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C I R C a P



FORMATION, LIFE AND RESPONSIBILITY OF THE EUROPEAN EXECUTIVE

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by J. Blondel

The collective resignation of the European Commission early in 1999 has raised for the first time in a practical manner the problem of the political responsibility of that Commission vis-a-vis the European Parliament, a problem which had hitherto seemed purely academic. The mechanism of the censure motion did not have to operate to lead to the resignation of the Commission, admittedly (though it had been set in motion a few weeks earlier and had then been almost successful): but the resignation without censure had a worse effect for two reasons. On the one hand, the parliamentarians did get away with the matter scott-free: they did not have to stand up and be counted; on the other hand, the Commission also refused to face squarely the problem with which it was confronted: it was not able or willing to disengage itself from the 'culprits' among its members, if there were any, nor, if no such 'culprits' existed, was it prepared to face a proper debate in which the substance of the troubles within the administrative apparatus would have been discussed.

Thus the question of the nature of the responsibility of the Commission was suddenly posed for the first time; what was also at stake was the matter of the mode of replacement of the outgoing executive. In the event, that matter was solved unexpectedly swiftly, if only in part, by the unanimous election of a new Commission President by the European Council, as a result of the accidental fact that that Council had been scheduled to meet a few days after the old executive decided to resign; but the question of the appointment of the rest of the Commission remained unsolved. Nor was it even determined when the new Commission would be formally put in place.

The two questions - formation and life of the executive and responsibility of the executive - were thus shown to be inextricably linked, a point which had not been fully appreciated, indeed which had not even been discussed seriously previously. Such a link exists in the context of any executive, to be sure; but it does not usually pose major problems because the character and extent of the responsibility of the executive does not normally undermine the basis on which that executive is constituted and remains in office. In the case of the European Union, on the contrary, the danger arising from the combination of the two problems is very serious: if the political responsibility of the Commission were to be set in motion somewhat mechanically, let alone routinely, the general principle of consensus within which that body has hitherto operated would be undermined. For it is difficult to reconcile the idea of a consensual structure with the notion that

such an institution is to be collectively responsible to another on broad policy grounds.

We need therefore to examine the dilemma which faces Commission and Parliament and the European 'political system' in general and see how far a new *modus vivendi* can be elaborated or whether there should be a re-affirmation of the kind of relationship which had hitherto prevailed, namely one by which the Parliament does not attempt in practice to exercise its legal right to censure the Commission.

To undertake this examination, we have first to determine whether the Commission can be regarded as 'the' executive of the European Union or whether other bodies should also be considered in this respect. We need then to look at the peculiar nature of the composition of the Commission and at the reasons for this peculiarity, even in the context of reforms which are repeatedly demanded but appear to face major obstacles. We shall have to explore the inevitable consequences which follow for the mode of formation of the Commission and which the European Parliament cannot altogether avoid let alone ignore. At that point we will be able to turn to the constraints on the political responsibility of the Commission which result from the composition and formation of that body. Finally, we will have to attempt to identify the understandings which need to be - in effect remain - in force with respect to the responsibility of the Commission if an acceptable *modus vivendi* is to be found enabling the European Union machinery to continue to function effectively.

Throughout this analysis, we can obtain some guidance from the example provided by the one union of states or confederacy which, as the European Union, has been based on profound cultural diversity, Switzerland. To quote from Stein Rokkan's Preface to Jurg Steiner's work on Switzerland "Switzerland presents a microcosm of Europe: linguistic and religious diversities, regional contrasts in economic growth and in settlement patterns, stubbornly defended pockets of autonomy in a system of increasing interdependence and accelerated interdependence.

"For all these reasons every serious study of the politics of Switzerland is a contribution to the study of the political structure of Europe"¹.

¹ J. Steiner (1974) *Amicable Agreement versus Majority Rule*, Chapel Hill, University of North Carolina Press, pag. IX.

I. Is the Commission 'the' executive of the European Union?

It may of course be claimed with some apparent justification that the question of the political responsibility of the Commission cannot be treated meaningfully as that body is not the 'real' executive of the European Union and that such a function is at least in part fulfilled by the Council of Ministers and the European Council. This claim does not stem from the fact that the European Council has the power to appoint the Commission (jointly with the European Parliament since the 1990s): all democratic executives have to be appointed. This can be by the Head of State, the Parliament, or the people. Nor is it necessarily more relevant in this respect to note that the Council of Ministers and the European Council are the bodies which take the most important decisions in the last resort: in a democratic context at least, key decisions are not 'taken' but prepared by the executive to be subsequently ratified by another body, typically by the Parliament. While, in many (perhaps most) cases, this ratification process is formal, this is not so always nor everywhere: 'strong' Parliaments and Congresses exist and these are not deemed to be part of the executive on the grounds that the decisions they take are crucial. Thus the Commission does not cease to be 'the' executive because it has to present proposals to other bodies for approval.

What does pose problem is a different matter: so far at least and in some cases even more since Maastricht than previously, a number of important areas of European Union decision-making are not dealt with by the Commission at all; only the Council of Ministers or the European Council are competent in these areas. This is true in particular of the two 'pillars' which have been added to the competence of the European Union by the Maastricht Treaty, foreign affairs and internal security. Although, subsequently, the Amsterdam Treaty gave the Commission some powers with respect to security, the Council of Ministers and to an extent the European Council can be deemed to constitute the executive in these matters.

Despite these developments, it is still justified to consider the Commission as the Union's 'prime' if not perhaps 'unique' executive. This is so for two reasons. First, the current equilibrium between Commission and Council is not likely to last because of the burden it imposes on the Council. Already certain aspects of the Schengen arrangements have been transferred to the Commission by the Amsterdam Treaty. For a body to constitute a genuine executive, as Locke pointed out three hundred years ago, it has to be, potentially at least, in continuous session in order to be able to respond to emergencies. Not just the European Council but even the Council of Ministers is not in a position to do so, given the fact that the ministers are in charge of departments in their own

country. Moreover, an executive has to be backed by a large bureaucracy: the COREPER, which staffs the Council, resembles more a large embassy than a ministerial department. As a result, all that the Council of Ministers and the European Council can do is take major strategic decisions, these decisions have been 'prepared' elsewhere. With the number of such decisions becoming increasingly large, the 'preparation' will inevitably fall on the shoulders of the Commission.

In the second place, questions of composition and responsibility are simply not relevant as far as the Council of Ministers and the European Council are concerned. These two bodies are composed ex officio of representatives of the member-States: that composition cannot therefore be under discussion at the level of the European Union. Nor can questions of responsibility at the level of the European Union arise with respect to these two bodies: they are responsible to the Parliaments and peoples of their own nations and to these only. Thus, either the question of the formation and responsibility of the European Union executive has no significance at all or, if it has to have any significance at all, this can only be insofar as the Commission is that executive. For the purposes of the analysis of its formation and its responsibility, the European Commission has therefore to be deemed to be the relevant body, even if it is recognised that some corners of executive power come, at any rate at present, within the purview of other bodies.

II. The very special character of the composition of the Commission

If the Commission is to be deemed to be the executive of the European union, it has also to be viewed as a rather peculiar type of executive, torn as it is, in fact if not in law, between the requirements of the several states and the interest of the Union as a whole. The attitude of the Commission has to be Janus-like. It has to look towards the nations as it cannot but to take into account the fundamental distinctions which exist among European societies; but it has also to be a factor of integration between these societies. Its legitimacy depends on its ability to achieve successfully both goals. This inevitably has an effect on the nature of its composition, which has to reflect meaningfully the various national traditions, as they are underpinned by cultural and, in most cases, linguistic differences as well; it has also to reflect many if naturally not all the ideological traditions which exist within these nations. Yet the result has ultimately to be a kind of 'melting pot' as a common policy process has to emerge from the midst of these national idiosyncrasies and ideological standpoints.

National and ideological differences and their reflection on the composition of the Commission.

Whether one likes it or not, the history of Europe is that of a number of great and proud nations which have given rise in a number of cases to long-standing traditions of statehood. Not all the European States are old or prestigious, but about half of them have a history which goes back several centuries during which they experienced periods of dominance. At least six of them - Portugal, Spain, the Netherlands, Austria, France, and Britain - have been world powers; a further two - Denmark and Sweden - were key players at some point in the European political game while a further two - Italy and Germany - emerged in the nineteenth century to occupy very quickly a major position in the concert of nations. Yet, perhaps more than the fact that these states were powerful and engaged in many armed conflicts, what is relevant in the process of building up of the European Union is the fact that they developed what they regarded as models of administration. These models differed: some were markedly more bureaucratic than others, but they were in general centralising and aiming at providing a uniform mode of government within each country, which meant that profound administrative differences among the countries arose as a result.

Moreover, these states are all the more confident of their status that they - or at least most of them - can claim that they embody a long-standing culture. The facts of this culture are to an extent controversial, as many myths are associated with these facts. Yet this culture does exist in the minds of the mass of the citizens as well as of the elite. At a 'highbrow' level, culture relates to literature, the arts, music, and indeed the development of thought. Meanwhile, a 'lowbrow' culture

which is less extolled openly yet plays a large part, indeed probably affects to a greater extent the bulk of the population: it has often serious consequences in terms of the kind of regulations which the Commission introduces, in particular with respect to food and drink products. These cultural differences are naturally embedded in linguistic divisions, as for some and for the French in particular, language is a vehicle of a whole culture and it is consequently a major source of division among the members of the Union.

Meanwhile, often cutting across these national and cultural divisions, ideological differences constitute both a further source of problems as well as, to an extent, a means of overcoming national problems. The Commission cannot have sufficient authority over a substantial number of citizens at least unless it is able to operate a kind of fusion among the main political 'families' which exist in Europe and in particular among the christian, liberal and socialist families. Only if it has the support of most if not all the representatives of these three families can it be expected to have sufficiently large political base to be able to act effectively.

The composition of the Commission and the limits of realistic reforms. The composition of the Commission has therefore to be based on a set of arrangements which does take into account both the geographical diversity embedded in the European nations and in the ideological diversity which finds its expression in the political 'families' which prevail in the Union. It would not only be unrealistic but suicidal for the Commission to be other than 'consociational' and not to have the joint support of the main public actors in the several member-States. This means that the Commission cannot be based on a majoritarian view of democracy but, on the contrary, that it has to be, in the strong sense of the word, a consensual body. Its decisions have to be taken collectively even if this means, there too, and not only in the Council of Ministers, delays and complex compromises.

The national and ideological constraints which operate on the composition of the Commission determine also the limits of the extent to which this composition can be altered in the future. That there should be reforms is a necessity, as the size of the body cannot indefinitely expand with the accession of new member-States without the collective character of the institution being profoundly affected. Indeed, with twenty members in the late 1990s, the Commission is probably already too large to be able to work effectively; if one assumes that, with the first decade of the twenty-first century, ten or more new members will join the Union, an unreformed Commission of thirty members or more would be truly unable to function as a collective executive.

The parallel of Switzerland helps to provide a suggestion as to what kind of realistic solution to the

problem of the European Commission could be implemented. The Swiss Federal Council is small, having seven members only: but it is none the less representative of the major political 'families' in the country, on the basis of the 'magic formula' whereby the four major political parties have seats on the Council; it is also representative of the main geographical and cultural divisions, without having to represent every one of the twenty-six cantons which compose the Confederation. The reduction of the number of commissioners could be obtained by establishing that they are appointed on the basis of 'regions' rather than countries, each region including two or more countries which are geographically contiguous and culturally close to each other. In this way the size of the Commission would be maintained within reasonable limits while cultural differences would continue to be represented alongside ideological differences and the consociational character of the executive would remain unaffected.

III. The formation and life of the European Commission

The constraints on the composition of the Commission have a direct impact on the mechanisms of formation and on the life of the institution. As a matter of fact, the problem is not so much at the level of the formal arrangements by which the members of the Commission are appointed but at the level of the conventions and customs which regulate the actual selection of the commissioners. In this respect, too, the practices which have come to be adopted in Switzerland provide a model for the Commission: indeed the procedure which has come to be followed in the context of the selection of commissioners is already similar in many respects to what occurs in Switzerland; by and large, too, the similarity extends to the subsequent life of the Commission.

The necessary role of the European Council in the formation of the Commission. The constraints imposed by national and cultural diversity as well as by ideological differences can be met in one way only: all the commissioners must be appointed in one stroke by political actors who are representative of both the national-cultural and the ideological dimensions, as two requirements have to be met simultaneously. On the one hand, the various aspects of these national-cultural and ideological dimensions have to be given their proper weight. On the other, the compromises which the first requirement forces have to be legitimised by a formal approval given *en bloc* by leaders representing these various strands. If this were not the case, some of the groups would feel alienated and the authority of the Commission would be reduced from the start.

The need to meet these two requirements has naturally important consequences on the mechanisms by which the commissioners are selected. To begin with, arrangements of this kind are more likely to be recognised informally than inscribed formally in a legal arrangement: legal arrangements tend to be rather ineffective where what is at stake is to achieve consensus. They are based either on the principle of majority rule, simple or qualified, or on the principle of unanimity. Consensus is obviously different from majority rule, even qualified majority rule; but it is not the same as unanimity either. Consensus means that the actors are prepared to agree to a proposed solution, possibly after a lengthy discussion, even if not all of them are entirely happy about all the aspects of that solution. Consensus means going along with what is being suggested as what emerges in the end is a complex overall package.

In the second place, these arrangements can be effective only if those involved in the process are both few and very senior. Few should be involved as there has to be a full understanding by those concerned of the parameters of the compromises which have to be reached: the members of the

group must be able to discuss fully a range of alternatives and come to a joint conclusion after having probably altered many pieces of the jigsaw which is being assembled. The members of the group must also be senior political actors - indeed ideally leaders - in their respective countries and parties, as these have to have the capacity to deliver the agreement.

These two requirements rule out the usual practice, both in presidential and parliamentary systems, as a result of which it is the leader of the executive who chooses the members of that executive. One variation on these models does come closer to what is needed in the case of the European Commission, however: in many parliamentary coalition governments, the selection of the ministers is in reality done jointly by the prime minister and the leaders of the parties of the coalition. Yet such a system fulfils the requirement of a truly consensual appointment only in part. In national parliamentary coalitions, the agreement between prime ministers and party leaders is a relatively simple affair, however long the process may be: typically four or five key actors are involved - the party leaders. In the case of the European Commission, the process of selection is rendered more complex by the fact that both party and national considerations have to be taken into account. As a matter of fact, even if the head of the Commission has already been appointed and is therefore technically in a position to start to select his or her future colleagues, there are no European party leaders with whom to discuss whom to appoint, since European 'parties' are loose confederations without any tentacles in the population of the various member-States: only national leaders - and therefore the members of the European Council can achieve the desired result, although the suggestions and views of the prospective President of the Commission should be taken into account.

Moreover, the selection of the President of the Commission has also to be made by the European Council for the same reasons as those which militate for the European Council being involved in the selection of the commissioners: only a small group of national leaders heading the main political 'families' can take authoritatively the decision of choosing the President of the Commission, as only they can ensure that the candidate who will be selected will be widely acceptable across the Union. Indeed, whether that President should be appointed before the other commissioners is in theory debatable, as it would be valuable for the Council to be able to be simultaneously concerned with the full picture; but a two-step procedure has been imposed by the Treaties since the President is to have some say in the selection of these commissioners.

The duration of the Commission. While the procedure of selection of the Commission has often been discussed and is regarded as somewhat controversial, the procedure leading to its possible

removal has not been equally examined despite the fact that it is in reality even more problematic. What is at stake is whether a term of five years is truly what it means or whether it is regarded as being mainly a maximum on the grounds that the European Parliament has - and always has had - the right to censure the Commission. Up to 1999, it seemed that the principle of the five-year term was not in question: the resignation of the Commission during that year suggests that this principle may be eroded and that the notion that the Commission is perhaps in office 'at the pleasure' of the Parliament is being introduced. If such a development occurs, the consequences for the European institutions are likely to be serious.

The Commission, as we noted, has to be a consensual body. The parliamentary notion of an executive dependent on the 'pleasure' of the legislature is not consensual: it is intrinsically majoritarian. Admittedly, as Lijphart has demonstrated² (1984), there are two markedly distinct versions of parliamentarism, the Westminster model, which is blatantly majoritarian because it is adversarial, and what he regards, somewhat exaggeratedly, as a 'consensual' model, which is unquestionably less adversarial: that second model remains none the less majoritarian in character, in that it is possible - and in practice it is periodically the case where this version prevails, as in Belgium and the Netherlands - for the parties forming the executive to change or at least to change somewhat, for instance if one party leaves the government and is replaced by another which was previously in opposition.

Such a 'pendulum' arrangement is not fully consensual and cannot constitute the basis on which the Commission is to be constituted: the Commission must include among its members representatives of the all main political 'families' as well as of the main national cultures. This is the only way to ensure that its decisions will be authoritative. The Commission must not therefore be organised on the same basis as the Belgian or Dutch governments; it must be, as the Swiss Federal Council, a *permanent* coalition of the main political 'families' and of the various national cultures. If this is the case, it is illogical to render the Commission dependent on the vagaries of a possible vote of censure by the Parliament which in turn might trigger, as in 1999, a collective resignation in anticipation of such a vote. The term of the Commission must be truly fixed; it must be coextensive with the duration of the European Parliament, whose term, incidentally and rightly so in such a consensual context, is not being subjected to dissolution.

Not only is it illogical for the Commission's mandate to be liable to be terminated at any moment,

² A. Lijphart (1984), *Democracies*, New Haven, Yale University Press .

but the possibility of such an occurrence constitutes a serious danger. It constitutes a 'technical' danger as the work of the Commission will be affected. Since the European decision process is inevitably slow, as we noted, it is not appropriate, to say the least, to introduce a hurdle which would make that decision process even more difficult. Second, votes of censure and even threatened votes of censure would create major political upheavals, as the 1999 instance did indeed show. Since what would be at stake would not be policy matters but mainly personality questions, given that all the main political 'families' are part of the Commission. It would be a manifest handicap for the Commission to be subjected to a potential vote of censure. Its authority would be diminished and this loss of authority would reverberate on the legitimacy of the institution.

It may be felt that the occurrence of one instance of resignation is not likely to damage the reputation of the Commission; it could even be argued that the events which took place in 1999 contributed to 'purifying' the atmosphere: but the repetition of such events would unquestionably increase cynicism with respect to the Commission among the European electorate, in the same way and for the same reasons as repeated changes of government resulting with an identical (or very similar) set of parties in power has contributed to increasing cynicism about politics where this situation has occurred, as in Italy.

The arrangement to be preferred by far is therefore one which stipulates that the duration of the mandate of the Commission coincides with that of the European Parliament and that a new Commission is consequently appointed each time a new Parliament is elected. Admittedly, given that the right to force the Commission to resign has been given to the European Assembly from the start of the European integration process, it would be unrealistic to expect that the Parliament would be prepared to abandon this right, as such an abandonment would be regarded as a significant reduction in the powers of the Parliament. The Parliament would be ill-advised to use this power, however, unless it wishes somewhat perversely to undermine the authority of the Commission and by the same token to undermine the fragile legitimacy of all the European institutions; nor should the Commission anticipate a vote of censure by resigning as such a behaviour would also undermine the authority of future Commissions and of the European institutions in general. The Commission should last its whole term and all concerned should see to it that this is indeed the case despite the 'hiccup' of 1999.

IV. The political responsibility of the Commission

The European Commission must be truly consociational; this entails that that body must be appointed, in the final analysis, by the European Council and that it must last its full term. This has also the effect of sharply circumscribing the political responsibility of the European executive, a point which was not altogether appreciated at the time of the crisis leading to the resignation of the Santer Commission in 1999.

The political responsibility of executives does not have the same character in different types of polities, even in different types of democratic polities. This is well-known in the context of the distinction between presidential and parliamentary systems. In the former, the political responsibility of the head of the executive is non-existent, except where the impeachment procedure is set in motion, and this procedure is normally not invoked on purely, at any rate ostensibly, political grounds. The rest of the presidential executive is politically responsible, on an individual basis, to the president, although, in some presidential systems at least, heads of ministerial departments are also individually responsible for their actions to the legislature; there is no collective responsibility to the legislature, however.

In parliamentary systems, on the contrary, the political responsibility of the executive takes two forms, individual and collective. Ministers are held to be individually responsible to parliament for their own actions and the actions of officials in their department to the extent that these have not been adequately controlled by the relevant minister; the whole executive is also collectively responsible to parliament for its actions and, typically, it is the prime minister who has the power to act in this respect, either by asking for a vote of confidence or by provoking the resignation of the government.

In practice, political responsibility has markedly altered over the years in most parliamentary systems. Where parties are few and well-disciplined (and in particular where there is a two-party or near two-party system), collective responsibility to parliament has in effect all but disappeared: the responsibility tends to be directly to the people rather than to parliament. Where there are many parties, even if these are reasonably well-structured, but a fortiori if they are loose organisations, collective responsibility is exercised frequently, in some countries very frequently indeed.

Meanwhile, the scope of individual responsibility has shrunk appreciably in parliamentary systems: it is rare for ministers to be made to resign for an event which occurred in their department.

Individual responsibility is not invoked typically because governments and the parties which support these governments fear that any resignations might follow would reflect adversely on them; moreover, in the case of coalitions, the equilibrium arrived at at the time of the formation of the government would be felt to be upset if individual resignations were to be forced by a prime minister or by parliament: the whole government might resign rather than let one or two ministers go. What occurred in the European Commission in 1999 was an example of such a move: a situation which might have been expected to result in individual resignations was transformed into a case of collective responsibility.

Individual and collective responsibility become therefore linked, unduly so admittedly, in parliamentary systems, and in particular in those parliamentary systems in which coalitions are complex and rather shaky. Yet these two types of political responsibility have entirely different goals. Individual responsibility constitutes a means of sanctioning managerial blunders and, at the limit, corrupt activities, not policy differences, as policy-making is expected to be collective in parliamentary-cabinet systems; an exception may be that of a minister who wilfully refuses to implement the decisions taken by the executive, but such cases are likely to be exceptional where the parliamentary system functions regularly.

Collective responsibility, on the other hand, constitutes a means of sanctioning policy differences between executive and legislature in a parliamentary system. If the executive is not prepared to follow the policy lines which the legislature wishes that it should follow or conversely if the legislature refuses to approve the proposals of the executive, censure is threatened and the government either anticipates this censure by resigning or is forced to resign if it is defeated, unless it chooses to ask the Head of State to dissolve Parliament where the Constitution gives such a right to the Head of State.

Thus collective responsibility is inextricably linked to the concept of a majority government. The vote of censure is threatened if and when the majority supporting the government dwindles, for instance if a party decides to abandon that majority and join the opposition. So long as this does not occur and the majority remains solid and compact, the threat of parliamentary censure remains an empty one.

It is precisely because the question of collective responsibility is linked to the majoritarian principle that it does not have its true place in the context of the European institutions. It is alien to the economy of the European 'system' because the Commission has to represent all the main national-

cultural and ideological strands within the Union: this does not mean that Commission, Parliament, and indeed the Council of Ministers or the European Council have to agree on every aspect of policy; but what is meant is that disagreements must not be solved, because they cannot be solved, by a 'changing of the guard'. There is no other 'guard', no alternative team waiting in the wings to replace the previous 'majority'. Disagreements have therefore to be solved by means of discussions and eventual compromises. If the Commission were to be periodically censured, the credibility of the executive would be impaired as it would no longer be clear that the current Commission was truly in charge despite the fact that there would not be any other 'team' on which it might be possible to count to 'redress the situation' or choose an alternative policy. Commission changes would be essentially at the level of personality politics: the use of the collective responsibility mechanism would therefore appear to many - indeed with justification - as a game designed to satisfy the ambitions of a few rather than the good of the Union.

The only kind of political responsibility which relates to the European Commission is therefore individual, but such an individual responsibility should be allowed to take place unimpeded. It should not be impeded by the 'shield' which a threatened resignation of the whole Commission might constitute. Individual responsibility being in existence to sanction the managerial failures of members of the executive, it should be set in motion by the Parliament or indeed even the Council of Ministers if the Commission as a whole is not courageous enough to see to it that those who have made managerial mistakes are induced to resign. Commissioners should not be in a position to blackmail the whole body by declining to resign: their mistakes should be clearly sanctioned and not drowned, so to speak, in an operation in which the whole Commission would come to be involved.

V. The understandings to be adopted to ensure a smooth working of the Commission

The events of the early part of 1999 have shaken what had hitherto been the economy of the relationship between Commission and Parliament. If nothing is done to counter this development, the result may be for the relationship to move in a parliamentary direction which will eventually undermine, as we argued, the rather fragile authority of European institutions. The Parliament is not alone to be blamed for the sequence of events as, in the first instance at least, the Parliament did try to single out those commissioners who were held to be particularly responsible for the managerial 'problems' which had arisen within the European bureaucracy: the intention may have been different, but these commissioners were in truth protected by the President of the Commission and the rest of their colleagues. Yet, even if the Commission did 'conspire' in the events which occurred in 1999, the greatest danger for the authority of the Commission in the future lies with the Parliament, as that body might be tempted to exercise from time to time the type of legal power of which it began to have some taste in 1999.

As a matter of fact, the subject-matter on which the European Parliament exercised its pressure in 1999 on the Commission was very special: it was one of the very few instances for which the Commission might justifiably be held to be collectively responsible. The object of the criticisms was not policy: it was management - incompetent or corrupt -; but it was management at the global 'pan-Commission' level, although the criticism became global in large part because the President of the Commission chose to attempt to deflect the criticisms which had been made against some colleagues individually by elevating the problem to the whole of the Commission's administration. Such an example of a kind of generalised, rather than collective responsibility is unlikely to be repeated frequently. It could therefore be argued that this instance does not constitute a precedent for the future of Commission-Parliament relations.

Yet this case is likely to constitute a precedent: its importance does not stem so much from the substance of the problem as from the fact that it showed that parliamentary action could lead to the downfall of the Commission. Given that it is highly unlikely that the Commission will avoid being faced in the future with serious parliamentary criticisms on one topic or another, the temptation will therefore occasionally exist to go beyond asking questions or provoking a debate and to attempt to force the Commission to alter its course of action by threatening to use the weapon of the censure motion.

The probability of such a motion being passed remains small, as a two-thirds majority is required.

Yet, even the threat to use the instrument will create tension and thus surely will not be beneficial to the working of the European institutions; moreover, the temptation to threaten censure will lead to the 'counter-temptation', on the part of the Commission and its President, as the Santer Commission did, to resign before the censure motion is even debated. If this were to occur over policy issues and thus take the place of discussions between the two sides ending in compromises, the prestige of European institutions would surely be markedly undermined.

Thus both Commission and Parliament have to find a *modus vivendi* which recognises that the Commission is not and cannot be a parliamentary cabinet leading a majority. It is an executive and not merely, as has been sometimes suggested, a 'regulatory' body: it is in charge of leading the machinery of the European Union, both with respect to the Parliament and with respect to the Council of Ministers, if not perhaps with respect to the European Council, at least inasmuch as its powers give it a right to intervene. Yet it is an executive of a peculiar kind, not surprisingly, as the project of the European Union is indeed most peculiar and perhaps unique.

The European Union cannot be parliamentary because it has to be fully consensual; but it should not be parliamentary for practical reasons as well. Even if it were felt that the Belgian or Dutch model could be followed on the grounds that it does make it possible to organise politics in a parliamentary context on what might be referred to as a 'semi-consensual' basis, such a model would still have to be ruled out at the European level as it could not function effectively and in particular as it does in Belgium or the Netherlands. Such a system can function well only if it organised around well structured parties: as parties in the European Union are very loose, to say the least, the executive could come under pressure from various corners of the Parliament and not be able to call on the loyal support of the MEPs of the 'majority' parties to resist the attack.

Given that the European Parliament has the power to censure the Commission, what has therefore to be ensured is that the European Parliament agrees to use this power or even threatens to use this power in extreme circumstances and that the Commission resists the temptation to avoid the conflict which it faces by resigning. One must therefore appeal in the first instance to both the Parliament and the Commission to behave in ways which will result in the European business being transacted in the consensual manner in which it should be transacted.

Yet one cannot rely only on the members of these two institutions to behave always in the manner which is truly consistent with the best development of the European Union. There have therefore to be also protective mechanisms: in this particular case, however paradoxical this may seem, the

best protector of the interests of the Union is the European Council. So long as that body controls the selection process of the Commission, the European Parliament is unlikely to be tempted to open 'governmental crises' since it would not be in a position to resolve these crises by itself. As a matter of fact, in 1999, the speed with which the Council provided a replacement to the outgoing Commission President was an example of the way in which the Council can buttress European institutions and the Commission in particular: it acted in the manner of a strong parliamentary Head of State wanting to ensure that the executive functions and therefore endeavouring to avoid what would otherwise be tortuous and lengthy processes during which successive candidates are paraded and their merits and demerits discussed ad nauseam.

There does remain a danger: the European Council may not always be anxious to select, as Commission President, someone who might be regarded as too strong-minded or independent. This may indeed occur, but it is not clear that any other mechanism of selection of the President could achieve the desired result. All that can be said is that it is better for the President to be appointed for the full term of the Commission and Parliament than to rotate frequently: this is indeed perhaps the only case where the Swiss model would have a negative effect on the European Union; this is so despite the fact that a longer-term presidency will make it very difficult, if not impossible in a Union of fifteen, let alone one of twenty or more countries for most of them ever having a president. If and when the European Union is truly established, the mandate of the president might be shortened and the office might then rotate among the commissioners. For the moment, however, the president cannot merely be a 'chairman', to use an old Farrell's expression: the 1999 experience, contrasted with the experience drawn from the ten years of the Delors Presidency, suggests that, for a substantial period at least, the President of the Commission must remain a 'chief'. This is in part because the President must take initiatives and pursue them doggedly on behalf of the Commission. This is also because the Commission President must have the achievements of the Commission at heart, give it a high profile and prevent colleagues from collapsing into defeatism and from 'giving up'. Only a President in office for the whole term can be expected to act in this manner, as only such a President can have a stake in seeing that the Commission which he or she steers remains known in history as one which has made the Union progress significantly.

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The European Commission is a 'partial' executive. It needs gradually to play a part in areas which many may wish to see remaining exclusively the province of 'intergovernmental' decision-making.

Such a development cannot and will not occur if the commission appears weak: one way in which it will appear weak - and indeed be weak - is if it is transient or is liable to be overthrown or to collapse. It is surely not in the long-term interests of the Commission or of the Parliament that such a scenario should prevail.

The strength of the Commission has therefore to be based on the realisation that that institution needs to remain in office for a full-five year term if it is to fulfil its task. This will not be achieved unless all recognise that it is essential - indeed imperative - that nothing should be done to shake the edifice and in particular that events such as those which occurred in 1999 must not be repeated. The Commission must never resign *en bloc*; if some of its members fail, they and they alone must resign. The Parliament must not place the Commission in a position in which it may be tempted to resign even if the Parliament, in the end, were to prove unable to deliver the votes needed for a vote of censure. Most European parliamentarians are surely likely to claim that they wish to see the European integration process proceed: but this cannot occur unless the Parliament exercises restraint and works with the Commission as it is, since the Commission as it is is constituted in a way which satisfies the difficult requirements of national-cultural and ideological dimensions. The European Parliament should therefore be statesmanlike enough to recognise that the European Council is its best protector against any temptation it might have to react too rashly and in particular to wish to use unnecessarily and dysfunctionally the mechanism of the censure motion. If dialogue and compromise, rather than discord and battle, prevail among two of the 'most European' of the European institutions, there is a very good chance that European integration will indeed progress with the same success as integration has progressed over the centuries in the Swiss Confederacy.