



The European Commission 2004-09: A politically weakened institution? Views from the National Capitals

Rapporteur:

Piotr Maciej Kaczyński, CEPS, Brussels

Contributions by:

Constantinos Adamides, University of Nicosia

Dace Akule, PROVIDUS, Riga

Toby Archer, UPI, Helsinki

Mike Beke, CEPS, Brussels

Irena Brinar, University of Ljubljana

Hugo Brady, CER, London

Mette Buskjær Christensen, DIIS, Copenhagen

Janis A. Emmanouilidis, ELIAMEP, Athens

Paulo Gorjão, IPRIS, Lisbon

Marco Incerti, CEPS, Brussels

Mindaugas Jurkynas, University of Vilnius

Elżbieta Kaca, IPA, Warsaw

Zuzana Lisoňová, SFPA, Bratislava

Ignacio Molina, ELCANO, Madrid

Maria Pallares, Notre Europe, Paris

Antoinette Primatarova, Centre for Liberal Strategies, Sofia

Gergely Romsics, HIIA, Budapest

Věra Řiháčková, EUROPEUM, Prague

Vanessa Stachtou, ELIAMEP, Athens

Jan Techau, DGAP, Berlin

Gilda Truica, European Institute of Romania, Bucharest

Mendeltje van Keulen, CLINGENDAEL, The Hague

Göran Von Sydow, SIEPS, Stockholm

Viljar Veebel, EVI, Tallinn

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THE EUROPEAN COMMISSION 2004-09: A POLITICALLY WEAKENED INSTITUTION? VIEWS FROM THE NATIONAL CAPITALS *EPIN WORKING PAPER NO. 23 / MAY 2009* PIOTR MACIEJ KACZYŃSKI*

Executive Summary

The Barroso Commission is coming to an end. At this stage it is impossible to foresee when the end will be or if the new (old) Commission President will be (re)elected in July 2009 by the new European Parliament. Nevertheless, based on the survey results of experts in 25 EU member states, the following picture of the European Commission emerges:

First, the Commission remains at the centre of European decision-making process. At the same time however, its **political position** seems to have weakened since 2004. The national capitals' perception is that it has lost out vis-à-vis other institutions, especially the Council of Ministers. Within the Council the Commission is perceived as being largely dependent on bigger member states. This view is shared by both the bigger (especially France and Germany) and smaller nations.

Second, the Commission seems to be losing **political leadership** in the Union. It is more and more perceived as serving the interests of the larger member states, sometimes even at the expense of smaller ones. The dominant perception is that among the European institutions the lowest common denominator is no longer determined as it was by the Council, because the Commission is increasingly anticipating national positions at an earlier stage and taking them into account at the preparatory level. Hence, it is no longer the institution that seeks the higher standards of 'Community interest' – this may well be the role for the new European Parliament.

Even if not all countries share these perceptions, there was not a single member country claiming that the Commission is gaining (rather than losing) ground vis-à-vis the other institutions; that it has improved its independence record against the larger nations or that it seeks higher standards rather than the lowest common denominator.

At the same time the Commission's greatest success – and also uncontested – is the adoption of the **Climate and Energy Package**. The activities in these policy areas are the most appreciated across the EU.

The single most important failure was the inability to foresee and respond to the **financial and economic crisis**. The Commission's actions were largely viewed as "too little too late".

It is not the purpose of this report to determine whether these perceptions are true or false.

But the very debate about and perception of the European Commission by national political elites and the general public alike has some impact on its proceedings.

* Piotr Maciej Kaczyński is a Research Fellow at the Centre for European Policy Studies in Brussels.

1. Views from the National Capitals

The European Commission is an institution that needs to continue to fight to maintain its relevance in the European Union. This study shows that in a number of EU member states the public debate and national perceptions of the European Commission is that this institution is losing importance vis-à-vis the other institutions of the European Union.¹ Recently *The Financial Times* published a list of fifty people who will frame the debate on the future of global capitalism. There are 17 EU citizens on this list, including the Prime Minister of the United Kingdom, the President of France and the German Chancellor. From the European institutions only the President of the European Central Bank was included. The absence of the European Commission President is telling, even if the FT stated that the list is by no means exhaustive.² Among the general public too the importance of the European Commission has decreased by 7% between 2004 and 2008. The countries in which the perception of the Commission's importance has decreased the most are Ireland, the United Kingdom (-15% each); Italy and Finland (-12% each). The country where the Commission gained the most in perceived importance is Greece (+7%).³

Opinions on the European Commission's performance are framed mainly through bilateral activity (between the Commission and individual member state government) as well as its presence in the national public debate. Therefore a series of national pictures arises where the European Commission consists basically of the President and one Commissioner – the national one. Almost all Commissioners are very popular in their own countries. One example of the power of embodying the European Commission is visible in Lithuania, where the Commissioner Dalia Grybauskaitė is so popular that she has decided to run for President of the country with a very good chance of winning the popular vote in the first round.⁴ The exception to this general rule is in the United Kingdom, where the national Commissioner is so absent from the national debate that the public has broadly forgotten about the politician mandated to work in the Commission. When Peter Mandelson resigned from the position of Trade Commissioner to join the national cabinet in 2008, he was welcomed back by some sections of the media as if he had been completely absent from the national British debate.

A predominant perception about the Barroso Commission is that it has tended to favour rather liberal policies over a more neutral approach. In some countries this was welcomed as a positive development (United Kingdom), while in others this view was a basis for criticism (in France and Italy for example).

¹ The survey was conducted among national experts in spring 2009. The experts were asked to name up to three successes and up to three failures of the European Commission 2004-2009 as perceived from national capitals. A number of them conducted additional national research. They were also asked to identify up to three issues that came up between the European Commission and national governments in the given framework. Lastly, the experts were also asked to provide information on the perception of the European Commission's independence from the national and other governments. There were contributions from 25 EU member states (with the exception of Austria and Malta)

² "Fifty who will frame a way forward", *Financial Times*, 10 March 2009 (available at http://www.ft.com/cms/s/0/2fe0826a-0dac-11de-a10d-0000779fd2ac.dwp_uuid=ae1104cc-f82e-11dd-aae8-000077b07658.html).

³ According to Eurobarometer 62 in the autumn of 2004, 75% of EU citizens thought the Commission played an important role in the European Union. Four years later (Eurobarometer 69) 68% of European shared this opinion. See http://ec.europa.eu/public_opinion/standard_en.htm.

⁴ One poll gave her 74% support in the May 2009 elections. See "Grybauskaitė is Favourite Contender in Lithuania" in Angus Reid Global Monitor: Polls & Research, 3 April 2009 (http://www.angus-reid.com/polls/view/33138/grybauskaitė_is_favourite_contender_in_lithuania).

In many of the newer member states that joined the EU in 2004 or 2007, the European Commission is largely respected for its pre-accession role. The opinion of the Commission's performance as having a liberal bias is not as strong here, though the liberalising role of the Commission is widely taken for granted (for example in the Czech Republic or Poland). In any case, the perception of the Commission's activity has been predominantly formed by the character of the relationship between individual Member States and the European Commission. This has manifested itself in the number of infringement cases, various competition policy decisions, the allocation of rights or duties in legislative proposals as well as assistance in the preparation of the Slovene and Czech EU presidencies.

The tradition of a high profile European Commission from the pre-enlargement era has sometimes delivered a mixed result in the post-2004 landscape when the direct link between the Commission and a country became somewhat diluted. In Slovenia for example, the Commission is not as well-known as the Council or the European Court of Justice. The Council's popularity might be the consequence of the Slovene Presidency in 2008 to which the media paid keen attention, as it offered a public stage for Slovene politicians and institutions. The European Parliament also attracted public attention more when the representatives of Slovenia spoke there.

For some states the European Commission represents a form of 'alternative institution' to the national governing institutions. The European Commission usually enjoys much higher support ratings than the national governments in newer member states (for example in the Czech Republic, Bulgaria, Poland and Slovakia). Even in a country like Latvia, where trust towards the Commission is relatively low among the EU-27, the level of trust towards the Commission still exceeds the level of trust towards the national government.⁵

In a number of countries the general opinion is that the Barroso Commission was a weaker institution (for example in the Netherlands, France, Finland and Greece) than other European institutions. The particular concern was that the Commission's position is an effect of the increasing intergovernmentalism of the decision-making process in the European Union. On the other hand, some national governments actually favour the development (for example in – although seldom explicitly advanced – Sweden). This opinion is further strengthened by a national reading that the Commission has not been able to fully deliver on in its ambitious agenda (for example in Latvia and Slovenia), even if the lack of success is not necessarily attributed to this institution alone.

There are, however, also positive opinions of the Barroso Commission in several member states (for example Spain, Poland and Latvia). The Spanish perspective is particularly telling, as it exemplifies a trend that could be observed in years to come in the newer EU member states. In Spain, public opinion, the political elite and other experts on the process of supranational integration still tend to consider the European Commission as a very legitimate and effective body in itself. The Commission is thought to fulfil its duty as the 'guardian of the treaties'. Furthermore, having joined the EC/EU in 1986 during the golden years of Jacques Delors, in Spain the institution probably enjoys an additional margin of approval compared to other countries. This margin is not yet used up, despite the dubious legacies of the Santer and Prodi tenures. The Commission still brings to Spanish minds the great achievements of 1980s-90s – constructions of the Internal Market, Cohesion Policy, the launch of EU Citizenship and the preparation for EMU.

Even if the Barroso team does not achieve the same levels of recognition among Spaniards as the Delors Commission did in terms of dynamism and sense of direction, it is generally

⁵ According to Eurobarometer 70 (autumn 2008) National Report for Latvia, 16% of Latvians trusted their national government compared to 38% of Latvians who trusted the European Commission.

perceived as being a competent group of Commissioners with the right leader. The overall assessment of both policy style and outputs is positive, especially in view of the complexities of incorporating the ten states that joined the EU only some months before the appointment. Moreover, it is the largest Commission in history with 25 portfolios; further increased mid-term for the 2007 enlargement.

2. Public Opinion and the Commission

Public opinion of the European Commission has largely remained stable. Over the past five years public support for this institution under the Barroso Commission has dropped by 5%. After four years in office the previous Prodi Commission was able to increase support moderately (+2%) and in its final year support jumped to 52% (increase of 8% since 1999). Even if the general picture remains largely unchanged for the Barroso Commission, it is telling that in all three Eurobarometer indicators on the Commission, in late 2008 the institution was less known, considered less important and fewer people trusted it than when the Barroso Commission took office.

Table 1. Eurobarometer indicators on the European Commission, 2004 and 2008

	Autumn 2004	Spring 2008	Difference
Knowledge	82%	78%	-4%
Importance	75%	68%	-7%
Trust	52%	47%	-5%

Source: Comparison between results reported in Eurobarometer 62 (autumn 2004) and 69 (spring 2008). Both reports are available at http://ec.europa.eu/public_opinion/

At the same time the stability of this situation is to some extent superficial; the national confidence ratings towards the Commission have sometimes changed considerably since 2004. It is possible to distinguish five groups of states in this regard. In the first group the Commission has enjoyed a stable and comfortably **high support** of over 60% for a long period. These states are: Belgium, Slovakia and Slovenia. The fourth member state of the group is the Netherlands, where the Commission has continued to gain support since spring 2005 (+13%).

The second group consists of those states in which **support is solid**: between 55 and 60%. They are: Malta, Estonia, Finland, Luxembourg, Greece, Hungary, Lithuania and Romania. From this group Luxembourg is the country where support for Commission activity has significantly dropped over the past four years (-10% between autumn 2004 and autumn 2008). Over the past year the Commission has also lost 13% support in Greece. If this new trend continues Greece will soon join the next group of states 'in transition'. In Greece therefore the Commission is both perceived as more important (+7%) and less popular.

The group '**in transition**' consists of states in which the Commission is supported by over half of the population. This applies to the Czechs, Cypriots, Danes, Portuguese, Spanish, Swedes and Bulgarians. What is worth mentioning here is the steady increase of support towards the Commission among the Swedish public over the past five years (+9% since spring 2005) and the first decrease of support among the Portuguese public since 2004, which fell below 55% in autumn 2008.

There are four nations in which the Commission is **losing support**. In Ireland the decrease in support since autumn 2004 was 16% and over the past year alone the Commission has lost 10% of its support in this country. In Italy the Commission has lost 11% of its support since 2004. In Poland a new phenomenon appeared in 2008, when the Commission lost 14% of its support

within 12 months. A slightly less radical showing occurred in France, where the Commission lost 9% of its support during the year between autumn 2007 and autumn 2008.

The last four nations are those in which the Commission is not necessarily losing trust, because it has already **lost support** (below 45% support rate). In Austria, Germany, Latvia and the United Kingdom the Commission has not been losing support at the same rate as the previous category, but the levels of support remain very low. An interesting development took place in the United Kingdom, where the support first fell rapidly in 2004-2005 (-13%) and stabilised at the extremely low level of about 25%. Yet ever since the record low support of autumn 2007 (22%) the last year saw an increase in support of 5%.

The perceived importance indicator remains relatively high. Four cases worth mentioning are those states in which the Commission lost 12-15% of its support between autumn 2004 and spring 2008. Public opinion of the importance of the Commission has changed in Finland, Ireland, Italy and the UK. At the same time a reversal of this process has only been observed in Greece (+7%).

3. The European Commission's Independence

What is striking is the low support for the European Commission among the biggest EU nations. With the exception of Spain, the other five nations already have either a low or increasingly low opinion of the European Commission. One way of explaining this would be to point to the Commission's impact on the bigger states, which remains rather limited. Hence there is little need to trust an institution if it proves itself to be powerless, if not irrelevant at times. This hypothesis, however, is largely untried, as public opinion about the Commission's importance in the six largest nations is mixed:

Table 2. Importance of the European Commission 2004-2008 among selected members

	Autumn 2004	Spring 2008	Difference
Poland	84%	80%	-4%
Spain	73%	73%	0%
France	76%	71%	-5%
Italy	77%	65%	-12%
Germany	70%	64%	-6%
United Kingdom	63%	48%	-15%

Source: Comparison between results reported in Eurobarometer 62 (autumn 2004) and 69 (spring 2008). Both reports are available at http://ec.europa.eu/public_opinion/

Another way of looking at the limited trust towards the Commission among the larger countries is to look at how the perception of the institution is framed within the different national contexts. First, the national perception is that the Commission is composed mainly of the President and the relevant national Commissioner. Second, the Commission's performance is also perceived through actions targeted at this country and there is more of this kind of interaction with the larger member states.⁶ Third, the interaction with larger member states gains more media attention, especially where controversy about the Commission's independence is

⁶ For example, in 2007 the top five countries that provided state aid in absolute figures (and this is monitored by the European Commission) were: 1. Germany, 2. France, 3. United Kingdom, 4. Spain, 5. Italy. Poland was 10th. See: "Total State aid by Member State as a percentage of GDP (1992 – 2007)", http://ec.europa.eu/competition/state_aid/studies_reports/ws2_2.xls.

involved. In this context the notable case of the application the Stability and Growth Pact rules in France and Germany in 2003 contrasts clearly with, say, the Lithuanian 2006 Eurozone application, which was rejected because the inflation rate at the time was too high by 0.1%.

For these reasons the national perception is that the Commission is less independent when it comes to dealing with the larger nations. The general impression is therefore that the Commission takes politically motivated decisions regarding its bigger members and bureaucratically justified decisions towards the smaller nations.

Table 3. Independence of the Commission from national governments

	Commission's independence from your own government (A)	Commission's independence from other EU governments (B)	Preference
BE, BG, CY, CZ, DK, EE, EL, FI, HU, IE, IT, LT, LU, LV, NL, PL, PT, RO, SE, SI, SK	Greater	Smaller	A
ES, UK	Same	Same	0
DE, FR	Smaller	Greater	B

Source: Result of own survey of national experts, April 2009. The survey covered all EU member states with the exception of Austria and Malta.

4. European Commission Successes and Half-Successes 2004-09

The greatest achievement of the Barroso Commission term is the activity in the energy and climate change area. The achievement of the **climate change package** has been dubbed as being among the top three successes in over half of member states. It was particularly celebrated in France, Spain, the UK, the Scandinavian and Baltic nations, Greece and the Benelux states. The Commission showed good leadership on the climate change proposals amid politically difficult times. It had a decisive impact on the efficient and quick formulation and adoption of the climate and energy package. This is especially important in the international context, including the December Copenhagen negotiations.

Another success in this area is the activity towards enhancing European **energy security**. This was particularly appreciated by some of the newer member states, like Poland, Bulgaria and Hungary, though clearly there is room for improvement. What was most appreciated is that the Commission successfully secured EU investments into energy security infrastructure. A more critical assessment of the Commission's role in this perspective came from Portugal, Lithuania and the UK: the 'energy package' needed to serve the energy security agenda at least as much as the threat posed by climate change. It did not.

The third success most commonly mentioned is the **enlargement** policy. The 2007 enlargement was particularly important for Bulgaria and Romania, but also for Lithuania, Sweden and Denmark. Accession negotiations with Croatia are appreciated most in Hungary, yet at the same time the Commission is criticised in the Netherlands for naming a date for possible accession whilst cooperation with the war crime tribunal is considered insufficient. Negotiations with Turkey also create mixed opinions. The Bulgarians wanted the Commission to do more for Turkish accession, while the (Greek-) Cypriot debate is that the Commission should be more critical of Ankara.

Concrete decisions related to the **single market** are also quite popular among many countries. The fact that the Barroso Commission has concentrated on 'producing' tangible results for

citizens is perceived as a positive development. This approach strengthens the EU's output legitimacy, which is especially important, as citizens increasingly have the impression that the EU has lost its ability to produce concrete added value. This refers particularly to lowering the roaming rates, the Services Directive and the better regulation initiative. Roaming was particularly appreciated in France and Bulgaria; better regulation is especially well-regarded among the Czech elites and in Sweden, where also the approach towards the small and medium sized enterprises is welcomed. The Services Directive is more a divisive issue. It is considered a Commission success in Finland and in Luxembourg. At the same time it remains controversial in Germany, Belgium, Poland, Spain and the Czech Republic. In Portugal it was considered a tactical error to link the Services Directive to the Constitutional Treaty back in 2005.

The Commission's role in **institutional affairs** was most appreciated in Lithuania and Portugal. The Slovenes valued the Commission's support for their EU Presidency as well as the institution's political role in the conflict between Slovenia and Croatia. On the other hand, the Commission was also criticised for its approach to institutional issues. For example in Greece, Luxembourg and Estonia the public understanding seems to be that the Barroso Commission did not play a decisive role in promoting and facilitating the ratification of the Constitutional Treaty and, subsequently, the Lisbon Treaty. The Barroso Commission preferred to be a non-actor following the crises triggered by the French and Dutch "no" to the Constitutional Treaty and the Irish "no" to the Lisbon Treaty.

The assistance given to the Czech EU Presidency was not greatly welcomed either, especially the scheduling of the presidency agenda. For example in the Freedom, Security and Justice area the Czech aspirations were to initiate a post-Hague "Prague Agenda". In the Czech Republic it is considered that the Commission has circumvented as a pay-back for the bilateral Czech-US visa waiver negotiations. Now it is expected that "The Hague Agenda" will be replaced by the "Stockholm Programme".

Competition policy was also especially important in three countries: the Netherlands, Spain and France, where the Microsoft case was widely reported. The **consolidation process** was also perceived as a success for the Commission in countries like Germany (Schengen zone) and Slovakia (Eurozone). As was the case for the role in the **budgetary** negotiations 2007-2013 (Spain and Greece), the Common **Agriculture** Policy health check process (Cyprus and Romania), and dealing with relations with **Russia** (the UK and Germany).

All three issues are nevertheless controversial. For example, budgetary reform is perceived negatively in Luxemburg and the United Kingdom. The CAP Health Check was not as welcome in Latvia. The topic of Russia is also controversial; as the Commission's Russian policy creates rather negative reactions in Finland, Romania and Lithuania (either too slow or too fast on negotiating the post-PCA agreement).

There are also many individual successes that are important for only one member country. For example, in Spain it is noted that the European Commission has established the basis for a common European policy on migration, one of the most important priorities on the Spanish government's internal and external agenda. The portfolio of Justice, Freedom and Security, first held by Franco Frattini and now by Jacques Barrot, was one of the most dynamic in terms of legislative proposals, although it is also true that the directive on the return of illegal immigrants had a very negative reception in the Spanish media when it was finally passed by the EP.

Among other issues is consumer protection; the Barroso initiative on national parliaments; citizens' engagement; engagement in the social issues of Commissioner Spidla; addressing the Cyprus issue by President Barroso; finalising the ambitious REACH Directive after many years of work, and the limiting effect of the Commission on national politicians. This phenomenon is particularly visible in Italy, and probably a reason why Italy is the only big EU country in which

the perception of the Commission's independence from influence by the national government is greater in the minds of the Italian general public than it is in other countries. For Poland a very important Commission success was the effective introduction of the Eastern Partnership initiative.

5. European Commission Failures 2004-09

Apart from the perceived successes, the Commission has also had some sizeable problems. There are two main failures that are at least perceived as such in national public spheres. First is the financial crisis and economic downturn. The second set of problems is related to the lack of political leadership on the part of the Commission.

But the main failure of the Barroso Commission is perceived as the **financial and economic crisis**. There are four main arguments against the Commission in this respect. Firstly, the Commission failed to *predict* the crisis. Secondly, the Commission is perceived as having been reluctant to *regulate financial markets* before the crisis emerged.

Thirdly, the most popular argument is that the Commission failed to *respond* to the outbreak of financial instability and economic recession. For example in Poland there are fears that in times of crisis the Commission does not necessarily guarantee the correct application of Community law towards some member countries (i.e. the state aid rules). As a German debate goes, even though the Commission holds only limited competences to coordinate responses to the crisis, the Barroso College's performance was widely perceived as providing weak leadership at a time of crisis. Therefore the perceived *lack of leadership* is the fourth argument in national debates put forward against the Commission. For example, the Greek perception is that the Barroso Commission was unable to rise above mediocrity to provide inspirational leadership within the EU following the breaking of the financial and economic crisis. It was by and large left to the big member states to provide strategic guidance and leadership.

The situation that emerged in the second half of 2008 showed, as the Portuguese argument goes, how fragile the European institutions are when faced with 'troubled times'. Although weeks later a common action was set in motion, European solidarity and integration were conveniently forgotten in the name of 'national interests' for quite a time, and the Commission did not fulfil its role as 'institutional locomotive' within the European Union.

The second single most popular feeling in national capitals is that the Barroso Commission **lacks political leadership**. There is an argument put out across the Union that the Commission's dependency on member states has increased to such an extent that it challenges 1) the inter-institutional balance; 2) the balance between the big and small members; 3) the institution's capacity to uphold and guard the prerequisites of the *acquis communautaire*, notably vis-à-vis the bigger member states; 4) the Commission's collegiality and 5) the its future effectiveness.

The popular understanding is therefore that the Barroso Commission was not able to reverse the general trend of the European Commission steadily losing strategic importance since the 1990s, and that this lack of leadership was particularly evident during the Barroso Commission term around the financial crisis and the constitutional process, where the Commission took a non-actor stance following the crises triggered by the French and Dutch "no" to the Constitutional Treaty and the Irish "no" to the Lisbon Treaty.

The balance between the bigger and smaller members is an issue particularly dear to the smaller nations. The main problem these countries have is that the Commission does not take into account the interests of the smaller nations. In Slovenia this became evident particularly in the discussions on the second cycle of the implementation of the Lisbon Strategy. Another is that it

risks being perceived as setting double standards and demanding less from the bigger nations. This could eventually endanger the legitimacy of the Commission.

The last two elements of the picture are related to the size of the Commission. The Barroso Commission is sometimes perceived as an un-collegial team lacking cohesion. There is also an effectiveness challenge. There are countries, like Spain, in which there is a national consensus between the government and the opposition that the Commission should have fewer than 27 members. Therefore the recent compromise reached with Dublin at the European Council of December 2008 (to keep one Commissioner per member state) has been considered as a necessary evil just to allow a second Irish referendum on the Lisbon Treaty. The striking example of creating a post of Commissioner for Multilingualism is mentioned in this context.

The **Services Directive** was mentioned above as a controversial issue, with some countries considering it a major success for the Commission. Despite that, it also came up as the third most popular example of a major Commission setback. The reason for this is unsatisfactory outcome, as the adopted text leaves an essential part of the single market unfinished. As a further Belgian argument goes, the way the Barroso team handled the matter can also be criticised. It decided to hold on to the overly ambitious idea of implementing complete freedom of all services through one single text. It would have been far more efficient if the Commission, in light of widespread opposition, had decided to present three of the four directives covering various aspects of the original proposal.

There is also another – albeit on a smaller scale – example of a Commission failure. The **sugar reform** of 2006 was badly received, especially in the Czech Republic and Finland, as closure of a number of sugar factories in those countries came as a result of that reform.

In one member country the greatest failure of the Barroso Commission concerns the approach towards economic and social issues. For French citizens, the Commission remained obstinate in its **liberalism**, which undermined its capacity to anticipate the economic crisis and to react efficiently. Moreover, the Barroso Commission is severely criticised in France for its lack of proposals on social issues. For example, not enough has been done on the issue of Services of General Interest, which is of vital concern in France and the perception is that little was done on social policies during the update of the Lisbon Strategy in 2005.

6. Selected Bilateral Issues between the Commission and Member States 2004-09

There are many individual issues between the European Commission and individual member states. A great majority of them are related to proposed legislation or the implementation of that legislation. One indicator of where debates can arise is to look at how many infringement procedures have been set in motion against each of the member states (see Table 4).

To follow is a brief overview of the national debates on the relationship with the European Commission:

In **Belgium** one major problem has to do with the political weakening of the Commission, as mentioned above. This has led to difficulties for the national government as it became more difficult to defend the Commission's action. As mentioned above, there is also a growing perception that this Commission, more than its predecessors, is more centred on the big member states, and pays less attention to the smaller or middle-sized ones. For the Belgian government, these issues are perceived as problematic. A more specific problem is the **incorrect or untimely transposition** of European legislation, which has led to a considerably higher than average number of infringement procedures against Belgium. Despite an improvement in the situation, Belgium remains one of the most 'under-performing' member states in this regard.

Table 4. Cases concerning failure of a Member State to fulfil its obligations: Outcome 2004-08

	Completed Case – Infringement declared (2004-08)	Completed Case – Action dismissed (2004-08)	<i>New actions in 2008 alone</i>	Completed Cases – Total (2004-08)
Italy	77	6	17	83
Luxembourg	68	1	15	69
Spain	58	5	21	63
France	57	3	15	60
Greece	52	5	19	57
Germany	43	5	10	48
Belgium	45	2	17	47
Austria	44	1	10	45
Portugal	34	1	14	35
United Kingdom	25	8	13	33
Ireland	22	3	10	25
Finland	20	3	5	23
Netherlands	18	2	4	20
Sweden	16	3	6	19
Czech Republic	8	0	6	8
Denmark	6	1	0	7
Poland	2	0	10	2
Slovakia	2	0	1	2
Lithuania	1	0	1	1
Malta	1	0	5	1
Hungary	0	0	3	0
Cyprus	0	0	2	0
Estonia	0	0	2	0
Slovenia	0	0	1	0
SUM	599	49	207	648

Source: Annual Reports of the Court of Justice for 2004, 2005, 2006, 2007, and 2008 available at <http://curia.europa.eu/en/instit/presentationfr/index.htm>. There was no ruling or case against the countries not included in the Table 4 (Bulgaria, Romania, and Latvia).

The **Bulgarian** government has serious problems with the Commission in the framework of the Cooperation and Verification of Progress Mechanism (CVM). The freezing of pre-accession funds because of irregularities, suspicions of fraud and conflicts of interest in the award of contracts are at the top of the Bulgarian government-European Commission agenda. The government is under pressure to deliver on the reform of the judiciary, the fight against corruption and organised crime. However, public opinion sides with the Commission rather than with the government. A December 2008 poll showed that 76% of Bulgarians consider the criticism of the Commission as justified.

As regards the climate-energy package, together with other new members from Central and Eastern Europe, Bulgaria has been pushing for more solidarity on energy issues and more flexibility with regard to CO₂ emissions trading beyond 2013.

Also, the Bulgarian government would expect more support from the Commission as regards its eagerness to join the EMR2 mechanism.

In **Cyprus** the Direct Trade Regulation proposal was proposed during the lifespan of this Commission.⁷ It was linked to Protocol 10 of the Accession Treaty (i.e. it tried to bypass the legal framework of Cyprus accession).

The biggest Commission achievement from the Cypriot perspective is the setting up of a special unit to facilitate the ongoing process of negotiations on the Cyprus problem. This team is headed by Barroso instead of Commissioner Olli Rehn, who is perceived by many Greek Cypriots as biased. Nicosia welcomed this development.

By the same token, the biggest failure is that of the Commission to correctly gauge Turkey's progress with regards to its accession obligations. From Nicosia's perspective, the Commission is too soft on Turkey.

Despite some minor issues regarding the implementation of structural funds in the **Czech Republic**, overall the relations between the Czech government and the European Commission have been good due to their 'similar' (liberal) ideological focus.

In **Denmark** the most significant debate arose after the European Commission published a report on the Freedom of Movement directive in December 2008, where it stated that there was no proof of misuse of the directive and therefore no need to make any changes. These conclusions went against the political agreement between the Danish government and its supporting party, the Danish People's Party and their intention to pave the way towards a change of the directive. The political agreement was a result of the political outcry in Denmark after the ECJ ruling in the Metock case which, with the directive on free movement as point of reference, challenges Danish immigration policy.⁸

A few problems came to public debate in **Finland** with regards the European Commission. The most significant were the Article 141 negotiations on the reform of sugar production – relevant for the support of the Finnish farming industry. The result of these negotiations was perceived negatively in the country. Among other issues is the co-operation agreement negotiations with Russia. A general observation, shared in other member states, is that the Commission let the council presidencies (France being the most obvious example) capture the EU agenda.

Beyond the abovementioned issues there are, in fact, relatively few problems. The Finnish government is very satisfied with the Barroso cabinet, both in style and substance, and it openly supports another term for Mr. Barroso; Prime Minister Matti Vanhanen stated this publically in October 2008.

The main problem between the **French** governments and the Barroso Commission were related to international trade, services of general interest and genetically modified organisms' regulations. French officials were very critical of the liberal views of the Commission on those issues.

In **Greece** there have been no major problems between the government and the Barroso Commission. In general, the Commission is widely perceived as an advocate of genuine

⁷ See COM(2004)466 final, "Proposal for a Council Regulation on special conditions for trade with those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control".

⁸ See the Metock case, Court of Justice Judgement in Case C-127/08 of 25 July 2008 and. The "European Commission Report on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States", Brussels, COM(2008) 840/3, available at:http://europa.eu/justice_home/news/intro/doc/com_2008_840_en.pdf

European interests and, unlike others, as a ‘defender’ of the interests of smaller EU member states. On the other hand, many experts in Greece criticise the Barroso Commission for having missed opportunities in the past to openly and unequivocally condemn the political manipulation of fiscal and macroeconomic figures by the Greek government.

Tensions between the Greek government and the Commission might intensify however, as the financial and economic crisis intensifies in the south-east European region. In this case problems may arise due to the precarious state of Greece’s economy, as the Commission will be increasingly ‘forced’ to criticise Greece for its weak economic performance and its inability to reduce national debt and introduce substantive reforms.

For **Hungary** the biggest challenge in relations with the Commission has been its public deficit. Hungary ran up a 10% budget deficit in the election year of 2006. By any standards, this constituted a breach of the Accession Treaty on the part of the Hungarian government, yet the excessive deficit procedure was started only half-heartedly. As a result, the issue became a major problem for some years, but did not escalate into a real conflict due to both parties recognising that they had similar desires: to avoid a full-blown conflict.

More recently, another issue arose with the economic crisis. Hungary is among the countries hit hardest by the current economic downturn. This has led to a keen awareness domestically of the vulnerabilities of small open economies with little domestic capital. There is a strong feeling among the intellectual elite that newer member states have cooperated with older and stronger member states in past years under an EU umbrella to the mutual benefit of the large companies located in old member states and the economies of the new member states. Currently, there is a sense of abandonment by the older member states seemingly bent on pursuing primarily statist rescue policies. The expectation towards the Commission in such a situation is to vocally support solidarity within the Union and to provide possible blueprints to temper the crisis in the newer member states that lack resources to do so themselves. The lack of visible and tangible activity in this area makes the Commission appear dependent on the larger older member states rather than acting as an autonomous institution offering support to the most vulnerable.

The most important issue on which **Italy** has been at odds with the Commission is its recent border security package.⁹ Other sources of friction have been economic matters, especially since the return to power of Prime Minister Berlusconi and the appointment of Giulio Tremonti as Finance Minister. Tremonti is known for his somewhat eurosceptic positions, and is not always willing to follow the Commission’s line on economic matters (e.g. he has always been rather critical of the Stability and Growth Pact rules).

Another cause of tension at the beginning of the term was the use (or lack thereof) by Italy of the TEN funding for the upgrading of its railroads to cater for high-speed trains. The Commission was obliged to send two official letters of reprimand to Italy, informing the government that it would have to discontinue the financing of the project (in particular the Turin-Lyon link) if there was no further progress.

The main problem between **Latvia** and the Commission was with regard to emissions quota. The Commission took the decision to grant to Latvia far lower emissions quota than requested. Initially, it had proposed that Latvia be granted only about half of what the government had calculated as necessary. The Commission’s proposal was based on 2005 data for emissions, GDP growth and the planned emissions reduction. However, it did not take into account the construction of new objects that would contribute to higher emission levels. In July 2007 the

⁹ For more on this issue see Massimo Merlino, *The Italian (In)Security Package: Security vs. Rule of Law and Fundamental Rights in the EU*, 10 March 2009, CEPS, Brussels (http://shop.ceps.eu/BookDetail.php?item_id=1809).

Commission revised its original position in Latvia's favour, though the new numbers were still far from the government's assessments. The Employers' Confederation of Latvia asked the government to turn to the European Court of Justice to appeal against the Commission decision, as it would imperil Latvia's industry. Following that, the government decided to challenge the Commission's decision in the Court.

It should be noted, however, that with the current financial and economic crisis hitting the country harder than most other EU member states, Latvia's negative perception of this Commission's decision may improve as the country reconsiders whether the requested emissions quota were in line with over-optimistic growth scenarios.

For the **Lithuanian** government the main problems with the Commission were 1) the introduction of euro and 2) the extension of the operation of Ignalina power plant. Lithuania 'failed' to introduce the euro in 2006 and the Commission's inflexibility led to the claim that the only criterion Lithuania did not meet was inflation. In fact this indicator was only by 0.1% higher (total 2.6%) than the permitted inflation, which, in turn, is being calculated by adding 1.5% to the average of three EU countries with lowest inflation figures. Two of those countries in 2006 (Poland and Sweden) did not even belong to the eurozone.

As for the Ignalina power plant, Lithuania was obliged to decommission the power station by the end of 2009. However, the country remains an 'energy island' in the EU and does not have any interconnection with other member states' energy markets. In such a case it becomes heavily dependent on the only supplier of gas (Russia), which is prone to use energy instruments as political tools in its foreign policy. The Commission did not agree to allow the power plant to operate until the interconnections with the EU are made.

Over past five years the Commission has taken several legal steps against **Luxembourg** concerning, for example, environmental and employment issues. Most visible to the public were issues related to corporate mergers, taxation of the financial sector and state support during the financial crisis.

In light of the 2006 takeover by the steel giant Mittal of Luxembourg-based Arcelor, the Commission was seeking to oversee the interpretation of takeover legislation by Luxembourg. Arcelor was seen as the nation's 'corporate crown jewel' in which the country was a large shareholder. Besides, Arcelor, as the biggest private employer in Luxembourg, made the takeover a publicly sensitive issue. The Commissioner for the Internal Market Charlie McCreevy stressed that the situation made the Commission cautious of developments being perceived as protectionist.

In March 2009 the Commission started an investigation based on state support legislation concerning the Dexia bank. The Competition Commissioner Neelie Kroes inquired whether the extensive support from Luxembourg, France and Belgium was actually based on realistic plans to better the company. The three countries invested around 6.4 billion euro in 2008 and have given a state guarantee of 150 billion.

At the time of the ratification crises, disagreement arose between **the Netherlands** and the European Commission over the matter of the future treaty reform and 'red lines' to be introduced in the new treaty text (limiting application in the single market and to public services), which the Commission opposed. Later, there were not many issues in public discussion relating to interaction with the Commission. There was some discussion on the possible budgetary consequences of new proposals; a prominent concern for the Netherlands as a net payer to the common budget. Cutting EU spending on, for example, economic stimulus plans was a topic for public debate. Few issues over late and incorrect implementation and transposition emerged.

The main conflicting issues between the **Polish** government and the Commission concerned the application of community law by Poland. The first issue was state aid for the Polish shipyard industry. The second problem occurred when the Polish fishermen exceeded the fishing quotas for cod. Also very controversial were problems with the employment of Polish nationals in the European Commission.

Over the last five years, the main cause of friction between the **Portuguese** government and the Commission was the non-transposition of directives into Portuguese law within the given deadlines. In fact, due to this 'slow-motion' process, the European Commission has initiated a number of lawsuits against Portugal in the ECJ, many of which are still pending a decision.

Furthermore, Portugal also clashed with the European Commission over a series of resolutions relating to competition policies (in the energy field, for example) or environmental measures that were not followed, particularly in the case of big public works.

In **Romania**, the most important issue involving the Commission and still pending is the continuation of the country's special monitoring of progress towards reforming the judicial system and curbing corruption. Recently Romania asked for EU financial assistance in the context of the financial crisis. Since the Commission is instrumental in setting the terms of this assistance, a stance perceived as too stringent could, theoretically, lead to certain problems in bilateral relations. Also, among the formal infringement procedures initiated by the Commission against Romania, the only one still unfolding is the issue concerning the independence of the communications regulatory body.

Problems between **Slovakia** and Commission mainly concern competition policy in postal services but also in the area of supermarket chains and telecommunications. During Commissioner Kroes' visit to Bratislava Prime Minister Fico did not even find the time to meet her. Generally the Commissioner appreciated the functioning of the Slovak Anti-monopoly Authority, but the official critique has focused on the competition policy law that limits the Authority's powers in the area of telecommunications, energy and postal services.

Another salient topic relates to the completion of the motorway infrastructure financed through the structural funds. The Commission questioned the purpose of such investments several times. There are problems with proper public procurements and tenders. The Commission has also inquired about the issue of removing Mr. Branislav Máčaj from his position as director of the Telecommunication Authority; suspecting a possible violation of the Authority's independence.

Also in the case of the climate-energy package, Slovakia strongly opposed the Commission's initial evaluation of emissions production. Yet this issue was resolved to the satisfaction of the Slovak government during the December 2008 summit.

There were also a few issues in **Slovenia**, where the country's view (contrary to the Commission) was that whenever there is a suspicion of a breach or inadequate implementation of the EU law, the Commission should first inform the member state and request that the problems be addressed rather than inform the media about the problems even before the respective member state is informed.

A more specific case arose with the introduction of the road vignettes as a means of tax collection on cross-border motorists. The Commission considered the introduction of annual and half-year vignettes as discriminatory for transit users. When – on the Commission's request – the Slovene government also agreed to introduce weekly vignettes, a new issue arose about the pricing of these vignettes.

The Slovenian government considers that the screening and evaluation of diverse projects funded by the structural funds in the field of agriculture is inadequate. In its opinion it is based on the premise that the country is too small and for that reason does not take into account the

internal diversity of Slovenia. Consequently, Slovenia demands that the whole country be treated as a sample and that internal diversity be taken into account.

Also, in relation to national quotas of staff employed in the European institutions, there is a perception that there are relatively few Slovene citizens working for the Commission.

For **Spain** the main problems between the government and the Commission (apart from the recent procedure started for excessive public deficit in 2008, after several years of Spanish budget surplus) are related to competition policy obligations and, in general, to the respect for European Community law. As is shown in Table 4, the Commission initiated many infringement actions against Spain concerning legal failures during the period 2004-2008 and is now the third member state (after Italy and Luxembourg) in a number of cases. Specifically, the most politicised ones relates to the E.ON-Endesa case and the unprecedented penalty of over €152 million to Spain's largest telecom company, Telefónica. Both cases provoked dissatisfaction in the Zapatero government.

Regarding Telefónica, the European Commission fined the Spanish telecoms operator for a very serious abuse of its dominant position in the Spanish broadband market. In the E.ON-Endesa case, the European Commission ruled in September 2006 that Spain had breached EU regulations in trying to protect Spanish electricity giant Endesa from a takeover bid by the German energy group E.ON. The Commission, backed afterwards by a European Court of Justice Decision condemning Spain for this case in March 2008, said the Madrid government failed to fulfil competition rules and internal market regulations after its national authorities placed conditions on the German bid.

In the early days of the Barroso Commission there were concerns from the **Swedish** side about actions and initiatives with regard to the Swedish monopolies, such as alcohol and pharmacies and the status of Services of General Interest (notably concerning housing). There was also some impatience about a new Posting Directive. These concerns have been played down by the current government, which took office in October 2006.

In the **United Kingdom**, aside from the usual resistance to extensive EU social regulations, there was an example of an area of disagreement from the justice and home affairs field. The UK (although it is not the only one) has strenuously disagreed with the Commission's determination to balance security-based measures like the European Arrest Warrant with an EU system of procedural rights. The problem for Britain is that this takes little account of the UK's common law traditions and that such legislation stretches the legal bases available in the treaty to breaking point. The EU simply does not have adequate rights to regulate in this area of the law. This will change somewhat under the Lisbon treaty, which, if adopted, will open up a new playing field on which to judge the performance of the European Commission.

The great variety of issues addressed in bilateral relationships between the member states and the European Commission is also testament to the diversity of topics covered by this body. The larger the Union becomes and the deeper the integration goes – then more and more national, regional and sectoral sensitivities are touched upon. This calls for even greater responsibility on the part of decision-makers. The Treaty of Lisbon and the enlarged Union bring with them higher expectations of the Commission and increased opportunities to antagonise various actors – be they member states, businesses or social partners. The greatest challenge for the future is how to maintain and reinforce the relevance of this institution in an era of multiple crises.

Annex 1. Who's to Stay, Who's to Go?

The new European Commission, supposed to take office in November 2009 though most likely will not take office before January 2010, will be composed of an unknown number of members. This does not prevent some speculation about who will become a member of the next European Commission. At this stage it is clearly still too early to predict the make-up of the next College.

Nevertheless, by following domestic debates we can say that the following 12 Commissioners are **expected to continue** their work in the next Commission:

- Catherine Ashton
- Jose Manuel Barroso
- Benita Ferrero-Waldner
- Marianne Fischer Boel
- Siim Kallas
- Laszlo Kovacs
- Charlie McCreevy
- Janez Potocnik
- Viviane Reding
- Olli Rehn
- Antonio Tajani
- Androulla Vassiliou

The following 15 Commissioners **are most likely not to continue** in the next College:

- Joaquin Almunia
- Jacques Barrot
- Joe Borg
- Stavros Dimas
- Dalia Grybauskaite
- Jàn Figel'
- Danuta Hübner
- Neelie Kroes
- Meglena Kuneva
- Louis Michel
- Leonard Orban
- Andris Piebalgs
- Vladimir Spidla
- Margot Wallström
- Gunter Verheugen

Annex 2. The Questionnaire

I. General perception of the Barroso Commission in your country

II. Assessment of the Barroso Commission

1. Please name and explain what have been the greatest achievements of the current Commission from your national perspective (maximum of three issues)

2. Please name and explain what have been the greatest failures of the current Commission from your national perspective (maximum of three issues)

3. Please name and briefly explain the main problems between your national government and the Commission.

4. Please assess Commission's independence:

- ✓ vis-à-vis your government
- ✓ vis-à-vis other governments

III. National Commissioner(s)

1. Please assess the performance of the Commissioner coming from your country

2. If available, please provide information who is 'hinted' to be the next Commissioner from your country, should the next EC have 27 members.

About EPIN

EPIN is a network of European think tanks and policy institutes with members in almost every member state and candidate country of the European Union. It was established in 2002 during the constitutional Convention on the Future of Europe. Then, its principal role was to follow the works of the Convention. More than 30 conferences in member states and candidate countries were organised in the following year.

With the conclusion of the Convention, CEPS and other participating institutes decided to keep the network in operation. EPIN has continued to follow the constitutional process in all its phases: (1) the intergovernmental conference of 2003-2004; (2) the ratification process of the Constitutional Treaty; (3) the period of reflection; and (4) the intergovernmental conference of 2007. Currently, EPIN follows (5) the ratification process of the Lisbon Treaty and – should the treaty enter into force – (6) the implementation of the Treaty.

Since 2005, an EPIN Steering Committee takes the most important decisions. Currently there are six member institutes: CEPS, DIIS (Denmark), ELCANO (Spain), HIIA (Hungary), Notre Europe (France) and SIEPS (Sweden).

Status quo

Currently there are 31 EPIN members from 27 countries, also from countries outside of the EU. The 'hard core' work of the network is based on the cooperation of about 10 most active institutes. The member institutes are quite diverse in size and structure, but are all characterised by political independence and the absence of any predetermined point of view or political affiliation.

EPIN organises two major conferences in Brussels per year; as well as ad hoc conferences or other activities in member states. The network publishes Working Paper Series and other papers, which primarily focus on institutional reform of the Union. The network follows preparations for the European elections, the EU's communication policy, and the political dynamics after enlargement, as well as EU foreign policy and justice and home affairs.

Achievements

EPIN is a network that offers its member institutes the opportunity to contribute to the 'European added-value' for researchers, decision-makers and citizens. The network provides a unique platform for researchers and policy analysts to establish personal links, exchange knowledge and collaborate on EU-related issues. Members bring their national perspectives to bear on the issues tackled and through collaboration they contribute to establish a 'European added-value' (e.g. on EU communication, flexible integration). By doing so they strengthen a common European dimension in the national debates on Europe.



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