Strasbourg, 19/07/2018

Joint complaints 488/2018/ and 514/2018/.

Subject of case: Report on inspection and meetings in the above cases concerning the European Commission’s appointment of a new Secretary-General

Dear Mr President,

On 6, 21, 22, 27, 28, 29 June 2018 and 2, 3, 4, 5, 10, 12 July 2018, my inquiry team conducted an inspection in this inquiry.

Please find enclosed, for your information, a copy of the inspection report, which I have sent to the complainants and which will be published on the Ombudsman’s website.

I would like to thank your colleagues for their good cooperation during the meetings.

Yours sincerely,

Emily O’Reilly
European Ombudsman

Strasbourg, 31/08/2018

Complaint 488/2018 & 514/2018

Subject: Recommendation of the European Ombudsman in the above case on the European Commission’s appointment of a new Secretary-General

Dear Mr President,

Please find enclosed my recommendation in the above case, made in accordance with Article 3(6) of the Statute of the European Ombudsman.

My recommendation is as follows:

The Commission should develop a specific appointment procedure for its Secretary-General, separate from other senior appointments.

- Such a procedure should include the publication of a vacancy notice and the placing of the appointment on the College agenda in a timely manner.
- The Consultative Committee on Appointments, for future appointments of the Secretary-General, should also be broadened to include members from outside the Commission.

In accordance with the Statute of the European Ombudsman, the European Commission shall send a detailed opinion before 4 December 2018.

A copy of my recommendation will be sent to the complainants. I would therefore appreciate if you could also include a translation of the Commission’s opinion in Dutch and French, the respective languages of the complaints.

Finally, please note that the following Commission staff are named in the recommendation (in order of appearance):

- Mr Martin Selmayr;
- Ms Paraskevi Michou.

I consider that it is necessary for a proper understanding of the recommendation to have included these names.
I will in a separate letter inform the named persons, who are currently working in the Commission, of the Ombudsman’s processing of their personal data.

Yours sincerely,

Emily O’Reilly
European Ombudsman

Enclosures:
• Recommendation to the European Commission
Mr Alexander Italianer

Strasbourg, 31/08/2018
Complaint 488/2018/ & 514/2018/  

Dear Mr Italianer,

I am writing to you in relation to the Recommendation that I have today sent to the European Commission (copy attached).

The Recommendation mentions you by name and describes certain actions relating to you. In accordance with data protection rules, we hereby inform you of this Recommendation. Please note that the Recommendation will be sent to the complainants early next week and then published. The Recommendation will also be forwarded to the President of the European Parliament.

The following information describes how the Ombudsman has ‘processed’ your personal data:

a) Identity of the controller: European Ombudsman

b) Purposes of the processing operation: conducting an inquiry into the manner in which the Commission appointed the new Secretary-General

c) Categories of data concerned: your name and information relating to your employment at the European Commission

d) Recipients or categories of recipients: the European Commission, the European Parliament, the complainants and the public

e) Legal basis of the processing operation for which the data are intended: Regulation 45/2001 and the Statute of the European Ombudsman

1 The full text of the Statute can be found here www.ombudsman.europa.eu/en/resources/statute.faces
f) Origin of the data: the European Commission

Yours sincerely,

Emily O'Reilly
European Ombudsman

Enclosure: Recommendation to the European Commission
Strasbourg, 31/08/2018

Complaint 488/2018/ & 514/2018/

Dear Professor Selmayr,

I am writing to you in relation to the Recommendation that I have today sent to the European Commission (attached).

The Recommendation mentions you by name and describes certain actions relating to you. In accordance with data protection rules, we hereby inform you of this Recommendation. Please note that the Recommendation will be sent to the complainants early next week, and then published. The Recommendation will also be forwarded to the President of the European Parliament.

The following information describes how the Ombudsman has ‘processed’ your personal data:

a) Identity of the controller: European Ombudsman

b) Purposes of the processing operation: conducting an inquiry into the manner in which the Commission appointed the new Secretary-General

c) Categories of data concerned: your name and information relating to your employment at the European Commission

d) Recipients or categories of recipients: the European Commission, the European Parliament, the complainants and the public

e) Legal basis of the processing operation for which the data are intended: Regulation 45/2001 and the Statute of the European Ombudsman¹

¹ The full text of the Statute can be found here www.ombudsman.europa.eu/en/resources/statute.faces
f) Origin of the data: the European Commission

Yours sincerely,

Emily O'Reilly
European Ombudsman

Enclosure: Recommendation to the European Commission
Ms Paraskevi Michou
Director-General
Directorate-General Migration and Home Affairs (HOME)

Strasbourg, 31/08/2018

Complaint 488/2018/ & 514/2018/

Dear Ms Michou,

I am writing to you in relation to the Recommendation that I have today sent to the European Commission (attached).

The Recommendation mentions you by name and describes certain actions relating to you. In accordance with data protection rules, we hereby inform you of this Recommendation. Please note that the Recommendation will be sent to the complainants early next week and then published. The Recommendation will also be forwarded to the President of the European Parliament.

The following information describes how the Ombudsman has ‘processed’ your personal data:

a) Identity of the controller: European Ombudsman

b) Purposes of the processing operation: conducting an inquiry into the manner in which the Commission appointed the new Secretary-General

c) Categories of data concerned: your name and information relating to your employment at the European Commission

d) Recipients or categories of recipients: the European Commission, the European Parliament, the complainants and the public

e) Legal basis of the processing operation for which the data are intended: Regulation 45/2001 and the Statute of the European Ombudsman¹

¹ The full text of the Statute can be found here www.ombudsman.europa.eu/en/resources/statute.faces
f) Origin of the data: the European Commission

Yours sincerely,

Emily O'Reilly
European Ombudsman

Enclosure: Recommendation to the European Commission
Strasbourg, 03/09/2018

Complaint 488/2018/ & 514/2018/

Subject of case: Recommendation of the European Ombudsman in the above case on the European Commission’s appointment of a new Secretary-General

Dear Mr President,

I have conducted an inquiry into the concerns that were raised as regards the manner in which the European Commission, on 21 February 2018, appointed Mr Martin Selmayr, the then Head of Cabinet of the President of the Commission, as its new Secretary-General.

On 18 April 2018, the European Parliament adopted a Resolution on the appointment of Mr Selmayr as Secretary-General1. The Parliament, in this Resolution, called on the Ombudsman to “inform the Commission and the Parliament of her views and of any possible instances of maladministration she has discovered which would need to be followed up”.

I am writing to you to inform you that I - on the basis of a careful examination of all the facts that have been presented to me during the inquiry, including those that emanated from the questionnaires of, and hearing organised by the Parliament’s Budgetary Control Committee - have sent a Recommendation to the Commission in relation to my inquiry. Please find this Recommendation here attached.

Yours sincerely,

Enclosure:

- Recommendation to the European Commission
Dear [Redacted]

After consulting with the Ombudsman, I can communicate the following to you.

We would like to inspect all documents relating to three occurrences -

1. retirement of the previous Secretary-General
2. appointment of a new Deputy Secretary-General
3. appointment the new Secretary-General

While the Commission should understand that request broadly, we would in particular like you to provide us with:

A. All documents, including memos and emails, sent from or received by President Juncker, Commissioner Oettinger or Commissioner Timmermans, or by a member of their cabinets, relating to any of the three occurrences listed above.
B. All documents, including memos and emails, exchanged between the cabinets of President Juncker and Commissioner Oettinger and staff members at Head of Unit level or above in the Secretariat General, relating to any of the three occurrences listed above.
C. All documents, including memos and emails, exchanged between the cabinets of President Juncker and Commissioner Oettinger and staff members at Head of Unit level or above in DG HR, relating to any of the three occurrences listed above. All notes and memos drafted by DG HR relating to any of the three occurrences listed above.
D. All legal advice or analysis drafted by the Legal Service relating to any of the three occurrences listed above. This should include any documents drafted by the Legal Service, relating to any of the three occurrences listed above, which were not circulated outside the Legal Service.

The timeline for each of the above is from 1 September 2017 until 18 April 2018, the day of the European Parliament resolution.

This does not exclude the possibility of further specific requests of documents for inspection.

We would like to conduct the inspection by no later than the end of next week.
Best wishes,

Fergal
Dear [Redacted]

I refer to our telephone conversation of yesterday.

After reviewing the case with the case team and after consulting with the Ombudsman, I can confirm that the only additional documents that we need to have sight of at this time are:

1. All Hebedo minutes from January and February 2018.
2. The pool of alternates for the CCA, as it was constituted on 31 January 2018.

The Ombudsman has decided that the case team does not need to view the agendas of Mr Juncker or Mr Oettinger. She has also decided that it is not necessary to request a copy of additional documents from the legal service.

As agreed, we will leave the file in the care of the Commission at DG HR. However, we kindly request the Commission to keep the file available at DG HR so that our case team can return to review it should that be necessary.

Let me take this opportunity to thank you for your assistance.

Best wishes,

Fergal O’ Regan
I know you are in inspection all day but I would like to talk to you when feasible for you either today or tomorrow. Let me know when is the best moment for you.

Many thanks in advance,

Best
Dear [Name],

Apart from the points already raised by us relating to the matter under investigation, we do not, at this stage, have any additional points that require clarification. However, as a matter of procedure, we would like to confirm expressly, at the meeting on Thursday, the completeness of the documentation provided to the Ombudsman.

Along with providing us with a folder containing documents that are (mostly) in the public domain, we were given, on the first day of the inspection, access to the CCA file. After we clarified the scope of the Ombudsman’s request for an inspection, we were also given access to 2 folders of documents (approximately 1,000 pages) from the Legal Service and 15 folders from DG HR, (amounting to approximately 7,500 pages). While these files emanate from the Legal Service and DG HR, they do contain some correspondence with the cabinets, with SG and with DG COMM (in particular, the SPP).

You have expressly informed us that you did request the cabinets and other services if they were in possession of any further documents which are not also included in the aforementioned files. You have confirmed to us that no such documents exist.

We would like to take an express note of this view in the inspection report.

See you Thursday.

Best wishes,

Fergal

European Ombudsman
Fergal O'Regan
Head of Unit

Rue Wiertz
Montoyer 30 Building
B-1047 Brussels
F: + 32 (0)2 284 49 14
www.ombudsman.europa.eu
Dear Fergal,

Thanks for your message. We will look into the document and the extra questions and will try to our best to be ready for our Thursday meeting. Any additional questions you might have, we would really appreciate receiving them by COB today so that we have time to prepare the answers (and to make all necessary searches).

I will send you an outlook invite now. See you and the team on Thursday.

Best,

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Le 10 juil. 2018 à 13:19, O REGAN Fergal Anthony a écrit:

Dear [Name],

Thank you for organising the continuing inspection today. I look forward to seeing you Thursday to clarify a number of points.

To follow up on the email of [Name], we thought it might be useful for you to have a copy of the preliminary research that we have carried out regarding appointments of DGs that are of the same nationality as their responsible Commissioner (see attached excel sheet as regards the nationality of DGs since 2004). This information was obtained from the Commission’s website and from other public sources. We wish to ensure that it is accurate. Therefore, we kindly request you to consult your records to complete the excel table, and correct it if necessary, for Thursday.

[Name] mentions Mr [Surname] in his email. This example predates our study period (which is from 2004 to present). However, we thought it might be useful to share with you a link to an article we found which discusses the career of Mr [Surname]:

[[Link]]

Although growing up in the Mr [Surname] was born in [Country], and thus had [Country] nationality. The article seems to suggest that he was already DG of DG Enlargement when Mr [Surname] took office and that he was moved precisely because he also held [Country] nationality (the article reads: "Before that, he had been director of the Commission’s enlargement taskforce and he subsequently became the director-general for enlargement – a post that he had to move from when [Surname], his [Country] became the commissioner for enlargement. (Commission rules would not allow commissioner and director-general to be of the same nationality.)"

While it is already clear from [Name] email, let me underline we wish to clarify how many examples there are of DGs being appointed to a Directorate General when that Directorate General was under the responsibility of a Commissioner of the same nationality.
Best wishes,

Fergal
From: [Redacted]
Sent: 10 July 2018 12:18
To: [Redacted] (EC)
Cc: [Redacted]
Subject: RE: Phone call

Thanks — we will be there.
Best,

From: [Redacted]
Sent: 10 July 2018 11:42
To: [Redacted] (EC)
Cc: [Redacted]
Subject: Re: Phone call

I confirm that we have reserved the same meeting room as last week - MO34 7A
Best regards

Sent from my [Redacted]

On 9 Jul 2018, at 16:21, [Redacted] (HR) wrote:

14.00 is fine for me, I have a panel at 14.30 but it is in the building. I will confirm the room tomorrow morning but will try to get the same one as last week on the 7th floor of MO34. Regards

From: [Redacted]
Sent: Monday, July 9, 2018 3:01 PM
To: [Redacted] (HR), [Redacted] (EO)
Cc: [Redacted] (EO)
Subject: RE: Phone call

Apology, I had misread your email regarding the proposal for the starting time. For us both timings would work, but we have a preference for starting at 14h.
Best,

From: [Redacted]
Sent: 09 July 2018 14:58
To: [Redacted] (EC)
Cc: [Redacted]
Subject: RE: Phone call

Dear [Redacted]
Thank you for confirming the meeting tomorrow. The timing is fine for [redacted] and myself — Fergal won’t be joining us. We can confirm that we only need to see the Hebdo document tomorrow, so no need for the other files at this stage.

Best wishes,

European Ombudsman

Rue Wiertz
Monoyer 30 Building
B-1047 Brussels
F: +32 (0)2 284 40 14
www.ombudsman.europa.eu

From: [redacted]
Sent: 09 July 2018 12:43
To: O REGAN Fergal Anthony
Cc: [redacted]
Subject: RE: Phone call

Dear Fergal,

If I understand correctly you only want to see the Hebdo document which I now have and which is 12 pages long. In that case, I propose tomorrow at 13.30 or 14.00. Please let me know if you need more than 30 minutes and/or access to the other files and I will try to make the necessary arrangements on our side for tomorrow afternoon.

Best regards

From: O REGAN Fergal Anthony
Sent: Monday, July 9, 2018 11:26 AM
To: [redacted]
Cc: [redacted]
(EO)
(EO)
(HR)
Subject: RE: Phone call

Dear [redacted],

We are available throughout the day and tomorrow to review the Hebdo documents (it should not take very long). Please pick a time that suits your services and let us know. As regards the documents already in the file, we will endeavour, before Thursday, to identify to you the factual points that we need to clarify.

Kind regards,
Fergal

European Ombudsman
Dear Fergal,

I have spoken to [redacted] in the meantime. She said she could arrange for a short session of let’s say half an hour as she has many meetings on Monday. Let me know.

Thanks and best

Envoyé de mon [redacted]

Le 6 juil. 2018 à 15:38, [redacted] a écrit :

Dear Fergal,

Thanks for your message. As [redacted] is not in the office this afternoon, I cannot answer on her behalf on whether a room could be arranged for you and colleagues as of 10:00 on Monday. I am really sorry for that, but I guess [redacted] will check her emails later on.

As for the session on Thursday, that’s fine to meet at 11:30. We will send you the room number at a later stage. As per the questions, in case more come to you at the beginning of next week, it is always easier for us to get the questions in advance to be able to answer you the best possible way.

Best regards,

[Redacted]

From: O REGAN Fergal Anthony

Sent: Friday, July 06, 2018 11:56 AM
To: [Redacted]
Cc: [Redacted] (EO); [Redacted] (EO); [Redacted] (HR)
Subject: RE: Phone call
Many thanks for contacting us this morning by telephone.
We agree that we can wrap up the inspection on Thursday. My team are available from 11.30.
We would like, as regards the facts, to tie up any loose ends Thursday. We can already identify a number of points.

1. The CCA was due to meet at 1800 on 20 February to interview the other candidate and was due to finalise its deliberations at 18.45. An external consultant had been asked to assist the Commission in that interview. When the second candidate withdrew (around 1500), DG HR contacted the external consultant to tell him that his presence was no longer needed that evening. The wording of the email to the external consultant seems to suggest that the CCA meeting programmed for 1800 was cancelled. Did the CCA meeting go ahead at 1800 as foreseen. Or was the avis brought around to the offices of the CCA members for their signature sometime after 1500 (it was suggested to us at the inspection that this was the case). We would like to verify precisely what happened.

2. Mr Oettinger and Mr Juncker interviewed Mr Selmayr together on 20 February. We would like to confirm that they did so after the avis was signed by the various CCA members. Can you tell us, if possible basing yourself on the agendas of Mr Juncker, Mr Oettinger and Mr Selmayr, when that meeting took place?

3. The Chef de Cabinet of Mr Oettinger is a member of the CCA. However, he was not put in copy to the letters of 13 February, nor was his name on the Fiche de circulation. In fact, he did not sign any of the documents in the file. Why was this the case? For the avoidance of doubt, we are aware that the quorum for the CCA is 4.

We may have some more questions Thursday when we have the documents in front of us again.
As we informed you by phone, we do not need to go the reading room today. However, if you could make available the Hebdo documents we requested in the reading room Monday, we can drop over Monday to check them (at 1000). Would that be OK?
Best wishes,
Fergal

---

From: O REGAN Fergal Anthony
Sent: 05 July 2018 13:02
To: (EC)
Cc: (EC)
Subject: RE: Phone call

Dear [Name]
Our case handlers have now informed me that they have noted in the file a reference to "Hebdo 2243" of 12 February which refers to this issue. The item on the agenda reads "Décision de la Commission sur le statut des anciens présidents et membres de la Commission". I hope this reference is of assistance to you. We can therefore limit our request to the minutes of that Hebdo meeting, any documents annexed to those minutes that are related to that issue and/or any documents circulated at that Hebdo meeting related to that issue. Unless they are also in the minutes, can you please also provide the attendance list at that Hebdo meeting. Am I correct to assume that the Chef de Cabinet of the President normally chairs the Hebdo meetings?
We hope to finish the inspection tomorrow.
Best wishes,
Fergal

---

European Ombudsman
Fergal O’ Regan
Head of Unit

Rue Wiertz
Montoyer 30 Building
B-1047 Brussels
F. + 32 (0)2 284 49 14
www.ombudsman.europa.eu
From: O REGAN Fergal Anthony
Sent: 05 July 2018 09:06
To: 
Cc: 
Subject: RE: Phone call

Dear [Name],

Thank you for coming back to me. The case team has read in the file reference to a decision on administrative support to former Commissioners. I understand that the case team have also seen in the file a copy of an undated (draft?) decision regarding such administrative support. I have also seen a reference, in the file, to a legal service "opinion" on this (draft) decision. This was one issue raised by Parliament. We have checked all the minutes of the college meetings from the relevant time and find no reference to the issue. We wish to verify if the issue was brought, in the relevant period (January - February) to the attention of the Cabinets at least.

Can you therefore please provide us with all the Hebdo "minutes" from that period to check this.

Best wishes,
Fergal

European Ombudsman

Fergal O' Regan
Head of Unit

Rue Wiertz
Montoyer 30 Building
B-1047 Brussels
F. + 32 (0)2 284 49 14
www.ombudsman.europa.eu

From: [Name]
Sent: 04 July 2018 18:48
To: O REGAN Fergal Anthony
Cc: 

6
Subject: Re: Phone call

Dear Fergal,

Thanks for your message. As for point 1 is there a particular item you are interested in? I can also send you the table of content of the minutes so that you can tell me which item(s) are of interest to you. As for point 2, I understand that provided you with the elements needed.

Best

Envoyé de mon

Le 4 juil. 2018 à 11:49, O REGAN Fergal Anthony

a écrit :

Dear

I refer to our telephone conversation of yesterday. After reviewing the case with the case team and after consulting with the Ombudsman, I can confirm that the only additional documents that we need to have sight of at this time are:

1. All Hebdo minutes from January and February 2018.
2. The pool of alternates for the CCA, as it was constituted on 31 January 2018.

The Ombudsman has decided that the case team does not need to view the agendas of Mr Juncker or Mr Oettinger. She has also decided that it is not necessary to request a copy of additional documents from the legal service.

As agreed, we will leave the file in the care of the Commission at DG HR.
However, we kindly request the Commission to keep the file available at DG HR so that our case team can return to review it should that be necessary.
Let me take this opportunity to thank you for your assistance.
Best wishes,
Fergal O’Regan

European Ombudsman

Fergal O’Regan
Head of Unit

Rue Wiertz
Montoyer 30 Building
B-1047 Brussels
F. + 32 (0)2 284 49 14
www.ombudsman.europa.eu

From:

Sent: 03 July 2018 12:38
To: O REGAN Fergal Anthony

Subject: Phone call
Dear Fergal,
I know you are in inspection all day but I would like to talk to you when feasible for you either today or tomorrow. Let me know when is the best moment for you.
Many thanks in advance,
Best
From: [Redacted]
Sent: 10 July 2018 10:30
To: [Redacted] (EC)
Cc: O REGAN Fergal Anthony, [Redacted] (EC)
Subject: RE: Phone call

Dear [Redacted]

Thanks for agreeing to meet with us on Thursday 12 July at 11:30.

I'm writing to inform you of other questions that we would like to clarify. Please find the list here below.

Kind regards,

European Ombudsman

Rue Wiertz
Montoyer 30 Building
B-1047 Brussels
F: +32 (0)2 284 48 14
www.ombudsman.europa.eu

As regards transfers under Article 7 of the Staff Regulations:

1. The file contains a table that has 45 "transfers" in the interests of the service under Article 7 SR to DG/DDG/HCA during the Juncker Commission.

1. There is an indication in the file that the total number of Article 7 transfers to DG/DDG/HCA were, in fact, 43.

Can you clarify who the 43 persons that were subject to an Article 7 transfers were, with an indication of the post previously held and the post to which they were transferred?

As regards appointments of DGs that are of the same nationality as their responsible Commissioner:

2. [Redacted] was appointed DG in a Directorate General which is under the responsibility of a Commissioner of the same nationality. We would like to understand how common such an occurrence is in recent times. We have noted in the file that the Commission has already reflected on this issue and came up with a number of examples. We have checked these examples using public records:

a. There is a reference [Redacted] in the file. [Redacted] was appointed DG at [Redacted] in June [Redacted]. It is our understanding, however, that [Redacted] is controlled by Commissioner [Redacted] (HU), and not by Mr Oettinger (DE).

Is that correct?

b. We also noted the reference to [Redacted] who was [Redacted] from [Redacted] until [Redacted]. Commissioner [Redacted] was in charge of [Redacted] and [Redacted] from [Redacted] to [Redacted]. However, [Redacted] is an interinstitutional body governed by a Management Committee, on which each institution is represented by its Secretary-General.

Are we correct to assume that the Management Board of [Redacted] has the final say as regards the appointment of the DG of [Redacted]?

c. [Redacted] is also mentioned in the file. He was at [Redacted] with Commissioner [Redacted]. However, we note that [Redacted] was a [Redacted] since [Redacted] it was created out of
Are we correct to assume that there was no formal transfer of [redacted] to [redacted] under Article 7 (we have not been able to find a reference to any such transfer in the public records)?

If such a transfer exists, was it done under the responsibility of [redacted]?  

[redacted] came up in relation to a question from a journalist. He was [redacted] of the [redacted] [redacted], till the end of the year, and was then transferred to become the [redacted] of the [redacted] [redacted] after [redacted] became [redacted].

Is that accurate?

We have also identified, ourselves, two other examples of DGs who were in situ when a Commissioner of the same nationality was appointed to the relevant Directorate General (the DGs were, namely, Mr [redacted] and [redacted]). Those DGs were however not appointed to the position of DG by a Commissioner of the same nationality.

Is that accurate?

In fact, the last clear example of a DG being appointed by a Commissioner of the same nationality seems to date back [redacted] [redacted] was appointed DG at [redacted] in [redacted] when that Directorate General was under Commissioner [redacted].

Is it accurate to conclude that this was the last time that a DG was appointed by a Commissioner of the same nationality?

From: [redacted]  
Sent: 06 July 2018 15:38  
To: O REGAN Fergal Anthony  
Cc: [redacted]  
Subject: RE: Phone call  
Dear [redacted],  

Thanks for your message. As [redacted] is not in the office this afternoon, I cannot answer on [redacted] behalf on whether a room could be arranged for you and colleagues as of 10:00 on Monday. I am really sorry for that, but I guess [redacted] will check [redacted] emails later on.  

As for the session on Thursday, that's fine to meet at 11:30. We will send you the room number at a later stage. As per the questions, in case more come to you at the beginning of next week, it is always easier for us to get the questions in advance to be able to answer you the best possible way.  
Best regards,

From: O REGAN Fergal Anthony  
Sent: Friday, July 06, 2018 11:55  
To: [redacted]  
Cc: [redacted]  
Subject: RE: Phone call  
Dear [redacted],  

Many thanks for contacting us this morning by telephone. We agree that we can wrap up the inspection on Thursday. My team are available from 11.30. We would like, as regards the facts, to tie up any loose ends Thursday. We can already identify a number of points.

1. The CCA was due to meet at 1800 on 20 February to interview the other candidate and was due to finalise its deliberations at 18.45. An external consultant had been asked to assist the Commission in that interview. When the second candidate withdrew (around 1500), DG HR contacted the external consultant to tell him that his presence was no longer needed that evening. The wording of the email to the external consultant seems to suggest that the CCA...
meeting programmed for 1800 was cancelled. Did the CCA meeting go ahead at 1800 as foreseen. Or was the avis brought around to the offices of the CCA members for their signature sometime after 1500 (it was suggested to us at the inspection that this was the case). We would like to verify precisely what happened.

2. Mr Oettinger and Mr Juncker interviewed Mr Selmayr together on 20 February. We would like to confirm that they did so after the avis was signed by the various CCA members. Can you tell us, if possible basing yourself on the agendas of Mr Juncker, Mr Oettinger and Mr Selmayr, when that meeting took place?

3. The Chef de Cabinet of Mr Oettinger is a member of the CCA. However, he was not put in copy to the letters of 13 February, nor was his name on the Fiche de circulation. In fact, he did not sign any of the documents in the file. Why was this the case? For the avoidance of doubt, we are aware that the quorum for the CCA is 4.

We may have some more questions Thursday when we have the documents in front of us again. As we informed you by phone, we do not need to go the reading room today. However, if you could make available the Hebdo documents we requested in the reading room Monday, we can drop over Monday to check them (at 1000). Would that be OK?

Best wishes,

Fergal

---

From: O REGAN Fergal Anthony
Sent: 05 July 2018 13:02
To: 
Cc: 

Subject: RE: Phone call

Dear

Our case handlers have now informed me that they have noted in the file a reference to "Hebdo 2243" of 12 February which refers to this issue. The item on the agenda reads "Décision de la Commission sur le statut des anciens présidents et membres de la Commission". I hope this reference is of assistance to you. We can therefore limit our request to the minutes of that Hebdo meeting, any documents annexed to those minutes that are related to that issue and/or any documents circulated at that Hebdo meeting related to that issue.

Unless they are also in the minutes, can you please also provide the attendance list at that Hebdo meeting. Am I correct to assume that the Chef de Cabinet of the President normally chairs the Hebdo meetings?

We hope to finish the inspection tomorrow.

Best wishes,

Fergal
From: O REGAN Fergal Anthony
Sent: 05 July 2018 09:06
To: [Redacted]
Cc: [Redacted]
Subject: RE: Phone call
Dear [Redacted],

Thank you for coming back to me. The case team has read in the file reference to a decision on administrative support to former Commissioners. I understand that the case team have also seen in the file a copy of an undated (draft?) decision regarding such administrative support. I have also seen a reference, in the file, to a legal service "opinion" on this (draft) decision. This was one issue raised by Parliament. We have checked all the minutes of the college meetings from the relevant time and find no reference to the issue. We wish to verify if the issue was brought, in the relevant period (January - February) to the attention of the Cabinets at least. Can you therefore please provide us with all the Hebdo "minutes" from that period to check this.

Best wishes,
Fergal

European Ombudsman
Fergal O' Regan
Head of Unit

Rue Wiertz
Montoyer 30 Building
B-1047 Brussels
F. +32 (0)2 284 49 14
www.ombudsman.europa.eu

From: [Redacted]
Sent: 04 July 2018 18:48
To: O REGAN Fergal Anthony
Cc: [Redacted]
Subject: Re: Phone call
Dear Fergal,

Thanks for your message. As for point 1 is there a particular item you are interested in? I can also send you the table of content of the minutes so that you can tell me which item(s) are of interest to you. As for point 2, I understand that [Redacted] provided you with the elements needed.

Best

Envoyé de mon

Le 4 juil. 2018 à 11:49, O REGAN Fergal Anthony a écrit :

Dear [Redacted],

I refer to our telephone conversation of yesterday.
Dear Fergal,

Many thanks for the reference, it is indeed helpful, we will look into that now. I can already reply to two of your points: we don’t establish attendance list of Hebdo meetings and it is the Secretary General who chairs the Hebdo meetings as per point 6.5.1 of the annex to the Commission decision C(2010) 1200 that you will find below.

Best regards,

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Dear [Name],

Our case handlers have now informed me that they have noted in the file a reference to "Hebdo 2243" of 12 February which refers to this issue. The item on the agenda reads "Décision de la Commission sur le statut des anciens présidents et membres de la Commission", I hope this reference is of assistance to you. We can therefore limit our request to the minutes of that Hebdo meeting, any documents annexed to those minutes that are related to that issue and/or any documents circulated at that Hebdo meeting related to that issue.

Unless they are also in the minutes, can you please also provide the attendance list at that Hebdo meeting. Am I correct to assume that the Chef de Cabinet of the President normally chairs the Hebdo meetings?

We hope to finish the inspection tomorrow.

Best wishes,

Fergal

European Ombudsman
Fergal O’Regan
Head of Unit
Dear [Name],

Thank you for coming back to me.

The case team has read in the file reference to a decision on administrative support to former Commissioners. I understand that the case team have also seen in the file a copy of an undated (draft?) decision regarding such administrative support. I have also seen a reference, in the file, to a legal service "opinion" on this (draft) decision. This was one issue raised by Parliament. We have checked all the minutes of the college meetings from the relevant time and find no reference to the issue. We wish to verify if the issue was brought, in the relevant period (January - February) to the attention of the Cabinets at least.

Can you therefore please provide us with all the Hebdo "minutes" from that period to check this.

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Dear Fergal,

Thanks for your message. As for point 1 is there a particular item you are interested in? I can also send you the table of content of the minutes so that you can tell me which item(s) are of interest to you. As for point 2, I understand that Sue provided you with the elements needed.

Best

[Email signature]

Envoyé de mon [Email client] le 4 juil. 2018 à 11:49, O REGAN Fergal Anthony a écrit :

Dear [Name]

I refer to our telephone conversation of yesterday.

After reviewing the case with the case team and after consulting with the Ombudsman, I can confirm that the only additional documents that we need to have sight of at this time are:

1. All Hebdo minutes from January and February 2018.
2. The pool of alternates for the CCA, as it was constituted on 31 January 2018.

The Ombudsman has decided that the case team does not need to view the agendas of Mr Juncker or Mr Oettinger. She has also decided that it is not necessary to request a copy of additional documents from the legal service.

As agreed, we will leave the file in the care of the Commission at DG HIR. However, we kindly request the Commission to keep the file available at DG HIR so that our case team can return to review it should that be necessary.

Let me take this opportunity to thank you for your assistance.

Best wishes,

Fergal O' Regan
Subject: Phone call

Dear Fergal,

I know you are in inspection all day but I would like to talk to you when feasible for you either today or tomorrow. Let me know when is the best moment for you.

Many thanks in advance,

Best

[Redacted]
Annex to the

COMMISSION DECISION

amending its Rules of Procedure:

Rules giving effect to the Rules of Procedure
ANNEX

CHAPTER 1

THE COMMISSION

Rules giving effect to Article 2:
Political guidelines, political priorities, work programme and budget

2-1. Each year the Commission shall hold a policy debate on its priorities and on budgetary issues.

The Commission's work programme and the draft budget for the following year shall be in accordance with the political guidelines laid down by the President and the priorities set by the Commission.

2-2. To clarify and organise the implementation of these political guidelines and these priorities, the Commission shall attach to its work programme a list of the main initiatives it is planning to adopt during the year in question. The Commission may update its work programme in the course of the year.

Rules giving effect to Article 3:
The President

3-1. The President may at any time set up groups of Members of the Commission. He may also suspend or terminate the work of a group.

In addition, he may change the mandate, membership and duration of groups of Members.

3-2. The order of precedence of Members of the Commission other than Vice-Presidents shall be based on their seniority in the Commission or, in the event of equal seniority, on their age.

Rules giving effect to Article 4:
Decision-making procedures

4-1. Save where decided otherwise by the Secretary-General, in particular for certain administrative matters, any instrument submitted to the Commission for decision shall be presented by means of the computer application provided for that purpose.

SECTION I – COMMISSION MEETINGS

Rules giving effect to Article 5:
Convening Commission meetings

5-1. On the initiative of the President, the Commission may hold seminars or working meetings on specific topics.

Policy discussions shall be held at the weekly meetings or at such seminars or working meetings.
Rules giving effect to Article 6:
Agenda of Commission meetings

6-1. Drawing up the agenda
The President shall adopt the agenda of the next Commission meeting, taking account of the work programme referred to in Article 2 of the Rules of Procedure, the Commission's communication strategy and the state of preparation of the drafts referred to him.

6-2. Type of acts entered on the agenda
6-2.1 As a general rule, only politically important or sensitive matters shall be placed on the agenda.
6-2.2 Without prejudice to rule 6-2.1, the Commission may also discuss at its meetings any documents on which there is disagreement that could not be resolved at an earlier stage in the decision-making process.

6-3. Initiating inclusion of an item in the agenda
6-3.1 As a general rule, requests for an item to be placed on the Commission's agenda are made via the programming instrument provided for as part of the Commission's agenda planning system.

Requests for an item to be placed on the agenda must be put into the computer application provided for that purpose at least nine working days before the Commission meeting in question.

6-3.2 In exceptional circumstances, a Member may ask the President to place an item on the agenda no later than four working days before the Commission meeting in question.
6-3.3 As a general rule, requests for an item to be placed on the agenda must include the following information:
   – the title of the initiative and a brief description of the content,
   – the reasons for presenting it and for its timing,
   – its link with the policy guidelines laid down by the President and the priorities set by the Commission, and with the Commission's work programme and its communication strategy,
   – the state of play in the preparation of the file, including the interservice consultation.

6-3.4 Except where the President decides otherwise, the requirements set out in the preceding paragraphs shall not apply in the case of:
   – the fixed items on the agenda of every Commission meeting,
   – the brief memoranda that Members can use to inform the Commission about matters of general interest within their area of activity; these memoranda reflect the views of the author only and do not require the Commission to adopt a position; in this case interservice consultation is optional.

6-3.5 To facilitate preparation of the Commission's discussions, the Secretariat-General, under the authority of the President, shall draw up a list of items for inclusion on the agenda of forthcoming Commission meetings, ensuring, as far as possible, that each Commission meeting deals with topics with a common theme.
6-4. **Lodging and circulation of documents and language rules**

6-4.1 The agenda for each Commission meeting, as adopted by the President, shall be circulated to the Members of the Commission by 17.00 on the day before the meeting. It shall be made public.

To facilitate preparation of the agenda, the Secretariat-General shall distribute a draft version no later than noon three working days before the meeting.

6-4.2 An item can be included in the agenda for a Commission meeting only if the necessary documents can be circulated to Members no later than by noon four working days before the meeting.

Documents which are to be discussed in advance at a special meeting of Heads of Cabinet must reach the Members at least 48 hours before the beginning of that meeting, which will normally be held on the Tuesday or Thursday of the week preceding the meeting of the College. In the case of very long documents, the Secretary-General, under the authority of the President, may allow more time.

In order for an item to be included in the agenda for a Commission meeting, the lodging of the necessary documents with the Registry of the Secretariat-General by means of the computer application provided for that purpose must take place on a single date, which shall be the Thursday of the last week but one (week n-2) before that of the Commission meeting.

6-4.3 Documents to be discussed at a Commission meeting shall be distributed to Members of the Commission:

- in the languages stipulated by the President, taking account of Members’ minimum requirements,
- and in the language or languages required in particular for the purposes of the instrument's entry into force and its notification to those to whom it is addressed.

6-4.4 Where the legal revisers group revises the text, all the language versions required shall be available in due time.

6-4.5 Official transmission to other Community institutions and/or publication in the *Official Journal of the European Union* requires the text to be available in all official languages.

6-4.6 The President shall take a decision in cases where the conditions set out in rule 6.4.2 and the first indent of rule 6.4.3 have not been met. Depending on the circumstances he may decide to hold the matter over to a subsequent meeting.

The matter must be held over if the language or languages required in particular for the purposes of the instrument's entry into force and its notification to those to whom it is addressed are not available when the instrument is adopted.

6-5. **Preparation of items on the Commission's agenda**

6-5.1 Items for inclusion on the agenda of Commission meetings shall be prepared at the weekly meeting of Heads of Cabinet, chaired by the Secretary-General. If necessary, special meetings of Heads of Cabinet may be called to examine specific questions. The Interinstitutional Relations Group shall examine more particularly the positions to be adopted by the Commission in interinstitutional discussions.

6-5.2 In principle, any question closed during one of the stages of preparation of meetings of the College must not be re-opened during the next stage.
6-5.3 If agreement has been reached at the weekly meeting of Heads of Cabinet or at the meeting of the College, the President may decide that the matter will be adopted by means of a finalisation written procedure, in accordance with rule 12-4.5.

If the matter remains on the agenda, the decision may be adopted without debate.

**Rules giving effect to Article 8:**

**Decision-making**

8-1. The President may decide that the Commission has reached agreement without the need to proceed to a vote.

8-2. In certain exceptional circumstances the President may decide to hold a secret ballot.

**Rules giving effect to Article 10:**

**Attendance of officials or other persons**

10-1. Without prejudice to rules 10-2 and 10-3, the President shall lay down rules for attendance by persons allowed to sit in on the Commission’s weekly meetings, seminars or any other type of meeting called on an ad hoc basis.

10-2. The Director-General of the Legal Service, the Director-General of the Directorate-General for Communication, the Director-General of the Bureau of European Policy Advisers, the Deputy Secretaries-General, the Head of the Spokesperson’s Service, the Commission’s Spokesperson and the Director of the Registry may sit in throughout all Commission meetings, in addition to the Secretary-General and the President's Head of Cabinet.

They may be assisted by their colleagues with responsibility for the matters under discussion. However, the latter may attend the meeting only for the duration of the discussions on the item in question.

10-3. When one or more Members present a proposal to the Commission, their Head(s) of Cabinet and the Director(s)-General concerned or their representative(s) may also sit in.

10-4. The President may, on his own initiative or at the request of a Member, declare all or part of a meeting restricted.

**Rules giving effect to Article 11:**

**Minutes**

11-1. The minutes shall be in two parts.

The ordinary minutes (PVO) shall give a general account of the business transacted at the meeting and such decisions as are to be made public.

The special minutes (PVS) shall record the other decisions, votes taken (if any), and statements which Members expressly ask to have recorded in the minutes.

11-2. The ordinary minutes shall be made public once they have been approved by the Commission.
SECTION II – OTHER DECISION-MAKING PROCEDURES

Rules giving effect to Article 12:
Decisions taken by written procedure

12-1. A draft text from one or more Members of the Commission may normally be adopted by written procedure provided that the prior approval of the Legal Service and the agreement of the departments which must be consulted in accordance with Article 23 of the Rules of Procedure and the rules giving effect to it have been obtained.

12-3 Initiation of written procedure

12-3.1 The Secretary-General shall be responsible for initiating written procedures, monitoring their progress and recording their completion.

12-3.2 The agreement of the Member requesting initiation of the written procedure is assumed to have been secured by the department responsible, in accordance with the working procedures agreed between the Member and his departments.

In the case of a written procedure tabled with the agreement of an associated Member, the agreement of the associated Member is assumed to have been secured by means of the computer application provided for that purpose.

12-3.3 Without prejudice to the provisions in rule 12-4.5 concerning finalisation written procedures, initiation of the written procedure is conditional on the agreement of the departments consulted having been secured in accordance with Article 23 of the Rules of Procedure. Such agreements shall be formally noted by the department responsible.

12-4. Time limits

12-4.1 The completion date set by the Secretary-General for each written procedure shall be not less than five working days from the date on which the document was distributed.

12-4.2 However, a shorter time limit may be set if the circumstances so require, as provided in rules 12-4.3, 12-4.4, 12-4.5 and 12-4.6.

12-4.3 Expedited written procedure

In accordance with rule 12-4.2, the time limit for a written procedure may be shortened to not less than three working days from the date on which the document was distributed.

Expedited written procedures may be used only on condition that:

– it can be demonstrated that a shorter time limit is needed owing to unforeseen and exceptional circumstances, and the procedure is not being used as a means of catching up on an administrative delay;

– authorisation is given by the President, at the request of the Member or Members submitting the draft text.

12-4.4 Urgent written procedure

With the prior agreement of the President, the time limit for a written procedure may be set by the Secretary-General at less than three working days to enable urgent measures to be adopted quickly.

If possible the matter shall be discussed at a meeting of Heads of Cabinet.
If necessary, notably where the time limit is less than one working day, the matter may be mentioned in the record of a meeting of Heads of Cabinet.

12-4.5 Finalisation written procedure

In accordance with Article 12(1) of the Rules of Procedure, a document which has been placed on the agenda of a Commission meeting may be adopted by finalisation written procedure if agreement has been reached on the text at the weekly meeting of Heads of Cabinet or at the Commission meeting.

Where agreement is reached on the text at the Commission meeting, the finalisation written procedure may be initiated, on a proposal from the President, even in the absence of the agreement of the departments consulted, including the Legal Service.

The time limit for the finalisation written procedure may be set at less than five working days; it must be subsequent to the Commission meeting on whose agenda the item was originally placed.

The draft decision shall be included in the list of decisions with political implications referred to in rule 12-11.

12-4.6 ‘Communication on a Council position’ written procedure

Under the ordinary legislative procedure provided for in Article 254 TFEU, when the Commission adopts a communication on a Council position, a ‘communication on a Council position’ written procedure, for which the time limit is at least two working days from the date on which the document was distributed, may be initiated by the Secretary-General at the request of the Member or Members submitting the proposal so that the communication can be sent to the European Parliament at the same time as the Council common position. The Secretary-General shall assess whether this procedure should be used.

12-5 Extension of time limit for written procedures

12-5.1 At the request of a Member of the Commission, or where the Secretary-General finds that the draft text does not meet all the requirements concerning substance and form, the time limit for a written procedure shall be extended by a period not exceeding that originally set, subject to rule 12-8.

12-5.2 The Secretary-General shall inform the other Members of the Commission of any extension.

12-5.3 If, in the course of a written procedure, the Member who requested it accepts amendments proposed by another Member of the Commission or wishes to amend the text himself, an amended version shall be distributed and, if necessary, a new time limit set.

12-6 Suspension of written procedures

12-6.1 The Secretary-General shall be notified in writing of any requests for suspension from Members of the Commission before the time limit expires.

He shall then suspend the procedure and inform the Members of the Commission.

The same shall apply if the Secretary-General finds a defect in the substance or form of the measure.

12-6.2 Requests for suspension shall include a clear indication of the point or points in the draft text to which they relate and give a brief explanation of the grounds.
12-6.3 Suspension of a procedure shall not prevent further requests for suspension or amendments being made.

12-7. Reopening of written procedures following suspension

When a request for suspension made by a Member of the Commission is withdrawn or defects in the substance or form of the text are removed, the Secretary-General shall reopen the written procedure once formal notification of the lifting of the objection or reservation has been made and/or an amended version of the text has been distributed, and a new time limit shall be set.

12-8. Inclusion in the agenda for a Commission meeting

12-8.1 If the procedure remains suspended, or if the requested extension of the time limit is considered undesirable, the Member or Members responsible for the draft text may propose that the matter be placed on the agenda of a forthcoming Commission meeting.

A matter shall be placed on the agenda in accordance with Article 6 of the Rules of Procedure and the rules giving effect to it.

12-8.2 In the case of expedited or urgent written procedures, any Member of the Commission who opposes the proposed measure may request that a special meeting of the Commission be convened immediately or at short notice to discuss the matter.

12–9. Termination of written procedures

12-9.1 Written procedures shall be terminated if recourse is had to the oral procedure as provided in rules 12-8.1 and 12-8.2.

12-9.2 A written procedure may also be terminated at the request of the Member or Members who asked that it be initiated or on the initiative of the Secretary-General if the requirements concerning substance and form have been met.

12-10. Adoption of the decision

12-10.1 Provided that all the requirements concerning substance and form have been met, the decision shall stand adopted if, within the time limit set, no Member of the Commission has requested that the matter be placed on the agenda for discussion at a meeting or has submitted and maintained an objection or reservation regarding the text.

12-10.2 In exceptional circumstances the decision may be taken at a meeting of the Commission.

12-10.3 The date of adoption shall be the date on which the time limit expired.

12-11. Information

Significant texts which are the subject of a written procedure may be brought to the attention of a Commission meeting on the initiative of the President, the Member or Members responsible or the Secretary-General.

The Secretary-General shall circulate a list to this effect for the weekly meeting of Heads of Cabinet.

12-12. Written procedures at certain times of the year
12.1 Written procedures may be initiated and completed during the periods in which there are normally no Commission meetings.

12.2 In the event of suspension, the President may convene a meeting in order to arrive at an agreement.

12.3 Language rules for written procedures

12.3.1 Documents for adoption by written procedure shall be distributed to Members of the Commission:

- in the languages stipulated by the President, taking account of Members’ minimum requirements; the President shall take a decision in exceptional circumstances (such as in the event of a major crisis, natural catastrophe or some other special circumstance) or in cases where these language versions are not available for reasons which can be duly substantiated.

- and in the language or languages required in particular for the purposes of the instrument’s entry into force and its notification to those to whom it is addressed.

12.3.2 Where the legal revisers group revises the text, all the language versions necessary shall be available in due time.

12.3.3 Official transmission to other Community institutions and/or publication in the Official Journal of the European Union requires the text to be available in all official languages.

Rules giving effect to Articles 13 and 14:
Decisions taken by empowerment procedure and by delegation procedure

13.1 For the purposes of rules 13-2 to 13-4,

- the term ‘conferred power(s)’ shall denote, as appropriate, the power(s) conferred by means of empowerment, subdelegation and/or delegation;

- the term ‘delegated body’ shall denote, as appropriate, the Member or Members empowered and/or the Director-General or Head of Department to whom powers have been subdelegated or delegated.

13.2 General conditions for conferring powers by empowerment or delegation

13.2.1 The conferred power may be subject to certain conditions and/or arrangements; in particular, it may be restricted to decisions which do not involve sums in excess of a ceiling set by the Commission or the subdelegating Member.

13.2.2 A register of conferred powers shall be kept by the Secretariat-General.

13.3 Arrangements for the exercise of powers under the empowerment and delegation procedures

13.3.1 The Commission may always itself take a decision in respect of which it has conferred power or may give additional instructions to the delegated bodies.

13.3.2 Before taking a decision, the delegated body shall determine whether, on grounds of political sensitivity or because of its importance, the matter should be brought before the full Commission.
If there is any doubt, the President should be consulted. The President may ask for additional information on the implications of the decision.

13/14-3.3 Except in duly substantiated specific cases, the approval of the Legal Service and the agreement of the departments consulted in accordance with Article 23 of the Rules of Procedure and the rules giving effect to it are required for the exercise of the powers conferred. The department responsible shall secure such agreement.

13/14-3.4 The exercise of conferred powers shall, in all cases, require reference to the decision conferring the power.

13/14-3.5 When conferred powers are exercised, the decision shall stand adopted once the relevant form or electronic form has been signed (by hand or electronically) by the delegated body and the decision concerned has been recorded by the Secretariat-General in the computer application provided for that purpose.

13/14-4. Language rules for empowerment and delegation procedures

13/14-4.1 For the exercise of conferred powers, the documents must be available, as appropriate, in the following language versions:

– the language(s) required for the act to enter into force;
– the language(s) required for notification of the act to those to whom it is addressed;
– the language(s) stipulated by the President, taking account of Members’ minimum requirements, or required for the purposes of adopting the act in other cases.

13/14-4.2 Where the legal revisers group revises the text, all the language versions necessary shall be available in due time.

13/14-4.3 Official transmission to other Community institutions and/or publication in the Official Journal of the European Union requires the text to be available in all official languages.

Rules giving effect to Article 13:
Decisions taken by empowerment procedure

13-1. Rules for the granting of empowerment

13-1.1 All decisions conferring powers by empowerment shall be taken at Commission meetings or by finalisation written procedure.

13-1.2 Draft ‘general’ empowerment decisions determining the framework within which management and administrative measures may be adopted in specific areas, on behalf of the Commission and subject to its control, shall be put to the Commission by the President in agreement with the Member or Members concerned.

For this purpose, the originating department shall send a preliminary draft to the Secretariat-General, which shall carry out the necessary consultations and take the appropriate steps to place the draft on the Commission's agenda.

13-1.3 Ad hoc powers may be conferred by empowerment on the Members responsible for the purposes of, with the agreement of the President:
– taking the final decision on the basis of the Commission's deliberations (implementing powers);
– finalising instruments which have been submitted to the Commission for approval, in the light of its deliberations (finalising powers);
– taking a specific measure.

Any request for ad hoc powers to be conferred by empowerment shall be placed on the agenda for a Commission meeting. It shall be accompanied by an information memo prepared by the Member concerned, in agreement with the President and with other Members where appropriate. It shall be prepared in close collaboration with the Secretariat-General.

13-1.4 Draft decisions shall specify as precisely as possible, and with reference to the corresponding guidelines:

– the Member who is empowered;
– the scope of the empowerment and the matter covered;
– all conditions and/or rules laid down for the exercise of the empowerment, and in particular the departments which must be consulted in accordance with Article 23 of the Rules of Procedure and the rules giving effect to it, and, where appropriate, the departments to be notified.

13-1.5 Powers conferred on a Member by empowerment may, where necessary, be exercised by another Member of the Commission.

13-2. Preparation of decisions to be taken by empowerment procedure

13-2.1 The departments responsible for preparing decisions to be taken by empowerment procedure shall indicate expressly to the empowered Members whether, in their opinion, the decision is a matter of routine management or whether there are any particular data or circumstances to be taken into account (assessment of their implications being a matter for the Members concerned).

13-2.2 Before conferred powers are exercised, the agreement of the cabinet of the empowered Member and of the cabinet(s) of any associated Member(s) shall be sought by the department responsible by means of the computer application provided for that purpose.

The agreement of the cabinet of the empowered Member shall still be required where the Member is unable to exercise the powers himself.

13-3. Checks on decisions taken by empowerment procedure

The Secretary-General shall monitor decisions taken by empowerment procedure. In particular, he shall check that the conditions and rules for the exercise of powers have been met. The check shall be carried out before a decision is submitted for signature by the empowered Member.

13-4. Arrangements for empowerment procedures at certain times of the year

To ensure that decisions can still be taken on public holidays and during periods in which there are normally no Commission meetings, the President shall appoint one of the Members to take any urgent action that may be required and, in particular, to sign official instruments.

13-5. Scope and conditions governing subdelegation
13-5.1 Decisions to subdelegate or withdraw powers shall be taken by the empowered Member in accordance with the empowerment procedure provided for in Article 13 of the Rules of Procedure and the rules giving effect to it.

13-5.2 The decision to subdelegate shall specify as precisely as possible:

– the Director-General or Head of Department to whom powers are subdelegated;

– the matter covered by the subdelegated powers and their scope, which may not, under any circumstances, exceed what was stipulated when the empowerment was granted.

13-5.3 Subdelegation shall be permitted for the adoption of instruments of general application only if they simply apply detailed or purely technical criteria.

13-5.4 With the exception of the cases referred to in Article 15 of the Rules of Procedure, subdelegated powers may not be delegated further.

13-5.5 The subdelegated official shall act under the authority of the empowered Member in accordance with any arrangements they may have agreed. The empowered Member shall continue to be accountable to the Commission for ensuring compliance with the general conditions attached to the empowerment.

13-5.6 The subdelegated official shall, by signing the certifying statement provided for in Article 17(3) of the Rules of Procedure, certify that the conditions and rules governing the decisions he is adopting have been complied with and that the required agreements have been secured.

13-6. Rules concerning delegation in respect of financial matters


13-7. Powers conferred on the appointing authority and on the authority empowered to conclude contracts of employment

The rules referred to in Article 13(4) of the Rules of Procedure are those laid down by the Commission to define the powers of the appointing authority and the authority empowered to conclude contracts of employment under the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities.

Rules giving effect to Article 14:

Decisions taken by delegation procedure

14-1. Rules for the delegation of powers

14-1.1 All decisions delegating powers shall be taken at Commission meetings or by finalisation written procedure.

14-1.2 Draft delegation decisions shall be put to the Commission by the President in agreement with the Member or Members concerned.
For this purpose, the originating department shall send a preliminary draft to the Secretariat-General, which shall carry out the necessary consultations and take the appropriate steps for the draft to be placed on the Commission's agenda.

14-1.3 Draft delegation decisions shall specify as precisely as possible, and with reference to the corresponding guidelines:

- the Director-General or Head of Department to whom powers are delegated;
- the scope of the delegated powers and the matter covered;
- all conditions and/or rules laid down for the exercise of the delegated powers, and in particular the departments which must be consulted and whose agreement must be obtained in accordance with Article 23 of the Rules of Procedure and the rules giving effect to it, and, where appropriate, the departments to be notified.

14-1.4 Delegation shall be permitted for the adoption of instruments of general application only if they simply apply detailed or purely technical criteria.

14-2. Checks on decisions taken by delegation procedure

14-2.1 The delegated official shall be accountable to the Commission for ensuring compliance with the general conditions attached to the delegation of powers.

14-2.2 The delegated official shall, by signing the certifying statement provided for in Article 17(3) of the Rules of Procedure, certify that the conditions and rules governing the decisions he is adopting have been complied with and that the required agreements have been secured.

Rules giving effect to Article 15:
Subdelegation of powers to take decisions awarding grants and contracts

15-1. Subdelegations of powers referred to in Article 15 of the Rules of Procedure shall apply to the adoption of decisions regarding the selection of projects and of individual decisions awarding grants and contracts where a committee as provided for under Article 202 of the Treaty establishing the European Community has issued a favourable opinion.

15-2. Such decisions shall not be subject to the arrangements for interservice consultation as laid down by the rules giving effect to Article 23.

15-3. The Commission's obligations under Articles 7 and 8 of Council Decision 1999/468/EC and the Agreement between the European Parliament and the Commission on procedures for implementing it (OJ L 256, 10.10.2000, pp. 19-20), as well as the internal administrative rules governing the fulfilment of its obligations, shall be complied with.

15-4. The subdelegated official shall act under the authority of the Director-General in accordance with any arrangements they may have agreed. The Director-General shall continue to be accountable to the Commission or the empowered Member for ensuring compliance with the general conditions attached to the delegation.

15-5. The subdelegated official shall, by signing the certifying statement provided for in Article 17(3) of the Rules of Procedure, certify that the conditions and rules governing the decisions he is adopting have been complied with.
Rules giving effect to Articles 16 and 17: Information concerning decisions adopted and authentication of acts adopted by the Commission

16/17-1. Day notes relating to decisions adopted by written procedure and by empowerment procedure and authenticating certain such decisions shall be produced and circulated by the Secretary-General within 24 hours of their approval, and in any event before the acts mentioned therein are notified or published.

Day notes relating to decisions adopted by delegation procedure and by subdelegation procedure shall be made available in the computer application provided for that purpose.

SECTION IV – PREPARATION AND IMPLEMENTATION OF COMMISSION DECISIONS

Rules giving effect to Article 20: The Secretary-General

20-1. The Secretary-General shall ensure overall policy coherence through prior coordination between departments during the preparatory stages in accordance with Article 23 of the Rules of Procedure and shall inform the President in good time of any draft initiative of outstanding importance and/or substance.

He shall check, under the authority of the President, that proposals comply with the political guidelines laid down by the President and the priorities set by the Commission, that they are compatible with other policies and are of a high standard, and that they are the result of close collaboration between all the departments concerned. He shall also ensure that the impact of the proposals has been properly assessed.

In addition, he shall monitor the formal aspects of draft texts for compliance with procedural rules, drafting rules and rules for presentation, including compliance with the language rules applicable, linguistic concordance being the responsibility of the translation department.

20-2. Under the authority of the President, the Secretary-General may act as mediator in the event of disagreement between departments. At the request of the President, he may take the lead role for draft texts which involve more than one Member of the Commission, are of a horizontal nature or are particularly sensitive.

20-3. The Secretary-General shall ensure that the coordination instruments work properly and smoothly. He shall comment on any matter involving interdepartmental coordination. Where necessary, he shall suggest that ad hoc instruments be set up or that existing instruments be adapted.

20-4. The Secretary-General shall make a record of the conclusions reached during the Commission’s policy discussions and ensure that it is appropriately distributed.
CHAPTER 2  
COMMISSION DEPARTMENTS

Rules giving effect to Article 21:  
Structure of departments

21-1. The term ‘equivalent department’ refers to specific Commission departments other than Directorates-General and includes the offices whose mandate is to perform administrative and support tasks which may be of a permanent nature and linked to the mission of a Commission department.

21-2. Without prejudice to the President’s prerogatives as set out in Article 22 of the Rules of Procedure concerning the creation of specific functions and structures, decisions on the structure of Directorates-General or equivalent departments may be delegated to the Member of the Commission with special responsibility for personnel and administration, acting in agreement with the President and the Member with special responsibility for the area of activity in question. They may also be delegated to the Director-General of the Directorate-General or department concerned. Powers conferred in this way shall then be exercised in accordance with the Code of Good Administrative Conduct as regards the establishment plans in force.

Rules giving effect to Article 23:  
Cooperation and coordination between departments

23-1. In order to ensure genuine coordination of substance in compliance with the political guidelines laid down by the President and the priorities set by the Commission, the department responsible for preparing an initiative shall contact departments with a legitimate interest and the Secretariat-General as soon as work begins, to inform them of the timetable for the work and enable them to cooperate at an early stage, notably where the drafting process will involve consultations with national government departments, experts or other outside agencies, an impact assessment, an ex-post evaluation or public consultation.

23-2. The department responsible and the departments consulted shall cooperate closely and for this purpose shall exchange all the necessary data and information before and after the formal interservice consultation referred to in rule 23-4.

23-3. Where important, complex or cross-cutting proposals, including the relevant impact studies, ex-post evaluations or public consultations, are being prepared, the department responsible may, in the interests of effective coordination, set up an interservice coordination group or other structures as appropriate. It must first obtain the prior agreement of the Secretary-General.

To facilitate interservice coordination, the Secretary-General may, if he considers it useful, organise or encourage interdepartmental meetings and joint meetings of Members' cabinets and the departments concerned.

23-4. Formal interservice consultation

23-4.1 When a document is finalised for decision by the Commission, the department responsible shall formally consult, by means of the computer application provided for that purpose, the departments with a legitimate interest. Where a new political initiative or a politically sensitive initiative is involved, the department responsible shall obtain the prior
agreement of the Member to whom it is attached on the basis of the draft document and any impact assessment report that has received a favourable opinion from the Impact Assessment Board.

The department responsible shall facilitate the interservice consultation procedure notably, where necessary, by organising interdepartmental meetings during or after the formal consultations.

23-4.2 The departments consulted shall be given at least ten working days in which to submit their comments.

This period shall be increased to a minimum of fifteen working days if the total length of the documents submitted for consultation, including the impact assessments and the Commission department working papers, exceeds twenty pages.

Unless the Commission specifically provides otherwise or all the departments concerned, including the Secretariat-General, agree, this period may be shortened in genuine emergencies only, and not, therefore, in order to catch up on an administrative delay.

23-4.3 For the purposes of initiating a written procedure and exercising delegated powers, the approval of the Legal Service and the prior agreement of the departments duly consulted in accordance with the relevant provisions of the Rules of Procedure and the rules giving effect to them shall be required.

Where a department consulted or the Legal Service has not reacted within the time laid down in rule 23-4.2, it shall be deemed to have given its agreement or approval.

Additional time may be requested but grounds must be given and the circumstances must be exceptional.

23-4-4 When the consultation is closed, the originating department shall revise the texts and try to incorporate as faithfully as possible the comments made and amendments requested by the departments consulted, and it shall inform the latter accordingly by means of the computer application provided for that purpose and make the revised document available to them.

23-4-5 The computer procedure and application used for interservice consultations shall also be used to obtain the agreement of the departments concerned before a Commission staff working paper is sent to its recipient(s).

23-5. Alternatives to formal written interservice consultation

23-5.1 The President may ask a group of Members to prepare the ground for the discussion of an initiative which may be raised at a subsequent meeting of the Commission.

He may decide that preparation by such a group counts as formal interservice consultation, provided that the Members of the Commission who are directly concerned in view of the nature of the matter in question are represented in the group. In this case, the presence of a representative of the Legal Service shall be required.

When drawing up a draft initiative the department responsible shall take care to involve the departments with a legitimate interest in the initiative beforehand, especially those which have to be consulted.

23-5.2 In addition, the Secretary-General may authorise the department responsible to consult the departments with a legitimate interest in an initiative at an interdepartmental meeting (‘fast-track’ procedure), provided that the urgency criteria are met. The fast-track procedure
shall be requested and organised using the computer application provided for that purpose. This oral interservice consultation is then equivalent to formal written consultation, provided that the departments most concerned, notably those which must be consulted, are represented at the meeting or send their comments in writing before the meeting is held.

The documents submitted for consultation must reach the departments to be consulted at least 48 hours before the meeting.

The opinions expressed by the departments consulted at the meeting must be duly recorded in the interdepartmental meeting minutes, which must reflect the outcome of the consultation.

23-6. When presenting documents to the Commission to be dealt with by oral or written procedure, the Secretary-General shall make express reference, in the covering memorandum, to the department responsible, to the departments consulted and to their opinion on the measure in question expressed in the formal written or oral interservice consultation, or to the opinion expressed in a group of Members of the Commission.

23-7. The rules of cooperation set out in this Article shall apply when representatives of the Member States are consulted under the relevant committee procedures. No draft measure may be presented to the Member States unless all departments consulted are in agreement.

This also applies to Commission positions and to non-papers and any other form of contribution prepared by one or more Commission departments to be presented or supplied by Commission representatives to the governments of Member States, to other Community institutions, to international organisations and in the course of negotiations with non-member countries, and to any other expression of opinion, including a personal opinion, which might compromise the Commission.
Dear Fergal,

Following yesterday’s meeting, please find enclosed the PV containing the amendment to the CCA rules concerning the replacement of the Head of Cabinet (point 6.3). We would like to point out though that since participation of the Head of Cabinet of the President is not obligatory (only the Rapporteur and the recruiting Director-General are required by the rules for a CCA to go ahead), no replacement was in fact necessary since the quorum of 4 was confirmed.

As per your second point, I referred your query to the SPP, but they confirm that they don’t have such document.

Best regards,

[Signature]

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From: O REGAN Fergal Anthony
Sent: Friday, July 13, 2018 12:11 PM
To: [Name]
Cc: [Name] (EO); [Name] (HR); [Name] (EO)
Subject: RE: Phone call

Dear [Name]

Thank you for meeting with us yesterday. We would like to follow up on one outstanding issue that was identified in the meeting.

Article 10 of the CCA Rules of Procedure states that the Chair must replace a member of the CCA who has a conflict of interest with a person from a pre-established list made up of DGs, DDG and Directors (it being understood that the replacement must be at least at the same level as the position to be filled). Mr Selmayr was not the hierarchical superior of any of the DGs or DDGs.

We also note that the recusal letter of Mr Selmayr states that

"the normal provisions for deputising or replacement allowed by the CCA Rules of Procedure are not really adequate in this instance in light of my position as hierarchical superior to the replacements foreseen". (our emphasis)

You informed us in the meeting that you believed that there is a Commission decision which derogates from Article 10 and that that decision is a public document. Can you please forward to us a copy of the decision you referred to by Monday COB.
In addition, please also let us know when the email exchanges between COMM and the "Le Soir" journalist, which were identified in the meeting yesterday, can be consulted in the reading room.

Best wishes,

Fergal

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From: O REGAN Fergal Anthony  
Sent: 10 July 2018 16:32 
To: (EC)  
Cc: (EC)  
Subject: RE: Phone call

Dear

Apart from the points already raised by us relating to the matter under investigation, we do not, at this stage, have any additional points that require clarification. However, as a matter of procedure, we would like to confirm expressly, at the meeting on Thursday, the completeness of the documentation provided to the Ombudsman.

Along with providing us with a folder containing documents that are (mostly) in the public domain, we were given, on the first day of the inspection, access to the CCA file. After we clarified the scope of the Ombudsman's request for an inspection, we were also given access to 2 folders of documents (approximately 1,000 pages) from the Legal Service and 15 folders from DG HR, (amounting to approximately 7,500 pages). While these files emanate from the Legal Service and DG HR, they do contain some correspondence with the cabinets, with SG and with DG COMM (in particular, the SPP).

You have expressly informed us that you did request the cabinets and other services if they were in possession of any further documents which are not also included in the aforementioned files. You have confirmed to us that no such documents exist.

We would like to take an express note of this view in the inspection report.

See you Thursday.

Best wishes,

Fergal

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European Ombudsman
Fergal O' Regan  
Head of Unit

Rue Wiertz  
Montoyer 30 Building  
B-1047 Brussels  
F. +32 (0)2 284 49 14  
www.ombudsman.europa.eu
Dear Fergal,

Thanks for your message. We will look into the document and the extra questions and will try to our best to be ready for our Thursday meeting. Any additional questions you might have, we would really appreciate receiving them by COB today so that we have time to prepare the answers (and to make all necessary searches).

I will send you an outlook invite now. See you and the team on Thursday.

Best

Envoyé de mon

Le 10 juil. 2018 à 13:19, O REGAN Fergal Anthony a écrit :

Dear

Thank you for organising the continuing inspection today, I look forward to seeing you Thursday to clarify a number of points.

To follow up on the email of we thought it might be useful for you to have a copy of the preliminary research that we have carried out regarding appointments of DGs that are of the same nationality as their responsible Commissioner (see attached excel sheet as regards the nationality of DGs since 2004). This information was obtained from the Commission’s website and from other public sources. We wish to ensure that it is accurate. Therefore, we kindly request you to consult your records to complete the excel table, and correct it if necessary, for Thursday.

mentions Mr in his email. This example predates our study period (which is from 2004 to present). However, we
thought it might be useful to share with you a link to an article we found which discusses the career of [person].

Although growing up in [place] Mr [person] was born in [place] in [year] and thus had [nationality]. The article seems to suggest that he was already DG of DG Enlargement when Mr [person] took office and that he was moved precisely because he also held [nationality] (the article reads: "Before that, he had been director of the Commission’s enlargement taskforce and he subsequently became the first director-general for enlargement – a post that he had to move from when [person], his compatriot, became the commissioner for enlargement. (Commission rules would not allow commissioner and director-general to be of the same nationality.)"

While it is already clear from [email] email, let me underline we wish to clarify how many examples there are of DGs being appointed to a Directorate General when that Directorate General was under the responsibility of a Commissioner of the same nationality.

Best wishes,

Fergal
Brussels, 14 October 2015

TEXTE EN

MINUTES
of the 2141st meeting of the Commission
held in Strasbourg
(Winston Churchill)
on Tuesday 6 October 2015
(afternoon)
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Single sitting: Tuesday 6 October 2015 (afternoon)

The sitting opened at 13.16 with Mr JUNCKER, President, in the chair.

Present:

Mr JUNCKER  President
Mr TIMMERMANS  First Vice-President
Ms GEORGIEVA  Vice-President
Mr ANSIP  Vice-President
Mr ŠEFČOVIČ  Vice-President  Points 9 and 10
Mr DOMBROVSKIS  Vice-President
Mr KATAINEN  Vice-President
Mr OETTINGER  Member
Mr HAHN  Member
Mr MIMICA  Member
Mr ARIAS CAÑETE  Member
Mr ANDRIUKAITIS  Member
Ms THYSSEN  Member
Mr STYLIANIDES  Member
Mr HOGAN  Member
Ms BULC  Member
Ms BIEŃKOWSKA  Member
Ms JOUROVÁ  Member
Mr NAVRACSICS  Member
Ms VESTAGER  Member
Mr MOEDAS  Member
Absent:

- Ms MOGHERINI  High Representative / Vice-President
- Ms MALMSTRÖM  Member
- Mr VELLA  Member
- Mr AVRAMOPOULOS  Member
- Mr MOSCOVICI  Member
- Lord HILL  Member
- Ms CREȚU  Member
The following sat in to represent absent Members of the Commission:

Ms PANZETTI A member of Ms MOGHERINI's staff
Mr CEBALLOS BARÓN Deputy Chef de cabinet to Ms MALMSTRÖM
Mr NEALE A member of Mr VELLA's staff
Ms ASTERIADI Deputy Chef de cabinet to Mr AVRAMOPOULOS
Mr DELL A member of Mr MOSCOVICI's staff
Mr KUCK A member of Lord Hill's staff
Mr DZIECIOLOWSKI A member of Ms CREŢU's staff

The following also sat in:

Mr SELMAYR Chef de cabinet to the PRESIDENT
Mr ROMERO REQUENA Director-General, Legal Service
Mr PESONEN Director-General, DG Communication
Ms BERTAUD Commission Spokesperson’s Service
Ms METTLER Head of the European Political Strategy Centre
Ms MARTÍNEZ ALBEROLA Deputy Chef de cabinet to the PRESIDENT
Ms DEJMEK-HACK Adviser in the PRESIDENT’s Office
Mr SMULDERS Chef de cabinet to Mr TIMMERMANS Items 1 to 8 (in part)
Mr SZAPIRO A member of Mr ŠEFČOVIČ’s staff Items 1 to 8
Mr SUARDI Deputy Chef de cabinet to Mr DOMBROVSKIS Items 8 (in part) to 10
Ms MADSEN A member of Mr KATAINEN's staff Points 9 and 10
Mr HERMANS Chef de cabinet to Ms THYSSEN Points 9 and 10
Mr HUSAK Chef de cabinet to Ms BIEŃKOWSKA
Ms NIKOLAY Chef de cabinet to Ms JOUROVÁ Items 1 to 8 (in part)

Secretary: Mr ITALIANER, Secretary-General, assisted by Mr AYET PUIGARNAU, Director in the Secretariat-General.
1. **AGENDAS**

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

2. **WEEKLY MEETING OF CHEFS DE CABINET**
   (RCC(2015) 2141)

   The Commission considered the Secretary-General's report on the weekly meeting of Chefs de cabinet held on Monday 5 October.

3. **MINUTES OF 2140\textsuperscript{th} MEETING OF THE COMMISSION (30 SEPTEMBER)**
   (PV(2015) 2140)

   The Commission approved the minutes of its 2140\textsuperscript{th} meeting.

4. **INTERINSTITUTIONAL RELATIONS**
   (RCC(2015) 77)

   The Commission took note of the record of the meeting of the Interinstitutional Relations Group (IRG) held on Friday 2 October (RCC(2015) 77).

   It paid particular attention to the following points.
4.1. LEGISLATIVE MATTERS

i) Council dossier
(point 3.3 of the IRG record)


4.2. RELATIONS WITH THE EUROPEAN COUNCIL AND THE COUNCIL

ii) Programming of Council business
(SI(2015) 380)


iii) Non-legislative dossiers
(point 4.1 of the IRG record)


The Commission approved the line set out in SI(2015) 373.


– The position to be adopted, on behalf of the European Union, in the sixty-sixth session of the Executive Committee of the Programme of the
United Nations High Commissioner for Refugees (Council Decision) – 2015/0237 (NLE)


4.3. RELATIONS WITH PARLIAMENT

iv) Non-legislative dossiers – Preparations for October I part-session (point 5.1 of the IRG record)

– Oral question O-000113/2015 – Emissions measurements in the automotive sector


– Oral question O-000097/2015 – Lessons learned from the red mud disaster, five years after the accident in Hungary

– Oral question O-000110/2015 – The renewal of the EU Action Plan on Gender Equality and Women’s Empowerment in Development


4.4. OTHER MATTERS

v) Energy Charter Treaty
   (point 7.1 of the IRG record)


5. WRITTEN PROCEDURES, EMPOWERMENT AND DELEGATION OF POWERS

5.1. WRITTEN PROCEDURES APPROVED
   (SEC(2015) 387 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 28 September and 2 October.

5.2. EMPOWERMENT
   (SEC(2015) 388 ET SEQ)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 28 September and 2 October.
5.3. **DELEGATION AND SUBDELEGATION OF POWERS**

*(SEC(2015) 389 ET SEQ)*

The Commission took note of the Secretariat-General's memoranda recording decisions adopted under the delegation and subdelegation procedure between 28 September and 2 October, as archived in Decide.

5.4. **SENSITIVE WRITTEN PROCEDURES**

*(SEC(2015) 390)*

The Commission took note of the sensitive written procedures for which the time limit expired between 5 and 9 October.

6. **ADMINISTRATIVE AND BUDGETARY MATTERS**

*(SEC(2015) 391)*

**ADMINISTRATIVE MATTERS**

*(PERS(2015) 94)*

6.1. **DG RESEARCH AND INNOVATION – APPOINTMENT OF AD14/15 DIRECTOR**

*(PERS(2015) 29 TO /3)*

The Commission had before it applications under Article 29(1)(a)(i) and (iii) of the Staff Regulations for the post of Director, ‘Innovation Union and European Research Area’, in DG Research and Innovation (PERS(2015) 29).

It took note of the opinions of the Consultative Committee on Appointments of 11 and 25 June (PERS(2015) 29/2 and /3).

The Commission proceeded to compare the applicants’ qualifications for the post. It also considered their ability, efficiency and conduct in the service. On a proposal from Ms GEORGIEVA, in agreement with the PRESIDENT and
after consulting Mr MOEDAS, as well as Mr ANSIP, Mr DOMBROVSKIS, Mr KATAINEN and Mr ŠEFČOVIČ it decided to appoint Mr Peter DRÖLL to the post.

This decision would take effect on 16 October 2015.

6.2. **DG MIGRATION AND HOME AFFAIRS – AMENDMENT OF THE ORGANISATION CHART AND APPOINTMENT OF AN AD15 PRINCIPAL ADVISOR**

On a proposal from Ms GEORGIEVA, in agreement with the PRESIDENT and after consulting Mr AVRAMOPOULOS and Mr TIMMERMANS, the Commission decided:

- to approve the creation of a temporary post of principal adviser in the Directorate-General for Migration and Home Affairs, directly attached to the Director-General; this post would be abolished upon departure of the job holder;

- to fill this post by transferring, in the interest of the service under Article 7 of the Staff Regulations, Mr Alain SCRIBAN, currently principal advisor to the Directorate General for Human Resources and Security, attached to the Structural Reform Support Service.

These decisions would take effect on a date to be fixed later.

6.3. **DG HUMAN RESOURCES AND SECURITY – AMENDMENT OF THE RULES OF PROCEDURE OF THE CONSULTATIVE COMMITTEE ON APPOINTMENTS**

In order to ensure the smooth running of the Consultative Committee on Appointments, the Commission, on a proposal from Ms GEORGIEVA, in agreement with the PRESIDENT, decided to add the following paragraph to
Article 8(2) of the Rules of Procedure of the Consultative Committee on Appointments:

'When convening for matters referred to in Article 1(1) in the Rules of Procedure of the Consultative Committee on Appointments relating to a function of Director-General or their equivalent, the Head of the President's Cabinet may in exceptional circumstances be replaced by the Deputy Head or the Director of Coordination and Administration of the President's Cabinet. In this case, the provision in Article 8(3) shall not be applicable.'

This decision would take effect immediately.


The Commission approved the Joint Consultation Paper set out in JOIN(2015) 33/2 for transmission to the Council and, for information, to the European Parliament, the European Economic and Social Committee, the Committee of the Regions and the national parliaments.
8. OTHER BUSINESS

8.1. OUTCOME OF THE MEETING BETWEEN THE PRESIDENT AND MR RECEP TAYYIP ERDOĞAN, PRESIDENT OF TURKEY (BRUSSELS, 5 OCTOBER)

The PRESIDENT gave an account of his meeting the previous day with the President of the Republic of Turkey, Mr Recep Tayyip Erdoğan. The meeting had mainly revolved around cooperation between the European Union and Turkey for managing the migration crisis and the influx of refugees from Syria and Iraq.

The discussion had focused on a joint draft action plan submitted by the EU to the Turkish President. The document, handed out during the meeting, provided, among other things, for European funds to be mobilised and for the EU to take in refugees arriving in Turkey. It also included setting up reception centres for asylum seekers in Turkey.

The PRESIDENT praised Turkey's substantial role and humanitarian effort in this crisis. There were currently 2.2 million Syrian and Iraqi refugees in the country and the Commission intended to lend its support. The PRESIDENT stressed that Turkey was part of the solution to the current migration crisis. He therefore invited the Members of the Commission most directly concerned to establish contacts with the Turkish authorities in order to help reach an agreement on this sensitive and complex issue.

In its proposal of 9 September the Commission had recommended a series of measures to implement the European Migration Agenda as soon as possible. At the upcoming European Council meeting on 15 and 16 October, the Commission would now be presenting a review of the emergency measures already taken, the measures yet to be taken, including at the level of the
Member States, and the arrangements put in place to improve cooperation with third countries in this area.

Mr HAHN noted that the Commission had already launched technical negotiations in Ankara on the action plan on migration. He agreed that relations with the Turkish authorities should be intensified in the run-up to the meeting of the European Council. Nonetheless, he also observed that the current climate was particularly sensitive since Turkey was in the midst of an election campaign on the one hand, and the Commission was preparing to present – at a time to be chosen by the PRESIDENT – the reports on progress achieved by candidate countries or potential candidate countries, on the other.

Mr HAHN noted that the conditions for the financial support to Turkey and the other third countries particularly affected by the influx of refugees, proposed by the EU in its draft action plan, were still being discussed with the Turkish Government. Once these had been approved, the Commission would be ready to implement them immediately.

The PRESIDENT stressed the need to reach an agreement on the action plan with Turkey as soon as possible, particularly since Member States keen to stem the influx of refugees into the EU were pushing in that direction. He called upon the Members of the Commission to contribute actively to the efforts to be made over the coming days in order to obtain a political solution before the European Council meeting.

Mr STYLIANIDES added that, from a humanitarian point of view, the priorities for alleviating the crisis facing Turkey were to emphasise the needs of refugees in terms of education and of local staff in terms of training, and to rely on the on-the-ground experience of international organisations and United Nations agencies present in the country to ensure coordination of the aid.
Ms GEORGIEVA, for her part, noted the financial support the Commission had proposed to set aside from the EU budget to contribute to managing the refugee crisis, including in Turkey, Lebanon and Jordan. She fully supported the idea of investing in education, particularly in order to give new hope to the young generation of refugees. She sincerely hoped that Member States would also participate in the financial effort and contribute to the assistance to the third countries which were the first to have to take in the refugees.

The PRESIDENT concluded the discussion by stating that he was willing, on this last issue, to explore different avenues to make this hope a reality, and by calling upon the Members of the Commission concerned to collect figures to underpin these possible new initiatives.

The Commission took note of this information.


Mr TIMMERMANS referred to the judgment delivered that day by the Court of Justice of the European Union which invalidated a Commission decision adopted in 2000 on the notion of ‘Safe Harbour’ (Commission Decision of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the safe harbour privacy principles and related frequently asked questions issued by the US Department of Commerce).

He noted that, in this decision, adopted by virtue of the Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Directive 95/46/EC), the Commission
concluded that the United States provided an adequate level of protection of personal data transferred from the EU under the Safe Harbour scheme.

He briefly reiterated the facts that gave rise to the judgment: an Austrian citizen, Mr Maximilian Schrems, a Facebook user since 2008, had lodged a complaint with the competent Irish data protection authority since the data he submitted to Facebook was transferred from Facebook's Irish subsidiary to servers located in the United States for processing. The complainant considered that in view of the revelations made by Mr Edward Snowden in 2013 on the activities carried out by American intelligence services (in particular the National Security Agency – NSA), United States law and practices did not provide sufficient protection against surveillance by the public authorities of the data transferred to that country.

Without going into the details of the case or the judgment, he noted that, according to the Court, the Commission was required to establish that, by reason of its domestic law or the international commitments it had entered into, the United States effectively ensured a level of protection of fundamental rights that was essentially equivalent to that guaranteed within the European Union by virtue of the Data Protection Directive, read in the light of the Charter of Fundamental Rights. However, the Court found that the American safe harbour regime allowed the US public authorities, for reasons of national security, public interest, or US law enforcement, to infringe people's fundamental freedoms, without according them the benefits of effective legal protection and recourse against such infringements.

He completed this brief presentation by stressing that, according to the Court, there was no provision in the Commission decision to prevent the national authorities from taking steps in accordance with the European Charter of Fundamental Rights and Directive 95/46/EC to monitor transfers of personal data to third countries that had been the subject of a Commission decision.
Mr TIMMERMANS then turned to the political interpretation of the judgment issued by the EU Court of Justice that day. He saw it as an important step in upholding the fundamental European right to the protection of personal data and the need to create a framework of robust safeguards surrounding the transfer of the personal data of European Union citizens.

He also saw the judgment as confirming the approach adopted by the Commission for renegotiating the safe harbour regime with the American authorities in order to safeguard these data transfers. This judgment would encourage the Commission to push ahead with the current work on redefining a secure framework for the transfer of personal data across the Atlantic.

In the meantime, data flows between companies could continue via other international transfer mechanisms which already existed under European data protection law.

The Commission's priorities at this stage were to ensure the protection of personal data transferred to the United States, to enable these transfers to continue, with appropriate safeguards, given their importance to the European Union's economy, and to ensure the consistent application of EU law throughout the internal market.

Finally, the Commission would issue clear recommendations to the national data protection authorities on how to deal with requests for data transfers to the United States in the light of the Court judgment. Given that the public needed robust safeguards and firms needed legal certainty, these recommendations should prevent the national supervisory authorities from adopting inconsistent decisions when enforcing European data protection legislation in the Member States.

Ms JOUROVÁ for her part stated that the Commission would continue its talks with the American authorities and pointed out that, in the wake of the
revelations connected with the Snowden affair in 2013, she had already issued specific recommendations on ways of making the safe harbour regime more secure.

Important progress had been made in revising this regime since 2013, and she welcomed the fact that the Court of Justice judgment would make it possible to consolidate these measures and speed up the discussions on tightening up the security of transatlantic data transfers.

For the time being, European data protection rules offered other mechanisms, such as standard clauses in contracts between companies and binding rules on data transfer within corporate groups, which would allow secure international data transfers to continue.

She confirmed that the Commission intended to work closely with the national data protection authorities in the Member States in order to avoid any fragmentation of the internal market. She was also willing to provide information to businesses on ways of facilitating personal data transfers in the wake of the Court of Justice judgment.

In conclusion, Ms JOUROVÁ referred to the progress being made on the one hand in reforming personal data protection in the Union and, on the other, towards the framework agreement on data protection between the European Union and the United States in the law enforcement sector, which would be completed in 2015 and which specifically sought to strengthen the safeguards that applied.

At the PRESIDENT’s invitation, the Director-General of the Legal Service addressed the meeting, reminding Members that under the Treaty of Lisbon and the European Charter of Fundamental Rights, the Court of Justice was the guarantor of fundamental rights in the European Union. In the judgment issued that day, the Court held that a fundamental right – the right to the...
protection of personal data – had been restricted in the safe harbour regime and the restriction in question had been disproportionate.

In addition to the aspects already mentioned, he spoke of the difficulty in the negotiations with the US authorities on the safe harbour regime of establishing recourse mechanisms.

Finally, he singled out an important point of the judgment relating to the duty to ensure a level of protection of personal data that was not merely adequate but was equivalent to that guaranteed within the European Union.

A brief discussion followed in the course of which the following main points were raised: (i) the need to continue the reform of European data protection law, (ii) the case for working with the US authorities to find ways of remedying the shortcomings identified by the Court of Justice judgment, (iii) the importance of making it clear that data protection in the United States was governed by state law, not federal legislation, (iv) similarly, the fact that the United States and Europe had different ideas about what could be done with personal data, and finally (v) an insistence on the fact that data transfers would continue, but also the need to explain to European businesses, and SMEs in particular, how to comply with the judgment in their data transfers to the United States.

The PRESIDENT concluded the discussion by thanking Mr TIMMERMANS and Ms JOUROVÁ for their analysis.

The Commission took note of this information.
8.3. **COMMISSION OPINION ON THE DRAFT BUDGETARY PLAN OF SPAIN FOR 2016 IN ACCORDANCE WITH ARTICLE 7 OF REGULATION (EU) 473/2013 ON COMMON PROVISIONS FOR MONITORING AND ASSESSING DRAFT BUDGETARY PLANS AND ENSURING THE CORRECTION OF EXCESSIVE DEFICIT OF THE MEMBER STATES IN THE EURO AREA**

At the PRESIDENT's request, Mr DOMBROVSKIS presented the draft Commission opinion on the Budgetary Plan of Spain for 2016, drawn up in accordance with Article 7 of Regulation (EU) 473/2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area.

This draft opinion was the subject of a written procedure (PE/2015/6958) for which the time limit expired on 6 October at 15.00.

Because of the general elections planned for 20 December, the Spanish government had requested the Commission's opinion on its budgetary plan for 2016 before the deadline set for all the euro-area Member States, since it wished the Spanish parliament to adopt the 2016 budget before the end of the current parliamentary term and the suspension of its activities.

With regard to the content of the draft opinion submitted to the College, according to the Commission's analysis the figures put forward by the Spanish government risked not allowing Spain to meet the criteria of the Stability and Growth Pact at the end of 2016. He added that owing to time constraints the data supporting these figures were not complete, meaning that the government resulting from the general election would have to submit an updated budgetary plan. Mr DOMBROVSKIS also noted in conclusion that even before its formal adoption by the Commission, the draft opinion had been commented on at the end of the Eurogroup meeting on the previous day, and
meanwhile significant additional information had been notified by the Spanish authorities.

In the light of the above, the PRESIDENT stated that in agreement with the Members of the Commission responsible, it was decided that the written procedure under way (PE/2015/6958) would be suspended; the Commission would return to it later.

The Commission took note of this information.

9. POLICY DEBATES ON LABOUR MOBILITY AND A EUROPEAN PILLAR OF SOCIAL RIGHTS

10. POLICY DEBATE ON A DEEPER AND FAIRER INTERNAL MARKET FOR THE 21ST CENTURY

The PRESIDENT opened the policy debate with a suggestion that the three topics – labour mobility, a European pillar of social rights, and the strategy to be followed to deepen the internal market and make it fairer – should be examined together, in so far as they complemented one another and formed a whole based on the same rationale. He therefore invited Mr DOMBROVSKIS and Ms THYSSEN to present the first two topics, and Mr KATAINEN and Ms BIEŃKOWSKA to present the third, before starting the discussion.

Mr DOMBROVSKIS pointed out that this policy debate raised issues at the heart of the European project since, thanks to the internal market, the citizens of the Union had in the past few decades benefited from increasing income, better living
conditions and higher levels of social protection. He also observed that freedom of movement was an integral part, as well as a symbol, of European integration.

However, these achievements were now being challenged by a crisis which had caused unemployment to shoot up and had aggravated inequalities, to the point where there was resistance to freedom of movement for workers in spite of the advantages this brought.

He therefore considered it necessary to re-launch a process of upward convergence by encouraging the best practices for stimulating employment and growth. In his view a global approach should be used, consisting of promoting flexibility and effective but sustainable social protection whilst raising the level of education and resolving the current problems of inadequate skills with regard to the needs of the market. He also stressed that social justice should be a cross-cutting priority for the Commission in implementing its agenda.

There were two important matters to be dealt with that day as part of the policy debate: the first was addressing the challenge of freedom of movement and the posting of workers by applying the principle of ‘the same pay for the same job in the same place’, as set out by the PRESIDENT in his speech on the state of the Union; and the second was the need to avoid a 'brain drain', for example by encouraging skilled migrants to return to their countries.

With regard to the European pillar of social rights, Mr DOMBROVSKIS considered that there should be a decision as to which fields should be focused on and what means used to promote these social rights.

The Five Presidents' Report – by the European Commission, the Euro Summit, the Eurogroup, the European Central Bank (ECB) and the European Parliament – on the means for completing the European economic and monetary union (EMU) recommended developing social rights in areas relating to balancing flexibility and security in employment contracts, to personalised assistance for the unemployed and
to improving qualifications in line with market needs. With regard to implementation, the same report recommended modernising the existing *acquis* without adding new regulatory constraints, and implementing a process of convergence in the field of employment and social policy performance based on the current best practices, drawing for this purpose on existing political instruments, in particular the European Semester. He considered that in this context, the European Semester was the right governance instrument. Finally, he suggested examining the best ways to cooperate with social partners.

Mr DOMBROVSKIS concluded his presentation by highlighting the importance of moving forward simultaneously on the two fronts of economic growth and social progress, which he considered to be inextricably linked, to regain the trust of citizens in Europe.

Ms THYSSEN welcomed the 'integrated' approach chosen for this policy debate, emphasising that the issue of labour mobility and the goal of a European pillar of social rights were central pillars in deepening the internal market. She stressed the need to involve European citizens so that this political project would be perceived as a source of opportunities, whether for entrepreneurs, consumers or workers, by guaranteeing conditions for fair competition and the protection required.

With regard to the first pillar, she explained the package of measures on mobility she would be tabling by the end of the year. Firstly, there would be a general communication evaluating the *de facto* situation as regards labour mobility in the Union and highlighting the benefits of mobility. Although situations varied from one Member State to another, she was convinced that it was best for all of them to address this issue as part of a common approach.

Secondly, she hoped to be able to submit a legislative proposal amending the EU rules on coordination of social security. This amendment would have four main aims: (i) to modernise the existing framework to take better account of recent
significant changes in the Member States’ social security systems, (ii) to introduce an explicit distinction between workers, job seekers and the economically inactive, based on recent Court of Justice case law, which upheld the fundamental principle that the right to freedom of movement does not give automatic entitlement to social benefits, (iii) to ensure that the current rules on unemployment benefit and family allowances were fair to all the stakeholders and propose changes if necessary, and (iv) to help cut red tape and promote more effective coordination between the national authorities concerned.

Thirdly, she referred to the targeted review of the Posting of Workers Directive, as announced by the PRESIDENT in his policy guidelines. Following the wide-ranging consultation she had carried out on this sensitive issue, her main aim was to ensure that the existing rules were clear, fair and applied on the ground, thereby applying the principle of ‘the same pay for the same job in the same place’. She spoke of the discussion under way on possible ways of improving the working conditions of posted workers.

Turning to the second pillar, she then explained the work aimed at establishing a European pillar of social rights to guarantee adequate protection for workers and encourage upward convergence of the Union's social policy, which she felt was essential in order to win back people's trust. Specifically, she proposed using all the instruments that the Commission had at its disposal: coordination of economic policies, legislation and smart deployment of structural funds and European investment funds. The work in this area was exploring two ways forward: developing a set of benchmarks, and updating the existing legislation on social and employment issues.

Mr KATAINEN confirmed that labour mobility and the coordination of social policies had a central role in the broader context of the Commission's overall strategy for achieving the objective of a deeper and fairer internal market. He reported on the progress made in drawing up the strategy, aimed above all at better
equipping the Union to enable it to address the challenges facing EU industries, companies and also consumers in the 21st century and to take maximum advantage of the internal market.

He emphasised in particular the horizontal nature of this future strategy, which would bring together the measures implemented under the different sectoral policies with a view to deepening the internal market. He cited as an example the measures taken in the context of the current Commission's main political priorities, such as the Investment Plan for Europe, the digital single market, energy unions and capital markets, and the circular economy. He also put into perspective the measures aimed at making the internal market fairer, such as the Commission's action plan on corporate taxation and actions relating to labour mobility.

With regard to the priority measures proposed, he observed that they were designed to promote growth and development for small and medium-sized enterprises (SMEs) and start-ups, encourage innovation, free up investment and strengthen the position of consumers. Implementing these measures could enable a qualitative leap that could overcome a number of structural barriers preventing the completion of the internal market.

In conclusion, he said that he looked forward to hearing the thoughts of the Commission Members, in particular concerning how ambitious the measures should be and what other measures they considered should be included in the priority actions.

Ms BIEŃKOWSKA stressed the highly specific nature of the strategy outlined, detailing the three main strategic points on which the proposed priority actions were based: industrial modernisation, innovation, and monitoring the application of EU legislation.
On the last point, she called for a more strategic approach in order to encourage more systematic conformity with legislation. In a rule-governed framework such as the EU, stronger monitoring of the application of legislation was essential.

She dwelt in particular on the problem of the circumvention of internal market rules by certain companies operating in the Union, pointing out that the Commission should have investigative powers to obtain information on the general functioning of the markets. This was borne out by the recent case concerning vehicle pollutant emissions.

With regard to industrial modernisation, it was necessary, with reference to cross-border sales, to put an end to all forms of unjustified discrimination on the basis of the consumer's nationality or place of residence. She stressed that, with a view to a fairer internal market, European consumers should, in most cases, be offered the same conditions of access and the same prices throughout the EU. This principle applied to both online and offline sales. With regard to services, she emphasised the considerable potential of the passport for firms, which would greatly facilitate the cross-border provision of services.

As regards promoting innovation, there was an urgent need to create a framework more favourable to the growth and development of SMEs and start-ups. In addition to the measures set out in the background note, she proposed a highly ambitious approach in order to create a true 'start-up culture' in Europe, which she regarded as essential for boosting the European economy.

In the course of the discussion that followed, the Commission raised the following main points:

- the need for this policy debate to address the subjects of all three background notes, which were closely linked: labour mobility, a European pillar of social rights and the best strategy for achieving a deeper and fairer internal market;
− support for the idea of encouraging labour mobility in the internal market while basing this policy on equity;

− a call to make a clear case based on objective data to challenge stereotypes and misconceptions surrounding labour mobility and to include a strong argument to this effect in the forthcoming main communication; a mention of political divisions on this issue among the Member States; against this background, a call to reflect on the presentation of the upcoming ‘labour mobility package’ coinciding with the migrant crisis;

− a reminder of the proven benefits of labour mobility on productivity;

− approval of the suggestion to include a targeted revision of the Posting of Workers Directive in the ‘labour mobility package’, addressing the issue of social dumping; the importance of a common basis for interpretation of these rules; however, in order to rally support, a call to leave the Member States room for manoeuvre to allow them to take into account their own national traditions in the field of social security;

− the need to promote the application of the principle ‘the same pay for the same job in the same place’ for posted workers, but also to bring the terms of temporary work contracts into line with those of permanent contracts;

− support for a proposal on the coordination of social security systems, while taking into account the recent case-law of the Court of Justice of the European Union;

− with regard to the idea of a basic European set of social rights, support for highlighting the place that must be given to education and qualifications, which were also factors for equity;

− support for the idea of an ambitious strategy to deepen the internal market; the
contribution that could be made by EU sectoral policies;

- support for the search for means to enhance the measures that contributed towards the complete and correct implementation of the internal market rules; how this could restore consumer confidence; the substantial progress made by monitoring the implementation of EU product legislation;

- the firm line that the Commission must take, in particular with regard to infringement proceedings; the consideration it should give in the medium term to increasing the means at its disposal for enforcing the implementation of the internal market rules;

- a discussion on the reasons that had led to an incorrect application of the Services Directive;

- the importance of stressing the provisions specific to start-ups in terms of access to markets, investors and venture capital; support for the promotion of a second chance programme for start-ups on a European level; a mention of the Commission initiatives concerning start-ups, starting with the Investment Plan for Europe;

- the case for using the instruments of the REFIT programme for regulatory fitness and performance to identify the obstacles that SMEs in particular encountered in the internal market;

- the value of taking into account the emergence of new economic models and the suggestion, in particular, of a more ambitious approach to the sharing economy; likewise, approval for the idea of using new information tools in the markets;

- the possibility of including a priority measure for non-agricultural geographical indications.
Mr KATAINEN thanked the Members of the Commission for their comments. He referred in particular to the value of emphasising skills and developing a ‘Skills Agenda’ in order to do this. He agreed that it was important to support start-ups, which was why the strategy for a deeper and fairer internal market was expected to include initiatives on venture capital, geo-blocking and copyright. He also stressed the need to give entrepreneurs and start-ups a ‘second chance’, as well as the opportunities for financing created by the European Fund for Strategic Investments (EFSI). He believed that this level of support for start-ups and SMEs was unprecedented.

Ms THYSSEN also thanked the Members of the Commission for their contributions, which she would draw on in her future proposals, emphasising that these sensitive issues called for balanced and targeted responses.

In particular, she took away from the day’s discussion the College’s support for the idea of launching a revision of the Posting of Workers Directive, while noting that the Member States, which were responsible for policy and social security in particular, should be left room for manoeuvre in order to promote labour mobility. More generally, she stressed that providing the right degree of protection would make it possible to regain the trust of everyone concerned, especially in the context of the current migrant crisis, which was intensifying citizens’ anxiety.

In the context of the debate on the internal market in the 21st century, Ms BIEŃKOWSKA reiterated the need, in her view, to offer European start-ups conditions that would allow them to catch up with their American counterparts in particular and to develop on a European-wide scale.

The PRESIDENT concluded by warmly thanking Mr DOMBROVSKIS, Ms THYSSEN, Mr KATAINEN and Ms BIEŃKOWSKA for their presentations on these subjects, which in his view deserve the utmost attention, as he indicated in his State of the Union address before the European Parliament on 9 September.
He expressed his support for all the policy guidance that had emerged from the day’s discussion. Without hiding the fact that it would be difficult, he particularly supported the idea of opening a discussion with the Member States on effective ways to combat social dumping, which was an issue that undermined citizens’ support for the European project. In terms of deepening the internal market, he reminded the meeting of the difficult policy debate that had taken place at the time of adoption of the ‘Bolkestein’ Services Directive, and stressed that the guiding principle must be that of equity, as he considered that the current Commission would be judged on its social record. He hoped therefore to be very closely involved in all the proposals that would soon be drafted.

Ms GEORGIEVA took the opportunity to announce the creation of a ‘social service day’ in which Commission officials would be able to participate. She also thanked the officials for their contribution to the fundraising for refugees organised within the institution.

The PRESIDENT wound up the policy debate and invited the College to meet in a few weeks’ time to examine the first proposals resulting from the discussion.

The Commission took note of the results and conclusions of the policy debate, as well as background notes SEC(2015) 398 and SEC(2015) 399, distributed under the authority of Mr DOMBROVSKIS and Ms THYSSEN, and SEC(2015) 397, distributed under the authority of Mr KATAINEN and Ms BIEŃKOWSKA.

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*   *

The meeting closed at 15.00.
Dear [Name] 

Thank you for meeting with us yesterday. We would like to follow up on one outstanding issue that was identified in the meeting.

Article 10 of the CCA Rules of Procedure states that the Chair must replace a member of the CCA who has a conflict of interest with a person from a pre-established list made up of DGs, DDG and Directors (it being understood that the replacement must be at least at the same level as the position to be filled). Mr Selmayr was not the hierarchical superior of any of the DGs or DDGs.

We also note that the recusal letter of Mr Selmayr states that "the normal provisions for deputising or replacement allowed by the CCA Rules of Procedure are not really adequate in this instance in light of my position as hierarchical superior to the replacements foreseen". (our emphasis)

You informed us in the meeting that you believed that there is a Commission decision which derogates from Article 10 and that that decision is a public document. Can you please forward to us a copy of the decision you referred to by Monday COB.

In addition, please also let us know when the email exchanges between COMM and the "Le Soir" journalist, which were identified in the meeting yesterday, can be consulted in the reading room.

Best wishes,
Fergal

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From: O REGAN Fergal Anthony
Sent: 10 July 2018 16:32
To: [Name] (EC)
Cc: [Name]
Subject: RE: Phone call

Dear [Name]

Apart from the points already raised by us relating to the matter under investigation, we do not, at this stage, have any additional points that require clarification. However, as a matter of procedure, we would like to confirm expressly, at the meeting on Thursday, the completeness of the documentation provided to the Ombudsman.

Along with providing us with a folder containing documents that are (mostly) in the public domain, we were given, on the first day of the inspection, access to the CCA file. After we clarified the scope of the Ombudsman’s request for an inspection, we were also given access to 2 folders of documents (approximately 1,000 pages) from the Legal Service and 15 folders from DG HR, (amounting to approximately 7,500 pages). While these files emanate from the Legal Service and DG HR, they do contain some correspondence with the cabinets, with SG and with DG COMM (in particular, the SPP).

You have expressly informed us that you did request the cabinets and other services if they were in possession of any further documents which are not also included in the aforementioned files. You have confirmed to us that no such documents exist.

We would like to take an express note of this view in the inspection report.

See you Thursday.

Best wishes,
Fergal

European Ombudsman
Fergal O’ Regan
Head of Unit
Dear [Redacted]

Many thanks for taking my call yesterday, in which I set out the reasons why the Ombudsman has asked for this limited and easily verified additional information.

We look forward to your comments on the draft inspection report.

We also look forward to receiving a response this week to our straightforward request for information.

Best wishes,

Fergal

European Ombudsman

Fergal O' Regan
Head of Unit

Rue Wiertz
Montoyer 30 Building
B-1047 Brussels
F. +32 (0)2 284 49 14
www.ombudsman.europa.eu

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Dear Fergal,

As I am now back from my holidays, please note that we acknowledge receipt of the draft report on the inspections and meetings relating to the joint complaints 488/2018 and 514/2018, and that we will provide you with our track changes this week.

Concerning your message below, we do have some questioning, since we do not understand the link between your request and the purpose of the inquiry following the above-mentioned complaints.

Best regards,

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Dear [Redacted],

Thank you again for meeting with us yesterday and your email of today. We would like to follow up on one additional issue.

We understand that the Secretary General has been invited to the weekly meetings of the President's cabinet since early this year, and this practice continues with the new SG. Can you confirm if this is the case? Can you indicate to us the dates in January, February, March, April, May and June 2018 when the Secretary General attended the weekly meetings of the President’s Cabinet. Can you indicate to us how many times the Secretary General was invited to weekly cabinet meetings in 2017.
Dear [Name],

Thank you again for meeting with us yesterday and your email of today. We would like to follow up on one additional issue.

We understand that the Secretary General has been invited to the weekly meetings of the President’s cabinet since early this year, and this practice continues with the new SG. Can you confirm if this is the case? Can you indicate to us the dates in January, February, March, April, May and June 2018 when the Secretary General attended the weekly meetings of the President’s Cabinet. Can you indicate to us how many times the Secretary General was invited to weekly cabinet meetings in 2017.

Thanks again for your cooperation.

Best wishes,

Fergal

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From: [Name]
Sent: 13 July 2018 14:30
To: O REGAN Fergal Anthony
Cc:
Subject: RE: Phone call

Dear Fergal,

Following yesterday’s meeting, please find enclosed the PV containing the amendment to the CCA rules concerning the replacement of the Head of Cabinet (point 6.3). We would like to point out though that since participation of the Head of Cabinet of the President is not obligatory (only the Rapporteur and the recruiting Director-General are required by the rules for a CCA to go ahead), no replacement was in fact necessary since the quorum of 4 was confirmed.

As per your second point, I referred your query to the SPP, but they confirm that they don’t have such document.

Best regards,

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From: O REGAN Fergal Anthony
Sent: Friday, July 13, 2018 12:11 PM
To: [Name]
Cc:
Subject: RE: Phone call

Dear [Name],

Thank you for meeting with us yesterday. We would like to follow up on one outstanding issue that was identified in the meeting.

Article 10 of the CCA Rules of Procedure states that the Chair must replace a member of the CCA who has a conflict of interest with a person from a pre-established list made up of DGs, DDG and Directors (it being understood that the replacement must be at least at the same level as the position to be filled). Mr Selmayr was not the hierarchical superior of any of the DGs or DDGs.

We also note that the recusal letter of Mr Selmayr states that "the normal provisions for deputising or replacement allowed by the CCA Rules of Procedure are not really adequate in this instance in light of my position as hierarchical superior to the replacements foreseen". (our emphasis)

You informed us in the meeting that you believed that there is a Commission decision which derogates from Article 10 and that that decision is a public document. Can you please forward to us a copy of the decision you referred to by Monday COB.
Dear [name],

As agreed during yesterday’s meeting, please find attached the inspection report for your review.

We would be grateful to have your comments on the report as soon as possible and by Wednesday, 18 July COB, at the latest.

Many thanks and best wishes,

[Logo]

European Ombudsman
Rue Wiertz
Montoyer 30 Building
B-1047 Brussels
F. +32 (0)2 284 49 14
www.ombudsman.europa.eu

Dear Fergal,

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Best regards,
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You informed us in the meeting that you believed that there is a Commission decision which derogates from Article 10 and that that decision is a public document. Can you please forward to us a copy of the decision you referred to by Monday COB.

In addition, please also let us know when the email exchanges between COMM and the "Le Soir" journalist, which were identified in the meeting yesterday, can be consulted in the reading room.

Best wishes,

Fergal
Dear [Name],

Thank you for your email of yesterday.

Let me first underline that our inspection reports are reports of the European Ombudsman. They are not joint reports. The purpose of sending a report to the Commission, in draft form, is simply to allow the Commission to propose changes aimed at correcting any factual inaccuracies or at identifying any information which may be confidential.

We note that a very limited number of your suggested changes relate to factual inaccuracies (dates, number of pages ...). We will accept those suggestions (see attached).

We have also accepted some suggested changes where the Commission proposes to summarise a list of documents.

However, you also suggest removing a number of factual statements without in any way indicating that the original text was inaccurate or that the text contained confidential information. We thus reject those suggested changes.

We thank you for tracking your proposed changes. However, we note that a sentence relating to how "Article 7 transfers" are normally used was redacted from our draft report without using tracked changes. This made it, at least initially, difficult for us to spot that this change had been made. We are assuming that the failure to use tracked changes for that edit was unintentional.

Please be informed that I am instructed to finalise the report accordingly, to send it to the complainants and to publish it on our website by 1700 today.

Please call me if you have any questions.

Best wishes,

Fergal

European Ombudsman
Fergal O’Regan
Head of Unit
T. [Redacted]
Rue Wiertz
Montoyer 30 Building
B-1047 Brussels
F. +32 (0)2 284 49 14
www.ombudsman.europa.eu
Dear Fergal,

Please find enclosed the draft report on the inspections and meetings with our track changes.

As regards your side question, the meetings of the President's Cabinet take place several times per week whenever it is considered necessary by the Head of Cabinet of the President. The Directors-General of Presidential services (including the Secretary-General), their Deputies and/or their assistants can be invited by the Head of Cabinet of the President. There are no attendance lists to such meetings therefore it is nearly impossible to verify who actually attended the meetings, even if they had been invited and had accepted the meeting request; especially since you request such information for the past 18 months. We therefore do not concur with you that it is easy and straightforward information. We also still fail to see the link between your request and the purpose of the inquiry.

Have a nice evening.
REPORT ON MEETINGS AND INSPECTION OF DOCUMENTS

Complaints 488/2018 514/2018

Title:
- European Commission appointment of new Secretary-General

Dates:
- 6, 21, 22, 27, 28, 29 June 2018
- 2, 3, 4, 5, 10, 12 July 2018

Locations:
- Office of Directorate-General for Human Resources, Brussels
- Meeting on July 12th took place at BERL building

Inspection carried out by:
- Mr Fergal O’Regan, Head of Coordination of Public Interest Inquiries
- Ms [redacted]
- Mr [redacted] (as of 2 July)

Purpose of the inspection meetings

The objective of the inspection and meeting was for the Ombudsman to inquire into the appointment of the new Secretary-General of the European Commission on 21 February 2018 and related issues.

Inspection meeting of 6 June 2018

The Ombudsman representatives introduced themselves, thanked the Commission representatives for their cooperation and set out the objective and purpose of the inspection within the context of the Ombudsman’s inquiry into the Commission’s appointment of a new Secretary-General.
In particular, the Ombudsman representatives outlined the legal framework which applies to the Ombudsman’s office when carrying out inspections and informed the Commission staff that if they identified any documents to be confidential, the applicable rules provide that no access may be granted by the Ombudsman to those documents. The Ombudsman representatives further explained that a report on the inspection would be prepared, sent to the Commission, to the complainants, and be published on the Ombudsman’s website.

The Ombudsman representatives were then granted access to two folders and one additional document. The Commission representatives explained the structure and nature of the documents shown to the Ombudsman representatives.

1. Folder

The first folder contained mainly the minutes of the meetings of the chefs de cabinet of 19 February 2018 and the minutes of the meeting of the Commission of 21 February 2018, as well as several email exchanges between the Commission’s spokespersons and journalists.

In detail, this folder contained:

- Demande de publication d’un avis de vacance of 31 January 2018, PERS(2018) 6
- Décisions administratives et budgétaires prises par la Commission lors de sa 2241ème réunion du 31 janvier 2018, 31 January 2018
- Décisions administratives et budgétaires prises par la Commission lors de sa 2244ème réunion du 21 février 2018, 21 February 2018
- Email exchanges between a Commission spokesperson and a journalist, dated 10 October 2017 to 26 February 2018 (confidential)
- Email exchange between a Commission spokesperson and a journalist, dated 27 February 2018 (confidential)
- Minutes of the meeting of the Commission held in Brussels on Wednesday 21 February 2018, 7 March 2018, PV(2018) 2244 final
- Email exchange between a Commission spokesperson and a journalist, dated 5 March 2018 to 7 March 2018 (confidential)
- Email exchange between a Commission spokesperson and a journalist, dated 14 March 2018 (confidential)
- Email exchange between a Commission spokesperson and a journalist, dated 14/15 March 2018 (confidential)
- Email exchange between a Commission spokesperson and a journalist, dated 15 March 2018 (confidential)
• Email exchange between a Commission spokesperson and a journalist, dated 29 March 2018 (confidential)
• Email exchange between a Commission spokesperson and a journalist, dated 20 March 2018 to 8 April 2018 (confidential)
• Email exchanges between two Commission spokespersons and a journalist, dated 20 March 2018 to 13 April 2018 (confidential)
• Email exchange between a Commission spokesperson and a journalist, dated 16/17 April 2018 (confidential)
• Email exchange between a Commission spokesperson and a journalist, dated 18 April 2018 (confidential)
• European Commission, Memo, Appointment of the Secretary-General of the European Commission - Questions and Answers, 27 February 2018 (confidential)
• European Commission, Memo, European Commission confirms: Appointment of Mr Selmayr as Secretary-General decided in full compliance with all legal rules - Questions and Answers, 25 March 2018
• European Commission, Memo, European Commission replies to follow-up questions of the European Parliament’s Budgetary Control Committee on the appointment of its new Secretary-General - Questions and answers, 4 April 2018

The Ombudsman representatives obtained copies of the documents contained in the folder. The Commission staff stated that, for the purposes of the inspection, the documents marked above as 'confidential' were confidential. The applicable rules provide that no access may be granted to those documents by the Ombudsman. This is without prejudice to the right of citizens to request the Commission to grant public access to those documents in accordance with Regulation 1049/2001.

2. Folder
The second folder consisted mainly of the file held by the Directorate-General for Human Resources and Security (DG HR) on the selection procedure for the vacancy of Deputy Secretary-General (COM/2018/292).

In detail, this folder contained:

The file of the selection procedure for the post of Deputy Secretary-General (COM/2018/292), including applications and withdrawal, assessment centre reports.

Commented [A2]: This is a standard sentence we use in inspection reports. The Commission has never previously objected to this statement. It is factually correct. We will retain this wording.
containing the conclusions of the evaluators of the assessment centre and the opinion of the Consultative Committee on Appointments

- Internal preparatory documents for College meeting 2244, 21 February 2018
- Mr Italianer's note of 21 February 2018 concerning his retirement
- Act notifying to Mr Selmay the decision of the European Commission of 21 February 2018 concerning his appointment as Deputy Secretary-General
- Act notifying to Mr Selmay the decision of the European Commission of 21 February 2018 concerning his transfer to the function of Secretary-General
- Email exchanges between DG HR and SG Registry dated 21/2/2018-27/2/2018 concerning the drafting of the summary and minutes of the Commission meeting of 21 February 2018,
- Minutes of Commission meeting of 21 April 2018
- Email from a staff member of DG HR to a Director General, 31 January 2018, relating to the appointment of a Rapporteur for the selection procedure COM/2018/392
- Email from a staff member of DG HR to an external contractor, 9 February 2018
- Note for the attention of the Permanent Rapporteur to the Consultative Committee on Appointments (CCA) from Mr Martin Selmay, candidate securing himself and his subordinates from participating in the CCA, 12 February 2018
- Note to the President from the Director General for Human Resources and Security relating to the aforesaid letter, 13 February 2018
- Avis de vacance COM/2018/392, 20 February 2018, containing a “Note à l'attention de M. Oettinger”, 13 February 2018
- Assessment Centre results of the first candidate
- Avis préalable N° 10/2018 du Comité Consultatif des nominations, 14 February 2018
- Note to the members of the CCA (Obj: Ordre du jour de la 91ème réunion du Comité Consultatif des Nominations), 15 February 2018
- Assessment Centre results of Mr Martin Selmay
- Email from the first candidate to the Permanent Rapporteur to the Consultative Committee on Appointments (CCA), 20 February 2018
Email exchange between a staff member of DG HR and an external contractor, 20 February 2018

Avis n° 10/2018 du Comité Consultatif des Nominations, signed on 20 February 2018 by the members of the CCA

Avis n° 10/2018 du Comité Consultatif des Nominations, PERS(2018)16/3, signed on 20 February 2018 by the Secretary General Mr. Italianer

Note to the members of the CCA (Objet: Résultats de la 91ème réunion du Comité Consultatif des Nominations du Vendredi 16 février 2018), 20 February 2018

Internal publication, selection procedure SC.DSCQ, not dated

Email from a member of the President’s Cabinet to Commissioner Cotteger, 20 February 2018

Questions administratives, PERS(2018)15, 21 February 2018

Email from Mr. Italianer to President Juncker, attaching his letter of resignation, 21 February 2018

Note drafted by DG HR “Administrative Matters”, not dated

Email exchange between a staff member of the Secretariat General and a staff member of DG HR, 26 February 2018

Email exchange between a staff member of the Secretariat General and two staff members of DG HR, 27 February 2018

The Ombudsman representatives did not obtain copies of the documents contained in the folder. However, the documents were made available to the Ombudsman services in a secure reading room at DG HR throughout the inspection.

The Commission stated that the entirety of the selection file was confidential.

3. Additional document

The additional document that was presented to the Ombudsman staff concerned the special procedure of the meeting of the Commission of 11 April 2018 following the Resolution adopted by the European Parliament on 10 April 2018.

The Ombudsman representatives did not obtain a copy of the document as it was marked as “confidential”, but inspected the document. The applicable rules provide that no access may be granted to those documents by the Ombudsman.

*European Parliament resolution of 10 April 2018 on the integrity policy of the Commission, in particular the appointment of the Secretary General of the European Commission (2018/216(RSP)).*
Follow up to first inspection meeting

Following the inspection of the documents provided by the Commission, the Ombudsman’s staff clarified in writing the scope of the inspection request that had been sent to the Commission on 8 May 2018. Therein, the Ombudsman stated that she had decided that it was necessary to inspect “all documents, whether in electronic or paper format, including correspondence, notes, memos, emails, and all legal advice, from 1 September 2017 until 18 April 2018, relating to the appointment of the new Secretary-General” (emphasis in original).

The Ombudsman representatives explained that this request was meant to encompass all documents relating to the appointment of the new Secretary-General, as opposed to only those documents directly linked to the recruitment procedure. In particular, it was meant to include correspondence, notes, memos, emails, and advice within the different Commission services and from the different Commission services to the Commissioners and their cabinets, as well as between the Commissioners and within their cabinets, relating to the appointment of the Commission’s new Secretary-General. The Ombudsman representatives reminded the Commission that the timeline expected was up until 18 April 2018, the day of the European Parliament resolution.

In light of these clarifications, it was decided to continue the inspection meeting at a later date.

The meeting was then suspended until the Commission could gather the relevant documentation.

Inspection meeting of 21 June 2018

The inspection continued on 21 June 2018. Upon clarification of the scope of the Ombudsman’s inspection request, the Ombudsman representatives were granted access to two vacancy notices for the position of Deputy Secretary-General (COM(2018)550 and COM(2018)551), published on 22 February 2018, and to 17 additional folders of documents.

The Commission representatives explained the structure and nature of the 17 folders presented to the Ombudsman representatives:

- 15 folders were compiled by the Directorate-General for Human Resources (eight folders containing emails and documents from the Head of Unit “Senior Management and CCA” and seven folders containing emails and documents from the Director “Talent Management and Diversity - Executive Staff”); and
- Two folders were compiled by the Commission’s Legal Service;

The Commission representatives further clarified that:

All requests from the Ombudsman's office were transmitted to the relevant services and cabinets and that all documents received were handed over. These include correspondence between and within the Cabinets, the Spokesperson's Service and the Legal Service. In the extent that these correspondence were also copied to Direcetorate General for Human Resources and/or the Legal Service.

The documents contained in the 17 folders all date from from after 20 February 2018 onwards. There are no additional documents from the Cabinets of Commissioners Gettinger, President Juncker and First Vice-President Timmermans nor the Spokesperson’s Service falling within the scope of the Ombudsman’s request. Other than those documents already contained in the 17 above mentioned folders.

There are no additional documents relating to the retirement of Mr Italianer other than those documents inspected by the Ombudsman’s staff on 6 June 2018.

There is no formal legal opinion on the appointment of the new Secretary General. However, the Legal Service was consulted (and gave its comments) on the draft answers to the questions asked by Parliament. These consultations are contained in the above mentioned two folders.

The Commission representatives also provided clarified upon request of the Ombudsman representatives, provided additional specific documents and clarified the following various points. and provided additional specific documents:

First Vice President Timmermans was consulted on the proposal to appoint Mr Martin Selmayr as new Secretary-General on 20 February 2018 during lunchtime.

The current practice of the Commission is not to transfer Principal Advisers to Director-General/Secretary-General positions, under Article 7 of the Staff Regulations.

It was agreed that the Ombudsman representatives would not obtain copies of the documents in the 17 folders, but would inspect the documents at the Commission’s premises.

Throughout the inspection, the Ombudsman’s services were requested to leave their electronic devices (telephones) in a secure container. A Commission security guard was present at all times.

Inspection meetings of 22, 27, 28 and 29 June 2018 and 2, 3, 4, 5 and 10 July 2018

Given the very extensive files to be reviewed, the inspection continued on 22, 27, 28 and 29 June 2018 and 2, 3, 4, 5 and 10 July 2018.

During these meetings, the Ombudsman representatives inspected the 17 folders at the Commission’s premises, in presence of the security guard from DG HR.

We will include this clarification in the report.

The documents in these folders date from 21 February onwards (ie after 20 February).

These statements are factually accurate, are necessary for clarity and are not confidential. We will retain these.

We were informed repeatedly during the inspection that the meeting with Mr Timmermans was at lunchtime on 20 February. This is supported by documentation we have seen. We note that you do not contest this factual statement nor do you provide any reasons why it is confidential. We will retain this factual statement.

We note that this bullet point was removed by the Commission without tracking the change. We assume that this was unintentional. The bullet point reflects a point which was repeatedly checked during the inspection. The bullet point is also identical to statements made to the Parliament by the Commission. It was also confirmed by the list of roster (at Juncker Commission) Article 7 transfers provided to us by the Commission. We will retain this bullet point.

These statements are factually correct. We will retain them.
It is estimated that the Ombudsman’s staff inspected approximately more than 30,000 to 35,000 pages. Given the huge amount of documents, it was not possible for the Ombudsman’s staff to draw up a comprehensive list of all documents inspected.

**Inspection meeting of 12 July 2018**

The Ombudsman representatives met with the Commission’s staff for a final meeting on 12 July 2018, in order to clarify remaining questions that had arisen during the inspection of documents.

In view of the fact that the Ombudsman representatives did not obtain copies of the documents in the 17 folders, it was agreed that the Ombudsman’s staff could inspect any of the documents again at the Commission’s premises, if needed for the purposes of the inquiry.

The Ombudsman representatives thanked the Commission for their cooperation, and the meeting ended cordially.

Brussels, **DATE**

Fergal O’Regan

Head of Coordination of Public Interest Inquiries

Commented [A15]: We believe this figure is higher. Many folders contain more than 500 sheets of paper and many documents were printed recto verso. I would estimate closer to 10,000 pages and definitely in excess of 10,000 pages.

OK

| |

4 Assuming that one binder contains, on average, **nearly 5,000** pages.
From: O REGAN Fergal Anthony  
Sent: 19 July 2018 17:00  
To: [redacted] (EC)  
Cc: [redacted] (EC), [redacted] (EC)  
Subject: RE: Important - Joint complaints 488/2018 and 514/2018

Dear [redacted],

You will see when you look at the report that there were 2 bullet points. One related to the lunchtime meeting between the President and the Vice President. The other (deleted by you without tracked changes) related to Article 7.

On the latter point, we note that it is factually correct to state:

"It is not the Commission’s practice to transfer AD15 officials occupying functions of Director/Principal Adviser to Director-General functions under Article 7 of the Staff Regulations".

Your addendum does not alter the accuracy of this statement.

Best wishes,

Fergal

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From: [redacted]  
Sent: 19 July 2018 16:53  
To: O REGAN Fergal Anthony  
Cc: [redacted] (EC), [redacted] (EC)  
Subject: Re: Important - Joint complaints 488/2018 and 514/2018

Dear Fergal,

Thank you for your feedback. It is indeed our understanding that this is your inspection report and we thank you for the opportunity to comment on it.

We have two last comments that are objective and factual on the part copied below:

The Commission representatives provided, upon request of the Ombudsman representatives, additional specific documents and clarified various points:

• The current practice of the Commission is not to transfer Principal Advisers to Director-General/Secretary-General positions, under Article 7 of the Staff Regulations.

Our first comment in that respect is that you announce various points but only mentions one so there is an inconsistency there. And our second comment is on what we actually said on the art. 7 part: it is more accurate to reflect our comments saying:

“While it is not the Commission’s practice to transfer AD15 officials occupying functions of Director/Principal Adviser to Director-General functions under Article 7 of the Staff Regulations, legally the College could have decided to do so”.

1
Sorry for the last minute comments that we hope you will be able to take into account but as I am travelling and [redacted] is not in the office, it was not possible to send you this email earlier.

Thank you for your understanding and best regards,

Envoyé de mon [redacted]

Le 19 juil. 2018 à 14:33, O REGAN Fergal Anthony [redacted] a écrit :

Dear [redacted]

Thank you for your email of yesterday.

Let me first underline that our inspection reports are reports of the European Ombudsman. They are not joint reports. The purpose of sending a report to the Commission, in draft form, is simply to allow the Commission to propose changes aimed at correcting any factual inaccuracies or at identifying any information which may be confidential.

We note that a very limited number of your suggested changes relate to factual inaccuracies (dates, number of pages ...). We will accept those suggestions (see attached).

We have also accepted some suggested changes where the Commission proposes to summarise a list of documents.

However, you also suggest removing a number of factual statements without in any way indicating that the original text was inaccurate or that the text contained confidential information. We thus reject those suggested changes.

We thank you for tracking your proposed changes. However, we note that a sentence relating to how "Article 7 transfers" are normally used was redacted from our draft report without using tracked changes. This made it, at least initially, difficult for us to spot that this change had been made. We are assuming that the failure to use tracked changes for that edit was unintentional.

Please be informed that I am instructed to finalise the report accordingly, to send it to the complainants and to publish it on our website by 1700 today.

Please call me if you have any questions.

Best wishes,

Fergal
From: O REGAN Fergal Anthony
Sent: 19 July 2018 17:37
To:  
Cc:  
Subject: RE: Important - Joint complaints 488/2018 and 514/2018

Dear [name]

On your suggested addendum, as noted in the inspection itself, the inspection report is not the place to go into technical arguments on complex matters of law, such as the supposed legality of Article 7 transfers between different types of posts as described in Annex I of the Staff Regulations.

In any event, the questions we posed in the inspection related to verifying the Commission's practice only. Indeed, we even asked you to give us a document describing the 45 different "Article 7 transfers" that have occurred in the Juncker era precisely for that purpose. From that document, we note that every one of those "Article 7 transfers" were from DDG to DG, DG to DG, AHC to DG and AHC to DDG. None were from Director/Principal Advisor to DDG/DG/AHC. The statement in the report is thus fully accurate and stand-alone.

I understand that the report is now final and signed off by the Ombudsman.

Best wishes,

Fergal

European Ombudsman
Fergal O’ Regan
Head of Unit

Rue Wiertz
Montoyer 30 Building
B-1047 Brussels
F. + 32 (0)2 284 49 14
www.ombudsman.europa.eu

Dear Fergal

From:  
Sent: 19 July 2018 17:10
To: O REGAN Fergal Anthony
Cc:  
Subject: Re: Important - Joint complaints 488/2018 and 514/2018
If I may, whilst it may be factually correct, it is selective and incomplete and doesn’t reflect in its entirety what would have been said. Since the statement refers to a clarification of the Commission, I would have thought that it should reflect our statement.

Regards,

Envoymé de mon

Le 19 juil. 2018 à 16:59, O REGAN Fergal Anthony a écrit :

Dear

You will see when you look at the report that there were 2 bullet points. One related to the lunchtime meeting between the President and the Vice President. The other (deleted by you without tracked changes) related to Article 7.

On the latter point, we note that it is factually correct to state:

"It is not the Commission’s practice to transfer AD15 officials occupying functions of Director/Principal Adviser to Director-General functions under Article 7 of the Staff Regulations".

Your addendum does not alter the accuracy of this statement.

Best wishes,

Fergal

From: O REGAN Fergal Anthony
Sent: 19 July 2018 16:53
To: O REGAN Fergal Anthony
Cc: (EC)
Subject: Re: Important - : Joint complaints 488/2018 and 514/2018

Dear Fergal,

Thank you for your feedback. It is indeed our understanding that this is your inspection report and we thank you for the opportunity to comment on it.

We have two last comments that are objective and factual on the part copied below:
Dear [Name],

Ahead of the inspection tomorrow, we would like to request for the following additional information.

On 24 March 2018, in answering question 65 of the European Parliament ("What is the average term of office duration for Director level positions and above, if not from Head of Unit level, as well as which were the - perhaps 10 - shortest terms of office on record.")", the Commission answered:

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

We would like to learn more about the cases of the ten Directors and six Deputy Directors-General that are referenced here. We would be grateful if the Commission could provide us – ideally tomorrow, 22 August, and at the latest by the end of this week, 24 August COB – with a brief overview of the details of these moves, including the names of the persons concerned, the dates on which these appointments/transfers happened, the posts the individuals were appointed to and the functions to which they were simultaneously transferred to.

Thanks in advance,

[European Ombudsman]

Rue Wiertz
Montoyer 30 Building
B-1047 Brussels
F. +32 (0)2 234 40 14
www.ombudsman.europa.eu
It’s OK for 22 August between 9 and 16.30 at the latest.

We have reserved the same room in MO34 7th floor and the DS will send a guard again, so same conditions as before.

The assistant of [REDACTED], will be there and will deliver the documents to the room for the time you want to start and will pick them up again at 16.30 at the latest.

Please let us know if this is ok for you and when you will arrive.

Have a nice day.

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European Commission
Secretariat General
Unit F.3 - National Parliaments,
Consultative committees, the Ombudsman

BERL, B-1049 Brussels/Belgium
+32 2 299 [REDACTED]

Please consider the environment before printing this email

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From: [REDACTED]
Sent: Thursday, August 9, 2018 10:12 AM
To: [REDACTED]
Cc: [REDACTED]

Subject: Access to the file of cases 488/2018[REDACTED] and 514/2018[REDACTED] -- appointment of the Commission's new Secretary-General

Dear [REDACTED] and [REDACTED]

I hope you have had a relaxing summer break and that this message finds you well.

I am writing with regards to the Ombudsman's inquiry into the Commission’s appointment of a new Secretary-General (488/2018[REDACTED] and 514/2018[REDACTED]) and the documents that were inspected in relation to this in June and July.
You might remember that it was agreed that we could inspect any of the documents again at
the Commission’s premises if needed, given that the Ombudsman did not obtain copies.

We would like to have access to these documents as of Wednesday 22 August to double-
check a number of facts. We would be grateful if a room were made available for that
purpose.

Thank you in advance.
Dear Gundi, dear Fergal,

Thank you very much for sharing with us your press release that you plan to publish tomorrow. As just discussed on the phone, I would however ask you to consider the enclosed proposed change in the press release. This is a statement that we feel is not in line with the 33-page recommendation signed by the Ombudswoman. It states that the Commission did something illegal which is not what we have read in the recommendation itself.

I trust you will consider the proposed change.

Thank you in advance,

Best

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Dear colleagues in the Commission,

Attached is a press release from the European Ombudsman on the Commission's Secretary-General appointment which I am sending you for your information.

We are planning to publish it tomorrow at 10.00.

Best wishes,

European Ombudsman

Ms Gundi Gadesmann
Head of Communication
T. + 32 (0)2 284 26 09
@EUOmbudsman

30, rue Montoyer
MTS 07X010
B-1047 Brussels
Press release no. 7/2018
Commission should develop new procedure for appointing its Secretary-General
4 September 2018

Following an investigation into two complaints, the European Ombudsman, Emily O’Reilly, has found four instances of maladministration in the appointment of the European Commission’s Secretary-General in February 2018.

The maladministration arose due to the way the Commission did not follow the relevant rules correctly when taking the decision. The Commission created an artificial sense of urgency to fill the post of Secretary General in order to justify not publishing a vacancy notice. It also organised a Deputy Secretary-General selection procedure, not to fill that role, but rather to make Mr Selmayr Secretary-General in a rapid two-step appointment.

In addition the Ombudsman notes that the Commission’s communications on this issue, which raised valid concerns, have been defensive, evasive and at times combative.

“Our inquiry was based on an inspection of thousands of pages of Commission internal documents, and it shows the precise steps the Commission took in order to make the appointment process appear normal.

“All of this risked jeopardising the hard won record of high EU administrative standards and consequently, the public trust.”

The Ombudsman calls on the Commission to develop a specific and separate appointment procedure for its Secretary-General to prevent a repeat of this happening. The procedure should include publishing a vacancy notice, placing it on the agenda of the weekly Commissioners’ meeting and also including external experts in the consultative committee for the appointment.

The Ombudsman notes in her findings that her investigation did not concern any assessment of Mr Selmayr, who she understands is both a competent EU official and committed to the European Union.

Background
The Ombudsman’s inquiry was based on two complaints, from two separate delegations of MEPs (one French and one Dutch).

Ms O’Reilly opened the inquiry in May 2018 following the Resolution of the Parliament on the same matter. She put seven questions to the Commission, including what lessons it had learned and how to ensure the same situation would not be repeated in future.

The Ombudsman’s services held several inspection meetings with the Commission to examine all relevant documents related to the appointment. This allowed the Ombudsman to build a detailed timeline (included in the Ombudsman’s Recommendation) of the events and
decisions that eventually led to the appointment.

**Instances of maladministration in full**

1) Failure to take appropriate measures to avoid the risk of a conflict of interests arising from the involvement of Mr Selmayr and/or other members of the President’s Cabinet in the decision-making leading to the creation and approval of the vacancy notice for Deputy Secretary-General (a vacancy for which Mr Selmayr highly likely knew he would apply for and later did).

2) Failure to ensure that the composition of the Consultative Committee on Appointments (CCA), for the selection of a Deputy Secretary-General, was in accordance with Article 10 of the CCA Rules of Procedure.

3) Holding a selection procedure for Deputy Secretary-General, which did not serve its stated purpose to fill the vacancy, but rather only to ensure that Mr Selmayr would be eligible for reassignment as Secretary-General.

4) As the impending retirement of Mr Italianer was kept secret, a situation of urgency to fill the post of Secretary-General was created artificially. Even then, this should not have prevented the Commission from launching a procedure to identify and evaluate possible candidates for Secretary-General before Mr Italianer would retire.

The Ombudsman’s full Recommendation can be found [here](#).
Dear [Name],

Many thanks for your comments. However, we maintain that the press release reflects the Ombudsman’s findings.

Best wishes,

[Name]

[Name]

European Ombudsman

Ms Gundi Gadesmann
Head of Communication
T. +32 (0)2 284 20 00
M. +32 (0)70 32 29 21
@EUCOmbudsman

30, rue Montoyer
MTS 07X010
B-1047 Brussels

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Dear Gundi, dear Fergal,

Thank you very much for sharing with us your press release that you plan to publish tomorrow. As just discussed on the phone, I would however ask you to consider the enclosed proposed change in the press release. This is a statement that we feel is not in line with the 33-page recommendation signed by the Ombudswoman. It states that the Commission did something illegal which is not what we have read in the recommendation itself.

I trust you will consider the proposed change.

Thank you in advance,

Best

[Name]
From: O’SULLIVAN Aidan  
Sent: 04 September 2018 10:04  
To: TAJANI Antonio, President  
Cc: HAFEN Frederik  
Subject: Complaint 488/2018 & 514/2018  
Attachments: RECOMMENDATION(S)_201800488_20180903_131055.pdf; INFO_201800488_20180903_173641.pdf 

Dear President Tajani,

Please see attached a letter for your attention, from the European Ombudsman.

Subject of inquiry: Recommendation of the European Ombudsman in the above case on the European Commission’s appointment of a new Secretary-General


Let me know of any questions.

Aidan O’Sullivan  
Head of Cabinet to the European Ombudsman

Rue Montoyer 30  
B-1047 Brussels

www.ombudsman.europa.eu  
@EUOmbudsman
Antwoorden van de Commissie op vragen van de Europese Ombudsman over de benoeming van de nieuwe secretaris-generaal


I. Achtergrond

De brief van de Europese Ombudsman van 5 mei 2018 aan de voorzitter van de Commissie is gebaseerd op twee klachten, ingediend door leden van het Europees Parlement van de Nederlandse D66 (fractie ALDE) en de Franse Parti socialiste (fractie S&D), over het besluit van het college van commissarissen van 21 februari 2018 tot benoeming van de nieuwe secretaris-generaal. De klagers uitten hun twijfel over de wettigheid van dit besluit. In het kader van het onderzoek van de klachten heeft de Europese ombudsman de Commissie gevraagd zeven aanvullende vragen te beantwoorden.

De Commissie heeft over deze kwestie al uitvoerige informatie verstrekt in haar antwoorden aan de Commissie begrotingscontrole van het Europees Parlement van 24 maart en 4 april 2018; in het bijzonder bevestigt zij daarin de wettigheid van het besluit door te verwijzen naar het Statuut, zoals uitgelegd in de jurisprudentie van de EU en het reglement van orde van de Commissie. Deze antwoorden geven het standpunt van de Commissie weer over de kwestie die het Europees Parlement aan de orde stelt.

De Commissie wil allereerst duidelijk maken dat het besluit tot benoeming van de nieuwe secretaris-generaal gebaseerd is op de volgende negen punten en beginselen:

1. Het besluit van de Commissie tot benoeming van de nieuwe secretaris-generaal is op 21 februari 2018 unaniem door alle leden van het college genomen, in het kader van een reeks benoemingen in hogere managementfuncties. De handelwijze van de Commissie was geheel in overeenstemming met het Statuut, zoals uitgelegd door de jurisprudentie in de EU en het reglement van orde van de Commissie.


3. Zoals te doen gebruikelijk is het benoemingsvoorstel, om de noodzakelijke vertrouwelijkheid te garanderen, rechtstreeks voorgelegd aan het college op dezelfde dag dat het besluit moest worden genomen. Overeenkomstig artikel 6, lid 5, van het reglement van orde van de Commissie mag de voorzitter punten aan de agenda van het college toevoegen. Het collegialiteitsbeginsel is volledig in acht genomen.

4. De post van secretaris-generaal van de Commissie vereist uitgebreide ervaring met betrekking tot het functioneren van de Commissie en haar werkmethode, haar besluitvormingsproces en haar institutionele rol. Volgens artikel 20 van het reglement

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3. Zie bijvoorbeeld de gevoegde zaken 161/80 en 162/80, Carbognani en Zabetta tegen Commissie, punt 19 e.v., en zaak F-24/12, BN/Parlement, punt 46.
van orde van de Commissie moet de secretaris-generaal de voorzitter en de Commissie in het algemeen bijstaan, zodat de Commissie, in het kader van de door de voorzitter vastgestelde politieke richtsnoeren, haar prioriteiten kan verwezenlijken. Hij of zij moet daarom beschikken over het volledige vertrouwen van de voorzitter en van de hele Commissie.

5. De persoon die momenteel het ambt bekleedt, voldoet volledig aan deze eis, alsook aan alle procedurele voorwaarden van het Statuut: als ambtenaar met rang AD 15 met acht jaar managementervaring op hoog niveau in de Commissie en zeven jaar beroepservaring vóór zijn indiensttreding bij de Commissie, voldeed betrokkenere aan alle kwalificaties die vereist waren om te worden overgeplaatst naar de post van secretaris-generaal, nadat hij overeenkomstig artikel 7, lid 1, van het Statuut bij besluit van het college tot plaatsvervangend secretaris-generaal was benoemd. Bovendien heeft de nieuwe secretaris-generaal, voorafgaand aan zijn benoeming, een volledige selectieprocedure doorlopen zoals voorgeschreven voor de benoeming van directeurens-generaal en adjunct-directeurens-generaal. Deze procedure hield onder meer in: deelname aan een assessment van een volledige dag, een gesprek, een beoordeling en een advies van het Raadgevend Comité benoemingen, en een gesprek met de commissaris voor Begroting en Personeelszaken en met voorzitter Juncker, voorafgaand aan de benoeming op 21 februari door het college met eenparigheid van stemmen.

6. Om een soepele werking van de instelling te garanderen, is het in het belang van de Commissie dat wordt vermeden dat de functie van de secretaris-generaal vacant wordt. Sinds de aanstelling in 1958 van de eerste secretaris-generaal, Emile Noël, is de functie van secretaris-generaal nooit vacant geweest. Bij de benoeming van de nieuwe secretaris-generaal is aan alle voorwaarden voor de toepassing van de overplaatsingsprocedure van artikel 7, lid 1, van het Statuut voldaan. De drie vorige secretarissen-generaal zijn volgens dezelfde procedure benoemd.

7. De voorzitter van de Commissie werd op 20 februari 2018 door de vorige secretaris-generaal in kennis gesteld van diens voornemen om de volgende ochtend schriftelijk zijn pensioneringsverzoek in te dienen. Diezelfde dag informeerde de voorzitter commissaris Oettinger over dit voornemen en deelde de voorzitter hem mee dat hij bijgevolg zou voorstellen het hoofd van zijn kabinet over te plaatsen naar de post van secretaris-generaal. Commissaris Oettinger stemde daar volledig mee in. De voorzitter heeft op 20 februari ook eerste vicevoorzitter Timmermans geraadpleegd over zijn voorstel, die ermee instemde.

8. De woordvoerder van de Commissie heeft alle vragen over deze procedure feitelijk en naar haar beste weten uitgebreid beantwoord. De Commissie is bereid de mogelijkheid te overwegen om besluiten inzake het hogere management vergezeld te laten gaan van technische briefings door deskundigen van het directoraat-generaal Personeelszaken, waarbij juridische of technische procedures ten behoeve van de pers worden verduidelijkt.

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5 Voor aanstelling in een functie van het niveau van directeur-generaal is formeel de rang AD 14 of hoger vereist (met voor ambtenaren met rang AD 14 ten minste twee jaar diensttijd in die rang) en ten minste twee jaar ervaring als hogere leidinggevende op het niveau van directeur of hoger.
II. Antwoorden van de Commissie

1. In de resolutie van het Parlement wordt gesteld dat de benoeming „kan worden beschouwd als een soort van staatsgreep waarmee de grenzen van de wet zijn opgezocht en mogelijk zelfs overschreden”. Wat zijn de gedachten van de Commissie over deze kwalificatie van de wijze waarop de benoeming is verlopen en welke lessen heeft zij eventueel in het algemeen uit deze affaire getrokken?

Onder „staatsgreep” wordt doorgaans verstaan „het onwettig, plotseling en gewelddadig ingrijpen in de politieke toestand om die te wijzigen” (Van Dale), waarbij sprake is van een illegale, openlijke machtsgreep door het leger of andere elites binnen het staatsapparaat. De Commissie ziet niet in hoe een besluit van het college van commissarissen dat door de voorzitter is voorgesteld en unaniem door alle leden van de commissie wordt gesteund, kan worden vergeleken met „een soort van staatsgreep”. Bij de benoeming van de nieuwe secretaris-generaal heeft de Commissie de voorschriften steeds naar de letter en de geest nageleefd en heeft zij gehandeld in het belang van de instelling.

Toen voorzitter Juncker de nieuwe secretaris-generaal van de Commissie voordroeg, wenste hij te verzekeren dat de werkzaamheden van de instelling vlot en efficiënt zouden blijven verlopen. Hij wenste tevens te vermijden dat de benoeming het onderwerp zou worden van onderhandelingen tussen lidstaten en/of politieke partijen, die ertoe hadden kunnen leiden dat de post na de pensionering van de vorige secretaris-generaal vacant zou blijven. Hij had voor deze functie bovendien een betrouwbare en deskundige persoon nodig, op wie het college zou kunnen vertrouwen en die de functie onmiddellijk zou kunnen overnemen en effectief zou kunnen uitoefenen. Het is voor Commissie en voor de verwezenlijking van haar prioriteiten en het programma op basis waarvan zij door het Europees Parlement is verkozen, absoluut noodzakelijk dat haar werkzaamheden op dit beslissende punt in haar mandaat niet worden verstoord en dat zij in staat wordt gesteld voorstellen van hoge kwaliteit in te dienen.

Zoals bij alle andere benoemingen in hogere managementfuncties heeft de Commissie bij het nemen van haar besluit vertrouwelijkheid en discreetie in acht genomen. De drie vorige secretarissen-generaal zijn alle volgens dezelfde procedure benoemd.

De Commissie is bereid in de toekomst de mogelijkheid te overwegen om belangrijke benoemingen inzake het hogere management vergezeld te laten gaan van gedetailleerde technische briefings door deskundigen van het directoraat-generaal Personeelszaken, waarbij de desbetreffende bepalingen van het Statuut en andere relevante Commissievoorschriften ten behoeve van de pers kunnen worden verduidelijkt.
2. De Commissie heeft geen antwoord gegeven op vragen van het Parlement waarbij het ging om de vraag of deze benoeming het vertrouwen in de EU als geheel kan hebben geschaad. Wil de Commissie nu bij nader inzien toch haar gedachten laten gaan en haar standpunt uiteenzetten over de vraag of het vertrouwen in de EU is geschaad? Is zij van mening dat de wijdverbreide kritiek op de wijze waarop de benoeming verliep, gerechtvaardigd is?

De Commissie heeft alle vragen van het Europees Parlement over deze kwestie duidelijk, eerlijk en begrijpelijk beantwoord.

De Commissie is het niet eens met de stelling dat het vertrouwen van de burgers in de EU zou zijn aangetast. Deze veronderstelling wordt evenmin ondersteund door de meest recente Eurobarometer-enquêtes. Voor 67% van de Europese burgers geldt dat zij de EU steunen en ervan overtuigd zijn dat het EU-lidmaatschap voor hun land voordelen heeft opgeleverd. In het bijzonder is het vertrouwen in de Europese Commissie met 4 procentpunten gestegen ten opzichte van vorig jaar: 46% van de respondenten zegt nu in enige mate vertrouwen te hebben in de Europese Commissie, terwijl 39% ertoe neigt haar niet te vertrouwen.

De Commissie is niet van mening dat de kritiek over de benoeming van de nieuwe secretaris-generaal terecht was. De kritiek was namelijk gebaseerd op een reeks ongegronde beschuldigingen, onjuiste gegevens en, in het algemeen, op betwisting van het recht van de Commissie om haar hoger management te benoemen. De Commissie is bereid al haar politieke verantwoordelijkheid op zich te nemen, maar zal niet aanvaarden dat een interne procedure, die volledig in overeenstemming is met het Statuut zoals uitgelegd door de rechter in de EU, en met het reglement van orde van de Commissie, kan worden opgevat als schadelijk voor het vertrouwen in de EU. De Commissie heeft binnen de grenzen van haar bevoegdheden gehandeld en de voorschriften toegepast, en heeft unaniem besloten over de benoeming van de nieuwe secretaris-generaal.

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3. Het is belangrijk dat hoge managementposten binnen de Commissie niet het onderwerp zijn van onderhandelingen tussen lidstaten of tussen politieke partijen, maar dat daarover wordt besloten door het college van commissarissen. Hoe denkt de Commissie ervoor te zorgen dat deze beslissingen in de toekomst gebaseerd zijn op de beginselen van transparantie, gelijkheid, kwalificaties en verdiensten?

De bestaande regels zijn zeer duidelijk: wanneer een post moet worden ingevuld, kan het tot aanstelling bevoegd gezag (bij hogere managementposten is dat het college van commissarissen) op grond van het Statuut kiezen tussen twee mogelijkheden:

- organisatie van een selectieprocedure overeenkomstig artikel 29, lid 1, van het Statuut;
- overplaatsing in het belang van de dienst overeenkomstig artikel 7, lid 1, van het Statuut.

Het Statuut stelt niet vast welke van deze twee mogelijkheden de voorkeur heeft en er wordt in de rechtspraak nergens gewag van gemaakt dat een van de procedures de regel zou zijn en de andere de uitzondering. Beide mogelijkheden hebben dezelfde juridische status: beide procedures zijn geldig. In alle gevallen, ongeacht de gekozen procedure, houdt de Commissie altijd rekening met de vaardigheden, kwalificaties, ervaring en verdiensten van de betrokken ambtenaar.

De Commissie is van mening dat de bestaande procedures voldoen. In overeenstemming met haar streven een excellent Europees openbaar bestuur tot stand te brengen, staat zij open voor constructieve besprekingen over de toepassing van het bestaande juridische kader. De Commissie is dan ook bereid om te beoordelen of en hoe de toepassing van de huidige regels en procedures in de toekomst verbeterd kan worden. Daarbij moet het begin van transparantie worden verzoekt met de noodzaak ervoor te zorgen dat de besluiten van de Commissie inzake het hogere management niet leiden tot onderhandelingen tussen de lidstaten en/of politieke partijen. Commissaris Oettinger heeft de aanzet gegeven tot een voorstel voor een interinstitutionele rondetafelbespreking. Die biedt de mogelijkheid tot besprekingen over de wijze waarop de excellentie en onafhankelijkheid kunnen worden gewaarborgd van het ambtenarenapparaat van de Unie dat ten behoeve van en in het gemeenschappelijk belang van de EU-burgers werkt.

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8 Zie bijvoorbeeld zaak 69/83, 23 juni 1984, Lux/Rekenkamer, punt 17, en zaak F-24/12, 19 juni 2014, BN/Commissie, punt 47.
4. Is de Commissie het eens met de stelling in de resolutie van het Parlement dat „benoemingen op hoge posities zoals die van secretaris-generaal niet tegelijk met andere benoemingen mogen plaatsvinden, zodat er geen verdenking kan ontstaan van niet-transparante pakketakkoorden of ruilafspraken op basis van voorkennis”? Kan de Commissie toelichting geven op deze stelling?

Wanneer het gaat om benoemingen in hogere managementfuncties is er geen sprake van zaken als „pakketakkoorden” of „ruilafspraken”. Dit zou indrukken tegen het Statuut en de doelstellingen dat over benoemingen uitsluitend op basis van verdiensten en kwalificaties wordt beslist. Wanneer de Commissie een reeks afzonderlijke besluiten inzake hogere managementposten neemt, gelden voor elk daarvan, zonder uitzondering, de relevante procedurele bepalingen. De Commissie ziet niet in waarom over benoemingen in bepaalde functies niet tegelijkertijd met andere benoemingen zou kunnen worden beslist. Voor alle benoemingen gelden dezelfde regels, en het aantal besluiten dat het college elke dag en op de wekelijkse vergaderingen neemt, verandert niets aan de kwaliteit of de inhoud van afzonderlijke besluiten en beïnvloedt deze niet.

De Commissie bestrijdt ook dat er sprake is van „ruilafspraken” bij de benoeming van senior managers. Elk besluit is gebaseerd op de specifieke verdiensten en kwalificaties van elke betrokkene en op de behoeften van de instelling. De Commissie let er speciaal op dat alle regels en procedures die voor de rechten van de kandidaten voor de verschillende functies gelden, worden nageleefd.

Bovendien betwist de Commissie de bewering dat benoemingen op basis van „voorkennis” worden gedaan. Volgens de normale gang van zaken worden benoemingen in hogere managementfuncties op het niveau van directeur-generaal en adjunct-directeur-generaal bij de Commissie, ter waarborging van de noodzakelijke mate van vertrouwelijkheid, zonder uitzondering rechtstreeks voorgelegd aan het college op dezelfde dag dat de Commissie over de benoeming moet beslissen. De betrokkenheid van de leden van de Commissie bij de voorbereiding van de diverse voorstellen is afhankelijk van hun respectieve portefeuilles: alle betrokken leden van de Commissie worden geraadpleegd over besluiten inzake hoger management op hun respectieve bevoegdheidsgebieden, voordat de betrokken voorstellen aan de Commissie worden voorgelegd.

De voorzitter mag punten aan de agenda van het college toevoegen wanneer hij dat nodig acht: overeenkomstig artikel 6, lid 5, van het reglement van orde van de Commissie kan de Commissie op voorstel van de voorzitter beraadslagen over een punt dat niet op de agenda is geplaatst; dit is een situatie die zich geregeld voordoet. Het college van commissarissen bestaat uit ervaren politici die zich ervan bewust zijn dat de voorzitter dit recht heeft. Elk lid van de Commissie kan tijdens de bijeenkomst van het College interveniëren, een mening uiten en verzoeken om uitstel van een punt indien hij of zij dit nodig acht.
5. De Commissie-Juncker is een politiek uitvoerend orgaan dat zijn legitiemiteit ontleent aan de verkiezingen van het Europees Parlement, en ondersteund wordt door een onafhankelijk ambtenarenapparaat. Deze positie is vergelijkbaar met de wijze waarop in veel EU-lidstaten de overheid is gestructureerd, maar kan de Commissie aangeven hoe zij omgaat met de werkkrelatie tussen de politieke zijde (dat wil zeggen de commissarissen en hun kabinetten) en het ambtenarenapparaat op hoog niveau?

Een politieke Commissie houdt in dat politici, de leden van het college, beleid voeren binnen het kader van de Verdragen en op grond van de politieke prioriteiten van de Commissie, dat zij hun politieke oordeel uiten en de verantwoordelijkheid nemen voor de genomen besluiten en dat de Commissie verantwoording aflegt aan het Europees Parlement.

Bij de vervulling van hun taak kunnen de leden van de Commissie steunen op een open, doeltreffend en onafhankelijk Europees ambtenarenapparaat, zoals bedoeld in artikel 298 van het Verdrag betreffende de werking van de Europese Unie. De leden van de Commissie worden door de diensten van de Commissie en hun personeel bijgestaan bij de voorbereiding en uitvoering van haar ambtsbezigheden en bij de verwezenlijking van de prioriteiten en de politieke richtsnoeren die door de voorzitter zijn vastgesteld (artikel 21, eerste alinea, van het reglement van orde).

Het politieke optreden wordt omschreven in artikel 11 van het Statuut. Artikel 11 van het Statuut.`
6. Burgers verwachten van het ambtenarenapparaat van de EU onafhankelijk advies, hoewel zij zich noodzakelijkerwijze bewust zijn van de politieke omgeving waarin het optreedt. Hoe denkt de Commissie ervoor te zorgen dat, wanneer iemand overstapt van een hoge politieke functie naar het hogere management van een onafhankelijk ambtenarenapparaat, burgers zeker kunnen zijn van de onpartijdigheid van de ambtenaren?

De Commissie beschikt over een hooggekwalificeerd ambtenarenkorps, dat in het belang van de 500 miljoen Europese burgers werkt.

Er bestaat geen „politieke functie” ten aanzien van de ambtenaren van de Commissie: voor alle personeelsleden van de Commissie, of zij werken in de kabinetten of in de verschillende diensten, geldt dat zij zich bij hun dagelijkse werk moeten houden aan dezelfde regels en strenge ethische normen, op grond waarvan zij onafhankelijk moeten optreden in het belang van de Unie. De voorschriften en normen gelden voor al het personeel, zonder uitzondering; alle personeelsleden hebben dezelfde rechten en plichten.

De regels zijn vastgelegd in het Statuut, de uitvoeringsbepalingen en andere documenten, zoals het Financieel Reglement en de bestuurlijke gedragscode. De regels betreffen onder meer de onafhankelijkheid ten aanzien van externe invloed, mogelijke belangenverstrengeling, ontvangen geschenken en onderscheidingen en externe activiteiten tijdens de werkzaamheden voor de EU en dienstverbanden na het verlaten van de EU-instelling, de betrekkingen met het publiek en de verplichting om hiërarchieke meerden goed en objectief advies te verlenen, alsmede bepalingen waarbij individuele personeelsleden voor hun acties aansprakelijk worden gesteld.

De Commissie zal altijd optreden om de naleving van de bovengenoemde voorschriften te garanderen. Personeelsleden van de Commissie zijn verplicht ten minste één cursus op het gebied van ethiek en integriteit te volgen. Burgers kunnen een klacht indienen als zij menen dat een ambtenaar van de Commissie in strijd met de bestuurlijke gedragscode handelt. Besluiten van de Commissie worden aan permanente openbare en institutionele controle onderworpen. Bovendien zien het Bureau voor onderzoek en disciplinaire zaken (IDOC) van de Commissie en het Europees Bureau voor fraudebestrijding (OLAF) er door middel van bestuurlijke onderzoeken en tuchtprocedures eerlijk, transparant en tijdig op toe dat (voormalige) ambtenaren en andere personeelsleden de bepalingen van het Statuut naleven.
7. De Commissie heeft tekortkomingen erkend ten aanzien van de communicatie over deze benoeming. Welke maatregelen is de Commissie van plan te nemen om in de toekomst beter om te gaan met valide en legitieme vragen van de media, gelet op het feit dat dergelijke uitwisselingen voor burgers vaak de enige manier zijn om antwoord te krijgen op hun vragen.

De Commissie erkent het belang van open en transparante communicatie en blijft zich ten volle inzetten om antwoorden te geven op vragen van de media en het publiek. Zij erkent dat de media een belangrijke rol spelen bij het verstrekken van informatie aan het publiek, vooral waar het gaat om het beleid van de EU. De Commissie organiseert daarom dagelijks rond het middaguur een informatiebijeenkomst die live wordt uitgezonden. Meer dan 1100 geaccrediteerde journalisten kunnen daar al hun vragen over het EU-beleid stellen. Dit is een unieke dienst, die aantoont dat openheid en transparantie ons ernst zijn.

De Commissie hecht er ook het grootste belang aan om in te gaan op de zorgen van de burger. De Commissie organiseert daarom sinds 2014 burgerdialogen in alle EU-lidstaten, waarbij de leden van de Commissie rechtstreeks ingaan op vragen en ideeën die de burgers aan hen voorleggen. De Commissie heeft haar inspanningen op het gebied van de communicatie met het publiek aanzienlijk opgevoerd: meer dan 17 miljoen mensen hebben deelgenomen aan 727 burgerdialogen (inclusief tien live chats via Facebook) op 285 locaties in de EU.

De Commissie is altijd bereid om de communicatie met de media en het publiek verder te verbeteren en technische en juridische procedures beter toe te lichten. Zij vindt echter niet dat zij bij de communicatie over de benoeming van de nieuwe secretaris-generaal tekort is geschoten. Zij werd geconfronteerd met een negatieve campagne, waarbij onjuiste informatie werd verspreid, de benoemingsprocedure en de functievereisten onjuist werden uitgelegd en illegaal gebruik werd gemaakt van persoonsgegevens die horen te worden beschermd op grond van het Statuut van de EU en de EU-regels voor gegevensbescherming. De Commissie gaat daarom door met het ontkrachten van misverstanden en het rechtzetten van misleidende informatie. Zij staat volledig achter de benoeming van de nieuwe secretaris-generaal, waarbij alle bestaande regels en procedures in acht zijn genomen.
Réponses de la Commission aux questions posées par la Médiatrice européenne sur la nomination du nouveau secrétaire général
- Plaintes 488/2018 et 514/2018

I. Contexte

La lettre que la Médiatrice européenne a adressée au président de la Commission le 5 mai 2018 se fonde sur deux plaintes, introduites, l’une par la délégation néerlandaise D66 (groupe ALDE) et l’autre par la délégation socialiste française (groupe S&D) du Parlement européen, concernant la décision du collège des commissaires du 21 février 2018 relative à la nomination du nouveau secrétaire général de la Commission. Les plaignants expriment des doutes quant à la légalité de cette décision. Dans le cadre de l’examen de ces plaintes, la Médiatrice européenne a demandé à la Commission de répondre à sept questions supplémentaires.


La Commission aimerait clarifier d’emblée les neuf points et principes suivants, sur lesquels se fonde la décision prise concernant la nomination du nouveau secrétaire général:

1. La Commission a pris la décision de nommer son nouveau secrétaire général le 21 février 2018, dans le cadre d’une série de nominations aux postes d’encadrement supérieur, à l’unanimité des 28 membres du collège. Ce faisant, elle a agi dans le plein respect du statut des fonctionnaires de l’Union européenne, tel qu’interprété par la jurisprudence des juridictions de l’UE3, et de son propre règlement intérieur.

2. Le président Juncker a proposé de nommer le nouveau secrétaire général en accord avec le commissaire Oettinger et après consultation du premier vice-président Timmermans. Tous deux ont donné leur accord à la nomination proposée.

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3 Voir, par exemple, les affaires jointes C-161/80 et C-162/80, Carbognani et Zabeta/Commission, points 19 et suivants, et l’affaire F-24/12, BN/Parlement, point 46.
3. Conformément à la pratique normale et pour assurer le niveau de confidentialité nécessaire, la nomination proposée a été présentée directement au collège le jour même où celui-ci a pris la décision. La possibilité d’ajouter des points à l’ordre du jour de la réunion du collège est une prérogative du président, conformément à l’article 6, paragraphe 5, du règlement intérieur de la Commission. Le principe de collégialité a été pleinement respecté.

4. Le poste de secrétaire général de la Commission requiert une vaste expérience du fonctionnement de la Commission, de ses méthodes de travail, de son processus décisionnel et de son rôle institutionnel. Ainsi que le prévoit l’article 20 du règlement intérieur de la Commission, le secrétaire général doit également assister le président et le collège dans son ensemble pour que, dans le cadre des orientations politiques que le président a définies, la Commission réalise les priorités qu’elle a elle-même fixées. Dès lors, il doit jouir de la pleine confiance du président et de l’ensemble de la Commission.

5. La personne qui occupe actuellement le poste remplit pleinement ces critères, ainsi que toutes les conditions de procédure énoncées dans le statut: en tant que fonctionnaire de grade AD15 cumulant huit années d’expérience dans l’encadrement supérieur au sein de la Commission et sept années d’expérience professionnelle acquise avant de rejoindre la Commission, elle était tout à fait qualifiée pour être mutée au poste de secrétaire général, après sa nomination en tant que secrétaire général adjoint, par décision du collège en application de l’article 7, paragraphe 1, du statut des fonctionnaires de l’Union européenne. En outre, avant sa nomination par le collège à l’unanimité le 21 février, le nouveau secrétaire général a suivi la procédure complète de sélection, conformément aux règles de la Commission concernant les nominations aux postes de directeur général et de directeur général adjoint, à savoir une journée complète en centre d’évaluation, un entretien, une évaluation et la remise d’un avis du comité consultatif des nominations, un entretien avec le commissaire chargé du budget et des ressources humaines et un entretien avec le président Juncker.

6. Afin de garantir le bon fonctionnement de l’institution, il est dans l’intérêt de la Commission d’éviter des situations dans lesquelles le poste de secrétaire général devient vacant. Il convient de noter que depuis la nomination d’Émile Noël en tant que premier secrétaire général de la Commission, jamais le poste de secrétaire général n’a été vacant. Dans le cas de la nomination du nouveau secrétaire général, toutes les

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4 Comme le Tribunal l’a établi, le fait d’occuper un poste de chef de cabinet est considéré comme équivalent à une expérience d’encadrement au sein de la Commission (affaires jointes T-118/04 et T-134/04, Caló/Commission, points 212 et 213).

5 L’exigence formelle requise pour être nommé à une fonction au niveau de directeur général est d’avoir au moins le grade AD14 (avec au minimum deux ans d’ancienneté dans le grade pour les fonctionnaires de grade AD14) et au minimum deux années d’expérience en tant que membre de l’encadrement supérieur au niveau de directeur ou supérieur.
conditions permettant de recourir à la procédure de mutation prévue par l’article 7, paragraphe 1, du statut étaient remplies. Les trois secrétaires généraux précédents avaient été nommés selon la même procédure.

7. Le président de la Commission a été prévenu du départ en retraite du secrétaire général précédent le 20 février 2018, lorsque ce dernier lui a fait part de son intention de signifier par écrit, le matin suivant, son départ à la retraite. Le même jour, le commissaire Oettinger a été informé de cette décision par le président, ainsi que de l'intention du président de proposer, en conséquence, la mutation de son chef de cabinet au poste de secrétaire général. Le commissaire Oettinger a exprimé son plein accord. Le président a également consulté, le 20 février, le premier vice-président Timmermans, qui a lui aussi marqué son accord sur sa proposition.

8. Le service du porte-parole de la Commission a répondu factuellement, au mieux de ses connaissances et de manière exhaustive, à toutes les questions qui ont été posées sur cette procédure. La Commission est prête à envisager la possibilité d'accompagner les décisions concernant son encadrement supérieur d’exposés techniques au cours desquels des experts de la direction générale des ressources humaines pourraient expliquer les procédures légales ou techniques à la presse.

9. La Commission est disposée à réexaminer, avec les autres institutions de l’UE, la manière dont l’application des règles et procédures peut être améliorée à l’avenir. Ce faisant, il importe de ménager l’équilibre entre le principe de transparence et la nécessité de veiller à ce que les décisions concernant l’encadrement supérieur adoptées par la Commission ne deviennent pas l’objet de tractations entre États membres et/ou partis politiques, ce qui pourrait mettre en cause, en ce qui concerne la Commission, l’esprit supranational de l’administration publique européenne et l’objectif de sélectionner des cadres supérieurs hautement qualifiés. Le commissaire Oettinger a proposé d’organiser une table ronde interinstitutionnelle sur cette question.
II. Les réponses de la Commission

1. La résolution du Parlement indique que la nomination «pourrait être considérée comme une sorte de coup de force à la limite de la légalité, voire dépassant cette limite». Quelles réflexions cette qualification de la manière dont la nomination s’est effectuée inspire-t-elle à la Commission et quels enseignements éventuels cette dernière a-t-elle tiré de cette affaire en général?

Un coup de force est défini comme une confiscation soudaine, violente et illégale du pouvoir d’un gouvernement, au cours de laquelle des militaires ou d’autres élites au sein de l’appareil d’État prennent le contrôle de l’État de manière illégale et non dissimulée. La Commission ne comprend pas comment une décision du collège des commissaires, proposée par le président et approuvée à l’unanimité par l’ensemble des membres de la Commission, peut être comparée à «une sorte de coup de force». Pour nommer le nouveau secrétaire général, la Commission a respecté toutes les règles dans la lettre et dans l’esprit, à tout moment, et a agi dans l’intérêt de l’institution.

En proposant le nouveau secrétaire général à la Commission, le président Juncker voulait s’assurer que les travaux de l’institution se poursuivraient sans heurt et de manière efficace. Il voulait aussi éviter toute possibilité que cette nomination devienne l’objet de tractations entre États membres et/ou partis politiques qui auraient pu avoir pour conséquence que le poste reste vacant après le départ en retraite du secrétaire général précédent. Il avait également besoin d’une personne digne de confiance et expérimentée pour occuper ce poste, quelqu’un sur lequel le collège pouvait compter et qui pouvait reprendre le poste avec effet immédiat et de manière efficace. La nécessité de ne pas perturber les travaux de la Commission à ce moment crucial du mandat et de présenter des propositions de grande qualité est primordiale pour l’institution et pour la réalisation de ses priorités et du programme sur la base duquel elle a été élue par le Parlement européen.

Comme pour toutes les autres nominations concernant l’encadrement supérieur, la Commission a agi avec confidentialité et discrétion lors de la prise de décision. Les trois secrétaires généraux précédents avaient tous été nommés selon la même procédure.

La Commission est disposée à examiner, pour l’avenir, la possibilité d’accompagner les nominations importantes concernant l’encadrement supérieur d’exposés techniques détaillés présentés par des experts de la direction générale des ressources humaines qui peuvent expliquer à la presse les dispositions du statut et autres règles pertinentes.
2. La Commission n’a pas répondu à plusieurs questions du Parlement sur la manière dont cette nomination a pu abîmer la confiance en l’UE dans son ensemble. La Commission voudrait-elle maintenant, avec le recul, s’interroger sur ce point et exposer son point de vue sur la question de savoir si cette nomination a nui à la confiance placée dans l’UE? Considère-t-elle que la critique généralisée de la manière dont la nomination s’est faite était justifiée?

La Commission a répondu clairement, honnêtement et de manière compréhensible à toutes les questions posées par le Parlement européen sur le sujet.

En ce qui concerne la question de la confiance en l’UE, la Commission ne partage pas l’avis selon lequel la confiance des citoyens a été ébranlée, affirmation que ne corroborent pas non plus les dernières enquêtes Eurobaromètre. 67 % des citoyens de l’Union soutiennent l’Union européenne et sont convaincus que leur pays a bénéficié du fait d’en être membre. Plus précisément, la confiance en la Commission européenne a augmenté de 4 points de pourcentage par rapport à l’année dernière, un plus grand nombre de personnes exprimant leur confiance en la Commission européenne (46 % ont plutôt confiance, contre 36 % qui n’ont plutôt pas confiance).

La Commission ne considère pas que les critiques exprimées à propos de la nomination du nouveau secrétaire général étaient justifiées. Au contraire, elles étaient basées sur une série d’allégations non fondées, d’informations incorrectes et, globalement, sur la contestation de la prérogative de la Commission de nommer les membres de son encadrement supérieur. La Commission est prête à assumer toutes ses responsabilités politiques, mais elle n’acceptera pas qu’une procédure interne, suivie dans le respect intégral du statut, tel qu’interprété par la jurisprudence des juridictions de l’UE, et de son propre règlement intérieur, puisse être considérée comme nuisant à la confiance en l’UE. La Commission a agi dans les limites de ses compétences, a appliqué les règles et a statué à l’unanimité sur la nomination du nouveau secrétaire général.

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7 Enquête Flash Eurobaromètre menée entre le 17 et le 26 mars 2018, disponible à l’adresse suivante: http://ec.europa.eu/comfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2180
3. Bien qu’il soit important que les postes d’encadrement supérieur de la Commission ne fassent pas l’objet de tractations entre États membres ou partis politiques, mais plutôt de décisions du collège des commissaires, comment la Commission veillera-t-elle à l’avenir à ce que ces décisions soient fondées sur les principes de transparence et d’égalité et sur les qualifications et le mérite?

Les règles en vigueur sont très claires – lorsqu’un poste doit être pourvu, le statut autorise l’autorité investie du pouvoir de nomination (pour les postes de l’encadrement supérieur, il s’agit du collège des commissaires) à choisir entre deux possibilités:

- l’organisation d’une procédure de sélection, en application de l’article 29, paragraphe 1, du statut, ou
- une mutation dans l’intérêt du service, en application de l’article 7, paragraphe 1, du statut.

Le statut n’établit pas d’ordre de préférence entre ces deux possibilités et il n’existe pas de référence dans la jurisprudence concernant le fait qu’une procédure serait la norme et l’autre l’exception. Les deux solutions sont d’égale valeur juridique et sont interchangeables. Dans tous les cas et quelle que soit la procédure retenue, la Commission tient toujours compte des compétences, des qualifications, de l’expérience et des mérites du fonctionnaire concerné.

La Commission estime que les procédures existantes sont suffisamment robustes. Conformément à son attachement à l’objectif de maintien d’une administration publique européenne d’excellence, elle est ouverte à des discussions constructives sur l’application du cadre juridique existant. La Commission est donc prête à examiner s’il serait possible d’améliorer l’application des règles et procédures à l’avenir, et comment. Ce faisant, il importe de ménager l’équilibre entre le principe de transparence et la nécessité de veiller à ce que les décisions concernant l’encadrement supérieur adoptées par la Commission ne deviennent pas l’objet de tractations entre États membres et/ou partis politiques, Le commissaire Oettinger a proposé d’organiser une table ronde interinstitutionnelle, qui permettra de débattre de la manière dont il serait possible de garantir l'excellence et l'indépendance de la fonction publique de l’Union européenne, pour le bien et dans l’intérêt commun des citoyens de l’Union.

4. La Commission partage-t-elle l'affirmation contenue dans la résolution du Parlement européen, selon laquelle «les nominations aux postes de haut niveau, comme celui de secrétaire général, devraient s'effectuer d'une manière indépendante d'autres nominations, afin d'éviter ainsi toute suspicion de compromis ou de compensations opaques fondés sur des informations confidentielles»? La Commission peut-elle commenter cette affirmation?

Lorsqu’il s’agit de nommer des personnes à des postes d’encadrement supérieur, il ne saurait être question de «compromis» ou de «compensations». Cela irait à l’encontre du statut et de l’objectif de décider des nominations exclusivement sur la base des mérites et des qualifications. Lorsque la Commission adopte une série de décisions individuelles concernant l’encadrement supérieur, toutes ces décisions – sans exception – sont toujours soumises aux dispositions procédurales applicables. La Commission ne voit aucune raison pour laquelle les nominations à certains postes ne seraient pas décidées en même temps que d’autres. Les mêmes règles s’appliquent à toutes les nominations et le nombre de décisions que le collège doit adopter chaque jour et lors de ses réunions hebdomadaires ne change rien à la qualité ou au contenu de chaque décision, ni ne les influence.

La Commission conteste également l’idée de «compensations» associée aux nominations de membres de l’encadrement supérieur. Chaque décision est fondée sur les mérites propres et les qualifications de chaque personne concernée, ainsi que sur les besoins de l’institution. La Commission est particulièrement attentive au respect des règles et procédures régissant les droits des candidats aux différents postes.

En outre, la Commission récuse le fait que les nominations soient fondées sur des «informations confidentielles». Conformément à la pratique normale et aux fins d’assurer le niveau de confidentialité nécessaire, les nominations au niveau du poste de directeur général ou de directeur général adjoint au sein de la Commission sont, sans exception, directement présentées au collège le jour même où la Commission se prononce à leur égard. La participation des membres de la Commission, lors de l’élaboration des différentes propositions, dépend de leur portefeuille respectif – tous les membres de la Commission concernés sont consultés sur les décisions relatives à l’encadrement supérieur relevant de leur sphère de compétence respective avant que ces décisions ne soient soumises à l’approbation de la Commission.

La possibilité d’ajouter des points à l’ordre du jour de la réunion du collège s’il le juge nécessaire est une prérogative du président – conformément à l’article 6, paragraphe 5, du règlement intérieur de la Commission, la Commission peut, sur proposition de son président, délibérer sur une question non inscrite à l’ordre du jour, ce qu’elle fait régulièrement. Le collège des commissaires est composé de personnalités politiques chevronnées qui ont connaissance de cette prérogative du président et tout membre de la Commission peut intervenir, exprimer son opinion et demander le report d’un point s’il le souhaite pendant la réunion de la Commission.
5. La Commission Juncker est un organe exécutif politique qui tire sa légitimité des élections parlementaires européennes et s'appuie sur une fonction publique indépendante. Bien que sa structure soit comparable à celles de nombreux gouvernements d’États membres, la Commission peut-elle décrire la manière dont elle gère les relations de travail entre les instances politiques (c’est-à-dire les commissaires et leurs cabinets) et les instances administratives, au niveau de l’encadrement supérieur ?

Dans une Commission politique, des responsables politiques, les membres du collège, conduisent des politiques dans le cadre délimité par les traités, sur la base des priorités fixées par la Commission, expriment leur opinion et assumption la responsabilité des décisions prises, et rendent compte au Parlement européen.

Dans l’accomplissement de leur mission, les membres de la Commission peuvent s’appuyer sur une administration européenne ouverte, efficace et indépendante, telle que prévue par l’article 298 du traité sur le fonctionnement de l’Union européenne. L’administration de la Commission et son personnel assistent les membres de la Commission dans la préparation et l’exécution de leurs tâches et dans la mise en œuvre des priorités et des orientations politiques fixées par le président (article 21, premier alinéa, du règlement intérieur).

L’action politique est encadrée par des règles exigeant de tout fonctionnaire de la Commission et des membres du collège qu’ils agissent de manière indépendante et servent en toute occasion les intérêts de l’Union européenne.


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9 Article 11 du statut.
dossiers liés à son portefeuille et l'informe de tout sujet pertinent relatif à la mise en œuvre des priorités ou à la gestion de ses services. Il est responsable de la bonne mise en œuvre devant le membre de la Commission et le Collège.»
6. Les citoyens attendraient de la fonction publique européenne qu’elle conseille en toute indépendance, tout en étant nécessairement consciente de l’environnement politique dans lequel elle fonctionne. Comment la Commission veille-t-elle à ce que, lorsqu’une personne ayant occupé un poste politique à haut niveau accède à l’encadrement supérieur de la fonction publique indépendante, les citoyens puissent être rassurés quant à l’impartialité de la fonction publique permanente?

La Commission dispose d’une fonction publique hautement qualifiée qui œuvre dans l’intérêt de 500 millions de citoyens européens.

Il n’y a pas de «postes politiques» au sein du personnel de la Commission: l’ensemble du personnel de la Commission, dans les cabinets comme dans les différents services, est soumis, dans son travail quotidien, aux mêmes règles et normes éthiques élevées, qui lui imposent d’agir en toute indépendance dans l’intérêt de l’Union. Les règles et normes existantes s’appliquent à tout le personnel, sans exception; tout le personnel est soumis aux mêmes devoirs et obligations.

Les règles sont énoncées dans le statut et ses modalités d'application, ainsi que dans d’autres documents tels que le règlement financier et le code de bonne conduite administrative. Elles couvrent l’indépendance par rapport aux influences extérieures, les conflits d’intérêts potentiels, les cadeaux et distinctions honorifiques, les activités extérieures menées tout en travaillant pour l’UE, l’activité professionnelle exercée après cette période d’emploi, les relations avec le public et les obligations de fournir des conseils avisés et objectifs aux supérieurs, ainsi que l’obligation pour les membres du personnel de rendre compte de leurs actions à titre individuel.

La Commission s’efforcera toujours de veiller au respect de ces règles. Le personnel de la Commission est tenu de suivre au moins une formation sur l’éthique et l’intégrité. Tout citoyen peut déposer une plainte s’il estime qu’un fonctionnaire a enfreint le code de bonne pratique administrative. Les décisions de la Commission sont soumises à un contrôle public et institutionnel permanent. En outre, l’Office d’investigation et de discipline (IDOC) de la Commission et l’Office européen de lutte antifraude veillent à ce que les (anciens) fonctionnaires et autres agents respectent le statut, en menant des enquêtes administratives et des procédures disciplinaires de manière équitable, transparente et en temps utile.
7. La Commission a admis des problèmes de communication en lien avec cette nomination. Quelles mesures la Commission entend-elle prendre à l’avenir pour améliorer sa gestion des questions pertinentes et légitimes posées par les médias, en gardant à l’esprit que ces échanges sont souvent le seul moyen pour les citoyens d’obtenir des réponses à leurs préoccupations.

La Commission reconnaît l’importance d’une communication ouverte et transparente et demeure fermement déterminée à apporter des réponses aux questions des médias et du grand public. Elle reconnaît que les médias jouent un rôle important pour communiquer des informations au public, notamment sur l’action de l’UE. C’est la raison pour laquelle la Commission organise chaque midi un point presse, diffusé en direct, au cours duquel plus de 1 100 journalistes accrédités peuvent poser des questions sur les politiques de l’UE. Il s’agit là d’un service unique qui témoigne de notre volonté d’ouverture et de transparence.

La Commission sait aussi combien il est particulièrement important d’apporter des réponses aux préoccupations des citoyens. C’est pourquoi, depuis 2014, elle organise dans tous les États membres de l’UE des dialogues citoyens au cours desquels des membres de la Commission répondent directement aux questions et aux idées exprimées par des citoyens. La Commission actuelle a considérablement intensifié ses efforts de communication avec le public, ce qui lui a permis de toucher plus de 17 millions de personnes au moyen de 727 dialogues citoyens (dont 10 dialogues en direct sur Facebook) organisés en 285 lieux de l’UE.

Si la Commission est toujours disposée à renforcer encore sa communication avec les médias et le grand public et à faire preuve de davantage de clarté et de pédagogie lorsqu’il s’agit d’expliquer des procédures techniques et juridiques, elle considère aussi qu’il n’y a pas eu de problème de communication en lien avec la nomination du nouveau secrétaire général. Par contre, au cours d’une campagne à charge, de fausses informations ont été diffusées, des explications incorrectes sur la procédure de nomination et les exigences applicables au poste ont été publiées et des informations personnelles protégées par le statut et les règles de l’UE sur la protection des données à caractère personnel ont été utilisées illicITEMENT. La Commission continuera donc de rétablir les faits, de corriger les informations erronées et de défendre la nomination du nouveau secrétaire général, qui s’est faite dans le plein respect de toutes les règles et procédures existantes.