



# BULLETIN

No. 34 (34) • June 16, 2009 • © PISM

Editors: Sławomir Dębski (Editor-in-Chief), Łukasz Adamski, Bartosz Cichocki,  
Mateusz Gniazdowski, Beata Górka-Winter, Leszek Jesień, Agnieszka Kondek (Executive Editor),  
Łukasz Kulesa, Ernest Wyciszekiewicz

## The Problem of 2009 Election of a New European Commission

by Aleksandra Kreczmańska

*Uncertainty over the ratification of the Lisbon Treaty will render difficult the process of forming a new European Commission in 2009, as the legal framework (Nice Treaty or Lisbon Treaty) on which to base the procedure is unclear. The President of the Commission could be nominated this summer, but the election of the commissioners is likely to follow only after the referendum in Ireland. The need to ensure an efficiently working Commission is an argument for shortening as much as possible the period of EU's institutional uncertainty.*

**Lisbon Treaty Ratification Problem.** By its provisions, the Lisbon Treaty is due to come into force on the first day of the month following the deposit of the last instrument of ratification. Assuming that the Irish referendum (due this September or October) produces a positive result and that the remaining states (including Poland) complete their ratification procedures, the Lisbon Treaty could come into force on 1 December 2009 at the earliest. Only then it will be clear which treaty—of Nice or of Lisbon—constitutes the basis for the appointment of the Commission. Under the Lisbon Treaty the “one country—one commissioner” rule would continue to apply during the Commission’s term commenced in 2009. In contrast, under the Nice Treaty currently in effect the number of Commission members must be lower than the number of member states. This is a difference of fundamental importance to the appointment of a new Commission, particularly with Ireland loath to see the number of commissioners reduced.

**Appointment of New Commission President.** The procedure for appointment of the European Commission (EC) President provides for cooperation of the European Council and the European Parliament (EP). In its December 2008 Conclusions the European Council decided that the process of appointment of the future Commission, in particular the designation of its President, would be initiated “without delay” after the EP elections (the European Council is due to hold its next meeting on 18–19 June). The Parliament took a similar position in the Dehaene report adopted in May 2009, although the report emphasized that the election of the European Commission ought to be preceded by consultations with the political groups in the Parliament, as provided for in the Lisbon Treaty.

If the European Council stands by these arrangements, not only will the time allowed for consultations with the EP be sparse, but the consultations will take place with the Parliament not yet fully formed (e.g. with the composition of the political groups still unknown). The Parliament could approve a President-designate at its inaugural session (14–16 July). If the European Council fails to reach agreement at its nearest summit, it could hold an extraordinary meeting, as was the case, for instance, in July 2004.

The nomination of the President could be postponed till the autumn. One advantage of a decision to that effect would be that the entire procedure would commence following the Irish referendum. Moreover, the Lisbon Treaty provides for the creation of a new post of a European Council President and it modifies the powers of the EU High Representative for Foreign Affairs and Security Policy. Nominations for these positions will probably take place in the autumn as well, or by the end of 2009 at the latest. Any later appointment of the European Commission President would enable this designation to be combined with the nominations to the remaining functions, and contemporaneous decision-taking on the filling of the three positions would make political negotiations easier. Yet this

seems to be a less likely scenario because, given the present situation of institutional uncertainty, the EU states are more likely to push for early appointment of at least the EC President.

**European Parliament's Impact on Commission President Nomination.** Electing the EC President in the coming weeks would have the advantage of establishing a clear connection between this nomination and the result of the EP elections—something the MEPs are particularly anxious for. By taking into account the present composition of the EP as it designates its candidate, the European Council would be complying with the postulate of a stronger political impact of EP elections on the composition of the Commission. Yet, in the absence of a European Socialist Party candidate and with a strong (owing to broad endorsement by the European Council) position of José Barroso, the nexus between the voting returns and the nomination of the Commission President remains frail.

Barroso is the candidate of the European Popular Party (EPP), which in the new EP will retain the largest-group status. Even so, to have him voted in, the EPP will need the support of other political groups, notably the liberals (ALDE)—which is not yet certain. The composition and ultimate size of a coalition supporting the European Commission President are important inasmuch as under the Lisbon Treaty 369 votes will be required to have the candidate approved—to the EPP's 264. In view of the socialists' unexpectedly poor performance, concepts of forming a coalition capable of challenging the Barroso candidacy, or of wrangling certain concessions from him, are becoming less realistic. Even with the support of the extreme Left and of the liberals, a coalition of socialists and Greens has no majority required to bring in its own candidate.

**Election of College of Commissioners.** Nominations of the remaining European Commission members and successive stages of the formation of the Council (hearings of the commissioner designates before the Parliament, and the EP vote on the entire college) will commence late in the autumn. As the issue of a reduced number of commissioners could trigger political conflicts, it will not be dealt with earlier than necessary, i.e. only after a negative outcome (should this happen) of the Irish referendum. However, if the President of the Commission is elected in June–July, the following months are likely to see the start of preliminary political consultations on possible candidates for commissioners and on the allocation of portfolios.

For the commissioners to be elected only after the Irish referendum, the mandate of the incumbent Commission, which is due to expire at the end of October, must be extended. It is only upon appointment by the Council that the members and the EC President (previously approved by the EP) become a new Commission. Until that time the previous Commission carries on. However, during its extended term the Commission will function with a limited political mandate and in practice it can deal with day-to-day matters only. Such situations occurred several times in the past, for instance during the protracted procedure of commissioners' hearings in 2004.

**Legal Doubts.** The nomination of the new President and the College of Commissioners is an issue giving rise to significant legal doubts. If the Commission President is nominated by the European Council and approved by the EP in June–July, this will be on the basis of the Treaty of Nice. Hence a question arises, if the procedure can be then continued on the basis of the Lisbon Treaty.

One argument holds that this is legally inadmissible, because the Lisbon Treaty modifies the provisions governing the appointment of the Commission—including on a majority in the EP required to approve the President of the Commission (a majority of the MEPs instead of currently required majority of the votes cast). This means that the new Commission President needs to enlist broader support of Parliament members. Under this interpretation, in June the European Council could only adopt a political decision on supporting the candidate, just as the EP could adopt a resolution on this matter rather than hold a formal vote on the nomination. In such a case the procedure for electing the Commission President would be formally commenced on the basis of the Lisbon Treaty. Alternatively, a repeated vote on the filling of the function of Commission President could be held following the entry into force of the Lisbon Treaty.

Under the second interpretation, one which invokes the principle of legal continuity, there are no obstacles to continuing the Commission-appointment procedure on the basis of the Lisbon Treaty after the President's election under the provisions currently in effect.

**Conclusions.** The election of the European Commission and its President and the filling of the remaining key positions in EU institutions will be accomplished in a climate of formal and legal uncertainty due to the dubious fate of the Lisbon Treaty. It is in the interest of all of the EU member states and of the institutions involved that the period of institutional uncertainty be kept as short as possible. The global political and economic context requires an efficient Commission, its authority ensured by decisions of the European Council and the newly established Parliament.