Contribution from the Italian delegation on the size and composition of the European Commission (26 May 2000)

Caption: On 26 May 2000, the Italian delegation sends a contribution on the size and composition of the European Commission to the Conference of the Representatives of the Governments of the Member States.

Source: Conference of the Representatives of the Governments of the Member States Cover note – IGC 2000 – Size and composition of the European Commission, CONFER 4746/00. Brussels: 26.05.2000. 8 p. http://www.consilium.europa.eu/uedocs/cms_data/docs/cig2000/EN/04746En.pdf.

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CONFERENCE OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES

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COVER NOTE

from :	Italian delegation
to :	Delegations
Subject :	***IGC 2000***
	– *Size and composition of the European Commission*

Attached is a contribution from the Italian delegation concerning the size and composition of the European Commission.

ANNEX

Size and composition of the European Commission

1. GENERAL REMARKS

Since the beginning of the European enterprise, the European Commission has been the institution that qualitatively differentiated the process of Community integration from the traditional international organisations. On the political and institutional level, the added value contributed by the history of European integration to the attempts to devise new forms of international cooperation rests to a large extent in the actual structure and operation of the Commission. On the legal level, too, the Commission is at the heart of that ongoing process of institutional engineering aimed at gradually defining possible legal forms for developing a process of integration between States which share an ever-increasing part of their sovereignty in a highly integrated structure but which at the same time do not wish to lose their sovereignty within a federal superstate.

The Commission's functions of providing impetus and of ensuring "coordinated implementation" of EU policies constitute, in the interrelationship of powers between the Community institutions, an essential factor for the balance and coherence of the institutional architecture. The Commission is the driving force behind the process of integration; it has the monopoly on initiating legislation; it has a general power to enforce Community law (including supervision of its application by the Member States); in many cases it represents the Community on the international stage. All these powers go to make up its decisive responsibility in guiding the Community's action.

In an enlarged and institutionally and socio-economically diversified Union, the Commission will have to be able to perform more incisively its function as a "watchdog" and as a forum for the reconciliation of national interests and requirements. The aim is not to outline a process in which national particularities and cultural identities are effaced in the abstract general interest of the Union; the aim is to make it possible, in full recognition of the principles of subsidiarity and proportionality, to perform a governance function within a complex system of institutional engineering which, without a strong and independent Commission, would not succeed in pursuing and securing the "common European good".

2. COMMISSION AS COLLEGE OR COMMISSION AS ASSEMBLY?

To achieve these objectives, it is necessary to ensure the preservation of one of the distinctive features of the Commission's operation, namely that it is a "college" and not a body composed of national representatives or delegates. Under Article 213 of the EC Treaty, Members of the Commission are "chosen on the grounds of their general competence" and their "independence [must be] beyond doubt"; "in the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties".

The distribution of portfolios among Commissioners has nothing in common with the assignment of duties within national executives, since all decisions for which the Commission is responsible must be approved by the College of Commissioners, which operates on a basis of majority voting.

Italy considers that, in a Union enlarged to 27 or 30 members, a Commission composed of a number of Commissioners equal to the number of Member States would present a very high risk of its being altered from *a collegial body to an assembly-type body,* with all that this would entail for the institution's efficiency and effectiveness. This approach would also involve the danger of a *serious weakening of the principle of collegiality.* In an assembly-type Commission, where every Member State had a share, not even a reinforcement of the President's authority and power to give political guidance or an increase in the number of Vice-Presidents would be sufficient to ensure the proper functioning of the Community's executive, with the risk that, as in the Council, national considerations would prevail.

In line with principle of collegiality, Italy is puzzled by the idea of making provision, in the internal organisation of the Commission, for the formal and binding delegation of powers to certain Commissioners beyond what is currently laid down in the Commission's Rules of Procedure [1].

The approach envisaged by many – of having *two categories of Commissioner*, along with the creation of an "inner cabinet", perhaps with different voting rules – would lead to a profound alteration in the nature of the Commission. It would seriously harm the principle of collegiality and could well pose greater problems than it solved (for example: how many "senior" and how many "junior" Commissioners? Appointed by whom?).

3. AN INDEPENDENT, DEMOCRATIC, EFFICIENT AND EFFECTIVE COMMISSION

3.1. Number of Commissioners

Italy considers that for Member States to see the presence of their own nationals in the Community's executive in terms of status, or as reflecting full membership of the Union, is misconceived and contrary to the Treaty. The Commission's function as "watchdog" is assured not by the fact that at any one time it has within it nationals of all the Member States, but rather by its independence, the expertise of its members and the transparency of its procedures. Indeed, given the Commission's particular institutional function, the presence of Member States' nationals cannot logically and politically be held to imply the representation of Member States' interests, and vice versa.

[1] Article 11 of the Commission's Rules of Procedure allows for the possibility of delegating in the case of acts preparatory to decisions of the College or in clearly defined administrative matters. In the Akzo judgment of 1986, the Court of Justice took the view that this did not conflict with the collegiality of the executive, clearly suggesting that this was, however, at the bounds of admissibility and that a more extensive delegation would not be acceptable. The Commission's collegiality is fundamental to its autonomy, independence and legitimacy.

There are already examples of bodies which do not include nationals of each Member State, but whose activities in the Community context are not thereby made any less legitimate or less impartial. We need only mention, in the context of Economic and Monetary Union, the Executive Board of the European Central Bank.

For all these reasons, Italy considers that the Commission must remain a college, which must have a fixed number of Commissioners regardless of the number of Member States of the Union. More specifically, the Commission should not be composed of more than 20 Commissioners, i.e. less than the number of Member States that the Union will have after the accessions.

3.2. Principles and procedures

Restricting the number of members to 20 should, however, be allied with the principle whereby every Member State has the right to appoint a Commissioner who is one of its own nationals. Without prejudice to the *entitlement*, only the actual *exercise* of the right would be regulated on the basis of the *numerus clausus* of Commissioners.

There would have to be a rotation among Member States in the appointment of Commissioners on the basis of absolute parity and according to a pre-established order. No Member State should be precluded for an undue period of time from appointing one of its own nationals as a member of the Commission.

With reference to Member States that were unable to exercise the right to appoint a Commissioner because of the rotation, it would be possible to establish suitable principles and procedures to ensure an overall balance in terms of "national presence" within the institutions.

Opting for a system of equal rotation does not, of course, prevent other possible approaches from being looked at; for example, the establishment of balanced groupings ("*constituencies"*) of States empowered to appoint a given number of Commissioners: in this case, the equal rotation would not be between States but between groups of States.

Less convincing, given the existing institutional balances, is the argument that the European Parliament should choose the 19 Commissioners from among the candidates put forward beforehand by each Member State in agreement with the President. This would distort the existing provisions, which, at the present stage of European integration, Italy considers should be maintained [1].

3.3. Organisation and accountability

Italy considers that, even in the case of a Commission limited to 20 members, there should be further reinforcement, with specific provisions inserted in the Treaty, of the President's authority and power to give political guidance. For example, the President of the Commission could be given greater powers in the allocation of duties, while retaining exactly the same voting power as the other Commissioners. The number of Vice-Presidents could also be increased (in the recent past they have been more numerous than at present), so as to ensure that, in compliance with the principle of collegiality, the Commission's activities are coordinated.

Amendments to the Treaty are probably necessary in order to include measures to increase the Commissioners' accountability. Italy appreciates the great sensitivity shown by the President of the Commission in undertaking to ensure that the Commission meets the highest standards of behaviour in public life. The Commission has already set itself the following guiding principles for its activities: teamwork, transparency, efficiency and accountability (the "Aartselaar spirit").

[1] See Article 214 TEC: "The governments of the Member States shall nominate by common accord the person they intend to appoint as President of the Commission; the nomination shall be approved by the European Parliament. The governments of the Member States shall, by common accord with the nominee for President, nominate the other persons whom they intend to appoint as Members of the Commission. The President and the other Members of the Commission … shall be subject as a body to a vote of approval by the European Parliament."

The idea of making Commissioners personally accountable has had various proponents: either accountability to the European Parliament (which would have the right to propose a vote of individual no confidence) or accountability to the President (who would be given the formal power – as opposed to an understanding on the basis of a gentlemen's agreement – to remove a Commissioner). This would fill the legal vacuum of the "collective resignation" of the Commission in the absence of a motion of no confidence.

Regarding the individual accountability of the members of the Commission, it seems that the simplest, albeit not perfect, solution is the present one, that is the "political" obligation of the Commissioner to resign if the President so requests, without providing for strict legal endorsement of this principle, which could involve sensitive problems relating to the nature of the appointment of a Commissioner by the Member States [1].

In the eventuality of "simultaneous resignation" of all the members of the Commission (not at present provided for in the Treaties), Italy considers that one could extend what is provided for the motion of censure [2] (collective appointment procedure and simple routine administration). In the case of voluntary resignations by individual Commissioners, however, provision could be made, in the light of recent events, for the immediate cessation of the resigning Commissioner's duties, with no need to await the appointment of a successor.

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1 Some support the idea of intervention by the Parliament to "sack" an individual Commissioner on a proposal by the President. This idea is unconvincing, as it could alter the institutional balance. Others are in favour of involvement of the Council, following the same procedure, for dismissal as for appointment, but in reverse (for example, the Council, acting on a proposal by the President of the Commission, could take a vote on the dismissal of a Commissioner and the Parliament would have to give its assent); but in that case a solution would still have to be found for the eventuality of the Member State who appointed the Commission opposing dismissal. The idea of giving the President the power to remove a Commissioner from office, while interesting, poses political problems with implications at intergovernmental and parliamentary level. That eventuality would give rise to complicated debate on the nature of "accountability" (which should be "political" and not "legal") and on possible avenues for "appeal" by the Commissioner concerned. Moreover, this would be a rather unorthodox procedure (the "dismissed" Commissioner would have been appointed by the Governments of the Member States by common accord with the President).

2 See Article 201 TEC.

As to the Commission's accountability to the European Parliament, the existing instrument of the motion of censure is sufficient.

The argument for dissolving the European Parliament following a motion of censure against the Commission is not convincing: it would considerably weaken this instrument of democratic control, and it would severely undermine the institutional balances, with the resulting need for a broad rethink of the whole Community architecture.

The fact remains that, in changed political circumstances, the present form of the instrument places the Commission in a weak position.

Some thought needs to be given to this point. One approach might be to formalise the Commission's power to ascertain – following the investiture procedure currently laid down in the Treaty, and using a formula compatible with the interinstitutional balances – whether there is still a political consensus on the part of the European Parliament on the exercise of the Commission's prerogatives to initiate legislation and on its duties of implementing Community policies.