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## Preface

The European Parliament is one of the seven EU institutions. However, as the only one among these seven, it is specifically designed to represent the interests of more than 450 million EU citizens from 27 countries. Consequently, it is desirable that the general public has, at least, some awareness about its role and functioning. However, since it is impossible for this paper to cover the whole range of tasks and powers the Parliament disposes of, it is focused exclusively on one of its function, namely its political control function.

It is necessary to note, that during the drafting of this paper, which has begun in September 2009, the Community has undergone a spectacular change, which has hardly an equivalent in its history. On December 1, 2009, after a long period of uncertainty, the Lisbon Treaty, signed already on December 13, 2007, entered into force.<sup>1</sup> It has amended both the Treaty of Maastricht (known also as the Treaty on European Union (TEU))<sup>2</sup> and the Treaty establishing the European Community (ECT)<sup>3</sup> – which it renamed Treaty on the Functioning of the European Union (TFEU)<sup>4</sup>. Besides renumbering, the Lisbon Treaty ushered in a new era of the Union. It has merged the European Union and the European Community into a single entity, the European Union, which now has only one legal personality. Furthermore, it has abolished the pillar structure (which brought along the ‘communitarisation’ of the 2nd and 3rd pillar) and reorganised the main EU institutions as well as the roles attributed to them, and especially the role of the European Parliament.

The crucial problem therefore arose, during the drafting process of this paper, how this change should be dealt with, especially with respect to the following: (a) the start of the drafting process of this paper was already in September 2009, when the destiny of the Lisbon Treaty was questionable and more than uncertain; (b) there is neither case law based on the Treaty of Lisbon yet, nor is it possible to demonstrate and base the

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<sup>1</sup> All EU member states had to ratify the Lisbon Treaty before it could enter into law. A national ratification was completed and registered when the instruments of ratification were lodged with the government of Italy. The Hungarian legislature was the first to approve the treaty, which it did on 17 December 2007. Under the original timetable set by the German Presidency of the Council of the European Union in the first half of 2007, the Treaty was scheduled to be fully ratified by the end of 2008, thus entering into force on 1 January 2009. This plan failed however, primarily due to the initial rejection of the Treaty in 2008 by the Irish electorate in a referendum, a decision which was reversed in a second referendum in October 2009. Ireland, as required by its constitution, was the only member state to hold referendums on the Treaty. The Czech instrument of ratification was the last to be deposited in Rome on 13 November 2009. Therefore, the Treaty of Lisbon entered into force on 1 December 2009.

<sup>2</sup> Treaty of Maastricht. The Official Journal C 191 of 29 July 1992.

<sup>3</sup> Consolidated Treaty establishing the European Community. The Official Journal C 321E of 29 December 2006.

<sup>4</sup> Consolidated version of the Treaty on the Functioning of the European Union. The Official Journal C 115 of 9 May 2008.

practice of the Parliament's political control mechanisms over the Commission on the new TEU and TFEU provisions, some of which have still not even been implemented.

Consequently, the only suitable way to handle this 'duality'<sup>5</sup> seemed to be the one approached in this paper. Its examination of the tools that the European Parliament has at its disposal in order to exercise political control over the Commission is based on ECT provisions – being supplemented (in brackets after the relevant provision), at the beginning of each chapter, with the corresponding Articles of the TFEU. Finally, and more importantly, at the end of each chapter, a subchapter on changes under the Lisbon Treaty has been included. This subchapter reflects and discusses all changes made to the substance of the relevant provision(s)<sup>6</sup> and the possible impact they could have on the current practice the European Parliament uses to exercise its political control power.

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<sup>5</sup> The ECT as valid until November 30, 2009 and the Lisbon Treaty, which entered into force on December 1, 2009.

<sup>6</sup> As from December 1, 2009.

## Introduction

At the very beginning, the European Union's institutional structure was based primarily on the bilateral relationship between the two key institutions, namely, the European Commission (the High Authority as it was then) and the Council of Ministers. In *Westlake's* words “under this simple model, the Commission proposed and the Council disposed”.<sup>7</sup> Generally spoken, there was no active role for the European Parliament (the Common Assembly as it was then). Thus, from the 1950s to the 1970s, the original Common Assembly and later the European Parliament (EP) were institutionally the weakest players in the EC with essentially supervisory and deliberative powers.<sup>8</sup> In legislative matters, they were only able to give an opinion on certain proposals from the European Commission (the Commission). In the large majority of cases, it was the Council of Ministers (the Council), representing the Member State governments, that had the last word in the law-making procedure.

The above-mentioned bilateral relationship was broken up for the first time in 1979, with the advent of the first direct election of the EP, and, later on, the process of fragmentation was accelerated by the adoption of the Single European Act in 1986<sup>9</sup>. Since then, the Commission has drawn heavily on the EP's democratic legitimacy, through which, as we will see below, the latter has skilfully and insistently managed to expand its powers, especially the legislative one, in a spectacular manner. This fragmentation, together with the increase of the EP's control over the executive, was subsequently deepened by the constitutional changes made by the Maastricht, Amsterdam, Nice and Lisbon Treaties.<sup>10</sup> As a result, the bilateral relationship of the Commission and the Council was replaced by the so called ‘inter-institutional triangle’, and the EP has become a key player at the European Community scene, which fulfils, among others, a necessary democratic and political control function, particularly over the institution responsible for the execution of EU law – the Commission. And as will be shown in this paper, the EP indeed has been and still is showing increasing willingness to make use of its gained powers to hold the Commission accountable for its actions.

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<sup>7</sup> See Spence, D. *The European Commission*. 3th ed. London: John Harper, 2006, in the section: *The European Commission and the European Parliament* by Westlake, M., p. 263.

<sup>8</sup> Confer article 137 of the EEC Treaty.

<sup>9</sup> Which brought along, among others, the EP's first true involvement in the legislative process.

<sup>10</sup> The Maastricht Treaty, for example, introduced the co-decision procedure in some areas of legislation and extended the cooperation procedure to others. The Amsterdam Treaty extended further the co-decision procedure to the most areas of legislation and thus put the EP as co-legislator on an equal footing with the Council. The Nice Treaty granted the EP a right to bring actions before the European Court of Justice under the same conditions as the other institutions.

Nowadays European Parliament is the assembly of 736 representatives of the Union citizens from 27 Member States (MSs), who have been elected<sup>11</sup> by direct universal suffrage since 1979 every five years. The last elections to the EP were held in June 2009. Thanks to its direct election by the peoples of the Union, the EP is the only real multinational legislative assembly in the world, and it plays an increasingly important role in the EU integration process. In addition, it is a transparent institution whose plenary sittings and discussions are entirely open to the public.

Today, the EP exercises four main functions: (1) Legislative, (2) Budgetary, (3) Approval<sup>12</sup> and (4) Political control. However, as the title indicates, this paper will focus on only one dimension of the EP's institutional functions, the fourth one. The political control function is exercised by the EP through several levels which are reflected in the EP's right to: (1) ask parliamentary questions; (2) set up inquiry committees; (3) grant discharge of the budget; (4) table a motion of censure; (5) find recourse before the Court of Justice of the European Union; (6) act on petitions received; (7) scrutinize Commission's reports; in the EP's (8) power of political initiative; and (9) through the so called 'comitology'. Although all these levels should be seen as being on an equal footing, that is not always the situation. In fact, when dealing with the EP's supervisory power over the Commission, authors, scholars, MEPs or various websites (even the EU ones) do not always mention consistently all these levels, but rather only some of them.<sup>13</sup> Very often, attention is drawn only to three or four levels, especially to: (1) the power of the EP to put written and oral questions; (2) the discharge procedure; (3) the power to give or withhold approval for the designation of Commissioners and the power to dismiss the Commission as a body by passing a motion of censure; and (d) the power to set up committees of inquiry.<sup>14</sup>

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<sup>11</sup> The electoral procedure is to be governed in each Member State by its national provisions.

<sup>12</sup> The approval function of the EP having been introduced by the Single European Act and meaning that the EP has the right to give or withhold its assent as regards some important questions. Under the Treaty of Nice, this procedure applies to a new provision regarding a breach of fundamental rights by Member States, as well as to the conclusion of certain international agreements, the accession treaties of new Member States to the Union and association agreements, uniform electoral procedures, budget agreements and matters related to economic and social cohesion.

<sup>13</sup> Confer fe. the following websites: [http://europa.eu/scadplus/glossary/european\\_parliament\\_en.htm](http://europa.eu/scadplus/glossary/european_parliament_en.htm) (last accessed on October 1, 2009); [http://www.euoparlmt.eu/view/en/European\\_Parliament/Powers/Democratic\\_control.html%3Bjsessionid=2ABD94BE6E0C2B898603EF3E963F42DE](http://www.euoparlmt.eu/view/en/European_Parliament/Powers/Democratic_control.html%3Bjsessionid=2ABD94BE6E0C2B898603EF3E963F42DE) (last accessed on October 1, 2009); [http://www.vsvsmv.wz.cz/spoluprace/docs/Nikola\\_Evropsk\\_\\_parlament.doc](http://www.vsvsmv.wz.cz/spoluprace/docs/Nikola_Evropsk__parlament.doc) (last accessed on October 1, 2009); [http://www.eurordis.org/article.php3?id\\_article=1589](http://www.eurordis.org/article.php3?id_article=1589) (last accessed on October 1, 2009); [http://europa.eu/abc/12lessons/lesson\\_4/index\\_en.htm](http://europa.eu/abc/12lessons/lesson_4/index_en.htm) (last accessed on October 1, 2009); <http://www.epceurope.org/about/guidetoeeurope.shtml#2> (last accessed on October 1, 2009); [http://www.euoparl.europa.eu/factsheets/1\\_3\\_2\\_en.htm](http://www.euoparl.europa.eu/factsheets/1_3_2_en.htm) (last accessed on October 1, 2009); or authors: Phinnemore, D. *A dictionary of the European Union*. 4th ed., London: Routledge, 2008. 474 p.; Judge, D. Earnshaw, D. *The European Parliament*. 2nd ed., Basingstoke: Palgrave Macmillan, 2008, 356 p.; Müller, K. *The powers of the European Parliament in the European Union*. Luxembourg : EP, 1999., Working document / EP. Political series; POLI 114 EN, 43 p; Corbett, R.; Jacobs, G.F. and Shackleton, M. *The European Parliament*. 7th ed., London: John Harper, 2007. 407 p.; etc.

<sup>14</sup> The European Parliament. Power of the European Parliament to monitor the executive. Available at: [www.ena.lu](http://www.ena.lu) (last accessed on October 1, 2009).

Therefore, the paper will focus and put emphasis primarily on the four above mentioned levels.

After a general introduction to the EP and a short examination of its tasks, the paper will start with parliamentary questions, as the first level of political control. This power empowers the EP to put to the Commission written and oral questions on various topical matters. Parliamentary questions are probably the most vital factor in the EP's power of direct democratic supervision of the Commission. However, despite their nature, they receive very little attention and are an overall under-researched area. Therefore, in order to remedy this shortage, a considerable part of this paper will be devoted to various aspects of parliamentary questions and their analysis. First, parliamentary questions in general will be examined, and, second, the particular types of parliamentary questions will be subject of scrutiny in the following order: (a) written questions, (b) questions for oral answer with debate, and (c) oral questions for Question Time. In addition, a research concerning parliamentary questions, which was undertaken by the author of this paper, will be presented. By means of a questionnaire (which was sent in April and May 2009 to approximately 630 members of the European Parliament (MEPs) selected on a proportional basis from all EU Member States), MEPs were asked to answer, inter alia, the following questions: (1) *Which criteria do they take into consideration when deciding in which form to table a question?*; (2) *Whether they find the Commission's answers satisfactory*; (3) *Whether they think that the questions are an effective tool which enables them to exercise democratic control over the Commission*; or (4) *whether they have any suggestions what could be improved regarding parliamentary questions*. Based on the answers received, the paper will assess whether this particular way of control is effective and how it could be possibly improved.

Further, a focus will be put on the second level of the EP control, represented by the so-called Committees of Inquiry. The EP is empowered to set up these Committees on the basis of Article 193 ECT<sup>15</sup> (as from December 1, 2009, Article 226 TFEU), at the request of a quarter of its component Members, in order to investigate alleged contraventions or maladministration in the implementation of Community law. However, in practice, the EP makes use of this power only exceptionally. Thus, it will be dealt with only marginally in chapter 2. Last but not least, the EP's budgetary control power, as the third instance of the EP's supervision over the executive, will be examined in chapter 3.

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<sup>15</sup> See Consolidated ECT Art. 193 and Consolidated TFEU Art. 226.

"In the course of its duties, the European Parliament **may**, at the request of a quarter of its Members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by this Treaty on other institutions or bodies, alleged contraventions or maladministration in the implementation of Community law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings." [emphasis added].

The fourth and not less important instance of the EP's supervision consisting of its power to give or withhold consent for the designation of Commissioners<sup>16</sup> and, especially, the power to force the College of Commissioners to resign as a whole by passing a motion of censure, will be more closely dealt with in chapter 4. Taking *Santer's* and *Barroso's* Commission as an illustrative example, we will demonstrate how these two powers work in practice. In the second part of this chapter, we will take a close look at the principle of collegiality and the Framework Agreement of 2000 and its 2005 update, which were concluded between the EP and the Commission and have been subject of strong criticism by the Council. These Framework Agreements are claimed to be in breach of the above mentioned principle of collegiality and, further, that several provisions of them seek to bring about a shift in the 'institutional balance' resulting from the Treaties. The paper will therefore examine, to what extent such criticism is founded. The last part of this chapter will be devoted to changes which were brought to this institute by the Lisbon Treaty.

Chapters 5 and 6 will introduce the fifth and sixth levels of the political control – the EP's right of recourse before the Court of Justice and its right to act on petition(s) received. Put more precisely, the possibility of judicial review covers the EP's rights to: (a) lodge an application for annulment of an act of the Commission adopted in application of Community law, (b) bring an action for failure to act against the Commission if it fails to fulfil its obligations, and (c) request the Court's opinion.

The last chapter will be devoted to the remaining levels, namely (7) the EP's power to exercise the supervision through its scrutiny of a large number of monthly or annual reports, which the Commission is obliged to submit to the former under the terms of the Treaties; (8) the power of political initiative<sup>17</sup>; and (9) the comitology procedure.

To sum up, the paper will examine how the EP exercises democratic control over the Commission's activities, i.e. whether this control is effective and how it could be possibly improved.

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<sup>16</sup> The President and the other members of the Commission were subject as a body to a vote of approval by the European Parliament as laid down in ex article 214 ECT. Note, however, that with the entry into force of the Lisbon Treaty, Article 214 ECT was repealed and replaced, in substance, by Article 17(3) and (7) TEU. The new Article 17(7) TEU lays down: "The President, the High Representative of the Union for Foreign Affairs and Security Policy and the other members of the Commission shall be subject as a body to a vote of consent by the European Parliament."

<sup>17</sup> The EP can call on the Commission to submit a proposal to the Council of Ministers.



# 1. Parliamentary Questions

*“Parliamentary questions are an interesting indicator of the way the MEPs in Strasbourg understand their role as the “representatives of the peoples” of the EU.”*

*Raunio Tapio*<sup>18</sup>

## 1.1 Introduction

As the Commission, already the High Authority (a predecessor of the European Commission) was politically responsible before the Common Assembly (later the European Parliament). Probably the most vital factor in the Parliament's power of control and thus the most important corollary of the political accountability of the Commission to the EP is the EP's right to put oral and written questions to the Commission, as laid down in Article 197(3) ECT (as from December 1, 2009, Article 230(2) TFEU).<sup>19</sup> Under the terms of this Article (as well as under the terms of the TFEU one) “the Commission shall reply orally or in writing to questions put to it by the European Parliament or by its Members.”<sup>20</sup> These questions give the EP an opportunity to obtain information from the Commission on particular points and issues or to force a policy statement to be made and thus constitute one of the possibilities how the EP can ensure direct democratic supervision of the Commission. In practice, as we will see, most of the questions tabled by the EP are written ones and only some questions, those which are of a sensitive nature, are discussed orally.

As *Grahn* points out, “the existing and future treaty level provisions leave the practical solutions to be sought at a lower level.”<sup>21</sup> He states that “on the one hand, the Commission has an obligation to reply to parliamentary questions, but as usual, the institutions have to find cooperative solutions to make things work, and, on the other hand, questions in parliament are something the European Parliament has had to develop internally.”<sup>22</sup> In practice, the EP, in order to take advantage of its right to put questions, has indeed, through its internal Rules of Procedure,<sup>23</sup> derived three different

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<sup>18</sup> See Tapio, R. *Parliamentary Questions in the European Parliament: Representation, Information and Control. Journal of Legislative Studies. London. 1996, Vol. 2. No. 4, p. 378.*

<sup>19</sup> See Consolidated versions of the Treaty on European Union and of the Treaty Establishing the European Community. The Official Journal C 321E of 29 December 2006.

<sup>20</sup> See Consolidated ECT Art. 197(3) and Consolidated TFEU Art. 230(2).

<sup>21</sup> See Grahn, R. *European Parliament: Question Time.* Grahnlaw, 2009. Available at <http://grahnlaw.blogspot.com/2009/03/european-parliament-question-time.html> (last accessed on September 21, 2009).

<sup>22</sup> *Id.*

<sup>23</sup> See the EP Rules of Procedure - 7th parliamentary term, December 2009. Not yet published in the Official Journal. Available at:

kinds of parliamentary questions from Article 197(3) ECT, all of which entail different internal procedures and serve different purposes.<sup>24</sup> They are as follows:

◆ **Written questions**

- worded with a request for a written answer published in the Official Journal;

◆ **Questions for oral answer with debate**<sup>25</sup>

- raised during plenary sitting and included in the day's debates, published in the Debates of the EP;

◆ **Oral questions for Question Time**

- raised during the time set aside at each plenary session in Strasbourg and published in the Official Journal;

It must be also noted and kept in mind that the EP Rules of Procedure provide not only for written and oral questions to the Commission, but also for written and oral questions to the Council (since 1973). To demonstrate a relationship between questions to the Commission and questions to the Council, it is enough to mention here, that the overall number of questions (as well as the different categories of questions themselves) addressed by the EP to the Commission, are far more numerous than those addressed to the Council. Based on the Table 1 concerning the EP's questions tabled between the years 2004 and 2008, the conclusion can be drawn, that approximately 84 per cent, out of the overall number of questions tabled, were addressed to the Commission. *Westlake* claims, that the reasons for this are "bound up in the nature of the Commission's functions, particularly as policy and budgetary executive, its extensive contacts with national authorities and its traditional openness to the EP".<sup>26</sup> However, since questions to the Council are not subject to scrutiny in this article, they will not be further dealt with.

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<http://www.europarl.europa.eu/sides/getLastRules.do?language=EN&reference=TOC> (last accessed on December 9, 2009).

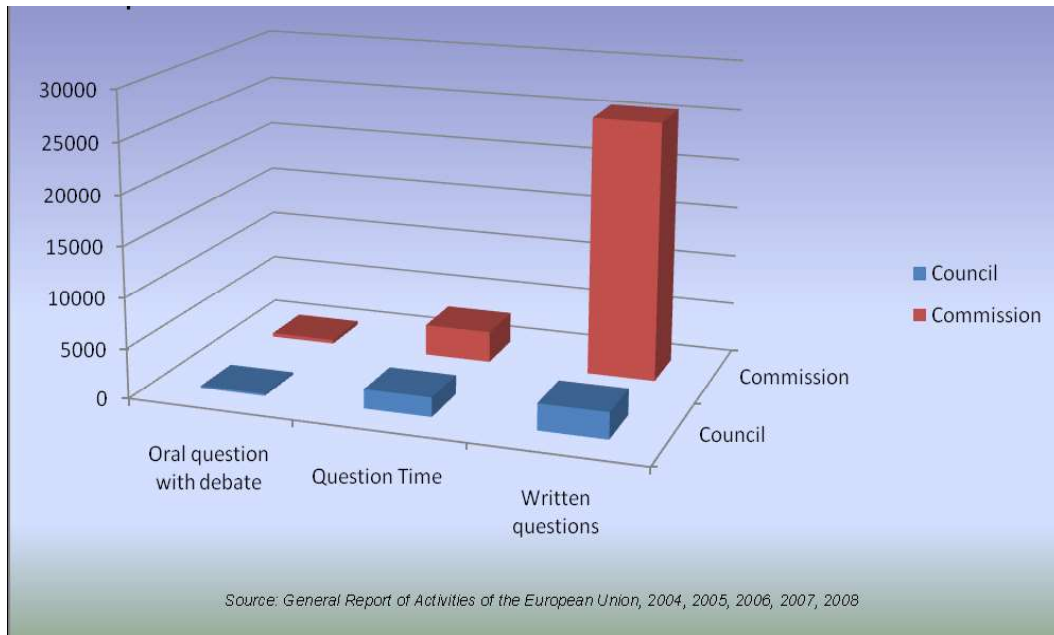
<sup>24</sup> *Id.* Rules 115-117.

<sup>25</sup> Prior to the 1993 change of the EP Rules there existed also oral questions without debate, but since then, the two types of oral question have been reduced to one.

<sup>26</sup> *Westlake, M. A modern guide to the European Parliament.* London: Pinter, 1994. p. 174.

**Table 1: Parliamentary questions tabled between 2004-2008**

	<b>Oral question with debate</b>	<b>Question Time</b>	<b>Written questions</b>
<b>Commission</b>	<b>372</b>	<b>3094</b>	<b>25710</b>
<b>Council</b>	<b>192</b>	<b>1913</b>	<b>2612</b>



As may be further deduced from Table 1 and as also *Navarro* noted in his paper, "Members of the European Parliament devote a lot of their time and energy to asking questions to other EU institutions."<sup>27</sup> This statement also underlines the fact, that since the last EP's elections in 2004, around 30 000 questions (7322 in 2008) were put to the Commission and this number has steadily increased over the years. One could argue that this increase can be easily explained by (1) *the parallel increase in the number of the MEPs*. To this extent, *Navarro* mentions two additional hypotheses, according to which the growing number of EP's questions may be further seen as a result of: (2) *the enlargement of the competences of the EC/EU* and (3) *the empowerment of the EP*.<sup>28</sup> *The enlargement of the competences of the EC/EU* has to be understood in a sense that since the introduction of new competences in the Treaties, such as, for instance, monetary policy and foreign affairs, the EC/EU institutions are now dealing with more issues than in the past<sup>29</sup> – which consequently leads to an increase in the number of

<sup>27</sup> See *Navarro, J. Questions in the European Parliament: What for? Preliminary findings. SPIRIT, Sciences Po Bordeaux. 2008, p.1.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

questions. As to *the empowerment of the EP*, Navarro claims, that it may have two contradictory consequences: (a) on the one hand, that it can involve a growing need for information from the part of the MEPs involved in the decision making process, or, (b) on the other hand, it is also possible that the MEPs prefer to act more directly through the legislative process than through ex post control mechanism of parliamentary questions.<sup>30</sup> The author of this paper suggests that this increase should be seen as a combination of all three parallel factors (1-3) mentioned above, all of them having an equal weight.<sup>31</sup>

Leaving behind the possible afore-mentioned hypotheses explaining the increased number of questions tabled every year, the fact remains, that parliamentary questions receive very little attention from scholars and specialists of the EP and are overall an under-researched area. Navarro highlights, that they are not even mentioned in two quite recent and respected books, namely: *Building Europe's Parliament. Democratic Representation Beyond the Nation-State* (2007) by Berthold Rittberger and *Democratic Politics in the European Parliament* (2007) by Simon Hix, Abdul Noury and Gérard Roland. To this point, the author of this paper has to add, that the similar could be said about two latest books on the European Parliament or the EP' Paper,<sup>32</sup> in which only two or three pages are devoted to this topic. Therefore, the only comprehensive studies dealing with parliamentary questions remain those by Raunio Tapio<sup>33</sup>, Westlake<sup>34</sup> and by Juliene Navarro<sup>35</sup>. As already stressed in the introduction, this is the reason why a considerable part of this paper is devoted to various aspects of parliamentary questions and their analysis.

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<sup>30</sup> *Id.*

<sup>31</sup> This suggestion is, among others, based on a Navarro's research which shows that the figure has more than doubled in the past 30 years and that the enlargement has accelerated and is exceptional since the beginning of the last term (2004-2009). He states that the number of questions has increased from 5313 in 2005 to 7322 in 2008. He concludes that as hypothesized this might be connected to the growing number of MEPs following the last but one enlargement of the EU. Nonetheless, he clearly shows in his statistic that the same phenomenon did not apparently occur following the enlargement to Portugal and Spain in 1986 and to Austria, Finland and Sweden in 1995.

<sup>32</sup> See Judge, D.; Earnshaw, D. *The European Parliament*. 2nd ed. Basingstoke: Palgrave, Macmillan, 2008, 356 p.; See also Corbett, R.; Jacobs, G.F. and Shackleton, M. *The European Parliament*. 7th ed. London: John Harper, 2007. 407p; and the EP's paper: Building Parliament: 50 years of European Parliament History 1958-2008. *European Parliament – 50th birthday Series*. 2008, 303 p.

<sup>33</sup> Tapio, R. Parliamentary Questions in the European Parliament: Representation, Information and Control. *Journal of Legislative Studies*, London. 1996, Vol. 2 No. 4, p. 356-382.

<sup>34</sup> See Westlake, M. *A modern guide to the European Parliament*. London: Pinter, 1994. 302 p.

<sup>35</sup> See Navarro, J. Questions in the European Parliament: What for? Preliminary findings. *SPIRIT, Sciences Po Bordeaux*. 2008, p.22. Available at: <http://webpages.dcu.ie/~martins/Navarro.pdf> (last accessed on September 6, 2009).

## 1.2 Origin of question time and its development

To begin, as *Navarro* rightly pointed out, the parliamentary questions are clearly linked to the institutional features of the EC/EU and the EP.<sup>36</sup> Firstly, because the possibility for the MEPs to table questions and receive an answer from them is clearly enshrined in the treaties. Secondly, because it reflects the larger institutional and political equilibrium of the political system of the EC/EU.<sup>37</sup> The right of MEPs to table questions to the Commission and to receive its answers was legally defined already in the original Treaty of Paris (ECSC Treaty) in its Article 23.<sup>38</sup> Under the wording of this Article, the original Common Assembly was empowered to table written and oral questions to the High Authority (as the Commission was called at that time), however, there was no similar provision which would provide for these questions to the Council. It was then later on, in 1973, when the Council agreed to answer MEPs questions. This was consequently confirmed by the Council ten years later, in 1983, in the Solemn Declaration adopted at the Stuttgart European Council, in which the Council gave an undertaking to answer all EP's questions addressed to it.<sup>39</sup> In 2003, the written question procedure was further extended also to the ECB. However, it is necessary to highlight that the ECB is not compelled to answer these written questions by the Treaty, but it does so on a voluntary basis.<sup>40</sup>

To quote *Westlake* "in the EP's early life, when the legislative and budgetary powers were few and weak, oral questions were considered an important power. They were far from having the government-defeating potential of the dreaded interpellation of the French Fourth Republic, but they did enable the EP to follow up the institution's response with a debate and the adoption of a resolution, and hence a vote. However, as the EP's

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<sup>36</sup> See Navarro, J. Questions in the European Parliament: What for? Preliminary findings. *SPIRIT, Sciences Po Bordeaux*. 2008, p.3.

<sup>37</sup> *Id.*

<sup>38</sup> See Consolidated ECSC Treaty Art. 23.

„The High Authority shall reply orally or in writing to all questions put to it by the Assembly or its members.“ Before December 1, 2009, this right was governed by ECT and by the EP's Rules of Procedure and nowadays (as from December 1, 2009, onwards), it is enshrined in Article 230(2) TFEU whilst it simultaneously follows to be governed by the EP Rules of Procedure.

<sup>39</sup> See Solemn Declaration Art. 2.3.3.

“In addition to the consultation procedures provided for in the Treaties, the Council, its members and the Commission will, in keeping with their respective powers, respond to: (a) oral or written question from Parliament; (b) resolutions concerning matters of major importance and general concern, on which Parliament seeks their comments.”

Nowadays, the President-in-Office of the Council generally attends plenary sitting of the European Parliament and answers questions addressed to the Council during question time, either directly or through his replacement.

<sup>40</sup> The ECB answers written questions submitted by individual Members of the European Parliament. The EP Rule of Procedure (Rule 118) states that “1. Any Member may put questions for written answer to the European Central Bank in accordance with guidelines laid down in an annex to these Rules of Procedure”.

legislative and budgetary powers have grown in number and importance, and as plenary time has been increasingly occupied by such business, the oral questions have diminished in relative importance.”<sup>41</sup> As we will see below, over the years, parliamentary questions have also been subject to some process of stylization and formalization, so that it now provides a very particular role in the EP’s activities.

### 1.3 Some reflections concerning the function of parliamentary questions

The EP’s questions form, as in many representative democracies, tools that MEPs dispose of, in order to scrutinize and control the executive. However, *Navarro* claims that these questions are sometimes perceived to be of secondary importance because they do not touch as directly to the policy-making process than other parliamentary tools, such as legislative amendments, reports, etc.<sup>42</sup> The question therefore arises, why do MEPs devote their time and energy to such a ‘secondary task’? Questions to the Commission are not very easy to explain from an instrument perspective since they have a low visibility in the public opinion and policy outcomes are more easily influenced through direct means such as legislative reports.<sup>43</sup> However, *Navarro* adds that “from the MEPs’ point of view, the questions present the double advantage of being available at the individual level and of requiring little effort (as compared to the drafting of a legislative report e.g.)”.<sup>44</sup> Besides, parliamentary questions may bring also benefits such as: (a) appealing to an MEPs’ constituents by addressing local issues; (b) gaining of credit from colleagues; and (c) giving access to useful information in the larger policy process. In *Navarro’s* words, “put another way, the cost of questioning is low, as are the benefits, and the fact that MEPs table so many questions certainly means that the benefits of questioning outweigh the costs.”<sup>45</sup>

To this extent, *Wiberg* identifies three major uses and functions of parliamentary questions.<sup>46</sup> First, questions may be a tool in the hands of the opposition to control and exercise pressure on the executive. Second, parliamentarians may resort to parliamentary questions in order to get information they want to use in the policy process. In such a case, questions follow a logic of specialization of a particular MEP. Thirdly,

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<sup>41</sup> See Westlake, M. *A modern guide to the European Parliament*. London : Pinter, 1994. p. 176.

<sup>42</sup> See Navarro, J. Questions in the European Parliament: What for? Preliminary findings. *SPIRIT, Sciences Po Bordeaux*. 2008, p.1.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> See Wiberg, M. Parliamentary control in the Nordic countries. Forms of questioning and behavioural trends. *The Finnish Political Science Association*. Helsinki. 1994, 364 p.

questions may be used in order to carry out constituency casework: they allow parliamentarians to raise concerns that are important to his or her voters.<sup>47</sup> The author of this paper suggests that MEPs' questions serve two main overlapping functions: information and scrutiny. To this, it is interesting to mention the response obtained from Baroness *Emma Nicholson of Winterbourne* (UK MEP serving during the 6th parliamentary term - EPP Group). As to the question of whether she thinks, that the parliamentary questions are an effective tool which enables her to exercise democratic control over the Commission, she responded as follows: "Inappropriate question as this is not a mechanism for control but for seeking knowledge or information."<sup>48</sup> This clearly shows, how parliamentary questions are looked upon by some MEPs and that the informative function of questions is one of their main merits. However, from the research undertaken by the author of this paper among MEPs serving during the 6th parliamentary term it further follows, that MEPs choose the written form of the question mainly for queries from their constituencies. Therefore, especially when one considers that the written questions are the most numerous ones, also the third function noted by *Wiberg* must be upheld as having a significant importance.

#### **1.4 Nature of the parliamentary questions and the Rules governing their procedure<sup>49</sup>**

Approximately 6000 questions (all together)<sup>50</sup> are being tabled by the EP to the Commission every year.<sup>51</sup> Most of the questions are written and only some of them, especially those that are of a sensitive nature, are discussed orally. Nevertheless, irrespective of the nature of parliamentary questions, answers to all of them must be approved by the Commission as a whole, i.e. by the College of Commissioners, and they are binding on it.<sup>52</sup>

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<sup>47</sup> *Id.*

<sup>48</sup> Answer to the author's questionnaires to MEPs received from Baroness Ema Nicholson of Winterbourne on May 11, 2009.

<sup>49</sup> See the EP Rules of Procedure - 7th parliamentary term, December 2009.

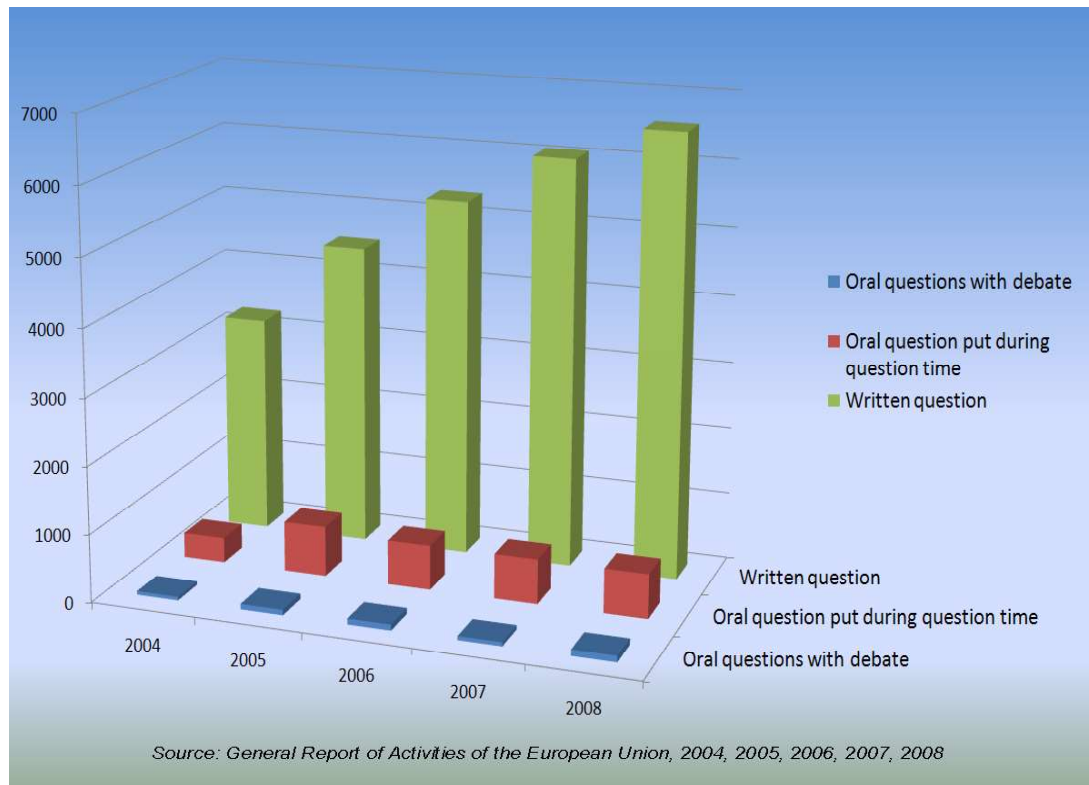
<sup>50</sup> Written questions, Questions for oral answer with debate, Oral questions for Question Time.

<sup>51</sup> See Table 1.

<sup>52</sup> Some authors claim that the collegiate nature is one of the reasons that hampers the Commission's role in the proceedings. The EP has sought to overcome this problem by providing for question times to the President and individual members of the Commission, but because it sees the principle of collegiality as a deontological part of the Community's inter-institutional balance, the Commission has refused to be bound by such distinctions. In this respect, see Westlake, M. *A modern guide to the European Parliament*. London: Pinter, 1994. p. 176.

**Table 2: Questions put by the EP to the Commission by year<sup>53</sup>**

TYPE OF QUESTION	2004	2005	2006	2007	2008 <sup>54</sup>
Oral questions with debate	53	80	87	59	659
Oral question put during question time	369	740	661	665	93
Written question	3254	4493	5327	6066	6570
<b>Total</b>	<b>3676</b>	<b>5313</b>	<b>6075</b>	<b>6790</b>	<b>7322</b>



To understand the Commission's internal rules governing parliamentary questions, it is necessary to mention that on the side of the Commission, two different bodies are in charge to help the Commission with matters concerning oral and written question tabled by the MEPs. They are: (a) the Inter-institutional Relations Group (GRI)<sup>55</sup> and (b) the

<sup>53</sup> See General Report of Activities of the European Union 2008. Available at: <http://europa.eu/generalreport/en/rg2008en.pdf> (last accessed on January 19, 2010). The next edition of the General Report of Activities of the European covering the year 2009 should be published in February 2010.

<sup>54</sup> It must be pointed out that according to this Report: "In 2008 Parliament addressed 7 322 questions to the Commission: 6 570 written questions, 659 oral questions with debate and 93 during question time, as reflected in the chart. In the author's opinion, the figures concerning the number of oral questions with debate and the number of oral question during Question time have been erroneously mixed up in this Report. If one compares Reports from previous years (2004-2007), it can be clearly seen that the number of oral questions during question time has never fallen below 200 and, simultaneously, the number of oral questions with oral debate has never (between 2004-2007) exceeded 45.

<sup>55</sup> The GRI is the Commission's main instrument in managing its relations with the EP. It is a body within the Commission with the task of coordinating political, institutional, legislative and administrative relations with the other institutions, and, in particular, with the European Parliament and the Council. It is also responsible for coordinating the Commission's position before Parliament's bodies and in the conciliation committees. The



Commission's General Secretariat (SG)<sup>56</sup>. Their main task is to ensure that the time limits and proper procedures concerning written and oral questions are observed. The SG further allocates questions received and, subsequently, coordinates the drafting of answers to oral and written questions and their adoption. It also ensures that they are sent to the EP. To sum up, it ensures the necessary coordination between departments and at cabinet level with a view to preparing the positions to be defended by the Commission during Question Time.<sup>57</sup> The detailed procedure concerning assignment of written questions and drafting their answers is set down in The Manual of Operating Procedures of the Commission.<sup>58</sup>

## ● **WRITTEN QUESTIONS (also denoted as TYPE "E QUESTIONS"<sup>59</sup>)**

To begin with the written questions, these are the first and at the same time the only group of questions, which have undergone some important changes in the last three years. Therefore, before we step to a description of how the tabling procedure of written questions works, it is appropriate to examine these changes first.

### **A) Changes in the EP Rules of Procedure – the Working Party on Parliamentary Reform**

The EP Rules of Procedure dealing with questions for written answers as valid in January 2007 were as follows:

Rule 110 : Questions for written answer<sup>60</sup>

1. *Questions for written answer may be put by any Member to the Council or the Commission. The content of questions shall be the sole responsibility of their authors.*

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GRI further assures the political preparation of forthcoming Parliament part-sessions and in particular helps define the Commission's stance on Parliament's amendments, examining certain non-legislative reports and other politically important matters and approving draft answers to parliamentary oral questions to ensure that they reflect the view of the Commission as a whole. For further details on GRI, see *Spence, D.*: The European Commission. 3th ed., London: John Harper, 2006, in the section: The European Commission and the European Parliament by *Westlake, M.*, p. 276.

<sup>56</sup> The SG is one of 40 Directorates-General (DGs) and specialised services, which make up the European Commission. Its task is to ensure the overall coherence of the Commission's work – both in shaping new policies, and in steering them through the other EU institutions.

<sup>57</sup> See: [http://ec.europa.eu/dgs/secretariat\\_general/relations/relations\\_other/index\\_en.htm](http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/index_en.htm) (last accessed on September 6, 2009).

<sup>58</sup> See The Manual of Operating Procedures of the Commission (Brussels: European Commission, 2009), Part: "Decision-making: Inter-institutional stage - European Parliament".

<sup>59</sup> Celex numbering as may be found in section 9 of the Celex Table, available at: <http://www.ellispub.com/ojplus/help/celex.htm#sectors1> (last accessed on March 28, 2009).

<sup>60</sup> The EP Rules of Procedure, Provisional version - January 2007. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20070101+TOC+DOC+XML+V0//EN&language=EN> (last accessed on September 16, 2009).

2. Questions shall be submitted in writing to the President who shall forward them to the institution concerned.
3. If a question cannot be answered within the time limit set it shall, at the request of the author, be placed on the agenda of the next meeting of the committee responsible. Rule 109 shall apply *mutatis mutandis*.
4. Questions which require an immediate answer but not detailed research (priority questions) shall be answered within three weeks of being forwarded to the institution concerned. Each Member may table one priority question each month. Other questions (non-priority questions) shall be answered within six weeks of being forwarded to the institution concerned. Members shall indicate which type of question they are submitting. The final decision shall be taken by the President.
5. Questions and answers shall be published in the Official Journal of the European Union.

Further, it must be recalled, that as from July 14, 2009, new EP Rules of Procedure<sup>61</sup> have entered into force, which replaced the EP Rules of Procedure – 16th edition<sup>62</sup> from March 2009. Consequently, former Rules 108–110 covering questions to the Commission were renumbered and today are covered by Rules 115–117.<sup>63</sup>

On 15 February 2007, the Working Party for Parliamentary Reform comprising one representative of each political group was set up by the Conference of Presidents<sup>64</sup> on the basis of a proposal made by the former President of the European Parliament, *Prof. Dr. Hans-Gert Pöttering*, who made the reform of the parliamentary work one of his priorities.<sup>65</sup> The aim of this working group was to make the EP's work more efficient and more attractive to the public, i.e. to propose amendments designed to enhance the procedural efficiency and effectiveness, as well as the political profile, of debates within the EP. During its operation, the EP's Working Party on Parliamentary Reform, despite the opinion of many insiders who claimed that the procedure concerning written and oral questions had remained „a useful vehicle“,<sup>66</sup> came to the conclusion that the practice concerning written questions to the Council or the Commission under Rule 110

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<sup>61</sup> The EP Rules of Procedure – 7th parliamentary term, July 2009. Currently, December 2009 edition is available at the EP's website.

<sup>62</sup> The EP Rules of Procedure – 16th edition, March 2009. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20090309+TOC+DOC+XML+V0//EN&language=EN> (last accessed on September 11, 2009). It must be noted that the numbering of Rules dealing parliamentary questions was identical as the one valid in January 2007.

<sup>63</sup> Between the years 2007 and 2009, the numbering of the EP's Rules of Procedure covering questions to the Commission was identical. However, it was renumbered in July 2009 by the EP's Rules of Procedure – 7th parliamentary term, as valid from July 14, 2009.

<sup>64</sup> The Conference of Presidents consists of the President of Parliament and the chairmen of the political groups (who may arrange to be represented by a member of their group) and meets approximately twice a month. For further information on its composition, duties and accountability, see Rules 23, 24 and 28 of the EP Rules of Procedure, 7th parliamentary term - December 2009.

<sup>65</sup> Available at: [http://www.kas.de/proj/home/events/9/2/year-2008/month-12/veranstaltung\\_id-33397/index.html](http://www.kas.de/proj/home/events/9/2/year-2008/month-12/veranstaltung_id-33397/index.html) (last accessed on September 6, 2009).

<sup>66</sup> See Corbett, R.; Jacobs G., F. and Shackleton M. *The European Parliament*. 7th ed. London: John Harper, 2007. p.284.

(nowadays Rule 117) had been clearly unsatisfactory.<sup>67</sup> To support this allegation, it further continued with a statement that “the Commission has also strongly complained about the number of such questions and the administrative workload answering them imposes on its services.”<sup>68</sup> Therefore, in order to respond to these claims from the Commission, *The reform of the procedures concerning written questions to the Council or the Commission under Rule 110*, as proposed by the Working Group, suggested to partially amend Rule 110 in association with the insertion of a new Annex IIa to EP Rules of Procedure. This modification established, inter alia, that the President would rule on the admissibility of written questions.<sup>69</sup> Clear provisions were further introduced to avert any abuses of this right: the requirement to set aside identical or similar questions as well as the non-admissibility of questions making use of offensive language.<sup>70</sup>

In the end, in 2008, as far as the suggested amendments concerning the reform of the procedures of written questions under Rule 110<sup>71</sup> were concerned, compromise was agreed in the EP to add wording to Rule 110 paragraph (nowadays Rule 117)<sup>72</sup> and to insert Annex IIa (nowadays Annex III)<sup>73</sup>, as they may be found in the current EP Rules of the Procedure.<sup>74</sup>

## **B) Written questions as the most popular ones**

As can be clearly seen from Table 2, written questions are by far the most numerous and therefore most popular of the procedures governing various types of questions as

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<sup>67</sup> See DRAFT REPORT from 7.2.2008 on amendment of the EP Rules of Procedure in the light of the proposals by the Working Party on Parliamentary Reform concerning the work of the Plenary and initiative reports (2007/2272(REG), p. 10. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-400.716+01+DOC+WORD+V0//EN&language=EN> (last accessed on September 29, 2009).

<sup>68</sup> *Id.*

<sup>69</sup> In this respect, compare Rule 110(2) of the EP Rules of Procedure, Provisional version - January 2007 and Rule 110(2) of the Parliament's Rules of Procedure of the European Parliament, Provisional version - 16th edition, October 2008.

<sup>70</sup> 08/07/2008 - EP: Non-legislative resolution; Available at: <http://www.europarl.europa.eu/oeil/file.jsp?id=5570632>, last accessed on October 6, 2009. In this connection, see paragraph 3 and 4 of the Annex III of the Parliament's Rules of Procedure, which provide the guidelines trying to avoid burdening the Commission with repetitious answers to identical or similar questions or when the statistical information is already available.

<sup>71</sup> Full text of the Draft Report from 7.2.2008 on amendment of the EP Rules of Procedure in the light of the proposals by the Working Party on Parliamentary Reform concerning the work of the Plenary and initiative reports (2007/2272(REG) can be found at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-400.716+01+DOC+WORD+V0//EN&language=EN> (last accessed on October 1, 2009).

<sup>72</sup> Current Rule 117 of the EP Rules of Procedure - 7th parliamentary term, December 2009.

<sup>73</sup> See The EP Rules of Procedure - 7th parliamentary term, December 2009.

<sup>74</sup> On 8 July 2008, the EP adopted a non-legislative resolution, where it approved a decision aiming to amend the Parliament's Rules of Procedure concerning the work of the Plenary and initiative reports. Reference: REG/2007/2272; Title Parliament's Rules of Procedure: amendment in the light of the proposals by the Working Party on Parliamentary Reform concerning the work of the plenary. Available at: <http://www.europarl.europa.eu/oeil/file.jsp?id=5570632> (last accessed on October 1, 2009).

mentioned above. This is not surprising at all when one considers, that under Rule 117, written questions are given advantages, which cannot be found in other types of questions. To be more precise, under the terms of Rule 117, MEPs enjoy very broad procedural freedom as far as the tabling of questions for written answers to the Commission is concerned. In practice, **any** MEP has a freedom to table such questions and their content is the sole responsibility of their authors. Furthermore, as *Tapio* in his study concerning questions for written answer points out, tabling a question for written answer does not require the physical presence of the questioning MEP in the chamber at a given hour,<sup>75</sup> which makes them even more popular. As to the number of written questions as such, *Tapio* further noted that often the same MEPs or different MEPs ask the same question twice or even more times. To paraphrase *Tapio*, they do so either, in order to underline the urgency or importance of the matter, or to get know why no action has so far been taken to remedy the situation in question.<sup>76</sup> He illustrates his point with the example of a French MEP, who commented in his question on funding a road project in the Pyrenees as follows “perhaps, like the walls of Jericho, the impenetrable defences which the Commission has erected will come tumbling down if the questions are asked again.”<sup>77</sup>

### C) The drawbacks and benefits of written questions

Starting with **drawbacks**, the fact that the enormous quantity of questions tabled by the EP per year is steadily increasing, which causes unavoidable delays in replies, has led, in *Westlake*'s words, to “a degree of frustration in the EP which has chiefly found its outlet in two alternatives”<sup>78</sup>: (a) Question Time, which will be examined below; and (b) personal correspondence with a Commissioner. The latter implies that besides questions, a MEP may also enter into correspondence with the Commission. *Corbett* noted, that “there is an ever-growing volume of such correspondence, which can sometimes elicit a quicker reply than a written question.”<sup>79</sup> The Commission's internal rules provide for MEP's letters to receive an acknowledgement immediately and a detailed answer should follow within no more than two months.<sup>80</sup> The disadvantage of such a correspondence,

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<sup>75</sup> See *Tapio*, R. *Parliamentary Questions in the European Parliament: Representation, Information and Control. Journal of Legislative Studies, London.* 1996, Vol. 2 No. 4, p. 360.

<sup>76</sup> *Id.*, p. 364.

<sup>77</sup> Written question No. 3349/92 tabled by Jean-Pierre RAFFIN to the Commission. Joint funding of the RN 134 road project (Vallée d' Aspe - Pyrénées Atlantique, France). The Official Journal C 258, 22.9. 1993, p.12.

<sup>78</sup> See *Westlake*, M. *A modern guide to the European Parliament.* London: Pinter, 1994, p.174.

<sup>79</sup> See *Corbett*, R.; *Jacobs* G., F. and *Shackleton* M. *The European Parliament.* 7th ed.. London: John Harper, 2007. p.285.

<sup>80</sup> *Id.*

undoubtedly, is that a letter concerning reply will not have a formal and official status of a reply published in the Official Journal of the European Union.

As to the delays in the Commission's answers to written questions, one has to make the reader familiar with the time limit for answering the questions first, which depends on their complexity. Questions which require an immediate answer but not detailed research (so called priority questions)<sup>81</sup> are to be answered within three weeks and the other (so called non-priority) questions within six weeks time limit.<sup>82</sup> A holding answer<sup>83</sup> is given if, for objective reasons,<sup>84</sup> a final answer to the question cannot be provided in the time available. *Judge* notes that "often the Commission views the deadlines imposed by Parliament to be unrealistic, and leaves written questions unanswered beyond the deadlines stipulated by the EP".<sup>85</sup> Also several interviewed MEPs, as will be seen later on, highlighted this as something, which should be improved with regard to the parliamentary questions.<sup>86</sup> From the Manual of Operating Procedures of the Commission it follows that answers to written questions should be, in order to make their adoption easier, concise, and no lengthy or costly research is supposed to be undertaken.<sup>87</sup> Therefore, the fact that MEPs use this particular form of a written question implies his or her acceptance of a short answer. However, as we will see below, this statement contradicts the answers of a majority of the interviewed MEPs who claimed, that they

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<sup>81</sup> Each member may table one priority question each month. Last sentence of Rule 117(4) of the Parliament's Rules of Procedure states: "Members shall indicate which type of question they are submitting. The final decision shall be taken by the President."

<sup>82</sup> A practice of priority questions was introduced unilaterally by the EP in 1994 as a way of speeding up the Commission's replies.

<sup>83</sup> A holding answer is given whenever it is unlikely, given the information available, that the question can be answered within the time limit of three or six weeks. If a department responsible considers, on receiving the question unofficially, that a holding answer is necessary, it must immediately send it to the SG via Basil. The SG itself can send out a holding answer at once for written questions where the deadline set by Parliament for a reply has passed and where no answer is imminent. This procedure is not applied if the lead cabinet informs the SG that the question is especially sensitive or that an answer is imminent. The supplementary answer must be sent to Parliament no later than two months after the date when the holding answer was sent. The procedural rules are the same as for standard answers. The SG regularly draws up a list of questions for which a holding answer has been given and no supplementary answer has yet been received from departments.

<sup>84</sup> Objective reasons can be linked, for ex., to the volume of information requested, to the difficulty in collecting it, or to the need for external contacts to obtain it. In such cases, i.e. if a question cannot be answered within the time limit set, the author of the question at stake has, in accordance with Rule 117(3) of the EP Rules of Procedure, the possibility to request that the issue should be placed on the agenda of the next meeting of the committee responsible.

<sup>85</sup> See *Judge, D.; Earnshaw, D. The European Parliament. 2nd ed.. Basingstoke: Palgrave Macmillan, 2008, p. 219.*

<sup>86</sup> Information based on 34 answers to the questionnaires concerning parliamentary questions sent to MEPs by the author during April and received during April and May 2009.

<sup>87</sup> See *The Manual of Operating Procedures of the Commission (Brussels: European Commission, 2009), Part: "Decision-making: Inter-institutional stage - European Parliament".*

would appreciate more detailed answers to be given by the Commission to their written questions.<sup>88</sup>

Few questions dealing with this issue can be found in the Official Journal. Most of them were tabled between the years 1979 and 1981<sup>89</sup> and only one such question was tabled after the year 2000<sup>90</sup>. As an example of the older questions, one can mention those tabled by *Lord O'HAGAN* in 1979 and 1980. Both of them were devoted to the delays in replying to questions.<sup>91</sup> In the first one, Lord O'HAGAN asked the Commission about steps it had taken to ensure that MEPs receive prompt answers and, further, what the maximum period between the tabling of a written question and the Commission's answer is. The Commissioner responsible for the answer ensured *Lord O'HAGAN* that the Commission made every effort to answer written questions as fast as possible and noted that it had recently revised its internal rules in an attempt to improve its performance in this respect. To the second part of the question, the Commissioner stressed, that the time taken to answer a written question depends on a number of factors, such as the amount of research required, etc. and, therefore, it was not realistic to set a maximum time limit to reply.<sup>92</sup> However, it appears that not much was changed, since in 1980, *Lord O' HAGAN* tabled another written question asking the Commission whether it was aware that the period given to it in order to answer the MEPs' written question had often been exceeded. In addition, in the second part of his question he repeated the question from the preceding year, i.e. whether the Commission would take any steps to ensure that answers are given promptly. The Commissioner, Mr. *Andriessen*,

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<sup>88</sup> Answer to the author's questionnaire received from Klaus-Heiner Lehne (German MEP - EPP Group), Ville Itälä (Finnish MEP - EPP Group), Aurelio Juri (Slovenian MEP - Socialist Group), Jiří Maštálka (Czech MEP - GUE/NGL Group).

<sup>89</sup> Written question No. 327/79 by LORD O' HAGAN to the Commission: Delays in answering written questions. The Official Journal C 260, 15.10.1979, p. 14; Written question No. 2187/80 by LORD O' HAGAN to the Commission: Time lag in answers. The Official Journal C 88, 21.4.1981, p. 27; Written question No. 962/81 by Mr. BANGEMANN to the Commission: Time limit for answering written questions. The Official Journal C 295, 16.11.1981, p. 35; Written question No. 1276/79 by Mr. MARSHALL to the Commission: Delays in replying to questions. The Official Journal C 49, 27.2.1980, p. 54; Written question No. 835/80 by Mr. DILIGENT to the Commission: The Commission's answers to written questions. The Official Journal C 295, 13.11.1980, p. 9; Written question No. 1567/79 by Mr. O' CONNELL to the Commission: Parliamentary questions. The Official Journal C 110, 5.5.1980, p. 60.; Written question No. 1750/80 by Mr. SIMPSON to the Commission: Written questions. The Official Journal C 78, 6.4.1981, p. 23.

<sup>90</sup> Written question E-2808/01 by Erik MEIJER (GUE/NGL) to the Commission. 46,05 % structural exceeding of deadlines for replies to non-priority written questions. The Official Journal C 115 E , 16/05/2002 P. 0164 - 0165. Available at: <http://eur-lex.europa.eu/Notice.do?val=265578:cs&lang=en&list=265578:cs,&pos=1&page=1&nbl=1&pgs=10&hwords=deadlines~replies~&checktexte=checkbox&visu=#texte> (last accessed on October 25, 2009).

<sup>91</sup> Written question No. 327/79 by LORD O' HAGAN to the Commission: Delays in answering written questions. The Official Journal C 260, 15.10.1979, p. 14. Available at: <http://www.eudor.net/faihofhe/download/> (last accessed on October 8, 2009); Written question No. 2187/80 by LORD O' HAGAN to the Commission: Time lag in answers. The Official Journal C 88, 21.4.1981, p. 27. Available at: <http://www.eudor.net/daiwaexi/download/> (last accessed on October 8, 2009).

<sup>92</sup> Written question No. 327/79 by LORD O' HAGAN to the Commission: Delays in answering written questions. The Official Journal C 260, 15.10.1979, p. 14. Available at: <http://www.eudor.net/faihofhe/download/> (last accessed on October 8, 2009).

stressed out in his answer, given on behalf of the Commission, that the latter had already answered many times why it could not, in every case, answer written questions within the time allowed by EP Rules of Procedure.<sup>93</sup> To this point, he recalled reasons such as a great number of questions received per year, their complexity, a frequent need of diligent investigation and the problem of translation. He also added that all the above mentioned, combined with the budgetary constraints imposed on the Commission in the matter of staff, prevented the Commission from promising any appreciable reduction in the time taken to answer questions.

Unfortunately, still, more than 20 years later, written questions concerning the delays in the Commission's responds are being tabled, though not in such a quantity as in the past. From the more recent questions dealing with this issue, the question tabled by *Anita Pollack* (May 1993)<sup>94</sup> and the question tabled by *Erik Meijer* (October 2001)<sup>95</sup> may be mentioned. In her question, *Anita Pollack*, challenged the immensely long time taken by the Commission to answer written questions. She also highlighted the fact that, in some cases, it took the Commission even longer than one year to produce a written reply. Mr. *Pineiro*, the Commissioner responsible for the answer, stated, that the Commission always tried to answer these questions as quickly as possible, but that it was not always possible. As for the reasons, he mentioned: (a) large number of questions, (b) the need to consult various departments, and (c) the problem of translation.<sup>96</sup> As to the second written question tabled by *Erik Meijer*, he made an analysis of the Commission's delays when answering written questions. He based his analysis on one hundred non-priority questions tabled by himself between September 1999 and the beginning of September 2001. He calculated that the quickest Commission's reply took 18 days, the slowest a full 125 days and that on average, the official waiting period was over 61 days, i.e. nearly nine weeks. From this he further calculated, that the time limit was exceeded by 46,05 %. Considering that his questions take much the same length of time to process as those tabled by other MEPs, he asked the Commission five questions, among which were:

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<sup>93</sup> Written question No. 327/79 by Mr. LORD O' HAGAN to the Commission: Delays in answering written questions. The Official Journal C 260, 15.10.1979, p. 14; Written question No. 1276/79 by Mr. MARSHALL to the Commission: Delays in replying to questions. The Official Journal C 49, 27.2.1980, p. 54; Written question No. 835/80 by Mr. DILIGENT to the Commission: The Commission's answers to written questions. The Official Journal C 295, 13.11.1980, p. 9; Written question No. 1567/79 by Mr. O' CONNELL to the Commission: Parliamentary questions. The Official Journal C 110, 5.5.1980, p. 60.; Written question No. 1750/80 by Mr. SIMPSON to the Commission: Written questions. The Official Journal C 78, 6.4.1981, p. 23.

<sup>94</sup> Written question No. 3394/92 by Mrs Anita POLLACK to the Commission. Time taken to answer written questions. The Official Journal C 145, 25/05/1993 P.0036.

<sup>95</sup> Written question E-2808/01 by Erik MEIJER (GUE/NGL) to the Commission. 46,05 % structural exceeding of deadlines for replies to non-priority written questions. The Official Journal C 115 E , 16/05/2002 P. 0164 - 0165.

<sup>96</sup> Written question No. 3394/92 by Mrs Anita POLLACK to the Commission. Time taken to answer written questions. The Official Journal C 145, 25/05/1993 P.0036.

1. Is the Commission aware that, according to Rule 44(6) of the Rules of Procedure of the European Parliament, non-priority written questions are to be answered within six weeks? Does the Commission consider itself to be bound by this time limit?
2. In its reply to my Written Question E-2806/00(1), the Commission stated in connection with other delays that it constantly analyses its own performance and seeks to improve it: does this also apply to speeding up its replies to non-priority written questions?<sup>97</sup>

In her answer given to *Erik Meijer*, the Commissioner *de Palacio* firstly pointed out, that the Commission attached the utmost importance to the fact, that a MEP could exercise to the full their right under the third paragraph 3 of Article 197 ECT and reassured him, that its aim was to answer questions put to it by MEPs within the deadlines desired by the EP. She also noted that the Commission was continually trying to simplify and step up computerisation of current procedures and practices with a view to shortening deadlines for answers.<sup>98</sup> In the 2008, the procedure was, as we have seen in the previous subchapter, indeed simplified and made more effective. Nevertheless, it must be stressed that this change was launched not on the initiative of the Commission, but on the initiative of the EP. However, whether this change will bring some positive changes in delays of the Commission remains uncertain for now. The only thing that can be mentioned here, is, that several MEPs interviewed in connection with parliamentary questions during April and May 2009 pointed out the delays in the Commission's answers to the written questions as one of the main things that should be improved.<sup>99</sup>

To conclude on the issue of delays of the Commission in replying to the written questions of the EP, it is apparent that this issue is a key and persisting problem hampering the efficiency of the whole procedure. For many years, MEPs keep complaining about time lag in answers, while the Commission seems to be using repeatedly the identical formula in order to cope with such claims. Although certain steps have been taken by the Commission in order to speed up the "answering procedure" and thus ensure that the MEPs receive their answer within the time limit laid down in EP's Rules of Procedure, the above excursion into some of the written questions shows that the Commission has still not managed to solve this problem.

As far as the quality of the Commission's answers to the written questions is concerned, MEPs' opinions varied. Some of them complained about answers being imprecise, others were more satisfied. In general, 80% of the polled MEPs, who responded to the questionnaire, were satisfied with replies only partly or were mostly

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<sup>97</sup> Written question E-2808/01 by Erik MEIJER (GUE/NGL) to the Commission. 46,05 % structural exceeding of deadlines for replies to non-priority written questions. The Official Journal C 115 E , 16/05/2002 P. 0164 - 0165.

<sup>98</sup> *Id.*

<sup>99</sup> Answer to the author's questionnaire received from Casaca Paulo (Portuguese MEP - Socialist Group), Aurelio Juri (Slovenian MEP - Socialist Group), Helmuth Markov (German MEP - GUE/NGL Group), Zuzana Roithová (Czech MEP - EPP Group), Syed Kamall (UK MEP - ECR Group).



unsatisfied. It is interesting to mention that an analogous research among MEPs concerning the quality of replies was undertaken already in 1996 by *Tapio* and that his findings were very similar to those flowing from the research of the author of this paper from 2009.<sup>100</sup> Thus it must be regrettably concluded, that not much has changed over last 13 years and the typically lengthy periods involved in drafting responses remain the downside of the high number of the written questions.

In 2003, a written question was tabled by *Christopher Huhne* to the Commission concerning unsatisfactory answers to a parliamentary question. He sought answers to the following questions: (a) whether there are some procedures available to the MEPs to proceed against a series of unsatisfactory answers, such as, for example, a complaint to the European Ombudsman; and (b) whether the Commission states the number of such complaints, or complaints to other bodies, in each of the last five years.<sup>101</sup> As to the first answer given by Commissioner *de Palacio* on behalf of the Commission, she firstly recalled that the Commission answered on average around 3800 written and oral parliamentary questions per year and stressed that it had always attached the highest priority to the quality of the replies given. However, she noted, that questions of a very technical nature or those requesting consultation of different information and statistical sources might require a more lengthy treatment and that in such cases, in order to avoid inevitable delays also due to translations and internal processing, it might be convenient to refer to factual information from sources already available to the Parliament. On the substance of the first question she stated, that beside the normal ways and means available to the EP in order to be able to fulfil its task of parliamentary control of the Commission, there were no specific procedures to apply in cases of unsatisfactory answers. She further added, that the Commission was not aware of any direct link between the political processes of parliamentary control and complaints to the Ombudsman. As to the second question asked by *Huhne*, the Commissioner responded, that in the year 2002, the Commission had received 32 written questions (out of a total 3 962 written and oral questions) raising issues related to the quality of the replies. The promise was also made to the former that he would be sent the relevant figures for the years 1998-2001. However, it must be noted, that no such relevant figures are made available to the public.

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<sup>100</sup> Tapio, R. Parliamentary Questions in the European Parliament : Representation, Information and Control. *Journal of Legislative Studies*, London. 1996, Vol. 2, No. 4, p. 362.

<sup>101</sup> Written question E-0856/03 by Christopher HUHNE (ELDR) to the Commission. Answers to parliamentary questions. The Official Journal C 242 E , 09/10/2003 P. 0200 - 0200. Available at: [http://eur-lex.europa.eu/Result.do?arg0=E-0856%2F03&arg1=&arg2=&titre=titre&chlang=en&RechType=RECH\\_mot&idRoot=10&refinecode=PAR\\*T1%3DV11%3BT2%3D%3BT3%3DV1&Submit=Search](http://eur-lex.europa.eu/Result.do?arg0=E-0856%2F03&arg1=&arg2=&titre=titre&chlang=en&RechType=RECH_mot&idRoot=10&refinecode=PAR*T1%3DV11%3BT2%3D%3BT3%3DV1&Submit=Search) (last accessed on October 8, 2009).

On the other hand, one must highlight also the **benefits** of the written questions, which rest in their character of a multi-functional instrument and their two main functions: (a) to control the executive and (b) sending and acquiring information. To quote *Tapio* “the MEPs can use the questions to ‘force the Commission under control’ because they are obliged to answer”<sup>102</sup>. He further stresses that this procedural obligation to answer is of a great importance since it forces the Commission to produce a reply, and MEPs thus receive an official statement from the Commission, which they can afterwards use for their own purposes.<sup>103</sup> This statement can be upheld by the response given to the author's questionnaire by *Elisabeth Jeggle* (German MEP serving during the 6<sup>th</sup> parliamentary term, EPP Group), who in one of her answers noted that “by receiving an answer in writing the Members of Parliament have an efficient tool to hold the Commission reliable in the future”<sup>104</sup>. Also *Manfred Weber* (German MEP serving during the 6<sup>th</sup> parliamentary term, EPP Group) pointed out that the fact that the answer received can be cited in the press is a great benefit in favour of the written questions.<sup>105</sup> The Czech MEP *Zuzana Roithová* (EPP Group) stressed that the benefit of the written questions lies further in the fact that they “save time”.<sup>106</sup>

Last but not least, *Tapio* notes that “MEPs can use questions to inform the Commission of a particular problem it might be unfamiliar with, thus making the problem known in Brussels. By submitting written questions members send signals to the Commission, thus expressing their concern over a particular grievance or developments in a certain country or a sector.”<sup>107</sup> *Judge* further suggests that in the way written questions are used, they serve the same purpose as others forms of questions and act as a two way channel of communication between elected representatives and the EU's dual executive.<sup>108</sup> To conclude with *Tapio*, parliamentary questions are one of the last means available to the MEP to have her or his case presented in public.<sup>109</sup>

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<sup>102</sup> See *Tapio*, R. *Parliamentary Questions in the European Parliament: Representation, Information and Control*. *Journal of Legislative Studies*, London. 1996, Vol. 2, No. 4, p. 362.

<sup>103</sup> *Id.*

<sup>104</sup> Answer to the author's questionnaire received from *Elisabeth Jeggle* on April 21, 2009.

<sup>105</sup> Answer to the author's questionnaire received from *Manfred Weber* on April 22, 2009.

<sup>106</sup> Answer to the author's questionnaire received from *Zuzana Roithová* on April 16, 2009.

<sup>107</sup> See *Tapio*, R. *Parliamentary Questions in the European Parliament: Representation, Information and Control*. *Journal of Legislative Studies*, London. 1996, Vol. 2, No. 4, p. 363.

<sup>108</sup> See *Judge*, D.; *Earnshaw*, D. *The European Parliament*. 2nd ed. Basingstoke: Palgrave Macmillan, 2008. p. 221.

<sup>109</sup> See *Tapio*, R. *Parliamentary Questions in the European Parliament: Representation, Information and Control*. *Journal of Legislative Studies*, London. 1996, Vol. 2, No. 4, p. 363.

## E) Inquiry - the arguments in favour of the use of the written questions

A research was also undertaken by the author of this paper regarding the incentives leading MEPs to choose the written form of the question. By means of a questionnaire (which is attached as **Annex 1** of this paper) sent in April and May 2009 to approximately 600 MEPs selected on a proportional basis from all EU Member States, MEPs were asked to answer, inter alia, the following question: ***Which criteria do you take into consideration when deciding in which form to table a question? Please indicate for which type of subject-matter or situation the following types of questions are most suitable.*** From the answers received, the finding can be drawn that MEPs use written questions mainly for queries from their constituencies and for delicate issues or topics of interest requiring further or detailed research by the services of the Commission - in other words, for questions that need a longer time to be answered correctly. The same can be deduced from the responses of other polled MEPs who stated that they use the written form when the question they want to table deals with less urgent (less time relevant) topical issues. Here it becomes interesting. We have just learnt that MEPs make use of written questions rather for complicated issues, which require more time to be answered. This, however, contradicts the expectations of the Commission, i.e. what is stated in the Manual of Operating Procedures of the Commission, that answers to written questions should be, in order to make their adoption easier, concise, and no lengthy or costly research is supposed to be undertaken.<sup>110</sup> This different view taken by MEPs on the one hand, and the Commission on the other hand, could be one of the factors explaining, at least partly, the never ending disputes regarding the delays in the Commission's answers to written questions, since both sides deem the written questions to serve different purposes.

Back to the inquiry, some of the addressed MEPs also answered that they use the written form when they want to table questions covering topics on application or on breach of EU law. Among other incentives, many of the polled MEPs mentioned the desire for a more detailed answer and the fact that they don't want to ask any complementary questions.

The above findings correspond to the conclusions reached by *Tapio*<sup>111</sup> and *Judge*.<sup>112</sup> *Tapio* points out that although MEPs ask questions on all sorts of issues, certain subjects

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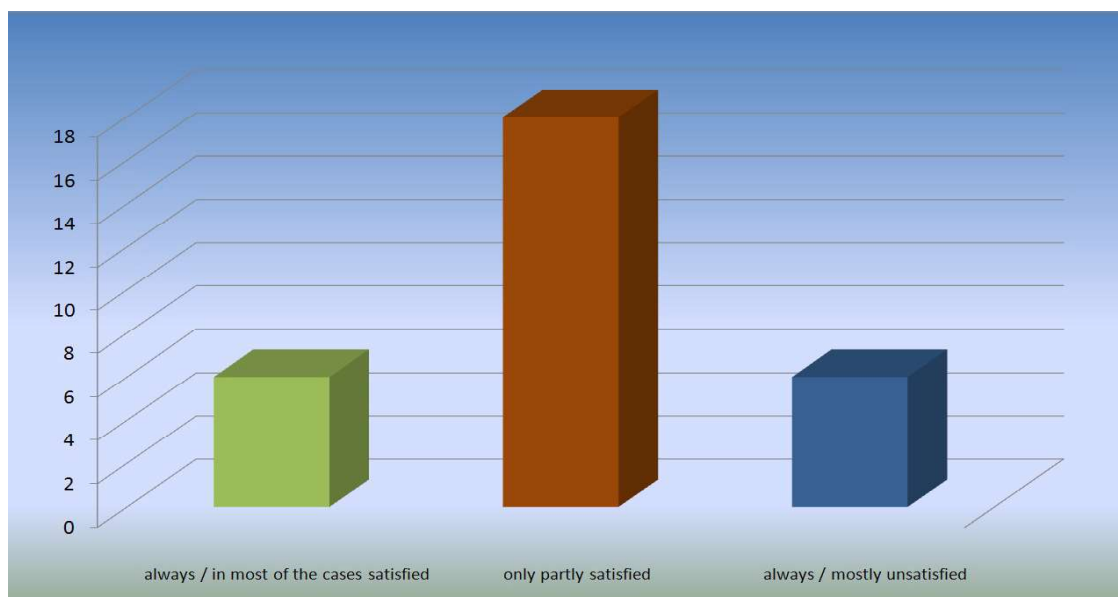
<sup>110</sup> See Manual of Operating Procedures of the Commission (Brussels: European Commission, 2009), Part: "Decision-making: Inter-institutional stage - European Parliament".

<sup>111</sup> See Tapio, R. Parliamentary Questions in the European Parliament: Representation, Information and Control. *Journal of Legislative Studies*, London, 1996, Vol. 2, No. 4, p. 356-382.

<sup>112</sup> See Judge, D.; Earnshaw, D. *The European Parliament*. 2nd ed. Basingstoke: Palgrave Macmillan, 2008. 356p.

may be better addressed by relying on other channels. He concludes that written questions are of little use when the representatives need the information immediately and are, on the other hand, particularly useful when members want detailed and specific information, often involving technical facts such is the case, for example, with budgetary questions.<sup>113</sup> In *Judge's* opinion, the fact that the written questions are of significance in symbolizing the responsibility of the Commission to answer to the EP is beyond any doubt, but, what is less certain, however, is the effectiveness of this channel in practice.<sup>114</sup> *Judge* further draws the attention to the fact that relatively few written questions originate directly and unambiguously from individual MEPs and that there are usually organized interests, corporate interests, lobbyists, citizens and national officials (and even Commission officials), who have all been known to suggest the tabling of written questions by MEPs for the Commission to answer.<sup>115</sup>

**Graph 1: The level of satisfaction among MEPs concerning the Commission's answers to written questions**



<sup>113</sup> See Tapio, R. *Parliamentary Questions in the European Parliament: Representation, Information and Control*. *Journal of Legislative Studies*, London. 1996, Vol. 2, No. 4, p. 363. *Tapio* further notes that as a result, several MEPs regularly submit written questions on issues such as the allocation and spending of structural funds.

<sup>114</sup> See *Judge*, D.; *Earnshaw*, D. *The European Parliament*. 2nd ed. Basingstoke: Palgrave Macmillan, 2008, p 221.

<sup>115</sup> *Id.*

● **QUESTIONS FOR ORAL ANSWER WITH DEBATE<sup>116</sup> (also denoted as “ORAL QUESTIONS” or TYPE “O” QUESTIONS<sup>117</sup>)**

**A) Conditions for tabling Questions for oral answer with debate**

**Oral questions** may be under current practice of Rule 115<sup>118</sup> tabled both, to the Council and the Commission, by **a committee, a political group or by 40 or more MEPs**. They must be submitted in writing to the President of the EP who refers them to the Conference of Presidents, which then decides,<sup>119</sup> whether and in what order questions should be placed on the agenda for a Parliamentary sitting. These limitations placed upon the tabling of oral questions are consequences of the limited time that is available at plenary sessions and result in the fact that only a few (in comparison with the written ones) of the oral questions with debate reach the agenda each year.<sup>120</sup> According to *Westlake*, in practice, only questions tabled by political groups and committees are put on the agenda.<sup>121</sup> Questions placed on the agenda must be referred to the Commission at least one week beforehand and questions not placed on Parliament's agenda within three months of being submitted, shall lapse. Concerning the oral part of the proceedings itself, under paragraph 4 of Rule 115, it starts at the sitting where the question is tabled and answered. The time limit for one of the questioners to speak to the question is five minutes and one of the members of the Commission shall then reply. The reply of the Commission is, subsequently, followed by a debate and the EP<sup>122</sup> may decide to follow this by the adoption of a resolution<sup>123</sup>, which is then subject to the vote on the same day.<sup>124</sup>

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<sup>116</sup> A procedure of oral questions without debate was abolished in 1994.

<sup>117</sup> Celex numbering as may be found in section 9 of the Celex Table, available at: <http://www.ellispub.com/ojolplus/help/celex.htm#sectors1> (last accessed on June 28, 2009).

<sup>118</sup> Previously, Rule 108 of the EP Rules of Procedure.

<sup>119</sup> Generally on Thursday afternoon before the part-session.

<sup>120</sup> See Judge, D.; Earnshaw, D. *The European Parliament*. 2nd ed.. Basingstoke: Palgrave Macmillan, 2008, p. 219.

<sup>121</sup> See Westlake, M. *The Commission and the Parliament : partners and rivals in the European policy-making process*. London: Butterworths, 1994, p. 45.

<sup>122</sup> A committee, a political group or at least 40 MEPs.

<sup>123</sup> The resolutions of the European Parliament are primarily of a declaratory nature but express the concerns of the democratically elected representatives of the 27 member states and nearly the 500 million citizens of the European Union.

<sup>124</sup> See Rule 110 paragraph 2 and 3 of the EP Rules of Procedure - 7th parliamentary term, December 2009.

## B) Inquiry - the arguments in favour of the use of the questions for oral answer with debate

Also with respect to the questions for oral answer with debate, a research was undertaken as to the criteria that MEPs take into consideration when deciding on tabling this specific type of question, or to the subject-matter for which the questions for oral answer with debate are best suitable. The most common answers to this question were as follows:

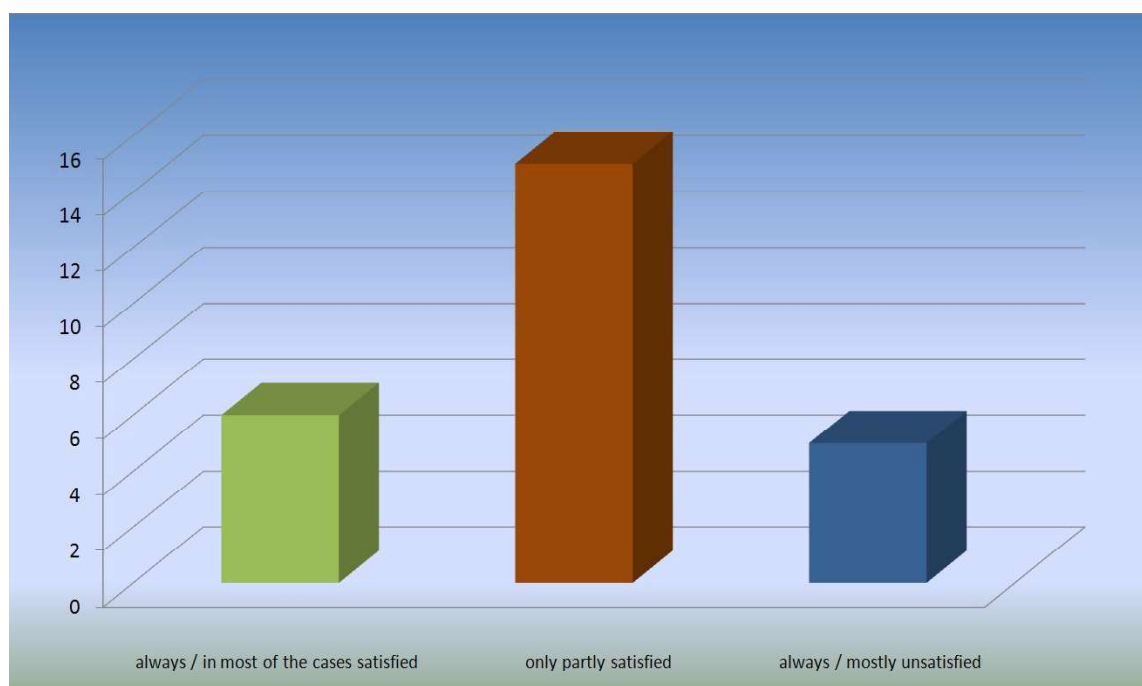
- ▶ major political issues of EU relevance or other topics of high importance which should be of wider interest and which need an in depth analysis by the Commission and debate with other MEPs - mainly points of international interest or cross political issues of major interest;
- ▶ legislative proposals of the Commission;
- ▶ questions where an immediate answer may be helpful and timely;
- ▶ questions that concern a legislative proposal or one coming up;

Other MEPs stated that this kind of questions is suitable for subjects that are:

- ▶ both urgent and of common interest of more EU members states; or
- ▶ have support of several MEPs

A big majority of the polled MEPs stressed that the use of the oral answer with debate is highly advisable where a public debate is desired.

**Graph 2: The level of satisfaction among MEPs concerning the Commission's answers to questions for oral answer with debate**



In practice, the number of oral questions has remained low since the introduction of direct elections. From 1979 until 1987 the EP tabled between 45 and 103 oral questions per year. The highest number of tabled oral questions was reached in 1990 (411), but five years later their number decreased again to 297 per year and in the last five years, their number has never exceeded 100.

## ● **ORAL QUESTIONS FOR QUESTION TIME (also denoted as “QUESTION TIME” or TYPE “H” QUESTIONS<sup>125</sup>)**

By contrast to the questions for oral answer with debate, the oral questions for Question Time are being answered by the Commission every month during Question Time in Strasbourg. **Question Time**,<sup>126</sup> as the third type of procedure introduced in 1973, is, interestingly, not directly mentioned in the ECT (nor in the TFEU), but can be in fact derived from Article 197(3) ECT (as from December 1, 2009, Article 230(2) TFEU).<sup>127</sup> In addition, Question Time is further governed by Rule 116 of the EP Rules of Procedure, according to which it shall be held at each part-session<sup>128</sup> at such times as may be decided by the EP on a proposal from the Conference of Presidents. Consequently, Rule 116 states that a specific time-period may be subsequently set aside for questions to the President and individual Members of the Commission. In practice, as a rule, Question Time with the Commission is scheduled regularly for every Tuesday afternoon<sup>129</sup> of each part-session in Strasbourg, usually starting at 6 pm. Answers are given during a 90-minute “question time” period. This 90-minute “question time” period is further divided into thirty minutes of urgent questions (part one) and sixty minutes of questions to three Commissioners,<sup>130</sup> whose names are notified to the EP by the Commission (part two).

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<sup>125</sup> Celex numbering as may be found in section 9 of the Celex Table, available at: <http://www.ellispub.com/ojolplus/help/celex.htm#sectors1> (last accessed on June 28, 2009).

<sup>126</sup> Question Time is a procedure, which was introduced in 1973, and which was given its labelling after the procedure in the UK’s House of Commons.

<sup>127</sup> See Consolidated ECT art. 197(3) and Consolidated TFEU art. 230(2).

„The Commission shall reply orally or in writing to questions put to it by the European Parliament or by its Members.“

<sup>128</sup> See Rule 133 (3) of the EP Rules of Procedure - 7th parliamentary term, December 2009.

“The part-session shall be the meeting of Parliament convened as a rule each month and subdivided into daily sittings.”

<sup>129</sup> See The Guide for the Plenary. Available at: <http://www.europarl.europa.eu/sed/manual.do> (last accessed on December 10, 2010). Question time with the Council is usually held on the Wednesday afternoon.

<sup>130</sup> At the end of the year, the SG provides a list from Parliament indicating the three Commissioners who will be present for Question Time at each plenary session in the following year.

Herein, one can not leave unheeded the fact, that the EP official website actually mentions division of Question Time with the Commission into three parts:<sup>131</sup>

- ▶ topical political matters (i.e. priority questions selected by the President);
- ▶ questions to the three Commissioners designated for the part-session;
- ▶ other questions.

The first two parts have been already indicated above. They are the parts, where an oral answer to urgent questions (part one) and to the questions addressed to the three Commissioners who will be present (part two) may be given. On request by the author of this paper, the Commission via e-mail clarified that questions on topical political matters (part one) are usually answered by the Council and, occasionally, by the Commission. Questions to the Commission (part two) are further answered by the designated Commissioners personally. For this purpose, as already noted above, there are always three Commissioners, whose names are notified to the EP by the Commission in advance, present at the plenary session to answer the questions tabled. The composition of the trio of the Commissioners is fixed on a rotating basis and is thus different for each session. The list is always forwarded to the EP to organise Question Time.<sup>132</sup> The third part of a 90-minute "question time" period, called "other questions" and not always mentioned in specialized publications, is the part covering the questions which are directed to other Commissioners than those attending Question Time or questions which have not been answered during Question Time for lack of time and which must be therefore answered in writing.

**Table 3: Le Secrétaire Général Adjoint - 27/05/2009**<sup>133</sup>

Commissioners designated by the Commission to reply to questions during the part-session in:

14 - 17/09/2009	19 - 22/10/2009
- <b>ASHTON Catherine</b>	- <b>FIGEL' Ján</b>
- <b>DIMAS Stavros</b>	- <b>ORBAN Leonard</b>
- <b>MICHEL Louis</b>	- <b>VERHEUGEN Günter</b>

<sup>131</sup> The division available at: <http://www.europarl.europa.eu/QP-WEB/application/intro.do> (last accessed on January 10, 2010).

<sup>132</sup> Answer to the author's inquiry received from Frutuoso Melo Fernando (Director of Directorate G - Relations with the European Parliament, the European Ombudsman, the European Economic and Social Committee, the Committee of the Regions and National Parliaments) on July 25, 2009.

<sup>133</sup> Table 3 available at: [http://www.europarl.europa.eu/QP-WEBdata/upload/comm\\_des.pdf](http://www.europarl.europa.eu/QP-WEBdata/upload/comm_des.pdf) (last accessed on July 12, 2009). From the EP website it follows that the list of Commissioners for Question Time at the upcoming February 2010 part-session is not currently available - since (a) the EP will vote on approval of the European Commission only on 26 January 2010, and because (b) only on this basis, the new Commission can be formally appointed by the European Council, acting by a qualified majority. See Notice-Question Time available at: [http://www.europarl.europa.eu/QP-WEBdata/upload/comm\\_des.pdf](http://www.europarl.europa.eu/QP-WEBdata/upload/comm_des.pdf) (last accessed on January 10, 2010).



Under the current Parliament's Rules of Procedure,<sup>134</sup> any MEP may table this kind of question. All "H" oral questions must be submitted in writing to the President of the EP, who then decides on their admissibility and the order in which they are to be taken, at least a week before the start of Question Time. In practice, the last questions generally arrive the preceding Tuesday (about twelve days before the part-session).<sup>135</sup> On December 8, 2008, the then Deputy Secretary-General of the EP, *David Harley*, published a Notice to MEPs concerning Question Time and laying down the new procedure for tabling questions with effect from the February 2009 part-session.<sup>136</sup> In conformity with the Notice, "with a view to simplifying the tabling of questions for Question Time and ensuring that Members and assistants are not kept waiting needlessly",<sup>137</sup> questions should be tabled by **e-mail** provided that each e-mail should be accompanied by a Word copy and a signed PDF copy of the question. If they are not, they will not be dealt with. Under this Notice, the tabling period for the relevant part-session starts at 13.00 on the Tuesday of the second-last week before a previous part-session. Thus, for instance, for the part-session in Strasbourg held between 23/11 and 26/11 2009, the tabling deadline for questions will start on 6/10 (13h00) and will finish on 10/11 (13h00).<sup>138</sup>

**Table 4: Question Time - Tabling deadline for questions**<sup>139</sup>

19- 22/10/2009	23- 26/11/2009
01/09 (13h00) - 06/10 (13h00)	06/10 (13h00) - 10/11 (13h00)

Questions forwarded prior to the given tabling period are automatically registered after questions submitted within the relevant period. From the explanation obtained from *David Harley*, the Deputy Secretary-General of the EP, it follows, that this Notice to MEPs does not intend to overrule the Parliament's Rules of Procedure but it simply interprets, for

<sup>134</sup> The EP Rules of Procedure - 7th parliamentary term, December 2007, as valid from July 14, 2009.

<sup>135</sup> European Commission: *The Manual of Operating Procedures of the Commission*. Part: "Decision-making: inter-institutional stage - European Parliament", Brussels, 2009.

<sup>136</sup> The Deputy Secretary-General, *Notice to Members of the European Parliament - Subject: Question Time: new procedure for tabling questions*, December 8, 2008. Available at <http://www.europarl.europa.eu/QP-WEB/application/intro.do?language=EN> (last accessed on July 20, 2009).

<sup>137</sup> *Id.*

<sup>138</sup> Document of May 27, 2009. Available at the EP website: [http://www.europarl.europa.eu/QP-WEBdata/qt/deadline\\_EN.pdf](http://www.europarl.europa.eu/QP-WEBdata/qt/deadline_EN.pdf) (last accessed on August 8, 2009).

<sup>139</sup> For the current tabling deadlines for questions, see the EP's document from November 11, 2009, available at: [http://www.europarl.europa.eu/QP-WEBdata/qt/deadline\\_EN.pdf](http://www.europarl.europa.eu/QP-WEBdata/qt/deadline_EN.pdf) (last accessed on January 10, 2009).

reasons of practical convenience for Members, the term “in writing” as covering questions submitted by email.<sup>140</sup>

## A) The short guidance for tabling Oral question for Question Time

As far as the detailed guidance of the main stages in the procedure for handling type 'H' oral questions is concerned, i.e. their assignment, drafting answers and a form of draft answers, it may be found in The Manual of Operating Procedures of the Commission.<sup>141</sup> The EP Rules of Procedure further lays down a **limitation of one question per MEP** as to the number of questions that may be put forward at a given part-session, i.e. per month. The procedure for handling each question in plenary is as follows:<sup>142</sup>

- the President of the EP calls the question;
- the Institution (a member of the Commission) concerned replies;
- following the reply, the President of the EP gives the floor to the author of the question for a supplementary question;<sup>143</sup>
- the Institution (a member of the Commission) concerned replies;
- the President of the EP may give the floor to up to two other Members present at the session for supplementary questions;<sup>144</sup>
- the Institution (a member of the Commission) concerned replies.

If neither the questioner nor his substitute is present in the Chamber at Question Time, the question lapses.<sup>145</sup> Questions which have not been answered orally for lack of time as well as oral questions that are not urgent and not addressed to the Commissioners present, will receive written answers which consequently oblige the Commission to follow a procedure almost identical to that applicable to written questions.<sup>146</sup> After the part-session, the SG circulates a list indicating how each question was dealt with, i.e. whether it was given an oral answer, a written answer, whether it

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<sup>140</sup> Answer to the author's personal inquiry received from David Harley on July 28, 2009.

<sup>141</sup> See The Manual of Operating Procedures of the Commission (Brussels: European Commission, 2009), Part: "Decision-making: Inter-institutional stage - European Parliament".

<sup>142</sup> The information about the procedure is made available at: <http://www.europarl.europa.eu/sed/questionTime.do> (last accessed on January 11, 2010).

<sup>143</sup> Each MEP has for his or her supplementary question a time-limit of two minutes.

<sup>144</sup> A Member may put up to two supplementary questions during Question Time, not including any supplementary question to his or her own tabled question. These supplementary questions asked by other MEPs present at the session are, as well as the question asked by the author, subject to the rules of admissibility.

<sup>145</sup> See The Manual of Operating Procedures of the Commission (Brussels: European Commission, 2009), Part: "Decision-making: Inter-institutional stage - European Parliament".

<sup>146</sup> Annex II A(12) and (13) of the EP's Rules of Procedure. See also The Manual of Operating Procedures of the Commission (Brussels: European Commission, 2009), Part: "Decision-making: Inter-institutional stage - European Parliament".

lapsed, etc. It is important to note the fact that neither draft answers nor final answers can be communicated directly to the MEP concerned. The SG sends answers electronically to the Parliament's Secretariat. Further details on the procedure of Question Time concerning the admissibility of questions, supplementary questions, answers, etc., may be found in guidelines laid down in an Annex II to the EP Rules of Procedure.

The EP website provides detailed statistics concerning Question Time (i.e. amount of tabled questions, of questions dealt with in the sitting, of questions receiving a written response, of complementary questions, of questions lapsed for absence of the author, of withdrawn questions, of inadmissible questions) on each part-session as well as statistics on the last legislature. Currently, the statistics on the 6th parliamentary term (2004-2009)<sup>147</sup> concerning Question Time are made available and are attached as **Annex 3** of this paper.

**Table 5: Detailed Statistics on the last part-session of the 6th legislature held in May 2009**<sup>148</sup>

<b>HEURE DES QUESTIONS</b> 6 <sup>ème</sup> Législature <b>MAI 2009</b>
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Institution	Nombre de questions	Questions traitées en séance	Questions avec réponse écrite	Questions complémentaires	Questions caduques (absence auteur)	Questions retirées	Questions non recevables	Représentant de l'institution
Conseil	22	7	11	11	0	4	0	M. Jan KOHOUT
Commission	32	12	19	20	0	0	1	M. PIEBALGS M. DIMAS Mme KUNEVA M. TAJANI
Total	54	19	30	31	0	4	1	

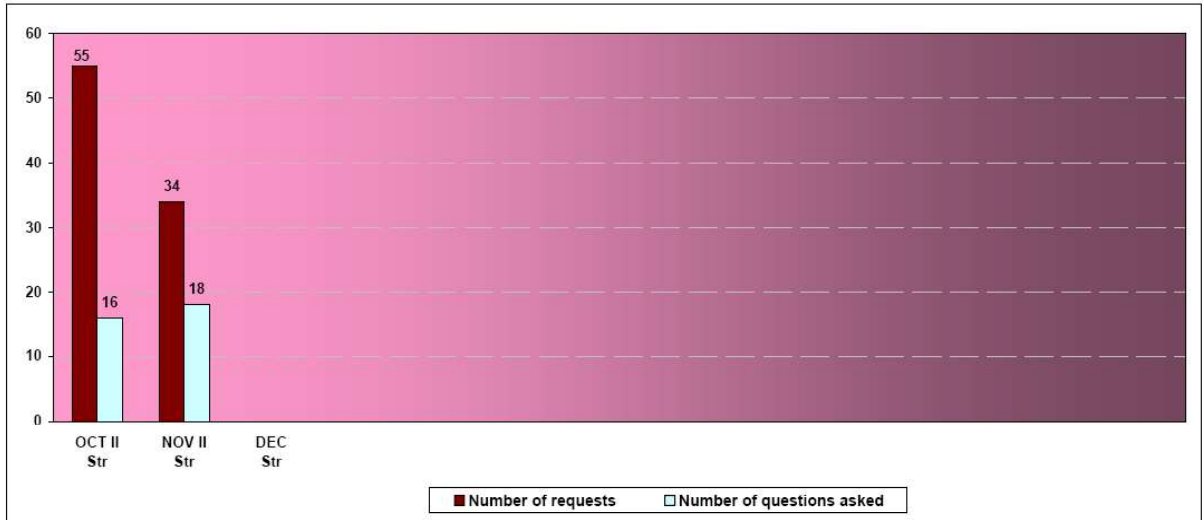
<sup>147</sup> Detailed statistics on 6th legislature (2004-2009) concerning Oral questions for Question Time in Strasbourg are available at: [http://www.europarl.europa.eu/seddoc/news/previoustermstatistic/6LEG\\_question\\_time.pdf](http://www.europarl.europa.eu/seddoc/news/previoustermstatistic/6LEG_question_time.pdf) (last accessed on September 11, 2009).

<sup>148</sup> Statistics are available at: [http://www.europarl.europa.eu/seddoc/news/currentsessionstatistic/SESS\\_question\\_time.pdf](http://www.europarl.europa.eu/seddoc/news/currentsessionstatistic/SESS_question_time.pdf) (last accessed on September 11, 2009).

**Table 6: Statistic from the EP's 7th legislature<sup>149</sup>**

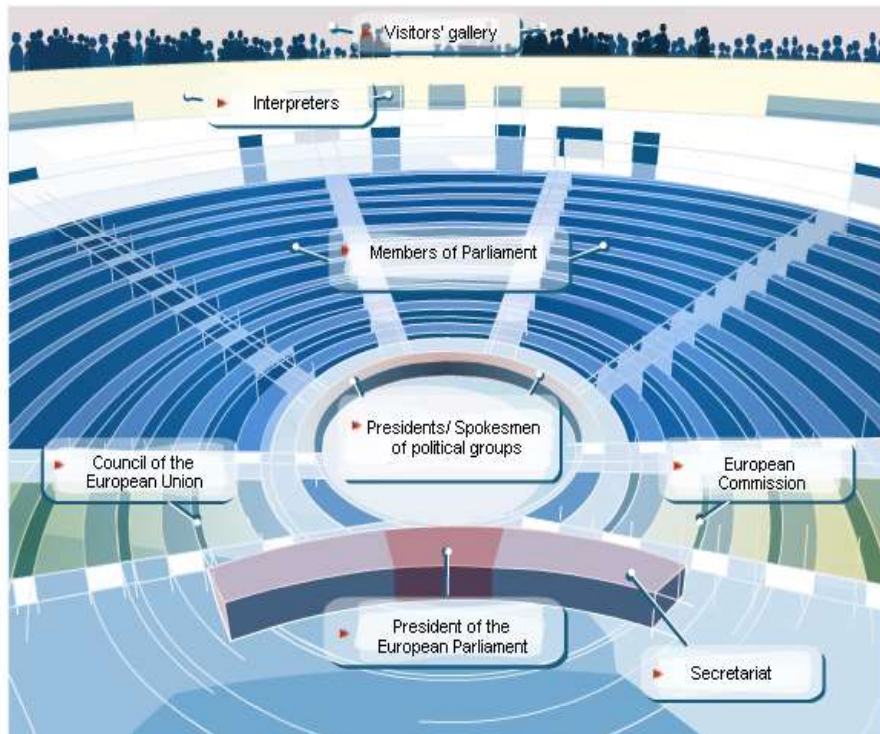


QUESTION HOUR  
(PRESIDENT OF THE COMMISSION)  
7th parliamentary term - 2009



**B) Question Time in practice**

**Picture 1: Plenary overview<sup>150</sup>**



<sup>149</sup> Statistic available at: [www.europarl.europa.eu/sed/doc/news/currenttermstatistic/HQ\\_en.pdf](http://www.europarl.europa.eu/sed/doc/news/currenttermstatistic/HQ_en.pdf) (last accessed on January 9, 2010)

<sup>150</sup> Available at: <http://www.europarl.europa.eu/sed/plenary.do> (last accessed on September 11, 2009).

Despite the fact, that EP's Question Time follows British Parliamentary practice, in *Corbett's* view, it has "rarely the cut and thrust of the Westminster highlights of the Leader of the Opposition questioning the Prime Minister."<sup>151</sup> *Corbett* further adds, that "it is more like Westminster question time for a departmental minister - not an exciting media event, but non the less useful".<sup>152</sup> Similarly, *Tapio* states that: "while parliamentary questions constitute a well-established activity inside the Parliament, they seldom attract the attention of the media."<sup>153</sup> Finally, in *Westlake's* opinion, "question time was bound to remain a pale imitation of its role-model in a culturally diverse Parliament where debates had to be interpreted through earphones, where there was no government and opposition and, above all, where there was no prime minister".<sup>154</sup> He further points out some drawbacks of the oral questions for Question Time such as the impossibility to use these questions for the request for statistical information, or on matters requiring extensive prior research, which are, by the virtue of their nature, out of order for Question Time, and must therefore be submitted instead as written questions.<sup>155</sup> Question Time additionally suffers from the fact that the Commissioners take turns to be in Strasbourg to answer the questions, i.e. we have seen above, that there are always three Commissioners present at the plenary session in order to answer the question tabled, but the composition of this trio varies from session to session. *Tapio* claims, that as a consequence, the Commissioners present in the chamber thus answer many different questions on behalf of the Commission, often irrespective of whether the questions fall under his or her competence, which can consequently undermine the practice of asking supplementary questions due to the fact that he or she cannot be expert in all areas.<sup>156</sup>

### C) Concluding remarks on Question Time

As for the conclusion, the author of this paper wishes to reflect some observations based on her personal attendance at Question Time held on April 22, 2009. First of all, the author entirely identifies herself with the statement that Question Time is indeed far away from some sort of lively event (see Picture 4). One could say that there are

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<sup>151</sup> See Corbett, R.; Jacobs, G. F. and Shackleton, M. *The European Parliament*. 7th ed. London: John Harper, 2007. p. 284.

<sup>152</sup> *Id.*

<sup>153</sup> See Tapio, R. *Parliamentary Questions in the European Parliament: Representation, Information and Control*. *Journal of Legislative Studies*, London. 1996, Vol. 2, No. 4, p. 363.

<sup>154</sup> See Westlake, M. *A modern guide to the European Parliament*. London: Pinter, 1994, p. 176.

<sup>155</sup> See Cohen, L.H. *The Development of Question Time in the European Parliament: With special Reference to the Role of British Members*. *Common Market Law Review*. 1979, Vol.16, No.1, p. 45.

<sup>156</sup> See Tapio, R. *Parliamentary Questions in the European Parliament: Representation, Information and Control*. *Journal of Legislative Studies*, London. 1996, Vol. 2, No. 4, p. 359.

significantly more curious public visitors present at Question Time than there are Commissioners and MEPs together (see Picture 2).

**Picture 2: Public visitors present at Question Time**



Usually, only the Commissioners designated for a particular part-session and a few MEPs, i.e. the authors of the questions and those MEPs asking complementary questions to the original questions, are present. Once the MEP tables a question, he or she usually leaves the Chamber immediately after receiving the reply. Consequently, there are also even more Commissioners and their assistants present in the Chamber than there are MEPs.

One can make the estimation that the number of all MEPs and Commissioners present during Question Time does not exceed ten. Given this fact, together with the time at which Question Time takes place, no one can expect it to be something which would attract public attention. In fact, by the time Question Time starts, the Chamber becomes very empty and nothing changes in the next 90 minutes. The impression of emptiness is further emphasised by the hugeness of the Chamber as such.

**Picture 3: Plenary in practice**



**Picture 4: Plenary during Question Time**<sup>157</sup>



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<sup>157</sup> Plenary session held on April 22, 2009, Question Time to the Commission.

All the more, in contrast to written questions, when tabling an oral question for Question Time, MEPs do not receive any official written statement from the Commission, which makes these questions even less attractive for them. The conclusion can be drawn, that Question Time is a process more serving the particular needs of the particular MEP than the EP's as a whole when ensuring its supervisory role over the Commission. This conclusion is also supported by the statement of *Elisabeth Jeggle* (German MEP serving during the 6<sup>th</sup> parliamentary term, EPP Group), who stated that oral questions for Question Time are "useful for short, individual questions without too much concern for the majority of the Members of Parliament".<sup>158</sup> Also others noted, that they use this kind of questions for important issues but of limited interest, i.e. of interest just for a particular MEP's constituency.<sup>159</sup>

As further follows from the above-mentioned research undertaken by the author of this paper among the MEPs serving during the 6th parliamentary term (2004-2009), the latter expressed the opinion, that this type of questions is most suitable in the following cases. Firstly, where an oral answer is most appropriate, secondly, for questions covering topical issues of high importance, which need a quick reply by the Commission, and, thirdly, for questions, where a public debate with the Commission or public opinion and a quick answer are desired and are not foreseen on the plenary agenda.

Among other relevant factors, which MEPs consider in relation with this type of questions, are the desirability of complementary questions or the consideration which Commissioner will be responding. However, there can be also other incentives, which lead the particular MEP to table this type of question. As an example can serve the answer given by *Nigel Farage* (UK MEP - Independence/Democracy Group Co-president) who stated that the reason he chose the type of oral question for Question Time is "to embarrass the Commissioner".<sup>160</sup>

To conclude, despite the above-mentioned shortcomings, question time has been a permanent feature of the EP's work for more than 36 years and the number of questions tabled per year stayed between 650 and 740 during the last four years (2004-2008). In addition to the Strasbourg Question Time, some of the EP's committees, as we will see in the following chapter, have introduced a more formalised question time to the Commission as regular events in their committee. In this case, nevertheless, the Commission civil servant specialist on an issue is often involved, rather than the

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<sup>158</sup> Answer to the author's questionnaire received from Elisabeth Jeggle on April 21, 2009.

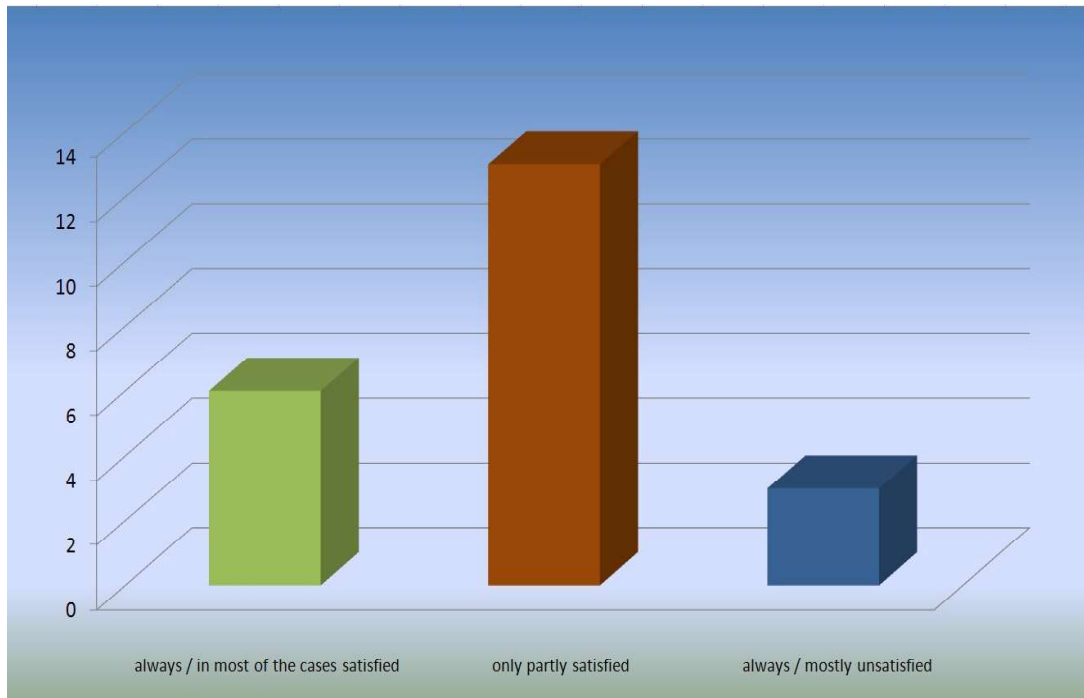
<sup>159</sup> Answer to the author's questionnaire received from Syed Kamall (UK MEP serving during the 6th parliamentary term - EPP Group) on April, 30, 2009 and from Janusz Onyszkiewicz (Polish MEP serving during the 6th parliamentary term - ALDE Group) on April 30, 2009.

<sup>160</sup> Answer to the author's questionnaire received from Nigel Farage on April 6, 2009.



Commissioner, which makes the whole event less formal and thus gives more chance for follow-up questions than its plenary equivalent.<sup>161</sup>

**Graph 3: The level of satisfaction among MEPs concerning the Commission's answers to oral questions for Question Time**



## 1.5 Conclusion on parliamentary questions

With regard to the effectiveness of parliamentary questions in general, as *Welsh* rightly points out, much depends on the skills with which questions are drafted.<sup>162</sup> In order for parliamentary questions to be useful, claims *Welsh*, it is essential for MEPs firstly, to have a clear idea of the nature of the answer sought and a reasonable experience of the detail of the subject, and, secondly, to draft questions in a way to produce constructive answers. In such a case, i.e. if approached correctly, the Commission can be very helpful and the questions' effectiveness rises.<sup>163</sup>

It is important to conclude, that despite all the shortcomings discussed above, the procedure of parliamentary questions in the EP has survived largely unchanged. Firstly, because it remains one of the very few areas of the EP's activities, where MEPs may

<sup>161</sup> See Corbett, R.; Jacobs G. F. and Shackleton, M. *The European Parliament*. 7th ed. London: John Harper, 2007. p. 285.

<sup>162</sup> See Welsh, M. Question time in Strasbourg; EC questions. *British Business*. London. 1983, Vol. 11 No 12, p 522.

<sup>163</sup> *Id.*

enjoy direct and formal interaction and debate with Commissioners. Secondly, thanks to the fact, that by virtue of these questions, MEPs can win commitments, particularly from Commissioners, to look into or report back on particular matters, and in so far as these commitments are minuted, Commissioners can be held to account.

Last but not least, one cannot leave out the fact that MEPs, besides the three types of questions examined above, have also other, quicker and more effective, possibilities available for serving their constituents and pursuing their goals. The most effective of them is direct contact with the Commission. To that effect, MEPs can write letters, send e-mail and faxes, or simply phone or visit a particular Commissioner of their interest. In addition to that, as *Tapio* notes, over the years, many MEPs develop also personal contacts inside the Commission.<sup>164</sup> However, the clear drawback of these informal channels is that the Commission is under no obligation to answer, and the answer is not an “official” Commission statement as are, for example, the answers to written questions.

Other MEPs may concentrate, as mentioned in the previous chapter on Question Time, on their work in the Committees of the EP, the significance of which have increased since the EP’s legislative position has been strengthened. As *Tapio* points out, Commissioners or Commission representatives are often invited to the committees, where MEPs may put questions to them.<sup>165</sup> The benefit of such hearings in the committees is that the members have at least the opportunity to have a face-to-face dialogue with the particular Commissioner or the representatives of the Commission. This is also supported by the answer received from *Vladimír Maňka* (Slovak MEP serving during the 6th parliamentary term, the EP’s 2010 budget rapporteur - Socialist Group) who stated:

*“I am a full member of the Committee on Budgets of the European Parliament. In the course of the budgetary procedure which runs from January to December, I meet many representatives of the Commission several times in a month. Since the EU budget covers all the activities dealt with by the EU institutions, it is in the Committee itself where we exchange the informations dealing with important and relevant aspects. By the virtue of this process and thanks to such a direct contact, we have managed to solve even the most difficult issues. Currently, I have been the EP’s 2010 budget rapporteur, and also from this position, the communication with the Commission is very intensive. In this way, I obtain the answers from the*

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<sup>164</sup> See *Tapio*, R. Parliamentary Questions in the European Parliament : Representation, Information and Control. *Journal of Legislative Studies*, London. 1996, Vol. 2 No. 4, p. 363.

<sup>165</sup> *Id.*

*Commission in the fastest way possible, and therefore I have no need to table questions in any other above mentioned form.*<sup>166</sup>

Last but not least, when making an assessment and a conclusion on parliamentary questions, one should not forget to provide the reader with the position expressed by MEPs themselves. By means of the already mentioned questionnaire sent in April and May 2009 to approximately 600 MEPs,<sup>167</sup> the latter were asked the following final question: ***Do you have any suggestions what could be improved regarding the parliamentary questions?*** From the answers received, the following can be stated: Most of the polled MEPs who answered the question suggested that the Commission should be bound by and respect the time limits for replies.<sup>168</sup> One of the MEPs further suggested that the time limits should be even reduced. Other MEPs suggested that the Commission's answers should be more precise and profound, or more in-depth, and should not follow so much the common knowledge the MEPs already have.<sup>169</sup> Two MEPs proposed, that a contact person in Commission for the question should be given, which would enable direct and individual discussion of a particular problem.<sup>170</sup> Also other MEPs put forward interesting suggestions, which are cited below.

*The EU-Commission is supposed to answer written questions within eight weeks. This length of time makes them virtually useless for any purpose. Even then, the Commission sometimes sends only a "holding response", after eight weeks, upon being prompted!*

*The problem with oral questions is that they have to be scheduled by the Conference of the EU-assembly's Presidents-of-Political-Groups, which, almost invariably, does not like my questions and refuses to table them.*

*Quite frankly, the whole process is a farce and a fraud as, indeed, is the assembly itself. The assembly (not worthy of the name of "parliament") acts only to give the false impression that the EU is democratic. This is very dangerous.*

(Nigel Farage, UK MEP - Independence/democracy)

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<sup>166</sup> Answer to the author's questionnaire received from Vladimír Maňka on April 6, 2009.

<sup>167</sup> See Annex 1 of this paper.

<sup>168</sup> Answer to the author's questionnaire received from Casaca Paulo (Portuguese MEP - Socialist Group), Aurelio Juri (Slovenian MEP - Socialist Group), Helmuth Markov (German MEP - GUE/NGL Group), Zuzana Roithová (Czech MEP - EPP Group), Syed Kamall (UK MEP - ECR Group).

<sup>169</sup> Answer to the author's questionnaire received from Klaus-Heiner Lehne (German MEP - EPP Group), Ville Itälä (Finnish MEP - EPP Group), Aurelio Juri (Slovenian MEP - Socialist Group), Jiří Maštálka (Czech MEP - GUE/NGL Group).

<sup>170</sup> Answer to the author's questionnaire received from Oldřich Vlasák (Czech MEP - EPP Group) and Frithjof Schmidt (German MEP - Group of the Greens/European Free Alliance).

Group, currently EFD Group, Co-president)

*“Parliamentary control over the Commission and the Council should be reinforced in general. Questions should be improved, mainly in terms of swiftness and quality of reply by the questioned institution and better organization of oral questions (H questions).”*

(Dimitrios Papadimoulis, Greek MEP - GUE/NGL Group)

*“Restriction in number of supplementaries in H questions is a drawback and discourages participation. Should allow more debate when there is wide interest.”*

(John Purvis, UK MEP - EPP Group)

*“If members were allowed to ask more than one priority question and if the Rules were kept the same as they are now so that members could ask unlimited written questions.”*

(Kathy Sinnott, Irish MEP -  
Independence/democracy Group)

*“Very urgent questions should be introduced with shorter delay and less cumbersome procedures.”*

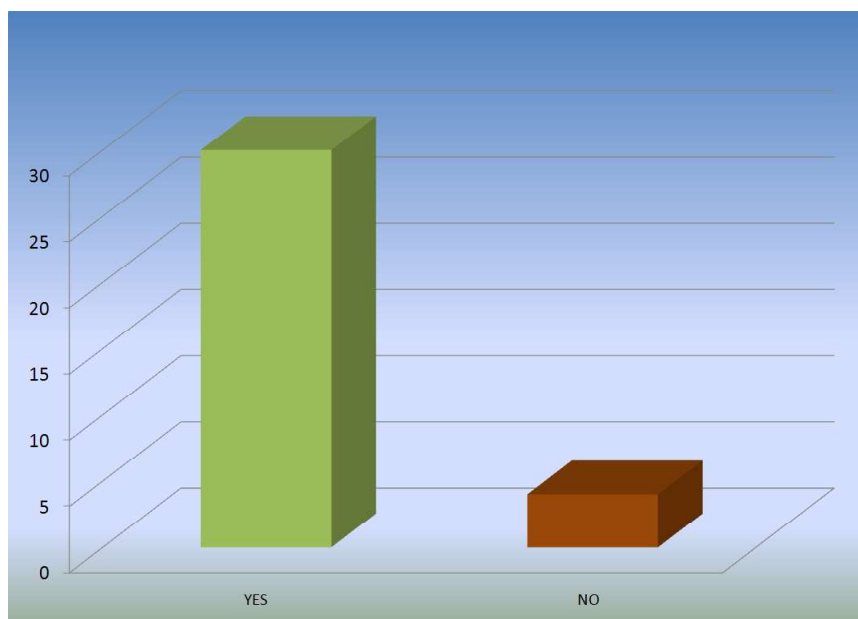
(Frithjof Schmidt, German MEP - Group  
of the Greens/European Free Alliance).

*“The Commission should be obliged to answer seriously to questions - especially on its own activities. A good example are the parliamentarian rights of the Bundestag towards the German federal government.”*

(Tobias Pflüger, German MEP -  
GUE/NGL Group)

However, despite the comments and suggestions presented above, it must be highlighted, that from the research it further follows, that the vast majority of the MEPs who answered the questionnaire, considers parliamentary questions to be an effective tool enabling them to exercise democratic control over the Commission (see Graph 4).

**Graph 4: Parliamentary questions as an effective tool enabling MEPs to exercise democratic control over the Commission**



Finally, to be impartial, one has to let the Commission's position to be presented as well. *Fernando Frutuoso Melo*, the Director of Directorate G - Relations with the European Parliament, the European Ombudsman, the European Economic and Social Committee, the Committee of the Regions and National Parliaments, was confronted by the author of this paper with the complaints of MEPs regarding parliamentary questions. In his email of 25 July 2009, *Fernando Frutuoso Melo* responded as follows:

*"On written questions it is true there are some delays, but more limited than what you mentioned, we have actually reduced the delays over the last months. However, it is a fact that some written questions are still not replied within the deadlines fixed by EP.*

*This is mainly the consequence of three factors:*

- we are currently replying to around 7.000 (seven thousand !) questions per year, which means an average of 35 new questions on each working day...*
- delays have been fixed long ago, when Parliament and Commission were much smaller in size and in scope.*
- to ensure collegiality all questions must be prepared by relevant services, including very often several Directorates General, and then be approved by the College: once again, the size and scope lead to many days being required for*

*everyone who is related to the issue to have time to give the views of the service.”<sup>171</sup>*

To the supplementary question asked by the author of this paper in relation to whether he can think about any possibility how to cope with these delays, *Fernando Frutuoso Melo* answered as follows:

*“Richard Corbett has proposed in his report to introduce quantitative as well as qualitative criteria. The idea was to have the same approach as for oral questions (question time). However, AFCO has not accepted this, and only the admissibility (quantitative) criteria were approved. So, those MEPs who use PQs as a main means of political intervention will certainly continue to do so. Also the fact that some media tend to “measure” the performance of MEPs by the number of PQs raised or reports drafted, leads to some MEPs, who are less visible as rapporteurs or in interventions in Plenary, wanting to show hard work by putting many PQs.*

*One might wonder whether in times of email, sms and twitter it still makes sense to have such a formal system of PQs, but clearly MEPs are not ready to address the issue, as the discussion on the Corbett report has shown.*

*So the Commission will continue to improve the management of questions and replies, as we have been doing, hoping that the numbers do not raise to an impossible level.”*

From all the afore-mentioned, it is clear, that the two camps - with MEPs on the one side, and the Commission on the other side - will hardly find some kind of common level of satisfaction regarding parliamentary questions, especially, the way how they are dealt with. Different views on that issue have persisted on both sides for many years and with the gradual enlargement and empowerment of the EP, they have become even more incompatible. On the one hand, one can easily understand the frustration of MEPs when struggling, mainly, with the Commission's imprecise and delayed answers. However, this problem cannot be looked at only from an individual MEP's point of view, but also from the Commission's one. When one fully considers the enormous amount of new questions the Commission must deal with every day, it seems impossible to avoid, at least, the delays.

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<sup>171</sup> Answer to the author's inquiry received from Fernando Frutuoso Melo (Director of Directorate G - Relations with the European Parliament, the European Ombudsman, the European Economic and Social Committee, the Committee of the Regions and National Parliaments) on July 25, 2009.

As a concluding remark, the difficulties, which one faces when undertaking a deeper statistical analysis of parliamentary questions, should be also mentioned in this chapter. Current internal IT applications provided by EUR-lex<sup>172</sup> do not allow any search that would enable a researcher to investigate, for example, how many of the questions, tabled by the EP during one electoral term, were of a legislative nature or to calculate a number of parliamentary questions by party group. This finding was also confirmed by *Véronique Warlop* from the Secretariat General of the Commission, who is involved in all the questions sent to the Commission. She confirmed that no criteria allow a search on the nature of the questions and that the only possible criteria are the search on the title of the question, by names of MEPs or by Directorate-General of the Commission that has prepared a draft answer.<sup>173</sup> This is, undoubtedly, very practical for someone seeking a concrete information, but not for those wishing to make an overall comparison as the one proposed above.

## 1.6 Changes under LISBON TREATY

The question remains what changes, if any, the Lisbon Treaty has brought. The answer is very simple, it did not bring anything new, at least as far as the text of the provision itself is concerned. The Treaty of Lisbon, more precisely the Consolidated TFEU,<sup>174</sup> has not affected the substance of the provision but has only renumbered it. Consequently, in the new TFEU,<sup>175</sup> Article 197(3) ECT now appears as Article 230 (2).

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<sup>172</sup> EUR-Lex provides a direct free access to European Union law. One can consult there the Official Journal of the European Union as well as the treaties, legislation, case law and legislative proposals.

<sup>173</sup> Answer to the author's inquiry received from Véronique Warlop on April 17, 2009.

<sup>174</sup> See Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed, Official Journal C 306 of 17 December 2007 (2007/C 306/01). Available also at: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:en:HTML> (last accessed on March 21, 2009).

<sup>175</sup> See Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Official Journal C 115 of 9 May 2008 (2008/C 115/01).

added paragraph (2), the Commission under a duty to submit, in addition to documents stipulated in its paragraph (1), an evaluation report on the Union's finances based on the results achieved. Finally, one change related, though indirectly, to the discharge procedure has also been made in Article 274 ECT (renumbered as Article 317 TFEU). Article 317 TFEU replaced the wording of Article 276 in quite a revolutionary way, i.e. with respect to the responsibility for the implementation of the Union's budget. Under the terms of former Article 274 ECT, it was the Commission which was solely responsible for implementing the Community's budget, while, since the entry into force of the Lisbon Treaty, this burden has been shifted partly to the Member States. As from December 1, 2009, it is thus a joint task of the Commission and the Member States to implement the Union's budget.

To sum up the above, it can be concluded that as to the substance of the discharge procedure, no fundamental changes have been made.



## 4. The EP's powers of approval and censure of the European Commission

### 4.1 A brief history

The motion of censure - in other words - *the right to dismiss the Commission as a body* - is, as demonstrated in the previous chapters, a crucial factor in the relationship between the EP and the Commission. It is one of the EP's oldest powers and still today, the EP remains the only institution that can force the Commission as a whole to step aside before the end of its election period. As pointed out at the beginning of this paper, the original Common Assembly was initially restricted only to the power of deliberation and supervision of the Commission (High Authority as it was then) without any legal consequences, except the power to censure the latter on the basis of Article 24 of the Paris (ECSC) Treaty. However, under the wording of this article, it could only censure the Commission in very limited circumstances, since a use of this power was **restricted merely to the ECSC's High Authority's General Report**, which the latter was obliged to submit annually to the former.<sup>279</sup> Because of that, the Assembly has often made a strategic use of censure to try to strengthen its own position.<sup>280</sup> It was later on in 1957/58, with the EEC and EURATOM Treaties, when the general right of censure was introduced.<sup>281</sup> Subsequently, in 1965/67, this general right of censure was extended also to the ECSC via the Merger Treaty.<sup>282</sup> The censure power was generalised in a sense that the EP could censure the Commission on **any aspect** of its activities and at **any moment**. If it was carried by a two-third majority comprising more than half of the MEPs it would force the Commission to resign as a whole.

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<sup>279</sup> See Consolidated ECSC Treaty Art. 24.

"The Assembly shall discuss in open session the general report submitted to it by the High Authority. If a motion of censure on the report is presented to the Assembly, a vote may be taken thereon only after a period of not less than three days following its introduction, and such vote shall be by open ballot. [...]" It implies that the motion of censure could be tabled only once a year.

<sup>280</sup> See Magnette, P. Appointing and Censuring the European Commission: The Adaptation of Parliamentary Institutions to the Community Context. *European Law Journal*. 2000, Vol.7, No.3, p. 303.

<sup>281</sup> Compare Article 24 of the ECSC Treaty with Article 144 of the EEC Treaty:

Article 24 ECSC Treaty

"If a motion of censure concerning the activities of the Commission is introduced in the Assembly, a vote may be taken thereon only after a period of not less than three days following its introduction, and such vote shall be by open ballot."

Article 114 EEC Treaty: "If a motion of censure on the activities of the Commission is tabled before it, the European Parliament shall not vote thereon until at least three days after the motion has been tabled and only by open vote"

<sup>282</sup> See Merger Treaty Art. 27(2).

"The second paragraph of Article 24 of the Treaty establishing the European Coal and Steel Community is repealed and replaced by the following:

"If a motion of censure on the activities of the High Authority is tabled before it, the Assembly shall not vote thereon until at least three days after the motion has been tabled and only by open vote."

Since the Single European Act, the EP's position has changed. It has retained its power to censure the Commission, but, in addition, it has gained other important powers, which were further reinforced by the Treaties of Maastricht, Amsterdam, Nice and Lisbon. Most importantly, the Treaty of Maastricht attributed to the EP the right to be consulted on the choice of the Commission's President and made the Commission as a body subject to a vote of approval by the EP (so called approval power).<sup>283</sup> The approval power itself was further modified by the subsequent Treaties. First, by the Treaty of Amsterdam, which, in addition, empowered the EP to reject the Commission President proposed by the Council of the EU;<sup>284</sup> second, by point 22 of the Nice Treaty; and third, by the Treaty of Lisbon, Article 17(3),(6) and (7) TEU . This EP's approval power is of great importance and as *Westlake* highlights, "nowhere have the Commission-Parliament relations moved more over the past quarter-century than in this field, i.e. from no say at all to a definitive say"<sup>285</sup>. Therefore, it will be dealt with in the following chapter.

To sum up the motion of censure's evolution, nowadays, the capacity of the EP to force the Commission to resign as a body if a motion of censure is validly carried out, is laid down in Article 201 ECT (as from December 1, 2009, Article 234 TFEU) and grants the EP the power of censure over the Commission in relation to any of its activities. Since the censure motion has been seen by many authors as a 'nuclear weapon'<sup>286</sup> with far-reaching consequences, which should only be used as a last resort, the relevant Treaty provision makes it is as such subject to two limitations. Firstly, the motion of censure must be carried out by a two-third majority of the votes cast, which must represent an absolute majority of the component MEPs, and, secondly, a condition of three-day lapse between the tabling of a motion and any vote thereon must be fulfilled. If the motion is validly tabled and adopted, the Members of the Commission shall resign as a body. Conditions for submitting a motion of censure as well as further information on the procedure for its

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<sup>283</sup> See Consolidated Treaty of Maastricht Art. 158(2).

"The governments of the Member States shall nominate by common accord, after consulting the European Parliament, the person they intend to appoint as President of the Commission.

The governments of the Member States shall, in consultation 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 thus nominated shall be subject as a body to a vote of approval by the European Parliament. After approval by the European Parliament, the President and the other members of the Commission shall be appointed by common accord of the governments of the Member States."

<sup>284</sup> In this respect, compare arts. 158 (1) and (2) of the Treaty of Maastricht and point 40) of the Treaty of Amsterdam.

<sup>285</sup> See Spence, D. *The European Commission*. 3th ed., London: John Harper, 2006, in the section: The European Commission and the European Parliament by Westlake, M., p. 266.

<sup>286</sup> See Judge, D.; Earnshaw, D. *The European Parliament*. 2nd ed., Basingstoke: Palgrave Macmillan, 2008. p. 210; See Westlake, M. *A modern guide to the European Parliament*. London: Pinter, 1994. p.114; See Westlake, M. *The Commission and the Parliament: partners and rivals in the European policy-making process*. London: Butterworths, 1994. p. 25; See also Beukers, T. The Barroso Drama: Enhancing Parliamentary Control over the European Commission and the Member States. *European Constitutional Law Review*. 2006, Vol. 2, No. 1, p. 28.

adoption and on what happens once the motion of censure is submitted, can be found in the EP Rules of Procedure.<sup>287</sup>

The last thing to be mentioned in this chapter is that the EP does not have any other formal powers of direct censure other than that concerning the Commission. The only, quite new exception provided for by the ECT is the one that allows for the European Ombudsman to be dismissed by the ECJ at the request of the EP.<sup>288</sup> However, this power has never been used so far.

## 4.2 The power of approval

The power of approval, as explained above, is inherently related to the power of censure. To demonstrate this power in practice, a good example may be found in the case of the *Barroso* Commission. In 2004, *José Manuel Barroso*, the then Commission President, was forced to regroup the college he had proposed in order to prevent it from being rejected by the EP. More precisely, on October 28, 2004, on the bases of strong informal voices from the EP indicating that he could not count on a sufficient majority to grant his proposed team the political authority he needed, *Barroso* decided to back away from presenting his 24 new Commissioners to the EP for approval and thus not to test the vote. These negative voices from the EP, which questioned the suitability of several of the candidates, originated mainly in the performance of some of the proposed Commissioners in the hearings before the parliamentary committees. Subsequently, two originally proposed Commissioners, namely, *Rocco Buttiglione* (Italy)<sup>289</sup> and *Ingrida Udre* (Latvia) were withdrawn and replaced with 'safe' candidates. In addition, the portfolio for *László Kovács* (Hungary), who was at first proposed as Commissioner for Energy, was changed for his alleged insufficient professional competence in the energy field. His portfolio became in the end Taxation and Customs Union. Following these changes, *Barroso* and his new college were approved by the EP on November 18, 2004 and were able to start the new term of office in their new composition on November 22, 2004.<sup>290</sup>

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<sup>287</sup> See The EP Rules of Procedure - 7th parliamentary term, December 2009.

<sup>288</sup> See Consolidated ECT art. 195(2) and Consolidated TFEU art. 228 (2).

<sup>289</sup> Rocco Buttiglione, a conservative Catholic, was the commissioner-designate proposed by Italy who has drawn the most controversy, especially because of his reported views on homosexuality and the role of women in the family. For example, during a hearing before the EP he expressed his opinion that homosexuality is a sin. He was originally proposed by Barroso as Vice President of the European Commission and Commissioner for Justice and Home Affairs.

<sup>290</sup> For further details on appointment and censure of the European Commission see Beukers, T. The Barroso Drama: Enhancing Parliamentary Control over the European Commission and the Member States. *European Constitutional Law Review*. 2006, Vol 2, No. 1, p. 21-53.

To conclude, in the case of the *Barroso* Commission, the EP, for the first time in its history, made a real use of its power of approval when it managed to influence the structure of the Commission and the allocation of portfolios, making this a prerequisite for its approval of the new Commission. Moreover, the EP had shown that it possessed a right to request a Commissioner's resignation. Not surprisingly, the same scenario has occurred now, five years later after the appointment of the *Barroso I*<sup>291</sup> Commission. In connection to the formation of the *Barroso II* Commission, the EP again rejected one of Barroso's Commissioner-designate, namely, the initiate Bulgarian candidate Rumiana Jeleva, on the basis of her bad performance during her EP Development Committee hearing.<sup>292</sup> Under the political pressure, she finally stood down on January 19, 2010 (only one week before the EP's vote on the new Commission was supposed to take place). Bulgaria rapidly submitted Kristalina Georgieva (World Bank VP) but this forced the vote on the Commission to be delayed weeks so Georgieva's hearings could be arranged. Consequently, as a result of the change of the Bulgarian Commissioner-Designate, the EP vote on the confirmation of the Barroso II Commission has been set for February 9, 2010. To that the EP President Buzek has made it clear that the latest developments with the withdrawal of the Bulgarian EC candidate showed that the democratic procedures of the EU were working fine.<sup>293</sup>

Thus, from the above-mentioned it can be clearly seen how, in the last 20 years, the EP has strengthened its role of political control over the Commission and has extended its powers, even beyond the letter of the Treaty. Although the censure of individual Commissioners is still excluded by the Treaty, it is now clear that the precedent set by the Barroso Commission will be used again by the EP if Member States present other candidates considered ineligible or unsuitable by the EP in future.

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<sup>291</sup> Since, on September 16, 2009, Barroso won again the EP's support and was thus re-appointed as EU Commission President for a second five-year term (2009-2014), under the term 'Barroso I Commission' should be understood the one which was in office from November 2004 until October 2009.

<sup>292</sup> Rumiana Jeleva was forced to step down due to opposition from MEPs, mainly the Socialists, who questioned her suitability and financial interests despite backing from the People's Party (to which her national party belongs). The only other Commissioner-designate to lack support was returning commissioner Neelie Kroes who was also seen to perform poorly in her hearing. However she was invited back and secured more support indicating she will get approval from Parliament.

<sup>293</sup> Source: <http://www.novinite.com>. Available at: [http://www.novinite.com/view\\_news.php?id=112134](http://www.novinite.com/view_news.php?id=112134) (last accessed on January 21, 2010).

### 4.3 Practice, the principle of collegiality in the Commission and the possibility of individual censure

The first part of this chapter will briefly look closer at the motion of censure from a practice point of view and will then focus on the principle of collegiality. Further, the issue of responsibilities and accountabilities of individual Commissioners, as addressed formally for the first time in the 2000 Framework Agreement<sup>294</sup> on Relations between the EP and the Commission and subsequently in its update of 2005, will be discussed as well.

The motion of censure is the EP's oldest and simultaneously the strongest formal power, which, however, has never been successfully used (see Table 6). The question therefore arises, why is that so? One of the possible answers could be the awareness of the far-reaching consequences that such a censure motion could have. Another reasoning put forward by *Judge* says that it is mainly because the EP and the Commission have historically shared a common institutional perspective, which has been reinforced by close working arrangements and inter-institutional agreements between the two institutions.<sup>295</sup> To that *Hix* adds that "the EP is aware that the Commission, as a fellow supranational institution, is more often an ally against the Council than an enemy".<sup>296</sup> Whatever the right explanation is, the fact remains that until now, all conflicts between the EP and the Commission have usually been resolved in ways different from that of censure. Nonetheless, the mere fact of existence of this power of the EP and the possibility that a censure motion might be tabled, let alone voted, entails "the ever-present threat of potential sanction"<sup>297</sup>. As such, it serves to ensure that both the EP and the Commission have a vested interest in securing inter-institutional cooperation rather than conflict.<sup>298</sup> This can be demonstrated with the example given by *Westlake* from May

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<sup>294</sup> The framework agreements signed bilaterally between the EP and the Commission represent, from a formal point of view, a variant of the interinstitutional agreements. The main difference between framework agreements and interinstitutional agreements is not just that the former are concluded bilaterally rather than between the three institutions, but also that they are made at the beginning of a new parliamentary term to govern relations between the Commission and the newly elected EP, and are not designed to enforce a particular provision of the Treaty.

<sup>295</sup> See *Judge, D.; Earnshaw, D. The European Parliament*. 2nd ed. Basingstoke: Palgrave Macmillan, 2008. p. 210.

<sup>296</sup> See *Hix, S. The political system of the European Union*. 2nd ed. Basingstoke : Palgrave Macmillan, 2005. The European Union series, p. 60.

<sup>297</sup> See *Westlake, M. A modern guide to the European Parliament*. London: Pinter, 1994. p.115.

<sup>298</sup> See *Judge, D.; Earnshaw, D. The European Parliament*. 2nd ed., Basingstoke: Palgrave Macmillan, 2008. p. 210. Also *Westlake* notes in his paper that the motion of censure "has hung over the Commission like a Damocles sword and has never been used, yet it is no exaggeration to argue that this ultimate sanction constantly colours Commission-Parliament relations". In this respect, see *Spence, D. The European Commission*. 3th ed. London: John Harper, 2006, in section: *The European Commission and the European Parliament* by *Westlake, M.* p. 263.

2005, when *Nigel Farage*, a UK Independence Party MEP, managed to gather more than the 76 signatures of MEPs necessary to trigger a censure motion debate and vote. In *Westlake's* words, “although the motion of censure had no chance of being adopted, the very fact that it had been tabled caused consternation and hectic political manoeuvring designed to ensure that it received as few votes as possible”.<sup>299</sup>

**Table 6: Motion of censure on the Commission tabled within the EP from 1972 to 2009 and their results**

December 1972	EP power of control over the EC budget	<b>Withdrawn</b>
June 1976	Incorporation of skimmed milk powder in animal feed	<b>Rejected</b>
December 1976	EP's right of control - access to documents	<b>Withdrawn</b>
March 1977	Butter sales to Eastern Europe	<b>Rejected</b>
15 February 1990	The CAP and the Commission's competences	<b>Rejected</b>
11 July 1991	Commission and Council policy on Yugoslavia	<b>Rejected</b>
17 December 1992	Position adopted by the Commission during the GATT negotiations - on the ground that the Commission's negotiating tactics had given too much away in the agricultural sector <sup>300</sup>	<b>Rejected</b>
20 February 1997	BSE	<b>Rejected</b>
14 January 1999	The 1996 discharge	Rejected
<b>March 1999</b>		<b>Commission resigns in anticipation of a motion of censure</b>
4 May 2004	Eurostat scandal, i.e. on the ground that the Commission had not dealt adequately with financial irregularities in the EU's statistic agency, Eurostat	<b>Rejected</b>
8 June 2005	Gift received by President of the Commission	<b>Rejected</b>

<sup>299</sup> See Spence, D. *The European Commission*. 3th ed., London: John Harper, 2006, in the section: The European Commission and the European Parliament by Westlake, M. p. 267.

<sup>300</sup> See Corbett, R.; Jacobs, G.F. and Shackleton, M. *The European Parliament*. 7th ed., London: John Harper, 2007. p.279.

However, there was one important instance in EU history, which led to the Commission's resignation because of the latter's fear that the motion of censure would be adopted sooner or later anyway. This instance was the so-called 'Santer crisis', which had its origin in alleged financial mismanagement and which was closer dealt with in chapter 3.4.1.

As has already been stressed, the principle regarding the accountability of the Commission vested in the original and current Treaties is the one of collegiality, which is considered to be an indispensable principle underlying the working of the Commission.<sup>301</sup> Consequently, the EP can only decide on the resignation of the College as a whole. The compulsory resignation of an individual Member of the Commission thus used to be the exclusive competence of the Court of Justice, which, at the request of the Council or the Commission, could compulsorily dismiss any Member of the Commission who failed to fulfil the necessary conditions in the performance of his duties or who committed a serious offence.<sup>302</sup> However, since the entry into force of the Treaty of Lisbon (Article 218(2) TFEU), a Commissioner must resign also at the demand of the President of the Commission.<sup>303</sup>

One may therefore wonder why the EP and its motion can be targeted at the Commission only collectively and not individually, as it is in the case of the dismissal of an individual Commissioner by the ECJ or the President of the Commission, mentioned above. The explanation could probably be that the aim was to avoid the power of dismissal to become an arbitrary power of the EP used to dismiss individual inconvenient Commissioners. In other words, since it is such a strong power, the author of this paper takes the position that the intention of the drafters of the original Treaties was, in all likelihood, to ensure non-discrimination between individual Commission members. From *Judge's* point of view, "the censure procedure is the reverse of the appointments procedure, for just as the EP consents to the formation of the College of Commissioners as a collectivity, and not to the appointment of individual Commissioners (other than the President), so MEPs censure the Commission as a whole and not as individual Commissioners."<sup>304</sup> *Corbett*, on the other hand, highlights the doctrine of collective accountability.<sup>305</sup> Here again, notwithstanding the correct reasoning, the truth is, that despite some attempts before 1999 to extend the right of censure also towards individual

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<sup>301</sup> See Consolidated ECT Art. 217 and Consolidated TEU Art. 17 (as valid from December 1, 2009).

<sup>302</sup> See Consolidated ECT Art. 213 (as from December 1, 2009, Article 245 TFEU).

<sup>303</sup> Confer Consolidated ECT Art. 217(4) under the terms of which a Commissioner had to resign at the demand of the President of the Commission and after agreement of the College.

<sup>304</sup> See Judge, D.; Earnshaw, D. *The European Parliament*. 2nd ed., Basingstoke: Palgrave Macmillan, 2008. p. 210.

<sup>305</sup> See Corbett, R.; Jacobs, G. F. and Shackleton, M. *The European Parliament*. 7th ed., London: John Harper, 2007. p.280.

Commissioners, such a provision has never, as such, been incorporated into the Treaty.

Nevertheless, from what will be discussed below, it is clear that the principle of collegiality in the Commission, especially the need to reconcile the issue of the individual responsibility of Commissioners with the collective responsibility of the Commission, is under constant pressure.<sup>306</sup> Early evidence of this statement can be found in the already mentioned Amsterdam provision, which provided for the appointment of the Commission President ahead of his colleagues and empowered the EP to reject the Commission President proposed by the Council.<sup>307</sup> However, this issue had in fact already arisen at the time of the *Delors* Commission and became highly discussed after and in connection with the above discussed resignation of the *Santer* Commission in 1999; the parliamentary hearings for the *Prodi* Commission; and with the appointment of the *Barroso I* Commission. Put more precisely, the *Santer* Commission had allegedly been undermined by its inability to force one of its members out.<sup>308</sup> Subsequently, as seen above, *Prodi* had insisted that each member of his Commission sign a resignation letter in advance - just in case.<sup>309</sup> The Treaty of Nice went even further, providing that the President of the Commission, albeit with the support of his or her colleagues, was empowered to request an individual Commissioner to resign.<sup>310</sup> However, this was 'nothing' in comparison with the change introduced by the Lisbon Treaty, under the terms of which, this power belongs solely to the President of the Commission.<sup>311</sup>

As a result, in composing his Commission in 2004, *Barroso* had made no demand similar to that of *Prodi*, but later, in the context of the new 2005 Framework Agreement his Commission committed itself, as will be discussed in the following subchapter, to something even more controversial.

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<sup>306</sup> See Malone, M. The Resignation of the Santer Commission. *Journal of the Institute of Public Administration of Ireland*. Summer 2002, Vol. 50, No. 2, p. 98 and 99.

<sup>307</sup> See Amsterdam Treaty point 40).

<sup>308</sup> See Spence, D.: *The European Commission*. 3th ed., London: John Harper, 2006, in the section: The European Commission and the European Parliament by Westlake, M., p. 268,

<sup>309</sup> *Id.*

<sup>310</sup> See Malone, M. The Resignation of the Santer Commission. *Journal of the Institute of Public Administration of Ireland*, Summer 2002. Vol. 50, No. 2, p. 98 and 99. As *Malone* notes, this provision is in line with the suggestion put forward in the Dehaene Report (1999) to formalise Commission President Prodi's initiative to extract informally from each of his colleagues a pledge that they would resign as a Commissioner if he requested them to do so.

<sup>311</sup> See Consolidated TEU Art. 17(6)(c) (as valid from December 1, 2009).



## 4.4 Background on Framework Agreements

Before we start this chapter, a short introduction on instruments regulating the Commission's relations with the EP needs to be given, thus explaining what the above mentioned Framework Agreement stands for. In a nutshell, the framework agreements signed bilaterally between the EP and the Commission represent, from a formal point of view, a variant of the inter-institutional agreements<sup>312</sup>. However, there are two main differences between framework agreements and inter-institutional agreements. First, framework agreements are concluded bilaterally rather than between the three institutions. Second, they are made at the beginning of a new parliamentary term to govern relations between the Commission and the newly elected EP and are not designed to enforce a particular provision of the Treaty. As a legal basis for such agreements serve not only Article 218 ECT (as from December 1, 2009, Article 295 TFEU), but also the requirement of 'loyal cooperation' (as laid down in Article 10 ECT,<sup>313</sup> which is, as from December 1, 2009, replaced, in substance, by Article 4(3), TEU). However, as follows from *Declaration No 3* on Article 10 ECT annexed to the Treaty of Nice, inter-institutional agreements could neither modify nor supplement the provisions of the Treaty and required the consent of the three institutions.<sup>314</sup> Thus, in *Westlake's* words, inter-institutional agreements can be perhaps best understood as a sort of "constitutional glue", filling out and connecting the basic provisions of the Treaties".<sup>315</sup>

From an EP paper it follows that both – the EP and the Commission – have always maintained that the framework agreements are designed to enforce the provisions of the Treaty and to allow the EP to fulfil its role of scrutinising the work of the Commission, and

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<sup>312</sup> Inter-institutional agreement is a term that covers not only 'inter-institutional agreements' in the strict sense, formally executed and published in the Official Journal of the European Union, but also other forms of 'soft law' (such as joint declarations, exchanges of letters, codes of conduct and so on). As a rule, these agreements are designed to facilitate the application of the provisions of the Treaty and practical cooperation between the various institutions, particularly the EP, the Council and the Commission. As far as the EP is concerned, these agreements have often been one of the ways in which the EP compensates for the shortcomings of the Treaty, or even, in some cases, a way to enhance its powers indirectly, taking advantage of occasions when the other institutions need its approval on important matters and thus avoiding inter-institutional conflict. For further details, see the EP's paper: *Building Parliament: 50 years of European Parliamentary History 1958-2008*. European Parliament – 50th birthday Series (2008), p. 194-204.

<sup>313</sup> It could be inferred from ex Article 10 ECT that the duty of sincere cooperation between the Member States and the Community institutions also applies to relations between the institutions themselves (see *Declaration No 3* on Article 10 of the Treaty establishing the European Community annexed to the Treaty of Nice).

<sup>314</sup> This clarification seems, with the highest possibility, to refer indirectly to bilateral framework agreements between the Commission and the European Parliament, which the Council and some Member States saw as circumventing the provisions of the Treaty on some points (see the chapter on framework agreements below).

<sup>315</sup> See Spence, D. *The European Commission*. 3th ed., London: John Harper, 2006, in the section: *The European Commission and the European Parliament* by Westlake, M. p. 272.

that they are not meant to change the institutional rules.<sup>316</sup> This point of view is however neither shared by the author of this paper nor, as we will see below, by the Council. As a matter of fact, for the EP, the main aim of framework agreements is twofold. First, to extract a series of bilateral promises<sup>317</sup> from the newly appointed Commission, mainly in order to strengthen its powers in relation to the latter and second, to persuade the Commission to grant it a more important role than the one assigned by the Council based on the provisions of the Treaty.<sup>318</sup> To conclude, in fact, the EP's framework agreements with the Commission<sup>319</sup> thus represent one of the techniques employed by the EP to compensate for the shortcomings of the Treaty and for what the EP perceives as a lack of power.<sup>320</sup> The author of this paper wishes to support this conclusion with an information obtained from a very recent German newspaper article, whose author states that "On Thursday [21 January 2010] the heads of the parliamentary groups will decide whether they are satisfied by the concessions made by Barroso as regards "inter-institutional matters". The groups demand binding commitments that guarantee more influence for MEPs on the work of the Commission and on legislation." Whether this is true will get proved in the upcoming weeks, however, for now, this statement, at least, indicates that such techniques do indeed exist.<sup>321</sup>

#### **4.5 2000 and 2005 Framework Agreements – clash between the EP and the Council**

It must be noted that over the years, the Commission and the EP have adopted a series of agreements and texts to regulate the conduct of their relations,<sup>322</sup> culminating, at the end, in two framework agreements. The first one (so called 2000 Framework Agreement) was signed by the EP and the Prodi Commission in July 2000, the second

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<sup>316</sup> See the EP's paper: Building Parliament: 50 years of European Parliament History 1958-2008. European Parliament – 50th birthday Series. 2008, p. 198.

<sup>317</sup> Sometimes going even beyond the provisions of the Treaty.

<sup>318</sup> As an example can serve the comitology procedure or the possibility of the EP intervening in the negotiation of international agreements beyond what was provided by the Luns-Westerterp procedures negotiated with the Council and the Commission in the 1970s, or indeed the 1983 Stuttgart Declaration.

<sup>319</sup> Like all interinstitutional agreements generally.

<sup>320</sup> See the EP's paper: Building Parliament: 50 years of European Parliament History 1958-2008. European Parliament – 50th birthday Series. 2008, p.198.

<sup>321</sup> Winter, M. Zitterpartie für die neue EU-Kommission; José Manuel Barroso muss die Zusammensetzung seiner Mannschaft ändern, sonst könnte das Europaparlament sie ablehnen. German newspapers: *Süddeutsche Zeitung*. Rubrik: *Politik; München*. January 19, 2010, s. 7.

<sup>322</sup> Inter alia, the Interinstitutional Agreement on better law-making from 2003, the Inter-institutional agreement on budgetary discipline and improvement of the budgetary procedure, etc.

one (2005 Framework Agreement)<sup>323</sup> was signed with the Barroso Commission in May 2005.

#### 4.5.1 The 2000 Framework Agreement

After the crisis over fraud in the Union and the subsequent resignation of the *Santer* Commission in 1999, the EP demanded a mechanism to establish the responsibility of individual Commissioners during their term.<sup>324</sup> It was then one year later that the EP managed to tackle the issue of individual/collective responsibility in the 2000 Framework Agreement on Relations between the EP and the Commission,<sup>325</sup> which was negotiated in 1999 after the *Prodi* Commission was confirmed and signed in 2000. This Framework Agreement was built on an existing Code of Conduct of 1995<sup>326</sup> and formally put an end to the ad hoc practices on which the two institutions had based their relations (exchanges of letters, codes of conduct, *modus vivendi* etc.). It integrated, in its key Article 9, commitments given by the Commission President *Prodi* in the course of his Commission's investiture procedure,<sup>327</sup> namely his promise that the Commission accepts that "where the European Parliament expresses lack of confidence in a Member of the Commission, the President of the Commission, having given serious consideration to the decision, shall either request that Member to resign, or explain his or her decisions to Parliament"<sup>328</sup>. This strategy was not seen as being in conformity with Community law since primary law<sup>329</sup> had provided only for a specific right of the Commission President to reshuffle Commissioners' portfolios responsibilities during the Commission's mandate, but not for a specific right to fire individual Commissioners. Nothing has changed the fact that, though the Framework Agreement managed to address the responsibility of individual

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<sup>323</sup> As already outlined, Prodi's interest in signing the first FA stemmed from the political necessity of overcoming the lack of trust between the Santer Commission and the EP, whilst the motives of the Barroso Commission had more to do with the different opinions of the EP and the Commission concerning the replacement of some of the Commission's members and the correct interpretation of the ECT provisions on the ability of the EP to censure individual members of the Commission.

<sup>324</sup> See Beukers, T. The Barroso Drama: Enhancing Parliamentary Control Over the European Commission and the Member States. *European Constitutional Law Review*, 2006. Vol. 2, No. 1, p. 33.

<sup>325</sup> See Framework Agreement on relations between the European Parliament and the Commission from 2000, Official Journal C 121, 24/04/2001, P. 0122 - 0130. This Framework Agreement was negotiated in 1999 after the Prodi Commission was confirmed and signed in 2000. This FA built on an existing 1995 Code of Conduct and integrated commitments given by President Prodi in the course of his Commission's investiture procedure. The EP's right to conclude such agreements is based on the Rule 120 of the EP Rules of Procedure according to which the EP may enter into agreements with other institutions in the context of the application of the Treaties or in order to improve or clarify procedures.

<sup>326</sup> The two institutions signed in the past two Codes of Conduct – one in 1990 and one in 1995 – governing their relations. Contrary to FA, the Codes of Conduct placed more emphasis on the voluntary – and therefore less binding – nature of the commitments made.

<sup>327</sup> See subchapter 4.3.

<sup>328</sup> See Framework Agreement on relations between the European Parliament and the Commission from 2000, Official Journal C 121, 24/04/2001, P. 0122 - 0130, art. 10.

<sup>329</sup> ECT as amended by the Treaty of Amsterdam.

Commissioners, it left the collective control in the hands of the Commission President. As a matter of fact, it was after this 2000 Framework Agreement that the Member States signed the above-mentioned *Declaration No 3* on Article 10 ECT annexed to the Treaty of Nice, whereby inter-institutional agreements could only enforce the provisions of the Treaty and had to be signed by all three institutions. However, as will be seen later on, this political declaration without any binding legal effect did not prevent the revision of the 2000 Framework Agreement and the adoption of the new one in May 26, 2005.<sup>330</sup>

#### 4.5.2 The 2005 Framework Agreement

In the case of the revised 2005 Framework Agreement, the EP followed the same strategy as in the case of the previous one and sought a revision of certain provisions of the 2000 Framework Agreement that had already posed a problem both for the Commission and the Council. This concerned, in particular, the involvement of the EP in international agreements, the withdrawal of a proposal rejected by the EP and, yet again, the censure of individual members of the Commission. The final text of the 2005 Framework Agreement, which was signed by the Presidents of both the EP and the Commission, was consequently strongly criticised<sup>331</sup> by the Council.<sup>332</sup> Put more precisely, the Council issued a statement in which it strongly opposed that several provisions of this reinforced 2005 Framework Agreement had aimed, even more markedly

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<sup>330</sup> See Framework Agreement on relations between the European Parliament and the European Commission, P6\_TA(2005)0194. Official Journal C 117E, 18/05/2005, P. 124 - 131. In the European Parliament the agreement was subject to an examination in the Report on revision of the Framework Agreement on relations between the European Parliament and the European Commission, A6-0147/2005.

<sup>331</sup> See Council statement concerning the Framework Agreement on relations between the European Parliament and the Commission, Official Journal C 161 (2005/C 161/01), 01/07/2005, P. 0001 - 0001.

"[...] Recalling its statement of 10 July 2000, the Council is concerned at the fact that several provisions of the new framework agreement seek to bring about, even more markedly than the framework agreement of 2000, a shift in the institutional balance resulting from the Treaties in force. It regrets not being informed earlier, in a spirit of sincere cooperation, of the negotiations on this new framework agreement. It further regrets that the two institutions concerned did not feel the need to take account of the points on which it had expressed concern in its appropriate bodies, before the agreement was signed.

The Council would point out in particular that under the EC Treaty (Article 201), a motion of censure on the activities of the Commission can only be tabled against all the members of the Commission as a college, and not an individual member. Article 217 enshrines the principle of collective responsibility for Commission action. The Council would also stress that the multi annual work programming procedure was adopted by the European Council at its meeting in Seville in June 2002. Finally, it would recall that the procedures enabling the European Parliament to be involved in international negotiations are governed by Article 300 of the EC Treaty and that practical arrangements concerning the presence of Members of the European Parliament in delegations of the Community or representing the European Union at international conferences were adopted in 1998.

The Council stresses that the undertakings entered into by these institutions cannot be enforced against it in any circumstances [...]"

<sup>332</sup> See European Parliament decision on the revision of the Framework Agreement on relations between the European Parliament and the Commission (2005/2076(ACI)), Official Journal C 117E, 18.5.2006, P. 123–133., Annex, Art. II. This Framework Agreement covers relations of the EP with the Commission, its Annex I contains provisions on confidential information and a timetable for the Commission's legislative, and work programme in Annex II. In effect, the latest version of the Framework Agreement provides a blueprint for the political relationship between the Commission and the EP.

than the Framework Agreement of 2000, at bringing about a shift in the institutional balance resulting from the Treaties in force, particularly with regard to the censure of individual Commissioners. In other words, the main focus of the Council's criticism was directed especially against articles II.2 and II.3 of the 2005 Framework Agreement which had recalled an individual responsibility of Commissioners<sup>333</sup> and the right of the EP to adopt a resolution criticising an individual Commissioner or to call upon her/him to resign. Although these articles simultaneously stressed that the final decision had remained entrusted to the President of the Commission, who should either request that Member to resign, or explain his or her decisions to Parliament<sup>334</sup>, the Council considered this to be contrary to Article 215 ECT (as from December 1, 2009, Article 246 TFEU).

The Council further deplored the lack of consideration for the Council's position shown by the EP and the Commission, while not even being informed of the negotiations on this new Framework Agreement.<sup>335</sup> The most substantial objection the Council raised concerned the above-discussed principle of collective responsibility flowing from Article 217 ECT.<sup>336</sup> As already highlighted, this principle does not allow a motion of censure against an individual Member of the Commission and in this sense the content of the 2005 Framework Agreement is very striking. Consequently, the Council made clear and stressed, that the undertakings entered into by these institutions under this 2005 Framework Agreement could not be enforced against it in any circumstances. In addition, it reserved its rights, in particular the right to take any measure appropriate, should the application of the provisions of the Framework Agreement lead to a violation of the allocation of powers or the institutional equilibrium laid down in the Treaties.<sup>337</sup>

Formally, both the Commission and the EP seem to agree to this point since, as the penultimate recital of the 2005 Framework Agreement states, the Agreement "does not

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<sup>333</sup> *Id.* Article II. 2 and II. 3 states that "Each Member of the Commission shall take political responsibility for action in the field of which he or she is in charge, without prejudice to the principle of Commission collegiality."

<sup>334</sup> *Id.*, Annex II.2.

<sup>335</sup> See Council Statement concerning the Framework Agreement on relations between the European Parliament and the Commission (2005/C 161/01), Official Journal C 161, 01/07/2005, P. 0001 - 0001. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:161:0001:0001:EN:PDF> (last accessed on July 17, 2009). Extract: "Recalling its statement of 10 July 2000, the Council is concerned at the fact that several provisions of the new framework agreement seek to bring about, even more markedly than the framework agreement of 2000, a shift in the institutional balance resulting from the Treaties in force. It regrets not being informed earlier, in a spirit of sincere cooperation, of the negotiations on this new framework agreement. It further regrets that the two institutions concerned did not feel the need to take account of the points on which it had expressed concern in its appropriate bodies, before the agreement was signed."

<sup>336</sup> *Id.* "[...] The Council would point out in particular that under the EC Treaty (Article 201), a motion of censure on the activities of the Commission can only be tabled against all the members of the Commission as a college, and not an individual member. Article 217 enshrines the principle of collective responsibility for Commission action [...]."

<sup>337</sup> *Id.* "[...] The Council stresses that the undertakings entered into by these institutions cannot be enforced against it in any circumstances. It reserves its rights and in particular the right to take any measure appropriate should the application of the provisions of the framework agreement impinge upon the Treaties' allocation of powers to the institutions or upon the institutional equilibrium that they create. [...]"

affect the powers and prerogatives of Parliament, the Commission or any other institution or organ of the European Union but seeks to ensure that those powers and prerogatives are exercised as effectively as possible<sup>338</sup>. However, *Beukers* notes, that in reality, the EP occasionally tries to stretch the formal provisions of the Treaty through this Framework Agreement.<sup>339</sup>

To conclude, through the Framework Agreement of 2000 and its 2005 update, the EP managed to create a mechanism for calling an individual Commissioner to account for his or her actions. This, as we have seen, cannot be done directly through a motion of censure on an individual Commissioner, but is only possible through the President of the Commission who would be called upon to act by dismissing the Commissioner in question or explaining a refusal to dismiss.<sup>340</sup> However, as *Judge* notes, “in this case, in relation to responsibility, Parliament has interjected a ‘smart bomb’ into its armoury, whereby through action directed against individual Commissioners it can signal the possible use of the ‘nuclear option’ against the entire Commission if it does not like the Commission President’s response on the individual case”<sup>341</sup>. Based on the aforementioned, it can be implied, that a vote on lack of confidence in an individual Commissioner expressed through this procedure will only be effective if the importance attached to it is such as to provoke a motion of censure on the whole Commission in case the President of the Commission does not follow-up on EP’s vote.

As *Westlake* notes, it is indisputable that the above mentioned is an issue which has gone to the heart of the Commission’s nature and its role. He follows that although the principle of collegiality is laid down in Article 201 TEU implicitly,<sup>342</sup> it has been explicitly enshrined in the Commission’s rules of procedure<sup>343</sup> by one of the founders of the Community, Jean Monnet, and that it was always considered to be as much a part of the “Community method” as its right of initiative.<sup>344</sup> Therefore, as far as a possible formal treaty change regarding this issue is concerned, *Corbett* claims that, even though a

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<sup>338</sup> See Framework Agreement on relations between the European Parliament and the European Commission, P6\_TA(2005)0194. Official Journal C 117E, 18/05/2005, P. 124 - 131, p. 125.

<sup>339</sup> See *Beukers, T. The Barroso Drama: Enhancing Parliamentary Control Over the European Commission and the Member States. European Constitutional Law Review. 2006, Vol. 2, No. 1, p. 32.*

<sup>340</sup> See Framework Agreement on relations between the European Parliament and the European Commission, provision 3.

“If Parliament decides to express lack of confidence in a Member of the Commission, the President of the Commission, having given serious consideration to that decision, shall either request that Member to resign, or explain his or her decisions to Parliament.”

<sup>341</sup> See *Judge, D.; Earnshaw, D. The European Parliament. 2nd ed., Basingstoke: Palgrave Macmillan, 2008. p. 212.*

<sup>342</sup> The motion of censure.

<sup>343</sup> Article 1 and 13 of the Rules of Procedure of the Commission [C(2000) 3614]. Official Journal L 308 18/12/2000 P, 0026-0034.

<sup>344</sup> See *Spence, D. The European Commission. 3th ed., London: John Harper, 2006, in the section: The European Commission and the European Parliament by Westlake, M., p. 268.* To this the author of this paper adds that the principle of collegiality follows explicitly from Article 217 ECT.

formal treaty change to permit individual dismissal of a Commissioner enjoys a certain degree of support, it is unlikely to win a majority because of the potentially adverse implications for the collegial nature of the Commission.<sup>345</sup>

In order to maintain this subchapter impartial, one should present opinions and/or counterarguments of other authors as well. For instance, *Muntean*, though being aware that the above-mentioned strategy is not entirely constitutional, sees Prodi's commitments as a necessary and progressive move of the newly-created Commission towards a more identified and increased accountability, "as long as the Commission's President acts within legal borders".<sup>346</sup> As the primary goal of this move he sees an expectation that the accountability of the Commission and individual Commissioners will be "less murky and faceless".<sup>347</sup> Therefore, he believes that the chain, where individual accountability of the Commissioners to the Commission's President constitutes the first level of the Commission's accountability, followed by the President's accountability to the EP, and finally by the accountability of the latter to the European public, should be actively pursued.<sup>348</sup> In addition, the author of this paper wishes to balance her personal conclusions with that of *Mr. Westlake*, the Secretary-General of the European Economic and Social Committee and author of many well-renowned books on the EP, obtained on the personal request of the author of this paper. By way of personal inquiry, *Mr. Westlake* was asked for his subjective opinion regarding the issue discussed above. He answered as follows: "[...] I think you have to take Barroso's commitment in its political context. The Buttiglione affair left him vulnerable and so he was bullied into making this concession. However, note that the President promised only 'to request' and that there is a get out clause (explanation to Parliament). A Commission President also has the option of reshuffling portfolios. Lastly, the Treaty (articles 245 and 247) gives the Commission the possibility of requesting the Court that a member be compulsorily retired. For various reasons, it is almost unthinkable that a Commission President would 'send an individual Commissioner home' in the way you suggest. You are correct to say that there is no answer to your question and that this is essentially political."<sup>349</sup>

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<sup>345</sup> See Corbett, R.; Jacobs, G.F. and Shackleton, M. *The European Parliament*. 7th ed., London: John Harper, 2007. p.280.

<sup>346</sup> See Muntean, A. The European Parliament's Political Legitimacy and the Commission's "Misleading Management": Towards a "Parliamentarian" European Union? *European Integration online Papers*. 2000, Vol.4, No 5, p. 13.

<sup>347</sup> *Id.*

<sup>348</sup> *Id.*

<sup>349</sup> Answer to the author's personal inquiry received from Martin Westlake on December 21, 2009. He further added: "By the way, the Buttiglione episode indicates the way a Commission President could still act if one of his Commissioners got into serious difficulties; he could speak to the member state concerned and ask them to convince the person in question to resign or, alternatively, to appoint the person to some other position back home that would oblige the person to resign. That said, it didn't happen with Cresson...."

To conclude, the formulation laid down in the 2005 Framework Agreement is indisputably an uneasy stand off which remains untested so far. However, notwithstanding the fact that no individual Commissioner has yet been forced to resign during a Commission's term and that the framework agreement is "only a textual element in the constitutional structure of the EU without legally binding force",<sup>350</sup> the EP, via this formulation, has effectively managed to create a precedent.<sup>351</sup> Taking into account all the afore-mentioned, and despite the views of *Muntean* and *Westlake* (as presented above), the author of this paper is of the opinion that the way the EP is trying to increase its controlling powers through non-legal instruments and thus, to a certain extent, overrule the Treaty provisions by trying to develop a Commissioner's individual responsibility to the EP, should be looked at with great attention and suspiciousness. Yet the truth remains that in practice, the application of the 2005 Framework Agreement has indeed not given rise to any major political difficulties.

#### **4.6 The censure motion under the Lisbon Treaty**

In the consolidated Lisbon Treaty the provision has been renumbered and the former Article 201 ECT appears now as Article 234 TFEU.<sup>352</sup> Despite discussions surrounding the afore-mentioned 2000 and 2005 Framework Agreements, the text of the Treaty provision itself remains the same as far as the way of carrying out a motion of censure and the rules surrounding the resignation of the College of Commissioners are concerned. The only change tackles the 'new' position of the High Representative for the Common Foreign and Security Policy (HR). So far, the HR has been the main co-ordinator of the Common Foreign and Security Policy within the European Union and together with the national Foreign Minister holding the Presidency of the Council of the European Union, he has represented the Council of Foreign Ministers of the Union. However, as from December 1, 2009, he has been given a 'double-hatted' role – with the Commission and the Council. Put more precisely, under the Lisbon Treaty, the post of the HR newly encompass (a) the position of the High Representative of the Union for Foreign Affairs and Security Policy, who would chair the Council of Ministers in its Foreign Affairs

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<sup>350</sup> See Beukers, T. The Barroso Drama. Enhancing Parliamentary Control Over the European Commission and the Member States. Constitutional Development Through Practice. *European Constitutional Law Review*. 2006, Vol. 2, No. 1, p. 32.

<sup>351</sup> Precedent in a sense, that the current President Barroso, as well as his successors, will have certainly a clear preference for this formulation to remain untested during their term.

<sup>352</sup> See Consolidated Treaty on the Functioning of the European Union. Official Journal C 115, 09/05/2008, P. 0001 - 0388.



configuration, and (b) the position of the Vice-President of the Commission.<sup>353</sup> Because of this double-hatted role, the HR's position had to be observed by the Lisbon Treaty also with regard to the motion of censure provision. Consequently, it was tackled so that if a motion of censure is validly carried out, "the members of the Commission shall resign as a body and the HR of the Union for Foreign Affairs and Security Policy shall resign from duties that he or she carries out in the Commission".<sup>354</sup> In other words, if the Commission as a body was forced to resign, he or she would lose the Commission hat, but would keep the task as (the Council's) HR, which would stay unaffected. This does not entail any difficulties. However, in this author's opinion, a crucial question is what would follow afterwards. We said, that according to the new Lisbon Treaty, the HR entails two functions. Let us assume that the motion of censure is adopted and the HR had to resign from his/her Commission's duties, but would retain his Council duties. What would happen afterwards, when a new Commission is appointed? We would arrive at a situation, when there would be the HR with his retained Council duties on the one hand, and a new Commission which needs a Vice-president, who would be simultaneously the HR, on the other hand. The Lisbon Treaty does not really provide us with a clear solution for such a situation. The only provision that gives us some kind of guidance is Article 246 TFEU, which deals, nevertheless, only with resignation, compulsory retirement or death of the HR and which lays down, that the latter shall be replaced in accordance with Article 18(1) TEU<sup>355</sup>. Moving to Article 18(1) TEU, this empowers the European Council, acting by a qualified majority, with the agreement of the President of the Commission, to appoint the HR or to end his term. Consequently, it seems that the only possible solution in the above mentioned situation would be either (a) that the HR would be deprived also of his or her task of the Council HR and that the European Council together with a newly appointed President of the Commission would have to agree on a new HR; or (b) that the former HR would be reappointed to the new Commission.

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<sup>353</sup> For functions of the HR, see article 18(2), (3) and (4) of the consolidated version of the Treaty on European Union, Official Journal of the European Union, C115/26, 9.5.2008.

<sup>354</sup> See Consolidated version Treaty on the Functioning of the European Union art.17(8).

<sup>355</sup> As valid from December 1, 2009.