

The European Parliament's appointing powers

SUMMARY

The role and the prerogatives of the European Parliament have evolved and increased over time, not only as regards legislative powers and oversight but also in relation to the procedures to nominate, vet and appoint people to other senior positions in EU institutions, agencies and other bodies. Parliament's role varies from case to case depending on the legal basis. For instance, Parliament appoints the European Ombudsman, is consulted when appointing the members of the Court of Auditors and appoints one member to the panel which vets nominees for the European Court of Justice. Parliament's scrutiny of such candidates, in various different forms, helps in ensuring the credibility, accountability and legitimacy of the process as well as its transparency.

What is today codified in the EU Treaties, secondary legislation and Parliament's Rules of Procedure is mostly the result of a set of Parliamentary processes that became established practices over the years. This demonstrates that Parliament has managed to use its political leverage to expand and formalise its power to nominate and appoint the holders of senior positions in EU institutions, agencies and other EU bodies. Moreover, through making informed scrutiny of the candidates, Parliament can better ensure that they are qualified for the job. Despite the heterogeneity of procedures, some common patterns may be highlighted, in particular, that candidates and nominees generally appear in front of the relevant committee(s) of the European Parliament, first making a statement and then answering questions from Members. Experience in recent years shows that Parliament has not been shy in using its powers. Suffice to mention the 2019 hearing process for the appointment of the von der Leyen Commission and the appointment of the first ever European Chief Prosecutor, where the Parliament's influence in the final appointments is clear.



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Background

The European Parliament had no formal role in any Community appointment procedures until 1975, when the Court of Auditors was created and Parliament was given consultative powers for the first time.¹ Parliament's efforts in the following years to become involved in the appointment process resulted into it holding an informal 'vote of confidence' to establish the European Commission's collegiate body. Parliament's appointment role was later formalised and significantly strengthened in subsequent Treaty revisions. It is worth mentioning that, in most cases, Parliament itself developed a practice of 'hearing' candidates and nominees for a position even before the formal recognition of an appointment role in the Treaties or in secondary legislation. For instance in 1981, the Committee on Budgetary Control wanted to meet with and have a dialogue with the candidates for the Court of Auditors before the plenary voted on them.² These hearings are not a mere formality but a decisive step for Parliament to ensure democratic accountability and the legitimacy of the process.

What is today codified in the EU Treaties and Rules of Procedure (RoP) of the European Parliament ([RoP 124–131](#) and [Annex VII](#)) is mostly the result of a set of Parliamentary procedures that became established practices over the years. This proves that the Parliament has managed to use its political leverage as well as successive Treaty reforms to expand and formalise its powers for nominations and appointments to senior positions in EU institutions, agencies and other bodies, as well as to obtain political commitments from candidates.³ Notably, the 1993 Maastricht Treaty granted Parliament the right to be consulted on the President-designate of the European Commission and to approve the whole College of Commissioners, to be consulted on the candidate for President of the European Monetary Institute, and subsequently the President, Vice-President and Board members of the European Central Bank, and lastly, to appoint the European Ombudsman.⁴ The 1997 Amsterdam Treaty further extended this power from consultation to actual approval of the nominee for Commission President, while the Lisbon Treaty (2009) explicitly gave the Parliament the power to elect the President of the Commission. Today, Parliament is involved in a plethora of different procedures (see Table 3 in Annex) for the appointment of senior roles in EU institutions and bodies: in some cases it has full ownership, as in the case of the election of the European Ombudsman, in other cases it acts together with the Council, for example in the appointment of the European Data Protection Supervisor and European Chief Prosecutor. In other instances, Parliament is consulted, such as in the case of replacement of an individual Commissioner, and the nomination of members of the Court of Auditors or of the Executive Board of the European Central Bank.

Treaty-based appointment powers

European Commission

The evolution of Parliament's appointing powers over time is most evident in its involvement in the appointment process for the European Commission. The Lisbon Treaty (2007) consolidated the [parliamentarisation](#) of the relationship between the two institutions, and increased the Commission's accountability before Parliament. Notably, at present, [Article 17\(7\) of the Treaty on European Union](#) (TEU) requires the European Council, acting by qualified majority, to take into account the elections of the European Parliament and to hold appropriate consultations before proposing to Parliament a candidate for the Commission Presidency. The candidate is then **'elected' by Parliament** acting by a majority of its component members. If that candidate does not obtain the required majority, the European Council shall within one month propose a new candidate to the Parliament following the same procedure. This evolution paved the way for the [Spitzenkandidaten](#) process whereby European political parties appoint lead candidates for the Commission Presidency ahead of the European elections. The presidency would then go to the candidate from the winning political party, considered to be more capable of forging political support. This process led to the election of Jean-Claude Juncker in 2014, however this was not the case for the [election](#) of Ursula von der Leyen in 2019.

The Lisbon Treaty provides that Member State governments propose the other Commissioners, who are then nominated by the Council in common accord with the President-elect of the Commission (Article 17(7) TEU).⁵ Each candidate then appears for a three-hour hearing in front of the Parliament's committee(s) responsible, as stipulated in Parliament's Rules of Procedure ([Rule 125, Annex VII RoP](#)). Before a hearing can take place, candidates must answer a written questionnaire and present their declaration of interests. The declarations of financial interests are examined by Parliament's Committee on Legal Affairs (JURI), which needs to confirm the absence of any conflict of interest ([Article 2 Annex VII](#)). After that, in accordance with Article 17(7)(3) TEU, the Commission as a whole still needs to obtain **consent from Parliament** by a majority of the votes cast, by roll call ([Rule 125\(7\) RoP](#)), before being appointed by the European Council, by qualified majority.

Considering the procedure as we know it today, changes over the years have influenced the relations and the power games between the institutions involved. For instance, in 1994 the President-designate was required to allocate portfolios before the Commission took office, and Commissioners-designate appeared in front of the respective Parliamentary committees. A number of Parliament's committees expressed [concerns](#) on candidates' specific expertise, and in particular asked for Irishman Pádraig Flynn to be assigned a different portfolio. Then in 1999, after the Santer Commission resigned, Parliament introduced the practice of Commissioners-designate replying to a set of written questions prior to the hearings. Although Parliament only has the power to approve or reject the Commission as a collegiate body, it has also questioned individual nominees. In [2004](#), [2010](#) and [2014](#), Parliament contested and raised concerns over a total of four nominees.⁶ The reasons varied from conflicts of interests with their duties, poor performance during the hearings, lack of knowledge of their portfolio, and the integrity of the individual.⁷ For this reason, candidates were replaced by Member States, and Commission Presidents had to reshuffle their College portfolios to ensure Parliament's political support.

In 2015, Parliament took stock of the [practices](#) regarding Commissioners' hearings and recognised that the evolving practice since 1994 had helped Parliament to make an informed judgement about the future members of the Commission, ensured transparency and enhanced the democratic legitimacy of the Commission. Parliament also made a number of suggestions to improve the exercise leading to the appointment of Commissioners, for instance it suggested that each Member State should propose at least two candidates, a man and a woman, for consideration by the Commission President-elect. Moreover, gender balance has been introduced in Parliament's RoP as one of the elements to take into account in the evaluation of Commissioners-designate ([Article 1, Annex VII RoP](#)). Over the years, the Commission appointment process has certainly contributed to giving greater visibility to Parliament, raised awareness of European affairs and improved transparency of the whole procedure. All documents related to the appointment process are made publicly [available](#), and the hearings as such are public and web-streamed. Traditional and social media have shown growing coverage, suffice to mention that from the moment when President-elect von der Leyen presented the new College on 10 September 2020, until the end of November, over 13 000 reports were identified in the online sources monitored, 76 % of the print and online publications monitored reported about the hearings.⁸

The **replacement procedure** for any [individual vacancy](#) arising during the Commission's mandate is a more expedited procedure compared to the regular appointment procedure for the Commission. Neither the Commission as a body nor the new individual candidate are subject to a vote of consent by Parliament before being appointed. According to [Article 246 of the Treaty on the Functioning of the European Union](#) (TFEU), the vacancy is filled with a new Commissioner of the same nationality after a suitable candidate has been put forward by the national government concerned. The new Commissioner is appointed by the Council,⁹ by common accord with the President of the Commission after **consulting Parliament**. However, it is worth mentioning that the 2010 [Framework Agreement](#) on relations between Parliament and Commission (point II.6) requires the Commission President to seriously consider the results of Parliament's consultation before agreeing with the Council on an individual replacement, and to inform Parliament in due time of

any portfolio re-shuffling so as to allow proper parliamentary consultations (point II.7). [Rule 125\(9\) RoP](#) provides that in case of individual replacement and of a substantial change in portfolio allocation following a re-shuffle, public hearing(s) take place with the parliamentary committee(s) responsible. The hearings are organised along the same lines as the 'regular' hearings prior to the Commission taking office (Part II, [Annex VII](#), RoP). After the hearing and the evaluation, Parliament votes on the candidate by a majority of the votes cast by secret ballot in accordance with Article 10 of Annex VII RoP. There have been several examples of Commissioners being replaced during their mandate, most recently in October 2020, following the [resignation](#) of Commissioner for Trade Phil Hogan, Mairead McGuinness was [appointed](#) Commissioner for financial services, financial stability and the capital markets union, while Vice-President Valdis Dombrovskis took over the trade portfolio.

Facts and Figures on the 2019 Commissioners' hearings

Ahead of the hearings, the Committee on Legal Affairs examined the declarations of financial interests of all candidates to assess possible conflicts of interest. Following this procedure, **two candidates**, L. Trócsányi and R. Plumb, were **withdrawn** and replaced by O. Várhelyi and A. Vălean respectively. After the hearings, **additional written questions** were addressed by the responsible committee to **four candidates**, namely Y. Johansson, J. Wojciechowski, S. Goulard and O. Várhelyi. At the request of the coordinators, **two hearings were resumed** (for an additional hour and a half) for J. Wojciechowski, with the Committee on Agriculture and Rural Development (AGRI), and for S. Goulard, with the Committee on the Internal Market and Consumer Protection (IMCO) acting jointly with the Committee on Industry, Research and Energy (ITRE). In **twenty-six cases**, the evaluation meetings allowed a positive assessment of the candidates, in **five cases by unanimity** and in **twenty-one cases** by a large majority of coordinators representing at least two-thirds of the committee membership. During the evaluation meeting of one candidate, S. Goulard, the coordinators were unable to reach a consensus and a full committee meeting had to be convened as set out in the rules. In a vote by secret ballot, the committee members decided that S. Goulard was deemed unqualified to be a member of the College. The **candidate was subsequently withdrawn and replaced** by a new candidate, T. Breton. Because of the planned withdrawal of the United Kingdom from the European Union, **no British candidate was presented** for Parliament's approval.

Source: Data provided by the Committee Coordination and Legislative Programming Unit, Directorate-General for Internal Policies, European Parliament, January 2020.

European Court of Auditors

According to [Article 286\(2\) TFEU](#) the Council adopts the list of members of the European Court of Auditors (ECA) following proposals from Member States and **after consulting the European Parliament**. Based on that article, the European Parliament has developed its own internal rules which provide that candidates go through a hearing process. After a statement in front of the Committee on Budgetary Control (CONT), the candidate answers questions, and at the end of the session the committee members vote by secret ballot on the recommendation to Parliament for each nominee. The vote in plenary, also by secret ballot, normally takes place within two months. Should the Parliament's opinion be unfavourable, the President asks the Council to withdraw the nomination and to submit a new one ([Rule 129 RoP](#)). The appointment procedure for the Court of Auditors was introduced in 1975 and was the first time that Parliament was granted such a role in appointment procedures, although the Budgetary Control Committee started to hear candidates and examine their competences and views only as of 1981.¹⁰ Parliament has issued unfavourable options a number of times although this was not always followed by Council's withdrawal of the candidate. Despite Parliament having a consultative role only, this cannot be under-estimated. Not only because Parliament has made full use of it but, also because Member States may prefer to withdraw a candidate than face a formal negative vote by Parliament. The relevance of Parliament's role also comes from the fact that hearings of the nominees are in public in committee, and their answers to the questionnaire are published, creating significant political weight and pressure on the candidates' performance. Hence, the credibility of both the candidate and the Member State

proposing them are at stake. Since 2009, Parliament has delivered [positive opinions](#) on the nomination of ECA members in 59 cases. On a number of occasions, Parliament has delivered a negative opinion on the nomination of a candidate (see Table 4 in Annex), including most recently in December 2020, when it [rejected](#) the Council's proposal to appoint Marek Opioła as Polish member of the ECA. Despite the negative vote in plenary, M. Opioła was [appointed](#) by the Council on 19 January 2021.

European Court of Justice

Parliament has no role in the appointing procedure for Judges or Advocates-General of the European Court of Justice (ECJ). However, according to [Article 255 TFEU](#) it **proposes one member of the panel entrusted with the duty of vetting the nominees**. The [panel](#) is composed of seven members¹¹ – chosen among former members of the Court and the General Court, members of supreme courts and lawyers of recognised experience – who are appointed for a period of four years by the Council on the initiative of the President of the Court of Justice. Members of the panel may be reappointed once (Council Decision [2010/124/EU](#) on the operating rules for the panel provided for in Article 255). Parliament proposes its own member based on a proposal from the Committee on Legal Affairs, which selects one nominee from a short list of candidates established by the coordinators of the committee ([Rule 128 RoP](#)). The role of the panel is to 'give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court before the governments of the Member States make the appointments referred to in Articles 253 and 254 [TFEU]'. To do so, the panel first [examines](#) the candidate's dossier sent to them by the Secretariat General of the Council, and may request additional information. It holds an interview with the candidate (except in case of reappointment, Article 7 of Annex to Council Decision [2010/124/EU](#)) and then formulates a reasoned opinion that is sent to the representatives of the governments of the Member States.¹² The procedure differs depending on whether the nominee is for a first term in office or for reappointment.

The assessment is based on a number of [criteria](#), including candidates' legal competence and professional experience (this includes as a judge, university professor, juris consult, or lawyer), ability to perform the duties as judge and in an international environment too, language skills as well as independence, impartiality, probity and integrity. Although the individual assessment is not made public, the panel publishes its [activity report](#) on a regular basis. It is argued¹³ that the reason why Parliament is not consulted in the procedure for nominating the Judges or the Advocates-General of the ECJ – contrary to the procedure for choosing the members of the Court of Auditors for instance – is that no institution, potentially justiciable, should be directly involved in the process of nominating the members of the ECJ. Indeed while members for the European Court of Auditors are appointed by the Council after consulting Parliament ([Article 286\(2\) TFEU](#)), Judges and Advocates-General of the Court of Justice and the General Court are appointed by the governments of the Member States ([Article 255 TFEU](#)). Along the same lines, in 1995, the Court of Justice [considered](#) 'unacceptable' a reform whereby the candidates would go through an audition process¹⁴ in front of Parliament committees because such a process would undermine, inter alia, candidates' own independence.

European Ombudsman

According to [Article 228 TFEU](#) the [European Ombudsman](#) is directly **elected by Parliament** for the duration of its legislative term, i.e. a five-year period. R. Corbett¹⁵ points out that this appointment is completely under the aegis of Parliament and that Member States have no role at all. The appointee should be chosen among EU citizens with full civil and political rights, be independent and satisfy the requirements for the exercise of the highest judicial office in their Member State or else possesses the competences and experience to perform the duties of the Ombudsman. Moreover they should not have been a member of a national government or EU institution within the previous three years ([Article 8\(2\)](#) of the Statute of the European Ombudsman). The [election](#) takes

place early in each parliamentary term, based on nominations supported by at least 38 Members of the European Parliament (MEPs) coming from two different Member States (each MEP can support one nominee only, [Rule 231 RoP](#)). The nomination is accompanied by supporting documents proving that the individual fulfils the required conditions. The Committee on Petitions (PETI) may then hear the nominees before submitting the list of those admissible, in alphabetical order, to Parliament which then votes by secret ballot. The successful nominee needs a majority of the votes cast (Rule 231(6) RoP) with at least half of Members present (Rule 231(7) RoP). Procedures are in place should no candidate be elected after two successive ballots.¹⁶ In December 2019, the Committee on Petitions [heard](#) five candidates, and Parliament subsequently [elected](#) Emily O'Reilly for a second term as the European Ombudsman. Parliament can also request the Court of Justice to dismiss the Ombudsman (Article 228(2) TFEU), upon request of one tenth of MEPs if Parliament considers that the Ombudsman no longer fulfils the conditions required for the 'performance of his or her duties or is guilty of serious misconduct' ([Rule 233 RoP](#)). Such a request is transmitted to the Ombudsman and to the PETI committee. Should the latter decide by a majority of its members that the request is founded, a report is submitted to plenary which holds a debate and then votes by secret ballot. If Parliament concludes that the Ombudsman should be dismissed and the Ombudsman refuses to resign, the EP President shall apply to the Court of Justice so to have them dismissed (Rule 233(4) RoP). At the time of writing the Parliament has never voted to dismiss the Ombudsman.

European Central Bank

Parliament also has a role in the appointments procedure for members of the Executive Board of the European Central Bank (ECB) as well as of the Supervisory Board of the Single Supervisory Mechanism (SSM). For the former, Parliament provides an opinion, while for the latter Parliament has a more stringent role. [Article 283\(2\) TFEU](#) states that the ECB Executive Board¹⁷ will be appointed by the European Council on a recommendation from the Council **after consulting the European Parliament** and the Governing Council of the ECB.¹⁸ Here again, Parliament has developed its own internal rules for vetting candidates. After a statement in front of the Committee on Economic and Monetary Affairs (ECON), the candidates answer questions from Members. At the end of the session, the committee makes a recommendation to plenary. The vote of Parliament, by secret ballot for each candidate, usually takes place within two months. Should the Parliament's opinion be unfavourable, the President asks for the nomination to be withdrawn and a new one submitted ([Rule 130 RoP](#)), though there is no obligation for the Council to comply. Nevertheless, the appointment procedure is again an occasion for Parliament to exercise political pressure and obtain political commitments from the candidates. For instance, in 1998, the ECON committee heard W. Duisenberg for the post of President of the ECB. During the [hearing](#), W. Duisenberg promised to come back to that committee to report regularly on the activities of the ECB; a political commitment that was later incorporated in Parliament's RoP under [Rule 135](#). Today this meeting is known as the '[Monetary Dialogue](#)' and takes place four times a year in front of the ECON committee. This confirms that the role of Parliament in the appointing procedure is also an expression of its [oversight](#) role. As a 2019 [study](#) clearly shows, Parliament has used the appointment procedure to state its position on a number of issues. For instance, in 2018, the appointment process of the ECB's Vice-President gave Parliament the occasion to endorse the candidacy while [voicing](#) its concerns, inter alia, on gender balance on the ECB Board, as further stressed in the Parliament's 2019 [resolution](#) on the ECB's 2017 annual report. Along the same lines, in 2012 Parliament had [rejected](#) – the only time – Y. Mersch as candidate for board member, precisely because of the persistent lack of gender balance within the Executive Board. Y. Mersch was nevertheless appointed by the European Council.

[Regulation \(EU\) No 1024/2013](#) (Article 26) is the main instrument for the appointment procedure of the Chair and the Vice-Chair of the Supervisory Board.¹⁹ In short, after hearing the Supervisory Board, the ECB submits a proposal for the appointment of the Chair and the Vice-Chair to **Parliament for formal approval**. In a final step, the Council finalises the appointment through an implementing decision by qualified majority (excluding Member States not participating in the SSM). There is a

difference though between the Chair and the Vice-Chair. The former is chosen on the basis of an open selection procedure, with the Parliament and Council kept informed, while the Vice Chair is chosen from among the members of the ECB Executive Board. Thus, for the Chair the procedure is divided into two phases, the selection and approval. Firstly, the ECB decides on the selection criteria and then publishes the vacancy, keeping the ECON committee of Parliament and Council informed. The ECON committee may ask questions at this stage about the selection criteria, the composition of the pool of candidates and the screening method used to arrive at a shortlist of candidates. The ECB's pre-selection committee decides on a shortlist of at least two candidates, respecting the principle of gender balance, which is submitted to the ECON committee – at least three weeks before the final nomination – and to the Council. Once the Governing Council adopts the formal nomination, it communicates the choice with a written justification to Parliament. The ECON committee organises a public hearing with the candidate and adopts a report which is later voted on in plenary. In addition to Chair and the Vice-Chair of the Supervisory Board, [Rule 131 RoP](#) covers the appointment procedure for several other bodies such as Chair, Vice-Chair and the full-time members of the [Single Resolution Board](#) of the Single Resolution Mechanism; Chairs and Executive Directors of the European Supervisory Authority; and the Managing Director and Deputy Managing Director of the [European Fund for Strategic Investments](#).

Posts in other EU bodies under secondary legislation

Agencies' board members and Executive Directors

The European Parliament exercises its oversight power over EU agencies through various procedures including, but not limited to, budgetary discharge, involvement in the appointment of their Executive Directors and Management Board members. With regard to Parliament's role in appointment procedures, a 2018 EPRS [study](#) looked at the different provisions and EP involvement, and the resulting picture is quite complex with significant variation. The study points out that there are at least ten cases in which Parliament appoints designates or representatives to the agencies' Management Boards, though in the large majority of cases there is no Parliament involvement at all. According to the 2012 [Common Approach](#)²⁰ an agency's Management Board should be composed of one representative per Member State as well as two Commission representatives. Additional members may be appointed by Parliament, and/or representatives of stakeholders can also be designated. Although the Common Approach does not clarify under what circumstances this should happen, there are only ten cases in which Parliament appoints 'designates' or 'representatives'²¹ to Management Boards. To quote a few, the members of the Management Board of the European Food Safety Authority ([EFSA](#)) are appointed by the Council in consultation with Parliament, on the basis of a list of proposals drawn up by the Commission ([Article 25](#) of Regulation No 178/2002). The Administrative Board of the European Union Agency for the Cooperation of Energy Regulators ([ACER](#)) is composed of five members appointed by the Council, two appointed by the Commission and two appointed by the Parliament ([Article 18](#) of Regulation (EU) 2019/942).

Table 1– EP Involvement in appointment of Management Boards

EP Involvement		No EP involvement
Representatives	Designates	
EMA, EUIPO, GSA	Qualified	APPF, BEREC, CdT, Cedefop, CEPOL, CPVO, EASA, EASO, EBA, ECDC, ECHA, EDPB, EEA, EFCA, EIGE, EIOPA, ELA, EMSA, ENISA, EPPO, ERA, ESMA, EU-LISA, EU-OSHA, Eurofound, Eurojust, Europol, FRA, FRONTEX, SRB
	Unqualified	
	ECHA ^{**} , EEA [*] , EFSA [*] , EMCDDA [*] , ETF [*]	ACER, ECDC

* the EP appoints experts + the EP appoints stakeholders.

Source: EPRS [study](#) on EU Agencies, Common Approach and Parliamentary Scrutiny, November 2018.

The same EPRS study found that the appointments of Executive Directors vary to a large extent too. It listed no less than 12 different appointment procedures, and argued that the founding regulations are more prone to involve Parliament in the appointment procedure than the [Common Approach](#) which is why the study recommended to improve the latter.²² It suggests aligning it to the practice established by the 2010 [Interinstitutional Agreement](#) between the Commission and the Parliament, according to which: 'Nominees for the post of Executive Director of regulatory agencies should come to parliamentary committee hearings' (para 32). The study categorised eight main models of procedures based on two keys, namely the appointing authority and Parliament's degree of influence. Parliament's position is most relevant when it must 'confirm' the candidate appointed by the Board of Supervisors such as in the cases of the European Banking Authority²³ (Article 51 of Regulation No [1093/2010](#)), European Insurance and Occupational Pensions Authority (Article 51 of Regulation No [1094/2010](#)) and European Securities and Markets Authority (Article 51 of Regulation No [1095/2010](#)). In these cases, Parliament's refusal to confirm a candidate would result in appointing them being impossible.

When the degree of political influence is quite high, the candidates *shall* be invited before the competent committees to give a statement and answer questions. Although, Parliament voting to reject a candidate would not result in a veto *stricto sensu* (i.e. the legal right to reject the candidates and ask for them to be replaced), in some cases the Management Board has to reason its decision to deviate from Parliament's position. For example, Article 107(2)(3) of the [Frontex/EBCG](#) Regulation establishes that, should the Management Board take the decision to appoint a candidate other than the Parliament's preferred candidate, it shall inform the Parliament and Council in writing and explain how the Parliament's opinion was taken into consideration. Other founding regulations are less prescriptive, and state that candidates 'may' be invited to Parliament to make a statement and answer questions. Finally, there are instances where an agency's founding regulation does not provide for Parliament's involvement at all. The EPRS study argued that, over the years, a practice has emerged, more favourable to parliamentary scrutiny, which has been institutionalised in the most recent agency founding acts. It further suggested that the variety of procedures would need to be rationalised to ensure more homogenous Parliament involvement, to ensure agencies' accountability and legitimacy.

Table 2 – Appointment of Executive Directors

Executive Director	EP confirmation needed	Candidate <i>shall</i> be invited to EP	Candidate <i>may</i> be invited to EP	No involvement of the EP
Appointment by the Management Board on the basis of a list proposed by the Commission		BEREC, EASA, EASO, ECDC, ECHA, EFSA, EIGE, EMA, EMCDDA, ENISA, ETF, FRA, FRONTEX, eu-LISA	ACER, EMSA, ERA, GSA,	CDT, CEPOL, EEA, EFCA, ELA, EU-OSHA, EPPO, Eurojust,
Appointment by the Board of Supervisors	EBA, EIOPA, ESMA			
Appointment by the Council		SRB	Europol, EUIPO	CPVO
Appointment by the Commission				Cedefop, Eurofound

Source: EPRS [study](#) on EU Agencies, Common Approach and Parliamentary Scrutiny, November 2018.

European Data Protection Supervisor

According to Article 53 of EU [Regulation 2018/1725](#), **Parliament and Council shall appoint** the European Data Protection Supervisor (EDPS) for a five-year term by common accord, on the basis of a public list of at least three candidates drawn up by the European Commission following a public call for submission of candidatures. The Commission [establishes](#) a pre-selection panel to assess the applications and invite the most suitable candidates to an interview. The pre-selection panel then proposes a list of suitable candidates for further interviews with the European Commission's Consultative Committee on Appointments (CCA). Based on the two rounds of interviews, the Commission draws up the list of candidates, on the basis of which the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) may decide to hold a hearing. In the most recent appointment procedure for the EDPS, in 2019 the LIBE committee received a list including three names: Y. Padova, E. Szabó and W. Wiewiórowski. Ahead of the hearing, the three candidates were asked to answer a set of questions. During the [hearings](#) Members had the opportunity to further question the candidates, as a result of which W. Wiewiórowski was [selected](#) as the first candidate. This resulted in a formal decision of Parliament and Council ([Decision \(EU\) 2019/2071](#)).

European Public Prosecutor's Office

One of the most striking recent examples of the enhanced role of the Parliament in appointment procedures is the process that led to the appointment of the first European Chief Prosecutor in 2019. According to Article 14 of [Regulation \(EU\) 2017/1939](#), **Parliament and Council shall appoint by common accord** the European Chief Prosecutor, based on a number of criteria following an open call for candidates published in the Official Journal. A selection panel,²⁴ a member of which shall be proposed by Parliament, draws up a shortlist of qualified candidates to be submitted to Parliament and to the Council. In 2019, the selection saw a long power [struggle](#) between the Parliament and Council, which finally ended with the appointment of Laura Codruța Kövesi, the candidate [backed](#) by Parliament, while the Council had previously [supported](#) a French candidate, Jean-François Bohnert.

The **Council alone selects and appoints the 22 European Prosecutors** (one per participating Member State) based on lists of at least three candidates submitted by each Member State (Article 16(2) of Regulation EU [2017/1939](#)). In [July 2020](#), the Council, in [appointing](#) the European Prosecutors for Belgium, Bulgaria and Portugal, did not follow the non-binding order of preference of the selection panel. Council claimed that the different assessment of the merits of those candidates was by the relevant preparatory bodies of the Council, without providing any specific reason. The lack of transparency was immediately addressed by Parliament in a number of written questions (on [11 September 2020](#), on [28 September](#) and [9 October](#)) seeking to clarify why Council decided not to follow the ranking recommended by the selection panel. In October 2020, an action for annulment ([T-647/20](#)) was brought against the Council by J.-M. Verelst²⁵ a Belgian public prosecutor, in respect of Council decision to appoint Y. Van Den Berge as Belgian European Prosecutor. In January 2021, media [reported](#) an alleged misleading approach by the Portuguese government in order to push its preferred candidate. In February, Parliament's Committees on Civil Liberties and on Budgetary Control officially requested Council to allow access to the documents concerning the appointments of the Portuguese, Belgian and Bulgarian prosecutors to EPPO. It is [reported](#) that access was given but 'under strict conditions' because some documents are classified as 'restricted'.

European Anti-Fraud Office

Article 17 of [Regulation No 883/2013](#) on the investigations conducted by the European Anti-Fraud Office (OLAF) recognises Parliament's role in the appointment procedure of the European Anti-Fraud Office Director-General as well as its Supervisory Committee. Following amendments [adopted](#) in December 2020, the Regulation states that the Director-General is [appointed](#) by the

European Commission for a seven-year term. In order to do so, following a public call for applications, the Commission draws up a list of suitably qualified candidates, based on the Supervisory Committee's favourable opinion, then **Parliament and Council agree on a shortlist of three candidates** based on which the Commission appoints the Director-General.²⁶ The five independent members of the Supervisory Committee are also **appointed by common accord of Parliament, Council and Commission** - Article [15\(2\) of Regulation 833/2013](#). Finally, the recent amendments introduced the figure of Controller of procedural guarantees, attached to the Supervisory Committee, appointed by the Commission **after consultation of Parliament** and the Council (new [Article 9a](#) of Regulation 2020/2223).

Special Representatives and Heads of EU Delegations

In the field of external relations, Parliament has a role in the appointment procedures of both Special Representatives and Heads of EU Delegations. Notwithstanding the more limited European Parliament role, compared to other appointment procedures, the fact that Special Representatives and Heads of EU Delegations may be asked to appear in front of Parliament's committees ensures political oversight on how EU external representation is conducted.²⁷

[Rule 116 RoP](#) establishes that, when Council intends to appoint a Special Representative for a particular policy issue ([Article 33 TEU](#)), the EP President, at the request of the Committee on Foreign Affairs (AFET) – which is the committee responsible – invites the Council to make a statement and to attend a question and answer session about the mandate, the tasks and the role of the Special Representative. The **Special Representative**, who works under the authority of the EU's High Representative for Foreign Affairs and Security Policy/Vice-President of the European Commission (HR/VP), may be invited too by the AFET committee to answer questions and make a statement, **after their appointment, but before taking up the position**. The AFET committee then has two months to make any recommendations on the appointment to the Council, to the Commission or to the HR/VP.

Ahead of their appointment, the nominees for Heads of EU Delegations may be invited for an exchange of views before the AFET committee, based on which the committee may adopt a resolution or make a recommendation ([Rule 117 RoP](#)). In addition to that, point 5 of the 2010 High Representative's [declaration](#) on political accountability annexed to the Council [Decision](#) establishing the organisation and functioning of the European External Action Service (EEAS) established that, upon request of Parliament, the newly appointed Heads of Delegations and EU Special Representatives will appear before the AFET committee for an exchange of views (differing from hearings) before taking up their posts. The format for these exchanges of views is to be agreed with the HR/VP based on the sensitivity and confidentiality of the topics.

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ENDNOTES

¹ R. Corbett, F. Jacobs, M. Shackleton, *The European Parliament*, 9th edition, 2016.

² [Building Parliament: 50 years of European Parliament history, 1958-2008](#), European University Institute, Florence, p. 213, 2009.

³ R. Corbett, F. Jacobs, M. Shackleton, *The European Parliament*, 8th edition, 2011, p. 341.

⁴ Ibid.

⁵ M. Diaz Crego, [Parliamentary hearings of the Commissioners-designate](#), EPRS, September 2019.

⁶ R. Corbett et al. (2016), op.cit., for a detailed assessment of Parliament's role in Commissioner-candidates hearings.

⁷ M. Diaz Crego, op.cit.

⁸ Media Impact report on 2019 hearings, Media Intelligence Unit, Directorate-General for Communication, European Parliament, December 2019.

⁹ Whereas Article [17\(7\) TEU](#) states that the Commission is appointed by the European Council on the basis of Parliament's consent.

¹⁰ R. Corbett et al. (2011), op. cit., p. 351.

¹¹ In April 2020, Allan Rosas was [appointed](#) by the Council as President of the panel until 28 February 2022.

¹² Moreover, 'at the request of the Presidency, the President of the panel shall present that opinion to the Representatives of the Governments of the Member States'. Article 8 of Annex to Council Decision 2010/124/EU.

¹³ J. P. Jacqué, *Droit institutionnel de l'Union européenne*, 9ème édition, Dalloz, p. 316, 2018.

¹⁴ In the French version: 'la Cour considère que serait inacceptable une réforme prévoyant l'audition de chaque candidat devant des commissions parlementaires. En effet, l'intéressé ne pourrait répondre de manière adéquate aux questions qui lui seraient posées sans sortir de la réserve qui s'impose à une personnalité devant offrir, aux termes des traités, toutes garanties d'indépendance et sans préjuger des positions qu'il pourra être amené à adopter à l'égard de questions contentieuses dont il aura à connaître dans l'exercice de sa fonction juridictionnelle'.

¹⁵ R. Corbett et al. (2011), op. cit., p.300.

¹⁶ If no candidate is elected after the first two ballots, only the two candidates obtaining the largest number of votes in the second ballot may continue to stand. In the event of any tie the oldest candidate shall be appointed (Rule 231(6)).

¹⁷ According to [Article 283\(2\) TFEU](#): The Executive Board shall comprise the President, the Vice-President and four other members.

¹⁸ Article 11 of [Protocol 4](#) on the Statute of the European System of Central Banks and of the European Central Bank.

¹⁹ In addition, also the [Interinstitutional Agreement](#) between the European Parliament and the European Central Bank on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the Single Supervisory Mechanism, the [Memorandum of Understanding](#) between the Council of the European Union and the European Central Bank on the cooperation on procedures related

to the Single Supervisory Mechanism (SSM), Section 2 (Selection and Appointment Procedures) and the European Parliament's Rules of Procedure ([Rule 131](#)).

- ²⁰ The Common Approach is a non-binding document that Parliament, Council and Commission adopted in 2012 in order to have a broader and comprehensive vision on EU agencies so to stake stock of existing measures on effectiveness, accountability and transparency and improve their operation. It deals with a set of measures, including the governing structure of agencies, the daily operation, the work programmes, the financing and the relationship between agencies and EU institutions.
- ²¹ The language also varies from one regulation to another. For instance [Article 65](#) of Regulation (EC) No 726/2004 establishing the European Medicines Agency (EMA) stipulates that the Management Board shall consist of one representative per Member State, two representatives of the Commission and two representatives of the Parliament. This latter is also consulted by the Council when appointing representatives of stakeholders (i.e. patients, doctors' and veterinarians' organisations).
- ²² According to the latter, directors should be appointed by the Management Board on the basis of a Commission's list of candidates based on a transparent procedure.
- ²³ Concerning the appointment of the Chair, article 48 of the same Regulation also establishes that before taking up their duties, and up to 1 month after the selection by the Board of Supervisors, the European Parliament may, after having heard the candidate object to the designation of the selected person.
- ²⁴ Article 14(3) of Regulation EU [2017/1939](#), a selection panel includes 12 persons chosen from among former members of the Court of Justice and the Court of Auditors, former national members of Eurojust, members of national supreme courts, high level prosecutors and lawyers of recognised competence. One of them shall be proposed by Parliament.
- ²⁵ Mr Verelst claimed violation of Articles 288, 289, 291 and 296 TFEU, Articles 20, 21 and 41 of the Charter, the general principles of legal certainty, legality and non-discrimination.
- ²⁶ The previous version of [Article 17\(2\)](#) referred to the appointment by the Commission after consulting Parliament and Council only.
- ²⁷ In this specific case, there is no secondary legislation to refer to but Parliament Rules of Procedure and a political declaration only.

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Annex – Parliament's roles in appointment procedures

Table 3 – Overview of Parliament's roles in appointment procedures

	Position	Parliament's role
	European Ombudsman	Elected by Parliament (Article 228(1) TFEU), with no role for Member States.
Commission	President	Elected by Parliament on a proposal of the European Council, Article 17(7) TEU.
	As a body	Subject to a vote of consent by Parliament, Article 17(7)(3) TEU.
	Individual vacancy	Appointed by Council, by common accord with the Commission's President, after consulting Parliament, Article 246 TFEU.
ECA	ECA Members	Council adopts the list of ECA members after consulting Parliament, Article 286(2) TFEU.
ECB	Executive Board	Appointed by the European Council following a Council recommendation and after consulting Parliament and the Governing Council of the ECB Article 283(2) TFEU.
	Supervisory Board	Parliament formally approves the Chair and Vice-Chair of the Supervisory Board, Regulation 1024/2013 .
ECJ	Member of the panel	Parliament proposes a member of the panel entrusted with the duties of vetting the nominees (Article 255 TFEU).
	EDPS	Appointed by Parliament and Council, Article 53 Regulation (EU) 2018/1725 .
EPPO	European Chief Prosecutor	Appointed by common accord by Parliament and Council, Article 14 Regulation (EU) 2017/1939 .
	Public Prosecutors	Selected and appointed by the Council, Article 16 Regulation (EU) 2017/1939 .
Agencies	Management Board	Different procedures apply, see Table 1.
	Executive Directors	Different procedures apply, see Table 2.
OLAF	Director-General	Appointed by the Commission based on a shortlist of three candidates agreed by Parliament and Council, Regulation (EU) 883/2013 .
EU External Representation	Heads of Delegation	Before appointment, he or she may be invited to appear before the committee responsible, Rule 117 RoP .
	Special Representatives	After appointment but before taking up the position, they may be invited to appear before the committee responsible, Rule 116(2) RoP .

Source: EPRS.

Table 4: Overview of candidates receiving an unfavourable opinion by Parliament's Budgetary Control Committee (CONT) and/or by plenary, 1989-2020

When	Parliament's assessment	Details
1989	Negative opinion on two candidates	The French candidate was replaced but not the Greek one.
1993	Negative opinion on two candidates	In both cases the Council confirmed the initial candidates.
2004	Negative opinion on two candidates	The Cypriot candidate was replaced and the Slovakian one was appointed by the Council.
2012	CONT - Plenary - withdrawn and replaced	The CONT committee gave an unfavourable opinion on the Romanian candidate Leonard Orban (14-, 12+, 0 abs.), followed by unfavourable opinion by plenary. The candidate withdrew and was replaced by George Pufan .
2013	CONT - Plenary - Appointed	The CONT committee gave an unfavourable opinion on the Croatian candidate Neven Mates (16-, 11+, 0 abs.); plenary also expressed unfavourable opinion, though the candidate was finally appointed by the Council.
2016	CONT + Plenary - Appointed	The CONT committee gave an unfavourable opinion on the Maltese candidate Antoni Abela (17-, 9+, 0 abs.). The candidate was withdrawn and replaced by Leo Brincat. Leo Brincat received a favourable opinion from the CONT committee (11+, 9-, 1 abs.), an unfavourable opinion from plenary and was finally appointed by the Council.
	CONT - Plenary - Appointed	The CONT committee gave an unfavourable opinion on the Polish candidate Janusz Wojciechowski (12-, 9+, 5 abs.) followed by the unfavourable opinion of plenary. The candidate was appointed by the Council.
	CONT - Plenary + Appointed	The CONT committee gave an unfavourable opinion on the Slovak candidate Ladislav Balko (16-, 8+, 2 abs.), followed by a favourable opinion in plenary. He was appointed by the Council.
2017	CONT - Plenary - withdrawn and replaced	The CONT committee gave an unfavourable opinion on the Belgian candidate Karel Pinxten (13-, 10+, 2 abs.) and plenary also expressed an unfavourable opinion (310-, 284+, 81 abs.). The Belgian government withdrew the candidate and proposed a new one, Annemie Turtelboom .
2019	CONT - Plenary - Appointed	The CONT committee gave an unfavourable opinion on the Romanian candidate Viorel Ștefan (12-, 8+, 0 abs.), plenary gave an unfavourable opinion (372-, 222+, 56 abs.). He was appointed as a Member of the Court
2020	CONT - Plenary - Appointed	The CONT committee gave an unfavourable opinion on the Polish candidate Marek Opioła (23-, 7+, 0 abs.) followed by an unfavourable (536-, 156+, 3 abs.) opinion by plenary. He was later appointed as Member of the Court.

Source: EPRS. Data for years 1988, 1993 and 2004 from Building Parliament: [50 years of European Parliament history, 1958-2008](#), European University Institute, Florence, pp. 212-217, 2009. Data from 2012 to 2019 were provided by the Parliament's Budgetary Control Committee (CONT).