

Nominations for Members of the European Court of Auditors

Treaty provisions and appointment procedure

As set out in Article 285 of the Treaty on the Functioning of the European Union (TFEU), the European Court of Auditors (ECA) shall consist of one national of each Member State. Article 286 (2) TFEU further specifies that each Member State has the right to propose its candidate. The Council then adopts the list of Members as proposed by the Member States. Often, this is a partial renewal of the Court - only one or a few Members are appointed, as the mandates of the Members may expire at different points in time. The Council can only act after consulting the European Parliament; in practice, the Committee on Budgetary Control (CONT) is responsible and the Member-designate of the ECA makes a statement before the committee and has to answer its questions. CONT then votes on the nomination and thus issues a recommendation to plenary, which votes within two months of receipt of the nomination. In case of an unfavourable opinion, the President shall ask the Council to withdraw its nomination and to submit a new nomination (Rule 129 of the EP's Rules of Procedure).

According to Article 286 (1) TFEU, the potential Members of the ECA "shall be chosen from among persons who belong or have belonged in their respective States to external audit bodies or who are especially qualified for this office." In addition, their independence must be beyond doubt. The procedure according to which the Member States nominate varies widely between the Member States, with some of them having purely executive procedures in place while others involve their national parliaments in the process or use application procedures. Upcoming and recent nominations demonstrate a wide variety of procedures in different Member States.

Upcoming nominations

Poland

In Poland, the government nominates the candidate for the post after the Polish Supreme Audit Office (Najwyższa Izba Kontroli - NIK) and the national parliament's (Sejm) committee on European Affairs have expressed their opinions. Since Janusz Wojciechowski, the former Polish ECA Member, took over the post of European Commissioner for Agriculture on 1 December 2019, the post has been vacant. Recently, the Polish government has nominated Mr Marek Opiola. His nomination received a positive opinion by the Sejm Committee on EU Affairs on 27 October 2020.¹

Mr Marek Opiola, whose statement before the CONT committee takes place on 7 December 2020, is currently Vice-President of the Polish Supreme Audit Office. He has held this position since November 2019. It is worth mentioning that all former Polish Members of the ECA previously held important positions in the Supreme Audit Office: Jacek Uczkiewicz, ECA Member in 2004–2010, was Vice-President of the NIK from 1995 until 2001 and from 2013 until 2016; Augustyn Kubik, ECA Member in 2010–2015, was an advisor to the President of the NIK in 2007–2010 and Janusz Wojciechowski, ECA Member in 2016–2019 was NIK's President from 1995 until 2001.

Previous to his function at NIK, Mr Opiola was Polish Sejm Member from the Law and Justice party since 2005. Throughout his mandates, he was active in the following parliamentary committees: the National Defense Committee, the Special Security Services Committee and the Regulations and Deputies' Affairs Committee.

Regarding further upcoming nominations to the ECA, there are none planned in 2021, barring exceptional developments. In 2022, there will be 8 nominations at various points throughout the year, namely for the Czech, Latvian, Slovenian, Slovakian (expiry of current term on 06/05/2022), Lithuanian (15/06/2022), Maltese (30/09/2022), Cypriot (1/11/2022) and Estonian (31/12/2022) members.

¹ 19 votes in favour and 17 against.

Source: <http://orka.sejm.gov.pl/zapisy9.nsf/0/013BCE52ADF4DE98C125861000496410/%24File/0069509.pdf>



Recent nominations

Austria

In Austria, the constitution states that the government is responsible for making proposals for the country's commissioner, Judge at the European Court of Justice, Member of the European Court of Auditors and the member of the Board of Directors of the European Investment Bank. It has the duty to inform the Austrian federal parliament ("Nationalrat") and the federal President of its intentions. The parliament's main committee ("Hauptausschuss") has to agree on these proposals.

Mrs Helga Berger, whose statement before the CONT committee took place on 25 June 2020, was Director General of Budget and Public Finances in the Austrian federal ministry of finance. She was nominated as the country's ECA Member by the government and confirmed unanimously by the main committee of the federal parliament.

Ireland

Mr Tony Murphy, the current Irish Member of the ECA since 2018, was nominated after a competitive procedure. The post was publicly advertised and applicants invited to express their interest. The applications were then screened and a shortlist established, with the shortlisted candidates undergoing a competitive interview. A Selection Committee (with the Secretary General to the Government, the Secretary General of the Department of Finance and two external third parties with senior level experience, in this case a retired Supreme Court Judge and the Chairperson of the Low Pay Commission, as its members) was in charge of this competitive process and made a recommendation to the government on its basis.¹

Avenues for further research

When looking at the national examples, it becomes clear that there is a variety of procedures in place in the Member States as regards the nomination of Members of the ECA. Practices range from a free market approach to an executive decision, from the necessary approval by a parliamentary body to the consideration of a parliamentary opinion. Also the role of the national supreme audit institutions may deserve further attention.

An exhaustive description of the procedures in all Member States would certainly uncover an even greater diversity than what has been shown here, and analysing changes over time in the procedures might further increase the number of different practices observed.

Which type of procedure is in place may in part depend on how the interaction with the European level is perceived and organised in the national political system. Different logics are conceivable: some countries view these nominators as the implementation of their management of European affairs at national level, which then would often lead to nominations being a matter for the executive.

Another line of reasoning and organisation may state that the same procedures as for corresponding national positions should apply, which then could lead to parliamentary involvement, depending on the national organisation. Given that the professional background of the candidate is a factor for the nomination, a role for the national Supreme Audit Institution can be of considerable importance.

A comprehensive analysis of nomination practices of all EU Member States over time would help to clarify which mechanisms may be at work here. A comparison with other positions, such as of Commissioner or Judge at the European Court of Justice, could also provide useful insights.

¹ https://merriestreet.ie/en/News-Room/Releases/Government_nominates_Mr_Tony_Murphy_to_the_European_Court_of_Auditors.html consulted 18/05/2020.