Parliamentary scrutiny of the European Commission: implementation of the Treaty provisions

European Implementation Assessment
Parliamentary scrutiny of the European Commission: Implementation of the Treaty provisions

Study

On 11 April 2018, the Committee on Constitutional Affairs of the European Parliament requested authorisation to produce an implementation report on ‘the Treaty provisions on Parliament’s power of political control over the Commission’ (rapporteur: Mercedes Bresso, S&D, Italy). This proposal was approved by the Conference of Committee Chairs at its meeting of 17 April 2018. Implementation reports are routinely accompanied by European Implementation Assessments.

This European Implementation Assessment has been drawn up by the Ex-Post Evaluation Unit of the Directorate for Impact Assessment and European Added Value, within the European Parliament’s Directorate-General for Parliamentary Research Services. It seeks to contribute to the Parliament’s discussion of this topic, improving understanding, and ultimately feeding into the implementation report under preparation by the rapporteur.

Abstract

The Treaties provide the European Parliament with various opportunities to exercise its powers of political oversight of the European Commission and its actions. The European Parliament’s application of these prerogatives increases the democratic legitimacy of the European Union, and the transparency and accountability of the European executive.

This study examines the status quo of the European Parliament’s powers of scrutiny over the European Commission. The cases examined pertain mainly to electoral and institutional issues, motions of censure, parliamentary questions, inquiry committees and special parliamentary committees and reporting, consultation and provision of information. It also touches upon scrutiny in budgetary issues, scrutiny of delegated acts, scrutiny in the legislative procedure, legal proceedings and the EU’s external relations.
AUTHOR(S)

Milan Remáč, Ex-post Evaluation Unit

To contact the author, please email: EPRS-ExPostEvaluation@ep.europa.eu

This paper has been drawn up by the Ex-post Evaluation Unit of the Directorate for Impact Assessment and European Added Value, within the Directorate-General for Parliamentary Research Services (EPRS) of the Secretariat of the European Parliament.

Acknowledgements: This study is based on substantive data provided by various services of the European Parliament, namely

- DG PRES: Plenary Organisation and Follow-up Unit, Members’ Activities Unit, Institutional Relations Unit, Legislative Planning and Coordination Unit
- DG IPOL: Secretariat of the Committee on Budgetary Control, Policy Department for Budgetary Affairs, Committee Coordination and Legislative Programming Unit, Secretariat of the Committee on Constitutional Affairs, Legislative Affairs Unit,
- DG EXPO: Policy Department for External Relations, Secretariat of the Committee on Foreign Affairs,
- DG EPRS: Budgetary Policies Unit, and
- Legal Service: Legislative and Judicial Coordination Unit.

The services of the European Parliament were invited to provide substantive comments on the sections of the study for which they provided the information. Subsequently, the whole study was peer-reviewed internally within the European Added Value Unit.

The author would like to thank the various contributors for all their valuable feedback and recommendations.

LINGUISTIC VERSIONS

Original: EN

Manuscript completed in September 2018.

DISCLAIMER AND COPYRIGHT

This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.


PE: 627.115
DOI: 10.2861/136846
CAT: QA-03-18-308-EN-N

eprs@ep.europa.eu
http://www.eprs.ep.parl.union.eu (intranet)
http://epthinktank.eu (blog)
Executive summary

Like the majority of national parliaments, the European Parliament also carries out a scrutiny and oversight function in relation to the executive – the European Commission. The European Parliament’s powers with regard to the European Commission are varied and wide-ranging. This European Implementation Assessment (EIA) has been prepared to accompany the drafting by the European Parliament’s Committee on Constitutional Affairs (AFCO) of an implementation report on ‘the Treaty provisions on Parliament’s power of political control over the Commission’.

The objectives of this EIA are threefold:

- first, to investigate and report on the status of the Parliament’s powers in scrutinising the European Commission, which are based on the Treaty provisions;
- second, to assess the implementation of these Treaty provisions in specific areas in which Parliament can carry out its scrutiny prerogatives; and
- third, to draw conclusions and suggest a direction for reflection on the exercise of the existing prerogatives.

This study briefly describes the background to the development of the European Parliament’s prerogatives with regard to the scrutiny of and political control over the executive. The methodology used to carry out the analysis included recourse to desk research and supporting data provided by the internal services of the European Parliament, as well as publicly available information. However, given that the assessment is intended to feed into the preparation of the AFCO implementation report on ‘the Treaty provisions on Parliament’s power of political control over the Commission’, analysis is limited to Parliament’s powers in relation to the Commission alone. In view of the time constraints involved, the cut-off date for the research is December 2009, date of the entry into force of the Treaty of Lisbon, and the Treaty provisions researched have been clustered around certain specific topics.

The study analyses the European Parliament’s powers of scrutiny over the European Commission, based on the text of the Treaties, concentrating on the following ten areas:

1. electoral and institutional issues,
2. motion of censure and withdrawal of confidence in individual Commissioners,
3. parliamentary questions,
4. inquiry committees and special parliamentary committees,
5. reporting, consultation and provision of information,
6. budgetary issues,
7. legislative procedure,
8. delegated acts,
9. legal proceedings,
10. external relations.

The analysis concludes that Parliament is well aware of the Treaty provisions allowing it to scrutinise and control the Commission. However, Parliament’s actual application of these prerogatives in individual areas varies as to their number, frequency and impact on the Commission and its work. The study notes that the Commission tries to fulfil its obligations towards the Parliament in areas where the Treaties oblige it to do so.

The study also notes that the impact of Parliament’s scrutiny prerogatives could be improved with regard to some of the fields, such as committees of inquiry, special parliamentary committees, and legislative procedures linked to Article 225 of the Treaty on the Functioning of the European Union (TFEU).
In conclusion, the study argues that only a limited number of the scrutiny competences currently afforded to Parliament by the Treaties can have a lasting impact on the executive, since Parliament’s powers to influence the Commission are rather limited, both in terms of when they can be used and the nature of their consequences. Beyond the text of the Treaties, provisions contained in the framework of interinstitutional agreements can only strengthen Parliament if its counterparts agree to abide by them.

Finally, when assessing the Parliament’s prerogatives of control over the European Commission, it is important to bear in mind the main reason behind their original inclusion in the text of the Treaties, i.e. to provide for the democratic scrutiny of the executive. Similarly, the European Parliament’s role as representative of the EU citizens, and as the only directly elected EU institution, must be taken as the starting point when it comes to its scrutiny of the European Commission.
Table of contents

Executive summary ........................................................................................................... 5
List of abbreviations ........................................................................................................ 11
List of parliamentary committees ................................................................................... 11
List of political groups ..................................................................................................... 12
1. Introduction and methodology ................................................................................... 13
   1.1. General introduction ............................................................................................ 13
   1.2. Methodology ....................................................................................................... 13
2. Assessing Parliament’s powers of scrutiny ................................................................. 16
   2.1. Electoral and institutional issues .......................................................................... 16
      2.1.1. Rules ............................................................................................................. 16
      2.1.2. Application of rules ....................................................................................... 18
      2.1.3. Summary ....................................................................................................... 22
   2.2. Motion of censure and withdrawal of confidence in an individual Member of the
       Commission ............................................................................................................. 23
      2.2.1. Rules ............................................................................................................. 23
      2.2.2. Application of rules ....................................................................................... 25
      2.2.3. Summary ....................................................................................................... 27
   2.3. Parliament’s and Members’ questions .................................................................... 28
      2.3.1. Rules ............................................................................................................. 28
      2.3.2. Application of rules ....................................................................................... 30
      2.3.3. Summary ....................................................................................................... 36
   2.4. Inquiry committee provisions and special parliamentary committees ..................... 36
      2.4.1. Rules ............................................................................................................. 37
      2.4.2. Application of rules ....................................................................................... 40
      2.4.3. Summary ....................................................................................................... 45
   2.5. Reporting, consultation and informing by the European Commission ....................... 46
      2.5.1. Rules ............................................................................................................. 46
      2.5.2. Application of rules ....................................................................................... 48
      2.5.3. Summary ....................................................................................................... 52
   2.6. Budgetary powers .................................................................................................. 52
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.6.1. Rules</td>
<td>52</td>
</tr>
<tr>
<td>2.6.2. Application of rules</td>
<td>55</td>
</tr>
<tr>
<td>2.6.3. Summary</td>
<td>60</td>
</tr>
<tr>
<td>2.7. Legislative procedure</td>
<td>61</td>
</tr>
<tr>
<td>2.7.1. Commission annual legislative work programme and Parliament</td>
<td>61</td>
</tr>
<tr>
<td>2.7.2. Procedure under Article 225 TFEU</td>
<td>65</td>
</tr>
<tr>
<td>2.7.3. Summary</td>
<td>69</td>
</tr>
<tr>
<td>2.8. Delegated acts</td>
<td>70</td>
</tr>
<tr>
<td>2.8.1. Rules</td>
<td>71</td>
</tr>
<tr>
<td>2.8.2. Application</td>
<td>72</td>
</tr>
<tr>
<td>2.8.3. Summary</td>
<td>76</td>
</tr>
<tr>
<td>2.9. Legal proceedings</td>
<td>77</td>
</tr>
<tr>
<td>2.9.1. Rules</td>
<td>77</td>
</tr>
<tr>
<td>2.9.2. Application</td>
<td>78</td>
</tr>
<tr>
<td>2.9.3. Summary</td>
<td>79</td>
</tr>
<tr>
<td>2.10. External relations</td>
<td>80</td>
</tr>
<tr>
<td>2.10.1. International agreements and Parliament's scrutiny</td>
<td>80</td>
</tr>
<tr>
<td>2.10.2. High Representative of the Union for Foreign Affairs and Security Policy and Parliamentary scrutiny over the CFSP</td>
<td>83</td>
</tr>
<tr>
<td>2.10.3. Summary</td>
<td>86</td>
</tr>
<tr>
<td>3. Conclusions and opportunities for action</td>
<td>87</td>
</tr>
<tr>
<td>REFERENCES</td>
<td>92</td>
</tr>
</tbody>
</table>
Table of figures

Figure 1 – Motion of censure – sequence ........................................... 24
Figure 2 - Present EU discharge procedure from the perspective of the European Parliament _ 58
Table of tables

Table 1 – Election of the President of the Commission since 2009 ........................................ 20
Table 2 – Election/approval of the Commission since 2009 ..................................................... 22
Table 3 – European Parliament Motions of censure 1992-2018 .............................................. 26
Table 4 – Questions for written answer and answers provided, 7th parliamentary term (2009-2014) ................................................................. 30
Table 5 – Questions for written answer and answers provided – 8th parliamentary term (2014-2018) ................................................................. 31
Table 6 – Average time taken to answer, in days – European Commission (2015-2018) ........ 31
Table 7 – Division of questions, based on political group, in 7th and 8th parliamentary terms 32
Table 8: Minor and major interpellations to the European Commission (2017-2018) .......... 33
Table 9 – Questions for oral answer with debate – 7th parliamentary term (2009-2014) ........ 33
Table 10 – Questions for oral answer with debate – 8th parliamentary term (2014-2019) .... 33
Table 11 – Inquiry committees and special parliamentary committees: main differences .... 39
Table 12: Inquiry committees 2009-2018 ........................................................................... 41
Table 13: Inquiry committees prior to 2009 ........................................................................ 42
Table 14: Special parliamentary committees 2009-2018 ....................................................... 44
Table 14 – Treaty based reporting obligations .................................................................... 48
Table 15 – Treaty based obligations to inform .................................................................... 50
Table 16 – Treaty based obligations to consult ................................................................... 51
Table 17 – Parliament approval of the EU budget, financial years 2011-2019 .................. 56
Table 18 – Discharge granted to the Commission between 2009-2016 ......................... 58
Table 19 – Timetable for the Commission work programme according to the Framework Agreement .............................................................................. 63
Table 20 – Commission work programme and subsequent actions ................................... 64
Table 21 – Legislative own-initiative reports (2010-2018) ................................................... 66
Table 22 – Delegated acts received by Parliament (2009-2018) .......................................... 71
Table 23 – Delegated acts Parliament has objected to (2009-2018) ................................... 74
Table 24 – Parliament’s applications against the Commission between 2009 and 2018 .... 78
Table 25 – Parliament’s applications against the Commission before 2009 ..................... 79
Table 26 – Parliament’s consent to international agreement withheld or declined (2009-2018) 81
Table 27 – Intensity and impact of the Parliament’s scrutiny prerogatives (2009-2018) .... 87
List of abbreviations

CCC  Conference of Committee Chairs  
CFSP  Common foreign and security policy  
Coordleg  Committee Coordination and Legislative Programming Unit  
COP  Conference of Presidents  
CSDP  Common security and defence policy  
CWP  European Commission annual work programme  
DG EPRS  European Parliament Directorate-General for Parliamentary Research Services  
DG EXPO  European Parliament Directorate-General for External Policies of the Union  
DG IPOL  European Parliament Directorate-General for Internal Policies of the Union  
DG PRES  European Parliament Directorate-General for the Presidency  
EIA  European Implementation Assessment  
FA 2010  Framework agreement on relations between the European Parliament and the European Commission, 2010  
IIA BLM  Interinstitutional agreement on better law-making, 2016  
IIA 2013  Interinstitutional agreement on budgetary discipline, on cooperation in budgetary matters and on sound financial management, 2013  
LEG I unit  European Parliament Legislative Affairs Unit  
MEP  Member of the European Parliament  
MFF  Multiannual financial framework  
OEIL  Legislative observatory  
ROP  Rules of procedure of the European Parliament, July 2018  
TEU  Treaty on European Union  
TFEU  Treaty on the Functioning of the European Union  
TEC  Treaty establishing the European Community  

List of parliamentary committees

AFET  European Parliament Committee on Foreign Affairs  
AFCO  European Parliament Committee on Constitutional Affairs  
AGRI  European Parliament Committee on Agriculture and Rural Development
<table>
<thead>
<tr>
<th>Code</th>
<th>Committee Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>BUDG</td>
<td>European Parliament Committee on Budgets</td>
</tr>
<tr>
<td>CULT</td>
<td>European Parliament Committee on Culture and Education</td>
</tr>
<tr>
<td>CONT</td>
<td>European Parliament Committee on Budgetary Control</td>
</tr>
<tr>
<td>DEVE</td>
<td>European Parliament Committee on Development</td>
</tr>
<tr>
<td>DROIT</td>
<td>European Parliament Sub-Committee on Human Rights</td>
</tr>
<tr>
<td>ECON</td>
<td>European Parliament on Economic and Monetary Affairs</td>
</tr>
<tr>
<td>EMPL</td>
<td>European Parliament Committee on Employment and Social Affairs</td>
</tr>
<tr>
<td>ENVI</td>
<td>European Parliament Committee on Environment, Public Health and Food Safety</td>
</tr>
<tr>
<td>FEMM</td>
<td>European Parliament Committee on Women's Rights and Gender Equality</td>
</tr>
<tr>
<td>INTA</td>
<td>European Parliament Committee on International Trade</td>
</tr>
<tr>
<td>IMCO</td>
<td>European Parliament Committee on Internal Market and Consumer Protection</td>
</tr>
<tr>
<td>ITRE</td>
<td>European Parliament Committee on Industry, Research and Energy</td>
</tr>
<tr>
<td>JURI</td>
<td>European Parliament Committee on Legal Affairs</td>
</tr>
<tr>
<td>LIBE</td>
<td>European Parliament Committee on Civil Liberties, Justice and Home Affairs</td>
</tr>
<tr>
<td>PECH</td>
<td>European Parliament Committee on Fisheries</td>
</tr>
<tr>
<td>PETI</td>
<td>European Parliament Committee on Petitions</td>
</tr>
<tr>
<td>REGI</td>
<td>European Parliament Committee on Regional Development</td>
</tr>
<tr>
<td>SEDE</td>
<td>European Parliament Sub-Committee on Security and Defence</td>
</tr>
<tr>
<td>TRAN</td>
<td>European Parliament Committee on Transport and Tourism</td>
</tr>
</tbody>
</table>

**List of political groups**

<table>
<thead>
<tr>
<th>Code</th>
<th>Group Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALDE</td>
<td>Group of the Alliance of Liberals and Democrats for Europe</td>
</tr>
<tr>
<td>ECR</td>
<td>European Conservatives and Reformists Group</td>
</tr>
<tr>
<td>EFDD</td>
<td>Europe of Freedom and Direct Democracy Group</td>
</tr>
<tr>
<td>ENF</td>
<td>Europe of Nations and Freedom Group</td>
</tr>
<tr>
<td>EPP</td>
<td>Group of the European People’s Party</td>
</tr>
<tr>
<td>GUE/NGL</td>
<td>Confederal Group of the European United Left – Nordic Green Left</td>
</tr>
<tr>
<td>Greens/EFA</td>
<td>Group of the Greens/European Free Alliance</td>
</tr>
<tr>
<td>S&amp;D</td>
<td>Group of the Progressive Alliance of Socialists and Democrats in the European Parliament</td>
</tr>
</tbody>
</table>
1. Introduction and methodology

1.1. General introduction

The European Parliament (Parliament), like the majority of national parliaments, exercises a scrutiny and oversight function over the executive. Parliament can exercise its scrutiny and oversight prerogatives with regard to several EU institutions, including the European Commission.

General provisions applicable to the Parliament’s scrutiny prerogatives are delimited in the Treaties (TEU and TFEU). The Treaties empower Parliament to exercise its powers in various policy areas, covering such aspects and procedures as a legislative process or an approval of the EU budget. However, the practical implementation of these Treaty-based Parliamentary powers is often specified in other documents, such as the Framework Agreement on relations between the European Parliament and the European Commission, the Interinstitutional agreement on better law-making, or in the Parliament's rules of procedure.

The Parliament's Treaty-based prerogatives to scrutinise the Commission are relatively broad. At their centre lie issues linked with the investiture of the European Commission, the right to deal with a motion of censure or with the right to set up inquiry committees to investigate policy topics. These core prerogative functions also include Parliament’s ability to pose questions to the Commission, or Parliament’s scrutiny over common foreign and security policy, which can also be considered a part of the Parliament’s core political scrutiny. Beyond these core scrutiny powers, Parliament carries out its political scrutiny responsibilities with regard to the EU budget or oversees the EU legislative process. Finally, the Parliament has the right to constitute legal proceedings before the Court of Justice of the European Union in cases described by the Treaties.

This European Implementation Assessment seeks to provide a picture of the state of play of the Parliament’s political scrutiny of the Commission. It seeks to analyse the implementation of the Treaty provisions, demonstrate their main strengths and weaknesses, and where possible point to opportunities for action.

1.2. Methodology

This subchapter provides a short description of the methodology and data collection used in this European Implementation Assessment (EIA).

This EIA is the result of desk research and analysis of the Treaty provisions, as well as provisions contained in other acts and documents implementing the Treaties. The analysis was supported by verification of data and opinions from the relevant services of the European Parliament’s Secretariat.

This study does not provide a historical overview of the development of the Parliament’s scrutiny prerogatives, as it only analyses these Parliamentary prerogatives since the entry into force of the Lisbon Treaty (December 2009). For a historical study of the development of the Parliament’s powers see, for instance, Corbett R. et al., The European Parliament, 9th edition, John Harper Publishing, August 2016.

Despite the fact that the Parliament can potentially scrutinise the actions of several EU institutions and bodies, this EIA concentrates on the Parliament oversight of the European Commission.
Parliamentary scrutiny over the European Commission: implementation of the Treaty provisions

Limitation is due to the requirement to prepare the European Implementation Assessment as input for the preparation of an implementation report by the Parliament’s AFCO committee on ‘the Treaty provisions on Parliament’s power of political control over the Commission’.

The Treaty provisions are naturally rather broad and general, and may be implemented in different documents, and as the subject of this research is very broad, certain limitations to this study were necessary. The analysis therefore concentrates on the provisions included in the following agreements:

1. Treaty on European Union, and

In addition, the Treaties’ legal provisions relative to Parliament’s prerogatives, including very often their procedural aspects, are further specified in several other documents that do not have the legal character or power of the Treaties. This analysis concentrates on the following documents:

1. Interinstitutional agreement on better law-making,
2. Framework agreement on relations between the European Parliament and the European Commission, and

Provisions included in other documents were assessed and taken into account only where necessary to provide more consistent and/or comprehensive data (such as the Interinstitutional agreement on budgetary discipline, on cooperation in budgetary matters, and on sound financial management).

Apart from the Treaty provisions, data obtained from several European Parliament services3 was analysed, as well as the academic literature on the subject, and existing research carried out by the European Parliamentary Research Service (DG EPRS). Furthermore, publicly available information, accessible via the websites of the European Commission, the European Parliament and the Council was also analysed. This EIA thus draws upon a combination of publicly available data and in-house data provided by the services of the Parliament.

In accordance with Article 14(1) TEU, Parliament exercises legislative functions, budgetary functions, control and consultation functions and elective functions. As these functions are interrelated, it is often impossible to separate them completely. For the purpose of this study, however, several Treaty provisions have been clustered around a specific topic, to cover a similar subject and cover the general functions carried out by Parliament.

In this regard the study concentrates on the ten following areas where Parliament might potentially exercise its scrutiny powers.

1. electoral and institutional issues,
2. a motion of censure,
3. parliamentary questions,
4. inquiry committees and special parliamentary committees,

2 Only the latest version of Parliament’s Rules of Procedure from June 2018 is assessed and taken into account.
3 These services include:
   - DG PRES: Plenary Organisation and Follow-up Unit, Members’ Activities Unit, Institutional Relations Unit, Legislative Planning and Coordination Unit,
   - DG IPOL: Secretariat of the Committee on Budgetary Control, Committee Coordination and Legislative Programming Unit, Secretariat of the Committee on Constitutional Affairs, Legislative Affairs Unit,
   - DG EXPO: Policy Department for External Relations, Secretariat of the Committee on Foreign Affairs
   - DG EPRS: Budgetary Policies Unit, and
   - Legal Service: Legislative and Judicial Coordination Unit.
reporting, consultation and providing information,
scrutiny in budgetary issues,
scrutiny in the legislative procedure,
scrutiny of delegated acts,
legal proceedings, and
scrutiny of external relations.

As these topics are highly complex, more specific in-depth research might be required in future.

The application of the Treaty provisions in each of these specific areas is assessed against two main broad criteria, **intensity** and **impact**. While **intensity** assesses how frequently Parliament used its prerogatives between 2009 and 2018, **impact** assesses the Commission's potential reaction to the application of the Parliament's prerogatives. Both criteria range from low to high.

This study was completed in August 2018 and includes developments which took place and/or information about which was publicly available at that time.
2. Assessing Parliament's powers of scrutiny

In the case of the European Parliament's control and scrutiny of the executive, the general right to 'exercise functions of political control and consultation as laid down in the Treaties' is included in Article 14 TEU.

Parliament, as the only directly elected EU institution, is mandated to carry out democratic scrutiny of the European executive, especially the European Commission, on behalf of EU citizens. In exercising this scrutiny, Parliament should be able to uphold and protect the application of EU principles of democracy and democratic values, such as transparency or accountability at European level.

Parliament's political scrutiny of the Commission can be characterised as the sum of Parliament's prerogatives and powers vested to it by the Treaties for the purpose of assessing the work the Commission carries out in its role as the EU's politically independent body responsible for upholding the Treaties, submitting proposals for new EU legislation, and managing EU policies.

Parliament's scrutiny is based on the relevant Treaty provisions, which can be characterised as either passive provisions (e.g. where the Commission's action towards the Parliament is envisaged), or active provisions (e.g. where the Parliament's action towards the Commission is envisaged). Depending on the text adopted in the Treaties, these types of provisions can be either obligatory (cases where the action is required) or optional (cases where the action is allowed). Both types of provisions are assessed in this study.

Political control of the Commission as exercised by Parliament can be viewed from both a broad and a narrow perspective. The narrower perspective usually includes Parliament's action with regard to electoral and institutional issues, motion of censure, Members' questions and inquiry committees. The broader perspective can also include Parliament's actions with regard to budget, implementing acts, legal proceedings, or legislative procedure. This EIA takes the broader perspective and analyses the state of play in ten specific areas, namely electoral and institutional issues; motion of censure and withdrawal of confidence in an individual Member of the Commission; Parliament and Members' questions; inquiry committee provisions and special parliamentary committees; reporting, consultation and providing information from the European Commission; budgetary control; legislative procedures; delegated acts; legal proceedings; and external relations.

2.1. Electoral and institutional issues

One way the Parliament seeks to influence the Commission, which could potentially constitute scrutiny, is the Parliament's prerogatives linked to electoral and institutional issues, especially: (1) the Parliament's right to elect the President of the European Commission; (2) its right to a vote of consent with regard to the other members of the Commission (as a body) and to consent to (3) the High Representative of the Union for Foreign Affairs and Security Policy.4

2.1.1. Rules

2.1.1.1. President of the Commission

The establishment of the European Commission (the President and the Commissioners) is linked to the elections to the European Parliament. The candidate for the President of the Commission is put forward by the European Council, which is obliged to take into account the results of the elections to the European Parliament. The decision in the European Council is taken by a qualified majority.

4 With regard to specific Parliamentary scrutiny powers regarding the High Commissioner, see subchapter 2.10.
Pursuant to Article 14(1) TEU, Parliament elects the President of the Commission. The candidate for the President of the Commission, proposed by the European Council, needs to be supported by a majority of the Parliament’s component members. If this majority is not reached, the European Council must propose a new candidate, who needs to receive the same majority in the Parliament (Article 17(7) TEU). This procedure can be technically repeated until the required majority is reached.

Implementation of the Parliament's right to elect the President of the Commission is discussed in Rule 117 of the ROP. This rule obliges candidates for the position of President of the Commission, to make a statement upon the request of the Parliament's President, and present their political guidelines to Parliament in plenary, followed by a debate. The vote is taken by secret ballot. If the candidate does not win the support of Parliament's vote, the Parliament then invites the European Council to propose a new candidate within a one month period.

2.1.1.2. European Commission

Article 17(7) TEU also requires that the other members of the Commission, as well as the High Representative of the Union for Foreign Affairs and Security Policy are subject, as a body, to the Parliament's vote of consent.

Pursuant to Rule 118, the Commission President-elect should inform Parliament of the allocation of responsibilities (portfolios) within the proposed College of Commissioners. The Commissioners-designate are requested to appear before the appropriate Parliamentary committee at a single public hearing, during which they are asked to make a statement and to answer the Committee’s questions.

Annex VI of the ROP (Approval of the Commission and monitoring of commitments made during the hearings) includes specific procedural issues concerning this process. The President-elect is invited to present the College of Commissioners and their programme during Parliament’s plenary sitting. After winding up the debate, Parliament either gives its consent or rejects the Commission by a majority of the votes cast by roll call. The ROP also requires that in the case of a substantial portfolio change or a change in the composition of the Commission during the Commission’s term of office, the Commissioners affected ... are invited to participate in a hearing (Article 9, Annex VI). Parliament can also exercise its scrutiny powers if there is 'a change in the Commissioner’s portfolio or in the financial interests of a Commissioner during his or her term of office' (Rule 118(10)).

Commissioners-designate are evaluated by Parliament based on 'their general competence, European commitment and personal independence. 'Knowledge of their prospective portfolio and their communication skills' are also assessed (Article 1, Annex VI).

Article 6 of the ROP’s Annex VI highlights the power of parliamentary committees to review the commitments made and priorities referred to by Commissioners-designate during the hearings throughout their mandate.

---

8 For more in this regard, see the following sub-chapter on motion of censure and withdrawal of confidence in an individual Member of the Commission.
2.1.2. Application of rules

The Commission’s five-year term of office and the person who will ultimately become the President of the Commission are influenced by Parliament’s decisions.

2.1.2.1. The *Spitzenkandidaten* process

The *Spitzenkandidaten* process was established\(^9\) by the European political parties before the 2014 European elections, when several of them put forward their lead candidates (*Spitzenkandidaten*) for the post of the future President of the Commission. Five European political parties nominated their lead candidate: the European People’s Party (EPP) put forward Jean-Claude Juncker, the Party of European Socialists (PSE) proposed Martin Schulz, the Alliance of Liberals and Democrats for Europe (ALDE), Guy Verhofstadt, the Greens nominated Ska Keller and José Bové jointly, and the European Left put forward Alexis Tsipras.

Electing one of the *Spitzenkandidaten* as President of the Commission creates a direct link between the Commission and Parliament. To a certain extent this procedure is reminiscent of parliamentary elections in parliamentary democracies, where the leader of the winning political party can become prime minister.\(^10\) This procedure provides European citizens with a certain influence, through their democratic vote, in who is elected President of the Commission. This process is intended to foster European citizens’ political awareness, and may also reinforce the political legitimacy of Parliament and the Commission alike.

As the rules included in the Treaties are rather general and make no mention of any *Spitzenkandidat* or ‘leading candidate’ (or anything else in this sense), this process can only be considered to be a constitutional tradition *in statu nascendi*, where European citizens can have some say in who will become the next President of the Commission. According to the Parliament’s press release\(^11\) of 7 February 2018, this process was ‘primarily an agreement between EU leaders in the European Council, the European Parliament and European political parties on how to interpret the wording in the Treaties’.

According to the text of the Treaties, the European Council is not bound by the results of the *Spitzenkandidaten* process, even though it has to take the results of the elections to the European Parliament into account. Conversely, the vagueness of the rules de facto strengthens the Parliament’s position, as Parliament can potentially reject all the candidates submitted by the European Council until their *Spitzenkandidat* is proposed. Then the position of President of the Commission could be ‘handed’ to the political group that wins the most seats during the European Parliament elections.

As the President of the Commission considerably influences the development of the EU’s policies, Parliament’s oversight of the choice of President considerably strengthens its position and might ultimately speed up the legislative process. However, once the President of the Commission is elected, Parliament as a representative body loses real power over his or her work.\(^12\)

---


\(^10\) Naturally, this only is a very general and simplistic description of this particular procedure.

\(^11\) ‘*Spitzenkandidaten* process cannot be overturned, say MEPs’, press release, European Commission, 7 February 2018.

\(^12\) Of course, Parliament can still vote on a motion of censure of the Commission College. See subchapter 2.2.
In its decision of 7 February 2018 on the revision of the Framework agreement on relations between the European Parliament and the European Commission, Parliament has already announced that it intends to follow this procedure again in the 2019 elections. In this regard Parliament approved amendments to the Framework Agreement of 2010 included in Annex to the decision. The decision also agreed that serving EU Commissioners may run as Spitzenkandidaten in the upcoming 2019 European elections.

Furthermore, Parliament also underlined its decision to use this process in its resolution of 19 April 2018 on Parliament’s estimates of revenue and expenditure for the financial year 2019.

As the Spitzenkandidaten process has been used only once (in the 2014 European elections), it is too early to evaluate its impact on the procedure for the election of the President of the Commission. Nonetheless, Parliament itself, in its decision of February 2018, already noted that ‘in 2014 the Spitzenkandidaten process proved to be a success’ (point 9). It should also be noted that the present President of the Commission (Jean-Claude Juncker) was indeed the EPP group Spitzenkandidat. Juncker received 40 more votes in the Parliament’s plenary than José Manuel Barroso in 2009.

Furthermore, in his State of the Union address on 17 September 2017, the current President of the Commission also argued that ‘if you want to strengthen European democracy, then you cannot reverse the small democratic progress seen with the creation of lead candidates – Spitzenkandidaten. I would like the experience to be repeated.’ On the other hand, the President of the European Council (Donald Tusk) noted that ‘there is no automaticity in this process’ during a press conference following an informal meeting on 23 February 2018. He argued that ‘the Treaty is very clear that it is the autonomous competence of the European Council to nominate the candidate, while taking into account the European elections, and having held appropriate consultations’.

The following table shows the results of the election of the Commission President in 2009 and 2014, including the votes cast and the term in office.

---

14 The decision was adopted by a roll-call vote with 457 votes for, 200 against and 20 abstained.
16 After the 2014 election the European Council did not immediately agreed with this ‘Spitzenkandidaten’ process. Although in the end it agreed with the J-C. Juncker its decision was not unanimous. See Conclusions of 30 August 2014.
17 Informal meeting of the 27 heads of state or government, press release, European Council, 23 February 2018.
Table 1 – Election of the President of the Commission since 2009

<table>
<thead>
<tr>
<th>Procedure reference and date</th>
<th>Vote</th>
<th>President of the Commission</th>
<th>Term in office</th>
</tr>
</thead>
</table>

Data source: Legislative Observatory (OEIL), European Parliament.

2.1.2.2. Approval of the College of the Commission – investiture

Before the Commissioners-designate can take office, Parliament exercises its scrutiny power by holding hearings with the proposed candidates in order to ascertain whether their skills and their qualifications match the posts proposed to them. Parliament needs to approve the proposed members of the Commission as a body. Since 1995,18 the Commissioners-designate have been required to appear before a Parliament public hearing involving one or several parliamentary committees, and after responding to a written questionnaire. The Commissioners-designate are presented by the incoming President of the Commission and Members evaluate their suitability before the plenary vote on the proposed Commission College.

The exact schedule of the hearings, i.e. when which Commissioner-designate should appear before which parliamentary committee, is approved by Parliament’s Conference of Presidents (COP). If a Commissioner-designate fails their hearing, they may be recalled for an additional hearing.

Before the hearings, declarations of financial interests prepared by Commissioners-designate are discussed by Parliament’s Committee on Legal Affairs (JURI). The JURI committee needs to confirm that no conflict of interest exists. Only then can the hearing before a committee responsible for a subject matter proceed. A single public hearing is organised for all the Commissioners-designate. These are organised by the COP on the recommendation of the Conference of Committee Chairs (CCC). The hearings are scheduled for a duration of three hours, while a live audiovisual transmission of the hearings is made available free of charge to the public and media (Article 3, Annex VI, ROP).

Following each hearing, each of the committees meet in camera to prepare their evaluation of the candidate’s expertise and performance. The evaluation of the outcome of hearings is carried out by the CCC at an extraordinary meeting and is subsequently is sent to the COP. The COP finally declares the hearings closed and finalises the evaluation. The Parliament then casts its votes about the Commission as whole in plenary session.

Occasionally, the hearings can lead to the withdrawal of a Commissioner-designate’s candidacy, or to a change in their portfolio. In 2014, following a Parliamentary hearing and subsequent negative vote in the Environment (ENVI) and Industry (ITRE) committees concerning Alenka Bratušek (proposed as a candidate for the position of Commissioner for Energy Union and the Commission’s Vice-President), Slovenia withdrew her nomination.19 In 2009, after the hearing of Rumiana Jeleva20

---

18 The first Commission subject to Parliament ‘hearings’ was the 1995 Santer Commission.

19 Hearing of Alenka Bratušek, Energy Union, Vice-President (withdrawn), European Parliament, 6 October 2014.

(proposed as a candidate for the position of Commissioner for International Cooperation), Bulgaria withdrew her nomination.

Between 2010 and 2018 there were a number of additional hearings of Commissioners-designate, including four to replace Commissioners who gave up their posts following election in May 2014 as Members of the European Parliament, and in one case following Croatian accession to the EU in July 2013. In the current term, two Commissioners have resigned, and their replacements were the subject of hearings.

On 4 June 2013, Parliament held a hearing of Commissioner-designate Neven Mimica, following which Parliament approved Mimica's nomination as Commissioner for Consumer Policy on 12 June 2013.\(^\text{21}\)

In July 2014, Parliament held hearings with (1) Jyrki Katainen, nominated to replace Olli Rehn for the Economic and Monetary Affairs and the Euro portfolio; (2) Ferdinando Nelli Feroci for the Industry and Entrepreneurship portfolio to replace Antonio Tajani; (3) Martine Reicherts to replace Viviane Reding for the Justice, Fundamental Rights and Citizenship portfolio; and (4) Jacek Dominik to replace Janusz Lewandowski for Financial Programming and Budget.\(^\text{22}\) It should be noted that the mandate of these Commissioners expired on 31 October 2014.

On 12 September 2016, Parliament held a hearing with Commissioner-designate Julian King, to take on the Security Union portfolio.\(^\text{23}\) And on 20 June 2017, Parliament held a hearing with Commissioner-designate Mariya Gabriel, to take over the responsibility for the Digital Economy and Society portfolio.\(^\text{24}\)

As with the Spitzenkandidaten procedure, the hearings of Commissioners-designate are not expressly stipulated in the Treaties. Nonetheless, they increase the Commission's accountability to Parliament and they are an important prerequisite for Parliament to be able to give an objective decision on the candidate for Commissioner.\(^\text{25}\)

With regard to the obligation on parliamentary committees to review the commitments made and priorities referred to by Commissioners-designate during the hearings throughout their subsequent mandate, the committees usually hold regular 'structured dialogue' meetings with the respective Commissioner. The practice is to have these meetings at least twice a year. During the meetings, Members ask the Commissioner questions on progress in the fulfilment of their commitments regarding the priorities of each particular committee.

\(^{21}\) European Parliament decision of 12 June 2013 approving the appointment of Neven Mimica as a Member of the Commission (2013/0806(NLE)) was approved with 565 votes in favour, 64 against and 64 abstentions.

\(^{22}\) European Parliament decision of 16 July 2014 approving the appointment of Jyrki Katainen, Jacek Dominik, Ferdinando Nelli Feroci and Martine Reicherts as Members of the Commission was approved with 421 votes in favour, 170 against and 32 abstentions.

\(^{23}\) European Parliament decision of 15 September 2016 approving the appointment of Julian King as a Member of the Commission (2016/0812(NLE)) was approved with 394 votes in favour, 170 against and 32 abstentions.

\(^{24}\) European Parliament decision of 4 July 2017 approving the appointment of Mariya Gabriel as a Member of the Commission (2017/0805(NLE)) was approved with 517 votes in favour, 77 against and 89 abstentions.

Table 2 – Election/approval of the Commission since 2009

<table>
<thead>
<tr>
<th>Procedure reference and date</th>
<th>Vote</th>
<th>Hearings of the Commission</th>
<th>Commission term in office</th>
</tr>
</thead>
</table>

Data source: Legislative Observatory (OEIL), European Parliament.

2.1.3. Summary

Whether in the election of the President of the Commission or in giving consent for the proposed Commission College, the European Parliament can and does exercise its scrutiny prerogatives. Naturally, this particular power of scrutiny is ex-ante in character, as Parliament assesses the abilities of the Commissioners-designate before they actually carry out their work. In this context, it is necessary to pay attention to the possibility for and obligation on parliamentary committees to monitor commitments made during hearings of Commissioners-designate throughout their mandate. The result of such monitoring might potentially lead to a withdrawal of the Parliament’s confidence in an individual Commissioner.26

Despite the fact that Parliament can considerably influence the College of the Commission by electing its President and approving the Commissioners, this power, although substantive, is nevertheless fairly limited. Since 2009, Parliament has had only two opportunities to actually use this particular prerogative in full.27 Furthermore, one can see some limitations to Parliament’s possible field of action with regard to the replacement of certain candidates, since according to the wording of the Treaties, Parliament can only reject or accept the Commission as whole.

Nonetheless, approval of the Commissioners and election of its President deepens the political link between Parliament and the Commission and can be considered a step towards greater democratisation of the EU.

However, the existing rules included in the Treaties are rather general, opening doors to varied interpretations. Therefore, although the procedure for hearings of Commissioners-designate can be considered as important and generally positive progress, the Spitzenkandidaten procedure raises questions. There may be a need to improve and clarify the rules and the procedure itself.28 However, such rules would require wider approval, based on a political discussion, since the relatively vague rules included in the TFEU and a unilateral use of the Spitzenkandidaten procedure by Parliament could potentially lead to a clash between the European Council and Parliament, which would neither benefit the EU and its institutions, nor the EU citizens.

26 See, subchapter 2.2.
27 If we take the cut-off date of this study, 1 December 2009 (entry into force of the Lisbon Treaty), into account, then Parliament has actually used the ‘new’ legal provisions only once, since Barroso was elected President of the Commission in September 2009.
28 See for example European Parliament decision of 28 April 2016 on discharge in respect of the implementation of the general budget of the European Union for the financial year 2014, Section I – European Parliament, point 32.
2.2. Motion of censure and withdrawal of confidence in an individual Member of the Commission

Governments and their construction in parliamentary democracies do not only reflect the results of general elections to parliaments, but they are also politically linked to parliamentary approval, i.e. they are responsible to parliaments. The power of parliaments to assess the work of governments and express their opinion about it belongs among those parliamentary prerogatives that can ultimately lead to the fall of a government. If parliaments are discontent with the functioning or actions of governments or individual ministers, they can resort to withdrawing their confidence in ministers or voting on a motion of no confidence in the whole government. A vote of no confidence often leads to the fall of a government and potentially to subsequent parliamentary elections. However, this depends on the constitutional rules of each country, as for example, some countries distinguish ‘a constructive vote of no confidence’ leading to a change of the head of government without the entire government falling and subsequent parliamentary elections being required.

Similarly, the European Parliament has the power to express its discontent with the work of the Commission and to take a vote of no confidence – a motion of censure. Potentially, this power can be considered to be the most important means of Parliament’s political control of the Commission as it may lead to the fall of the Commission. However, Parliament’s power to withdraw its confidence in an individual Commissioner is a slightly different case.

2.2.1. Rules

While the Treaties provide rules with regard to motion of censure, they are silent regarding the withdrawal of confidence in an individual Commissioner.

2.2.1.1 Motion of censure

General provisions of the Parliament’s right to vote on a motion of censure of the Commission, called also a vote of no confidence, are included in Article 17(8) TEU and in Article 234 TFEU. Implementation of this right is presently discussed in Rule 11932 of the ROP.

Provisions in both Treaties underline the Commission’s responsibility towards the European Parliament. A successful vote on a motion of censure against the Commission leads to a resignation of the Commission as a body, including the High Representative of the Union for Foreign and Security Policy with regard to his/her duties carried out in the Commission. To a certain extent, this mirrors the power of national parliaments over national governments.

The Treaty provisions note that Parliament cannot vote on such a motion ‘until at least three days after the motion has been tabled’ (Article 234 TFEU). The ROP (Rule 119) provides clearer information concerning the procedural issues. The threshold required for submitting the motion of censure is at least one tenth of the component Members of Parliament (75 Members). If the motion

---

29 Depending on the method of government creation in different countries.
30 For example, Spain or Hungary. This case was also applied in 2018 in Slovakia.
33 After the 2019 elections this number will decrease to 70.
of censure has been voted on in the preceding months, a new one must be tabled by at least one fifth of the component Members of Parliament (150 Members).  

The motion of censure has to be submitted to the Commission and its reasons have to be stated. A motion of censure has to be announced to Members of the Parliament by the President of Parliament immediately upon reception. Between receipt of a motion of censure and the debate regarding the motion, the ROP prescribes a period of 24 hours. The vote taken on the motion is a roll call vote, which can be taken at the earliest 48 hours after the beginning of the debate. The debate and the vote have to take place during the part-session following the submission of the motion. In order for a vote on a motion of censure to be successful, it has to be carried by a two-thirds majority of the votes cast, representing a majority of the component Members of the European Parliament. This majority is rather high and occasionally raises questions as to its practical usefulness or applicability.

Figure 1 illustrates the sequence of the motion of censure procedure.

2.2.1.2. Withdrawal of confidence in an individual member of the Commission

The Commission is responsible to Parliament as a body, as the Treaties only recognise its collective responsibility towards Parliament. This might be one of the reasons why the Treaties are silent regarding a withdrawal of confidence in an individual Member of the Commission by

---

34 After the 2019 elections this number will decrease to 141.

Parliament. Nonetheless, the TFEU recognises the responsibilities of individual Commissioners, who can be requested to resign by the President of the Commission (Article 17(6) TFEU).

Rule 118(10) of the ROP provides Parliament with the possibility to request that the President of the Commission withdraw his/her confidence in an individual Commissioner if a conflict of interest is identified during the Commissioner's term of office and if the President of the Commission has failed to implement the Parliament's recommendations for resolving this conflict of interests.

In this context, point 5 of the Framework Agreement on relations between the European Parliament and the European Commission, 2010 (FA 2010) empowers Parliament to make such a demand of the President of the Commission. The President of the Commission is then obliged to 'seriously consider whether to request that Member [of the Commission] to resign'. The same FA 2010 provision obliges the President of the Commission either to (1) require the resignation of that Commission member, or (2) explain his/hers refusal to do so before Parliament in the following part-session. Where appropriate, Parliament can also demand that the President of the Commission take action with a view to depriving the Commissioner in question of their right to a pension, or other benefits in lieu of pension, in accordance with Article 245(2) TFEU.

In general, this means that Parliament has no powers per se to force the resignation of an individual Commissioner. The Treaties do not provide Parliament with this prerogative. Parliament can only demand, by passing a resolution in plenary, that the President of the Commission do so, and account for his/her decision in plenary. Whether Parliament would be willing to go further with a motion of censure if the President of the Commission disregarded the Parliament's request and provisions of the FA 2010 remains an open question.

Neither the ROP nor the Framework Agreement require a special majority to request that the President of the Commission withdraw confidence in an individual Commissioner.37

2.2.2. Application of rules

The Treaty provisions set out the Commission's collective responsibility to Parliament which can, if the requirements are complied with, withdraw its trust in the Commission. Although the Treaties are silent on withdrawal of confidence in an individual member of the Commission, the Framework Agreement includes provisions touching on this subject.

2.2.2.1. Motion of censure

To date, Parliament has tried (unsuccessfully) several times to use the Treaty provisions and their predecessors (Article 201 TEC) relating to a motion of censure. The following table provides an overview of cases in which the Members attempted to use the provisions related to the motion of censure procedure and remove a Commission College. The main reasons for the vote, results and the number of Members tabling the motions are also included.

37 In this regard, it should also be noted that, according to Article 2(3) of the Commission Decision of 31 January 2018 on a Code of Conduct for the Members of the European Commission (C/2018/0700), the 'Members [of the Commission] have the responsibility to maintain political contacts in view of the accountability of the Commission to the European Parliament and the European electorate and in view of the role of European political parties in the democratic life of the Union.'
### Table 3 – European Parliament Motions of censure 1992-2018

<table>
<thead>
<tr>
<th>Procedure file</th>
<th>Date of vote</th>
<th>Votes</th>
<th>Result</th>
<th>MEPs tabling motion</th>
<th>Reason for motion of censure</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/1594(MOC)</td>
<td>12 May 2016</td>
<td>Not applicable</td>
<td>Motion withdrawn</td>
<td>83</td>
<td>The Commission failed to adopt delegated act on scientific criteria for determining endocrine-disrupting properties</td>
</tr>
<tr>
<td>2005/2101(INS)</td>
<td>8 June 2005</td>
<td>For - 35, Against - 598, Abstentions - 35</td>
<td>Procedure rejected</td>
<td>77</td>
<td>President of the Commission received a gift linked to a regional aid grant.</td>
</tr>
<tr>
<td>B3-1676/92</td>
<td>17 December 1992</td>
<td>For - 96, Against - 246, Abstentions - 15</td>
<td>Procedure rejected</td>
<td>75</td>
<td>Denouncing the Commission’s role in the GATT negotiations</td>
</tr>
</tbody>
</table>

Data source: Legislative Observatory (OEIL), European Parliament and the Committee Coordination and Legislative Programming Unit (Coordleg), European Parliament.

One case where Parliament’s motion of censure, albeit indirectly, led to the fall of the Commission occurred in 1999. Parliament refused to agree discharge for the Commission in respect of the implementation of the general budget of the European Communities for the 1996 financial year.

---

39 The Legislative Observatory (OEIL) does not provide any further information about this file.
39 The Legislative Observatory (OEIL) does not provide any further information about this file.
40 This date refers to the date when the motion was tabled, as in this case there was no vote as the motion was later withdrawn.
41 The Legislative Observatory (OEIL) gives the date of 14 January 1997.
Although, as can be seen in table 3, Parliament did not reach the requested majority in the plenary, two months after the vote, the Commission collectively resigned.42

2.2.2.2. Withdrawal of confidence of an individual member of the Commission

The provisions included in the ROP and FA 2010 on withdrawal of confidence in an individual member of the Commission have never been applied.43 It is therefore impossible to evaluate their effects.

2.2.3. Summary

Similar to provisions linked with the Parliament’s power of investiture of the Commission, the Parliament’s power to support a motion of censure has also been used only sporadically. This power has been used twice since 2009, and seven times since 1992. However, as indicated in table 3, none of the motions for censure have reached the majority required by the Treaty and directly resulted in the fall of the Commission.44 Nonetheless, a motion of censure is undoubtedly the strongest instrument in the Parliament’s toolkit vis-à-vis the Commission.

The most striking challenge of this tool is the two-thirds majority of Members that seems very difficult to reach across Parliament. On one hand, the requirement for this majority limits the Parliament’s power to effectively control the Commission, while on the other, a very high majority contributes to the stability of the Commission and prevents the misuse of this possibility by a minority in Parliament. Nevertheless, should Parliament feel there were satisfactory grounds to require a motion to be carried, it would doubtless reach the required majority. In addition, as can be concluded from the fall of the Santer Commission in 1999, even the threat that Parliament will use its power can bring about the resignation of the Commission.

The withdrawal of confidence of an individual member of the Commission has never been used. The Treaties do not expressly confer this competence on Parliament, although based on FA 2010, Parliament can demand the President of the Commission withdraw confidence at Parliament’s request. Therefore, any such request depends to a large extent on the state of relations between Parliament and the President of the Commission, who is the sole person to decide whether a Parliament request will lead to the removal of an individual Commissioner.

---

42 In this context see First Report on Allegations regarding Fraud, Mismanagement and Nepotism in the European Commission, Committee of Independent Experts, 15 March 1999.

43 However, in a recent case, an individual Commissioner departed from the Commission: the Maltese Commissioner for Health and Consumer Policy, John Dalli. This resignation followed an investigation by the European Anti-Fraud Office (OLAF). Dalli offered his resignation for reasons of impropriety following a meeting with President Barroso in October 2012, and subsequently contested the procedure in the Court of Justice of the EU. However, the General Court held that ‘the power to request a Member of the Commission to resign, which is a discretion conferred on the President of the Commission by the EU Treaty, cannot be considered to be illegitimate pressure affecting the validity or the voluntary nature of the resignation of the person concerned’ (point 157, Case T-562/12 Dalli v European Commission). The judgment was later upheld on appeal (Case C-391/15 Dalli v European Commission).

44 It seems, that at the time, Parliament’s Political Groups were more supportive of Commissioner Dalli than the Commission, and linked the forced departure to politically motivated delays regarding the pending update of the EU Tobacco Directive (MEPs look for smoking gun after Dalli resignation, Euractiv, 24 October 2012). Ultimately, this case resembles the opposite of the circumstances envisaged in the TFEU and FA 2010, as Parliament put the resignation in question, rather than requesting resignation.

45 Although it can argued that the fall of the Santer Commission in 1999 was the consequence of such a motion.
2.3. Parliament's and Members' questions

The prerogative of parliaments to scrutinise the executive is also carried out through questions addressed to the executive by parliaments and their members. Such questions can have political consequences, as they can trigger further investigation through various ad hoc inquiry committees, or potentially even the withdrawal of confidence in an individual member of government. As such, parliamentary questions should not be underestimated.

The European Parliament and its Members can also make use of this scrutiny tool.

2.3.1. Rules

The traditional parliamentary right to question the executive (the Commission) in oversight of its actions is established by Article 230 TFEU. The TFEU requires the Commission to reply, either orally or in writing, to questions put to it by Parliament or its Members. The TFEU is rather general in this regard and only provides a legal basis for the Members' questions. The specific rules applicable to this right and its implementation are currently included in the ROP (Rules 128-131a) and in FA 2010. Specific criteria regarding the admissibility of Member's questions and interpellations are set out in Annex II of the ROP.

The ROP, as well as the TFEU, distinguish between questions for oral answer with debate (Rule 128) and questions for written answer (Rule 130) asked by Members. The ROP furthermore specify minor interpellations for written answer (Rule 130a) and major interpellations for written answer with debate (Rule 130b). They also include the concept of question time (Rule 129).

Questions for oral answer with debate to the Commission may be put forward by a committee, a political group or Members. These questions need to be submitted in writing to the President, who subsequently refers them to the Conference of Presidents. It is the COP who decides whether the questions should be put on the draft agenda. These questions have to be referred to the Commission at least one week before the sitting on the agenda. Pursuant to Rule 149a point 1, a question for oral answer can also be added when the agenda of the plenary is adopted at the opening of the part-session.

Questions for written answer to the Commission may be put forward by any Member in accordance with Annex II of the ROP. Members have sole responsibility for their content. Written questions have also to be submitted to the President, who decides on their admissibility in a reasoned decision. Members can submit a maximum 20 questions over a rolling period of three months. The ROP here distinguishes between priority and non-priority questions. Each Member can table one priority question per month. If the Commission cannot answer the question within six weeks (or three weeks if it is a priority question), the Member may request this question is placed on the agenda of the next meeting of the committee responsible.

---

50 The ROP's provisions relating to Members' questions to the European Central Bank, the Single Supervisory Mechanism and the Single Resolution Mechanism are not discussed here.
52 Annex II ROP sets criteria for questions and interpellations for written answer under Rules 130, 130a, 130b, 131 and 131a.
In minor interpellations for written answer and in major interpellations for written answer with debate the Commission can be asked by a committee, a political group or at least five percent of Parliament's component Members. Minor interpellations ask the Commission to provide Parliament with information on specifically designated issues. In both cases, the questions have to comply with the requirements of Annex II and have to be submitted to the President, who decides on their admissibility. Minor interpellations should be generally answered in two weeks, although an extension to the deadline can be agreed. With regard to major interpellations, these ask the Commission to give information regarding a probable timetable for providing an answer. After the answer is received, major interpellations are placed on the draft agenda and must be debated if required. This is also applicable if the Commission refuses to answer.

All questions and answers are published on the Parliament's website.53

Annex II of the ROP specifies that written questions and interpellations have to: (1) clearly specify the addressee to whom they are to be transmitted through the usual interinstitutional channels; (2) fall exclusively within the limits of the competences of the addressee, as laid down in the relevant Treaties or in legal acts of the Union, or within its sphere of activity; (3) be of general interest; (4) be concise and contain an understandable interrogation; (5) not exceed 200 words; (6) not contain offensive language; (7) not relate to strictly personal matters; and (8) not contain more than three sub-questions. In this regard, Parliament’s Secretariat should provide authors with advice on how to comply with these criteria in an individual case (Annex II, point 3).

Written questions concerning related matters may be merged into a single question by Parliament's Secretariat, to be answered together (Annex II, point 6).

Furthermore, should identical or similar questions have been put forward and answered by the Commission during the preceding six months, or should questions relate to follow-up on a resolution that has already been provided by the Commission, Parliament’s Secretariat transmits a copy of the previous question and answer, or the Commission’s follow-up, to the author. Nevertheless, the President of the Parliament can decide that, in the light of significant new developments, the question should still be asked (Annex II, point 4).

The provisions included in the FA 2010 also set out some additional rules regarding parliamentary questions. For example, point 16 requires that Parliament avoid asking questions in respect of which the Commission has already informed Parliament of its position through a written follow-up communication.

The ROP (Rule 129) also allow for question time with the Commission. This may be held at each part-session and can last up to 90 minutes. Question time can be held on one or more specific horizontal themes. The COP sets specific horizontal themes and decides on a question time at least one month in advance of the part-session, and invites the Commissioners responsible for the related portfolio(s). The number of Commissioners who can be invited for the session is limited to a maximum of three. In accordance with guidelines established by the Conference of Presidents,54 a ‘special question hour’ may be held with the President of the Commission. Question time is not specifically allocated, however Members holding different political views should be given the opportunity to put a question forward. Members have one minute to pose a question (or 30 seconds to pose a supplementary question), while the Commissioners have two minutes to provide an answer or a supplementary reply. The President decides on the admissibility of the questions.

54 It seems that such guidelines have never been adopted.
In this regard, there is a slight discrepancy between the ROP and the FA 2010. While Rule 129 of the ROP require that question time should be 90 minutes long, the FA 2010 mentions a ‘question hour’ (point 46). Also according to the FA, the question hour with the President of the Commission should take place in two parts: (i) spontaneous; and (ii) devoted to a specific policy theme.

2.3.2. Application of rules

The existing rules allow Members to ask the Commission various questions for reply both in writing or orally. The latest revision of the ROP that entered into force in June 2018 also provides for the organisation of question time.

2.3.2.1. Questions for written answer

The following tables 4 and 5 give an overview of questions for written answers that were addressed by the Members to the Commission during the last two parliamentary terms, and the answer rate. The statistics provided in this sub chapter also include questions to the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy.

Table 4 – Questions for written answer and answers provided, 7th parliamentary term (2009-2014)

<table>
<thead>
<tr>
<th>Year</th>
<th>Questions</th>
<th>Answers provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009 (from July)</td>
<td>2 734</td>
<td>2 668</td>
</tr>
<tr>
<td>2010</td>
<td>10 267</td>
<td>9 924</td>
</tr>
<tr>
<td>2011</td>
<td>11 985</td>
<td>11 536</td>
</tr>
<tr>
<td>2012</td>
<td>11 342</td>
<td>10 871</td>
</tr>
<tr>
<td>2013</td>
<td>13 888</td>
<td>13 201</td>
</tr>
<tr>
<td>2014 (until June)</td>
<td>5 391</td>
<td>5 065</td>
</tr>
<tr>
<td>Total</td>
<td>55 607</td>
<td>53 265</td>
</tr>
</tbody>
</table>


55 The number of Commission answers is lower than the number of the questions asked because the Commission occasionally provides a joint answer to questions on the same topic.
Table 5 – Questions for written answer and answers provided – 8th parliamentary term (2014-2018)

<table>
<thead>
<tr>
<th>Year</th>
<th>Questions</th>
<th>Answers provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014 (from July)</td>
<td>5,458</td>
<td>5,155</td>
</tr>
<tr>
<td>2015</td>
<td>15,555</td>
<td>14,804</td>
</tr>
<tr>
<td>2016</td>
<td>9,494</td>
<td>9,062</td>
</tr>
<tr>
<td>2017</td>
<td>7,777</td>
<td>7,411</td>
</tr>
<tr>
<td>2018 (until June)</td>
<td>3,573</td>
<td>21,29</td>
</tr>
<tr>
<td>2019</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>41,857</td>
<td>38,561</td>
</tr>
</tbody>
</table>

Data source: DG PRES, European Parliament

Although the tables are incomplete, it is possible to see that during the first two years of the 8th parliamentary term (2014, 2015), the questions asked increased when compared with the questions asked during the first two years of the 7th parliamentary term (2009, 2010). The situation changed in 2016 and 2017, when the number of questions asked dropped considerably.

A certain percentage of questions for written answer are usually deemed inadmissible. These questions are subsequently withdrawn by their authors or cancelled. The remaining questions for written answer are all forwarded to the Commission and are all answered. Nevertheless, the number of answers provided by the Commission is lower than the number of questions sent, because the Commission sometimes sends a joint answer to several questions on the same topic.

Table 6 – Average time taken to answer, in days – European Commission (2015-2018)

<table>
<thead>
<tr>
<th>Non-priority questions (in days)</th>
<th>Priority questions (in days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>64 61 58 59 60.50</td>
<td>57 52 48 48 51.25</td>
</tr>
</tbody>
</table>


As noted above, priority questions should be answered by the Commission within three weeks (21 days) from their notification. Non-priority questions should be answered within six weeks (42 days). As can be seen from the data included in table 6, the Commission’s average time to provide an answer is somewhat higher: on average, 60.5 days for non-priority and 51.25 for priority questions.

It should be highlighted that these deadlines have never been agreed with either the Commission or the other addressees of the questions. The Commission considers these deadlines to be indicative. Nevertheless, cooperation between Parliament and the Commission improves the timely

---

56 The number of the Commission’s answers is lower than the number of the questions asked because the Commission occasionally provides a joint answer to questions on the same topic.

57 Situation on 16 July 2018. The answers to several questions tabled during the first semester 2018 are still pending.

58 One can assume that this was partially also caused because of an amendment of the ROP in January 2017 that limited the number of questions that can be asked by a Member.

59 The figures for the first semester 2018 are still provisional, as the answers to many questions tabled during the first semester 2018 are still pending.
provision of answers. Furthermore, as noted by Parliament’s Directorate General for the Presidency (DG PRES), holidays and office closure days are not taken into account for the calculation of deadlines and answering times, except when offices are closed at the end of the year. In addition, the Commission uses a different system for calculating its targets for timely answers, as it takes all holidays and office closure dates into account.

It should also be noted that the average time to answer priority questions in 2018 decreased, while there is a relative rise in the average time to answer the non-priority questions. However these numbers may be different at the end of 2018, as they are based on data from the first six months of 2018.

Table 7 – Division of questions, based on political group, in 7th and 8th parliamentary terms

<table>
<thead>
<tr>
<th>Political group</th>
<th>7th parliamentary term (2009-2014)</th>
<th>8th parliamentary term (2014-2018 (June))</th>
</tr>
</thead>
<tbody>
<tr>
<td>EPP</td>
<td>17 879</td>
<td>10 254</td>
</tr>
<tr>
<td>S&amp;D</td>
<td>10 007</td>
<td>10 864</td>
</tr>
<tr>
<td>ALDE</td>
<td>5 902</td>
<td>4 290</td>
</tr>
<tr>
<td>Greens/EFA</td>
<td>3 864</td>
<td>2 063</td>
</tr>
<tr>
<td>ECR</td>
<td>3 993</td>
<td>2 680</td>
</tr>
<tr>
<td>GUE/NGL</td>
<td>3 794</td>
<td>5 977</td>
</tr>
<tr>
<td>EFDD</td>
<td>7 265</td>
<td>2 641</td>
</tr>
<tr>
<td>ENF</td>
<td>-</td>
<td>2 594</td>
</tr>
<tr>
<td>Non-attached Members (NI)</td>
<td>4 848</td>
<td>2 042</td>
</tr>
<tr>
<td>Total</td>
<td>57 552</td>
<td>43 405</td>
</tr>
</tbody>
</table>


A parliamentary question can be co-tabled by several Members and by Members from different political groups. As a result, the total number of questions included in table 7 is larger than the total number of questions tabled (table 4 and table 5).

The latest revision of the ROP introduced two more types of parliamentary question – minor and major interpellations. As noted above, minor interpellations for written answer should address specifically designated issues, whereas major interpellations for written answer with debate provide the possibility to scrutinise the Commission in plenary. Between January and June 2018, there were five major interpellations on:

- violation of the fundamental human rights of women in Pakistan (G-000005/2018); debated in plenary on 5 July 2018,
- observance of the International Day of the Family (15 May) (G-000004/2018); debated in plenary on 31 May 2018,
- the EU response to sexual misconduct in aid organisations (G-000003/2018); debated in plenary on 31 May 2018,
- situation in the European shipbuilding industry (G-000002/2018); debated in plenary on 19 April 2018, and
- Israel's involvement in projects financed under Horizon 2020 (G-000001/2018) debated by plenary on 14 June 2018.
Table 8: Minor and major interpellations to the European Commission (2017-2018)

<table>
<thead>
<tr>
<th>Year</th>
<th>Minor interpellations for written answer</th>
<th>Major interpellations for written answer with debate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>1</td>
<td>12</td>
</tr>
<tr>
<td>2018 (until June)</td>
<td>0</td>
<td>5</td>
</tr>
</tbody>
</table>


Due to the hitherto small number of these interpellations, it is not yet possible to assess their usefulness.

2.3.2.2. Questions for oral answer

With regard to questions for oral answer it should be noted that not all questions for oral answer with debate actually receive an answer. Some might never be placed on the agenda of Parliament and for debate in plenary. As noted in Rule 128 of the ROP (and above) the COP decides whether to put these questions on the draft agenda. Also, pursuant to Rule 149a (1), questions for oral answer can also be added when the plenary session agenda is adopted at the opening of the part-session. Questions not placed on the agenda lapse within three months of being submitted.

The following two tables show that the number of questions for oral answer that were asked in the last two legislative terms has decreased. Of course, since this data is incomplete, this conclusion is only preliminary. Nonetheless, the data shows a decreasing tendency of questions for oral answers with debate.

Table 9 – Questions for oral answer with debate – 7th parliamentary term (2009-2014)

<table>
<thead>
<tr>
<th></th>
<th>2009 (from July)</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014 (June)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debate in plenary</td>
<td>32</td>
<td>93</td>
<td>108</td>
<td>58</td>
<td>52</td>
<td>12</td>
<td>355</td>
</tr>
<tr>
<td>Lapsed without debate</td>
<td>28</td>
<td>77</td>
<td>136</td>
<td>108</td>
<td>59</td>
<td>35</td>
<td>443</td>
</tr>
<tr>
<td>Total</td>
<td>60</td>
<td>170</td>
<td>244</td>
<td>166</td>
<td>111</td>
<td>47</td>
<td>798</td>
</tr>
</tbody>
</table>


Table 10 – Questions for oral answer with debate – 8th parliamentary term (2014-2019)

<table>
<thead>
<tr>
<th></th>
<th>2014 (from July)</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018 (June)</th>
<th>2019</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debate in plenary</td>
<td>13</td>
<td>52</td>
<td>70</td>
<td>35</td>
<td>20</td>
<td>---</td>
<td>190</td>
</tr>
<tr>
<td>Lapsed without debate</td>
<td>23</td>
<td>80</td>
<td>58</td>
<td>30</td>
<td>38 60</td>
<td>---</td>
<td>229</td>
</tr>
<tr>
<td>Total</td>
<td>36</td>
<td>132</td>
<td>128</td>
<td>65</td>
<td>58</td>
<td>---</td>
<td>419</td>
</tr>
</tbody>
</table>


---

60 Situation on 16 July 2018. Some of these questions have not yet lapsed, therefore might still be treated in plenary.
According to data provided by DG PRES, the ratio between questions for oral answer with debate and questions for written answer is 798/55 607 (1.44 %) for the 7th parliamentary term (2009-2014), and 419/41857 (1.00 %) for the current parliamentary term (until June 2018). Also, following the revision of the ROP that entered into force in 2017, there is no evidence suggesting that there was a ‘shift’ from questions for written answer to questions for oral answer with debate, or vice-versa.

2.3.2.3. Question time

Although ‘question time’ was introduced to the European Parliament as long ago as 1973, the possibility is not currently used. Parliament’s plenary website, which includes all the Member’s questions (for written and oral answer) including major and minor interpellations, does not contain any examples of questions and debates that took place during question time in the last legislative term (2014-2019). Additionally, the Parliament’s Public Register of Documents\textsuperscript{61} includes information on question time, up to 2011 only.

Based on information provided by DG PRES, the organisation of question time with the Commission was last used during the 2009-2014 legislature,\textsuperscript{62} but has not been used in the present parliamentary term, despite the fact that the ROP include specific rules allowing it. In 2011, a six-month trial period was carried out which resulted in the amendment of the rules applicable to question time, seeking a way to increase its attractiveness. A thematic approach was included in the subsequent amendment of the ROP adopted by Parliament, now reflected in the wording of Rule 129. However, despite these changes to the rules, the changes have never been put into practice.

Publicly accessible data does not explain the exact reason for the limited use of this possibility. This might be explained by the fact that, to a certain extent, it overlaps with the Members’ questions for oral answer, but also that in recent years, strong political will to revive the practice has not been in evidence.

Nonetheless, the existing rules on question time as they stand show several limitations for Members of Parliament to put their questions to the Commission. These includes the thematic limitation, and the subsequent restriction to two or three Commissioners. The Commissioners responsible for a theme cannot always be present in Parliament’s hemicycle to answer the questions put to them. In their absence, another Commissioner may reply on their behalf. Of course, another option, that would be in accordance with the principle of democratic control, i.e. that all the Commissioners would attend the Parliament’s sessions and would answer Members’ questions, is unlikely to be possible in practice.

A similar situation concerns the special ‘question hour’ with the President of the Commission. Based on a search of the plenary agendas on the Parliament’s website, and on the data received from DG PRES, the last question hour was held in June 2011 and the procedure has not been used since then.

2.3.2.4. Qualities of questions and replies

As to the division between individual policy areas of questions, no quantitative data exists in this regard. The actual scope of questions for written answer is very wide, covering nearly every aspect of the activities of the EU, starting with the application of the Treaties, through the implementation of EU legislation, and ending with statistical and factual information. The policy areas behind the questions cover every field of the Commission’s competence.

\textsuperscript{61} Public Register of Documents, European Parliament website.

\textsuperscript{62} It appears that the last time this was used was during the January 2013 plenary session.
Based on the data provided by Parliament’s DG PRES, there is general satisfaction with the Commission answers among Members of Parliament. Some, however, have complained about the Commission’s frequent delays in answering, vis-à-vis the timeframe established in the ROP.

However, Members have also expressed concerns about the quality of the answers. In particular, an oral question to the Commission on ‘Commission’s answers to written questions’ was tabled by 246 MEPs in 2017. The Members, in the question, noted that due to a large number of questions, Parliament had set a cap for the number of questions to be asked by a Member. They however regretted that ‘the Commission’s answers are often uninformative’. The Members wanted to know the requirements and constraints imposed by the Commission upon itself with regard to answering the questions, and the legal basis for these decisions. Furthermore, the Members wanted the Commission to justify the ‘lack of substantial content’ in its answers. The Members also asked about future changes to the format of the Commission’s answers. The question was (briefly) debated with and answered by Tibor Navracsics, European Commissioner for Education, Culture, Youth and Sport in plenary on 3 April 2017. The Commissioner noted that the vagueness of the Commission’s replies is linked to the fact that the Commission is a political body which provides political answers and that there might be limits to its competences, although he promised an improvement in the quality of the answers.

In this regard, following an exchange of letters between the Presidents of Parliament and the Commission at the beginning of 2017, the two institutions’ services cooperated to work together to take the necessary steps to address these two issues.

Occasionally, a question addressed to the Commission by individual Members can lead to a Parliamentary resolution. Such a use of this procedure can improve its impact, although it would be inappropriate to use it on every occasion.

Members’ questions for written answer must respect the admissibility criteria established in Annex II of the ROP. For example, they must fall exclusively within the limits of the competences of the addressee, as laid down in the relevant Treaties or in legal acts of the Union, or within its sphere of activity, ‘be of general interest’ and ‘not relate to strictly personal matters’. For instance, if the question refers to an internal issue of a particular Member State, the Member(s) posing the question can be asked to redraft their question to avoid that it is deemed inadmissible and not forwarded to the Commission.

In 2017, the ROP changed with regard to the number of questions that could be asked by Members per month. The intention behind this modification was to allow the Commission to provide good quality answers within a shorter timeframe, thanks to a reduction in the number of questions.

It is unclear to what extent the Commission has changed its approach to provide more informative and more substantial answers. It is also not clear whether there are any real improvements in terms of the quality of the Commission’s answers due to the limitation of the number of written questions Members can ask per month. This is caused by the fact that a systematic assessment of the quality of answers has never been performed because of the difficulties inherent in such an assessment. Since Parliament’s services are not in a position to assess the quality of the answers, it is impossible
for the Parliament’s Secretariat to appreciate whether there has been any improvement in quality following the changes to the ROP.

In some cases, Members have tabled additional questions in order to ask for clarification of the answers to their previous questions. In addition, negative feedback on the quality of an answer has occasionally been received by DG PRES or by the President, in particular when a Member intended to complain about a reply they considered insufficient.

2.3.3. Summary

Members’ questions to the Commission (whether for written or oral answer) are one of the most visible methods of Parliament’s scrutiny of the Commission. Despite the visibility of this tool of democratic control, it remains questionable whether questions and (written or oral) answers have a significant influence on the work of the Commission. Although the Commission spends considerable time dealing with answering the questions, as noted above, the quality of the answers, especially their vagueness, has remained an issue (at least until 2017).

A potential influence on the quality of the answers could have been exerted by an exponential increase in the number of questions for written answer tabled by Members, which was remarked towards the end of the previous parliamentary term and the beginning of the current term. This increase ultimately led to a revision of the ROP that streamlined the procedure for questions for written answer and replaced the previous system. This change in the ROP has proved effective and has maintained the number of questions within a reasonable number. Apart from streamlining the procedure, this modification should also allow the Commission to provide better quality answers.

So far, use of interpellations has been limited, as since their creation in 2017, 17 major interpellations and one minor interpellation have been addressed to the Commission. It seems that the potential of these interpellations is not yet fully utilised. An increase in their use can have an influence on the number of questions asked of the Commission. Naturally, it should to be taken into account that these interpellations are connected with a certain number of Members (at least five per cent), a political group or a committee.

Another possibility for scrutiny that does not seem to perform optimally at present is that of ‘question time’ and ‘regular question hour with the President of the Commission’. Although these instruments exist in the ROP formally and the FA 2010, they have not been used to date in the current legislative term (2014-2019).

As it is currently impossible to assess whether the quality of the Commission’s replies increased following the changes to the ROP in 2017, a systematic assessment of the quality of answers has never been performed due to the difficulties such an assessment implies. It can, however, be concluded that, despite some minor issues, Member’s questions to the Commission are a successful tool in the Parliament’s political scrutiny of the Commission, although it is questionable whether these questions and their replies could have more substantive results.

2.4. Inquiry committee provisions and special parliamentary committees

Inquiry committees are one of the most powerful and certainly one of the most visible instruments for holding the executive accountable in a parliamentary democracy. Inquiry committees provide parliaments with a range of investigative powers. These powers enable parliaments to inquire into an issue independently of the judiciary or other administrative authorities. In general, these inquiries do not substitute for judicial or administrative proceedings or other investigative authorities (e.g. ombudsmen). Their character is driven by political considerations, as they are intended to deal with a specific issue on the political agenda. In doing this, they often react to citizens’ or societal concerns,
or the needs of the legal systems. The European Parliament is no exception, as it can set up temporary committees of inquiry with investigative powers.

Conversely, special parliamentary committees, often referred to as select committees, temporary committees or ad hoc committees, are not necessarily always linked to parliamentary investigative powers. In contrast with standing parliamentary committees, these are temporary, and established to examine a specific ad hoc subject, task or a legislative issue. As soon as the investigation is completed, a special committee is dissolved. As in the case of inquiry committees, special committees can also be set up by the European Parliament.

2.4.1. Rules

The rules concerning inquiry committees and special parliamentary committees overlap to some extent.

2.4.1.1. Inquiry committees

Parliament’s power to establish committees of inquiry is based on Article 226 TFEU, while the specific implementation of this right is presently included in Rule 198 of the ROP. The TFEU enables Parliament to set up a temporary committee of inquiry to investigate ‘alleged contraventions or maladministration in the implementation of Union law’. Such contraventions and/or maladministration in the implementation of Union law are the first limitation of inquiry committees.

The TFEU furthermore limits Parliament’s power to establish such a committee if ‘the alleged facts are being examined before a court and while the case is still subject to legal proceedings’. This is applicable to proceedings pending before a national court, as well as before the Court of Justice of the European Union. Parliament is, however, not limited in its action if judicial proceedings have been completed and the court has delivered its final ruling. In addition, Parliament is not limited in setting up an inquiry committee in the case of a European Ombudsman’s investigation or an investigation by the European Court of Auditors. The TFEU also underlines the temporary character of the inquiry committees by highlighting the fact that such committees cease to exist on the submission of their report.

The TFEU does not exclude the EU common foreign and security policy (CFSP) from the Parliament’s right of inquiry.

Detailed provisions applicable to inquiry committees are currently included in the ROP and in Decision 95/167/EC of the European Parliament, the Council and the Commission on the detailed provisions governing the exercise of the European Parliament’s right of inquiry. Decision 95/167/EC clarified the scope of the inquiry committees as: (1) EU institutions or bodies; (2) Member States’ public administrative bodies empowered to implement EU law; and (3) natural or legal persons empowered to implement EU law (Article 2(1)). The decision also underlines the limitations of inquiry committees to ‘inquiries necessary to verify alleged contraventions or maladministration in the implementation of EU law’ (Article 3(1)).

66 The new version of Rule 198 that will apply from the opening of the July 2019 part-session is included in the Appendix to the July 2018 ROP.

67 Article 2(3) Decision 95/167/EC.

The establishment of an inquiry committee can be requested by a quarter of Parliament’s component Members (currently 187 of 751 Members). Subsequently, Parliament decides on a proposal from the COP whether or not to establish such a committee (Rule 198(4)).

The composition and rules of procedure of inquiry committees are set by Parliament. Rule 198(3) connects the working methods of the inquiry committees with that of the standing committees, as it notes that the inquiry committees’ modus operandi is governed by the rules applicable to standing committees.

Generally, testimonies and hearings in front of these committees are held in public, however one-quarter of the committee of inquiry’s Members, the EU or national authorities can request to hold proceedings in camera. Witnesses and experts also have the right to make a statement or testimony in camera.

The inquiry committee adopts a report, which can include minority opinions. Based on that report, Parliament can decide to adopt recommendations.

These recommendations may be forwarded to the Commission (or a Member State or another EU institution). The Commission is not bound by the recommendations, though it can ‘draw therefrom the conclusions which it deems appropriate’ (Article 4(3), Decision 95/167). The example of the last two recommendations demonstrates that the Commission takes the recommendations seriously, as in both cases it provided extensive follow-up and agreed to take action.

The inquiry committees cannot deliver opinions to other committees.

2.4.1.2. Special parliamentary committees

Neither the TFEU nor the TEU include any specific rules on the establishment, powers or objectives of special parliamentary committees. However, Rule 197 of the ROP allows for their establishment. The proposal to set up a special parliamentary committee has to come from the COP, however such a committee can be set up at any time.

---

69 This number will decrease due to a distribution of seats in Parliament after the next European election (May 2019) and as a consequence of the UK’s decision to leave the EU. A request to set up of a committee of inquiry will need the support of 175 Members out of 705. See P8_TA(2018)0029.

70 See data included in Table 10.

71 The new version of Rule 197 that will apply from the opening of the July 2019 part-session is included in the Appendix to the July 2018 ROP.
The term of office of special parliamentary committees is generally 12 months, although this can be extended by Parliament. Similarly to inquiry committees, special parliamentary committees cannot deliver opinions to other committees.

Since there are no other specific rules on the special parliamentary committees, it is possible for them to deal with any topic or policy area.

2.4.1.3. Differences
The following table provides a short overview of the main differences between inquiry committees and special parliamentary committees.

Table 11 – Inquiry committees and special parliamentary committees: main differences

<table>
<thead>
<tr>
<th></th>
<th>Committee of inquiry</th>
<th>Special parliamentary committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal basis</td>
<td>Article 226 TFEU</td>
<td>Rule 197 ROP</td>
</tr>
<tr>
<td></td>
<td>Decision 95/167/EC</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rule 198 ROP</td>
<td></td>
</tr>
<tr>
<td>Threshold</td>
<td>Request of one-quarter of Members</td>
<td>No minimum number of Members is needed to request a special committee is set-up, the proposal comes directly from the COP.</td>
</tr>
<tr>
<td></td>
<td>Decision taken by majority of Members in plenary</td>
<td></td>
</tr>
<tr>
<td>Object</td>
<td>Alleged contraventions or maladministration in the implementation of Union law (rather limited flexibility)</td>
<td>Any issue (very flexible)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject</td>
<td>EU institutions and bodies</td>
<td>As there are no specific rules on the powers of special committees they can in practice have the same (and potentially more) powers as a committee of inquiry.</td>
</tr>
<tr>
<td></td>
<td>Public administrative body of Member State implementing EU law</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Legal persons and natural persons empowered by EU law to implement it</td>
<td></td>
</tr>
<tr>
<td>Duration</td>
<td>Temporary – not more than 12 months</td>
<td>Temporary – not more than 12 months</td>
</tr>
<tr>
<td></td>
<td>Can be prolonged twice for 3 months by reasoned decision</td>
<td>Can be prolonged</td>
</tr>
<tr>
<td></td>
<td>Ceases to exist on the submission of its report or at the latest upon expiry of a period not exceeding 12 months</td>
<td></td>
</tr>
</tbody>
</table>
Parliamentary scrutiny over the European Commission: implementation of the Treaty provisions

<table>
<thead>
<tr>
<th>Committee of inquiry</th>
<th>Special parliamentary committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participate in hearings and testimonies (public or in camera)</td>
<td>As there are no specific rules on the powers of special committees, they can in practice have the same (and potentially more) powers as a committee of inquiry.</td>
</tr>
<tr>
<td>Hear witnesses and experts</td>
<td></td>
</tr>
<tr>
<td>Inspect documents</td>
<td></td>
</tr>
<tr>
<td>Request Member State and EU institutions to appear before the committee via authorised official</td>
<td></td>
</tr>
<tr>
<td>Carry out fact-finding missions</td>
<td></td>
</tr>
</tbody>
</table>

Data Source: TFEU, TEU and the European Parliament ROP.

### 2.4.2. Application of rules

Since 2009, Parliament has set up several inquiry committees and special parliamentary committees. However, use of inquiry committees is not extensive, as after 2009 there were only two cases in which Parliament decided to set up such a committee, while both cases occurred in the 8th legislative term. Even before the Lisbon Treaty entered into force, the institute of an inquiry committee was not extensively used, as only three other inquiry committees were set-up.

#### 2.4.2.1. Inquiry committees

Between 2009 and 2016, Parliament set up the Inquiry Committee on Emission Measurements in the Automotive Sector (EMIS) and the Inquiry Committee on Money Laundering, Tax Avoidance and Tax Evasion (PANA). Both inquiry committees reacted to crises: 'Dieselgate' and the 'Panama papers' leaks. In both cases, Parliament reacted rapidly to set-up an inquiry committee in a very short time.

Before 2009, Parliament set up three more inquiry committees: the Temporary Committee of Inquiry into the Crisis of the Equitable Life Assurance Society (EQUI); the Temporary Committee of Inquiry into BSE (bovine spongiform encephalopathy) (ESB); and the Temporary Committee of Inquiry into the Community Transit System (TRANSIT); which were active in the 1990s and 2000s.

Tables 12 and 13 provide additional information on Parliament's inquiry committees, between 2009 and 2018, and prior to 2009. The tables include the length of mandate, initiating decision, draft report, and a short delimitation of the inquiry's main subject. The tables also include a reference to the Parliament's recommendations and the follow-up adopted by the Commission in response.

---

72 Although neither the Treaties nor the ROP explicitly mention this power, fact-finding missions have been used by the committees in practice.

73 See the specific data in Table 11.

74 For more information on 'Dieselgate' see for example, Frigessi di Rattalma M., *The Dieselgate: A Legal Perspective*, Springer, 2017 and for more information on 'Panama papers' see Remeur C., *Panama papers in a nutshell*, EPRS, European Parliament, 2017.

75 It took only two months for the Parliament to set-up the EMIS committee in December 2015 following the US Environmental Protection Agency accusations of September 2015 against Volkswagen. Equally, only two months passed between April 2016 when the International Consortium of Investigative Journalists started to reveal offshore entities (the Panama Papers) and Parliament's setting-up of the PANA committee in June 2016.

76 See the specific data in Table 12.
Table 12: Inquiry committees 2009-2018

<table>
<thead>
<tr>
<th>Inquiry Committee</th>
<th>Date of mandate</th>
<th>Set-up decision</th>
<th>Report/draft report</th>
<th>Main subject</th>
<th>Parliament recommendatio n/ Commission follow-up</th>
</tr>
</thead>
</table>

Source: EPRS and data provided by Coordleg, European Parliament.

In both of the abovementioned cases, the inquiry committees were set up by Parliament to investigate specific alleged contraventions or maladministration in the implementation of EU law. In the first case it was (among other issues) the alleged failure of the Commission to comply with obligations under Regulation 715/2007, and in the second, the alleged failure of the Commission to enforce implementation of Directive 2005/60/EC. At the end of their terms, both committees submitted a final report with findings. Parliament considered these reports in plenary and addressed extensive recommendations to the Commission (and the Council and the parliaments of Member States).

Subsequently, as prescribed by the rules, the Commission reacted to Parliament's recommendations in its follow-up documents. The Commission reacted to individual points raised by Parliament either by replying to each paragraph of the Parliament's recommendations or by replying to clusters of Parliament recommendations.

In both cases, Parliament's standing committees were instructed by Parliament to monitor the actions taken on the conclusions and recommendations of the inquiry committee. Parliament instructed several committees to undertake monitoring activities regarding the conclusions and recommendations of the EMIS committee: the ENV, ITRE, IMCO and TRAN committees. In the case of the PANA committee, political groups were invited to decide on the establishment of a temporary special committee to follow-up on the work of the PANA committee.
Parliamentary scrutiny over the European Commission: implementation of the Treaty provisions

Table 13: Inquiry committees prior to 2009

<table>
<thead>
<tr>
<th>Inquiry Committee</th>
<th>Date of mandate</th>
<th>Set-up decision</th>
<th>Report/draft report</th>
<th>Main subjects</th>
<th>Parliament Recommendation/ Commission follow-up</th>
</tr>
</thead>
</table>

Source: EPRS and data provided by Coordleg, European Parliament.

Despite the use of the Treaty provisions regarding Parliament’s right of inquiry, the application of specific parts of this right has not been without challenge.

For example, in its recommendation following the inquiry of the PANA committee on money laundering, tax avoidance and tax evasion,77 Parliament stressed that ‘the current legal framework for the operation of committees of inquiry … is outdated’. Parliament also noted that this system does not provide ‘the necessary conditions under which the exercise of Parliament’s right of inquiry can effectively take place’ (point 190). Parliament here also noted that ‘lack of powers and the limited access to documents significantly hampered and delayed the work of the inquiry’. This precluded a full assessment of alleged breaches of EU law (point 191).

During the PANA inquiry, Parliament also noted several failures by the Commission to provide the documents requested or that there were long delays in providing the documents (point 192). In this regard, Parliament called for the introduction of an accountability mechanism. It also voiced the opinion that such committees should be granted the ability to subpoena persons and to have access to all relevant documents.

---

77 Recommendation following the inquiry of the PANA committee on money laundering, tax avoidance and tax evasion, European Parliament, 13 December 2017.
In its recommendation following the inquiry of the EMIS committee into emission measurements in the automotive sector, Parliament noted several limitations of the committee of inquiry. As in the PANA inquiry, Parliament reiterated the need for committees to have power to compel witnesses to appear and to compel the production of documents (point 77). It also noted cases in which documents were not produced or were produced only after long delays (point 82). Among other things, Parliament considered the 12 month time limit for an inquiry committee ‘arbitrary and often insufficient’ (point 88). It called for a change to the ROP (points 89-91) and called for ‘a development of a defined set of rules relating to the effective functioning of committees of inquiry’ (point 92).

In both recommendations, Parliament called for clarification and updating of the existing rules and pointed to its 2015 proposal.

2.4.2.2. Special parliamentary committees

Since 2009, Parliament has set up eight special parliamentary committees. Table 14 provides information on the special parliamentary committees that were active between 2009 and 2013. The table includes the length of their mandate, set-up decision, the committee’s draft report, a short delimitation of the committee’s main subject, and where possible Parliament’s recommendations based on the report and the Commission’s follow-up.

78 Recommendation following the inquiry of the EMIS committee into emission measurements in the automotive sector, European Parliament, 4 April 2017.

79 On 25 April 2018, a non-paper with regard to Parliament’s inquiry committees was politically endorsed by the AFCO committee. This non-paper should serve as a basis for fresh political discussions between Members, the Council and the Commission on a legislative proposal to strengthen Parliament’s investigatory powers. This ‘non-paper’ constitutes a new articulated proposal for a regulation. It is based both on the original Parliament proposal of 2014 and several modifications suggested by the Legal Services of the three main EU institutions following their meetings, which took place in the first half of 2017. Its aim is to accommodate new proposals to resolve the concerns expressed by other institutions (mainly the Council). The proposal also takes account of the experience of the PANA and the EMIS committees. Press release, Right of Inquiry: MEPs seek to restart talks on sturdier investigatory powers, European Parliament, 24 April 2018.

80 Special parliamentary committees established before 2009 are not included in this study. In this regard see for example, Poptcheva E-M., Parliament’s committees of inquiry and special committees, EPRS, European Parliament, 2016.
### Table 134: Special parliamentary committees 2009-2018

<table>
<thead>
<tr>
<th>Special Committee</th>
<th>Date of mandate</th>
<th>Set-up decision</th>
<th>Report/draft report</th>
<th>Main subjects</th>
<th>Parliament recommendation/Commission follow-up</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Committee on EU Authorisation Procedure for Pesticides (PEST)</td>
<td>March 2018 - (ongoing)</td>
<td>6 February 2018</td>
<td>NA</td>
<td>The EU’s pesticide authorisation procedure, its independence, transparency</td>
<td>Data not available.</td>
</tr>
<tr>
<td>Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAXE 3)</td>
<td>March 2018 - (ongoing)</td>
<td>1 March 2018</td>
<td>NA</td>
<td>Digital taxation, national citizenship programmes and VAT fraud</td>
<td>Data not available.</td>
</tr>
</tbody>
</table>

Data source: Coordleg, European Parliament.

---

81 This resolution does not include any recommendations per se. Nonetheless, it includes several calls on the Commission.
Although (or because) the rules on the setting-up of special parliamentary committees are rather
general, these committees are more common than inquiry committees. This lack of very specific
rules on the one hand strengthens the committees’ flexibility and allows them to investigate various
issues. They are not limited to investigating maladministration or alleged contraventions in
implementation of EU law. On the other hand, this lack of rules might decrease their persuasiveness,
as they may face similar problems as the inquiry committees (e.g. unresponsive witnesses or no
access to documents) but without any legislative/Treaty backing, i.e. they suffer from a lack of formal
investigative powers.

Nonetheless, following submission of report by a special committee, Parliament can address some
recommendations to the Commission, which the Commission usually tackles in its follow-up.

Special parliamentary committees are not limited to investigating alleged contraventions or
maladministration in the implementation of Union law. Their scope of oversight can include almost
anything, from general policy issues such as organised crime, money laundering, climate change or
human genetics, to investigating specific issues or contraventions. This may the differences
between these committees and inquiry committees to some extent blur. This substantive overlap is
partially strengthened by Parliament. In its resolution of 6 July 2016 on tax rulings and other
measures similar in nature or effect, Parliament noted the insufficient competencies of special
committees and committees of inquiry, including for instance, the right to summon witnesses and
enforce document access.

2.4.3. Summary

Although Article 226 TFEU allows Parliament to formally set up an inquiry committee as a matter of
fact, this power has not been used extensively. More than inquiry committees, Parliament tends to
set up special parliamentary committees that are regulated only by the ROP. One of the explanations
for the limited use of the inquiry committees is their narrow scope, as they can only investigate
specific alleged contraventions or maladministration in the implementation of EU law by bodies and
individuals empowered to do so.

Despite a slight under-use of this particular Treaty provision, Parliament can react very quickly and
set up an inquiry committee in a very short period of time, as can be seen in the case of both inquiry
committees set up after 2009. According to some authors, the reason for this scarce use of
committees of inquiry, in contrast to special parliamentary committees, is to a great extent ‘the more
limited scope of the right of inquiry according to Article 226 TFEU’.83

Special parliamentary committees are not necessarily linked with Parliament’s formal scrutiny
powers. However thanks to the flexibility of their rules (or lack thereof) they can carry out
investigative functions and thus partially substitute for inquiry committees. This lack of legislative
backing however underlines their dependence on the goodwill of witnesses, experts, or bodies and
institutions possessing a relevant document. However, special committees can raise this issue
before the Court if the Commission fails to act.84 Inquiry committees have at least the advantage
that they can base their requests on the Treaty provisions. The investigative flexibility of special
committees is thus fairly limited by their reliance on the stakeholders possessing the information
needed in the inquiry.

82 Resolution on tax rulings and other measures similar in nature or effect, European Parliament, 6 July 2016.
83 Poptcheva E-M., Parliamentary hearings of the Commissioners-designate: A decisive step in the investiture process,
84 Despite having this power, it is rather improbable that an inquiry committee with a lifespan of 12 months will start Court
proceedings that usually last longer than a year on the sole basis that it has not received a requested document.
Thanks to special parliamentary committees’ investigative powers, and a lack of clear competences, a certain overlap exists that blurs the division between their role and the role of inquiry committees. However, both inquiry committees and special parliamentary committees adopt a report which is debated by Parliament in plenary session. Parliament can, based on this report, direct a recommendation to the Commission. Nevertheless, Parliament has only limited power to compel the Commission to follow up on such recommendations. In practice, the Commission tries to react when possible. Its follow-up documents comprehensively address the recommendations and their fulfilment can (should) be monitored by Parliament’s standing committees.

That said, unless Parliament connects the results of an inquiry with some stronger tool, such as a motion of censure or links it to its decision on budget/discharge or a threat thereof, it has few possibilities to persuade the Commission to follow its recommendations. In general, it seems that Parliament and legal certainty alike would profit from clearer rules on the Parliament’s right of inquiry. The adoption of a regulation on the Parliament’s right of inquiry might clarify this right. However, in this case, Parliament needs to persuade the Council and the Commission of the necessity of such a text.85

2.5. Reporting, consultation and informing by the European Commission

Depending on the specifics of their constitutional relations, national governments are often obliged to inform national parliaments about various topics, either when asked or proactively. Very similar relations are envisaged in the Treaties with regard to the Commission’s obligation to keep Parliament up-to-date.

The Treaties underline the Parliament’s right to be informed by the Commission or the Commission’s obligation to inform Parliament in numerous places. This section of the present study distinguishes between the Parliament’s right to be informed through Members’ questions and the Parliament’s right to be informed based on a Commission report or other document directly required in the Treaties. Naturally, these rights are ways to implement the Parliament’s prerogative to be informed by the Commission. This distinction is made in order to underline other ways in which Parliament can carry out its prerogatives.

2.5.1. Rules

The right of Parliament to be provided with information is considered to be the basis for the Parliament’s political control of the executive. Several Treaty provisions give Parliament the right to receive a report from the Commission or to be consulted or informed. On the other hand, several provisions set out that Parliament can request the Commission to report, or to submit a report, or provide a particular piece of information. This particular right, depending on its legal provision, therefore has an active and a reactive part. The following provisions only highlight the most outstanding examples found in the Treaties. In addition, numerous legal provisions included in secondary European law (regulations and directives) that oblige the Commission to report, inform or consult Parliament on implementation of a particular legal act or its specific provisions cannot be ignored.86 However, these obligations are not discussed here. Some of these Commission ‘reporting

85 Here, it can be noted that Members and the Committees alike have raised this issue also through questions to the Council. For example in a question for oral answer (O-000089/2017) Danuta Hübner (EPP, Poland), expressed criticism on behalf of the AFCO committee and asked the Council to explain the existing deadlock and to provide reassurances to engage in dialogue with Parliament and the Commission.

obligations’ are linked with a specific subject described in other sub-chapters i.e. the Commission’s obligations related to budgetary issues (e.g. evaluation report pursuant to Article 318 TFEU), the Commission work programme (CWP) (point 11, Interinstitutional Agreement, 2016), with delegated acts (annex to the Interinstitutional Agreement, 2016) or consultations between Parliament and the High Representative on CFSP and CSDP (Article 36 TEU).87

The following examples point to cases in which the European Commission is obliged to report or submit a report to Parliament. These examples are not exhaustive.

- According to Article 249 TFEU, the Commission is obliged to publish a general report on the activities of the Union annually. This report should be submitted no later than one month before the opening of the Parliamentary plenary session. The report has subsequently to be discussed in Parliament’s open session (Article 233 TFEU).
- The Commission has to report to Parliament with regard to non-discrimination and citizenship of the Union, while taking the development of the EU into account, at three year intervals (Article 25 TFEU).
- The results of multilateral surveillance in economic policy should be reported to Parliament (Article 121(5) TFEU).
- Another report that has to be forwarded to Parliament is an annual report on progress in achieving the objectives of Article 151, i.e. the article on social policy (Article 159 TFEU). Social developments within the Union should be reported in the Commission’s annual report to Parliament (Article 161 TFEU).
- Article 175 TFEU requires the Commission to submit a report on the progress made towards achieving economic, social and territorial cohesion and on the manner in which the various means provided for in this article have contributed to the progress. This report has to be submitted at three year intervals.
- A report should be sent by the Commission in accordance with Article 190 TFEU that includes information on research and technological development activities and the dissemination of results during the previous year.
- When conducting negotiations with third countries or international organisations, the Commission is obliged by Article 207 TFEU to report regularly to Parliament on the progress of these negotiations.
- The Commission needs to submit a further annual report to Parliament, pursuant to Article 325(2) TFEU with regard to protection of the EU’s financial interests and the fight against fraud.

A few Treaty provisions allow Parliament to request information, a report, or other action from the Commission. These cases are however infrequent, as the Treaties do not provide many examples. For instance, according to Article 319(3) TFEU, Parliament can request that the Commission report on the measures taken in the light of Parliament’s comments and observations during the discharge procedure. Parliament can also, pursuant to Article 225 TFEU, request that the Commission submit an appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Treaties.88

Occasionally, the Treaties require Parliament to discuss the information provided, as in the case set out in Article 233 TFEU. Pursuant to this provision, Parliament is obliged to discuss the annual general report submitted by the Commission.

---

87 A closer description of these obligations is included in the following subchapters.

88 In this regard see subchapter 2.8.2.
Provisions included in the Treaties, mainly the TFEU, are not the only provisions setting the Parliament's right for information. Various provisions are also included in the FA 2010, or in the Interinstitutional Agreement of 2016 that provide these rights. For example, point 45 of this latter agreement requires the Commission to report annually to Parliament on the application of Union legislation, or report on the implementation of the CWP (point 11).

General rules on the provision of information are also included in the FA 2010. Among other provisions, the FA 2010 requires that the Commission is aware of the Parliament's resolutions, both legislative and non-legislative, and replies to their substance. In this regard, point 16 of FA 2010 establishes rules for the Commission's 'follow-up' documents. With regard to Parliament's resolution, the Commission should, generally within three months after the adoption of a resolution, provide information to Parliament in writing on action taken in response to specific requests addressed to the Commission in the resolution. The Commission should provide this information even if it has a different opinion on the matter to the Parliament.

The Commission should therefore provide: (1) a written answer, (2) within a set period, (3) on actions taken in connection with the Parliament’s requests included in its resolutions, (4) even if it does not agree with Parliament’s views.

### 2.5.2. Application of rules

There is no evidence in the publicly available data and the data provided by the Parliament’s services to show that the Commission ignores or disregards its Treaty based obligations to provide reports or to inform Parliament.90

Tables 14, 15 and 16 below provide information on the Commission’s Treaty based obligations to report, inform and consult the Parliament. The tables identify the main subject of this obligation, its frequency (if given) and the actual action of the Commission. These tables also include some examples of obligations based on the Interinstitutional Agreement on better-law making (2016) and the Framework agreement between Parliament and the Commission (2010). These are marked by one or two asterisks (*) and (**) respectively. The examples included in the tables are not exhaustive.

The usual entry point for information or a report coming from the Commission to Parliament is through a parliamentary committee. Information issued by the Commission is also sometimes provided directly to the Parliament’s President, who subsequently announces this information to plenary. Information on administrative issues can also be provided to the Secretary General of Parliament directly.

#### Table 14 – Treaty based reporting obligations

<table>
<thead>
<tr>
<th>Informing provision</th>
<th>Main subject</th>
<th>Frequency</th>
<th>Action adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 25 TFEU</td>
<td>Non-discrimination and the EU citizenship</td>
<td>Every three years</td>
<td>The Commission prepares reports on progress towards effective EU citizenship (e.g. 2010, 2013, 2017).</td>
</tr>
</tbody>
</table>

89 The actual Commission reports on monitoring and application of EU law are older than the 'requirement to report on monitoring and application of EU law' to Parliament, as the first annual report was adopted in April 1984 (COM(84) 181 final).

90 This statement does not apply to the Commission’s reporting obligations based on the provisions of EU secondary law (regulations or directives).
<table>
<thead>
<tr>
<th>Informing provision</th>
<th>Main subject</th>
<th>Frequency</th>
<th>Action adopted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 121 (5) TFEU</td>
<td>Multilateral surveillance</td>
<td>Not specified</td>
<td>It seems that no specific reports on multilateral surveillance are adopted by the Commission.</td>
</tr>
<tr>
<td>Article 159 TFEU</td>
<td>Social policy issues</td>
<td>Annual</td>
<td>A chapter on social policy is included in the Commission's general annual reports.</td>
</tr>
<tr>
<td>Article 161 TFEU</td>
<td>Social developments</td>
<td>Annual</td>
<td>A chapter on social developments is included in the Commission's general annual reports.</td>
</tr>
<tr>
<td>Article 175 TFEU</td>
<td>Progress made towards achieving economic, social and territorial cohesion</td>
<td>Every three years</td>
<td>The Commission prepares reports on economic, social and territorial cohesion (e.g. 2010, 2014, 2017).</td>
</tr>
<tr>
<td>Article 190 TFEU</td>
<td>Research and technological development</td>
<td>Annual</td>
<td>The Commission prepares reports on research and technological development annually (e.g. 2015, 2016, 2017).</td>
</tr>
<tr>
<td>Article 207 (3) TFEU</td>
<td>Negotiations on international agreements</td>
<td>Regular</td>
<td>Based on accessible data, parliamentary committees are informed about negotiations on international agreements.</td>
</tr>
<tr>
<td>Article 249 TFEU</td>
<td>General report on the activities of the Union</td>
<td>Annual</td>
<td>The Commission prepares general reports annually (e.g. 2015, 2016, 2017).</td>
</tr>
<tr>
<td>Article 318 TFEU</td>
<td>Evaluation report on the EU's finances, accounts relating to the implementation of budget, financial statement of the EU's assets and liabilities</td>
<td>Annual</td>
<td>This, budget related, report is submitted by the Commission together with additional documents, as required by the text of the Treaties.</td>
</tr>
<tr>
<td>Article 319 (3) TFEU</td>
<td>Measures taken in the light of Parliament’s (or Council’s) observations with regard to a discharge procedure</td>
<td>On Parliament’s request</td>
<td>The Commission prepares reports on follow-up to the discharge procedure annually (e.g. 2014, 2015, 2016)</td>
</tr>
<tr>
<td>Article 325 (5) TFEU</td>
<td>Measures taken related to countering fraud and illegal activities affecting the EU's financial interests</td>
<td>Annual</td>
<td>The Commission prepares reports on the protection of the EU's financial interests annually (e.g. 2014, 2015, 2016)</td>
</tr>
<tr>
<td>Point 11 IIA BLM*</td>
<td>Commission’s annual work programme</td>
<td>Regular</td>
<td>See subchapter 2.8.1.</td>
</tr>
<tr>
<td>Point 45 IIA BLM*</td>
<td>Application of the Union legislation</td>
<td>Annual</td>
<td>The Commission prepares reports on monitoring the application of EU law annually (e.g. 2015, 2016, 2017)</td>
</tr>
</tbody>
</table>

Data source: the Treaties and publicly available information.
### Table 15 – Treaty based obligations to inform

<table>
<thead>
<tr>
<th>Informing provision</th>
<th>Main subject</th>
<th>Frequency</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 156 TFEU</td>
<td>Cooperation between Member States in the field of social policy</td>
<td>Not specified</td>
<td>No data available.</td>
</tr>
<tr>
<td>Article 168 (2) TFEU</td>
<td>Cooperation between Member States in the field of public health</td>
<td>Not specified</td>
<td>No data available.</td>
</tr>
<tr>
<td>Article 173 (2) TFEU</td>
<td>Cooperation between Member States in the field of industry</td>
<td>Not specified</td>
<td>No data available.</td>
</tr>
<tr>
<td>Article 181 TFEU</td>
<td>Cooperation between Member States in the field of research and technological development</td>
<td>Not specified</td>
<td>No data available.</td>
</tr>
<tr>
<td>Article 215 (1) TFEU</td>
<td>Interruption or reduction of economic and financial relations with third countries</td>
<td>Not specified</td>
<td>No data available.</td>
</tr>
<tr>
<td>Article 225 TFEU</td>
<td>The Commission should submit an appropriate proposal</td>
<td>On Parliament’s request</td>
<td>See subchapter 2.8.2.</td>
</tr>
<tr>
<td>Point 10 IIA BLM*</td>
<td>The Commission should submit an appropriate proposal</td>
<td>Within three months</td>
<td>See subchapter 2.8.2.</td>
</tr>
<tr>
<td>Point 16 FA**</td>
<td>The Commission should submit an appropriate proposal</td>
<td>Within three months</td>
<td>See subchapter 2.8.2.</td>
</tr>
<tr>
<td>Article 328 TFEU</td>
<td>Enhanced cooperation</td>
<td>Regular</td>
<td>The Commission consults Parliament regarding enhanced cooperation.</td>
</tr>
<tr>
<td>Point 9 IIA BLM*</td>
<td>Withdrawal of legislative proposal by the Commission</td>
<td>Always when withdrawing a proposal</td>
<td>The Commission announces withdrawal of pending legislative proposals in its CWP.</td>
</tr>
<tr>
<td>Point 13 IIA BLM*</td>
<td>Quality check of the Commission’s impact assessment by the Regulatory Scrutiny Board</td>
<td>Always when quality check is carried out</td>
<td>Opinions of the RSB are published on the Commission’s webpages (impact assessments and evaluations and fitness checks).</td>
</tr>
<tr>
<td>Point 19 IIA BLM*</td>
<td>Results of public consultations</td>
<td>Without delay, whenever a consultation is carried out</td>
<td>Public consultations and their results are published on the Commission’s webpage (consultations). They are also delivered to Parliament.</td>
</tr>
</tbody>
</table>

91 In this respect see Kristo Kiendl I., The implementation of the Treaty provisions concerning enhanced cooperation, EPRS, European Parliament, 2018.

Informing provision | Main subject | Frequency | Action |
--- | --- | --- | --- |
Point 14 FA** | Provision of internal Commission documents | At the request of Parliament | Based on accessible data and experience the Commission provides Parliament internal documents when requested. |
Point 15 FA** | Provision of full information and documents on meetings with national experts on preparation and implementation of EU law | Not specified | No data available. |
Point 16 FA** | Follow-up to Parliament’s resolutions | Within three months | The Commission regularly produces follow-up documents to Parliament’s resolutions. These follow-ups are published in the OEIL. |
Point 17 FA** | Initiative to adopt a legislative act issued by Member States, the Court, the EIB or the ECB | On Parliament’s request | No data available. |

Data source: the Treaties and publicly available information.

Table 16 – Treaty based obligations to consult

Informing provision | Main subject | Frequency | Action |
--- | --- | --- | --- |
Article 36 TEU | Consultations of the High Representative on the main aspects of the CFSP and the CSDP | Regular | See sub-chapter 2.10.2. |
Article 295 TFEU | Interinstitutional agreement between Parliament, the Council and the Commission | Not specified | The interinstitutional agreement was adopted in 2016. |
Point 6 IIA BLM* | Commission’s annual work programme | Annual | There is an annual dialogue between the Commission and Parliament concerning the CWP. See subchapter 2.8.1. |
Point 11 IIA BLM* | Commission’s annual work programme | Regular | See subchapter 2.8.1. |

Data source: the Treaties and publicly available information.

Although several publications cover the review clauses included in the secondary EU legislation or in international agreements concluded by the EU,93 there seems to be no publication that would, on a rolling basis, comprehensively assesses the Commission’s compliance with its reporting, informing and consulting obligations included in the Treaties.

2.5.3. Summary

Based on the available data, it does not seem that the Commission is ignoring or disregarding its reporting, informing or consulting obligations based on the Treaties. Since there are numerous legislative reporting provisions (many also included in secondary EU law), however, it is impossible to say whether or not the Commission provides all required information precisely within the statutory deadline. As the Commission may opt to merge several reporting obligations into one report it is often unclear whether a particular obligation was fulfilled, and if so, in which document. Parliament could probably address the Commission on this issue and request that it be as specific as possible in its reporting obligations.

Furthermore, a distinction is required between a formal reaction/answer given by the European Commission, which can at times very formalistic, i.e. it follows a specific form and arrives within the deadline, but is unsatisfactory in content or political value. Judgement of this latter point must be made by the political authority – very often the relevant parliamentary committee. Parliament therefore needs to have appropriate follow-up procedures in place.

2.6. Budgetary powers

With regard to the EU budget, Parliament exercises a double function. On the one hand Parliament, together with the Council, establishes the EU budget, while on the other, it carries out budgetary control. Therefore, while Parliament and the Council are (the two arms of) the EU budgetary authority, Parliament is the discharge authority. Budgetary control – as a concept – further includes the control of implementation of the current budget and an ex-post control of past budgets (budgetary discharge).

Although Parliament's control powers with regard to the EU budget are not limited to the Commission – for example, Parliament also grants discharge to other EU institutions (e.g. the Council) and the EU agencies – due to the focus of this study, the following sub-chapter only covers the Parliament's control powers with regard to the European Commission.

2.6.1. Rules

2.6.1.1. Establishment of the budget

The parliamentary committee most active in the establishment of the EU budget is the Committee on Budgets (BUDG).

Parliament and the Council, acting together through budgetary co-decision, have the power to establish the entire EU annual budget. They form the EU's budgetary authority within the scope of Article 314 TFEU, and decide on the proposal for a draft budget submitted by the Commission. This provision of the TFEU establishes a general procedure, its stages and deadlines. It also lays down the rules applicable if Parliament and Council cannot reach an agreement and a conciliation...
committee has to be established (Article 314(4) TFEU), and it confirms that a new draft budget has to be submitted by the Commission if the conciliation procedure fails (Article 314(6) TFEU).

Although **the power to establish the EU budget** does not belong among the Parliament’s control prerogatives per se, it can be used as a leverage over the Commission; not establishing a budget at the beginning of a financial year leads to limits to the monthly budgetary spending of a sum ‘equivalent to not more than one twelfth of the budget appropriations for the preceding financial year’ (Article 315 TFEU). This can naturally limit any substantive plans on spending.

In the event of unavoidable, exceptional or unforeseen circumstances, the Commission may propose ‘draft amending budgets’ amending the adopted budget for the current year. These amending budgets are generally subject to the same rules as the general budget.

Procedural rules are currently included in the ROP and in the Interinstitutional agreement on budgetary discipline, on cooperation in budgetary matters and on sound financial management (IIA 2013). The IIA 2013 should improve budgetary discipline, the functioning of the annual budgetary procedure, and budgetary cooperation. With regard to the budget, the IIA 2013 presents several specific rules in its Annex – Institutional cooperation during the budgetary procedure. For instance, it notes that a trilogue should be convened to discuss possible budgetary priorities for the coming financial year (point 2), as well as organisation of a trilogue to have an exchange of views on the draft budget (point 10). It also requests cooperation with regard to the establishment of the budget, the budgetary procedure including conciliation procedure, and amending budgets.

### 2.6.1.2. Implementation of the EU budget and discharge procedure

The Parliament’s role is not only linked with establishing the EU budget. It is also linked to assessment of its implementation. As soon as the EU budget is established, the European Commission is responsible for its implementation, in cooperation with the Member States (Article 317 TFEU). Various implementation methods are applied. Parliament has power of control over this implementation, i.e. it can scrutinise how the EU money has been spent by the European Commission. During this discharge procedure in recent years, Parliament has given final approval of the implementation of the EU budget for a specific year.

The sole parliamentary committee in charge of this kind of budgetary control responsibility is the Committee onBudgetary Control (CONT).

For the Parliament to carry out its oversight, the Commission is obliged to submit to Parliament and to the Council various documents annually, for example:

1. accounts of the preceding year relating to implementation of the budget,
2. a financial statement of the Union’s assets and liabilities,
3. an evaluation report (Article 318 TFEU),

---

96 These draft amending budgets are based on Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union.

97 Interinstitutional agreement on budgetary discipline, on cooperation in budgetary matters and on sound financial management, 2013.

98 The implementation methods for example include: (1) shared management between Member States and the Commission; (2) direct management (tasks delegated to agencies); and (3) indirect management (tasks delegated to other entities such as the EIB). See for instance Implementation of the budget, Fact Sheets on the European Union, European Parliament, 2018.
4 annual management and performance reports, and
5 the Commission’s communication on the follow-up of the preceding discharge.

Parliament can grant discharge to the Commission in respect of the implementation of the EU budget (Article 319 TFEU) while acting on a recommendation from the Council. Before discharge is granted, both Parliament and the Council examine various documents, including accounts, financial statements, the annual evaluation report submitted by the European Commission and the annual report by the Court of Auditors. Parliament may ask to hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. Parliament can also in this regard request the Commission provide any necessary information and observations relating to the execution of expenditure.

The Commission is obliged to ‘take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament relating to the execution of expenditure’ (Article 319(3) TFEU). At Parliament’s request, the Commission has to report on the measures taken in light of its observations and comments.

Additional rules for budgetary procedures are included in Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union. The regulation establishes principles and rules that govern the implementation of the budget. In Articles 164-167, the regulation provides more specific rules for discharge procedure. Parliament grants discharge before 15 May of year n + 2 in respect of the implementation of the budget for year n. If this date cannot be met, discharge can be postponed and the Commission should be informed of the reasons for the postponement. Subsequently, the Commission has to make ‘every effort to take measures’ that would remove the obstacles to Parliament agreeing to give its discharge decision (Article 164). The regulation also notes the Commission’s obligation to ‘take all appropriate steps to act on the observations accompanying the European Parliament’s discharge decision’ (Article 166).

The ROP also include special provisions applicable to budget and budgetary control. Budgetary procedures are included in Rules 86-95. Rule 92a of the ROP requires that Parliament monitors the implementation of the EU’s annual budget. This task is entrusted to the committees responsible for the budget and budgetary control, (CONT and BUDG). The ROP also requires that Parliament, before its reading of the draft budget for the following financial year, considers the problems in the implementation of the current budget.

No real legal sanction is available if Parliament decides not to grant discharge to the Commission. While greater political pressure might be considered a sanction, withholding discharge does not

---

99 Additional important documents that Parliament receives also include the Commission’s annual management and performance reports for the EU budget (e.g. Annual management and performance report 2017 or 2016), and annual activity reports of the authorising officer by delegation (e.g. Annual activity report 2017 or 2016). The Budgetary Control (CONT) committee also holds exchanges of views with the directors and, separately, with the Commissioners in this respect, and submits written questions.


102 The regulation is not discussed here in further detail.


105 Parliament also grants discharge to other EU institutions. These discharge responsibilities are not discussed here. For more information see D’Alfonso A., Discharge to the Council and European Council, EPRS, European Parliament, 2014.
halt the Commission’s work or impact on spending.\textsuperscript{106} It can, however, have an impact on the establishment of the budget or provide a reason for a motion of censure. However, the Treaties do not expressly connect any specific sanctions with a Parliament refusal to grant a discharge. Nonetheless, there is a link between granting the discharge and closing the accounts.

2.6.2. Application of rules

The days when Parliament’s only right in respect of the budget was to be informed of the Council’s decisions on discharge concerning the Commission’s implementation are long gone.\textsuperscript{107} Today, Parliament is a decisive player that can considerably influence the EU and its policies via the budget. Historically, Parliament possessed budgetary rights before it possessed any legislative powers,\textsuperscript{108} and Parliament’s budgetary powers are often considered to be the driving force behind its development.\textsuperscript{109}

2.6.2.1. Political control and establishment of the budget

Parliament makes considerable impact on the functioning of the EU through its powers in the budgetary field. From a power perspective, and with regard to the final EU budget, Parliament’s position might be considered stronger than that of the Council, as Parliament may in some circumstances have the last word and impose a budget against the Council’s will.\textsuperscript{110}

The procedure establishing the EU budget can lead to two results: (1) approval of the budget; or (2) rejection of the budget and subsequent launch of a new budgetary procedure that may lead to application of the system of provisional twelfths.

Table 17 provides data on Parliament’s approval rate of the EU budget with regard to financial years 2011-2019. The table provides data on the date of the decision and a procedural file, votes in plenary regarding the budget, and comments.

\textsuperscript{106} A relevant example of the Council and Parliament’s decision to grant discharge here is Parliament’s refusal to grant discharge for the implementation of the Council’s budget in financial years 2009, 2010, 2011, 2012 and 2013. This decision was linked to a repeated lack of cooperation from the Council regarding the provision of information. The lack of discharge did not lead to any sanctions in these cases. Nonetheless Parliament’s decision not to grant discharge was one of the reasons that led to the fall of the Santer Commission in 1999. For more information, see D’Alfonso A., \textit{Discharge to the Council and European Council}, ERPS, European Parliament, 2014.

\textsuperscript{107} Between 1958 and 1970, Parliament, or the European Parliamentary Assembly, was supposed to be informed of the Council’s discharge decisions. Between 1970 and 1975, Parliament could grant discharge together with the Council, and since 1975, Parliament is the only EU institution that grants discharge (based on the Council’s recommendation).

\textsuperscript{108} Parliament originally enjoyed a merely advisory role in the legislative process. Since 1986 (the Single European Act), Parliament’s legislative prerogatives have been extended.


\textsuperscript{110} The Parliament may adopt the budget even if the Council rejects the joint text approved in the conciliation committee. However a very high threshold is set – the majority of component Members and three-fifths of the votes cast. See, Article 314 (7)d TFEU. This can occur therefore under highly theoretical and unlikely circumstances.
<table>
<thead>
<tr>
<th>Financial year</th>
<th>Date of decision and procedural file</th>
<th>Votes in plenary</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>2018/2046(BUD)</td>
<td>NA</td>
<td>The procedure in Parliament is in the preparatory phase. Indicative scheduling for the plenary sitting of October II 2018. Rapporteurs: Paul Rübig (EPP, Austria) and Daniele Viotti (S&amp;D, Italy).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Against - 154</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Abstained - 197</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Against - 194</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Abstained - 4</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Against - 179</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Abstained - 8</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Against - 250</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Abstained - 7</td>
<td></td>
</tr>
<tr>
<td>2015</td>
<td>22 October 2014, 2014/2040(BUD)</td>
<td>For - 464</td>
<td>An agreement was not reached in budgetary conciliation. The Commission was required to submit a new draft budget.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Against - 186</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Abstained - 46</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Against - 158</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Abstained - 13</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Against - 162</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Abstained - 12</td>
<td></td>
</tr>
<tr>
<td>2013</td>
<td>23 October 2012, 2012/2092(BUD)</td>
<td>For - 492</td>
<td>An agreement was not reached in budgetary conciliation. The Commission was required to submit a new draft budget.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Against - 123</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Abstained - 82</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Against - 124</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Abstained - 26</td>
<td></td>
</tr>
<tr>
<td>Financial year</td>
<td>Date of decision and procedural file</td>
<td>Votes in plenary</td>
<td>Comments</td>
</tr>
<tr>
<td>---------------</td>
<td>------------------------------------</td>
<td>------------------</td>
<td>----------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Against - 141</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Abstained - 19</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>20 October 2010, 2010/2001(BUD)</td>
<td>For - 546</td>
<td>An agreement was not reached in budgetary conciliation. The Commission was required to submit a new draft budget.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Against - 88</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Abstained - 39</td>
<td></td>
</tr>
</tbody>
</table>

Data Source: Legislative Observatory (OEIL), European Parliament.

Parliament’s power to refuse to approve the budget is not overused.

Table 17 shows that, since 2010, Parliament has, together with the Council, established a budget on each occasion, and even established the budget before the end of the year, with 15 December the latest date of approval of the budget. Since 2009, Parliament has not once rejected the proposed budget, although it did refuse on two occasions in the distant past, in December 1979 and in December 1984.

The Conciliation Committee did not reach an agreement on the EU budget on three occasions; in 2011, 2013 and 2015. In these three cases, the Commission had to present a new draft budget. The decisions on new draft budgets are designated by an asterisk (*) in the table.

2.6.2.2. Political control and discharge procedure

The responsibility for implementation of the EU budget lies with the European Commission. The discharge procedure is in fact ‘ex-post democratic oversight at political level of how the EU’s budget has been used’. In practical terms, Parliament granting discharge to the Commission is the Parliament’s way of expressing the level of satisfaction with the Commission’s implementation of the EU budget. Within the annual discharge procedure, Parliament can make recommendations for improving financial management and implementation of the budget. The Parliament’s decision on the discharge can nonetheless express Parliament’s dissatisfaction with the implementation of the budget, as it can lead two possible results: (1) discharge is granted, or (2) discharge is refused. Article 319 TFEU does not explicitly mention refusal to grant discharge. The Parliament’s power is however considered as implicit. This is one of the reasons why refusal to grant discharge does not imply any legal consequences, but only (potentially) political ones.

When assessing the implementation of the budget, the CONT committee concentrates on verifying compliance with the relevant rules, as well as on performance, i.e. compliance with the principles of sound financial management. In addition to Parliament, two more institutions play an important role in the discharge procedure; the Council, providing Parliament with a (non-binding) recommendation, and the Court of Auditors in preparing both special reports (performance audits) and the annual report (financial audit) for the financial year under consideration.

---

113 Parliament can also postpone its decision but in the end it leads either to granting a discharge or its refusal.
114 Since 2015, these principles are included in the Commission’s ‘EU Budget focused on results’ initiative. ibid.
Figure 2 illustrates a general timeline of the discharge procedure from the Parliament’s perspective. It shows the actions that need to be carried out by the Commission, the Court of Auditors and Parliament.

Figure 2 - Present EU discharge procedure from the perspective of the European Parliament

<table>
<thead>
<tr>
<th>Financial year</th>
<th>Financial year</th>
<th>Date of discharge and procedural file</th>
<th>Votes in plenary</th>
<th>Comments</th>
<th>Commission’s follow-up and replies to requests</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td></td>
<td>18 April 2018, 2017/2136(DEC)</td>
<td>For - 426</td>
<td>Parliament e.g. calls for the alignment of the EU’s policy objectives and financial cycles, its own legislative period and the mandate of the Commission (point 1, resolution with observations).</td>
<td>17 July 2018 COM(2018) 545 final</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Against - 255</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Abstained - 12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2015</td>
<td></td>
<td>27 April 2017, 2016/2151(DEC)</td>
<td>For - 466</td>
<td>Parliament e.g. notes a lack of synchronisation of the MFF (seven years) with the mandates of Parliament and the Commission (five years), which creates discrepancies between the budget for the financial year and its discharge (point 1, resolution with observations).</td>
<td>10 July 2017 COM(2017) 379 final</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Against - 173</td>
<td></td>
<td>11 October 2017 Detailed replies</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Abstained - 11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td></td>
<td>28 April 2016, 2015/2154(DEC)</td>
<td>For - 504</td>
<td>Parliament e.g. regrets that the Commission’s answers to Parliament remain ambiguous in various respects (point 2, resolution with observations).</td>
<td>17 October 2016 COM(2016) 674 final</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Against - 114</td>
<td></td>
<td>17 October 2016 Detailed replies</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Abstained - 3</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


Table 18 provides the main information concerning discharge procedures between 2009 and 2016.\(^{115}\) It includes dates and the number of a procedural file of the discharge procedure, votes in plenary, and the Commission’s follow-up to Parliament’s requests and comments.

\(^{115}\) According to the timetable for the discharge procedure for the financial year 2017, Directorate for Budgetary Affairs and Secretariat of the Committee on Budgetary Control, European Parliament, discharge is provisionally planned for March 2019.
<table>
<thead>
<tr>
<th>Financial year</th>
<th>Date of discharge and procedural file</th>
<th>Votes in plenary</th>
<th>Comments</th>
<th>Commission’s follow-up and replies to requests</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>29 April 2015, 2014/2075(DEC)</td>
<td>For - 513</td>
<td>Parliament e.g. calls on the Commission to take concrete steps to enable the necessary progress in sound financial management (point 47, resolution with observations).</td>
<td>8 October 2015 COM(2015) 505 final 8 October 2015 Detailed replies</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Against -184</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Abstained - 4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2012</td>
<td>3 April 2014, 2013/2195(DEC)</td>
<td>For - 488</td>
<td>Parliament e.g. calls on the Commission to assume greater and more substantial responsibility for safeguarding the Union budget against financial losses (point 1, resolution with observations).</td>
<td>26 September 2014 COM(2014) 607 final 26 September 2014 Detailed replies</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Against -121</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Abstained - 10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>17 April 2013, 2012/2167(DEC)</td>
<td>For - 445</td>
<td>Parliament e.g. calls on the Commission to take priority actions dealing with the protection of EU budget, to deal with error rate in shared management or to enhance the use of performance audit (point 1, resolution with observations).</td>
<td>26 September 2013 COM(2013) 668 final 26 September 2013 Detailed replies</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Against - 84</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Abstained - 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td>10 May 2012, 2011/2201(DEC)</td>
<td>For - 427</td>
<td>Parliament e.g. calls on the Commission to take priority actions including improvement and strengthening of the reliability of the accountability chain or reconsidering the increased use of pre-financing (point 1, resolution with observations).</td>
<td>3 October 2012 COM(2012) 585 final 3 October 2012 Detailed replies</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Against - 134</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Abstained - 66</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td>10 May 2011, 2010/2142(DEC)</td>
<td>For - 570</td>
<td>Parliament e.g. notes that the annual accounts of the Union present fairly the financial position of the Union as of 31 December 2009 and the results of operations and cash flows though it deplores that the Commission delivered its opinions belatedly (points 1 and 2, resolution with observations).</td>
<td>14 November 2011 COM(2011) 736 final 14 November 2011 Detailed replies</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Against - 75</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Abstained - 13</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td>5 May 2010, 2009/2068(DEC)</td>
<td>For - 550</td>
<td>Parliament e.g. remains concerned about problems accumulated from the previous Commission, such as high rates of error in payments or slowness in recoveries of undue payments (point 1, resolution with observations).</td>
<td>18 November 2010 COM(2010) 650 final 18 November 2010 Detailed replies</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Against - 48</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Abstained - 39</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Data Source: Legislative Observatory (OEIL), European Parliament.
Since 2009, Parliament has not refused to grant discharge to the European Commission (although this has been the case for other institutions or bodies). Neither was discharge postponed. Nonetheless, among the Members, the lowest support expressed for discharge was in April 2018 with regards to financial year 2016. However, discharge was eventually granted in this case.

Prior to a decision on discharge, a debate is always held in the plenary where the Members can discuss the documents provided by the Commission with regard to the discharge and provide the Commission with respective political messages. These documents are also voted and discussed in the Budgetary Control Committee (CONT) that prepares its report. The CONT report can point to possible fraud or irregular spending, as well as to control or anti-corruption policies in Member States. Reports usually include various requests and demands for Commission action.

All the above-mentioned Parliament decisions on granting discharge include recommendations to the Commission, known either as priority actions, or measures to be taken. The Commission, as required by the Treaty, is supposed to take appropriate steps on these observations.

Based on the study of the Commission’s follow-up documents, in general terms the Commission presents the Treaty-required documents on time and expresses its commitment to implement the majority or the main requests made by Parliament and apply them in the subsequent budgetary procedures. In the case of special requests made by Parliament, the Commission provides extensive detailed replies.

2.6.3. Summary

Approval of the EU budget and a decision to grant discharge are important tools in the hands of Parliament and if used properly can be used to considerably influence EU policies. Although these prerogatives are partially shared with the Council, they – at least the discharge procedure – can be considered alongside Parliament’s other control prerogatives over the Commission. Nevertheless, despite providing Parliament with control competences, the discharge procedure is bound to one specific aspect, i.e. the implementation of the past budget. This can theoretically mean that even if Parliament is not satisfied with the implementation of the past budget, the Commission actually responsible for implementation of this budget is no longer ‘in power’. This limits Parliament to voicing recommendations for a new Commission and assessing the implementation of the following budget.

Parliament always opts for numerous recommendations in its discharge decision. The Commission tries to address them in its follow-up to the decision and in its actions. However, since 2009, Parliament has not used (has not had to use) its power to refuse to grant discharge (never actually used), or to postpone discharge (not used since 1996). This naturally opens the question of possible sanctions if Parliament has decided not to grant a discharge. No particular sanction is presumed by the Treaties for not granting discharge. While not granting discharge may be considered as a sanction in itself, this does not necessarily need to lead to the fall of the Commission.

Furthermore, Parliament's power to establish the EU budget is not per se a prerogative leading to political control of the Commission, despite the possibility to use this power as a leverage to reach

---

116 However, examples exist of Parliament postponing discharge in the past. For example, the 1990 discharge was postponed so that the Commission could provide additional information; the 1996 discharge was postponed for the Commission to meet certain conditions; and the discharges of 1980 and 1985 were postponed to amend some documents on which the decision was to be based. See, D’Alfonso A., Discharge procedure for the EU budget, EPRS, European Parliament, 2016, p. 9.

117 In the last four discharge decisions Parliament unified the use of the latter term.

118 It is questionable whether postponement of discharge was the sole reason of the fall of the 1996 Santer Commission.
specific goals. However, it is difficult to evaluate this power, as since 2009, Parliament has always approved the budget before the end of a financial year and thus an application of a system of provisional twelfths has not been applied.

In general terms, Parliament's Treaty based control competences in the budgetary procedure are used correctly, and the Commission complies with its obligations. However, one of the most challenging issues in the EU’s public finances (and that might be found outside the EU institutional framework, outside the budget and therefore outside Parliament's budgetary control competence), is a growth in extra-budgetary financial tools addressing various crises that do not necessarily allow for Parliament’s democratic scrutiny.119

2.7. Legislative procedure

As a co-legislator, Parliament naturally takes part in EU legislative processes, whether through participation in an ordinary legislative procedure or a special legislative procedure (e.g. consultation or consent procedures). As this area belongs among the Parliament’s (and the Council’s) unique prerogatives, it might raise the question as to whether Parliament exercises its political scrutiny of the Commission in this area.

Although not apparent, Parliament can use its control/scrutiny prerogatives in the legislative field at least with regard to: (1) the Commission’s annual legislative work programme (CWP); and (2) its own power to request the Commission to submit a legislative proposal. In several areas, the TFEU requires that the Commission provide Parliament with information, or even reports, linked with legislative proceedings or delegated acts (these points are however noted in the previous sub-chapters).120

2.7.1. Commission annual legislative work programme and Parliament

Regarding the Commission annual work programme (CWP), the Commission has several obligations towards Parliament. Based on Article 17(1) TEU, the Commission initiates the Union’s annual and multiannual programming with a view to achieving interinstitutional agreements.

Furthermore, at the beginning of each year, the Commission has to send Parliament a report that includes the ‘work programme for the current year’ (Article 190 TFEU). For the last couple of years, the CWP was presented by the Commission during the second October plenary session by its President or its Vice-President. Presentation of the CWP is linked with the ability of the Commission to make statements before Parliament. According to Rule 123, ROP, Members of the Commission can ask the President of Parliament for permission to make a statement. A full debate or a series of questions from Members can follow such statement. This happens regularly regarding the CWP.

Specific rules for annual programming and the CWP are included in the IIA BLM (points 6-11), and in the ROP (Rule 118a and Rule 37). The IIA BLM requires a dialogue between the Commission, Parliament and the Council and sets the requirements applicable to an annual work programme


120 EU secondary law can oblige the Commission to provide a report to Parliament or inform it via ‘review clauses’. A review clause in this sense can be defined as a provision included in the secondary EU law calling for a review or evaluation of legislative act or preparation of an implementation report. See, Kiendl Kristo I, Review Clauses in EU Legislation: A Rolling Check-List (6th edition), EPRS, European Parliament, 2018.

Parliamentary scrutiny over the European Commission: implementation of the Treaty provisions

before its adoption and after it is adopted. It also sets out specific issues that need to be included in the CWP.122

**Before the Commission adopts and presents its annual work programme,** the IIA BLM requires several steps: (1) An *early exchange of bilateral views* on initiatives between the Commission and Parliament has to take place; (2) This is followed by a written contribution from the President of the Commission describing the main 'items of major political importance for the following year' – *letter of intent*, addressed to the President of Parliament; (3) On the basis of this letter of intent, following the debate on the State of the Union; and (4) the Commission, the Council and Parliament should hold an *additional exchange of views.*

**Following the adoption of the CWP,** (5) a *further exchange of views* has to take place, and the three institutions should agree on a joint declaration on annual interinstitutional programming. Implementation of the joint declaration has to be monitored regularly by all three institutions.

The CWP should include major legislative and non-legislative proposals for the following year, including repeals, recasts, simplifications and withdrawals. It is considered to be ‘the Commission’s contribution to the Union’s annual and multiannual programming’ (point 53 FA 2010).

With regard to the CWP, the Commission is also obliged to provide regular updates on its planning and give reasons for any delay in the presentation of the proposals included therein. The Commission should also report to Parliament on the CWP's implementation.

Annual legislative programming is covered by the ROP. Rule 37123 reiterates the cooperation between Parliament and the Commission in preparing the CWP, while it clearly notes that before negotiating with the Council and the Commission on a joint declaration, the President of Parliament has to exchange views with the COP and the CCC regarding Parliament’s priorities and objectives. The President also forwards any resolution adopted by Parliament concerning legislative planning and priorities to the Commission. A reference to multiannual programming is made in Rule 118a124 that requires that the newly appointed Commission, Parliament and the Council exchange views and agree on joint conclusions for multiannual programming. Any such exchange of views should be preceded by the President’s exchange of views with the COP.

The provisions of the FA 2010 provide a clear obligation on the Commission to present its CWP to Parliament (point 34 FA). Furthermore, the FA’s 2010 Annex IV sets a timetable according to which the Commission and Parliament should cooperate.125 The FA 2010 requires that the Commission’s Vice-President responsible for institutional relations regularly reports to the CCC.

Table 19 presents the timetable, based on an analysis of the text of the FA 2010 with regard to the Commission work programme and the Commission’s and Parliament’s actions linked thereto.

---

122 For instance, ‘major legislative and non-legislative proposals for the following year, including repeals, recasts, simplifications and withdrawals’ (point 8 IIA BLM).
125 Point 10 of Annex IV notes that the timetable does not prejudice any future agreement on interinstitutional programming.
Table 19 – Timetable for the Commission work programme according to the Framework Agreement 2010

<table>
<thead>
<tr>
<th>Timeframe</th>
<th>Actions</th>
</tr>
</thead>
</table>
| The first half of year        | - regular dialogue between the Members of the Commission and the corresponding parliamentary committee  
                               | - report to the CCC on the outcome of the dialogue by the respective committee  
                               | - regular exchange of views between the CCC and the Commission’s Vice-President                                                                                                                   |
| June                          | - summary report submitted by the CCC to the COP, containing the results of the screening of implementation of the CWP, Parliament’s priorities for the upcoming CWP, and taking stock of results of ongoing bilateral dialogue with the Commission |
| July part-session             | - Parliament resolution outlining its position on legislative priorities                                                                                                                                 |
| September first part-session  | - State of Union address and debate in Parliament while Commission prepares ‘main elements guiding the preparation’ of the CWP in writing                                                                 |
| Start of September            | - detailed exchange of views on future priorities in each policy area between the Members of the Commission and the corresponding parliamentary committee  
                               | - subsequent meeting between the CCC and the College of Commissioners and if appropriate between the COP and the President of the Commission                                                      |
| October                       | - adoption of the CWP for the following year and presentation of the CWP (by the Commission President or the Vice-President)                                                                               |
| December part-session         | - debate and subsequent Parliament resolution                                                                                                                                                         |


The IIA BLM obliged the Commission’s President to inform Parliament about ‘items of major political importance for the following year’. Since then, the President of the Commission has presented these intentions while addressing the plenary on their view of the state of the Union. This practice existed even before the adoption of the IIA BLM (see Table 21). A letter, in which the President of the Commission informed the President of Parliament about its legislative intentions, has been sent at least since 2010, usually in September before the presentation of the CWP in the Parliament plenary session.\(^{126}\) In comparing the content of the letter of intent and the Parliament’s resolution\(^ {127}\) on the CWP, it can be observed that a majority of Parliament’s requests have indeed been included in the letter of intent.

\(^{126}\) In 2014, after the European Parliament elections and the election of the President of the Commission, such a letter was sent two months later (in November 2014). The CWP presentation also took place later, in December 2014.

\(^{127}\) If such a resolution is adopted. Since 2016, when the IIA entered into force, Parliament has only once adopted a resolution on strategic priorities for the Commission work programme (with regards to the CWP 2017).
Table 20 – Commission work programme and subsequent actions

<table>
<thead>
<tr>
<th>CWP Year</th>
<th>Resolution of Parliament</th>
<th>Letter of intent</th>
<th>State of Union address</th>
<th>Presentation of the CWP in plenary</th>
<th>Joint declaration</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>Proposal for resolution rejected on 15 January 2015 (PE545.687v01-00)</td>
<td>12 November 2014</td>
<td>No speech given</td>
<td>16 December 2014, 2014/2829(RSP)</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

Data Source: Legislative Observatory (OEIL), European Parliament.

Since 2016, when the IIA BLM provisions entered into force, the Commission (the President or the First Vice-President) submits a letter of intent to Parliament. It seems that Parliament, the Council and the Commission participate in a dialogue before and after the adoption of the CWP. A joint declaration on annual interinstitutional programming, currently known as the **joint declaration on the EU’s legislative priorities**, is yet another step forward. The joint declaration identifies files which should receive priority treatment without prejudice to the co-legislators’ powers under the Treaties. Joint declarations represent the commitment of the three institutions ‘to agree each year on a number of priority proposals, on which they want to ensure substantial progress’. The first such declaration was adopted in December 2016. The implementation of the joint declaration is

128 Despite these resolutions (adopted or not), various Parliament requests can be seen to have been taken on board in the CWP.

129 Prior to December 2016 there were none ‘joint declarations of Parliament, the Council and the Commission’ that would set legislative priorities for the upcoming year(s). See for example, press release, European Parliament, 13 December 2016.

130 It seems that due to the European elections in 2014 and a subsequent change of the Commission, no speech on the state of Union was given (Neither by then President Barroso nor President-elect Juncker). However, on 15 July 2014, then President-elect Juncker presented his **Political Guidelines for the next European Commission** to the Parliament plenary session, and on 22 October 2014 he made a speech in plenary ahead of the vote on the College.
monitored regularly at technical level and also at the level of the three Presidents, which involves consultation of the CCC and CoP (Rule 37 ROP).  

Parliament usually reacts to the Commission’s legislative planning in its resolution on the CWP or on legislative priorities. Since 2010, Parliament has not adopted a resolution on the CWP or on legislative planning in two cases (in 2017 and in 2015).

2.7.2. Procedure under Article 225 TFEU

According to Article 225 TFEU, the Parliament, when acting by a majority of its component Members, may request that the Commission submit ‘any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Treaties’. The wording of the Treaty leaves the Commission with two options: (1) submit, within the legislative procedure, the requested legislative proposal; or (2) decide not to submit such a proposal and inform Parliament of its reasons.

Furthermore, point 10 IIA BLM requires the Commission to give ‘prompt and detailed consideration to requests for proposals for Union acts’ made by Parliament. In this case, the Commission should reply to these requests within three months, while it should also adopt a specific communication explaining the intended follow-up. Furthermore, if the Commission decides not to submit a proposal, it needs to provide detailed reasons for its decision and, where appropriate, also an analysis of possible alternatives. It should also reply to issues raised by Parliament concerning European added value and the cost of non-Europe. In addition, the Commission has to present its reply in the European Parliament or in the Council, if so requested.

Furthermore, point 16 FA 2010 also clarifies that the Commission should come forward with a legislative proposal (based on Parliament’s request) at the latest after one year, or it should include this proposal in its next annual CWP.

Rule 46 ROP sets specific procedural rules for requesting that the Commission submit a legislative proposal amending an existing act or leading to a new legislative act. Parliament does this via a resolution (on the basis of an own-initiative report), adopted by a majority of its component Members.

A proposal for a Union act on the basis of Article 225 TFEU can be tabled by any Member but, it can also be tabled jointly by up to 10 Members. It has to include the legal basis and can contain an explanatory statement of a maximum of 150 words. The President of Parliament, to whom such a proposal should be submitted, can refer it to the committee responsible for an opinion. The proposal is announced in the plenary and referred to the committee responsible, if the President declares it admissible. The proposal has to be translated into those official EU languages that are considered necessary in order for a summary consideration to be possible. The committee responsible should then take its decision within three months of the referral, while the authors of the proposal can address the committee. According to this rule, the CCC has to monitor whether the Commission fulfils its obligations according to point 10 IIA BLM regularly. The CCC has to report to the COP regularly.


132 Although the procedure according to Article 241 TFEU is to some extent similar to the Article 225 TFEU procedure, it is not discussed here as it covers exclusively the relation between the Council and the Commission.

133 Currently 376 Members.

In cases where Parliament adopts an own-initiative legislative resolution requesting the Commission submit a legislative proposal, the Commission should reply to Parliament and explain the reasons for its decision. In practice, in the majority of cases the Commission does not follow the Parliament’s request. However, in the vast majority of cases, the Commission provided an explanation as to why it did not proceed with the proposal. Only on a few occasions has the Commission followed-up (more or less) on the Parliament’s requests.

Table 21 shows cases in which plenary decided to request the Commission submit a proposal pursuant to Article 225 TFEU between 2010 and 2018. The table also provides an observation of the result and refers to the Commission’s follow-up to the Parliament’s resolution/decision. The following table does not however include legislative own-initiative reports that were submitted with regard to decisions (or legal acts) to be adopted uniquely by the Council or proposals for regulation according to Article 226 TFEU concerning the Parliament’s right of inquiry.  

Table 21 – Legislative own-initiative reports (2010-2018)

<table>
<thead>
<tr>
<th>Legislative own-initiative report (INL)</th>
<th>Adoption in plenary</th>
<th>Votes</th>
<th>Legislative proposal</th>
<th>The Commission’s response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statute for social and solidarity-based enterprises 2016/2237(INL)</td>
<td>5 July 2018</td>
<td>For - 398 Against - 78 Abstained - 44</td>
<td>No response in NA</td>
<td>NA</td>
</tr>
<tr>
<td>Odometer manipulation in motor vehicles: revision of the EU legal framework 2017/2064(INL)</td>
<td>31 May 2018</td>
<td>For - 577 Against - 32 Abstained - 19</td>
<td>No response in NA</td>
<td>NA</td>
</tr>
<tr>
<td>Common minimum standards of civil procedures 2015/2084(INL)</td>
<td>4 July 2017</td>
<td>For - 545 Against - 79 Abstained - 71</td>
<td>No response in NA</td>
<td>The Commission responds (16 October 2017, SP(2017)539) that the EU civil justice instruments already contain civil procedure rules. It notes that if further action is needed it intends to take the proposal into account.</td>
</tr>
<tr>
<td>Limitation periods for traffic accidents 2015/2087(INL)</td>
<td>4 July 2017</td>
<td>For - 558 Against - 69 Abstained - 73</td>
<td>No response in NA</td>
<td>The Commission notes (6 October 2017, SP(2017)540) that harmonisation of national limitation periods could not be limited to traffic accident cases in isolation and should be addressed in a future report on application of the Rome II Regulation.</td>
</tr>
<tr>
<td>Protection of vulnerable adults 2015/2085(INL)</td>
<td>1 June 2017</td>
<td>For - 539 Against - 23 Abstained - 72</td>
<td>No response in NA</td>
<td>The Commission responds (30 August 2017, SP(2017)510) that a legislative initiative would produce desired effects only when a sufficient number of MS have joined the 2000 Hague Convention on international protection of adults.</td>
</tr>
<tr>
<td>Cross-border aspects of adoptions 2015/2086(INL)</td>
<td>2 February 2017</td>
<td>For - 533 Against - 41 Abstained - 72</td>
<td>No response in NA</td>
<td>The Commission responds (10 April 2017, SP(2017)188) that it is aware of the existing problems. It nevertheless points out that an initiative needs to be evidence-based and waits for results of a consultation.</td>
</tr>
<tr>
<td>Establishment of an EU mechanism on democracy, the rule of law and 25 October 2016</td>
<td>For - 405 Against - 171 Abstained - 39</td>
<td>Partial</td>
<td>The Commission notes (17 February 2017, SP(2017)116) the need to use the existing instruments. As regards the rule of law, on 2 May 2018, the Commission proposed a</td>
<td></td>
</tr>
</tbody>
</table>

135 The following legislative initiative procedures (INL) were not included in the table: European Parliament’s right of inquiry 2009/2212(INL), Jurisdictional system for patent disputes 2011/2176(INL), Composition of the European Parliament with a view to the 2014 elections 2012/2309(INL), Improving the practical arrangements for the holding of the European elections in 2014 2013/2102(INL), Reform of the electoral law of the European Union 2015/2035(INL) and Composition of the European Parliament 2017/2054(INL).
<table>
<thead>
<tr>
<th>Legislative own-initiative report (INL)</th>
<th>Adoption in plenary</th>
<th>Votes</th>
<th>Legislative proposal</th>
<th>The Commission’s response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fundamental rights 2015/2254(INL)</td>
<td></td>
<td></td>
<td></td>
<td>The Commission responds (3 May 2016, SP(2016)180) that it addressed Parliament’s request by submitting a 2016 legislative proposal regarding on mandatory, public country-by-country reporting. Later, in 2018, the Commission proposed rules to ensure that digital business activities are taxed in a fair and growth-friendly way in the EU.</td>
</tr>
<tr>
<td>Bringing transparency, coordination and convergence to corporate tax policies in the Union 2015/2010(INL)</td>
<td>16 December 2015</td>
<td>For - 500 Against - 122 Abstained - 81</td>
<td>Partial</td>
<td></td>
</tr>
<tr>
<td>Combating violence against women 2013/2004(INL)</td>
<td>25 February 2014</td>
<td>Adopted by show of hands</td>
<td>No</td>
<td>The Commission notes (22 July 2014, SP(2014)447) that various legal measures were adopted in this field while the Commission will consider submitting proposals therein.</td>
</tr>
<tr>
<td>Parliament’s rights in the appointment procedure of future Executive Directors of the European Environment Agency 2013/2089(INL)</td>
<td>11 September 2013</td>
<td>Adopted by show of hands</td>
<td>No</td>
<td>The Commission notes (19 December 2013, SP(2013)816) that at this stage it does not intend to put forward a legislative amendment.</td>
</tr>
<tr>
<td>Statute for a European mutual society 2012/2039(INL)</td>
<td>14 March 2013</td>
<td>Adopted by show of hands</td>
<td>No</td>
<td>The Commission replies (29 July 2013, SP(2013)442) that it intends to wait for results of consultation in order to address these issues. The first proposal was withdrawn in 2006. No new proposal has since been scheduled in the CWP.</td>
</tr>
<tr>
<td>Better governance for the single market 2012/2260(INL)</td>
<td>7 February 2013</td>
<td>For - 527 Against - 30 Abstained - 31</td>
<td>No</td>
<td>The Commission doubts (28 June 2013, SP(2013)304) whether Article 26(3) TFEU could be used as a legal basis to adopt a legislative act on the governance of the single market.</td>
</tr>
<tr>
<td>Towards a genuine Economic and Monetary Union 2012/2151(INL) (Follow up on 2010/2099(INL))</td>
<td>20 November 2012</td>
<td>For - 482 Against - 160 Abstained - 35</td>
<td>Yes</td>
<td>The Commission points (2 April 2013, SP(2013)110) to proposals already submitted and notes its intention to submit further proposals in this field. In July 2013 (and thereafter) the Commission publishes the Banking Union proposals which include the Single Resolution Mechanism, the Single Supervisory Mechanism, the European Deposit Insurance Scheme (still in the legislative process) and a proposal on sovereign bond-backed securities.</td>
</tr>
<tr>
<td>Access to basic banking services 2012/2055(INL)</td>
<td>4 July 2012</td>
<td>For - 585 Against - 68 Abstained - 5</td>
<td>Yes</td>
<td>The Commission intends (31 October 2012, SP(2012)636) to examine results of public consultation and to assess the need to bring forward a proposal.</td>
</tr>
</tbody>
</table>

136 The Legislative Observatory (OEIL) includes identical numbers and dates for this file and the file noted above.
As table 21 shows, Parliament's success in persuading the Commission to submit a legislative proposal based on its request has been rather limited. Of 22 cases mentioned above, the Commission followed up the Parliament's request to some extent with a proposal in only 8 cases.

With regard to the implementation of point 10 of the Interinstitutional Agreement 2010, a project team ‘Suites Données’ was set up in Parliament, with part of its work being to evaluate the implementation of the IIA BLM. The project team was led by DG PRES and consisted of representatives from DG IPOL, DG EXPO, DG EPRS and Parliament’s Legal Service. Its conclusions fed into a wider monitoring report by Parliament’s Secretariat, as a contribution to Parliament’s further political work on the IIA BLM.137

The project team recommended that the monitoring of the Commission’s follow-up to Parliament’s resolutions under Article 225 TFEU should be carried out in two separate

---

phases: (1) a 'quantitative and timing check' of the Commission's replies systematically
carried out by DG PRES including its compliance with the three-month deadline and (2)
'qualitative and political check' of the replies. Here the responsibility for the quality
control should lie with a competent parliamentary committee and within an agreed
framework of the CCC, which is the body in charge of the regular monitoring of the
Commission's compliance with point 10 of the IIA BLM (Rule 46 (6) ROP).

As regards the possibility to ask the Commission to present its reply in Parliament, the
project team recommended a certain flexibility for the given parliamentary body (i.e.
particular committee, CCC or plenary) to take a decision, depending on the political
importance of the file. The project team also recommended a set of existing information
documents be prepared on the topic, in particular, a regular, comprehensive note
analysing the follow-up provided by the Commission services in accordance with
point 16 of the Framework Agreement (DG PRES); a 'political work programme'
(DG IPOL) and a 'rolling checklist' (DG EPRS).

It is still too early to fully evaluate the implementation of this provision, as only six follow-ups have
been made to parliamentary resolutions adopted on the basis of Article 225 TFEU since the adoption
of the IIA BLM in 2016. From a quantitative point of view, it seems the Commission has to date
complied with the existing deadline of three months for replying to such requests as established in
point 10 IIA BLM. The first responses received from the Commission provide a more detailed analysis
of the Parliament's request and possible follow-up compared to its past replies.

2.7.3. Summary

The procedure for preparation of the Commission's work programme seems to be sufficiently
directed at and discussed with Parliament. Parliament is, either at the level of the parliamentary
committees, or at the level of the plenary or the President, involved at several stages in preparation
of the CWP.

The adoption of the IIA BLM in 2016 allowed for far broader cooperation between Parliament, the
Commission and the Council. The 'officialised' letter of intent by the President of the Commission
and the joint declaration between the three institutions regarding the legislative priorities
particularly enable Parliament to push through its interests after the CWP is adopted. This position
is however slightly undermined by the fact that Parliament is often unable to reach the majority
required for the adoption of a resolution on the legislative priorities that should be included in the
CWP. This weakens the Parliament's position with regard to the CWP.138

In the last two years, Parliament's power increased with regard to the CWP, especially due to broader
cooperation between the three EU institutions and via the joint declarations on annual
interinstitutional programming. In order to use existing powers to their full extent, Parliament needs
to try to reach a political agreement between its different political factions.

According to the Treaties, Parliament does not traditionally have a right of legislative initiative.139 As
such, it cannot compel the Commission to submit a legislative proposal. Although Parliament is not
very successful as regards its requests under Article 225 TFEU, its last two requests have not yet been
assessed by the Commission. This power nevertheless allows Parliament to scrutinise whether the
Commission fulfils its role properly. From the Commission's follow-up documents to the
Parliament's requests, it is evident that the Commission considers Parliament's requests seriously.

138 Within the last four years, Parliament has not been able to adopt such a resolution on two occasions.
139 With the exception of proposals pursuant to Article 226 TFEU.
Parliament’s requests can always lead to the submission of a ‘real’ legislative proposal. If that does not happen, they can at least provide a different view to that of the Commission.

Parliament would potentially gain if the application of Article 225 TFEU was more linked with the Parliament’s powers concerning the CWP. A combination of both would not only broaden Parliament’s application of its scrutiny powers but might also support greater clarity in legislative planning.

2.8. Delegated acts

A specific part of Parliament’s control prerogatives, when taking the Treaties’ provisions into account, is linked with the Parliament’s ability to scrutinise delegated acts – acts adopted by the Commission on the basis of a delegation granted in EU legislative acts. The conditions of powers delegated to the Commission are defined case-by-case by these legislative acts (basic legislative act).

Since the entry into force of the Lisbon Treaty in 2009, Parliament has concluded 301 legislative files with the Council that empower the Commission to adopt delegated acts. Of this number, in the eighth legislative term (to June 2018), the co-legislators adopted 98 legislative acts that empower the Commission to adopt a delegated act. The 301 abovementioned legislative files include approximately 1,614 provisions empowering the Commission to adopt a delegated act. This however does not mean that the Commission will ultimately adopt 1,614 delegated acts, as in some cases measures under several provisions can be clustered into a single delegated act, whereas for certain provisions the Commission may adopt multiple delegated acts. This makes it difficult to estimate precisely the number of delegated acts that will be adopted by the Commission based on the Parliament’s and Council’s delegation.

As soon as Parliament has formally received a delegated act adopted by the Commission, it has the possibility to assess the act and to object to it if considered necessary. A delegated act can only enter into force if there has been no objection by Parliament or the Council within a period of usually two months (that can occasionally be prolonged). In addition, Parliament can also scrutinise the way the Commission uses the power delegated to it.

---


142 Of 1,614 provisions empowering the Commission to adopt a delegated act, 425 are estimated to fall in the competence of the AGRI committee, 317 the ECON committee and 227 the ENVI committee. Overview of delegated and implementing acts in the Parliament, Directorate General for Internal Policies, European Parliament, May 2018, Table 1, p. 2.

143 This is, for instance, the case with the Financial Regulation (Regulation No 966/2012) that contained more than 100 provisions empowering the Commission, while most of them were included in one single delegated regulation (Commission Delegated Regulation (EU) No 1268/2012).
Table 22 shows the number of delegated acts received from the Commission per year since 2009. As can be seen from the table, the number of delegated acts received by Parliament rose considerably in 2014 and, in the last four years (excluding 2018), it has remained higher than 100.

Table 22 – Delegated acts received by Parliament (2009-2018)

<table>
<thead>
<tr>
<th>Year</th>
<th>Delegated acts received by Parliament</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>4</td>
</tr>
<tr>
<td>2011</td>
<td>7</td>
</tr>
<tr>
<td>2012</td>
<td>38</td>
</tr>
<tr>
<td>2013</td>
<td>57</td>
</tr>
<tr>
<td>2014</td>
<td>177</td>
</tr>
<tr>
<td>2015</td>
<td>106</td>
</tr>
<tr>
<td>2016</td>
<td>139</td>
</tr>
<tr>
<td>2017</td>
<td>130</td>
</tr>
<tr>
<td>2018 (until June 2018)</td>
<td>40</td>
</tr>
</tbody>
</table>


### 2.8.1. Rules

A legislative act may delegate the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act to the Commission. This definition of delegated acts is provided by Article 290(1) TFEU. Within the general rules applicable to delegated acts, the TFEU gives Parliament several powers that fit into the package of Parliament’s scrutiny powers, especially (1) power to revoke delegation (Article 290 (2) a TFEU); and (2) power to object to the delegated act within a certain period (Article 290 (2) b TFEU). In both cases, Parliament needs to act by a majority of its component Members (i.e. 376 MEPs).144

The general rules included in the TFEU (at least with regard to Parliament’s involvement in scrutiny of delegated acts) are specified in the Interinstitutional Agreement on Better Law-Making 2016 and in the annexed Common understanding on delegated acts, setting out ‘the practical arrangements and agreed clarifications and preferences applicable to delegations of legislative power’ (Annex, point 1). Additionally, with regard to delegated acts ‘which are expected to have significant economic, environmental or social impacts’, the Commission should carry out impact assessments (IIA BLM, point 13).

The IIA BLM’s point 28 requires that Parliament receives all documents linked with the delegated act at the same time as Member States' experts. Furthermore, Parliament’s experts have the right to systematically access the meetings of Commission expert groups during the preparation of

---

144 This number will decrease due to a redistribution of seats in Parliament after the next European election (May 2019) and as a consequence of the UK’s decision to leave the EU. A majority of its component Members will be 353 out of 705. See, P8_TA(2018)0029.
delegated acts. In this context, Parliament should receive the planning for the following months and invitations for all experts’ meetings (Annex, point 11).

Delegated acts have to be officially transmitted by the Commission to Parliament and the Council. However, Annex, point 14 notes that they should not be transmitted between 22 December and 6 January or between 15 July and 20 August, unless they were adopted under the urgent procedure. The period for expressing objections shall start when all official language versions of the delegated act have been received by the European Parliament and the Council (Annex, point 15).

Parliament has to be fully informed about the possibility of a delegated act being adopted under the urgency procedure (Annex, point 21). However, even in the case of an urgency procedure Parliament can express its objection. When adoption of a delegated act is notified to the Parliament under the urgency procedure, the Commission is obliged to state its reasons for doing so (Annex, point 23).

Where the delegation of power is determined for a given period of time and tacitly extended for periods of an identical duration, Parliament and the Council can both oppose a tacit extension of delegation of power. This opposition has to be made no later than three months before the end of each determinate period (Annex, point 17). The same point also requires the Commission to draw up a report in respect of delegated power ‘not later than nine months before the end of each period.’

Additionally, Parliament’s procedural rules applicable to the delegated acts are included in Rule 105 ROP.145 Delegated acts received are announced to Parliament by its President. They are subsequently considered by the committee responsible, which can table a reasoned motion for a resolution objecting to the delegated act (105(3) ROP).

Apart from that, the ROP note Parliament’s possibilities to address recommendations to the Commission and to call on the Commission to submit a new delegated act that takes account of Parliament’s recommendations.

The abovementioned rules are also partially supplemented by Regulation (EU) No 182/2011146 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers, although this regulation primarily deals with implementing and not delegated acts.

DG IPOL’s LEGI/CODE unit has also published a list of good practices based on procedures in committees: Good practices for scrutinising delegated acts; RPS measures; and implementing acts (2015).

2.8.2. Application

Apart from approving a provision empowering the Commission to adopt a delegated act in a regulation or a directive when Parliament acts as co-legislator, Parliament has three main competences with regard to delegated acts. It can:

1. revoke a delegation of power,
2. object to a delegated act, including to a delegated act adopted under the urgency procedure, and
3. oppose the tacit renewal of a delegation of power.

---

146 Regulation No EU 182/2011.
2.8.2.1 Revocation of delegated power

Although Parliament can revoke the delegation of power under a specific act at any time (Article 290, 2(a) TFEU), as of June 2018, Parliament has never revoked a delegation. The situation is identical with regard to the Council, as it also has never revoked a delegation.

Furthermore, a provision exists that coordinates Parliament and the Council’s approach regarding revocation of the Commission’s delegated powers, however this provision has not yet been used.

2.8.2.2 Objection to a delegated act

Since 2009, Parliament has objected to a delegated act adopted by the Commission in eight cases. In the case of the Council this happened on two occasions. There is no formal coordination process in this regard, but the two institutions have an obligation to inform each other and to inform the Commission.

Objections to a delegated act were rejected in plenary in 13 cases and in three cases they were withdrawn. In 16 cases objections were rejected in the responsible Parliamentary committee and in 4 cases objections were withdrawn by the committee responsible.

Parliament extended the deadline for raising an objection to a delegated act 75 times (up to June 2018), while in 29 cases, Parliament has expressed early non-objections for delegated acts.

During the scrutiny phase, the CCC and the COP are regularly informed about relevant developments concerning adopted delegated acts so that the political authorities have a good overview regarding decisions that have been taken at the different stages of the procedure. In June 2018, 17 delegated acts were scrutinised by the respective Parliamentary committee. In two cases the committees commenced their scrutiny activities in accordance with Rule 105 and in one case an objection procedure was initiated (Rule 105(5)).

Although there is currently only a limited number of examples in which Parliament objected to a Commission delegated act, it is possible, based on these examples, to postulate some general reasons for Parliament’s objections. These general reasons include, for instance:

1 blanket exemptions included in the delegated act,
flaws in the Commission’s methodology,
failure to comply with conditions laid down in a regulation or a directive,
incompatibility of the delegated act with the aim and content of a regulation or a directive on which it is based,
insufficient measures to protect stakeholders, and
exceeding the Commission’s mandate.

Table 23 shows eight cases in which Parliament objected to delegated acts adopted by the Commission. The table also includes the procedure number, date of adoption of the Parliament’s decision, vote in plenary and general comments as to the reason for objecting to the delegated act.

Table 23 – Delegated acts Parliament has objected to (2009-2018)

<table>
<thead>
<tr>
<th>Delegated act</th>
<th>Procedure, decision date and vote</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commission delegated regulation of 2 March 2018 amending Delegated Regulation (EU) 2017/118 establishing fisheries conservation measures for the protection of the marine environment in the North Sea</td>
<td>2018/2614(DEA) 14 June 2018 For - 484 Against - 77 Abstained - 15</td>
<td>In resolution (P8_TA(2018)0265) Parliament objects to the act as, for example, the review and reporting clause of the proposed delegated act does not apply to the newly proposed zones and their management, thus rendering transparent evaluation of the effectiveness of the measures impossible (letter G).</td>
</tr>
<tr>
<td>Commission delegated regulation of 24 March 2017 amending Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council, as regards deleting Guyana from the table in point I of the Annex and adding Ethiopia to that table</td>
<td>2017/2634(DEA) 17 May 2017 For - 392 Against - 80 Abstained - 207</td>
<td>In resolution (P8_TA(2017)0213) Parliament objects to the act as, for example, anti-money laundering and countering terrorist financing deficiencies may persist as regards several aspects of Article 9(2) in certain countries that are not included in the list of high-risk third countries in the amending delegated regulation (letter A).</td>
</tr>
<tr>
<td>Commission delegated regulation of 30 June 2016 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products</td>
<td>2016/2816(DEA) 14 September 2016 For - 602 Against - 4 Abstained - 12</td>
<td>In resolution (P8_TA(2016)0347) Parliament, for example, objects to the act ‘as it contain(ed) flaws in the methodology for the calculation of future performance scenarios and does not therefore fulfil the requirement under Regulation (EU) No 1286/2014 to provide information which is accurate, fair, clear and not misleading’ (letter D).</td>
</tr>
<tr>
<td>Commission delegated regulation of 25 September 2015 supplementing Regulation (EU) No 609/2013 of the European Parliament and of the Council as regards the specific compositional and information</td>
<td>2015/2863(DEA) 20 January 2015 For - 393 Against - 305</td>
<td>According to resolution (P8_TA(2016)0015), Parliament objects to the act on the grounds that the act for instance does not contain sufficient measures to protect infants and young children against obesity (point 2).</td>
</tr>
</tbody>
</table>
### Delegated act

<table>
<thead>
<tr>
<th>Delegated act</th>
<th>Procedure, decision date and vote</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>requirements for processed cereal-based food and baby food</td>
<td>Abstained - 12</td>
<td>In resolution (<a href="#">P8_TA(2015)0206</a>), Parliament objects to the act on the grounds that ‘data relating to ethyl alcohol of agricultural origin ensures both transparency and knowledge as regards the evolution of the market’, and that is ‘extremely useful when it comes to international agreement negotiations and anti-dumping investigations’ (letters A and B).</td>
</tr>
</tbody>
</table>
20 May 2015  
For - 486  
Against - 164  
Abstained - 26 | In resolution ([P8_TA(2015)0205](#)), Parliament considers that the Commission delegated directive fails to comply with the conditions laid down in Article 5(1)(a) of Directive 2011/65/EU (point 3). |
| Commission delegated directive of 30 January 2015 amending, for the purposes of adapting to technical progress, Annex III to Directive 2011/65/EU of the European Parliament and of the Council as regards an exemption for cadmium in illumination and display lighting applications | 2015/2651(DEA)  
20 May 2015  
For - 618  
Against - 33  
Abstained - 28 | According to the Resolution ([P7_TA(2014)0218](#)), Parliament considers that the Commission delegated regulation is not compatible with the aim and content of Regulation (EU) No 1169/2011 and that it exceeds the delegated powers conferred on the Commission under the latter (point 2). |
14 March 2014  
For - 402  
Against - 258  
Abstained - 14 | The reporting obligation for delegation of powers with a determinate duration is monitored by the Parliamentary committees. The LEGI unit publishes a table indicating all upcoming ‘tacit extensions’ and the corresponding reports expected from the Commission. While the reports sometimes come later than expected and often contain only standardised information, there does not seem to be a case known where the Commission has not submitted its report. |

**Data Source:** LEGI unit, Directorate General for Internal Policies, European Parliament.

#### 2.8.2.3. Opposing the tacit renewal of a delegation of power

In addition to empowering the Commission to adopt delegated acts, the basic legislative act determines the time period for which this power is delegated to the Commission. The duration of empowerment can be given for: (1) an indefinite period; (2) a determinate period with tacit extension; and (3) a determinate period with no extension possible. Based on the statistics of the Parliament’s LEGI unit (former CODE unit), an indeterminate period was given in **13 cases**, while a determinate period with tacit extension in **158 cases** and a determinate duration in **41 cases** (data until June 2018).

The reporting obligation for delegation of powers with a determinate duration (normally five years with tacit extension) is monitored by the Parliamentary committees. The LEGI unit publishes a table indicating all upcoming ‘tacit extensions’ and the corresponding reports expected from the Commission. While the reports sometimes come later than expected and often contain only standardised information, there does not seem to be a case known where the Commission has not submitted its report.
Up to June 2018, Parliament has not opposed the tacit renewal of a delegation of power to the Commission.

2.8.2.4. General information

In general, it is common practice in many committees to invite a representative of the Commission to present and discuss draft delegated acts with the Parliamentary committee responsible, either regularly or in cases of specific upcoming acts. Some Parliamentary committees have regular scrutiny slots in their agendas (e.g. the ECON committee). The exact number of these exchanges is however not available. Also, Parliament has access to meetings of the Commission concerning preparation of delegated acts. This access has been simplified with adoption of the IIA BLM.

Parliament often discusses draft acts with the Commission in the respective Parliamentary committee. Where the Commission takes on board Parliament’s comments and suggestions before adopting the act, there is no need for triggering an objection.

With regard to delegated acts, the Commission fulfils its information obligations properly. All necessary documents such as draft acts, agendas on expert meetings, are transmitted via email to Parliament’s functional mailboxes at the same time as to the Member States’ experts, and are published in the Interinstitutional Register of Delegated Acts. Furthermore, most Parliamentary committees receive the planning of expert meetings by email into their functional mailbox. The expert group meetings and planned acts are also announced in the register and are thus accessible to the committees.

The urgency procedure is used only in exceptional cases. Based on the data received, in these rare cases, the committee secretariats are informed by their counterparts in the Commission before the act is adopted.

Before 2014, there were regular exchanges of letters between the CCC and the Commission about recurrent problems regarding delegated acts procedures, in which Parliament communicated its dissatisfaction to the Commission (e.g. letter from CCC Chair Klaus-Heiner Lehne (EPP, Germany) to Commission Vice-President Maros Šefčovič of 25 February 2014). The adoption of the IIA BLM eliminated the need to raise these issues at political level. In case of problems, they could be solved by informal contacts, often involving the horizontal services, such as the Commission’s Secretariat-General or Parliament’s LEGI unit.

Occasionally, the Commission prepares an impact assessment with regard to a delegated act. A number of draft delegated acts are published on the Commission website for public consultation before their adoption.

2.8.3. Summary

Parliament can scrutinise the Commission with regard to delegated acts. However, even though Parliament can revoke a delegation of power, object to a delegated act adopted, or oppose the tacit renewal of a delegation of power, Parliament uses these ‘veto’ powers with discretion. Up to June 2018, Parliament has not once revoked a delegation of power, nor has it opposed the tacit renewal of a delegation of power.

153 The Interinstitutional Register of Delegated Acts was launched in December 2017.
154 Expert Group meetings; and planned acts.
155 For example, Commission delegated regulation amending Delegated Regulation (EU) 2015/35 concerning the calculation of regulatory capital requirements for certain categories of assets held by insurance and reinsurance undertakings (infrastructure corporates) included a required impact assessment (SWD(2017)219).
Parliament has nonetheless used its power to object to a delegated act adopted by the Commission. Despite the fact that Parliament has done so in only approximately three per cent of all received legislative files, Parliament uses its competences to control the Commission and its use of delegated acts.

The transparency of the delegated acts procedure and the exchange of information has been strengthened by the creation of the register. Ultimately, it is for Parliament (together with the Council) to decide whether it first of all agrees with the inclusion of a provision containing a delegation in the first place and secondly, it is for the competent Parliamentary committees to assess the quality of a delegated act and the need to address a recommendation to the Commission in this particular regard.\textsuperscript{156}

2.9. Legal proceedings

Parliament's ability to constitute legal proceedings before the Court of Justice of the European Union (the Court of Justice) does not necessarily belong among its core prerogatives of political control of the Commission. However, based on the result of such a power of control, it can constitute a potential subsequent step for Parliament. As from a broad perspective, this represents the exercise of the Parliament's scrutiny powers, it is included briefly in this study.

2.9.1. Rules

The TFEU allows Parliament, like the other EU institutions, to start legal proceedings before the Court of Justice against the Commission. Parliament can:

- institute legal proceedings before the Court of Justice against the Commission and ask the Court to review the legality of an act of the Commission, in accordance with Article 263 TFEU;
- institute court proceedings if the Commission fails to act in accordance with Article 265 TFEU;
- intervene in cases against the Commission instituted by other subjects (Article 40, Protocol 3 of the Statute of the Court of Justice of the European Union).

The procedural provisions related to referrals to the Court of Justice are included in Rule 141\textsuperscript{157} ROP. According to the rule Parliament 'examines Union legislation, especially when adopted by Council alone, and its implementation, usually by the Commission, in order to ensure that the Treaties have been fully complied with', especially if Parliament's rights are concerned. In cases where a breach of law is suspected, the Committee on legal affairs (JURI) should report to Parliament. The JURI committee can in this regard hear the views of the committee responsible for a subject matter.

An action on behalf of Parliament against another institution (e.g. the Council or the Commission) is brought, in accordance with the JURI committee's recommendation, by Parliament's President (Rule 141(3) ROP). Nonetheless, Parliament may have the opportunity to rule against such action, by a majority of the votes cast. If the President brings an action contrary to the recommendation of the JURI committee, Parliament can reverse its President's decision.

\textsuperscript{156} Parliament has addressed the issue of delegated acts in several resolutions. For instance in an own-initiative resolution on follow-up on the delegation of legislative powers and control by Member States of the Commission's exercise of implementing powers of 25 February 2014 (P7_TA(2014)0127) Parliament raised several criteria for the application of Articles 290 and 291 TFEU.

Observations and interventions in Court proceedings on behalf of Parliament, usually in order to defend the validity of Parliament’s own acts and decisions, and following a recommendation by the JURI committee, are also brought by the President. The President needs to inform the JURI committee if he/she intends to act contrary to its recommendation. If this happens, the case has to be referred to the COP. If the COP then decides that no observation or intervention should be made, the matter should be submitted to Parliament.

As required by the ROP, the JURI committee adopted Guidelines for the application of Rule 141 of the Rules of Procedure\(^{158}\) in 2015, including specific principles for application of this rule.

### 2.9.2. Application

Since 2009, there have been several cases in which Parliament introduced an application against the Commission or intervened in a pending case.

**Table 24 – Parliament’s applications against the Commission between 2009 and 2018**

<table>
<thead>
<tr>
<th>Type of proceedings</th>
<th>Case name and number</th>
<th>Date and jurisdiction</th>
<th>Result of action</th>
<th>Main points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intervention regarding action for failure to act</td>
<td>T-521/14 - Sweden v Commission</td>
<td>Judgment of the General Court (Third Chamber) of 16 December 2015</td>
<td>Action granted</td>
<td>Failure of the Commission to adopt delegated act.</td>
</tr>
<tr>
<td>Action for annulment</td>
<td>C-286/14 - Parliament v Commission</td>
<td>Judgment of the Court (Fifth Chamber) of 17 March 2016</td>
<td>Action granted</td>
<td>The Commission exceeded the scope of empowerment.</td>
</tr>
<tr>
<td>Action for annulment</td>
<td>C-65/13 - Parliament v Commission</td>
<td>Judgment of the Court (Second Chamber) of 15 October 2014</td>
<td>Action dismissed</td>
<td>The Commission did not exceed its implementing power.</td>
</tr>
</tbody>
</table>

Data Source: Legal Service, European Parliament.

Parliament could also institute Court proceedings against the Commission, bring action for annulment, and action for failure to act before 2009. The following table includes the main data concerning the cases in which Parliament began Court proceedings before 2009.\(^ {159}\)

---


\(^{159}\) Depending on the particular time period, the legal basis for such action is different. However, as this is not a historical study this specific information is not included.
Table 25 – Parliament's applications against the Commission before 2009

<table>
<thead>
<tr>
<th>Type of proceedings</th>
<th>Case name and number</th>
<th>Date and jurisdiction</th>
<th>Result of action</th>
<th>Main points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Action for annulment</td>
<td>C-14/06 and C-295/06 - Parliament and Denmark v Commission</td>
<td>Judgment of the Court (Grand Chamber) of 1 April 2008</td>
<td>Action granted</td>
<td>The Commission exceeded its implementing power.</td>
</tr>
<tr>
<td>Action for annulment</td>
<td>C-403/05 - Parliament v Commission</td>
<td>Judgment of the Court (Grand Chamber) of 23 October 2007</td>
<td>Action granted</td>
<td>The Commission exceeded its implementing power.</td>
</tr>
</tbody>
</table>

Data Source: Legal Service, European Parliament.

2.9.3. Summary

The abovementioned cases show that legal proceedings instituted by Parliament against the Commission are both rare and rather limited.

Since 1991, there were nine cases in which Parliament began proceedings, and one case in which it intervened in a pending case. The majority of cases were actions for annulment (eight). In five cases, the action was granted by the Court, while in three, the action was dismissed. In two cases there was no need for the Court to adjudicate.

Undoubtedly, taking a case to the Court of Justice can be an extreme consequence of Parliament's actions taken after exercising its control prerogatives. Taking a case to the Court of Justice however involves some time before the judgment is given. According to the Court’s 2017 annual report, direct action cases require approximately 20.3 months to adjudicate, while appeals require
approximately 17.1 months. Nonetheless, the Court’s decisions are final and can potentially lead to an annulment of the Commission’s decision or a statement that the Commission did not comply with its obligations to act. However Parliament should assess its other possibilities before resorting to the Court, such as for example, the right to object to a delegated act adopted by the Commission or the right to scrutiny of draft implementing acts.

2.10. External relations

With regard to external relations, the Council and the European Council have the responsibility to define and implement the common foreign and security policy rules and procedures (Article 42 TEU). The CFSP is put into effect by the High Representative of the Union for Foreign Affairs and Security Policy (the High Representative) and by Member States. Nonetheless, Parliament’s involvement in EU external policies exists and was strengthened by the Lisbon Treaty, as Article 218 TFEU envisages Parliament’s consent to international agreements and the right to be fully and immediately informed at all stages of the procedure for all international agreements. Furthermore, the High Representative, who is ex officio a Vice-President of the Commission, has to consult Parliament on various topics, such as CFSP or CSDP, in accordance with Article 36 TEU.

Several Parliamentary committees are active in the field of external relations, for instance the Committee on Foreign Affairs (AFET), the Committee on International Trade (INTA), the Committee on Development (DEVE) and the Subcommittee on Human Rights (DROI) and the Subcommittee on Security and Defence (SEDE).

Although the following points on international agreements and the High Representative are not always linked with the political scrutiny of the European Commission, for the sake of clarity and completeness they are discussed briefly below.

2.10.1. International agreements and Parliament’s scrutiny

Despite the fact that the majority of competences in the field of international agreements lie with the Council and the Commission, at certain stages Parliament cannot be overlooked and can greatly influence the adoption of such agreements. With the adoption of the Lisbon Treaty, Parliament gained the capacity to ‘ratify’ international agreements in various areas including trade, agriculture and internal security matters, by providing its consent to such agreements. This gives Parliament enormous leverage.

In the vast majority of cases, Parliament plays an active role linked with the approval of international agreements throughout the procedure through the consent procedure (Article 218(6)(a) TFEU). If Parliament refuses to give its consent, the international agreement cannot be concluded. Parliament therefore has a ‘veto’ power in this context. Consultation of Parliament by the Council (Article 218(6)(b) TFEU) is required in all other cases. The only exception

---

161 Other parliamentary committees can also potentially deal with cross-border issues such as environment, transport, culture or fisheries etc. which all have an international, external dimension.
162 In this regard see also See, Remáč M, International Agreements - A Rolling Check-List, DG EPRS, European Parliament, 2018.
163 The TFEU (Article 218(6)(a) TFEU) requires Parliament’s consent with regard to (1) association agreements, (2) agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms, (3) agreements establishing a specific institutional framework by organising cooperation procedures, (4) agreements with important budgetary implications for the Union, (5) agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required. In urgent situations, Parliament could be obliged to give its consent within a time limit.
to the consent and consultation procedures are international agreements relating exclusively to the common foreign and security policy, where the Council can act without the Parliament’s approval. Therefore the majority of international agreements cannot be concluded without Parliament’s acceptance. The Treaty provisions do not give reasons why Parliament can use its ‘veto’ prerogative, which leaves Parliament with broad discretion. The procedural side of Parliament’s involvement with international agreements is included in Rule 108 of the ROP.

With regard to international agreements, since 2009, Parliament has used its veto power – and has withheld its consent on two occasions, described in table 26.

Table 26 – Parliament’s consent to international agreement withheld or declined (2009-2018)

<table>
<thead>
<tr>
<th>Year</th>
<th>International agreement, procedural file</th>
<th>Decision, votes</th>
<th>Main points</th>
<th>Consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>Anti-Counterfeiting Trade Agreement (ACTA Agreement), 2011/0167(NLE)</td>
<td>Parliament declined to consent. 4 July 2012, (P7_TA(2012)0287) For - 39 Against - 379 Abstained - 165</td>
<td>This was the first time that Parliament exercised its power to reject an international trade agreement.</td>
<td>The rejection meant that neither the EU nor its Member States could join the agreement.</td>
</tr>
</tbody>
</table>

Data Source: Legislative Observatory (OEIL), European Parliament.

The situation regarding the SWIFT Agreement was interesting, as the SWIFT Agreement was the first international agreement that was to be subject to the new (post-Lisbon) procedure for ratification by Parliament. In its recommendation to plenary, The JURI committee noted, inter alia, the need to provide all relevant information and documents to be available for the Parliament’s deliberations. It also noted various issues, such as breaches of principles of necessity and proportionality, or unequal rights of European citizens under US law. According to some authors, by withholding its consent with this agreement, Parliament ‘used the institutional uncertainty that followed the entry into force of the Treaty of Lisbon to successfully reinterpret its right to be 'informed' in international

164 See, Article 218 (6) TFEU.
166 Recommendation of 5 February 2010 on the proposal for a Council decision on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Program (PE 438.440v02-00).
Parliamentary scrutiny over the European Commission: implementation of the Treaty provisions

negotiations and transformed it into a right to be ‘involved’. Nonetheless, based on this Parliamentary decision, a new set of negotiations had to take place. This subsequently led to a new agreement that was approved by Parliament.

Parliament vetoed a trade agreement for the first time in 2012, with regard to the Anti-Counterfeiting Trade Agreement (ACTA). Here, Parliament followed the recommendation of the INTA committee that highlighted, inter alia, the need for transparency in the negotiations of international agreements, and it challenged ACTA’s impact on legal certainty. The recommendation noted, inter alia, that the ACTA text had serious unintended consequences and argued that its intended benefits were outweighed by the potential threats and that under the ACTA adequate protection for citizens’ rights could not be guaranteed.

In accordance with Article 218(10) TFEU, Parliament has the right to be immediately and fully informed at all stages of the procedure connected with the conclusion of international agreements, including agreements exclusively relating to EU common foreign and security policy. The Treaty provision is however somewhat broad and as such it does not specify what type of information should be provided to Parliament, nor its format. This point is only tackled in the FA 2010 to some extent, in provisions regarding a constructive dialogue, and flow of information more specifically, in points 23-29. Pursuant to point 23, Parliament has the right to be immediately and fully informed at all stages of the negotiation and upon conclusion of international agreements, while Annex III of the Framework Agreements (Negotiation and conclusion of international agreements) includes several arrangements concerning the provision of information to Parliament regarding the negotiation and conclusion or international agreements.

Parliament should also be informed of the Commission’s intention to propose to start negotiations at the same time as the Council, (Annex III, point 1). In the case of international agreements requiring Parliament’s consent, Parliament should receive all relevant information provided to the Council by the Commission, including draft amendments to adopted negotiating directives, draft negotiating texts, agreed articles, the agreed date for initialling the agreement, and the text of the agreement to be initialled (Annex III, point 5). In the case of other international agreements, Parliament should be provided with information about the draft negotiating directives, the adopted negotiating directives, the subsequent conduct of negotiations and the conclusion of the negotiations (Annex III, point 6).

Despite the framework agreement – and also the 2014 IIA between Parliament and the Council – Article 218(10) TFEU has been unevenly implemented. In the majority of cases, the provision of information depends on a good relationship between the respective Commissioner or Commission directorate-general, and the respective parliamentary committee (or its secretariat). Furthermore, it seems that there is currently no harmonised approach by the Commission’s services to providing information (concerning negotiations of international agreements) to Parliament in a coordinated manner.

168 The need for greater transparency was included in point 3 of the JURI committee opinion to the INTA committee, where the JURI committee noted that ‘adequate transparency has not been ensured throughout the negotiations on ACTA’. Recommendation of 22 June 2012 on the draft Council decision on the conclusion of the Anti-Counterfeiting Trade Agreement between the European Union and its Member States, Australia, Canada, Japan, the Republic of Korea, the United Mexican States, the Kingdom of Morocco, New Zealand, the Republic of Singapore, the Swiss Confederation and the United States of America (PE 486.174v03-00).
169 See the explanatory statement on the INTA committee’s recommendation.
170 Interinstitutional Agreement of 12 March 2014 between the European Parliament and the Council concerning the forwarding to and handling by the European Parliament of classified information held by the Council on matters other than those in the area of the common foreign and security policy (2014/C 95/01).
manner. The Council also often fails to transmit the adopted negotiating mandates to Parliament automatically, and Parliament has had to request each of them through exchange of letters – not always successfully.

To overcome the discrepancies and shortcomings in the implementation of Article 218(10) TFEU, point 40 of the IIA BLM 2016 requires that Parliament, the Commission and the Council negotiate ‘improved practical arrangements for cooperation and information-sharing within the framework of the Treaties’.171 These negotiations are ongoing since November 2016.172 Despite a lengthy and challenging negotiation process between the institutions (in addition to the three institutions, EEAS is also participating),173 the latest talks have been more positive, and practical arrangements are expected to be concluded before the end of the current legislative mandate. These arrangements should introduce systematisation and predictability in the way the institutions inform each other at all stages of procedures related to international agreements.

Furthermore, the FA (point 25) also enables the inclusion of a delegation of the Parliament’s Members as observers in EU delegations during international conferences so that they can be immediately and fully informed about the conference proceedings. Here, the Commission usually follows Parliament’s requests to allow this participation, usually by the representatives of the respective parliamentary committee. The Commission should also facilitate access for the Parliament’s Members as observers forming part of the EU delegations to meetings of bodies set up by multilateral international agreements involving the Union, whenever such bodies are called upon to take decisions which require the consent of Parliament or the implementation of which may require the adoption of legal acts in accordance with the ordinary legislative procedure (point 26). Nonetheless, the practice of Members requesting to be observers in EU delegations during international conferences is not very extensive. In practice, the Commission usually provides daily briefings to Members who are present, in order to ensure they are fully informed on progress.

Although Members may not participate directly in the negotiations, they may be granted observer status in the negotiations by the Commission (point 25) subject to the legal, technical and diplomatic possibilities. Based on the received information, a practice where Members ask to be observers during negotiations of international agreements is very rare.

Finally, Parliament is able to seek a prior opinion from the Court of Justice on the compatibility of an international agreement with the Treaty (Article 218(11) TFEU). Parliament has used this prerogative in connection with a draft agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data. The opinion of the Court was delivered in July 2017.174

2.10.2. High Representative of the Union for Foreign Affairs and Security Policy and Parliamentary scrutiny over the CFSP

In accordance with Article 36 TEU, the High Representative is obliged to regularly consult Parliament on the main aspects and the basic choices of the CFSP and the CSDP. Furthermore, Parliament has a right to be informed about the evolution of these policies. Parliament’s views should be duly taken into consideration, while the High Representative may be involved in briefing Parliament. As with

---

171 The EEAS is also involved in these negotiations, for practical reasons.


173 See above press release; statement by Elmar Brok (EPP, Germany) and Bernd Lange (S&D, Germany).

174 See Opinion of the Court (Grand Chamber) of 26 July 2017 (Opinion 1/15).
other members of the Commission, Parliament may address questions or make recommendations to the High Representative.

The High Representative is *ex officio* a Vice-President of the Commission. In this connection, the High Representative, like other Commission members, is subject to Parliament’s vote of consent (Article 17 TEU) and hearings before the respective committee. Furthermore, in the case of a successful Parliament motion of censure, the High Representative is obliged to resign from their duties carried out in the Commission (Article 17(8) TEU). As noted above, this situation has not yet occurred.

Furthermore, the High Representative should regularly inform Parliament regarding developments in enhanced cooperation (Article 328(2) TFEU). Apart from provisions included in the TFEU, provisions concerning scrutiny are also included in the Declaration by the High Representative on political accountability (2010). In this document, the High Representative promises to seek Parliament’s views on main aspects and basic choices of the CFSP, as well as enhancing the joint consultation meetings with the Bureaux of the AFET committee and the CONT committee (point 1). Furthermore, the High Representative declared that all documents for the strategic planning phases of financial instruments and all consultative documents (point 3) would be communicated. Other consultations and provisions of information are also mentioned (e.g. consultation on the identification and planning of election observation missions), including access to classified documents (point 4). As this document only includes self-imposed obligations on the High Representative, its provisions have the character of promises by the current office-holder, rather than legal obligations for the office of the High Representative. Therefore, any accountability of the High Representative to Parliament based on this document is a political one. However this political responsibility has to be checked against the fact that Parliament, based on present provisions of the Treaties, cannot withdraw its confidence in the High Representative. Procedural rules concerning the Parliament’s recommendations to the High Representative are included in Rule 113, while consultations and provision of information by the High Representative are included in Rule 113a.

Based on the information received, it seems that the cooperation between Parliament and the High Representative is currently very extensive and can be assessed as rather positive. The present High Representative is very active towards Parliament, including being present and active during plenary sessions and meetings of the AFET committee. On average the High Representative consults with Parliament twice per month currently, on various topics linked to external relations. Furthermore, Parliament holds twice-yearly debates on the state of play of CFSP and CSDP on the basis of annual consultation meetings.

---

175 See Section 2.1.
176 See Section 2.2.
177 For more information on enhanced cooperation, especially Permanent Structured Cooperation (PESCO) see Kristo Kiendl I., *The implementation of the Treaty provisions concerning enhanced cooperation*, EPRS, European Parliament, 2018.
178 Declaration by the High Representative on political accountability.
179 It should be noted that the current High Representative, Federica Mogherini, during her Parliamentary hearing in 2014, promised to fully respect the Declaration of political accountability (adopted by her predecessor). In this regard Mogherini expressed interest in ‘finding pragmatic solutions with Parliament to implement [the Declaration] more fully and systematically, for instance with regard to information on international agreements’. See *Answers to the European Parliament, Questionnaire to the Commissioner-designate* (Mogherini), 2014.
progress reports on their implementation.\(^{182}\) The High Representative also often provides *ad personam* committee briefings.

It appears that, based on available information, Parliament occasionally addresses recommendations to the High Representative who seems to take them seriously and tries to implement them.\(^{183}\) These recommendations are however usually very broad and as such they allow the High Representative to concentrate only on the most obvious points while disregarding the rest. Apart from such official recommendations, informal recommendations are sometimes also provided to the High Representative.

Currently, the AFET committee is the main committee cooperating with the High Representative, however other committees such as the INTA committee, the LIBE committee, the DEVE committee, the SEDE subcommittee and the DROI subcommittee also regularly meet with the High Representative/Vice-President.

Furthermore, Parliament has achieved a degree of informal cooperation with the European External Action Service (EEAS).\(^{184}\) Parliament’s scrutiny of the CFSP is carried out mainly through CFSP Joint Consultation Meetings and the annual CFSP resolution.\(^{185}\)

In addition to the Parliament’s political dialogue with the High Representative, Parliament also exercises its authority regarding external relations through the budgetary procedure. Parliament (together with the Council) approves the annual CFSP budget and as such, it can considerably impact on its character.\(^{186}\) In this regard, pursuant to point 25 of the IIA on budgetary discipline, the High Representative has to consult Parliament annually on a document setting out the main aspects and basic choices of the CFSP, including the financial implications for the general budget of the Union, a requirement which effectively takes place in practice.

Furthermore, Parliament also scrutinises the implementation of the EU external financing instruments (EFIs) under the MFF. In this regard a series of *strategic dialogues* between the AFET and DEVE committees and the Commissioners in charge, including the High Representative, take place ahead of the adoption of multiannual programming documents. Other instruments, such as DEVE and AFET’s working groups on the instruments, have been put in place to facilitate the scrutiny

---

\(^{182}\) See various speeches of the High Representative in the Parliament’s plenary e.g. on the conflict in Georgia (12 June 2018); on EU-NATO relations at the European Parliament plenary session (12 June 2018); on Libya (29 May 2018); on the situation in Russia (17 April 2018); on the Progress on the UN Global Compact for safe, regular and orderly migration and UN Global Compact on refugees (13 March 2018); or on the situation in Zimbabwe (8 February 2018). According to the information published on the Parliament’s plenary website, between 2014 and 2019 the current High Representative (Mogherini) participated in the debate in plenary or gave a speech on more than 180 occasions.

\(^{183}\) See for example, European Parliament recommendation of 30 May 2018 to the Council, the Commission and the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy on Libya (P8_TA(2018)0227), European Parliament recommendation of 1 March 2018 to the Council, the Commission and the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy on cutting the sources of income for jihadists – targeting the financing of terrorism (P8_TA-PROV(2018)0059), or an upcoming recommendation to the High Representative concerning the defence of academic freedom in the EU’s external action (See 2018/2117(INI)).

\(^{184}\) Since the EEAS is not a Commission body, it is not discussed in this study in any further detail.

\(^{185}\) The annual reports on the CFSP and CSDP are adopted by the Council and are therefore not discussed in this study. See for example the Council’s [CFSP report 2017](https://www.consilium.europa.eu/en/), or [CFSP report 2016](https://www.consilium.europa.eu/en/).

\(^{186}\) In this regard, see section 2.6.
of their implementation. Parliament’s efforts to have a more binding say on the definition of strategic priorities in the programming of EU assistance abroad, which could have been achieved by changing the procedure for the adoption of multiannual programming documents (from the traditional comitology to delegated acts), was fiercely opposed by the Commission, EEAS and Council during the negotiations on the last MFF. The negotiations on the future MFF will provide yet another occasion to improve Parliament’s scrutiny rights in this field.

2.10.3. Summary

The Lisbon Treaty also strengthened Parliament’s position with regard to external relations. Despite some limitations in this regard (e.g. constraints on the types of international agreements requiring consent, or the fact that the main role in this field is played by the Council), Parliament can to some limited extent also scrutinise the Commission in this particular field.

The Parliament’s veto power with regard to some international agreements, which is probably its strongest, yet still rather limited, tool in this field, is not a scrutiny tool per se. Parliament can choose to use it if it deems such action necessary, e.g. Parliament did not receive all necessary information with regard to the negotiation of international agreements as presumed by the Treaties – an obligation that is usually linked to the Commission. Parliament’s use of this power only a couple of months after the Treaty of Lisbon entered into force, gave a clear signal that in this area Parliament can do more than merely rubber-stamp international agreements, as a rather high number of international treaties now require its consent. This can subsequently increase the transparency of negotiations on international treaties. Despite the existing positive practices, further efforts are needed to enhance cooperation between the institutions (including the Council and the EEAS) and to systematise their relations, as requested by Article 40 of the IIA.

The relations with the High Representative/Vice-President of the Commission, and Parliament are currently rather extensive and positively perceived. However, certain improvements with regard to drafting recommendations to the High Representative by Parliament (e.g. number of points in resolutions) could be adopted that would allow for a better focus in the recommendations and their subsequent follow-up.

Beyond the scrutiny phase, Parliament can potentially (even considerably) influence external policies by its actions during the adoption of the EU budget and with regard to EFIs.

---

187 For more about the EFIs, please see Ioannides I., EU external financing instruments and the post-2020 architecture: European Implementation Assessment, DG EPRS, European Parliament, 2018, as well as the Mid-term review of the external financial instruments, Committee on Foreign Affairs, European Parliament, 2018.
3. Conclusions and opportunities for action

This study does not intend to provide an in-depth picture of all the areas mentioned above, as such complex legislative procedures deserve dedicated studies. Instead, it aims at providing a general overview of the status quo in the Parliament’s areas of operation, while focusing on the scrutiny of the Commission.

Treaty provisions provide Parliament with powers to scrutinise the Commission across a spectrum of areas. In a narrower sense, these areas include competences with regard to the investiture of the Commission, motion of censure, parliamentary questions, the work of inquiry committees, scrutiny with regard to external relations, and the right of Parliament to be informed by and receive reports from the Commission. However, beyond these areas of traditional parliamentary scrutiny and based on the Treaty provisions, Parliament can also exercise its scrutiny of the Commission in the fields of budgetary matters and legislative procedures, including delegated acts. Parliament also enjoys the possibility to begin proceedings against the Commission before the Court of Justice of the European Union in cases described by the Treaties.

The following table provides a short assessment of the intensity and impact of Parliament’s (general control) prerogatives regarding these subjects/fields. The table is based on an analysis of the previous pages. The intensity criterion assesses the frequency of use of particular prerogatives between 2009 and 2018. These prerogatives could have been active (Parliament actively acting towards the Commission), or passive (the Commission dealing with its obligation towards Parliament). The criterion of impact assesses the influence of the prerogative on the particular subject/field. Both criteria range from low to high. The assessment included in table 27 is based on the author’s evaluation of the available data.

Table 27 – Intensity and impact of the Parliament’s scrutiny prerogatives (2009-2018)

<table>
<thead>
<tr>
<th>Field</th>
<th>Intensity</th>
<th>Impact</th>
<th>Brief assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electoral issues (election of the President of the Commission)</td>
<td>Low</td>
<td>Medium</td>
<td>As, since 2009, the tenure of the Commission’s President is linked with the parliamentary elections, Parliament had only two opportunities to use these prerogatives. After the election of the President, even if the President is elected through the Spitzenkandidaten procedure, Parliament de facto loses power to influence the President, though there might be some closer cooperation.</td>
</tr>
<tr>
<td>Electoral issues (Investiture of the Commission)</td>
<td>Low</td>
<td>Medium</td>
<td>As since 2009 the tenure of the Commission is linked with the parliamentary elections, Parliament had only two opportunities to use these prerogatives. The hearings of the Commissioner-designates before the Parliament’s committees have a considerable impact. On some occasions they led to the withdrawal of a candidate. After the hearings each particular committee has to assess whether the Commissioner complies with her/his promises.</td>
</tr>
<tr>
<td>Motion of censure</td>
<td>Low</td>
<td>High</td>
<td>Since 2009, there have been only two cases in which Parliament resorted to use of these prerogatives. However neither of the two cases was successful. Nonetheless, use of this procedure or a threat thereof, after a very high threshold in plenary is reached, can lead to the actual fall of the Commission.</td>
</tr>
<tr>
<td>Field</td>
<td>Intensity</td>
<td>Impact</td>
<td>Brief assessment</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-----------</td>
<td>--------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Withdrawal of confidence in individual Commissioner</td>
<td>Never been used</td>
<td>NA</td>
<td>Despite the existing (non-Treaty) provisions, Parliament has never used this prerogative. Because of that it is not possible to assess its impact.</td>
</tr>
<tr>
<td>Parliamentary questions (for written and oral answer)</td>
<td>High</td>
<td>Medium</td>
<td>The Members use this prerogative very often. Since 2009, there have been more than 90,000 questions for a written answer and more than 1,100 questions for oral answer. The impact is to some extent limited, as the Members sometimes raise concerns about the quality of the Commission’s answers.</td>
</tr>
<tr>
<td>Interpellations (minor and major)</td>
<td>Low</td>
<td>NA</td>
<td>These new instruments have been used only since 2017. Until now there has been only one minor interpellation and 17 major ones. Due to the small number of these interpellations and the limited time they are in use, it is not possible to assess its impact.</td>
</tr>
<tr>
<td>Question time/Question hour</td>
<td>Presently not used</td>
<td>NA</td>
<td>Since 2011, Parliament has not used this prerogative. Due to this, it is not possible to assess its impact.</td>
</tr>
<tr>
<td>Inquiry committees</td>
<td>Low</td>
<td>Medium</td>
<td>Despite their backing in the Treaty provisions, inquiry committees have rather limited powers. A potential regulation on the Parliament’s right of inquiry with a clear set of specific rules can strengthen their impact.</td>
</tr>
<tr>
<td>Special parliamentary committees</td>
<td>Medium</td>
<td>Medium</td>
<td>Since 2009, Parliament decided to set up a special parliamentary committee in eight cases. Special committees are not backed by Treaty provisions. This limits their powers, as well as their ‘persuasiveness’. Potential regulation on the Parliament’s right of inquiry with a clear set of specific rules can strengthen their impact.</td>
</tr>
<tr>
<td>Reporting, consultation and providing information</td>
<td>Medium</td>
<td>Medium</td>
<td>Generally, the Commission reports to Parliament, consults Parliament and provides information to Parliament, as requested by the Treaties. As the Commission may opt to merge several reporting obligations into one report it is often unclear whether a particular obligation was fulfilled and if so in which document. Some of the Treaty provisions are without a specific date. A high amount of Commission ‘reporting obligations’ included in secondary EU law might decrease the concentration of those included in the text of the Treaties.</td>
</tr>
<tr>
<td>Establishment of budget</td>
<td>Medium</td>
<td>High</td>
<td>Parliament (together with the Council) establishes the EU budget annually. Since 2009, Parliament has not once rejected the budget proposal. The Conciliation Committee did not reach agreement regarding budget on three occasions.</td>
</tr>
<tr>
<td>Budgetary control (discharge procedure)</td>
<td>High</td>
<td>Medium</td>
<td>Parliament annually decides in a discharge procedure. Since 2009, Parliament has not used (has not had to use) its power to refuse to grant a discharge (never actually used) or to postpone a discharge (not used since 1996). Despite the possible considerable impact of the Parliament’s refusal to grant a discharge on the Commission’s functions, the Treaties do not connect any legal sanction or consequence with such a refusal. Furthermore, a growth in extra-budgetary financial tools addressing</td>
</tr>
<tr>
<td>Field</td>
<td>Intensity</td>
<td>Impact</td>
<td>Brief assessment</td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>-----------</td>
<td>--------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Legislative procedure (CWP)</td>
<td>Medium</td>
<td>Medium</td>
<td>Since 2016, cooperation concerning the CWP between Parliament and the Commission (and the Council) has intensified. Parliament does not always adopt a resolution on the legislative priorities that should be included in the CWP, which weakens its impact.</td>
</tr>
<tr>
<td>Legislative procedure (Article 225 TFEU initiative)</td>
<td>High</td>
<td>Medium</td>
<td>Since 2009, Parliament adopted a legislative resolution based on Article 225 TFEU in approximately 22 cases. The Commission followed the Parliament's request to some extent with a proposal in eight cases.</td>
</tr>
<tr>
<td>Delegated acts</td>
<td>Low</td>
<td>High</td>
<td>Parliament has never revoked a delegation, nor has it opposed the tacit renewal of a delegation of power. Furthermore, since 2009, it objected to a delegated act in eight cases. Revocation of a delegation or objecting to a delegated act have a considerable impact on a particular delegated act.</td>
</tr>
<tr>
<td>Legal proceedings</td>
<td>Low</td>
<td>Medium</td>
<td>Parliament starts (or joins) legal proceedings only in a limited number of cases (three since 2009). The impact of this prerogative is limited by the time needed by the Court to decide the case and the uncertainty of the result before the end of proceedings.</td>
</tr>
<tr>
<td>External relations (international agreements)</td>
<td>Low</td>
<td>Medium</td>
<td>Since 2009, Parliament has used its veto power (in the consent procedure) regarding international agreement only twice. The impact of Parliament's scrutiny of negotiations of international agreements is limited by a partial lack of information provided to Parliament and by a need to finish negotiations concerning point 40 of the IIA 2016.</td>
</tr>
<tr>
<td>External relations (High Representative)</td>
<td>High</td>
<td>Medium</td>
<td>Since 2009, Parliament has an extensive, and a rather positive political dialogue with the High Representative. It is unclear whether Parliament has the power to withdraw its confidence in the High Representative. Furthermore, broad and general recommendations to the High Representative may limit the impact of Parliament's prerogatives.</td>
</tr>
</tbody>
</table>

Source: author

A low **intensity** does not necessarily mean that Parliament action is insufficient. Here, it is necessary to consider that the use of some prerogatives is time limited (e.g. electoral issues), while in the case of others (e.g. legislative proceedings or delegated acts), the limitation is linked with an informed decision of Parliament (e.g. a decision not to start a case before the Court or a decision not to revoke a delegation). In some cases, an assessment was not possible as there is not enough information (e.g. interpellation), or a particular prerogative has not been actively used (e.g. question time).

Conversely, the **impact** part of the table shows that there might be some limitations to Parliament’s prerogatives with regard to the subject or a field. In some cases, such limitations are due to prerogatives in the Treaties (e.g. time limitations, as in the case of the election of the Commission’s President) and therefore do not allow Parliament to influence their impact. Although the impact of
Parliament's actions is not considered low, there are fields that might require additional Parliament attention and/or political discussion between Parliament and other EU institutions (e.g. adoption of a regulation on Parliament's right of inquiry). Some of the issues, such as a motion of censure, establishment of budgets, or delegated acts, can have a clear high impact on the Commission and its work.

In addition to this assessment of the impact and intensity of Parliament actions, specific ideas can be highlighted. Based on the analysis of provisions of the Treaties and other selected legislative acts, data received from the Parliament's services, academic literature, studies and documents mentioned above, these ideas applied to the current status of political control of the European Commission by Parliament, can be summarised in the following lines.

- Several of the European Parliament's control prerogatives are useful only in very specific and time limited situations (e.g. election of the European Commission's President, initial hearings of Commissioner-candidates, discharge procedure). This influences the impact of these specific prerogatives.

- Several of the scrutiny prerogatives, not limited in time, have not been used extensively or not at all (e.g. a withdrawal of confidence in an individual Commissioner or question time).

- A very high threshold in the plenary of the scrutiny prerogatives (e.g. motion of censure) practically limits their successful exercise and requires close cooperation across the political groups. This decreases the practical use of such provisions.

- The European Parliament's ability to withdraw its confidence in an individual Commissioner is very limited. Although Parliament can request a change of an individual Commissioner, the actual change of an individual Commissioner depends on the will of the President of the European Commission.

- Because of a lack of clear rules for special parliamentary committees, there is a small difference between them and inquiry committees. A lack of 'a legislative (Treaty) back-up' for special parliamentary committees may lead to their limited practical influence.

- Inquiry committees and special inquiry committees do not currently have the right to subpoena witnesses or experts or submission of the documents, which limits their persuasiveness.

- Parliamentary questions may be a useful tool with regard to getting information from the Commission. Their usefulness can however be questioned when it comes to the substantial (and substantive) control of the Commission.

- There has never been a systematic assessment of the quality of answers by the Commission to Members questions, due to the difficulties of such an assessment.

- The European Parliament has not really used its power to refuse discharge to the European Commission, and since 2009, the European Parliament has not used the power to stop establishment of the EU budget before the end of the year.

- The European Parliament has never revoked a delegation of power to the European Commission to adopt a delegated act or opposed the tacit renewal of a delegation of power. Since 2009, Parliament has, in eight cases, objected to a delegated act adopted by the European Commission.

- As the European Commission may opt to merge several Treaty-based reporting obligations into one document, it is often unclear whether a particular obligation was fulfilled and if so in which document.

- The European Parliament is sometimes unable reach the majority required for the adoption of the resolution on legislative priorities that should be included in the Commission Annual Work Programme. In this way, it limits its potential impact on the content of the CWP.

- The European Commission follows up on the Parliament's requests under Article 225 TFEU in only a minority of cases.

Although it seems that the Commission fulfils its obligations towards Parliament in a comprehensive manner and that the majority of the Parliament's Treaty-based scrutiny competences are used
correctly, while leading to positive results, there are still issues and areas that provide opportunities for Parliamentary action that could improve or intensify the parliamentary control of the Commission. These issues, for instance, include:

- continuing to invite the Commissioners to parliamentary committees to explain delays or non-delivery of the legislative proposals announced in the CWP;
- repeatedly reminding the Commissioners of their commitments made during their hearings and of Parliament’s requests and priorities;
- regularly verifying the compliance of the Commission’s work with the CWP;
- regularly verifying whether the Commission delivered reports or information required by the Treaty or whether Parliament was consulted;
- urging the Commission to respond promptly in writing to requests made by Parliament;
- urging the Commission to respond promptly to improve the substance and timeliness of their replies to Members’ questions.

Despite having similar (though not the same) competences as national parliaments, the European Parliament’s relationship with the Commission is a special one that does not fully reflect the relations between national governments and national parliaments, due to the different natures of the EU and its Member States – which the relationship between Parliament and the Commission must reflect. Parliament may be the extended arm of the EU citizens, but it needs a working relationship with the Commission.

Nevertheless, when assessing the Parliament’s prerogatives of control over the European Commission, the main reason behind their inclusion in the text of the Treaties must be considered. The character of the European Parliament as a representative of the EU citizens, and the only directly elected EU institution, must be taken into account as the starting point when scrutinising the European Commission.

Since the existing limitations were set by the Treaties, without a change to their text some of the existing challenges are difficult to meet. However, even a potential change of the ‘rule book’ does not inevitably mean strengthening Parliament’s position. The issue is not only the formal powers at the institution’s disposal, but the way in which they are used.
REFERENCES


Building on the Spitzenkandidaten Model: Bolstering Europe's Democratic Dimension, Issue 1, 16 February 2018.
Herbel A., Parliamentary scrutiny of the EU’s Common Foreign and Security Policy, West European Politics, 40:1, 161-182, 2017


The Treaties provide the European Parliament with various opportunities to exercise its powers to carry out a political control of the European Commission and its actions. Application of these prerogatives by the European Parliament increases the democratic legitimacy of the European Union, transparency and the accountability of the European executive.

This study examines the status quo of the European Parliament’s powers in scrutinising the European Commission. The cases examined pertain mainly to electoral and institutional issues, motions of censure, parliamentary questions, inquiry committees and special parliamentary committees and reporting, consultation and provision of information. It also touches upon scrutiny in budgetary issues, scrutiny of delegated acts, scrutiny in legislative procedures, legal proceedings and the EU’s external relations.