



# BULLETIN

No. 36 (36) • June 24, 2009 • © PISM

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## EU Institutional Developments after the European Council of 18–19 June 2009

by Aleksandra Kreczmańska

*The European Council has designated a candidate for Commission President, yet it is for the European Parliament to decide on setting in motion the official procedure for his appointment. Moreover, legal guarantees for Ireland have been adopted to provide a basis for a repeated referendum in that country. While these decisions mark yet another step towards the resolution of the ratification crisis, the present situation of institutional and legal uncertainty will impact to a considerable extent the Swedish presidency of the EU in the second half of the year.*

**Election of Commission President.** The European Council granted political support to José Barroso's candidacy for the President of the European Commission (EC). His formal nomination was postponed to ensure appropriate time for consultations with the European Parliament (EP), which is now in a phase, natural in a post-election period, of organizing its internal affairs. Only after these talks (provided they end in an agreement) will the Council consisting of the heads of state or government officially designate the candidate for Commission President. There is no need to convene another European Council summit for this purpose, as the written procedure can be applied.

How the process of appointing the EC President unfolds from there, in particular how the issue of Barroso's official nomination is settled in July, will depend primarily on the political power pattern in the Parliament. On 9 July, the EP is due to adopt an agenda of its first plenary session (14–16 July), and only then will it be known whether the Parliament will vote on the Barroso nomination at that meeting. This timetable has the support of the European Popular Party (EPP). On the other hand, the European Socialist Party (PES) and the Greens have lately reiterated their objection to the Barroso candidacy and to the vote being held as early as in July. Under the circumstances, the position of the liberals (ALDE) and of the new conservative fraction will be of crucial importance. As for the ALDE, some national delegations (e.g. the French MoDem party) announced they would not support the incumbent's re-election. What's more, the leader of the Liberals, Graham Watson, has sought to take advantage of the present situation to prevent the filling of the Presidency of the Parliament under a rotational agreement of the Christian Democrats and the Socialists. This has a bearing on Jerzy Buzek's chances for election to that office.

The issue of the EP's holding a repeated vote on the election of the EC President (on the basis of the Nice Treaty still in effect) following the entry into force of the Lisbon Treaty is yet to be resolved.

**Evolution of Political Situation in the Parliament.** With its powers to approve the election of EC President and of the entire Commission, the Parliament can influence the Commission's program and shape. The EP left-wing parties, while unlikely to put forward an alternative candidate at this date, could nevertheless use the present situation to ensure that the President takes their postulates into account in his program, or that a candidate from their political camp gets an important position (e.g. a key portfolio in the Commission). Since 1994, when it first engaged alongside the European Council in the election of the Commission, the Parliament has been increasingly intent on exercising in full its powers. This autumn is hence likely to see the Parliament's active involvement in the forming of the College of Commissioners. If the Lisbon Treaty comes into force, the Parliament will also

approve (with the entire College) the EU High Representative for Foreign Affairs and Security Policy. It is to be expected that the Parliament will want to have a say on that nomination as well.

The Lisbon Treaty (its provisions on this matter already being taken into account) introduces two major changes with respect to the EP's involvement in the procedure for the election of the Commission. Most importantly, it modifies the manner of appointing the European Commission President: the President is to be elected by the Parliament and the European Council must take election results into account as it designates the candidate. This is a change potentially capable of deepening political divisions in the EP. On the other hand, as under the Lisbon Treaty a higher majority in the EP is required to vote in the Commission President, this could enhance the consensual operation of political groups. The Socialists' and the Greens' current vigorous objection to the Barroso candidacy seems to herald more distinct party divisions in the Parliament.

**Guarantees for Ireland.** At the European Council summit, legal guarantees were granted to Ireland in response to the Irish people's concerns. Most controversies arising on that issue among the member states concerned the form rather than the substance of these guarantees. While the concessions for Ireland had been meant not to necessitate any re-ratification, the Irish government had insisted on the guarantees being legally binding.

To accommodate both requirements, an arrangement was used similar to that applied in 1992 to grant to Denmark certain opt-outs after the first negative referendum on the Maastricht Treaty. The heads of state and government assembled in the European Council adopted a decision which clarifies the Irish doubts concerning the right to life, the family, education, taxation, and security and defense. The decision, although not an instrument of the Community law, is legally binding under the international law. As it contains merely clarifications of the contents of the Treaty and creates no new commitments, it does not require ratification in the member states. Moreover, since the Conclusions of 18–19 June expressly pronounce the contents of the decision to be compatible with the Lisbon Treaty, the Treaty itself does not require a re-ratification (a provision Britain was particularly anxious for). Last but not least, the European Council undertook to set out the guarantees laid down in the decision, at the time of the conclusion of the next accession treaty, in a protocol to be attached to the Treaty on the European Union and the Treaty on the Functioning of the EU (the Danish derogations had been included in the primary EU law by the instrument of the Amsterdam Treaty).

As another element of the Irish guarantees, a declaration on workers' rights and social policy was adopted. Moreover, the European Council took notice of Ireland's unilateral declaration. The declaration is to be associated with the Irish instrument of ratification of the Treaty (to be placed with the depositary of the Treaty at the final stage of the ratification procedure) and it will determine, among other things, the terms of Ireland's involvement in the work of the European Defense Agency, or of its participation in permanent structured cooperation within the defense policy framework.

Now that it received legally binding guarantees, the Irish government has a strong basis for holding the repeated referendum, which is due early in October. Still, neither the latest polls, which show growing support for the Treaty, nor the withdrawal from the referendum debate (following lost election to the European Parliament) of Declan Ganley, one of the main leaders of the spring 2008 anti-Lisbon campaign, do not make a positive outcome a foregone conclusion. The fact that the referendum will be held in difficult conditions of an increasingly severe economic slump and declining popularity of the government is not to be disregarded.

**Prospects of the Swedish Presidency.** The uncertainties over the timeframe and procedures for the election of the new Commission, the ratification crisis, and the repeated referendum in Ireland will add to the difficulty of carrying out the program of the Swedish presidency. The Commission will not be operational as usual, particularly after 1 November 2009, when the basic political mandate of the outgoing College of Commissioners expires. For this reason, new initiatives which Sweden intends to propose in the coming months—such as the Strategy for the Baltic Sea or the “Stockholm program” of cooperation in the areas of freedom, security and justice—were prepared well in advance in cooperation with the present Commission.

Sweden will also set in motion preparatory work necessary for efficient implementation of the provisions of the Lisbon Treaty should its ratification be completed before the end of 2009. In 2008 the Slovenian presidency has already initiated some implementation work, but that activity has been subsequently put on hold. A number of procedural and institutional aspects need to be clarified: the principles of cooperation and coordination between the European Council and its President and the EU Council (notably issues relating to the functioning of the General Affairs Council); principles of transition, in selected areas, to the co-decision procedure; or legislative and procedural changes in the third pillar.