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EUROPEAN PARLIAMENT'S CONTROL OF THE EUROPEAN COMMISSION – PROCEDURAL ASPECTS

ABSTRACT

The purpose of this work is to give legal analysis of the procedures for the political control of the European Commission by the European Parliament. The author has used the legal method for the analysis of legal acts which introduce in the EU political system the tools of political control which have been known in different systems of government based on the separation of powers. The use of comparative method has to facilitate the answer to the question whether the EU lawmaker could and should use the instruments of the political control which have been prescribed in the national legal systems.

Well-known instruments of the political control, such as parliamentary questions, inquiry, and the vote of no confidence, have been prescribed in different acts. However, legally prescribed conditions for the use of these instruments are usually quite strict. It seems that they exist only as legal and political possibility but they don't have any practical value. Therefore, it could be said that the political control of the Commission by the Parliament is more an idea than reality.

Key words: *European Union, European Parliament, European Commission, Political Control, Parliamentary Questions, Committees of Inquiry, Vote of No Confidence*

1. INTRODUCTION

The European Parliament has the right to control the European Commission. This control, which is political in nature, has different aspects, and includes different procedures. The purpose of this work is to analyze these procedures, and to answer the question what is the democratic capacity of this control.

The control ranges from the right of the MEPs to ask questions, and to make inquiries, to the duty of the Commission to submit reports to the European Parliament, and finally the right of the Parliament to vote no confidence in the Commission.

The purpose of this work is to analyze legal provisions which enable the Parliament to control the work of the Commission, to explain procedural aspects of

the political control, and to show its strengths and weaknesses. The issue of the political control of the Commission by the Parliament can be observed from different angles. The legal and the political angles are the most important, and they are tightly interdependent. Although there can be some unwritten conventions on the political control, it is mostly prescribed in different legal acts. Our intention is to analyze legal acts which are relevant at the level of the European Union. This is important since the legal provisions constrain the activities of both institutions, and set the legal basis for the political control. Of course, the legal framework is not a value in itself since it depends on the interests and political attitudes of the political actors in the European Union. Therefore, the main scientific method which has to be implemented in this work is the legal method. It is going to be complemented with the comparative method since our intention is to compare the legal acts of the European Union with the legal acts of its Member States. This is justified for two reasons. First, since the Member States have established or joined the European Union, it is natural that the EU law took over some principles of the relationship between the legislative and the executive of these states. Second, since the legal provisions in the Member States are not the same in all aspects, it is useful to analyze them in order to find those with the best possible democratic capacity for the European Union institutions.

Of course, it is not enough to know the legal framework since the practice often deviates from the legal provisions. It is important to explore how the institutions of the Union really function. Therefore, the political method has to be used. Since this work is based primarily on the legal analysis, the political method is going to be used only as an auxiliary method.

The political system of the European Union is based on the principle of the separation of powers. It is one of the basic notions of the constitutional as well as political systems in all the states of the European Union. Therefore, it has to be one of the pillars of the European Union's political system. Of course, there is much space and reasons for the criticism of the very idea of the separation of powers. However, the purpose of this work is not to criticize the very idea but to explore the main aspects of its fulfillment regarding the relationship between the European Parliament and the European Commission.

2. LEGAL BASIS

The legal basis for the European Parliament's control over the executive is laid down by the treaties establishing the European Union. Article 17 of the Lisbon Treaty prescribes the political control of the European Parliament over the Commission. However, the procedural aspects of this control are also very important

since they influence the content and the possibility of the fulfillment of the principle of the political control. Namely, the provisions on the procedure don't just give the answer to the question about the steps that have to be taken in order to realize the political control. They have a substantial importance since they influence to some extent the very relationship between two institutions.

The Lisbon Treaty follows the tradition of the European constitutionalism since the European constitutions contain only principles on the relationship between legislature and executive. However, much of the provisions, including those on procedural aspects of the political control, by their very nature can not be contained in the constitutions or the treaties.

Some other means of the political control have been prescribed too. For example, Article 226 of the Treaty on the Functioning of the European Union (ex Article 193 of the Treaty on the European Community) prescribes the establishment of the temporary committees of inquiry, on the request of one quarter of the members of the Parliament. Article 230 (ex Article 197 of the TEC) contains provisions on the oral or written questions put to the Commission by the members of the Parliament. The provisions on the motion of censure are contained in the article 234 (ex Article 101 of the TEC), as well as in the article 17 of the Treaty on the European Union. First, the article 234 prescribes that the European Parliament can not vote on the confidence before three days expire between the submitting the motion and the voting itself. Second, for the resignation of the Commission to happen, two-third majority of the votes cast, including the majority of the component members of the Parliament is necessary. The Treaty also regulates what is going to happen in this case: the Commission will be obliged to resign, while it will continue to operate, dealing only with current tasks until the election of the new Commission. The Treaty also regulates that the term of office of the new members of the Commission shall expire on the date on which the term of office of the members of the Commission obliged to resign as a body would have expired.

It seems that the provisions in the treaties are relatively detailed, at least concerning some of the means of the political control. This is the case with the provisions which regulate the vote of no confidence in the Commission, and, to lesser extent, with the provisions on the committees of inquiry. On the other hand, some of the instruments for the political control, such as the case with the parliamentary questions, have just been briefly regulated. These provisions have a constitutional character. Therefore, it is necessary for them to be included into the treaties or at least the Parliament's Rules of Procedure, which have a character of the constitution in material sense.

The Rules of Procedure of the European Parliament are very important legal source of the political control of the Commission. In their Title V („Relations with other Bodies"), Article 119 is dedicated to the motion of censure on the Commission. However, it is only one of the aspects of the relationship between the Parliament and the Commission since the political control means much more than mere motion of censure. It is only the final proof that there is no political confidence of the Parliament regarding the Commission. Before it happens, there are some instruments and provisions which enable Parliament to control the work of the Commission. These instruments also have to be enacted by legal acts, such as the Rules of Procedure. Chapter 3 of the same title of the Rules is dedicated to the parliamentary questions, an institute which is well-known in the parliamentary systems. The Annex II of the Rules contains criteria for questions and interpellations for written answers.

As it could be seen, the legal basis for the political control of the Parliament over the Commission is well developed. It includes the usual means of the control. Now, it is important to understand the content of these provisions, particularly since it is not possible to claim that the relationship between the institutions of the European Union is based on the principles of the parliamentary system, although there are some of its features.

3. THE RIGHT ON INFORMATION AS A MEANS OF THE POLITICAL CONTROL

The right on information of the Parliament is the first degree of the political control.[1] First of all, the Parliament has to have the information on the work of the Commission in order to control it and formulate attitudes on its work. Second, the right on information of the Parliament can lead to the political control of the Commission directly or implicitly.[2] Namely, any question of a MEP implicitly can have negative

[1] „Most studies of PQs have tended to focus on the issue of accountability and control. A series of country specific studies indicate that PQs are somewhat useful for holding the government to account." – Martin, S., *Parliamentary Question, the Behaviour of Legislators, and the Function of Legislatures: An Introduction*, Journal of Legislative Studies, Vol. 17, No. 3, 2011, 259–270, p. 261; „Parliament had a number of powers described as 'supervisory' in the Treaty consisting of the right to question the Commission (orally or in writing), to debate its activities and, ultimately, to adopt a motion of censure on it." – Corbett, R., *The European Parliament's Role in Closer EU Intgeration*, Palgrave Macmillan, Basingstoke and New York, 2001, p. 124; „A parliamentary question is, by definition, a request for information. Regular questioning can by used by parliament to hold the government to account." – Yamamoto, H., *Tools for Parliamentary Oversight, A Comparative Study of 88 National Parliaments*, Inter-Parliamentary Union, Geneva, 2007, p. 49.

[2] Some authors argue that this is particularly important for the national opposition parties. – Proksch, S.-O., Slapin, J.B., *Parliamentary questions and oversight in the European Union*, European Journal of Political Research, 50/2010, 53–79, p. 54.

political consequences for the Commission,[3] and can be used as a trigger for further investigation of its policies although the question itself can not have so sharp negative political consequences such as the vote of no confidence.[4] The parliamentary questions are particularly important for the national opposition parties, since it is one of few means which they have at their disposal for the control of the Commission, or, to be more precise, for the access to information. The parliamentary questions are even more important if we take into consideration another political factor – political groups which are active in the European Parliament. Namely, the parliamentary questions give the freedom to the MEPs to communicate with the Commission without previously getting explicit permission from their political group.

The Rules of Procedures differs between the questions for oral answers with debate, and the questions for written answers.[5] According to the Rule 128 of the Rules of Procedure, "Questions may be put to the Council, the Commission or the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy by a committee, a political group or Members reaching at least the low threshold with a request that they be placed on the agenda of Parliament". Comparative analysis show that it is usual for the parliamentary questions to be posed by any member of the parliament even when he/she doesn't have support for such an activity from any other member of the parliament. It is quite natural since all members of the parliaments have the right to be informed about the activities of the executive, which is necessary prerequisite for successful fulfillment of their duties.

The questions have to be submitted in writing to the President. He/she will immediately refer them to the Conference of Presidents,[6] who will decide whether the question will be placed on the agenda of the Parliament. If this doesn't happen during three months after the question has been submitted, it will lapse. It seems that the right to ask the question is limited, and that it depends to some extent on the will of the Conference of Presidents. However, it is important for the MEPs to have unlimited right to submit parliamentary questions. Maybe this could create

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3 „It is this instrument that gives MEPs and their parties the most direct access to oversight." – *Ibid.*, p. 56.

4 The purpose of the parliamentary questions can be different, as we shall see later. Theoretically speaking, the authors define 14 different purposes of the parliamentary questions. – Russo, F., Wiberg, M., *Parliamentary Questioning in 17 European Parliaments: Some Steps Toward Comparison*, The Journal of Legislative Studies Vol. 16, No. 2, June 2010, 215–232, pp. 217–218.

5 In practice, there are four times more written than oral questions. – Dann, Ph., *Looking through the federal lens: The Semi-parliamentary Democracy of the EU*, Jean Monnet Working Paper 5/02, New York, 2002, p. 30.

6 It is composed of the presidents of the political groups in the Parliament.

a situation that too many questions would be submitted which would influence the efficacy of the Parliament's proceedings. However, it is "an accident" of the parliamentary systems which has to be accepted as something unavoidable.

Questions must be referred to the addressee at least a week before the sitting of the Parliament begins, in order for the Commission to have enough time to prepare its answer. The procedure can be ended with voting. As some authors point out, the voting on the parliamentary questions is possible in some parliaments. Therefore, it is not unusual that the Rules of Procedure of the European Parliament prescribes the possibility of voting on the oral questions.[7] If one takes into consideration the fact that the debate is also a part of the procedure, the conclusion is that this is relatively powerful means of control. It is interesting that small number of European parliament's contain this possibility in the respective rules of procedure.[8]

The Rules of Procedure also contains the provisions on the question time. The MEPs have the chance to ask the Commissioners questions about particular horizontal theme(s) which are decided by the Conference of Presidents one month before the session. The number of the Commissioners who are going to be present at the session is limited to two, or three, and they are in charge of the themes which are at the agenda. The problem with the question time is threefold. First, the MEPs can't ask all kind of questions since they are limited by the decision of the Conference of Presidents. This could be observed as negative solution since the leaders of the political groups in the Parliament still have the greatest influence in the process of questioning the Commission for they decide about the issues which the Commission can be questioned about. The limitation comes also from the fact that two or three Commissioners can't be competent for answering all the questions. Of course, the reverse solution would be more in accordance with the principle of democratic control – all the Commissioners would attend the sessions of the Parliament and would be obliged to ask the questions posed to them.

The national parliaments regulate the issue of the question time in different ways. In some countries, the MPs can ask the questions at any session of a parliament,[9] while in others, they can do it at the end of each month,[10] or on particular days.[11]

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7 Here, the Rule 123 (2) to (8) shall be applied *mutatis mutandis*.

8 Russo, F., Wiberg, M., *op. cit.*, note 3, p. 222.

9 See Article 132 of the Rules of Procedure of the Croatian Parliament; Article 258 of the Rules of Procedure of the National Assembly of the Republika Srpska.

10 In Serbia, for example. – See: Petrov, V., *Parlamentarno pravo* (*Parliamentary Law*), Pravni fakultet Univerziteta u Beogradu, Beograd, 2010, p. 154.

11 The members of the Bundestag can put questions to the Federal Government on Wednesdays in weeks of sittings (Rules of Procedure of the Bundestag, Annex 7, see also Annex 4 I (1)).

Another procedural aspect of the question time is quite usual: it is prescribed that a MEP has the right to ask the question, and to pose the additional question after the answer of a Commissioner, while the latter has the right to clarify his/her answer, after a MEP asks his/her additional question.

The written questions are much more appropriate, since they enable MEPs to ask questions at any time, and to any Commissioner. The Article 130 of the Rules of Procedure prescribes that each MEP has the right to submit written question to the Commission. An MEP has the right to get the answer in written form. The question has to be submitted to the President of the Parliament who will decide on its permissibility. Each MEP has the right to submit up to 20 questions during the three months period. The answer has to be submitted for three or six weeks, depending on the character of the question (priority or non-priority question). In our opinion, this period is too long, and one could fear that the very submitting of the question could lose its purpose. This is particularly so if one takes into account the fact than in most national parliaments this length of time is considerably shorter (from six days to a month).

As it could be seen, there are no spontaneous questions. In our opinion, they should be prescribed, since in that way the MEPs would get more efficient way to receive information and to control the Commission. Sometimes the MEPs need immediate information, or they want to immediately point out the issues which are in the competence of the Commission.[12] It is true that written questions are principally more appropriate. They enable a Commissioner to give more detailed information, since he/she often can't give detailed answer immediately. However, even in the case of spontaneous questions, it would be possible for a Commissioner to give just a brief answer, with the duty to submit detailed written or oral answer in precisely defined time framework.

There are two more instruments for information. These are minor interpellations for written answers (Rule 130a), and major interpellations for written answer with debate (Rule 130b). The first ones are based on the questions for written answer, which can be submitted by a committee, a political group, or at least five per cent of the members of the European Parliament. Using these questions, the abovementioned subjects can submit to the Commission questions on concretely defined issues. The addressee has to submit answer for two weeks, although this deadline could be prolonged if necessary after the consultation of the President with those who have submitted the question. It has to be stressed that the role of

[12] We agree with the authors who claim that spontaneous questions ar useful for those members of parliamet who want to stress some failures of the government or of some of its members. – Russo, F., Wiberg, M., *op. cit.*, note 3, p. 221.

the President in the case of this kind of questions is limited since he/she only has the right to assess whether these questions are generally in accordance with the Rules of Procedure.

The major interpellations for written answer with debate means that the same subjects as the abovementioned can submit the questions and that the debate on the answer is possible if requested by a committee, a political group, or at least five per cent of the component members of the Parliament. This kind of interpellation is similar to the interpellation which is known in the national parliaments. The difference is that the debate can't have as its consequence the vote of no confidence. Namely, the Rules of Procedure prescribes the possibility that the discussion on the interpellation finishes with the adoption of a resolution, since the Rule 123 can be used in this situation. However, the Rule 123 doesn't mention the possibility of the vote of no confidence.

It is a departure from the notion of parliamentarism, since the essence of the interpellation is not only that the members of a parliament get information but also to show their dissatisfaction with the government's work. This dissatisfaction can have as its eventual consequence the vote of no confidence. First of all, the interpellation means getting information about a problem of general interest, not about a concrete issue. Second, the interpellation means the possibility to discuss about the issue. Third, it means the possibility to influence the actions of a government directly.[13]

The parliamentary questions have been used extensively during past few decades.[14] The fact that parliamentary questions have been used more after the introduction of the direct elections of the Parliament,[15] leads to the conclusion that the MEPs use them as a means of political control, as well as a means for promotion of their political attitudes. If the parliamentary questions have this important political role and nature, the procedural aspect of their utilization has to be clearly prescribed. It has been argued that the MEPs who belong to the national opposition parties use them more often than the MEPs of the ruling parties.[16] It is quite understandable why it is the case. The members of national opposition parties don't have many possibilities to get information about the work of the Commission, since they

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13 Sánchez de Dios, M., Wiberg, M., *Questioning in European Parliaments*, Journal of Legislative Studies, Vol. 17, No 3, 2011, 354–367, p. 355, 364.

14 For example, the number of written questions to the Commission rose from 1.647 in 179 to 5.327 in 2006, while the number of oral questions rose from 42 in 1979 to 87 in 2006. – Simić, J., *Evropski parlament akter u odlučivanju u Evropskoj uniji*, Službeni glasnik, Beograd, 2010, pp. 145–146.

15 Corbett, R., *op. cit.* note 1, p. 124.

16 Proksch, S.-O., Slapin, J.B., *op. cit.* note 1, p. 54.

don't govern in their respective national states. Without information, these MEPs can't participate in the work of the Parliament successfully. Therefore, parliamentary questions are real means of the control, as some authors point out regarding their meaning in the national parliaments.[17] The significance of the parliamentary questions, as a tool in the hand of the national opposition parties, is even bigger if one has in mind the way of the selection of the members of the Commission. They are proposed by the national governments, and then agreed by the President of the Commission.[18] The MEPs practically don't have an influence on their nomination. Therefore, it is very important for them to get a chance to submit questions to these Commissioners, since parliamentary questions can be the only means of control of the work of individual Commissioners, as well as of the entire Commission.

It is also interesting to stress that the euro-skeptical MEPs use parliamentary questions more often than other MEPs.[19] This, of course, doesn't' have anything with the procedures prescribed by the Rules of Procedure, since the right to submit parliamentary questions is equal for all MEPs. On the other side, it seems that the euro-skeptical MEPs use the parliamentary questions not only for the purpose of information or control but more as a means of promotion of their political position. This doesn't mean promotion their attitudes to the wide layers of citizens, but more in narrower circles of political elites. Namely, for the MEPs it is much harder to use the parliamentary questions as a means of their promotion in wider audience than it is the case for the national parliamentarians. Some questions have to be published, which is the case with the questions for written answer, which have to be published at the Internet page of the Parliament (Rule 130 (7)). It is the same with the minor interpellations for written answer (Rule 130a (2)), and major interpellations for written answer with debate (Rule 130b (5)). These rules have a positive role in a sense that they enable even ordinary citizens to be informed on particular issues in the competences of the Commission, as well as on the relationship between the Parliament and the Commission. However, it can't be expected that this would be really useful for the citizens since they will not find out more about the work of MEPs by simply following the Internet page of the Parliament.

The MEPs' actions depend mostly on their party affiliation and not on their nationality. They act more as representatives of their political parties, and European

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17 Sánchez de Dios, M., Wiberg, M., *op. cit.* note 11, p. 359.

18 Hix, S., G. Noury, A., Roland, G., *Democratic Politics in the European Parliament*, Cambridge 2007, p. 17.

19 Martin, S., *op. cit.* note 1, p. 261.

political groups.[20] This fact influences the character of the parliamentary questions as a tool for political control even more than they could be understood merely as a tool for getting information. Considering this fact, it is not surprising that the Commission decided to adopt new arrangements for handling with the questions.[21]

4. THE COMMITTEES ON INQUIRY

The European Parliament has the right to control various institutions through committees of inquiry.[22] This power of scrutiny[23] has been particularly important after the signing of the Treaty of the European Union.[24] The very Parliament considers the committees as exceptional instruments of political control.[25] The committees can be set up in order „to investigate alleged contraventions or maladministration in the implementation of Union law" (Rule 198 (1) of the Rules of Procedure).[26] First of all, this kind of activity can't be limited to the relationship of the Parliament and the Commission, although it includes it. Second, these committees are ad hoc bodies, which can be established if required by one-fourth of MEPs. Third, they can't be established for the discussion on the issues of general policy, but only about concrete issues, and only when there is a doubt on violation of the law.

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20 Hix, S., *Parliamentary Behavior with Two Principals: Preferences, Parties, and Voting in the European Parliament*, American Journal of Political Sciences, Vol. 46, No. 3/2002, 688–698, p. 689.

21 „The Commission at the same time decided on new arrangements for handling parliamentary questions (faster answers and the attribution of authorship to responsible Commissioners, which had not been the case in the past) (...)" – Corbett, R., *op. cit.* note 1, p. 83.

22 „While it set up commissions of inquiry between 1993 and 1999 to look into suspicions of maladministration and violation of community regulations (concerning the circulation of goods and the 'mad cow' epidemic), in 1999, in the face of suspicions of fraud, nepotism and maladministration involving members of the Santer Commission, the EP preferred to delegate its powers of review to a Committee of Independent Experts." – Pinelli, C., *The Powers of the European Parliament in the New Constitutional Treaty*, The International Spectator 3/2004, 83–96, p. 85.

23 „A parliamentary inquiry is the reflection of parliament's constitutional role in overseeing the government." – Yamamoto, H., *op. cit.* note 1, p. 39.

24 Sobiech, A., *The European Parliament and the European Commission: Institutional Changes*, Tilburg Foreign L. Rev. Vol. 8, No. 281, 1999-2000, 281–296, pp. 292–293.

25 See Preamble of the Proposal for the Regulation of the European Parliament on the detailed provisions governing the exercise of the European Parliament's right of inquiry and repealing Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission.

26 „'Contraventions' in this sense mean violations of EU law, while 'maladministration' includes, inter alia, administrative irregularities, omissions, abuses of power, unfairness, malfunction or incompetence, discrimination, avoidable delays, refusal to provide information, and negligence." – Poptcheva, E.-M., *Parliament's investigative powers, Committes of inquiry and special committees*, European Parliamentary Research Service, 2015, p. 2.

The Parliament decides on the creation of a committee, on the proposal of the Conference of Presidents, after discussion on the reasons for its creation. In our opinion, this provision is not quite acceptable. First of all, a serious condition for the creation of a committee, namely relatively high number of MEPs who have to propose its creation, has been prescribed. This is a condition which most of the political groups in the Parliament can't fulfill if they act alone since they don't have strong enough caucus.[27] Therefore, if the Parliament didn't wish to allow to only one MEP to submit the motion for establishing of a committee,[28] it could at least allow it to political groups. It could be understood that this condition has been prescribed in order to prevent baseless proposals for inquiry. However, such strictness could cause the opposite effect, namely inability of most MEPs to use this means of control. Second, the Parliament has the right to decide if a committee has to be created. It seems that this Parliament's right would be justified if less number of MEPs would be given the right to propose the creation of a committee. In a situation when this right has to be exercised by relatively high number of MEPs, it is inappropriate that the Parliament has the right to decide on the initiative for creation of a committee, since parliamentary majority could use its dominance to prevent it. In some national legal systems, it is possible that a committee is created simply by the initiative of certain number of members of the parliament, without the approval of the parliament.[29] It is a good solution, since it enables parliamentary minority to use the inquiry as a means of control. It is in the nature of the inquiry to become a means of protection against the executive which could practically become unaccountable. Therefore, the solution in the EU law is not appropriate. On the other hand, the good thing is that the Conference of Presidents can't change the subject of the inquiry. If this could be the case, the

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27 At the moment, only two biggest political groups have sufficient number of MEPs to propose the creation of a committee. All other political groups have to find MEPs from other political groups in order to have enough MEPs who would have the right to make a proposal for the creation of a committee.

28 As it has been noted, in most countries even a single MP may submit a motion to set up of a committee. – Yamamoto, H., *op. cit.* note 1, p. 41.

29 European national parliaments contain different provisions on this issue. For example, the Rules of Procedure of the French National Assembly prescribes in the Article 141 (1) that the establishment of a committee will be the result of the favourable vote in the Assembly. In Italy, according to Article 141 of the Chamber of Deputies Rules of Procedure, the Chamber decides to carry out an inquiry. The same solution has been adopted in Austria. On the contrary, according to Article 44 of the Basic Law of Germany, the Bundestag shall have the duty to establish the committee of inquiry on the request of one quarter of its members. The Constitution of Latvia prescribes in its Article 26 that a committee of inquire will be set up on the request of at least one third of MPs. In Portugal, according to Article 181 of the Constitution, „the parliamentary committees of enquiry are compulsorily set up whenever so requested by one-fifth of the members of the Assembly entitled to vote, up to the limit of one per member and per legislative session." In Slovenia, according to article 93 of the Constitution, the National Assembly has to order parliamentary inquiry if it is required by one-third of the MPs.

MEPs would not have any guarantee that their proposal would be adopted as they submitted it.

The composition of the committee has to be decided by the Parliament, at the proposal of the Conference of Presidents, while its members have to belong to different political groups. This is quite natural solution, which has to be adopted in order to prevent possible misuse of this instrument of control.

Although the committees have the right to investigate, to call witnesses, to require documents, or to hold hearings, they can't oblige the officials to appear before them in order to testify, since the officials can authorize subordinated officials to appear before the committee. The Commission (just like other institutions) has the right to refuse the cooperation with the committee on the ground of secrecy or security. These provisions, however, could be misused in order to prevent a committee from doing its job. If an official has the right not to appear before a committee, the importance of the committee inquiry decreases. On the other hand, the problem also lays in the fact that the Parliament doesn't have at its disposal sanctions against those who refuse to cooperate with it. The importance of the inquiry could be understood if one moves from the legal to the political field. The absence of legal sanctions could be at least partly compensated with the political sanction, i.e. the threat of the Parliament that the Commission could be voted out of office in the case of refusal of cooperation.[30] However, it is hard to believe that this kind of threat can have serious impact on the relationship between the Parliament and the Commission except in some controversial cases when doubts are so serious that the Commission could be faced with the vote of non-confidence. In "normal" situations, when there are no serious controversies, parliamentary inquiry hardly can have the removal of the Commission as its consequence.

Another problem could appear at the end of the procedure of investigation. Namely, a committee has to submit the report within 12 months, although this can be extended twice for the period of three months. The adoption of recommendations to the Commission can be the final result of the inquiry. However, the Commission (or any other institution) is not legally binding to adopt these recommendations.

The European Parliament adopted in 2012 new Proposal for the Regulation, which made some changes.[31] In 2014, the Parliament adopted legislative resolu-

[30] „In this sense, in 1997, the EP threatened the Commission with a motion of censure if it did not follow up on the recommendations of the BSE committee of inquiry in due time." – Poptcheva, E.-M., *op. cit.* note 22, p. 4.

[31] Proposal for the Regulation of the European Parliament on the detailed provisions governing the exer-

tion, on which discussion had to be continued with the Council and the Commission. The latter expressed fears that the regulation would introduce too strong legal instrument in the hands of the Parliament for control of the Commission's activities. According to the regulation, the committee of inquiry can: hear members of Union institutions or members of governments of the Member States; obtain evidence from officials or other servants; request experts' reports; request documents; etc. (Article 12 (1)). The committee has the right to get any document which it requests if it finds that this is necessary for the investigation. The committee also has the right to request from any person who is a resident of the Union to participate in a hearing before it (Article 15 (1)). If there is a committee's request, the Commission shall designate one or more of its members to appear before a committee and testify. So, if there is a committee's request, the Commission can't refuse to cooperate with it.

5. VOTE OF NO CONFIDENCE

The power of the European Parliament to vote no confidence in the Commission is its final and the most important means of political control. It has been introduced by the Treaty of Rome (1958),[32] and has been strengthened since then. The procedure of vote no confidence has to be analyzed in the connection with the procedure for the Commission's election. The procedure is such that the Council, acting by qualified majority,[33] nominates the president of the Commission, and then he/she presents his/her program to the Parliament. After that, the discussion begins. The Council participates in the discussion as it has made this nomination. The Parliament confirms the President of the Commission by the majority votes of all MEPs. The elected President of the Commission and the Council have to agree on the other members of the Commission. The list of candidates for the post of Commissioners shall be made after the consultation with the Member States. The nominated members of the Commission are then subjected to hearings, after which the Parliament will elect them as a body. After that, the Council shall approve the Commission.

According to Article 234 of the Treaty on the Functioning of the European Union, the Parliament has the right to vote no confidence in the Commission. The Parliament can vote on the motion of censure at least three days after it was submitted.

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cise of the European Parliament's right of inquiry and repealing Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission.

[32] Article 144. Also, according to the article 206 B of the same treaty, the Parliament can decide on the budgetary responsibilty of the Commission, on the recommendation of the Council, adopted by the qualified majority.

[33] See Article 17 of the Consolidated Version of the Treaty on the European Union.

The debate on the motion can start at least 24 hours after the MEPs have been informed that it had been submitted. The vote on the motion can be undertaken at least 48 hours after the debate started. These provisions seem quite logical. The MEPs need some time to prepare for discussion, to discuss about the motion, and to examine its reasonableness. Since the motion shall be forwarded to the Commission, it needs time to prepare its defense, and to try to convince the Parliament not to vote in favor of the motion.

The decision on motion has to be made by the two-thirds majority of the votes cast, which includes votes of the majority of all members of the Parliament. The Commission will be obliged to resign, but will continue to deal with everyday business until the new Commission is elected. Although known, it is quite unusual solution for the government to be voted out of office by two-thirds majority.[34] Since it is very hard to achieve this majority,[35] the Commission can be sure that it would be hardly possible for the Parliament to use this means of control.[36] The provision, according to which the vote of no confidence would lead to the Commission's resignation if the absolute majority of MEPs vote it, would be better solution. The vote of no confidence would be a realistic possibility in the case of the conflict between the Parliament and the Commission. One could understand why different majorities in the Parliament have been prescribed for the election and the removal of the Commission. The election by absolute majority has been prescribed in order to facilitate the election of the Commission. On the other hand, the two-thirds majority for its removal has been prescribed in order to prevent too often initiatives for removal, even when there is no objective chance or reason for the removal. However, such a strict condition for the removal doesn't seem justified although it contributes to the stability of the Commission. Namely, the Commission doesn't have to be so stable that it is practically impossible for the Parliament to remove it.

The Rules of Procedure of the Parliament contains more detailed provisions on the vote of no confidence. According to Rule 119, one tenth of the MEPs may

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[34] It seems that it is the case in 10 per cent or even less number of parliaments. – See: Yamamoto, H., *op. cit.* note 1, p. 67.

[35] „In practice, this means a large coalition must be in favour of sacking the Commission, and since the Commission is an oversized coalition in the first place, putting together a two-thirds coalition to remove the Commission is very difficult." – Hix, S., G. Noury, A., Roland, G., *op. cit.* note 17, pp. 183–184.

[36] This is one of the reasons why the threat of vote of no confidence has been described as a practically useless „nuclear bomb". – See: Dann, Ph., *op. cit.*, note 5, p. 24. Some authors argue that this right of the Parliament is similar to the right of the US Congress to recall the President than on the right of the European parliaments to depose the government. – Hiks, S., *Politički sistem Evropske unije*, Službeni glasnik, Beograd, 2007, p. 74.

submit the motion of censure. But, if a motion has been voted on in preceding two months, a new one may be submitted by one-fifth of the MEPs. It seems that these conditions are not too strict, which is positive since the one-tenth is a reasonable and relatively easy to achieve number of MEPs who have the right to submit the motion. One could argue that this condition is too easy to achieve, which could be misused by small political groups, or even groups of individual MEPs who just want to promote themselves instead to do serious parliamentary work.[37] This could be possible but it doesn't mean that conditions for submission of motions have to be more rigorous. Namely, even if motions are submitted for strictly political or propaganda purposes, which don't have direct causes in the Commission's policies, the discussion which follows the motion could be useful in the sense that it could reveal weaknesses of the Commission's political positions. Second, if the conditions for the submission of motions would be more rigorous, it could prevent MEPs to submit the motions even when they don't have purely propaganda reasons for the submission. It also has to be stressed that the MEPs usually claim that the Commission lacks the competence in a sphere of its action which means that strictly political arguments for the censure don't prevail,[38] which is quite different than in the national parliaments.

The Commission is responsible to the Parliament as a body. The EU law recognizes only the collective responsibility of the government.[39] The individual responsibility of the Commissioners has not been prescribed in any treaty. Individual responsibility of ministers is one of the features of most parliamentary systems. Although there are some systems where only collective responsibility is known, it is not in the nature of the very parliamentary system.[40] One could argue that the European Union doesn't have the parliamentary system of government. Nevertheless, it is based on the principle of separation of powers, and of the principle of

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37 „The censure may also be used in another political perspective, which is closer to what the French political scientist Georges Lavau called the 'tribunitian function' of the opposition. As the Rules of Procedure of the EP allow one tenth of its members to present a censure motion, minor groups, opposed to the Commission in general, or even to European integration in itself, have sometimes used this institution to make their protesting voice heard. This was the case with two motions tabled by an extreme-right wing French MEP in 1990 and 1991." – Magnette, P., *Appointing and Censuring the European Commission : The: Adaptation of Parliamentary Institutions to the Community Context*, European Law Journal, Vol. 7, No. 3, 2001, pp. 292–310.

38 *Ibid.* Some authors stress that there is no firm conception of the nature of the responsibility of the Commission to the Parliament, namely whether it is political responsibility or responsibilty for conductiong the administrative affairs. – Simić, J., *op. cit.*, note 14, p. 140.

39 Kohler, M., *European Governance and the European Parliament: From Talking Shop to Legislative Powerhouse*, Journal of Common Market Studies, Vol. 52, No. 3, 2014, 600–615, p. 606.

40 According to Yamamoto, in 53 out of 88 analyzed parliaments, individual responsibility exists. – Yamamoto, H., *op. cit.* note 1, p. 68.

the political responsibility of the Commission to the Parliament, which is known in both systems of government based on the separation of powers with the government as one of the executive powers (parliamentary and semi-parliamentary systems). It is in the nature of the principle of political responsibility that both collective and individual responsibility are prescribed. If there is no individual responsibility, the parliament's power to control executive is limited in the case that the government is decisive in the decision to protect its member who is under critics of the parliament.

What has been said before doesn't mean that there is no individual responsibility of Commissioners at all. According to the Treaty of Nice (amendment to the Article 217 of the EC Treaty), members of the Commission will have to resign on the President's request, if he/she has obtained the Commission's approval.[41] This can be understood as an indirect tool of political control of the Parliament and of individual responsibility.[42] Whether the President will request the resignation depends on two factors. First, it depends on the relationship of forces of political groups in the Parliament, since the President has to estimate whether the Commissioner in question can count on the support of the Parliament, and whether the Parliament's attitude would change if the President would refuse to ask for the Commissioner's resignation. Second, it depends on the reasons for the Commissioner's resignation.

6. CONCLUSION

Procedural aspect of the political control is very important for the regulation of the relationship between the Parliament and the Commission. It has important political consequences. Legal regulation, established by different treaties as well as the Parliament's Rules of Procedure, depends on the political conception of the relationship between legislative and executive powers in the European Union. On the other side, the same legal regulation also influences the functioning of the Parliament and the Commission. Therefore, procedural aspect of the political control is legal as well as political in its nature.

The Member States are parliamentary or semi-presidential democracies. Their constitutional systems are, at least formally, based on the principle of the separation of powers. Therefore, the relationship between the Parliament and the Commission has to be based on the same principle. However, the nature of the

41 Fairhurst, J., *Law of the European Union*, Pearson Longman, Essex, 2006, p. 88.

42 For example, the Parliament can threat to the President of the Commission that it will vote no confidence in the Commission if he doesn't remove a Commissioner.

European Union is different from the nature of the Member States. Therefore, the relationship between its legislative and executive can't be the same as the relationship between the legislative and the executive in the parliamentary or semi-presidential democracies. This is the reason why one can't be surprised by the fact that there are some inconsistencies in the regulation of relationship between the Parliament and the Commission. However, the specific nature of the European Union can't be justification for the absence of some means of political control, or for inadequate regulation of these means. For example, the right of the Parliament to vote no confidence in the Commission is so limited that it doesn't have much practical importance. Procedural provisions are very strict, although they are such for political reasons. Procedure and politics are intertwined.

Indeed, some elements of the systems based on the separation of powers are missing. For example, the Commission can't threat the Parliament that it is going to dissolve it. Therefore, one could argue that it is justified to enact strict provisions for the Commission's removal. The equilibrium must exist. If the Commission can't influence the Parliament's existence, the Parliament shouldn't influence the Commission's influence, or it could do it under strict conditions. We don't think that this is good argumentation since it justifies that the means of the Parliament's political control over the Commission has almost entirely formal character without real political significance.

The procedural provisions have to be changed in many ways in order to strengthen the Parliament's influence over the Commission, particularly considering the vote of no confidence as a means of control. This would inevitably mean strengthening the already existing elements of the parliamentary system in the European Union's political system. Whether it is possible or not is a political issue.

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