**Follow up to the European Parliament non-legislative resolution of 18 April 2018 on the integrity policy of the Commission, in particular the appointment of the
Secretary-General of the European Commission**

**2018/2624 (RSP)**

**1. Resolution tabled pursuant to Rule 123(2) of the European Parliament's Rules of procedure by Ingeborg GRÄSSLE (EPP/DE), Claudia SCHMIDT (EPP/AT), Tomáš ZDECHOVSKÝ (EPP/CZ), Joachim ZELLER (EPP/DE), Ryszard CZARNECKI (ECR/PL), Monica MACOVEI (ECR/RO) and Indrek TARAND (Greens/EE) on behalf of the Committee on Budgetary Control (CONT)**

**2. EP reference number:** B8-0214/2018 / P8\_TA-PROV(2018)0117

**3. Date of adoption of the resolution:** 18 April 2018

**4. Subject:** Integrity policy of the Commission, in particular the appointment of the Secretary-General of the Commission

**5. Competent Parliamentary Committee:** Committee on Budgetary Control (CONT)

**6. Brief analysis / assessment of the resolution and requests made in it:**

This resolution provides the Parliament's assessment of the appointment of the Secretary-General of the Commission and makes, in this regard, a number of calls on the Commission as well as all other EU institutions in relation to senior management appointments.

The Commission has already provided detailed information on this matter in its replies to the Budgetary Control Committee of the European Parliament of 24 March[[1]](#footnote-1) and 4 April 2018[[2]](#footnote-2) in particular confirming the legality of the decision by reference to the Staff Regulations as interpreted by the EU jurisdictions' case law and to the Commission's Rules of Procedure. These replies represent the position of the Commission on the questions raised by the European Parliament.

The Commission would like to make clear from the outset the following nine points and principles that underpin the decision taken on the appointment of the new Secretary-General.

1. The Commission took the decision to appoint the new Secretary-General on 21 February 2018, as part of a series of senior management appointments, by unanimity of all 28 Members of the College. In doing so, the Commission acted in full compliance with the EU Staff Regulations, as interpreted by the EU jurisdictions' case law[[3]](#footnote-3) and with its Rules of Procedure.

2. President Juncker made the proposal to appoint the new Secretary-General in agreement with Commissioner Oettinger and after consultation with First Vice-President Timmermans. Both of them gave their agreement to the proposed appointment.

3. In accordance with normal practice, and to safeguard the necessary degree of confidentiality, the proposed appointment was presented directly to the College on the same day that the College took the decision. It is a prerogative of the President to add items to the College agenda, in line with Article 6(5) of the Rules of Procedure of the Commission. The principle of collegiality was fully respected.

4. The Secretary-General of the Commission is a position that requires extensive experience with regard to the functioning of the Commission, its working methods, its decision-making process and its institutional role. As foreseen in Article 20 of the Commission's Rules of Procedure, the Secretary-General also needs to assist the President and the College as a whole, so that, in the context of the political guidelines laid down by the President, the Commission achieves the priorities that it has set itself. He or she must therefore have the full trust of the President and of the entire Commission.

5. The person currently occupying the post fully meets these requirements, as well as all the procedural conditions laid down in the EU Staff Regulations: as an AD15 official with eight years of senior management experience in the Commission[[4]](#footnote-4) and seven years of professional experience prior to joining the Commission, the person was fully qualified to be transferred to the Secretary-General post, after his appointment of Deputy Secretary-General, by a decision of the College under Article 7(1) of the EU Staff Regulations[[5]](#footnote-5). In addition, prior to this appointment, the new Secretary-General underwent a full selection procedure, as required by Commission rules for the appointments of Directors-General and Deputy Directors-General, including participation in a full day Assessment Centre, an interview, assessment and opinion by the Consultative Committee on Appointments; and an interview with the Commissioner in charge of Budget and Human Resources and with President Juncker before being appointed by the College unanimously on 21 February.

6. In order to guarantee the seamless functioning of the institution, it is in the interest of the Commission to avoid situations where the function of the Secretary-General becomes vacant. It should be noted that since the appointment of Emile Noël as the Commission's first Secretary-General, the position of Secretary-General has never been vacant. In the case of the appointment of the new Secretary-General, all the conditions for using the transfer procedure of Article 7(1) of the Staff Regulations were fulfilled. The three previous Secretaries-General were appointed on the basis of the same procedure.

7. The retirement of the previous Secretary-General was communicated to the President of the Commission on 20 February 2018, when he informed the President about his intention to submit his retirement letter the next morning. On the same day, Commissioner Oettinger was informed by the President about this intention and that consequently the President would propose that his Head of Cabinet be transferred to the post of Secretary-General. Commissioner Oettinger expressed his full agreement. The President also consulted First Vice-President Timmermans on his proposal on 20 February who gave his agreement.

8. The Commission's Spokesperson's Service replied factually, to the best of its knowledge and comprehensively to all the questions received on this procedure. The Commission is ready to consider the possibility to accompany senior management decisions with technical briefings where experts from the Human Resources Directorate-General could explain legal or technical procedures to the press.

9. The Commission stands ready to reassess, together with the other EU institutions, how the application of the rules and procedures can be improved in the future. In doing so the principle of transparency must be reconciled with the need to ensure that senior management decisions adopted by the Commission do not become the objective of negotiations between Member States and/or political parties. This could call into question, with regard to the Commission, the supranational spirit of the European Public Administration and the goal of having highly qualified senior managers. Commissioner Oettinger has launched a proposal to organise an interinstitutional round table on this matter.

**7. Response to requests and overview of actions taken, or intended to be taken, by the Commission**

The Commission welcomes that the resolution, in recital C, recognises that – under the Treaties – all EU institutions are autonomous in matters related to their organisation and personnel policy.

Furthermore, the Commission welcomes that the resolution in point 22 rightly states that the decision to appoint the new Secretary-General cannot be revoked. The Commission took the decision to appoint the new Secretary-General by unanimity of all 28 Members of the College. In doing so, the Commission acted in full compliance with the EU Staff Regulations, as interpreted by the EU jurisdictions' case law[[6]](#footnote-6) and with its Rules of Procedure.

A coup is defined as "*a sudden, violent, and illegal seizure of power from a government”* where *“the illegal and overt seizure of a state by the military or other elites within the state apparatus occurs.*" The Commission does not understand how a decision of the College of Commissioners, proposed by the President and supported unanimously by all the Members of the Commission, can be compared with such a "*coup-like action*". In appointing the new Secretary-General, the Commission respected all the rules to the letter and in their spirit at all times and acted in the interest of the institution.

The Commission does not share the European Parliament's assessment that "*credibility of the EU"* has been affected by the appointment of the new Secretary-General, as noted in point 26. This assumption is not supported by the latest Eurobarometer surveys either. The European Parliament's Eurobarometer shows the highest support for the EU in 35 years with 67% of EU citizens being convinced that their country has benefitted from EU membership[[7]](#footnote-7). In addition, new Eurobarometer figures show in particular that trust in the European Commission has in fact increased by 4 percentage points compared to last year with a larger percentage of people expressing their trust in the European Commission (46% tend to trust versus 39% who tend not to trust)[[8]](#footnote-8). In addition, 67% of EU citizens believe it is beneficial to be a member of the European Union ̶ the highest score ever measured since 1983. The Commission cannot see how an internal procedure, made in full compliance with the EU Staff Regulations, as interpreted by the EU jurisdictions' case law and with its Rules of Procedure, can be considered as damaging the trust and credibility in the EU.

Trust is not given – it has to be earned and the Commission agrees that to maintain this trust in the European project and in the European Union, all EU institutions need to act as role models in the fields of rule of law, transparency and good administration. It is for this very reason that the Commission is open to constructive discussion about the application of the existing legal framework and stands ready to assess whether and how the application of the current rules and procedures could be improved in the future. In doing so the principle of transparency must be reconciled with the need to ensure that senior management decisions adopted by the Commission do not become the object of negotiations between Member States and/or political parties. This could call into question, with regard to the Commission, the supranational spirit of the European Public Administration and the goal of having highly qualified senior managers. Commissioner Oettinger has launched a proposal to organise an inter-institutional round table. This will allow for discussions on how to guarantee the excellence and independence of the EU civil service working for the benefit of and in the common interest of EU citizens.

The Commission recognises the importance of open and transparent communication and continues to encourage the press and the public to hold it to account. For that reason, the Commission organises a daily midday briefing which is broadcast live and where over 1100 accredited journalist can ask any question related to EU policies. This is a unique service and proof of the Commission's commitment to openness and transparency. In this spirit, the Commission has replied factually, to the best of its knowledge and comprehensibly to all the questions it has been asked on this matter. The Commission is ready to consider the possibility to accompany senior management decisions with technical briefings where experts from the Human Resources Directorate-General could explain legal or technical procedures to the press.

Finally, while Commission is always ready to further strengthen its communication with the media and the general public and to be more clear and pedagogic when explaining technical and legal procedures, the Commission considers that there was no failure in communication in relation to the appointment of the new Secretary-General. Instead, in a negative campaign, false information was disseminated, incorrect explanations of the appointment procedure and the requirements for the post were published and personal information that is protected on the basis of the EU Staff Regulations and EU rules on data protection was used illegally. The Commission will therefore continue to set the record straight, correct misinformation and defend the appointment by the Commission of the new Secretary-General which was done in full respect of all existing rules and procedures.

Over and above these more general considerations, a number of points in the resolution merit clarification.

1. Minutes are kept of all meetings of the Commission’s Consultative Committee on Appointments, contrary to the statement in point 2 of the resolution.

2. Concerning the career path of the new Secretary-General set out in points 3 and 4, it should be clarified that following his reintegration as Head of Vice-President Reding’s Cabinet on 1 June 2014, the Commission took a decision on 11 June 2014 to appoint him Principal Adviser in the Directorate-General for Economic and Financial Affairs with effect of 1 July 2014. His secondment as Head of the Transition Team of the President-elect of the European Commission ran from 2 July 2014 to 31 October 2014 when he was seconded on 1 November 2014 as Head of Cabinet of the President. His promotion to grade AD15 in his basic career occurred during his tenure as Head of Cabinet and took effect on 1 January 2017, not at the end of his secondment.

3. The Commission would like to draw the attention to the fact that the *"rapid career path"* of the new Secretary-General, referred to in point 4, is by no means unprecedented. There are other examples of officials who have had a swift career path in the Commission – which is always merit-based. At least three officials have gone from Director to Director-General faster than the new Secretary-General did. Since the 2004 reform of the Staff Regulations, the Commission has also appointed a number of young, highly qualified Directors-General (one at the age of 43, three at the age of 45) and Deputy Directors-General (one at the age of 37, three at the age of 43, one at the age of 44) – all younger than the new Secretary-General is today (he is 47). He is also not the youngest Director-General in the Commission today – one of his colleagues is 44 – neither is he the youngest Secretary-General in the history of the Commission[[9]](#footnote-9).

The assertion in point 5 that the new Secretary-General *"has not performed any management tasks within the Commission services"* is not correct. The Head of Cabinet of the President has extensive management responsibilities. Not only does she/he manage and lead a team of 30 highly qualified collaborators, but also, as first adviser of the President, she/he deals with matters of exceptional complexity and high-level stakeholder management. She/ he notably plays a key role in preparing the weekly College meetings and their follow-up, together with the Heads of Cabinet of the other Members of the College. She/ he is also in charge of complex high-level negotiations, acting as sherpa of the President where the latter designates her/ him to be the sherpa. As the General Court has found, being Head of Cabinet qualifies as gaining management experience within the Commission[[10]](#footnote-10).

4. The successful exercise of the functions of Secretary-General[[11]](#footnote-11) requires not only managerial experience and a strong experience with regard to the functioning of the Commission, its working methods, its decision-making process and its institutional role. As foreseen in Article 20 of the Commission's Rules of Procedure, the Secretary-General also needs to assist the President and the College as a whole, so that, in the context of the political guidelines laid down by the President, the Commission achieves the priorities that it has set itself. He or she must therefore have the full trust of the President and of the entire Commission, as also noted by the resolution. President Juncker also needed a trustworthy and knowledgeable person in this role, someone whom the College can rely on and who could take over the post immediately and effectively. The need not to disrupt the work of the Commission at this crucial moment in the mandate, and to deliver high level quality proposals is of essence for the institution and for the completion of its priorities and the programme on the basis of which it was elected by the European Parliament.

5. The person currently occupying the post fully meets these requirements, as well as all the procedural conditions laid down in the EU Staff Regulations: as an AD15 official with eight years of senior management experience in the Commission and seven years of professional experience prior to joining the Commission, the person was fully qualified to be transferred to the Secretary-General post, after his appointment of Deputy Secretary-General, by a decision of the College under Article 7(1) of the EU Staff Regulations[[12]](#footnote-12). In addition, the new Secretary-General underwent a full selection procedure, as required by Commission rules for the appointment of Directors-General and Deputy Directors-General, including participation in a full day Assessment Centre, and an interview, assessment and opinion by the Consultative Committee on Appointments; an interview with the Commissioner in charge of Budget and Human Resources and with President Juncker before being appointed by the College unanimously on 21 February.

6. In appointing the new Secretary-General, President Juncker wanted to ensure that the work of the institution continues smoothly and efficiently. He also wanted to avoid any possibility of the appointment becoming the object of negotiations between Member States and/or political parties that could have resulted from leaving this post vacant following the retirement of the previous Secretary-General. It should be noted that since the appointment of Emile Noël as the Commission first Secretary-General, the position of Secretary-General has never been vacant. The need not to disrupt the work of the Commission at this crucial moment in the mandate and to deliver high level quality proposals is of essence for the institution and for the completion of its priorities and the programme on the basis of which it was elected by the European Parliament. All the conditions for a transfer in the interest of the service on the basis of Article 7(1) of the EU Staff Regulations, as laid down in the case-law[[13]](#footnote-13), were fulfilled. It was in the interest of the institution, notably in view of the specific characteristics of the function of Secretary-General and the challenges the Commission is currently facing as well as the need to avoid a vacancy in this important function in order to guarantee the seamless exercise of the office; and the post corresponded to the function group and grade of the new Secretary-General. The three previous Secretaries-General were appointed on the basis of the exact same procedure as also noted in point 7 of the resolution.

7. The resolution contests the Commission’s use of transfers in the interest of the service in points 13, 14 and 21. The EU Staff Regulations are very clear: where a post needs to be filled, the rules allow the appointing authority (in the case of senior management posts the appointing authority is the College of Commissioners) to choose between two options:

* the organisation of a selection procedure pursuant to Article 29(1) of the Staff Regulations,
* a transfer in the interest of the service pursuant to Article 7(1) of the Staff Regulations.

The Staff Regulations do not establish an order of preference between the two options and there is no reference in the case-law[[14]](#footnote-14) to the fact that one procedure would be the norm and the other the exception. Both options are of equal legal standing and are alternative procedures. In all the cases and irrespective of the procedure chosen, the Commission always takes into account the skills, qualifications, experience and merits of the official concerned. Under the Juncker Commission 46 Directors-General/ Deputy Directors-General appointments were made using the Article 29 and 15 were made using the Article 7(1) procedure.

8. With regard to the statement expressed in point 16 of the resolution that the appointment of the Secretary-General *"did not appear on the agenda"* of the College, the Commission would like to recall that in accordance with normal practice, and in order to safeguard the necessary degree of confidentiality and discretion, senior management at Director-General and Deputy Director-General level, at the Commission are, without exceptions, presented directly to the College on the same day that the Commission decides on them. The involvement of the Members of the Commission, in preparing the different proposals, depends on their respective portfolios – all Members of the Commission concerned are consulted on decisions on senior management in their respective areas of responsibility before they are submitted to the Commission for decision. It is the prerogative of the President to add items to the College agenda when he deems necessary – in line with Article 6(5) of the Rules of Procedure of the Commission, the Commission may, on a proposal of the President, discuss any topic which is not foreseen on the agenda, and it does so on a regular basis. The Commission considers this to be an important prerogative of the President. The College of Commissioners consists of experienced politicians who are aware of this prerogative of the President and every Member of the Commission may intervene, express its opinion and ask for the postponement of an item if they so wish during the College meetings. The fact that the decision to appoint the new Secretary-General was taken unanimously by the 28 Members of the College shows that all Members of the Commission were in agreement with the proposal of the President presented in agreement with Commissioner Oettinger and after consultation and agreement of First Vice-President Timmermans.

9. The Commission considers that we have robust rules in place in order to *"maintain an excellent and independent, loyal and motivated European civil service"*, as referred to in point 23 of the resolution. In their day-to-day work, EU officials are subject to clear rules and high ethical standards which require them to act independently in the best interest of the Union. The rules are embodied in the Staff Regulations, their implementing rules and in other documents such as the Financial Regulation, and the Code of Good Administrative Behaviour. They include rules on independence towards external influence, potential conflicts of interest, gifts and honours received, external activities while working for the EU and employment after having worked for the EU. Commission staff is obliged to be independent, impartial, objective and loyal in its relations with the public. The rules and standards in place are to be applied to all Staff without exceptions. There are no political roles in the staff of the Commission; all senior managers have the same duties and obligations. All staff in the Commission, working in Cabinets or in the different services, is subject, in their day-to-day work, without exceptions, to the same rules and high ethical standards which requires them to act independently in the best interest of the Union. The Commission will always seek to ensure compliance with the abovementioned rules. Commission staff has to follow at least one Ethics and Integrity training course. The general public can file a complaint if they feel a Commission official has breached the Code of Good Administrative Behaviour. Commission decisions are under permanent public and institutional scrutiny. In addition, the Investigation and Disciplinary Office (IDOC) of the Commission and the European Anti-Fraud Office ensure that (former) officials and other agents respect the Staff Regulations by conducting administrative inquiries and disciplinary procedures in a fair, transparent and timely manner.

10. The above account shows that in appointing the new Secretary-General, the Commission respected the rules to the letter and in their spirit at all times. The Commission therefore does not consider that a revision of the Staff Regulations is necessary in this respect (as suggested in point 28). This was also the conclusion of the College discussion on the 11 April 2018 on the follow-up to the draft European Parliament resolution on integrity policy in the Commission. However, the Commission remains fully committed to discuss in the framework of the roundtable how to improve the application of the current rules.

1. <https://ec.europa.eu/commission/news/european-commission-confirms-appointment-mr-selmayr-secretary-general-decided-full-compliance-all-legal-rules-2018-mar-24_en> [↑](#footnote-ref-1)
2. <https://ec.europa.eu/commission/news/european-commission-replies-follow-questions-european-parliaments-budgetary-control-committee-appointment-its-new-secretary-general-2018-apr-04_en> [↑](#footnote-ref-2)
3. See for example joined cases 161 and 162/80, *Carbognani and Zabetta v. Commission*, points 19 et seq. and case F-24/12, *BN v. Parliament*, point 46. [↑](#footnote-ref-3)
4. As the General Court has found, being Head of Cabinet qualifies as gaining management experience within the Commission (Case T-118/04 and T-134/04, *Caló v Commission*, para. 212-213) [↑](#footnote-ref-4)
5. Formal requirement for appointment to a Director-General level function is to have the grade of AD14 or above (with a minimum of two years in the grade for AD14 officials) and a minimum of two years of management experience as a senior manager at Director level or above [↑](#footnote-ref-5)
6. See for example joined cases 161 and 162/80, *Carbognani and Zabetta v. Commission*, points 19 et seq. and case F-24/12, *BN v. Parliament*, point 46. [↑](#footnote-ref-6)
7. http://www.europarl.europa.eu/pdf/eurobarometre/2018/oneyearbefore2019/eb89\_one\_year\_before\_2019\_eurobarometer\_en\_opt.pdf [↑](#footnote-ref-7)
8. Flash Eurobarometer, survey conducted 17-26 March 2018 [↑](#footnote-ref-8)
9. Emile Noël who was 36 years old when he became Secretary-General of the Commission [↑](#footnote-ref-9)
10. Case T-118/04 and T-134/04, *Caló v Commission*, para. 212-213 [↑](#footnote-ref-10)
11. Described in detail in Article 20 of the Commission’s Rules of Procedure [↑](#footnote-ref-11)
12. Formal requirement for appointment to a Director-General level function is to have the grade of AD14 or above (with a minimum of two years in the grade for AD14 officials) and a minimum of two years of management experience as a senior manager at Director level or above. [↑](#footnote-ref-12)
13. In all the relevant judgments (see joined cases 161 and 162/80, *Carbognani and Zabetta v. Commission* C-60/80 and *Kindermann v. Commission*, 21/05/1981 to F-24/12, *BN v. Parlement*, 19/06/2014), the Court of Justice, the General Court and the Civil Service Tribunal have considered that: When a post is not vacant, a transfer can be carried out without publication upon only two conditions: this transfer has to be done in the interests of the service and this transfer has to respect the equivalence of both grade and function. There are no references to the fact that such transfer shall be done only upon an exceptional basis. [↑](#footnote-ref-13)
14. See for example Case 69/83, 23 June 1984, *Lux v Court of Auditors*, point 17 and case F-24/12, 19 June 2014, *BN vs Commission*, point 47. [↑](#footnote-ref-14)