Stresses and Strains

Upgrading the relationship between the Commission and European Parliament

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The European Parliament and the Commission are revising a Framework Agreement governing their mutual relationship. First introduced in 2005, the Agreement sets out how the two institutions intend to manage affairs within the context of their EU treaty-based interdependence. The revised Framework Agreement was agreed on 9 September and has since been formally accepted by the Commission. It now meanders through Parliament for final endorsement.

Here I look at the background to the new accord, summarise the main changes, and suggest what it might mean for the Union's political and legislative processes. I end by discussing how the reforms are viewed by the Council and European Council, the other party in the triangular relationship.

The revision process was driven by the services of the two institutions, whose focus was on improving the implementation of existing rules, and not by MEPs or the college of Commissioners. This may explain why an agreement has been reached notwithstanding the rather prickly political relationship that prevails between President Ursula von der Leyen and the current, fractured parliamentary leadership.

In her bid to be re-elected in July 2024, von der Leyen agreed in principle to revise the Framework Agreement. The exercise was kicked off by an exchange of letters between von der Leyen and Parliament's President Roberta Metsola. Under the guidance of its new Secretary-General Alessandro Chiocchetti, Parliament remained in the driving seat, moved by the injunction in Article 14(1) TEU that Parliament "shall exercise functions of political control". But it did not always get its own way.

Equal treatment with the Council

Top of Parliament's objectives was to oblige the Commission to assert in practice the principle of "mutual sincere cooperation" (Article 13(2) TEU). For Parliament, this means the Commission should treat Parliament and the Council on equal terms. It blames the Commission for favouring the Council during the trilogues that are a regular part of the ordinary legislative procedure. It also seeks equal treatment in budgetary and urgent procedures, and in access to information.

A new paragraph has been inserted in the Framework Agreement to read:

> *The Commission shall cooperate with the European Parliament and the Council on an equal footing, in full respect of the balance between the institutions and the institutional prerogatives conferred on them by the Treaties. Where appropriate, the Commission shall take all necessary initiatives with a view to reconciling the positions of the co-legislators, acting as an honest broker.*

Election of the Commission

For twenty years, Parliament has gradually tightened its grip on the method for the election of the Commission President and the subsequent vote of consent for the whole college (Article 17(7) TEU). The Commission has complained, with some justification, that Parliament's scrutiny of the individual Commissioners-designate has not been consistently open and fair. But the Commission resists Parliament's efforts to accentuate the personal accountability of Commissioners over the treaty-based principle of collegiality. The controversial auditions process is not codified in the

revised Framework Agreement, but the Commission agrees to inform MEPs about the intended gender balance and structure of the incoming college in advance of the opening of the auditions.

In future the President "shall" consider Parliament's request to sack a member of the Commission (rather than "seriously consider whether" to do so). But the President of the increasingly hierarchical college will retain full command of any reshuffle of portfolios in accordance with Article 248 TFEU.

Parliamentary initiatives

Eurosceptics claim that because the Parliament lacks the direct competence to initiate laws it cannot be a real parliament. This criticism is fallacious: most national parliaments in Europe, with some carefully circumscribed exceptions, rely on their governments to propose legislation and manage parliamentary agendas. In the case of the EU there is, of course, no discernible, single parliamentary government at the federal level – a constitutional issue well beyond the scope of any interinstitutional agreement.

One may recall that Parliament has rights under the Lisbon Treaty to propose the reform of its own electoral system (Article 14(2) TEU), as well as to propose amendments to the Treaties themselves (Article 48(2) TEU). MEPs have indeed toyed with both issues, but without much coherence or obvious conviction.

Article 225 TFEU, meanwhile, gives Parliament the right to invite the Commission to initiate a new act for the purpose of implementing the Treaties. The provision is often used (25 times in the 2019-24 legislature) and works fairly well, with the Commission able and willing to accommodate a version of Parliament's proposal in its work programme. The Council also enjoys a similar indirect right of initiative (Article 241 TFEU). By thus balancing the two co-legislators, the Commission's prerogative to propose laws – a key element of the Community method – is maintained (Article 17(2) TEU).

In the negotiation of the revised Framework Agreement steps were taken to improve consultation between Parliament and Commission before the formal launch of a legislative initiative report, to encourage more rigorous preparation by both parties, and to strengthen follow-up. Parliament agrees to improve its assessment of the potential administrative burden and financial implications of its legislative initiatives; the Commission agrees to analyse the "European added value" and the "cost of non-Europe" in its assessment of Parliament's proposals.

Both sides aim to reduce the number of idle or repetitive parliamentary questions to the Commission, not least with the aim of reducing costs. No changes are sought by either party to the way the EU treats its national parliaments: no joy here for COSAC. Parliament agrees to consult the Commission in advance of making relevant changes to its own Rules of Procedure and to hear on the matter the Commissioner responsible for inter-institutional relations (currently Maros Sefcovic).

International agreements

With respect to Parliament's role in the scrutiny and/or endorsement of EU international agreements, MEPs have long complained of playing second fiddle. Article 218 TFEU prescribes important and specific roles to the Parliament as the Commission, under a mandate from the Council, negotiates and concludes a variety of agreements with third countries. The revised Framework Agreement reinforces Parliament's status specifically in the receipt of timely information from the Commission. (An updated annex is intended to stop the leaking of confidential information.) Parliament's role is reassured with respect of the provisional application of "mixed agreements", and with regard to the negotiation of political, "non-binding", memoranda of understanding – for instance with Turkey and Tunisia over migration.

Ironically, the negotiation of the lamentable Trade and Cooperation Agreement with the UK is taken by both Commission and Parliament to establish a "gold standard" in the conduct of the EU's international relations: chapeau Michel Barnier.

The budget

Parliament made less progress over its scrutiny of the implementation by the Commission and Member States of the annual budget and the Multiannual Financial Framework. Here the Commission is constrained by its trilateral obligations also to the Council, the other arm of the budgetary authority (Article 324 TFEU), as well as by the prevailing unanimity rules.

The work programme

The tripartite nature of the Interinstitutional Agreement on Better Law-Making is said by the Commission to prevent it giving Parliament privileged access to its draft work programme. The Commission also observes that Parliament has failed in recent years to pass a resolution setting out its own priorities; it complains that participation by MEPs at relevant meetings – the "structured dialogue" – is low; and it regrets that Parliament is often very slow in assigning dossiers to committees and appointing rapporteurs. Von der Leyen's intention to defend the Commission's right of legislative initiative is evident. The Commission refuses to take responsibility for decisions of the Council, especially taken under the unanimity rule, with which Parliament disagrees.

Parliament is on stronger ground in objecting to the more frequent recourse by the Commission (and Council) to Article 122 TFEU as the basis for urgent procedures when a fast-tracked measure under the ordinary legislative procedure could have been used. Parliament is merely informed in these cases but has no vote. Parliament has indeed recently taken the Commission to the Court of Justice alleging misuse of Article 122 in the case of the defence fund SAFE. A new point is added to the Framework Agreement that largely meets Parliament's objections to being cut out of these exceptional legislative and budgetary emergencies.

More generally, continuing work is required to improve the quality of EU law-making, to include and digest impact assessments, and to conduct effective post-legislative transposition into member state law.

Participation and protocol

Both the Commission and Parliament are concerned with livening up parliamentary proceedings. Coordination of the agendas of the two parties is clearly complicated. Parliament's complaints about the patchy presence of relevant Commissioners in debates, often held at the last minute, should be weighed against the sparse attendance of MEPs in plenary, at question time, and even in committee. This used not to be the case. But the lack of a whipping process within the political groups and the more contested political environment across the House makes poor engagement by many MEPs a difficult problem to resolve.

What about the Council?

The Council, meanwhile, looks on at the exercise with some anxiety. The EU's eurosceptic governments dislike the Commission and despise the Parliament, but the Council is singularly ill-equipped to prevent a cabal between them. The rotating presidency of the Council means instability and discontinuity of approach on all matters constitutional.

The European Council, for its part, does not have a grip on the Council of ministers. But its own role has expanded significantly in the past few years of multiple crises. It strays beyond its non-legislative functions as laid down in Article 15 TEU. It meets much more often than the four times a year foreseen, in a variety of formats.

European Council President Antonio Costa has been more concerned with maintaining a confederal stasis than in steering a federal strategy. If he were wise, however, he would seize the example of the Framework Agreement to offer Parliament a radical upgrade of its operational relationship with the European Council. After all, the obligation to practice "mutual sincere cooperation" applies to the European Council just as much as the Commission.

Costa might agree, for example, to provide MEPs with better access to relevant documents in accordance with general EU practice. He could publish meeting minutes and offer to answer both oral and

written parliamentary questions about the activities and political positions of his institution.

Some progress

Overall, the new Framework Agreement includes some useful steps forward for the Parliament, especially in foreign affairs. The Commission should avoid using Article 122 as a way of evading the ordinary legislative procedure. The new Agreement will be used by MEPs to justify their complaints against the Commission for being either partial towards the Council's position or simply inactive during tricky legislative trilogues. It rather strengthens the Commission's hand in assisting Parliament at an early stage of the launch of an own legislative initiative.

Given the constitutional impasse that the European Union finds itself in, this modest institutional reform is probably the last we will see during this mandate – unless, that is, the European Council is tempted to seek a reset of its own relations with Parliament. Better coordination between all the institutions and more transparency would improve EU governance and bolster democratic legitimacy. Just when we need it.

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