NOMINATIONS AND APPOINTMENTS: AN EVOLVING EU MODEL

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[The following views are submitted in a personal capacity, and do not necessarily reflect the position of the European Parliament]

INTRODUCTION

One aspect of the EU's evolution that has received comparatively little attention in the past has been that of the way in which nominations and appointments to top EU jobs have been made. The main reason for this lack of interest was that, until comparatively recently, there was little controversy attached to such appointments, which were made by consensus for most jobs on the basis of uncontested nominations by individual national governments. For those where only one job was available, such as the Presidency of the Commission, appointments were made on the basis of a rough-and-ready rotation system between those countries prepared to put forward serious candidates.

In the last few years, however, this initial way of making appointments, while still very much in force in certain aspects, has come under increasing challenge. The European Parliament has been given a consultative role as regards certain nominations, and a formal power of assent as regards the Commission. In one, admittedly untypical, case, that of appointing the EU Ombudsman, the European Parliament has even been given the decisive role. Moreover, in addition to this increase in its formal powers, the European Parliament has been able to maximize their significance by the introduction of such devices as confirmation hearings for the nominees. These have helped to focus attention on the new powers of the European Parliament, and to make them seem more akin to (although still clearly falling short of) the advise and consent powers of the US Senate.

While these changes have clearly signified an increase in the powers of the European Parliament, the longer-term implications are of even wider significance. The initial appointments had focussed on the appropriateness of a nomination from a domestic political point of view rather than whether it led to the best overall composition for an institution. In the case of a political institution such as the Commission, a number of questions are highly relevant: What is the overall political balance? Are there a sufficient number of women? Are there any representatives of ethnic minorities? Moreover, even more fundamental questions can be posed about the structures and objectives of the institutions in question. Changes in the EU appointments model can thus lead not only to an increase in democratic accountability and openness, but also to an increase in EU efficiency.

All the above questions are raised as a result of the changes that have already been taken. The status quo is unlikely, however, to remain and further changes in the EU appointment model can be expected in the future. The purpose of the present paper is to examine this evolving model for nominations and appointments. The first part of the paper recalls the initial EU model for appointments and how it worked in practice. The second section looks at the new role that has been given to the European Parliament as regards nominations in recent years, and the ways in which it has chosen to build on its new powers. The final part of the paper looks at some of the likely demands for changes in the future.

THE TRADITIONAL EU APPOINTMENTS MODEL

Although the respective Treaty formulations varied slightly[1] the initial model for EU appointments was a very simple one. Nominations were in the gift of individual Member States' governments, which took their decisions on the basis of domestic political or other considerations, and without interference from the other Member States.

Wherever possible there should be a nominee from each Member State. When the European Court of First Instance was created, for example, the Commission initially suggested that there should be fewer judges than the number of Member States, but it was finally decided that there should be one judge from each Member State.

In the case of the Commission, the larger Member States were able to have two Commissioners. On most such occasions the Member States concerned put forward one nominee from the governing party or coalition, and the other from the opposition, but in a few cases the second nominee was from the junior party in the governing coalition. Again, what counted in all cases were domestic political factors.

In those cases where only one appointment had to be made (such as the Presidency of the Commission), or else fewer appointments than the number of Member States, consensus was reached as to the nationality of the nominees. No formal rotation system was adopted (there have been two Luxembourgish and two French Presidents of the Commission, for example, and now a second Italian), and a country's claim to a post could not be automatically taken up unless it put forward (and firmly backed!) a serious candidate (e.g., there has been no prominent German candidate for President of the Commission since Hallstein), but the need to ensure broad national balance was always an important factor. Each of the six founding Member States, for example, has had at least one President of the Commission. There has also been little open disagreement between the Member States: John Major's rejection in 1994 of Jean-Luc Dehaene as President of the Commission was the exception that proved the rule, and was taken for domestic political reasons at a time when he needed to show the Eurosceptics in his own party that he was "Standing up to Europe".

The traditional EU nomination process has thus not only remained an essentially inter-governmental one based on consensus, but has been driven by domestic factors. Until recently the European Parliament has had no say in the process, and nor have national parliaments played a direct role.

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1 **The Council acting unanimously** in the case of nominations to the European Court of Auditors (Article 247 TEC, former Article 188b), to the Economic and Social Committee (Article 258 TEC, former Article 194), to the Committee of the Regions (Article 263 TEC, former Article 198(a)) and to be Secretary-General and Deputy Secretary-General of the Council (Article 207(2) TEC, former Article 151(2)), **common accord of the governments of the Member States** in the case of nominations to the Commission (Article 214 TEC, former Article 158), to the European Court of Justice (Article 223 TEC, former Article 167) and to the Court of First Instance (Article 225 TEC, former Article 168(a)), and finally **common accord of the governments of Member States at the level of Heads of State or Government**, in the case of nominations to the Executive Board of the European Central Bank (Article 112 TEC, former Article 109a2(b)).

For the less political posts, such as to the European Court of Justice, the overall consequences of a system of national patronage have perhaps been less great. For the Commission, however, they have been very considerable and have indeed been a contributory factor to the recent crisis.

The sum total of a series of individual national decisions has been Commissions which have not always been politically balanced[2]. While this is arguably of lesser importance if Commissioners are meant to become genuinely independent after their appointment, what is undeniable, however, has been the unrepresentative nature of the Commission in other respects. It is perhaps unsurprising, if regrettable, that there has never been an ethnic minority representative on the Commission. What is more remarkable is that no woman became a Commissioner until 1989. There were then two women in the second Delors Commission from 1989 to 1993, but again only one in the final Delors Commission from 1993 to 1995. Only after 1995 was there a significant change and this was almost certainly related, as outlined below, to the reinforced rôle of the European Parliament in the nomination process.

Another negative consequence of the traditional national patronage system for the Commission has been its inflexibility, and the lessening of the authority of its President. The President has had no real say concerning his team of Commissioners, and even the issue of which Commissioner is to get which portfolio has become a matter of national prestige and influence. Moreover, once a Commission has been installed, the same national factors have made it impossible in practice for an individual Commissioner to be dismissed. Even reshuffling of portfolios has proved to be extremely difficult. The traditional EU nomination model has thus been anything but neutral in its overall consequences.

THE GROWING ROLE OF THE EUROPEAN PARLIAMENT

The development of formal European Parliament powers

In the initial model described above, the European Parliament was given no role at all, even as regards the European Commission, which the European Parliament had already been given the power to fire as a body.

The first opening came after the **creation of the European Court of Auditors** in 1975. The European Parliament had pushed hard for its establishment, and was given the right to be consulted in the appointment of its Members (Article 247 TEC). The second development concerned the **appointment of the Commission**. The Stuttgart Declaration of 19 June 1983 provided for the European Parliament's "Enlarged Bureau" (the forerunner of the current Conference of Presidents) to give its views before the formal appointment of a new President of the Commission. After its nomination the Commission would then present its programme to the European Parliament for a debate and a vote.

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2 For much of the Delors era, for example, only six of the 17 Commissioners were of the left of centre.

The Treaty of Maastricht later introduced a more far-reaching change, with the European Parliament as a whole first being consulted on the nominee for President, and later being asked to give its approval to the entire college of Commissioners (Article 214 TEC). A further vital change was that the Commission's term of office was extended to five years and aligned with that of the European Parliament, but beginning six months later to give the newly elected European Parliament the time to carry out its scrutiny of the new Commissioners. Finally, the Amsterdam Treaty gave the European Parliament the formal right to approve (and thus also to reject) the nominee for Commission President, and not just to be consulted. Moreover, the position of the President-elect was reinforced, in that he or she was not just to be consulted on the other nominees to the Commission, but had to give his or her accord.

Besides its innovations as regards the Commission, the Maastricht Treaty provided for the European Parliament to be consulted on the nominee for President of the **European Monetary Institute** (Article 117 TEC), and on the nominees for President, Vice-President and other members of the Executive Board of the **European Central Bank** (ECB) (Article 114 TEC). The Maastricht Treaty went furthest of all as regards the new office of the **Ombudsman**. Here the European Parliament was given the direct power of appointment (Article 195 TEC).

The European Parliament's use of its new powers

As a result of these successive reforms, the European Parliament was given a formal role for the first time in the EU appointments process. The European Parliament has sought to build on these new powers and to maximize their significance by a variety of implementing measures.

Again, the first steps were taken as regards the **European Court of Auditors**. In 1981 the European Parliament's Budgetary Control Committee began the practice of inviting the nominees to a hearing at which they were cross-examined on their experience and views. On the basis of these hearings the committee and then the Parliament drew-up its recommendations as to whether to approve or oppose the nominations in question. In 1989 the European Parliament expressed negative positions on nominees for the first time when it opposed the French and Greek nominees to the Court. While the Parliament was only consulted, and its views could have been ignored (as they were in the case of the Greek nominee), its position was reinforced as a result of the withdrawal of the French nominee, and his replacement by another candidate. The inherent weakness of the European Parliament's position, however, was shown four years later in 1993, when the European Parliament's opposition to a Portuguese nominee and to an Italian incumbent who was being re-nominated was completely ignored.

The most important steps, however, were taken by the European Parliament in the aftermath of the increase in its appointment powers at the Treaty of Maastricht. As after each major Treaty change, the European Parliament went on to revise its internal rules of procedure and on this occasion decided to set out the principle of holding hearings on the individual nominees to the Commission, to the Presidency of the European Monetary Institute, and to the Presidency, Vice-Presidency and Executive Board of the future

European Central Bank. Such hearings were to take place before the Parliament voted on the nominations. Nowhere was the idea of such hearings set out in the relevant Treaty articles.

The first occasion when this came up was after the Member States' nomination of Mr Alexandre Lamfalussy to be the first **President of the European Monetary Institute** in the autumn of 1993. Not only did the responsible European Parliament committee, that on Economic and Monetary Affairs and Industrial Policy, request Mr Lamfalussy to attend a hearing at short notice, but also to respond in advance of the hearing to a written questionnaire that had been sent out by the committee.

The preparation of the questionnaire illustrated both the similarities and the contrast to US confirmation procedures. On the one hand there was the deliberate intention that the nomination of Mr Lamfalussy should be subject to much more systematic scrutiny than had been the case for previous EU nominations, and to learn from US experience in this regard[3]. On the other hand, it soon became clear that European parliamentarians generally felt that any hearings should not go into the kind of detail characteristic of certain U.S. nomination forms and procedures, and that there should be less emphasis, in particular, on the personal lives of the nominees. Even probing for details of the nominee's financial position, while supported by a minority of Members, was rejected by the majority in favour of more general questions about possible conflicts of interest.

The most significant element of all this, however, was the reaction of Mr Lamfalussy. He was under no formal obligation to appear at a European Parliament hearing, let alone reply to a questionnaire in advance, but he promptly agreed to both. He gave full written replies to the questionnaire[4] and then appeared before the parliamentary committee for an entire morning[5]. The committee then had no problem in approving his nomination, and its recommendation was followed by the whole Parliament at its November 1993 plenary session. A key precedent had been established for the future. This was soon illustrated with regard to the nomination of the 1994 **Commission.**

The European Parliament had long sought to extend its role as regards the nomination of the Commission. Even before the adoption of the Stuttgart Declaration, and when the European Parliament had no formal role at all, it was already describing the conclusion

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3 Ms Randzio-Plath, the Chair of the Economic Committee's Monetary Sub-Committee, had previously been on a study visit to the US with a committee staff member to look at techniques of Congressional control of the US Federal Reserve, including confirmation procedures, and a background note on this subject was subsequently prepared under her auspices with the European Parliament's own future hearings in mind.

4 The gist of these were outlined in the "Financial Times" before the hearing opened, and this helped to build-up the sense of a new parliamentary occasion.

5 The European Parliament had previously successfully resisted Council Presidency pressure to agree to an accelerated timetable for European Parliament approval of Mr Lamfalussy, which would have precluded the holding of such a hearing.

of its debate on the incoming Thorn Commission in 1981 as a vote of confidence, and this formula was repeated for the Delors Commissions in 1985 and 1989. The significance of this was reinforced in the latter year when the college of Commissioners waited for the European Parliament to give its vote of confidence before going to Luxembourg to be sworn into office.

Once the Maastricht Treaty had given the European Parliament a real role in the nomination of the Commission, the European Parliament sought to reinforce this by suggesting new criteria to be taken into account when making nominations to the Commission, and by looking at the overall composition of the Commission for the first time. The Froment-Meurice resolution that was adopted on 21 April 1994 on the investiture of the Commission (based on report A3-0240/94) called, inter alia, for account to be taken of the overall political balance of power in the Union, for "the Commission as a whole to be representative of the peoples of the Union", including "adequate representation of women", and for some Commissioners to be chosen from among sitting MEPs.

The first formal step in the nomination of the new Commission was for the European Parliament to exercise its new post-Maastricht power of giving its opinion on the nominee to be President of the Commission. After Belgian premier Dehaene had been vetoed by the British government of John Major, the Member States then submitted the name of Jacques Santer, the long-standing Prime Minister of Luxembourg, and this nomination was considered by the newly-elected Parliament at its constituent session in July 1994. Apart from making a statement to the plenary, Mr Santer also appeared before certain of the political groups[6] but not others. After considerable suspense his nomination was then only narrowly approved by a vote of 260 in favour to 238 against, with 23 abstentions. The significance of this vote has been analysed elsewhere[7]. Suffice it to say that the close vote was partly as a result of dissatisfaction with the performance and lack of vision of the nominee (especially in contrast to his predecessor Jacques Delors) and partly because of dissatisfaction with the process by which he had been selected by the Member States. On the other hand, he was primarily saved because MEPs from parties in government felt reluctant to vote against their own governments' nominee.

If Santer had been rejected the Member States could have maintained their nomination, since the European Parliament was merely being consulted under the terms of the Maastricht Treaty. In practice, however, the nomination would almost certainly have been killed off, since German Chancellor Kohl for one had indicated that he would respect the European Parliament's decision, and the nominee himself would not have wanted to take up office under these circumstances.

Once Mr Santer had been approved as President-elect it was up to the Member States to choose the rest of his team. While the method used was the traditional one, with the President-elect having little or no say, the choice of nominees by the Member States did

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6 The Socialist, EPP and Liberal groups.

7 For example, by Simon Hix.

follow some of the criteria laid down in the European Parliament's Froment-Meurice resolution, with senior political figures and former MEPs figuring more prominently than in the past and, above all, with an increase in the number of women nominees from one to six.

The key battle of principle that now emerged was whether the nominees would appear at hearings in front of the responsible European Parliament committees, as called for in the European Parliament's revised Rules of Procedure. Out-going Commission President Jacques Delors was hostile to the idea, but Jacques Santer sought to get his relationship with the European Parliament back on to a better footing and agreed to the principle of the hearings. A further consequence of this decision was that Santer undertook to have his team announced and their prospective portfolios established by the end of October 1994, so that the European Parliament would then have the time to organise the hearings. Santer was successful in meeting these objectives[8].

The subsequent holding of the hearings was a much more complex task than the single hearing for Mr Lamfalussy, with a whole range of problems relating to their organisation[9]. Among these were when to hold the hearings (the Delors Commission's term of office expired at the end of 1994, but hearings held before then would exclude the new MEPs from Austria, Finland and Sweden, who only joined the European Parliament in January 1995), whether to send out written questionnaires in advance of all the hearings, how to handle hearings where several committees were concerned, and above all how to present the committee conclusions on the outcome of each hearing when the European Parliament did not have the power to reject individual nominations but only the team of Commissioners as a whole.

In the end the hearings were held at the beginning of January 1995 with the European Parliament as a whole voting on the Commission during its January part-session, and with the Delors Commission remaining in office to carry out current business for a few weeks beyond the formal expiry of its term of office. The principle was firmly established that there should only be one hearing per Commissioner, with subsidiary committees sending delegations to the hearings organised by the lead committee. There was, however, very disparate practice as regards use of prior written questionnaires, with some committees insisting on written replies before the hearings, others sending out questionnaires but expecting them to be answered orally at the hearing and other committees not sending out questionnaires at all.

The hearings themselves had to be held within a very short period of time. They were generally of around two hours duration, but with more than one hearing having to be held

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8 Although the second Italian nominee, Emma Bonino, ironically later a very dynamic Commissioner, was only nominated at the very last moment, and a further adjustment to prospective portfolios had to be made after Norway rejected EU membership in its referendum.

9 The Institutional Affairs Committee appointed one of its members, Mr Herman, to make recommendations on these issues, and the European Parliament President, Klaus Hänsch, and the Conference of Presidents were also heavily involved.

at the same time. The nominees made short opening statements and then responded to questions first from the main committee, and afterwards from any delegation from a subsidiary committee in areas falling within their competence. The hearings were held in public, but at the end short, "in camera" sessions were held so that the committees could discuss their conclusions on the nominees. Letters were then sent to the President of Parliament containing an overall assessment of the nominee, but without, of course, any formal approval or rejection of a nominee. No transcripts were made of the hearings[10].

The most controversial issue was what to do with these conclusions. Should they be publicised or remain confidential? How many of the individual conclusions had to be negative before the European Parliament might consider voting against the Commission as a whole? What scope was there to negotiate adjustments to the Commissioners' prospective portfolios?

The response of European Parliament President Hänsch to the first of these questions was to publish all the conclusions that he had received from the individual committees. This confirmed that the majority of the nominees had received satisfactory report cards[11], but that there was dissatisfaction - to a greater or lesser degree - with five or six of them. The reasons for dissatisfaction varied. In a couple of cases the nominees were not forthcoming enough in their replies, in others they came across as patronising or arrogant[12]. Only one of the nominees who came in for particular criticism was an out-going Commissioner, and all the others were new.

Once the comments had been publicised there was very little time to make adjustments. President-elect Santer made a number of additional promises to the Parliament and one responsibility was removed from one of the criticised Commissioners and brought directly under Santer's control, but more far-reaching changes (for instance to rectify the obvious fragmentation of responsibilities for foreign relations) were not made. The Parliament then voted to give its approval to the Santer Commission[13].

One final related development was that a new Code of Conduct was subsequently negotiated between the new Commission and the Parliament. A Commission/European Parliament Code of Conduct had first been drawn-up in 1990, but the 1995 version was considerably reinforced, primarily as regards the Commission's undertakings to the Parliament in the legislative field.

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[10] For logistical rather than political reasons.

[11] Although one of these had raised eyebrows by not knowing that a particular issue area fell within her prospective fields of responsibility.

[12] One nominee compounded this by going on to make critical comments about the European Parliament in her national capital.

[13] By a substantial majority, but with a number of MEPs stating that their support was on a probationary basis only.

This first experience of the European Parliament's new powers as regards the nomination of the Commission was criticised by a number of MEPs, especially the publication of committee assessments of nominees when the European Parliament had no powers to approve or reject them on an individual basis.

On the other hand, there were a number of very positive features of the new procedures. A much more systematic dialogue was established between the Commission President-elect and the new Parliament. Moreover, the hearings themselves, for all their teething problems, did establish an immediate working relationship between individual Commissioners and the relevant European Parliament committees. They also proved in many (if not all) cases to be good indicators of subsequent performance by the Commissioners in question.

While it was undoubtedly a much tougher procedure for the individual nominees, President Santer himself claimed that the whole process had led to his Commission having greater legitimacy than would otherwise have been the case.

Finally, and perhaps most importantly, the principle of democratic control of the Commission by the Parliament was much more firmly established than under the previous appointment model.

The most far-reaching change of all to the traditional EU appointment model was that introduced by the Maastricht Treaty as regards appointments to the new post of **EU Ombudsman** where Article 195 TEC provides for the Ombudsman to be appointed by the European Parliament after each European Parliament election for the duration of its term of office. The Member States are given no say at all in the nominations process.

In this case the European Parliament has thus been given full rights to determine the nominations process. The European Parliament's relevant Rules provide for a call for nominations to be published in the Official Journal of the European Communities and for nominations to have the support of a minimum of 29 Members (recently raised to 32) who are nationals of at least two Member States. The responsible committee (the Petitions Committee) then holds public hearings of the candidates and submits a list of admissible nominations in alphabetical order to the full Parliament, which takes the final decision by secret ballot on the basis of a majority of the votes case. To prevent this being taken on too low a vote, a quorum of at least half of Parliament's component Members have to be present[14]. If no candidate has been elected after the first two ballots, only the two candidates obtaining the largest number of votes in the second ballot may continue to stand.

On the first occasion when the European Parliament exercised its new powers there was initially an embarrassing stalemate when there was a tied vote between the Spanish and German candidates, and the Rules of Procedure did not cover the contingency. The

[14] Article 198 TEC only permits the European Parliament to take decisions by simple majority of the votes cast unless a specific majority requirement has been established by the Treaty. The European Parliament is, however, free to fix its own quorum requirements.

Rules were later modified to provide for the eldest candidate to prevail in the event of any tie. A Finnish candidate, Mr Jacob Söderman, was subsequently elected by the European Parliament, and has since tenaciously pursued not only individual cases but also broader principles such as the need for greater openness and transparency within the EU institutions.

In May 1998 the European Parliament's new responsibilities as regards nominations were again illustrated when it came to appointing the first President, Vice-President and other members of the Executive Board of the newly established **European Central Bank**. Here the European Parliament's powers were again more constrained, since the relevant Article 112 TEC lays down that the Executive Board is to be appointed by common accord of the governments of the Member States at the level of Heads of State or Government on a recommendation from the (ECOFIN) Council, after it has consulted both the European Parliament and the Governing Council of the ECB.

The Maastricht Treaty has given a very large degree of independence to the ECB from political control by national governments and parliaments and also by the European Parliament. The nomination process for the first Executive Board of the ECB was thus a very important opportunity for the European Parliament, not least because the variable terms of office established for individual Members of the initial Board meant that this would be the only occasion when all the Members of the Board would be up for appointment at the same time. The nomination process could thus be helpful in getting to know about the different candidates, and in establishing the terms of the future dialogue between the European Parliament and the ECB.

To meet these objectives it was again indispensable that there be European Parliament hearings on the individual candidates. There was little doubt that the nominee for President (Mr Duisenberg) would agree to such a hearing[15]. In the event, not only Mr Duisenberg but all the other candidates agreed to attend such hearings, and also to reply to written questionnaires prior to the hearings.

The written questionnaires that were sent out covered four main topics, the personal and professional background of the candidates, monetary and economic policy questions, the decision-making processes of the ECB and the issue of democratic accountability of the ECB, in particular, openness and future relations with the ECB. Along with the CV's of the candidates, their written replies to these questions were then translated and made available in time for the hearings, which were held in Brussels on 7-8 May 1998.

The preparations made for the hearings were more systematic than for previous European Parliament hearings, not only within the responsible European Parliament Committee on Economic and Monetary Affairs and Industrial Policy, but also within the individual political groups; the Socialist Group, for instance, even went so far as to organize a video-conference between certain of its Members in Strasbourg and Mr Alan

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[15] He had already followed the precedent of Mr Lamfalussy when he had attended a hearing of the relevant European Parliament committee prior to his appointment as Mr Lamfalussy's successor as President of the European Monetary Institute.

Blinder, former Vice-President of the US Federal Reserve in Washington, at which he was asked for his views on possible lines of questioning of the ECB nominees. For their part, the ECB nominees also met up in Frankfurt to discuss their handling of the written questionnaires and of the hearings.

The hearings of 7-8 May were held in public and lasted for three hours in the case of Mr Duisenberg, 1¾ hours in the case of Mr Noyer (the candidate for the post of Vice-President) and 1½ hours for the other nominees. Each hearing began with a statement of ten minutes by each nominee, and was then followed by rounds of questioning. In order to make best use of the limited time available a prior rotation system had been agreed upon between the political groups on the basis of their size, and each question (and the single follow-up question that could be posed) had to be made within a period of no more than one minute. The entire transcript of the hearings was then placed in the original languages on the Internet.

Once the hearings were concluded the decision on the candidates by the Committee on Economic and Monetary Affairs and Industrial Policy was taken at an "in camera" meeting in Strasbourg on 11 May, and the final plenary decision on 13 May.

In the end all the nominees were approved by the European Parliament by substantial majorities, including the Spanish candidate who had been the subject of certain initial reservations by some Members of the Socialist Group in particular.

What then did the European Parliament's involvement in the ECB nomination process actually achieve? While some people were dissatisfied with certain conclusions[16], there were a number of positive results. Mr Duisenberg himself, who had only been nominated at the end of a particularly unattractive piece of horse-trading at which he had apparently agreed to stand down before the end of his official term of office in favour of a French nominee, succeeded in getting across the message that there was nothing automatic about this promise and that he retained a personal margin of manoeuvre. He also committed himself to a regular dialogue with the European Parliament, and to appear before its Economic Committee on at least a quarterly basis. Perhaps most importantly of all, Members of the European Parliament (and journalists and any others attending the hearings) were able to get a much clearer idea of the personalities and views of the different candidates, including those who would not normally be appearing in the future in front of a parliamentary committee.

Without the European Parliament's involvement in the process, such knowledge would have been limited to a much more restricted group of insiders. Another - limited but still significant - breach in the traditional EU appointments model had been made.

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16 For example, the very unsatisfactory position that emerged as regards ECB transparency, and publications of its minutes only at a distant time in the future.

THE OUTLOOK FOR FURTHER CHANGE

The EU nomination and appointment model has thus already evolved considerably. The European Parliament will now have to further build on the powers that it has already been granted, most immediately as regards implementation of the modified procedures for appointment of the European Commission that were included in the Amsterdam Treaty. In addition to this, further changes in the EU appointment model might be made as regards other institutions and bodies. The European Parliament has already put forward proposals to this effect, and these will undoubtedly be raised again in the forthcoming IGC.

Evolution in the European Parliament role as regards nomination of the European Commission

The main change in this respect in the Amsterdam Treaty is that the European Parliament is no longer merely consulted on the nomination of the President of the Commission but has to give its formal agreement to the appointment. The Commission President-elect's say in the choice of his or her team of Commissioners has also been reinforced.

While symbolically important, these changes did not necessarily require substantial changes in the European Parliament's interim procedures as they had been developed after the Maastricht Treaty. The European Parliament began, however, two parallel exercises, firstly to revise the relevant sections of its Rules of Procedure in the light of the outcome of Amsterdam[17], and secondly to prepare a report within its Institutional Affairs Committee on the institutional implications of the approval by the European Parliament of the President of the Commission[18].

The main issue of controversy was whether a far-reaching change might be made to the appointment model for President of the Commission within the existing framework of the Amsterdam Treaty, namely by establishing a linkage between the nomination process and the European Parliament election campaign. The idea was that the European Parliament's political groups should each propose the candidate that they would like to see appointed as President of the European Commission and the European election campaign would then help to focus on these candidates, and would thus gain in visibility and relevance. The governments of the Member States would then have to take account of the outcome of the European elections and the preference indicated by European political parties when nominating the candidate for the Presidency of the European Commission by common accord.

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[17] With Mr Corbett, Mr Gutierrez and Ms Palacio as the rapporteurs of the Rules Committee.

[18] Its full title also referred to the independence of the Commission. The committee's first rapporteur was Mr D'Andrea. Upon his appointment to the Italian government he was replaced by Mr Brok.

This idea had been put forward on several occasions in the past[19], but had received most publicity after it had again been suggested by a committee chaired by the then ex-Commission President Jacques Delors. It was then taken up within the European Parliament in the report drawn-up by Mr D'Andrea and subsequently by Mr Brok[20].

The potential advantages of this proposal are very considerable but how it would work in practice is less clear. Would the smaller political groups put forward their own candidates during the election campaign, and then rally behind a major group afterwards, or would they seek to negotiate with the larger groups in advance of the elections? What position would be taken by political parties not yet in a fixed political family within the Parliament? What would happen if there was a conflict between the preferred candidate of the largest political group within the European Parliament after the elections and that of the Member States, for example if the EPP were to become the biggest group within the European Parliament at a time when the majority of European Union governments were in the hands of the centre-left?

These were just some of the issues that led to this idea not having majority support when it was again debated in the context of the European Parliament's post-Amsterdam Rules revision. The committee's rapporteur on this issue (Mr Antoni Gutierrez) had supported the idea in the first draft of the relevant Rules change, although his proposal would have only allowed the possibility of European Parliament candidates being put forward, but would not have mandated it. Even his relatively cautious wording, however, was not followed by the Parliament, which ended up making only relatively minor changes to its existing Rules, in particular to provide for "election" rather than "nomination" of the President of the Commission. The only other substantial change that was mooted was to provide for election of the President by secret ballot rather than by roll-call, but this idea[21], while it received considerable support, was also rejected by the European Parliament.

The appointment of the new Commission in 1999 is thus taking place pursuant to procedures that are quite similar to those used in 1994. The situation has been further complicated by the mass resignation of the Santer Commission in March 1999, and the need to replace it on both an interim and longer-term basis under conditions that were still not entirely clear at the time of writing this paper.

Mr Romano Prodi was put forward as the Member States' candidate for new President of the Commission at the Berlin European Council of 24-25 March 1999. He made an initial statement at the European Parliament's plenary session in April 1999. He

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19 But not interestingly enough in the otherwise highly innovative Spinelli Draft Treaty on European Union, which provided for European Parliament investiture of the Commission as a whole but no European Parliament role at all as regards nomination of the President of the Commission.

20 See above. The final European Parliament resolution was adopted in July 1998.

21 Familiar in certain Member States, such as Germany, but not in others. It's main perceived advantage was that it might have led MEPs to be more independent of the line of their own political party or government.

subsequently appeared before four of the European Parliament's political groups[22], and he made a further statement at the European Parliament's plenary session in May 1999. This was followed by a lengthy debate. On 5 May Mr Prodi was approved by the European Parliament as the new President-elect of the Commission on a vote of 392 in favour to 72 against and 41 abstentions. The accompanying resolution took care to refer to approval of Mr Prodi for the remainder of the (Mr Santer's) mandate.

After the constitution of the new Parliament in July 1999 the European Parliament will have to decide on procedures for the approval of Mr Prodi's new Commission as a whole, both for the interim period until the end of 1999 and for the 1999-2004 term of office. The currently envisaged procedures are for Mr Prodi to present the other Commission nominees and their prospective areas of responsibility at the European Parliament's constitutive session in July 1999, and for the European Parliament's new committees to prepare the hearings at special meetings during the last week of the month. Questionnaires would then be sent out to the Commissioners-designate for reply in the course of August. The hearings of the Commissioners-designate would then take place at the end of August and early September, and the new Commission might then be voted upon at the European Parliament's plenary session in September.

The European Parliament's first exercise of its new post-Amsterdam powers are thus taking place under rather special and unsatisfactory circumstances, and with much less time available than would normally be the case. The European Parliament will have to make the best of the situation, however, and lessons are already being drawn from the European Parliament's experiences in 1994 with the Santer Commission (as well as from the experience of its ECB hearings in May 1998).

Commissioners-designate will now all be expected to reply in advance to written questionnaires (unlike the very variable practice in 1994). There are also likely to be full transcripts of the hearings, and for them to be put on the Internet (neither of which occurred in 1994).

Besides these changes in form, there are also likely to be a number of changes in substance. The written questionnaires are more likely to contain a few common elements. There will also need to be a greater emphasis on the implications of Mr Prodi's proposals for the future structure and workings of the Commission, in order to avoid, for example, such features as the unjustified fragmentation of the European Commission's responsibilities for foreign affairs at the outset of the Santer Commission. More attention may also have to be paid to the content of Mr Prodi's proposed political programme, and its implications in particular policy sectors.

There may also be a more specific linkage between approval of the new Commission and renegotiation of the existing European Parliament/Commission Code of Conduct. The existing Code largely deals with legislative issues, and will probably need to be enlarged to cover wider issues of control (and such sensitive questions as the conditions for the

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22 One more than Jacques Santer!

transfer of confidential information and documents), in order to provide for a Commission which is more democratically accountable to the European Parliament while maintaining a sufficient degree of autonomy.

This will clearly be a challenge for the new Parliament. The ways in which it meets this challenge will condition the changes that will have to be made as regards procedures for the appointment of subsequent Commissions. It is then quite likely that the proposals by Delors and others for candidates to be put forward during European Parliament election campaigns will again be revived in the future.

Possible future changes in appointments to other European Union posts

Besides its changes as regards the President of the Commission, the Amsterdam Treaty did not otherwise modify the EU's appointment procedures as regards other institutions and bodies, in spite of a number of specific (and repeated!) proposals to this effect being put forward within the European Parliament both to extend its existing powers and also to establish them where they do not currently exist at all.

Certain of the European Parliament's requests had dated from the early 1980s. The Spinelli Draft Treaty on European Union had called for judges at the European Court of Justice to be chosen half by the European Parliament and half by the Council, and for the European Parliament to choose the extra judge if there were to be an uneven number of judges. The Draft Treaty on European Union also called for members of the Court of Auditors to be appointed on a similar 50-50 basis between the European Parliament and the Council.

In the run-up to the Amsterdam IGC the European Parliament again revived some of its earlier proposals, for example in its Martin/Bourlanges resolution of 17 May 1995 on "the operation of the Treaty on European Union with a view to the 1996 Intergovernmental Conference", in which (in its paragraph 23(ii)) it called for the European Parliament to have "to give its assent to all nominations to the European Court of Justice, to the Court of First Instance, to the European Court of Auditors and to the Members of the Executive Board of the European System of Central Banks".

There was no response to these requests by the IGC negotiators, although both the Court of Justice and the Court of First Instance reacted to the European Parliament's proposals in their respective IGC contributions of May 1995[23], in which there was an interesting difference of emphasis between the two. The Court of Justice (in paragraph 13 of its report) considered "that a reform involving a hearing of each nominee by a parliamentary committee would be unacceptable". The argument used was that "prospective appointees would be unable adequately to answer the questions put to them without betraying the discretion incumbent upon persons whose independence must, in the words of the Treaties, be beyond doubt and without prejudging positions they might

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[23] Court of Justice report of May 1995 on certain aspects of the implementation of the Treaty on European Union, contribution of 17 May 1995 by the Court of First Instance with a view to the 1996 Intergovernmental Conference.

have to adopt with regard to contentious issues which they would have to decide in the exercise of their judicial function".

The Court of First Instance adopted a less dismissive stance, drawing "the attention of the Conference to the fact that any projected intervention by the Parliament in the procedure for appointing judges should be confined to the initial appointment, for the obvious reason that it cannot extend to a review of the manner in which judicial functions have actually been carried out". Moreover, "any such intervention by the Parliament should be solely for the purpose of ascertaining whether the prospective nominees possess the qualifications required by the Treaty in order to exercise their functions". A footnote cited with approval a working document by Mr B. Donnelly on behalf of the European Parliament's Institutional Affairs Committee[24] which had called for the European Parliament approval process to avoid political considerations and to concentrate on verifying the qualifications required in Articles 223 and 225 (former 167 and 168(a) of the Treaty), namely "that a nominee can demonstrate his or her independence and that they have held high judicial office or can otherwise show outstanding legal abilities".

The above considerations have been cited at some length since they illustrate some of the questions that will have to be tackled as regards the scope of the European Parliament's role in the appointment process if it is to be further extended. The European Parliament is likely to repeat its requests in any forthcoming IGC[25], and there may be new requests as regards such bodies as the European Investment Bank or the EBRD. The case for a formal extension of democratic accountability of these institutions and bodies is a powerful one but the nature of the European Parliament's role will then have to be carefully defined.

In the meantime, and even in the absence of such formal Treaty changes, the European Parliament's most recent revision of its Rules of Procedure[26] has sought to extend the European Parliament's informal role within the context of the existing Treaty as regards certain appointments in the field of foreign policy. The European Parliament recognises that it can have no direct say, for example, in the appointment of the High Representative for the common foreign and security policy pursuant to Article 207(2) TEC or of any special representatives pursuant to Article 18(5) TEU, but in its new Rules 90(b) and 90(c) the European Parliament lays down procedures for the Council to be invited to make statements prior to the appointments being made. Moreover, both the High Representative and any special representative may be invited to appear before the responsible European Parliament committee to make a statement and to answer

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[24] Working document of 19 January 1995 on the composition and appointment of judicial organs and of the Court of Auditors (PE 211.536).

[25] Although it is interesting that the European Parliament retreated a little in its Dury/Maij-Weggen resolution of March 1996, in which it no longer called for European Parliament assent as regards nominations to the ECB.

[26] Revisions adopted by the European Parliament on 11 March 1999 in light of the Amsterdam treaty, rapporteurs Corbett/Gutierrez/Palacio.

questions once they have been appointed, but before they have taken up their duties. In addition, the European Parliament's new Rule 90(e) provides for a nominee to be the Head of a Commission external delegation to be invited to appear before the relevant body of Parliament to make a statement and answer questions.

All the above proposals fall far short of a change in the EU appointment model but are aimed at ensuring wider democratic accountability of such nominees and of newly appointed office-holders.

The European Parliament is thus increasingly reluctant to accept a passive role and its experience of "confirmation hearings" where it does have a formal role in appointments has been leading it to call for an extension of possibilities for dialogue where this does not exist.

A final uncertainty relates to whether there will be demands for an increased role in EU nominations and appointments from other parliaments besides the European Parliament, for instance to provide for prior vetting by national parliaments of a Member State's nominee to the Commission or other post. So far this has not been the case but it is possible that such requests will be put forward in the future.

Concluding remarks

The European Union's appointment model is thus subject to continuing review and change, in order to ensure more democratic accountability and also to ensure that purely national considerations are complemented by wider European questions about the composition, structures and objectives of the EU institutions and bodies in question. It is often alleged that the European Union is remote and inefficient. The on-going changes in the traditional EU appointments model could play a significant part in reducing these concerns, and in making the EU more open, efficient and democratic.