
The European news service from Eversheds LLP

Europe in Brief

Issue 7/2004

The European Commission's Trials and Tribulations

Regular Europe in Brief readers will recall that Issue 6/2004 discussed the constitution of the new European Commission, which was due to take office in Brussels on 1 November 2004. You may notice the word "was".

To recap: the Commission, which is effectively the European Union's executive government and whose members have very wide powers to run their respective departments, is appointed in several stages. Firstly, the President of the Commission is appointed by the heads of the 25 EU member states. This is usually the most contentious part of the proceedings.

In a next step, each member state nominates a Commissioner. However, the portfolio of each Commissioner is allocated by the President in his absolute discretion. Once that has been done, the directly elected European Parliament votes the new Commission into office, after each Commissioner has been interviewed and declared suitable for the job by a Parliamentary Committee. Although these interviews can last several hours each and can be rather inquisitive, so far Parliament has never refused to confirm the President's proposed candidates.

At first there appeared to be nothing unusual about the current round of interviews. Some candidates, such as the UK Commissioner Peter Mandelson who is due to take over the coveted Trade post, made a better impression than expected. Others were subjected to some criticism: the Hungarian Commissioner Laszlo Kovacs was deemed to be rather ignorant of his proposed Energy portfolio, the designated Dutch Antitrust Commissioner Neelie Kroes was criticised for being on the boards of several major companies such as Lockheed Martin, and the Danish candidate for the Agriculture post, Mariann Fischer Boel, was accused of being conflicted due to being the owner of a heavily EU-subsidised farm. However, none of these criticisms was out of the ordinary or posed a serious threat to the expected approval of the Commission.

Finally, it was the turn of the Italian Commissioner-designate, Rocco Buttiglione, to be interviewed. The conservative Buttiglione had always been very open about his staunchly Catholic views, however, in response to a question on the recurring topic of the legal status of same-sex relationships, he stated that in line with the European Treaty's no-discrimination policy he would not discriminate against anyone, although personally, he thought that homosexuality was a sin.

These remarks caused outrage among MEPs, exacerbated shortly afterwards by the news that Buttiglione had, at a conference on US-EU relations, stated that single mothers are not very good mothers, and that marriage is intended to allow women to have children and to have the protection of a male. Although the Commissioner-designate quickly realised his mistake and qualified his statements, the damage was already done and it became obvious that the European Parliament was not prepared to confirm Buttiglione as Commissioner with the required majority.

This may look like a clear case of denying freedom of speech. However, the particular twist in this matter was the fact that Buttiglione was due to take over the Justice and Home Affairs department, with the overall responsibility for implementing European social policy and drafting all relevant legislation concerning, among other issues, the status of single mothers and same-sex relationships. Indeed, the European Parliament made it clear to President Barroso that it would confirm Buttiglione despite his views, provided he was given a different, less sensitive portfolio. But Barroso refused to move Buttiglione to a different portfolio, and the Italian Prime Minister Silvio Berlusconi refused to appoint a different Commissioner for Italy. On the eve of the decisive vote, Barroso told the European Parliament that he was withdrawing his whole proposed Commission, in order to avoid a predictable defeat.

Reactions to this unprecedented event ranged from fears that the standing of President Barroso had been irreparably damaged before he had even taken office, to triumph over the shift in the balance of power within the European Union and the newly-found confidence of the Parliament as the elected representatives of the people.

Ironically, the ceremonial signing of the new European Constitution by the heads of state of all member states took place on 29 October 2004, two days after Barroso's withdrawal. That Constitution, once ratified by the member states (see Europe in Brief 5/04), will increase the European Parliament's power within the legislative process.

The current Commissioners, who were supposed to have left office a week ago, are now staying on in a caretaker role until a new Commission has been confirmed. Barroso has presented a reshuffled team, not including Buttiglione, which the European Parliament is currently expected to confirm on 18 November 2004. The new Commission could, all being well, be in office by the end of this month. The outgoing President of the Commission, Romano Prodi, has therefore expressed his hope that after five years' service at the helm of the Commission he will soon be able to return to his native Italy, where he is expected to use his Brussels-honed unifying powers to help the disparate opposition parties topple the controversial Berlusconi government.

Update: Microsoft

Microsoft is reported to have settled a number of outstanding disputes with before US courts, in particular claims brought by Novell and the CCIA (Computer and Communications Industry Association). While this does not have any direct bearing on the ongoing appeal by Microsoft against the European Commission's decision to fine it more than \$640 million for breach of antitrust laws earlier this year, it does remove the Commission's strongest industry supporters, and leaves RealNetworks as its only heavyweight ally.

The CCIA, in particular, had provided the Commission with the industry expertise necessary to secure the March 2004 infringement decision, and had also invested heavily into the Commission's defence against Microsoft's ongoing appeal before the European Courts, in which a decision is expected later this month. As if this was not enough, the CCIA is also reported to have withdrawn a separate complaint against Microsoft relating to the Windows XP software, and although in theory this would not prevent the Commission from launching an investigation, in practice its dwindling support and resources make it less and less likely that the Commission can continue its six-year campaign.

We will keep you up to date on further developments.