

17 The political institutions

Hartley, T.C. (2003) *The Foundations of European Community Law: An Introduction to the Constitutional and Administrative Law of the European Community*, Oxford, Oxford University Press, pp. 11–13.

According to the Treaties,²⁹ the Community has five institutions – the Commission, the Council, the European Parliament, the Court of Justice, and the Court of Auditors. The first three are political institutions. [...]

The Commission

The Commission is intended to give expression to the Community interest. Its most important activities are formulating proposals for new Community policies, mediating between the Member States to secure the adoption of these proposals, co-ordinating national policies, and overseeing the execution of existing Community policies.

Composition

At present the Commission has twenty members,³⁰ who must be nationals of a Member State. There must be at least one from each Member State and no more than two from the same Member State.³¹ The practice is that the five largest countries – Germany, France, Italy, Spain, and the United Kingdom – have two members each and the others one each. The Treaty of Nice will change this. The change is to come about in two stages. Under the first stage, which will apply to the first Commission to take up its duties after 1 January 2005, the larger Member States will lose their second Commissioner. There will then be one Commissioner from each Member State.³² This may initially result in a smaller Commission, but, as more countries join, it could rise above its present size. Thus if ten more countries were to join, there would be twenty-five Commissioners.

Once the number of Member States reaches twenty-seven, the second stage will come into effect. Member States will thus lose the automatic right to have even one Commissioner. The number of Commissioners will be less than the number of Member States, and Commissioners will be chosen 'according to a rotation system based on the principle of equality'.³³ The implementation of this will depend on a decision of the Council, acting unanimously, which will determine the size of the Commission and the way in which Commissioners are chosen. Member States will have to be treated on a 'strictly equal footing'; subject to that,

²⁹ See Arts 7 [4] EC and 3 Euratom.

³⁰ The number of Commissioners may be altered by the Council, acting unanimously: Arts 213 (1) [257 (1)] EC, and 126 (1) Euratom.

³¹ *Ibid.*

³² Art. 4 (1) of the Protocol to the Treaty of Nice on the Enlargement of the European Union. This was foreshadowed in the Protocol on the Institutions with the Prospect of Enlargement of the European Union (a protocol annexed to the Treaty on European Union and the EC, ECSC, and Euratom Treaties by the Treaty of Amsterdam).

³³ *Ibid.*, Art. 4 (2).

each Commission should reflect satisfactorily the demographic and geographical range of all the Member States of the Union'.³⁴

These changes could affect the character of the Commission. The principle of equality means that small countries would have the same right to a Commissioner as large ones. If we assume that the twelve states most likely to become Members³⁵ all join, we will have a Union of twenty-seven states. The second stage will apply, assuming that the Council takes a decision to this effect. In such a case, there will be three states with a population of less than a million each (each entitled to equality with the big states),³⁶ eleven states with a population of less than six million each; and nineteen states with a population of less than twelve million each.³⁷ The combined population of the thirteen smallest states will be less than fifty million. The four largest states at present have more than fifty million each. The population of Germany (over 80 million) is greater than the combined population of the sixteen smallest states. Although the method of selection is supposed to reflect the demographic make-up of the Community, this is subject to the principle of equality. It seems inevitable, therefore, that the Commission will be dominated by Commissioners from the smaller states. It is even imaginable that, at some time in the future, Germany might have no Commissioner, while the majority of Commissioners might come from states the combined population of which is less than that of Germany. It could be argued that since the Commissioners are supposed to put national loyalties to one side, it does not matter if representation is lopsided. However, no one really believes that it does not matter. This is proved by the furious battles fought over the issue. A further problem is that it may be difficult to find candidates of sufficient quality from the very small states.

Prior to the Treaty of Nice, the procedure for appointing Commissioners was as follows.³⁸ The first step was for the governments of the Member States, acting 'by common accord',³⁹ to nominate the person they intended to appoint as President of the Commission. The nomination then had to be approved by the European Parliament. Next, they nominated the other members of the Commission. In doing so, they acted by common accord, in agreement with the President-elect.

All this is changed by the Treaty of Nice. Appointments will no longer be made by the governments of the Member States, but by the Council,

³⁴ *Ibid.*, Art. 4 (3).

³⁵ In descending order of population, these are: Poland, Romania, the Czech Republic, Hungary, Bulgaria, Slovakia, Lithuania, Latvia, Slovenia, Estonia, Cyprus, and Malta.

³⁶ Cyprus, Luxembourg, and Malta.

³⁷ This paragraph is based on current population figures. These will change, but the basic argument will remain valid.

³⁸ Arts 214 [158] EC and 127 Euratom.

³⁹ This means that they must all agree.

meeting in the composition of Heads of State or Government. Since the same individuals will be involved, this might seem purely symbolic.⁴⁰ In addition, however, they will act by a qualified majority. As regards the appointment of the President-elect, this will mean that one Member State will no longer be able to block a person supported by the others. As regards the appointment of other members of the Commission, the Treaty lays down three requirements:

- 1 the Council must act by a qualified majority;
- 2 it must also act by common accord with the President-elect;
- 3 the list of persons it intends to appoint must be drawn up in accordance with the proposals made by each Member State.

The last requirement seems to mean that the Commissioner from a given Member State cannot be anyone other than the person nominated by that state.

As far as Commissioners other than the President are concerned, this was the way things worked in practice under the previous system. Since every Member State had to agree to each appointment, a state could secure the appointment of its own candidate by threatening to block the appointment of other states' candidates. This threat would no longer be effective under qualified-majority voting, which explains the change in the wording of the Treaty. If it were really true that Commissioners did not in some sense represent their states, there would be no reason why they should be appointed on the nomination of their own governments. The Council could decide for itself who would be appointed for each Member State.

The final step in the procedure is unchanged.

⁴⁰ It does, however, mean that such decisions will be subject to review by the European Court under Art. 230 [173] EC.