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# Watching EU watchdogs assessing the accountability powers of the European Court of auditors and the European Ombudsman

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## ABSTRACT

The paper provides a comprehensive assessment of the accountability capacity of the two main EU watchdog institutions. The overarching research question is: how powerful are these watchdog institutions in holding the EU executive to account? The paper presents an expanded analysis of the formal and organisational accountability powers of these EU watchdogs and how these are exercised, based on an in-depth case study. We apply an assessment framework of accountability powers developed previously. Both watchdogs have comparable formal powers when it comes to accountability. Despite these similarities, the EO and the ECA differ in their organisational power and in the exercise of their powers. In the organizational dimension, there are differences regarding leadership. In the exercise of power dimension, the EO has increasingly developed standards for good practice with an emphasis on transparency and principles of good administrative behavior, while also using its networks to further improve complaint handling.

## KEYWORDS

Watchdog institutions; accountability index; ECA; EO; auditing; ombudsman

## Assessing the power of EU watchdogs

EU accountability is a major concern, both in politics and in academia. The shift from national, state-based policy-making to transnational and multilevel European governance has been accompanied by a growing concern about how to organize democratic accountability in the complex multi-level web of European governance (Bovens, Curtin, and Hart 2010, 5). There are currently no less than 10 executive bodies and 40 agencies operating at the EU level. To whom are these accountable? The multilevel character of the EU is particularly relevant in this respect because it represents a complex set of accountability relations. EU executive power is dispersed across a wide set of actors, including the national governments, the European Commission, the Council, the European Council, the ECB and the EU agencies (Curtin 2009).

The good news is that the landscape of accountability institutions in the EU is getting denser (Wille 2016). The EU multilevel system, just like other modern polities, stores a multiplicity of accountability arrangements, multiple forums, horizontal and vertical

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accountability mechanisms (Bovens, Curtin, and Hart 2010). The establishment of ‘watchdog’ institutions, such as an ombudsman, auditors, an integrity office, ethical committees, point to an expansion of executive accountability.

As these watchdogs gradually have become more salient in the EU accountability landscape, this also calls for more knowledge of the institutional and operational elements that affect their effectiveness as accountability institutions. There is a substantial literature that describes and analyses the operations of specific types of watchdogs at the national (Barzelay 1997; Pollitt and Summa 1997; Wilkins 2017), at the international (Dolan and Bennett 2019; Erkkilä 2020) or the EU level (Kostadinova 2015).

However, fewer studies have focused on evaluating the *accountability* powers of these institutions (Wilkins 2017; Van Acker and Bouckaert 2019). Therefore, this paper systematically assesses two of the main independent oversight institutions in the EU context, the European Court of Auditors (ECA) and the European Ombudsman (EO). Audit institutions and ombudsmen are the two quintessential watchdogs for the public sector (Gay and Winetrobe 2008). Traditionally, the core function of auditors is the financial audit, a technical matter of checking financial transactions and procedures. Increasingly, audit institutions also focus on the control and performance of the public sector at a more aggregate level (Wilkins 2015). The core role of the ombudsman is to investigate citizens’ complaints about maladministration and to secure the rights of citizens in dealing with the government. Yet, when ombudsmen start investigations into government conduct on a more aggregate level they enter the arena of the SAls (Van Acker and Bouckaert 2019, 57).

Our principal aim in this paper is to conduct a comprehensive assessment of the accountability capacity of the two main EU watchdog institutions operating in the same multilevel context. The overarching research question is: how powerful are these watchdog institutions in holding the executive to account? The paper presents an expanded analysis of the formal and organisational accountability powers of these EU watchdogs and how these are exercised, based on an in-depth case study. We apply an assessment framework of accountability powers developed previously (Bovens and Wille 2020). With this we intend to contribute to the larger empirical project of measuring accountability powers by using these new tools to evaluate the two watchdogs.

Empirical studies addressing how the post-Lisbon era has affected EU accountability, have focused thus far mainly on the role of legislative, judicial and regulatory institutions, but overlooked the influence of the EU watchdogs. By providing policy recommendations and by cooperating with the European Parliament and the European Court of Justice, the two watchdogs perform an important supplementary function in the EU’s accountability landscape. This paper systematically assesses the strength of their accountability powers vis a vis the EU executive.

We start our theoretical section with a description of watchdog institutions and how the ECA and the EO fit within the broader EU accountability landscape. This is followed by a framework for assessing the multidimensional accountability powers. This framework is then applied to assess the ECA and the EO. Data were generated by means of a study of secondary sources and analyses of annual reports and other relevant documents. The scope of the analysis is mainly descriptive and not explanatory.

## Watchdog accountability powers

### *EU Watchdogs moving center stage*

Watchdogs are important accountability forums. However not all accountability forums are watchdogs. Courts and parliaments, for example, are very important for legal and political accountability, yet they perform other, equally important, roles as well, such as providing adjudication, or drafting legislation. In this paper we limit the term *watchdog* to accountability forums that are purely engaged in second order governance tasks, that is delivering accountability by overseeing and controlling executive actors in the implementation of their first order governance tasks (Tömmel 2016). We follow the definition of Wilkins (2015), who states that watchdogs are ‘statutory agencies that have a primary function of scrutinizing the actions of the public sector and providing reports independent of those scrutinized.’ They can do so by providing recommendations, solutions, or by administering sanctions. Ombudsmen, auditors, and anti-corruption agencies are primarily watchdog institutions, courts and parliaments are not.

The European Court of Auditors (ECA) and the European Ombudsman (EO) are the main EU watchdogs. Both institutions operate independently, and both play a role in performance and integrity management, and in the accountability of the EU executive (Wilkins 2019). Both belong to the class of major EU institutions (Kourtikakis 2010, 29–30). They have the status of ‘institutions of the union’ in the EU Treaties, which makes them legally equivalent to the European Commission, the EP, or the European Court of Justice. The ECA and the EO are principal institutions of the EU which were not put in place by the Treaties of Paris and Rome. They were added to the European Communities by separate treaties many years later.

The European Court of Auditors was established in 1977, but assumed the status of a full institution of the Union when the Treaty on European Union came into operation in 1993 (Laffan 1999, 2003, 764–765). As the EU’s external auditor, also called the ‘guardian of EU’s finances’, it is to carry out the audit of the EU finances and expected to contribute to improving EU financial management and report on the use of public funds (Aden 2015; Sánchez-Barrueco 2015; Stephenson 2015, 2016, 2017).

The institution of the European Ombudsman was established in 1993. The core mandate of the EO is its role as a complaint handler: it is the main mechanism for providing redress when things go wrong. In this role the EO ensures that European administrative bodies and those who exercise administrative functions make fair and just decisions, assuring both minimal legal standards (the rule of law) and going beyond them (good administration) in protecting citizens from abuses of power. The EO has an important role in the administrative and political accountability of the EU (Magnette 2003; Trondal and Wille 2017; Hofmann & Ziller 2017; Neuhold and Nastase 2017; Inglese and Binder 2018; Vogiatzis 2018).

While these watchdog institutions have been part of EU’s institutional setup for a while, ‘they recently left the periphery of the administrative landscape and moved closer to center-stage’ (Pierre and De Fine Licht 2019, 1). Four developments have contributed to this increased prominence of these watchdogs in the EU’s accountability landscape. First, watchdog institutions ‘have become more important as the programs and commitments of EU have become more complex and specialized. Scrutiny of EU governance requires increasingly the input of sophisticated “accountability professionals”’ (Posner and Shahan 2014, 488).

Second, the role of watchdogs has been strengthened because of the stronger emphases on integrity in the way public resources are used, and on accountability to indicate that their uses are properly authorized, in combination with the growing importance of the ‘value for money’ movement (Pierre & De Fine Licht 2017; Posner and Shahan 2014). Audit institutions and ombudsmen are increasingly seen as advocates of good governance, promoting best practices, institutional learning, and transparency and accountability in government programs and actions. Likewise, the emergence of international networks of ombudsmen and audit institutions and the establishment of professional standards, international norms and other soft law regulation has contributed to the increased salience of these type of watchdogs. In the EU, the strengthened political attention to budget control (Cipriani 2017) and the salience of good governance and transparency (Vogiatzis 2018) have made the role of the EO and the ECA more prominent as part of the evolving network of accountability institutions (Harlow and Rawlings 2007; Wille 2016).

Third, the increased power of the European Parliament has spilled over and enhanced the role of the EU watchdogs. The work of auditors, ombudsmen and integrity offices increasingly complements the oversight functions of the established branches of government. Some qualify watchdogs as satellites of parliaments (Wilkins 2015). Others even see them as an indication of the rise of a ‘fourth branch’ of government alongside the legislature, executive, and judiciary (Head 2012, 7). The wider institutional setting enables these watchdogs to operate effectively only to the extent that they are permitted to conduct their work, and their reports are used to promote accountability (Santiso 2006; Stapenhurst, Jacobs, and Cedric Eboutou 2019). The EP depends on the ECA and the EO providing reliable information, while the watchdogs depend on the EP to provide a public forum for presenting and discussing their reports and recommendations.

Finally, the enhanced role of watchdogs is linked to the emergence of an ever-denser international institutional landscape in which these two watchdogs operate. The EU’s complex multi-level network governance structures, cutting across decisional levels, has contributed to a *mélange* of overlapping, competing and complementary powers and responsibilities, as well as a diversified set of accountability relationships. This has led to a mixture of accountability arrangements operating at European, national and sub-national levels. The watchdogs increasingly play a role in this mixed order of vertical accountability arrangements and practices at distinct levels in the EU (Aden 2015).

### ***Watchdog accountability powers: three dimensions<sup>1</sup>***

When are these watchdog institutions doing well? Good governance requires watchdogs ‘with sharp ears and a good bark’ (Kuris 2015). Elsewhere (Bovens and Wille 2020) we have developed a watchdog accountability power framework. Accountability power is the ability of a forum to hold executive actors to account. In other words, what needs to be assessed is the strength of the forum in its relation to the actor. A watchdog has strength if it has the authority to contribute to account holding, if it has the resources to hold the executive to account, and if it actually employs relevant account holding activities. This framework provides a systematic evidence base to assess external accountability arrangements and their effectiveness. It is based on three dimensions which are listed in [Tables 1–3](#).

**Table 1.** Elements of formal watchdog powers.

Element	Description	Literature
Formal autonomy	The extent to which the institution is legally recognized as autonomous.	Blume and Voigt 2011; Gustavson and Sundström 2016.
Institutional independence	The extent to which the board is free from interference by the executive	Wonka and Rittberger 2010: 738–739; Blume and Voigt 2011: 219; Koop and Hanretty 2018.
Agendasetting autonomy	The extent to which the watchdog has the discretion to investigate anything which falls within its mandate.	Wonka and Rittberger 2010: 739; Pierre and de Fine Licht 2019: 230.
Information power	The extent to which the institution has the statutory power to obtain the information necessary for executing its mandate.	Bovens 2007.
Questioning power	The extent to which the institution has statutory powers to question officials and witnesses.	Bovens 2007.
Sanctioning power	The extent to which the institution has formal powers to sanction actors when it finds irregularities.	Bovens 2007; Kostadinova 2015: 11.

First of all, the accountability power of watchdogs depends on their *formal powers* to hold actors to account. These powers are likely to be codified in laws, treaties, regulations, decrees, or statutes. The remit of the watchdog determines its ability to set its own agenda and to act accordingly. There is consensus in the literature that independence and investigation are essential attributes of watchdog institutions.<sup>2</sup> In order to measure this dimension, the index looks at six elements which are listed in Table 1.

Secondly, it is a matter of *organisational powers*. An effective system of checks and balances not only implies that accountability forums possess the formal powers to oversee executive, but also that they have the organisational capacity to implement these accountability powers. To assess the organisational power, we look at the following organisational features (see Table 2): does the watchdog operate on the basis of a clear mission that is linked to achieving accountability, and a strategy for reaching this goal? Does it have the necessary resources to implement their formal powers? Does it have sufficient budgets and qualified personnel, and can it rely on professional networks? An

**Table 2.** Elements of organisational watchdog powers.

Element	Description	Literature
Mission & strategy	The extent to which the institution has outlined its objectives through a clear mission and strategy.	Mulgan 2014; Wilkins 2017.
Staff	The extent to which the institution has sufficient and qualified staff at its disposition to execute its mandate.	Mulgan 2014; Wilkins 2017; Gustavson and Sundström 2016: 8–9; Brenninkmeijer et al. 2017.
Size of budget	The extent to which the budget of the institution matches the task at hand, given the size of the actor it has to control.	Mulgan 2014; Wilkins 2017.
Network Integration	The extent to which the institution participates in established networks that enhance its capacities.	Harlow and Rawlings 2007; Mazur, 20–17; Wilkins 2015; Wille 2016.
Leadership structure	The extent to which the leadership structure enables effective leadership.	Stephenson 2017.
Leadership composition	The extent to which the board members have the appropriate professional qualifications.	Wonka and Rittberger 2010: 738–739; Blume and Voigt 2011: 219.

**Table 3.** Elements of the exercise of watchdog powers.

Element	Description	Literature
Productivity	The extent to which the watchdog makes use of its de jure powers at all.	Barzelay 1997; Pollitt and Summa 1997.
Effectiveness	The extent to which its recommendations and reports lead to a follow up by the executive actor.	Van Acker and Bouckaert 2019; Van Looche and Put 2011; Bonollo 2019.
Salience	The extent to which the watchdog plays a vital role in keeping executive agencies accountable.	Barzelay 1997; Pollitt and Summa 1997.
Credibility	The extent to which the forum is recognized as credible.	Busuioac & Lodge , 2017; Funnel et al. 2016.
Creativity	The extent to which the institution makes creative use of its powers.	Stuhmcke 2012.
Impact	The extent to which its activities lead to improvement of accountability practices.	Pierre and de Fine Licht 2019; Kostadinova 2015.
Visibility	The extent to which the institution is visible in the relevant political and policy arenas	Gustavson and Sundström 2016.

additional organisational factor that determines its capacity is the quality of its leadership. Is the leadership able to steer and support the watchdog to maximize its oversight role?

Thirdly, what matters most of all, is the actual *exercise of these powers*. It is not enough to examine formal rules and organisational capacity; these should be complemented by output, or even outcome-based indicators (Kaufmann and Kraay 2007, 9). Much of their accountability power depend on how watchdogs interpret and exercise their mandate, on the initiatives they undertake, and the effectiveness of carrying out their powers. The effectiveness of a watchdog depends also on whether it is able to go beyond its traditional formal oversight role and link its work into the executive's policy making and policy decisions. By finding innovative ways to achieve their goals, watchdogs can help to improve their salience and credibility, and increase their impact on executive policies and programs. This dimension of accountability consists of seven elements which are listed in Table 3.

## Research methods

### *A case study of parallel watchdogs*

With the accountability power framework, we have tried to identify the major dimensions of *structural* variables that are present to some extent in all watchdog arrangements (cf. Ostrom 2011). Our aim is to assess the accountability powers of these *parallel EU watchdogs*. Both the ECA and the EO share a common focus and operate independently, and both increasingly play a role in performance and integrity management, and in the accountability of the executive (Wilkins 2019). Both are involved in horizontal accountability relations, and work closely with the European Parliament; and both operate in a multi-level administrative and accountability system.

### *Operationalization and quantification*

The three dimensions for watchdog accountability powers are measured using indicators that were collected in the same way for the two EU watchdogs. We have used a document analysis and relied on unobtrusive information found in treaties, protocols, on websites and in the annual reports of 2018 (and earlier) of the EO and the ECA and of the EP.<sup>3</sup> We

have used this information from different sources to compile data on the accountability power of the two EU institutions. Numerical information, displaying the development of distinct aspects of watchdog power in [Figures 4–6](#), was used as a basis for assessing and illustrating the exercise of accountability power.

For the measurement it is needed to clearly define and operationalize every feature of the dimensions (Adcock and Collier 2001). The documents provided the material for a qualitative description of these items. This qualitative information was used to produce the quantitative data. The collected qualitative descriptions are used as the base for a score: according to the fuzzy logic (Ragin 2008) in which the distinct features assume a value between 0 and 1. We have coded each watchdog according to a coding sheet shown in [Table A4](#) in the Appendix. This Table illustrates the coding of legal independence of the EO. A value of 0 was assigned to cases showing no legal guarantee for autonomy, and 1 was assigned for autonomy fully guaranteed in constitution or treaties. Scores of 0.25, 0.5, and 0.75 were assigned for different in-between forms of autonomy. The full overview of all indicators and measures is provided in [Tables A1–A3](#) in the Appendix. Two members of the research team undertook the coding procedure independently.

## Assessing the accountability powers of the ECA and EO

### *The formal powers of the EO and the ECA*

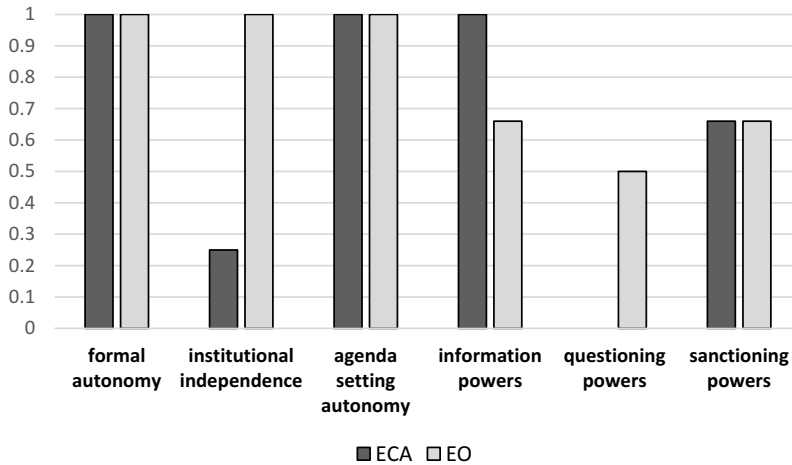
We have six indicators that measure formal powers. The assessment of these indicators was based on the relevant treaties and legal documents. The comparisons are presented in [Table 4](#) and the scores in [Figure 1](#).

Both the ECA and the EO have a very high level of formal autonomy, as their legal mandates are based on the EU Treaty. The European Court of Auditors has been established already in 1977, but the Maastricht Treaty provided it with full legal status. The legal

**Table 4.** Formal powers of EO AND ECA.

	EO 2018	ECA 2018
Formal autonomy Institutional independence	Autonomy is treaty based. TFEU, 228. The EP has the powers to (re)appoint the EO. TFEU, 228 and art.6 Statute.	Autonomy is treaty based. TFEU, 285–287. The Council of the EU appoints each member of ECA following nomination by their respective national government. TFEU, 286, 2.
Agenda setting autonomy	Discretion to investigate anything which falls within its mandate. TFEU, 228, 1 and art.3, 1 Statute.	Discretion to investigate anything which falls within its mandate. TFEU, 287,4.
Information power	A right to access the information it needs to execute its mandate. Statute, 3 sub 2 & 3.	May access and search premises and ICT and retrieve any dossiers and data against the will of the executive body. TFEU, 287,3.
Questioning power	The right to subpoena officials and other servants. Statute 3, 2.	No formal power to subpoena and question officials.
Sanctioning power	The EO cannot impose formal sanction. If proposed recommendations are not accepted by the executive, the EO can send special report to the EP. Statute 3, sub 4, 6, 7.	The ECA cannot impose formal sanctions itself, but it can inform the EP or the Council who have formal sanctioning powers (budgetary or disciplinary) towards a variety of EU executive agencies and member states.





**Figure 1.** The formal powers of ECA and EO in 2018.

mandate of the ECA is to identify error and fraud in EU budgetary spending. The institution of the European Ombudsman was established by the Maastricht Treaty. The Treaty empowers the EO to investigate complaints about maladministration by EU institutions and bodies.

The ECA and EO differ in their formal independence. The members of the ECA are appointed by the Council, after consultation of the European parliament, in accordance with a proposal made by the executive of each member state. This implies that the executive, both at the national and at the EU level, has a strong and even final say in who is running this watchdog. The Ombudsman, on the other hand, is elected by the European parliament.

They also differ with regard to information and questioning power. The ECA has not only the right to request any documents it requires necessary to perform its duties, but it may also perform the audit on the spot. However, unlike the EO, it has no formal power to hear witnesses. The EO has more questioning powers. The Statute of the Ombudsman obliges officials and other servants of the EU institutions to testify at the request of the Ombudsman, although, unlike in court proceedings, they do not swear an oath.

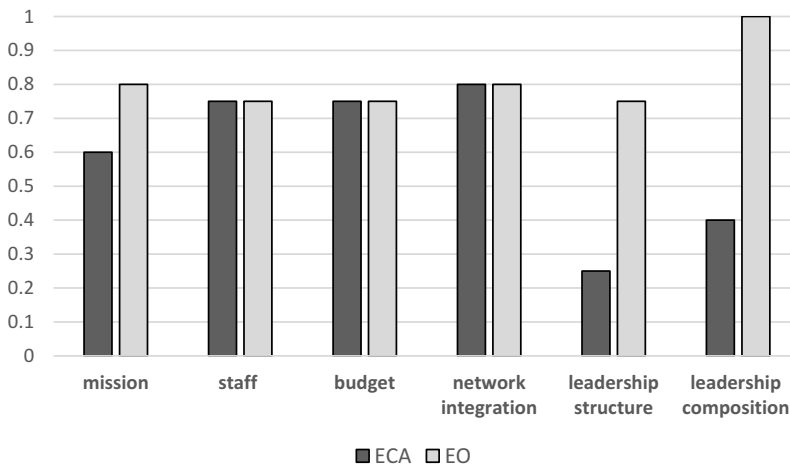
Both institutions score lower on sanctioning powers. If the EO and the ECA find a deficiency within the activities of the (financial) administration, they cannot impose sanctions or obligations on individual officials or institutions. The decisions and advise of the EO and the ECA are not legally binding and cannot be enforced. They therefore need to find a friendly solution on the issue with the institution in question. If that does not work, they can inform the European Parliament or the Council, or resort to naming and shaming via the media.

### ***The organisational powers of the EO and the ECA***

The results of the analysis are presented in [Table 5](#) and the scores are displayed in [Figure 2](#).

**Table 5.** Organisational powers of EO and ECA.

	EO 2018	ECA 2018
Mission & Strategy	The EO has issued a clear and comprehensive strategy document in 2014. The document lists four key priorities for the period 2014–2019.	The ECA has a mission statement on its website and has issued in 2017 an explicit strategy for 2018–2020. The outcomes of the Strategy were not always clearly articulated and systematically broken down into strategic objectives (peer review 2020).
Staff	In 2018, the Ombudsman had a staff of 65. Number of days of professional training in 2018 per staff member was 7.5.	At the end of 2018, ECA had 834 officials and temporary staff. Auditors attended an average of 7.5 training days in 2018.
Size of Budget	In 2018: EUR 10 837 545.	In 2018: EUR 146 016 000.
Network integration	Legislative link: EO is frequently represented in EP meetings, hearings and events. EO has close contact with Committee on Petitions. International link: In 2018: Conference European Network of Ombudsmen (ENO) – which consists of 96 offices.	Legislative link: Meetings with EPs Committee on Budgetary Control (CONT). In 2018, ECA representatives appeared 133 times in the European Parliament (2017: 91), 65 times in the Council (2017: 47) and 50 times in national parliaments (2017: 19). International link: ECA was active in Intosai and Eurosai.
Leadership structure	One headed leadership.	Board consist of 28 members, which elect a President from among themselves.
Leadership composition	Extensive experience as national ombudsman in member state, before appointment at the European level.	Many members of the ECA have a relevant professional background. More than one third of its members are former politicians at the national or European level, or both.



**Figure 2.** The organisational powers of ECA and EO in 2018.

There is also variation in organisational capacity between the two watchdogs. The EO has issued a clear and comprehensive strategy document in 2014. The document lists four key priorities for the period 2014–2019 and has a clear set of priorities for each objective which are assessed on the basis of key performance indicators and a scoreboard.<sup>4</sup> Each year the strategy is updated and evaluated in annual management plans. The ECA also has a mission statement on its website and has issued in 2017 an explicit strategy for 2018–2020. This strategy document lists four strategic goals. These goals are

operationalized in a variety of sub-goals.<sup>5</sup> However, compared with the EO, this strategy is somewhat more general and consists of less clear and measurable priorities.<sup>6</sup>

Regarding staff and budget, both score quite well. The EO had a budget of almost 11 million euros and a staff of 65 fte in 2018, which is rather small compared to many national ombudsmen. For example, the Dutch National ombudsman had a staff of 151 fte in 2018. However, the EO has a limited caseload, because most complaints will be lodged at the national level, due to the fact that the implementation of EU policy is largely in the hands of the member states. Moreover, the size of the EU executive is also rather small in comparison with national bureaucracies, with less than 30.000 civil servants in the EU Commission. Most of the staff of the EO are lawyers and they receive regular training.<sup>7</sup> The ECA is a much larger organization, with 834 fte and a budget of 146 million euros in 2018. Many of its employees have professional degrees in relevant disciplines and extensive experience in auditing.

Both watchdogs have developed strong inter-institutional linkages. Horizontally, the growing cooperation of the ECA, the EO, and the EP can be perceived as part of a wider attempt to enhance the accountability fabric of the EU. Vertically, the multilevel network of the EO, called the European Network of Ombudsmen, seems to operate more effectively than the multi-level network of the ECA. The implementation of EU Law falls, in many instances, within the mandate of national authorities and alleged infringements cannot, therefore, be addressed by the EO. Instead, complaints from EU citizens regarding a possible breach of EU Law, as implemented by national authorities, have to be referred to the relevant national ombudsmen. It has been in the EO's interest, because it frequently receives complaints that should be addressed to national ombudsmen, to further develop 'an effective and close system of cooperation to safeguard the rights of European citizens'.

For the ECA too, the emphasis has shifted in the past 20 years, from horizontal control and accountability, towards a system of financial accountability that has an EU and a national dimension. In the areas of the budget where management is shared, member states cooperate with the Commission in setting up supervisory and internal control systems to monitor if funds are spent properly and in accordance with the rules. The Court has built up interinstitutional linkages with national and regional audit institutions auditing the European funds that are managed and spent by national and regional administrations. This has given shape to the development of a multi-level accountability network for non-hierarchical and informal cooperation, although this has not been without its problems. Aden (2015) mentions the non-binding and voluntary character of the collaboration with the different accountability forums, the difficulty in reaching consensus, the different audit cultures and structures (federal, regional), which constrains effective multilevel governance. The outreach of the ECA's reports lags behind at the Council and the national level. Only on a few occasions has the ECA been invited to present its special reports at ministerial level and did it succeed in intensifying contacts with Member State governments and parliaments.<sup>8</sup>

Finally, there is the element of leadership, on which both EU watchdogs differ. The EO has a one-headed leadership, which allows for swift and outspoken interventions. The ECA, in contrast, is led by a collegial body of 28 Court Members. This shared leadership often fragments and hinders effective decision-making. In its institutional design the choice was for a full national representation within a college of auditors, to ensure that different national auditing approaches would be incorporated into the ECA's work

(Groenendijk 2004, 705). However, this also created decision and management problems because of differences in approaches, different national interests, and the sheer size of the college. These became even worse when the various enlargements increased the College from 15 to 28 members. The impact has been an 'excessive fragmentation of its decision-making and management [...]. Each Court member had a private office of five posts, meaning almost one in five staff members was engaged in top-down management activities outside the regular audit function' (Stephenson 2016, 477). It has created a top-heavy management, inhibiting the ECA to become more flexible and responsive as an organization.

With regard to professional background, some differences can be observed too. All three European Ombudsmen, so far, had extensive experience as national ombudsman in their member state, before they were appointed at the European level. With the exception of Södermann, they did not have a political background and worked as an academic or journalist before becoming national ombudsman in their country. Many members of the ECA have a professional degree and had a career as civil servant, lawyer or accountant before coming to Luxemburg. However, in 2018 more than one third of its members, including the president, are former career politicians at the national or European level.<sup>9</sup>

### ***The exercise of accountability powers by ECA and EO***

Table 6 presents the exercise of powers by the two watchdogs, and Figure 3 presents the scores on the indicators in this dimension.

In terms of productivity, in 2018, the ECA has a diversified output and produced 50 reports (6 annual reports, 35 special reports, six briefing papers, two landscape reviews and one rapid case review).<sup>10</sup> The ECA also issued 10 opinions in addition to the selected audits planned in the work programme. As can be seen from Figure 4, the productivity of the ECA has increased with over 50% in the past decade.

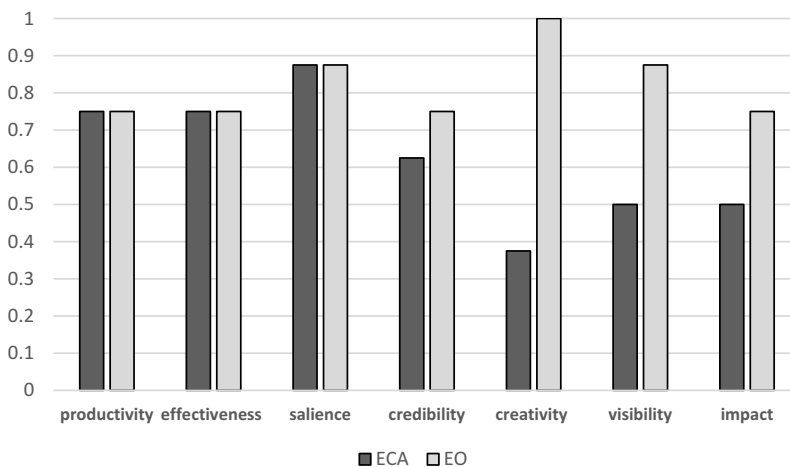
The EO has received a rather stable number of complaints within its mandate, varying between about 603 and 880 in the past fifteen years. The EO had 490 inquiries opened and 545 closed in 2018.<sup>11</sup> This was higher than in most previous years and beyond the high level of 2012 (see Figure 5). The bulk of the inquiries is based on complaints, but the ombudsman also launches wider strategic inquiries and initiatives when she receives more complaints on an issue or she suspects a systematic character.

Both watchdogs did not only increase their productivity, they also have diversified their output. The ECA uses its advisory role and publishes special reports, presenting the results of selected performance and compliance audits, which can be published at any time during the year, and opinions and position papers on topics related to EU financial management. In the past, the ECA focused chiefly on the compliance and regularity audit, but during the last decade more efforts have been devoted to conducting performance audits. The two watchdogs are progressively acting also as quasi-regulators by setting standards for good administrative behavior and public financial management and audit.

The watchdogs both appear fairly effective. According to the ECA's 2018 annual report, implementation rates run from 35% in the first year after a report is issued, till 97% after four years. The EO's compliance rates have slightly increased from 80% in 2011 till around 81% in 2017, suggesting a rather high effectiveness.

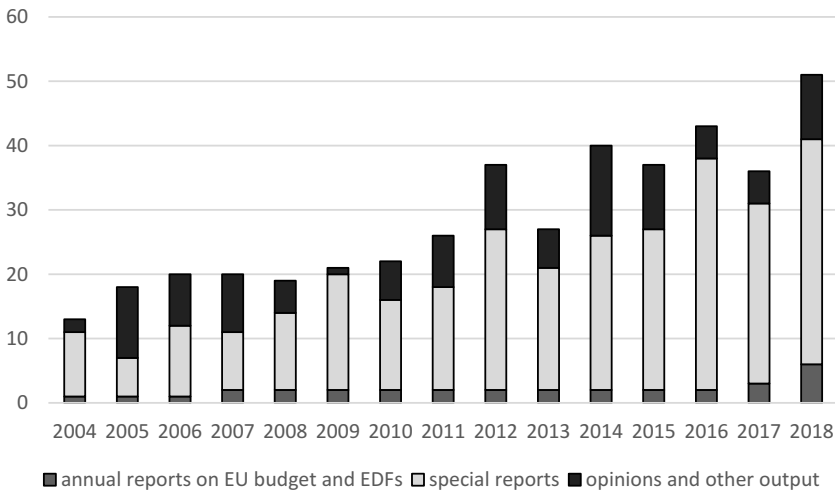
**Table 6.** Exercise of accountability power.

	EO 2018	ECA 2018
Productivity	EO is very productive: Opened 490 inquiries on the basis of complaints, including 8 own-initiative inquiries, and closed 545 complaint-based inquiries; Opened 5 strategic inquiries and launched 10 strategic initiatives.	ECA is fairly productive: In 2018, the ECA published 50 reports (6 annual reports, 35 special reports, six briefing papers, two landscape reviews and one rapid case review). The ECA also issued 10 opinions in addition to the selected audits planned in the work programme.
Effectiveness	The activities often lead to adequate follow ups. In 2017: the EU institutions complied with the Ombudsman’s proposals in 81% of instances, a slight decrease from the 85% in 2016.	The activities often lead to adequate follow ups: In 2018: an analysis of the recommendations made in the 2014 annual report and special reports shows that 74% of the recommendations made in the 2014 annual report and 94% of the recommendations in the 2014 special reports had been (somehow) implemented.
Saliency	EO has a prominent place in the accountability landscape given media reports and parliamentary attention.	ECA has a prominent place in the accountability landscape given media reports and parliamentary attention.
Credibility	EO is recognized as credible: majority of the external stakeholders evaluated the Ombudsman’s performance positive.	ECA is recognized as credible. Survey shows positive evaluations of the ECA in survey.
Creativity	EO is innovative regarding a wide range of activities and powers: e.g established the ‘Award for Good Administration’; published a list of ‘Dos and Don’ts’ for officials’ interactions with lobbyists; developed a Fast-Track procedure for complaints about public access to documents.	ECA started new communication pilot project providing the public with information on an upcoming or recently started audit task (audit previews).
Visibility	EO is very visible. Extensive use of social media, has office in Brussels. Large staff of communication officers, press releases, speeches.	ECA is fairly visible. Present on social media, press briefings, publishes journal. Peer review (2020) indicates that challenges remain regarding the ECA’s strategic communication activities.
Impact	Activities lead often to an improvement of the accountability practices. Transparency, administrative procedures, ethics.	The DAS, and the intention to add value with a reform of the DAS, remain highly complex and controversial.

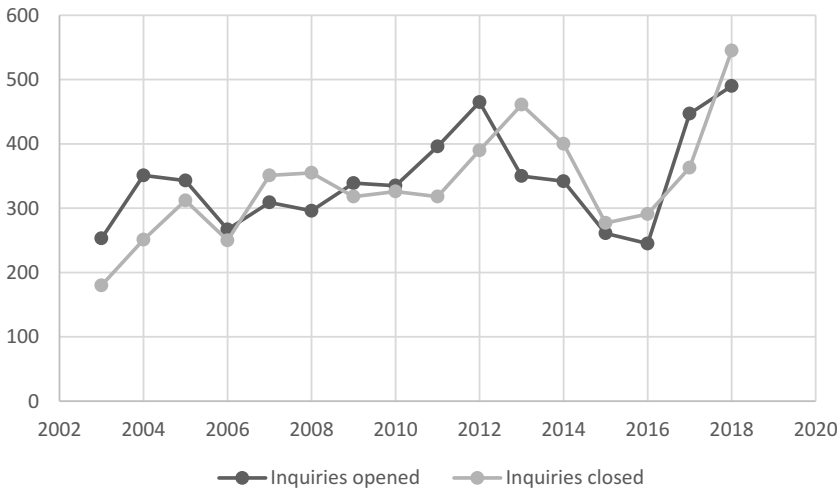


**Figure 3.** The exercise of powers of ECA and EO in 2018.

With regard credibility, both the ECA’s and the EO’s stakeholder appraisal is quite high. Likewise, the saliency of both institutions is on the increase, as can be seen in Figure 6. The media pay much more attention to their reports, compared to the begin of this century.



**Figure 4.** Number of publications ECA from 2004–2017 (source: ECA various AR).

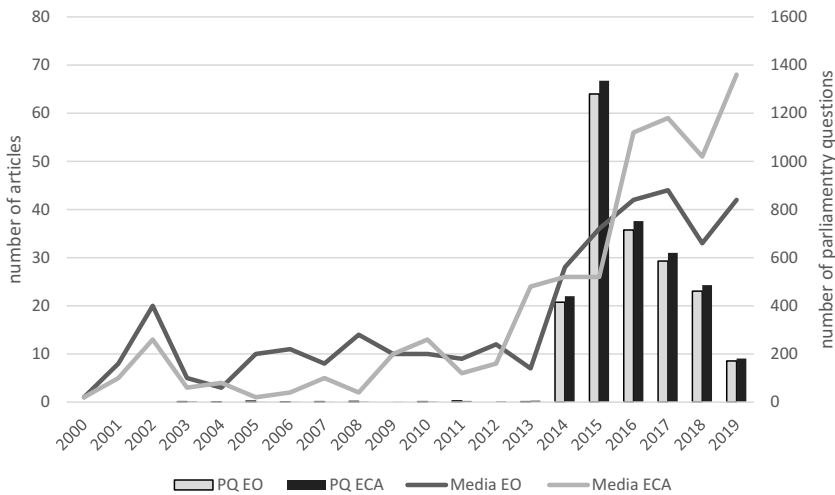


**Figure 5.** Number of inquiries by the EO 2003–2018 (source: Various AREO).

The number of parliamentary questions that refer to the ECA or EO runs between 400 and 1200 hundred each year.

Both institutions have worked on their visibility for institutional stakeholders and the general public, by making its publications more accessible and reader-friendly, and by using clearer language and introducing more infographics. In addition, both watchdogs employ strategic communication activities, although the EO seems more successful in this.

Both institutions make innovative use of their powers, but they do it in different ways as Table 6 shows. The ECA has from 2017 onwards tried to reform and improve the annual Statement of Assurance (SoA) in the discharge procedure, mandated by the TFEU, into a more valuable approach for the EU financial management and control system. The



**Figure 6. Media attention to the ECA and EO 2000–2018** (Number of articles per year about the two watchdogs on EURACTIV, graph lines Media EO & Media ECA); **Parliamentary attention to the ECA and EO 2000–2018** (Number of questions in the EP with the EO and the ECA in the title of the question per year, bars PQ EO & PQ ECA).

procedure remains, however, highly complex and controversial.<sup>12</sup> The EO operates as a proactive creative system-fixer. Using the knowledge that the EO draws from handling complaints, it develops initiatives to improve administration by EU institutions and goes beyond the mere handling of cases of maladministration. One example is its work regarding the accessibility of documents from the EU institutions and bodies. Such accessibility has been the subject of intense lobbying by the EO.

The EO's impact has been particularly powerful in developing the understanding of transparency – from a passive citizen's right to access documents to a broad and proactive duty of institutions to make sure information about its policies and actions are widely available and genuinely accessible (Curtin 2009, 214–215). Several inquiries initiated by the EO itself, and EO Special Reports have been dedicated to this subject. Other topics to which the ombudsman has paid special attention are lobbying transparency and the revolving doors question. She published a practical Dos and Don'ts guide for EU officials on how they should interact with lobbyists, which is being used by the Commission in its training for new staff. To share best practices with a broader audience, the EO launched an Award for Good Administration in 2017.

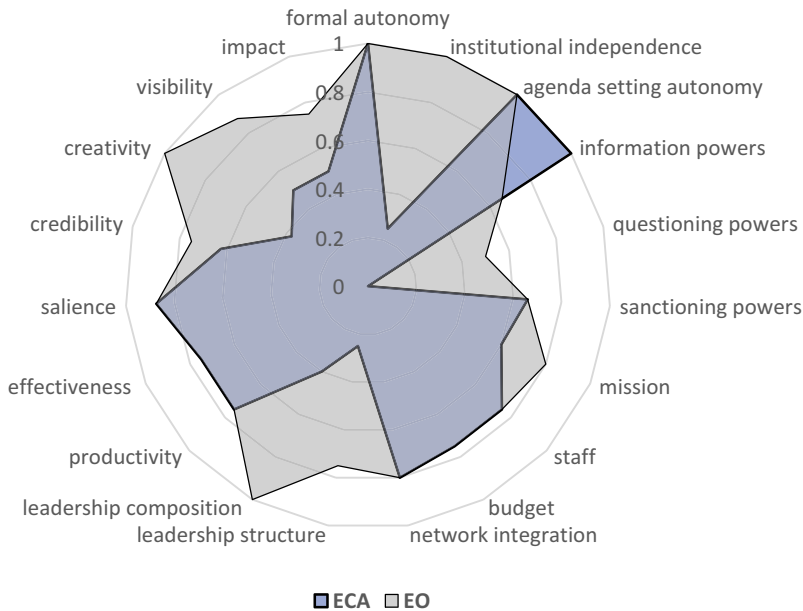
### Watchdog versus watchdog: the accountability powers of the ECA and the EO

Both the European Ombudsman and the European Court of Auditors occupy a significant place in the administrative and financial accountability regime of the EU. Both have comparable formal powers when it comes to accountability. Despite these similarities, the EO and the ECA differ in their organisational and executive accountability powers. The two parallel accountability institutions operate in the multilevel EU system, and the analysis shows that the formal powers of the EO and the ECA are both mainly situated at the European level. Yet in their organizational set up and exercise of accountability

powers the two watchdogs follow different principles of operation. The EO is a small institution, chiefly attaining horizontal accountability at the EU level; whereas the ECA is considerably larger, operating at the EU and the national level. This requires arduous coordination to integrate horizontal and vertical accountability, achieving oversight of public sector actors across administrative levels and geographical areas in the multilevel EU system. As can be seen from Figure 7, the EO scores higher than the ECA on a number of indicators.

First of all, in the organizational dimensions, there are differences regarding leadership. The members of the board of the ECA are nominated by national executives and appointed by the EU executive and a substantial number of the board members have been career politicians instead of professional auditors. Moreover, the sheer size of the board, but also the fact that members are representatives of the member states, weakens its organizational resolution and agility (cf. Stephenson 2016). The single-headed EO can operate much swifter and with more creativity.

This is also visible in the differences between the EO and the ECA on the exercise of powers dimension. In terms of achieving administrative accountability, the EO has increasingly developed standards for good practice with an emphasis on transparency and principles of good administrative behavior, while also using its networks to further improve swift and accurate complaint handling. Arguably, the work of the ECA is arduous and complicated due to the shared management character of the EU auditing system. Member states have significant room for the monitoring of spending of funds by the EU budget. The court of auditors can sometimes only report that errors occurred too frequently and in too many areas. The budget’s legislative framework is complex and politicized.



**Figure 7.** Accountability powers of the European Court of Auditors and European Ombudsman in 2018.



The EO operates mainly at the EU level, as it captures maladministration and misconduct mostly by EU-level institutions, whereas the ECA works both at the EU and the national level. Yet also for the EO the accountability landscape ‘verticalized’ significantly as the EO engaged in multilevel governance networks. The multilevel European Network of Ombudsmen has matured over the past two decades and the EO has tried to build organisational capacity to operate in that international administrative order. As the expanding EU accountability landscape has evolved over the past years, so has the EO.

The two watchdogs play a clear role in the system of parliamentary fire alarm monitoring (McCubbins and Schwartz 1984). With the strong encouragement of the EP, the EO has developed its capacity to be both an effective fire-watcher and fire-preventer. The EO’s recommendations are not legally binding and it is not a formal lawmaker. Still, the EO’s soft power seems to have a broad reach and has already shown itself to be able to instigate governance and legal reform. With its evolving networks, both horizontal and vertical, it is expected that such soft power will expand faster and will have a greater impact on realizing better-quality administration in a multilevel governance context. It remains to be seen whether this is a genuine institutional feature or mainly due to the personal profile of the incumbent. How much of the institutional innovations or groundbreaking reports pushed forward by O’Reilly will be sustainable in the long term? This requires a longitudinal analysis, covering various mandates.

As the expanding EU accountability landscape has evolved over the past years, so has the power of the EU watchdogs. Three elements in the exercise of accountability powers have become progressively more relevant. First, increased visibility has become an important aspect of reputation management which has become critical for accountability management (cf. Busuioc and Lodge 2017). The diversification of output makes it possible to increase institutional branding. Both institutions try to make its products visible, to engage with its various stakeholders and to emphasize the relevancy of their work to the wider public of EU citizens, or ‘the man on the bus’ in the ECA’s terminology. This connection is, however, easier to make for the EO, given that her core business is solving individual complaints, whereas the work of ECA mainly focusses on the operation of depersonalized financial management systems.

Second, watchdogs are increasingly expected to become *improvement* oriented in their work promoting best practices and institutional learning. As a consequence, watchdogs need to find a balance between their role as independent accountability forums and their new role as agent of change, advocating reforms (cf. Pierre and de Fine Licht 2019).

Third, the watchdog institutions have a clear function in the broader accountability landscape (Santiso 2006). They report and advise, but when the push comes to shove, both institutions can only enforce accountability indirectly by referring their findings to the legislature and the judiciary. Their sanctioning power and impact hinges for a large part upon the quality of the system of cooperation with these institutions in the multilevel of accountability landscape.

### ***Assessing watchdog accountability: discussion and agenda***

The measurement of accountability powers is useful for making a systematic and multi-dimensional assessment of watchdog institutions. Most studies about independent oversight institutions focus mostly on formal or on institutional powers (independence,

mandate, resources). Yet, our analysis shows that most developments and differences in holding the executive to account occur in the third dimension: in the exercise of powers. This dimension, though cumbersome to measure, is crucial for getting a realistic understanding in the accountability powers of watchdogs.

A next step would be to track changes in accountability powers for each watchdog over longer periods of time. This requires repeating these assessments over a number of years. This would provide a better insight in the dynamics of accountability powers: have they increased or not and in what respect? Another step would be to compare these scores to those of similar (peer) institutions in the member states. How are these EU watchdogs doing, compared to their national counterparts? This may spur a range of new questions about the nature of the similarities and differences between different cases. A robust toolkit for cross-national and multilevel research can facilitate research into the contextual factors that affect the way in which these watchdogs operate. Only through such a more systematic empirical strategy can we develop a deeper understanding of watchdog accountability power.

## Notes

1. This paragraph is based, in large part, on Bovens and Wille (2020).
2. See Gustavson and Sundström (2016, 8–9) for an overview of the literature.
3. Although it is commonly assumed that Annual Reports (AR) are also used as a public relations tool, Michalisin (2001) shows that ARs contain accurate representations of the organisation and its activities.
4. See: <https://www.ombudsman.europa.eu/en/resources/strategy/strategy.faces>
5. See: [https://www.eca.europa.eu/Lists/ECADocuments/STRATEGY2018-2020/STRATEGY2018-2020\\_EN.PDF.pdf](https://www.eca.europa.eu/Lists/ECADocuments/STRATEGY2018-2020/STRATEGY2018-2020_EN.PDF.pdf)
6. International Peer Review: assessing the implementation of the European Court of Auditors' Strategy for 2018–2020, March 2020, retrieved from: [https://www.eca.europa.eu/Other%20publications/2020\\_PEER\\_REVIEW/2020\\_peer\\_review\\_EN.pdf](https://www.eca.europa.eu/Other%20publications/2020_PEER_REVIEW/2020_peer_review_EN.pdf).
7. Number of days of professional training in 2018 per person was 7.5 (source: Annual Activity Report of the Principal Authorising Officer by Delegation, 2018, p. 42).
8. International Peer Review: assessing the implementation of the European Court of Auditors' Strategy for 2018–2020, March 2020, p.28,
9. Based on their resumes, retrieved from: <http://www.eca.europa.eu/en/Pages/OrganizationChartList.aspx>. Consulted 2 June 2019.
10. ECA Activity Report 2018. [https://www.eca.europa.eu/Lists/ECADocuments/AAR18/AAR18\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/AAR18/AAR18_EN.pdf)
11. Annual Report 2018. Retrieved from: <https://www.ombudsman.europa.eu/nl/annual/en/113728>
12. International Peer Review: assessing the implementation of the European Court of Auditors' Strategy for 2018–2020, March 2020

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## Appendix

**Table A1.** Formal watchdog powers (indicators, scores).

Formal autonomy	What is the legal basis for the autonomy of the institution?	0 = No legal guarantee for autonomy; 0.25 = Administrative act; 0.50 = Secondary legal act; 0.75 = Formal law; 1.00 = Constitution or treaty.
Institutional independence	Has the executive (Cabinet, Commission, Council, member states) formal powers to (re)appoint the board?	0 = Board (re)appointed by the executive, 0.33 = Board (re)appointed by executive, nomination by an independent committee, Board (re)appointed by Parliament, nomination by the executive, 1.0 = Board (re)appointed by Parliament, nomination by an independent committee.
Agenda setting autonomy	Has the institution the discretion to investigate anything which falls within its mandate?	0 = Upon request from executive branch only; 0.25 = Upon request from legislative only, 0.50 = Upon request, but from a variety of external actors (legislative, civil society/ general public), 0.75 = Upon request, but internal decision, 1 = Fully autonomous in setting its agenda.
Information power	Has the institution the statutory power to obtain the information necessary for executing its mandate?	0 = No formal powers to obtain information, 0.33 = A right to access the information it needs to execute its mandate, 0.66 = May request or obtain any information it deems necessary to execute its mandate, 1.0 = May also access and search premises and ICT and retrieve any dossiers and data against the will of the executive body.
Questioning power	Has the institution statutory powers to question officials and witnesses?	0 = No formal power to subpoena and question witnesses, 0.5 = The right to subpoena witnesses, 1.0 = The right to subpoena and hear witnesses under oath.
Sanctioning power	Has the institution formal powers (fines, disapproval of budget, or disciplinary measures) to sanction actors when it finds irregularities?	0 = No formal sanctioning power, 0.33 = No formal sanctioning power but it may engage in public naming and shaming, 0.66 = No formal sanctioning power but it can refer to other authorities which have sanctioning powers, 1.00 = It can impose formal sanctions.

**Table A2.** Organisational watchdog powers (indicators, scores).

		0 = The institution has no mission or strategy; 0.2 = The institution has no explicit mission or strategy, but some strategic objectives may be implicitly inferred; 0.4 = The institution has issued some statements which speak to a mission or strategy; 0.6 = The institution has an explicit mission, but this has not been translated in strategic objectives. 0.8 = The institution has an explicit mission and strategic objectives, but these are not operationalized; 1 = The institution has a clear mission and specified and measurable strategic objectives that relate to a specific period.
Mission & strategy	Has the institution outlined its objectives through a clear mission and a specific strategy?	
Staff	Is the number of staff the institution has at its disposition sufficient to execute its mandate?	0 = The number of staff is very low given the size of the executive; 0.25 = The number of staff is low given the size of the executive; 0.5 = The number of staff is limited given the size of the executive; 0.75 = The number of staff is adequate given the size of the executive; 1 = The number of staff is very adequate given the size of the executive.
Budget	Is the budget of the institution sufficient to execute its mandate?	0 = The budget is very insufficient given the task; 0.25 = The budget is very limited given the task; 0.5 = The budget is limited given the task; 0.75 = The budget is adequate given the task; 1 = The budget is very adequate given the task.
Network integration	Does the institution participate in established networks that enhance its capacities? <i>Examples are: networks of similar institutions in other countries or at other levels of governance, cooperation with other watchdog institutions or parliamentary committees, or with professional associations and academic institutions.</i>	0 = The institution does not participate in any relevant network; 0.25 = The institution is a passive member of one or two relevant networks; The institution is a passive member of several relevant networks; 0.5 = The institution actively makes use of one or two relevant networks; 0.75 = The institution actively makes use of several relevant networks; 1 = The institution actively makes use of a large variety of relevant networks, at various levels of governance (nationally and internationally).
Board structure	Does the leadership structure enable effective leadership?	0 = The institution has no clear leadership structure; 0.25 = The institution is governed by a very large board (10 members and more); 0.5 = The institution is governed by a medium size board (4 till 10 members); 0.75 = The Institution is governed monocratically (President or Auditor General); 1.0 = The board consists of two or three persons.
Board composition	Have the board members the appropriate professional qualifications?	0 = All board members are former politicians, who are appointed solely on the basis of their loyalty to the ruling political establishment; 0.2 = Most board members are former politicians, with little relevant professional qualifications; 0.4 = A substantial number of board members are former politicians, with little relevant professional qualifications; 0.6 = A substantial number of board members are former politicians, but with a relevant degree or relevant work experience; 0.8 = Most board members have a professional background with a relevant degree and relevant work experience; 1 = All board members have a professional background with a relevant degree and extensive relevant work experience.

**Table A3.** Exercise of watchdog powers (indicators, scores).

		0 = The institution employs no activities; The institution employs few activities; 0.33 = The institution is reasonably productive, given its resources; 0.66 = The institution is very productive, given its resources; 1 = The institution is extremely productive given its resources, in terms of number, type, area, and scope of activities.
Productivity	Does the institution make use of its resources?	
Effectiveness	Do the activities lead to an adequate follow up by the executive actor?	0 = The activities do not lead to adequate follow ups at all; 0.25 = The activities sometimes lead to adequate follow ups; 0.5 = The activities every now and then have adequate follow ups; 0.75 = The activities often lead to adequate follow ups within a reasonable time; 1.0 = The activities almost always lead to adequate follow ups within a reasonable time.
Salience	Does the institution play a vital role in keeping government agencies accountable? <i>(Are the reports of the institution often cited by media, and used by parliament and other forums? Does it have a prominent place in the accountability landscape?)</i>	0 = The institution plays no role whatsoever; 0.25 = The institution plays a limited role; 0.5 = The institution plays some role; 0.75 = The institution is clearly visible in the accountability landscape; 1.0 = The institution has a very prominent place in the accountability landscape.
Credibility	Is the institution recognized as credible by the general public and relevant stakeholders?	0 = The institution has no credibility; 0.25 = The institution has limited credibility; 0.5 = The institution has reasonable credibility; 0.75 = The institution has high credibility; 1.0 = The institution has very high credibility among a broad range of stakeholders.
Creativity	Does the institution make creative use of its formal and informal powers? <i>(Does it engage in innovative practices?)</i>	0 = The institution is not creative at all; 0.33 = The institution is somewhat creative; The institution is fairly creative; 0.66 = The institution is very creative; 1.0 = The institution is very creative regarding a wide range of activities and powers.
Visibility	Is the institution visible in the relevant political and policy arenas? <i>(Does it have a clear presence in the relevant arena's? This may include physical presence (i.e. location), but also presence via social and traditional media.)</i>	0 = The institution is not visible at all; 0.25 = The institution is somewhat visible; 0.5 = The institution is fairly visible; 0.75 = The institution is very visible; 1 = The institution is very visible in a wide variety of arenas.
Impact	Does the range of activities lead to an improvement of the accountability practices?	0 = The institution has no impact whatsoever; 0.25 = The institution has little impact; 0.5 = The institution has reasonable impact; 0.75 = The institution has high impact; 1 = The institution has high impact on a range of actors and practices.



**Table A4.** Illustration of coding sheet used to score formal power: formal autonomy.

Institution	EO
Dimension	Formal power
Indicator number	Q1.2
Indicator name	Formal autonomy
Question	What is the legal basis for the autonomy of the institution?
Clarification Q	
Score (1)	No legal guarantee for autonomy
Score (2)	Administrative act guarantees autonomy
Score (3)	Secondary legal act guarantees autonomy.
Score (4)	Formal law guarantees autonomy
Score (5)	Constitution or treaty guarantees autonomy
Additional data Sources	
Score	5
Text	<i>Article 228 TFEU</i>
Comment	
Sources	
Causes	
Miscellaneous	
Coder	