

Analytical Fiche Nr° 7

Appointment and dismissal of the Director
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1) State of play *de jure* and in practice

Appointment

Provisions concerning the appointment of the agency's Director are defined in the constituent act of each agency. The Director is appointed either by the Management Board¹ or by the Council of Ministers or by the Commission.

The table below summarizes the existing procedures for the appointment of the agency's Director:

Agencies		Appointment procedure
Former 1st pillar	Most of the agencies under the former 1 st pillar	Appointment by the Management Board on the basis of the Commission's proposal.
	CPVO	Appointment of the President of the Office by the Council on the basis of the Commission's proposal.
	CEDEFOP and EUROFOUND	Appointment by the Commission on the basis of the Management Board's proposal.
	OHIM	Appointment of the president of the Office by the Council on the basis of the Management Board's proposal.
Former 2nd pillar	EDA	Designation by the Steering Board on the basis of a Head of Agency's proposal (the Secretary General of the Council/High Representative for the Common Foreign and Security Policy)
	ISS	Appointed by the Board from candidates proposed by the Members States to the Secretary General of the Council/HR for CFSP
	EUSC	Appointed by the Board from candidates proposed by the Members States to the Secretary General of the Council/HR for CFSP
Former 3rd pillar	EUROJUST	Appointed by the College of National Members by two-thirds majority on the basis of a list of candidates established by a selection board set up by the College
	CEPOL	Appointed by the Governing Board on the basis of a list of candidates presented by a selection committee
	EUROPOL	Director and Deputy Directors are appointed by the Council after an opinion of the Management Board

¹ "Management Board" stands for the Director's Appointing Authority irrespective to the term used in individual agency's founding regulation.

Detailed provisions concerning individual agencies can be found in Annex.

Process

As indicated above, the Commission is involved in the appointment procedure of Directors of all agencies under the former 1st pillar, except for OHIM. In most cases, the Commission is entrusted with selection of candidates who are appointed by the Management Board (for details see the Annex). In order to define its role at different stages of the selection process, in January 2009 the Commission updated guidelines² aiming at ensuring that a minimum core of rules applying to selection and appointment of Directors of agencies is respected.

When the Commission prepares the short-list of candidates, the above Guidelines foresee the following stages for the appointment procedure:

- elaboration and publication of the vacancy notice including the eligibility and selection criteria,
- pre-selection by a pre-selection Committee,
- assessment by the Consultative Committee on Appointments and assessment centre,
- interview with a member of the College of Commissioners,
- adoption of the short list of candidates by the Commission,
- interviews before the appointing authority,
- possible hearings before the relevant committees of the European Parliament,
- appointment by the appointing authority as a temporary agent on the basis of Article 2a of the Conditions of employment of other servants of the European Communities.

Grading

The abovementioned Guidelines stipulate that the agency's Director is equal to the function of Director foreseen in the Staff Regulations under Annex 1a. It is therefore corresponding to the entry grade for this function at AD14³.

Renewal/extension of term of office

The constituent acts define the length of the Directors' term of office as well as a possibility of the latter's renewal or extension. In general terms, the Directors have a term of office from three to five years (indeed most of them have has a five-year term of office), which may be renewed or extended⁴.

The term "renewal" implies carrying out a new external selection procedure, which is not required in respect to the "extension" of the Director's mandate. In contrast, the extension is based on an evaluation report of the Director's first mandate and has to be justified by the duties and requirements of the Agency.

² Guidelines related to selection and appointment of Directors of the regulatory and executive agencies as well as of the joint undertakings, SEC(2009/27) of 13.01.2009

³ Guidelines are related to selection of new Directors. Directors who are currently in office may occupy different grades, in accordance with the authorised establishment plans of the agencies.

⁴ 16 basic regulations used the word "renewable" or "renewed". 11 basic regulations used the word "extended", "extendable" or "extend".

In order to clarify any ambiguity resulting from the use of the terms "renewed" and "extended", and with a view to harmonising this issue across agencies, the Commission proposed in 2005 an amendment to basic regulations of 18 regulatory agencies⁵. This modification foresaw that the Director's term of office is extendable once after an evaluation. So far the legislator has not been able to reach an agreement on this dossier.

Whatever the word used in the founding regulation ("renewed" or "extended"), the current practice is to extend the Director's terms of offices after a prior and positive evaluation composed of two elements: the Director's appraisal during the first mandate and duties and requirements of the agency.⁶

Moreover, a special provision on the extension of the mandate has been included in the text of founding regulations that were adopted, codified or proposed recently⁷. The founding regulations foresee that prior to the extension of the term of office of the Director, she/he may be invited to make a statement before the competent committee(s) of the Parliament and answer questions from its/their members. Therefore, the extension procedure does not affect the role of the European Parliament.

Dismissal

Provisions concerning dismissal of the agency's Director are defined in the agencies' constituent acts, which foresee that the Director may be dismissed by the Appointing Authority exercising the disciplinary powers over the Director. There are no guidelines establishing a framework concerning the process of dismissal of agencies' Directors prepared by the Commission. Further details concerning provisions on dismissal in founding regulations are provided in Annex.

2) Critical analysis of the issue at hand

Appointment process

Ever since 1975 when the first two agencies were created - EUROFOUND and CEDEFOP - the appointment process of Directors and the actors involved in that process have differed from one agency to another (see table in part 1 of this fiche). The majority of Directors are appointed by the Management Board on the basis of a list of candidates proposed by the Commission. In a minority of cases the appointing authority is the Commission or the Council. In some cases only the candidate selected undergoes a hearing by the Parliament before his/her formal appointment, which means that the appointment of Directors is not always subject to parliamentary scrutiny.

There seems to be no objective reason for having different appointing authorities for agencies' directors. On the contrary, this variety of procedures lacks coherence and is not understood by the stakeholders and the candidates for the post of Director themselves. Furthermore, the difference in the "level" of appointing authorities (board *vs* Commission or Council) is sometimes perceived as implying a difference in terms of legitimacy or may create feelings of dependence *vis à vis* the Institution that appointed the Director. The same applies to the pre-selection phase. In most cases, the Commission is in charge of establishing a shortlist of candidates; there does not seem to be any justification for not following the same procedure in

⁵ COM(2005)190 final of 13.05.2005

⁶ Since 2005, 9 Directors were confirmed and carried out a second mandate.

⁷ ETF (Article 10 of Regulation 1339/2008), FRA (Article 15(3) of Regulation 168/2007), EASO (Article 30 of Regulation 439/2010), Agency for Operational Management of SIS II, VIS and EURODAC (Article 15 of Commission proposal, COM (2009) 293 final)

all agencies. On the contrary, the formal pre-selection procedure as put in place by the Commission for appointments of agencies' directors guarantees a rigorous evaluation of candidates and a high level of independence.

Grading

The former Commission guidelines (valid from 2005 to beginning 2009) foresaw grading at AD13, AD14 or AD15, depending on the size and nature of responsibilities of the agency. At that time, the grade of the agency Director was decided on an ad hoc basis. This system had to be abandoned because of the drawbacks of the so called "threshold approach". In fact, every single appointment procedure was accompanied by endless negotiations concerning the appropriate threshold (and therefore, the grade of appointment), due to lack of objective criteria. This is why in 2009 this system was abandoned in favour of the present approach of "one grade for all selection procedures".

Since 2009, according to the Commission guidelines Directors are recruited at grade AD14⁸. This grade corresponds to the post of Director as indicated in Annex IA of the Staff Regulations. This "flat" approach presents the advantage of clarity, but has the disadvantage of being more rigid than the system previously in use. However, this level of recruitment can be justified by two complementary elements: it is in line with the practice of the Commission and of the other institutions to launch the external selections of directors in AD 14, independently of the size of the directorate; depending of the margin given by the establishment plan, it saves some room of manoeuvre for a possible reclassification in AD 15 in the course of the director's mandate or in case of an extension of his mandate.

Renewal/extension of term of office

This topic entails several issues.

- Firstly, the question whether an Agency Executive Director's mandate should be renewable at all. It may be argued that the position of agency Director is a sensitive one for which renewals/extensions are not appropriate, because they may affect the independence of the director. However, only one basic regulation mentions no possibility for the renewal of the Executive Director (ENISA). The rest of the agencies' founding regulations foresee the possibility for the appointing authority to renew the mandate of the Executive Director. In addition, it should be considered that in those cases where the Director has performed well, the renewal of his/her mandate would be beneficial for the agency, especially in terms of continuity of work.
- A second issue concerns the procedure to be followed in case of renewal. In particular, whether the incumbent director should be renewed only on the basis of his/her merits or whether he/she should be systematically put in competition with external candidates. On the one hand, it can be considered that an open competition would add transparency. On the other hand, it should be reflected whether external candidates would, in practice, have real chances in those cases where the agency's Management Board considers that the incumbent Director has performed well.
- A third issue concerns directors who decide after two mandates to participate in the new (external) selection procedure. There is no legal provision that prevents them to apply and, if considered as the most suitable candidate, to be appointed for a third mandate. Besides the considerations in terms of sensitivity of post (see above), this situation gives rise to an

⁸ Although the EIGE Director was recruited at grade AD13

awkward practical consequence: very often, the former director was reclassified (promoted) in his/her function, but the new appointment can occur only at the basis grade (therefore leading to a downgrade, which is often source of frustrations).

- A fourth issue concerns the aggregate duration of the director mandates (initial and renewed mandates). On this point agencies' legal basis are not harmonized, and there are no common rules for limiting the maximum aggregate duration of Directors mandate, as it is the case for sensitive posts in other institutions. There are pro's (equal treatment of all agencies' Directors) and con's (need to take into account the specificities of each agency) in having a uniform rule. The sensitivity of Directors' posts should, in any case, imply a maximum aggregate duration for their mandate.
- More important seems to be the respective lengths of the initial mandate and its renewal. Also here, no common rules exist. In some cases, the second mandate may only be identical or shorter than the first mandate, but most founding regulations do not stipulate such a restriction. It appears important to have a reflexion on the relative duration of the renewal.
- Finally, the question of the procedure for the renewal/extension of a mandate without publication. In what concerns extension, the initiative normally rests with the appointing Authority⁹, which must decide if it is appropriate to proceed with an extension of the mandate. Concerning the assessment of the opportunity to extend the mandate, there is to date only an administrative practice. This consists of a two-fold evaluation, focussing on the Director's appraisal during the first mandate and on duties and requirements of the Agency for the next years. On the basis of these elements, the appointing authority decides whether to extend the mandate of the Director. This practice would deserve being formalised because in certain agencies Directors showed their hostility to be assessed.

Reclassification

There is no legal framework for the reclassification at a higher grade of agencies' Directors. Also, the administrative practice is very limited to date. Despite this lack of legal basis, the pressure to reclassify Directors is particularly strong, both from boards and Directors themselves. It therefore seems urgent to codify this matter.

Dismissal

The agencies' constituent acts generally stipulate very little about the procedure to dismiss the Executive Director, and in some cases no provisions at all are foreseen. This lack of specific provisions means that the appointing authority does not have any guidance on how to dismiss an Executive Director.

⁹ In the case of the GSA, the basic act does not say explicitly who has the authority to decide on the renewal of the term of office. If an analogy to the initial nomination was to be applied, the initiative would be with the Commission to propose the renewal and to the Board to decide on this.

ANNEX TO ANALYTICAL FICHE N°7

1. Agencies under the former 1st pillar whose Director is appointed by the Management Board or the Council on the basis of the Commission proposal.

Agency	Title and legal base	Appointment and duration of term of office	Dismissal
<p>ACER</p> <p>Agency for the cooperation of Energy Regulators</p>	<p>Director</p> <p>Article 16 of Regulation 713/2009</p>	<p>Appointed by the Administrative Board following a favourable opinion of the Board of Regulators, from a list of at least three candidates proposed by the Commission, following a public call for expression of interest.</p> <p>Hearing before the competent committee(s) of the European Parliament.</p> <p>5-year period extendable for a maximum 3-year period on a proposal from the Commission, after an evaluation carried out by the Commission, taking into account the opinion of the Board of Regulators.</p>	<p>Dismissed by the Administrative Board, after a favourable opinion of the Board of Regulators.</p>
<p>EEA</p> <p>European Environment Agency</p>	<p>Executive Director</p> <p>Article 9 of Regulation 401/2009</p>	<p>Appointed by the Management Board on a proposal from the Commission.</p> <p>5-year term of office, renewable.</p>	<p>No specific provisions.</p>
<p>ETF</p> <p>European Training Foundation</p>	<p>Director</p> <p>Article 10 of Regulation 1339/2008 (recast)</p>	<p>Appointed by the Governing Board from a list of at least 3 candidates submitted by the Commission.</p> <p>Hearing before the competent committee(s) of the European Parliament.</p> <p>5-year period extendable for a maximum 3-year period on a proposal from the Commission and after an evaluation.</p>	<p>Dismissed by the Governing Board on a proposal from the Commission.</p>
<p>EMCDDA</p> <p>European Monitoring Centre for Drugs and Drug Addictions</p>	<p>Director</p> <p>Article 11 of Regulation 1920/2006 (recast)</p>	<p>Appointed by the Management Board on a proposal from the Commission.</p> <p>Hearing before the European Parliament.</p> <p>5-year term of office, renewable.</p>	<p>No specific provisions.</p>

EU-OSHA European Agency for Safety and Health at Work	Director Article 11 of Regulation 2062/94	Appointed by the Governing Board on a proposal from the Commission. 5-year term of office, renewable.	No specific provisions.
CPVO Community Plant Variety Office	President Article 43 of Regulation 2100/94	Appointed by the Council from a list of candidates proposed by the Commission after obtaining the opinion of the Administrative Council. Maximum 5-year term of office, renewable.	Dismissed by the Council on a proposal from the Commission and after obtaining the opinion of the Administrative Council.
CdT Translation Centre for the Bodies of the European Union	Director Article 9 of Regulation 2965/94	Appointed by the Management Board on a proposal from the Commission. 5-years term of office, renewable.	No specific provisions.
EFSA European Food Safety Authority	Executive Director Article 26 of Regulation 178/2002	Appointed by the Management Board from a list of candidates proposed by the Commission after an open competition Hearing before the European Parliament before appointment. 5-years term of office, renewable.	Dismissed by a majority of the Management Board.
EMSA European Maritime Safety Agency	Executive Director Article 16 of Regulation 1406/2002	Appointed by the Administrative Board. The Commission may propose one or more candidates. Decision taken by a 4/5 majority. 5-years term of office, renewable.	Dismissed by the Administrative Board according to the same procedure (as appointment).
EASA European Aviation Safety Agency	Executive Director Article 39 of Regulation 216/2008	Appointed by the Management Board on a proposal from the Commission. Decision taken by a ¾ majority. Possible hearing before the competent committee(s) of the European Parliament. 5-years term of office, renewable once.	Dismissed by the Management Board on a proposal from a Commission.
ENISA	Executive Director	Appointed by the Management Board from a list of candidates	Dismissed by the Management

European Network and Information Security Agency	Article 7 of Regulation 460/2004	proposed by the Commission after an open competition. Hearing before the European Parliament. Term of office: up to 5 years.	Board.
ECDC European Centre for Disease Prevention and Control	Director Article 17 of Regulation 851/2004	Appointed by the Management Board from a list of candidates proposed by the Commission after an open competition. Hearing before the European Parliament. 5-years term of office, extendable once for a period of up to 5 years.	Dismissed by the Management Board in accordance with the same provision (as appointment).
ERA European Railway Agency	Executive Director Article 31 of Regulation 881/2004	Appointed by the Administrative Board. The Commission may propose a candidate or candidates. Decision taken by a 4/5 majority. 5-years term of office, renewable once.	Dismissed by the Administrative Board according to the same procedure (as appointment).
EMA European Medicines Agency	Executive Director Article 64 of Regulation 726/2004	Appointed by the Management Board from a list of candidates proposed by the Commission after a call for expression of interest. Statement to the European Parliament: "Before appointment, the candidate nominated by the Management Board shall be invited forthwith to make a statement to the European Parliament and to answer any questions put by its Members." 5-year term of office, renewable once.	Dismissed by the Management Board on a proposal from the Commission.
GSA European GNSS Supervising Authority	Executive Director Article 7 of Regulation 1321/2004	Appointed by the Administrative Board from a list of at least 3 candidates proposed by the Commission. Decision taken by a ¾ majority. The European Parliament or the Council may call upon the Executive Director to submit a report on the performance of his duties. 5-year term of office, renewable once.	Dismissed by the Administrative Board according to the same procedure (as appointment).
FRONTEX	Executive Director	Appointed by the Management Board from a list of candidates	Dismissed by the Management

European Agency for the Management of Operational Co-operation at the External Borders	Article 26 of Regulation 2007/2004	proposed by the Commission after a publication of the post. Decision taken by a 2/3 majority. 5-year term of office, extendable once for up to 5 years.	Board according to the same procedure (as appointment).
CFCA Community Fisheries Control Agency	Executive Director Article 30 of Regulation 768/2005	Appointed by the Administrative Board from a list of at least 2 candidates proposed by the Commission after a selection procedure. 5-year term of office, extendable once.	Dismissed by the Administrative Board at the request of the Commission or 1/3 of AB members.
ECHA European Chemicals Agency	Executive Director Article 84 of Regulation 1907/2006	Appointed by the Management Board from a list of candidates proposed by the Commission after an open call for expression of interest. Decision taken by a 2/3 majority. Statement before the European Parliament: "Before being appointed, the candidate selected by the Management Board shall be invited as soon as possible to make a statement before the European Parliament and to answer questions from Members of Parliament." 5-year term of office, extendable once for a period of up to 5 years.	Dismissed by the Management Board according to the same procedure (as appointment).
EIGE European Institute for Gender Equality	Director Article 12 of Regulation 1922/2006	Appointed by the Management Board from a list of candidates proposed by the Commission after an open competition. Declaration before the Parliamentary Committee: "Before being appointed, the candidate selected by the Management Board shall be asked to make a declaration before the competent committee(s) of the European Parliament and answer questions from its/their members." 5-year term of office, extendable once on a proposal from the Commission and after an evaluation.	Dismissed by the Management Board

FRA Fundamental Rights Agency	Director Article 15 of Regulation 168/2007	Appointed by the Management Board in accordance with a co-operation procedure on the basis of a list of candidates drawn up by the Commission. Statement to the Council and the European Parliament: "Before being appointed, the candidate selected by the Management Board shall be invited as soon as possible to make a statement before the European Parliament and to answer questions from Members of Parliament." 5-year term of office, extendable once for a period of no more than 3 years after an evaluation.	Dismissed by the Management Board on the basis of a proposal of a 1/3 of its member or of the Commission.
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2. Agencies under the former 1st pillar whose Director is appointed by the Commission on the basis of a proposal from the Management Board.

Agency	Title and legal base	Appointment and duration of term of office	Dismissal
CEDEFOP European Centre for the Development of Vocational Training	Director Article 6 of Regulation 337/75	Appointed by the Commission from a list of candidates submitted by the Governing Board. 5-years term of office, renewable.	No specific provisions.
EUROFOUND European Foundation for the Improvement of Living and Working Conditions	Director Article 8 of Regulation 1365/75	Appointed by the Commission from a list of candidates submitted by the Administration Board. 5-year term of office, renewable.	No specific provisions.

3. Agencies under the former 1st pillar whose Director is appointed without intervention from the Commission.

Agency	Title and legal base	Appointment and duration of term of office	Dismissal
OHIM Office for Harmonisation in the Internal Market	President Article 125 of Regulation 207/2009	Appointed by the Council from a list of at most 3 candidates prepared by the Administrative Board. Maximum 5-year term of office, renewable.	Dismissed by the Council on proposal of the Administrative Board.

4. Agencies under the former 2nd pillar.

Agency	Title and legal base	Appointment and duration of term of office	Dismissal
EUSC European Union Satellite Centre	Director Article 8 of Council Joint Action of 20 July 2001	Appointed by the Board from candidates proposed by Member States to the SG/HR. 3-year term of office, extendable for a period of 2 years.	No specific provisions.
ISS European Union Institute for Security Studies	Director Article 6 of Council Joint Action of 20 July 2001	Appointed by the Board from candidates proposed by the Member States to the SG/HR. 3-year term of office, extendable for a period of 2 years.	No specific provisions.
EDA European Defence Agency	Chief Executive Article 10 of Council Joint Action 2004/551/CFSP of 12 July 2004	Designated by the Steering Board on a proposal of the SG/HR. Chief Executive operates under authority of the Head of Agency. 3-year term of office extendable for a period of 2 years.	No specific provisions

5. Agencies under the former 3rd pillar.

Agency	Title and legal base	Appointment and duration of term of office	Dismissal
Eurojust The European Union's Judicial Co-operation Unit	Administrative Director Article 29 of Council Decision 187/2002	Appointed unanimously by the College. The latter sets up a selection board that establishes a list of candidates following a call for applications. 5-year term of office, renewable.	Dismissed by the College by a 2/3 majority.
Cepol European Police College	Director Article 11 of Council Decision 2005/681	Appointed by the Governing Board from a list of at least 3 candidates presented by a selection committee. 4-year term of office, extendable once.	Dismissed by the Governing Board.
Europol European Police Office	Director Article 38 Council decision 2009/371/JHA	Europol shall be headed by a Director appointed by the Council, acting by qualified majority, from a list of at least three candidates presented by the Management Board, for a four-year period. 4-year term of office, may be extended once, for maximum four years.	Dismissed by the Council by a 2/3 majority according to the same procedure (as appointment).