

PROMOTER COMMISSION LEGISLATIVE AND EXTERNAL REPRESENTATIVE OF THE UNION

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Abstract

Commission was established by the Treaty establishing the Economic Community of Coal and Osel – signed in Paris in 1951, entered into force next year – as the High Authority supranational institution with discretionary decision-making powers in optics of this treaty. Also known as “guardian of the treaties” Commission by its member, who exercise their functions in complete independence, is an institution that promotes the general interest of the Union (art. 17 par. TEU). Commission oversees therefore application of Union law. In this capacity, especially in terms of the competence of the legislative proposal, the Commission by calling upon specialists and experts from EU Member States harmonize with the national interest.

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1. Regulation of the European Commission³

Commission was established by TCECO - signed in Paris in 1951, entered into force next year - as the High Authority supranational institution with discretionary decision-making powers in optics of this treaty⁴.

In 1967, the Treaty of Brussels, called Merger Treaty of executives⁵, the two Commissions of the EEC, respectively, Euratom and the High Authority were merged into a single institution, to exercise the powers under the provisions of three treaties (otherwise, the fundamental problems treaties of Rome are identical even in forms⁶).

The TMs⁷ were repealed Articles of Merger Treaty in Brussels concerning the composition and organization of the Commission⁸, instead of their being inserted in the three EU Treaty provisions having identical content. The main innovations of the TEU on the appointment and term of office of the Commission - from 4-5 years.

Also known as "guardian of the treaties"⁹ Commission by its members, who exercise their functions in complete independence, is an institution that promotes the general interest of the Union (art. 17 par. TEU). In this capacity, especially in terms of the competence of the legislative proposal, the Commission, by calling upon specialists and experts from EU Member States harmonize with the national interest.

Regarding the supranational character of the Commission, emphasized on numerous occasions since its establishment, is the fact that its members - Commissioners - though appointed by common accord of the governments of the Member States of their citizens, acting in complete independence, not subject to any influence from states that have proposed.

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³ Ioana Nely Militaru, *European Union Law*, Legal Universe Publishing, Edition II, Bucharest, 2011, p. 249.

⁴ See Brândușa Stefanescu, *European Court of Justice*, Science and Encyclopedic Publishing House, Bucharest, 1979, p. 29.

⁵ The treaty was signed on April 8, 1965.

⁶ See Brândușa Stefanescu, op.cit. p. 24.

⁷ It is about Article P, paragraph 1

⁸ These are Articles 9 and 10 of the Merger Treaty of executives in Brussels, signed in 1965, entered into force in 1967.

⁹ Because art.17 TFEU which states inter alia "shall oversee the application of Union law". See Pierre Mathjisen, *Compendium of European law*, Ed. Club Europe, Bucharest, 2002, p. 112; Cornelia Lefter, *Institutional Foundations of Community law*, Ed. Economica, Bucharest, 2003, p. 172.

2. Functions of the Commission

The functions of the Commission are set out in art. 17 para. 1 TEU, which states:

- a. take appropriate initiatives to promote the general interest of the Union.
- b. proposes to adopt legislative acts of the Union, except where the Treaties provide otherwise. Propose for adoption and other documents, where the Treaties so provide;
- c. has own discretion.

The Commission proposes to adopt legislative acts of the Union, except where the Treaties provide otherwise. Propose for adoption and other documents, where the Treaties so provide (art. 17 par. 2 TEU)¹⁰.

Union legislative acts may only be adopted on a proposal from the Commission, except where the Treaties provide otherwise. Other acts shall be adopted on a proposal from the Commission where the Treaties so provide.

Guaranteeing the interests of the Union, the Commission was conceived as "institution driving European integration."¹¹ To this end, she was responsible for "overall ... mission initiative"¹², and in particular the power to propose bills. The Commission legislative initiative contribute to the planning, preparation and shaping of measures taken by the Council and Parliament, which formulates policies of the Union, presenting them as proposals¹³.

Whenever the Council shall act on proposals from the Commission, shall be deemed to have a right of legislative initiative¹⁴(under the TFEU and TEuratom).

Commission may propose draft laws only in cases where the Treaties confer such power¹⁵, being held at the same time, comply with the principle of subsidiarity as set out in art. 5 para. 3 TEU, according to which the Union, the Commission's initiative, "act only if and insofar as the objectives of the proposed action can not be sufficiently achieved by the Member States either centrally or at regional and local level, but the scale and effects of the proposed action, be better achieved at Union level. "The cases in which" the Commission's proposal "is retained by the TFEU are many in this regard, we mention as an example the following articles: art. 66, 70, 76, 109, 112, 121 para. 2, 125 para. 2, 126 para. 14, 138 para. 1, 2, 140 para. 2, 153 para. 2, letter b) paragraph 165. 4, 167 para. 5, 188, 293 para. 1, 294 para. 2, 257, 322 para. 2, 215 paragraph 1 TFEU.

In most cases the Commission acts on its own initiative, ie where adoption of legal acts by the ordinary legislative procedure. This procedure is triggered only proposal from the Commission (Art. 289 para. 1 TFEU).

In some situations, however:

- Council is asking the Commission to make a recommendation or a proposal, as appropriate, in terms of art. 135 TFEU, in others, the Council is obliged to consult the Committee (art. 49 TEU)¹⁶, or
- European Parliament, acting by a majority of its component Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union act requires the development of implementing the Treaties (Art. 225 TFEU).

Thus, based on a report by the committee, in accordance with Article 225 TFEU, the Parliament, acting by a majority of its component Members, request the Commission to submit any appropriate legislative proposal. Parliament may, at the same time, establish a deadline for submission of such a proposal. Competent parliamentary committee approval must first ask the

¹⁰Ioana Nely Militaru, op. cit. p. 258.

¹¹See Guy Isaac, Marc Blanquet, Droit communautaire general, 8 ed, Dalloz, Paris, 2001, p. 62.

¹²CJCE, 26 febr. 1976, SADAM, 88 la 90/75, Rec. 323.

¹³See O. Manolache, Treaty of Community law, Vth edition, Ed. CH Beck, Bucharest, 2006, p. 127.

¹⁴See, C. Lefter, op. cit., p. 170.

¹⁵ Such as in the field of the European company law, in which the Commission outline the initiatives, which will be both legislative and non-legislative, to modernize the company law – see Anca Popescu-Cruceru, Gabriela Leuciuc, „*Considerations Regarding The Groups Of Companies' Regime*”, Proceedings of the 9th International Conference „Accounting and Management Information Systems” Amis 2014, Ed. ASE, p. 300 - 313

¹⁶Idem

Conference of Presidents. Commission may agree or refuse to prepare a legislative proposal requested by the European Parliament. A proposed Union act under the right of initiative conferred on Parliament under Art. 225 TFEU can be made by a Member of Parliament. This proposal is submitted to the President, which shall forward committee for review. It may decide to present in plenary.

There are also situations where "the Commission may alter its proposal at any time during the procedures leading to the adoption of a Union act" according to art. 293 para. 2 TFEU, referring to an act of the Council adopted the Commission's proposal, "as long as the Council has not taken a decision (on this note).

There are situations in which the Commission is required to submit proposals in a given period, this data breach entitling the other EU institutions and Member States to seize the ECJ to find a violation of treaties (art. 265 TFEU)¹⁷ in others, for example art. 109 TFEU, the Commission is not bound by any term.

In all cases, however, the Parliament or the Council, as appropriate, the Commission may require it to explain and justify the merits of its proposals.

The Commission's proposals are published in the Official Journal of the European Union, series "C" being called "COM documents".

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Although the right of legislative initiative, as a rule, belongs to the Commission, the treaties provide that this right be exercised by:

- European Parliament under Art. 223 TFEU, shall issue a project to establish the necessary provisions for the election of its members by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States;
- At least one million citizens who are nationals of a significant number of Member States have the right to invite the Commission to submit, within its powers, an appropriate proposal on matters where citizens consider that a legal act of necessary Union to implement treaties.

4. Ensure external representation of the Union, except CFSP

The Commission has powers of representation. In exercising this power, the Commission represents the EU interest not only in it, namely, in its relations with Member States, to individuals (natural or legal) institutions and other Community bodies but also in the external third states or international organizations¹⁸.

The Commission's representative of Union interest therein arising from the set of tasks, previously analyzed; In this the Commission is presented "as a neutral intermediary between Member States on the one hand and between them and the Union, on the other hand"¹⁹.

Ability to represent the Commission resulting from art. 335 TFEU, which provides that "in each of the Member States, the Union has the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire and dispose of movable and immovable property and legal proceedings. To this end, the Union is represented by the Commission".

Union representation is made by the Commission as follows:

- Under the common commercial policy, the Commission opens negotiations needed after authorization given by the Council. Negotiations conducted by the Commission involve consultation with a special committee appointed by the Council. The Commission shall report regularly to the special committee and the European Parliament negotiations stage (art. 207 TFEU);
- Negotiate international agreements, under art. 218 TFEU, thus "for the conclusion of agreements between the Union and one or more States or international organizations, the Commission shall make recommendations to the Council, which shall adopt a decision authorizing the opening of negotiations and, depending on the agreement in question, negotiator or head Union negotiating

¹⁷See the action for failure, according to art.265TFEU, the period is two months.

¹⁸See Cornelia Lefter, op. cit., p. 177.

¹⁹Idem

team. These negotiations are conducted by the Commission in consultation with a special committee appointed by the Council to assist it in this task and within the guidelines outlined by the Council may issue to it. "Likewise, the provisions of art. 37 TEU provide that, when necessary an agreement with one or more States or international organizations, the Council (...) may authorize the Presidency, assisted by the Commission as appropriate, to open negotiations to that end.

To fulfill this task, the Commission should be empowered by the Council through a "decision bargaining". The decision is subject to negotiation assent advance of the European Parliament, namely, the opinion of the ECJ. Council, the Commission or a Member State may request the opinion of the Court of Justice on the compatibility of that agreement with the Treaties. If the opinion of the Court is adverse, the agreement may enter into force only in terms of art. 48 TEU²⁰.

- The Commission shall be fully associated with the negotiations for conclusion by the Council of formal agreements on an exchange rate system for the euro in relation to the currencies of third countries (Art. 219 para. 1 and para. 3, last sentence TFEU);

- Union shall establish all appropriate forms of cooperation with the organs of the United Nations and its specialized agencies, the Council of Europe, the Organization for Security and Co-operation in Europe and the Organisation for Economic Co-operation and Development (art. 220 TFEU).

The Union shall also maintain such relations as are appropriate with other international organizations.

Implementation of the provisions of this article is the responsibility of High Representative of the Union for Foreign Affairs and Security Policy and the Commission.

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²⁰Article 48 TEU regulates the draft amendments to the Treaties on which the European Union, which are presented by the Government of any Member State or the Commission.