

Appointment of the Commission's Secretary General in 2018

Documentation



**DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT D: BUDGETARY AFFAIRS**

Appointment of the Commission's Secretary General in 2018

DOCUMENTATION

Abstract

The appointment of the new Secretary-General of the Commission in 2018 has been taken up by the European Parliament and has been put on its agenda on several occasions. In order to give interested readers an overview on the controversial decision, its circumstances and its assessment by different actors, this documentation contains a chronology of the related activities of the European Parliament and the European Ombudsman. It collects the most relevant texts from these institutions and also the answers given to them by the European Commission.

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ABOUT THE EDITOR

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Chronology of the “Selmayr Case”

Date (all 2018 except noted)	Event
September 2015	SG Italianer indicates to President Juncker the intention to retire after March 2018
Second half of 2017/Early 2018	Talks about SG Italianer's succession between SG Italianer, President Juncker and Mr Selmayr
January	Mr Selmayr participates in the decision-making leading to the creation of the vacancy as well as the approval of the vacancy notice for the post of DSG
24 January	President Juncker agrees that the current DSG will move from her post as of 1 March 2018. Draft vacancy note is prepared
31 January	DSG vacancy note is published
14 February	Deadline for the vacancy. The Consultative Committee on Appointments (CCA) issues opinion that both applicants (one of them Mr Selmayr) are eligible to be interviewed by CCA
15&16 February	Mr Selmayr takes part in an external assessment centre and interview with the CCA, they shortlist him as a suitable candidate
20 February	<p>The only other applicant writes to the CCA and withdraws her application. President Juncker and Commissioner Oettinger interview Mr Selmayr for the DSG position and nominate him.</p> <p>Parallely, President Juncker informs VP Timmermans of SG Italianer's decision to resign and proposed Mr Selmayr as successor. DG HR drafts a note for the College meeting on these developments the same day, before Mr Selmayr is officially nominated as DSG</p>
21 February	President Juncker informs the College of Commissioners that SG Italianer wants to resign from his post and that the President wants Mr Selmayr to take over the post
1 March	Mr Selmayr becomes SG
12 March	EP plenary debate on integrity policy
20 March	CONT questionnaire to EC
25 March	EC reply to CONT questionnaire
27 March	CONT exchange of views with Commissioner for Human Resources
28 March	CONT 2nd questionnaire to EC
4 April	EC reply to CONT 2nd questionnaire
18 April	EP resolution on the integrity policy of the EC
5 May	Launch of Ombudsman inquiry
3 September	European Ombudsman issues recommendation on cases 488/2018/KR and 514/2018/KR on the EC's appointment of a new SG
25 September	Inter-institutional Round Table

Date (all 2018 except noted)	Event
20 November	CONT meeting on discharge 2017, exchange of views with SG Selmayr
21 November	Joint Meeting: Committees on Budgetary Control, Legal Affairs, Petitions
13 December	European Parliament Resolution on the Activities of the European Ombudsman in 2017, with reference to the EC's SG
26 March 2019	European Parliament Resolution on the Discharge 2017: EU general budget - Commission and executive agencies, with reference to the EC's SG



EUROPEAN COMMISSION

Vacancy notice COM/2018/292 (Status: Published)

DEPUTY SECRETARY-GENERAL - (AD15/AD16)

SG.DSG2

BRUSSELS(Belgium)

COM number: COM/2018/292

Publication: from 31/01/2018 to 13/02/2018
until 12.00 hours noon Brussels time

Vacancy open to candidates from other institutions: no

Vacancy open to candidates from EPSO reserve list: no

Job Properties

Job ID: 143892
Job available from: 01/03/2018
Management job: yes
Budget: Administration
Security clearance required: no

We are

The principal mission of the Secretariat-General is to ensure that the Commission's political priorities, as defined by the President, are carried out. The Secretariat-General also provides support to the Vice-Presidents. It works proactively to ensure strategic planning and programming, up-stream policy co-ordination, continuous improvement in the quality of law-making, the evaluation of existing policies, and collegial decision-making, and to co-ordinate the position of the Commission with other institutions.

The Secretariat-General is responsible for monitoring issues of horizontal interest (e.g. institutional questions, relations with civil society, transparency, and data protection). It delivers protocol services to the President and the College. It is at the service of other services and the College, acting as a force for quality and coherence within the Commission.

We propose

The Deputy Secretary-General will support the overall activities of the Secretariat-General and deputise for the Secretary-General. She/he will represent the Commission at a senior level in inter-institutional forums and will chair inter-service groups.

We look for

The successful candidate must be able to demonstrate:

- a strong background and professional experience as a manager and as a communicator, being able to lead and motivate large teams, set priorities and take decisions;
- an excellent knowledge of the Commission's policies and priorities, as well as of its administrative practices and procedures; a high level of negotiating skills and proven experience in representing the Commission at a senior level;
- strong analytical skills and ability to think freshly and strategically and to work out compromise solutions to difficult problems;
- a proven capacity to develop and achieve strategic objectives;
- excellent communication skills in order to communicate efficiently and fluently with internal and external stakeholders.

Jan 31, 2018 4:02 PM

Recruitment policy

The Secretariat-General applies an equal opportunities policy. Given the low representation of women in management functions, the Commission would particularly welcome applications from women. Candidates invited for an interview with the Consultative Committee on Appointments have to attend, before this interview, a one-day assessment centre run by external consultants, unless they have already been evaluated through an assessment centre organised at the request of DG HR for a type of post at the same level as the one they are currently applying for during the two years preceding the date of the interview with the CCA.

For information related to Data Protection, please see the Specific Privacy Statement.
<https://webgate.ec.europa.eu/fpfis/wikis/display/HRMIS/Privacy+statements>

Contacts

Name	Phone Number	Email
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How to apply

Commission officials or other officials with access to SYSPER have to use the on-line application module in SYSPER when applying for a vacant post (using the "Apply for this job" button).
Once SYSPER has correctly registered your application, you will receive an automatic e-mail notification. If you do not receive this e-mail notification, this means that your application via SYSPER was not successful and you will need to try again. Your application has to be submitted before the expiry of the application deadline. Therefore, we advise you to upload your application in SYSPER sufficiently in advance (modifications are possible until the expiry of the deadline). In the case of technical problems with SYSPER or for candidates without access to the SYSPER vacancy module, applications via e-mail also need to be submitted within the deadline.

The CV and the motivation letter attached to the email must be in PDF format (maximum size of 2MB per document). Any other documents you wish to attach (e.g. references, certificates, etc.) must be merged into one single PDF document (maximum size of 2MB).
 HR-SM-VACANCIES@ec.europa.eu

Closing date

The closing date for registration is 13/02/2018. Registration will not be possible after 12:00 noon Brussels time.

Eligibility criteria and other important information

<https://m.yintracomm.ec.testa.eu/staff/EN/talent-management/managers/Pages/management-posts.aspx>

Brussels, 21 February 2018

Note for the attention of the President

Referring to our discussion at the time of my appointment as Secretary-General, I would like to confirm my intention to retire from the Commission soon after the end of February 2018. Should this be useful in view of facilitating the transition for my successor, I would gladly accept a transfer under Article 7 of the Staff Regulations to a position of Hors-Classe Adviser as of 1 March 2018, allowing me to retire by 1 April 2018.

Alexander Italianer

Copy: Commissioner Dettinger
Martin Selmayr, Irene Souka



PV(2018) 2244 final

- English language version of the French text which is authentic -

Brussels, 7 March 2018

TEXTE EN

MINUTES

**of the 2244th meeting of the Commission
held in Brussels (Berlaymont)
on Wednesday 21 February 2018
(morning)**

PV(2018) 2244 final

- English language version of the French text which is authentic -

EN

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	<i>[...]</i>	

Single sitting: Wednesday 21 February 2018 (morning)

The sitting opened at 9.35 with Mr JUNCKER, President, in the chair.

Present:

Mr JUNCKER	President
Mr TIMMERMANS	First Vice-President
Ms MOGHERINI	High Representative / Vice-President
Mr ANSIP	Vice-President
Mr ŠEFČOVIČ	Vice-President
Mr DOMBROVSKIS	Vice-President
Mr KATAINEN	Vice-President
Mr OETTINGER	Member
Mr HAHN	Member
Ms MALMSTRÖM	Member
Mr MIMICA	Member
Mr ARIAS CAÑETE	Member
Mr VELLA	Member
Mr ANDRIUKAITIS	Member
Mr AVRAMOPOULOS	Member
Ms THYSSEN	Member
Mr MOSCOVICI	Member
Mr STYLIANIDES	Member
Mr HOGAN	Member
Ms BULC	Member
Ms BIENKOWSKA	Member
Ms JOUROVÁ	Member
Mr NAVRACSICS	Member
Ms CREȚU	Member
Ms VESTAGER	Member
Mr MOEDAS	Member
Sir Julian KING	Member
Ms GABRIEL	Member

The following sat in:

Ms MARTÍNEZ ALBEROLA	Deputy Chef de cabinet to the PRESIDENT	
Mr ROMERO REQUENA	Director-General, Legal Service	
Mr PESONEN	Director-General, DG Communication	
Mr SCHINAS	Head of the Spokesperson's Service and Chief Spokesperson of the Commission	
Ms METTLER	Head of the European Political Strategy Centre	
Mr SZOSTAK	Adviser in the PRESIDENT's Office	
Ms ARKI	PRESIDENT's Office	
Mr HAGER	Chef de cabinet to Mr OETTINGER	Item 10
Ms SOUKA	Director-General, DG Human Resources and Security	Items 1 to 10
Mr POST	Director in DG Human Resources and Security	Items 1 to 10
Ms ANDREEVA	Commission Spokesperson's Service	

Mr ITALIANER, Secretary-General, assisted by Mr AYET PUIGARNAU, Director in the Secretariat-General.

1. AGENDAS

(OJ(2018) 2244/FINAL; SEC(2018) 2244/FINAL)

The Commission took note of that day's agenda and of the tentative agendas for forthcoming meetings.

It also noted:

- the addition to the agenda of that day's meeting of item 10 on administrative decisions;
- the fact that the preparation of (i) the informal meeting of European leaders on institutional issues and the multi-annual financial framework after 2020 and (ii) the international high-level conference on the Sahel would be dealt with at the working lunch starting at 13.00.

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8. [...]

PV(2018) 2244 final

- English language version of the French text which is authentic -

EN

9. [...]

10. ADMINISTRATIVE AND BUDGETARY MATTERS

ADMINISTRATIVE MATTERS (PERS(2018) 15 AND /2)

MOBILITY OF SENIOR MANAGEMENT OFFICIALS

The PRESIDENT invited Mr OETTINGER to present to the College several important proposals for decisions on senior management posts with a view to ensuring both continuity and change, and also with the objective of achieving by the end of the current Commission's term at least 40% of female representation in management posts.

Mr OETTINGER reminded the College that in Spring 2015 the Commission had already adopted a similar set of decisions on appointments to senior management posts. By appointing the best candidates to the right posts, the Commission had given itself the means to obtain tangible results, which was what was also being proposed to the College that day for the period 2018/2019 and beyond.

He explained that the decisions submitted to the College for approval concerned key strategic areas for the current Commission – ranging from climate action to research, and including education, youth, sport and culture, employment, social affairs and inclusion. He added that these decisions would also significantly increase female representation in Director-General and Deputy Director-General posts, rising from 11% in November 2014 to 36% today. He specified that this outcome was the result of the commitment made by the PRESIDENT to achieve the objective of having at least 40% representation by 31 October 2019.

Mr OETTINGER mentioned the main decisions he was proposing to the College, in agreement with the PRESIDENT.

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10.11. SECRETARIAT-GENERAL – APPOINTMENT OF AD15/16

DEPUTY SECRETARY-GENERAL

(PERS(2018) 16 TO /3)

The Commission had before it applications under Article 29(1)(a)(i) and (iii) of the Staff Regulations for the post of Deputy Secretary-General in charge of Directorates B and E in the Secretariat-General (PERS(2018)16).

The Commission took note of the opinions of the Consultative Committee on Appointments of 14 and 16 February 2018 (PERS(2018) 16/2 and /3).

The Commission proceeded to an assessment based on the qualifications required for the post. On a proposal from Mr OETTINGER, in agreement with the PRESIDENT, the Commission decided to appoint Mr Martin SELMAYR to the post.

This decision would take effect on 1 March 2018.

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iii) Publication of Deputy Director-General, Director and Principal Advisor posts

The Commission authorised Mr OETTINGER, in agreement with the PRESIDENT, after consulting the Vice-Presidents and Members of the Commission directly concerned, to adopt the vacancy notices for the following posts:

- internal publication of a new post of Deputy Director-General of DG Climate Action;
- internal publication of a post of Deputy Director-General of DG Energy;
- internal, interinstitutional and external publication of the post of Deputy Director-General of Eurostat;
- internal publication of a post of Deputy Secretary-General of the Secretariat-General;
- internal publication of two posts of Deputy Director-General of DG Trade;
- internal publication of the post of Director of the Directorate ‘Single Market for Public Administrations’ in DG Internal Market, Industry, Entrepreneurship and SMEs;

- internal publication of a new post of Principal Advisor in DG Climate Action;
- external publication, reserved for Croatian nationals, of a new post of Principal Advisor in DG Education, Youth, Sport and Culture.

The Commission also authorised Mr OETTINGER, in agreement with the PRESIDENT, to decide the date and period of publication of the vacancy notices for these posts. Other vacancy notices for Deputy Director-General posts would also be published on the same terms and conditions.

The Commission also decided to cancel the vacancy notice relating to the external publication, reserved for Croatian nationals, of the post of Director of the ‘Health’ Directorate in DG Research and Innovation. These decisions would take effect immediately.

The PRESIDENT thanked Mr OETTINGER for his presentation and gave the floor to the Secretary-General of the Commission, Mr Alexander ITALIANER.

Mr ITALIANER announced to the Members of the Commission that, as agreed with the PRESIDENT, he would take retirement on 1 April 2018, after two and a half years as head of the Secretariat-General, and explained that he was prepared to leave the post on 1 March in order to ensure an orderly transition. He was leaving the Commission having completed some thirty-three years’ service, during which he had served five Presidents and contributed to the achievement of the Institution’s missions and objectives both in major political projects and day-to-day management. He thanked the PRESIDENT for having entrusted him with the role of Secretary- General, in which he had striven to act as an intermediary between the College and the Commission’s departments, and the Members of the Commission for their trust and friendship. He was proud to have helped to translate the ten political priorities of the current Commission into concrete achievements and to prepare both the next multiannual financial framework and the initiatives concerning the future of the Union.

The PRESIDENT expressed his sadness at the retirement of Mr ITALIANER, whom he had known for nearly 25 years. He congratulated Mr ITALIANER for his

flawless European career and praised his deep commitment to the European project in general and the Commission in particular. He was a credit to Europe and to his home country, the Netherlands. He expressed his gratitude and great respect for Mr ITALIANER, and looked forward to counting him among his special advisors from 1 April.

The PRESIDENT then presented to the College his proposal to appoint his current Head of Cabinet, Mr Martin SELMAYR, a German national who had recently been appointed Deputy Secretary-General, to the post of Secretary-General with effect from 1 March 2018, replacing Mr Alexander ITALIANER. He emphasised Mr SELMAYR's personal and professional qualities, the remarkable contribution he had made to him as a candidate and President of the Commission, and the services he had rendered to the Institution.

Finally, the PRESIDENT announced his decision to appoint Ms Clara MARTÍNEZ ALBEROLA, a Spanish national and the current Deputy Head of Cabinet, as Head of Cabinet. He welcomed the fact that she would be the first woman in this role at the Commission. He also announced that she would be assisted by her current diplomatic advisor, Mr Richard SZOSTAK, a dual British-Polish national, who would be appointed Deputy Head of Cabinet.

iv) Secretariat-General – Appointment of Adviser Hors Classe and amendment of organisation chart

1020. SECRETARIAT-GENERAL – AMENDMENT OF ORGANISATION CHART AND APPOINTMENT OF AD16 ADVISER HORS CLASSE

On a proposal from Mr OETTINGER, in agreement with the PRESIDENT, the Commission decided:

- to create a temporary post of Adviser Hors Classe in the Secretariat-General; this post would be abolished upon the departure of the job-holder;

- to transfer to this post in the interest of the service, under Article 7 of the Staff Regulations, Mr Alexander ITALIANER, currently Secretary- General of the Commission;
- by derogation from the Commission Decision of 26 May 2004 (C(2004) 1891/2), Mr Alexander ITALIANER would retain his right to the management step until his retirement.

This decision would take effect on 1 March 2018.

10.21. [...]

v) Appointment of Secretary-General

10.22. SECRETARIAT-GENERAL – APPOINTMENT AD15/16 SECRETARY GENERAL OF THE COMMISSION

On a proposal from the PRESIDENT, in agreement with Mr OETTINGER, the Commission decided to transfer in the interest of the service, under Article 7 of the Staff Regulations, Mr Martin SELMAYR, deputy Secretary- General responsible for Directorates B and E, to the post of Secretary- General of the Commission.

This decision would take effect on 1 March 2018.

11. [...]

The Commission’s other discussions on certain agenda items are recorded in the special minutes.

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The meeting closed at 10.19

* *



2017 - 2018

MINUTES

of the sitting of

Monday

12 March 2018



KEYS TO SYMBOLS USED

*	Consultation procedure
***	Consent procedure
***I	Ordinary legislative procedure: first reading
***II	Ordinary legislative procedure: second reading
***III	Ordinary legislative procedure: third reading

(The type of procedure is determined by the legal basis proposed in the draft act.)

ABBREVIATIONS USED FOR PARLIAMENTARY COMMITTEES

AFET	Committee on Foreign Affairs
DEVE	Committee on Development
INTA	Committee on International Trade
BUDG	Committee on Budgets
CONT	Committee on Budgetary Control
ECON	Committee on Economic and Monetary Affairs
EMPL	Committee on Employment and Social Affairs
ENVI	Committee on the Environment, Public Health and Food Safety
ITRE	Committee on Industry, Research and Energy
IMCO	Committee on the Internal Market and Consumer Protection
TRAN	Committee on Transport and Tourism
REGI	Committee on Regional Development
AGRI	Committee on Agriculture and Rural Development
PECH	Committee on Fisheries
CULT	Committee on Culture and Education
JURI	Committee on Legal Affairs
LIBE	Committee on Civil Liberties, Justice and Home Affairs
AFCO	Committee on Constitutional Affairs
FEMM	Committee on Women's Rights and Gender Equality
PETI	Committee on Petitions
DROI	Subcommittee on Human Rights
SEDE	Subcommittee on Security and Defence

ABBREVIATIONS USED FOR POLITICAL GROUPS

PPE	Group of the European People's Party (Christian Democrats)
S&D	Group of the Progressive Alliance of Socialists and Democrats in the European Parliament
ECR	European Conservatives and Reformists Group
ALDE	Group of the Alliance of Liberals and Democrats for Europe
GUE/NGL	Confederal Group of the European United Left – Nordic Green Left
Verts/ALE	Group of the Greens/European Free Alliance
EFDD	Europe of Freedom and Direct Democracy Group
ENF	Europe of Nations and Freedom
NI	Non-attached Members

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EUROPEAN PARLIAMENT
2017 - 2018 SESSION Sittings
of 12 to 15 March 2018
STRASBOURG
MINUTES

MONDAY 12 MARCH 2018

IN THE CHAIR: Antonio TAJANI

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The order of business was thus established.

IN THE CHAIR: Bogusław LIBERADZKI
Vice-President

14. Integrity policy of the Commission, in particular the appointment of the Secretary-General of the European Commission (debate)

Commission statement: Integrity policy of the Commission, in particular the appointment of the Secretary-General of the European Commission (2018/2624(RSP))

Günther Oettinger (Member of the Commission) made the statement.

The following spoke: Françoise Grossetête, on behalf of the PPE Group, Arndt Kohn, on behalf of the S&D Group, who declined a blue-card question from Olaf Stuger, Jan Zahradil, on behalf of the ECR Group, Sophia in 't Veld, on behalf of the ALDE Group, Philippe Lamberts, on behalf of the Verts/ALE Group, Dennis de Jong, on behalf of the GUE/NGL Group, Nigel Farage, on behalf of the EFDD Group, Olaf Stuger, on behalf of the ENF Group, Bruno Gollnisch, non-attached Member, Marian-Jean Marinescu, Pervenche Berès, Peter van Dalen, Ramon Tremosa i Balcells, Bart Staes, Isabella Adinolfi, Nicolas Bay, Ingeborg Gräßle, Inés Ayala Sender, Anders Primdahl Vistisen, Sven Giegold, György Schöpflin, Mark Demesmaecker, Pascal Durand, Werner Langen and Bas Eickhout.

The following spoke under the catch-the-eye procedure: Tom Vandenkendelaere.

IN THE CHAIR: Lívia JÁRÓKA
Vice-President

The following spoke under the catch-the-eye procedure: Eric Andrieu, Notis Marias, João Ferreira, Eleftherios Synadinos, Agnes Jongerius, Pirkko Ruohonen-Lerner, Georgios Epiteideios and Krisztina Morvai.

The following spoke: Günther Oettinger.

The debate closed.

24. Closure of the sitting

The sitting closed at 23.04.

ATTENDANCE REGISTER

12.3.2018

Present:

Ademov, Adinolfi, Agea, Agnew, Aguilera García, Aiuto, Aker, Ali, Alliot-Marie, Anderson Lucy, Anderson Martina, Andersson, Andrieu, Andrikien , Androulakis, Annemans, Arena, Arimont, Arnautu, Arthuis, Ashworth, Assis, Atkinson, Auken, Auštrevičius, Ayala Sender, Ayuso, van Baalen, Bach, Balas, Balytis, Balczó, Batten, Bay, Bayet, Bearder, Becerra Basterrechea, Becker, Belet, Bendtsen, Benifei, Benková, Berès, Bilbao Barandica, Bilde, Bizzotto, Björk, Blanco López, Blinkevičius, Bocskor, Böge, Bogovič, Boni, Borghezio, Borzan, Bortoluzzi, Bours, Boutonnet, Bové, Boylan, Brannen, Bresso, Briano, Briois, Buchner, Buda, Bullmann, Bullock, Buzek, Cadec, Calvet Chambon, van de Camp, Campbell Bannerman, Caputo, Carthy, Carver, Casa, Caspary, Castaldo, del Castillo Vera, Cavada, Cesa, Charanzová, Chauprade, Childers, Chinnici, Chountis, Christoforou, Chrysogonos, Cicu, Cirio, Clune, Coburn, Coelho, Collin-Langen, Collins, Colombier, Comi, Corazza Bildt, Corbett, Cornillet, Costa, Couso Permuy, Cramer, Cristea, Csáky, Czarnecki, Czesak, van Dalen, Dalli, Dalton, Dalunde, D'Amato, Dance, Danti, (The Earl of) Dartmouth, De Castro, Delahaye, Deli, Delli, Delvaux, Demesmaeker, Denanot, Deprez, Deß, Detjen, Deva, Diaconu, Díaz de Mera García Consuegra, Dlabajová, Dodds, Dohrmann, Dorfmann, D'Ornano, Durand, Dzhambazki, Eck, Ehler, Eickhout, Elissen, Epitideios, Erdős, Ernst, Ertug, Estaràs Ferragut, Etheridge, Evans, Evi, Fajon, Farage, Faria, Federley, Ferber, Fernandes, Fernández, Ferrara, Ferreira, Finch, Fitto, Fjellner, Flack, Flanagan, Fleckenstein, Florenz, Fontana, Foreza, Foster, Fotyga, Fountoulis, Freund, Frunzulic , Gahler, Gál, Gambús, García Pérez, Gardiazabal Rubial, Gardini, Gebhardt, Geier, Gerbrandy, Gericke, Geringer de Oedenberg, Giegold, Gierek, Gieseke, Gill Neena, Gill Nathan, Girling, Giuffrida, Goddyn, Goerens, Gollnisch, Gomes, González Peñas, González Pons, Gosiewska, Grammatikakis, de Grandes Pascual, Grapini, Gräßle, Graswander-Hainz, Griffin, Grigule-Peterson, Grossetête, Grzyb, Gualtieri, Guillaume, Guoga, Hadjigeorgiou, Halla-aho, Hannan, Harkin, Häusling, Hautala, Hayes, Hazekamp, Hedh, Henkel, Herranz García, Hetman, Hirsch, Hoc, Hoffmann, Hohlmeier, Hökmark, Hölvényi, Honeyball, Hookem, Hortefeux, Howarth, Hübner, Hudghton, Hyusmenova, in 't Veld, Iturgaiz, Iwaszkiewicz, Jaakonsaari, Jäätteenmäki, Jadot, Jahr, Jakovčič, Jalkh, James, Jamet, Járóka, Jazłowiecka, Ježek, Jiménez-Becerril Barrio, Joly, de Jong, Jongerius, Joulaud, Jurek, Kadenbach, Kaili, Kalinowski, Kallas, Kalniete, Kammerevert, Kappel, Karas, Karim, Kariš, Karlsson, Karski, Kaufmann, Kefalogiannis, Kelam, Keller Jan, Keller Ska, Kelly, Klinz, Kłosowski, Koch, Kofod, Kohlíček, Kohn, Kölmel, Konečná, Köster, Kouloglou, Kouroumbashev, Kovatchev, Kozłowska-Rajewicz, Krasnodarski, Krehl, Krupa, Kudrycka, Kuhn, Kukan, Kuneva, Kuusk, Kyenge, Kyllönen, Kyrkos, Kyrtsov, Kyuchyuk, Lalonde, Lamassoure, Lambert, Lange, Langen, La Via, Lavrilleux, Lebreton, Lechevalier, Le Hyaric, Leinen, Lenaers, Le Pen, Lewandowski, Liberadzki, Liese, Lietz, Lins, Lochbihler, Loiseau, Løkkegaard, Loones, Lope Fontagné, López, López Aguilar, López Bermejo, López-Istúriz White, Lösing, Lucke, Ludvigsson, Łukacijewska, Lundgren, Łybacka, McAllister, McAvan, McGuinness, McIntyre, Macovei, Malinov, Maltese, Mamikins, Mandl, Mandl, Mann, Manscour, Marcellesi, Marias, Marinescu, Marinho e Pinto, Martin David, Martin Dominique, Martin Edouard, Martusciello, Mašťálka,

Matera, Matias, Mato, Matthews, Maullu, Mavrides, Maydell, Mayer Georg, Mayer Alex, Mazuronis, Meissner, Mélin, Melo, Metsola, Michel, Michels, Mihaylova, Mikolášik, Millán Mon, van Miltenburg, Miranda, Mitrofanovs, Mizzi, Mlinar, Mobarik, Moi, Mois , Molnár, Monot, Monteiro de Aguiar, Montel, Moody, Moraes, Morgano, Morin-Chartier, Morvai, Müller, Mure an, Mussolini, Nagy, Nart, Nekov, Neuser, Nica, Nicholson, Nicolai, Niebler, Niedermayer, Niedermüller, van Nistelrooij, Noichl, Novakov, Nuttall, Obermayr, O'Flynn, Olbrycht, O óg, Pabriks, Padar, Paet, Paksas, Palmer, Panzeri, Paolucci, Papadakis Demetris, Papadakis Konstantinos, Papadimoulis, Parker, Pa cu, Pavel, Payne, Pedicini, Peillon, Peterle, Petersen, Petir, Picula, Piecha, Pieper, Pietikäinen, Pimenta Lopes, Piotrowski, Piri, Pirinski, Pitera, Plura, Poc, Poche, Pogliese, Pol ák, Popa, Por ba, Pospíšil, Preda, Pretzell, Preuß, Procter, Proust, Quisthoudt- Rowohl, Radev, Radoš, Radtke, Rebega, Reda, Reding, Regner, Reid, Reimon, Reintke, Revault d'Allonnes Bonnefoy, Ribeiro, Ries, Riquet, Rivasi, Rochefort, Rodrigues Liliana, Rodrigues Maria João, Rodríguez-Piñero Fernández, Rodust, Rolin, Rop , Rosati, Rozière, Ruas, Rübige, Ruohonen- Lerner, Saïfi, Sakorafa, Salafranca Sánchez-Neyra, Salini, Salvini, Sánchez Caldentey, Sander, Sant, dos Santos, Sârbu, Sargentini, Saryusz-Wolski, Saudargas, Schaake, Schaffhauser, Schaldemose, Schirdewan, Schlein, Schmidt, Scholz, Schöpflin, Schreijer-Pierik, Schulze, Schuster, Schwab, Scott Cato, Sehnalová, Selimovic, Senra Rodríguez, Sernagiotto, Serrão Santos, Seymour, Siekierski, Silva Pereira, Simon Peter, Simon Siôn, Sippel, Škripek, Škrlec, Smith, Smolková, Sógor, Šojdrová, Solé, Šoltes, Sommer, Spinelli, Spyraiki, Staes, Stanishev, Starbatty, Štefanec, Št tina, Stevens, Stihler, Stolojan, Stuger, Sulík, Šulin, Sylikiotis, Synadinos, Szájer, Szanyi, Szejnfeld, Tajani, Tamburrano, T n sescu, Tannock, Ţapardel, Tarabella, Tarand, Taylor, Teli ka, Terricabras, Theocharous, Thomas, Thun und Hohenstein, T kés, Toli , Tomaševski, Tomaši , Tomc, Toom, Torres Martínez, Torvalds, Tošenovský, Trebesius, Tremosa i Balcells, Troszczynski, Trüpel, urcanu, Ujazdowski, Ujhelyi, Ulvskog, Ungureanu, Urbán Crespo, Urtasun, Urutchev, Vaidere, Vajgl, Valcárcel Siso, V lean, Valenciano, Valero, Valli, Vallina, Vana, Van Brempt, Vandenkendelaere, Vaughan, Vautmans, Väyrynen, Vergiat, Viegas, Vilimsky, Viotti, Virkkunen, Vistisen, Voigt, Voss, Vozemberg-Vrionidi, Waitz, Wał sa, Ward, Weber Renate, Weidenholzer, von Weizsäcker, Wenta, Werner, Wieland, Wierinck, Wikström, Winberg, Winkler Hermann, Winkler Iuliu, Wi niewska, Wölken, Woolfe, Záborská, Zagorakis, Zahradil, Zammit Dimech, Zanni, Zanonato, Zarianopoulos, Zdechovský, Zdrojewski, Zeller, Zemke, Zijlstra, Zimmer, Złotowski, Zoan , Zoffoli, óttek, Zorrinho, Zovko, Zullo, Zver, Zwiefka

Excused:

Christensen, Corrao, Crowley, Fisas Ayxelà, Marusik, Nilsson, Sonneborn, Z le, Žit anská

European Parliament meeting 12 March 2018.

Integrity policy of the Commission, in particular the appointment of the Secretary-General of the European Commission (debate)

<http://www.europarl.europa.eu/plenary/EN/vod.html?mode=chapter&vodLanguage=EN&startTime=20180312-17:44:13-818#>

MINUTES OF EP MEETING 12 MARCH

Günther Oettinger, Mitglied der Kommission. – Herr Präsident, Damen und Herren Abgeordnete, meine sehr verehrten Damen und Herren! Sie haben mich heute hierher eingeladen, um im Namen der Kommission eine Erklärung abzugeben betreffend die Integritätspolitik der Kommission und ihre Arbeitsweise, namentlich auch in Bezug auf die Ernennung des Beamten Martin Selmayr zum Generalsekretär der Kommission mit Datum des 1. März dieses Jahres. Gestatten Sie mir zunächst einige Erläuterungen zum Kontext.

Die Kommission hat am 21. Februar eine Reihe von Entscheidungen betreffend ihres Senior Managements getroffen, in einem sogenannten Paket. Warum machen wir das überhaupt? Bei einer größeren Zahl von Generaldirektionen, die wir in unseren Diensten wissen, bei einer Vielzahl von „Senior-Management“-Positionen haben wir nahezu wöchentlich eine Entscheidung. Dies würde aber in unseren Diensten Unruhe bedeuten. Deswegen machen wir dies regelmäßig im Paket. Nur so erreichen wir im Interesse unserer Institution eine ausgewogene Gesamtentwicklung, zum Beispiel betreffend die unterschiedlichen Nationalitäten. Dienstalster, Lebensalter, Pensionsreife beziehen wir dabei ein, und auch das Ziel, den Frauenanteil wirkungsvoll zu steigern, ist dabei eine Priorität.

Das letzte Paket hat meine Vorgängerin vorbereitet. Es wurde Ende Juni 2015 im Kollegium beraten und auch verabschiedet. Übrigens war damals ein Teil des Pakets neben zahlreichen Posten von Generaldirektoren und Direktorinnen, von deputies in der Kommission, die Entscheidung, dass Catherine Day ihren Dienst beendete und dass Herr Italianer neuer Generalsekretär geworden ist. Eigentlich war Ende Juni ein genau vergleichbares Paket zur Entscheidung anstehend wie vor wenigen Wochen die Entscheidung zum jetzigen Paket.

Wir haben dafür ein eingeführtes Verfahren. Gestatten Sie mir, drei Punkte zu unterstreichen: Wir treffen diese Entscheidungen auf dem Boden des Statuts der Europäischen Union. Das ist unser Recht und unsere Pflicht. Und genauso gingen wir auch diesmal wieder vor. Wir haben diese Entscheidung getroffen im Einvernehmen und unter Mitwirkung der Portfolio-Kommissare, der koordinierenden Vizepräsidenten, meiner Person und auch des Präsidenten. Alle Entscheidungen des Kollegiums vom 21. Februar erfolgten auf meinen Vorschlag, und die Entscheidung über den Generalsekretär auf direkten Vorschlag unseres Präsidenten – genauso wie es auch in der Verantwortung innerhalb der Kommission vorgesehen ist. Alle Entscheidungen – einschließlich der Entscheidung über den neuen Generalsekretär – wurden von allen Mitgliedern der Kommission einvernehmlich gebilligt. Ich darf auf das Sitzungsprotokoll der Kommissionssitzung vom 21. Februar verweisen, das wir – wie nach jeder Sitzung – im Einklang mit unseren Transparenzregeln auch öffentlich gemacht haben. Zweitens: Für mich steht außer Zweifel – und es wurde auch bisher nicht in Frage gestellt –, dass der Beamte Martin Selmayr über alle notwendigen Qualifikationen für die Aufgabe des Generalsekretärs der Europäischen Kommission verfügt. Er hat langjährige Erfahrung in Schlüsselfunktionen in der Kommission, er ist ein hervorragender Jurist, er besitzt hohe kommunikative Fähigkeiten. Er ist mit Sicherheit uneingeschränkt für die Aufgabe geeignet. Fleiß, Begabung, Qualifikation, proeuropäische Einstellung und auch politisches Gespür sind ihm zu eigen. Hinzu kommt: Er hat das Vertrauen unseres Kommissionspräsidenten, auch mein Vertrauen und das des gesamten Kollegiums. Was die verfahrensrechtlichen Fragen betrifft, die in den letzten Tagen öffentlich aufgeworfen wurden, kann man sagen, dass auch im Rahmen dieses Pakets und anschließend bei der Versetzung Martin Selmayrs auf den Posten des Generalsekretärs im Einklang mit Artikel 7 des Statuts das Verfahren in allen Einzelheiten und im Zeitablauf beachtet wurde. Erst die Ausschreibung des Deputy Secretary General, dann ein Assessment Center, eine externe Bewertung von Kandidaten, das Interview mit dem Beratenden Ausschuss innerhalb der Kommission und dann das Interview mit dem Präsidenten und

mit mir selbst einen Tag vor der Entscheidung. Es handelte sich um eine korrekte Auswahl nach den Regeln des Statuts, die ich auch als für Personalangelegenheiten verantwortlicher Kommissar sicherzustellen hatte und sichergestellt habe.

Bei der Auswahl eines Generalsekretärs spielen weder Nationalität noch Zugehörigkeit zu einer Partei – sofern gegeben – eine Rolle. Einzig und allein die Befähigung für dieses Amt, um das Funktionieren unserer Behörde bestmöglich sicherzustellen und im Sinne der Leitlinien des Präsidenten der Kommission die Arbeit zu garantieren, darf im Mittelpunkt stehen. Und dafür halten wir den Kandidaten, den gewählten Beamten Martin Selmayr, für uneingeschränkt geeignet.

Kurzum: Wir können Ihnen dartun, dass die formalrechtlichen Regeln beachtet wurden, das Verfahren denselben entsprach und der Kandidat unseren Erwartungen hinsichtlich der Qualifikation ebenfalls in vollem Maße entspricht. Deswegen wollen wir Sie bitten, diese Entscheidung so zu kontrollieren, aber dann auch zu akzeptieren.

Françoise Grossetête, au nom du groupe PPE. – Monsieur le Président, Monsieur le Commissaire, il y a un principe qui est indiscutable: il est dans le pouvoir d'un président de procéder à des nominations à des postes éminemment stratégiques et politiques. C'est la conséquence, le résultat, d'une élection démocratique.

Monsieur le Commissaire, je vous remercie de nous avoir apporté toutes les explications, car toute nomination ne doit pas être une prise de pouvoir de la haute administration, au mépris des règles de procédure ou grâce à des petits arrangements entre amis, parce que dans ce cas, quoi de mieux pour nourrir le discours anti-élites, quoi de mieux pour donner du grain à moudre aux eurosceptiques et entretenir le mythe d'une Europe technocratique dirigée derrière des portes closes?

En 2014, notre groupe s'est engagé pour une Europe plus politique, moins technocratique, plus transparente, plus proche du citoyen, avec une Commission politique qui prenne le pas sur l'administration. Malheureusement, l'affaire dont nous débattons ce soir laisse croire à nos concitoyens que des fonctionnaires non élus prendraient de facto les rênes de l'institution, au nez et à la barbe de commissaires prévenus en dernière minute. Franchement, nous nous tirons une balle dans le pied!

La légitimité des hauts fonctionnaires de la Commission, dont la compétence n'est pas en doute, se verrait au contraire renforcée par des procédures de nomination transparentes et équitables. Or, cette affaire jette le discrédit sur toute une institution, dont nous savons pourtant qu'elle est composée en majeure partie de professionnels talentueux et engagés pour faire avancer le projet européen.

Les institutions européennes n'appartiennent pas aux hauts fonctionnaires, elles appartiennent aux citoyens européens. Les premiers sont là pour servir les seconds et non pas pour se servir eux-mêmes, ce dont la Commission est responsable devant ce Parlement. Il serait bon de s'en souvenir.

Arndt Kohn, im Namen der S&D-Fraktion. – Herr Präsident, Herr Kommissar, liebe Kolleginnen und Kollegen! Mir steht nicht zu, über die persönliche oder berufliche Qualifikation von Herrn Selmayr zu urteilen. Herr Oettinger hat eben ausführlich dargelegt, welche Qualifikationen er mitbringt und wie die Regeln bei der Berufung des neuen Generalsekretärs eingehalten wurden. Wieso sind wir aber dennoch nicht mit dieser Situation zufrieden?

Wir leben in Zeiten des Brexit, in Zeiten, in denen Populisten aller Couleur rund um die Uhr daran arbeiten, das Projekt Europa infrage zu stellen. Vorgänge wie die Beförderung von Herrn Selmayr, bei denen nach außen hin der Eindruck entsteht, dass Regularien bis aufs Äußerste gedehnt werden,

um bestimmte Stellen mit bestimmten Personen zu besetzen, produzieren in den Augen der Bürgerinnen und Bürger nicht nur Fragezeichen. Nein, sie sind Wasser auf die Mühlen der Europakritiker und fördern Unverständnis und Ablehnung in der Bevölkerung. Meine Frage an Sie, Herr Kommissar: Wie wollen Sie dieses verloren gegangene Vertrauen wieder herstellen? Wir als S&D werden in der anstehenden Entlastung für das Haushaltsjahr 2016 einen Änderungsantrag einbringen, der das Ziel hat, dass bei zukünftigen Bewerbungsverfahren die am besten geeigneten Kandidatinnen oder Kandidaten in einem fairen und transparenten Verfahren gefunden werden, um hochrangige Beamtenstellen zu besetzen. Das soll nicht nur für die Kommission gelten. Alle EU-Institutionen, auch das Parlament und der Rat, sollen dieses Verfahren zukünftig anwenden. Das ist unser Vorschlag, um Vertrauen wiederzugewinnen. Ich gehe davon aus, dass Sie, Herr Oettinger, dieselben Ziele verfolgen, und hoffe auf eine gute Zusammenarbeit mit Ihnen.

(Der Redner lehnt eine Frage nach dem Verfahren der „blauen Karte“ von Olaf Stuger ab.)

Jan Zahradil, on behalf of the ECR Group. – Mr President, my Group has tabled a set of questions. Unfortunately, we haven't received sufficient responses to them from the Commissioner and I hope that he will still go back to those four questions. You have argued that everything was in compliance with the rules: rules are one thing, the other is the impression.

Let me add a few more questions to what we originally tabled. I have no special information, everything I have comes from open sources, from the media.

Is it true that on 19 February, when Heads of Cabinet met to prepare a College meeting, no mention of the appointment was on the agenda or under any other business, while on 21 February it was there? And that the whole procedure for the appointment of the Secretary-General took just nine minutes, where Mr Selmayr was first appointed Deputy Secretary-General, then the Secretary-General of the European Commission resigned, and then Mr Selmayr was appointed as the Secretary-General?

My second question: was he the only candidate, or were there more candidates?

My third question, again from the media: is it true that the minutes of the 21 February Commission meeting were amended to include a discussion about the merits of non-existent multiple candidates? Mr Commissioner, there is a lot of interest surrounding that appointment and I think that you should do your best to come out with something which is trustworthy, and you should avoid any feeling or any impression that it was a pre-prepared, politically motivated nomination. Unfortunately, I don't think that in this case you did your job perfectly.

Sophie in 't Veld, on behalf of the ALDE Group. – Mr President, Commissioner Oettinger has, quite frankly, just made matters a lot worse, coming here and taking MEPs for stupid. Telling us about the wonderful new clothes of the emperor and expecting us to believe it is a stupid strategy, and it just underlines the point that I want to make here today. Today's debate is not about staff policy; it is about the total lack of political judgment of this Commission and that also applies to the absence of Mr Juncker, who likes to talk about his political Commission, but politics also means political accountability. He should be here to be held accountable for a political decision.

I am left completely speechless at the scene of 28 powerful politicians, selected for the political leadership of this continent but led by the nose by a civil servant. The political Commission of Mr Juncker sheepishly signing on the dotted line. Yes, Commissioner Oettinger, that is what you've been doing. If the Commissioners are so easily intimidated by a civil servant, if they act like helpless children when confronted with an unexpected staff decision, then how can we expect them to stand

up for the European interests against Trump, for example, in a trade war, or resist pressures from powerful lobbies, or be firm with national governments that violate EU rules?

Maybe that part of the House could have the courtesy to hear me out... (Speaker is pointing to the right).

Selmayr gate destroys all the credibility of the European Union as a champion of integrity and transparency in public administration. At a time when public trust in the European project is low, this is devastating, Commissioner Oettinger, and the fact that the Commission has remained deaf to date to criticism shows how disconnected it is from reality.

In conclusion, the Commission will have to choose what is more important: the career of Mr Selmayr or the credibility of the European Union. The appointment of Mr Selmayr was a grave error and it must be corrected, and that is a precondition for our continued support for this Commission.

Philippe Lamberts, au nom du groupe Verts/ALE. – Monsieur le Président, chers collègues, en ce moment où le projet européen rencontre un dépit, voire une hostilité grandissants, que devons-nous attendre de la Commission, celle dont on nous dit qu'elle est de la dernière chance? Qu'elle se reconnecte aux besoins criants de nos sociétés, qu'elle s'ouvre à la diversité des approches en sortant du tout à l'économie, qu'elle quitte les dogmes de la pensée unique, dont l'échec est patent, qu'elle sorte du bunker dans lequel elle se replie jour après jour.

Comme aurait pu le dire Maria Montessori en son temps, il est urgent de mobiliser l'autonomie et l'initiative parmi les 33 000 agents de ce service public par excellence que doit être la Commission. Le parachutage d'assaut du capitaine Martin Selmayr à leur tête relève d'un aveuglement coupable de Jean-Claude Juncker. Personne ne met en cause ni l'intelligence ni la capacité de travail de l'intéressé. Par contre, il est de notoriété publique que c'est d'abord et avant tout l'homme d'un parti, dont l'objectif premier est d'asseoir son hégémonie sur les affaires européennes. Martin Selmayr poursuit sur le chemin d'une centralisation autoritaire, d'une caporalisation des fonctionnaires, invités à l'obéissance, plutôt qu'à la créativité, dans le mépris total de l'esprit de collégialité avec pour objectif celui de ne plus avoir qu'une ligne, ne plus voir qu'un visage: le sien.

Dennis de Jong, namens de GUE/NGL-Fractie. – Voorzitter, ik moet u zeggen dat ik diep teleurgesteld ben door wat de heer Oettinger ons net in een paar minuutjes aan informatie gaf worden. We worden – net als de journalisten – als volksvertegenwoordigers hier behandeld als kinderen die zeuren over iets wat toch al lang bekend is – dat de Commissie alles goed doet, dat de sollicitatieprocedures fantastisch zijn en dat terwijl alles en alles geheim is en stinkt rondom de benoeming van de heer Selmayr. Wij willen precies weten, stap voor stap: hoe ging de eerste benoeming als adjunct-secretaris-generaal? Hoe ging de tweede benoeming als secretaris-generaal? Hoe kan het zijn dat commissaris Thyssen verrast was door het voorstel voor de heer Selmayr als secretaris-generaal? En behandel ons niet als kleine kinderen, want dat accepteren we niet!

Hetzelfde gebeurde op 28 februari door vicepresident Katainen die ook zei dat hij ons zou vertellen wat vriendschap is, toen hij met Barroso een glaasje bier ging drinken. Het had immers niets te maken met Goldman Sachs. Barroso was helemaal geen lobbyist, maar hij noteerde wel in het register dat hij met Goldman Sachs geluncht had of een glaasje gedronken had. Wat is nou het werkelijke verhaal? Heeft Barroso zijn afspraken met het ad—hoc ethisch comité dat hij niet meer zou lobbyen voor Goldman Sachs, heeft hij die niet gehandhaafd? In dat geval moeten er maatregelen genomen worden over Barroso. Twee gevallen van integriteit en daarom hebben we het onderwerp integriteitsbeleid hier op de agenda gezet. We wensen niet als kinderen behandeld te worden.

Ik moet eerlijk zeggen dat ik afgelopen weekend erg moest denken aan wat er in 1999 gebeurd is met de Commissie Santer. Ook daar was er een integriteitsprobleem met madame Cresson en werd er aan het begin arrogant gedaan. Want ja, waar bemoeien jullie je mee? Wat is er aan de hand? Het werd weggemoffeld. En u kent het lot van de Commissie Santer.

Mijn fractie staat pal om ook een motie van wantrouwen in te dienen tegen de Commissie Juncker als deze arrogante houding zo doorgaat. Tijdens het onderzoek dat de Commissie begrotingscontrole gaat instellen, willen we alle feiten op tafel!

Nigel Farage, on behalf of the EFDD Group. – Mr President, I would like to thank the Commission. The fast-track appointment of Martin Selmayr to a EUR 20 000 a month job was done without any openness, without any transparency. In fact, his photograph was on the Commission website before the meeting even took place, so well done on that score.

What you have done, I think, is to bring a bit more light onto the Commission. I want the citizens to know that the Commission is the government of Europe. It is unelectable. We cannot vote for them, we cannot remove them, and yet they have the sole right to make law, and people need to understand how their money is being spent. This is Juncker's favourite bureaucrat, a fanatic, who is now the most powerful bureaucrat in the world, and all of it done without an open procedure. You have done the peoples of Europe a great service. It is the perfect stitch-up. It smacks of nepotism, unaccountable government, abuse of public funds. Thank God the UK is leaving.

Olaf Stuger, namens de ENF-Fractie. – Voorzitter, ik ben geschokt, maar niet door de aanstellingsprocedure van de heer Selmayr. Ik ben geschokt door het wantrouwen dat ik hier proef tegenover de heer Juncker. Want, Voorzitter, kennen wij de heer Juncker niet als een door en door integer mens, een bescheiden, nee, een onderdanig bestuurder, die zichzelf volledig wegcijfert en zich opoffert voor de Europese burger? En juist hij, het voorbeeld voor veel wereldleiders, wordt hier besmeurd. En Voorzitter, dat kan ik niet toestaan. Dat kan ik niet toestaan. Ik vraag om directe maatregelen. Mijn voorstel is, Voorzitter, om de verkiezingen van volgend jaar, de Europese verkiezingen, af te zeggen en de heer Juncker de bevoegdheid te geven op persoonlijke titel de leden van dit Parlement te kiezen en te benoemen.

Bruno Gollnisch (NI). – Monsieur le Président, Monsieur Oettinger, vous nous prenez vraiment pour des enfants en ne répondant pas aux vraies questions sur l'effarante nomination de M. Martin Selmayr, nommé en un seul jour secrétaire général adjoint puis secrétaire général. La Commission en a débattu longuement – nous a dit son porte-parole – lors d'une réunion, le 21 février, qui a commencé à 9 h 30, la convocation de la presse pour annoncer ladite nomination étant partie à 9 h 39, pour une réunion à 10 h 30. Moins de deux candidats, car s'il n'y avait pas eu de candidats, la nomination eût été tout à fait illégale. Il allait un homme et une femme. On a demandé donc à une dame, Mme Clara Martínez Alberola, adjointe de M. Selmayr, d'être candidate. Elle a bien voulu le faire, elle en a été récompensée, elle a retiré sa candidature sitôt les inscriptions clôturées, afin de laisser M. Selmayr seul en piste. À qui ferez-vous croire que cette procédure est régulière?

Il reste par ailleurs une dernière question, une question très importante: comment se fait-il que les 27 commissaires aient été aussi bienveillants à l'égard de ces manipulations indécentes de la procédure? Est-ce parce que M. Selmayr a proposé d'augmenter l'indemnité de transition des anciens commissaires, en la faisant passer de 40 à 65 % du dernier salaire de base? Est-ce parce qu'il a promis à tous les anciens commissaires un bureau à la Commission, une voiture avec chauffeur, deux assistants, de telle sorte qu'ils recevraient le double ou le triple de ce qu'ils reçoivent actuellement?

Voilà une question à laquelle il est important que vous répondiez.

Marian-Jean Marinescu (PPE). – Domnule președinte, este evident că poziția de secretar general al Comisiei este extrem de importantă. Trebuie să asigure buna funcționare a serviciilor, echilibru, schimbul de informații între direcțiile generale, schimbul de informații cu Parlamentul și, mai ales, implementarea deciziilor politice ale colegiului comisarilor, fără să interfereze, fără să devieze, absolut deloc, de la aceste decizii politice. Funcționarul trebuie să pună în aplicare deciziile politice, nu să aibă opinii, până la urmă.

De aceea, cred eu că procedura trebuie să fie pe măsură, să fie o procedură foarte transparentă, să încurajeze participarea unui număr mare de funcționari, pentru a se putea decide o persoană, cea mai potrivită, pentru această funcție. Numai în acest fel Comisia își probează credibilitatea și cred că intervenția Comisiei pentru control bugetar este extrem de binevenită în acest caz.

Pervenche Berès (S&D). – Monsieur le Président, Monsieur le Vice-Président, dois-je vous relire l'article 4 du statut des fonctionnaires de l'Union européenne?

«Toute vacance d'emploi dans une institution est portée à la connaissance du personnel de cette institution dès que l'autorité investie du pouvoir de nomination a décidé qu'il y a lieu de pourvoir à cet emploi».

Pourquoi le poste de secrétaire général n'a-t-il pas été publié, contrairement à ce que vous avez réaffirmé ici aujourd'hui? Pourquoi Mme Clara Martinez a-t-elle retiré sa candidature avant même d'avoir été entendue? Où est l'audition d'un homme et d'une femme dans votre procédure? Comment se fait-il que le personnel n'ait pas été informé en temps et en heure? Vous, Monsieur le Vice-Président, qui êtes si à cheval sur le respect de toutes les règles, comment pouvez-vous vous satisfaire de cette violation manifeste de l'esprit et de la lettre de la loi? Comment pouvez-vous prendre le risque d'engager cette Commission que le président Juncker a voulue comme celle de la dernière chance, qui aujourd'hui alimente, y compris dans ses rangs, des discours eurosceptiques, alors que nous avons besoin qu'elle soit la gardienne des traités? Comment pouvez-vous violer l'esprit des institutions qui fait que ceux qui y travaillent ne sont pas là pour se servir mais pour travailler au service des citoyens – ceux que nous représentons? Être au service des citoyens, c'est ce que nous devons faire de manière exemplaire, ici face aux dérives au sein de la Commission européenne, mais nous devons bien sûr le faire aussi avec autant de vigilance dans notre propre Institution, nous le savons bien. Alors nous vous le disons, Monsieur le Vice-Président: cessez ces contre-vérités! Quelles que soient les qualités de M. Selmayr, il n'avait pas les qualités juridiques en termes d'emploi pour occuper ces fonctions et votre capacité à promouvoir les femmes en demandant à cette secrétaire générale adjointe de retirer sa candidature, avant même de l'avoir entendue n'est pas digne de la promotion de l'égalité des genres.

Peter van Dalen (ECR). – Voorzitter, Brussel heeft bij heel veel Europese burgers een negatieve klank, een klank van vriendjespolitiek en goed voor jezelf zorgen. Dat is exact wat Commissievoorzitter Juncker nu heeft gedaan. Vriendje Selmayr naar voren schuiven en goed voor hem zorgen.

Na zestig jaar Europese Unie lijkt er nog maar weinig veranderd. Heinrich Heine had gelijk: "Es ist eine alte Geschichte, doch bleibt sie immer neu". Juncker is er altijd als de kippen bij om lidstaten en anderen te beschuldigen weg te duiken voor verantwoordelijkheid en niet transparant te zijn. Hij doet nu hetzelfde en verschuilt zich achter woordvoerders die nota bene verklaren dat alles met religieuze juistheid is gedaan. Je moet het lef maar hebben!

Het verpletterend simplistische antwoord van commissaris Oettinger laat nu zien dat de Commissie iedere politieke antenne mist. En meneer Selmayr is nu "aangebrand Brussels lof" en iedereen weet dat dat niet te verteren is. Er start vandaag nog een nieuwe procedure in de opvolging van de heer Italianer. Alleen op die manier kan de schade en schande van dit nieuwe geval van Brusselse vriendjespolitiek nog ietsjepietsje beperkt worden.

Ramon Tremosa i Balcells (ALDE). – Mr President, first of all we should ask where President Juncker is, because he, not you, should be the best person to answer questions about the double promotion of Mr Selmayr, which was approved at the College meeting on 21 February.

But, I have some questions for you, Commissioner Oettinger. How long beforehand were you informed that Mr Selmayr was the only candidate for this post? To many observers giving Mr Selmayr a double promotion did not respect at least two articles of the Statute for EU civil servants. Article 29 requires an internal competition for the vacant post of Deputy Secretary— General. Mr Selmayr only had the grade of director and he was appointed Deputy Secretary— General. Commissioner Oettinger, for how long did he hold this post?

Article 4 requires the appointing authority and the staff of the Commission to be informed. This was not the case. So, Commissioner Oettinger, was it a fake internal competition? It seems an abuse of power. I welcome the fact that the EU Ombudsman is analysing this affair. Colleagues, such behaviours and abuses of power are fuelling anti - European sentiment all over Europe.

Bart Staes (Verts/ALE). – Voorzitter, collega's, commissaris, dit is een debat over ethiek en integriteit. U zegt dat alle regeltjes gevolgd zijn, maar wie het dossier nader bestudeert, weet dat dit hele dossier stinkt.

In de eerste plaats de aanstelling tot adjunct-secretaris-generaal. Die procedure is op een extreem snelle manier verlopen. Vacature: 31 januari. Externe evaluatie: 15 februari. Gesprek met het Raadgevend Comité: 16 februari. Interview met u en meneer Juncker: 20 februari. Aanstelling tot adjunct-secretaris-generaal: 21 februari. Een wereldrecord! In de tweede plaats: de vacature is niet op een eerlijke manier behandeld. Er waren niet meerdere kandidaten. In de derde plaats: de vacature is niet open en transparant verlopen.

In de vierde plaats: de aanstelling tot secretaris-generaal op 21 februari is verlopen op een manier als een deus ex machina: niet aangekondigd, niet geagendeerd, zonder enig document op tafel voor de 28 commissarissen.

Deze zaak moet onderzocht worden, mijnheer Oettinger! En dat zal gebeuren in de Commissie begrotingscontrole! U hoeft niet te doen alsof wij kleine kinderen zijn! Wij willen weten wat er gebeurd is en aanvaarden niet dat hoge ambtenaren op zo'n manier, op zo'n oneerlijke manier snel en zomaar er doorheen gejaagd worden!

Isabella Adinolfi (EFDD). – Signor Presidente, onorevoli colleghi, ci troviamo qui a discutere di un grigio funzionario, Selmayr, che nessun cittadino europeo però conosce. Perché? Perché Selmayr, in un attimo, si è trovato a sedere su una delle poltrone più pesanti della Commissione europea. Il problema è che noi sappiamo chi volle mettere a capo del Gabinetto dell'ufficio Juncker il tedesco Selmayr, e di chi faceva gli interessi.

Ora, io non contesto la correttezza formale della nomina stessa, ma piuttosto il ruolo politico o meno della Commissione e del suo Presidente, e soprattutto vorrei sapere la considerazione che deve avere

l'etica nella vita pubblica. Io a questo punto mi chiedo e vi chiedo, a voi colleghi deputati: il Presidente della Commissione e i Commissari sono solo dei semplici tecnici oppure sono dei politici? Perché se si tratta di politici – cosa che tra l'altro il Presidente Juncker ha più volte ribadito – in che modo rispondono della loro condotta ai cittadini che non li hanno eletti ma che però subiscono le loro decisioni?

I politici, soprattutto quelli a capo delle istituzioni, devono agire con integrità, disciplina, onore, comportarsi sempre in modo eticamente irreprensibile. Tutti i loro atti devono non solo essere, ma anche apparire irreprensibili. Non possono esserci dubbi sul loro operato. Dove sono allora, in questo caso, l'etica e la trasparenza, che Lei, Commissario, prima ci ha citato? Quali sono i meccanismi di sanzione politica di fronte a questi atteggiamenti e a questi comportamenti, visto che né Lei, Commissario Oettinger, né tanto meno il Presidente Juncker, siete stati eletti direttamente dai cittadini, e non è prevista una mozione di sfiducia individuale? Soprattutto, dov'è il Presidente Juncker?

Il voto in Italia ha dimostrato che i cittadini non vogliono più questa Europa, chiusa in un fortino di raccomandati, di interessi tedeschi e di lobbisti. Dall'Italia spira forte un vento di cambiamento, che voi non potete più ignorare.

Nicolas Bay (ENF). – Monsieur le Président, oui, la nomination de M. Selmayr comme Secrétaire général de la Commission européenne est scandaleuse.

Scandaleuse parce que ce soutien de Mme Merkel s'ajoute à la longue liste des Allemands abusivement nommés à des postes-clés dans les instances européennes.

Scandaleuse parce que cette nomination totalement arbitraire, au mépris de toutes les règles de recrutement en vigueur dans cette institution, consacre le triomphe de la superstructure bureaucratique sur les responsables politiques que nous sommes.

Alors que l'Union européenne ne cesse de donner des leçons de droits de l'homme, de respect de l'état de droit et de démocratie à la terre entière, voilà que l'ancien premier ministre d'un paradis fiscal veut imposer son chef de cabinet à la tête de l'administration de l'exécutif européen. Au lieu de venir ici pour s'en expliquer, M. Juncker nous envoie M. Oettinger, le commissaire allemand également choisi par Mme Merkel. Quel mépris pour le Parlement et les citoyens que nous représentons!

C'est avec ce même mépris que les bureaucrates non élus de la Commission, qui disposent d'un pouvoir exorbitant, se permettent de contester les décisions à la fois légales et légitimes de gouvernements démocratiquement élus comme en Pologne ou en Hongrie.

Ingeborg Gräßle (PPE). – Herr Präsident, meine lieben Kolleginnen und Kollegen! Ich wusste gar nicht, wie viele von euch und von uns scharf darauf sind, sich in die Untiefen des Statuts einzuarbeiten. Ich freue mich darauf. Ich möchte uns einladen, zur Versachlichung der Debatte beizutragen. Der Haushaltskontrollausschuss wird Fragen stellen, die Sprecher werden das heute in einer Woche beschließen, und dann werden wir alle die Fragen stellen, die uns umtreiben.

Normalerweise geht der Plenarberatung die Ausschussberatung voraus. Es wäre vielleicht in dem Falle auch gut gewesen, sich daran zu halten. Jeder Mitarbeiter ist willkommen, hier Fragen zu stellen. Ich glaube, es ist dringend geboten, zur Versachlichung beizutragen. Ich möchte eine Lanze brechen für das Statut, für den Bewährungsaufstieg, für Chancengerechtigkeit – übrigens auch hier im Haus. Ich weiß, dass die Beamtinnen und Beamten sich darauf verlassen und auf uns zählen. Ich nehme deswegen die Aussage des Herrn Kommissars zur Kenntnis, dass die Regeln und Verfahren des Statuts

eingehalten worden sind. Es gab sogar zwei Assessment- Center. Wir haben keine Statusänderung für ehemalige Kommissare, Herr Kommissar – es wäre wichtig, dass Sie das noch mal sagen – also kein Chauffeur, kein Büro, kein Personal und kein Übergangsgeld. Es wäre sehr wichtig, davon von Ihnen noch etwas zu hören.

Und ich nehme auch zur Kenntnis, dass niemand angezweifelt hat, dass der Ernannte es kann. Ich glaube, es ist für Beförderungen auch immer wichtig sicherzustellen, dass der Benannte es kann. Den Rest werden wir im Haushaltskontrollausschuss klären und hoffentlich dann eine Resolution zustande bringen.

Inés Ayala Sender (S&D). – Señor presidente, suscribo la demanda de que, ahora que estamos, además, en el marco de la aprobación de la gestión, la Comisión de Control Presupuestario haga la audiencia necesaria al señor Oettinger: tenemos la capacidad y ya lo habíamos solicitado.

Pero de todos modos, señor Oettinger, yo quería plantearle que llevo años, llevamos años pidiendo en este Parlamento — y en el contexto de la aprobación de la gestión, además — algunos cambios y algún esponjamiento de nombramientos de altos cargos sin que nos hayan hecho nunca caso.

Y cuando, por fin, esto llega, resulta que ni siquiera puedo alegrarme o podemos alegrarnos porque todo el procedimiento se ve contaminado por esa decisión expés del nombramiento del secretario general, que resulta inadmisibles aunque sea legal e, incluso, legítima, pero que se ha hecho de tal manera que ahora mismo nos ha colocado en medio de una tormenta que nos impide centrarnos en lo esencial — el brexit y sus consecuencias, los presupuestos 2020, el pilar de los derechos sociales, la política migratoria,... en fin, los temas esenciales de la Unión Europea—, y en vez de lo esencial, nos vemos en este momento hablando del funcionamiento, del mal funcionamiento, del opaco funcionamiento de las instituciones.

En vista de lo ocurrido, por lo tanto, en ese Colegio de Comisarios — que he de recordar que todos lo aprobaron, aunque después en los pasillos lloran, se quejen y digan otras cosas —, nos encontramos en el Parlamento en la necesidad de tomar en este debate estéril algunas decisiones. Yo, desde luego, estoy de acuerdo en que, en el marco de la aprobación de la gestión y de la Comisión de Control Presupuestario, que es donde habitualmente hacemos el control, desde luego hará falta que hagamos esa audiencia y ese control en profundidad.

Y yo también le pediría, señor Oettinger, puesto que sé que usted es capaz de hacerlo, que aquí nos dijera que, antes de finales de este año — que es lo que los socialistas hemos pedido —, la Comisión nos presentará una propuesta de nombramiento de altos representantes, de altos funcionarios que sea definitivamente más transparente, que esté a la altura de los tiempos y también que respete la igualdad de derechos de los funcionarios. Yo creo que nos lo merecemos todos y también Europa para su futuro.

Anders Primdahl Vistisen (ECR). – Hr. formand! Man skal være både blind, stum og døv for at tro på kommissær Oettingers forsikringer om, at denne udpegning er sket både efter reglernes ånd og bogstav. Derfor har jeg faktisk også lidt ondt af kommissæren i dag. Jeg har ondt af, at formand Jean-Claude Juncker har valgt at sende en stikirenddrenge for at forklare denne udpegning i stedet for at møde op i egen person og forklare til Parlamentet, hvorfor man absolut vil insistere på at miskreditere Kommissionens højeste niveau af embedsfolk med politiske udpegninger. Det er noget, der vil skade Kommissionen ikke bare i dag, hvor vi diskuterer denne udpegning, men også i årene, der kommer. Hvis de europæiske borgere ikke grundlæggende tror på, at de øverste embedsfolk i Kommissionen er udpeget på grund af deres dygtige kvalifikationer som neutrale embedsmænd, som vogtere af traktaten og som dem, der på en neutral måde skal formidle Parlamentets og Rådets

politische visioner, så lider hele ideen om et demokratisk EU, og derfor er det en skam, at Jean-Claude Juncker ikke i dag selv vil komme her og stå på mål for sin udpegning.

Sven Giegold (Verts/ALE). – Herr Kommissar, liebe Kolleginnen und Kollegen! Durch das, was hier in den letzten Wochen passiert ist, macht sich die Europäische Union angreifbar. Sie macht sich angreifbar, weil es in den Augen der Öffentlichkeit nach Vetternwirtschaft riecht, es riecht nach einem Beförderungsverfahren im Expresstempo. All das, Herr Kommissar, mag den Buchstaben der Regeln entsprechen, aber in den Augen der Öffentlichkeit entspricht das eben nicht den Prinzipien Europas von Transparenz, Offenheit und klaren Verfahren mit Chancengleichheit.

Und daher: Sie erinnerten an das politische Gespür des Kandidaten. Das will ich nicht in Frage stellen, aber ich appelliere an Ihr politisches Gespür. Tun Sie nicht so, als sei nichts geschehen und als sei alles in Ordnung, wenn im Grunde in ganz Europa viele Fragen zu Recht gestellt werden! Ziehen Sie Konsequenzen aus diesem Skandal, nutzen Sie nicht länger die Ausnahmenvorschriften zu Lasten der Transparenz und Offenheit des Verfahrens, die das Beamtenstatut bietet! Alle Stellen – auch hier im Parlament, in der Kommission – müssen offen und transparent ausgeschrieben werden. Die entsprechenden Entscheidungen gehören vorher auf die Tagesordnung der Gremien. Ziehen Sie bitte die Konsequenzen, damit das keine Wahlkampfhilfe für Populisten im Europawahlkampf wird!

György Schöpflin (PPE). – Mr President, the facts really do point in a particular direction. The Commission has made a very senior appointment without following its own procedures adequately, certainly as far as transparency is concerned. This has flawed consequences. It demonstrates that checks and balances are, shall we say, missing from the work of the Commission. Equally that when it suits the Commission, it ignores the rules, meaning the rule of law. Following procedure is a necessary part of the rule of law. If the Commission is ready to ignore its own rules, why should anyone pay a blind bit of attention to what the Commission says about flaws in the rule of law in Member States or anywhere else for that matter?

Mark Demesmaeker (ECR). – Commissaris Oettinger, uw toelichting toont vooral aan in wat voor soort bubbel u eigenlijk leeft. Hierbuiten stellen burgers zich vragen over deze blitzbenoeming, en u komt met een droge toelichting die op geen enkele vraag een antwoord geeft.

Het gaat voor mij niet over de persoon van Martin Selmayr. Ongetwijfeld is hij briljant. Het gaat voor mij over de manier waarop deze benoeming werd georkestreerd, de intrige, het beeld van achterkamer- en vriendjespolitiek. Het gaat over de werking van de Commissie in haar geheel. Het toont aan dat de collegialiteit in de Commissie pure schijn is. Het gaat over ongezonde concentratie van macht en invloed. En het gaat over uw communicatie.

U hebt de regels zagezegd religieus gevolgd. Wel, ik heb als kind vaak geluisterd naar de parabel van de farizeeër die de regels van Mozes naar de letter volgt, maar eigenlijk het toonbeeld is van hoogmoed en van arrogantie. U ziet de bedreigingen voor de Europese Unie vaak elders: in Rusland bij Poetin, in Amerika bij Trump, bij het populisme. Maar de echte bedreiging voor het EU—project, meneer de commissaris, moet u vooral bij uzelf zoeken.

Pascal Durand (Verts/ALE). – Monsieur le Président, Monsieur Oettinger, *fraus omnia corrumpit, apprend-on sur les bancs des facultés de droit, la fraude corrompt tout*. Lorsque vous essayez de faire croire à ce Parlement que la nomination de quelqu'un comme secrétaire général adjoint pour trois minutes pour pouvoir échapper aux règles de nomination par l'extérieur et être nommé par le tour intérieur est une procédure normale pour devenir secrétaire général à la tête de 33 000 personnes, je n'ai pas de leçon à recevoir de vous, Monsieur Oettinger, ni de conseil. Aucun.

Vous nous prenez pour des imbéciles, vous mentez. Aucune autorité indépendante, aucune autorité indépendante, celle que nous défendons, n'accepterait de se laisser traiter de la sorte. Vous devriez avoir honte! Ce que vous faites pour l'Europe, Monsieur Oettinger, et l'ensemble de votre Commission, est pire que ce que font tous les nationalistes, tous les extrémistes et tous les eurosceptiques. Vous êtes en train de détruire le projet européen et la démocratie européenne.

Werner Langen (PPE). – Herr Präsident! Ich habe keine Zweifel an der juristischen und wissenschaftlichen Qualifikation von Herrn Selmayr, ich habe aber Zweifel am Verfahren und an dessen fachlichen Eignung als Vorgesetzter von 33 000 Beamten. Herr Selmayr war bisher nur als Kabinettsmitglied von Luxemburger Kommissaren tätig, nicht als deutscher Beamter – das für diejenigen, die das Deutschland zuschreiben wollen. Es fehlt ihm die Erfahrung in der normalen Beamtenlaufbahn, der Bewährungsaufstieg: kein Abteilungsleiter, kein Referatsleiter, kein Direktor – nichts von alledem.

Das Verfahren war alles andere als transparent – das erinnert an die Geheimebürokratie des 19. Jahrhunderts. Und Herr Selmayr hat sich in der Vergangenheit häufig um die anderen gewählten Institutionen gekümmert. Er wollte dem Parlament erneut Herrn Schulz als Präsidenten aufdrücken, er hat in der finnischen Presse vier Kommissare als unbrauchbar bezeichnet. Warum er überhaupt noch im Amt ist, ist schon verwunderlich, meine Damen und Herren. Aber am Ende sage ich: Das ist eine unangemessene Machtübernahme in der EU, wenn man so will, durch die Hintertür. Luxemburg hat es wieder einmal geschafft. Mich erinnert das an die Augsburger Puppenkiste, wo oben einer die Fäden zieht und unten die Puppen tanzen.

Bas Eickhout (Verts/ALE). – Voorzitter, mijnheer Oettinger, ik denk dat het voor alle vragen tot nu toe heel duidelijk is dat uw eerste interventie totaal de plank missloeg. Het was een formalistisch antwoord waarin werd gedaan alsof alles volgens de letter is gevolgd. Maar u weet ook: je hebt regels die je volgens de letter moet volgen of die je volgens de geest moet volgen. En daar gaat het in deze kwestie om. Het gaat over transparantie. Het gaat over geloofwaardigheid. Het gaat over eerlijke procedures, iets waar de Commissie zegt voor te staan.

Dus u kunt in uw tweede antwoord wraak nemen voor uw zwakke optreden in de eerste fase. U kunt dan zelf aangeven waar u denkt dat de regels aangepast moeten worden, zodat we een volgende keer niet meer zo'n flitsprocedure kunnen meemaken en er een open, eerlijke, transparante procedure wordt gevolgd, zodat we vertrouwen hebben in de benoemingen van de ambtenaren van de Europese Commissie. Dat vertrouwen is ongelooflijk belangrijk en het is jammer dat u blijkbaar regeltjes nodig heeft om u eraan te houden. Maar het is nu aan u om duidelijk te maken waar u vindt dat de procedure verbeterd moet worden, anders bent u echt geen knip voor de neuswaard.

Zgłoszenia z sali

Tom Vandenkendelaere (PPE). – Voorzitter, integriteit is in politiek een van de meest kostbare goederen. Je mag als politicus nog zoveel kwaliteiten hebben als je wil, zonder integriteit gelooft niemand je en ben je met die kwaliteiten uiteindelijk helemaal niets. En dat is voor de Europese instellingen bij uitstek het geval. En dus moeten wij des te meer het voortouw durven nemen juist als het aankomt op die integriteit.

Ik hoop dat het debat van vandaag dit goed aantoont. Los van de objectieve kwaliteiten is er nog zoiets als de manier waarop alles gebeurt. Daarom vraag ik ook duidelijk aan de commissaris om hier en nu formeel te bevestigen dat niet alleen de procedure correct werd gevolgd, maar ook dat de

geruchten over het vertrekpakket van de commissarissen, de chauffeurs en dergelijke meer, compleet fout zijn en dus uit de lucht gegrepen zijn.

Elnökváltás: JÁRÓKA LÍVIA

Alelnök asszony

Eric Andrieu (S&D). – Madame la Présidente, au moment où le monde est en pleine ébullition, au moment où les États-Unis rentrent dans leur conservatisme, dans leur protectionnisme, au moment où la Corée du Sud rencontre la Corée du Nord, au moment où Poutine et la Russie réarment, au moment où Bachar El-Assad continue à intervenir sans discernement, au moment où Erdoğan continue avec les Kurdes, nous ici, que faisons-nous? Nous parlons de l’incapacité du président de la Commission européenne de respecter les règles qu’il a lui-même édictées et je ne veux même pas parler de notre Président de l’Assemblée parlementaire, qui lui pratique le tango corse – le tango corse c’est deux pas en avant et trois pas en arrière –, puisqu’il nous disait il ya à peine six mois, «Je serai président d’un parlement et je ne serai jamais premier ministre». Il a fallu que les élections italiennes le séduisent et qu’il se propose pour occuper les fonctions de premier ministre. Le monde se rit de nous, amis parlementaires. Aujourd’hui, il est de notre responsabilité de déterminer quel rôle peut jouer le continent européen à l’échelle intercontinentale au lieu de passer des heures et des heures à débattre de sujets qui ne sont pas à la hauteur des enjeux mondiaux qui doivent nous animer.

Νότης Μαριάς (ECR). – Κυρία Πρόεδρε, κύριε Oettinger, ο κ. Juncker έπρεπε να είναι εδώ στη θέση σας και όχι να απαντάτε εσείς. Και έπρεπε να είναι εδώ, για να έρθει να αναλάβει τις ευθύνες του, διότι όταν βγήκε το θέμα στη δημοσιότητα είπε ότι είναι απόλυτο δικαίωμά του να διορίζει όποιον επιθυμεί αυτός ως Γενικό Γραμματέα, διότι συνέκρινε τον εαυτό του στις δηλώσεις του με τον κύριο Macron και την κυρία Merkel και είπε ότι όπως αυτοί διορίζουν όποιον θέλουν Γενικό Γραμματέα, το ίδιο μπορεί να κάνει κι αυτός στην Κομισιόν. Επομένως, έπρεπε να έρθει εδώ, να υπερασπίσει αυτές τις απόψεις του, να υπερασπίσει αυτή την προκλητική παράνομη συμπεριφορά του, διότι αυτά είπε στις δηλώσεις του. Τώρα από τη συζήτηση και από αυτά που είπατε προκύπτουν ακόμη περισσότερες παρατηρήσεις και περισσότερα ερωτήματα, διότι είναι δεδομένο ότι ο επιλεγείς έγινε αναπληρωτής Γενικός Γραμματέας και αμέσως την επόμενη μέρα Γενικός Γραμματέας. Αυτά είναι απίθανα που συμβαίνουν, αλλά δεν έπρεπε να είστε εδώ εσείς, έπρεπε να έρθει ο κ. Juncker να υπερασπίσει τις επιλογές του.

João Ferreira (GUE/NGL). – Senhora Presidente, a política dita “de integridade e de transparência” da Comissão Europeia pode resumir-se nisto: a Comissão Europeia está integralmente ao serviço dos interesses económicos e financeiros que, a todo o momento, determinam a sua ação e os conteúdos das suas iniciativas. E não há constatação mais cristalina e transparente do que esta.

A incondicional defesa destes interesses exige, com frequência, a obscuridade de procedimentos que nenhum código de ética ou política dita “de transparência” pode eliminar por completo. Esta falta de integridade e de transparência não é algo de episódico, é, pelo contrário, algo de estrutural. Por muito chocantes que possam ser, e são, alguns dos episódios que vão revelando esta realidade estrutural. Mas é ela, esta realidade que deve ser combatida mais do que a sua manifestação episódica. Seja o caso do ex-presidente da Comissão Europeia e lobista da Goldman Sachs, que tenta influenciar comissários, seja o expediente, agora conhecido, que oportunamente, muito oportunamente, guindou ao topo da burocracia da União Europeia o todo-poderoso chefe de gabinete do Presidente da Comissão Europeia.

Ελευθέριος Συναδινός (NI). – Κυρία Πρόεδρε, επιτρέψτε μου να συγχαρώ τον κύριο Selmayr, έναν καριέριστα πολιτικό υπό τον μανδύα του δημοσίου υπαλλήλου, για το κατόρθωμα της διπλής προαγωγής, σε διάστημα μόλις ενός δεκαλέπτου. Δυστυχώς, το Κοινοβούλιο δεν έχει την τυπική αρμοδιότητα να αποπέμψει τον Γενικό Γραμματέα της Επιτροπής, ο οποίος υπηρετεί κατά την κρίση του σώματος των Επιτρόπων. Πόσο όμως υποκριτικές είναι πλέον οι νουθεσίες της Επιτροπής, όταν επιτίθεται σε κράτη μέλη με γενικόλογες διαπιστώσεις περί κράτους δικαίου, τη στιγμή που δεν τηρεί ούτε καν τα προσχήματα περί ηθικής, διαφάνειας και αξιοκρατίας στα του οίκου της;

Το έλλειμμα ακεραιότητας της Επιτροπής είναι ήδη γνωστό. Εκδηλώνεται με πρακτικές που ναι μεν τηρούν το γράμμα αλλά όχι το πνεύμα των κανονισμών: τη διαφορετική ερμηνεία και εφαρμογή των ίδιων κανόνων προς τα κράτη μέλη κατά το δοκούν, την αποκάλυπτη πολιτικοποίηση της διοίκησης θεωρητικά ουδέτερων οργάνων και μηχανισμών και τη γερμανοκρατούμενη στελέχωση καίριων θέσεων. Σε αυτή την Ένωση δεν υπάρχουν συνένοχοι, αλλά μόνο υπεύθυνοι, δεν υπάρχουν περιθώρια συνεννόησης ή αποδοχής και, αν χρειαστεί, θα υποστηρίξω πρόταση καθαίρεσης της διορισμένης Επιτροπής.

Agnes Jongerius (S&D). – Voorzitter, commissarissen, er zijn van die dagen dat ik mij schaam om lid te zijn van het Europees Parlement. En ik moet zeggen: dit is zo'n dag. En dat is niet omdat ik denk dat wij – onze ondersteunende diensten of de diensten van de Commissie – geen heel nuttig werk doen om onderwerpen die voor Europese burgers van belang zijn op een goede manier te regelen. Maar als ik kijk naar het beeld van Europa, dan is het beeld van Europa vandaag: Europa is van de achterkamertjes, van onduidelijke benoemingen. En er hangt ook nog een heel vraagstuk in verband met schimmige beloftes aan commissarissen boven de tafel zonder dat dat hier vandaag in het Parlement besproken is. Dus ik ben blij dat er een onderzoek komt, want ik zou mij trots willen voelen op het werk dat ik hier doe en me niet hoeven te schamen voor het Europees Parlement.

Pirkko Ruohonen-Lerner (ECR). – Arvoisa puhemies, on esitetty voimakkaita väitteitä, joiden mukaan komission tärkeä virkanimitys ei olisi mennyt sääntöjen mukaisesti. Eurooppalaisen veronmaksajan kannalta on tärkeintä, että kaikkiin virkatehtäviin valitaan aina hakijoista paras, ketään syrjimättä, ketään suosimatta. Vähintä mitä komissio voi tehdä tässä tilanteessa, on kertoa totuus siitä, kuinka tähän nimitykseen on päädytty, voitaisiinko asiantila korjata ja kuinka. Poliittiset virkanimitykset ovat korruptiota. Tähänkö suuntaan komissio haluaa kehittää Euroopan unionia?

Γεώργιος Επιτήδειος (NI). – Κυρία Πρόεδρε, ο διορισμός του κυρίου Selmayr, πολιτικού φίλου του κυρίου Juncker, ως Γενικού Γραμματέα της Ευρωπαϊκής Επιτροπής, ο οποίος έγινε αιφνιδιαστικά και με αδιαφάνεια, δεν είναι τίποτε περισσότερο από ένα πραξικόπημα στη λειτουργία του θεσμικού αυτού οργάνου. Παρακάμφθηκαν είκοσι οκτώ Επίτροποι, οι οποίοι έγιναν απλοί θεατές των γεγονότων και παραδόξως δεν αντέδρασαν, προφανώς για να αποκτήσουν προσωπικά οφέλη. Παρακάμφθηκαν επίσης και τα κράτη, από τα οποία αφαιρέθηκε η δυνατότητα να παρέμβουν. Η όλη αυτή μεθόδευση έγινε για έναν προφανή λόγο: Ο μικρός ηγετικός κύκλος της Ευρωπαϊκής Ενώσεως θέλει να διορίσει σε όλα τα θεσμικά όργανα ανθρώπους τους οποίους ελέγχει απολύτως, ούτως ώστε να χειραγωγή τη διαδικασία και τις αποφάσεις αυτών των οργάνων.

Είναι σαφές ότι η Ευρωπαϊκή Ένωση έχει ξεφύγει από τις αρχές και τις αξίες επί των οποίων στηρίχθηκε η δημιουργία της, έχει γίνει όργανο ικανοποίησης των σκοπών της παγκοσμιοποίησης και γι' αυτόν ακριβώς το λόγο επιλέγει μαριονέτες για να κάνουν αυτά τα οποία πρέπει να κάνουν. Αυτή η κατάσταση πολύ γρήγορα θα αλλάξει, διότι στις επόμενες ευρωεκλογές τα κράτη μέλη θα στείλουν πατριώτες στον χώρο αυτό και οι διεφθαρμένοι πολιτικοί θα μπουν στο χρονοντούλαπο της ιστορίας.

Krisztina Morvai (NI). – Madam President, at the last plenary we were dealing with Mr Barroso, former Commissioner, now working for Goldman Sachs, coming back to bribe, perhaps, or perhaps just influence the present Commission. At this plenary we are talking about a political appointee becoming the Secretary-General of the European Commission, in violation of all the relevant rules. In the meantime, the same European Union dares to have Article 7 proceedings against my country, Hungary, and against Poland for violation of the rule of law. Don't you think that you should immediately, after this very session, stop these Article 7 proceedings and start proceedings instead against yourselves? („Catch the eye“ eljárás vége).

Günther Oettinger, Mitglied der Kommission. – Frau Präsidentin, meine sehr verehrten Damen und Herren Kollegen! Bitte nehmen Sie mir ab, dass ich für die Kommission, aber auch persönlich vor der Bedeutung des Parlaments hohen Respekt habe, hier nicht arrogant auftrete, Sie nicht als kleine Kinder behandeln will, Ihre Fragen ernst nehme und der Untersuchung auch mit großer Ernsthaftigkeit und Gelassenheit entgesehe. Zollen wir uns gegenseitigen Respekt.

Zum Zweiten: Betrug, Korruption, Skandal, Intrige, persönliche Vorteile: dies wurde von einigen Rednerinnen und Rednern unterstellt. Allein deswegen haben wir, habe ich allergrößtes Interesse an einer objektiven Untersuchung im und durch den Haushaltskontrollausschuss. Es werden dort alle Fragen beantwortet. Fragen, die uns bis 5. März – Datum des Poststempels – schriftlich zugingen, werden fristgerecht bis zum 14. März beantwortet, losgelöst von der heutigen relativ kurzen Beratungszeit.

Warum bin ich hier? Weil die Konferenz der Präsidenten genau dies beschlossen hat. Es war Ihr hohes Haus, es war Ihr Präsident, es waren Ihre Fraktionsvorsitzenden, die bei abweichender Meinung von ECR und GUE mit breiter Mehrheit gesagt haben „Oettingers Portfolio“, also muss der Oettinger her. Deswegen bin ich hier. Ich bin sicher, wenn die Konferenz der Präsidenten meinen Präsidenten sprechen wollte, würde er anwesend sein. Das heißt: ich bin deswegen hier, weil die Konferenz der Präsidenten, Ihre Konferenz in der Vorbereitung, genau dieses von der Kommission erwartet hat. Wir erfüllen Ihre Erwartungen. Es wurde von dem Generalsekretär Martin Selmayr als einem grauen Bürokraten gesprochen. Dieser Deutsche Selmayr – keiner kenne ihn. Ich zitiere! Meine Bitte ist: Diskriminierung ist in Europa nicht zu akzeptieren. Es sollten auch Beamte in keiner Form diskriminiert werden. Wenn in der Presse von einem Monster geschrieben wird, ist es Sache der freien Presse. Aber ich finde, jeder Beamte, egal ob kleiner oder großer Beamter, hat ausreichend Fürsorge und Respekt von uns allen verdient.

Es wird gesagt, die Deutschen beherrschen mit dieser Entscheidung wieder Europa. Ich höre in Deutschland oft Folgendes: Warum ist jeder Mitgliedsstaat mit einem Kommissar vertreten? Warum haben auch kleinste Mitgliedsstaaten wie die großen einen Kommissar? Ich finde es richtig. Ich glaube, es sollte im Gerichtshof, im Rechnungshof, in der Kommission jeder Mitgliedsstaat auf Augenhöhe vertreten werden. Aber bitte nehmen Sie mir ab: In den großen Mitgliedsstaaten wird schon gefragt, warum nur einer von 28. Oder dass in diesem hohen Hause die kleinen Mitgliedsstaaten einen Abgeordneten haben, der neunzigtausend Einwohner vertritt, während in den großen Mitgliedsstaaten ein Abgeordneter neunhunderttausend Einwohner vertritt. One man, one vote. Ich halte es trotzdem für richtig, dass Malta und Luxemburg mit sechs Abgeordneten vertreten sind. Aber ich möchte hier klarstellen: In der Frage der fairen Vertretung unserer Mitgliedsstaaten, der Nationalität, sind wir alle... (Zwischenruf) Ich habe Ihnen doch auch zugehört, Frau Kollegin! Wenn Sie eine Zwischenfrage stellen wollen, gerne. Sonst bitte ich Sie, dass Sie Ihre Fragen geordnet und umfassend... Ich komme zu allen Fragen, Frau Kollegin! Es waren 20 Fragen. Sie werden auch noch merken, dass ichs Ihre Fragen zu beantworten versuche. Eines nach dem anderen, Geduld und Respekt.

Die Frage der Nationalität ist für mich völlig sekundär. Ich fühle mich als europäischer Bürger, der in der Kommission einer von 28 ist. Ich glaube, dass deswegen die Frage, wo man geboren ist, und das Passdatum eine eher geringere Bedeutung spielen sollten.

Es wurde gesagt, die Kommission sei nicht gewählt. Dem widerspreche ich ausdrücklich. Ein Kommissarsanwärter wird von seiner demokratisch gewählten Regierung vorgeschlagen. Er wird von diesem hohen Hause im Fachausschuss gegrillt. Er wird von diesem Hause gewählt. Er wird vom Europäischen Rat gewählt. Ich kenne viele Mitgliedsstaaten, in denen man nationaler Minister wird, ohne dass das nationale Parlament überhaupt mitwirkt. Wenn zum Beispiel in zwei Tagen in Deutschland die Kanzlerin gewählt wird – die Minister werden von den Parteien bestimmt und vom Präsidenten bestätigt. Keinerlei Wahl, kein Hearing, gar nichts

– so wie etwa im Europäischen Parlament. Deswegen behaupte ich, die Kommission genügt demokratischen Grundsätzen mehr als viele andere Gremien auf nationaler Ebene.

Ich kann ihnen hiermit sagen, dass diese Kommission nicht die Absicht hatte und nicht die Absicht hat, für alle Kommissare nach dem Ausscheiden aus der Kommission Dienstwagen, Fahrer, Büros zu organisieren. Dies halte ich für Fake News. Wir haben es mehrfach dargelegt, und ich kann Ihnen hier versichern: Es gibt unter meiner Verantwortung keinen Vorschlag, der an diesem Thema bezüglich aller Kommissare nach ihrem Ausscheiden irgendetwas ändern soll. Es wurde von einigen Kollegen gesagt, die Regeln mögen nach dem Buchstaben eingehalten worden sein. Ich finde, Buchstaben sind zunächst mal die Grundlage, damit man Regeln einhalten kann. Deswegen sehe ich den Überprüfungen mit Interesse entgegen. Wir haben alle Regeln nach dem Buchstaben voll und ganz eingehalten. Dies wird von einigen bezweifelt. Lassen Sie uns das prüfen. Ich stelle mich hier sehr gerne Ihren Fragen. Aber dieses Statut, wie man Beförderungen, Ernennungen in der Kommission durchführt, ist kein Statut des Präsidenten. Das Statut, auf dessen Grundlage die Ernennung von Martin Selmayr zum Generalsekretär geschehen ist, ist ein Statut, das dieses hohe Haus und der Rat beschlossen haben. Es ist Ihr Statut, es sind Ihre Buchstaben, es sind Ihre Regeln. Wenn Sie sie ändern wollen, müssen wir darüber reden. Entschuldigung, die staff regulations und das, was der Rat beschlossen hat, sind in den demokratischen Gremien Rat und Parlament entstanden! Dies kann man ändern. Aber diese Ernennungen geschehen nicht nach Willkür der Kommission, sondern auf der Grundlage, nach den Buchstaben und auch im Geiste dessen, was in den europäischen demokratischen Gremien entschieden und beschlossen worden ist.

Wir haben drei Möglichkeiten, wie man über die Besetzung von Positionen und die Ernennung dazu entscheidet: die interne Ausschreibung, die externe Ausschreibung und den Transfer innerhalb des Dienstes. Alle drei – interne Ausschreibung, externe Ausschreibung und Transfer – sind in unseren Statuten vorgesehen. Der Beamte Martin Selmayr war drei Jahre Kabinettschef unseres Präsidenten. Und genau dies, Kabinettschef, entspricht der Generaldirektorenebene, während Kabinettschef eines Kommissars der Direktorenebene entspricht. Und von daher hat er in den letzten drei Jahren mit Ihrem Wissen eine Aufgabe ausgeführt und erfüllt, die ihn dazu befähigt, nach der Methode, die wir angewandt haben, in das Amt des Generalsekretärs zu kommen. Wir sollten von Herrn Selmayr auch kein Zerrbild aufbauen. Er ist weder Parteimann, noch ist er ein Monster, noch ist er unfähig. Deswegen ist meine Bitte: Geben Sie ihm in der Aufgabenausführung in den nächsten Monaten mit ihrem strengen Blick eine Chance! Ich bin mir sicher, er wird die Aufgabe hervorragend ausführen, und dies als jemand, der Dienstleister dem Präsidenten Juncker gegenüber und der Kommission gegenüber ist. Zerrbilder halte ich hier in jeder Form für nichtangebracht. Wenn Sie ihn nicht mögen, wenn Sie es ihm nicht zutrauen, sagen Sie es! Aber es hat hier diesem hohen Hause niemand ein negatives Urteil über seine Qualifikation und seine Arbeitsfähigkeiten und seine verschiedenen Positionen in den letzten Jahren abgegeben.

Wir stellen uns gerne dem Haushaltskontrollausschuss, werden auch schriftliche Fragen beantworten. Ich bin selbst auch bereit, in jedes Ihrer Gremien zu kommen, in Ihre Fraktionsitzungen, auch zum bilateralen Gespräch, und ich nehme mir gerne jede Zeit, um alle Ihre Sorgen und Fragen in den nächsten Wochen durch klare Antworten mit Blick auf das Europäische Statut und auf Recht und Gesetz zur Befriedigung aller Fragesteller zu beantworten.

Elnök asszony. – A vitát lezárom. Írásbeli nyilatkozatok
(162. cikk)

Indrek Tarand (Verts/ALE), in writing. – To everyone's surprise, the EU's executive body has turned the replacement of its Secretary-General into an absolute fiasco. The recent coup d'Etat or the so-called "selection" process, is another shameful example of bending the rules and ignoring norms. This "Blitzkrieg" method of appointing Mr. Selmayr, who orchestrated his own selection procedure, the legitimacy of which is questionable at best, is a little reminiscent of the case of former Commissioner Kallas. The latter was himself at the source of a set of transparency rules, which led to the creation of the transparency register, but a couple of months after his term as a Commissioner, he simultaneously held positions as special advisor to the Commissioner Dombrovskis and consultant at a private-sector software company Nortal, without having himself or Nortal registered in the transparency register. These, and many other Commission's gimmicks, where they claimed having done things "by the book", are becoming increasingly detrimental to the integrity of the EU institutions and will be scrutinised in the Parliament's CONT Committee. But this should not remain the standard, as I call for the College of Commissioners to take collective responsibility for such administrative calamities as the abovementioned affairs.

European Parliament



CONFERENCE of PRESIDENTS

MINUTES

of the ordinary meeting of Thursday

15 March 2018

Louise Weiss Building, Room R1.1

Strasbourg

PE 615.867/CPG

EN

CONFERENCE OF PRESIDENTS

MINUTES

of the ordinary meeting of

Thursday, 15 March 2018

from 10:00 to 12:00 hours

Louise Weiss Building, Room R1.1

Strasbourg

[...]

4.4 Integrity policy of the Commission, in particular, the appointment of the Secretary-General of the European Commission

The Conference of Presidents

- heard the President recall the Commission statement and the plenary debate of 12 March 2018 on the Integrity policy of the Commission, in particular the appointment of the Secretary-General of the European Commission;
- heard the President propose that the Committee on Budgetary Control be tasked to examine the case and to draft a motion for a resolution on the subject-matter, with a view to tabling it for the part session during which the Commission discharge report would be voted, the latter being foreseen for the April 2018 part-session;
- heard Mr WEBER, Chair of the EPP Group, Ms RODRIGUES, acting Chair of the S&D Group, Ms STEVENS, acting Chair of the ECR Group, Mr VERHOFSTADT, Chair of the ALDE Group, Ms KELLER, Co-Chair of the Greens/EFA Group, Ms ZIMMER, Chair of the GUE/NGL Group, Mr LUNDGREN, acting Chair of the EFDD Group, and Mr BAY, Co-Chair of the ENF Group, stressing, inter alia, the need for more transparency and appropriate scrutiny;
- endorsed the President's proposal by majority vote.

[...]

**COMMISSION ANSWERS TO THE QUESTIONS
OF THE BUDGETARY CONTROL COMMITTEE
OF THE EUROPEAN PARLIAMENT ON THE
APPOINTMENT OF MR MARTIN SELMAYR AS
THE NEW SECRETARY-GENERAL OF THE
EUROPEAN COMMISSION**

24 March 2018

I. Access to the file

Question of the European Parliament:

1. Please provide all documents relating to the selection process of Mr. Selmayr as Deputy Secretary-General:

- a) Vacancy notice, including considerations for choosing an internal advertisement, information on how the vacancy was brought to the attention of staff, and contents relating to job requirements/sought for qualifications of candidates;***
- b) Applications, including letters of interest and CVs;***
- c) Withdrawal of Applications, including letters of motivation;***
- d) Assessments and Interviews of candidate(s); composition of the Consultative Committee on Appointment (CCA)***
- e) Documents relating to the decision to nominate Mr. Selmayr.***

Commission answer:

- a) The vacancy notice COM/2018/292 is attached to this reply (see list of annexes). Following the appointment of Ms Michou as Director-General for Migration and Home Affairs on 31 January, the decision was taken by the College to publish the post of Deputy Secretary-General¹ with the standard deadline of ten working days for applications (i.e. 13 February).
- b) We ask for your understanding that these documents cannot be transmitted for reasons of protection of private life and personal data, and in order not to prejudice the institution's future staff selection procedures, including the decision-making process. However, we are ready to discuss with the CONT committee appropriate arrangements for confidential access to documents concerning Mr Selmayr, who agreed with this way of proceeding.
- c) These documents cannot be transmitted for reasons of protection of private life and personal data, and in order not to prejudice the institution's future staff selection procedures, including the decision-making process.
- d) The Consultative Committee on Appointments (CCA)² was chaired by the

¹ The Sysper2 job vacancy portal is an online system open to all officials working in the Commission on which job vacancies are posted.

² The Consultative Committee on Appointments (CCA) is an advisory body that establishes the list of candidates to be proposed for appointment by the College of Commissioners. The CCA meets in different configurations (depending on the level of the post to be filled) but it generally includes senior managers from the Commission's Secretariat General, the Directorate-General for Human Resources and the recruiting Directorate-General.

Commission's Secretary-General (who was also the recruiting Director-General) and included the Director-General of Human Resources and Security, a high-ranking official from the Directorate-General Human Resources and Security (the Permanent Rapporteur) and a Director-General selected from a list that is adopted periodically by the Commission (the Rapporteur). The assessments of the Consultative Committee on Appointments cannot be transmitted for reasons of protection of private life and personal data, and in order not to prejudice the institution's future staff selection procedures, including the decision-making process. However, we are ready to discuss with the CONT committee appropriate arrangements for confidential access to documents concerning Mr Selmayr, who agreed with this way of proceeding.

- e) The minutes of the meeting, the QABD³ brief relating to the appointment of the Deputy Secretary-General and distributed in the room and the act appointing Mr Selmayr to the function of Deputy Secretary-General are attached (see list of annexes).

Question of the European Parliament:

- 2. Please provide all documents relating to the resignation of Mr. Italianer as Secretary-General:**
- a) Letter of resignation;**
 - b) Any minutes of 'silent' agreement about date of resignation;**
 - c) Any documents relating to the appointment of Mr. Italianer as Advisor Hors Class, specifically devoted to the Multi-Annual Financial Framework.**

Commission answer:

- a) Mr Italianer has given his agreement to disclose part of his retirement letter which is attached (see list of annexes). The remainder of the letter cannot be transmitted for reasons of protection of private life and personal data.
- b) No such minutes exist.
- c) The College transferred Mr Italianer to an Hors Classe Adviser function in the Secretariat-General for the period 1 March 2018 to 31 March 2018 (see the minutes of the College meeting of 21 February 2018, PV(2018)2244, point 10.20). The press release⁴ concerning the reorganisation of President Juncker's

³ QABD stands for "Questions administratives et budgétaires diverses". This document serves as a basis for senior management decisions.

⁴ http://europa.eu/rapid/press-release_IP-18-1004_en.htm

close team and the appointment of the new Secretary-General referred to the agreement that Mr Italianer would continue to advise the President after 1 April 2018, as an unpaid Special Adviser on the EU agenda, in particular the Multiannual Financial Framework and Brexit Preparedness. The formal decision to appoint Mr Italianer unpaid Special Adviser to the President is expected to be taken soon.

Question of the European Parliament:

3. *Please provide all documents relating to the preparation of the meeting of the College of 21 February, during which Mr. Selmayr was appointed as Secretary-General:*
- a) *Minutes of the meeting of Heads of Cabinet of 19 February and, in particular, any information relating to the question who chaired the meeting when the appointment of Mr. Selmayr was discussed;*
 - b) *Documents provided to the Commissioners for the relevant agenda item;*
 - c) *Agenda of the College meeting of 21 February (OJ 20182244 final, SEC 2018 2244final);*
 - d) *Compilation of reactions of Commissioners, both on the procedure followed and on the decision taken.*
 - e) *Opinions of the Consultative Committee on Appointments of 14 and 16 February 2018 (PERS 2018 16/2 and 3), as referred to, page 24 (paragraph 10.11) of the abovementioned minutes? If needed under the relevant confidentiality rules?*

Commission answer:

- a) In accordance with normal practice, and in order to safeguard the necessary degree of confidentiality, senior management appointments at Director-General or Deputy Director-General level are presented directly to the College on the same day that the College decides on them. This is why this was not discussed amongst Heads of Cabinet. Consequently, there is no information relating to the topic in question in the minutes of this meeting.
- b) The minutes of the Commission meeting of 21 February 2018 (PV(2018)2244final) which are attached (see list of annexes), identify under point 10.11 the documents which were submitted to the Commission. There were no additional documents necessary for point 10.22.
- d) The agenda of the College meeting of 21 February 2018 (OJ 2018 2244 final) is publicly available on the website of the Commission, and attached to this reply. The agenda was amended during the meeting, and as documented in the minutes

of the meeting. In line with Article 6(5) of the Commission's Rules of Procedure (C(2010)1200), the Commission may, on a proposal from the President, discuss any question which is not on the agenda or for which the necessary documents have been distributed late.

Document SEC(2018)2244final, the so-called *liste des points prévus*, is a document with indicative dates for major policy initiatives. Such document never refers to senior management decisions. Therefore, it does not refer to the decisions in question.

- d) The minutes of the meeting of the College 21 February 2018 reflect the discussion during the meeting and the decisions taken, in respect of the collegial nature of the Commission. There are no other official records of the meeting.
- e) We ask for your understanding that these documents cannot be transmitted for reasons of protection of private life and personal data, and in order not to prejudice the institution's future staff selection procedures, including the decision-making process.

Question of the European Parliament:

- 4. Please provide the exhaustive minute (PV Special) of the 2244th meeting of the Commission if needed under the relevant confidentiality rules (in accordance with the relevant provisions of the framework agreement between the Commission and the European Parliament)?***

Commission answer:

The minutes attached (see list of annexes) are the exhaustive record of this meeting. No other minutes exist.

Question of the European Parliament:

- 5. Please provide all documents relating to the Communication Strategy of the Commission in relation to the appointment of Mr.Selmayr:***
- a) Instructions to the spokespersons before each of the briefing sessions with the media, during which the appointment came up;***
 - b) Reports back to the Commission of the spokespersons about the questions asked by journalists and the increasing unrest during the briefing sessions;***
 - c) Any information on how the Commission could underestimate the turmoil its communication strategy caused and on any ideas on how to approach the interested journalist in order to de-escalate the situation.***

Commission answer:

- a) The Spokesperson's Service answers questions from the media and provides explanations to the press through its daily midday press briefings and on the basis of established positions. These are prepared on a daily basis through discussions with all the relevant services concerned.
- b) The midday press briefing is public, available [online](#) and reflected in media reports. You can access all midday press briefings on Europa by Satellite where midday briefings can be found according to dates: <https://ec.europa.eu/avservices/ebs/schedule.cfm>. The midday press briefings during which the appointment was raised include: 26 and 27 February and 2, 5, 6, 8, 9, 16, 19, 20 March (see list of annexes).
- c) Given the interest around the procedural aspects of the appointment, the Spokesperson's Service prepared an internal paper relating to the most frequently asked questions in the press room which was made available as an information tool to provide assistance to interested journalists (see list of annexes). It can in no way be considered an official Commission document and it does not produce legal effects⁵.

Question of the European Parliament:

- 6. *Please provide the exhaustive minutes (PV SPECIAL) of all the meetings where the proposal of a new Code of conduct for the Commissioners was discussed, if needed under the relevant confidentiality rules?***

Commission answer:

The new Code of Conduct⁶ was discussed in the Commission seminar on 31 August and 1 September 2017. There are no minutes of the seminar.

The new Code of Conduct was discussed and approved in the Commission meeting of 12 September 2017. This is reflected in the minutes of this meeting. The minutes are attached to this reply (PV(2017)2224).

The new Code of Conduct was finally adopted in the meeting of 31 January 2018 as reflected in the minutes of this Commission meeting. The minutes are attached (see list of annexes).

⁵ Cf. the orders of the General Court in Cases T-192/16, T-193/16, T-257/16 of 20 February 2017.

⁶ C(2018)700 Commission Decision of 31.1.2018 on a Code of Conduct for the Members of the European Commission.

II. 2244th Meeting of the Commission held in Brussels on Wednesday, 21 February 2018, from 9.35am to 10.09

Procedure of appointment

Question of the European Parliament:

7. *What, according to the staff regulation, are the preconditions for being appointed as Secretary-General? Were these preconditions fulfilled?*

Commission answer:

There are two formal requirements for being appointed as Secretary-General of the Commission: having the grade of AD14 or above (with a minimum of two years in the grade for AD14 officials) and a minimum of two years of management experience as a senior manager at Director level or above. The chart below reflects Annex I of the Staff Regulations.

Criteria for appointment as Director-General (or Deputy Director-General)		
Current function:	Current grade:	Seniority required:
Director-General / Deputy Director-General	AD16	No additional requirements
	AD15	
Director / Principal Adviser	AD15	2 years in Senior Management function
	AD14	2 years in Senior Management function AND 2 years in grade
Head of Cabinet	AD16	No additional requirements
	AD15	2 years in Senior Management / Head of Cabinet function
	AD14	2 years in Senior Management / Head of Cabinet function AND 2 years in grade

Beyond the formal requirements, the candidate needs to demonstrate European commitment, have an excellent knowledge of the Commission's policies and priorities as well as of its administrative practices and procedures, have a strong background as a manager and communicator with professional experience in leading and motivating teams as well as strong analytical skills and the ability to communicate efficiently with internal and external stakeholders. Also, the Secretary-General, as foreseen in Article 20 of the Commission Rules of Procedure (C(2010)1200), shall assist the President so that, in the context of the political guidelines laid down by the President, the Commission achieves the priorities that it has set itself. He must therefore have the full trust of the President and of the whole Commission.

Question of the European Parliament:

8. *What, according to the staff regulation, is the procedure for appointing the Secretary-General? Was this procedure followed?*

Commission answer:

The EU's Staff Regulations, adopted by the European Parliament and the Council, provide for two ways of being appointed Director-General or Deputy Director-General, both of which are the same type of post (graded at either AD15 or AD16, in accordance with Annex I to the Staff Regulations). The two ways are: (1) appointment by the College following publication of the post and selection procedure under Article 29 of the Staff Regulations or (2) transfer in the interest of the service pursuant to Article 7 of the Staff Regulations.

1. **Appointment by the College following publication** of the post and selection procedure (**Article 29**⁷ of the [Staff Regulations](#)). This selection procedure includes a full day Assessment Centre⁸ (run by an external consultancy) and an interview, assessment and opinion by the Commission's high-level Consultative Committee on Appointments (CCA). This Committee was chaired for this procedure by the Commission's Secretary-General and included the Director-General who was recruiting (in this instance, the Secretary-General), the Director-General of Human Resources and Security, a high-ranking official from the Directorate-General Human Resources and Security (the Permanent Rapporteur) and a Director-General selected from a list that is adopted periodically by the Commission (the Rapporteur). Finally, the candidate has to pass an interview with the responsible Member of the Commission and with the Commissioner responsible for Budget and Human Resources. The College appoints Directors-General and Deputy Directors-General⁹.

⁷ Article 29 of the Staff Regulations provides that:

1. Before filling a vacant post in an institution, the appointing authority shall first consider:

(a) whether the post can be filled by:

- (i) transfer, or
- (ii) appointment in accordance with Article 45a, or
- (iii) promotion within the institution;

(b) whether requests for transfer have been received from officials of the same grade in other institutions, and/or

(c) if it was not possible to fill the vacant post through the possibilities mentioned in points (a) and (b), whether to consider lists of suitable candidates within the meaning of Article 30, where appropriate, taking into account the relevant provisions concerning suitable candidates in Annex III and/or

(d) whether to hold a competition internal to the institution, which shall be open only to officials and temporary staff as defined in Article 2 of the Conditions of Employment of Other Servants of the European Union;

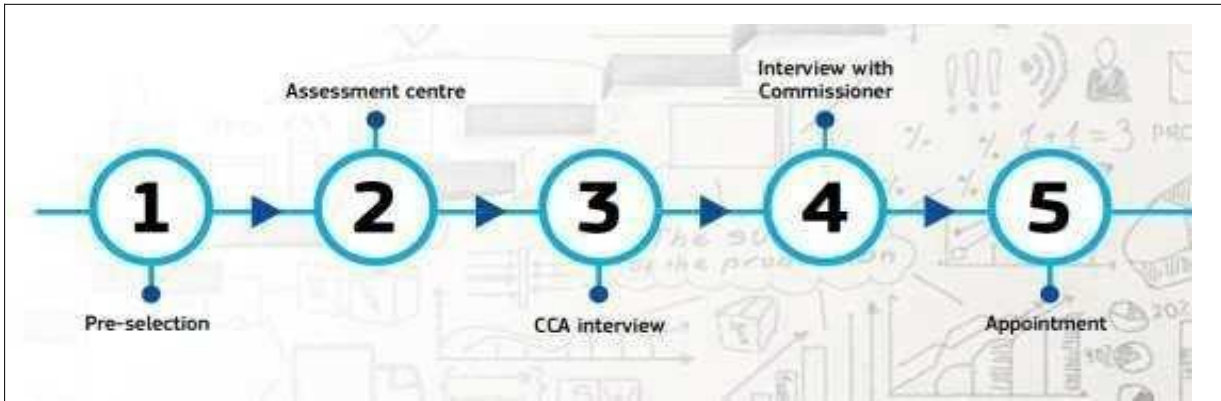
or follow the procedure for competitions on the basis either of qualifications or of tests, or of both qualifications and tests. Annex III lays down the competition procedure.

The procedure may likewise be followed for the purpose of constituting a reserve for future recruitment [...]

2. A procedure other than the competition procedure may be adopted by the Appointing Authority for the recruitment of senior officials (Directors-General or their equivalent in grade AD 16 or AD 15 and Directors or their equivalent in grade AD 15 or AD 14) and, in exceptional cases, also for recruitment to posts which require special qualifications.

⁸ Assessment centres are organised by an external contractor and assess managerial competencies. They were introduced by the Commission for internal selection procedures at Director level in 2007 and for Deputy Director-General/Director-General level in 2015 (see list of annexes).

⁹ Commission Decision C(2016)1881 of 4/4/2016 on the exercise of powers conferred by the Staff



2 **Transfer in the interest of the service** (Article 7¹⁰ of the [Staff Regulations](#)).

Officials in grades of functions AD15 or AD16 who hold a post or carry out a function at senior management level, are eligible for transfer to another function at senior management level in the Commission in the interest of the service. This does not require the official to undergo the selection procedure outlined in point 1. This is the procedure that was used in 2000, when David O’Sullivan, at that time Head of Cabinet of the President, was appointed Secretary-General, as well as in 2005 for the appointment of Catherine Day and in 2015 for the appointment of Alexander Italianer.

In accordance with the Staff Regulations, the Article 7 procedure was used for the appointment of Mr Selmayr as Secretary-General of the Commission. The College took the decision on a proposal from the President, in agreement with the Commissioner responsible for Budget and Human Resources and after consultation of the First Vice-President.

Question of the European Parliament:

9. Who personally initiated the process of appointment?

Commission answer:

The process of appointment by transfer was initiated by the President in agreement with the Commissioner responsible for Budget and Human Resources and after consultation of the First Vice-President.

Regulations on the Appointing Authority (AIPN).

¹⁰ Article 7 of the Staff Regulations provides that: The Appointing Authority shall, acting solely in the interest of the service and without regard for nationality, assign each official by appointment or transfer to a post in his function group which corresponds to his grade.

Question of the European Parliament:

10. Did somebody within the Commission oppose it?

Commission answer:

The decision of the College of Commissioners was unanimous.

Question of the European Parliament:

11. According to the minutes, the 2244th College meeting started at 9.35 am; can the Commission confirm that at 9.39 the accredited press was informed that president Juncker and Günther Oettinger would held a press conference on 10.30?

Commission answer:

Journalists were informed by an e-mail sent at 9h40 that the read-out of the College meeting would be done by President Juncker and Commissioner Oettinger and would start at 10h30. This was done to guarantee timely information of journalists on the outcome of the College meeting and was without prejudice to further decisions taken by the Commission.

Question of the European Parliament:

12. How was Article 29 of the Staff Regulations interpreted in relation to the preference for a direct transfer of Mr. Selmayr from Deputy SG to SG? Considering that this procedure can only be applied in 'exceptional circumstances', which were these?

Commission answer:

It is not correct that the transfer procedure of Article 7 of the Staff Regulations can only be used in "exceptional circumstances". It is, under the Staff Regulations, an alternative procedure to the publication procedure of Article 29.1 a) of the Staff Regulations and can equally be chosen by the institution depending on the interest of the service. Please also see answer to question 8.

Paragraphs 10.11 of the Minutes of the 2244th Commission meeting - Appointment of AD 15/16 Deputy Secretary-General

Question of the European Parliament:

13. What recruitment procedures are followed for Deputy Secretary Generals?

Commission answer:

Like Deputy Directors-General, Deputy Secretaries-General belong to the same type of post as Directors-General within the AD function group (Annex I to the Staff Regulations). Please see the answer to question 8 for the applicable procedures. Subsequent to the senior management decisions taken on 21 February 2018, two Deputy Secretary-General functions, as well as two Deputy Director-General functions have now been published and will shortly be filled.

Question of the European Parliament:

14. Can the Commission confirm that the post of Deputy Secretary General is the one of Mrs Paraskevi Michou? If not which one was it? If it was the post of Mrs Michou, is it correct that she remained Deputy Secretary General until the 1st of March, date at which her nomination as Director General of DG HOME took effect? If so, how could Mr Selmayr be nominated on a post of Deputy General Secretary on 21 February 2018, which was not yet vacant? What was the reason for removing Mr Matthias Ruete from his post (Director General DG HOME)?

Commission answer:

The Commission can confirm that the post of Deputy Secretary-General was the one previously occupied by Ms Michou. Since the College had decided, on 31 January 2018, to transfer her in the interest of the service to the post of DG HOME with effect from 1 March 2018, it was possible to fill this post again with effect from that date. The fact that her appointment took effect on 1 March 2018 is not an obstacle to the appointment. On the contrary, it is in line with the principle of good administration to avoid gaps by publishing in due time the post to ensure that it is filled rapidly.

As regards the reasons for the transfers of Ms Michou and Mr Ruete, which took place at the request of the First Vice-President Timmermans and Commissioner Avramopoulos in agreement with Commissioner King, the Commission refers to the minutes of the College meeting of 31 January 2018 (PV(2018) 2241, p. 11 and 12) which state, “*The Commission proposed to appoint [Ms MICHOU] as Director- General of DG Migration and Home Affairs, with effect from 1 March 2018. Ms MICHOU was one of the key figures behind the Commission’s global response to the migration crisis, in particular coordinating numerous initiatives and steering its crisis management on*

migration in the different departments. In her new role as Director-General, she would work directly with Mr AVRAMOPOULOS, the Member of the Commission responsible for migration, home affairs and citizenship, Sir Julian KING, the Member of the Commission responsible for the Security Union, and Mr TIMMERMANS, First Vice-President of the Commission, responsible for better regulation, interinstitutional relations, the rule of law and the Charter of Fundamental Rights. Mr OETTINGER stressed that Ms MICHOU was in effect immediately to assume responsibility for the work under way on reform of the European asylum system provided for by the 'Dublin III' regulation. This fundamental reform to ensure the proper functioning of the Schengen area would be on the agenda of the European Council in June and must first be examined by the European leaders at their informal meeting in May [...] Mr OETTINGER stressed that these two appointments would ensure the continuity of senior management in the crucial area of migration and home affairs."

Question of the European Parliament:

15. Can the Commission confirm that regular procedures (publications of posts, call of interest, etc.) can be followed in a case where the post is not yet vacant? If so, how?

Commission answer:

In order to ensure continuity of service, the relevant procedures are normally launched as soon as it is clear that a post will have to be filled in the foreseeable future, for instance because of transfer of the job holder.

Question of the European Parliament:

16. Does the Commission consider it normal to arrange in advance (i.e. 31 January, 21 February) the promotion, nomination and mutation into three management posts for the 1st of March? (Nomination of Michou DG HOME 1st March on 31st of January, and promotion of Selmayr to Deputy Secretary General on 1st March on 21st February, and mutation of Selmayr to the post of Secretary General 1st March on 21st February?)

Commission answer:

In the interest of the institution, situations where important functions of this level become vacant are to be avoided. The approach followed by the College guaranteed the seamless exercise of these functions.

None of these appointments or transfers led to a promotion within the sense of the Staff Regulations, since they all happened at the same grade already held by the officials involved (AD15). Promotions involve an official moving up from one grade to the next in accordance with article 45 of the Staff Regulations.

Question of the European Parliament:

17. How many minutes did the College reflect on these nominations?

Commission answer:

The duration of individual agenda items is not recorded in the minutes. The meeting lasted from 9h35 to 10h19. The decision of the College of Commissioners was unanimous.

Question of the European Parliament:

18. How many applications had the Commission before it? How many applications were initially introduced? If some application had been withdrawn when did it take place? For which reason? When did the exchange of views between the candidate(s) and Commissioner Oettinger and President Juncker take place? How long did that interview last? And what was the result? Please provide the CONT Committee with the Minutes of the interviews.

Commission answer:

Following the appointment of Ms Michou as Director-General for Migration and Home Affairs on 31 January, the post of Deputy Secretary-General was published with the standard deadline of ten working days for applications (i.e. 13 February) and two candidates applied. Mr Selmayr was one of the applicants for the post. The second candidate applied for the vacancy on 8 February 2018, went through the full day Assessment Centre on 12 February 2018 and withdrew the application prior to the interview with the Consultative Committee on Appointments (CCA) scheduled for 20 February 2018.

Mr Selmayr underwent the procedure foreseen under Article 29 of the Staff Regulations. This procedure included:

- a) a full day Assessment Centre (15 February);
- b) an interview (16 February), assessment and opinion (20 February) by the Consultative Committee on Appointments (CCA);
- c) an interview with Commissioner Oettinger in charge of Budget and Human Resources and President Juncker (20 February). No minutes are required from these interviews and the length of the interview is not recorded.

The College – by unanimous decision – appointed Mr Selmayr as Deputy Secretary- General on 21 February.

Question of the European Parliament:

- 19. *If there were only one candidate on 21 February, it would have been necessary to proceed to a new call for applications so that the College would be offered a sufficient choice. How does the Commission justify that it did not respect its internal rule according to which "The lists adopted by the CCA should in any event offer the Commissioners a satisfactory choice of candidates..."***

Commission answer:

There is no legal obligation to close the procedure because there is only one candidate if the Consultative Committee on Appointments (CCA) considers that this candidate meets the necessary qualifications. Even though it is an objective of the Commission to have lists adopted by the Consultative Committee on Appointments (CCA) which offer a satisfactory choice of candidates, it happens that there is only one candidate who applies for a senior management vacancy or that there is only one qualified candidate left by the end of the procedure when the proposal is made to the College.

Question of the European Parliament:

- 20. *When did the other candidate apply for the function of deputy Secretary-General? Was it on the same date as Mr Selmayr? Did she applied on the request of her chief? Did she also had a job interview with Commissioner Oettinger? If not, why? When did she decided to withdraw from the application procedure? What where the reasons for her to withdraw?***

Commission answer:

The second candidate applied for the vacancy on 8 February 2018, went through the full day Assessment Centre on 12 February 2018 and withdrew the application prior to the interview with the Consultative Committee on Appointments (CCA) scheduled for 20 February 2018. Candidates are not required to give any reasons or justification for withdrawing their application.

Question of the European Parliament:

- 21. *Mme Alberola ignorait-elle les intentions du Président de nommer Selmayr SG ? Était-elle au courant du fait qu'elle aurait eu le poste de Chef de Cabinet suite à la nomination de Selmayr comme SG?***

Commission answer:

Ms Martinez Alberola was informed on 20 February 2018.

Question of the European Parliament:

- 22. Why was the selection procedure for the post of Deputy Secretary General not reopened when Ms Martinez Alberola withdrew her candidacy? Can Ms Martinez explain why she withdrew her candidacy? In the previous selection procedures for deputy secretary-generals, how many candidates did apply for each of the posts advertised? Please give an answer for each of the deputy secretary-generals appointed since 2004.**

Commission answer:

Please see answer to question 19. There is no legal obligation to close the procedure if one or more candidates withdraw their application at any stage of a selection procedure if the Consultative Committee on Appointments (CCA) considers that the only candidate remaining is suitably qualified for appointment. This does not lead to reopening the procedure. Once the deadline for applications has expired, the procedure cannot be reopened for new applications. The procedure continues as normal with the remaining candidates. When candidates withdraw their application, they are not required to give any reason or justification for their withdrawals.

Since 2004, a total of 146 candidates applied for a Deputy Secretary-General post in previous selection procedures, one of which was published externally:

Year	Selection procedure	Nr. of applications
2005	COM/2005/3857	4
2009	COM/2009/1847	3
2010	COM/2010/1337	2
2010	COM/2010/1338	3
2015	COM/2015/10361 (external)	120
2015	COM/2015/1447	6
2015	COM/2015/1448	8

Other candidates

Question of the European Parliament:

- 23. Does the Commission confirm that there was only one other candidate for the position of Deputy Secretary-General? And do you confirm that she retrieved her application shortly after the vacancy was closed? Finally, does the Commission confirm that in consequence only Mr Selmayr passed the assessment test and was interviewed by Mr Oettinger and Mr Juncker to fill the position of Deputy Secretary- General?**

Commission answer:

Both candidates went through the Assessment Centre. The second candidate withdrew the application prior to the interview with the Consultative Committee on Appointments (CCA) scheduled for 20 February 2018. Please see answers to questions 18 to 20.

Question of the European Parliament:

- 24. How often during the current legislature did candidates of the underrepresented gender retrieve their candidature once a vacancy is closed? If this happened not only exceptionally, how can it be prevented that the underrepresented gender retrieve their candidature to make sure that the Commission complies with its claims on equal opportunities and transparency?**

Commission answer:

In senior management selection procedures, it happens that candidates withdraw their applications, but there is no specific pattern in terms of gender. Withdrawals are unpredictable events, which do not undermine the equal opportunities and transparency policy of the Commission but which result from a personal decision for which no justification is required. We would like to recall that this Commission has increased the number of female Directors-General and Deputy Directors-General from 11% to 36%.

Question of the European Parliament:

- 25. Did the CCA not insist on a sufficient number of candidates, according to the internal Rules of the COM?**

Commission answer:

Please see answer to question 19.

Question of the European Parliament:

26. Please explain how the procedure abided to required conditions of openness and transparency.

By adopting its internal guidelines, the Commission has clearly set itself the following rule: “The lists adopted by the CCA should in any event offer the Commissioners a satisfactory choice of candidates. The responsible Commissioners need on the one hand to have the widest choice of suitably qualified candidates and on the other to have a list of candidates for interview which does not impose on them a major burden of comparative assessment of a large number of candidates” (point 5.2.6 of the Compilation Document). When this is not the case, according to the CCA rules of procedure (Article 1(2) (2) of Decision C (2007)380), “at the request of one of its members, after hearing the Director-General concerned and, if required, the Rapporteur appointed to follow the specific selection procedure, the CCA may suggest that a wider choice of candidates should be proposed to the Appointing Authority.” A vacancy notice must be published and it must give potential candidates enough time to decide whether or not they wish to apply (this reflects a general principle: cf. C-566/10 P, Italy / Commission, point 90).

Commission answer:

Article 1(2) of Commission Decision C(2007) 380 of 7 February 2007 laying down the Rules of Procedure for the Consultative Committee on Appointments (CCA) (see list of annexes) relates to selection procedures having the purpose of filling a vacant post of Head of Unit or Adviser. It does therefore not apply to senior management selection procedures. Moreover, even at middle management level, the "wider choice of candidates" can only concern candidates who applied for the respective position; the Consultative Committee on Appointments (CCA) cannot propose for interview candidates who did not submit a formal application.

Article 1(1) of the same decision relates to selection procedures having the purpose of filling a vacant post of Directors-General or their equivalent in grade AD15 or AD16 and of Director or equivalent in grade AD14 or AD15 and states that, “*the CCA shall examine all applications for a vacancy; it shall assess candidates as to their aptitude to exercise senior management function and propose to the Appointing Authority a list of those candidates it considers most suitably qualifies for appointment.*” The vacancy notice for the post of Deputy Secretary-General was published with the standard deadline of ten working days, which gave potential candidates sufficient time for deliberation.

Question of the European Parliament:

27. *Following the withdrawal of Ms Alberola’s application even before the CCA was able to examine it - Shouldn’t the selection procedure have been repeated to ensure the participation of a sufficient number of candidates?*

Commission answer:

Please see answer to question 19.

Question of the European Parliament:

28. *Can the Commission explain its view on how the conditions repeated below were met?*

- *fair and effective competition for the vacant post in the meaning of Article 29 of the Staff Regulations;*
- *non-discrimination of potential candidates in the meaning of Article 1 of the Staff Regulations; and*
- *“a satisfactory choice of candidates” in accordance with the rules adopted by the College.*

Commission answer:

First, the Commission notes that the terms cited in the third indent of the question relate to the Consultative Committee on Appointments stage of a selection procedure and do therefore not concern the choice between the organisation of a selection procedure pursuant to Article 29 of the Staff Regulations and the transfer in the interest of the service pursuant to Article 7 of the Staff Regulations. In any event, where a post needs to be filled, the Staff Regulations allow the Appointing Authority, in this case the College, to choose between the organisation of a selection procedure pursuant to Article 29.1 of the Staff Regulations, and a transfer in the interest of the service pursuant to Article 7 of the Staff Regulations. Article 1d of the Staff Regulations, which refers to the principle of non-discrimination, needs to be respected in both procedures. It depends on the specific circumstances of the case at stake whether a selection procedure or a transfer is considered to best correspond to the interest of the institution.

Question of the European Parliament:

29. *Can Mr Oettinger in his capacity as Commissioner in charge of this procedure explain his reasons for not persisting to ensure the participation of an adequate number of candidates in accordance with the Staff Regulations and the guidelines of the College on these matters?*

Commission answer:

Please see answer to question 19.

Question of the European Parliament:

30. Both decisions of appointment of AD 15/16 Deputy Secretary-General and Secretary General of the Commission will take effect on 1 March 2018. Is it normal procedure to adopt two staff decisions concerning the same servant with simultaneous effect whilst logically the appointment to the post of Deputy-Secretary General should have preceded the transfer to the post of Secretary-General?

Commission answer:

The decisions were taken by the College consecutively. First, the appointment of Deputy Secretary-General was decided, then Alexander Italianer announced his retirement and only thereafter the transfer to the post of Secretary-General was decided. The first decision took effect in time before the second one even if on the same day.

In the interest of the institution, situations where important functions of this level become vacant are to be avoided. The approach followed by the College guaranteed the seamless exercise of these functions. None of these appointments or transfers led to a promotion within the sense of the Staff Regulations, since they all happened at the same grade already held by the officials involved (AD15). Promotions involve an official moving up from one grade to the next in accordance with article 45 of the Staff Regulations.

Question of the European Parliament:

31. Retirement of Mr Italianer Page 30 4th alinea of the Minutes of the 2244th Commission meeting.

Mr Italianer announced that he would take retirement on 1 April 2018 and that he was prepared to leave the post on 1 March to ensure an orderly transition.

To which extend the fact of leaving the post 7 days after the decision would ensure a better transition than managing a transitory period of one month and 7 days?

Commission answer:

Mr Italianer was transferred to a function of Hors Classe Adviser in the Secretariat-General for the period 1 March 2018 to 31 March 2018 notably in view of facilitating the transition to his successor during this period

Question of the European Parliament:

32. *During the press conference held on Wednesday February 21th, Jean-Claude Juncker mentioned that the outgoing Secretary-General, Alexander Italianer, informed him two years ago of his decision to retire as of 1 March. According to the Commission's minutes, it was during the Commission's meeting of February 21th that Mr Alexander Italianer, Secretary-General of the Commission, informed the Commission of his intention to retire with effect as of 1 April 2018. What is the correct version?*

Commission answer:

President Juncker explained during his press conference on 21 February that when agreeing to become Secretary-General in 2015, Mr Italianer had told the President that he intended to retire soon after 1 March 2018. The President discussed this information with his Head of Cabinet, like all important senior management matters.

The President did not share this information further in order not to undermine Mr Italianer's authority while he was in office. The President and his Head of Cabinet also kept the hope to be able to convince Mr Italianer to stay on as Secretary-General beyond 1 March 2018. However, in early 2018, Mr Italianer confirmed that he would stick to his decision. Mr Italianer sent the President a formal letter stating his intention to retire on 31 March 2018 in the morning of 21 February 2018.

After having sent his letter, he subsequently informed the College of Commissioners during their meeting on 21 February. The letter was the first formal step taken by Mr Italianer in order to inform the President and subsequently the College of his intention to retire.

Question of the European Parliament:

33. *Does the Commission insist that the resignation of DG Italianer, which happened just a few minutes after Mr. Selmayr had been appointed his Deputy, was coincidental?*

Commission answer:

Please see answer to question 32.

Question of the European Parliament:

34. *Page 30 last sentence and page 31 of the Minutes of the 2244th Commission meeting*

“The President then presented to the College his proposal to appoint his current head of Cabinet, Mr Martin Selmayr, a German national who has recently been appointed Deputy-Secretary general, to the post of Secretary-General with effect from 1 March 2018,”

Why do the minutes mention the nationality of Mr Selmayr whilst under article 7 of the Staff regulation foresees as to the transfers that: “the Appointing Authority shall, acting solely in the interest of the service and without regard to nationality”

Commission answer:

There is no specific reason. Nationality does not play a role with regard to appointments or transfers under the Staff Regulations.

Question of the European Parliament:

35. *Is it well obvious that at the moment of his presentation by President Juncker on 21 February 2018 Mr Selmayr was presented in his capacity/function of “current head of Cabinet of the President”?*

Commission answer:

On 21 February 2018, Mr Selmayr was, in his "basic career" a Commission official in grade AD15, Principal Adviser in the Directorate-General for Economic and Financial Affairs and, in his career as seconded official, Head of the Cabinet of the President at grade AD15.

Question of the European Parliament:

36. *To which extend article 4 of the Staff regulation has been respected that foresees in particular that*

“No appointment or promotion shall be made for any purpose other than that of filling a vacant post as provided in these Staff Regulations.

Vacant posts in an institution shall be notified to the staff of that institution once the appointing authority decides that the vacancy is to be filled....”

Commission answer:

Articles 4 and 29 of the Staff Regulations were followed for the procedure for appointment of Mr Selmayr as Deputy Secretary-General. Article 7 of the Staff Regulations was followed for the procedure for the transfer to the post of Secretary General. As this post was not vacant, the case law of the EU courts allows for transfers to be carried out without publication.¹¹

¹¹ Case F-24/12, BN v PE, points 46-48; Case T-339/03, Clotuche v Commission, point 31.

Article 4 of the Staff Regulations does not mean that posts can only be filled via a publication and formal selection procedure. The two procedures as described in the answer to question 8 (appointment under Article 29 of the Staff Regulations or transfer in the interest of the service under Article 7 of the Staff Regulations) are alternatives and the College can decide which procedure to be used. EU institutions may make use of the possibility to transfer officials of the same function group in the interest of the service in accordance with Article 7, without a formal publication. Please see answer to question 8.

Finally, the Court of Justice has consistently held that the EU institutions have a broad discretion to organise their departments to suit the tasks entrusted to them and to assign staff available to them in the light of such tasks, on condition however that the staff are assigned in the interests of the service and in conformity with the principle of assignment to an equivalent post.¹² The Court of Justice has also confirmed that re-assignments of this type are in line with the Staff Regulations, which allow both procedures to be used.¹³

Question of the European Parliament:

37. How often has this procedure been used in the ongoing legislature to fill AD15/AD16 position without publishing a vacancy as required in Article 4?

Commission answer:

During this mandate, the Commission has made 32 transfers in the interest of the service under Article 7 of the Staff Regulations of Directors-General/Deputy Directors-General to another function of Director-General/Deputy Director-General. In addition, 13 officials in grades AD15/AD16 who had previously occupied a function of Director-General or Deputy Director-General have been moved to Hors Class Adviser functions. All these transfers have been decided by the College of Commissioners in full compliance with the provisions of the Staff Regulations. Please also see answer to question 36.

Under the previous Commission, 60 officials holding functions of Director-General/Deputy Director-General/Hors Classe Adviser were transferred to other functions at this level under Article 7 of the Staff Regulations. Six of these transfers were of Directors-General/Deputy Directors-General to Hors functions. Classe Adviser.

¹² Case F-73/07, Doktor/Conseil, point 39; see also Case 69/83, Lux v. Court of Auditors, point 38.

¹³ Case C-174/99P, European Parliament v Pierre Richard, points 38-39.

Question of the European Parliament:

38. *How can the Commission make sure that the best candidates are selected without complying with the requirements laid down in Article 4?*

Commission answer:

Please see answers to questions 28 and 36.

Question of the European Parliament:

39. *Paragraph 10.22: appointment of AD15/16 Secretary-General of the Commission*

“On a proposal from the President, in agreement with Mr Oettinger, the Commission decided to transfer in the interest of the service, under Article 7 of the Staff regulations, Mr Martin Selmayr, Deputy Secretary- General responsible for Directorates B and E to the post of Secretary- general of the Commission”

Why do the minutes present Mr Martin Selmayr as Deputy Secretary - General responsible for Directorates B and E whilst at that very moment his appointment of Deputy Secretary- General has not taken effect yet?

Commission answer:

Please see answer to question 16. Given the sequence of events, first the appointment of Deputy Secretary-General was decided, then Alexander Italianer announced his retirement and only thereafter the transfer to the post of Secretary-General was decided. The first decision took effect in time before the second one even if they were adopted on the same day.

Question of the European Parliament:

40. *Which was the latest grade of Martin Selmayr before having been seconded to the Cabinet of the President of the European Commission and when did he become an official of the European Commission under the terms of the Staff regulation? Which was the grade of Mr Selmayr on 20 February 2018? What has been his career path? Did his appointment as Secretary-General have any effect on his emoluments?*

Which grade does he have now? Is it right that Martin Selmayr has held an AD15 position as the head of Juncker’s cabinet since 2017 - but please provide CONT Committee with the full record of his career within the EU institutions:- for each position - status (official, seconded official, temporary), grade, date of promotion, what concours, besides that of DSG, did he pass? When did he pass those concours? What was his entry grade when starting the service? Can the Commission confirm that Mr Selmayr was an AD 14 official before the 9 minutes during which he was appointed Deputy Secretary General and then Secretary General?

Commission answer:

Mr Selmayr was a grade AD14 official at the time that he was seconded as Head of the President's Cabinet.

Mr Selmayr joined the Commission as a grade AD6 official in November 2004, having passed the open AD competition COM/A/10/01 under the Prodi Commission. He was one of the 4,557 eligible candidates in this open competition in the field of Law.

156 candidates (3,4% rate) passed the competition, including Mr Selmayr. He was chosen from the 156 laureates reserve list published in the Official Journal (OJ 8.3.2003 C 54/5). Prior to joining the Commission, Mr Selmayr had seven years of professional experience, including working within the Bavarian administrative and court system, lecturing at the University of Passau and assignments at the European Monetary Institute, later the European Central Bank, in addition to work experience as an attorney and manager in the private sector.

In his Commission career, Mr Selmayr, was promoted to grade AD7 in 2007, to grade AD8 in 2009, to grade AD9 in 2011 and to grade AD10 in 2013.

From 10 February 2010, Mr Selmayr was seconded as Head of Vice-President Reding's Cabinet. In this position he occupied a function of Head of Cabinet at grade AD14, at Director level in accordance with the Rules on the Composition of Cabinets in force at the time (SEC(2010)104).

In 2014, Mr Selmayr was one of 91 candidates for the post of Principal Adviser to the European Bank for Reconstruction and Development (a position at the level of a Director in DG ECFIN) and successfully went through the entire selection procedure (Article 29 of the Staff Regulations) including a full day Assessment Centre, interview by the Consultative Committee on Appointments and interview by Olli Rehn, the Vice-President for Economic and Monetary Affairs and the Euro. Subsequently, he was appointed Principal Adviser (a post at Director level) by the College of Commissioners under the Barroso Commission at the request of Vice-President Rehn with effect of 1 June 2014. With this appointment he became a grade AD14 official.

Mr Selmayr took leave on personal grounds (CCP) from 1 April 2014 to 31 May 2014 in order to act as campaign manager for Jean-Claude Juncker, lead candidate for President of the Commission. Following his reintegration on 1 June 2014, Mr Selmayr was assigned as an AD14 official as Principal Adviser in the Directorate-General for Economic and Financial Affairs.

From 1 July 2014 to 31 October 2014, Mr Selmayr was seconded at grade AD14 as Head of the Transition Team of President-elect Jean-Claude Juncker.

On 1 November 2014, Mr Selmayr was seconded as Head of the President's Cabinet at grade AD15 in accordance with the Rules on the Composition of Cabinets in force since 2004 (see decisions SEC(2004)185, SEC(2010)104 and C(2014)9002), (see list of annexes).

On 1 January 2017, Mr Selmayr was promoted by the College to grade AD15 in his basic (non-secondment) career as an official in the framework of the 10th Senior Officials Promotion Exercise, a decision taken by the College of Commissioners (PV(2017)2221).

Mr Selmayr was an AD15 official before the Commission meeting of 21 February 2018, and he is still grade AD15 today. There was no promotion in the sense of the Staff Regulations. His appointment as Secretary-General had a negative effect on his salary and emoluments since he was in step 2 of grade AD15 as a seconded official but in step 1 of grade AD15 in his basic career as a Commission official.

Question of the European Parliament:

4l. Who was already, before the date of the “flash” promotion of Mr Selmayr, informed that M. Selmayr will be the new Secretary-General? When was Juncker informed? When was Frans Timmermans informed? When was Mr Oettinger informed?

Commission answer:

There was no promotion in the sense of the Staff Regulations. Mr Selmayr was an AD15 official before the Commission meeting of 21 February 2018, and he is still grade AD15 today. His appointment as Secretary-General had a negative effect on his salary and emoluments since he was in step 2 of grade AD15 as a seconded official but in step 1 of grade AD15 in his basic career as a Commission official.

In accordance with normal practice, and in order to safeguard the necessary degree of confidentiality, senior management appointments at Director-General or Deputy Director-General level are presented directly to the College on the same day that the College decides on them. The Commissioner responsible for Budget and Human Resources presents the proposals in agreement with the President and after consulting the recruiting Commissioner and the relevant Vice-President(s). This was the procedure applied for all the appointments and transfers in the senior management appointments and transfers decided by the College of Commissioners on 21 February 2018.

On 20 February, Commissioner Oettinger was informed by President Juncker about the decision of Mr Italianer to submit his retirement letter the next morning (21 February) and that consequently he would propose that Mr Selmayr be transferred to the post of Secretary-General. Commissioner Oettinger expressed his full agreement and the proposal was then unanimously agreed by the College on 21 February.

The President had also consulted First Vice-President Timmermans on this proposal on 20 February who had given his agreement. The President consulted the First Vice-President, as he consults him on all important decisions of the Commission, in view of the special role he plays in the set-up of the Juncker Commission. The First Vice-President also has a special relationship with the Secretary-General in view of his responsibility notably for institutional matters, Better Regulation and the Commission Work Programme.

When President Juncker during the College meeting on 21 February proposed to appoint Mr Selmayr Secretary-General, all Members of the Commission agreed unanimously.

Question of the European Parliament:

- 42. *Where there any other Commissioners informed that Mr. Selmayr will be the new Secretary-General before the date of this “flash” promotion?***

Commission answer:

Please see answer to question 41. There was no promotion in the sense of the Staff Regulations. Mr Selmayr was not promoted but transferred and this transfer did not entail any change in grade or promotion. Promotions involve an official moving up from one grade to the next in accordance with article 45 of the Staff Regulations¹⁴. This was not the case.

Question of the European Parliament:

- 43. *Are there government leaders who have spoken about the appointment of M. Selmayr? If so, which? If not, does the appointment come up during the summit of 23 of March, whether formal or informally;***

Commission answer:

The Juncker Commission never discusses senior management appointments in advance with national governments and/or other outside parties, as this would be incompatible with the supranational spirit of the European Public Administration and with the independence of the Commission and its staff, which is chosen by the College of Commissioners on the basis of qualifications, skills, experience and trust, as required by the Staff Regulations. In line with these principles, the appointment of Mr Selmayr as Secretary-General was not discussed in advance with any national government or outside party, but reserved for the College of Commissioners.

The appointment of Mr Selmayr was not on the agenda of the European Council of 22/23 March 2018.

¹⁴ Promotion shall be effected by appointment of the official to the next higher grade in the function group to which he belongs

Question of the European Parliament:

- 44. To which extend the conditions required to decide on a transfer in the interest of the service (under article 7 of the Staff regulations* ...) of Mr Martin Selmayr were met as on 21 February 2018 the decision of appointing Mr Martin Selmayr to the post of Deputy Secretary-General had not taken effect?***

Commission answer:

On 21 February, the College decided on a series of senior management appointments, including appointing Mr Selmayr as Deputy Secretary-General.

Thereafter, Mr Italianer took the floor to inform the College that he intended to retire as of 31 March 2018. In order to ensure that the key position of Secretary-General would not be vacant, and in accordance with Article 7 of the Staff Regulations, the College, on the proposal of President Juncker and in agreement with the Commissioner for Budget and Human Resources and after consulting the First Vice- President, unanimously decided to appoint Mr Selmayr Secretary-General.

As an AD15 official, Mr Selmayr was eligible for this transfer in the interest of the service to the post of Secretary-General, which was decided unanimously by the College. The College considered that Mr Selmayr, an AD15 official with eight years of senior management experience, brings all the necessary qualifications to this important position.

Question of the European Parliament:

- 45. Is it well confirmed that on 21 February Mr Selmayr was still Head of Cabinet and did not perform the tasks of a Deputy-Secretary General?***

Commission answer:

Yes. On 21 February 2018 Mr Selmayr was carrying out the functions of Head of the President's Cabinet and he continued to do so until 28 February 2018. The date of effect of the decisions taken on 21 February 2018 concerning his appointment in accordance with Article 29 of the Staff Regulations to the function of Deputy Secretary-General and his transfer in the interest of the service in accordance with Article 7 of the Staff Regulations to the function of Secretary-General was 1 March 2018.

*The Appointing Authority shall, acting solely in the interest of the service and without regard to nationality, assign each official by appointment or transfer to a post in his function group which corresponds to his grade. An official may apply for a transfer within his institution

Question of the European Parliament:

- 46. How were the qualifications of Mr. Selmayr as potential SG assessed, including his managerial skills and experience? Were considerations of gender and nationality taken into account?**

Commission answer:

Managerial skills and experience are assessed when officials are appointed to a senior management function via a procedure in accordance with Article 29 of the Staff Regulations. Since 2015 (PV(2015)2132), this has also included a full-day Assessment Centre run by an external consultant for all internally published procedures at Director-General/Deputy Director-General level. Assessment Centres were introduced in 2006 (PV(2006)1767) for internally published procedures at Director/Principal Adviser level. Mr Selmayr was assessed in the context of his application for the function of Deputy Secretary-General. Transfers in the interest of the service under Article 7 of the Staff Regulations do not require a further formal assessment of managerial skills and experience.

Question of the European Parliament:

- 47. Is management experience required to be secretary general? If no, why? If yes, what is the management experience of Mr Selmayr?**

Commission answer:

The formal requirement is to have at least two years of senior management experience. In addition to having been appointed Principal Adviser in Directorate-General Economic and Financial Affairs, Mr Selmayr has been, since February 2014, Head of Cabinet, which is considered, under Commission rules, a senior management function in accordance with the rules on the Composition of Cabinets in force since 2004 (see decisions SEC(2004)185, SEC(2010)104 and C(2014)9002), (see list of annexes). He was Head of Cabinet firstly for Vice-President Reding (2010 - 2014) and then for President Juncker (2014 -February2018).

Question of the European Parliament:

- 48. Does the Commission consider that managing a cabinet and managing a directorate-general of the Commission is the same?**

Commission answer:

Under the rules on the Composition of Cabinets in force since 2004, managing a normal Commissioner's Cabinet is considered to be equivalent to managing a Directorate, managing the High Representative/Vice-President's Cabinet is considered equivalent to having a Deputy Director-General function and managing the President's Cabinet, which is specifically complex and implies significant responsibility, is considered to be equivalent to managing a Directorate-General (see decisions SEC(2004)185, SEC(2010)104 and C(2014)9002)). Please see answer to question 7.

Question of the European Parliament:

- 49. Could Mr. Selmayr have been appointed to the position of Secretary-General without having been appointed to the position of Deputy Secretary-General? What different procedure would have had to be applied?**

Commission answer:

As an AD15 official holding a senior management function, Mr Selmayr was eligible for the post of Secretary-General and could have been transferred by a decision of the College using the Article 7 procedure. Article 7 of the Staff Regulations states: “*The Appointing Authority shall, acting solely in the interest of the service and without regard to nationality, assign each official by appointment or transfer to a post in his function group which corresponds to his grade.*” Article 5 of the Staff Regulations defines 3 function groups: Administrators (AD), Assistants (AST) and Secretaries/Clerks (AST/SC). Annex 1 of the Staff Regulations specifies that functions at the level of Director-General can be filled at grade AD15 or grade AD16. Mr Selmayr is an official in the AD function group with the grade AD15. He would, therefore, have been eligible for a transfer to the function of Secretary-General in accordance with Article 7 without having been appointed to the function of Deputy Secretary-General. While it is not the Commission's practice to transfer Directors in grade AD15 to Director General posts under Article 7, legally the College could have decided to do so in view of the specific circumstance of the case, which would have justified such a decision.

Question of the European Parliament:

- 50. Why-and on which legal basis, did Mr Oettinger affirm on 12 March 2018 in plenary meeting of the European Parliament that the transfer of Mr Martin Selmayr was only possible due to the fact that his function of Head of Cabinet of the President of the Commission was equivalent the one of a Director-General?**

Commission answer:

On 12 March 2018, Commissioner Oettinger mentioned the fact that the function of Head of Cabinet of the President is equivalent to a function of Director-General on the basis of the rules on the composition of the Cabinet of Members of the Commission in force since 2004 (see decisions SEC(2004)185, SEC(2010)104 and C(2014)9002), (see list of annexes). The Rules on the Composition of the Cabinets of Members of the Commission are internal rules, which are necessary to specify, among other things, from an administrative point of view, the functions of the Heads of Cabinet of the Members and President of the Commission. They are legally compatible with the Staff Regulations. Commissioner Oettinger did not say that this equivalence was a formal requirement for the transfer to the post of Secretary-General. The formal requirements are those set out in the answers to questions 7 and 49.

Question of the European Parliament:

51. Has the Head of the European Commission legal Service (who as mentioned page 7 of the Minutes attended the meeting) been consulted during the meeting on the procedure to be followed? Has the legal service been consulted on the procedure to be followed before the meeting?

Commission answer:

The decision was proposed and adopted unanimously at the meeting of the College on 21 February 2018. The Director-General of the Legal Service was present at the meeting. Any Member of the College can request the opinion of the Legal Service during the meeting.

Question of the European Parliament:

52. Has it ever happened before under the current term of office of this Commission that the College of Commissioners decided on a staff matter (promotion/transfer) which has not been put previously on the agenda of the meeting of the college and the weekly meeting of the chefs de cabinet?

Commission answer:

Please see the answers to questions 41 and 3(a). During the mandate of this Commission, this has happened on 16 occasions.

Paragraph 10.20 of the Minutes of the 2244th Commission meeting Secretariat-General- amendment of organisation chart and appointment of AD 16 Adviser hors classe

Question of the European Parliament:

53. Why did the Commission decide that by derogation from the Commission decision of 26 May 2004 (C 2004 1891/2) Mr Alexander Italianer would retain his right to the management step until his retirement whilst he has not to assume any management tasks?

Commission answer:

As the Union Courts have confirmed on numerous occasions, the institutions are bound by the duty of care, which implies that, when taking a decision under the Staff Regulations, the institution must not only take account of the interest of the service, but also of the interest of the official concerned. In line with this principle, the College decided to maintain the right to the management step for the one month until his date of retirement on 31 March 2018.

Changes in the Organisational Chart of the Commission

Question of the European Parliament:

- 54. In PV (2018)2244 final the Commission explains that 1 additional deputy director-general post and 4 additional Advisers Hors Class were created. What are the additional costs in 2018 for these additional posts? Why did the Commission augment these senior posts up to 104 despite staff cuts?**

Commission answer:

The Commission is operating within the limits of the establishment plan approved by the Budgetary Authority in the Budget 2018.

With respect to the 5% staff cuts decided in the context of the current Multiannual Financial Framework, the Commission has already achieved this target in 2017.

Question of the European Parliament:

- 55. Derogation from the statutory retirement age for officials:**

Current Director Generals are prolonged by the Commission beyond the statutory retirement age till 2019 or even 2020.

- a. Is the Commission of the opinion that no appropriate candidates could be available amongst the EU staff for those posts?***
- b. Why did the Commission not publish those posts in time? Which steps does the Commission intend to take to ensure that suitable candidates will be found in 2019 and 2020?***

Commission answer:

Article 52 of the Staff Regulations allows an official to carry on working until the age of 67 or, exceptionally, until the age of 70, at his own request and where the appointing authority considers it justified in the interests of the service. In the framework of the senior management decisions taken on 21 February 2018, the Commission took note of the fact that this possibility had been granted in the case of three Directors- General, taking account of the interests of the service, the wishes of the portfolio Commissioners, Vice-Presidents and the President, as well as the fact that this contributes to ensuring an appropriate balance overall between renewal and continuity. During the current mandate, 16 senior management officials made requests to continue to work beyond the age of 65; all these requests were granted.

Question of the European Parliament:

56. Appointment of Advisers Hors Class:

The Commission decided to side-line three Director Generals as „Advisors Hors Class“ and to entrust them with doubtful new duties in the European Political Strategy Centre. Apart from the fact that human resources are wasted the Commission demonstrates a surprising indifference towards this senior staff. Which kind of message is the Commission giving to its senior staff when the ones are even prolonged beyond the retirement age and the second are humiliated?

Commission answer:

These transfers took place at the request of the respective portfolio Commissioners. They were agreed unanimously by the College. It should be noted that the officials concerned were not sidelined. They were entrusted by the President with specific missions within the European Political Strategy Centre, directly advising him and the College on the following subjects: (1) relations with the Florence European University Institute; (2) Robotics, Artificial Intelligence and the Future of European Labour Law; and (3) Open Access to Publicly Funded Scientific Publications and Research Results.

One-month-Hors-class-adviser

Question of the European Parliament:

57. Why Secretary General Italianer was prolonged as a one-month-hors-class-adviser despite his wish to retire?

Commission answer:

Please see answer to question 53. The transfer of Mr Italianer to the function of Hors Classe Adviser did not lead to any change of his remuneration.

Question of the European Parliament:

58. Was the one-month-hors-class-adviser-post relevant for a management step?

Commission answer:

Please see answer to question 53.

Promotion and appointment of Ms. Christophidou as Director General Education, Youth, Sport and Culture

Question of the European Parliament:

59. Following the CV published by the Commission Ms. Christophidou served since 2010 as Head of Unit and was not appointed Director. Why was she promoted and appointed as DG?

Commission answer:

Please see answer to question 7. As a grade AD14 official with more than 2 years seniority in the grade and experience as a Head of Cabinet (a function at Director level) since 2011, Ms Christophidou was eligible to apply for the function of Director- General of Directorate-General Education, Youth, Sport and Culture which was published in accordance with Article 29.1.a (i) and (iii) under reference COM/2018/55. She underwent a full selection procedure, including a full day Assessment Centre, interview with the Consultative Committee on Appointments and final interviews with portfolio Commissioner Navracsics, Commissioner Oettinger and the President. The College decided to appoint her Director-General of Directorate-General Education, Youth, Sport and Culture on a proposal of Commissioner Oettinger, the Commissioner responsible for Budget and Human Resources in agreement with the President after consultation of the portfolio Commissioner and Vice-Presidents concerned. The decision of the College was unanimous.

III. Comparison with preceding appointment procedures

Question of the European Parliament:

60. Which procedure was followed for the appointment of former Secretary Generals?

David O 'Sullivan, Catherine Day, Alexander Italianer

- a) When were the vacant posts for those nominations published?***
- b) What was their career path from the grade of director on to the SG?***
- c) How many candidates applied for the SG post respectively?***
- d) When did the Assessment Centre take Place?***
- e) Who took the Decision?***
- f) When was the College informed?***
- g) What was the role of the College?***
- h) How much time took the nominations of these SGs***

Commission answer:

- a) David O’Sullivan, Catherine Day and Alexander Italianer were all transferred to the function of Secretary-General in the interest of the service in accordance with Article 7 of the Staff Regulations. In each case, the decision was taken simultaneously with the decision about the previous Secretary-General (transfer, retirement). The function was therefore not published as it was not vacant.
- b) David O’Sullivan became Director in Directorate-General Employment, then Director-General of Directorate-General Education and Culture before becoming Head of the President’s Cabinet and then Secretary-General. Catherine Day became Director in Directorate-General External Relations, then Deputy Director-General in Directorate-General External Relations, then Director-General of Directorate-General Environment and then Secretary-General. Alexander Italianer became Director in Directorate-General Economic and Financial Affairs, then (Deputy) Head of Cabinet, then Deputy Secretary-General, then Director-General of Directorate-General Competition and then Secretary-General.
- c) In each case, the function was not published and, as it was not vacant, there were no applications. David O’Sullivan, Catherine Day and Alexander Italianer were all transferred to the function of Secretary-General in the interest of the service in accordance with Article 7 of the Staff Regulations.
- d) Transfers in accordance with Article 7 do not require the selection procedure followed for Article 29 appointments. None of the three previous Secretaries-General underwent an Assessment Centre before being appointed at Director-General level because these were only introduced by the Commission for internal procedures at this level in 2015(PV(2015)2132).
- e) Decisions on Article 7 transfers at Director-General level are always taken by the College as Appointing Authority.
- f) The College was informed of the proposal for a transfer in the interest of the service in accordance with Article 7 as follows:
 - David O’Sullivan - during the College meeting (PV(2000)1477)
 - Catherine Day - during the College meeting (PV(2005)1721)
 - Alexander Italianer - during the College meeting (PV(2015)2132)
- g) The College is the Appointing Authority for transfers in the interest of the service in accordance with Article 7 at Director-General level.
- h) The duration of individual agenda items is not recorded in the minutes.

Question of the European Parliament:

61. As to the appointment of Martin Selmayr.

- a) When and where was the vacant post published?**
- b) What was the career path from the Grade of director on to the SG? Was he eligible?**
- c) How many candidates applied for the SG?**
- d) Why did Mr Selmayr pass a one-day assessment centre before his appointment? Does such a procedure exist in other EU institutions as well? When did the Assessment Centre take Place?**
- e) Who took the Decision?**
- f) When was the College informed?**
- g) What was the role of the College?**
- h) How much time took the nominations of the SG?**

Commission answer:

- a) The post of Secretary-General was not vacant and therefore was not published.
- b) Mr Selmayr was eligible for the post of Secretary-General, as an AD15 official with 8 years of senior management experience. As an AD15 official with eight years of senior management experience, Mr Selmayr was eligible for this transfer in the interest of the service to the post of Secretary-General, which was decided unanimously by the Commission. The Commission unanimously considered that Mr Selmayr brings all the necessary qualifications to this important position. Please see answers to questions 40 and 49.
- c) The post of Secretary-General was not published as it was not vacant.
- d) Mr Selmayr underwent a full day Assessment Centre in the context of his application for the function of Deputy Secretary-General (which is equivalent to the function of Director-General), not in the context of his transfer by Article 7 to the post of Secretary-General. The Commission has no comprehensive overview on the use of Assessment Centres in other institutions.
- e) On 21 February, the College took the decision. As an AD15 official with eight years of senior management experience, Mr Selmayr was eligible for this transfer in the interest of the service to the post of Secretary-General, which was decided unanimously by the Commission. The Commission unanimously considered that Mr Selmayr brings all the necessary qualifications to this important position.
- f) The proposal was brought directly to College as is the case with all senior management decisions at this level. Please also see answer to question 3(c).
- g) The role of the College was that of Appointing Authority. The College took the decision unanimously.
- h) Please see answer to question 17.

Question of the European Parliament:

- 62. Which were the differences in the nomination procedures of SGs O’Sullivan, Day and Italianer and of Mr Selmayr? Why did the procedure differ?**

Commission answer:

There are no differences between the four procedures. In all four cases the transfer was decided by reference to Article 7 of the Staff Regulations. In all four cases the decisions were presented directly to College, which agreed to them.

Question of the European Parliament:

- 63. How much time did it take to nominate Mr. Selmayr as Deputy Sec- Gen.?**

Commission answer:

The Commission published the vacancy notice for the function of Deputy Secretary-General on 31 January 2018. Mr Selmayr was appointed to the function of Deputy Secretary-General on 21 February 2018.

Question of the European Parliament:

- 64. How much time passed between the appointment as Deputy Sec - Gen to Sec - Gen?**

Commission answer:

Please see answer to question 17.

Question of the European Parliament:

- 65. What is the average term of office duration for Director level positions and above, if not from Head of Unit level, as well as which were the - perhaps 10 - shortest terms of office on record.**

Commission answer:

The average duration of the term of office for a Director is three years and four months, for a Deputy Director-General it is three years and one month and for a Director- General it is four years. There have been a number of instances of appointment and immediate transfer in the past ten years with at least ten Directors and six Deputy Directors-General having moved directly to another function on the day they were initially supposed to take up duties elsewhere.

Question of the European Parliament:

- 66. *If no such length of office records are available, should they not be seen as valuable information in terms of human resources administration, even if not necessarily linked to individual officials?***

Commission answer:

Please see answer to question 65.

Question of the European Parliament:

- 67. *Why was the promotion of the new SG taken in such a non-transparent manner and is surrounded by secrecy?***

Commission answer:

Firstly, there was no promotion, as the grade of the jobholder has been AD15 before and after the appointment. Please see answer to question 40. Secondly, the appointment of the new Secretary-General took place in full accordance with the Staff Regulations and the Rules of Procedure of the Commission. The fact that senior management decisions at this level are kept confidential is to preserve the autonomy of the Commission in senior management decisions and to protect them from undue external influence in view of the independence of personnel decisions. The College took this decision unanimously on the proposal of the President, in agreement with Commissioner Oettinger and after consultation of First Vice-President Timmermans.

Question of the European Parliament:

- 68. *Why was the promotion executed in such a speedy manner that did not give enough time to those concerned to react?***

Commission answer:

Firstly, there was no promotion as the grade of the jobholder has been AD15 before and after the appointment. Please see answer to question 40. In order to ensure that the key position of Secretary-General would not be vacant, given its importance for the smooth functioning of the institution, the Commission, on the proposal of President Juncker and in agreement with the Commissioner the Budget and Human Resources and after consultation of First Vice-President Timmermans, decided to appoint Mr Selmayr Secretary-General by transferring him in the interest of the service in accordance with Article 7 of the Staff Regulations. The College decided unanimously.

Question of the European Parliament:

- 69. *Does the President acknowledge that such decisions are becoming a fuel for euro scepticism?***

Commission answer:

The Commission does not agree with the premise underlying this question. The decision of the College was taken unanimously, in full compliance with the Staff Regulations and the Rules of Procedure of the Commission.

Question of the European Parliament:

70. Does the President realise that his step has decreased the credibility not only of the European Commission and the position of the President, but the trustworthiness of the EU as a whole?

Commission answer:

The Commission does not agree with the premise underlying this question. The decision of the College was taken unanimously, in full compliance with the Staff Regulations and the Rules of Procedure of the Commission.

Question of the European Parliament:

71. How is the President of the Commission going to win back the trust of public?

Commission answer:

The Commission does not agree with the premise underlying this question. The decision of the College was taken unanimously, in full compliance with the Staff Regulations and the Rules of Procedure of the Commission.

IV. Misuse of powers

On the facts:

Question of the European Parliament:

72. On 21 February the Commission's College, at the President's proposal, contextually adopted the following decisions:

- to accept Mr Italianer's request for early retirement starting on 1 April, as well as his request to resign from the post of Secretary- General (SG) as of 1 March;*
- to appoint M. Selmayr to the post of Deputy Secretary-General (DSG) through a promotion procedure, with internal publication of the appointment, on the basis of Article 29 of the Staff Regulations;*
- to appoint M. Selmayr to the post of SG, which had fallen "vacant " only a few minutes earlier, through a transfer procedure, on the basis of Article 7 of the Staff Regulations.*

Can the President of the Commission confirm each of these facts? If not could he please explain what the correct order of the College's decisions was?

Commission answer:

As set out in the minutes of the College meeting of 21 February 2018 (PV(2018) 2244), the order of the College decisions was the following: first, the College decided on a series of senior management appointments, including appointing Mr Selmayr as Deputy Secretary-General. Thereafter, Mr Italianer took the floor to inform the College that he intended to retire as of 1 April 2018. In order to ensure that the key position of Secretary-General would not be vacant, and in accordance with Article 7 of the Staff Regulations, the College, on the proposal of President Juncker and in agreement with the Commissioner for Budget and Human Resources and after consulting the First Vice-President, unanimously decided to appoint Mr Selmayr Secretary-General.

Question of the European Parliament:

73. At his press conference of 21 February, Mr Juncker stated that he had been aware of Mr Italianer's intention to resign on 1 March for the past two years. Nevertheless, in his letter of 6 March, addressed to the French Socialist Delegation, the President stated in writing that he had "learnt of" said intention from the letter he received from Italianer in the morning of 21 February 2018.

Can the Commission confirm that Alexander Italianer informed the President on his will to leave his functions (as Secretary-General) before 1st January 2018? Please provide evidence.

Commission answer:

President Juncker explained during his press conference on 21 February that when agreeing to become Secretary-General in 2015, Mr Italianer had told the President that he intended to retire soon after 1 March 2018. The President discussed this information with his Head of Cabinet, like all important senior management matters.

The President did not share this information further in order not to undermine Mr Italianer's authority while he was in office. The President and his Head of Cabinet also kept the hope to be able to convince Mr Italianer to stay on as Secretary-General beyond 1 March 2018. However, in early 2018, Mr Italianer confirmed that he would stick to his decision. Mr Italianer sent the President a formal letter stating his intention to retire on 31 March 2018 in the morning of 21 February 2018.

After having sent his letter, Mr Italianer subsequently informed the College of Commissioners during their meeting on 21 February. The letter was the first formal step taken by Mr Italianer in order to inform the President and subsequently the College of his intention to retire.

Question of the European Parliament:

74. Since when exactly was Mr Juncker aware of the Mr Italianer's intention to resign on 1 March? (Weeks/months before 21 February 2018? On 20 February 2018? On 21 February 2018?)

Commission answer:

Please see answer to question 32 and 73.

Question of the European Parliament:

75. According to the same letter of 6 March, addressed to the French Socialist Delegation, in the evening of 20 February, the President informed First Vice-President (FVP) Timmermans of his intention to appoint M. Selmayr to the post of Deputy Secretary General (DSG).

Why did Mr Juncker the day before the actual appointment of Head of his cabinet as the new Dep Sec Gen of the Commission inform the FVP of his intention and not also all other members of the Commission's College given that the FVP plays no formal role in the procedure?

Commission answer:

Please see answer to question 41. The President consulted the First Vice-President, as he consults him on all important decisions of the Commission, in view of the special role he plays in the set-up of the Juncker Commission. The First Vice-President also has a special relationship with the Secretary-General in view of his responsibility notably for institutional matters, Better Regulation and the Commission Work Programme.

Question of the European Parliament:

76. Did Mr Juncker in the evening of 20 February inform the FVP of his intention to replace a Dutch SG (Italianer) with M. Selmayr already on 21 February?

Commission answer:

Please see answers to question 41 and 75.

Question of the European Parliament:

77. If this is the case, what can the President of the Commission say in defence of the statement that M. Selmayr's appointment to the post of DSG was, from the outset, only a means to his appointment as the new SG of the Commission?

Commission answer:

Please see answers to questions 7, 44 and 49. It would have been possible to appoint Mr Selmayr directly to the position of Secretary-General (on the basis of a selection procedure under Article 29 of the Staff Regulations) or to transfer him directly to this position in the interest of the service (under Article 7 of the Staff Regulations).

Question of the European Parliament:

78. On 20th February, the President informed the First VP Timmermans about the appointment of Selmayr to the position of SGA, but the reasons behind this decision are not clear, since for that procedure VP Timmermans plays no formal role. Did the President inform the Vice-president of his intention to replace a Dutch Secretary General by Selmayr? If so, can it be said that Selmayr's appointment to the SGA position was only a means, from the beginning, to appoint him to SG?

Commission answer:

Please see answers to questions 41, 75 and 77.

Question of the European Parliament:

79. Mr Selmayr had an interview with Oettinger on February 20 afternoon as part of (and as provided by) the appointment procedure of the SGA. Was Mr Oettinger aware that, in fact, the procedure had been put in place solely to ensure Selmayr's eligibility for SG post? In other words, can Oettinger confirm that he was well aware, as early as 20 February, of the President's intention to appoint Selmayr as SG the following day? And can he confirm that Selmayr knew about it too? In addition, would the Commission be able to deny that all the other members of the College were not aware of anything and they were informed only in the morning of 21st February?

Commission answer:

Commissioner Oettinger does not agree with the premise underlying this question. Mr Selmayr, an AD15 officials with eight years of senior management experience, was eligible, and it would have been possible to appoint him directly to the position of Secretary-General (on the basis of a selection procedure under Article 29 of the Staff Regulations) or to transfer him directly to this position in the interest of the service (under Article 7 of the Staff Regulations).

This decision was fully in line with the provisions of the Staff Regulations. On 20 February, Commissioner Oettinger was informed by President Juncker about the decision of Mr Italianer to submit his retirement letter the next morning (21 February) and that consequently, he would propose that Mr Selmayr be transferred to the post of Secretary-General. Commissioner Oettinger expressed his full agreement, and the proposal was then unanimously agreed by the College on 21 February.

Please see also answer to question 49.

In accordance with normal practice, and in order to safeguard the necessary degree of confidentiality, senior management appointments at Director-General or Deputy Director-General level are presented directly to the College on the same day that the College decides on them.

Question of the European Parliament:

80. MM.Timmermans et Oettinger peuvent-ils confirmer qu'ils étaient au courant que la finalité de la procédure était, dès le début, de nommer Selmayr SG ? En outre, la Commission serait-elle en mesure de nier que tous les autres membres du Collège n'étaient au courant de rien et ils ont été mis au courant uniquement le matin du 21 février?

Commission answer:

The Commission does not agree with the premise underlying this question. The decision was taken unanimously, by the College of Commissioners, in full compliance with the Staff Regulations and the Rules of Procedure of the Commission. Please see answer to question 79.

Question of the European Parliament:

81. Les commissaires Timmermans et Oettinger ainsi que le Directeur Général du SJ de la Commission sont-ils en mesure de faire une déclaration d'honneur s'agissant de la réponse à la question suivante: "Étiez-vous au courant de l'intention du Président Juncker de nommer M. Selmayr au poste du SG? Étiez-vous donc au courant que la procédure de nomination au poste du SGA servait comme seul but de permettre à M. S. d'être éligible au poste du SG ?

Commission answer:

The Commission does not agree with the premise underlying this question. The decision was taken by the College of Commissioners in full compliance with the Staff Regulations and the Rules of Procedure of the Commission. It was taken on 21 February 2018 on the proposal of the President in agreement with the Commissioner for Budget and Human Resources and after consultation of the First Vice-President. Please see answer to question 41.

Question of the European Parliament:

82. According to our information, M. Selmayr had an interview with Mr Oettinger in the afternoon of 20 February as part of (and as required by) the procedure for the appointment of the DSG.

Commission answer:

This is correct. Please see answer to question 18.

Question of the European Parliament:

83. *Had Mr Oettinger to the point of conducting this interview been aware that, in reality, the procedure had been started for the sole purpose of making M. Selmayr eligible for the post of SG? In other words, can Commissioner Oettinger confirm that he was fully aware, from 20 February, of the President's intention to appoint Selmayr to the post of SG the following day?*

Commission answer:

The Commission does not agree with the premise underlying this question. The decision was taken by the College of Commissioners unanimously, in full compliance with the Staff Regulations and the Rules of Procedure of the Commission. It was taken on 21 February 2018 on the proposal of the President in agreement with the Commissioner for Budget and Human Resources and after consultation of the First Vice- President. Please see answer to question 41.

On the Legal framework:

Question of the European Parliament:

84. *Both the SG and the DSG are senior officials of the Commission, and therefore their posts are subject to the Staff Regulations (cf. Pappas/Committee of the Regions, T-74/01). If either of these posts falls vacant, the Staff Regulations provides for two ways of filling it:*

- a) *with a candidate from within the Commission, by an open promotion procedure on the basis of Article 29, paragraph 1 of the Staff Regulations or, alternatively, by transfer on the basis of Article 7 of the Staff Regulations; or*
- b) *with a candidate from outside the institution, by an external selection procedure (publication in the OJ) on the basis of Article 29, paragraph 2, of the Staff Regulations.*

Is this a correct interpretation of the Staff Regulations? If not, can the Commission specify the exact part where our interpretation of the rules is incorrect and correct the incorrect interpretation?

Commission answer:

Please see the explanation of the procedures that apply under the Staff Regulations in the answer to question 8.

Question of the European Parliament:

85. *Under both procedures, given that the Secretariat General is a body that depends directly on the President, the appointment is decided by the College based on a proposal by the President.*

However, in accordance with the principle of legality (of which, moreover, the Commission is a guarantor within the Union, in its capacity as guardian of the Treaties), both the President and the College, in exercising their discretionary powers, are subject to, and must observe, the Staff Regulations. This is supported by the fact that the posts of SG and DSG are administrative posts and therefore not comparable with the “political” posts of cabinet members, which are filled through a simple choice made by the relevant member of the College.

Is this a correct interpretation of the Staff Regulation? If not, can the Commission specify the exact part where our interpretation of the rules is incorrect and correct the incorrect interpretation?

Commission answer:

The decisions to appoint the Secretary-General and the Deputy Secretary-General were taken by the College of Commissioners unanimously, in full compliance with the Staff Regulations and the Rules of Procedure of the Commission. For a full description of the procedures, please see answer to question 8.

Question of the European Parliament:

86. *The post of the SG falls within the highest grade (AD15/AD16). In order to be “transferred” to the SG post as per Article 7, the official concerned must already occupy a post “in his function group which corresponds to his grade”.*

All Directors-General of the Commission were therefore eligible for the post in question and could have, at least, expressed an interest in applying for it. Conversely, M. Selmayr, who had held a grade AD15 position since 2017, but whose role within the administration was that of Special Adviser, which does not correspond to the same functions, had to be promoted to the post of DSG first in order to then be appointed by transfer to the post of SG. In fact, a post occupied solely as a result of being employed as a member of a cabinet, even when said post is equivalent in grade or in functions, cannot be taken into consideration for a promotion or transfer within the administrative departments. Contrary to what was stated by the Commission’s Spokesperson’s Service, M. Selmayr undoubtedly had to be promoted to the post of DSG in order to be transferred to the post of SG.

Can the Commission confirm this interpretation of the Staff Regulation? If not, can it specify the exact part where our interpretation of the rules is incorrect and correct such an incorrect interpretation?

Commission answer:

This interpretation is not correct. Article 7 of the Staff Regulations provides for the transfer of an official to occupy a post in his function group which corresponds to his grade. The function groups are detailed in Annex I of the Staff Regulation. The Administrators (AD) function group includes the types of posts of Director-General AD15-AD16 and of Director AD14-AD15.

M. Selmayr, having the grade AD15, and belonging to the same function group (AD) as the type of post of Director-General pursuant to Annex I of the Staff Regulation, could have been transferred under Article 7 of the Staff Regulations directly to the post of Deputy Secretary-General or Secretary-General which are equivalent to Director-General. While it is not the Commission's practice to transfer Directors in grade AD15 to Director General posts under Article 7, legally the College could have decided to do so in view of the specific circumstance of the case, which would have justified such a decision. Please see answer to question 49.

In this context, it is important to clarify that Mr Selmayr was appointed by the College of Commissioners in 2014 as a Principal Adviser in Directorate-General for Economic and Financial Affairs, a function at Director level. He is not and has never been a Special Adviser, which is a specific category of staff under Articles 5, 123 and 124 of the Conditions of Employment of Other Servants of the European Union.

Question of the European Parliament:

87. Is the position of the President's Chief of Staff at the same level that the Director General?

Commission answer:

Yes. This is set out in the Commission's rules on the composition of the Cabinets of Members of the Commission in place since 2004 (SEC(2004)1485). The Head of the President's Cabinet is functionally considered as a Director-General, and the Heads of Cabinets of the Commissioners are considered as Directors since that date and by subsequent updates of the rules (SEC(2004)1485, SEC(2010)104 and C(2014)9002). The Rules on the Composition of the Cabinets of Members of the Commission specify, among other things, from an administrative point of view, the functions of the Heads of Cabinet of the Members of the Commission. They are legally compatible with the Staff Regulations.

Question of the European Parliament:

88. Could a communication from the President of the Commission amend the Staff Regulation and the Rules of Procedure of the Parliament and the Council?

Commission answer:

The Rules on the Composition of the Cabinets of Members of the Commission are internal rules, which are necessary to specify, among other things, from an administrative point of view, the functions of the Heads of Cabinet of the Members of the Commission. They are legally compatible with the Staff Regulations.

On possible Legal irregularities:

A) Procedure for the appointment of the DSG

Question of the European Parliament:

89. Misuse of powers:

It's hard to believe that right from the outset, the sole purpose of the procedure for the appointment of the DSG was not only to ensure M. Selmayr's eligibility for his contextual transfer to the post of the SG. By virtue of Article 29 of the Staff Regulations, the College has considerable discretionary powers when it comes to appointing the DSG. However, the appointment procedure may not be used with the obvious intention of achieving a different aim from that for which it was launched. The facts as well as the statements to the press show that, from the start, the aim of the procedure for the appointment of the DSG was to appoint the new SG by transfer, rather than to appoint by promotion a Deputy Secretary-General who could truly take office. The decision relating to the appointment of the DSG was therefore not sincere since it only used as means to occupy the position of the SG and is therefore marred by a misuse of powers. This is especially true as M. Selmayr has never served as the DSG of the Commission (or if he did, then only for a period of few minutes ...).

The procedure for the publication of a vacancy notice must be effectively followed and should not be implemented in such a way as to be stripped of its substance, given that the aim of this procedure is to ensure equality of treatment for all candidates for the post of DSG, rather than ensure the eligibility of an individual candidate for the post of SG.

Can the Commission confirm the preceding paragraph?

Commission answer:

The Commission does not share the premise underlying this question. The decision was taken by the College of Commissioners unanimously, in full compliance with the Staff Regulations and the Rules of Procedure of the Commission. There was no promotion. Mr Selmayr was an AD15 official before the Commission meeting of 21 February 2018, and he is still AD15 today. His appointment as Secretary-General had a negative effect on his salary and emoluments since he was in step 2 of grade AD15 as a seconded official but in step 1 of grade AD15 in his basic career as a Commission official. Please see answers to questions 40, 49 and 77.

B) Procedure for the appointment of the DG

Question of the European Parliament:

90. Violation of the principles of transparency and non-discrimination, including indirect discrimination, as provided for in Articles 1 and 4 of the Staff Regulations.

Under Article 7 of the Staff Regulations, the College may - acting solely in the interest of the service - transfer a DSG to the post of SG. Nevertheless, this power is subject to the principles established in Article 4 of the Staff Regulations, according to which “no appointment [...] shall be made for any purpose other than that of filling a vacant post as provided in these Staff Regulations” and, furthermore, “vacant posts in an institution shall be notified to the staff of that institution once [the College] decides that the vacancy is to be filled”. This means that, for the purpose of appointing the SG:

- I) the Staff Regulations apply and may not be derogated from, given that the post of SG is administrative rather than “political” in nature;***
- II) the post must first be vacant and the staff must be informed of this vacancy, i.e. when a rotation of directors-general is planned, this must be brought to the attention of at least those members of staff who, occupying a post in the same function group, might in principle express some interest in applying for the post.***

Can the Commission confirm this interpretation of the existing rules? If not, can it correct the incorrect part?

Commission answer:

The Commission does not agree with this interpretation.

Articles 4 and 29 of the Staff Regulations were followed for the procedure for appointment of Mr Selmayr as Deputy Secretary-General. Article 7 of the Staff Regulations was respected for the procedure for the transfer to the post of Secretary General. As this post was not vacant, the case-law of the EU courts allows for transfers to be carried out without publication.¹⁶

Article 4 of the Staff Regulations does not mean that posts can only be filled via a publication and formal selection procedure. The two procedures as described in the answer to question 8 (appointment under Article 29 of the Staff Regulations or transfer in the interest of the service under Article 7 of the Staff Regulations) are alternatives and the College can decide which procedure to be used. EU institutions may make use of the possibility to transfer officials of the same function group in the interest of the service in accordance with Article 7, without a formal publication (please see answer to question 8).

¹⁶ Case F-24/12, BN v PE, points 46-48; Case T-339/03, Clotuche v Commission, point 31.

Finally, the Court of Justice has consistently held that the EU institutions have a broad discretion to organise their departments to suit the tasks entrusted to them and to assign staff available to them in the light of such tasks, on condition however that the staff are assigned in the interests of the service and in conformity with the principle of assignment to an equivalent post.¹⁷ The Court of Justice has also confirmed that re- assignments of this type are in line with the Staff Regulations, which allow both procedures to be used.¹⁸

Also in all other respects, the Commission has acted in full compliance with the Staff Regulations and the Rules of Procedure of the Commission.

Question of the European Parliament:

91. In the case under consideration, the request for early retirement and M. Selmayr's appointment to the posts of DSG and SG took place at the same time. Furthermore no other members of the Commission's College was said to be informed of these intentions until the meeting of the College of 21 February, with the exception of Mr. Oettinger and Mr. Timmermans. In case the statement above is not true - Could the Commission present signed statements of the individual members of the College that they were informed about the planned appointment of M. Selmayr before the exact day of his appointment and present the mails informing them on the issue?

Commission answer:

The decisions were taken by the College consecutively. The College of Commissioners decided unanimously in both procedures and acted in full compliance with the Staff Regulations and the Rules of Procedure. Please see answers to questions 39, 41 and 72.

Question of the European Parliament:

92. Was the issue discussed on beforehand in the preparatory meeting of Heads of Cabinets of all Commissioners? If not, why?

Commission answer:

In accordance with normal practice, and in order to safeguard the necessary degree of confidentiality, senior management appointments at Director-General or Deputy Director-General level are presented directly to the College on the same day that the College decides on them. This is why this was not discussed amongst Heads of Cabinet. Please see answer to question 41.

¹⁷ Case F-73/07, Doktor/Conseil, point 39; see also Case 69/83, Lux v. Court of Auditors, point 38.

¹⁸ Case C-174/99P, European Parliament v Pierre Richard, points 38-39.

Question of the European Parliament:

- 93. Can the Commission ensure CONT Committee that the post did not fall vacant, and that staff was notified of the vacancy in accordance with Article 4? What was done in due time to make the call for applicants transparent and made it possible to other eligible persons/potential candidates to run for the post on an equal footing?**

Commission answer:

Articles 4 and 29 of the Staff Regulations were followed for the procedure for appointment of Mr Selmayr as Deputy Secretary-General. Article 7 of the Staff Regulations was followed for the procedure for the transfer to the post of Secretary-General. As this post was not vacant, the case-law of the EU courts allows for transfers to be carried out without publication.¹⁹

Article 4 of the Staff Regulations does not mean that posts can only be filled via a publication and formal selection procedure. The two procedures as described in the answer to question 8 (appointment under Article 29 of the Staff Regulations or transfer in the interest of the service under Article 7 of the Staff Regulations) are alternatives and the College can decide which procedure to be used. EU institutions may make use of the possibility to transfer officials of the same function group in the interest of the service in accordance with Article 7, without a formal publication (please see answer to question 8).

Finally, the Court of Justice has consistently held that the EU institutions have a broad discretion to organise their departments to suit the tasks entrusted to them and to assign staff available to them in the light of such tasks, on condition however that the staff are assigned in the interests of the service and in conformity with the principle of assignment to an equivalent post.²⁰ The Court of Justice has also confirmed that re-assignments of this type are in line with the Staff Regulations, which allow both procedures to be used.

²¹Please see answers to questions 36 and 61.a).

Question of the European Parliament:

- 94. Can Mr Oettinger explain whether - and in what ways - he ensured compliance with the essential conditions laid down in Article 4 with regard to filling a vacant post (which also apply to the position of SG).**

¹⁹ Case F-24/12, BN v PE, points 46-48; Case T-339/03, Clotuche v Commission, point 31.

²⁰ Case F-73/07, Doktor/Conseil, point 39; see also Case 69/83, Lux v. Court of Auditors, point 38.

²¹ Case C-174/99P, European Parliament v Pierre Richard, points 38-39.

Commission answer:

Articles 4 and 29 of the Staff Regulations were followed for the procedure for appointment of Mr Selmayr as Deputy Secretary-General. Article 7 of the Staff Regulations was followed for the procedure for the transfer to the post of Secretary General. As this post was not vacant, the case-law of the EU courts allows for transfers to be carried out without publication.²²

Article 4 of the Staff Regulations does not mean that posts can only be filled via a publication and formal selection procedure. The two procedures as described in the answer to question 8 (appointment under Article 29 of the Staff Regulations or transfer in the interest of the service under Article 7 of the Staff Regulations) are alternatives and the College can decide which procedure to be used. EU institutions may make use of the possibility to transfer officials of the same function group in the interest of the service in accordance with Article 7, without a formal publication (please see answer to question 8).

Finally, the Court of Justice has consistently held that the EU institutions have a broad discretion to organise their departments to suit the tasks entrusted to them and to assign staff available to them in the light of such tasks, on condition however that the staff are assigned in the interests of the service and in conformity with the principle of assignment to an equivalent post.²³ The Court of Justice has also confirmed that re-assignments of this type are in line with the Staff Regulations, which allow both procedures to be used.²⁴ Please see answers to questions 36 and 61.a).

Question of the European Parliament:

95. *Could Mr Oettinger explain in what sense did the appointment of M. Selmayr differ from process of choosing a member of a private office (as appointments to the highest administrative post should follow the Staff Regulations to the last letter)?*

Commission answer:

There are a number of essential differences between appointments to the private offices of Members of the Commission and appointments to senior management functions in the Commission's services.

Members of the private office (Cabinets) are chosen by the Members of the Commission concerned *intuitu personae* and appointed by the Commissioner for Budget and Human Resources.

²² Case F-24/12, BN v PE, points 46-48; Case T-339/03, Clotuche v Commission, point 31.

²³ Case F-73/07, Doktor/Conseil, point 39; see also Case 69/83, Lux v. Court of Auditors, point 38.

²⁴ Case C-174/99P, European Parliament v Pierre Richard, points 38-39.

Transfers under Article 7 of the Staff Regulations to positions of Director-General or equivalent are decided by the College as the Appointing Authority in the interest of the service.

Moreover, an official chosen as member of a private office (Cabinet) may benefit from a higher grade during the period of secondment (see Article 38 of the Staff Regulations), whereas a transfer in the interest of the service never implies a change of grade (please also see answer to question 49).

To be appointed via an internally published selection procedure under Article 29 of the Staff Regulations, candidates need to be officials, they need to fulfil the formal eligibility criteria in terms of grade and management experience (please see answer to question 7), and the College is the Appointing Authority.

Question of the European Parliament:

96. Could Mr Juncker explain if he considers it a usual decision making procedure, when these kind of important decisions pass the College without any debate?

Commission answer:

Decisions of the College can be taken with or without debate depending on the wish of Members to take the floor. The decision of the College was taken unanimously.

V. Good administration and collegiality

Question of the European Parliament:

97. La presse affirme que M. Selmayr aurait "finalement lui-même reconnu que le Président Juncker lui avait proposé le poste en novembre dernier". Le SG et le Président de la COM peuvent-ils confirmer la véracité de cette affirmation?

Commission answer:

It is not true that President Juncker made a proposal to Mr Selmayr to become Secretary-General in November 2017. The option for Mr Selmayr to become Secretary-General only became concrete on 20 February 2018.

President Juncker explained during his press conference on 21 February that when agreeing to become Secretary-General in 2015, Mr Italianer had told the President that he intended to retire soon after 1 March 2018. The President discussed this information with his Head of Cabinet, like all important senior management matters.

The President did not share this information further in order not to undermine Mr Italianer's authority while he was in office. The President and his Head of Cabinet also kept the hope to be able to convince Mr Italianer to stay on as Secretary-General beyond

1 March 2018. However, in early 2018, Mr Italianer confirmed that he would stick to his decision. Mr Italianer sent the President a formal letter stating his intention to retire on 31 March 2018 in the morning of 21 February 2018.

After having sent his letter, Mr Italianer subsequently informed the College of Commissioners during their meeting on 21 February. The letter was the first formal step taken by Mr Italianer in order to inform the President and subsequently the College of his intention to retire.

Question of the European Parliament:

98. Does the COM consider that deciding on the appointment of the SG at a meeting of the college without this point having figured on the agenda is an expression of the principle of good administration?

Commission answer:

There was no promotion. Mr Selmayr was an AD15 official before the Commission meeting of 21 February 2018, and he is still grade AD15 today. His appointment as Secretary-General had a negative effect on his salary and emoluments since he was in step 2 of grade AD15 as a seconded official but in step 1 of grade AD15 in his basic career as a Commission official.

In accordance with normal practice, and in order to safeguard the necessary degree of confidentiality, senior management appointments at Director-General or Deputy Director-General level are presented directly to the College on the same day that the College decides on them. The Commissioner responsible for Budget and Human Resources presents the proposals in agreement with the President and after consulting the recruiting Commissioner and the relevant Vice-President(s). This was the procedure applied for all the senior management appointments and transfers decided by the College on 21 February 2018.

On 20 February, Commissioner Oettinger was informed by President Juncker about the decision of Mr Italianer to submit his retirement letter the next morning (21 February) and that consequently he would propose that Mr Selmayr be transferred to the post of Secretary-General. Commissioner Oettinger expressed his full agreement and the proposal was then unanimously agreed by the College on 21 February.

The President had also consulted First Vice-President Timmermans on this proposal on 20 February who had given his agreement. The President consulted the First Vice-President, as he consults him on all important decisions of the Commission, in view of the special role he plays in the set-up of the Juncker Commission. The First Vice-President of the Commission also has a special relationship with the Secretary-General in view of his responsibility for institutional matters, Better Regulation and the Commission Work Programme.

When President Juncker during the College meeting on 21 February proposed to appoint Mr Selmayr Secretary-General, all Members of the Commission agreed unanimously.

The Commission would also like to recall Article 6(5) of its Rules of Procedure (C(2010)1200), which states that the Commission may, on a proposal from the President, discuss any question which is not on the agenda or for which the necessary documents have been distributed late.

Question of the European Parliament:

99. How does the Commission define "collegiality"? How many times has the Commission adopted decisions that were not on the agenda of its meeting? At what exact time of the College meeting of 21 February was the point "appointment of a Secretary General" added to the agenda of the College meeting? What is the evidence that the point was actually on the agenda? Is it the standard practice of the Commission to adopt decisions for which commissioners are totally unprepared?

Commission answer:

Please see answers to questions 3, 17, 52 and 98.

Question of the European Parliament:

100. How can the COM explain that the 25 Commissioners who were not even aware that the procedure of appointment of the SGA would be on the agenda of the meeting of 21 February 2018, did not object to the procedure of appointment of the SG, but voted unanimously in favour?

Commission answer:

The fact that the decision was taken unanimously shows that all Members of the Commission were in agreement with the proposal of the President presented in agreement with the Commissioner for Budget and Human Resources and after consultation of the First Vice-President.

Question of the European Parliament:

101. Under the current Commission term, what has been the length of procedure for the appointment of DGs when the post was published?

Commission answer:

This Commission has published 47 Director-General/Deputy Director-General functions. Five selection procedures are still ongoing. Selection procedures for these functions have taken between three weeks for internally published procedures to well over a year for external procedures.

Question of the European Parliament:

102. *Given the enormous damage caused to the reputation of the Commission by this appointment, and given that Mr Italianer is still working for the Commission, would the Commission accept that the appointment of Mr Selmayr should be suspended until the completion of the investigation by the COCOBU, or the investigation by the European Ombudsman? Does the Commission intend to submit proposals for amending or clarifying the rules contained in the Staff Regulations for such appointments?*

Commission answer:

The Commission does not agree with the premise underlying this question. In addition, the College cannot suspend an appointment as there is no legal basis for this. As explained in answers to previous questions (please see in particular answer to question 7), the procedures were carried out in full compliance with the Staff Regulations and the Rules of Procedure of the Commission. The Commission also considers that the rules contained in the Staff Regulations, which were agreed by the European Parliament and Council and apply to all institutions are sufficiently clear and appropriate and that its procedures allow each institution to appoint the most suitably qualified candidate.

VI. Plenary session of the European Parliament, 21 February 2018 –Strasbourg

Question of the European Parliament:

103. *During the plenary debate in Strasbourg on March 12, Commissioner Oettinger stated: “Die Kommission hat am 21. Februar eine Reihe von Entscheidungen betreffend ihres Senior Managements getroffen, in einem sogenannten Paket”.*

Question: During the plenary debate on Monday March 12 on the integrity policy of the Commission and in particular the appointment of the Secretary-General of the European Commission Commissioner Oettinger mentioned the existence of a ‘Package’ that was composed for Mr. Selmayr. Please provide the European Parliament with the full details of the Package: what appointments, promotions, demotions and/or mobility decisions were part of the Package? Who has been involved in composing the Package? Were the other Commissioners aware of the composition of the Package? When was the Package composed? Is it common for such a Package to be assembled for the appointment of senior management positions and in particular the appointment of the Secretary-General of the European Commission?

Why the reshuffling of DGs has been done at the same time with the appointment of the new Secretary-General? How did this happen during former procedures?

Please give examples of other Packages that have been proposed to senior management staff members? Please give dates for each of the steps that has been taken in composing the package (talks with staff members,

consultation with portfolio Commissioners, College decisions, decision of retirement of Mr Italianer, etc.). Have these steps been taken in accordance with the internal rules for appointments?

Commission answer:

The decisions taken by the College on 21 February 2018 comprised a series of senior management appointments affecting a number of services. Neither did Commissioner Oettinger speak of a package “composed” for Mr Selmayr, nor was this the case. The decisions respected the proposals and requests of the portfolio Commissioner and relevant Vice-Presidents. Full details of all senior management decisions taken are given in the minutes of the College meeting of 21 February 2018 (PV(2018)2244).

The involvement of the Commissioners depends on their respective portfolios, which are notably defined in the decision of the President of 1 November 2014 on the organisation of responsibilities of the Members of the Commission (C(2014)9000). As the Commission decided on 5 November 2014 (PV(2014)2104, p. 35), all Members of the Commission concerned are consulted on decisions on staff and organisational matters in their respective areas of responsibility before they are submitted to the Commission for approval. Please also see answer to question 41.

The transfers of both Catherine Day and Alexander Italianer to the function of Secretary-General took place in the context of several other senior management decisions (PV(2005)1721) and (PV(2015)2132) which were proposed during the very same College meeting that took these decisions.

The transfer of Mr Selmayr to the function of Secretary-General was not part of the first series of senior management decisions taken by the College but happened subsequent to the announcement of Mr Italianer’s retirement. Please also see answer to question 44.

Question of the European Parliament:

104. During the plenary debate in Strasbourg on March 12, Commissioner Oettinger stated: “Warum machen wir das überhaupt? Bei einer größeren Zahl von Generaldirektionen, die wir in unseren Diensten wissen, bei einer Vielzahl von „Senior-Management“-Positionen haben wir nahezu wöchentlich eine Entscheidung. Dies würde aber in unseren Diensten Unruhe bedeuten. Deswegen machen wir dies regelmäßig im Paket. Nur so erreichen wir im Interesse unserer Institution eine ausgewogene Gesamtentwicklung, zum Beispiel betreffend die unterschiedlichen Nationalitäten. Dienstalder, Lebensalter, Pensionsreife beziehen wir dabei ein, und auch das Ziel, den Frauenanteil wirkungsvoll zu steigern, ist dabei eine Priorität”.

Question: Please explain how each staff decision in the Package contributed to attaining each of these objectives. Please explain why some staff members have been allowed to stay on after retirement age unlike other staff members and how that relates to the above mentioned objectives.

Commission answer:

With the decisions taken on 21 February 2018, the share of women in senior management functions at Director-General level rose to 36% (compared to 11% at the beginning of the mandate). In addition, for the first time, Bulgarian and Cypriot officials were appointed to functions of Director-General. As regards the point on the prolongation of active service beyond the statutory retirement age, Commissioner Oettinger took account of the interests of the service, the wishes of the portfolio Commissioners, Vice- Presidents and the President, as well as the fact that this contributes to ensuring an appropriate balance overall between renewal and continuity. Please see answer to question 55.

Question of the European Parliament:

105. *During the plenary debate in Strasbourg on March 12, Commissioner Oettinger stated: “Das letzte Paket hat meine Vorgängerin vorbereitet. Es wurde Ende Juni 2015 im Kollegium beraten und auch verabschiedet. Übrigens war damals ein Teil des Pakets neben zahlreichen Posten von Generaldirektoren und Direktorinnen, von deputies in der Kommission, die Entscheidung, dass Catherine Day ihren Dienst beendete und dass Herr Italianer neuer Generalsekretär geworden ist. Eigentlich war Ende Juni ein genau vergleichbares Paket zur Entscheidung anstehend wie vor wenigen Wochen die Entscheidung zum jetzigen Paket ”.*

Question: If the position of the Secretary-General was part of the Package, then the nomination of Mr. Selmayr for that position must have been included in the Package, and therefore decided before the 21st of February. If the position of Secretary-General was not part of the Package, then the relevance of the Package argument for the case at hand is unclear. Please further elaborate on the inclusion of the nomination of Mr. Selmayr in the Package?

Commission answer:

All the senior management decisions referred to by Commissioner Oettinger were taken by the College on 21 February 2018 acting unanimously and in full compliance with the Staff Regulations and the Rules of Procedure of the Commission.

The first set of individual appointments and transfers were proposed to the College by Commissioner Oettinger after having consulted the relevant portfolio Commissioners and Vice-Presidents. The decision on the Secretary-General was the last decision to be taken and was proposed by the President in agreement with Commissioner Oettinger and after consultation of First Vice-President Timmermans. All these senior management decisions were taken unanimously by the College. Please see answer to question 103.

Question of the European Parliament:

106. *Since Commissioner Oettinger seems to have been informed about the proposal of President Juncker to nominate Mr Selmayr as Secretary-General at a very late stage, it appears to be a proposal that has been prepared by President Juncker himself. As the President is advised by staff people in the Commission on all matters, please indicate who advised*

President Juncker on this particular proposal? Who were involved in drafting the proposal on his request? Please make available to Parliament any memo's or email exchanges on this matter between President Juncker and staff people within the Commission? Has Mr Selmayr, as chef de Cabinet of President Juncker in any way been involved in this advice to the President? If so, can you please make any relevant document available?

Commission answer:

Commissioner Oettinger had discussed all the senior management decisions to be taken on 21 February 2018 with the President. The President regularly discusses important senior management decisions with his Head of Cabinet. However, as soon as Mr Selmayr submitted his application for the post of Deputy Secretary-General, DG Human Resources and Security made, at the request of Mr Selmayr and with the agreement of the President, all the necessary arrangements to avoid any conflict of interest. No one from the President's Cabinet was involved in the procedure in any way.

Question of the European Parliament:

107. During the plenary debate in Strasbourg on March 12, Commissioner Oettinger stated: "Wir haben dafür ein eingeführtes Verfahren. Gestatten Sie mir, drei Punkte zu unterstreichen: Wir treffen diese Entscheidungen auf dem Boden des Statuts der Europäischen Union. Das ist unser Recht und unsere Pflicht. Und genauso gingen wir auch diesmal wieder vor. Wir haben diese Entscheidung getroffen im Einvernehmen und unter Mitwirkung der Portfolio-Kommissare, der koordinierenden Vizepräsidenten, meiner Person und auch des Präsidenten".

Question: Please explain in detail which Portfolio Commissioners were involved in drawing up the Package, and how and when they were involved. Please explain on the basis of which criteria some Commissioners were involved, while others were not. In addition, please explain why the other Commissioners were not informed before February 21st. Please explain why some Commissioners stated in the media they were unaware, and "surprised" when the Package was presented for decision on February 21st.

Commission answer:

The individual appointments and transfers were proposed to the College by Commissioner Oettinger, in agreement with the President, after having consulted the relevant portfolio Commissioners and Vice-Presidents. The decisions respected the proposals and requests of these portfolio Commissioners and Vice-President(s), and each Member of the College was therefore fully aware of the decisions related to their portfolio. On the involvement of the Commissioners, please see the minutes of the College meeting (PV(2018)2244). Please see answer to question 105.

Question of the European Parliament:

108. On March 18, the French news platform *Libération* claimed that the effect of surprise among the Commissioners about Mr. Selmayr's nomination, was one of the reasons no critical questions were asked about the procedure. Is it not of great importance that when appointing their highest official, the Commissioners have sufficient time to reflect upon that appointment? In this light, please explain for what reason(s) both the resignation of Mr. Italianer, as well as the nomination of Mr. Selmayr could not have been communicated before the meeting that took place on February 21 in order to enable an open discussion among the Commissioners about the nomination of Mr. Selmayr?

Commission answer:

In accordance with normal practice, and in order to safeguard the necessary degree of confidentiality, senior management appointments at Director-General or Deputy Director-General level are presented directly to the College on the same day that the College decides on them. The Commissioner responsible for Budget and Human Resources presents the proposals in agreement with the President and after consulting the relevant portfolio Commissioner and the relevant Vice-President(s). This was the procedure applied for all the senior management appointments and transfers decided by the College on the 21 February 2018. The College decided unanimously in full compliance with the Staff Regulations and the Rules of Procedure of the Commission.

Please see answers to questions 32, 41, 68 and 96.

Question of the European Parliament:

109. During the plenary debate in Strasbourg on March 12, Commissioner Oettinger stated: "Alle Entscheidungen des Kollegiums vom 21. Februar erfolgten auf meinen Vorschlag, und die Entscheidung über den Generalsekretär auf direkten Vorschlag unseres Präsidenten - genauso wie es auch in der Verantwortung innerhalb der Kommission vorgesehen ist. Alle Entscheidungen - einschließlich der Entscheidung über den neuen Generalsekretär - wurden von allen Mitgliedern der Kommission einvernehmlich gebilligt. Ich darf auf das Sitzungsprotokoll der Kommissionssitzung vom 21. Februar verweisen, das wir - wie nach jeder Sitzung - im Einklang mit unseren Transparenzregeln auch öffentlich gemacht haben".

Question: At what point in time did Commissioner Oettinger learn of the intention of Mr. Juncker to nominate Mr. Selmayr as Secretary- General? Furthermore, the presence of a Package seems to imply that the resignation of Mr. Italianer was previously known by several other staff members. Please explain when you became aware of the resignation of Mr. Italianer. Were the other Commissioners aware of his resignation before the nomination of Mr. Selmayr? If not, why not? Can you please indicate who was aware of the resignation? Please clarify when former Secretary-General Italianer decided to retire as of 1 March 2018.

President Juncker made public that he was informed by Mr. Italianer already more than 2 years ago, but in his letter to all Commission civil servants, Mr. Selmayr wrote, that Italianer, “who decided last week to retire after 32 years of dedicated service ...”. Please explain that difference?

Commission answer:

Please see answers to questions 32, 41, 103 and 106.

As regards the last part of the question, there is no contradiction between the statements referred to Mr Italianer had informed the President in 2015 about his intention to retire soon after 1 March 2018. The President discussed this information with his Head of Cabinet, like all important senior management matters.

The President did not share this information further in order not to undermine Mr Italianer’s authority while he was in office. The President and his Head of Cabinet also kept the hope to be able to convince Mr Italianer to stay on as Secretary-General beyond 1 March 2018. However, in early 2018, Mr Italianer confirmed that he would stick to his decision. Mr Italianer sent the President a formal letter stating his intention to retire on 31 March 2018 in the morning of 21 February 2018.

Question of the European Parliament:

110. *During the plenary debate in Strasbourg on March 12, Commissioner Oettinger stated: “Zweitens: Für mich steht außer Zweifel - und es wurde auch bisher nicht in Frage gestellt -, dass der Beamte Martin Selmayr über alle notwendigen Qualifikationen für die Aufgabe des Generalsekretärs der Europäischen Kommission verfügt. Er hat langjährige Erfahrung in Schlüsselfunktionen in der Kommission, er ist ein hervorragender Jurist, er besitzt hohe kommunikative Fähigkeiten. Er ist mit Sicherheit uneingeschränkt für die Aufgabe geeignet. Fleiß, Begabung, Qualifikation, proeuropäische Einstellung und auch politisches Gespür sind ihm zu eigen. Hinzu kommt: Er hat das Vertrauen unseres Kommissionspräsidenten, auch mein Vertrauen und das des gesamten Kollegiums”.*

Question: Please elaborate on the relevant work experience that Mr. Selmayr has in senior management. Please name the necessary criteria that have to be met to qualify for the position of Secretary-General and explain how these criteria have been set up? Please explain in detail by using examples why Mr. Selmayr’s experience makes him suitable to manage a large administration with 33.000 staff?

Commission answer:

Please see answers to questions 7 and 40. Mr Selmayr's career is described in detail in the answer to question 40 and the relevant criteria for the function of Secretary- General are set out in the answer to question 7. In this context, the Commission would also like to refer to Article 20 of its Rules of Procedure (C(2010)1200). This Article notably provides that the Secretary-General shall assist the President so that, in the context of the political guidelines laid down by the President, the Commission achieves the priorities it

has set and that the Secretary-General shall help to ensure political consistency by organising the necessary conditions between departments. There is no doubt that Mr Selmayr, an AD15 official with 8 years senior management experience in the political guidelines laid down by the President, the Commission achieves the priorities it Commission, has outstanding qualifications for the performance of these duties.

Question of the European Parliament:

111. During the plenary debate in Strasbourg on March 12, Commissioner Oettinger stated: “Was die verfahrensrechtlichen Fragen betrifft, die in den letzten Tagen öffentlich aufgeworfen wurden, kann man sagen, dass auch im Rahmen dieses Pakets und anschließend bei der Versetzung Martin Selmayrs auf den Posten des Generalsekretärs im Einklang mit Artikel 7 des Statuts das Verfahren in allen Einzelheiten und im Zeitablauf beachtet wurde. Erst die Ausschreibung des Deputy Secretary General, dann ein Assessment Center, eine externe Bewertung von Kandidaten, das Interview mit dem Beratenden Ausschuss innerhalb der Kommission und dann das Interview mit dem Präsidenten und mit mir selbst einen Tag vor der Entscheidung”.

Question: Where you aware at the time of your interview with Mr. Selmayr that Mr. Italianer would retire and that Mr. Juncker would nominate Mr Selmayr not just as Deputy Secretary General, but as the successor of Mr Italianer within one and the same meeting? If you knew this, did you consider that a proper and transparent procedure? If you did not know this, do you consider you have been taken by surprise bypassed as responsible Commissioner?

Commission answer:

As responsible Commissioner, Mr Oettinger agreed with the procedure as it was in line with the Staff Regulations. The President presented the next day the proposal for the appointment of Mr Selmayr as Secretary-General in agreement with Commissioner Oettinger. The College decided unanimously with these proposals.

Please see answers to questions 41 and 79.

Question of the European Parliament:

112. During the plenary debate in Strasbourg on March 12, Commissioner Oettinger stated: “Es handelte sich um eine korrekte Auswahl nach den Regeln des Statuts, die ich auch als für Personalangelegenheiten verantwortlicher Kommissar sicherzustellen hatte und sichergestellt habe”.

Question: Please explain why there seems to be a stricter procedure for the selection of a Deputy Secretary General than for the nomination of the Secretary-General?

Commission answer:

The procedures set out in the Staff Regulations – selection procedure under Article 29 or transfer in the interest of the service under Article 7 – are applicable, as alternatives, with regard to both positions. In the present case, the first of these procedures was used for the filling of the position of Deputy Secretary-General and the second one with regard to the position of Secretary-General.

Please see answers to questions 8 and 49.

Question of the European Parliament:

113. In addition, how do you view the remark by Commissioner Marianne Thyssen in the Flemish media that it concerns “Not a typical job, where the typical rules apply”

[<https://www.vrt.be/vrtnws/nl/2018/03/13/verhofstadt-over-zaak-selmayr--jean-claude--je-moet-dit-oplossen/>]

Does this reflect the views of the College, of Mr. Juncker, and yourself? If other ‘special’ rules should apply, which rules should be followed? On the basis of which criteria are these ‘special’ rules defined? Do you agree that the procedure to nominate and appoint the highest ranking staff member of the European Commission should be more transparent? Do you think the highest possible transparency has been pursued during the nomination and appointment of Mr. Selmayr? How could this transparency level be improved? Furthermore, do you believe that all possible candidates have had the opportunity to apply for the position of Secretary-General? Should there not be an open application procedure, as is the case for appointments of staff members of the European Commission? Has, due to a lack of such an open procedure and a blurring between the political and administrative level, the status of other officials been violated?

Commission answer:

The transfer in the interest of the service of Mr Selmayr to the post of Secretary- General was carried out in full compliance with the relevant provisions of the Staff Regulations. Please see answer to question 8.

Question of the European Parliament:

114. During the plenary debate in Strasbourg on March 12, Commissioner Oettinger stated: “Bei der Auswahl eines Generalsekretärs spielen weder Nationalität noch Zugehörigkeit zu einer Partei - sofern gegeben - eine Rolle ”.

Question: Please explain how this statement relates to the above mentioned objective of the Package - of which the position of Secretary General is part - to achieve a national balance? If the nationality of the Secretary General plays no role, should it then be concluded that the Secretary General was not a part of the Package?

Commission answer:

The first set of individual appointments and transfers were proposed to the College by Commissioner Oettinger after having consulted the relevant portfolio Commissioners and Vice-Presidents. The decision on the Secretary-General was the last decision to be taken and was proposed by the President in agreement with Commissioner Oettinger after consultation of First Vice-President Timmermans. All these senior management decisions were taken unanimously by the College.

Please see the answer to question 72.

Question of the European Parliament:

115. *During the plenary debate in Strasbourg on March 12, Commissioner Oettinger stated: “Einzig und allein die Befähigung für dieses Amt, um das Funktionieren unserer Behörde bestmöglich sicherzustellen und im Sinne der Leitlinien des Präsidenten der Kommission die Arbeit zu garantieren, darf im Mittelpunkt stehen. Und dafür halten wir den Kandidaten, den gewählten Beamten Martin Selmayr, für uneingeschränkt geeignet”.*

Question: Assuming that the nomination of Mr. Selmayr as Secretary General was not part of the Package, and therefore had not been considered before his appointment as Deputy Secretary-General, how did you establish his qualifications for the position of Secretary-General within the alleged 9 minutes between the two appointments? Could the minutes of that meeting be shared with the European Parliament? Furthermore, the meeting on February 21, where the minutes were adopted, was chaired by Mr. Selmayr. Does the Commission consider this to be ethical, given that an important item in those minutes concerns the appointment of the chair of the meeting?

During the last weeks, the case aroused outrage in public opinion, among MEPs, but also within the European public service. Wouldn't you say the response to the appointment of Mr. Selmayr was an accurate assessment and are you willing to take appropriate steps in response? Please explain why yes/no. Given the outrage the case has caused, why was it not raised during one of the meetings of the College following February 21?

Commission answer:

The first set of individual appointments and transfers, including the appointment of Mr Selmayr as Deputy Secretary-General, were proposed to the College by Commissioner Oettinger after having consulted the relevant portfolio Commissioners and Vice-Presidents. Please see answer to question 105.

The minutes of College meetings are always adopted by the College, which is chaired by the President.

Question of the European Parliament:

116. During the Parliament's plenary session of 12 March 2018, Mr Oettinger stated that the College could have appointed Mr Selmayr to the post of Secretary General, on the basis of Article 7 of the EU Staff Regulations, by direct transfer, simply because of his function as Chief of Staff of the President. This line was already exposed by the Commission's Spokesperson in the press room, in the weeks following the appointment of the SG, where it was clarified that, by applying for the post of SGA Selmayr would have "chosen" the most difficult internal procedure to be appointed SG while he could be appointed directly from the post of Head of Cabinet. This statement is not in accordance with the rules of the Statute. Mr. Oettinger should explain the legal reasons supporting his statement.

Commission answer:

Please see answer to question 49.

Question of the European Parliament:

117. Mr. Oettinger stated that at the present stage there is no plan or intention to change the exit conditions of commissioners at the end of their term of office, to increase compensation or to add an office, additional staff and availability of a car. In addition, according to statements made to the press by the Commission's Spokesperson, there is no plan or intention to reorganize the Commission's Legal Service for submission to the Secretary General.

Mr Oettinger is called upon to further confirm to the CONT that no plans to reorganize the allowances of the Commissioners and the Legal Service are planned and will therefore be approved by the Commission during this term.

Commission answer:

The Commission can confirm the statement of Commissioner Oettinger. There are no such plans.

Allowances for Commissioners fall under Council Regulation (EU) 2016/300 of 29 February 2016 determining the emoluments of EU high-level public office holders. The regulation is based on Articles 243 and 286(7) of the Treaty on the Functioning of the European Union. Both Articles do not foresee a right of initiative for the Commission. The Commission can consequently confirm that it has no plan or initiative nor a legal possibility to "reorganise" the allowances of Commissioners.

There are no rules regarding facilities for former Commissioners, unlike in other institutions or Member States. Although there have been internal discussions on the status and limited administrative support to the candidates, designated and former Members of the College, the College has not discussed such plans.

There is no plan to reorganise the Legal Service.

Complaints against distortion of promotion or appointment procedures

Question of the European Parliament:

118. What procedures can officials of the EU Commission use to file complaints when promotion or appointment rules are not respected? Have any complaints been submitted regarding the appointment to the position of Secretary-General of Mr. Selmayr? How many complaints using this procedure have been filed during the ongoing legislature and the former one for any position corresponding to the position of director or higher grade?

Commission answer:

Under Article 90(2) of the Staff Regulations, any EU official may submit to the appointing authority a complaint against an act adversely affecting him/her. Only acts which directly and immediately affect his/her legal situation are considered to be acts adversely affecting the official.

No complaints have been submitted regarding the appointment of Mr Selmayr to the position of Secretary-General. During the current Commission mandate and the preceding one, two complaints were lodged with regard to decisions on the appointment to senior management functions at the Commission.

Question of the European Parliament:

119. What mechanism does the Commission have to manage negative reactions from the DGs affected by the personal changes to avoid any damages of the reputation of the institution?

Commission answer:

The Commission does not share the underlying premise of this question. The Commission has acted in full compliance with the Staff Regulations and its Rules of Procedure. On that basis, the Commission counts on its very able senior managers to ensure that their departments run smoothly and that the morale of the staff is high.

VII. Other questions

Question of the European Parliament:

120. Please provide CONT Committee with all the documentation related to this case to ensure the procedure was fully in line and explaining why there was an exemption to the rule of an open call for candidates for both positions (DSG and SG)?

Commission answer:

Please see answer to question 1. It is the Commission's prerogative, and falls within its margin of discretion, to decide which posts to publish pursuant to Article 29 of the Staff Regulations and which posts to fill by transfer in the interest of the service pursuant to Article 7 of the Staff Regulations thereof in order to ensure that the departments are organised in the best way to suit the tasks entrusted to them.

In the cases where the Commission decides to fill the posts by transfer in the interest of the service before they become vacant (please see answer to question 4, point 2), they are not published. In the history of the Commission, the post of Secretary-General was only published once. Five Secretaries-General were directly appointed by the College on the proposal of the President.

Question of the European Parliament:

121. Press articles suggest that Mr. Selmayr still chairs (while already in his new position as SG) President Juncker's cabinet meetings and that Mrs Martínez, now Head of cabinet of President Juncker, will become the next Commission's DG for the legal service).

Can the Commission confirm or deny these suggestions? How does the Commission plan to exercise its judicial role independently from Commission's political role in case such appointments are made. The Commission argues the decision had to be taken immediately because it is of so overriding importance to have no gap in this top post and to have no undue influence and pressure by external actors, such as the Member States. At the same time- If it is true that Mr Juncker knew already since 2,5 years that SG Italianer would leave the service by 1 March/1 April why did he wait then until 31 January to open a Vacancy for the post of DSG? We ask for the answer to this question by President Juncker.

Commission answer:

As regards meetings of the President's Cabinet, they are chaired by the Head of Cabinet of the President, while the Directors-General of other Presidential services (including the Secretary-General), their Deputies and/or their assistants can be invited by the Head of Cabinet of the President. Meetings of the President's Cabinet take place several times per week whenever it is considered necessary by the Head of Cabinet of the President.

In addition, there are Management Meetings organised 3 times per week, between the President's Cabinet, the Secretariat-General, the Legal Service, the Directorate-General

for Communication and the European Political Strategy Centre (EPSC). These meetings are chaired jointly by the Head of Cabinet of the President and the Secretary-General or their Deputies.

The post of Director-General of the Legal Service of the Commission is not vacant. There is no reason to speculate about a possible successor.

The Commission exercises its competences in line with the Treaties.

The Secretary-General, as foreseen in Article 20 of the Commission Rules of Procedure (C(2010)1200), shall assist the President so that, in the context of the political guidelines laid down by the President, the Commission achieves the priorities that it has set itself. He must therefore have the full trust of the President and of the whole Commission. Given this special role and in view of the particular phase of the mandate where the Commission needs to deliver significant outstanding proposals, conclude important negotiations and present the proposal for the next Multiannual Financial Framework, it is indeed crucial to ensure continuity in the function. In order to ensure this continuity, the relevant procedures are normally launched as soon as it is clear that a post will have to be filled in the foreseeable future, for instance because of the transfer of the jobholder.

It was known on 31 January 2018 that the Deputy Secretary-General position would become vacant when the decision to appoint Ms Michou to the function of Director-General for Home Affairs was taken by the College. The College decided to publish the post of Deputy Secretary-General on the same day.

President Juncker explained during his press conference on 21 February and in his subsequent letters to the European Parliament that when agreeing to become Secretary-General in 2015, Mr Italianer had told the President that he intended to retire soon after 1 March 2018. The President did not share this information in order not to undermine Mr Italianer's authority. The President and his Head of Cabinet also kept the hope to be able to convince Mr Italianer to stay on as Secretary-General beyond 1 March 2018. In early 2018, Mr Italianer confirmed that he would stick to his decision. Mr Italianer sent the President a formal letter in the morning of 21 February 2018, stating his intention to retire on 31 March 2018. Please see answer to Question 41.

Question of the European Parliament:

122. When and how did Mr Selmayr learn about Mr Italianer leaving his post as SG on 1 March 2018?

Commission answer:

The President was informed by Mr Italianer when agreeing to become Secretary- General in 2015 that he intended to retire soon after 1 March 2018. The President discussed this information with his Head of Cabinet, like all important senior management matters.

The President did not share this information further in order not to undermine Mr Italianer's authority while he was in office. The President, as well as his Head of Cabinet, also kept the hope to be able to convince Mr Italianer to stay on as Secretary- General beyond 1 March 2018. However, in early 2018, Mr Italianer confirmed that he would stick to his decision. Mr Italianer sent the President a formal letter stating his intention to retire on 31 March 2018 on the morning of 21 February 2018.

Question of the European Parliament:

123. Can the Commission confirm that the information provided by Jean Quatremer on 3 March "Les Coulisses de Bruxelles" as to the transitional allowances and on in kind advantages that would be granted to the Commissioners when they will leave their post is "fakenews"?

Commission answer:

This is indeed incorrect. The Commission has no plan or initiative nor a legal possibility to change the allowances of Commissioners. There is also no plan to give other in-kind advantages to former Commissioners. Please see answer to question 117.

Question of the European Parliament:

124. Reports appeared in various media about commitments to Commissioners who are stepping down in the future. The commitments are described quite precisely in the Dutch media: over the course of three years they have use of an office, two employees and a car with a driver. Have these commitments been discussed? Has the proposal already been submitted specifically for decision-making? If not, will such a proposal be submitted and discussed soon? If not, what is the explanation for such detailed coverage in the media? And: is it ruled out that such a proposal will be submitted for decision-making?

Commission answer:

This is incorrect information. The Commission has no plan or initiative nor a legal possibility to change the allowances of Commissioners. There is also no plan to give other in-kind advantages to former Commissioners. Please see answer to question 117.

Question of the European Parliament:

- 125. There were reports in the press that the Commission intends to pur the Legal Service under the authority of the Secretary General. Are these reports founded?*

Commission answer:

These reports are totally unfounded. There is no plan to reorganise the Legal Service.

Question of the European Parliament:

- 126. As new secretary general, one of the first decisions of Mr Selmayr has been to block the proposals to bring a number of Member States to the European court of Justice for violation of their obligations under the Clean Air directive. Why is this decision justified?*

Commission answer:

This is false. Decisions related to infringement proceedings are taken by the College.

Question of the European Parliament:

- 127. Can the Commission confirm that in July this year, the Legal service will be subject to the authority of Mr Selmayr, thereby removing its independence and any possibility for it of expressing an opinion which is frank, objective, comprehensive and, therefore, of use to the Commission for the purpose of assessing the legality of the Commission action? Can the Commission confirm that there is no plan to change the status or working methods of the Commission's Legal Service or any other change to the rules of procedures?*

Commission answer:

This is false. There is no plan to reorganise the Legal Service or change its status.

Question of the European Parliament:

- 128. Does the Commission considers it appropriate to submit the Legal Service of the Commission to the authority of a man who has possibly breached the staff regulations?*

Commission answer:

The Commission does not share the premise underlying this question. The Commission would recall that the decision concerning the appointment of the Secretary- General was taken by the College acting unanimously in full compliance with the Staff Regulations and the Commission Rules of Procedure. There is no plan to reorganise the Legal Service or change its status.

Question of the European Parliament:

129. Can the Commission confirm that there is no current project, initiative or plan to alter the statute or retirement package, remuneration or emoluments of former Commissioners?

Commission answer:

Yes, the Commission can confirm this. The Commission has no plan or initiative nor a legal possibility to change the retirement package, remuneration or emoluments of Commissioners or former Commissioners. Please see answer to question 117.

Question of the European Parliament:

130. Is it correct that, as has been claimed by some media, Commissioners were promised an increase of their pensions if they approved Mr Selmayr's appointment (even though only the Council is competent to take a decision on pensions)?

Commission answer:

This is false. The Commission has neither the intention nor the initiative nor the legal possibility to take such a decision. Please see answer to question 117.

Question of the European Parliament:

131. What nominations and interviews are foreseen for other members of President's cabinet before the end of mandate of present Commission? Which personal issues exactly (promotions of the number of people at top managerial levels, in which DGs) will be (co)decided by Mr. Selmayr in his new position until the end of mandate of this Commission?

Commission answer:

At this stage, there are no nominations foreseen for members of the President's Cabinet. It is not excluded that members of the President's Cabinet may decide to apply for vacancies for which they are qualified during the remainder of the mandate. Where senior management posts need to be filled, the appointment and transfer decisions will be taken by the College as Appointing Authority in accordance with the Staff Regulations.

As Secretary-General, like all Directors-General, Mr Selmayr may, in agreement with the President and the Commissioner in charge of Human Resources, decide on transfers of his Deputies, Directors and Principal Advisers within his service. He does not have any decision-making powers concerning other senior management appointments or transfers.

Question of the European Parliament:

- 132. If the present Commission is a political Commission (which is how you present and lead it), it must also accept political responsibilities that go beyond the legal limitations, including of its ethical aspects. Do you accept this statement? And if so, do you recognize that the nomination process of Mr. Selmayr clearly undermines the role of the Commission as the guardian of Treaties and rule of law?***

Commission answer:

The Commission fully assumes its political responsibilities, including the application of the principles of integrity and ethics. The Commission maintains that the procedure of appointing Mr Selmayr to the post of Deputy Secretary-General and to the post of Secretary-General was decided by the College acting unanimously, in full compliance with the Staff Regulations and the Rules of Procedure of the Commission.

Question of the European Parliament:

- 133. What is the Commission's opinion on the Amendment which will be tabled in the context of the Commission discharge, saying: "in view of European Public Administration of excellence, asks de Commission to come before the end of 2018 with a proposal for the procedure of appointments of high level officials including the Secretary-General of the European Commission, which guarantees the selection of best-qualified-candidate-profiles under the premise of transparency and equal opportunities and which will be sufficiently comprehensive to be implemented in other EU Institutions, such as the European Parliament and the Council."***

Commission answer:

The Commission fully shares the goal of a European Public Administration of excellence. The Commission therefore stands ready to discuss with the other EU institution whether and how the application of the EU Staff Regulations, which apply to all EU institutions, can be further developed and strengthened with this objective in mind. The need to recruit, appoint and promote talented officials on the basis of qualifications, skills and experience has to be as prominent in this discussion as the imperative to preserve the autonomy of each EU institution in its personnel decisions, the independence of decision-making processes from external influences as well as the supranational spirit of the European Public Administration. While enhanced transparency is an important principle, it must not lead to senior management decisions becoming the object of negotiations between Member States and/or political parties, as this could call into question, notably with regard to the Commission, both the supranational spirit of the European Public Administration and the goal of having highly qualified senior managers. The Commission stands ready to pursue a constructive dialogue on these matters with the European Parliament, the Council and other EU institutions. In this dialogue, the Commission will explain that it has made good experience with the use of Assessment Centers and of external experts in its senior management selection procedures; they provide helpful objective input to assess qualifications, skills and experience of senior managers.

Question of the European Parliament:

134. Can the Commission please put forward a proposal for a more transparent procedure for future appointments?

Commission answer:

Please see answer to question 133.

WRITTEN QUESTIONS ON

Ethics and Integrity

Meetings with former Commission President Barroso

Question of the European Parliament:

- 1. What are the implications of the promise made in September 2016 by President Juncker to the European Ombudsman that the former Commission President would be “received in the Commission not as a former President but as an interest representative” and would be “submitted to the same rules as all other interest representatives as regards the Transparency Register”? Did this rule out private meetings outside the Commission’s premises?***

Commission answer:

The commitment taken by President Juncker vis-à-vis the European Ombudsman means that whenever a Commissioner or Director-General receives Mr Barroso, independently of the capacity in which Mr Barroso acts and independently of the possibly private or social character, this fact shall be published as a meeting with an interest representative. This is to ensure greatest possible transparency and avoid any doubt with regard to alleged secret meetings. It does not imply that every meeting with Mr Barroso must have a purpose of lobbying.

Question of the European Parliament:

2. *Considering that both Vice-President Katainen and Vice-President Dombrovskis entered their meetings with Mr. Barroso into the transparency register as meetings with Goldman Sachs that during these meetings Mr. Barroso acted as interest representative?*

Commission answer:

The publication of such meetings does not imply that Mr Barroso acts as an interest representative of Goldman Sachs in each of these meetings. It has been made clear by Vice-President Katainen in the plenary of the European Parliament on 28 February 2018 that no lobbying of the Commissioners took place.

Question of the European Parliament:

3. *If the answer to question 2 is yes, how does this match with Mr. Barroso's pledge to the Ethics Committee of the Commission that he would not undertake any lobbying activities vis-à-vis the European institutions on behalf of Goldman Sachs and that his position at the bank was of a purely advisory nature?*

Commission answer:

Please see reply to question 2 above.

Question of the European Parliament:

4. *What is the Commission's reaction to the Recommendations of the European Ombudsman in respect of her joint inquiry into complaints 194/2017/EA, 334/2017/EA, and 543/2017/EA on the European Commission's handling of post-mandate employment of former Commissioners, a former Commission President and the role of its 'Ethics Committee'?*

Commission answer:

The European Ombudsman has given the Commission time until 6 June 2018 to reply. The Commission is in the process of replying to the European Ombudsman and asks for the Parliament's understanding that it cannot make its reaction public before the Ombudsman has received it.

LIST OF ANNEXES

Batch 1

1. OJ(2018)2244 - Agenda of the Commission meeting 21 February 2018
2. PV(2018)2244 – Minutes of the Commission meeting 21 February 2018
3. PV(2017)2224 – Minutes of the Commission meeting 12 September 2017
4. PV(2017)2221 - Minutes of the Commission meeting 19 July 2017
5. PV(2015)2132 - Minutes of the Commission meeting 24 June 2015
6. PV(2014)2104 - Minutes of the Commission meeting 5 November 2014
7. PV(2006)1767 - Minutes of the Commission meeting 29 November 2006
8. PV(2005)1721 - Minutes of the Commission meeting 9 November 2005
9. PV(2000)1477 - Minutes of the Commission meeting 3 May 2000

Batch 2

1. C(2014)9002 – Communication: Rules governing the composition of Cabinets – 1 November 2014
2. SEC(2010)104 – Communication: Rules governing the composition of Cabinets – 3 February 2010
3. SEC(2004)1485 - Rules governing the composition of Cabinets -2004
4. C(2014)9000 – Decision of the President – Organisation of responsibilities of the Members of the Commission – 1 November 2014
5. C(2010)1200 – Commission Decision amending its Rules of Procedure –24 February 2010
6. Annex to C(2010)1200 – Commission Decision amending its rules of procedure – 24 February 2010
7. C(2018)700 - Commission Decision on a Code of Conduct for the Members of the European Commission – 31 January 2018
8. Council Regulation (EU) 2016/300 determining the emoluments of EU high- level public office holders – 29 February 2016

Batch 3

1. The Compilation Document on Senior Officials Policy
2. Commission Decision C(2007)380 on the Rules of Procedure of the Consultative Committee on Appointments
3. Vacancy Notice for a Deputy Secretary-General COM/2018/292
4. Mr Italianer's letter concerning his retirement
5. Reserve List COM/A/10/01
6. Vacancy Notice for a Director-General for DGEACCOM/2018/55
7. MEMO handed to Press on Frequently Asked Questions
8. Brief for QABD points for College meeting of 21 February 2018
9. Extension of the use of Assessment Centres to Internal Selection Procedures for Posts of Director or Equivalent(PV(2006)1767
10. Act notifying Mr Selmayr's appointment as Deputy Secretary-General

Batch 4

1. C(2016)1881 – Commission Decision of 4/4/2016 on the exercise of powers conferred by the Staff Regulations on the Appointing Authority
2. Staff Regulations of Officials and Conditions of Employment of Other Servants

Committee Meeting Budgetary Control (CONT) 27 March 2018.

Integrity policy of the Commission, in particular the appointment of the Secretary-General of the European Commission.

Hearing of Günther Oettinger, Commissioner responsible for budget and human resources.

<http://www.europarl.europa.eu/ep-live/en/committees/video?event=20180327-0900-COMMITTEE-CONT>

**COMMISSION ANSWERS TO THE FOLLOW-UP
QUESTIONS OF THE BUDGETARY CONTROL
COMMITTEE OF THE EUROPEAN PARLIAMENT ON
THE APPOINTMENT OF THE NEW SECRETARY-
GENERAL OF THE EUROPEAN COMMISSION**

4 April 2018

Article 7 of the Staff regulations: transfer in the interest of the service:

Question of the European Parliament:

1. According to the presentation by the [member of the European Parliament's] Legal Service on "Transfer in the interest of the service" as a means to fill a post, article 7 of the staff regulation must be read in conjunction with article 4 of the staff regulation: In principle a post that falls free must be published and exceptions are not stated in the statute. Why did the Commission not publish the post of Secretary-General? Why did the Commission not follow the principle of the staff regulations?

Commission answer:

The Commission, advised by its Legal Service, does not share the premise that the publication of a post is to be considered the rule under the Staff Regulations. The Commission recalled in its replies to the questions of the Budgetary Control Committee of 24 March 2018 that the EU Staff Regulations provide for two alternative ways for being appointed Director-General or Deputy Director-General, namely appointment to a vacant post in accordance with Article 29(1)(a) of the Staff Regulations or transfers in accordance with Article 7 of the Staff Regulations.

Both options legally have an equal standing: the procedure of Article 7 is, under the Staff Regulations, an alternative procedure to the procedure of Article 29(1)(a). Where a post needs to be filled, the Staff Regulations allow the appointing authority, in this case the College of Commissioners, to choose between the organisation of a selection procedure pursuant to Article 29(1) of the Staff Regulations and a transfer in the interest of the service pursuant to Article 7 of the Staff Regulations. It depends on the specific circumstances of the case at stake whether a selection procedure or a transfer is considered to best correspond to the interest of the institution.

The Commission did follow all the rules and principles of the Staff Regulations when appointing the new Secretary-General of the Commission. In view of the specific characteristics of the function of Secretary-General and the challenges the Commission is currently facing, a transfer in the interest of the service was clearly the option which best corresponded to the interest of the institution.

It should be kept in mind that the Secretary-General of the Commission is not an ordinary job. The position requires not only special experience with regard to the functioning of the Commission, its working methods, its decision-making process and its interinstitutional role, but also a particular level of trust that the President can place in the Secretary-General who has the legal mandate, under Article 20(1) of the Commission's Rules of Procedure, to "assist the President so that, in the context of the political guidelines laid down by the President, the Commission achieves the priorities that is has set." In every Commission, there is thus only a handful of people at most who fulfil these special requirements, which is why the transfer of a senior manager, on the basis of Article 7 of the Staff Regulations, who is well known to and trusted by the President and the College of Commissioners has been common practice for the preceding three decisions of the Commission on the appointment of a Secretary-General of the Commission.

General legal framework:

The case-law of the EU courts provides that within Article 7 of the Staff Regulations, there are two types of transfers:

- the transfer "properly called" where an official is transferred to fill a vacant post which is subject to the formalities laid down in Articles 4 and 29 of the Staff Regulations, i.e. the publication of the vacant post ("mutation") and
- "reassignment" ("réaffectation"), for which those formalities (i.e. publication is not applicable as this does not give rise to a vacancy; "autonomous" concept of transfer).¹

Article 7(1) of the Staff Regulations is the legal basis for the "autonomous" concept of transfer, which is known in the case-law as "reassignment with the official's post"². This type of transfer does not give rise to a vacant post as indicated by the case-law. This is in line with Article 4, first subparagraph of the Staff Regulations, which provides that "appointments" and "promotions" may only be used for the purpose of filling a vacant post, whereas no such requirement is laid down for "reassignments".

Article 4, third paragraph and Article 29(1)(a)(i) of the Staff Regulations refer to the concept of transfer "properly called" to fill a vacant post after the appointing authority has decided that the vacancy is to be filled. In such case, the appointing authority shall publish the post in accordance with Article 4, second paragraph, and thereafter use the possibility set out in Article 29(1)(a)(i) to transfer the colleague via Article 7(1).

In the light of the above, Article 7(1) of the Staff Regulations may be used in the context of two types of transfers: on the one hand, a transfer "properly called" on the basis of Article 4, and Article 29(1)(a)(i) of the Staff Regulations, to a vacant post (in this case, Article 7(1) of the Staff Regulations is applied as a modality) and a "reassignment with the official's post" (in this case, Article 7(1) of the Staff Regulations is the sole legal basis for the transfer).

In accordance with Article 7(1) of the Staff Regulations, both transfers cited above must be carried out upon two conditions expressed in a limited and exhaustive manner: (1) in the interest of the service, and (2) in compliance with the requirement that the post corresponds to the official's grade.

While it is true that a serious and urgent situation – as mentioned by the member of the Legal Service of the Parliament – may be enough to substantiate an interest of the service in order to trigger Article 7(1) of the Staff Regulations, neither the Staff Regulations nor the case-law set this as a requirement for making use of this provision. This type of situation is just one example, among others, of the interests of the service. The concept of serious and urgent situation is certainly not a necessary condition for triggering an Article 7(1) transfer.

The Commission notes that the member of the Legal Service of the European

¹ *Kindermann/Commission*, Case 60/80, point 12. See also: *Clotuche/Commission*, T-339/03, point 31; *Guggenheim/CEDEFOP*, T-373/04, point 64; *BN/Parliament*, F-24/12, point 46.

² See for example joined cases 161 and 162/80, *Carbognani and Zabetta v. Commission*, points 19 et seq. and case F-24/12, *BN v. Parliament*, point 46.

Parliament, after screening the case-law on reassignments, considered that there would be three broad categories of situations in which reassignments could be justified in the interest of the service:

- 1) relationship difficulties, when they cause tensions which are prejudicial to the proper functioning of the service;³
- 2) situations where the appointing authority has doubts on whether irregularities were committed and considers the possible opening of a disciplinary inquiry;⁴
- 3) the need to reorganise a service.

The Commission, advised by its Legal Service, considers that these categories do not constitute an exhaustive description of what may constitute a transfer in the interest of the service within the meaning of Article 7 of the Staff Regulations. In view of the broad concept of interest of the service as defined by the case-law, it does not appear justified to limit reassignments to these categories only. The need to take into account "the specific requirements of the post to be filled" was also considered relevant according to the case-law.⁵

These principles constitute the basis for the practice of the Commission.⁶ During the mandate of this Commission 50.6% of all appointments at Director-General/Deputy Director-General/*Hors Classe* Adviser level were transfers according to Article 7 of the Staff Regulations.

It should be noted that the Staff Regulations do not establish an order of preference between these two types of transfer. The case-law has made it clear that even in case where the appointing authority has already opened a procedure on the basis of Article 29 of the Staff Regulations, it can terminate this procedure without follow-up and proceed directly with a transfer based solely on Article 7.⁷

The case-law does not contain any reference either to the fact that one procedure would be the norm and the other the exception. It is therefore for the appointing authority to decide which type of transfer it deems appropriate in order to best ensure the interest of the service, as part of its wide discretion to organise its departments to suit the tasks entrusted to it and to assign the staff available in the light of such tasks, on condition that the staff is assigned in the interest of the service and in conformity with the principle of assignment to an equivalent post.⁸

In the usual practice of the Commission, both types of transfer are widely used. It should be noted that the Commission's policy to ensure the mobility of its senior

³ The Legal Service of the European Parliament mentioned *BN/Parliament*, F-24/12. Other instances are see also BP/FRAF-38/12.

⁴ The Legal Service of the European Parliament mentioned *Clotuche/Commission*, T-339/03.

⁵ *Fronia/Commission*, T-51/01, point 62: "*la décision attaquée, en ce qu'elle se limite à réaffecter le requérant avec son emploi et à ne pas le maintenir en tant que chef d'unité, concerne la situation administrative du seul requérant. En l'absence d'une nomination à un poste vacant, l'AIPN n'était pas tenue de procéder à un choix comparatif entre plusieurs candidats.*"

⁶ See above footnote 1.

⁷ Judgment of the Civil Service Tribunal of 13 November 2008, *Traore/Commission*, F-90/07, point 48 and the case-law cited.

⁸ See for example Case 69/83, 23 June 1984, *Lux v Court of Auditors*, point 17 and case F-24/12, 19 June 2014, *BN vs Commission*, point 47.

managers could not be implemented without the possibility to make use of transfers based solely on Article 7.

In the case-law, it has only been considered once that the appointing authority had not acted in the interest of the service by not turning to a selection process to identify the most competent persons to exert each function. This was in the very particular circumstances of the *Guggenheim* case⁹, where a series of individual decisions of transfers had to be taken in the context of a reorganisation of an agency giving rise to several new assignments. Only in that case, the General Court considered that due to the very particular circumstances of the case ((a) many parallel individual decisions to be taken (b) in a complex reorganisation matter and notably within the context of the creation of an additional administrative layer (c) with an impact on global governance) a reassignment with the official's post without organising an internal call for interest was not suitable. This case-law is therefore the exception and not the norm and does not apply in a case involving a single individual decision like the case at stake.

As regards the interest of the service, the case-law shows that the concept of the interest of the service relates notably to the smooth running of the institution.¹⁰ It necessarily entails a case-by-case analysis depending on the circumstances of each case. The appointing authority enjoys a wide margin of discretion in this respect, and as already explained above, nothing, whether in the Staff Regulations or in the case-law, requires the publication of a vacancy to fulfil the interest of the service. On the contrary, the appointing authority may choose the procedure it deems best to ensure that the interest of the service is met.

Application of these legal principles in the present case:

As regards the exercise of its discretionary power in the case at hand, the Commission did not publish the post of Secretary-General because it decided, using its broad margin of appreciation acknowledged by the case-law, to follow the procedure of reassignment with post on the sole basis of Article 7 of the Staff Regulations. Notably, as it has already been explained in the Commission's answers of 24 March, it was in the interest of the institution that situations where important functions such as the ones of Secretary-General become vacant are to be avoided, in order to guarantee the seamless exercise of these functions. The same procedure was followed by the Commission when the previous three Secretaries-General were appointed.

The function of Secretary-General is not a normal function at Director-General level. The tasks of the Secretary-General are described in detail in Article 20 of the Commission's Rules of Procedure, and the successful exercise of these functions notably requires the trust and confidence of the President (who is the only one who can propose a new Secretary-General). There is only a handful of senior managers in the Commission who bring all the necessary competences for this function, who are willing to take on this job (which is generally seen as one of the most demanding in the Commission) and who have at the same time the trust of the President.

In view of these circumstances, the first choice of the President of the Commission was always to convince Mr Italianer to continue in this position until the end of the

⁹ Case T-373/04, *Guggenheim v. Cedefop*.

¹⁰ Case T-13/95, *Kyrpitsis v. ESC*, para. 51 ; Case F-38/12, *BP v. FRA*, para. 140.

mandate.

When it became clear that Mr Italianer did not want to continue exercising this function, the Commission had to act without delay, taking account of the important internal and external challenges the EU is facing in this particular moment in time. To name only the most important of these challenges, the Commission has to make its final proposals under the Political Guidelines by end of May as foreseen by the Commission Work Programme, must propose by early May 2018 the next Multiannual Financial Framework and negotiate it, must deal with Brexit (with only one year remaining) and with daily challenges to the multilateral rules-based international order.

Accordingly, the Commission could not allow for any disruption in its work, but had to ensure a smooth and swift handover to someone who is already fully familiar with the political priorities of the President and the working methods of the institution. For these reasons, the Head of Cabinet of the President was an obvious choice for the President as Secretary-General since he is familiar with all relevant files and can immediately resume the work. For the same reasons, the College of Commissioners unanimously approved the proposal to transfer Mr Selmayr to this position, considering that it was in the best interest of the service.

Of course, such a choice can only be made within the limits set by the Staff Regulations. In the present case, the conditions for using the reassignment with post procedure on the sole basis of Article 7(1) of the Staff Regulations, as laid down in the case-law,¹¹ were fulfilled. In particular, the post corresponded to Mr Selmayr's function group and grade.

¹¹ In all the relevant judgments (see joined cases 161 and 162/80, *Carbognani and Zabetta v. Commission* C-60/80 and *Kindermann v. Commission*, 21/05/1981 to F-24/12, *BN v. Parlement*, 19/06/2014), the Court of Justice, the General Court and the Civil Service Tribunal have considered that: When a post is not vacant, a transfer can be carried out without publication upon only two conditions: this transfer has to be done in the interests of the service and this transfer has to respect the equivalence of both grade and function. There are no references to the fact such transfer shall be done only upon an exceptional basis.

Question of the European Parliament:

2. Can the Commission explain in detail the interest of the service justifying the absence of publication for the post of Secretary-General, taking into account the judgment of the Court in the case T-373/04, Guggenheim?

Commission answer:

As regards the interest of the service within the meaning of the Staff Regulations, the case-law shows that the concept of the interest of the service relates notably to the smooth running of the institution.¹² It necessarily entails a case-by-case analysis depending on the circumstances of each case. The appointing authority enjoys, as also acknowledged by the member of the Legal Service of the European Parliament, a wide margin of discretion in this respect. As already explained above in response to question 1, nothing, whether in the Staff Regulations or in the case-law, requires the publication of a vacancy to fulfil the interest of the service. On the contrary, the appointing authority may choose the procedure it deems best to ensure that the interest of the service is met.

As regards the interest of the service justifying the absence of publication in this particular case, the Commission did not publish the post of Secretary-General because it decided, using its broad margin of appreciation acknowledged by the case-law, to follow the procedure of reassignment with post on the sole basis of Article 7. The same procedure was followed by the Commission when the previous three Secretaries-General were appointed.

The function of Secretary-General is not a normal function at Director-General level. The tasks of the Secretary-General are described in detail in Article 20 of the Commission's Rules of Procedure, and the successful exercise of these functions notably requires the trust and confidence of the President (who is the only one who can propose a new Secretary-General). There is only a handful of senior managers in the Commission who bring all the necessary competences for this function, who are willing to take on this job (which is generally seen as one of the most demanding in the Commission) and who have at the same time the trust of the President.

In view of these circumstances, the first choice of the President of the Commission was to convince Mr Italianer to continue in this position until the end of the mandate.

When it became clear that Mr Italianer did not want to continue exercising this function, the Commission had to act without delay, taking account of the important internal and external challenges the EU is facing in this particular moment in time. To name only the most important of these challenges, the Commission has to make its final proposals under the Political Guidelines by end of May as foreseen by the Commission Work Programme, must propose by early May 2018 the next Multiannual Financial Framework and negotiate it, must deal with Brexit (with only one year remaining) and with daily challenges to the multilateral rules-based international order.

¹² Case T-13/95, *Kyrpitsis v. ESC*, para. 51 ; Case F-38/12, *BP v. FRA*, para. 140.

Accordingly, the Commission could not allow for any disruption to its work, but had to ensure a smooth and swift handover to someone who is already fully familiar with the political priorities of the President and the working methods of the institution. For these reasons, the Head of Cabinet of the President was an obvious choice for the President as Secretary-General since he is familiar with all relevant files and can immediately resume the work. For the same reasons, the College of Commissioners unanimously approved the proposal to transfer Mr Selmayr to this position, considering that it was in the best interest of the service.

Of course, such a choice can only be made within the limits set by the Staff Regulations. In the present case, the conditions for using the reassignment with post procedure on the sole basis of Article 7(1) of the Staff Regulations, as laid down in the case-law,¹³ were fulfilled. In particular, the post corresponded to Mr Selmayr's function group and grade.

As regards the general legal framework, it is important to explain what the concept of "transfer" entails within the meaning of the Staff Regulations. The Staff Regulations as interpreted by the EU jurisdictions' case-law allow for two types of "transfers": reassignment with the officials' post based solely on Article 7 of the Staff Regulations and transfer on the basis of Articles 4, 29 and 7 of the Staff Regulations.

The first type of transfer, "reassignment with the official's post"¹⁴, does not give rise to a vacant post. This is in line with Article 4, first subparagraph of the Staff Regulations, which provides that "appointments" and "promotions" may only be used for the purpose of filling a vacant post, whereas no such requirement is laid down for "transfers".

Article 4 and Article 29(1)(a)(i) of the Staff Regulations refer to the concept of transfer in a stricter sense, i.e. to fill a vacant post after the appointing authority has decided that the vacancy is to be filled. In such case, the appointing authority shall publish the post in accordance with Article 4, second paragraph, and thereafter use the priority set out in Article 29(1)(a)(i) to actually transfer the colleague via Article 7(1) of the Staff Regulations.

In the light of the above, Article 7(1) of the Staff Regulations may be used in the context of two types of transfers: on the one hand, a transfer "properly called" on the basis of Article 4 and Article 29(1)(a)(i) of the Staff Regulations, to a vacant post (in this case, Article 7(1) of the Staff Regulations is applied as a modality) and a "reassignment with the official's post" (in this case, Article 7(1) of the Staff Regulations is the sole legal basis for the transfer).

In accordance with Article 7(1) of the Staff Regulations, both transfers cited above

¹³ In all the relevant judgments (see joined cases 161 and 162/80, *Carbognani and Zabetta v. Commission* C-60/80 and *Kindermann v. Commission*, 21/05/1981 to F-24/12, *BN v. Parliament*, 19/06/2014), the Court of Justice, the General Court and the Civil Service Tribunal have considered that:
- When a post is not vacant, a transfer can be carried out without publication upon only two conditions: this transfer has to be done in the interests of the service and this transfer has to respect the equivalence of both grade and function. There are no references to the fact such transfer shall be done only upon an exceptional basis.

¹⁴ See for example joined cases 161 and 162/80, *Carbognani and Zabetta v. Commission*, points 19 et seq. and case F-24/12, *BN v. Parliament*, point 46.

must be done in line with two conditions expressed in a limited and exhaustive manner: (1) in the interest of the service, and (2) in compliance with the requirement that the post corresponds to the official's grade.

While it is true that a serious and urgent situation – as mentioned by the member of the Legal Service of the Parliament – may be enough to substantiate an interest of the service in order to trigger Article 7(1) of the Staff Regulations, neither the Staff Regulations nor the case-law set this as a requirement for making use of this provision. This type of situation is certainly not a necessary condition for triggering an Article 7(1) transfer.

As indicated by the case-law, the above reading is the basis for the practice of the Commission.¹⁵

It should be noted that the Staff Regulations do not establish an order of preference between these two types of transfer. The case-law has made it clear that even in case where the appointing authority has already opened a procedure on the basis of Article 29 of the Staff Regulations, it can terminate this procedure without follow-up and proceed directly with a transfer based solely on Article 7.¹⁶

The case-law does not contain any reference either to the fact that one procedure would be the norm and the other the exception. It is therefore for the appointing authority to decide which type of transfer it deems appropriate in order to best ensure the interest of the service, as part of its wide discretion to organise its departments to suit the tasks entrusted to it and to assign the staff available in the light of such tasks, on condition that the staff is assigned in the interest of the service and in conformity with the principle of assignment to an equivalent post.¹⁷

In the usual practice of the Commission, both types of transfer are widely used. It should be noted that the Commission's policy to ensure the mobility of its senior managers could not be implemented without the possibility to make use of transfers based solely on Article 7.

In the case-law it has only been considered once that the appointing authority had not acted in the interest of the service by not turning to a selection process to identify the most competent persons to exert each function. This was in the very particular circumstances of the *Guggenheim* case¹⁸, where a series of individual decisions of transfers had to be taken in the context of a reorganisation of an agency giving rise to several new assignments. Only in that case, the General Court considered that due to the very particular circumstances ((a) many parallel individual decisions to be taken (b) in a complex reorganisation matter and notably within the context of the creation of an additional administrative layer (c) with an impact on global governance) a reassignment with the official's post without organising an internal call for interest

¹⁵ *Kindermann/Commission*, Case 60/80, point 12. See also: *Clotuche/Commission*, T-339/03, point 31; *Guggenheim/CEDEFOP*, T-373/04, point 64; *BN/Parliament*, F-24/12, point 46.

¹⁶ Judgment of the Civil Service Tribunal of 13 November 2008, *Traore/Commission*, F-90/07, point 48 and the case-law cited.

¹⁷ See for example Case 69/83, 23 June 1984, *Lux v Court of Auditors*, point 17 and case F-24/12, 19 June 2014, *BN vs Commission*, point 47.

¹⁸ Case T-373/04, *Guggenheim v. Cedefop*.

was not suitable. This case-law is therefore the exception and not the norm and does not apply in a case involving a single individual decision such as the case at stake¹⁹.

The judgment of the General Court in *Guggenheim* thus concerned a case with very particular circumstances; it does therefore not prevent the Commission from making use of the possibility to transfer an individual official in the interest of the service under Article 7 of the Staff Regulations. In view of the specific characteristics of the function of Secretary-General and the challenges the Commission is facing at the current juncture of its mandate²⁰, a transfer in the interest of the service was clearly the option which best corresponded to the interest of the institution.

¹⁹ Case T-51/01, *Fronia/Commission*, p. 62.

²⁰ To name only the most important of these challenges, the Commission has to make its final proposals under the Political Guidelines by end of May as foreseen by the Commission Work Programme, must propose by early May 2018 the next Multiannual Financial Framework and negotiate it, must deal with Brexit (with only one year remaining) and with daily challenges to the multilateral rules-based international order.

Question of the European Parliament:

3. *In a case of a transfer in the interest of the service it is, according to the [member of the European Parliament's] Legal Service, also customary to call for an expression of interest. By explanation of the [member of the European Parliament's] Legal Service: In the case of a transfer in the interest of the service, the rulings of 'interest of the service' includes the need to select competent staff, but as the Staff Regulations say "the most competent officials" and to achieve that, you need to organise an internal selection procedure. According to the Legal Service, it is possible to organise an internal call for interest without publishing a vacancy. Why did the Commission not organise a call for an expression of interest as is customary? Why did the Commission not organise an internal call for interest without publishing a vacancy? How does the Commission handle in the interest of the service by not publishing a vacancy or organising a call for expression of interest?*

Commission answer:

The Commission understands that this question does not concern the choice between a publication within the meaning of Article 29 of the Staff Regulations and a transfer in the interest of the service under Article 7 of the Staff Regulations; the member of the Legal Service of the Parliament here only raises the question of whether a transfer in the interest of the service can be preceded by a call for expression of interest. This would theoretically be possible, but it would in this specific case not have been in the interest of the institution.

a) It is in principle not excluded to organise a call for expression of interest instead of publishing a vacancy. However, such a call for expression of interest would only in very specific circumstances constitute an appropriate solution. The classical example is the annual rotation exercise for the staff of the Directorates-General in the field of external relations. On the one hand, it is, in view of the high number of posts to be filled, necessary to bring them to the attention of the number of the officials concerned. On the other hand, a publication under Article 29 of the Staff Regulations would not be adequate since it would allow all Commission officials to apply, and not only the officials of the external relations Directorates-General who are under the obligation to serve in delegations in third countries.

b) In contrast to the above-mentioned example of the rotation exercise, there are in the present case no specific circumstances which would plead for the publication of a call for expression of interest. A transfer under Article 7 of the Staff Regulations to the function of Secretary-General without preceding publication of a call for expression of interest was the option which best corresponded to the interest of the institution.

It must be noted in this context that the function of Secretary-General is not a normal function at Director-General level. The tasks of the Secretary-General are described in detail in Article 20 of the Commission's Rules of Procedure, and the successful exercise of these functions notably requires the trust and confidence of the President (who is the only one who can propose a new Secretary-General). There is only a handful of senior managers in the Commission who bring all the necessary

competences for this function, who are willing to take on this job (which is generally seen as one of the most demanding in the Commission) and who have at the same time the trust of the President.

In view of these circumstances, the first choice of the President of the Commission was to convince Mr Italianer to continue in this position until the end of the mandate.

When it became clear that Mr Italianer did not want to continue exercising this function, the Commission had to act without delay, taking account of the important internal and external challenges the EU is facing in this particular moment in time. To name only the most important of these challenges, the Commission has to make its final proposals under the Political Guidelines by end of May as foreseen by the Commission Work Programme, must propose by early May 2018 the next Multiannual Financial Framework and negotiate it, must deal with Brexit (with only one year remaining) and with daily challenges to the multilateral rules-based international order.

Accordingly, the Commission could not allow any disruption to its work, but had to ensure a smooth and swift handover to someone who is already fully familiar with the political priorities of the President and the working methods of the institution. For these reasons, the Head of Cabinet of the President was an obvious choice for the President as Secretary-General since he is familiar with all relevant files and can immediately resume the work. For the same reasons, the College of Commissioners unanimously approved the proposal to transfer Mr Selmayr to this position, considering that it was in the best interest of the service.

Question of the European Parliament:

4. *The Parliament's Legal Service explanation of the necessary conditions for the use of Article 7 of the Staff Regulation given at the CONT committee on March 27th was that "it has to be serious and urgent situation".*

Given the fact (referring to Commission's answers from March 24th) that the president of the Commission and his head of the Cabinet were well aware of the Sec Gen's intention to retire on April 1st 2018 from as early as 2015 (confirmed again by the Sec Gen in early 2018 and officially announced on February 21st) what was the serious and urgent situation that prevented the Commission to use a normal internal recruitment procedure under Article 29?

Commission answer:

The Commission cannot share the opinion that the possibility to transfer an official in the interest of the service under Article 7 of the Staff Regulations can only be used in a "serious and urgent situation".

While it is true that a serious and urgent situation – as mentioned by the member of the Legal Service of the Parliament – may be enough to substantiate an interest of the service in order to trigger Article 7(1) of the Staff Regulations, neither the Staff Regulations nor the case-law set this as a requirement for making use of this provision. This type of situation is certainly not a necessary condition for triggering Article 7(1) of the Staff Regulations.

Firstly, although the Commission cannot agree with the premise of the question (use of Article 7 only being possible in a "serious and urgent" situation), it would, in order to give an exhaustive reply, set out the reasons which led to its choice.

The function of Secretary-General is not a normal function at Director-General level. The tasks of the Secretary-General are described in detail in Article 20 of the Commission's Rules of Procedure, and the successful exercise of these functions notably requires the trust and confidence of the President (who is the only one who can propose a new Secretary-General). There is only a handful of senior managers in the Commission who bring all the necessary competences for this function, who are willing to take on this job (which is generally seen as one of the most demanding in the Commission) and who have at the same time the trust of the President.

In view of these circumstances, the first choice of the President of the Commission was to convince Mr Italianer to continue in this position until the end of the mandate.

When it became clear that Mr Italianer did not want to continue exercising this function, the Commission had to act without delay, taking account of the important internal and external challenges the EU is facing in this particular moment in time. To name only the most important of these challenges, the Commission has to make its final proposals under the Political Guidelines by end of May as foreseen by the Commission Work Programme, must propose by early May 2018 the next Multiannual Financial Framework and negotiate it, must deal with Brexit (with only one year remaining) and with daily challenges to the multilateral rules-based international order.

Accordingly, the Commission could not allow for any disruption to its work, but had to ensure a smooth and swift handover to someone who is already fully familiar with the political priorities of the President and the working methods of the Institution. For these reasons, the Head of Cabinet of the President was an obvious choice for the President as Secretary-General since he is familiar with all relevant files and can immediately resume the work. For the same reasons, the College of Commissioners unanimously approved the proposal to transfer Mr Selmayr to this position, considering that it was in the best interest of the service.

Of course, such a choice can only be made within the limits set by the Staff Regulations. In the present case, the conditions for using the reassignment with post procedure on the basis of Article 7(1) of the Staff Regulations, as laid down in the case-law,²¹ were fulfilled. In particular, the post corresponded to Mr Selmayr's function group and grade.

Secondly, as regards the applicable legal framework, it is important to explain what the concept of "transfer" entails within the meaning of the Staff Regulations. The Staff Regulations as interpreted by the EU jurisdictions' case-law allow for two types of "transfers": reassignment with the officials' post on the sole basis of Article 7 of the Staff Regulations and transfer "properly called" on the basis of Articles 4, 29 and 7 of the Staff Regulations.

Case-law recognised that Article 7(1) of the Staff Regulations can be used without publication in cases where reassignments are carried out "with the official's post".²² The first type of transfer does not give rise to a vacant post. This is in line with Article 4, first subparagraph of the Staff Regulations, which provides that "appointments" and "promotions" may only be used for the purpose of filling a vacant post, whereas no such requirement is laid down for "transfers".

It should be noted that the Staff Regulations do not establish an order of preference between these two types of transfer. The case-law has made it clear that even in case where the appointing authority has already opened a procedure on the basis of Article 29 of the Staff Regulations, it can terminate this procedure without follow-up and proceed directly with a transfer based solely on Article 7.²³

The case-law does not contain any reference to the fact that one procedure would be the norm and the other the exception. It is therefore for the appointing authority to decide which type of transfer it deems appropriate in order to best ensure the interest of the service, as part of its wide discretion to organise its departments to suit the tasks entrusted to it and to assign the staff available in the light of such tasks, on

²¹ In all the relevant judgments (see joined cases 161 and 162/80, *Carbognani and Zabetta v. Commission* C-60/80 and *Kindermann v. Commission*, 21/05/1981 to F-24/12, *BN v. Parliament*, 19/06/2014), the Court of Justice, the General Court and the Civil Service Tribunal have considered that: - When a post is not vacant, a transfer can be carried out without publication upon only two conditions: this transfer has to be done in the interests of the service and this transfer has to respect the equivalence of both grade and function. There are no references to the fact such transfer shall be done only upon an exceptional basis.

²² See for example joined cases 161 and 162/80, *Carbognani and Zabetta v. Commission*, points 19 et seq. and case F-24/12, *BN v. Parliament*, point 46.

²³ Judgment of the Civil Service Tribunal of 13 November 2008, *Traore/Commission*, F-90/07, point 48 and the case-law cited.

condition that the staff is assigned in the interest of the service and in conformity with the principle of assignment to an equivalent post.²⁴

As a matter of fact, in the usual practice of the Commission, both types of transfer are widely used. It should be noted that the Commission's policy to ensure the mobility of its senior managers could not be implemented without the possibility to make use of transfers based solely on Article 7.

For what concerns the interest of the service, the case-law shows that the concept of the interest of the service relates notably to the smooth running of the institution.²⁵ It necessarily entails a case-by-case analysis depending on the circumstances of each case. The appointing authority enjoys a wide margin of discretion in this respect, as also acknowledged by the member of the Legal Service of the European Parliament. As already explained above in response to question 1, nothing, whether in the Staff Regulations or in the case-law, requires the publication of a vacancy to fulfil the interest of the service. On the contrary, the appointing authority may choose the procedure it deems best to ensure that the interest of the service is met.

²⁴ See for example Case 69/83, 23 June 1984, *Lux v Court of Auditors*, point 17 and case F-24/12, 19 June 2014, *BN vs Commission*, point 47.

²⁵ Case T-13/95, *Kyrpitsis v. ESC*, para. 51 ; Case F-38/12, *BP v. FRA*, para. 140.

Question of the European Parliament:

5. *As the latest case of such internal recruitment process (under Article 29) (where Mr. Selmayr went through the Pre-selection, Assessment centre, CCA Interview, Interview with Commissioner before being appointed Dep SecGen by the College of Commissioners) clearly shows - that such recruitment procedure is open, transparent, allows all eligible staff to compete and also allows for a formal complaint if any candidate thinks rules were not completely followed. His appointment process as the Dep Sec Gen also shows that following all the necessary steps such a process can take less than a month.*

What serious and negative consequences could a situation where the Commission would announce a vacant position of the Sec Gen immediately after Feb 21st and carried out the appointment of a new Sec Gen through a promotion procedure on the basis of Article 29 have created?

What serious risks would emerge in such a case where one of the Dep Sec Gens would temporary (for the duration of the internal promotion procedure) take over the responsibilities of the SecGen?

Commission answer:

In view of the specific characteristics of the function of Secretary-General and the challenges the Commission is facing at the current juncture of its mandate²⁶, a transfer in the interest of the service was clearly the option which best corresponded to the interest of the institution. The temporary exercise of the function of Secretary-General by an official with a deputising status would not have been a good solution under the current circumstances.

It must be noted in this context that the function of Secretary-General is not a normal function at Director-General level. The tasks of the Secretary-General are in detail described in Article 20 of the Commission's Rules of Procedure, and the successful exercise of these functions notably requires the trust and confidence of the President (who is the only one who can propose a new Secretary-General). There is only a handful of senior managers in the Commission who bring all the necessary competences for this function, who are willing to take on this job (which is generally seen as one of the most demanding in the Commission) and who have at the same time the trust of the President.

In view of these circumstances, the first choice of the President of the Commission was to convince Mr Italianer to continue in this position until the end of the mandate.

When it became clear that Mr Italianer did not want to continue exercising this function, the Commission had to act without delay, taking account of the important internal and external challenges the EU is facing in this particular moment in time.

²⁶ To name only the most important of these challenges, the Commission has to make its final proposals under the Political Guidelines by end of May as foreseen by the Commission Work Programme, must propose by early May 2018 the next Multiannual Financial Framework and negotiate it, must deal with Brexit (with only one year remaining) and with daily challenges to the multilateral rules-based international order.

To name only the most important of these challenges, the Commission has to make its final proposals under the Political Guidelines by end of May as foreseen by the Commission Work Programme, must propose by early May 2018 the next Multiannual Financial Framework and negotiate it, must deal with Brexit (with only one year remaining) and with daily challenges to the multilateral rules-based international order.

Accordingly, the Commission could not allow for any disruption to its work, but had to ensure a smooth and swift handover to someone who is already fully familiar with the political priorities of the President and the working methods of the institution. For these reasons, the Head of Cabinet of the President was an obvious choice for the President as Secretary-General since he is familiar with all relevant files and can immediately resume the work. For the same reasons, the College of Commissioners unanimously approved the proposal to transfer Mr Selmayr to this position, considering that it was in the best interest of the service.

In this very sensitive context for the Commission and the Union, it would not have been in the interest of the institution to make use of Article 26 of the Commission's Rules of Procedure and to designate a deputising Secretary-General. Situations where functions of this importance become vacant and are exercised on a deputising basis are to be avoided. The approach followed by the College guaranteed the seamless exercise of these functions, without disruptions.

It should be noted that since the appointment of Émile Noël as the Commission's first Secretary-General the Secretary-General position has never been vacant.

Question of the European Parliament:

6. In case of Sec Gen's illness or other longer absence from work - who replaces him in carrying out his duties? What prevented the Commission to appoint one of Dep Sec Gens to temporary take over the responsibilities of the Sec Gen?

Commission answer:

Article 26 of the Commission's Rules of Procedure state that "where the Secretary-General is prevented from exercising his functions, or where the post is vacant, they shall be exercised by the Deputy Secretary-General present with the highest grade or, in the event of equal grade, by the Deputy Secretary-General with the greatest seniority in the grade or, in the event of equal seniority, by the eldest or by an official designated by the Commission. If there is no Deputy Secretary-General present and no official has been designated by the Commission, the subordinate official present in the highest function group with the highest grade or, in the event of equal grade, the subordinate official with the greatest seniority in the grade or, in the event of equal seniority, the one who is eldest, shall deputise."

This provision applies therefore only in two situations: 1) when the Secretary- General is prevented from carrying out his functions for reasons such as long term illness or any reason beyond his will, and 2) where the post is vacant. It should be noted that since the appointment of Émile Noël as the Commission's first Secretary- General the Secretary-General position has never been vacant.

Given that Mr Italianer on 21 February announced his decision to retire, the College of Commissioners followed an approach that guaranteed the seamless exercise of these functions, in the interest of the institution.

In view of the specific characteristics of the function of Secretary-General and the challenges the Commission is facing at the current juncture of its mandate²⁷, a transfer in the interest of the service was clearly the option which best corresponded to the interest of the institution. The temporary exercise of the function of Secretary- General by an official with a deputising status would not have been a good solution under the current circumstances.

²⁷ To name only the most important of these challenges, the Commission has to make its final proposals under the Political Guidelines by end of May as foreseen by the Commission Work Programme, must propose by early May 2018 the next Multiannual Financial Framework and negotiate it, must deal with Brexit (with only one year remaining) and with daily challenges to the multilateral rules-based international order.

Question of the European Parliament:

7. *A major reason given for the unprecedented manner in which Mr Selmayr went from being Mr Juncker's Chief of Staff to Deputy Secretary-General of the Commission to the Sec-Gen hot seat (literally, still warm from Mr Italianer's abrupt departure), was time - the Commission couldn't afford to wait, to have that vacancy. What happens if, for whatever reason and as can happen, Mr Selmayr should be unable to perform his duties for a period of time? Who steps in? Is it really credible to suggest that this couldn't have been delayed for even four weeks, to allow time for a search for a suitable fully-vetted candidate?*

Commission answer:

As for the reply to question 6, Article 26 of the Commission's Rules of Procedure apply (1) when the Secretary-General is prevented from carrying out his functions e.g. for reasons such as long-term illness or any reason beyond his will and (2) where the post is vacant. It should be noted that since the appointment of Émile Noël as the Commission's first Secretary-General the Secretary-General position has never been vacant.

As explained in the reply to questions 1 to 5 and 8, the appointing authority enjoys a wide margin of discretion in case a post has to be filled. As already explained above, nothing, whether in the Staff Regulations or in the case-law, requires that a post is published to fulfil the interest of the service. On the contrary, the appointing authority may choose the procedure it deems best to ensure that the interest of the service is met. Only once in the very particular circumstances ((a) many parallel individual decisions to be taken (b) in a complex reorganisation matter (c) with an impact on global governance) of the *Guggenheim* case, where a series of individual decisions of transfers had been to be taken in the context of a reorganisation of an agency giving rise to several new assignments, the General Court considered that a reassignment with the official's post was not suitable. This case-law is therefore the exception and not the norm and does not apply in a case involving a single individual decision such as in the present case.

As it has already been explained in the Commission's answers to the questionnaire of the Committee on Budgetary Control of 24 March, it was in the interest of the institution that situations where important functions such as the ones of Secretary-General become vacant are to be avoided, in order to guarantee the seamless exercise of these functions, notably at this particular moment of the mandate of the Commission.

Question of the European Parliament:

8. In the answer to question 36 of the questionnaire, the Commission claims that no publication was needed to appoint Mr. Selmayr to the post of Secretary General. During the hearing, an official from the legal service of the European Parliament contradicted this claim and explained that a transfer to another post is only possible if a post is vacant. According to article 4 of the staff regulations, every vacant post shall „be notified to the staff of that institution once the appointing authority decides that the vacancy is to be filled“. Exceptions to this rule are not in the staff regulations, but were determined by the jurisprudence. Could you explain how in the light of the jurisprudence related to article 7 of the staff regulations the appointment of Mr Selmayr without a notification of the staff can be justified? Please refer yourself to the explanations provided by the legal service of the European Parliament during the hearing“.

Commission answer:

The case-law of the EU's jurisdictions supports the possibility to transfer an official in the interest of the service, a possibility which is set out in Article 7 of the Staff Regulations. In view of the specific circumstances of the case at stake, the transfer in the interest of the service to the function of Secretary-General was the solution which best corresponded to the interest of the service.

Firstly, as regards the exercise of this discretionary power in the case at hand, the Commission did not publish the post of Secretary-General because it decided, using its broad margin of appreciation acknowledged by the case-law and also by the member of the Legal Service of the European Parliament, to follow the procedure of reassignment with post based solely on Article 7 of the Staff Regulations. Notably, as it has already been explained in the Commission's answers of 24 March, it was in the interest of the institution to avoid situations where important functions such as the ones of Secretary-General become vacant, in order to guarantee the seamless exercise of these functions, notably at this particular moment in the mandate of the Commission.

The function of Secretary-General is not a normal function at Director-General level. The tasks of the Secretary-General are described in detail in Article 20 of the Commission's Rules of Procedure, and the successful exercise of these functions notably requires the trust and confidence of the President (who is the only one who can propose a new Secretary-General). There is only a handful of senior managers in the Commission who bring all the necessary competences for this function, who are willing to take on this job (which is generally seen as one of the most demanding in the Commission) and who have at the same time the trust of the President.

In view of these circumstances, the first choice of the President of the Commission was to convince Mr Italianer to continue in this position until the end of the mandate.

When it became clear that Mr Italianer did not want to continue exercising this function, the Commission had to act without delay, taking account of the important internal and external challenges the EU is facing in this particular moment in time. To name only the most important of these challenges, the Commission has to make its

final proposals under the political guidelines by end of May as foreseen by the Commission Work Programme, must propose by early May 2018 the next Multiannual Financial Framework and negotiate it, must deal with Brexit (with only one year remaining) and with other daily challenges to the multilateral rules-based international order.

Accordingly, the Commission could not allow for any disruption to its work, but had to ensure a smooth and swift handover to someone who is already fully familiar with the political priorities of the President and the working methods of the institution. For these reasons, the Head of Cabinet of the President was an obvious choice for the President as Secretary-General since he is familiar with all relevant files and can immediately resume the work. For the same reasons, the College of Commissioners unanimously approved the proposal to transfer Mr Selmayr to this position, considering that it was in the best interest of the service.

Of course, such a choice can only be made within the limits set by the Staff Regulations. In the present case, the conditions for using the reassignment with post procedure on the basis of Article 7(1) of the Staff Regulations, as laid down in the case-law,²⁸ were fulfilled. In particular, the post corresponded to Mr Selmayr's function group and grade.

Secondly, concerning the general legal framework: as indicated by the member of the European Parliament's Legal Service, the Staff Regulations, as interpreted by the EU jurisdictions' case-law, allow for two types of "transfers": reassignment with the officials' post on the sole basis of Article 7 of the Staff Regulations and transfer "properly called" on the basis of Articles 4, 29 and 7 of the Staff Regulations.

Article 7(1) of the Staff Regulations is the legal basis for an "autonomous" concept of transfer, which is known in the case-law as "reassignment with the official's post".²⁹ This type of transfer does not give rise to a vacant post. This is in line with Article 4 of the Staff Regulations, which provides that "appointments" and "promotions" may only be used for the purpose of filling a vacant post, whereas no such requirement is laid down for "transfers".

Article 4 and Article 29(1)(a)(i) of the Staff Regulations refer to the concept of transfer "properly called", i.e. to fill a vacant post after the appointing authority has decided that the vacancy is to be filled. In such case, the appointing authority shall publish the post in accordance with Article 4, second paragraph, and thereafter use the priority set out in Article 29 (1)(a)(i) to actually transfer the colleague via Article 7(1).

In the light of the above, Article 7(1) of the Staff Regulations may be used in the context of two types of transfers: on the one hand, a transfer "*properly called*" on the

²⁸ In all the relevant judgments (see joined cases 161 and 162/80, *Carbognani and Zabetta v. Commission* C-60/80 and *Kindermann v. Commission*, 21/05/1981 to F-24/12, *BN v. Parlement*, 19/06/2014), the Court of Justice, the General Court and the Civil Service Tribunal have considered that: - When a post is not vacant, a transfer can be carried out without publication upon only two conditions: this transfer has to be done in the interests of the service and this transfer has to respect the equivalence of both grade and function. There are no references to the fact such transfer shall be done only upon an exceptional basis.

²⁹ See for example joined cases 161 and 162/80, *Carbognani and Zabetta v. Commission*, points 19 et seq. and case F-24/12, *BN v. Parliament*, point 46.

basis of Article 4 and Article 29(1)(a)(i) of the Staff Regulations, to a vacant post (in this case, Article 7(1) of the Staff Regulations is applied as a modality) and a "reassignment with the official's post" (in this case, Article 7(1) of the Staff Regulations is the sole legal basis for the transfer).

In accordance with Article 7(1) of the Staff Regulations, both transfers cited above must be done in line with two conditions expressed in a limited and exhaustive manner: (1) in the interest of the service, and (2) in compliance with the requirement that posts correspond to the official's grade.

While it is true that a serious and urgent situation – as indicated by the member of the Parliament's Legal Service – may be enough to substantiate an interest of the service in order to trigger Article 7(1) of the Staff Regulations, neither the Staff Regulations nor the case-law set this as a requirement for making use of this provision. This type of situation is certainly not a necessary condition for triggering an Article 7(1) transfer.

As indicated by the case-law, the above reading is the basis for the practice of the Commission.³⁰

It should be noted that the Staff Regulations do not establish an order of preference between these two types of transfer. The case-law has made it clear that even in case where the appointing authority has already opened a procedure on the basis of Article 29 of the Staff Regulations, it can terminate this procedure without follow-up and proceed directly with a reassignment based solely on Article 7.³¹

The case-law does not contain any reference to the fact that one procedure would be the norm and the other the exception. It is therefore for the appointing authority to decide which type of transfer it deems appropriate in order to best ensure the interest of the service, as part of its wide discretion to organise its departments to suit the task entrusted to it and to assign the staff available in the light of such tasks, on condition that the staff are assigned in the interest of the service and in conformity with the principle of assignment to an equivalent post³².

As a matter of fact, in the usual practice of the Commission, both types of transfer are widely used. It should be noted that the Commission's policy to ensure the mobility of its senior managers could not be implemented without the possibility to make use of transfers based solely on Article 7.

In the case-law it has only been considered once that the appointing authority had not acted in the interest of the service by not turning to a selection process to identify the most competent persons to exert each function. This was in the very particular circumstances of the *Guggenheim* case³³, referred to by the member of the European Parliament's Legal Service where a series of individual decisions of transfers had been

³⁰ *Kindermann/Commission*, Case 60/80, point 12. See also: *Clotuche/Commission*, T-339/03, point 31; *Guggenheim/CEDEFOP*, T-373/04, point 64; *BN/Parliament*, F-24/12, point 46.

³¹ Judgment of the Civil Service Tribunal of 13 November 2008, *Traore/Commission*, F-90/07, point 48 and the case-law cited.

³² See for example Case 69/83, 23 June 1984, *Lux v Court of Auditors*, point 17 and case F-24/12, 19 June 2014, *BN vs Commission*, point 47.

³³ Case T-373/04, *Guggenheim v. Cedefop*.

taken in the context of a reorganisation of an agency giving rise to several new assignments. Only in that case, the General Court considered that due to the very particular circumstances ((a) many parallel individual decisions to be taken (b) in a complex reorganisation matter (c) with an impact on global governance) a reassignment with the official's post without organising an internal call for interest was not suitable. This case-law is therefore the exception and not the norm and does not apply in a case involving a single individual decision.

As regards the interest of the service, the case-law shows that the concept of the interest of the service relates notably to the smooth running of the institution³⁴. It necessarily entails a case-by-case analysis depending on the circumstances of each case. The appointing authority enjoys a wide margin of discretion in this respect, as also acknowledged by the member of the European Parliament's Legal Service. As already explained above in response to question 1, nothing, whether in the Staff Regulations or in the case-law, requires the publication of a vacancy to fulfil the interest of the service. On the contrary, the appointing authority may choose the procedure it deems best to ensure that the interest of the service is met.

³⁴ Case T-13/95, *Kyrpitsis v. ESC*, para. 51 ; Case F-38/12, *BP v. FRA*, para. 140.

Question of the European Parliament:

9. *Given that Mr Selmayr's ability to do the job wasn't in question, why did Mr Oettinger spend so much time in his replies stressing over and over again Mr Selmayr's ability and qualifications - is he implying that someone of equal or perhaps even superior ability couldn't have been found through the normal process? And if not, then why wasn't the normal process used?*

Commission answer:

It was a normal process in which the Commission used, with Article 7, the same provision of the Staff Regulations as in the case of the appointment of the three previous Secretaries-General of the Commission. As indicated in replies to questions 1 to 5 and 8, the appointing authority enjoys a wide margin of discretion in case a post has to be filled and as already explained above, nothing, whether in the Staff Regulations or in the case-law, requires the publication of a vacancy to fulfil the interest of the service. On the contrary, the appointing authority may choose the procedure it deems best to ensure that the interest of the service is met.

The Secretary-General, as foreseen in Article 20 of the Commission's Rules of Procedure, shall assist the President so that, in the context of the Political Guidelines laid down by the President, the Commission achieves the priorities that it has set itself. He must therefore have the full trust of the President and of the College of Commissioners.

In the case at hand, the Commission did not publish the post of Secretary-General because it decided, using its broad margin of appreciation acknowledged by the case-law, to follow the procedure of reassignment with post on the autonomous basis of Article 7 of the Staff Regulations, in view of the specific characteristics of the function of Secretary-General and the challenges the Commission is facing at the current juncture of its mandate³⁵. A transfer in the interest of the service was clearly the option which best corresponded to the interest of the institution. The temporary exercise of the function of Secretary-General by an official with a deputising status would not have been a good solution under the current circumstances.

It must be noted in this connection that the function of Secretary-General is not a normal function at Director-General level. The tasks of the Secretary-General are in detail described in Article 20 of the Commission's Rules of Procedure, and the successful exercise of these functions notably requires the trust and confidence of the President (who is the only one who can propose a new Secretary-General). There is only a handful of senior managers in the Commission who bring all the necessary competences for this function, who are willing to take on this job (which is generally seen as one of the most demanding in the Commission) and who have at the same time the trust of the President.

³⁵ To name only the most important of these challenges, the Commission has to make its final proposals under the Political Guidelines by end of May as foreseen by the Commission Work Programme, must propose by early May 2018 the next Multiannual Financial Framework and negotiate it, must deal with Brexit (with only one year remaining) and with daily challenges to the multilateral rules-based international order.

Furthermore, it should be noted that the special competence of Mr Selmayr as well as the trust he enjoyed by the President were decisive for the College when it decided that his transfer to the position of Secretary-General on the basis of Article 7 of the Staff Regulations was in the interest of the service. This is for example explained in the press release the Commission issued on 21 February 2018, but also recorded by First Vice-President Timmermans in the minutes of the College meeting of 28 February 2018 (PV(2018)2245) of 28 February 2018):

"Mr TIMMERMANS also congratulated the current Head of Cabinet to the PRESIDENT, Mr Martin SELMAYR, who would succeed Mr ITALIANER as Secretary- General of the Commission on 1 March. The current Commission would never have achieved so much or made so much progress without Mr SELMAYR's personal and professional qualities, unwavering commitment to the European project, and sheer determination. Mr SELMAYR had faithfully served the President of the Commission to implement his political priorities and direct his cabinet as a cohesive team, fully committed to achieving the institution's objectives. Mr TIMMERMANS encouraged him to foster the same spirit within the Secretariat-General and apply the same determination to achieving the College's ten priorities."

Notably, as it has already been explained in the Commission's answers to the questionnaire of the Budgetary Control Committee of 24 March 2018, it was in the interest of the institution to avoid situations where important functions such as the ones of Secretary-General become vacant, in order to guarantee the seamless exercise of these functions.

It should be noted that since the appointment of Émile Noël as the Commission's first Secretary-General the Secretary-General position has never been vacant.

Article 11 of the Staff regulation

Question of the European Parliament:

10. Commissioner Oettinger confirmed that Mr Selmayr revised the answer to CONT questions. According to Article 11a of the Statute:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG%3A1962R0031%3A20140101%3AEN%3APDF>

« 1. An official shall not, in the performance of his duties and save as here in after provided, deal with a matter in which, directly or indirectly, he has any personal interest such as to impair his independence, and, in particular, family and financial interests.

2. Any official to whom it fall, in the performance of his duties to deal with a matter referred to above shall immediately inform the Appointing Authority. The Appointing Authority shall take any appropriate measure, and may in particular relieve the official from responsibility in this matter. »

Can the EC Explain why in these circumstances Mr Selmayr is complying with Article 11a

Commission answer:

All answers were drafted under the authority of the Commissioner for Budget and Human Resources with the support of the Directorate-General in charge of Human Resources and Security, the Commission's Legal Service and the Cabinet of the President. It was also the Commissioner for Budget and Human Resources who, in agreement with the President, approved the final version of the replies and sent them to the Budgetary Control Committee.

Mr Selmayr was only involved by Commissioner Oettinger's team in order to help making sure that the replies provided were correct, complete and comprehensively addressed the issues raised. The final responsibility for the replies always remained with Commissioner Oettinger and his team.

During the Hearing on 27 March Commissioner Oettinger already replied to this question by stating the following:

"Da viele Fragen für die Beantwortung den Input von Herrn Selmayr benötigten und wir möglichst umfassend antworten wollten, hat er bei der Erarbeitung an Teilen der Beratungen teilgenommen. Aber er hat dies nicht gemacht, um die Formulierungen zu beeinflussen, sondern um den Inhalt zu vervollständigen. Wenn eine Frage gewesen war: Ab wann wusste Martin Selmayr Bescheid? Wenn eine Frage von Ihnen ja gewesen war: Im Ablauf 2015, 2017, 2018, Januar, Februar – wann wusste er Bescheid? War doch klar, dass diese Frage und andere Fragen nur mit ihm oder gar von ihm zu beantworten gewesen war. Hätten wir geantwortet: Tut uns leid, wir wissen es nicht; wir haben zwar einen Generalsekretär, der sitzt zwar im gleichen Gebäude einen Stock höher als wir, aber wir geben keine Antwort. Da möchte ich

mal Ihre Äußerung hören. Da hätte es zu Recht Gelächter in Ihrer Reihe gegeben. Deswegen haben wir ihn einbezogen, um die Antworten umfassend leisten zu können, um den Dingen umfassend auf den Grund zu gehen."

(For translation purposes: "Since many questions required the input of Mr Selmayr in order to be answered, and since we wanted to answer as thoroughly as possible, he has taken part in part of the consultation during the drafting phase. But he has not done this in order to influence the formulation, but to complete the content. In case of a question such as: 'Since when was Martin Selmayr aware?' In case of a question from you such as: 'In the course of 2015, 2017, 2018, January, February when did he become aware? It was quite clear this question and other questions could only be answered together with him or by him. If we had answered: 'We are sorry, we don't know; we actually have a Secretary-General, who sits in fact in the same building as us, just one floor above, but we can't give you any answer'. In that case I can imagine what your reaction would have been. It would have generated laughter in your rows, and rightly so. Therefore, we have involved him, in order to provide you with complete answers and to go comprehensively to the bottom of these issues.")

Article 29 of the Staff regulations

Question of the European Parliament:

II. It was known three years ago, on his appointment that Mr Italianer was going to be retiring early in 2018. That Mr Juncker wanted him to stay on is understandable, that he would try to persuade him to change his mind right up to the last few weeks equally understandable. What is not understandable, what is not acceptable, is that no provision was made for the normal succession appointment procedure to take place. Given that Mr Italianer had confirmed his decision time and time again, why was this not done?

If the Commission had decided to appoint the new Sec Gen following a promotion procedure on the basis of Article 29 who would be the eligible staff to apply for this position?

Commission answer:

It is true, as the question of the Parliament suggests, that it was the clear preference of President Juncker and of his Head of Cabinet that Mr Italianer stayed on as Secretary-General beyond 1 March 2018 and until the end of the mandate. He and his Head of Cabinet made several attempts to convince Mr Italianer to continue in his function, and they did so until mid-February.

However, in parallel, the President had an understandable interest in guaranteeing the smooth functioning of the institution also in case Mr Italianer retired, and there were discussions and reflections on this matter since the second half of 2017 and more in detail as of early 2018. A transfer of Mr Selmayr, a senior manager with the required grade and eight years of senior management experience in the Commission and who had the necessary trust of the President, to the position of Secretary-General became one possible option in early 2018.

To ensure that such a possible transfer would be in line not only with the law, but also with Commission practice, Mr Selmayr took part, as of 31 January 2018, in a full selection procedure for the position at the level of Director-General/Deputy-Director General, even though the College could have decided to transfer Mr Selmayr directly to the position of Secretary-General; in this case, however, Mr Selmayr would not have had to participate in a full day Assessment Centre as a Commission decision called for since 2015.³⁶

In spite of having fulfilled all the formal requirements, the option for Mr Selmayr to become Secretary-General only became concrete once both First Vice-President Timmermans and Commissioner Oettinger gave their agreement to the President on 20 February 2018. Should either one of them have rejected the proposal, the President would not have proposed Mr Selmayr to the College as new Secretary-General.

The appointment of the Secretary-General was and remains a decision reserved for the

³⁶ Mr Selmayr is the first Secretary-General of the Commission who demonstrated his competence and management skills in two full day Assessment Centres, in 2014 for senior managers at Director level and in 2018 for senior managers at the level of Director-General/Deputy Director-General.

College as the appointing authority. The College of Commissioners took the decision unanimously to appoint Mr Selmayr Secretary-General on 21 February.

As to the question who would be eligible following an Article 29 procedure, the Commission refers to the answers given to questions 7, 47 and 110 of the Commission's answers to the questionnaire of the Budgetary Control Committee of 24 March 2018.

There are two formal requirements for being appointed as Secretary-General of the Commission: having the grade of AD14 or above (with a minimum of two years in the grade for AD14 officials) and a minimum of two years of management experience as a senior manager at Director level or above. Mr Selmayr fulfilled both conditions. In addition to having been appointed, in 2014 Principal Adviser, a position at Director level, in the Directorate-General Economic and Financial Affairs³⁷, Mr Selmayr has been, since February 2010, Head of Cabinet, which is considered, under Commission rules, a senior management function in accordance with the rules on the Composition of Cabinets in force since 2004 (see decisions SEC(2004)185, SEC(2010)104 and C(2014)9002) and which are contained in the annexes of the Commission's answers to the questionnaire of the Budgetary Control Committee of 24 March 2018. He was Head of Cabinet firstly for former Vice-President Reding, a function with responsibilities at Director level (2010-2014) and then for President Juncker, a function with responsibilities at Director- General level (2014 until February 2018).

³⁷ The date of effect of this appointment was 1 July 2014. Due to a clerical error, the date of 1 June 2014 appears in the reply to question 40 of the questionnaire of the Budgetary Control Committee of 24 March 2018.

Question of the European Parliament:

12 In light of the above, why wasn't Mr Oettinger informed much earlier, so he could have had the normal procedures in place?

Commission

answer:

The Commission refers to the answer given to question 11.

The President did not share this information further in order not to undermine Mr Italianer's authority while he was in office. The President and his Head of Cabinet also kept the hope to be able to convince Mr Italianer to stay on as Secretary-General beyond 1 March 2018.

Question of the European Parliament:

13 Did Commissioner Oettinger interview Mr Selmayr on 20/2/18 for the post of Deputy Secretary General or SecretaryGeneral?

Commission answer:

On 20 February 2018, Commissioner Oettinger interviewed Mr Selmayr for the post of Deputy Secretary-General.

Deputy Secretary-General

Question of the European Parliament:

14 Concerning the "candidates" at the end, we understood that the only candidate was Mr Selmayr, as Ms Clara Martinez withdrew and was rewarded with the position of Chief of Cab of Mr Juncker, how did you Mr Oettinger and the College evaluate that Mr Selmayr had the best competences to take up this role in order to respect meritocracy and best practices?

Commission answer:

The Commission disagrees with the underlying premise regarding other candidates. The Commission refers to its answers to the questions 110 and 44 of the answers to the questionnaire of the Budgetary Control Committee of 24 March 2018.

It should be kept in mind that the Secretary-General of the Commission is not an ordinary job. The position requires not only special experience with regard to the functioning of the Commission, its working methods, its decision-making process and its interinstitutional role, but also a particular level of trust that the President can place in the Secretary-General who has the legal mandate, under Article 20(1) of the Commission's Rules of Procedure of the Commission, to "assist the President so that, in the context of the political guidelines laid down by the President, the Commission achieves the priorities that it has set." In every Commission, there is thus only a handful of people at most who fulfil these special requirements, which is why the transfer of a senior manager, on the basis of Article 7 of the Staff Regulations, who is well known to and trusted by the President and the College of Commissioners has been common practice for the preceding three decisions of the Commission on the appointment of a Secretary-General of the Commission.

Accordingly, the Commission could not allow for any disruption to its work, but had to ensure a smooth and swift handover to someone who is already fully familiar with the political priorities of the President and the working methods of the institution. For these reasons, the Head of Cabinet of the President was an obvious choice for the President as Secretary-General since he is familiar with all relevant files and can immediately resume the work. For the same reasons, the College of Commissioners unanimously approved the proposal to transfer Mr Selmayr to this position, considering that it was in the best interest of the service.

On 21 February, the College decided on a series of senior management appointments, including appointing Mr Selmayr as Deputy Secretary-General.

Thereafter, Mr Italianer took the floor to inform the College that he intended to retire as of 31 March 2018. In order to ensure that the key position of Secretary-General would not be vacant, and in accordance with Article 7 of the Staff Regulations, the College, on the proposal of President Juncker and in agreement with the Commissioner for Budget and Human Resources and after consulting the First Vice-President, unanimously decided to appoint Mr Selmayr Secretary-General.

As an AD15 official, Mr Selmayr was eligible for this transfer in the interest of the service to the post of Secretary-General, which was decided unanimously by the College of Commissioners. The College considered that Mr Selmayr, an AD15 official with eight years of senior management experience, brings all the necessary qualifications to this important position.

Mr Selmayr's career is described in detail in the answer to question 40 of the answers to the questionnaire of the Budgetary Control Committee of 24 March 2018 and the relevant criteria for the function of Secretary-General are set out in the answer to question 7 of the answers to the questionnaire of the Budgetary Control Committee of 24 March 2018. In this context, the Commission would also like to refer to Article 20 of its Rules of Procedure. This Article notably provides that the Secretary-General shall assist the President so that, in the context of the Political Guidelines laid down by the President, the Commission achieves the priorities it has set and that the Secretary-General shall help to ensure political consistency by organising the necessary conditions between departments. There is no doubt that Mr Selmayr, an AD15 official with eight years of senior management experience in the Commission, has outstanding qualifications for the performance of these duties.

Question of the European Parliament:

15. Necessary qualifications and single candidate:

What are the qualifications by the one proposed candidate that no-one else in the Commission could have?

Commission answer:

Beyond the formal requirements, the candidate needs to demonstrate European commitment, have an excellent knowledge of the Commission's policies and priorities as well as of its administrative practices and procedures, have a strong background as a manager and communicator with professional experience in leading and motivating teams as well as strong analytical skills and the ability to communicate efficiently with internal and external stakeholders. Also, the Secretary-General, as foreseen in Article 20 of the Commission's Rules of Procedure, shall assist the President so that, in the context of the Political Guidelines laid down by the President, the Commission achieves the priorities that it has set itself. He must therefore have the full trust of the President and of the College of Commissioners.

The Commission also refers to what Commissioner Oettinger said in the Hearing of the Budgetary Control Committee on 27 March 2018:

"Für uns stehen zwei Fragekomplexe im Vordergrund. Der Erste: Hat der von der Kommission ernannte neue Generalsekretär die fachliche, die persönliche Qualifikation aufgrund seiner Ausbildung, aufgrund seines beruflichen Werdeganges, aufgrund seiner beruflichen Erfahrung, aufgrund seiner fachlichen Kompetenz, aufgrund seines Intellekts und aufgrund seiner charakterlichen Eignung zu seiner europäischen Einstellung? Da kann man jeder für sich eine Meinung haben. Ich kenne ihn nun seit 8 Jahren, eher länger, sehr intensiv. Und ich persönlich glaube, und mein Präsident ist davon überzeugt und die Kollegen ebenso: Er hat uneingeschränkt die fachliche und persönliche Qualifikation, die für dieses Amt und zur Erbringung der dort geforderten Arbeitsleistung notwendig ist. Bin gerne bereit hierzu andere Meinungen zu hören, darüber zu streiten, aber meine Überzeugung dazu ist gefestigt. Bringt er auch die rechtlichen Voraussetzungen mit, den Grad der Einstufung in AD, die Jahre im Seniormanagement? Ja, er bringt die notwendigen rechtlichen Voraussetzungen, dies sich aus unseren beamtenrechtlichen Regelungen ergeben, mit."

(...)

"Und da am Ende ein Bewerber blieb und der in der Bewertung von Präsident Juncker und meiner Bewertung und der von Herrn Timmermans unzweifelhaft befähigt ist – Sie sprachen, Herr Abgeordneter, von Selmayr sei hoch qualifiziert, dies teile ich, er habe Managementenerfahrung, dies teile ich – bestand aller Grund mit ihm als Vorschlag das Verfahren zu einer Ernennung zubringen."

(For translation purposes: "For us there are two core questions in the foreground. The first: Has the newly-appointed Secretary-General of the Commission the professional, the personal qualifications on the basis of his education, of his professional career, of his professional competencies, of his intellect and of his personal/moral suitability to settle in this European post? Everyone can have his/her own opinion on this. I have known him now for eight years, even more, in depth. And I personally think, and the

President is also convinced, and the colleagues as well, that he has absolutely the professional and personal qualifications that are necessary for this post and for the delivery of the work required in that context. I would be happy to hear other opinions, to have a debate on this, but my conviction here is firm. Does he also meet the legal requirements, the grade in the AD classification, the years in senior management? Yes, he has the necessary legal requirements that are foreseen in our Staff Regulations.

(...)

"And in the end he remains an applicant, an applicant who, according to the assessment of President Juncker, of my assessment and that of Mr Timmermans, is undoubtedly capable (Honourable Members, you said that Selmayr is highly qualified, and I agree, that he has management experience, and I agree), which gave all the reasons to propose his appointment in this procedure."

Question of the European Parliament:

- 16** *In your written answer to CONT committee you stated that "no one from the President's Cabinet was involved in the procedure in any way". Given that the candidate who withdrew was a member of that Cabinet, how can this be true?*

Commission answer:

When Mr Selmayr applied as Deputy Secretary-General, arrangements were made by the Directorate-General for Human Resources and Security to ensure that no member of the President's Cabinet was involved in the procedure, namely in the committees and panels that had to assess whether Mr Selmayr had the required experience and competences. The purpose was to exclude any conflict of interest. The rules on conflict of interest would not have excluded a member of the President's Cabinet from applying for the post, which was published across the Commission and was thus open to all senior Commission officials. For data protection reasons, the Commission cannot disclose the identity of the second candidate.

Question of the European Parliament:

- 17** *Was the candidate who withdrew subsequently promoted to Mr Selmayr's position?*

Commission answer:

For data protection reasons, the Commission cannot disclose the identity of the other candidate.

Communication:

Question of the European Parliament:

- 18** *Why did Mr. Selmayr edit his wikipedia page in December 2017? Does this indicate he was aware of a potential vacancy in the post of Secretary-General before Mr. Italianer's retirement became concrete on 20 February 2018?*

Commission answer:

During the Christmas break, friends, colleagues and family members pointed Mr Selmayr to inaccurate information about him on Wikipedia. It was, for example, wrongly claimed that Mr Selmayr was a member of Chancellor Merkel's CDU (the German Christian Democratic party) – a party to which he has never belonged; he is, in fact, since 2014 a member of the Flemish Christian Democrats in Belgium, where he lives. Mr Selmayr was also described as catholic, even though he is protestant. Several points on his CV and relating to his work were also inaccurate; for example, they gave the impression that his job in the Commission consisted primarily of the Brexit negotiations, even though this was not the case. Mr Selmayr therefore contacted the Wikipedia team who asked him to verify, by providing an official e-mail address, that he really was Mr Selmayr, Head of Cabinet of President Juncker. In direct interaction with a Wikipedia editor, who checked and verified all information provided by Mr Selmayr and ensured that it is properly referenced, the entries relating to his person and his job were partly, even though not entirely adjusted. For example, the English Wikipedia page continues to state that Mr Selmayr is catholic.

The interaction with Wikipedia was unrelated to the later appointment of Mr Selmayr as Secretary-General of the Commission.

Question of the European Parliament:

19. Mr. Juncker has been reported as saying that “if [Selmayr] goes, I go.” Can the Commission clarify whether Mr. Juncker was referring only to his role as the President of the Commission, the entire college of Commissioners, or indeed whether these remarks were an attempt at humour, rather than a serious threat?

Commission answer:

The European Commission is not in a position to clarify alleged comments made. The Commission refers to what President Juncker stated when asked about this during a press conference after the European Council (on 23 March), when he stated that he has no intention to ask Mr Selmayr to step down as Secretary-General.

Question of the European Parliament:

20. Le Soir article of 27 March 2018:

Did Mr. Juncker ask Mr. Selmayr to consider the post of Secretary General before Christmas 2017? As according to the quote from Le Soir on 27 March 2018: « Juncker m’a dit avant Noël qu’il allait falloir y aller, il m’a dit de réfléchir. J’ai su pendant le voyage de la présidence [bulgare] à Sofia (qui a eu lieu les 11 et 12 janvier, NDLR), que cela allait arriver.»?

Commission answer:

First of all, it should be recalled that it was the clear preference of President Juncker and of his Head of Cabinet that Mr Italianer stayed on as Secretary- General beyond 1 March 2018 and until the end of the mandate. Even though Mr Italianer had expressed his intention in 2015 to only stay until March 2018, President Juncker and his Head of Cabinet kept the hope that he would in the end stay beyond that date. They made several attempts to convince Mr Italianer to stay on, and they did so until mid-February.

However, in parallel, the President had an understandable interest in guaranteeing the smooth functioning of the institution also in case Mr Italianer stayed firm and retired in March 2018. This is why the possible succession to Mr Italianer was discussed between the President, Mr Selmayr and Mr Italianer repeatedly in the second half of 2017 and in more detail as of early 2018. All of them reflected on this for several months.

A transfer of Mr Selmayr, a senior manager with the required grade and eight years of senior management experience in the Commission and who had the necessary trust of the President, to the position of Secretary-General was one possible option since early 2018. However, in spite of having fulfilled all the formal requirements, the option for Mr Selmayr to become Secretary-General only became concrete once both First Vice- President Timmermans and Commissioner Oettinger gave their agreement to the President on 20 February 2018. Should either of them have rejected the proposal, the President would not have proposed Mr Selmayr to the College as new Secretary-General.

The appointment of the Secretary-General was and remains a decision reserved for the College as the appointing authority. The College of Commissioners took the decision unanimously to appoint Mr Selmayr Secretary-General on 21 February.

Question of the European Parliament:

21. How does Commissioner Oettinger assess his communication performance? Is there anything he did wrong? Did the EC do anything wrong? Did the Spokesperson and communication team commit serious errors?

Commission answer:

The Commission upholds the open and transparent manner in which we communicate. We continue to encourage the press and the public to hold the Commission to account, for example through its unique and public daily midday briefings or when Commissioners participate in public hearings organised by the European Parliament. It is in this spirit that the Commission, including via the Spokesperson's Service, has replied factually, to the best of its knowledge and comprehensively to all questions asked – with the exception of not providing personal information as required by rules on the protection of personal data. That being said, the Commission will continue to do its utmost to further improve its communication work, taking into account new developments in the media landscape and in reporting about European issues, notably with regard to social media where the Commission sees a continued need to strengthen its communication capacities.

Commissioner Oettinger answered openly and truthfully in a straight-forward manner on the questions put to him both at the Plenary and the Hearing of the Budgetary Control Committee. When it comes to the last part of the questions he said:

"Und ich glaube es kann – Stand heute – niemand über den Ablauf der letzten Wochen sehr glücklich sein. Aber prüfe ein jeder, welchen Betrag er geleistet hat und leisten will zur Versachlichung der Debatte beizutragen – zur Versachlichung, nicht zur Harmonisierung, zur Versachlichung beizutragen und Schärfeherauszunehmen."

(For translation purposes: "And I believe that, as it stands today, nobody can feel very happy about how the last weeks went. But everyone should examine what contribution they have made or want to make in order to render this debate more fact-based – to make it more objective, not to harmonise it, to bring more objectivity and focus/clarity.")

Acknowledging that the rules for appointing senior management staff are complex, it might have been useful to immediately offer to the press a Frequently Asked Questions (FAQ)-Memo and/or a detailed technical briefing with experts from the Human Resources department and the Legal Service about the relevant provisions of the Staff Regulations and other pertinent Commission rules (including about the different appointment procedures, the eligibility requirements etc.).

Question of the European Parliament:

22. Did the spokesperson lie regarding the number of candidates on 26th February at the EC midday briefing? On 26/02/2018 during the 55 minutes press conference on the Selmayrgate, why did the spokesperson hide the truth to journalists on the number of candidates?

Why so many different replies? First many candidates, less than 4, 2 and 1 at the end) because the other Candidate Clara Martinez has withdrawn her candidature before the end of the process to be rewarded as Juncker Chief of Cab

Please listen to EC Spokesperson to minutes 12, 26, 34 et 45:

<https://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=I151207>

Commission answer:

The Commission's Spokesperson's Service has always replied factually, to the best of its knowledge and comprehensively to all the questions asked during multiple midday briefings.

That being said, we acknowledge the need to further strengthen our communication work, to be more pedagogic when explaining complicated issues, to bring experts to the press room when special legal or technical expertise is required to respond to the questions of journalists, and to be more attentive to views and information spread via social media.

Question of the European Parliament:

23. On the 11th of February a set of pictures of Martin Selmayr was upload on the European Commission website (around 70 photos, later reduced to around 20 photos). According to media reports, quoting internal sources, Mr Selmayr himself asked the Audiovisual services to upload the pictures. Why the pictures were uploaded 10 days before the appointment (9 days before interview with Oettinger, 5 day before interview by Consultative Committee on Appointments, 4 days before Assessment Centre) if Martin Selmayr was not sure to get the position of Deputy Secretary General and then Secretary General?

(NB: Alexander Winterstein confirmed on twitter that the pictures where uploaded with the captions "Head of cabinet", then modified with the caption "Secretary General, on February 11)

Commission answer:

The photos were made available for public perusal in response to frequent requests because the last publicly available pictures of Mr Selmayr on the Commission's audiovisual library dated back to 2004. Whilst Mr Selmayr was therefore aware that some updated pictures would eventually be uploaded for public perusal, he himself never asked the Commission's audiovisual service to upload the pictures nor was he in control of the timing. In fact, some of the photos initially uploaded were put online by mistake and against his agreement.

The Commission confirms that the photos were uploaded with the captions "Head of Cabinet of Jean-Claude Juncker" on 11 February. The captions were then adapted by the Commission's audiovisual service to "Secretary-General" on 1 March 2018.

Articles 12 and 17 of the Staff regulations

Question of the European Parliament:

24 *Wie der Spiegel am 09.09.2017 berichtete, hat Martin Selmayr dem Korrespondenten Peter Müller gegenüber gesagt: „Wenn ich dich damals getroffen hätte, hätte ich dir in die Fresse gehauen. Arschlöcher machen Arschlochjournalismus; du wirst von mir nie wieder irgendeine Information bekommen.“*

Hält die Kommission diese Äußerungen für unschädlich für Martin Selmayrs damaliges Amt als Kabinettschef des Kommissionspräsidenten?

Falls die Kommission diese Äußerungen nicht für unschädlich hält, warum wurde keine Untersuchung wegen Verstoßes gegen Artikel 12 des Beamtenstatus der Europäischen Union eingeleitet?

Commission answer:

The Commission refers to the reply given by Commissioner Oettinger during the Hearing of 27 March 2018. The Commission is not in a position to confirm the alleged comments. Mr Selmayr has rejected the allegations, as also recorded in the article quoted in the question³⁸.

³⁸ SPIEGEL (37/2017), 9 September 2017, p. 142; BILD Zeitung, 11 September 2017, p.2.

Question of the European Parliament:

25 *Herrn Selmayrs oben zitierte Äußerungen lassen eindeutig darauf schließen, dass Herr Selmayr vertrauliche Informationen an Herrn Müller weitergegeben hat. Im Zuge der Befragung von Herrn Kommissar Oettinger im CONT-Ausschuss des Europäischen Parlaments am 27.03.2018 zur Personalentscheidung der Europäischen Kommission, Herrn Selmayr zum Generalsekretär der Europäischen Kommission zu befördern, habe ich sinngemäß folgende Frage an Herrn Kommissar Oettinger gerichtet: Verstößt die Weitergabe von vertraulichen Informationen von Beamten der Europäischen Union an Journalisten gegen Artikel 17 des Beamtenstatuts?*

Die Antwort von Kommissar Oettinger lautete im Wortlaut: „Der Kontakt zur Presse besteht immer aus Informationen. Aber ich habe nicht Grund zur Annahme, dass die Vertraulichkeit dabei verletzt wurde, sondern die Verschwiegenheitspflicht eines Beamten einzuhalten ist und eingehalten wird.“

Bezugnehmend auf diese Antwort von Kommissar Oettinger stelle ich fest, dass er meine Anfrage nicht beantwortet hat. Daher stelle ich nochmals die Frage: Verstößt die Weitergabe von vertraulichen Informationen von Beamten der Europäischen Union an Journalisten gegen Artikel 17 des Beamtenstatuts der Europäischen Union?

Wenn es der Fall ist, dass der Europäischen Kommission und seinen Mitarbeitern laut den im Artikel 17 des Beamtenstatuts festgelegten Regelungen untersagt ist, vertrauliche Informationen an Journalisten weiterzugeben: Weshalb wurde keine Untersuchung gegen Herrn Selmayr eingeleitet, nachdem bekannt wurde, dass dieser vertrauliche Informationen an Herrn Müller weitergegeben hat? Wurde dies in Erwägung gezogen und wenn ja, warum wurde keine Untersuchung eingeleitet?

Commission answer:

The Commission does not agree with the underlying assumption of this question, namely that confidential information was disclosed

Mediastrategy:

Question of the European Parliament:

26 *Why is there an absence of media strategy of the Commission to deal with the political fallout of the decision to appoint of Mr. Selmayr?*

Commission answer:

The Commission upholds the open and transparent manner in which we communicate. We continue to encourage the press and the public to hold the Commission to account, for example through its unique and public daily midday briefings or when Commissioners participate in public hearings organised by the European Parliament. It is in this spirit that the Commission, including via the Spokesperson's Service, has replied factually, to the best of its knowledge and comprehensively to all questions asked – with the exception of not providing personal information as required by rules on the protection of personal data. That being said, we acknowledge the need to further strengthen our communication work, to be more pedagogic when explaining complicated issues, to bring experts to the press room when special legal or technical expertise is required to respond to the questions of journalists, and to be more attentive to views and information spread via social media. The Commission has honestly and openly provided comprehensive answers to all questions asked by members of the Budgetary Control Committee as well as members of the press.

The Commission also refers to what Commissioner Oettinger said in the Hearing of the Budgetary Control Committee on 27 March 2018:

"Und ich bin auch bereit, nach dem heutigen Tag jederzeit weitere Fragen zu beantworten, schriftlich oder auch bilateral oder auch in vergleichbaren Ausschuss- Sitzungen."

(For translation purposes: "And I am also willing after today to answer any question anytime, whether in writing, or bilaterally, or in similar committee sessions.")

Question of the European Parliament:

- 27. How does the Commission reflect on their estimation of public interest in the appointment? What are lessons learned for the Commission? How do the lessons learned relate to the expressions of the spokespersons of the Commission that journalists and elected representatives should concern themselves with more important issues?**

Commission answer:

As Commissioner Oettinger confirmed to the European Parliament's Budgetary Control Committee on 27 March, the Spokesperson – when referring in a Tweet to the particular interest of the "Brussels bubble" in the appointment by the College of Commissioners of Mr Selmayr – had expressed his personal opinion, not the position of the Commission. The Commission's approach to the matter is one based on respect and full cooperation towards the interested public, the European Parliament, and this Committee in particular. This is evidenced by the comprehensive, detailed and timely replies provided to the European Parliament, both in writing and in person by Commissioner Oettinger, as well as to members of press. That being said, we acknowledge the need to further strengthen our communication work, to be more pedagogic when explaining complicated issues, to bring experts to the press room when special legal or technical expertise is required to respond to the questions of journalists, and to be more attentive to views and information spread via social media.

The Commission also refers to what Commissioner Oettinger said in the Hearing of the Budgetary Control Committee on 27 March 2018:

"Und ich bin gerne interessiert daran, mit dem von mir vorgeschlagenen runden Tisch einmal über Verbesserungen für alle Institutionen nachzudenken. Und ich glaube es kann – Stand heute – niemand über den Ablauf der letzten Wochen sehr glücklich sein. Aber prüfe ein jeder, welchen Betrag er geleistet hat und leisten will zur Versachlichung der Debatte beizutragen – zur Versachlichung, nicht zur Harmonisierung, zur Versachlichung beizutragen und Schärfefeherauszunehmen."

(...)

"Wenn wir zu einem Zeitpunkt X in diesem Jahr einen round table veranstalten sollten, an dem alle Institutionen teilnehmen – denn die Staff Regulations gelten für alle europäischen Institutionen, nicht für die Kommission allein, für alle –, dann wäre ich gerne bereit einmal mit klugen Köpfen aller Gremien und meinen klugen Fachleuten über die geltenden Regeln nachzudenken, um zu prüfen ob gegebenenfalls Anlass für Änderungen, Erweiterungen, Konkretisierungen besteht. Da können Sie auf mich zählen und da könnte man gerne einmal einen round table entsprechend gemeinsam veranstalten."

(For translation purposes: "And I am also interested, in the round table that I proposed, first of all in reflecting upon the improvements for all institutions. And I believe that, as it stands today, nobody can feel very happy about how the last weeks went. But everyone should examine what contribution they have made or want to make in order to render this debate more fact-based – to make it more objective, not to

harmonise it, to bring more objectivity and focus/clarity."

(...)

"Should we, at a certain point in time this year, organise a round table, in which all institutions take part (because the Staff Regulations apply to all institutions, not only to the Commission), then I would be ready first of all to pick the brain of everybody here and of my experts to reflect upon the applicable internal rules in order to check whether there is possibly a scope for modifying them, broadening them or making them more concrete. You can count on me, we can with pleasure organise together a round table on this.")

Question of the European Parliament:

- 28 *The Commission continues to insist that the criticism on the procedure and nomination of Mr Selmayr is excessive. She seems to continue to deny the impact this case will have on the credibility of and trust in the institutions. Furthermore, she dedicates the unrest to the reactions from the different political groups from the European Parliament. However, the extensive national and international media coverage of the issue just after the hearing, as well as the motion that has been submitted in Dutch Parliament, shows that it is a highly sensitive matter that does not escape the public eye. Does the Commission acknowledge that the process of the appointment of Mr Selmayr caused serious reputational damage to the EU institutions? If not, on what grounds? How the Commission does believes it can repair this damage?*

Commission answer:

The Commission does not agree with the premise underlying this question. The decision of the College was taken unanimously, in full compliance with the Staff Regulations and the Commission's Rules of Procedure.

The Commission also refers to the answers to the questions 69, 70 and 71 of the answers to the questionnaire of the Budgetary Control Committee of 24 March 2018.

Collegiality:

Question of the European Parliament:

29. How can the principle of collegiality be ensured if the senior management appointments are presented directly to the College on the same day that (in fact some minutes before) the College decides on them?

Commission answer:

The Commission would like to recall Article 6(5) of its Rules of Procedure, which states that the Commission may, on a proposal from the President, discuss any question which is not on the agenda or for which the necessary documents have been distributed late.

The College of Commissioners consists of experienced politicians, who take important decisions every week, including on files which are added late to the agenda. Every Commissioner may ask for the postponement of an item.

In accordance with normal practice, and in order to safeguard the necessary degree of confidentiality, senior management appointments at Director-General or Deputy Director-General level are presented directly to the College on the same day that the College decides on them.

The Commissioner responsible for Budget and Human Resources presents the proposals in agreement with the President and after consulting the recruiting Commissioner and the relevant Vice-President(s). This was the procedure applied for all the appointments and transfers in the senior management appointments and transfers decided by the College of Commissioners on 21 February 2018.

When during the College meeting on 21 February 2018, President Juncker proposed to appoint Mr Selmayr Secretary-General, all Members of the Commission agreed unanimously.

The "fake procedure"

Question of the European Parliament:

30. Did the European Commission arrange a "fake procedure" knowing from the beginning that M. Selmayr would have been appointed Secretary General?

Commission answer:

The Commission does not agree with the premise underlying this question. The decision was taken by the College of Commissioners in full compliance with the Staff Regulations and the Commission's Rules of Procedure. It was taken on 21 February 2018 on the proposal of the President in agreement with the Commissioner for Budget and Human Resources and after consultation of the First Vice-President. Should either of them have rejected the proposal, the President would not have proposed Mr Selmayr to the College as new Secretary-General.

The appointment of the Secretary-General was and remains a decision reserved for the College as the appointing authority. The College of Commissioners took the decision unanimously to appoint Mr Selmayr Secretary-General on 21 February.

As an AD15 official holding a senior management function, Mr Selmayr was eligible for the post of Secretary-General and could have been transferred by a decision of the College using the Article 7 procedure. Article 7 of the Staff Regulations states: "*The Appointing Authority shall, acting solely in the interest of the service and without regard to nationality, assign each official by appointment or transfer to a post in his function group which corresponds to his grade.*" Article 5 of the Staff Regulations defines three function groups: Administrators (AD), Assistants (AST) and Secretaries/Clerks (AST/SC). Annex 1 of the Staff Regulations specifies that functions at the level of Director-General can be filled at grade AD15 or grade AD16. Mr Selmayr is an official in the AD function group with the grade AD15. He would, therefore, have been eligible for a transfer to the function of Secretary-General in accordance with Article 7 without having been appointed to the function of Deputy Secretary-General. While it is not the Commission's practice to transfer Directors in grade AD15 to Director-General posts under Article 7, legally the College could have decided to do so in view of the specific circumstance of the case, which would have justified such a decision.

Question of the European Parliament:

3L. On the 31st of January, the college appointed Paraskevi Michou as new Director-General for Migration and Home Affairs. It was well known at that time that a major reshuffle of DG and deputies was in the pipeline. Why you decided to anticipate the appointment of Paraskevi Michou, taking effect on the March 1, if not to free the position of deputy Secretary General for Martin Selmayr?

(NB: Alexander Winterstein denied that the appointment of Michou was related to the appointment of Selmayr)

Commission answer:

The transfer of Ms Michou took place at the request of the First Vice-President Timmermans and Commissioner Avramopoulos in agreement with Commissioner King. The Commission refers to the minutes of the College meeting of 31 January 2018 (PV(2018) 2241, p. 11 and 12) which state, “*The Commission proposed to appoint [Ms MICHOU] as Director-General of DG Migration and Home Affairs, with effect from 1 March 2018. Ms MICHOU was one of the key figures behind the Commission’s global response to the migration crisis, in particular coordinating numerous initiatives and steering its crisis management on migration in the different departments. In her new role as Director-General, she would work directly with Mr AVRAMOPOULOS, the Member of the Commission responsible for migration, home affairs and citizenship, Sir Julian KING, the Member of the Commission responsible for the Security Union, and Mr TIMMERMANS, First Vice-President of the Commission, responsible for better regulation, interinstitutional relations, the rule of law and the Charter of Fundamental Rights. Mr OETTINGER stressed that Ms MICHOU was in effect immediately to assume responsibility for the work under way on reform of the European asylum system provided for by the ‘Dublin III’ regulation. This fundamental reform to ensure the proper functioning of the Schengen area would be on the agenda of the European Council in June and must first be examined by the European leaders at their informal meeting in May [...]. Mr OETTINGER stressed that these two appointments would ensure the continuity of senior management in the crucial area of migration and home affairs.*”

Question of the European Parliament:

32 How long did it actually take for all the above appointments to be made?

Commission answer:

The duration of individual agenda items is not recorded in the minutes. The meeting lasted from 9h35 to 10h19. The decision of the College of Commissioners was unanimous.

As to the written questions transmitted to the Commission on 20 March 2018

Question of the European Parliament:

33 Question number 11 and 17

M Juncker made four (4) proper press conferences in the press room of the European Commission during his tenure. The first one was the week after taking office (the 4 of November 2014). The second one was the day after the Brexit referendum. The third was the week before Martin Selmayr appointment. The fourth was on Martin Selmayr appointment. How can you say that the press conference was convened "without prejudice to further decisions taken by the Commission"?

As M. Oettinger attended the college meeting on the 21st of February could he inform the Parliament on how long it took for the appointment of M. Selmayr as Deputy Secretary General and other Officials as Director Generals and deputies, for the resignation of Alexander Italianer and finally the appointment of M. Selmayr as Secretary General? Four (4) minutes? More? How long?

Commission answer:

The question gives a very incomplete account of the press conferences given by President Juncker. Since the beginning of the mandate, President Juncker has given 15 press conferences in the Commission press room, 59 VIP press corners, participated in 48 European Council and other Summits press conferences and in 58 press conferences outside Brussels and in Strasbourg, bringing the total number of press appearances by the President to 180.

The press conference on 21 February was convened without prejudice to the decisions to be taken because President Juncker wanted to present the entire set of senior management appointments which were and are instrumental for him and the Juncker Commission to deliver on its outstanding priorities effectively and with continuity until the end of the mandate of this Commission. It was always the President's intention to assume the political responsibility and present the outcome of the College meeting, irrespective of the decisions taken there.

The duration of individual agenda items is not recorded in the minutes. The meeting lasted from 9h35 to 10h19. The decision of the College of Commissioners was unanimous.

Question of the European Parliament:

34 Questions 12 and 46

Would M. Oettinger say that in the interest of the service (under art. 7 of the Staff regulation) the European Commission could decide whatever it wants?

Commission answer:

No. The Commission cannot decide whatever it wants since it is bound by the conditions set out in Article 7 of the Staff Regulations.

As mentioned under reply to questions 1 to 5 and 8, concerning the interest of the service, the case-law shows that the concept of the interest of the service relates notably to the smooth running of the institution³⁹. It necessarily entails a case-by-case analysis depending on the circumstances of each case. The appointing authority enjoys a wide margin of discretion in this respect, as also acknowledged by the member of the Legal Service of the European Parliament. As already explained in response to question 1, nothing, whether in the Staff Regulations or in the case-law, requires the publication of a vacancy to fulfil the interest of the service. On the contrary, the appointing authority may choose the procedure it deems best to ensure that the interests of the service are met.

However, when it comes to the protection of the rights and legitimate interests of the officials concerned, decisions to reassign – like transfers – are subject to the rules contained in Article 7(1) of the Staff Regulations insofar as, *inter alia*, the reassignment of officials may take place only in the interest of the service and in conformity with the principle of equivalence of posts⁴⁰.

While the Commission as the appointing authority enjoys a wide margin of discretion when it comes to Article 7 transfers, such decisions are open to judicial review by the EU jurisdictions to ensure their lawfulness. However such a judicial review must be confined to the question of whether the Commission has remained within the reasonable limits of the requirements of the interest of the service and has not used its discretion in a manifestly wrong way. The Court cannot therefore substitute its assessment of the merits and qualifications of the candidates for that of the appointing authority where there is nothing in the file to suggest that, in assessing those merits and qualifications, the authority in question committed a manifest error⁴¹.

It should be kept in mind that the Secretary-General of the Commission is not an ordinary job. The position requires not only special experience with regard to the functioning of the Commission, its working methods, its decision-making process and its interinstitutional role, but also a particular level of trust that the President can place in the Secretary-General who has the legal mandate, under Article 20(1) of the Commission's Rules of Procedure, to "assist the President so that, in the context of the political guidelines laid down by the President, the Commission achieves the priorities

³⁹ Case T-13/95, *Kyrpitsis v. ESC*, para. 51 ; Case F-38/12, *BP v. FRA*, para. 140

⁴⁰ Case T-118/04 and T-134/04, *Caló v Commission*, para.99

⁴¹ Case T-120/01 and T-300/01, *De Nicola v. EIB*, para. 83-86

that is has set." In every Commission, there is thus only a handful of people at most who fulfil these special requirements, which is why the transfer of a senior manager, on the basis of Article 7 of the Staff Regulations, who is well known to and trusted by the President and the College of Commissioners has been common practice for the preceding three decisions of the Commission on the appointment of a Secretary- General of the Commission.

Question of the European Parliament:

35 Question 18

Could Mr Oettinger confirm that the procedure of the appointment of the deputy Secretary General would have been invalid with just one applicant at the beginning of the procedure?

Commission Answer:

A procedure with only one applicant is valid under the Staff Regulations. The Commission refers to the answers given to questions 19 and 22 of the answers given to the questionnaire of the Budgetary Control Committee of 24 March 2018.

There is no legal obligation to close the procedure because there is only one candidate if the Consultative Committee on Appointments considers that this candidate meets the necessary qualifications. Even though it is an objective of the Commission to have lists adopted by the Consultative Committee on Appointments which offer a satisfactory choice of candidates, it happens that there is only one candidate who applies for a senior management vacancy or that there is only one qualified candidate left by the end of the procedure when the proposal is made to the College.

There is no legal obligation to close the procedure if one or more candidates withdraw their application at any stage of a selection procedure if the Consultative Committee on Appointments considers that the only candidate remaining is suitably qualified for appointment. This does not lead to reopening the procedure. Once the deadline for applications has expired, the procedure cannot be reopened for new applications. The procedure continues as normal with the remaining candidates. When candidates withdraw their application, they are not required to give any reason or justification for their withdrawals.

Question of the European Parliament:

36 Question 36

In the answer to question 36 of the questionnaire, the Commission claims that no publication was needed to appoint Mr. Selmayr to the post of Secretary General. During the hearing, an official from the legal service of the European Parliament contradicted this claim and explained that a transfer to another post is only possible if a post is vacant. According to article 4 of the staff regulations, every vacant post shall „be notified to the staff of that institution once the appointing authority decides that the vacancy is to be filled“. Exceptions to this rule are not in the staff regulations, but were determined by the jurisprudence. Could you explain how in the light of the jurisprudence related to article 7 of the staff regulations the appointment of Mr Selmayr without a notification of the staff can be justified? Please refer yourself to the explanations provided by the legal service of the European Parliament during the hearing“.

Commission answer:

The Commission does not agree with this interpretation. For the correct legal interpretation, see reply to question 1.

Question of the European Parliament:

37. Question 53

Would M. Italianer have lost his retirement rights or a management step if he would have stepped down on March 1?

Commission answer:

We understand that this question concerns the consequences of a retirement of Mr Italianer on 1 March 2018. In this case, he would not have lost any of his pension rights (retiring on 31 March 2018 rather than 28 February 2018 had no impact on his pension). Mr Italianer did not get another management step during the period from 1 to 31 March 2018.

Question of the European Parliament:

38 Question 53 and 58: Did Mr. Italianer get another management step during his on-month-hors-class-Adviser-post?

Commission answer:

Mr Italianer did not get another management step during the period from 1 to 31 March 2018.

Question of the European Parliament:

39. Question number 55

During the current mandate, how many requests to continue to work beyond the aged of 65 were denied?

Commission answer:

During the current mandate, 16 senior management officials made requests to continue to work beyond the age of 65. All the requests submitted to the appointing authority were granted.

Question of the European Parliament:

40. Question 55 referred to „the Package“ and the Prolongation of several director generals beyond their retirement age. The Commission states in its answer that this Prolongation was „in the interest of the service“. Could the Commission please explain „the interest of the service“ in these cases?

Commission answer:

The senior management decisions were intended to ensure an appropriate overall balance between renewal and continuity. Taking account of the challenges ahead in the respective areas, the portfolio Commissioners, Vice-Presidents and the President wished to continue drawing on the experience and expertise of the Directors-General concerned and to continue to benefit from the stability and continuity of their leadership within the departments.

Question of the European Parliament:

41. Question 73

Was VP Kristalina Georgieva aware of M. Italianer intention to step down on the 1 of March 2018?

Commission answer:

No, Vice-President Georgieva was not aware of Mr Italianer's intention.

President Juncker explained during his press conference on 21 February that when agreeing to become Secretary-General in 2015, Mr Italianer had told the President that he intended to retire soon after 1 March 2018. The President discussed this information with his Head of Cabinet, like all important senior management matters. The President did not share this information further in order not to undermine Mr Italianer's authority while he was in office.

Even though Mr Italianer had expressed his intention in 2015 to only stay until March 2018, President Juncker and his Head of Cabinet kept the hope that he would in the end stay beyond that date and until the end of the mandate. They made several attempts to convince Mr Italianer to continue in this position, and they did so until mid-February.

Question of the European Parliament:

42 Question 80 and Question 81: Vice-president Timmermans and Commissioner Oettinger: Did they know before the Meeting of the College that Mr. Italianer will retire in this same Meeting?

Commission answer:

On 20 February, Commissioner Oettinger was informed by President Juncker about the decision of Mr Italianer to submit his retirement letter the next morning (21 February) and that consequently he would propose that Mr Selmayr be transferred to the post of Secretary-General. Commissioner Oettinger expressed his full agreement and the proposal was then unanimously agreed by the College of Commissioners on 21 February.

The President had also consulted First Vice-President Timmermans on this proposal on 20 February who had given his agreement. The President consulted the First Vice-President, as he consults him on all important decisions of the Commission, in view of the special role he plays in the set-up of the Juncker Commission. The First Vice-President also has a special relationship with the Secretary-General in view of his responsibility notably for institutional matters, Better Regulation and the Commission Work Programme.

Question of the European Parliament:

43 Question 97, the Commission has informed us that Mr. Italianer's retirement only became "concrete" on 20 February 2018. However, Le Soir reported on 27 March 2018 that Mr. Selmayr was asked to think about the position of Secretary-General but Mr. Juncker in December 2017.

Can the Commission clarify the apparent contradiction between their answer to question 97 and this media report

Commission answer:

First of all, it should be recalled that it was the clear preference of President Juncker and of his Head of Cabinet that Mr Italianer stayed on as Secretary-General beyond 1 March 2018 and until the end of the mandate. Even though Mr Italianer had expressed his intention in 2015 to only stay until March 2018, President Juncker and his Head of Cabinet kept the hope that he would in the end stay beyond that date. They made several attempts to convince Mr Italianer to continue in this position on, and they did so until mid-February.

However, in parallel, the President had an understandable interest in guaranteeing the smooth functioning of the institution, especially in case Mr Italianer decided to retire in March. This is why the possible succession to Mr Italianer was discussed between the President, Mr Selmayr and Mr Italianer repeatedly in the second half of 2017 and in more detail as of early 2018. All of them reflected on this for several months.

A transfer of Mr Selmayr, a senior manager with the required grade and eight years of senior management experience in the Commission and who had the necessary trust of the President, to the position of Secretary-General was one possible option since early 2018. However, in spite of having fulfilled all the formal requirements, the option for Mr Selmayr to become Secretary-General only became concrete once both First Vice-President Timmermans and Commissioner Oettinger gave their agreement to the President on 20 February 2018. Should either of them have rejected the proposal, the President would not have proposed Mr Selmayr to the College as new Secretary-General.

The appointment of the Secretary-General was and remains a decision reserved for the College as the appointing authority. The College of Commissioners took the decision unanimously to appoint Mr Selmayr Secretary-General on 21 February.

Question of the European Parliament:

44 Question 106

In its answer the Commission stated that "no one from the President's Cabinet was involved in the procedure in any way". How can the Commission make such an assertion since the other candidate to the post of Deputy Secretary General was a member of the Cabinet?

Commission answer:

Please see answer to question 16.

Question of the European Parliament:

45 Question 121

Is it normal that the Secretary General goes to a meeting of the EPP leaders, as Martin Selmayr did on March 23? Did Alexander Italianer went ever to a meeting of the EPP?

NB: Alexander Winterstein said that Mr Selmayr went to the EPP meeting to update the President on the Trade issues evolving that day. Since Clara Martinez Alberola was present, is Selmayr exercise the de facto role of Head of Cabinet? How can Selmayr lead a 33.000 officials administration and, at the same time, be the de facto President's Head of Cabinet?

Commission answer:

Commissioner Oettinger explained that Mr Selmayr accompanied the President to the EPP meeting of 22 March to advise him in real time about the agenda of the European Council which was permanently evolving on this day because of important geopolitical developments, notably with regard to the trade relations with the US and developments with regard to Russia and Turkey.

The President decides who accompanies him during his work day, depending on the context and the needs of the President to be always informed, advised and briefed in real time. It must be noted that in accordance with Article 20 of the Commission's Rules of Procedure, the Secretary-General assists the President in implementing his political priorities. This notably includes the preparation of the President's participation in the European Council where the Secretary-General of the Commission is the only Commission official who accompanies the President into the meeting room.

On 22 March, Mr Selmayr accompanied the President, together with the Head of Cabinet of the President, in the car to the venue of the EPP leaders meeting (which directly preceded the European Council meeting), to brief him about the latest developments on trade. He did not enter the meeting room (which was reserved for leaders and elected party officials), but waited outside together with senior advisers, ambassadors and sherpas of other EU leaders. Several journalists were also present in the very same waiting room. Mr Selmayr joined the President again afterwards in the car on the way to the European Council, together with the President's Head of Cabinet, who advised the President on ongoing political discussions on the taxation item and on social issues which were also on the agenda of the European Council. It should be noted that in parallel to the EPP leaders meeting, the order of the agenda of the European Council was changed by President Tusk in agreement with President Juncker in view of the evolving trade agenda.

Question of the European Parliament:

46. *Since commissioner Oettinger admitted that he wasn't present at the meeting on the night between March 24 and 25, who validated the answers to the questionnaire. Did the College, President Juncker or any other Commissioner approved the document sent to the EP at 3 am in the morning?*

Commission answer:

All answers were drafted under the authority of the Commissioner for Budget and Human Resources with the support of the Directorate-General in charge of Human Resources and Security, the Commission's Legal Service and the Cabinet of the President. It was also the Commissioner for Budget and Human Resources who, in agreement with the President, approved the final version of the replies and sent them to the Budgetary Control Committee.

Equivalence of functions: Head of Cabinet/ Directors- General

Question of the European Parliament:

47. *Which management responsibilities did have the Head of Cabinet of the President? Which number of Staff did he have to manage under his own responsibility and which budget? For which Expenditure is the Head of Cabinet the authorising officer?*

Commission answer:

The Head of Cabinet of the President has extensive management responsibilities. Not only does she/he manage and lead a team of 30 highly qualified collaborators, but also, as first adviser of the President, she/he deals with matters of exceptional business complexity and high-level stakeholder management. She/he notably plays a key role in preparing the weekly College meetings and their follow-up, together with the Heads of Cabinet of the other Members of the College. She/he is also in charge of complex high-level negotiations, regularly acting as sherpa of the President.

The Commission also refers to what Commissioner Oettinger said in the Hearing of the Budgetary Control Committee on 27 March 2018:

"Bitte unterschätzen Sie die Bedeutung von Kabinetten in der Europäischen Kommission und von Kabinettschefs nicht – ein Kabinettschef hat bei allem Respekt vor unseren Generaldirektoren, im Zweifel mehr Verantwortung, mehr zu entscheiden, in breiterer Dimension Sachkunde, Wissen an den Tag zu legen, einen längeren Wochenalltag als jeder Spitzenbeamte in irgendeinem Portfolio."

(For translation purposes: "Please do not underestimate the importance of Cabinets and of Heads of cabinet in the European Commission. In case you have a doubt, a Head of Cabinet has – with all due respect for our Directors-General – more responsibility, more to decide upon, has to show knowledge and expertise in a broader dimension, longer working hours than any high official in any portfolio.")

As to the responsibility of the Head of Cabinet for the expenditure of the budget is concerned, the Commission refers to the Annex "Administrative Budget for each Commissioner's Budget" of the Rules governing the composition of the Cabinets of the members of the European Commission and of the Spokesperson's Service C(2014)9002 of 1 November 2014, attached to the questionnaire of 20 March 2018. The responsibilities of the Head of Cabinet of the President go significantly beyond those of a Head of Cabinet of a Member of College.

As the General Court found, the appointing authority does not exceed its wide discretion where it considers that a candidate who has been Head of Cabinet for a normal Member of the Commission, because of his experience in that post and given that a cabinet is an administrative unit of around 10 staff (the Head of Cabinet of the President manages and leads a team of 30 highly qualified collaborators), fulfils the condition that he must have the recognised ability to run a major administrative unit, since that condition refers not to the actual running of such an entity, but to the recognised ability to run it, which may result from experience and factors which do not necessarily consist in having led a

large number of staff⁴² This reasoning applies *a fortiori* to the Head of Cabinet of the President whose responsibilities go significantly beyond those of a Head of Cabinet of a Member of College.

Appointment of the Deputy Secretary-general

Question of the European Parliament:

48 Initially it was announced that there were ‘several’ candidates for the position of Deputy Secretary-General, then it was said to be ‘less than four’, then ‘two’, and finally, just one. What is the truth?

Commission answer:

There were two candidates for the publication of the Deputy Secretary-General post. The second candidate applied for the vacancy on 8 February 2018, went through the full day Assessment Centre on 12 February 2018 and withdrew the application prior to the interview with the Consultative Committee on Appointments scheduled for 20 February 2018. Candidates are not required to give any reasons or justification for withdrawing their application.

⁴² Case T-118/04 and T-134/04, *Caló v Commission*, para. 212-213

Question of the European Parliament:

49. *Would the procedure for the appointment of the deputy Secretary General have been valid with just one applicant from the outset?*

Commission answer:

Yes, the procedure would have been legal with just one applicant from the outset. The Commission refers to the answer given to question 35 of this questionnaire and to the answers given to questions 19 and 22 of the questionnaire of the Budgetary Control Committee of 24 March 2018.

There is no legal obligation to close the procedure because there is only one candidate if the Consultative Committee on Appointments considers that this candidate meets the necessary qualifications. Even though it is an objective of the Commission to have lists adopted by the Consultative Committee on Appointments which offer a satisfactory choice of candidates, it happens that there is only one candidate who applies for a senior management vacancy or that there is only one qualified candidate left by the end of the procedure when the proposal is made to the College.

There is no legal obligation to close the procedure if one or more candidates withdraw their application at any stage of a selection procedure if the Consultative Committee on Appointments considers that the only candidate remaining is suitably qualified for appointment. This does not lead to reopening the procedure. Once the deadline for applications has expired, the procedure cannot be reopened for new applications. The procedure continues as normal with the remaining candidates. When candidates withdraw their application, they are not required to give any reason or justification for their withdrawal.

CONT committee 27 March 2018

Question of the European Parliament:

50. *In his oral replies to the CONT committee on March 27th, Mr Oettinger repeatedly stated as a major reason for Mr Selmayr's appointment that Mr Juncker needed a Secretary-General in place whom he knew and could trust; does this mean that the normal procedure itself is not to be trusted, that not alone is it acceptable for a direct appointment to be made (which this was, in practice), it is preferable?*

Commission answer:

As indicated in replies to questions 1 to 5 and 8 and in reply to question 9, the procedure used by the Commission was the normal one used in such cases and was fully in line with the Staff Regulations, case-law and the Commission's Rules of Procedure.

Question of the European Parliament:

51. *In his replies Mr Oettinger also said that Mr Selmayr was Mr Juncker's preference; however, even as Commission President it wasn't Mr Juncker's prerogative so why has Mr Oettinger gone along with this farce?*

Commission answer:

The Commission does not agree with the premise underlying this question.

As responsible Commissioner, Mr Oettinger agreed with the procedure as it was in line with the Staff Regulations. On the next day (21 February), the President presented the proposal for the appointment by the College of Commissioners of Mr Selmayr as Secretary-General in agreement with Commissioner Oettinger and after consultation of First Vice-President Timmermans. The College decided unanimously on this proposal.

Question of the European Parliament:

52. *Given that Mr Selmayr's ability to do the job wasn't in question, why did Mr Oettinger spend so much time in his replies stressing over and over again Mr Selmayr's ability and qualifications - is he implying that someone of equal or perhaps even superior ability couldn't have been found through the normal process? And if not, then why wasn't the normal process used?*

Commission answer:

Please see answer to question 9.

Question of the European Parliament:

53. *According to Commissioner Oettinger, Mr Selmayr was present at the European Summit last week because of his expert knowledge of international trade. Was this knowledge only made available to the EPP leaders and Commissioners, or also the S&D and liberal leaders and commissioners?*

Commission answer:

Please see answer to question 45. The advice and preparation by the Secretary-General was for the President and not for the EPP leaders. Mr Selmayr was in a room next to the meeting room waiting with senior advisers, ambassadors and sherpas of other EU leaders for their departure to the European Council. In the same room, several journalists were also waiting, so this was fully transparent for everybody to see.

Question of the European Parliament:

54. *Were other commission officials were present at the European summit? If so, who and why?*

Commission answer:

At European Summits (= formal or informal meetings of the EU28, EU27 or EU19, called by President Tusk), Commission senior officials from the Secretariat-General, Legal Service, services thematically concerned and the Cabinet of the President are present in the Commission delegation room and/or in the room outside the meeting room of the leaders, in the same way as all other Heads of State or Government of the European Union are present with their officials, senior advisers and ambassadors.

At leaders meetings of political families organised ahead of European summits, only the President himself participates in the meeting of his political family. Officials who accompany him wait in a meeting room outside to join him upon his departure to the European Council.

Commission website

Question of the European Parliament:

- 55** *On the 11th of February a set of pictures of Martin Selmayr was uploaded on the European Commission website (around 70 photos, later reduced to around 20). According to media reports, quoting internal sources, Selmayr himself asked the Audiovisual services to upload the pictures. Is this true?*

Commission answer:

Please see answer to question 23.

Question of the European Parliament:

- 56** *If so, why were the pictures uploaded 10 days before the appointment (nine days before interview with Oettinger, five day before interview by Consultative Committee on Appointments, four days before Assessment Centre)? Did Mr Selmayr know he was about to be promoted to the position of Deputy Secretary General and then Secretary General?*

Commission answer:

Please see answer to question 23.

Nationality of Commissioner and his/her Directors General

Question of the European Parliament:

57. *Does the Commission still stick to the internal rule that a DG working under the direct responsibility of a Commissioner should not be of the same nationality?*

Commission answer:

There is no such rule for appointments. In the context of mobility of senior managers, (and not in the section on appointment procedures), general principles are mentioned in the Compilation Document on Senior Officials Policy of 25 October 2004, which is attached to the answers given by the Commission to the questionnaire of the Budgetary Control Committee of 24 March 2018. This document states: "As a general rule, the Commissioner and the Director-General responsible for the same Directorate-General should not have the same nationality". This is not a peremptory provision. As it follows from its wording ("As a general rule"; "should"), it rather constitutes a principle which does not exclude exceptions.

In addition, in view of the way in which the Juncker Commission is organised, Directors-General often work for several Commissioners and Vice-Presidents in project teams.

Question of the European Parliament:

58. *Could the Commission explain the latest Promotions under the responsibility of the Commissioner for Migration?*

Commission answer:

Only the College of Commissioners is the appointing authority for the appointment of senior managers.

The Commission understands this question as referring to the appointment of Ms Michou as Director-General of DG HOME. If this is the case, the appointment of Ms Michou to Director-General did not amount to a promotion. She was an AD15 official before the appointment and still is an AD15 official after her appointment by the College of Commissioners. DG HOME works under the authority of Commissioner Avramopoulos and Commissioner King in the project team managed by First Vice-President Timmermans. As replied in question 31 the transfer took place at the request of the First Vice-President Timmermans and Commissioner Avramopoulos, in agreement with Commissioner King.

EU Ombudsman

Question of the European Parliament:

59. *The EU Ombudsman has declared the complaint submitted by the D66 delegation in the European Parliament admissible. Are you willing to follow the conclusions of the research of the EU ombudsman once she has conducted her research and presented her findings?*

Commission answer:

Should the Ombudsman decide to make recommendations in this matter, the Commission will examine attentively any recommendation the Ombudsman would address and would propose appropriate follow-up, as it does in all the cases, in conformity with Article 228 of the Treaty on the Functioning of the European Union.

Question of the European Parliament:

60. *Did Commissioner Oettinger interview Mr Selmayr on 20/2/18 for the post of Deputy Secretary General or Secretary General?*

Commission answer:

The Commission refers to the answer to question 13.

On 20 February 2018, Commissioner Oettinger interviewed Mr Selmayr for the post of Deputy Secretary-General.

The Commission refers also to the answer to question 98 of the questionnaire of the Budgetary Control Committee of 24 March 2018 where it states that on 20 February, Commissioner Oettinger was informed by President Juncker about the decision of Mr Italianer to submit his retirement letter the next morning (21 February) and that consequently he would propose that Mr Selmayr be transferred to the post of Secretary-General. Commissioner Oettinger expressed his full agreement and the proposal was then unanimously agreed by the College on 21 February.

The President had also consulted First Vice-President Timmermans on this proposal on 20 February who had given his agreement. The President consulted the First Vice-President, as he consults him on all important decisions of the Commission, in view of the special role he plays in the set-up of the Juncker Commission. The First Vice-President of the Commission also has a special relationship with the Secretary-General in view of his responsibility for institutional matters, Better Regulation and the Commission Work Programme.

Unrest by personnel:

Question of the European Parliament:

- 61. *The unrest by the personnel is apparent as one of the unions (Renouveau et Democratie) has sent an open letter to the Commissioner Oettinger requesting transparency and an open procedure regarding this procedure of appointment. Will there be more transparency in appointments and open procedures, including for positions of senior management, in the future?***

Commission answer:

The Commission refers to its answer to question 133 of the answers to the questionnaire of the Budgetary Control Committee of 24 March 2018.

The Commission fully shares the goal of a European Public Administration of excellence. The Commission therefore stands ready to discuss with the other EU institutions whether and how the application of the EU Staff Regulations, which apply to all EU institutions, can be further developed and strengthened with this objective in mind. The need to recruit, appoint and promote talented officials on the basis of qualifications, skills and experience has to be as prominent in this discussion as the imperative to preserve the autonomy of each EU institution in its personnel decisions, the independence of decision-making processes from external influences as well as the supranational spirit of the European Public Administration. While enhanced transparency is an important principle, it must not lead to senior management decisions becoming the object of negotiations between Member States and/or political parties, as this could call into question, notably with regard to the Commission, both the supranational spirit of the European Public Administration and the goal of having highly qualified senior managers. The Commission stands ready to pursue a constructive dialogue on these matters with the European Parliament, the Council and other EU institutions. In this dialogue, the Commission will explain that it has made good experience with the use of Assessment Centers and of external experts in its senior management selection procedures; they provide helpful objective input to assess qualifications, skills and experience of senior managers.

The Commission also refers to the statements of Commissioner Oettinger in the Hearing before the Budgetary Control Committee on 27 March 2018:

“Wenn wir zu einem Zeitpunkt X in diesem Jahr einen round table veranstalten sollten, an dem alle Institutionen teilnehmen – denn die Staff Regulations gelten für alle europäischen Institutionen, nicht für die Kommission allein, für alle –, dann wäre ich gerne bereit einmal mit klugen Köpfen aller Gremien und meinen klugen Fachleuten über die geltenden Regeln nachzudenken, um zu prüfen ob gegebenenfalls Anlass für Änderungen, Erweiterungen, Konkretisierungen besteht. Da können Sie auf mich zählen und da könnte man gerne einmal einen round table entsprechend gemeinsam veranstalten.”

(For translation purposes: “Should we, at a certain point in time this year, organise a round table, in which all institutions take part (because the Staff Regulations apply to all institutions, not only to the Commission), then I would be ready first of all to pick the brain of everybody here and of my experts to reflect upon the applicable internal

rules in order to check whether there is possibly a scope for modifying them, broadening them or making them more concrete. You can count on me, we can with pleasure organise together a round table on this.”



2018 - 2019

MINUTES

of the sitting of

Wednesday

18 April 2018



KEYS TO SYMBOLS USED

*	Consultation procedure
***	Consent procedure
***I	Ordinary legislative procedure: first reading
***II	Ordinary legislative procedure: second reading
***III	Ordinary legislative procedure: third reading

(The type of procedure is determined by the legal basis proposed in the draft act.)

ABBREVIATIONS USED FOR PARLIAMENTARY COMMITTEES

AFET	Committee on Foreign Affairs
DEVE	Committee on Development
INTA	Committee on International Trade
BUDG	Committee on Budgets
CONT	Committee on Budgetary Control
ECON	Committee on Economic and Monetary Affairs
EMPL	Committee on Employment and Social Affairs
ENVI	Committee on the Environment, Public Health and Food Safety
ITRE	Committee on Industry, Research and Energy
IMCO	Committee on the Internal Market and Consumer Protection
TRAN	Committee on Transport and Tourism
REGI	Committee on Regional Development
AGRI	Committee on Agriculture and Rural Development
PECH	Committee on Fisheries
CULT	Committee on Culture and Education
JURI	Committee on Legal Affairs
LIBE	Committee on Civil Liberties, Justice and Home Affairs
AFCO	Committee on Constitutional Affairs
FEMM	Committee on Women's Rights and Gender Equality
PETI	Committee on Petitions
DROI	Subcommittee on Human Rights
SEDE	Subcommittee on Security and Defence

ABBREVIATIONS USED FOR POLITICAL GROUPS

PPE	Group of the European People's Party (Christian Democrats)
S&D	Group of the Progressive Alliance of Socialists and Democrats in the European Parliament
ECR	European Conservatives and Reformists Group
ALDE	Group of the Alliance of Liberals and Democrats for Europe
Verts/ALE	Group of the Greens/European Free Alliance
GUE/NGL	Confederal Group of the European United Left – Nordic Green Left
EFDD	Europe of Freedom and Direct Democracy Group
ENF	Europe of Nations and Freedom
NI	Non-attached Members

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[...]

MINUTES

WEDNESDAY 18 APRIL 2018

IN THE CHAIR: Antonio TAJANI
President

[...]

2. Integrity policy of the Commission, in particular the appointment of the Secretary-General of the European Commission (motions for resolutions tabled)

Commission statement: Integrity policy of the Commission, in particular the appointment of the Secretary-General of the European Commission (2018/2624(RSP))

The debate had been held on 12 March 2018 (*minutes of 12.3.2018, item 14*).

Motion for a resolution to wind up the debate tabled under Rule 123(2):

- Ingeborg Gräßle, Claudia Schmidt, Tomáš Zdechovský, Joachim Zeller, Ryszard Czarnecki, Monica Macovei and Indrek Tarand, on behalf of the CONT Committee, on the integrity policy of the Commission, in particular the appointment of the Secretary-General of the European Commission (2018/2624(RSP)) (B8-0214/2018).

Vote: *minutes of 18.4.2018, item 12.12*.

3. Closure of the sitting

The sitting closed at 23.02.

ATTENDANCE REGISTER

18.4.2018

Present:

Adaktusson, Ademov, Adinolfi, Affronte, Agea, Agnew, Aguilera García, Aiuto, Albrecht, Ali, Alliot-Marie, Anderson Lucy, Anderson Martina, Andersson, Andrieu, Andrikien , Androulakis, Annemans, Arena, Arimont, Arnautu, Arnott, Arthuis, Ashworth, Assis, Atkinson, Auken, Auštrevičius, Ayala Sender, Ayuso, van Baalen, Bach, Balas, Balaytis, Balczó, Balz, Barekov, Bashir, Batten, Bay, Bayet, Bearder, Becerra Basterrechea, Becker, Beghin, Belder, Belet, Bendtsen, Benifei, Benito Ziluaga, Beriova, Berès, Bergeron, Bettini, Bilbao Barandica, Bizzotto, Björk, Blanco López, Blinkevicius, Bocskor, Böge, Bogovski , Bonafè, Boni, Borghezio, Borrelli, Borzan, Bortinaru, Boutonnet, Bové, Boylan, Brannen, Bresso, Briano, Briois, Buchner, Buda, Bullmann, Bullock, Buntin, Bütikofer, Buzek, Cabezón Ruiz, Cadec, Calvet Chambon, van de Camp, Campbell Bannerman, Caputo, Carthy, Carver, Casa, Caspary, Castaldo, del Castillo Vera, Cavada, Cesa, Charanzová, Chauprade, Childers, Chountis, Christoforou, Chrysogonos, Cicu, Ciocca, Cirio, Clune, Coburn, Coelho, Cofferati, Collin-Langen, Collins, Colombier, Comi, Corazza Bildt, Corbett, Cornillet, Corrao, Costa, Couso Permuy, Cozzolino, Cramer, Cristea, Csáky, Czarnecki, Czesak, van Dalen, Dalli, Dalton, Dalunde, D'Amato, Dance, Danjean, Danti, Dantin, (The Earl of) Dartmouth, Dati, De Castro, Delahaye, Deli, Delli, Delvaux, De Monte, Denanot, Deprez, Deß, Detjen, Deutsch, Deva, Diaconu, Díaz de Mera García Consuegra, Didier, Dlabajová, Dodds, Dohrmann, Dorfmann, D'Ornano, Durand, Dzhambazki, Eck, Eickhout, Elissen, Engel, Engström, Epitideios, Erdős, Ernst, Ertug, Estaràs Ferragut, Evans, Evi, Fajon, Farage, Faria, Federley, Ferber, Fernandes, Fernández, Ferrandino, Ferrara, Ferreira, Finch, Fisas Aixelà, Fitto, Fjellner, Flack, Flanagan, Fleckenstein, Florenz, Forenza, Foster, Fotyga, Fountoulis, Fox, Freund, Frunzulic , Gabelic, Gahler, Gál, Gambús, García Pérez, Gardiazabal Rubial, Gardini, Gasbarra, Gebhardt, Geier, Gentile, Gerbrandy, Gericke, Geringer de Oedenberg, Giegold, Gierek, Gieseke, Gill Neena, Gill Nathan, Giménez Barbat, Girling, Giuffrida, Goddyn, Goerens, Gollnisch, Gomes, González Peñas, González Pons, Gosiewska, Grammatikakis, de Grandes Pascual, Grapini, Gräßle, Graswander-Hainz, Griesbeck, Griffin, Grigule-Peterson, Grossetête, Grzyb, Gualtieri, Guerrero Salom, Guillaume, Guoga, Guteland, Gyürk, Hadjigeorgiou, Halla-aho, Hannan, Harkin, Harms, Häusling, Hautala, Hayes, Hazekamp, Hedh, Henkel, Herranz García, Hetman, Heubuch, Hirsch, Hoc, Hoffmann, Hohlmeier, Hökmark, Hölvényi, Honeyball, Hookem, Hortefeux, Howarth, Hübner, Hudghton, Huitema, Hyusmenova, in 't Veld, Iturgaiz, Ivan, Iwaszkiewicz, Jaakonsaari, Jäätteenmäki, Jadot, Jahr, Jakovčić, Jalkh, James, Jamet, Jáuregui Atondo, Jávora, Jazłowiecka, Ježek, Jiménez-Becerril Barrio, Joly, de Jong, Jongerius, Joulaud, Jurek, Kadenbach, Kaili, Kalinowski, Kallas, Kalniete, Kammerevert, Kappel, Karas, Kari, Karim, Kariš, Karlsson, Karski, Katainen, Kaufmann, Kefalogiannis, Kelam, Keller Jan, Keller Ska, Kelly, Khan, Kirton-Darling, Klinz, Kłosowski, Koch, Kofod, Kohn, Kölmel, Konečná, Kósa, Köster, Kouloglou, Kouroumbashev, Kovács, Kovatchev, Kozłowska-Rajewicz, Krasnodarski, Krehl, Krupa, Kudrycka, Kukan, Kumpula-Natri, Kuneva, Kumiuk, Kyenge, Kyllönen, Kyrkos, Kyrtos, Lalonde, Lamassoure, Lambert, Lancini, Lange, de Lange, Langen, La Via, Lavrilleux, Lebreton, Lechevalier, Le Hyaric, Leinen, Lenaers, Lewandowski, Liberadzki, Liese, Lietz, Lins, Lochbihler,

Loiseau, Løkkegaard, Loones, Lope Fontagné, López, López Aguilar, López Bermejo, López-Istúriz White, Lösing, Lucke, Ludvigsson, Łukacijewska, Lundgren, Łybacka, McAllister, McAvan, McGuinness, McIntyre, Macovei, Maleti , Malinov, Maltese, Mamikins, Mandl, M nescu, Ma ka, Mann, Manscour, Marcellesi, Marias, Marinescu, Marinho e Pinto, Martin David, Martin Dominique, Martin Edouard, Martusciello, Marusik, Matera, Matias, Mato, Matthews, Maullu, Maurel, Mavrides, Maydell, Mayer Georg, Mayer Alex, Mazuronis, Meissner, Mélin, Melior, Melo, Messerschmidt, Metsola, Meuthen, Michel, Michels, Mihaylova, Mikolášik, Millán Mon, van Miltenburg, Mineur, Miranda, Mitrofanovs, Mizzi, Mlinar, Mobarik, Moi, Mois , Molnár, Monot, Montel, Moody, Moraes, Morano, Morgano, Morin-Chartier, Morvai, Mosca, Müller, Mure an, Muselier, Mussolini, Nagtegaal, Nagy, Nart, Nekov, Neuser, Nica, Nicholson, Nicolai, Niebler, Niedermayer, Niedermüller, Ní Riada, van Nistelrooij, Noichl, Novakov, Nuttall, Obermayr, O'Flynn, Olbrycht, Omarjee, O óg, Pabriks, Paet, Pagazaurtundúa Ruiz, Paksas, Palmer, Panzeri, Paolucci, Papadakis Demetris, Papadakis Konstantinos, Papadimoulis, Pargneaux, Parker, Pa cu, Pavel, Payne, Pedicini, Peillon, Peterle, Petersen, Petir, Picierno, Picula, Piecha, Pieper, Pietikäinen, Pimenta Lopes, Piotrowski, Pirinski, Pitera, Plura, Poc, Poche, Pol ák, Popa, Por ba, Pospíšil, Post, Preda, Pretzell, Preuß, Procter, Proust, Quisthoudt-Rowohl, Radev, Radoš, Radtke, Rangel, Rebege, Reda, Reding, Regner, Reid, Reimon, Reintke, Revault d'Allonnes Bonnefoy, Ribeiro, Ries, Riquet, Rivasi, Rochefort, Rodrigues Liliana, Rodrigues Maria João, Rodríguez-Piñero Fernández, Rodust, Rohde, Rolin, Rop , Rosati, Rozière, Ruas, Rübige, Ruohonen-Lerner, Saïfi, Sakorafa, Salafranca Sánchez-Neyra, Salini, Sánchez Caldentey, Sander, Sant, dos Santos, Sargentini, Sarvamaa, Saryusz-Wolski, Sassoli, Schaake, Schaffhauser, Schaldemose, Schirdewan, Schlein, Schmidt, Scholz, Schöpflin, Schreijer-Pierik, Schulze, Schwab, Scott Cato, Sehnalová, Selimovic, Senra Rodríguez, Sernagiotto, Serrão Santos, Seymour, Siekierski, Silva Pereira, Simon Peter, Simon Siôn, Sippel, Škripek, Škrlec, Smith, Smolková, Sógor, Šojdrová, Solé, Šoltes, Sommer, Soru, So nierz, Spinelli, Spyra, Staes, Stanishev, Starbatty, Štefanec, Št tina, Stevens, Stihler, Stolojan, Stuger, Šuica, Sulík, Šulin, Swinburne, Sylikiotis, Synadinos, Szájer, Szanyi, Szejnfeld, Tajani, T n sescu, Tang, Tannock, Tãpardel, Tarabella, Tarand, Taylor, Teli ka, Terricabras, Theocharous, Thomas, Toia, T kés, Toli , Tomaševski, Tomaši , Tomc, Toom, Torres Martínez, Torvalds, Tošenovský, Trebesius, Tremosa i Balcells, Troszczynski, Trüpel , urcanu, Turmes, Ujazdowski, Ulvskog, Ungureanu, Urbán Crespo, Urtasun, Urutchev, Uspaskich, Vaidere, Valcárcel Siso, V lean, Valenciano, Valero, Valli, Vallina, Vana, Van Bossuyt, Van Bremept, Vandenkendelaere, Van Orden, Vaughan, Vautmans, Väyrynen, Vergiat, Verheyen, Viegas, Vieu, Vilimsky, Viotti, Virkkunen, Vistisen, Voss, Waitz, Wał sa, Ward, Weidenholzer, von Weizsäcker, Wenta, Werner, Westphal, Wieland, Wierinck, Wikström, Winberg, Winkler Hermann, Winkler Iuliu, Wi niewska, Wölken, Woolfe, Záborská, Zagorakis, Zahradil, Zala, Zammit Dimech, Zanni, Zanonato, Zarianopoulos, Zdechovský, Zdrojewski, Zeller, Zemke, Zijlstra, Zimmer, Złotowski, Zoan , Zoffoli, óltek, Zorinho, Zovko, Zullo, Zver, Zwiefka

Excused:

Albiol Guzmán, Christensen, Crowley, Demesmaeker, Dr ghici, Händel, Juvin, Kuhn, Le Pen, Maštálka, Ponga, Punset, Thun und Hohenstein, Weber Manfred, Z le, Žit ánská



TEXTS ADOPTED

P8_TA(2018)0117

Integrity policy of the Commission, in particular the appointment of the Secretary-General of the European Commission

European Parliament resolution of 18 April 2018 on the integrity policy of the Commission, in particular the appointment of the Secretary-General of the European Commission (2018/2624(RSP))

The European Parliament,

- having regard to the statement by the Commission of 12 March 2018 on the integrity policy of the Commission, in particular the appointment of the Secretary-General of the European Commission,
 - having regard to the replies given by the Commission on 25 March 2018 to the written questions asked by members of the Committee on Budgetary Control and during the hearing held by that committee on 27 March 2018,
 - having regard to Article 14(1) of the Treaty on European Union,
 - having regard to the Staff Regulations for European Union civil servants and in particular Articles 4, 7 and 29 thereof,
 - having regard to the case-law of the Court of Justice of the European Union,
 - having regard to the motion for a resolution of the Committee on Budgetary Control,
 - having regard to Rule 123(2) of its Rules of Procedure,
- A. whereas it is fundamental that the European Commission, as guardian of the Treaties, acts in conformity with the letter and the spirit of the rules;
- B. whereas trust in the European project and in the European Union will only be maintained if the European Union institutions act as role models in the fields of the rule of law, transparency and good administration, and are seen to have sufficient internal checks and balances to react adequately whenever these fundamental principles are threatened;
- C. whereas, under the Treaties, all EU institutions are autonomous in matters related to their organisation and personnel policy, including when choosing their top civil servants on the basis of merit, experience and trust, in line with the Staff Regulations and their respective rules of procedure;
- D. whereas posts published externally frequently result in the selection of internal candidates who do not meet the requirements for applying under internal rules, thereby circumventing regular career progression;

- E. whereas appointments to high-level posts such as that of Secretary-General should be made independently of other appointments, thereby avoiding any suspicion of non-transparent package deals or trade-offs based on privileged information;
 - F. whereas the European Ombudsman is currently conducting an inquiry into the appointment procedure in question, and Parliament is confident that the Ombudsman will inform the Commission and the Parliament of her views and of any possible instances of maladministration she has discovered which would need to be followed up;
 - G. whereas the Commission acknowledged shortcomings in its communications relating to the appointment and recognised the need to strengthen its efforts in that field;
 - H. whereas the staff committees, as elected representatives of the staff of the EU institutions, have requested transparent procedures for appointments to all management positions;
1. Regrets that the procedure for the appointment of the new Secretary-General of the European Commission on 21 February 2018 was conducted in a manner which provoked widespread irritation and disapproval in public opinion, among Members of the European Parliament and within the European civil service; notes that the result of this procedure constitutes a reputational risk not only for the European Commission but for all the European Union institutions; calls on the Commission to acknowledge that this procedure and the communication about it towards the media, Parliament and the general public have negatively influenced its own reputation;

Factual elements

2. Notes that:
 - on 31 January 2018, the post of Deputy Secretary-General was published with the standard deadline of ten working days for applications (i.e. 13 February 2018);
 - only two candidates applied, one man and one woman, both from the cabinet of the Commission President; the new Secretary-General was one of the applicants for the post; the second candidate applied for the vacancy on 8 February 2018, went through the full-day assessment centre on 12 February 2018, withdrew her application prior to the interview with the Consultative Committee on Appointments (CCA) scheduled for 20 February 2018, and was then appointed as the Commission President's new Head of Cabinet;
 - the new Secretary-General went through the procedure provided for in Article 29 of the Staff Regulations which included:
 - a) a full-day assessment centre (15 February 2018);
 - b) an interview (16 February 2018), assessment and opinion (20 February 2018) by the CCA;
 - c) an interview with the Commissioner responsible for Budget and Human Resources, and the President of the European Commission (20 February 2018);

- no minutes were drafted for these interviews, nor was their length recorded;
- the College – by unanimous decision – appointed the Head of Cabinet of the Commission President as Deputy Secretary-General on 21 February 2018;
- subsequently, during the same meeting, the then Secretary-General announced his retirement having, on the morning of the same day, sent a formal letter to the President stating his intention to retire on 31 March 2018;
- the President of the European Commission and his Head of Cabinet had known since 2015 that the then Secretary-General intended to retire soon after March 2018, an intention which was reconfirmed in early 2018; the President had not, however, divulged this information in order not to undermine the authority of the then Secretary-General, but he had communicated with his Head of Cabinet;
- after the repeated failure of his efforts to persuade the then Secretary-General to extend his tenure, the President of the European Commission should, at the very minimum, have alerted the Commissioner responsible for Budget and Human Resources of the impending vacancy, so that steps to fill that vacancy could have been initiated in the normal, best-practice and timely manner;
- acting on a proposal from the President, in agreement with the Commissioner for Budget and Human Resources, and without the appointment of a new Secretary-General having been placed on the agenda of the meeting, the College decided to transfer the newly appointed Deputy Secretary-General with his post, pursuant to Article 7 of the Staff Regulations, to the position of Secretary-General of the European Commission (reassignment without publication of the post);

Career path of the new Secretary-General

3. Notes that:

- the new Secretary-General joined the European Commission as a grade AD6 official in November 2004, having passed the open AD competition COM/A/10/01; was promoted to grade AD7 in 2007, to grade AD8 in 2009, to grade AD9 in 2011 and to grade AD10 in 2013;
- as of 10 February 2010, and while still being in grade AD8 in his basic career, he was seconded as Head of Vice-President Reding's Cabinet, where he occupied the function of Head of Cabinet at grade AD14, at Director level, in accordance with the Rules on the Composition of Cabinets in force at the time (SEC(2010)0104);
- the new Secretary-General took leave on personal grounds (CCP) from 1 April 2014 to 31 May 2014 in order to act as campaign manager for the EPP lead candidate for President of the European Commission;

- following his reintegration on 1 June 2014, he was assigned as an AD14 official as Principal Adviser to the Directorate-General for Economic and Financial Affairs;
 - after having successfully completed a selection procedure, the new Secretary-General was appointed Principal Adviser to the European Bank for Reconstruction and Development with effect as of 1 July 2014; with this appointment he became a grade AD14 official in his basic career;
 - from 1 July 2014 to 31 October 2014, the new Secretary-General was seconded at grade AD14 as head of the transition team of the President-elect of the European Commission;
 - on 1 November 2014, he was seconded as Head of the President's Cabinet at grade AD15 in accordance with the Rules on the Composition of Cabinets in force since 2004 (see decisions SEC(2004)0185, SEC(2010)0104 and C(2014)9002);
 - on 1 January 2017, he was promoted to grade AD15 in his basic (non-secondment) career as an official in the framework of the 10th Senior Officials Promotion Exercise, a decision taken by the College of Commissioners (PV(2017)2221); hence, prior to the meeting of 21 February 2018, in his basic career he was a Commission official in grade AD15, Principal Adviser in the Directorate-General for Economic and Financial Affairs;
4. Draws attention to the extremely rapid career of the new Secretary-General who, over a period of slightly more than 13 years, has progressed from AD6 to AD15, during which time he spent eight years in different cabinets (after the first cabinet he was promoted from AD10 to AD14; after the second cabinet from AD14 to AD15);

Career paths of previous Secretaries-General

5. Stresses that, according to the Commission, the three previous Secretaries-General became Director, Director-General and Head of Cabinet before being transferred to the function of Secretary-General, whereas the new Secretary-General has not performed any management tasks within the Commission services; points out, in particular, that on 21 February 2018 he was not Deputy Secretary-General in function and has served less than 14 months in the basic AD15;

Appointment procedure

6. Notes that, according to the Commission, the new Secretary-General was transferred in the interest of the service under Article 7 of the Staff Regulations and that the position was not published because the post was not considered vacant; notes, hence, that no official could apply since the procedure was organised through a reassignment with post rather than as a transfer in the strict sense with proper publication of the vacant post;
7. Notes that the Commission used the same procedure of transfer under Article 7 of the Staff Regulations for the three previous Secretaries-General (transfer with post rather than transfer in the strict sense); underlines, nevertheless, that none of the previous Secretaries-General were successively appointed Deputy Secretary-General and Secretary-General during the same College meeting; underlines also that all three previous Secretaries-General were proposed to the College during the very same

College meeting at which their respective predecessors were transferred to a different post or announced their retirement;

8. Stresses that the appointment by transfer was initiated by the President of the European Commission in agreement with the Commissioner responsible for Budget and Human Resources and after consultation of the First Vice-President (who was consulted about the name of the candidate but definitively not on the procedure);
9. Acknowledges that it is not Commission practice to transfer Directors in grade AD15 to Director-General posts, but notes that the Commission considers that, legally, the College could have decided to transfer a principal advisor to the post of Secretary-General;
10. Questions why the Commission used different procedures for the appointments of Deputy Secretary-General and Secretary-General for the same candidate and during the same College meeting;

Findings

11. Stresses that the replies given by the Commission show that the President and his Head of Cabinet had been aware since 2015 of the intention of the former Secretary-General to retire soon after 1 March 2018, an intention which he reconfirmed in early 2018; underlines that this knowledge would have allowed for a regular appointment procedure for his successor by one of the two public procedures foreseen by the Staff Regulations: (1) appointment by the College following publication of the post and a selection procedure under Article 29 of the Staff Regulations; or (2) transfer in the interest of the service pursuant to Article 7 of the Staff Regulations, also upon publication of the post in order to allow any interested official to apply for such transfer;
12. Takes note of the Commission's view that the publication of a post need not be considered the rule under the Staff Regulations, notably with regard to the position of Secretary-General which requires not only special experience but also a particular level of trust by the President and the College of Commissioners;
13. Underlines that, by opting for the transfer procedure under Article 7 of the Staff Regulations in the form of reassignment of the newly appointed Deputy Secretary-General with his post to the position of Secretary-General, it was not necessary to publish the post of the retiring former Secretary-General; notes that while the same procedure was used for the appointments of previous Secretaries-General, those persons had previously occupied Director-General posts with high management and budgetary responsibilities; stresses, however, that this tradition of non-publication has reached its limits insofar as it does not correspond to the modern standards of transparency by which the Commission, the European Parliament and other EU institutions should abide;
14. Notes the Commission's widespread practice of filling positions through internal transfers in the form of reassignment with post, a practice which is also used for senior positions; whilst recognising the wide margin of discretion open to the institutions in this regard, is concerned that this may undermine the principle of equality of opportunities and the selection of the best qualified candidates; calls on all Union institutions to fill positions through such transfers only with proper notification of staff,

in line with the case-law of the Court of Justice of the European Union, and to give preference to open and transparent procedures aimed at selecting the best qualified candidates;

15. Underlines that only the President, the Commissioner responsible for Budget and Human Resources, the First Vice-President and the former and new Secretaries-General knew in advance of the meeting of the College of Commissioners on 21 February 2018 that the proposal for the immediate appointment of the new Secretary-General would be made;
16. States that this procedure seems to have taken all other members of the College by surprise and avoided a discussion being held among the Commissioners, since the appointment of a new Secretary-General did not appear on the agenda of the meeting of the College of Commissioners on 21 February 2018;
17. Is deeply concerned that this way of proceeding with the appointment of the new Secretary-General could cast doubt on the preceding procedure for the appointment to Deputy Secretary-General insofar as it might not have served the purpose of filling this vacancy in the first place, but rather of allowing for the transfer of this post to the post of Secretary-General under Article 7 of the Staff Regulations without publication of the post; considers that, although such a way of proceeding might satisfy purely formal requirements, it nevertheless runs against the spirit of the Staff Regulations and prevents competition for the post by any other eligible staff;

Conclusions

18. Is disappointed that not a single Commissioner seems to have questioned this surprise appointment, asked for this appointment decision to be postponed or requested a discussion of principle on the role of a future Secretary-General in the Commission and on how that role is understood, while noting that this item was not on the agenda;
19. Recalls that Directors-General in the European institutions are in charge of hundreds of staff members and the implementation of substantial budgets as authorising officers, and also have an obligation to sign a declaration of assurance in their annual activity report at the end of each financial year; questions therefore the Commission's claim that the Head of the President's Cabinet could be considered as equivalent to a Director-General position in terms of management and budgetary responsibilities without having occupied such a position, as was the case of the previous Secretaries-General of the Commission; points out that the internal communication from the President to the Commission governing the composition of the private offices of the Members of the Commission and of the Spokesperson's service of 1 November 2014 does not supersede or modify the Staff Regulations;
20. States that the two-step nomination of the Secretary-General could be viewed as a coup-like action which stretched and possibly even overstretched the limits of the law;
21. Stresses that Parliament cannot find any 'serious and urgent situation', as explained by the Parliament's Legal Service, to justify the use of the procedure of reassignment under Article 7 of the Staff Regulations without publication of the post;

Required action

22. Is aware that the revocation of a favourable administrative act is generally not possible due to legal constraints, but nevertheless asks the Commission to reassess the procedure of appointment of the new Secretary-General in order to give other possible candidates within the European public administration the possibility to apply and hence allow for a wider choice among potential candidates from the same function group and grade; calls on the Commission to conduct open and transparent application procedures in the future;
23. Points out that in order to maintain an excellent and independent, loyal and motivated European civil service, the Staff Regulations need to be applied in letter and spirit; stresses that this requires notably that Articles 4, 7 and 29 of the Staff Regulations need to be fully respected so that all ‘vacant posts in an institution shall be notified to the staff of that institution, once the appointing authority decides that the vacancy is to be filled’ and that this obligation of transparency also needs to be respected for transfers under Article 7 of the Staff Regulations, apart from in very exceptional and duly motivated cases, as recognised by the Court of Justice;
24. Recalls that only through the proper publication of vacant posts is it possible to secure a wide gender-balanced choice of the most qualified candidates, allowing for informed and optimal appointment decisions; stresses that publication procedures whose sole purpose is to fulfil the formal requirement for publication must be avoided by all European institutions and bodies;
25. Recommends that the decision-making processes and procedures of the College of Commissioners need to be strengthened in order to avoid any indiscriminate waving-through of appointments or other important decisions, and that it is therefore necessary for all such items to be included in the draft agenda;
26. Calls, in this context, on all institutions and bodies of the European Union to also put an end to the practice of ‘parachuting’ people into positions which runs the risk of damaging procedures and thus the credibility of the EU; stresses that political influence must not undermine the application of the Staff Regulations; is of the opinion that all vacant posts should be published in the interest of transparency, integrity and equal opportunities; stresses that should institutions nevertheless decide to deviate from this principle they should only do so within the narrow margins set by the case-law of the Court of Justice of the European Union;
27. Proposes that officials from staff representative bodies sit on Parliament’s senior management selection panels;
28. Asks the Commission and all other EU institutions concerned to revoke any decisions by which they consider the function of Head of Cabinet of the President as equivalent to the function of Director-General and the function of Head of Cabinet of a Commissioner as equivalent to the function of Director; also asks the Commission to ensure that the next revision of the Staff Regulations under the ordinary legislative procedure provides for valuable career options, both for officials who have followed the traditional career path and for members of cabinets:
 - with regard to Article 7 by clarifying the transfer procedure of reassignment with the official’s post, which has only been developed by case-law,

- by integrating the relevant internal rules for members of private offices/cabinets, and
 - by laying down fully transparent procedures for appointing Secretaries-General;
29. Calls on the Commission to review, before the end of 2018, its administrative procedure for the appointment of senior officials with the objective of fully ensuring that the best candidates are selected within a framework of maximum transparency and equal opportunities, thereby also setting an example for the other European institutions;
30. Acknowledges that Article 17 of the Commission's Rules of Procedure attributes particular management responsibilities to the Secretary-General who should have wide-ranging managerial experience and the confidence of the President; sees the need to update and clarify these Rules in order to guarantee the neutrality of the role of the Secretary-General in a (party) political environment; expects to be informed of such an update by September 2018;
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- o o
31. Instructs its President to forward this resolution to all the European institutions.

“European Commission”: Follow up to the European Parliament non- legislative resolution of 18 April 2018 on the integrity policy of the Commission, in particular the appointment of the Secretary- General of the European Commission

2018/2624 (RSP)

- 1. Resolution tabled pursuant to Rule 123(2) of the European Parliament's Rules of procedure by Ingeborg GRÄSSLE (EPP/DE), Claudia SCHMIDT (EPP/AT), Tomáš ZDECHOVSKÝ (EPP/CZ), Joachim ZELLER (EPP/DE), Ryszard CZARNECKI (ECR/PL), Monica MACOVEI (ECR/RO) and Indrek TARAND (Greens/EE) on behalf of the Committee on Budgetary Control(CONT)**
- 2. EP reference number:** B8-0214/2018 / P8_TA-PROV(2018)0117
- 3. Date of adoption of the resolution:** 18 April 2018
- 4. Subject:** Integrity policy of the Commission, in particular the appointment of the Secretary-General of the Commission
- 5. Competent Parliamentary Committee:** Committee on Budgetary Control (CONT)
- 6. Brief analysis / assessment of the resolution and requests made in it:**

This resolution provides the Parliament's assessment of the appointment of the Secretary- General of the Commission and makes, in this regard, a number of calls on the Commission as well as all other EU institutions in relation to senior management appointments.

The Commission has already provided detailed information on this matter in its replies to the Budgetary Control Committee of the European Parliament of 24 March¹ and 4 April 2018² in particular confirming the legality of the decision by reference to the Staff Regulations as interpreted by the EU jurisdictions' case law and to the Commission's Rules of Procedure. These replies represent the position of the Commission on the questions raised by the European Parliament.

The Commission would like to make clear from the outset the following nine points and principles that underpin the decision taken on the appointment of the new Secretary-General.

1. The Commission took the decision to appoint the new Secretary-General on 21 February 2018, as part of a series of senior management appointments, by unanimity of all 28 Members of the College. In doing so, the Commission acted in full compliance with the EU Staff with the Regulations, as interpreted by the EU jurisdictions' case law³ and with its Rules of Procedure.

¹https://ec.europa.eu/commission/news/european-commission-confirms-appointment-mr-selmayr-secretary-general-decided-full-compliance-all-legal-rules-2018-mar-24_en

²https://ec.europa.eu/commission/news/european-commission-replies-follow-questions-european-parliaments-budgetary-control-committee-appointment-its-new-secretary-general-2018-apr-04_en

³ See for example joined cases 161 and 162/80, *Carbognani and Zabetta v. Commission*, points 19 et seq. and case F-24/12, *BN v. Parliament*, point 46.

2. President Juncker made the proposal to appoint the new Secretary-General in agreement with Commissioner Oettinger and after consultation with First Vice-President Timmermans. Both of them gave their agreement to the proposed appointment.
3. In accordance with normal practice, and to safeguard the necessary degree of confidentiality, the proposed appointment was presented directly to the College on the same day that the College took the decision. It is a prerogative of the President to add items to the College agenda, in line with Article 6(5) of the Rules of Procedure of the Commission. The principle of collegiality was fully respected.
4. The Secretary-General of the Commission is a position that requires extensive experience with regard to the functioning of the Commission, its working methods, its decision-making process and its institutional role. As foreseen in Article 20 of the Commission's Rules of Procedure, the Secretary-General also needs to assist the President and the College as a whole, so that, in the context of the political guidelines laid down by the President, the Commission achieves the priorities that it has set itself. He or she must therefore have the full trust of the President and of the entire Commission.
5. The person currently occupying the post fully meets these requirements, as well as all the procedural conditions laid down in the EU Staff Regulations: as an AD15 official with eight years of senior management experience in the Commission⁴ and seven years of professional experience prior to joining the Commission, the person was fully qualified to be transferred to the Secretary-General post, after his appointment of Deputy Secretary-General, by a decision of the College under Article 7(1) of the EU Staff Regulations⁵. In addition, prior to this appointment, the new Secretary-General underwent a full selection procedure, as required by Commission rules for the appointments of Directors-General and Deputy Directors-General, including participation in a full day Assessment Centre, an interview, assessment and opinion by the Consultative Committee on Appointments; and an interview with the Commissioner in charge of Budget and Human Resources and with President Juncker before being appointed by the College unanimously on 21 February.
6. In order to guarantee the seamless functioning of the institution, it is in the interest of the Commission to avoid situations where the function of the Secretary-General becomes vacant. It should be noted that since the appointment of Emile Noël as the Commission's first Secretary-General, the position of Secretary-General has never been vacant. In the case of the appointment of the new Secretary-General, all the conditions for using the transfer procedure of Article 7(1) of the Staff Regulations were fulfilled.

The three previous Secretaries-General were appointed on the basis of the same procedure.

7. The retirement of the previous Secretary-General was communicated to the President of the Commission on 20 February 2018, when he informed the President about his intention to submit his retirement letter the next morning. On the same day, Commissioner Oettinger was informed by the President about this intention and that consequently the President would propose that his Head of Cabinet be transferred to the post of Secretary-General. Commissioner Oettinger expressed his full agreement. The President also consulted First Vice-President Timmermans on his proposal on 20 February who gave his agreement.

⁴ As the General Court has found, being Head of Cabinet qualifies as gaining management experience within the Commission (Case T-118/04 and T-134/04, *Caló v Commission*, para. 212-213)

⁵ Formal requirement for appointment to a Director-General level function is to have the grade of AD14 or above (with a minimum of two years in the grade for AD14 officials) and a minimum of two years of management experience as a senior manager at Director level or above

8. The Commission's Spokesperson's Service replied factually, to the best of its knowledge and comprehensively to all the questions received on this procedure. The Commission is ready to consider the possibility to accompany senior management decisions with technical briefings where experts from the Human Resources Directorate-General could explain legal or technical procedures to the press.
9. The Commission stands ready to reassess, together with the other EU institutions, how the application of the rules and procedures can be improved in the future. In doing so the principle of transparency must be reconciled with the need to ensure that senior management decisions adopted by the Commission do not become the objective of negotiations between Member States and/or political parties. This could call into question, with regard to the Commission, the supranational spirit of the European Public Administration and the goal of having highly qualified senior managers. Commissioner Oettinger has launched a proposal to organise an interinstitutional round table on this matter.

7. Response to requests and overview of actions taken, or intended to be taken, by the Commission

The Commission welcomes that the resolution, in recital C, recognises that – under the Treaties – all EU institutions are autonomous in matters related to their organisation and personnel policy.

Furthermore, the Commission welcomes that the resolution in point 22 rightly states that the decision to appoint the new Secretary-General cannot be revoked. The Commission took the decision to appoint the new Secretary-General by unanimity of all 28 Members of the College. In doing so, the Commission acted in full compliance with the EU Staff Regulations, as interpreted by the EU jurisdictions' case law⁶ and with its Rules of Procedure.

A coup is defined as "*a sudden, violent, and illegal seizure of power from a government*" where "*the illegal and overt seizure of a state by the military or other elites within the state apparatus occurs.*" The Commission does not understand how a decision of the College of Commissioners, proposed by the President and supported unanimously by all the Members of the Commission, can be compared with such a "*coup-like action*". In appointing the new Secretary-General, the Commission respected all the rules to the letter and in their spirit at all times and acted in the interest of the institution.

The Commission does not share the European Parliament's assessment that "*credibility of the EU*" has been affected by the appointment of the new Secretary-General, as noted in point 26. This assumption is not supported by the latest Eurobarometer surveys either. The European Parliament's Eurobarometer shows the highest support for the EU in 35 years with 67% of EU citizens being convinced that their country has benefitted from EU membership⁷. In addition, new Eurobarometer figures show in particular that trust in the European Commission has in fact increased by 4 percentage points compared to last year with a larger percentage of people

⁶ See for example joined cases 161 and 162/80, *Carbognani and Zabetta v. Commission*, points 19 et seq. and case F-24/12, *BN v. Parliament*, point 46.

⁷ http://www.europarl.europa.eu/pdf/eurobarometre/2018/oneyearbefore2019/eb89_one_year_before_2019_eurobarometer_en_opt.pdf

expressing their trust in the European Commission (46% tend to trust versus 39% who tend not to trust)⁸. In addition, 67% of EU citizens believe it is beneficial to be a member of the European Union the highest score ever measured since 1983. The Commission cannot see how an internal procedure, made in full compliance with the EU Staff Regulations, as interpreted by the EU jurisdictions' case law and with its Rules of Procedure, can be considered as damaging the trust and credibility in the EU.

Trust is not given – it has to be earned and the Commission agrees that to maintain this trust in the European project and in the European Union, all EU institutions need to act as role models in the fields of rule of law, transparency and good administration. It is for this very reason that the Commission is open to constructive discussion about the application of the existing legal framework and stands ready to assess whether and how the application of the current rules and procedures could be improved in the future. In doing so the principle of transparency must be reconciled with the need to ensure that senior management decisions adopted by the Commission do not become the object of negotiations between Member States and/or political parties. This could call into question, with regard to the Commission, the supranational spirit of the European Public Administration and the goal of having highly qualified senior managers. Commissioner Oettinger has launched a proposal to organise an inter-institutional round table. This will allow for discussions on how to guarantee the excellence and independence of the EU civil service working for the benefit of and in the common interest of EU citizens.

The Commission recognises the importance of open and transparent communication and continues to encourage the press and the public to hold it to account. For that reason, the Commission organises a daily midday briefing which is broadcast live and where over 1100 accredited journalist can ask any question related to EU policies. This is a unique service and proof of the Commission's commitment to openness and transparency. In this spirit, the Commission has replied factually, to the best of its knowledge and comprehensibly to all the questions it has been asked on this matter. The Commission is ready to consider the possibility to accompany senior management decisions with technical briefings where experts from the Human Resources Directorate-General could explain legal or technical procedures to the press.

Finally, while Commission is always ready to further strengthen its communication with the media and the general public and to be more clear and pedagogic when explaining technical and legal procedures, the Commission considers that there was no failure in communication in relation to the appointment of the new Secretary-General. Instead, in a negative campaign, false information was disseminated, incorrect explanations of the appointment procedure and the requirements for the post were published and personal information that is protected on the basis of the EU Staff Regulations and EU rules on data protection was used illegally. The Commission will therefore continue to set the record straight, correct misinformation and defend the appointment by the Commission of the new Secretary-General which was done in full respect of all existing rules and procedures.

Over and above these more general considerations, a number of points in the resolution merit clarification.

⁸ Flash Eurobarometer, survey conducted 17-26 March 2018

1. Minutes are kept of all meetings of the Commission's Consultative Committee on Appointments, contrary to the statement in point 2 of the resolution.
2. Concerning the career path of the new Secretary-General set out in points 3 and 4, it should be clarified that following his reintegration as Head of Vice-President Reding's Cabinet on 1 June 2014, the Commission took a decision on 11 June 2014 to appoint him Principal Adviser in the Directorate-General for Economic and Financial Affairs with effect of 1 July 2014. His secondment as Head of the Transition Team of the President-elect of the European Commission ran from 2 July 2014 to 31 October 2014 when he was seconded on 1 November 2014 as Head of Cabinet of the President. His promotion to grade AD15 in his basic career occurred during his tenure as Head of Cabinet and took effect on 1 January 2017, not at the end of his secondment.
3. The Commission would like to draw the attention to the fact that the "*rapid career path*" of the new Secretary-General, referred to in point 4, is by no means unprecedented. There are other examples of officials who have had a swift career path in the Commission – which is always merit-based. At least three officials have gone from Director to Director-General faster than the new Secretary-General did. Since the 2004 reform of the Staff Regulations, the Commission has also appointed a number of young, highly qualified Directors-General (one at the age of 43, three at the age of 45) and Deputy Directors-General (one at the age of 37, three at the age of 43, one at the age of 44) – all younger than the new Secretary-General is today (he is 47). He is also not the youngest Director-General in the Commission today – one of his colleagues is 44 – neither is he the youngest Secretary-General in the history of the Commission⁹.

The assertion in point 5 that the new Secretary-General "*has not performed any management tasks within the Commission services*" is not correct. The Head of Cabinet of the President has extensive management responsibilities. Not only does she/he manage and lead a team of 30 highly qualified collaborators, but also, as first adviser of the President, she/he deals with matters of exceptional complexity and high-level stakeholder management. She/ he notably plays a key role in preparing the weekly College meetings and their follow-up, together with the Heads of Cabinet of the other Members of the College. She/ he is also in charge of complex high-level negotiations, acting as sherpa of the President where the latter designates her/ him to be the sherpa. As the General Court has found, being Head of Cabinet qualifies as gaining management experience within the Commission¹⁰.

4. The successful exercise of the functions of Secretary-General¹¹ requires not only managerial experience and a strong experience with regard to the functioning of the Commission, its working methods, its decision-making process and its institutional role. As foreseen in Article 20 of the Commission's Rules of Procedure, the Secretary-General also needs to assist the President and the College as a whole, so that, in the context of the political guidelines laid down by the President, the Commission achieves the priorities that it has set itself. He or she must therefore have the full trust of the President and of the entire

⁹Emile Noël who was 36 years old when he became Secretary-General of the Commission

¹⁰Case T-118/04 and T-134/04, *Caló v Commission*, para. 212-213

¹¹ Described in detail in Article 20 of the Commission's Rules of Procedure

Commission, as also noted by the resolution. President Juncker also needed a trustworthy and knowledgeable person in this role, someone whom the College can rely on and who could take over the post immediately and effectively. The need not to disrupt the work of the Commission at this crucial moment in the mandate, and to deliver high level quality proposals is of essence for the institution and for the completion of its priorities and the programme on the basis of which it was elected by the European Parliament.

5. The person currently occupying the post fully meets these requirements, as well as all the procedural conditions laid down in the EU Staff Regulations: as an AD15 official with eight years of senior management experience in the Commission and seven years of professional experience prior to joining the Commission, the person was fully qualified to be transferred to the Secretary-General post, after his appointment of Deputy Secretary-General, by a decision of the College under Article 7(1) of the EU Staff Regulations¹². In addition, the new Secretary-General underwent a full selection procedure, as required by Commission rules for the appointment of Directors-General and Deputy Directors-General, including participation in a full day Assessment Centre, and an interview, assessment and opinion by the Consultative Committee on Appointments; an interview with the Commissioner in charge of Budget and Human Resources and with President Juncker before being appointed by the College unanimously on 21 February.
6. In appointing the new Secretary-General, President Juncker wanted to ensure that the work of the institution continues smoothly and efficiently. He also wanted to avoid any possibility of the appointment becoming the object of negotiations between Member States and/or political parties that could have resulted from leaving this post vacant following the retirement of the previous Secretary-General. It should be noted that since the appointment of Emile Noël as the Commission first Secretary-General, the position of Secretary-General has never been vacant. The need not to disrupt the work of the Commission at this crucial moment in the mandate and to deliver high level quality proposals is of essence for the institution and for the completion of its priorities and the programme on the basis of which it was elected by the European Parliament. All the conditions for a transfer in the interest of the service on the basis of Article 7(1) of the EU Staff Regulations, as laid down in the case-law¹³, were fulfilled. It was in the interest of the institution, notably in view of the specific characteristics of the function of Secretary-General and the challenges the Commission is currently facing as well as the need to avoid a vacancy in this important function in order to guarantee the seamless exercise of the office; and the post corresponded to the function group and grade of the new Secretary-General. The three previous Secretaries-General were appointed on the basis of the exact same procedure as also noted in point 7 of there solution.

¹² Formal requirement for appointment to a Director-General level function is to have the grade of AD14 or above (with a minimum of two years in the grade for AD14 officials) and a minimum of two years of management experience as a senior manager at Director level or above.

¹³ In all the relevant judgments (see joined cases 161 and 162/80, *Carbognani and Zabetta v. Commission* C- 60/80 and *Kindermann v. Commission*, 21/05/1981 to F-24/12, *BN v. Parlement*, 19/06/2014), the Court of Justice, the General Court and the Civil Service Tribunal have considered that: When a post is not vacant, a transfer can be carried out without publication upon only two conditions: this transfer has to be done in the interests of the service and this transfer has to respect the equivalence of both grade and function. There are no references to the fact that such transfer shall be done only upon an exceptional basis.

7. The resolution contests the Commission's use of transfers in the interest of the service in points 13, 14 and 21. The EU Staff Regulations are very clear: where a post needs to be filled, the rules allow the appointing authority (in the case of senior management posts the appointing authority is the College of Commissioners) to choose between two options:

- the organisation of a selection procedure pursuant to Article 29(1) of the Staff Regulations,
- a transfer in the interest of the service pursuant to Article 7(1) of the Staff Regulations.

The Staff Regulations do not establish an order of preference between the two options and there is no reference in the case-law¹⁴ to the fact that one procedure would be the norm and the other the exception. Both options are of equal legal standing and are alternative procedures. In all the cases and irrespective of the procedure chosen, the Commission always takes into account the skills, qualifications, experience and merits of the official concerned. Under the Juncker Commission 46 Directors-General/ Deputy Directors- General appointments were made using the Article 29 and 15 were made using the Article 7(1) procedure.

8. With regard to the statement expressed in point 16 of the resolution that the appointment of the Secretary-General "*did not appear on the agenda*" of the College, the Commission would like to recall that in accordance with normal practice, and in order to safeguard the necessary degree of confidentiality and discretion, senior management at Director- General and Deputy Director-General level, at the Commission are, without exceptions, presented directly to the College on the same day that the Commission decides on them. The involvement of the Members of the Commission, in preparing the different proposals, depends on their respective portfolios – all Members of the Commission concerned are consulted on decisions on senior management in their respective areas of responsibility before they are submitted to the Commission for decision. It is the prerogative of the President to add items to the College agenda when he deems necessary – in line with Article 6(5) of the Rules of Procedure of the Commission, the Commission may, on a proposal of the President, discuss any topic which is not foreseen on the agenda, and it does so on a regular basis. The Commission considers this to be an important prerogative of the President. The College of Commissioners consists of experienced politicians who are aware of this prerogative of the President and every Member of the Commission may intervene, express its opinion and ask for the postponement of an item if they so wish during the College meetings. The fact that the decision to appoint the new Secretary-General was taken unanimously by the 28 Members of the College shows that all Members of the Commission were in agreement with the proposal of the President presented in agreement with Commissioner Oettinger and after consultation and agreement of First Vice-President Timmermans.

9. The Commission considers that we have robust rules in place in order to "*maintain an excellent and independent, loyal and motivated European civil service*", as referred to in point 23 of the resolution. In their day-to-day work, EU officials are subject to clear rules and high ethical standards which require them to act independently in the best interest of the Union. The rules are embodied in the Staff Regulations, their implementing rules and in other documents such as the Financial Regulation, and the Code of Good Administrative Behaviour. They include rules on independence towards external influence, potential conflicts of interest, gifts and honours received, external activities while working for the EU and employment after having worked for the EU. Commission staff is obliged to be independent, impartial, objective and loyal in its relations with the public. The rules and standards in place are to be applied to all Staff without exceptions. There are no political roles in the staff of the Commission; all senior managers have the same duties and obligations. All staff in the Commission, working in Cabinets or in the different services, is subject, in their day-to-day work, without exceptions, to the same rules and high ethical standards which requires them to act independently in the best interest

¹⁴ See for example Case 69/83, 23 June 1984, *Lux v Court of Auditors*, point 17 and case F-24/12, 19 June 2014, *BN vs Commission*, point 47.

of the Union. The Commission will always seek to ensure compliance with the abovementioned rules. Commission staff has to follow at least one Ethics and Integrity training course. The general public can file a complaint if they feel a Commission official has breached the Code of Good Administrative Behaviour. Commission decisions are under permanent public and institutional scrutiny. In addition, the Investigation and Disciplinary Office (IDOC) of the Commission and the European Anti-Fraud Office ensure that (former) officials and other agents respect the Staff Regulations by conducting administrative inquiries and disciplinary procedures in a fair, transparent and timely manner.

10. The above account shows that in appointing the new Secretary-General, the Commission respected the rules to the letter and in their spirit at all times. The Commission therefore does not consider that a revision of the Staff Regulations is necessary in this respect (as suggested in point 28). This was also the conclusion of the College discussion on the 11 April 2018 on the follow-up to the draft European Parliament resolution on integrity policy in the Commission. However, the Commission remains fully committed to discuss in the framework of the roundtable how to improve the application of the current rules.

EORegistry

From: IN'T VELD Sophie
Sent: 08 March 2018 08:46
To: EORegistry
Subject: [EOWEB#24247] New complaint from: sophie.intveld@europarl.europa.eu -
Attachments: EN.html

Uw klacht is ingediend bij de Europese Ombudsman. Wij zullen u een ontvangstbevestiging sturen binnen een paar dagen.

NB - Er is op gewezen dat deze e-mail is verstuurd van een e-mail adres dat enkel bewijs van ontvangst verstuurd. Indien u contact wenst op te nemen met de technische dienst, gelieve de onderstaande link te gebruiken:

[Contacteer technische dienst](#)

Sender

Van: sophie.intveld@europarl.europa.eu
Datum: Thursday, March 8, 2018 8:46:08 AM CET

Klacht betreffende wanbeheer

Deel 1 - Contact information

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Deel 2 - Tegen welke instelling of welk orgaan van de Europese Unie (EU) wenst u te klagen?

Europese Commissie

Deel 3 - Tegen welk besluit of over welke zaak wenst u te klagen? Wanneer nam u er kennis van? Voeg, indien nodig, bijlagen toe.

De D66 delegatie in het Europees Parlement wenst een klacht in te dienen over de gang van zaken rondom de benoeming van de heer Martin Selmayr als nieuwe Secretaris-Generaal van de Commissie. De D66 delegatie nam op 21 februari kennis van de kwestie.

Deel 4 - Wat heeft de instelling of het orgaan van de Europese Unie volgens u onjuist gedaan?

De Commissie lijkt de interne regels omtrent de benoeming van haar hoogste ambtenaar te hebben gemanipuleerd.

Deel 5 - Wat zou, volgens u, de instelling of het orgaan moeten doen om uw zaak recht te zetten?

De D66 delegatie wilt dat de Europese Ombudsman onderzoekt of de benoeming van dhr. Selmayr onbehoorlijk bestuur is en dat, indien onderzoek de noodzaak daartoe aantoon, passende maatregelen worden genomen.

Deel 6 - Heeft u reeds contact opgenomen met de betrokken instelling of het betrokken orgaan van de EU om uw klacht te trachten te regelen?

Ja (alstublieft specificeren en kopieën indienen van de relevante correspondentie)

Ja.

De heer Gerben-Jan Gerbrandy heeft namens de D66 delegatie met urgentie schriftelijke vragen ingediend over de kwestie (aan de Commissie):

Betreft: Benoemingsprocedure en aanstelling dhr. Selmayr als Secretaris-Generaal van de Europese Commissie

Op 25 februari meldde het Franse nieuwsplatform Libération (http://www.liberation.fr/planete/2018/02/25/martin-selmayr-et-les-comploteurs-de-lacommission_1632200) dat bij de benoeming van Martin Selmayr als Secretaris-Generaal van de Europese Commissie interne regels zouden zijn omzeild of zelfs geschonden. Een week eerder werd hij benoemd tot plaatsvervangend SG en vrijwel direct daarna tot SG door het aftreden van de huidige SG, Alexander Italianer.

- Kan de Commissie de benoemingsprocedure voor een nieuwe SG toelichten en aangeven of deze procedure correct gevolgd is en zo niet, kan zij uitleggen waarom zij niet heeft toegezien op het naleven van interne regels en hoe de procedure van dhr. Selmayr is verlopen?
- De voorzitter van de Commissie zou al lang op de hoogte zijn geweest van het vervroegd pensioen van dhr. Italianer. Waarom is op basis van die kennis niet de normale, zorgvuldige en open procedure gevolgd bij de benoeming van de nieuwe SG en waarom zijn niet alle eurocommissarissen van tevoren ingelicht?
- Klopt het dat de heer Selmayr toezeggingen heeft gedaan aan eurocommissarissen om zijn benoeming te verzekeren en beschouwt de Commissie de flietsbenoeming van dhr. Selmayr als een voorbeeld van zorgvuldigheid, openheid en onafhankelijkheid die bij de aanstelling van de hoogste ambtenaar van de Commissie verwacht mag worden? Zo ja, begrijpt de Commissie dat deze benoeming het beeld oproept van vriendjespolitiek, intransparantie en onzorgvuldigheid?

Deel 7 - Indien uw klacht arbeidsbetrekkingen met de instellingen of organen van de EU betreft : heeft u alle mogelijkheden voor interne administratieve verzoeken en beroep, zoals voorzien in het Ambtenarenstatuut, uitgeput? Indien dit het geval is, zijn de termijnen voor het antwoord van de instelling reeds verstreken?

Ja (gelieve te verduidelijken)

Ja. Inmiddels ligt er een verzoek voor een plenair debat dat D66 ondersteunt. Gezien de urgentie van de zaak kan een onderzoek niet langer uitgesteld worden.

Deel 8 - Werd over de feiten waarop uw klacht betrekking heeft al een uitspraak gedaan door een gerecht of is uw klacht in behandeling bij een gerecht?

Neen

Deel 9 - U moet bevestigen dat u de onderstaande informatie hebt gelezen.

U hebt de informatieve nota over gegevensverwerking en vertrouwelijkheid gelezen.

Deel 10 - Stemt u ermee in dat uw klacht kan worden doorverwezen naar een andere (Europese of nationale) instelling of orgaan, indien de Europese Ombudsman besluit dat hij niet bevoegd is uw klacht te behandelen?

Ja



**Groupe de l'Alliance progressiste des
Socialistes & Démocrates
au Parlement Européen**

Délégation socialiste française

Madame Emily O'Reilly
Médiatrice européenne
1, Avenue du Président Robert Schuman
CS 30403 - FR - 67001
Strasbourg Cedex France

Bruxelles, jeudi 8 mars 2018

Madame la Médiatrice,

Nous souhaitons par la présente vous alerter et vous saisir de l'affaire Selmayr.

Vous l'avez sans doute vu dans la presse, la nomination de M. Selmayr, chef de cabinet de M. Juncker, Président de la Commission européenne, au poste de secrétaire général de la Commission européenne est manifestement entachée d'irrégularités.

Les articles 4, 7 et 29 du statut de la fonction publique européenne n'ont pas été respectés. Les services de la Commissions ont affirmé, ces deux dernières semaines, que M. Selmayr avait en tant que chef de cabinet, le grade de Directeur général, ce qui est juridiquement faux. Une simple « communication » du Président de la Commission ne peut pas modifier le statut.

D'autre part, pourrions-nous avoir la confirmation que la vacance du poste de Secrétaire général n'échappe pas à l'article 4 du statut, et donc à la publication du poste ? Rien ne dit en effet dans le statut que le poste de Secrétaire général est à la disposition du seul Président de la Commission européenne.

Le désistement de l'autre candidate accrédite l'impression que cette candidature, avait simplement comme vocation, de servir de caution à la procédure. Pire, un projet de procès-verbal de la réunion du Collège des Commissaires du 21 février, celui-là même qui a promu deux fois M. Selmayr en un laps de temps ridiculement court, consigne que ces derniers auraient « comparé les mérites des candidats » au poste de secrétaire général adjoint, alors même qu'il ne restait plus qu'une candidature.

Nous nous permettons de vous faire parvenir le courrier adressé par la délégation socialiste française à M. Juncker sur ce sujet, ses réponses, et les conclusions que nous en tirons.

Nous vous prions de croire, Madame la médiatrice, en l'expression de notre meilleure considération.

Christine Revault d'Allonnes-Bonnefoy
Présidente de la délégation socialiste française

Eric Andrieu, Guillaume Balas, Pervenche Berès, Jean-Paul Denanot, Sylvie Guillaume, Louis-Joseph Manscour, Edouard Martin, Emmanuel Maurel, Vincent Peillon, Virginie Rozière, Isabelle Thomas

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Emily O'Reilly
European Ombudsman

Recommendation

of the European Ombudsman in joint cases 488/2018/KR and 514/2018/KR on the European Commission's appointment of a new Secretary- General

Made in accordance with Article 3(6) of the Statute of the European Ombudsman¹

Summary

Following two complaints to her office, the Ombudsman conducted an inquiry into how Mr Martin Selmayr, the then Head of Cabinet² of the President of the European Commission, was appointed Secretary-General of the Commission in February 2018.

The outgoing Secretary-General, Mr Italianer, who had indicated his intention to retire to President Juncker in 2018 when he was first appointed in 2015, was replaced by Mr Selmayr without a competition and without any formal consideration of other candidates. As the vacancy was not published, no other candidates could apply.

This was not unprecedented. However in order to be fully eligible for such a direct reassignment, Mr Selmayr first had to apply to become Deputy Secretary-General. Such a position became vacant in January 2018, shortly after the then Secretary-General had confirmed to the Commission President his decision to retire in March 2018. This information was known at that time only by the President and by Mr Selmayr.

Mr Selmayr and another member of the Cabinet were the only two applicants for Deputy Secretary-General. The other member withdrew before the process was completed. Preparatory steps for appointing Mr Selmayr as Secretary-General were already being taken one day before

¹ Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p. 15.

² The French term "*Cabinet*" is frequently used to describe the private offices of Commissioners.



the formal completion of the selection process for Deputy Secretary-General.

On Wednesday, 21 February 2018, the College of Commissioners approved the appointment of Mr Selmayr first as Deputy Secretary-General and then his reassignment as Secretary-General just minutes later, following the announcement during the meeting that the then Secretary-General would step down in March. The retirement of Mr Italianer had not been on the agenda.

Based on the inspection of Commission documents, the Ombudsman inquiry has identified several issues of concern:

- Mr Selmayr did not recuse himself in January 2018 from the decision-making that led to the creation of the vacancy, and the approval of the vacancy notice, for the post of Deputy Secretary-General, despite the fact that it is highly likely he knew that he would apply for the post and later did so.
- At that point Mr Selmayr had to recuse himself from taking part in the Consultative Committee on Appointments (CCA), which interviews and gives an opinion on the merits of candidates. However, contrary to the applicable binding rules, no replacement was appointed.
- Documentary evidence of the sequencing of events shows that the Deputy Secretary-General appointment procedure was not undertaken to fill that post, but rather to make Mr Selmayr eligible for his immediate reassignment as the new Secretary-General.
- When valid concerns were raised in relation to how the surprise double-appointments were made, the Commission reacted in an evasive, defensive and legalistic manner, which served further to increase concerns.

The European Parliament debated the issue and passed a resolution in plenary on 18 April 2018. Given the facts of the inquiry, the Ombudsman agrees with its assessment that the affair damaged trust in EU institutions and that the double-appointments “*stretched and possibly even overstretched the limits of the law*”.

Based on her inquiry, the Ombudsman now recommends that the Commission develop a specific appointment procedure for Secretary-General, separate from the procedure for other senior appointments.



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1) Background

1. The inquiry concerns the manner in which the European Commission, on 21 February 2018, appointed Mr Martin Selmayr, the then Head of the private office (“*Cabinet*”) of the President of the Commission, as its new Secretary-General. While Cabinet positions are often in practice more influential than roles in the Commission’s civil service, given that Cabinet members speak for the Commissioner, they are by their nature temporary. The position of Secretary-General is the most important “*permanent*” position in the EU civil service. Decisions to appoint senior managers in the civil service are taken by the College of Commissioners, which is composed of one Commissioner from each EU Member State.

2. At 8:39 on **Wednesday 21 February 2018**, Mr Alexander Italianer, who had been Secretary-General of the Commission since 1 September 2015, and who had indicated at that time to the President his intention to retire in 2018, sent a letter to the President stating that he wished to step down as Secretary-General on 1 March 2018, and to retire as an EU civil servant by the end of March 2018.

3. Just under one hour later, at 9:35, the weekly meeting of the College of Commissioners began. On the agenda was a series of proposed appointments of “*senior managers*” for approval, one of which concerned Mr Selmayr. The College agreed that he be appointed to the post of Deputy Secretary-General. Mr Italianer then informed the College that he would step down as Secretary-General on 1 March and retire on 31 March 2018. This information had not been included on the agenda. The President then proposed that Mr Selmayr replace Mr Italianer as Secretary-General, with effect from 1 March 2018. None of the Commissioners is recorded as having objected to this proposal. On 1 March 2018, Mr Selmayr became Secretary-General³.

4. Concerns about this appointment were raised, attracting widespread negative comment. The European Parliament debated the appointment in plenary on 12 March 2018⁴ and subsequently asked its Committee on Budgetary Control to examine the matter.

5. On 20 March 2018, the Committee sent an extensive questionnaire to the Commission. The Commission replied on 25 March 2018. On 27 March 2018, the Committee held a hearing with the Commissioner for Human Resources, Mr Oettinger. On 28 March 2018, the Committee sent a second extensive questionnaire to the Commission, which replied on 4 April 2018⁵.

6. The European Ombudsman had meanwhile received complaints about the appointment. On 26 March 2018, the Ombudsman stated that she intended to

³ Minutes of the 2244th meeting of the Commission, PV (2018) 2244 final, pp. 17 - 29, available here: <http://ec.europa.eu/transparency/regdoc/rep/10061/2018/EN/PV-2018-2244-F1-EN-MAIN-PART-1.PDF>.⁴ The debate of 12 March 2018 on the ‘Integrity policy of the Commission, in particular the appointment of the Secretary-General of the European Commission’, is available here:

<http://www.europarl.europa.eu/plenary/en/debate-details.html?date=20180312&detailBy=date>.

⁵ Details on Parliament’s investigation are available here: <http://www.europarl.europa.eu/committees/en/cont/subject-files.html?id=20180326CDT02181>.



await the work of Parliament's Committee on Budgetary Control before inquiring into the matter.

7. On 18 April 2018, Parliament adopted a Resolution on the appointment of Mr Selmayr as Secretary-General⁶. This identified a number of specific concerns relating to the appointment and characterised it as a “*coup-like action which stretched and possibly even overstretched the limits of the law*”. Parliament also called on the Ombudsman to “*inform the Commission and the Parliament of her views and of any possible instances of maladministration she has discovered which would need to be followed up*”.

⁶ European Parliament resolution of 18 April 2018 on the integrity policy of the Commission, in particular the appointment of the Secretary-General of the European Commission, P8_TA-PROV(2018)0117, available here: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2018-0117&language=EN&ring=B8-2018-0214>



2) Timeline

	Deputy Secretary-General (DSG)	Secretary-General (SG)
September 2015		New SG Mr Italianer indicates to President Juncker he intends to retire soon after March 2018.
Second half of 2017/Early 2018		Discussions ⁷ on his succession take place between him, the President and Mr Selmayr ⁸ .
Early 2018		Mr Italianer confirms he will retire ⁹ . Transfer of Mr Selmayr to position of SG becomes “one possible option” ¹⁰ .
11-12 Jan 2018		Evidence suggests ¹¹ that President Juncker encouraged Mr Selmayr to “work towards” the option of assuming the responsibility of SG.
At or before 24 Jan 2018	The President agrees, via his Cabinet, that a current DSG (Ms Michou) will move from her post, thus rendering as of 1 March 2018 her post vacant.	
24 Jan 2018	Draft vacancy notice for DSG is prepared.	
Before 31 Jan 2018	The President, via his Cabinet, approves the vacancy notice.	
Wednesday, 31 Jan 2018	The College of Commissioners transfers Ms Michou and launches a vacancy procedure.	

⁷ Answer to Parliament, Question 11, 4 April 2018.

⁸ Answer to Parliament, Question 20, 4 April 2018.

⁹ Answer to Parliament, Question 32, 24 March 2018.

¹⁰ Answer to Parliament, Question 11, 4 April 2018.

¹¹ The Belgian newspaper *Le Soir* interviewed Mr Selmayr on the afternoon of 21 February 2018 and quotes the following statement (which was later on reportedly confirmed in an email exchange with the Commission Spokesperson's Service) : « Juncker m'a dit avant Noël qu'il allait falloir y aller, il m'a dit de réfléchir. J'ai su pendant le voyage de la présidence [bulgare] à Sofia (qui a eu lieu les 11 et 12 janvier, NDLR), que cela allait arriver. » Draft answers to Parliament, which the Ombudsman's inquiry team inspected, confirm this sequence of events.



	The DSG post is approved and vacancy notice published, with a deadline of 13 February.	
Thursday, 8 Feb 2018	The first candidate applies for DSG.	
Monday, 12 Feb 2018	Mr Selmayr submits a note to the Consultative Committee on Appointments (CCA), informing it of his intention to apply and recuses himself and his Cabinet from the CCA. He submits a separate letter applying for DSG. The first candidate takes part in assessment by external HR consultant.	
Tuesday, 13 Feb 2018	The Director-General for Human Resources (HR), who is a permanent member of the CCA, informs the President about Mr Selmayr's application, his recusal from the CCA and the recusal of the other Cabinet members. Mr Juncker countersigns that note. CCA gets results of the first candidate's external assessment.	
Wednesday, 14 Feb 2018	CCA issues preliminary opinion, that both candidates are suitable to be interviewed by the CCA.	
Thursday, 15 Feb 2018	Mr Selmayr takes part in the external assessment.	
Friday, 16 Feb 2018	CCA interviews Mr Selmayr, and concludes that he is a suitable shortlist candidate.	
Tuesday, 20 Feb 2018		Lunchtime President Juncker informs First Vice-President Timmermans of Mr Italianer's retirement and his intention to propose Mr Selmayr as SG to the College the next day. Mr Timmermans agrees.



	<p>14:58 The first candidate writes to the CCA and withdraws.</p> <p>Between 14:58 and 18:10 The four relevant members of the CCA sign the CCA opinion shortlisting Mr Selmayr for the position of DSG.</p> <p>18:30 President Juncker and Commissioner Oettinger together interview Mr Selmayr for the position of DSG.</p> <p>20:04 The President's Cabinet informs DG HR of the President's decision to nominate Mr Selmayr as DSG.</p>	<p>13:23 The Directorate-General for HR is informed of this proposal and starts drafting a note for the College meeting, that Mr Italianer will retire and the President proposes to appoint Mr Selmayr as SG. The document already refers to Mr Selmayr as a "<i>Deputy Secretary-General</i>". The document was last modified at 14:45.</p> <p>Before the interview of President Juncker and Commissioner Oettinger with Mr Selmayr for the position of DSG, Commissioner Oettinger is informed of the resignation of Mr Italianer and gives his agreement to the President's proposal to appoint Mr Selmayr as SG.</p>
<p>21 Feb 2018</p>	<p>9:35 The 2244th College meeting starts.</p> <ul style="list-style-type: none"> - Mr Selmayr is appointed Deputy Secretary-General 	<p>8:39 Mr Italianer sends his resignation letter to President Juncker.</p> <ul style="list-style-type: none"> - Mr Italianer announces his retirement to the College. - Mr Selmayr is appointed Secretary-General



3) Procedural steps in the inquiry

8. On 5 May 2018, following the Resolution of Parliament, the Ombudsman wrote to the Commission stating she had opened an inquiry into the matter. In order to avoid duplication of work, she said she would consider that the answers already provided by the Commission to Parliament constituted the Commission's final position on those matters, unless the Commission informed her otherwise. She also stated that she would conduct her inquiry under the independent mandate given to the Ombudsman through the EU Treaties¹².

9. As a first step, the Ombudsman put **seven questions** to the Commission which replied on 15 June 2018¹³.

10. In parallel, the Ombudsman informed the Commission that she required access to all documents, dating from 1 September 2017 until 18 April 2018 (the date of the Parliament resolution), relating to the appointment of the new Secretary-General. For the avoidance of doubt, the Ombudsman stated that this requirement covered documents sent from Commissioners to their Cabinets, documents within and between Cabinets, as well as documents between Commissioners/Cabinets and the Commission services, and should include all documents relating to the retirement of the previous Secretary-General, the appointment of a new Deputy Secretary-General and the appointment of the new Secretary-General.

11. The inspection of these documents began on 6 June 2018. The Commission gave the Ombudsman access to **two folders** of documents. One folder contained the file relating to the appointment of Mr Selmayr as Deputy Secretary-General, the other contained the minutes of the meetings of the chefs de cabinet of 19 February 2018 and the minutes of the meeting of the Commission of 21 February 2018. It also contained several email exchanges between the Commission's spokespersons and several journalists.

12. The Ombudsman then clarified in writing the much broader scope of the documentation required, and the Commission stated that it would review its files. The inspection recommenced on 21 June 2018 and, in all, involved twelve separate inspection days. The Ombudsman's staff inspected **15 additional folders** provided by the Commission's Directorate-General for Human Resources and **two folders** from the Commission's Legal Service. **The inspection covered between 8,500¹⁴ and 11,000¹⁵ pages in total.** This large volume is partly explained by the fact that the files included numerous

¹² The letter opening cases 488/2018/KR and 514/2018/KR on the European Commission's appointment of a new Secretary-General is available here:

<https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/94714/html.bookmark>

¹³ The reply from the European Commission to the European Ombudsman concerning the Commission's appointment of a new Secretary-General (Joint inquiry into complaints 488/2018/KR and 514/2018/KR) is available here:

<https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/97356/html.bookmark>

¹⁴ The Ombudsman's estimate.

¹⁵ The Commission's estimate.



preliminary drafts of the Commission's answers to Parliament's questionnaires¹⁶.

13. Apart from the file on the appointment of Mr Selmayr as Deputy Secretary-General, which contains documents dating from 31 January 2018 until late February 2018, all of the documents inspected date from after 21 February 2018, the day that Mr Italianer submitted his retirement letter and the day also on which the Commission appointed Mr Selmayr to replace him.

14. During the inspection, the Ombudsman asked the Commission to confirm that details of the documents she required had been given to the relevant Commission services and Cabinets, and that all documents received from these services and Cabinets had been brought to the Ombudsman's attention¹⁷. The Commission gave this confirmation.

15. The documentation inspected by the Ombudsman included a number of email exchanges with journalists. The Ombudsman is aware of public statements by other journalists that they also exchanged emails with the Commission's Spokesperson's Service relating to the appointment of Mr Selmayr as Secretary-General. The Ombudsman asked the Commission for copies of these additional exchanges. The Commission informed the Ombudsman that it had contacted its Spokesperson's Service but had been told that copies of the emails in question could not be found¹⁸.

4) Structure of the Commission services

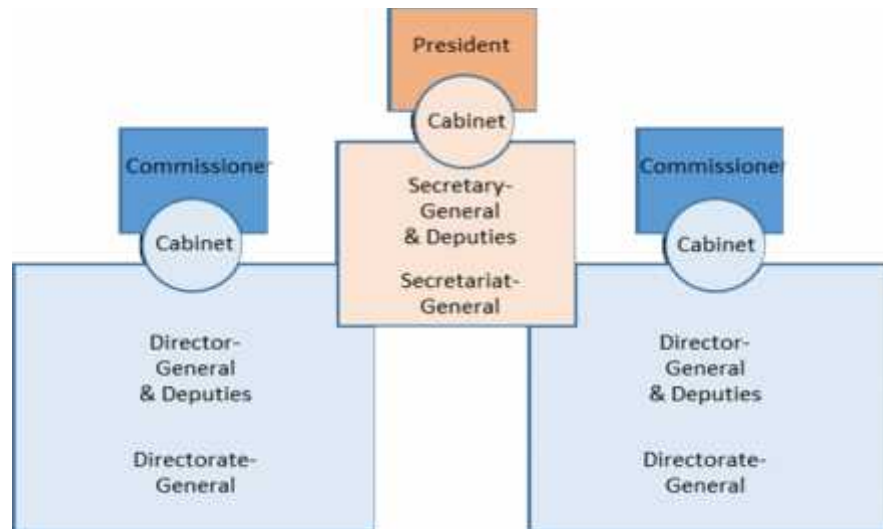
16. The Commission is organised into departments called "*Directorates-General*", each with responsibility for a different policy area, such as competition, agriculture, trade or energy. Each Directorate-General is under the political supervision of one or more Commissioners, who, in conjunction with the College of Commissioners, decide on the policies of the Commission. Overall responsibility for the implementation of the policies of the Commission is entrusted, within each Directorate-General, to its Director-General.

¹⁶ The Ombudsman's inspection report is available here:

<https://www.ombudsman.europa.eu/cases/correspondence.faces/en/99793/html.bookmark>

¹⁷ To the extent that this correspondence was also copied to the Directorate-General for Human Resources and/or the Legal Service, these documents include correspondence between and within the Cabinets.

¹⁸ These include: 1) emails between a journalist working with *Le Soir* (a major Belgian newspaper) and the Commission's Spokesperson's Service relating to an interview the journalist had with Mr Selmayr on 21 February (where, according to the journalist, he stated that Mr Italianer had confirmed, in early January 2018, that he would certainly retire in March 2018 (see paragraph 43 below), and 2) an email to several journalists sent on 5 March 2018 by the Spokesperson's Service confirming that the second candidate had withdrawn its candidacy in the recruitment procedure for the position of Deputy Secretary-General.



17. The Secretariat-General of the Commission is a specialised Directorate-General that operates under the political guidance of the President of the Commission. While it has a particular responsibility to the President, it has a responsibility also to the entire Commission as it is responsible for the overall coherence and coordination of the Commission's work¹⁹. The Secretary-General is headed by the "Secretary-General", who has the rank of a Director-General. As the Secretary-General acts as a 'first among equals', he or she is considered to be the most senior *permanent* civil servant within the Commission. As the Commission pointed out in its replies to Parliament, "the Secretary-General of the Commission is not an ordinary job"; it requires "special experience" regarding the functioning of the Commission, its working methods, decision-making processes and inter-institutional role²⁰. Clearly, the role of the Secretary-General of the Commission is a central one within the entire EU civil service.

18. Each Commissioner is assisted by a private office ("Cabinet"). Cabinets consist of the Head of Cabinet, a deputy Head of Cabinet, advisors and administrative staff²¹. In contrast to the posts of officials working in the civil service, Cabinet posts are limited to the duration of the five-year mandate of the Commission. The Head of Cabinet of the President plays a key role as he or she advises the President and speaks directly for him or her, and in that context is involved in many important decision-making processes (including those relating to the appointment of senior managers).

19. The fundamental difference between staff in the Commission's civil service and in Cabinets is that Cabinet staff are **personal appointees**, whose employment and administrative status is linked to their Commissioner's term of office. Staff in the Commission's services, on the contrary, are appointed on

¹⁹ Article 20 of the Rules of Procedure of the Commission, C (2000) 3614, OJ 2000 L 308 (consolidated version), available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02000Q3614-20111116&from=EN>

²⁰ Reply to Parliament, Question 1, 4 April 2018.

²¹ Communication to the European Commission, Rules governing the composition of the Cabinets of the Members of the Commission and of the Spokesperson's Service, 1 November 2014, available here: <http://ec.europa.eu/transparency/regdoc/rep/3/2014/EN/3-2014-9002-EN-F1-1.Pdf>



the basis of competitions. They are employed mostly on a permanent basis but many also on temporary contracts. They must have the independence necessary to serve any possible Commission throughout their careers but can be and are "*seconded*" to a Cabinet. This was the case with Mr Selmayr who, as a civil servant, was seconded to the President's Cabinet. Previous Secretaries-General had also served in Cabinets including in those of Commission Presidents.



5) Appointment of Commission senior officials

20. The selection and appointment of EU civil servants is governed by the Staff Regulations²². They set out two “*types of posts*” occupied by senior officials:

- Directors (grades AD14/15);
- Directors-General (grades AD15/16);

The post of Secretary-General is a Director-General post type.

21. The Commission’s ‘Senior Officials Policy’²³ sets out certain general principles governing the appointment of senior officials. Merit and competence relevant to the function are the main criteria for appointment: candidates may be appointed as senior managers only following a merit-based comparison of eligible staff²⁴.

22. The Senior Officials Policy goes on to state that “[a]s a general rule vacant senior official posts must be published” as this provides for “the best guarantee” of finding the most suitable candidates for a post in a transparent manner. It also allows all eligible officials the opportunity to apply²⁵.

23. Senior management appointments are made by the College of Commissioners. However, certain individual Commissioners have, before the College decides on appointments, important roles in the appointment process. Appointments are based on a proposal of the Commissioner for Human Resources (HR). For that proposal to proceed, the agreement of the President must be obtained. Before giving his or her agreement, the President must consult with the Commissioner(s) and Vice-President(s) who are responsible for the policy area where the successful candidate will work²⁶.

24. An advisory committee, called the Consultative Committee on Appointments (CCA) has an important preparatory role in the appointment process. Its role is to evaluate and interview candidates and, on that basis, recommend a shortlist of suitable candidates to the Commissioners responsible for proposing appointments (see Annex I). For appointment procedures relating to Deputy Director-General posts, **the CCA consists of the following members**²⁷:

²² Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ 1962 P 045 (consolidated version), hereafter ‘EU Staff Regulations’, available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501>

²³ Compilation Document on Senior Officials Policy (hereafter ‘Senior Officials Policy’), available here: https://ec.europa.eu/info/sites/info/files/compilation-of-the-senior-official-policy-at-the-european-commission_en.pdf

²⁴ Senior Officials Policy, p. 2.

²⁵ Senior Officials Policy, p. 3.

²⁶ Communication à la Commission relative aux méthodes de travail de la Commission, C(2014) 9004, 11 November 2014, p. 7, available here: https://ec.europa.eu/info/sites/info/files/the_working_methods_of_the_european_commission_2014-2019_november2014_en.pdf.

²⁷ Article 3 of Commission Decision of 07.02.2007 laying down the rules of procedure for the Consultative Committee on Appointments (hereafter ‘CCA rules of procedure’).



1. Secretary-General (chair);
2. Director-General of the recruiting Directorate-General;
3. Director-General for HR;
4. Head of Cabinet of President;
5. Head of Cabinet of Commissioner for HR;
6. Permanent Rapporteur (currently a Director in Directorate-General for HR); and
7. Rapporteur for the case (designated by the Secretary-General from a list of Rapporteurs²⁸ comprised of existing senior managers).

25. Where the post in question is the post of Deputy Secretary-General, the number of persons on the CCA is reduced from seven to six, since the Secretary-General is also the Director-General of the recruiting Directorate-General²⁹.

26. The Senior Officials Policy states that the shortlists adopted by the CCA *“should in any event offer the Commissioners a **satisfactory choice of candidates**. The responsible Commissioners need on the one hand to have the widest choice of suitably qualified candidates and on the other to have a list of candidates for interview which does not impose on them a major burden of comparative assessment of a large number of candidates”*³⁰.

Reassignments

27. The Commission, in its replies to Parliament, maintains that it can also *“reassign”* an official with his or her post - without any need to publish a vacancy, without any need to identify candidates, and without any need to compare candidates³¹.

28. The EU courts have established rules on the use of *“reassignments with post”*. Reassignments with post are based on the concept of *“equivalence”*. The Ombudsman believes it would be legally highly problematic to use a reassignment to move a person from one *“type of post”* to a **higher** *“type of post”*, as this would most likely breach the principle of equivalence (see Annex II for a technical description of this concept).

29. In its replies to Parliament, the Commission notes that the previous three Secretaries-General – Mr David O’Sullivan, Ms Catherine Day and Mr

²⁸ Article 7 of the CCA rules of procedure.

²⁹ For the position of a Deputy Secretary-General, the Secretary-General and the Commission President *“must have reached, on the basis of the CCA opinion, an agreement on the applicant to be put forward for appointment”*, see Senior Officials Policy, p. 10.

³⁰ Senior Officials Policy, p. 9 (emphasis added).

³¹ Answer to Question 1, 4 April 2018.



Alexander Italianer - were all reassigned to the function of Secretary-General³². However, as the Parliament has pointed out, all three already held and exercised the function of a Director-General in their basic careers before being reassigned to the function of Secretary-General.

30. In contrast, in January 2018, Mr Selmayr was the equivalent of a Director and not a Director-General (his post was that of a “*principal advisor*”)³³. Mr Selmayr could not rely on the higher grade and rank he held **in the Cabinet** of the President to make that jump, since grades and rank held **in a Cabinet** do not count in an official’s progress in his or her **basic career**. This is not only legally highly problematic, but as the Commission confirmed to Parliament, not its practice. This meant that if Mr Selmayr was to become Secretary-General, by reassignment, he had first to be appointed to a Director-General equivalent post such as that of Deputy Secretary-General.

³² Answer to Parliament, Question 60, 24 March 2018.

³³ The Ombudsman notes that Mr Selmayr was appointed a “*principal advisor*” in the Directorate-General for Economic and Financial Affairs in July 2014, to represent the Commission at the European Board for Reconstruction and Development in London. The relevant vacancy notice states had the appointee would have responsibility “*for around four members of staff*”. As Mr Selmayr was seconded to the President’s Cabinet at exactly the same time, he never actually worked as a principal advisor for the Commission.



6) The appointments of Martin Selmayr

31. The Commission told Parliament that President Juncker and his then Head of Cabinet had made several attempts to convince Mr Italianer to continue as Secretary-General. The Commission stated that there had been “*discussions and reflections*”³⁴ on Mr Italianer’s succession between the President, Mr Selmayr and Mr Italianer from the second half of 2017 and in more detail as of early 2018³⁵. In early 2018, Mr Italianer confirmed that he would abide by his decision to retire³⁶ and, according to the Commission, the transfer of Mr Selmayr to the position of Secretary-General became “*one possible option*”³⁷.

32. In an interview with a Belgian newspaper on the day he was appointed Secretary-General, Mr Selmayr was reported to have stated that President Juncker had encouraged him, in early January 2018, to work towards the option of assuming the responsibility of becoming Secretary-General³⁸. The journalist in question has reportedly stated that Mr Selmayr’s comments were “*on the record*”³⁹.

33. It is possible however from the documentation inspected to identify the steps taken that ultimately led to Mr Selmayr becoming Secretary-General. It is clear that preparatory steps were taken **from mid-January to 21 February 2018** that facilitated Mr Selmayr’s appointment as Secretary-General. The fact that such preparatory steps were taken, and the precise manner in which they were taken, raise specific concerns.

i) The preparatory steps

34. The Deputy Secretary-General vacancy was created through a decision to reassign an incumbent Deputy Secretary-General, Ms Paraskevi Michou, to the post of Director-General in the Directorate-General for Migration and Home Affairs. That decision was taken on 31 January 2018. However, as the decision states that the reassignment of Ms Michou would take effect on 1 March 2018, the vacancy for a Deputy Secretary-General was not due to arise until that date.

35. There was nothing incorrect with this reassignment in itself. However, the appointment of Ms Michou was unusual as it concerned an appointment of a

³⁴ Answer to Question 11, 4 April 2018.

³⁵ Answer to Question 20, 4 April 2018.

³⁶ Answer to Question 32, 24 March 2018.

³⁷ Answer to Question 11, 4 April 2018.

³⁸ The sequence of events as described by Mr Selmayr in his interview with *Le Soir* on 21 February was reflected in an initial draft of the answers to Parliament. The original draft reply to Question 20 (second questionnaire) detailed that President Juncker had approached Mr Selmayr before Christmas 2017 about the likelihood of Mr Italianer’s retirement and had asked him to reflect on the option of his replacement. The draft states that when, in early January, Mr Italianer confirmed his intention to retire on 31 March 2018, “*President Juncker during the Bulgarian Presidency of the EU visit of the College (11-12 January) encouraged Mr Selmayr to work towards the option of assuming this responsibility*”. That draft reply was originally drafted by the Spokesperson’s Service. However, this draft text, which reflects the statements made by Mr Selmayr himself to *Le Soir* on 21 February, was redacted by the President’s Cabinet before the replies were sent to Parliament.

³⁹ See also paragraph 15.



Director-General to a portfolio under the joint responsibility of a Commissioner **of the same nationality** (both Ms Michou and Commissioner Avramopoulos are Greek). The Commission, as a general rule⁴⁰, does not appoint Directors-General to a portfolio under the responsibility of a Commissioner **of the same nationality**. The Ombudsman has checked the Commission's records **and found that in the last 14 years** more than 100 Director-General appointments were made but none where the newly appointed Director-General was of the same nationality as the relevant Commissioner⁴¹.

36. More importantly, the timing of Ms Michou's appointment is also noteworthy. It was approved by the College of Commissioners on 31 January 2018, three weeks before the adoption of the periodical mobility exercise on 21 February 2018 and four weeks before the appointment was due to take effect. There is no convincing explanation as to why the decision needed to be taken on 31 January, and not on 21 February⁴². A number of other appointments decided upon on 21 February took effect on 1 March. It is not clear why it was therefore necessary to announce the transfer of Ms Michou on 31 January, when the appointment would not take effect until March. But moving the appointment forward did have one major implication; it allowed the appointment procedure for the vacated Deputy Secretary-General post to start on 31 January 2018. This gave Mr Selmayr time to apply, for the evaluation process and interviews to be completed, and for Mr Selmayr then to be appointed Deputy Secretary-General at the College meeting of 21 February 2018, just before Mr Italianer officially announced that he would retire.

37. The proposal to transfer Ms Michou - before being brought to the College meeting - required the approval of the President. The Commission has told the Ombudsman that this approval would normally be given, **at a meeting with the President's Cabinet**, in advance of the College meeting. However, the Commission has said that no minutes or attendance record exist of the relevant meeting with the President's Cabinet.

38. As neither Mr Selmayr, nor any of the President's Cabinet, formally recused themselves from this decision-making process, it must be assumed that the Cabinet was part of the decision-making process leading to the transfer of Ms Michou thus creating a vacancy for a Deputy Secretary-General post.

⁴⁰ Senior Officials Policy, p. 13, Point 9.1.

⁴¹ There are four cases where a Commissioner was appointed to a portfolio which was **already** under the responsibility of a Director-General of the same nationality. The Commission took steps, where necessary, to move the Director-General. In one other case, the Commission was involved in the appointment of a Director-General outside the Commission, at the inter-institutional publications office, OPOCE, when that Director-General was of the same nationality as the Commissioner with responsibility for that matter. However, that case cannot be deemed to be comparable to the case of Ms Michou since OPOCE is not part of the Commission (it is an inter-institutional body) and the other main institutions, the Council and Parliament, also had to give their approval for that appointment. The Ombudsman has a complete list of the appointments in question on her file.

⁴² During the College meeting, Mr Oettinger stated that Ms Michou was expected to immediately assume responsibility for the work on reform of the European asylum system, in view of the upcoming European Council in June (PV(2018) 2241 final, p. 12). The Ombudsman does not consider this explanation to be convincing. To be convincing, it would have to be the case that Ms Michou took up her new post soon after 31 January. However, Ms Michou did not take up the new post until 1 March 2018.



39. On 31 January 2018, the College approved the publication of the vacancy notice for the position of Deputy Secretary-General. The Ombudsman understands that in advance of this, the normal approval circuit for the proposal was followed. In the case of a position within the Secretariat-General, the final step in the approval circuit for a vacancy notice involves the President's Cabinet. This means that the President's Cabinet, then headed by Mr Selmayr, was involved in the preparation and approval of the vacancy notice for Deputy Secretary-General in the week preceding 31 January 2018.

40. Despite the absence of any recusals regarding this decision-making process, Mr Selmayr 12 days later applied for the vacant post along with another senior member of the President's Cabinet. Nobody else applied.

Article 11a of the Staff Regulations

41. In general, a candidate should not be involved, in any form or **at any stage**, in the preparations or organisation of a selection procedure in which he or she may be an applicant. This is not only a principle of good administration, it is also a principle of law⁴³. Article 11a of the Staff Regulations states that:

“1. An official shall not, in the performance of his duties and save as hereinafter provided, deal with a matter in which, directly or indirectly, he has any personal interest such as to impair his independence, and, in particular, family and financial interests.

2. Any official to whom it falls, in the performance of his duties, to deal with a matter referred to above shall immediately inform the Appointing Authority. The Appointing Authority shall take any appropriate measure, and may in particular relieve the official from responsibility in this matter. “

42. It is clear that Mr Selmayr and/or other members of the President's Cabinet were involved in the decision-making process that led to 1) the creation of the vacancy for a Deputy Secretary-General and 2) the approval of the vacancy notice for the post of Deputy Secretary-General for which Mr Selmayr (and another senior member of the President's Cabinet) later applied. This created, **at the very least**, a risk of a conflict of interests.

43. The Ombudsman therefore takes the view that Mr Selmayr's recusal from the selection procedure, made on 12 February, came too late and was unavoidable at that stage in any event. To avoid any risk of a conflict of interests, Mr Selmayr should, as early as January 2018, have recused himself, and perhaps the President's Cabinet over which he had hierarchical control, from any involvement in the relevant decision-making processes.

44. As, in early January 2018, President Juncker had apparently encouraged Mr Selmayr to take an interest in becoming Secretary-General, and as Mr Selmayr was aware of the importance of becoming Deputy Secretary-General in order to

⁴³ See, by analogy, Case T-292/15, *Vakakis kai Synergates - Symvouloi gia Agrotiki Anaptixi AE Meleton v. European Commission* ECLI:EU:T:2018:103, para. 98.



enable his reassignment to the post of Secretary-General, any involvement by Mr Selmayr in any of the arrangements to fill the posts of Deputy Secretary-General or Secretary-General would inevitably be problematic. However, **even if** Mr Selmayr had not decided to apply for the position of Deputy Secretary-General before his application on 12 February, the Commission should have taken appropriate measures once Mr Selmayr had applied for the post to avoid any risk of a conflict of interests. Having noted that Mr Selmayr had not recused himself from the relevant decision-making processes, it should have re-launched the selection procedure without the involvement of the President's Cabinet. The fact that the Commission did not take such steps constitutes **maladministration**.

ii) Deputy Secretary-General appointment

45. The CCA for the appointment of a Deputy Secretary-General comprises six persons (see paragraph 25). One is the "*rapporteur*" chosen from a list of "*senior managers*" in the Commission. On 8 February 2018, the Chair of the CCA, Secretary-General Italianer, chose the Director-General for Communication to be rapporteur to the advisory procedure for the position of Deputy Secretary-General.

46. On the same day, the first application was received from a candidate (the "*first candidate*"), a senior member of the President's Cabinet.

47. As Head of Cabinet of the President, Mr Selmayr was a member of the CCA. On 12 February, Mr Selmayr recused himself from participating in the CCA's involvement in this appointment procedure stating that he intended to apply for the position himself. He also stated that, in view of his current post and his role as a permanent member of the CCA, it would be essential to avoid the "*appearance of any potential conflict of interest*". He therefore asked the Directorate-General for HR to take the appropriate measures to ensure that the procedure be carried out without his involvement or the involvement of any person over whom he had hierarchical authority (that is, other members of the President's Cabinet). The reason he recused the other members of the President's Cabinet, as disclosed in Commission documents inspected, was that the independence of these possible replacements would be compromised in a procedure involving their own direct hierarchical superior. However, the Ombudsman considers that this recusal came too late and was hardly a decision he could have avoided.

48. On the same day, 12 February 2018, Mr Selmayr applied for the position of Deputy Secretary-General. In its replies sent to Parliament, the Commission stated that Mr Selmayr applied for the post of Deputy Secretary-General in order to ensure that his transfer as Secretary-General "*would be in line not only with the law, but also with Commission practice*"⁴⁴. This statement itself indicates that he participated in the selection procedure for Deputy Secretary-General for the sole purpose of becoming eligible for reassignment as Secretary-General.

⁴⁴ Answer to Parliament, Question 11, 4 April 2018.



49. Also on 12 February the first candidate took part in a day-long assessment conducted by an outside HR consultant⁴⁵.

50. On 13 February, the Director-General for HR informed President Juncker of Mr Selmayr's application and that he could not therefore take part in the CCA. The Director-General for HR agreed with the suggestion of Mr Selmayr that the Directorate-General for HR would take *"whatever measures are necessary and appropriate in order to ensure that the various steps in this procedure can be carried out without [Mr Selmayr's] involvement or that of any other member of staff in the President's Cabinet"*. She proposed that *"all correspondence relating to this selection procedure, which would normally either be addressed to your Head of Cabinet or require his agreement, is sent directly to your personal attention and for your personal agreement"*. The note was counter-signed, conveying his agreement, by the President. Accordingly, by 13 February 2018 at the latest, the President knew that his Head of Cabinet was applying for the post of Deputy Secretary-General.

51. The recusal of Mr Selmayr and his Cabinet colleagues meant that there were now only five members on the CCA.

52. On 14 February 2018, the CCA, basing itself on the applications of the two candidates, issued its *"preliminary opinion"* in which it took the view that both candidates should be called for interview.

53. On 15 February 2018, Mr Selmayr took part in the day-long assessment by the outside consultant (which is a good practice other EU institutions could examine). Also on that day, a note was circulated to the members of the CCA, setting the dates and times of the CCA interviews with Mr Selmayr (8:00 on 16 February) and the first candidate (18:00 on 20 February). The note also set the time for adopting the CCA's opinion (18:45 on 20 February).

54. On 16 February, the CCA interviewed Mr Selmayr and concluded that he was a suitable candidate to be shortlisted. The Head of Cabinet of the Commissioner for HR, who is a permanent member of the CCA, was not present at the interview⁴⁶. This meant that he could no longer be involved in the procedure, as CCA members need to be present in all relevant interviews if they are to compare the candidates' merits. This brought the number of remaining CCA members to four, the minimum number required for a quorum.

55. On 20 February 2018, over lunch on the day before the relevant College meeting, President Juncker informed First Vice-President Timmermans about Mr Italianer's decision to retire and his (President's) intention to propose the appointment by the College of Mr Selmayr as the new Secretary-General. Mr Timmermans agreed to this proposal. There are indications that Mr

⁴⁵ The Assessment Centre *"comprises individual and/or group exercises as well as in-depth interviews focussed on management skills"*, see [Senior Officials Policy](#), point 5.2.6.

⁴⁶ The Ombudsman has been unable to ascertain why the Head of Cabinet of the Commissioner for Human Resources could not attend the interview.



Timmermans was not made aware, in that meeting, of any procedural complexities involving the appointment of Mr Selmayr as Secretary-General⁴⁷.

56. On 20 February 2018, the relevant Head of Unit at the Directorate-General for HR, received an oral instruction regarding the proposal to appoint Mr Selmayr as Secretary-General. The Head of Unit created a Word document on “*administrative matters*”, at 13:23 on that day. That document would serve as a briefing note for the College meeting that was due to take place the next morning. Importantly, the document expressly mentions the retirement of Mr Italianer as Secretary-General. It also states that the President proposes, **in agreement with Commissioner Oettinger**, to transfer Mr Selmayr to the post of Secretary-General as of 1 March 2018. The document does not describe Mr Selmayr as a principal advisor, or as a Head of Cabinet. Rather, **it describes him as a “Deputy Secretary-General”**. The document was last modified at 14:45 on 20 February 2018.

57. At 14:58, on 20 February 2018, the first candidate, who was due to be interviewed by the CCA at 18:00, sent an email to the Permanent Rapporteur of the CCA formally withdrawing her application for the post of Deputy Secretary-General⁴⁸.

58. It was **after** the formal withdrawal of the first candidate that the relevant Head of Unit at the Directorate-General for HR asked the four members of the CCA, who had interviewed Mr Selmayr, to sign the draft CCA opinion, which then became the definitive CCA opinion. The then Secretary-General, Mr Italianer, was the last CCA member to sign the opinion, at approximately 18:10. With that final signature, the opinion of the CCA was formally adopted.

59. At 18:30 on the evening before the College meeting, President Juncker and Commissioner Oettinger jointly interviewed Mr Selmayr for the position of Deputy Secretary-General. Before that interview, President Juncker informed Commissioner Oettinger of the retirement of Mr Italianer and his intention to propose to the College the nomination of Mr Selmayr as the new Secretary-General⁴⁹.

⁴⁷ These indications derive from declarations made by Mr Timmermans' Head of Cabinet in the context of the preparation of the responses to Parliament's questionnaires.

⁴⁸ There are indications in the file that the Head of Unit concerned had information, earlier in the day, that the first candidate would not be interviewed that evening (the Head of Unit responded to the outside consultant, who was due to assist at the interview with the first candidate at 18.00, indicating that it was unsure if the interview would take place and that he would be contacted later to confirm). The Head of Unit wrote to the outside consultant after 15.00 to inform him that the interview, due to take place at 18.00, was now cancelled. The Head of Unit also included a reference to the withdrawal of the first candidate in the draft CCA opinion last modified at 9:40 on 20 February 2018.

⁴⁹ The European Commission's MEMO on the Appointment of the Secretary-General of the European Commission – Questions and Answers, 27 February 2018, p. 2, refers to the fact that Mr Oettinger was informed **before** the interview with Mr Selmayr. The Ombudsman notes that the Commission's answers to Parliament leave out this precise timing; it simply informed Parliament that Mr Oettinger was informed on 20 February, see, for example, answer to Question 11, 4 April 2018. The use of the more general timing, in the response to Parliament, arose because a member of the Commission's Legal Service recognised, when commenting on a draft, that it would be “*un peu délicate*” to state, in the responses to Parliament that Mr Oettinger knew of the proposal to appoint of Mr Selmayr as Secretary-General before the interview. The wording used in the response to Parliament is not, strictly speaking, untrue. It is correct that Mr Oettinger did know, on 20 February, of the proposal to appoint Mr Selmayr as Secretary-General. But, the statement is not the whole truth. This is confirmed by the Ombudsman's inspection. The



60. At 20:04, on 20 February 2018, a senior member of the President's Cabinet, the same person who had earlier withdrawn her candidature for the position, informed the Directorate-General for HR by email, that after interviewing Mr Selmayr jointly with Mr Oettinger, the President proposed to nominate Mr Selmayr to the function of Deputy Secretary-General. On the basis of that email, the Directorate-General for HR finalised a document with its proposals to appoint a series of senior managers.

61. On the morning of the College meeting, Wednesday, 21 February, at 8:39, Mr Italianer sent an email to President Juncker attaching a formal letter stating that he wished to step down as Secretary-General on 1 March, and to retire definitively on 31 March 2018⁵⁰.

62. The College meeting started at 9:35. The retirement of Mr Italianer was not included on the written meeting agenda distributed in advance, and neither obviously the intended appointment of a new Secretary General. It appears that no Commissioners, other than Mr Juncker, Mr Timmermans and Mr Oettinger, knew that this issue would arise in the meeting.

63. During the meeting, Mr Oettinger, announced the proposal to appoint a series of senior managers, including Mr Selmayr as Deputy Secretary-General. All of these proposals were adopted by the College. Given the short duration of the meeting (49 minutes) and the various other points on the agenda including a discussion on the EU budget and a conference in Africa, any discussions on individual appointments on that list must have been very limited. As outlined further below, the College then went on to approve the appointment of Mr Selmayr as Secretary-General.

Composition of the advisory committee (CCA)

64. For appointment procedures for Deputy Secretaries-General, the CCA consists of **six senior Commission staff**, including the President's Head of Cabinet and the Secretary-General. The Ombudsman notes that all of these senior staff members work closely together, would know each other well and very often also know the candidates.

65. Article 10 of the CCA Rules of Procedure states that a CCA member, with a **personal interest such as to impair his or her independence in a specific matter dealt with by the CCA**, shall neither take part in the deliberations nor vote on that matter. In such cases, the rules require that the member in question

document drafted by the Directorate-General for Human Resources between 13:23 and 14:45 on 20 February 2018 expressly states that the President had the **agreement** of Mr Oettinger for the transfer of Mr Selmayr to the position of Secretary-General. Thus, it is clear that Mr Oettinger knew of the proposed appointment of Mr Selmayr as Secretary-General before the interview with Mr Selmayr (indeed, he had given his approval for that appointment).

⁵⁰ No reason for this timing of his retirement has been ascertained from the Commission documents inspected.



“shall be replaced by a Rapporteur designated by the Secretary-General among the members on the list of Rapporteurs” (our emphasis)⁵¹.

66. Thus when, on 12 February 2018, Mr Selmayr recused himself from the selection procedure, and also recused all the other members of the President’s Cabinet, an alternate **should** have been appointed by Mr Italianer from the list of rapporteurs. However, no alternate was appointed. This meant that the number of people involved in the process was less than required by the rules, and a smaller pool of people contributed to the CCA’s opinion.

67. When the Ombudsman raised this issue with the Commission, it highlighted an update to Article 8 of the CCA rules agreed by the College in 2015⁵². However this update, allowing for the President’s Head of Cabinet to be replaced by a senior member of the Cabinet (for example if he was unable to attend), does not affect the requirement under Article 10.

68. The Ombudsman thus concludes that **the CCA was not composed in accordance with the relevant CCA Rules of Procedure**. The failure to follow the rules of the CCA constitutes **maladministration**.

Purpose of the appointment procedure

69. Before all formal steps in the selection procedure for a Deputy Secretary-General were concluded, President Juncker had already discussed with First Vice-President Timmermans his intention to propose Mr Selmayr as Secretary-General. Shortly after this discussion, a staff member of the Directorate-General for HR drafted a briefing note for the next day’s College meeting. This note mentioned the retirement of Mr Italianer and stated that the President proposed, in agreement with Commissioner Oettinger, to transfer Mr Selmayr to the function of Secretary-General. This briefing note referred to Mr Selmayr, not as Head of Cabinet, but rather as Deputy Secretary-General.

70. Both the conversation between the President and the First-Vice President, and the drafting of the briefing note, took place:

- **before** the first candidate in the selection procedure for the position of Deputy Secretary-General had formally withdrawn her application;
- **before** the CCA signed its opinion shortlisting Mr Selmayr for the position of Deputy Secretary-General;
- **before** President Juncker and Commissioner Oettinger interviewed Mr Selmayr for the position of Deputy Secretary-General; and
- **before** the President communicated to the Directorate-General for HR his proposal that Mr Selmayr be appointed a Deputy Secretary-General.

⁵¹ Article 10 of the CCA rules of procedure.

⁵² Exception added to the CCA rules of procedure by the College of Commissioners in October 2015, PV(2015) 2141 final, 6 October 2015, p. 13.



71. The content of this briefing note, referring as it does to the decision to propose Mr Selmayr as Secretary-General, thus **pre-empts the opinion of the CCA, which was not finalised until several hours later.**

72. Given that the instruction to draft this note came either from a particular Director or from the Director-General for HR - both of whom were CCA members - it seems clear that at least one member of the CCA signed the CCA opinion in full knowledge of the fact that the opinion would no longer serve to achieve the appointment of a person who would actually serve as a Deputy Secretary-General.

73. It is also clear that the interview of Mr Selmayr by President Juncker and Commissioner Oettinger, for the position of Deputy Secretary-General, took place **after** the President had taken steps to propose Mr Selmayr as Secretary-General. **President Juncker** and **Commissioner Oettinger** interviewed and proposed Mr Selmayr for the position of Deputy Secretary-General in full knowledge of the fact that he would not serve in that role.

74. The Ombudsman takes the view that, at least from the point when President Juncker spoke to First Vice-President Timmermans, if not earlier, the selection procedure for a Deputy Secretary-General no longer served the purpose of filling the position of Deputy Secretary-General; rather its sole purpose was to make Mr Selmayr eligible for reassignment as Secretary-General.

75. Article 4 of the Staff Regulations states that “*no appointment or promotion shall be made for any purpose other than that of filling a vacant post as provided in these Staff Regulations*”. The fact that the Commission went through with the selection procedure for a Deputy Secretary-General, in full knowledge (including at least some Commissioners) of the fact that it no longer served the purpose of filling that position, means the Commission did not use its powers correctly, and so constitutes **maladministration**⁵³.

iii) Secretary-General appointment

76. Mr Italianer had informed President Juncker, at the time of his appointment in 2015, of his intention to retire as Secretary-General soon after March 2018. Mr Italianer confirmed this intention in January 2018⁵⁴. The Commission told Parliament that the President did not share the January 2018 information with anyone else, except with his Head of Cabinet, so as “*not to undermine Mr Italianer’s authority while he was in office*”⁵⁵.

77. The ‘Senior Officials Policy’ provides that an appointment procedure under Article 29(1) or (2) of the Staff Regulations “*begins as soon as it is clear that a*

⁵³ For an example of a misuse of power in the context of recruitment procedures, see, for example, Case C-105-75, *Franco Giuffrida v Council of the European Communities* [1976] ECLI:EU:C:1976:128.

⁵⁴ Answer to Question 32, 24 March 2018.

⁵⁵ Answer to Question 32, 24 March 2018.



vacancy will arise in the foreseeable future, e.g. when an official signals his intention to retire" (our emphasis)⁵⁶. This means that a selection procedure could have been launched in early 2018, once Mr Italianer had definitively signalled his intention to retire.

78. Even if Mr Italianer's retirement plans had not been known until 20 February 2018 (which was not the case), there was still sufficient time⁵⁷ to complete a selection procedure under Article 29 of the EU Staff Regulations for the position of Secretary-General **before** Mr Italianer retired on 31 March 2018.

79. The Ombudsman is not convinced by the Commission's justifications for using the "reassignment with post" approach under which the merits of eligible staff would not be assessed⁵⁸. There was no obvious urgency in deciding on the appointment of a new Secretary-General on 21 February 2018. Neither are there grounds for assuming that the launch of a selection procedure would have led to any disruption in the Commission's work. The Ombudsman finds that the creation of a time constraint was entirely artificial and that this constitutes **maladministration**.

80. The Ombudsman also cannot identify any valid reasons for the secrecy surrounding Mr Italianer's impending retirement. This information was, initially, kept between three people, Mr Juncker, Mr Italianer and Mr Selmayr. On the face of it, this situation appears to have allowed the putting in place of arrangements, in good time, to ensure that Mr Selmayr would become eligible to be reassigned as Secretary-General. The fact that the impending retirement of Mr Italianer was not put on the agenda of a College meeting, deprived Commissioners of the opportunity, collectively, to reflect on the issue.

81. Immediately following the appointment of Mr Selmayr as Deputy Secretary-General at the College meeting on 21 February, Mr Italianer told the College that he would retire. Mr Juncker then proposed that Mr Selmayr should replace Mr Italianer and the College agreed without any reported objections.

82. The Ombudsman notes that part of the Commission reasoning for the appointment is problematic. The minutes of the College meeting refer to Mr Selmayr's "remarkable contribution ... to [Mr Juncker] as a candidate and President of the Commission" (emphasis added). While Mr Juncker may have been grateful for this contribution, this cannot constitute a basis for the College of Commissioners to appoint Mr Selmayr to the post of Secretary-General, which is a post in the civil service. The reasons for filling such a post must be related to the "interests of the service" - and not the interests of a political candidate. It is of course important that the Commission President should have trust in, and

⁵⁶ Senior Officials Policy, p. 7, point 5.2.1.

⁵⁷ The inspection has revealed that a vacancy procedure can be completed in 21 calendar days (in the case of the vacancy notice for the post of Deputy Secretary-General, the procedure was completed in 21 days, from 31 March until 21 February).

⁵⁸ The Commission argued, in its replies to Parliament, that "important functions such as the ones of Secretary-General [to] become vacant are to be avoided, in order to guarantee the seamless exercise of these functions". Therefore, "when it became clear that Mr Italianer did not want to continue exercising this function, the Commission had to act without delay, taking account of the important internal and external challenges the EU is facing in this particular moment in time", Answer to Parliament, Question 1, 4 April 2018.



some degree of personal empathy with, a Secretary-General but in this case there was an inappropriate blurring of the line between administrative independence and political closeness.

83. At 10:30 on 21 February 2018, the Commission President and the Commissioner for HR announced to the press that Mr Selmayr would become Secretary-General.



7) Wider context to the appointments

i) Relationship between Commission cabinets and services

84. The Commission has described “the political level” as the Commissioners who - as politicians - exercise political judgement in pursuing the Commission's political priorities within the framework of the Treaties. The Commission as a whole is accountable to the European Parliament. In the preparation of policies and in the performance of tasks, Commissioners are assisted both by staff in the civil service and in their Cabinets. The Staff Regulations apply both to the civil service and the Commissioners’ Cabinets and include the obligation that staff “shall carry out [their] duties and conduct [themselves] solely with the interests of the Union in mind. [..]”⁵⁹.

85. The Commission has published guidance which says: “A close personal relationship based on trust and the mutual provision of information must be established between each Member of the Commission and the Director(s)-General concerned. The Member of the Commission issues General guidelines or gives instructions to the Director-General, in accordance with the College’s priorities. The Director-General, for his/her part, advises the Member of the Commission on the files relating to his/her portfolio and informs him/her of any subjects of relevance to the implementation of the priorities or the management of his/her services. He/she is accountable to the Member of the Commission and the College for proper implementation”⁶⁰.

86. One of the tasks of the Secretary-General is to “assist the President so that, in the context of the political guidelines laid down by the President, the Commission achieves the priorities that it has set.” The Secretary-General also ensures that the Commissioners are fully informed of the progress made on internal and inter-institutional procedures⁶¹. To fulfil this function effectively, the Secretary-General needs to be trusted by the President and other Commissioners, and by the civil service. For this trust to be maintained, the Secretary-General needs to be recognised as having legitimacy by both political and civil service sides of the Commission.

87. The Secretary-General also assists the President in “preparing the proceedings and conducting the meetings of the Commission”⁶². Commissioners meet normally on Wednesdays, and these meetings are prepared for on Tuesdays by the Commissioners’ Heads of Cabinet under the chairmanship of the Secretary-General.

88. The President's Cabinet may meet several times per week whenever it is considered necessary by the President’s Head of Cabinet. The Directors-General of Presidential services (including the Secretary-General), their Deputies and/or their assistants can be invited by the President’s Head of Cabinet to these Cabinet meetings.

⁵⁹ See Article 11 of the EU Staff Regulations.

⁶⁰ [Communication à la Commission relative aux méthodes de travail de la Commission, C\(2014\) 9004, 11 November 2014 p.](#) Annex 4, point 1.3.

⁶¹ Article 20 of the Commission’s rules of procedure.

⁶² Article 20 of the Commission’s rules of procedure.



89. In response to a written query by the Ombudsman during the inquiry, the Commission did not confirm or deny that as of the beginning of 2018, the Secretary-General now frequently joins meetings of the President's Cabinet. Of course, it is a matter for the President to organise his/her own cabinet, and specify how they interact with the Secretary-General. However, the roles are distinct and should be kept so.

ii) Commission's interaction with journalists

90. Apart from press conferences, where Commissioners answer questions directly, the Commission interacts with journalists through its Spokesperson's Service, which "*ensures political communication on behalf of the President and the entire Commission*"⁶³. The Spokesperson's Service, whilst part of the Directorate-General for Communications, falls under the political authority of the Commission's President. The Spokesperson's Service organises daily press briefings in Brussels, which is nearly a unique practice among public administrations in the world.

91. When the President and the Commissioner for HR met the press on 21 February 2018, the Commission had yet to issue the minutes of the College meeting in which Mr Selmayr was appointed as Secretary-General. The unusual circumstances of this appointment, which consisted of two procedures, one involving Mr Selmayr being appointed Deputy Secretary-General and a second involving his immediate reassignment to the post of Secretary-General, were not immediately explained⁶⁴. The lack of detail at the time of the announcement, coupled with the surprise⁶⁵ expressed by some Commissioners, contributed to a sense of public disquiet and unease about the procedure when, a number of days later, these facts became known.

92. Once journalists sought to find out more about this two-step process, the Spokesperson's Service became defensive, evasive and even somewhat combative. When asked during a press briefing, the week after the College meeting, about the number of candidates in the recruitment procedure for the Deputy Secretary-General post, the Commission Spokesperson's answer was not sufficiently clear. The Spokesperson answered, in the same press briefing, that there were 'several', 'less than four', 'more than one', and finally 'two' candidates. The Spokesperson then acknowledged that the exact number had been in the briefing notes all along⁶⁶.

93. One issue initially highlighted in the media in relation to the appointment of the Secretary-General, was the assertion that allowances and administrative support for former Commissioners would be improved in connection with the appointment of the new Secretary-General. The first issue as regards allowances is, as the Commission pointed out, not within the competence of the

⁶³ See Communication à la Commission relative aux méthodes de travail de la Commission, C(2014) 9004, 11 November 2014, p. 10.

⁶⁴ See: <http://ec.europa.eu/avs-services/video/player.cfm?sitelang=en&ref=1150894>.

⁶⁵ The item had not been on the agenda for that morning's College meeting and most Commissioners were unaware of the proposal.

⁶⁶ See: <http://ec.europa.eu/avs-services/video/player.cfm?sitelang=en&ref=1151643>.



Commission but is a matter for the Council of the EU. There was nothing in the documents inspected by the Ombudsman about allowances for former Commissioners. There were however discussions on administrative support to former Commissioners, as the Commission confirmed later to Parliament. In the documents inspected, the Ombudsman has found no evidence to suggest that the appointment of the Secretary-General is linked to possible changes to the administrative support of former Commissioners e.g. use of car pool, office space. The Commission Spokesperson's Service did not acknowledge that this issue had been discussed at a senior level (Heads of Cabinet-level), and that a draft Decision had indeed been prepared. The Legal Service had concerns about the draft Decision and it was taken no further. When the Commissioner for HR was given the floor in the European Parliament plenary he likened reports about improving the administrative support for former Commissioners to "*fake news*" an unfortunate phrase given its origins⁶⁷.

94. Based on her overall analysis of the Commission's communication with journalists, the Ombudsman finds the information provided by the Commission to journalists in the days following the appointment of the new Secretary-General was not sufficiently clear and complete. However, it is also true that given the way in which the appointment was conducted, the spokespersons were placed in a very difficult situation in attempting to explain a problematic appointment.

95. Overall, the Commission's handling of the communications aspect of the appointments, ultimately further damaged public trust.

iii) Public Trust

96. In opening this inquiry, the Ombudsman asked the Commission to reflect on how the appointment of its new Secretary-General may have damaged trust in the EU as a whole, given the widespread criticism of the manner in which the appointment was made.

97. The Commission answered that it does not believe that its actions have damaged citizens' trust. The Ombudsman finds that this reflexively defensive response portrays either an actual lack of self-awareness and understanding of the valid concerns raised or a wilful refusal to admit to them. In its Resolution, the European Parliament stated that it "*[r]egrets that the procedure for the appointment of the new Secretary-General of the European Commission on 21 February 2018 was conducted in a manner which aroused widespread irritation and disapproval in public opinion, among Members of the European Parliament and within the European civil service*". It furthermore noted "*that the result of this procedure constitutes a reputational risk not only for the European Commission but for all the European Union institutions*".

⁶⁷ Commissioner Oettinger speaking in the European Parliament's plenary session on 12 March at the end of the debate on the "Integrity policy of the Commission, in particular the appointment of the EC Secretary-General".



98. It is thus regrettable that the Commission replied in the manner it did and did not take account of the extensive criticism from the European Parliament, from many EU civil servants themselves and contained in a wide array of national and international media reports.

99. European citizens are entitled to expect all EU institutions to follow the rule of law, in spirit and letter. Specifically, citizens justifiably expect the European Commission to be a role model in this regard. And indeed, in many ways the Commission does maintain very high standards in terms of transparency, ethics and the rule of law compared to many other public administrations. However, any failure to respect the rules, and the spirit of those rules, can give rise to accusations that the Commission uses its power in an arbitrary and self-serving way. In such circumstances, the Commission risks damaging its own legitimacy. Given the key role of the Commission in the EU's institutional architecture, and indeed in European integration, the wider legitimacy of the EU is also put at unnecessary risk.

100. If legitimate concerns are raised, people expect the Commission to reply without delay and to give answers which are correct and complete.



8) Conclusions

101. The Ombudsman has found **four instances of maladministration** by the Commission in her inquiry:

- 1) Failure to take appropriate measures to avoid the risk of a conflict of interests arising from the involvement of Mr Selmayr and/or other members of the President's Cabinet in the decision-making leading to the creation of the vacancy and the approval of the vacancy notice for Deputy Secretary-General (a vacancy for which Mr Selmayr highly likely knew he would apply and later did).
- 2) Failure to ensure that the composition of the Consultative Committee on Appointments (CCA), for the selection of a Deputy Secretary-General, was in accordance with Article 10 of the CCA Rules of Procedure.
- 3) Holding a selection procedure for a Deputy Secretary-General, which did not serve its stated purpose to fill the vacancy, but rather only to ensure that Mr Selmayr would be eligible for reassignment as Secretary-General.
- 4) As the impending retirement of Mr Italianer was kept secret, a situation of urgency to fill the post of Secretary-General was created artificially. Even then, this should not have prevented the Commission from launching a procedure to identify and evaluate possible candidates for Secretary-General before Mr Italianer would retire.

102. The Ombudsman wishes to highlight that an assessment of Mr Selmayr himself did not form any part of her inquiry. The Ombudsman understands that not only is he a competent EU official but one highly committed to the European Union. He is also someone who has earned and maintained the trust of President Juncker. It is however somewhat ironic that President Juncker was the first Commission President elected via the '*Spitzenkandidaten*' democratic process, assisted by Mr Selmayr. This transparent democratic process, whereby the Commission President is elected taking account of the results of the European Parliament elections is designed, in part, to counter false claims that the EU is run by unelected officials in Brussels.

103. As outlined above, many citizens, EU civil servants, journalists and MEPs felt unease in the weeks following the appointment of the Commission's new Secretary-General. The Ombudsman inquiry has had access to all relevant documents, as presented by the Commission. The Ombudsman conclusions following her inquiry are largely similar to those of the European Parliament as expressed in its Resolution of 18 April 2018. The Parliament expressed the view that the Commission's actions in this case had undermined public trust in the EU, that they ran contrary to the spirit of those requirements; and that the appointment of Mr Selmayr was a "*coup-like action which stretched and possibly even overstretched the limits of the law*". The Ombudsman agrees with Parliament that "*the tradition of non-publication has reached its limits insofar as it does not*



correspond to modern standards of transparency, the Commission, the European Parliament and other EU institutions should abide”.

104. In making these findings of maladministration, the Ombudsman is conscious of the need to consider the senior appointment procedures in their entirety and not in a narrow way. The Ombudsman is also conscious that the Commission must be allowed some flexibility in the organisation of its own administration. However, the Commission’s actions in this case go beyond the legitimate boundaries of flexibility. The Commission’s actions involved a manipulation of the rules governing senior management appointments so as to convey the impression that the appointment procedures, in the case of Mr Selmayr, were applied correctly and that the outcome, in turn, was fair and correct. In fact, this was not the case and the entire affair, starting in January 2018, if not earlier, was arranged to ensure the appointment of Mr Selmayr as Secretary-General.

105. The Ombudsman also notes that responsibility for the maladministration in this case rests with the European Commission collectively. The Ombudsman, like Parliament, is disappointed that no individual Commissioner appears to have seriously questioned the manner in which the appointment of the Secretary-General was conducted. It seems extraordinary that in the course of a very short meeting, at which other business was also dealt with, that the College should have approved, successively, the appointment of Mr Selmayr, first as Deputy Secretary-General, and then as Secretary-General. And all of this in a context where the proposed appointment of a new Secretary-General was not on the meeting agenda and no background papers had been circulated.

106. The Ombudsman agrees with the European Parliament that *“appointments to high-level posts like Secretary General should be made independently of other appointments”*. Indeed, the Commission itself, in its current Rules of Procedure, recognises that the post of Secretary-General is a separate post with its own specific functions.

107. The Ombudsman welcomes the Commission statement in response to her written questions that it *“stands ready to reassess, together with the other EU institutions, how the application of the rules and procedures can be improved in the future.”* The Ombudsman agrees with *“the need to ensure that senior management decisions adopted by the Commission do not become the object of negotiations between Member States and/or political parties. This could call into question, with regard to the Commission, the supranational spirit of the European Public Administration and the goal of having highly qualified senior managers.”* The Ombudsman also welcomes Commissioner Oettinger’s proposal to organise an inter-institutional roundtable on this matter, and encourages all EU institutions to engage seriously with this initiative to the overall benefit of the EU administration.



9) Recommendation

On the basis of the inquiry into these complaints, the Ombudsman makes the following recommendation to the Commission:

The Commission should develop a specific appointment procedure for its Secretary-General, separate from other senior appointments.

- ✓ **Such a procedure should include the publication of a vacancy notice and the placing of the appointment on the College agenda in a timely manner.**
- ✓ **The Consultative Committee on Appointments, for future appointments of the Secretary-General, should also be broadened to include members from outside the Commission.**

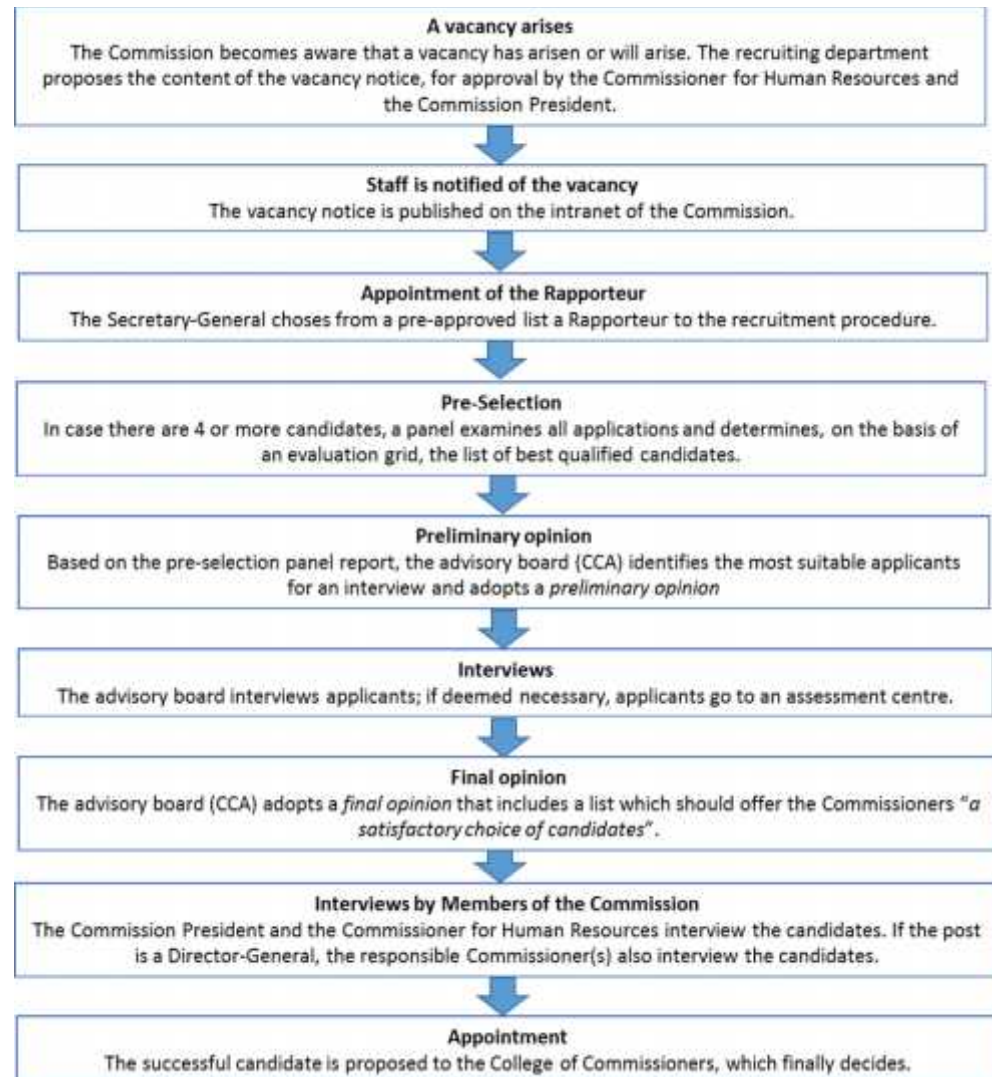
The Commission and the complainants will be informed of this recommendation. In accordance with Article 3(6) of the Statute of the European Ombudsman, **the Commission shall send a detailed opinion by 4 December 2018.**

Emily O'Reilly
European Ombudsman

Strasbourg, 31/08/2018



Annex I - Vacancy Procedures for Senior Commission Officials





Annex II - Technical analysis - vacant posts, reassignments

This Annex seeks to clarify the concept of “*vacant post*” and the concept of “*reassignment with post*”.

1 Vacant posts

Article 4 of the Staff Regulations states that:

“Vacant posts in an institution shall be notified to the staff of that institution once the appointing authority decides that the vacancy is to be filled .”

Once a vacancy is notified to staff, an institution must compare the merits of the eligible candidates who apply for the vacancy, in order to decide, based on the selection criteria set out in the “*vacancy notice*”, which candidate is best suited to fill the vacancy.

A post certainly becomes “*vacant*” in an institution when the service of an official is terminated in accordance with Article 47 of the Staff Regulations, which includes the retirement of the official under Article 52 of the Staff Regulations.

The Commission argues the retirement of Mr Italianer did not give rise to a “*vacant post*”, because the post in question was filled immediately: it argues that since Mr Selmayr took up the function of Secretary-General *immediately* once Mr Italianer was transferred to an advisor role, that the post had not become “*vacant*”. It thus argues that there was no need to publish a vacancy notice for the post of Secretary-General.

A number of examples will illustrate why the words used by the Commission are somewhat misleading.

On 31 January, it was announced that Ms Michou, who at that time held the post of Deputy-Secretary-General, would, on 1 March, be transferred to the post of Director-General. The Commission then considered that a vacancy would arise, on 1 March, in the post of Deputy Secretary-General. It thus issued a vacancy notice, two candidates applied, and eventually, on 21 February Mr Selmayr was appointed to the vacant post of Deputy Secretary-General. The fact that there was no time-lapse between the departure of Ms Michou from the post of Deputy Secretary-General (she left that post on 1 March) and the appointment of Mr Selmayr to replace her (on 1 March) in that post, did not mean that a vacancy had not arisen in that post.

If it were the case that no vacancy had arisen in that post, it would not have been possible to issue a vacancy notice.

On 21 February, it was announced that Mr Italianer would be transferred, also on 1 March, to the post of Hors Classe Advisor (and that he would retire definitively on 31 March). From a technical perspective, there is no difference between the transfer of Ms Michou from the post of Deputy Secretary-General



to the post of Director-General, and the transfer of Mr Italianer from the post of Secretary-General to the post of an advisor. If the transfer of Ms Michou from the post of Deputy Secretary-General gave rise to a “vacancy” for the post of Deputy Secretary-General, certainly the transfer of Mr Italianer from the post of Secretary-General must also have given rise to a “vacancy” in the post of Secretary-General.

The fact that the vacancies thereby created might be immediately filled (that is, they are not *left* vacant for any period of time) does not mean that a vacancy had not arisen.

The Commission states in its replies to Parliament that “*since the appointment of Émile Noël as the Commission’s first Secretary-General the Secretary-General position has never been vacant*”⁶⁸. The Ombudsman does not see the logic of this statement. Just because a post does not **remain** vacant, but is immediately filled once it becomes vacant, does not mean that the post was not rendered vacant by the departure of the incumbent. The Ombudsman’s staff also confirmed, during the inspection, that a vacancy notice was issued for the position of Secretary-General in 1997. Two candidates applied and Mr Carlo Trojan was appointed after a comparison of the merits of the two candidates. In that case also, there was no time period between the departure of the previous Secretary-General and Mr Trojan taking up this role.

In the Ombudsman’s view, the fact that a post is **directly** filled by a successor does not change the fact that it was “*vacant*”.

There is, however, a straightforward explanation for the above. As noted above, Article 4 of the Staff Regulations states that “*vacant posts in an institution shall be notified to staff of that institution **once** the appointing authority decides that the vacancy is to be filled*”. A proper reading of Article 4 implies that an appointing authority is not obliged to notify staff of every vacant post. It is obliged to do so only **once** it decides to fill that post.

An institution could well decide to wait before filling any vacant post.

It is also perfectly possible that when the institution decides to fill a given post that has been rendered vacant, it can use that particular post for another purpose. If a person retires from a “*Director-General-level*” post, the institution can use that post for another purpose, such as for a new Deputy Director-General. It can thus issue a vacancy notice to that effect.

It is also perfectly possible that the **function** that was carried out by the Director-General referred to in the previous paragraph could be given to another Director-General. In such cases, the person who is called upon to carry out the functions in question is understood to be “*reassigned with his/her post*” in order to carry out those functions.

⁶⁸ Answer to Parliament, Question 5, 4 April 2018.



Reassigning an official *with his or her post*

The Commission, in its replies to Parliament has referred to the possibility of “*reassigning*” an official *with his or her post*. It argues that when it reassigns an official with his or her post, there is no need to comply with the obligation, set out in Article 4 of the Staff Regulations, to issue a “*vacancy notice*”.

The Ombudsman notes that case law covers three main categories of “*reassignment with post*”, namely: 1) geographical reassignments; 2) reassignments when there is a serious and urgent need to move an official out of a job; and 3) a reorganisation of a service.

A geographical “*reassignment with post*” can be used where there is a need to move posts, and the persons occupying them, from one geographical location to another.⁶⁹ Such geographical “*assignments of posts*” can occur without any post becoming vacant in the location where the person is reassigned.

“*Reassignments with post*” can be used, very exceptionally, where there is a very serious and urgent need to move a member of staff **out of a specific job**, such as when a person occupying a managerial post is under investigation for fraud⁷⁰, or where there is alleged harassment and it is necessary to take steps to protect the alleged victim. In those very serious and urgent cases, the institution is not required to have a vacancy before immediately “*reassigning*” the person concerned to another function. The vast majority of the case law relating to reassignments with posts concerns this type of reassignment, namely that a staff member is moved out of a job against his or her will, since in those cases the jobholder concerned contests the decision of the Appointing Authority in court.

“*Reassignments*” can also be used to carry out regular staff mobility exercises or reorganisations of a service. In such cases, staff are moved, **with their posts**.

The EU courts have, however, established rules as regards this use of “*reassignments with post*”⁷¹. If a staff mobility exercise involves moving a person to an **important function where specific skills are required**, and that function is **different from the function that person previously held**, and where the decision has **important and general effects**, the institution should put in place a “*procedure*” allowing it to identify the **most competent** person to carry out that function⁷².

⁶⁹ The case law refers, for example, to situations where the posts of two secretaries working in the Delegation in Rome, and the persons occupying those posts ((Cases 161/80 and 162/80, *Carbognani and Code Zabetta v Commission*), were moved, back to Brussels.

⁷⁰ This arose in a case where OLAF was investigating alleged fraud at Eurostat. In that very serious and urgent situation, the Commission decided to move a number of managers implicated in the investigation to non-managerial functions. In order to achieve this aim quickly, it “reassigned” the posts of the persons in question to non-management functions). Once this reassignment with post was carried out, however, the Commission published the posts of Directors (see case T-339/03, *Clotuche v Commission* and Case T-118/04 and T-134/04, *Caló v Commission*)

⁷¹ See, in particular, Case T-373/04, *Guggenheim v Cedefop*.

⁷² If the new functions that arise from a reorganisation imply the same or lesser responsibilities than previously exercised by the reassigned official, it can be assumed that the official concerned has the capacities to exercise those new functions. In those circumstances, the simple reassignment can be used, without any need to carry out a procedure to identify the most capable candidate. This occurred in a



The appointment of a Secretary-General will have important and general effects.

At the very least, a director-level post, such as the one held by Mr Selmayr in his basic career until February 2018, is not **equivalent** (in terms of importance, in terms of responsibilities and in terms of the skills needed) to the post of a Secretary-General⁷³.

Thus, it would not be consistent with the above outlined case-law to appoint a person who is at **director-level in his basic career**, to the post of Secretary-General, through a “*reassignment with post*”, without any procedure to compare the merits of eligible staff with a view to identifying the most competent person.

Also the Commission, in its reply to the Ombudsman, now carefully qualifies its earlier statements to Parliament. Rather than insisting that Mr Selmayr was **always** eligible to be reassigned to the post of Secretary-General, it states that Mr Selmayr “*was fully qualified to be transferred to the Secretary-General post, after his appointment of Deputy Secretary-General, by a decision of the College under Article 7(1) of the EU Staff Regulations*” (emphasis added).

Annex I of the Staff Regulations establishes the **types of posts**⁷⁴ in each function group. Section 1 of Annex I reads:

1. Function group AD

Type of post	Grade range
Director-General ⁷⁵	AD 15 - AD 16

case where a Head of Unit was reassigned to a non-managerial role (see *Fronia v Commission* at paragraph 56 and 57).

⁷³ It is arguable that there is **no post** in the Commission which is “*equivalent*”, in terms of the skills required, to the post of Secretary-General. The Commission has stated to Parliament that the “*the Secretary-General of the Commission is not an ordinary job*”. It is a job which “*requires not only special experience with regard to the functioning of the Commission, its working methods, its decision-making process and its interinstitutional role, but also a particular level of trust that the President can place in the Secretary-General*” and that there is “*only a handful of people at most who fulfil these special requirements*.” The Commission has also stated, in answering Parliament, that the function of Secretary-General **is not a normal function at Director-General-level**. It would thus seem consistent with the Court’s ruling in *Guggenheim v Cedefop* for the Commission always to carry out a “procedure” to identify the most competent person to carry out that role. This would mean that **even Directors-General** would have to go through a procedure to identify the most competent person in order to become Secretary-General. However, for the purposes of the present inquiry, it is not necessary for the Ombudsman to arrive at a conclusion on this point since the only issue at stake here is whether Mr Selmayr could have been re-assigned from a **director-level post** to the Secretary-General post, which he clearly could not.

⁷⁴ The Commission has adopted a decision implementing Annex I which stipulates that there may be a Director-General or equivalent, and Directors or equivalent. This allows the Commission to appoint Deputy Director-Generals as a sub category within the Director-General Category, and principal advisors within the Director category.

⁷⁵ A Secretary-General is a Director-General “*type of post*”.



Director	AD 14- AD 15
Advisor or equivalent	AD 13- AD 14
Head of Unit or equivalent	AD 9- AD 14
Administrator	AD 5 - AD 12

The five “*types of posts*” set out in Section 1 of Annex I of the Staff Regulations are significantly different from each other. Administrators have no management duties. Heads of Units manage administrators. Directors must have the ability to manage managers, which requires skills which are different from the skills required to be a Head of Unit. Directors-General must have the ability to manage Directors.

As a result, it is not possible to move a person up from one level to the next level through a simple “*reassignment with post*”. A “*procedure*” must instead be put in place allowing the institution to compare the merits of potential appointees and thus to identify the most competent person to carry out that function.

Opinion of the European Commission on the European Ombudsman's recommendation

- Complaint by delegations of the European Parliament, ref. 488/2018/KR and 514/2018/KR

The European Commission notes that the Recommendation of the European Ombudsman of 31 August 2018 on the European Commission's appointment of a new Secretary-General does not contest the legality of the appointment procedure and recognises the qualifications of the senior official appointed by the Commission.

The European Commission also takes note of the European Ombudsman's acknowledgement "*that the Commission must be allowed some flexibility in the organisation of its own administration.*" It would like to add however in this regard that, like any other institution of the Union, the Commission is not only "*allowed some flexibility*", but acts autonomously within the limits of the powers conferred on it in the Treaties and within the framework of the applicable law. This includes the power to decide on its internal organisation, its rules of procedure and the exercise of its appointing authority powers under the Staff Regulations.

The Recommendation of the European Ombudsman results from the examination of approximately 11,000 pages of documentation that the European Commission gave access to. Unfortunately, it includes a number of incorrect findings which the Commission would like to clarify.

The European Ombudsman's reading of the EU Staff Regulations and of other relevant rules is not accurate. The European Commission acted in full compliance with the EU Staff Regulations, as interpreted by the case law of the European Union Courts, and with its Rules of Procedure. The Commission notes well that the transfer of an official under Article 7(1) of the EU Staff Regulations in the interest of the service, which has been decided for senior management positions at Director-General or equivalent level in 49 cases by this Commission and in 59 cases under the previous Commission and has also been applied with regard to the three previous Secretaries-General, is singled out in the present case by the European Ombudsman.

The decision to appoint the new Secretary-General was taken by the College of 28 Commissioners unanimously, and the person currently occupying the post fully met all demanding requirements for the job. The Commission therefore firmly rejects the observation made by the Ombudsman that it would have manipulated the rules in any way. The Commission also rejects the observation that it would have created an artificial time constraint; on this point both the President and his former Head of Cabinet tried, until the very last day, to convince the

former Secretary-General to stay on in his function, and it is only on 20 February 2018 that the retirement of the previous Secretary-General was communicated to the President of the Commission, when he informed the President about his intention to submit his retirement letter the next morning. These facts could have been confirmed by the former Secretary-General and by the former Head of Cabinet of the President. The Commission notes that the European Ombudsman did not hear these two persons who could have explained and confirmed these facts.

The Commission also contests, and regrets, the wording of a *press release* put out by the European Ombudsman in order to publicise its Recommendation¹. The press release uses a statement that is not found in the actual Recommendation and which yet made all the headlines: “*The maladministration arose due to the Commission not following the relevant rules correctly either in letter or in spirit*” [emphasis added]. This is misleading because in none of the 107 points made in the Recommendation there is evidence that the relevant rules were not respected. The Commission regrets this contradiction between a recommendation that is one of the formal instruments at the disposal of the European Ombudsman based on the Treaty as well as the European Ombudsman’s Statute, and communication via a press release. The Commission also notes that it is only the European Court of Justice or the General Court that could rule on the respect of the relevant rules in case a Commission decision was legally challenged, which was not the case in the present case.

The European Commission would like to clarify some facts and legal elements that the European Ombudsman refers to in support of her Recommendation. In particular, it seems necessary to clarify the possibilities offered by Article 7 of the EU Staff Regulations as a number of the European Ombudsman’s findings are based on a clear misunderstanding of this Article. The European Ombudsman states that “*in order to be fully eligible [for a post of Secretary-General, the former Head of President’s Cabinet] first had to apply to become Deputy Secretary-General*”. This is wrong.

Article 7(1) of the EU Staff Regulations states: “*The Appointing Authority shall, acting solely in the interest of the service and without regard to nationality, assign each official by appointment or transfer to a post in his function group which corresponds to his grade*”.

The Ombudsman’s observation in point 30 of the Recommendation contesting that the former Head of Cabinet of the President had the necessary grade for the transfer to the Secretary-General post goes against the standing law. As an AD15 official holding a senior management function for 8 years in the Commission, the former Head of Cabinet of the President was eligible for the post of Secretary-General and therefore eligible for a transfer by a decision of the Commission using the procedure of Article 7(1) of the EU Staff Regulations. The former Head of Cabinet of the President was – and still is – an official in the AD function group with the grade AD15. He would, therefore, have been eligible for a transfer to the function of Secretary-General in accordance with Article 7 without having been appointed to the function of Deputy Secretary-General.

¹“*Commission should develop new procedure for appointing its Secretary-General*”, available at: <https://www.ombudsman.europa.eu/en/press-release/en/102716>.

For the sake of clarity, the Commission would like to repeat the elements of its reply of 15 June 2018 to the European Ombudsman's additional questions that sets out nine points and principles that underpinned the decision on the appointment of the new Secretary-General and that explains why the appointment corresponds to normal practice:

“1. The Commission took the decision to appoint the new Secretary-General on 21 February 2018, as part of a series of senior management appointments, by unanimity of all 28 Members of the College. In doing so, the Commission acted in full compliance with the EU Staff Regulations, as interpreted by the EU jurisdictions’ case law² and with its Rules of Procedure.

2. President Juncker made the proposal to appoint the new Secretary-General in agreement with Commissioner Oettinger and after consultation with First Vice-President Timmermans. Both of them gave their agreement to the proposed appointment.

3. In accordance with normal practice, and to safeguard the necessary degree of confidentiality, the proposed appointment was presented directly to the College on the same day that the College took the decision. It is a prerogative of the President to add items to the College agenda, in line with Article 6(5) of the Rules of Procedure of the Commission. The principle of collegiality was fully respected.

4. The Secretary-General of the Commission is a position that requires extensive experience with regard to the functioning of the Commission, its working methods, its decision-making process and its institutional role. As foreseen in Article 20 of the Commission’s Rules of Procedure, the Secretary-General also needs to assist the President and the College as a whole, so that, in the context of the political guidelines laid down by the President, the Commission achieves the priorities that it has set itself. He or she must therefore have the full trust of the President and of the entire Commission.

5. The person currently occupying the post fully meets these requirements, as well as all the procedural conditions laid down in the EU Staff Regulations: as an AD15 official with eight years of senior management experience in the Commission³ and seven years of professional experience prior to joining the Commission, the person was fully qualified to be transferred to the Secretary-General post, after his appointment of Deputy Secretary-General, by a decision of the College under Article 7(1) of the EU Staff Regulations⁴. In addition, prior to this appointment, the new Secretary-General underwent a full selection procedure, as required by Commission rules for the appointments of Directors-General and Deputy Directors-General, including participation in a full day Assessment Centre, an interview, assessment and opinion by

² See for example joined cases 161 and 162/80, Carbognani and Zabetta v. Commission, points 19 et seq. and case F-24/12, BN v. Parliament, point 46.

³ As the General Court has found, being Head of Cabinet qualifies as gaining management experience within the Commission (Case T-118/04 and T-134/04, Caló v Commission, para. 212-213).

⁴ Formal requirement for appointment to a Director-General level function is to have the grade of AD14 or above (with a minimum of two years in the grade for AD14 officials) and a minimum of two years of management experience as a senior manager at Director level or above.

the Consultative Committee on Appointments; an interview with the Commissioner in charge of Budget and Human Resources and with President Juncker before being appointed by the College unanimously on 21 February.

6. In order to guarantee the seamless functioning of the institution, it is in the interest of the Commission to avoid situations where the function of the Secretary-General becomes vacant. It should be noted that since the appointment of Emile Noël as the Commission's first Secretary-General, the position of Secretary-General has never been vacant. In the case of the appointment of the new Secretary-General, all the conditions for using the transfer procedure of Article 7(1) of the EU Staff Regulations were fulfilled. The three previous Secretaries-General were appointed on the basis of the same procedure.

7. The retirement of the previous Secretary-General was communicated to the President of the Commission on 20 February 2018, when he informed the President about his intention to submit his retirement letter the next morning. On the same day, Commissioner Oettinger was informed by the President about this intention and that consequently the President would propose that his Head of Cabinet be transferred to the post of Secretary-General. Commissioner Oettinger expressed his full agreement. The President also consulted First Vice-President Timmermans on his proposal on 20 February who gave his agreement.

8. The Commission's Spokesperson's Service replied factually, to the best of its knowledge and comprehensively to all the questions received on this procedure. The Commission is ready to consider the possibility to accompany senior management decisions with technical briefings where experts from the Human Resources Directorate-General could explain legal or technical procedures to the press.

9. The Commission stands ready to reassess, together with the other EU institutions, how the application of the rules and procedures can be improved in the future. In doing so the principle of transparency must be reconciled with the need to ensure that senior management decisions adopted by the Commission do not become the object of negotiations between Member States and/or political parties. This could call into question, with regard to the Commission, the supranational spirit of the European Public Administration and the goal of having highly qualified senior managers. Commissioner Oettinger has launched a proposal to organise an interinstitutional round table on this matter."

In line with this reply, Commissioner Oettinger convened an interinstitutional round table on 25 September to which the European Ombudsman was invited as well. The round table comforted the Commission in its view that the way in which the institutions implement the rules is both adequate and fit for purpose. The EU Staff Regulations, supplemented by established case law, provide a solid framework within which each Institution has the autonomy to organise its departments and assign its staff in the interest of the service so as to make the best use of their talents.

Concerning the instances of alleged maladministration, the Commission would like to reply with the following observations:

On the first instance of alleged maladministration concerning the risk of a conflict of interest during the appointment procedure.

It is neither legally required nor practical – and therefore not Commission practice – for a senior official to recuse himself from contributing to the preparation of vacancy notices for posts for which he or she could conceivably intend to apply in the future. The same reasoning applies to procedures to appoint other senior managers. The possibility to apply for vacant senior management posts exists for all senior managers across the Commission fulfilling the eligibility criteria, be they currently assigned to a Directorate-General, the Cabinet of the President or any other Cabinet. This possibility is inherent to the process and the Members of the College as Appointing Authority are obviously aware of it when they decide on a transfer or a vacancy notice such as in the present case.

It should also be noted that the vacancy notice adopted by the College in the present case and published on 31 January did not differ in substance from the vacancy notice previously published for the exact same function.

The former Head of Cabinet of the President did explicitly recuse himself from the entire selection process. He did so in writing, by note of 12 February 2018, addressed to the Consultative Committee on Appointments, when he decided to apply for the post of Deputy Secretary-General, thus avoiding even the *appearance* of a potential conflict of interest. This note was part of the documents inspected by the European Ombudsman. It is attached to this reply.

Contrary to what the European Ombudsman suggests, the European Commission thus took all the appropriate measures to avoid not only a potential conflict of interests but also any appearance of a potential conflict of interest.

On the second instance of alleged maladministration concerning the composition of the Consultative Committee on Appointments.

Contrary to what the European Ombudsman suggests, the Consultative Committee on Appointments was composed in full compliance with all the applicable Rules of Procedure.

The European Ombudsman correctly refers in point 65 of its Recommendation to Article 10 of the Consultative Committee on Appointments' Rules of Procedure stating that a member of the Committee with a personal interest such as to impair his or her independence in a specific matter dealt with by the Committee, shall neither take part in the deliberations nor vote on that matter. In such cases, the rules require that the member in question "*shall be replaced by a Rapporteur designated by the Secretary-General among the members on the list of Rapporteurs*".

However, Article 10 of the Consultative Committee on Appointments' Rules of Procedure was not applicable in the selection procedure for the Deputy Secretary-General. The replacement of the Head of the President's Cabinet in exceptional circumstances is specifically foreseen in Article 8(2), paragraph 2, of the same rules. This provision was introduced by the Commission in October 2015 and constitutes a subsequent rule specifically aimed at addressing the replacement of the Head of the President's Cabinet in the Consultative Committee on Appointments. It constitutes a *lex specialis* for the replacement of a specific person, i.e. the Head of the President's Cabinet, excluding the application of other general provisions, such as Article 10 of the Rules of Procedure.

When the former Head of Cabinet of the President recused himself from the procedure on 12 February 2018, he also recused the entire Cabinet of the President. This means that his replacement as member of the Consultative Committee on Appointments on the basis of Article 8(2), paragraph of the Consultative Committee on Appointments' Rules of Procedure, was not possible. The Committee was therefore composed in full compliance with the applicable Rules pursuant to Article 3.2 without the presence of the Head of the Cabinet of the President.

On the third instance of alleged maladministration concerning the purpose behind the selection procedure for the Deputy Secretary-General.

The assumption advanced by the European Ombudsman that "*the sole purpose [of the Deputy Secretary-General selection procedure] was to make Mr Selmayr eligible for reassignment as Secretary-General*" is wrong and is not supported by the facts.

As stated above, the former Head of Cabinet of the President was already eligible for the post of Secretary-General without having to go through any intermediary step of being appointed Deputy Secretary-General first. As an AD15 official holding a senior management function for 8 years in the Commission, he was eligible for the post of Secretary-General and could have been transferred by a decision of the Commission using the Article 7 procedure. Article 7(1) of the EU Staff Regulations states: "*The Appointing Authority shall, acting solely in the interest of the service and without regard to nationality, assign each official by appointment or transfer to a post in his function group which corresponds to his grade*". The former Head of Cabinet of the President was (and still is) an official in the AD function group with the grade AD15. He would, therefore, have been eligible for a transfer to the function of Secretary-General in accordance with Article 7 without having been appointed to the function of Deputy Secretary-General.

While, as has already been communicated to the European Parliament, it is not the Commission's practice to transfer Directors in grade AD15 to Director-General posts under Article 7, legally this is entirely possible and the Commission could have decided to do so in view of the specific circumstances of the case⁵.

⁵ See reply to question 49 of European Parliament questionnaire of 24 March 2018.

The new Secretary-General was appointed to the function of Deputy Secretary-General and would have served in that function had the College not unanimously agreed to his subsequent transfer to the function of Secretary-General. The announcement of the previous Secretary-General of his intention to retire did not justify stopping an on-going, separate and independent selection procedure for a Deputy Secretary-General function.

On the fourth instance of alleged maladministration concerning the urgency of the appointment and the use of the Article 7 transfer procedure.

The Ombudsman's conclusion that the urgency of the Secretary-General's appointment was "*artificial*" is based on a fundamental misunderstanding of the autonomous concept of transfer on the basis of Article 7(1) of the EU Staff Regulations known in the case law as "*reassignment with the official's post*".

No exceptional circumstances are required to reassign an official with his/her post. In particular, the concept of there being a serious and urgent situation is certainly not a necessary condition for an Article 7(1) transfer. The Commission has always stressed that transferring the former Head of Cabinet of the President to the function of Secretary-General was in the best interest of the service and was possible because it is a function which corresponds to the function group and grade he had at the time and still has.

The Commission would also like to insist: (1) on the specificities of the role of the Secretary-General and its importance from a political and administrative point of view in implementing the agenda of the President of the Commission and therefore, on the necessity to have a fully operational Secretary-General at all times; and (2) on the fact that both the President and his former Head of Cabinet tried, until the very last day, to convince the former Secretary-General to stay on in his function.

Concerning Annex II of the European Ombudsman's Recommendation, the European Commission cannot share the analysis of what constitutes a "*vacant post*" and "*reassignment with post*" – the analysis being based on an interpretation of the rules set out in Articles 4, 7 and 29 of the EU Staff Regulations that contradicts the constant case-law of the European Union Courts. Some of the elements developed in Annex II are along the lines of the analysis previously developed by the European Parliament, which the Commission already commented upon in its answers to the Parliament on 4 April 2018. As the Commission explained in those answers, the EU Staff Regulations allow for two types of transfer: reassignment with post on the basis of Article 7 and transfer properly called on the basis of Articles 4, 29 and 7. Article 7(1) is the legal basis for an autonomous concept of transfer, which is known in the case law as "*reassignment with the official's post*"⁶ and does not give rise to a vacant post.

Contrary to the reasoning in Annex II of the Recommendation, no exceptional circumstances are needed to use the procedure of reassignment of an official with his/her post. Indeed, this type of transfer is standing practice by all institutions in all grades and function groups. Furthermore, the EU Staff Regulations do not establish an order of precedence between these two types of transfer, and the case law does not contain any reference either that one procedure would be the norm and the other the exception. It should also be noted that the three categories of reassignment

of an official with his/her post that have been analysed by European Union Courts have not been considered as exhaustive.

It is therefore for the Appointing Authority to decide which type of transfer it deems appropriate in order to best ensure the interest of the service, on condition that the staff member's assignment is in the interest of the service and in conformity with the principle of assignment to an equivalent post (defined by the EU Staff Regulations as a post in his function group that corresponds to his grade)⁷.

This is the decision that the Commission took in the present case based on what it considered to be in the best interest of the service and in line with its responsibility for the continuity of service.

It is wrong to see a contradiction with the Guggenheim case of 2004⁸ mentioned by the Ombudsman in Annex II of the Recommendation. This case concerned a very specific situation, where a whole series of individual decisions of transfers of several persons had to be taken in the context of a reorganisation of an Agency that gave rise to the creation of a new category of administrative functions in that Agency and consequently to a number of new assignments. Only in the specific circumstances of that very case, the General Court considered that due to the very particular circumstances ((a) many parallel individual decisions to be taken (b) in a complex reorganisation matter (c) with an impact on global governance) a reassignment with the official's post without organising an internal call for interest was not in the interest of the service. This case-law establishes therefore an exception, clearly not the norm and does not apply in a case involving a single individual decision and a single post which has always existed in an institution.

With respect to the ***Recommendation as to how the Secretary-General should be appointed in future***, the European Commission does not see any reason why the appointment should be carried out independently from the appointment of any other Director-General. The Commission also rejects any suggestion which might impinge on the President's prerogative to organise the meetings of the College and to decide on its agenda including his right to add items to the agenda at any stage.

⁶ See for example joined cases 161 and 162/80, *Carbognani and Zabetta v. Commission*, points 19 et seq. and case F-24/12, *BN v. Parliament*, point 46.

⁷ See for example Case 69/83, 23 June 1984, *Lux v Court of Auditors*, point 17 and case F-24/12, 19 June 2014, *BN vs Commission*, point 47.

⁸ Case T-373/04, *Guggenheim v. Cedefop*.

In the context of the interinstitutional round table convened on 25 September 2018 by Commissioner Oettinger, the Commission discussed, with the other institutions, the application of the current rules and procedures in all the institutions and how these might be improved in the future. As said above, these discussions comforted the Commission in its view that the way in which the institutions implement the rules is both adequate and fit for purpose. This should allow all institutions to guarantee the excellence of the European Union's civil service, supporting the respective institutions in their work for the European Union interest and being independent from any government, authority, organisation or person outside the institution.

Annex: Note of 12 February 2018

Decision in the joint inquiry in cases 488/2018/KR and 514/2018/KR on the European Commission's appointment of a new Secretary-General

DECISION - CASE 488/2018/KR - OPENED ON Tuesday | 08 May 2018 -
RECOMMENDATION ON Friday | 31 August 2018 -
DECISION ON Monday | 11 February 2019

This complaint-based inquiry concerned the appointment of the European Commission Secretary-General, Martin Selmayr, in 2018.

Following an extensive inspection of Commission documents and written questions put to the Commission as part of the inquiry, the Ombudsman identified four instances of maladministration in the handling of the appointment and made a recommendation.

Following the Ombudsman's findings, the European Parliament in December 2018 passed a resolution calling on the new Secretary-General to resign.

The Commission's reply to the Ombudsman's recommendation presents no new information and does not alter the inquiry findings, which showed in detail how Mr Selmayr's appointment did not follow EU law, in letter or spirit, and did not follow the Commission's own rules.

The Ombudsman recommended that the Commission should develop a specific appointment procedure for its Secretary-General, separate from other senior appointments.

- Such a procedure should include the publication of a vacancy notice and the placing of the appointment on the College agenda in a timely manner.
- The Consultative Committee on Appointments, for future appointments of the Secretary-General, should also be broadened to include members from outside the Commission.

It is highly regrettable that the Juncker Commission chose not to implement this recommendation. The Ombudsman looks forward to its implementation by the next Commission.

The Ombudsman closes her inquiry by confirming her findings and recommendation.

Background

1. On 21 February 2018, the European Commission announced that Mr Martin Selmayr, the then head of the private office (“*Cabinet*”) of the President of the Commission, would be appointed Secretary-General to replace Mr Alexander Italianer. Earlier that morning, Mr Italianer *formally* told the President that he would retire on 31 March 2018.
2. In the days and weeks that followed, a number of serious concerns were raised about the manner in which this appointment was made.
3. In this context, the European Parliament’s Committee on Budgetary Control carried out an initial examination including 195 questions put to the Commission^[1]. In the same period, the Ombudsman also received a **number of complaints** about how the Commission had appointed its new Secretary-General, several of which were submitted by Members of the European Parliament (MEPs).
4. After examining the Commission’s responses to its questionnaires, Parliament adopted a resolution, on 18 April 2018, stating that the “*two-step nomination of the Secretary-General could be viewed as a coup-like action which stretched and possibly even overstretched the limits of the law*”^[2].
5. After Parliament adopted its resolution, the Ombudsman opened her inquiry. In June 2018, the Ombudsman received the Commission’s reply to her questions^[3]. Between June and August 2018, the Ombudsman inspected thousands of pages of documents eventually made available to her by the Commission^[4].
6. On 31 August 2018, the Ombudsman issued her findings^[5]. After setting out a detailed account of the facts, she identified four instances of maladministration, which can be summarised as follows:
 1. The Commission held a selection procedure for Deputy Secretary-General not for the purpose of filling that role, but for the sole purpose of ensuring that Mr Selmayr would become eligible for reassignment as Secretary-General.
 2. By keeping the retirement of Mr Italianer secret until the last moment, a situation of artificial urgency was created that facilitated the appointment of Mr Selmayr as Secretary-General. Yet despite the appearance of urgency, nothing would have prevented the Commission from launching a procedure to identify and evaluate candidates for Secretary-General before Mr Italianer’s retirement in late March.
 3. A risk of a conflict of interest arose regarding the involvement of Mr Selmayr (and/or his subordinates in the President’s Cabinet) in the decision-making leading to the creation of the Deputy Secretary-General vacancy and the approval of the vacancy notice for that position (a vacancy for which it was highly likely that Mr Selmayr knew he would apply, and later did so).
 4. The committee of senior officials which interviewed Mr Selmayr for the Deputy Secretary-General post was not constituted in accordance with the applicable rules.

7. In light of these findings, the Ombudsman recommended that the Commission put in place a specific procedure for appointing a Secretary-General, separate from other senior appointments. This should include the publication of a vacancy notice and the placing of the appointment on the agenda of the College of Commissioners in a timely manner. She also recommended that the committee of senior officials that evaluates candidates for such positions be broadened to include members from outside the Commission. The purpose of these recommendations was to avoid errors like those identified in this case from reoccurring.
8. On 25 September 2018, the Commission convened an inter-institutional round table on senior management selection and appointments. No further meetings took place. To date, this round table discussion has not given rise to any concrete conclusions or actions by the Commission.
9. On 3 December 2018, the Commission provided its opinion^[6] on the Ombudsman's findings and recommendations.
10. The complainants made comments on that opinion.
11. On 13 December 2018, Parliament passed a resolution in which it "*emphasises that Mr Selmayr must resign as Secretary-General and calls on the Commission to adopt a new procedure for appointing its Secretary-General, ensuring that the highest standards of transparency, ethics and the rule of law are upheld*"^[7].

The Ombudsman's assessment following her recommendation

12. The Commission's opinion on the Ombudsman's recommendation presents no new information and does not alter the inquiry findings, which showed in detail how Mr Selmayr's appointment did not follow EU law and did not follow the Commission's own rules^[8]. The Ombudsman notes the following main points (a full assessment is contained in the annex to this decision):

1. Misuse of Deputy Secretary-General appointment procedure

13. The Commission opinion does not dispute the accuracy of the sequence of events set out in the Ombudsman's findings^[9]. In fact, it ignores it completely. The Commission opinion refers only to a fact which is not relevant to the Ombudsman's findings, namely that the *announcement* of Mr Italianer to retire did not justify stopping the on-going selection procedure for a Deputy Secretary-General position. The Ombudsman's findings were not linked to this *announcement*, but rather to the fact that steps were taken to reassign Mr Selmayr to Mr Italianer's post *before* the Deputy Secretary-General selection had been completed. It was *this sequencing* which proves that there was no intention for Mr Selmayr to serve as Deputy Secretary-General.
14. The Ombudsman therefore maintains her finding that, **contrary to Article 4 of the EU Staff Regulations**^[10], the Deputy Secretary-General selection procedure did not serve the purpose of filling the post of Deputy Secretary-General.

2. Creation of artificial time constraint

15. The Ombudsman concluded that the artificial time constraint was created by keeping the retirement of Mr Italianer secret until the last moment and that this constituted maladministration. In its opinion, the Commission provided no evidence to support its position that efforts were made, until the last moment, to convince Mr Italianer not to resign. It also chose not to address the Ombudsman's finding that there was, *in any case*, sufficient time to complete a selection procedure for the position of Secretary-General before Mr Italianer retired on 31 March 2018.
16. The Ombudsman therefore maintains her view that a sense of urgency was artificially created which facilitated the appointment of Mr Selmayr as Secretary-General.

3. Conflicts of interest

17. The Ombudsman found that the Commission had failed to take appropriate measures to avoid the **risk of a conflict of interest** arising from the involvement of Mr Selmayr (and/or other members of the President's Cabinet under his authority) in the Commission's decision-making leading to 1) the creation of a vacancy for a post of Deputy Secretary-General and 2) the approval of the vacancy notice for that Deputy Secretary-General post (a vacancy for which it was highly likely that Mr Selmayr knew he would later apply).
18. The Ombudsman concluded that this was maladministration, as candidates should not be involved, in any form or **at any stage**, in the preparations or organisation of a selection procedure for which they apply. The Ombudsman found that this is not only a principle of good administration, it is also specified in law in **Article 11a of the Staff Regulations**.
19. In its opinion, the Commission does not deny - indeed it seems to confirm - that Mr Selmayr did take part in the decision-making leading to the creation of a vacancy for the post of Deputy Secretary-General and in the approval of the vacancy notice for that newly vacant position.
20. The Ombudsman disagrees with the Commission's view that there is no legal requirement for senior officials to recuse themselves from such procedures. Article 11a of the Staff Regulations states that an official shall not deal with a matter in which directly or indirectly he has any personal interest such as to impair his independence. An official who intends to apply, or who is highly likely to apply, for a post, has a personal interest in the selection procedure for that post.
21. The Commission's reply to the Ombudsman appears to confirm that Mr Selmayr did in fact take part in the decision-making described above. As a result, there was not only a *risk* that a conflict of interest would arise. Rather, by taking part in the decision-making, a concrete conflict of interest **did arise**. The Ombudsman's finding of maladministration on this matter now reads:

A risk of a conflict of interest arose regarding the involvement of Mr Selmayr (and/or his subordinates in the President's Cabinet) in the decision-making leading to the creation of the Deputy Secretary-General vacancy and the approval of the vacancy notice for that position (a vacancy for which Mr Selmayr was highly likely to know he would apply and later did).

4. Composition of the Consultative Committee on Appointments

22. The Ombudsman found that the committee of senior officials who interviewed and assessed the candidates for the position as Deputy Secretary-General (namely, the Consultative Committee on Appointments or CCA) was not constituted in accordance with Rules of Procedure for that committee (since the Commission failed to appoint an alternate to replace Mr Selmayr when he eventually recused himself and his subordinates).
23. The Commission's representation of the relevant rules is incorrect. Article 10 of the CCA Rules of Procedure is designed to deal with the very specific circumstance of when a member of the committee is conflicted. Mr Selmayr, and his subordinates, had conflicts of interest as regards the various steps taken to fill the Deputy-Secretary General post. In that context, Article 10 *should* have been applied, and an alternate *should* have been chosen from the list of alternates. This was not done, and so a smaller pool of people were involved in CCA.
24. The Ombudsman therefore maintains that the CCA was not composed in accordance with the CCA Rules of Procedure.

5. Appointment procedure for Secretary-General

25. The Commission did not agree with the Ombudsman recommendation to publish a vacancy notice for the post of Secretary-General, thus leaving open the option that it would, in future, again appoint a Secretary-General through a reassignment without allowing eligible staff to apply for the Secretary-General vacancy.
26. The Commission has stated to Parliament that the "*the Secretary-General of the Commission is not an ordinary job*". It is a job which "*requires not only special experience with regard to the functioning of the Commission, its working methods, its decision-making process and its inter-institutional role, but also a particular level of trust that the President can place in the Secretary-General*" and that there is "*only a handful of people at most who fulfil these special requirements.*" The Commission has also stated, in its replies to Parliament, that the function of Secretary-General is not a normal function at Director-General level.^[11] As such, re-assigning a Director-General to the post of Secretary-General cannot ensure that the best person is appointed to the job. Only an open and fair selection procedure, where all eligible candidates can apply and be evaluated, can provide this reassurance. The Ombudsman therefore regrets the position taken by the Commission.

6. Changes to the Consultative Committee on Appointments

27. In her recommendation, the Ombudsman called on the Commission to broaden the Consultative Committee on Appointments to include members from outside the Commission and to use the CCA for future Secretary-General appointments.
28. The Commission does not agree.
29. The CCA currently consists of **six senior Commission staff** for appointment procedures for Deputy Secretary-General, a procedure which proved key to the double-appointment of Mr Selmayr. The Ombudsman notes that all of these senior staff members work closely together, tend to know each other well and very often also know the candidates. It is advisable to avoid any situations which can give rise to doubts as regards the objectivity and independence of a

selection process. Broadening the membership of the CCA would help improve the legitimacy of the process, which is particularly important for a key post like that of Secretary-General.

Conclusions

Based on the inquiry, the Ombudsman closes these cases with the following finding:

The Ombudsman upholds her findings of maladministration and her recommendation to the Commission, as follows:

The Commission should develop a specific appointment procedure for its Secretary-General, separate from other senior appointments.

Such a procedure should include the publication of a vacancy notice and the placing of the appointment on the College agenda in a timely manner.

The Consultative Committee on Appointments, for future appointments of the Secretary-General, should also be broadened to include members from outside the Commission.

The complainants and the Commission will be informed of this decision.

Emily O'Reilly European Ombudsman Strasbourg, 11/02/2019

Annexes:

1. Misuse of the Deputy Secretary-General appointment procedure

The Ombudsman's findings

- 30.** Mr Selmayr was appointed Secretary-General after an unusual two-step procedure. This involved, first, the creation of a vacancy for a post as a Deputy Secretary-General, and a three-week procedure to fill that vacancy (only two candidates applied for the post, Mr Selmayr and one of his subordinates). After the second candidate withdrew from the selection procedure, Mr Selmayr was appointed Deputy Secretary-General (in the Commission meeting of 21 February 2018). Once he was appointed Deputy Secretary-General, he was, in the same meeting of 21 February, immediately reassigned to the position of Secretary-General (after Mr Juncker informed the College of Commissioners that the incumbent Secretary-General would resign).

31. The Ombudsman’s inquiry revealed that the Deputy Secretary-General appointment procedure did not serve its stated purpose, namely to fill the Deputy Secretary-General vacancy, but rather only served to ensure that Mr Selmayr would become legally eligible to be immediately reassigned as Secretary-General, without any procedure to identify candidates for the post of Secretary-General and to compare their merits.
32. The Ombudsman found that this procedure for the appointment of a Deputy Secretary- General was contrary to Article 4 of the EU Staff Regulations, which states that “*no appointment or promotion shall be made for any purpose other than that of filling a vacant post as provided in these Staff Regulations*”.

The Ombudsman’s assessment of the Commission’s opinion

33. The Commission, in its opinion, stated that “[t]he assumption advanced by the European Ombudsman that “*the sole purpose [of the Deputy Secretary-General selection procedure] was to make Mr Selmayr eligible for reassignment as Secretary-General*” is wrong and is not supported by the facts”. The Commission further stated that “[t]he announcement of the previous Secretary-General of his intention to retire did not justify stopping an on-going, separate and independent selection procedure for a Deputy Secretary-General function.”
34. The Ombudsman has shown, in her recommendation, that President Juncker’s proposal to appoint Mr Selmayr as Secretary-General was initiated *before* the procedure for Mr Selmayr’s appointment as Deputy Secretary-General was concluded. It was initiated at the latest at lunchtime on 20 February, which was:
 - *before* the second candidate in that procedure sent an email to DG HR withdrawing her candidature (the email was sent at 14:58 on 20 February);
 - *before* the Consultative Committee on Appointments (CCA) had issued its opinion on Mr Selmayr’s candidacy for that post (this opinion was completed after 18:00 on 20 February);
 - *before* Mr Selmayr was interviewed for the post by Mr Juncker and Mr Oettinger (this joint interview took place between 18.30 and 20:00 on 20 February); and
 - *before* 20:04 on 20 February when instructions were issued from Mr Juncker’s Cabinet, to the Directorate-General for HR, to propose Mr Selmayr as Deputy Secretary-General at the Commission meeting the next morning.
35. This sequencing shows that Mr Juncker went through the procedure leading to the appointment of Mr Selmayr as **Deputy Secretary-General** *even though* he himself had, earlier, initiated the procedure for proposing Mr Selmayr as **Secretary-General**. This sequencing proves that the Deputy Secretary-General procedure did not serve its stated purpose, namely to fill a vacant post of Deputy Secretary-General, but rather only served to ensure that Mr Selmayr would become legally eligible to be reassigned to the post of Secretary-General at the meeting of 21 February. Indeed, the evidence suggests that there was never any intention for Mr Selmayr to serve as a Deputy Secretary-General. The Ombudsman again recalls that Article 4 of the EU Staff Regulations states that “*no appointment or promotion shall be made for any purpose other than that of filling a vacant post as provided in these Staff Regulations*”.
36. The Commission opinion does not dispute the accuracy of the sequencing established by the Ombudsman. In fact, it ignores it completely. Rather, the Commission opinion only refers to

a fact which is not relevant to the Ombudsman's findings. It states that the *announcement* of Mr Italianer to retire did not justify stopping the on-going selection procedure for a Deputy Secretary-General position. The Ombudsman agrees that the *announcement* of Mr Italianer to retire would not have, in itself, justified stopping the selection procedure for the appointment of a Deputy Secretary-General. However, the Ombudsman's findings were not linked to this *announcement*, but rather to the fact that steps were taken to reassign Mr Selmayr to Mr Italianer's post, which occurred *before* the Deputy Secretary-General selection had been completed. It was *this sequencing* which proves that there was no intention for Mr Selmayr to serve as Deputy Secretary-General. Rather, the intention was always to make him Secretary-General (and the Deputy Secretary-General procedure only served to make his reassignment to Secretary-General legally possible^[12]).

37. The Ombudsman therefore maintains her finding that, contrary to Article 4 of the EU Staff Regulations, the Deputy Secretary-General selection procedure did not serve the purpose of filling the post of Deputy Secretary-General.

2. The creation of an artificial time constraint

The Ombudsman's findings

38. In her recommendation, the Ombudsman established that the impending retirement of Mr Italianer was kept secret until the very last moment (that is until the Commission meeting of 21 February when Mr Selmayr was reassigned to the post of Secretary-General). The Ombudsman found that this secrecy was used to create an artificial sense of urgency.
39. The Ombudsman further found that *even if* Mr Italianer's retirement had not been known until 21 February, nothing prevented the Commission from launching, on 21 February, an open selection procedure for the post of Secretary-General. Evidence indicates that such a procedure could have been completed well in time for the date of Mr Italianer's retirement from the Commission (which occurred on 31 March 2018).
40. The Ombudsman concluded that the creation of an artificial time constraint constituted maladministration.

The Ombudsman's assessment of the Commission's opinion

41. In its opinion, the Commission stated that “[t]he Commission [...] rejects the observation that it would have created an artificial time constraint; on this point both the President and his former Head of Cabinet tried, until the very last day, to convince the former Secretary-General to stay on in his function, and it is only on 20 February 2018 that the retirement of the previous Secretary-General was communicated to the President of the Commission, when he informed the President about his intention to submit his retirement letter the next morning”.
42. The Ombudsman carefully inspected the Commission's files that were made available to her. She notes that she specifically asked the Commission for all communications to/from the President's Cabinet (which was headed by Mr Selmayr at the time) and to/from Mr Italianer related to the retirement of Mr Italianer. No evidence, for example in the form of emails or notes, has been provided by the Commission indicating that *any* efforts were made to

convince Mr Italianer *not* to step down. On the contrary, documentary evidence points to the fact that Mr Juncker and Mr Selmayr knew, from at least mid-January 2018, that Mr Italianer would retire, and that planning to manage the succession was put in place.

43. Mr Juncker (and Mr Selmayr) knew of Mr Italianer's intention to retire for at least two years. By mid-January 2018 (at the latest), Mr Italianer confirmed to Mr Juncker, and to Mr Selmayr, that he would go ahead with his plans to retire.[\[13\]](#) Even on 20 February 2018, the Commission could have ensured that the retirement of Mr Italianer could be put on the agenda of the Commission meeting of 21 February. The Ombudsman notes that the Directorate-General for HR was informed of Mr Juncker's instructions to propose Mr Selmayr as Secretary-General before 13:23 on 20 February 2018. There was thus ample time to add this point to the agenda of the Commission meeting that took place on 21 February. This conclusion is proven by the fact that the proposal to make Mr Selmayr a Deputy Secretary-General was included on the agenda of the meeting of 21 February (the list of proposed appointees, circulated for that meeting, was modified to include the proposal to appoint Mr Selmayr) even though the proposal to make him Deputy Secretary-General was communicated to the Directorate-General for HR, by Mr Juncker's Cabinet, at 20:04 on 20 February.
44. The Commission stated, in its opinion to the Ombudsman that Mr Juncker has the right to add items to the agenda of Commission meetings at any stage. If an issue genuinely arises at the last minute, it is reasonable that it can be added to the agenda at the last minute. However, it is not true that Mr Juncker had knowledge of Mr Italianer's retirement at the last minute. Rather, he knew well in advance that Mr Italianer would retire. He certainly knew at lunchtime on 20 February when instructions were issued to the Directorate-General for HR to prepare the documentation regarding the reassignment of Mr Selmayr to the position of Secretary-General. This leads the Ombudsman to conclude that there was no practical obstacle preventing Mr Juncker from adding the point to the agenda and that the reason it was not added to the agenda, in good time, was to maintain secrecy with the aim of creating, artificially, a sense of urgency.
45. The Ombudsman also notes that the Commission has, in its opinion to the Ombudsman, chosen not to address her finding that *even if* Mr Italianer's retirement plans had not been known until mid-February 2018, there was still sufficient time to complete a selection procedure under Article 29 of the EU Staff Regulations for the position of Secretary-General (before Mr Italianer retired on 31 March 2018). She notes that if it were possible to complete the selection procedure for the vacant Deputy Secretary-General position in the **three weeks** leading up to 21 February 2018, it would certainly have been possible to complete a selection procedure for the vacant Secretary-General position in the **five weeks** between 21 February and 28 March 2018 (which was the date of the last Commission meeting before Mr Italianer retired from the Commission on 31 March 2018).
46. The Ombudsman therefore maintains her view that a sense of urgency was artificially created. This was maladministration.

3. Conflicts of interest

The Ombudsman's findings

47. In her recommendation, the Ombudsman found that the Commission had failed to take appropriate measures to avoid the **risk of a conflict of interest** arising from the involvement of Mr Selmayr (and/or other members of the President's Cabinet under his authority) in the Commission's decision-making leading to 1) the creation of a vacancy for a post of Deputy Secretary-General and 2) the approval of the vacancy notice for that Deputy Secretary-General post (a vacancy for which Mr Selmayr would later apply).
48. The Ombudsman concluded this was maladministration, as candidates should not be involved, in any form or **at any stage**, in the preparations or organisation of a selection procedure for which they apply. The Ombudsman found that this is not only a principle of good administration, it is also a principle of law reflected in Article 11a of the Staff Regulations.

The Ombudsman's assessment of the Commission's opinion

49. In its opinion on the Ombudsman's findings, the Commission stated that "*[i]t is neither legally required nor practical – and therefore not Commission practice – for a senior official to recuse himself from contributing to the preparation of vacancy notices for posts for which he or she could conceivably intend to apply in the future*". The Commission further said that "*[i]t should also be noted that the vacancy notice adopted by the College in the present case and published on 31 January did not differ in substance from the vacancy notice previously published for the exact same function*".
50. As a preliminary point, the Ombudsman notes that the opinion of the Commission does not deny - indeed it seems to confirm - that Mr Selmayr did take part in the decision-making leading to the creation of a vacancy for the post of Deputy Secretary-General and in the approval of the vacancy notice for that newly vacant position.
51. The Ombudsman disagrees with the Commission's view that there is no legal requirement for senior officials to recuse themselves from preparing vacancy notices for which they later apply. Article 11a of the Staff Regulations states that an official shall not deal with a matter in which directly or indirectly he has any personal interest in such as to impair his independence. An official who intends, or is highly likely, to apply for a post has a personal interest in the vacancy procedure for that post.
52. As regards the practicality of senior officials recusing themselves from such procedures, it was clearly entirely within the power of Mr Selmayr to recuse himself from the decision-making procedures in question. The fact that he did not do so was not because he could not do so, but simply because he chose not to do so. The Ombudsman bears in mind, in this context, that Mr Selmayr was aware, at the time of these decision-making processes, of the impending retirement of Mr Italianer (he was aware of this information from, *at least*, mid- January 2018). The Ombudsman also notes that, as a senior official, Mr Selmayr is legally presumed to know the EU Staff Regulations. As such, he would have been aware that he could not be reassigned to the post of Secretary-General from his then current position (he held, since July 2014, a director-level post in his basic career) and that he would not be legally eligible to be reassigned to the post of Secretary-General (once Mr Italianer formally announced his

retirement) without first taking up a Director-General level post. The post of Deputy Secretary-General is a Director-General level post. Indeed, this explains why Mr Selmayr applied for the post of Deputy Secretary-General (given that the evidence in the file indicates that his ultimate intention was not to serve as a Deputy Secretary-General, but rather to take up the position of Secretary-General).[\[14\]](#)

53. As the Commission's reply to the Ombudsman appears to confirm that Mr Selmayr did in fact take part in the decision-making described above, there was not only a *risk* that a conflict of interest would arise. Rather, by taking part in the decision-making, a concrete conflict of interest *did arise*. The Ombudsman will thus make the necessary modification to her findings.
54. The Commission stated, in its opinion to the Ombudsman, that the Deputy Secretary-General vacancy notice did not differ in substance from the vacancy notice previously published for the same function. The Ombudsman notes that it is irrelevant, in terms of finding that the participation of Mr Selmayr in the vacancy procedure was a "*conflict of interest*", whether or not the text of the vacancy notice was actually changed in the decision-making procedure in which Mr Selmayr took part. The simple fact that he took part in the procedure for approving the vacancy notice for a position he would later apply for was a "*conflict of interest*".⁵⁵ It is in this context, however, noteworthy that the Commission chose not to mention, in its opinion on the Ombudsman's recommendation, that Mr Selmayr also took part in the decision-making for the *creation* of the vacancy for which he later applied (this vacancy arose when the Commission announced, on 31 January 2018, the appointment of an incumbent Deputy Secretary-General as Director-General for Justice and Consumers, with effect from 1 March 2018). (see, in particular, paragraphs 35 and 36 of the Ombudsman's recommendation[\[15\]](#)).
56. The Ombudsman found that, to avoid even a risk of conflict of interest, Mr Selmayr should, as early as January 2018, have recused himself (and the President's Cabinet over which he had hierarchical control) from any involvement in the relevant decision-making processes creating the vacancy and approving the vacancy notice. The opinion of the Commission confirms that not only did Mr Selmayr not formally recuse himself from those processes, he actually took part in them. That participation constituted a conflict of interest.

4. Composition of the Consultative Committee on Appointments

The Ombudsman's findings

57. The Ombudsman established that the committee of senior officials who interviewed and assessed the candidates for the position as Deputy Secretary-General (namely, the Consultative Committee on Appointments or CCA) was not constituted in accordance Rules of Procedure for that committee (since the Commission failed to appoint an alternate to replace Mr Selmayr when he eventually recused himself and his subordinates from taking any further part in the procedure).

The Ombudsman's assessment of the Commission's opinion

58. The Commission, in its opinion, stated that “[t]he Consultative Committee on Appointments was composed in full compliance with all the applicable Rules of Procedure.” In the Commission’s view, Article 10 of the CCA Rules of Procedure was not applicable in this case, as “[t]he replacement of the Head of the President’s Cabinet in exceptional circumstances is specifically foreseen in Article 8(2), paragraph 2, of the same rules. This provision was introduced by the Commission in October 2015 and constitutes a subsequent rule specifically aimed at addressing the replacement of the Head of the President’s Cabinet in the Consultative Committee on Appointments. It constitutes a *lex specialis* for the replacement of a specific person, i.e. the Head of the President’s Cabinet, excluding the application of other general provisions, such as Article 10 of the Rules of Procedure”.
59. The Ombudsman disagrees with the Commission’s representation of the relevant rules. Article 10 of the CCA Rules of Procedure is a *lex specialis* designed to deal with a very specific circumstance, namely where a member of the committee is conflicted. Mr Selmayr eventually took the view that he could take no further part in the procedure for the selection of Deputy Secretary-General (he took the view, albeit belatedly, that such participation would be a conflict of interest). He also considered that the replacements foreseen under Article 8 of the rules would also be conflicted (since they were under his hierarchical control). In that context, Article 10 of the rules should have been applied, and an alternate should have been chosen from the list of alternates. This was not done.
60. The Ombudsman therefore maintains her view that an alternate should have been appointed from the list of rapporteurs. Because this did not happen, the CCA was not composed in accordance with the CCA Rules of Procedure.

Further points raised by the Commission

1. Reassignments with posts

61. The Ombudsman concluded in her recommendation that a “*reassignment with post*” cannot be used to move an official holding a Director level post up to a Director-General level post without any procedure to compare the merits of eligible staff (see Annex II of the recommendation).
62. This conclusion was relevant for the inquiry. The Ombudsman found that Mr Selmayr held (in his basic career) a Director level post (thus one level **below** a Director-General level post). As a result, the fact that he became a Deputy Secretary-General (which is a Director-General level post) served to ensure that he would become legally eligible for a “*reassignment*” to the position of Secretary-General (once Mr Italianer formally announced that he would retire^[16]).
63. In its opinion, the Commission disagreed with the Ombudsman. It stated that “[t]he former Head of Cabinet of the President was – and still is – an official in the AD function group with the grade AD15. **He would, therefore, have been eligible for a transfer to the function**

of Secretary-General in accordance with Article 7 without having been appointed to the function of Deputy Secretary-General”(our emphasis).

64. The Ombudsman maintains her view that the appointment of Mr Selmayr to Deputy Secretary-General was needed in order to make Mr Selmayr legally eligible for reassignment as Secretary-General. This view is not only consistent with the case-law, it also explains the efforts to make Mr Selmayr Deputy Secretary-General in time for the meeting of 21 February, when the retirement of Mr Italianer was formally announced.
65. The Ombudsman further notes that her understanding of “*reassignments with post*” is entirely in line with Commission practice. The Ombudsman found that out of the 45 “*reassignments*” to Director-General in the Juncker Commission (including the previous Secretary-General), there is not a single example of a Director taking up the role of a Director-General through a “*reassignment with post*” procedure.
66. The Ombudsman also points out that the Commission’s statement contradicts the following statement that the Commission sent to the Ombudsman in June 2018 and then re-quoted in its opinion of 3 December: “*The person currently occupying the post fully meets these requirements, as well as all the procedural conditions laid down in the EU Staff Regulations: as an AD15 official with eight years of senior management experience in the Commission and seven years of professional experience prior to joining the Commission, - the person was fully qualified to be transferred to the Secretary-General post, after his appointment of Deputy Secretary-General, by a decision of the College under Article 7(1) of the EU Staff Regulations*” (our emphasis; footnotes left out).

2. The Ombudsman’s press release

67. In its opinion, the Commission takes issue with the wording of a press release which the Ombudsman published to inform the public of her recommendation in this inquiry. The Commission considers that a statement in the press release that “[t]he maladministration arose due to the Commission **not following the relevant rules correctly either in letter or in spirit**” (emphasis added by the Ombudsman), is misleading. In support of its view, the Commission states that the recommendation does not contain evidence that the relevant rules were not respected.
68. In her recommendation, the Ombudsman expressly stated that Article 4 of the EU Staff Regulations (see paragraph 75 of her recommendation and paragraphs 13 and 17 of this decision) and Article 11a of the EU Staff Regulations (see paragraphs 40 to 44 of her recommendation and paragraphs 25 and 28 of this decision) were not respected by the Commission during the selection procedure which led to Mr Selmayr being appointed as a Deputy Secretary-General. She also stated that the Commission did not act according to the rules of the Consultative Committee on Appointments (paragraphs 65 to 68 of her recommendation and paragraphs 36 to 38 of this decision).
69. The Ombudsman therefore considers that her press release accurately reflected the Ombudsman’s recommendation.

3. Mr Selmayr’s right to be heard

70. The Commission opinion argues that the Ombudsman did not hear Mr Selmayr.

71. The Ombudsman inquires into the administration of EU institutions, and not individuals. In this case, the Commission was heard, in writing and in several meetings between June and August 2018. As in every Ombudsman inquiry, it is the responsibility of the institution to obtain from its staff all relevant information before its response to the Ombudsman. If an inquiry involves the actions of specific staff or units (as they very often do), the institution may choose to consult with the relevant staff to prepare its response to the Ombudsman.
72. As regards Mr Italianer, should the Commission have considered it useful to contact Mr Italianer with a view to obtaining information to reply to the Ombudsman, it could have done so.
73. The Ombudsman's mandate covers EU institutions, bodies, offices and agencies. In this context, it is not normally necessary for her to identify individual officials in her recommendations and decisions. In the present case, however, she took the step of identifying three Commission officials in her recommendation, including Mr Selmayr and Mr Italianer^[17]. This identification of three officials was necessary in order to ensure that her recommendation was clear and unambiguous. In order to comply with data protection rules, the Ombudsman informed these three officials of her recommendation prior to the publication of the recommendation.

[1] Details on Parliament's investigation are available here:

<http://www.europarl.europa.eu/committees/en/cont/subject-files.html?id=20180326CDT02181>.

[2] European Parliament resolution of 18 April 2018 on the integrity policy of the Commission, in particular the appointment of the Secretary-General of the European Commission, P8_TA-PROV(2018)0117, available here:

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2018-0117&language=EN&ring=B8-2018-0214>.

[3] The replies of the Commission to these questions is available here:

<https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/97356/html.bookmark>

[4] <https://www.ombudsman.europa.eu/en/correspondence/en/99793>

[5] Available here: <https://www.ombudsman.europa.eu/en/recommendation/en/102651>

[6] The opinion of the Commission is available here:

<https://www.ombudsman.europa.eu/en/correspondence/en/107213>.

[7] <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2018-0531>

[8] At the Commission's midday press briefing of 4 September 2018, the Commission Chief Spokesperson said that: "*The Ombudsman neither contests the legality, nor the competence of the candidate*". <http://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=I159943>

As regards the legality of the matter, the Ombudsman pointed out in her recommendation that she agreed with the European Parliament's assessment that the double-appointments "*stretched and possibly even overstretched the limits of the law*". Moreover, the recommendation noted that Article 4 of the EU Staff Regulations (see paragraph 75 of her recommendation) and Article 11a of the EU Staff Regulations (see paragraphs 40 to 44 of her recommendation) had not been respected.

[9] For the details of this sequencing, see paragraph 34 below.

[10] Article 4 states that "*no appointment or promotion shall be made for any purpose other than that of filling a vacant post as provided in these Staff Regulations*".

[11] Reply to Parliament, Question 1, 4 April 2018, available here:

<http://www.europarl.europa.eu/cmsdata/141000/Commission%20replies%20CONT%2004042018.pdf>.

[12] See Annex II of the Ombudsman's recommendation, available here:

<https://www.ombudsman.europa.eu/en/recommendation/en/102651>

[13] See paragraphs 32 and 76 of the Ombudsman's recommendation:

<https://www.ombudsman.europa.eu/en/recommendation/en/102651>

[14] The Ombudsman recalls that in its response to Parliament dated 4 April (available at <http://www.europarl.europa.eu/cmsdata/141000/Commission%20replies%20CONT%2004042018.pdf>), the Commission stated (see the Commission's answer to Question 11) that "*the President had an understandable interest in guaranteeing the smooth functioning of the institution also in case Mr Italianer retired, and there were discussions and reflections on this matter since the second half of 2017 and more in detail as of early 2018. A transfer of Mr Selmayr, a senior manager with the required grade and eight years of senior management experience in the Commission and who had the necessary trust of the President, to the position of Secretary-General became one possible option in early 2018. To ensure that such a possible transfer would be in line not only with the law, but also with Commission practice, Mr Selmayr took part, as of 31 January 2018, in a full selection procedure for the position at the level of Director-General/Deputy-Director General.*" (emphasis added).^[15] Available here: <https://www.ombudsman.europa.eu/en/recommendation/en/102651>.

[16] See paras. 27-30 and Annex II of the Ombudsman's recommendation. See also footnote 9 of this Decision.

[17] The third individual identified was Ms Paraskevi Michou. At the Commission's midday press briefing of 4 September 2018, the Commission Chief Spokesperson **stated twice** that Ms Michou had applied for the post of Director General, whereas the Ombudsman notes that she **did not apply for the post but** was in fact reassigned at the initiative of President Juncker.

Internet Source:

<https://www.ombudsman.europa.eu/en/decision/en/10985>

GÜNTHER H. OETTINGER
MEMBER OF THE EUROPEAN COMMISSION

Dr Ingeborg Gräßle
Chair of the Committee on Budgetary Control
European Parliament
B-1047 Brussels

Brussels, 16. 04. 2018

MH/ab Ares(2018)s2255486

Dear Dr Gräßle,

I am referring to the engagement I took towards the CONT Committee during the meeting of 27 March 2018.

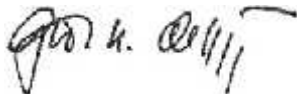
In this context, I proposed to organise a round table with the European Parliament, the Council and other Institutions on the subject of selection of senior management staff

I will be launching the invitation in the coming weeks and my Cabinet will be in contact with the other Institutions for the appropriate follow up.

I would like to reiterate what I have already declared on two occasions to the European Parliament. The Commission clearly shares the goal of a European Public Administration of excellence and it is in this spirit that we are ready to discuss with the other European Institutions whether and how the application of the European Union Staff Regulations can be further developed and strengthened to reach this objective.

Having said that, I also reiterate my position that while enhanced transparency is a very important principle this must not lead to senior management decisions becoming the object of negotiations between Member States and/or political parties, as this could call into question, notably with regards to the Commission, both the supranational spirit of the European Public Administration and the goal of having highly qualified senior managers.

Yours sincerely,



**Interinstitutional round table on
senior management selection and appointment
Brussels, 25 September 2018, 15.00-16.30**

MEETING REPORT

The meeting was chaired by Commissioner Oettinger; all invited Institutions were represented at political and/or administrative level¹ (see annex I for the list of attendees).

Mr Oettinger (EC) opened the meeting by welcoming all participants. He acknowledged receipt of the recommendations issued by the Ombudsman as well as the request received from the Parliament to complete a questionnaire on senior management appointments, to which the Commission had replied prior to the meeting. He emphasised the Commission's goal of maintaining and further enhancing the attractiveness of the Institution as an employer of choice (by providing its staff with adequate opportunities for training, for developing their talent and potential and for their career overall). He confirmed the Commission's commitment to achieving a transparent, efficient and independent European public administration and reminded the participants that it is the prerogative of each Institution to be able to invoke the interest of the service as and when required. He reiterated that the Commission operates strictly within the boundaries of the Staff Regulations, using the provisions of Article 29 (appointment by the College following a publication and a selection procedure) and Article 7 (appointment via transfer in the interest of the service), underlining that these are two equal alternatives without any order of precedence. He explained that the competence of the candidate is the primary criterion for all selection procedures, adding that for several years the Commission has successfully used assessment centres run by independent external HR experts. He also set out the resources in place to support senior managers including management development programmes and structured feedback exercises. He shared the latest figures on gender balance which show that the Commission is poised to reach its 40% target of women in management by next year. He gave the floor to the participants.

Dr Gräßle (EP) recalled the key points of the Parliament's Resolution of 18 April on the integrity policy of the Commission and underlined the Parliament's request for an open, fair and transparent procedure for the appointment of senior officials. She reiterated previous statements that the use of Art. 7 for transfers in the form of reassignment without publication of the post should remain exceptional and that all vacant posts should be published. Commenting on the data she had received from the Commission in response to the questionnaire, she drew the conclusion that in the Commission a substantial number of Director-General posts were filled by way of transfer without publication of the post. She called on the Commission to ensure equal chances and fair career opportunities for all officials and to enforce internal guidelines in this respect.

¹ At their own request, the Ombudsman attended as observer.

Mr Tranholm-Mikkelsen (Council) shared his personal assessment that the procedures in place in the Council are adequate, transparent and non-controversial. He stressed that while the Staff Regulations set out the basic principles of the procedures, each Institution is autonomous in its implementation. He outlined the procedure for the appointment of the Secretary-General of the Council as well as for other vacancies at senior management level, adding that no promotion takes place without a selection procedure. He confirmed the use of assessment centres in senior management selection procedures in the Council.

Mr Gaudissart (ECJ) explained that the Court does not have a Secretary-General but a Registrar who has both a judicial and an administrative role and is a member of the Institution. The appointment of the Registrar (as well as the Deputy Registrar) is governed by a specific procedure and legal basis and subject to obligatory publication in the Official Journal.

Mr Placco (ECJ) described the procedures for the appointment of Directors and Directors-General pointing to the fact that external publication under Article 29 (2) SR is frequently used.

Mr Ruiz- García (CoA) explained that the Secretary-General is a temporary post at grade AD 16 with a renewable mandate of six years. He added the Court does not have Directors-General, but Directors at grade AD 14 / 15, which are permanent positions. He explained the procedures to fill such posts.

Mr Di Vita (EEAS) described the applicable rules and explained the specific procedures applied to the selection and appointment of senior officials to both headquarters and delegation functions. He expressed a desire to go further in the use of assessment centres at senior management level as budget allows.

Mr Brunetti (EESC) clarified that the Committee does not have Director-General posts but seven Directors and one Deputy-Director and explained the procedures for their selection and appointment which includes the use of assessment centres. He added that the Secretary-General is a temporary post at grade AD 16 with a renewable mandate of five years.

Mr Lambertz (CoR) explained that the Committee has two Director posts at grade AD 14 / 15 and one Secretary-General post at grade AD 16. He presented the procedure for the selection and appointment of senior officials in the Committee as well as the voting rules. He explained that shortlisted candidates undertake an assessment centre prior to their final interview.

Mr Wiewiórowski (EDPS) clarified that the Institution has neither a Secretary-General nor a Director-General but only the Director of the Office and outlined the selection and appointment procedure, adding that this is based primarily on an exchange of best practices with the Commission.

Mr Welle (EP) described the procedure for senior management selection in the European Parliament. He stated that all posts of Secretary-General, Director-General and Director are published with the final decision whether to publish internally or externally falling to the President. Transfer is used in the context of mobility, notably to move senior officials to new jobs after 7 years in a post. He clarified that the Parliament does not have a Deputy Secretary-General function equivalent to the ones in the Commission.

Mr Oettinger confirmed again in the ensuing discussion that Article 29 and Article 7 of the Staff Regulations are on equal footing as long as they comply with the key requirement of the interest of the service.

Dr Gräßle repeated her stance that since 2013 the Commission had made virtually of all its appointments by way of transfer without publication of the post and claimed that this practice has a demotivating effect on staff and that it leads to politicising the process. She insisted that the Commission should give the right example and called on all Institutions to follow the recommendations of the Ombudsman.

Mr Oettinger underlined that in many cases transfers may create opportunities for publication of other posts and that this is an invaluable tool to ensure that the right person is assigned to the right job within the necessary timeframe.

Dr Gräßle argued that, according to her reading of the data provided by the Commission since 2013, it was mostly former members of Cabinets who were appointed at senior management level. She insisted that all Institutions should provide real career opportunities for all staff.

Mr Oettinger refuted Dr Gräßle's figures, replying that the present Commission had implemented practices regarding the career of Cabinet members so that appointment at senior management level within the service under their portfolio is not possible. He added that the Parliament does not necessarily apply the same discipline to its own appointments.

Mr Tranholm-Mikkelsen confirmed that the Council had the same understanding as the Commission on the use of Article 7 SR and underlined its usefulness as a practical instrument to make the best use of talent.

Mr Oettinger concluded the proceedings underlining that Article 7 transfers can only be made at the same grade, thereby precluding any promotions. He thanked all participants for their valuable contributions and closed the meeting.

Annex I: List of attendees

European Commission:

- ✓ Commissioner Günther H. Oettinger
- ✓ Ms Irene Souka, Director General for Human Resources and Security
- ✓ Mr Henk Post, Director for Talent Management and Diversity – Executive Staff
- ✓ Mr Michael Hager, Head of Commissioner Oettinger's Cabinet

European Parliament:

- ✓ Dr Ingeborg Gräßle, Chair of the Budgetary Control Committee
- ✓ Mr Klaus Welle, Secretary-General

Council of the European Union:

- ✓ Mr Jeppe Tranholm-Mikkelsen, Secretary-General
- ✓ Mr William Shapcott, Director-General for Administration

Court of Justice of the European Union:

- ✓ Mr Marc-André Gaudissart, Deputy Registrar
- ✓ Mr Valerio Placco, Director-General for Administration
- ✓ Mr Mark Ronayne, Director Human Resources and Personnel Administration

European Court of Auditors:

- ✓ Mr Eduardo Ruiz García, Secretary-General

European External Action Service:

- ✓ Mr Gianmarco Di Vita, Director-General for Budget and Administration
- ✓ Ms Arianna Vannini, Economic Adviser Cabinet of the High Representative and Vice-President Mogherini

European Economic and Social Committee:

- ✓ Mr Gianluca Brunetti, Director of Human Resources and Finance

European Committee of the Regions:

- ✓ Mr Karl-Heinz Lambertz, President
- ✓ Mr Julien De Ridder, Head of Cabinet
- ✓ Mr Reinhold Gnan, Deputy Director of the Directorate for Human resources and Finance

European Ombudsman (as *Observer*):

- ✓ Mr Alessandro Del Bon, Head of Unit Personnel, Administration and Budget
- ✓ Ms Zinovia Assimakopoulou, Head of Sector Human Resources

European Data Protection Supervisor:

- ✓ Mr Wojciech Wiewiórowski, Assistant Supervisor
- ✓ Mr Leonardo Cervera Navas, Director

Committee Meeting Budgetary Control (CONT) 20 November 2018

Discharge 2017: General budget of the EU - European Commission. Exchange of views with Martin Selmayr, Secretary General of the European Commission.

<http://www.europarl.europa.eu/ep-live/en/committees/video?event=20181119-1500-COMMITTEE-CONT>



TEXTS ADOPTED

Provisional edition

P8_TA-PROV(2018)0531

Activities of the European Ombudsman in 2017

European Parliament resolution of 13 December 2018 on the annual report on the activities of the European Ombudsman in 2017 (2018/2105(INI))

The European Parliament,

[...]

AC. whereas the Ombudsman conducted an inquiry into how Martin Selmayr, the then Head of Cabinet of the President of the Commission, was appointed Secretary-General of the Commission; whereas the Ombudsman highlighted that the Commission created an artificial sense of urgency to fill the post of Secretary-General in order to justify not publishing a vacancy notice, and organised a selection procedure for Deputy Secretary-General not to fill that role directly, but to make Mr Selmayr Secretary-General in a rapid two-step appointment; whereas the Ombudsman found four instances of maladministration in Mr Selmayr's appointment due to the Commission's failure to follow the relevant rules correctly, both in letter and spirit.

[...]

22. Believes that the Commission failed to respect the principles of transparency, ethics and the rule of law in the procedure it used to appoint Martin Selmayr as its new Secretary-General; strongly regrets the Commission's decision to confirm Mr Selmayr as its new Secretary-General, disregarding the extensive and widespread criticism from EU citizens and the reputational damage caused to the EU as a whole; emphasises that Mr Selmayr must resign as Secretary-General and calls on the Commission to adopt a new procedure for appointing its Secretary-General, ensuring that the highest standards of transparency, ethics and the rule of law are upheld;

[...]



TEXTS ADOPTED

Provisional edition

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**European Parliament resolution of 26 March 2019 on Discharge 2017:
EU general budget - Commission and executive agencies**

[...]

Administration

Nomination procedure for the designation of the secretary general of the Commission

188. Is not satisfied by the Commission's reactions to the media's and general public's valid concerns on the procedure immediately after the appointment of the Secretary-General of the European Commission took place, or by Commission's explanations presented at the European Parliament's plenary debate and in its written response to the European Parliament's resolution of 18 April 2018, which were evasive, defensive and legalistic, demonstrating a lack of sensitivity for the importance European citizens attach to transparent, fair and open recruitment procedures;
189. Recalls, in this context, the Ombudsman's finding of four instances of maladministration in its Recommendation in joint cases 488/2018/KR and 514/2018/KR; notes that the Ombudsman's conclusions are 'largely similar to those of the European Parliament' and that it agrees with the European Parliament's assessment that the double appointment stretched and possibly even overstretched the limits of the law'; stresses the Ombudsman's final recommendation to the Commission that the Commission should develop a specific procedure for its Secretary General, separate and independent from other senior appointments; regrets, therefore, the Commission's defiant reply to the European Ombudsman of 3 December 2018, which shows little discernment of the points raised by the Ombudsman following the Ombudsman's examination of 11 000 pages of documentation; calls on the next College of Commissioners and their president to review the appointment in light of the Ombudsman's findings and Parliament's resolution;
190. Takes into account the fact that Commissioner Oettinger organised an inter-institutional round table on senior management selection and appointment on 25 September 2018, although the meeting seems to have been inconclusive; calls therefore on the Commission to put in practice paragraph 29 of its resolution on integrity policy in the Commission;

191. Calls on the Commission, as well as on all European institutions to review, where necessary, nomination procedures, in particular for senior officials and where relevant for cabinet members, and to take additional measures to improve transparency, fairness and equal opportunity during appointment procedures on the basis of the European Ombudsman's findings and the forthcoming study of the European Parliament on the appointment procedures of the European Union's institutions; calls on the Commission to report back to the European Parliament by 31 August 2019 on the progress made;
192. Requests the immediate resignation of the Secretary General and the opening of a fair, fully transparent and open competition for this post

[...]

The appointment of the new Secretary-General of the Commission in 2018 has been taken up by the European Parliament and has been put on its agenda on several occasions. In order to give interested readers an overview on the controversial decision, its circumstances and its assessment by different actors, this documentation contains a chronology of the related activities of the European Parliament and the European Ombudsman. It collects the most relevant texts from these institutions and also the answers given to them by the European Commission.

DISCLAIMER

This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament.



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