"THE EUROPEAN PARLIAMENT'S ROLE IN NOMINATING THE MEMBERS OF THE COMMISSION:

FIRST STEPS TOWARDS PARLIAMENTARY GOVERNMENT OR US SENATE-TYPE CONFIRMATION HEARINGS"

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Introductory remarks

1. The European Parliament's role in the nomination process to top positions in European institutions has traditionally been a very weak one. This has even been true with regard to nominations to the Commission, in spite of the fact that the Parliament has long had the power to fire the entire Commission once it is in place.

One of the most significant changes introduced by the Maastricht Treaty is that the Parliament has been given a stronger say in the nomination process, not only as regards the President of the Commission and the Commission as a whole, but also as regards membership of the European Court of Auditors, the Presidency of the European Monetary Institute and the Presidency and Vice-Presidencies of the future European Central Bank.

The present paper concentrates on the Parliament's role concerning nominations to the Commission, but also looks at its role regarding other EU nominations as well. The paper begins by examining the Parliament's lack of involvement in the appointment process prior to the Maastricht Treaty, and at the various proposals by the Parliament and others to remedy this. It goes on to review those new powers given to the Parliament in the Maastricht Treaty, and then at the ways in which they have subsequently been implemented (and their scope further extended) by the European Parliament. The paper concludes with a discussion of the demands likely to be made by the Parliament at the 1996 Intergovernmental Conference for further development of its powers to scrutinize nominations to the Commission and other EU institutions, and thus to further reinforce democratic control at EU level.

New powers concerning nominations given to the Parliament by the Maastricht Treaty

2. Until the adoption of the Maastricht Treaty the European Parliament's powers as regards the approval of nomination to the Commission (or for that matter to any other Community institution or body) were both extremely weak and of an informal rather than formal nature.

Appointment of the Commission

3. Until Maastricht the relevant Community provisions for the nomination of the Commission (Article 11 of the Merger Treaty) simply stated that "The members of the Commission shall be appointed by common accord of the governments of the Member States". The European Parliament was thus given no formal say at all, a Treaty omission contrasting sharply with the provisions of Article 144 which stated, inter alia, "if the motion of censure is carried by a two-thirds majority of the votes cast, representing a majority of the members of the European Parliament, the members of the Commission shall resign as a body".

There are a number of reasons why this power has never been used by the Parliament, but a contributory factor has certainly been the imbalance between this power and the Parliament's lack of involvement in the appointment process. This has meant firstly that the Parliament has found it difficult to establish yardsticks for the assessment of Commission performance when it was not involved in the setting of the

initial objectives for that Commission, and secondly that the Parliament would have had no say in the appointment of the successors of those Commissioners fired by the Parliament. There would have been nothing to stop them all being reappointed by the governments of the Member States, which would have helped to emphasise the powerlessness of the Parliament rather than the opposite.

4. This situation has long been recognised as unsatisfactory. As early as 1953 the draft Treaty for a Statute of the European Community that was adopted by the Ad Hoc Assembly of the European Coal and Steel Community suggested that the "European Executive Council" (the draft Treaty's predecessor of the Commission) be submitted to a vote of confidence by majority vote of its members in the People's Chamber of directly elected members as well as in the Senate of nominated members of national parliaments: the President of the Executive Council, however, would only have been elected by the Senate. On the other hand, the Vedel report of March 1972 explicitly suggested the introduction of a system of dual investiture of the President of the Commission by governments and by the Parliament. The resolution adopted by the European Parliament on European Union on 10 July 1975 (the Bertrand resolution) stated that "the European Parliament should participate in the appointment of the members of the Commission of the Communities to emphasise their democratic legitimacy" (para. 11(f)). The Tindemans report in December 1975 called for the President of the European Commission to be appointed by the European Commission and for the nominee to then appear before the Parliament to make a statement and have his or her appointment confirmed by vote. Nothing, however, came of these various proposals.

In the early 1980's more proposals were put forward. The Parliament (in the Rey report of April 1980) again called for a role for the European Parliament in the nomination of the Commission, with a Parliament vote of confidence ratifying the appointment of its President after a public debate in his presence. In November 1981 the draft European Act submitted by the German and Italian governments (the so-called Genscher-Colombo Plan) called for the President of the Council to consult the President of the European Parliament before the appointment of the President of the Commission, and for there to be an investiture debate in which the Parliament should be able to discuss the programme of the Commission, but only after the appointment of the members of the Commission by the governments of the Member States. In its turn the Parliament, in its draft Treaty of European Union on the basis of the Spinelli report, called for the Commission to take office only after it had presented its programme to the Parliament and then received the investiture of the Parliament. The draft Treaty, however, called for the President of the Commission to be named directly by the European Council without any role for the Parliament.

5. After these various proposals some limited progress was made. As a result of the 1993 Stuttgart Solemn Declaration on European Union the European Council began to consult what was then the enlarged Bureau of the European Parliament before nominating the President of the Commission. In 1984, when Jacques Delors was chosen, Garret Fitzgerald the President-in-Office of the Council met with Parliament's enlarged Bureau to discuss the nomination and in 1988 Parliament's President went to the relevant European Council meeting.

Moreover, the Parliament also began the practice (from 1982 onwards) of holding a debate, and a vote of confidence, on the incoming Commission. Although the latter had no formal status the Commissions chaired by Jacques Delors waited until they had received such a vote of confidence from the Parliament before going to take the oath at the European Court of Justice. Since Parliament always gave its support to the incoming Commission the consequences of a negative vote were never put to the test, although the Parliament could presumably have sought to use a motion of censure to dismiss a Commission whose appointment it had not previously approved.

6. In spite of these informal developments the Parliament's role continued to be perceived as inadequate, not merely by the Parliament itself but also by some other influential Community leaders. President Mitterrand, for example, in a speech to the Parliament in October 1989 called for the nomination procedure to be changed to allow the Parliament to elect the President of the Commission.

Nominations to other Community institutions and bodies

7. The pre-Maastricht situation as regards the Parliament's role in other nominations was generally even weaker. For instance, the Judges and Advocates-General at the European Court of Justice as well as the Judges at the Court of First Instance were all appointed by common accord of the governments of the Member States without a role for the Parliament. The Parliament was also given no say in appointments to the Board of Directors of the European Investment Bank. The only limited exception was in the case of the European Court of Auditors, whose members were to be appointed by the Council, acting unanimously after consulting the European Parliament (then Article 206, now Article 188(b)). This provision stemmed from the 1975 budget treaty which first established the European Court of Auditors.

8. The first significant impact that Parliament had on any nomination process occurred as a result of the implementation of Article 206, when in November 1989 the Parliament was consulted on the appointment or re-appointment of six candidates to the European Court of Auditors. It approved four of the nominees but expressed itself "unable to give a favourable opinion" on the French and Greek candidates. In spite of Parliament's opinion the Greek government maintained its initial choice, but the French government did respond by replacing the original candidate by a new one who was subsequently approved by the Parliament. The Parliament did not take any further action with regard to the decision on the Greek candidate.

9. Generally, however, there were fewer calls for the Parliament to be involved in nominations other than those to the Commission, although the Spinelli draft treaty did call for half of the Members of the Court of Justice and of the Court of Auditors to be named by the Parliament and half by the Council of the Union.

<u>The changes introduced in the Maastricht Treaty</u>

10. The Maastricht Treaty introduced significant changes as regards the involvement of the Parliament in the appointment of the Commission, and also gave the Parliament a role in the appointment of the President of

the European Monetary Institute and at a subsequent stage of the President, Vice-President and other members of the Executive Board of the European System of Central Banks. The European Parliament's role as regards appointment to the Court of Auditors was left unchanged (although the Court of Auditors was promoted to the rank of a Community institution), and no role was given the Parliament with regard to appointments to the European Court of Justice and the Court of First Instance (or to the European Investment Bank).

11. The new rules as regards the nomination of the Commission were set down in modified Article 158. The governments of the Member States were to nominate by common accord, after consulting the European Parliament, the person they intended to appoint as the President of the Commission. In consultation with the nominee for President the governments of the Member States would then nominate the other persons whom they intended to appoint as Members of the Commission. The President and the other Members of the Commission would then be appointed by common accord of the governments of the Member States after having been subject as a body to a vote of approval by the European Parliament.

12. Article 109(f) of the Maastricht Treaty (and Article 9 of the Protocol on the Statute of the European Monetary Institute) provided for its President to be chosen by the European Council on a recommendation from the Committee of Central Bank Governors, and after having consulted the Council and the European Parliament.

Article 109(a) of the Maastricht Treaty (and Article 11.2 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank) provide for the ECB's Executive Board (its President, Vice-President and four other members) to be appointed by common accord of the governments of the Member States at the level of Heads of State or government, on a recommendation from the Council, after it had consulted the European Parliament and the Governing Council of the ECB.

13. Finally, the European Parliament was given (in Article 138(e)) the power to itself appoint an Ombudsman empowered to receive complaints from European Union citizens concerning Community maladministration.

14. The Maastricht Treaty thus introduced new powers for the Parliament as regards its involvement in certain appointments. Their apparent significance was, however, limited by the fact that the Parliament's involvement, with the exception of the Ombudsman, was restricted to consultation only and in no case apart from the Ombudsman could the Parliament have a decisive say. If the Parliament disapproved of a nomination there was nothing formally to stop it being made against the wishes of the Parliament.

Implementing the Maastricht changes: the experience so far

Adapting Parliament's Rules of Procedure

15. The first practical step taken by the Parliament to implement the Maastricht changes was to adapt its own rules to the new situation. A whole new section of the rules (Rules 32 to 36) was now dedicated to the

Parliament's role in appointments, and much more detail was put forward than in the Maastricht Treaty itself.

New Rule 32, for example, dealt with the procedures to be used by the Parliament in examining the nomination for the Presidency of the Commission. The nominee would be requested to make a statement to the Parliament and this would be followed by a debate. Only then would the Parliament approve or reject the nomination by roll call by a majority of the votes cast. Moreover (Rule 32-4), if the result of the vote in Parliament was to be negative, its President would request the governments of the Member States to withdraw their nomination and to present a new nomination to Parliament.

New Rule 33 set out the new procedures for Parliament to vote its approval of the Commission as a whole. The main innovation of this Rule was that it envisaged the holding of confirmation hearings for individual nominees, whereby they would be requested (Rule 33-1) to appear before the appropriate committees of Parliament according to their respective fields of responsibility. The committee could then invite the nominee to make a statement and answer questions and on the basis of this would then report its conclusions to the President of Parliament (Rule 33-2). After the hearings the nominee for President would then present the Commission's programme to the Parliament in plenary session, and this would be followed by a debate (Rule 33-3).

Any political group would have the right to table a motion for a resolution containing a statement as to whether Parliament approved or rejected the nominated Commission (Rule 33-4) and the Parliament would then vote its approval of the Commission by roll call by a majority of the votes cast (Rule 33-5). If Parliament were to approve the nominated Commission, its President would then notify the governments of the Member States that the appointment of the Commission could now take place (Rule 33-6).

New Rule 35 deals with the procedures for appointment of the Court of Auditors and new Rule 36 with those for the European Monetary Institute and the European Central Bank. Both rules provided for confirmation hearings of a nominee before Parliament's responsible committee, which would then make a recommendation to the Parliament as a whole as to whether the nomination should be approved.

Both rules also provided indicative time limits for consideration of the nominations (two months from the receipt of the nomination, unless the Parliament explicitly decided otherwise) and for the President to request the Council to withdraw a nomination and submit a new one to the Parliament in case Parliament's opinion on the original nomination was to be negative.

More detailed rules were set out (in new Rule 159) for the appointment of the Ombudsman, for which Parliament had sole responsibility.

The first experience with Parliament's new powers

16. Before the Parliament's first experience of investing the Commission (1995-2000 term of office) under the new Rules was completed in January 1995, it had already successfully used its new Maastricht powers as

regards the appointment of the President of the European Monetary Institute and less successfully as regards the appointment and re-appointment of a number of Members of the Court of Auditors. Its drawn-out attempt to name the first Ombudsman had unfortunately still not been completed.

17. The Parliament's involvement in the appointment of the President of the new European Monetary Institute (EMI) was a success on several grounds.

When the Committee of Central Bank Governors put forward the name of Alexandre Lamfalussy, the President of the Bank of International Settlements, as their nominee for EMI President, the Council then asked for Parliament to give its opinion within a few days, which would have prevented any serious scrutiny of the nominee. This pressure was successfully resisted by the Parliament, which insisted on a few more weeks to consider the nomination.

Secondly, Mr Lamfalussy agreed to appear before Parliament's responsible committee (its Committee on Economic and Monetary Affairs and Industrial Policy) in a confirmation hearing, a requirement that had been laid down in Parliament's Rules of Procedure but was not in the Maastricht Treaty, and that could have been resisted by the nominee. Perhaps even more significantly, he agreed to submit written answers in advance of the hearing to ten questions on his professional life and economic and monetary policy objectives that had been drawn-up by the Economic Committee's coordinators (the spokesmen from each of the political groups). His answers, which had been distributed to all Members of the Committee, were also discussed in the Financial Times prior to the hearing, which helped to ensure that it received even greater publicity.

The public hearing took place on 10 November 1993. After Mr Lamfalussy had made a short introductory statement he then answered questions from the Committee members grouped under four headings, personal and professional matters, economic and monetary policy matters, institutional relations, and his views on the organisation of the European Monetary Institute. The question time available was roughly divided between the political groups as a function of their respective size, but this was not too rigidly followed. A characteristic of the hearing was that the questioning on personal matters did not cover any aspects of his personal life, and even his financial situation was not discussed: some members had wished to raise the latter but this went against the cultural grain of a majority of members. The type of questions that were asked focused on whether he intended to combine his job as EMI President with other professional activities, and whether he intended to serve for his full term of office. All in all, the hearing lasted for around three hours, and the nominee was felt to have acquitted himself very well.

After the public hearing the Economic Committee held a brief "in camera" discussion on its outcome and then adopted a recommendation approving Mr Lamfalussy's nomination. The Committee's request for there to be a full transcript of the hearing was turned down by Parliament's administration, on the grounds that there was no time and resources to produce what would have been a multilingual text, an interesting example of the constraints that the European Parliament has to face compared to a national parliament! Annexed to the Committee's recommendation,

however, were copies of the Committee questionnaire, Mr Lamfalussy's written answers and his opening statement before the Committee.

The European Parliament subsequently approved the nomination at its plenary session on 29 November 1993, and the appointment was then formally made on 11 December 1993.

18. A less satisfactory experience was that with regard to the Parliament's involvement in nominations to the European Court of Auditors. The European Parliament has always felt it has had a privileged relationship with the Court, with the establishment of which it was so closely associated. Even before the Maastricht Treaty came into force Parliament's responsible Committee on Budgetary Control drew-up a report (with the rapporteur being Alain Lamassoure, the present French Minister for European Affairs) setting down specific guidelines for the procedure for consulting the European Parliament on the appointment of Members of the Court of Auditors. The report, which was adopted by the Parliament on 17 November 1992, called for a public hearing for each nominee but with "in camera" discussions afterwards, and with a final secret vote both in committee and in plenary.

Among the criteria that were established were the need for nominees to have appropriate high-level professional experience and an impeccable management record in public finance or in management auditing, and not to hold any elected office or have any responsibilities in a political party with effect from the date of appointment. Moreover, members should not serve more than two terms and indicative age limits were set down (no more than 65 at the end of their first term of office or 70 at the end of their second). The Parliament also considered that the lack of female representation on the Court was unjustifiable.

Parliament's first decisions on nominations to the Court after the Maastricht Treaty came into force were taken at the end of 1993 and in early 1994. A public hearing was held on 15 October 1993 on six nominations, including a mixture of new appointments and of re-appointments. At this hearing two of the nominees were felt to have performed poorly. At the plenary session on 15 December 1993 the Parliament approved four of the nominations, rejected the Italian nominee (who was being reappointed) by a vote of 134 in favour to 155 against with 29 abstentions, and postponed its decision on the Portuguese nominee (who was being appointed for the first time) in order to gain more background information. A new report was drawn-up and in the plenary session on 20 January 1994 the Parliament also rejected the Portuguese nominee on the grounds that he was the former President of a Portuguese body that had been responsible for managing and monitoring certain Community appropriations, and that had experienced serious dysfunctions; it would thus be inappropriate if he were to find himself in a position of having to supervise the management of appropriations which had been previously implemented under his authority. The Parliament also protested at the lack of consultation of the Portuguese Court of Auditors prior to the Portuguese nomination being put forward, and at the attitude of the Council throughout the consultation procedure, which had given the Parliament unrealistic deadlines on the nominations, and had concealed from Parliament the information forwarded to it by the Portuguese authorities in reply to a specific request from the Parliament.

In spite of Parliament's rejection of the Italian and Portuguese nominees they were duly appointed by the Council by decision of 7 February 1994. The Parliament had thus had less success on this occasion than when it had forced the withdrawal of the French nominee in its previous decision prior to the entry into force of the Maastricht Treaty.

As a result of this experience, the Parliament (on the basis of a report by Mr Bourlanges from its Budgetary Control Committee) drew-up a new resolution on consultation procedures with regard to appointments to the Court of Auditors. This was adopted on 19 January 1995, and called for the Council to submit nominations at least 10 weeks before the Members concerned were due to be appointed, to supply relevant career details and to pass on any information it had concerning nominations that the Council had received from Member States, on the understanding that a failure to produce this information would lead to further delays, because Parliament would have to carry out its own investigations.

The Budgetary Control Committee also held hearings on the new nominees to the Court of Auditors from Austria, Finland and Sweden. These nominations were all approved by the Parliament on 17 February 1995, but in the explanatory statement to the report from the Committee regret was expressed at the fact that none of the Members of the Court were women, thus going against one of the criteria that had earlier been set down by the Parliament.

19. Parliament's difficulties with regard to nominations to the Court of Auditors have stemmed from the attitude of the Council and from the Parliament's involvement through the inadequate consultation procedure. Parliament's difficulties (which have still not been finally resolved at the moment of writing) with regard to the appointment of the first European Union Ombudsman, have stemmed from internal problems within the Parliament, since the decision is one for Parliament alone. A European Parliament call for nominations was made in the Official Journal in July 1994 and on 5 and 6 October 1994 hearings were held with the six short-listed candidates. On two occasions, however, there was then a tied vote within the Committee between the two leading candidates, and the Committee was unable to submit a single nominee to the plenary, as required by Parliament's Rules of Procedure. The Parliament then decided to change its own rules, which were clearly not adapted to a situation of deadlock, but has not yet managed to complete this process. There is increasing recognition within the Parliament that this must now be done quickly, so that an Ombudsman can finally be appointed.

Parliament's investiture of the new Commission

20. The Council's renomination of Jacques Delors for the Commission's 1993-94 term of office postdated the signing of the Maastricht Treaty but preceded its coming into force, and the old rules thus applied. In a resolution on 10 June 1992, the Parliament called for it to be consulted on any nomination but on 7 July 1992 approved the renomination of Jacques Delors while regretting the fact that the Parliament's request for consultation had not been met by the Council. In a resolution of 10 February 1993 on the presentation of the new Commission as a whole, the Parliament reiterated its criticism that it had not been consulted on the President-designate, and also criticised the Council for the way

in which the other Commissioners had been chosen without a sufficient say by Mr Delors, and also because of the lack of women on the Commission.

21. This was a striking contrast with what happened in 1994 once the Maastricht Treaty had fully come into force, and the new procedures were thus implemented with regard to the Commission that was to take office at the beginning of 1995.

22. In a resolution adopted on 21 April 1994 (on the basis of a report by Mr Froment-Meurice) the Parliament now established a set of initial criteria as regards the investiture of the Commission. The Parliament called for the President of the Commission to be chosen from amongst the public figures who had already been members of the Community institutions or already held positions of responsibility for European affairs in their country. The chosen nominee should make a statement followed by a debate and vote during the July 1994 part-session (after the political group leaders had been previously consulted on the nomination). The Parliament also threatened to refuse the investiture of the Commission if the governments again put forward a candidate who had been previously rejected by the Parliament.

The resolution also called for the rest of the Commission to take account of the political balance of power in the Union, the need to include adequate representation of women and also to include some current Members of the European Parliament.

The Parliament called for the names of the other nominees to be forwarded to Parliament no later than 1 November 1994, so as to allow time to organise the hearings of the Commissioners by the committees in time for the presentation of the Commission programme and Parliament's vote agreeing to its investiture during the December 1994 part-session. Finally, the Parliament considered that any change in the composition of the Commission, which Parliament considered to be of major importance, would require a new investiture.

23. Meanwhile, the decision on whom to nominate as Mr Delors' successor had led to considerable difficulties within the Council. The candidacy of the then Dutch Prime Minister, Ruud Lubbers, was blocked by Chancellor Kohl, in particular, and the acceptance by 11 Member States of the candidacy of the Belgian Prime Minister, Jean Luc Dehaene, was then vetoed by the British Prime Minister, John Major, ostensibly because Mr Dehaene was considered to be too "federalist", but also in considerable measure because of British resentment at what was seen as a Franco-German stitch-up. At the Brussels European Council of 13 July 1993 the name of Jacques Santer, the Prime Minister of Luxembourg was submitted to the Parliament for its consideration.

Mr Delors would always have been a hard act to follow and there was also considerable irritation within the Parliament at the way that the Santer nomination had been made by the Member States. In addition, Mr Santer's cause was not helped by aspects of his performance at the July 1994 plenary session, at which the newly elected Parliament had to consider his nomination. Firstly, while coming across as open and friendly, he did not particularly shine at the hearings with him that were held by the Parliament's three largest groups (the Socialists, EPP and Liberals)

and there was resentment too within the smaller groups that they had not also been able to meet with the nominee. Moreover, his initial speech in the relevant plenary debate was felt to be uninspiring and to be in sharp contrast with Mr Delors' speeches. It became increasingly evident that there would be strong opposition to his nomination, on the grounds of the inadequate procedure followed and to some extent also because of the apparent lack of vision of the nominee. It was only when he had his back to the wall that he then gave a better concluding speech.

The vote which followed was an extremely close and dramatic one with 521 of the 567 then Members of the Parliament taking part in the vote (an exceptionally high percentage by EP standards!), and with the nomination only being approved by 260 votes in favour to 238 against with 23 abstentions. The European People's Party (from whose ranks Mr Santer came), RDE and Forza Europa Groups overwhelmingly supported the nomination, while the Left Unity, Radical Alliance and Green Groups and a majority of Members from the Socialist and Liberal Groups opposed it. The day was primarily saved for Mr Santer by those Members of the Socialist and Liberal Groups whose parties at home were in government (such as the Spanish, Dutch, Greek and Irish socialists and the Portuguese in the Liberal Group), and who had thus taken part in the decision to nominate Mr Santer.

While many within the Parliament regretted that the nomination had not been rejected by Parliament at the outset (and Chancellor Kohl for one had previously said that he would respect Parliament's decision), there was a general feeling that the vote at the July plenary had been an exceptional Parliamentary occasion that had attracted a great degree of public and press attention for the Parliament.

24. The next task for the Parliament was to decide on the timetable and detailed procedures for its evaluation of the Commission as a whole. Implementation of the Parliament's relevant rules and also of the criteria set out in the Froment-Meurice resolution was complicated by a number of additional factors, some of them due to the newness of the procedures and others to the particular circumstances of EU enlargement to Austria, Finland, Sweden and Norway.

The first question in the former category was whether there would be agreement to hold hearings at all. While called for in Parliament's rules, they were not mentioned in the Maastricht Treaty and outgoing President Delors was at best unenthusiastic and, if anything, positively hostile to their taking place.

A second unknown was when the Member States would complete their nominations, since some of them had tended in the past to make these nominations at the last minute. Not only would these nominations have to be made in plenty of time before Parliament's hearings and investiture debate, but sufficient time would also have to be left for the provisional distribution of portfolios between the nominees. Without this individual hearings could not take place, or would be of such a general nature as to be meaningless.

The enlargement process posed another set of problems. Firstly, only Austria had held its referendum and it was not known which, if any, of

Finland, Sweden and Norway would enter the European Union, thus complicating the distribution of portfolios between the nominees. Secondly, if Parliament were to vote on the new Commission at the December 1994 plenary as originally proposed in the Froment-Meurice resolution, none of the new Member States would have joined the European Union, and Parliament would have to vote again on the enlarged Commission early in the New Year. Moreover, Parliamentarians from the new Member States would not have been able to take part in the hearings.

25. In order to resolve these problems two initial steps were taken. The European Parliament's President, Klaus Hänsch, made contact with Commission President-designate Santer to review the possible solutions, and the Parliament's Committee on Institutional Affairs appointed one of its members, Mr Fernand Herman, to make specific recommendations as to how to proceed.

26. Mr Herman's first major recommendation was that there should be a single investiture of the new Commission with Parliament holding only one vote, not just on the basis of hearings of the prospective Commissioners from the existing Member States, but from the new Member States as well. He thus suggested, after having received advice from Parliament's legal service, that the existing Commission could continue in office for a short additional period after the end of its normal term, and that Parliament need then only vote during its January 1995 part-session. After looking at some of the political conditions that could be requested by the European Parliament prior to it approving the Commission as a whole (a possible strengthening of the Code of Conduct between Commission and Parliament, etc.), Mr Herman went on to make some suggestions as to the common conduct of the individual confirmation hearings within the committees. As a general rule, committee hearings should be open, for example, and should take place within Parliament's existing committee structure. Submission of written questions to nominees in advance of a hearing should be encouraged. Questions should not focus on personal matters, although it was legitimate to raise questions about potential financial or other conflicts of interest.

Another sensitive issue raised by Mr Herman was the need to take account of the collegiate character of the Commission. Since Parliament could only vote on the Commission as a whole, it was thus essential to ensure that there were no formal votes of approval or disapproval on individual nominees within the different Parliament committees.

Most of these recommendations were followed by Parliament's leadership (although the mere inclusion of an annex showing the type of financial disclosure form used for certain U.S. Senate hearings aroused indignant comment from some Members that these U.S. requirements were far too detailed and bureaucratic for European circumstances). In the meantime, President-designate Santer not only agreed to the principle of holding the hearings, but also undertook to distribute the portfolios before 1 November 1994.

The Parliament then decided not only to vote on the Commission in January 1995 rather than in December 1994, but to hold all the hearings over a few days at the beginning of January, so as to focus rather than disperse media and public attention, and also in order to enable the MEPs from the new Member States to take part in the hearings.

Following this all the Member States completed their nominations, and President-designate Santer then managed to distribute the portfolios of the different Commissioners (including those from the new Member States) before the expiry of the requested deadline of 1 November, although a slight adjustment subsequently had to be made concerning the fisheries portfolio after the negative result of the Norwegian referendum.

27. Parliament was then able to establish its final guidelines for the hearings. These took place from 4-10 January 1995. The principle was established that each nominee would only have to appear at one confirmation hearing and that there would be one lead Parliamentary committee, although delegations from other committees could also pose questions to the nominees in the cases where a nominee's responsibilities overlapped those of several committees. The hearings generally lasted for a full morning and afternoon, with up to three such hearings taking place at the same time. At all the hearings the nominee made an opening statement, and then responded first to questions from members of the lead committee and later from members from delegations of any other concerned committees. The practice as regards questions submitted in advance varied greatly from committee to committee, with some committees sending questionnaires for prior written response from the nominees, others sending questionnaires merely for oral response at the hearing, and other committees not posing any questions in advance at all.

All the hearings were held in public, but after the departure of the nominees the committees then held brief or longer meetings in camera to give their views on the nominees. Committees were not permitted to give positive or negative votes on the nominees because of the point mentioned above about the collegiate nature of the Commission, but the chairman of each committee was required to send a letter to the President of Parliament expressing the committee's global appreciation of the performance of each nominee. Some committees also produced summary but not verbatim reports of their hearings.

The treatment of the committee letters, which the Parliament's President decided to publish, and to present at a packed press conference a few days later, proved to be the most controversial element in the whole confirmation procedure. This was because it inevitably involved a certain degree of singling out of individual weak performances in spite of the fact that the Parliament would not subsequently be able to vote on individual nominees, but only on the Commission as a whole.

Some of the letters expressed concerns about the distribution of the portfolios (for instance, the dispersion of the foreign affairs portfolios), but some concentrated on the qualities of the individual nominees. It was widely publicised that Parliament was especially critical of five of the nominees, including all three Scandinavian nominees, one of the French nominees and the Irish nominee. Some felt that this was unfair, since the letters were inevitably subjective, since some of those who escaped this critical treatment were felt to have deserved it, and since four of the five who were criticised were new nominees rather than experienced Commissioners.

Moreover, the fact that the Scandinavian nominees were all criticised raised the question of whether there was a Scandinavian cultural factor

at work, with a reluctance to make crowd-pleasing statements, to make promises that could not be kept, or even to express a view on unfamiliar subjects. Nevertheless, there was broad agreement that the Irish nominee, Padraig Flynn (an incumbent Commissioner) and Ritt Bjerregaard had performed in an unsatisfactory fashion. In the case of Flynn, the committee letter expressed "general disappointment" at his performance and said that he was "almost systematic in his inability or unwillingness to answer in a direct fashion the questions put to him". While recognising that he had made a positive contribution to the Commission in the past, the letter also suggested that the specific field of equal opportunities policy be attributed to another Commissioner.

The letter about Ms Bjerregaard was even more laconic. In spite of her unconvincing performance "there was little support for rejection" of the nominee, but "if her performance were representative of the whole Commission, the Members of the committee would feel bound to vote against the Commission's investiture on 18 January". The Parliament's negative views were subsequently compounded by alleged critical remarks that the nominee made about the Parliament in her national media.

Some of Parliament's criticisms were raised by the political group chairmen in a meeting with President-designate Santer. The latter then presented the Commission's political programme on Tuesday 17 January, and this was followed by a full debate. In the course of this debate Mr Santer made a few additional gestures towards the Parliament, including taking away the chairmanship of the Commission working group on equal opportunities from Mr Flynn and reserving it for himself. He also clarified a number of uncertain points concerning the distribution of competences in such fields as development policy, human rights and the fight against racism. Vaguer promises were made concerning the forthcoming new Code of Conduct between the Commission and the Parliament. Mr Santer was asked to give explicit assurances about the attitude of Ms Bjerregaard towards the Parliament, and he complied with this request.

On this basis the Parliament then voted on Wednesday 18 January to approve the new Commission by a vote of 417 in favour to 104 against, with 59 abstentions. 580 of the 626 MEPs took part in the vote, again an exceptionally high figure of 92% of those eligible to vote. The vast majority of the Socialists, European People's Party, Forza Europa, RDE (Gaullist Group) voted in favour, as well as a majority of the Liberals. The Radicals, the Greens and the more traditional Communist element of the Left Unity Group voted against the Commission, as did the French and Belgian far right, and a few Socialists (including many German SPD members), Liberals (notably the Finns) and EPP members (including the more Euro-sceptic of the British Conservatives). Among those abstaining were the members of the Europe of Nations Group, the remaining members of the Left Unity Group and a significant majority within the Liberal Group. The Commission was thus approved by a large majority, primarily on the grounds that the majority of the nominees had performed adequately or well at their hearings, that there were insufficient other reasons to vote against the Commission as a whole and that it was better to give it a sufficiently broad rather than narrow endorsement. Otherwise it would begin its term of office under too great a handicap. The final vote was not one of universal enthusiasm, however, and certain

speakers emphasised that the new Commission was now entering a period of probation.

28. The Parliament subsequently held a "post-mortem" on the new procedures, with a special meeting of the chairmen of committees being devoted to reviewing the experience with the hearings, and with Mr Herman of the Institutional Affairs Committee preparing a set of conclusions on their outcome. The hearings were generally felt to have been very positive. Besides being well attended and generating considerable public interest, they were felt to have conferred greater democratic legitimacy upon the new Commission compared to its predecessors, to have been a catalyst for the relatively rapid distribution of portfolios among the nominees, to have given an opportunity for each committee to establish an immediate working relationship with the Commissioner responsible for their area, and also to learn more about the personal capacities of each nominee. The hearings were also felt to have been useful in pinpointing weaknesses and overlaps in the organisation of the Commission.

Satisfaction was also expressed that the composition of the new Commission better reflected some of Parliament's criteria, such as the need for more women, and for more politically experienced and former MEPs in the Commission. It was felt, however, that the hearings could have been improved in a number of ways. In future, for example, it might be wise to have rather fewer hearings per day, and for better allowance to be made for subsidiary committees to get their questions across. More time might be allowed between the end of the hearings and the decision in plenary to permit a better prepared Commission response to Parliament's criticisms. There should be more standard practices between EP committees as regards the preparation of questions to the nominee, the scope of the questions and the format of the concluding committee letters. More allowance might also be made for the distinction between nominees who were already on the Commission and entirely new candidates, who were likely to be at a certain disadvantage. It was also felt to be desirable for the Commission to be set additional deadlines for the presentation of its draft political programme, so that this could be presented before the individual hearings: This would enable questions to be put to individual Commissioners on the part or parts of the Commission's draft programme within their area of responsibility.

29. All these suggestions, of course, were put forward within the context of the existing rules. The new procedures stemming from the Maastricht Treaty represent, as this paper has sought to demonstrate, a major advance on preceding practice, but they are still far from constituting a final stable system. A number of proposals will be put forward to reform these procedures at the 1996 Intergovernmental Conference. These possible changes are briefly described below in the concluding section of this paper.

<u>Possible proposals at the 1996 Intergovernmental Conference</u>

30. The involvement of the European Parliament in appointments to the Commission and to other European Union institutions and bodies will not be one of the major issues at the 1996 Conference but will certainly be raised. A number of proposals have already been put forward to this effect within the European Parliament, both within several of the 17

working documents initially drawn-up in the Institutional Affairs Committee and in the texts produced by the same committee's co-rapporteurs, Mr David Martin (British Labour - Socialist Group) and Mr Jean-Louis Bourlanges (French UGF - EPP Group), whose two draft reports were merged into one joint report amended and adopted by the committee on 3 May 1995.

31. David Martin's text emphasised the current unsatisfactory procedure for appointing the President of the Commission, and he supported Mr Santer's own suggestion that future Presidents be elected by the European Parliament from a list of names put forward by the European Council. His explanatory statement pointed out in this context that if such potential candidates were known in advance, the choice of a Commission President could become one of the themes debated and discussed in European Parliament election campaigns. He went on to moot an even more radical variant on this proposal, with each European political party entering the election campaign with its own candidate for President. In either case, the rest of the Commission would then be put together by agreement between the President and the national governments before coming to Parliament for a final vote of investiture as a college.

32. Mr Bourlange's initial draft report had a different emphasis. The President and the two Vice-Presidents of the Commission responsible for the second and third pillars respectively would be nominated by the European Council by a specially reinforced majority, with the assent of the Parliament being required for approval of the prospective nominee for President. The President and two Vice-Presidents would then form a college which would nominate the other Members of the Commission, with the Commission as a whole then being invested by an absolute majority of the component Members of the European Parliament and also by the European Council acting by specially reinforced majority. According to Mr Bourlanges, individual Commission nominees could also be rejected by the Parliament acting by a majority of its Members and two-thirds of those voting. In the voting on 3 May the Institutional Affairs Committee voted to follow David Martin's proposals rather than those of Jean-Louis Bourlanges.

33. The Institutional Affairs Committee also followed Mr Martin's proposal in calling for the Parliament to have to give its assent to, rather than being merely consulted or not involved at all, in nominations to the European Court of Auditors, the European Court of Justice, the Court of First Instance and the Executive Board of the European System of Central Banks: Mr Bourlanges had only supported Parliament being given the right of assent on nominations to the European Court of Auditors.

34. The issue of these other nominations besides those to the Commission had previously been touched on by a working document on the composition and appointment of judicial organs and of the Court of Auditors prepared within the Institutional Affairs Committee by Brendan Donnelly, a British Conservative. He supported the introduction of the assent procedure for nominations to the Court of Auditors, with Parliament being able to veto a nomination if necessary, but was more cautious with regard to European judicial appointments. He concluded that the idea of introducing consultation or assent of the European Parliament for such nominations, with confirmation hearings for such nominations, did merit further examination but that any such EP role should avoid purely

political considerations and concentrate entirely on verifying whether a nominee could demonstrate his or her independence and outstanding legal qualifications or abilities.

The Parliament had, at an earlier date (9 February 1994), adopted a resolution on the appointment of Members of the Court of Justice in which a more limited request had been made, namely that the governments of the Member States ensure that appropriate arrangements be made for its Committee on Legal Affairs and Citizens' Rights to meet with prospective Members of the Court of Justice prior to their appointment.

The European Parliament will now again be voting on all these issues on Wednesday 17 May, when it will adopt its final position prior to the establishment of the Reflection Group. It is quite likely that the proposals put forward by David Martin will be followed on these particular points.

Concluding comments

35. As a result of the 1996 IGC the European Parliament may or may not be given a more significant role in appointments to leading positions in the EU Commission and in other EU institutions and organs. Even, however, if its formal powers remain the same as after Maastricht, the European Parliament's role as regards nominations is already greater than it was in the past. Moreover, the practice of holding Parliamentary hearings of the nominees, a practice unknown within the European Parliament a few years ago, is now here to stay as regards nominations to the Commission, the European System of Central Banks and the Court of Auditors and may be informally extended to the Court of Justice as well. Future hearings are also likely to be better prepared and structured. If Parliament is given the full right of assent on these nominations, with a right to veto individual candidates or else the entire Commission, Parliament's hearings will even more resemble those within the US Senate (although nominees are unlikely ever to have to submit to the type of detailed personal and financial scrutiny that happens in the United States).

In conclusion, it is clear that the European Parliament's role in nominations is likely to further grow, and the significance of European Parliament confirmation hearings is almost certain to increase even within the existing system of nominations.

Annex

Main sources cited: Recent EP material

- Decision embodying the opinion of the European Parliament on the proposal for the appointment of the President of the European Monetary Institute (29 November 1993).

- Resolutions on appointments of Members of the Court of Auditors (16 December 1992, 15 December 1993, 20 January 1994 and 17 February 1995).

- Resolution on proposed candidate for President of the Commission (21 July 1994).

- Decision approving the nominated Commission (18 January 1995).

- Resolution on the appointment of Members of the Court of Justice (9 February 1994).

- Report on the procedure for consulting the European Parliament on the appointment of Members of the Court of Auditors (Lamassoure reports, A3-0345/92).

- Report on the procedures to follow when Parliament is consulted in connection with appointment of Members of the Court of Auditors (Bourlanges report, A4-0001/95).

- Resolutions on the appointment of the President of the Commission (10 June 1992 and 8 July 1992).

- Resolution on the presentation of the new Commission (10 February 1993).

- Resolution on the investiture of the Commission (21 April 1994, based on Froment-Meurice report, A3-0240/94).

- Set of recommendations adopted by the Committee on Institutional Affairs on possible procedures for the investiture of the Commission (drafted by Mr Herman, "suiveur", PE 210.035/rev.3).

- Conclusions on the EP confirmation hearings of prospective new Commissioners in the context of the investiture process (suiveur: Mr Fernand Herman, PE 211.539/fin.).

- Working document on composition and appointment of judicial organs and of the Court of Auditors (draftsman: Mr B. Donnelly, PE 211.536).

- Draft report on the Development of the European Union (rapporteur: Mr David Martin, PE 211.919/A+B).

- Draft report on the Operation of the Treaty on European Union with a view to the 1996 Intergovernmental Conference - Implementation (rapporteur: Mr Jean-Louis Bourlanges, PE 211.920/A).

- Report of the Institutional Affairs Committee on the Implementation and Development of the Union (co-rapporteurs: Martin and Bourlanges, A4-0102/95/Part I.A.