

Parliamentary hearings of the Commissioners-designate

A decisive step in the investiture process

SUMMARY

The hearings of the Commissioners-designate before the European Parliament's committees are a necessary ingredient in informing Parliament's decision to give its consent to, or reject, the proposed College. Each Commissioner-designate appears before a single hearing, involving one or more parliamentary committees, after responding to a written questionnaire and presenting his or her declaration of interests.

In past hearings, the main points of criticism were some candidates' lack of specialist knowledge of their portfolio, their vague answers and reluctance to make commitments, the existence of possible conflicts of interests in relation to the assigned portfolio and concerns regarding the integrity of the candidate. From the 2004 investiture on, Parliament has used its role in the appointment of the Commission to press for the replacement of certain controversial candidates and to force adjustments to certain portfolios, although it can only reject or accept the College as a whole.

Whilst some experts warn of excessive politicisation of the hearings, others welcome the increased accountability of the Commission to Parliament, and see the deepening political link between the two as a step towards further democratisation of the EU decision-making process. Hearings have become critical for Parliament's holding the Commission to account, and are gaining in significance as a means for Parliament to take a greater role in agenda-setting at EU level.

This is an updated and expanded version of a [2014 briefing](#) by Eva-Maria Poptcheva.



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Parliament's role in the appointment of Commissioners

Ever-increasing influence

Commissioners were originally appointed by common accord of the Member States' governments for a renewable term of office of four years ([Article 158 TCEE](#)). The Commission was composed of nine members, with small Member States appointing one Commissioner and large Member States (France, Germany and Italy) two. The founding Treaties did not involve the European Parliament in the procedure leading to the appointment of the Commission, although Commission Presidents [used to deliver](#) a general policy statement before Parliament when taking office. Once the Commission was in office, Parliament could adopt a motion of censure of the entire College. Parliament pushed to be involved in the investiture procedure in the 1970s and 1980s, to enhance the democratic legitimacy of the Commission. Although not required by the Treaties, Parliament's efforts led to the [introduction of a vote of confidence](#) in the designated Commission as early as 1981.

However, it was not until 1993, with the Maastricht Treaty, that Parliament formally gained a role in the appointment of the Commission. The Treaty aligned Parliament's and Commission's terms of office (5 years) and provided for Parliament to be consulted by Member States' governments before nominating the person they intended to become President of the Commission. Similarly, the Treaty required the nominated President and Commissioners to be subject as a body to a vote of approval of Parliament ([Article 158 TEC](#)). Parliament adapted its Rules of Procedure to the new Treaty provisions, providing for the nominated President of the Commission to make a statement, followed by a debate, in Parliament ([Rule 29](#)) and for the nominated Commissioners to appear before parliamentary committees ([Rule 29a](#)) before the vote of approval. The first Commission subject to such 'hearings' was the Santer Commission in 1995, although President Jacques Santer accepted the new procedure only after receiving assurances from the Parliament's President that there would be no parliamentary vote on individual Commissioners-designate.¹ The model for '**confirmation hearings**' was those held by the US Congress on presidential nominations to judicial and executive posts.²

The Amsterdam and Nice Treaties introduced further modifications in the composition of the Commission and the appointment procedure. After four enlargements, the College had grown to 20 members, with five large Member States (France, Germany, Italy, United Kingdom and Spain) appointing two Commissioners and the others appointing only one. With a view to the future enlargement of the European Union towards the east, the Treaty of Nice provided for a reduction in the number of Commissioners through the adoption of the principle of 'one Commissioner per Member State' ([Article 4, Protocol on the enlargement of the European Union](#)), a provision that was first applied to the first Barroso Commission (2004). The Treaty of Nice also provided for a further reduction in the number of Commissioners that was meant to be applied when the 27th Member State acceded to the Union, but in the meantime new changes were made to the Treaties.

As for the appointment procedure, the Amsterdam Treaty gave Parliament a greater role in relation to the election of the President of the Commission, as Parliament was to hold a separate vote of approval (not only be consulted) for the candidate nominated by the Member States ([Article 214 TEC](#)). Similarly, as of the Treaty of Amsterdam, Commissioners-designate would have to be nominated by the Member States by common accord with the President-elect of the Commission (and not only in consultation with him/her), a change that gave the President-elect of the Commission the formal power to veto the list of Commissioners. The Treaty of Nice involved the Council in the procedure as the institution formally in charge of nominating both the President (in this case, in the composition of Heads of State or Government) and the Commissioners by qualified majority. Consensus of all Member States was no longer required by the Treaties for nominating the candidate for the presidency ([Article 214 TEC](#)), although it has remained the rule in practice. However, in 2014, Jean-Claude Juncker was nominated by qualified majority, with two Member States voting against him.

The current situation

After the entry into force of the Lisbon Treaty, the link between the appointment of the Commission and European elections and, therefore, the *parliamentarisation*³ of the process leading to the appointment of the Commission, became more explicit, with the Treaties obliging the European Council to ‘take into account the elections to the European Parliament’ when proposing a candidate for the Presidency of the Commission. Moreover, they confer to the Parliament the power to ‘elect’ (and not only to approve) the President of the Commission. This modification paved the way for the [Spitzenkandidaten](#) process, which led to the election of Jean-Claude Juncker in 2014; in 2019, however, none of the *Spitzenkandidaten* were successful, with Ursula von der Leyen eventually elected the Commission’s President in July 2019. For the other members of the College, the Lisbon Treaty introduced several changes relating to the composition of the College, the criteria for selection and the appointment procedure.

Composition of the College: Possible reduction in the number of Commissioners?

The growing number of Commissioners (from 9 to 28), caused by successive EU enlargements and the decision to stick to ‘one Commission per Member State’, has led to concerns relating to the Commission’s capacity to act and adopt decisions as a collegiate body, to ensure coordination among Commissioners and to avoid competence overlaps and inefficiencies.⁴ The Lisbon Treaty envisaged a Commission that would consist of a number of members corresponding to 2/3 of the number of Member States as from November 2014, unless the European Council decided otherwise through a unanimous decision (Article 17(5) TEU). The composition of the Commission would have to guarantee equal rotation among nationals of the different Member States, as well as to reflect the demographic and geographical range of all Member States, as required by Articles 17(5) TEU and 244 TFEU. However, this provision has not yet been applied, as the European Council [decided](#) in 2013 to maintain one Commissioner per Member State for the 2014-2019 Commission. Following a review of this decision at the June 2019 European Council meeting, the Commission to take office in November 2019 will again be composed of one Commissioner per Member State.

Criteria to be fulfilled by Commissioners-designate

The Lisbon Treaty also introduced changes in relation to the criteria to be used when selecting the members of the Commission. The Commissioners are to be selected taking into account their general competence and independence, but also their European commitment, a criterion introduced in the Lisbon Treaty. Independence, including from national governments, is a requirement clearly linked to the characterisation of the Commission as the EU institution promoting the general (and not national) interest of the Union (Article 17(3) TEU). Despite this, some authors suggest that Member States try to influence the Commission through the appointment of loyal Commissioners (i.e. persons belonging to the government party) or through nominations that would guarantee them an important portfolio for their Commissioner (i.e. nominations of senior or high profile politicians).⁵ Parliament’s Rules of Procedure include other criteria to be taken into account when evaluating the future Commissioners, that is to say, specific knowledge of the portfolio, communication skills and gender balance ([Article 1, Annex VII](#)). According to the Treaties, respect for the geographical and demographic diversity of the Union would only be considered relevant if ‘one Commissioner per Member State’ were abandoned. Until then, geographical and demographic balance is to be considered only when appointing the top institutional positions, i.e. the presidencies of the Commission and the European Council and the High Representative of the Union for Foreign Affairs and Security Policy ([Declaration No 6 on Article 15\(5\) and \(6\), Article 17\(6\) and \(7\) and Article 18 of the Treaty on European Union](#), annexed to the Treaties).

Nominating the Commissioners: Who does what?

As regards the nominations of Commissioners and the High Representative of the Union for Foreign Affairs and Security Policy, who is also a Vice-President of the Commission (Article 17(5) TEU), the Lisbon Treaty provides for two different appointment procedures. The High Representative is appointed by the European Council, acting by a qualified majority, with the agreement of the

Commission President (Article 18(1) TEU), whereas all the other Commissioners are proposed by the Member States' governments and nominated by the Council in common accord with the President-elect of the Commission (Article 17(7) TEU). The composition of the Commission therefore does not usually reflect the political balance in the European Parliament but rather among national governments, with pan-European party politics playing a minor role in the selection of individual Commissioners-designate.⁶ This feature clearly distinguishes the EU's institutional framework from parliamentary democracies, where the composition of the government tends to represent the majority in Parliament, to whom the national executive is also collectively responsible. However, with Parliament's role in the procedure strengthened, a clear majority in Parliament could in future try to put pressure on the Council to take the results of European elections more into account when nominating Commissioners. Similarly, the role played by the President-elect of the Commission in the nomination process seems to be evolving: while it is true that the President-elect is not able to shape the College in the same way as a prime minister in a parliamentary democracies, their current [power](#) to veto future Commissioners and to attribute responsibilities within the Commission has allowed Presidents-elect to lobby for specific candidates or for certain profiles,⁷ as President von der Leyen has [promised](#) to do to ensure gender balance within her College.

The final steps of the procedure: Parliament's vote of consent.

Once the candidates are nominated, the Commission needs to obtain the consent of Parliament by a majority of the votes cast ([Rule 125\(7\)](#)) before being appointed by the European Council. 'Hearings' of Commissioners and the High Representative are not stipulated in the Treaties, but required under Parliament's Rules of Procedure ([Rule 125 and Annex VII](#) of Parliament's Rules of Procedure). They are a necessary counterpart to the requirement of obtaining Parliament's consent, which would have no substance if Parliament could not examine the aptitude of the candidates.

According to the Treaties, once Parliament has elected the President of the Commission by a majority of its component Members, it can only refuse or accept the Commission in its entirety and not individual Commissioners-designate – just as many parliaments in parliamentary democracies cannot vote on individual members of government other than the prime minister. This is a consequence of the collective responsibility of the Commission as a collegiate body. In the appointment process, Parliament can only refuse the Commission in its entirety, just as Parliament can only force the resignation of the entire Commission once its members are in office through a motion of censure (Articles 17(8) TEU and [234 TFEU](#)). However, the threat to vote down the designated Commission has proven to be a powerful means to encourage national governments to replace Commissioners-designate opposed by Parliament and some see this as a step forward towards Commissioners' individual responsibility to Parliament, a trend that would ultimately test the collegial character of the Commission.⁸

The hearings procedure

The procedure for holding hearings is set out in Rule 125 of Parliament's Rules of Procedure and in Annex VII thereto. For hearings to be conducted smoothly, nominations of Commissioners-designate need to be made in due time, as Parliament [highlighted](#) after the 2014 hearings. On that occasion, given the late proposals for nominations by certain governments, candidates had less time (around 10 days) than in previous hearings to master the portfolio assigned to them.

Once future Commissioners are nominated, Parliament's President invites the President-elect of the Commission to provide information about the allocation of portfolios within the College. Taking into account their future responsibilities, Commissioners-designate are requested by Parliament's President to appear before the appropriate committees or bodies. The hearings are organised by the Conference of Presidents, on a recommendation from the Conference of Committee Chairs. The chair and coordinators of each committee are responsible for the detailed arrangements. Hearings are held in public and are broadcast live.

Examination of the declarations of interests of Commissioners-designate.

Each Commissioner-designate is subject to a single hearing, but before that, the Parliament's Legal Affairs Committee examines the declaration of financial interests presented by each Commissioner-designate, to confirm that there is no conflict of interests in connection with their future portfolio in the Commission. After the 2014 hearings, the Legal Affairs Committee [analysed](#) the process and the extent of Parliament's scrutiny over the declarations of interests. The Rules of Procedure were then modified in [2016](#) to make the examination of the declaration on financial interests of Commissioners-designate a precondition for the committee responsible holding a hearing.

According to the current Rules of Procedure, if the Legal Affairs Committee is not satisfied by the declaration of financial interests presented by a Commissioner-designate, it can request supplementary information and invite the Commissioner-designate to a discussion. If a conflict of interest were identified, the Legal Affairs Committee would draw up recommendations aimed at resolving the conflict and, as a last resort, may conclude that the Commissioner-designate would be unable to take up their duties at the Commission. In that case, the Rules of Procedure provide that Parliament's President inform the President-elect of the Commission who would decide on what steps to take. Although the consequences of a negative evaluation of the declaration of interest made by a Commissioner-designate are unclear, Parliament's Rules of Procedure provide for the suspension of the appointment procedure as regards the specific Commissioner-designate until a solution to the conflict of interests is found or the President-elect decides on what steps to take. However, if the President-elect of the Commission were not to take note of the negative opinion, it could put at risk the approval of the whole Commission by Parliament.

Parliament has also attempted to reinforce scrutiny over the future Commission through extending the scope of the declarations of interest, as they were considered too narrow and ambiguous. Following Parliament's [calls](#) to modify the [2011 Code of Conduct for Commissioners](#), the [2018 Code of Conduct](#) broadened the scope of the declaration of interest that members of the Commission have to present to include, among other things, all financial interests of a value of more than €10 000 (regardless whether they are likely to constitute a conflict of interest); the financial interests of minor children, where those might be considered capable of giving rise to a conflict of interest; and membership of associations, political parties, trade unions, NGOs or other bodies if their activities are intended to influence or affect the exercise of public functions. Similarly, the new Code of Conduct provides for Commissioners-designate to make their declaration of interest available to Parliament in due time to allow its examination.

Organisation of the hearings: Committee responsible and allocation of time.

Once the Legal Affairs Committee has examined the declarations of Commissioners-designate, hearings take place before the appropriate committees or bodies. If the portfolio of a Commissioner-designate falls within the remit of one parliamentary committee, only that committee will be involved in the hearing (**committee responsible**). Hearings may, however, involve more than one parliamentary committee. If the portfolio of a Commissioner-designate falls equally within the remit of more than one committee, he/she shall be heard jointly by those committees (**joint committees**). Conversely, if the portfolio of a Commissioner-designate is mainly within the remit of one committee and only to a limited extent within that of others, they will be heard by the committee mainly responsible, with the other committee(s) also participating (**associated committees**). The portfolios often fall across the remits of different parliamentary committees, thus in the [2014 hearings](#), there were nine hearings with joint committees and nine with associated committees. For Commissioners-designate (or Vice-Presidents) with cross-cutting competences, a **different format** may be used provided that the committee responsible is involved. As it is impossible to involve all committees in individual hearings, even if the portfolio touches on their remit, Parliament [proposed](#) a different format following the 2014 experience: a meeting of the Conference of Presidents or of the Conference of Committee Chairs open to members of the committees responsible. In 2014, a hearing before the Conference of Presidents open to all Members was the [format](#) used for the First Vice-President, Frans Timmermans, whose competences had a distinctly horizontal nature.

Committees submit **written questions** to the Commissioners-designate before the hearings. Commissioners-designate receive **two common questions** drafted by the Conference of Committee Chairs. The first is on their general competence, European commitment and personal independence. The second is on the management of the portfolio and their cooperation with Parliament. The Committee responsible for the hearing drafts **five policy-specific** questions about their main priorities and legislative initiatives. In the case of joint committees, each may ask three questions. Sub-questions are not allowed. Associated committees only participate in the hearings, when they can ask oral questions. The curriculum vitae of the Commissioners-designate and their answers to the written questions are made available on Parliament's website before the hearings.

Each hearing lasts **three hours**. Commissioners-designate make an opening statement of no more than 15 minutes. A session of questions and answers follows. In the [2014 hearings](#), the Conference of Presidents decided to have 45 single questions and answers. Therefore, no committee used a systematic question and answer 'ping pong', although some allowed certain 'ping pong' questions and answers or occasional follow-up questions. Aiming to make hearings more flexible and dynamic, Parliament's current Rules of Procedure provide for an oral hearing of up to 25 questions, with a follow-up question to be asked immediately by the same MEP within their allocated time. Speaking time is allocated to Members taking into account the size of each political group (including the non-attached Members), as required under [Rule 171](#). In order to avoid repetition, questions are grouped by topic. Commissioners-designate may also make a brief closing statement.

Evaluation of Commissioners-designate after the hearings.

The chair and coordinators of the committee responsible for the hearing (or of the joint committees) meet *in camera* after the hearing to **evaluate** the Commissioner-designate's suitability to be a member of the Commission and their suitability to deal with the assigned portfolio. There is one single evaluation letter for each candidate, including the opinions of any associated committees. If the coordinators unanimously approve or reject the Commissioner-designate, a letter of approval or rejection will be submitted. If coordinators representing a majority of at least two-thirds of the committee membership approve the candidate's performance, the letter of approval will state that the candidate was approved by a large majority of the committee and minority views will be mentioned if requested. If the two-thirds majority is not attained, the coordinators shall request further information from the Commissioner-designate through written questions and, if they are still dissatisfied, can request a resumed 1.5-hour hearing subject to the approval of the Conference of Presidents. If the coordinators are still unable to reach the two-thirds majority, the chair will convene a committee meeting and call a vote, first, on the candidate's suitability to become a member of the Commission and after on their suitability to carry out the duties assigned. Committees' evaluation letters are to be transmitted within 24 hours of the completion of the evaluation. Those letters are examined by the Conference of Committee Chairs and conveyed to the Conference of Presidents to ensure horizontal scrutiny of the evaluation results. The Conference of Presidents then declares the hearings closed and authorises the publication of all letters of evaluation, which are then published at the same time.

After the hearings have concluded, the President-elect presents the College of Commissioners and its programme in plenary. The Presidents of the European Council and of the Council are invited to attend. The statement is followed by a debate, and any political group or at least one-twentieth of Members of Parliament (low threshold) may table a motion for a resolution. Finally, consent to the Commission as a whole is given by a vote in plenary, whereby the majority of the votes cast, by roll call, is necessary. The new Commission can then be formally appointed by the European Council, acting by qualified majority.

Critical issues in past hearings

The first Commission subjected to hearings was the Santer Commission in 1995, where the parliamentary committees made many critical comments on certain Commissioners-designate and

asked for Irishman Pádraig Flynn to be assigned a different portfolio. The main point of criticism in the hearings was the lack of specialist knowledge of some candidates on their portfolio, as well as their vague answers and reluctance to make commitments, invoking the collegiate decision-making of the Commission. This led in subsequent hearings to Commissioners-designate preparing more thoroughly on the concrete policy fields and even making concrete commitments and signing commitments proposed by a parliamentary committee – a practice established by the Economic and Monetary Affairs Committee in 2010, with Joaquín Almunia, Michel Barnier, and Olli Rehn.

Parliament pressed for the first time in 2004 for the replacement of a Commissioner-designate. Amongst other things, Italian nominee Rocco Buttiglione drew sharp criticism due to his comments on the role of women and on homosexuality. Confronted with the possibility of Parliament rejecting his College, President-elect José Manuel Barroso was obliged to ask Parliament to postpone its vote and to come back with two new Commissioners-designate and a change in another portfolio. Buttiglione's appointment was withdrawn by the Italian government, and Franco Frattini was nominated and inherited the Justice, Freedom and Security portfolio from his unsuccessful predecessor. Latvia also withdrew Ingrida Udre's nomination, due to her possible involvement in political and legal malpractice, and Andris Piebalgs was nominated instead. Hungarian nominee László Kovács, who had been criticised due to his lack of preparation and specific knowledge on his future portfolio (Energy) was assigned a different portfolio (Taxation and Customs Union).⁹ In 2009, the focus fell on Bulgarian nominee Rumiana Jeleva, whose business dealings and her competence in her portfolio were questioned in the hearing. As a consequence, the Bulgarian government withdrew her nomination and proposed Kristalina Georgieva instead.

In 2014, Slovenian nominee Alenka Bratušek, a former prime minister, was rejected by the Committees on Environment, Public Health and Food Safety, and Industry, Research and Energy as the Vice-President for Energy Union due to her poor knowledge of the portfolio and ethical concerns linked to her appointment as Commissioner-designate by a government headed by herself. Slovenia withdrew her nomination and appointed Violeta Bulc, who took up her duties as Commissioner for Transport. Hungarian nominee Tibor Navracsics did receive a vote of approval as Commissioner-designate, but not for the proposed portfolio (Commissioner for education, youth, culture and citizenship), with MEPs criticising the attribution of competences related to citizenship due to his close ties with the Hungarian prime minister. Both negative votes were followed by changes in the initial portfolio allocations made by President-elect Juncker in order to secure Parliament's approval.

Strengthening the Commission's democratic accountability

The hearings of Commissioners-designate have contributed to increasing the political dynamic in relations between Parliament and Commission, similar to that found in the national context. Many experts and stakeholders credit the procedure with having further politicised the European Commission,¹⁰ and therefore also the EU decision-making process, which is seen by many as a necessary step towards further democratisation.

However, the growing politicisation of the parliamentary hearings is not universally welcomed. Some point out that a parliamentary-based Commission would not be independent enough and would not have the legitimacy to carry out its traditional duties, for example, of acting as guardian of the Treaties or monopolising the right of legislative initiative.¹¹ Criticism has been expressed by some experts that the Commissioners-designate are tested in the parliamentary hearings on their competence in the portfolio assigned whereas the Treaties stipulate that the Commissioners be chosen on the ground of their 'general competence and European commitment'. Moreover, the focus on the political views of individual Commissioners-designate is seen by some as contradictory to the Parliament being able only to approve or reject the Commission as a whole. The possibility of Parliament rejecting the whole College because of the bad performance of one Commissioner-designate is thus seen as a disproportionate measure.¹² Some argue that MEPs' far more aggressive interrogation of candidates from opposing European political families than of those belonging to their own results in a power struggle not only within the institutional triangle of EP, Council and

Commission, but also between the political groups in Parliament. This may be seen to reduce the future ability to build stable majorities throughout the legislative period.

However, it is widely agreed that the hearings play a major role in the Commission's accountability to Parliament. Whilst seen as an ordeal, once passed it strengthens the new Commissioners' positions. This is all the more important given Parliament's increasing efforts to shape, together with the Commission and Council, the Union's annual and multiannual programming ([Article 17\(1\) TEU](#)). Hearings could therefore become the starting point for stronger political agenda-setting at EU level.

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ENDNOTES

¹ Thomas Beukers, 'The Barroso Drama: Enhancing Parliamentary control over the European Commission and the Member States', *European Constitutional Law Review*, num. 2 (2006), pp. 24-25.

² Ibidem, p. 24.

³ For different opinions on this debate see, among others, Thomas Christiansen 'After the *Spitzenkandidaten*: fundamental change in the EU's political system?', *West European Politics*, vol. 39, 2016; Sergio Fabbrini, 'The European Union and the puzzle of Parliamentary government', *Journal of European Integration*, vol. 37, 2015; Simon Hix, *What's wrong with the European Union and how to fix it*, Polity, London, 2008.

⁴ See Robert Böttner, 'The size and structure of the European Commission: legal issues surrounding project teams and a (future) reduced College'. *European Constitutional Law Review*, vol. 14, 2018, pp. 37-61.

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⁶ Renke Deckarm, 'Assessing the effect of the European elections' *Spitzenkandidaten* procedure on the constitution of the European Commission', *European Politics and Society*, vol. 18, 2017, pp. 207-209.

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⁸ Thomas Beukers, op. cit. p. 53.

⁹ For a detailed analysis of the whole process, see Thomas Beukers, op. cit.

¹⁰ Anchrit Wille, op.cit., pp. 57-96; Julie Smith, *Reinvigorating European elections. The implications of electing the European Commission*. Chatham House, London, 2005, pp. 61-94.

¹¹ Sergio Fabbrini, op. cit, p. 580.

¹² Julie Smith, op. cit., pp. 68-69.

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