balance his solution to the major political forces in Parliament.

A difference with the Buttiglione crisis is that here we are dealing with a conventional constitutional agreement without the existence of a precedent. No individual Commissioner has yet been forced to resign during a Commission's term. It is therefore a textual element in the constitutional structure of the EU without legally binding force. Just like the factual development in the Barroso Drama, this textual structure has come into existence through the leverage of the ultimate political sanction available to Parliament, namely censure of the whole Commission.

The limits to the political control of Parliament over individual Commissioners are not only caused by the mechanism described above. In fact, the independent character of the Commission representing all major political forces means that, in practice, a lack of confidence in an individual Commissioner will not easily arise over traditional political issues. In case of a fundamental political conflict, it would automatically be a matter for the entire Commission, for the Commission takes its decisions on a collegial basis. Lack of confidence in individual Commissioners would seem to be reserved for matters of personal integrity. The title 'political responsibility' is thus somewhat misleading as far as Article 3 of the Framework Agreement is concerned.

Conclusion

The approval procedure of the Commission has developed into a central moment for Union institutional development. Demands are expressed by European Parliament to the President-designate of the Commission to include new items into the Framework Agreement. That is not to say that the President-designate has to agree to all of Parliament's wishes in full. But he or she does have to address them

⁹⁵ Formally he needs approval by his college (Art. 217 EC).

seriously upon approval and make concessions. The origin of the agreement should be understood as a result of negotiations between the two institutions and seen in the light of the opposition by the Council, expressing the resistance of member states inside the Union framework.

Parliamentary control over individual Commissioners has been increased by the European Parliament, using non-legal instruments. Again, that is not to say that the principle of individual responsibility is now fully established. But a procedure for sanctioning individual Commissioners has been created, albeit through the President of the Commission and via the leverage of the power of censure of the whole Commission.

The above analysis has shown that several important provisions of the Framework Agreement are results of the events of the Barroso Drama. Thus, the procedure after the withdrawal of confidence in an individual Commissioner has been inspired by the Buttiglione case, the provision on a conflict of interest by the survival of Kroes and Fischer Boel, whereas the text on disclosure of information is a result from the surprise caused by Barrot.

FINAL REMARKS

While member states are in a privileged position because of their formal monopoly in creating legal Treaty rules (Article 48 EU), the European Parliament has used the leverage of its power of approval of the Commission to increase its formal control over the Commission and individual Commissioners.

By provoking the withdrawal and change of portfolio of individual Commissioners, the European Parliament has taken major steps in the development of Commissioner's individual responsibility to Parliament, testing the collegial character of the Commission. The European Parliament has demanded a mechanism to establish the responsibility of individual Commissioners during their term in a reaction to past events, namely the fraud crisis. The mechanism laid down in the 2005 Framework Agreement – i.e., responsibility channelled through discretion of the Commission President – is analogous to the construction applied in practice in reaction to the performance of especially Buttiglione in his parliamentary committee hearing. A next series of events may show if this can be taken further, to include the rejection or censure of one individual Commissioner.

