

**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 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.

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/FRA F-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. 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.

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. 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.

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 Sec Gen 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 Sec Gen?

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:

11. *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 Secretary General?***

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 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.

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 Senioremanagement? 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 zu bringen."

(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 Schärfe herauszunehmen."

(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 mediastrategy 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 Schärfe herauszunehmen."

(...)

"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:

31. *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.”)