



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION

to the Intergovernmental Conference on the reform of the institutions

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Subject: The Commission's internal organisation

1. In its Opinion of 26 January 2000 on the institutional reforms to be undertaken to prepare the Union and its institutions for enlargement,¹ the Commission proposed that the composition of the Commission be revised either by restricting the number of Members to twenty and laying down in the Treaty a rotation system based on the principle of equality or by stipulating that the Commission would always be composed of one national of each Member State and undertaking a major reorganisation of the Commission.

Regardless of the final decision on the composition of the Commission - whether it is to be made up of a national of each Member State at all times or whether a rotation system based on the principle of equality is to be introduced in the medium or short term, the Commission is frequently asked to explain the measures proposed in its Opinion with a view to maintaining the institution's decision-making capacity and preserving its collective responsibility after enlargement. This Communication describes the amendments to be made to the Treaties and outlines certain separate adjustments that could be made to the Commission's working procedures.

2. A distinction must be drawn between the matters considered here relating to the structure and organisation of the Commission's proceedings and the internal reform process under way since the present Commission took office. Those reforms are concerned with modernising and improving the workings of the administration and must be carried out regardless of the number of Members of the Commission.
3. In many respects, the structure and organisation of the Commission's proceedings also need to be looked at closely regardless of the number of Members.

The tasks carried out by the Commission have changed enormously since the European integration process began. At first the Commission devoted most of its resources to the application of Community law and the formulation of various European policies as a prelude to exercising its right of initiative. Other tasks came to be added to this basic function - such as managing Community policies and implementing the budget and Community programmes - which now demand much greater resources. Today the role assigned to the European Union has become more varied and more complex. The relative workload involved in these different tasks has changed and this shift needs to be taken into account in organising the Commission's business.

In performing these management tasks, the Commission must display all the speed and efficiency offered by modern information and communications tools. It is expected to act and react quickly.

¹ COM (2000) 34 – *Adapting the institutions to make a success of enlargement* (26 January 2000).

Another force for change - enlargement - will substantially increase the size of the Union territory. Contacts will have to be kept up with decision-makers in an even greater number of Member States, imposing constraints which must be taken into account in organising the Commission's business.

4. At all events the organisational structure to be established in order to preserve the Commission's capacity for action in this new environment must respect the principle of collective responsibility, whereby all Members of the Commission take part as equals in the decision-making process, regardless of their nationality, and all Members are collectively accountable for those decisions.

In the above-mentioned Opinion, the Commission pointed out the profound difference between the role and workings of the Commission and that of a national government, which is held together by a common political tendency or coalition interests and has the backing of a Parliamentary majority to implement its political programme. This explains how national governments can have a large number of Ministers without weakening their capacity for action. The Union's institutional system clearly rules out such an arrangement at this stage of its development. What gives the Commission its legitimacy and internal coherence is not only the appointment procedure but its collective decision-making. It is conceivable that a balance could be struck in other ways, for example by establishing a different procedure for appointing the Commission President. This would require fundamental changes in the institutional framework.

5. Before outlining possible reforms, it is worth recalling how the principle of collective responsibility operates at present in the organisation of the Commission's proceedings.
 - The President assigns each Member of the Commission fields of activity for which he or she is responsible, from the preparation of the Commission's proceedings to implementation of its decisions. However, the decisions themselves are adopted not by the individual Member responsible, but by the whole Commission.
 - Decisions are adopted at Commission meetings, which are generally held once a week and are attended by all Members. The Commission takes a decision on a proposal from one of its Members, generally - but not necessarily - the Member responsible for the field in question. Decisions are very often taken by consensus. Where appropriate, a vote is taken, in which case the decision is adopted by a simple majority of the Members.
 - For certain issues or fields of activity, the President may set up working groups of Members, appointing their chairperson. These groups have no decision-making powers, but prepare the ground for the Commission's subsequent deliberations.
 - Commission meetings are prepared by meetings of the Members' Chefs de cabinet, so that Members can take part in the Commission's deliberations armed with a full knowledge of matters for which they have no direct responsibility. Thus, decisions are genuinely taken on a collective basis.
 - To ease the workload of Commission meetings, a system of decision-making by written procedure has been established. The text of the draft decision is sent to all Members of the Commission. Unless a Member asks for a debate on the draft, the decision is deemed to have been adopted on expiry of an agreed time-limit.

- Finally, the Commission may empower one of its Members to take or adopt on its behalf clearly defined management or administration measures. The principle of collective responsibility is still observed, as the empowerment procedure can be used only subject to strict conditions laid down by the Commission as a whole and only for preparatory instruments or decisions where there is no margin of discretion. Decisions taken by the empowerment procedure are notified to all Members of the Commission.
6. The reforms to be introduced in the way the Commission's proceedings are structured and organised **fall partly under the Treaties**² and **partly under separate adjustments**, to be laid down for example in the Commission's Rules of Procedure.

Treaty provisions on the Commission's structure should be kept to a bare minimum. Rather than lay down the details of internal organisation, the Intergovernmental Conference should empower the President to take the organisational measures that are required for the smooth operation of the Commission, as and when necessary. This is the thinking behind the amendments to the Treaty proposed by the Commission in its Opinion of 26 January. Without undermining the institution's independence, the amendments confirm the President's role of ensuring that the Commission acts effectively.

I. Amendments to be made to the Treaties

7. At present the Treaties contain only a small number of provisions on the Commission's internal organisation:
- the Commission works under the political guidance of its President (first paragraph of Article 219 EC);
 - the Commission acts by a majority of its Members (second paragraph of Article 219 EC); the number of Members present required to constitute a quorum is laid down in the Rules of Procedure (third paragraph of Article 219 EC);³
 - the Commission may appoint one or two Vice-Presidents from among its Members (Article 217 EC);
 - the Commission lays down its own Rules of Procedure to ensure that both it and its departments operate smoothly (Article 218 (2)).
8. The main features of the Commission's internal organisation described at point 5 are therefore determined by its Rules of Procedure. Amendments to the Treaties are needed to enhance the President's capacity to organise the Commission's proceedings and to confer new powers on him or her to that effect. Apart from his or her role in constituting the Commission, the only right enjoyed by the President under the present

² This Communication refers only to the EC Treaty, but the necessary adjustments will also have to be made to the ECSC and Euratom Treaties.

³ Under the Rules of Procedure, the quorum is a majority of Members, but Members are also required to attend Commission meetings (Articles 7 and 5 of the Commission's Rules of Procedure, OJ 1999, L 252, p. 41)

Treaty is that the Commission must work under his or her guidance (first paragraph of Article 219).

9. The Commission therefore proposed a number of amendments to the Treaties in its Opinion of 26 January.⁴ Given the forces for change described at point 3, these amendments are already useful now; they will be even more important should the number of Members be increased, in order to strengthen the role of the President.
- (1) In its Opinion the Commission recommended "*significantly increasing the President's power to allocate or not allocate portfolios and departments to Members of the Commission. The result would be that some Commissioners might be given special responsibilities only on an ad hoc basis. The choice would be for the President*".

A similar provision is laid down in the Commission's Rules of Procedure.⁵ Inserting it in the Treaty would give the President the political scope he or she needs to organise the different areas of responsibility as efficiently as possible. Rather than artificially divide up existing administrative structures, it would undoubtedly make more sense, should the present number of Members be increased, to entrust certain Members with specific tasks which do not necessarily require the support of an entire Directorate-General.⁶

The Commission therefore proposes that the third paragraph of Article 217 EC should in future read as follows: "The President may entrust to Members of the Commission, for the duration of their term of office or part thereof, specific tasks or missions, with administrative departments to support them if necessary."

- (2) In its Opinion the Commission also recommended that provision be made in the Treaty for "*the possibility that the Commissioners coordinate and oversee the work of certain other colleagues who would be answerable to them. It would be logical to provide in the Treaty specific powers to this end for Vice-Presidents whose number could be higher than the one the Treaty provides at present*".

Since the Maastricht Treaty the Commission has been able to appoint one or two Vice-Presidents from among its Members.⁷ During the present conference, the possibility

⁴ The proposed amendments to the Treaty are reproduced in the Annex. Here the Commission's recommendations are printed in italics.

⁵ Article 3 of the Rules of Procedure states that, "*The President may assign to Members of the Commission special fields of activity with regard to which they are specifically responsible for the preparation of Commission work and the implementation of its decisions. He may also change these assignments at any time.*" This recent amendment to the Rules of Procedure (which previously stated that fields of activity could be assigned by the Commission) followed Declaration No 32 adopted by the Conference which concluded the negotiation of the Amsterdam Treaty ("...the President of the Commission must enjoy broad discretion in the allocation of tasks within the college, as well as in any reshuffling of those tasks during the Commission's terms of office").

⁶ Participation in the work of the Intergovernmental Conference is a good example of a task which does not require major administrative support.

⁷ Originally, Vice-Presidents were appointed by the Member States. Their number has varied. From 1958 to 1972, there were three Vice-Presidents among the nine Members of the Commission (except between 1967 and 1970, when there were four among fourteen Members, following the merger of the executives of the three Communities). From 1973 to 1985, there were five Vice-Presidents among thirteen (or, from 1982, fourteen) Members. From 1985 to 1992, there were six Vice-Presidents among seventeen Members.

of increasing this number has been raised. The number of Vice-Presidents depends of course on the tasks which the President wishes to assign to them and the structure he or she intends to establish. Provision should therefore be made in the Treaty for the President to determine the number of Vice-Presidents who will help ensure the consistency of the Commission's action in specific fields.

At present the task of appointing Vice-Presidents falls to the Commission. However, the political reality is that portfolios are distributed and Vice-Presidents nominated before Parliament holds its vote of approval and the Commission is appointed by the governments of the Member States. The text of the Treaty should therefore be adapted to confer the power of appointment on the President.

The Commission therefore proposes that paragraph 2 of Article 217 EC should read as follows: "The President may appoint Vice-Presidents from among the Members of the Commission, with responsibility for coordination and management of the Commission's activities in a specific area."

- (3) In its Opinion the Commission recommended "*giving more power to direct policy to the President, who would then have a casting vote in Commission discussions, the power to oppose any initiatives he or she deemed inappropriate and the power to remove Commission Members from office.*"

The overwhelming majority of delegations at the Intergovernmental Conference want the President's powers to be strengthened. This would cover not only the organisation of the Commission as a body, but an extension of his or her powers to direct policy.

In this context the Commission proposes that the political commitment given by Members of the present Commission to resign if asked to do so by the President be formally incorporated in the Treaty. The President could then ask for the resignation of a Member of the Commission whose conduct conflicted with the political guidelines he or she had laid down. It would be conceivable for the Commission as a whole, at the initiative of the President, to adopt a position on the resignation of one of its Members, the Member in question taking no part in the vote.

Finally, giving the President a casting vote in deliberations would confirm his or her power to direct policy. Of course for this amendment to have any real effect there would have to be an even number of Members.

The Commission therefore proposes that the present first paragraph of Article 219 be deleted and a new first paragraph be added to Article 217, to read as follows: "The President shall determine the political orientations of the Commission." A new sentence would then be added to Article 215: "A Member of the Commission shall resign if asked to do so by the President." Finally, the following sentence would be added to the second paragraph of Article 219: "Where votes are evenly divided, the President shall have a casting vote."

- (4) In its Opinion the Commission proposed the introduction of "*new rules allowing Commissioners to take, in the name of the Commission or under its responsibility, decisions of daily management.*"

It is clear that all delegations at the Conference rule out changes that would weaken the principle of collective responsibility – which would be the case if Members were to take decisions in their own name, thus paving the way to individual accountability before the European Parliament.

It is therefore more appropriate to confirm the use of the empowerment procedure, already standard practice under the Commission's Rules of Procedure. Greater legal certainty would be achieved by inserting a specific reference to this procedure in the Treaty. The Commission therefore proposes that the following paragraph be added to Article 219: "The Commission may empower one or more of its Members to take decisions on its behalf in specific fields, subject to such conditions and restrictions as it shall impose in its Rules of Procedure".

The scope of Commission decisions taken by the empowerment procedure could thus be extended, for example to the management of Community policies and implementation of the budget, within a well-defined legislative and budgetary framework. As is the case at present, each Member of the Commission would have to decide whether, on the grounds of political sensitivity or in view of the importance of the issue at stake, he or she wished to consult the President and/or put a decision to the Commission as a whole.

II. Separate adjustments to the workings of the Commission

10. Besides the above amendments to the Treaties, the Commission will have to adapt its working methods to ensure that its action remains consistent and effective.

Even more than in the past, the annual work programme will be an indispensable tool for ensuring consistency and effectiveness, and in particular adherence to the political guidelines laid down by the President. The Commission has therefore decided to frame its activities in an increasingly integrated process of strategic planning, programming and activity-based budgeting. Strategic planning and programming cycles will be used to determine the Commission's policy priorities and core activities and to set the medium and long-term objectives which will make up the work programme. Better planning will mean that each Commission meeting can concentrate on matters relating to the same field of activity.

11. Beyond that, any reorganisation of the Commission's proceedings should pay special attention to the following aspects:
 - the preparation of Commission meetings, which could for example be the subject of meetings between the President and Vice-Presidents.
 - the frequency of Commission meetings;
 - the role of groups of Members;
 - the role of Vice-Presidents - over and above what is provided for in the Treaty. Vice-Presidents could be appointed to chair working groups set up by the President under the Commission's Rules of Procedure.
12. These guidelines are given for illustrative purposes only. There can be no question of prejudging the decisions that might be made by the present or future Commission.

Moreover, it is worth pointing out that any change in the Commission's detailed working procedures is solely a matter for the Commission itself.

Extracts from the Opinion of 26 January 2000

Current text of EC Treaty

ARTICLE 215

Apart from normal replacement, or death, the duties of a Member of the Commission shall end when he resigns or is compulsorily retired.

The vacancy thus caused shall be filled for the remainder of the Member's term of office by a new Member appointed by common accord of the governments of the Member States. The Council may, acting unanimously, decide that such a vacancy need not be filled.

In the event of resignation, compulsory retirement or death, the President shall be replaced for the remainder of his term of office. The procedure laid down in Article 214(2) shall be applicable for the replacement of the President.

Save in the case of compulsory retirement under Article 216, Members of the Commission shall remain in office until they have been replaced.

Draft amendment

ARTICLE 215

A Member of the Commission shall resign if asked to do so by the President. Apart from normal replacement or death, the duties of a Member of the Commission shall end when he resigns, voluntarily or **at the request of the President or when** compulsorily retired.

The vacancy thus caused shall be filled for the remainder of the Member's term of office by a new Member. **This new Member, nominated by common accord by the President and the governments of the Member States, shall be** appointed by common accord of the governments of the Member States. The Council may, acting unanimously, decide that such a vacancy need not be filled.

In the event of resignation, compulsory retirement or death, the President shall be replaced for the remainder of his term of office. The procedure laid down in Article 214(2) shall be applicable for the replacement of the President.

Save **in the case of resignation at the request of the President or** in the case of compulsory retirement under Article 216, Members of the Commission shall remain in office until they have been replaced.

ARTICLE 217

The Commission may appoint a Vice-President or two Vice-Presidents from among its Members.

ARTICLE 219

The Commission shall work under the political guidance of its President.

The Commission shall act by a majority of the number of Members provided for in Article 213..

A meeting of the Commission shall be valid only if the number of Members laid down in its Rules of Procedure is present..

ARTICLE 217

The President shall determine the political orientations of the Commission.

The President may appoint Vice-Presidents from among the Members of the Commission, with responsibility for co-ordination and management of the Commission's activities in a specific area.

The President may entrust to Members of the Commission, for the duration of their term of office or part thereof, specific tasks or missions, with administrative departments to support them if necessary.

ARTICLE 219

(deleted following reformulation of Article 217).

The Commission shall act by a majority of the number of Members provided for in Article 213. **Where votes are evenly divided, the President shall have a casting vote.**

A meeting of the Commission shall be valid only if the number of Members laid down in its Rules of Procedure is present.