

# Questions to the President of the Commission on the appointment of Martin Selmayr as the Commission's Secretary General

## Questions tabled by the Greens/EFA

### On the facts:

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

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

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

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

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

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

3. **Why did Mr Juncker the day before the actual appointment of Head of his cabinet as the new Dep Sec Gen of the Commission inform the FVP of his intention and not also all other members of the Commission's College given that the FVP plays no formal role in the procedure?**
4. **Did Mr Juncker in the evening of 20 February inform the FVP of his intention to replace a Dutch SG (Italianer) with M. Selmayr already on 21 February?**

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

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

5. **Had Mr Oettinger to the point of conducting this interview been aware that, in reality, the procedure had been started for the sole purpose of making M. Selmayr eligible for the post of SG? In other words, can Commissioner Oettinger confirm that he was fully aware, from**

**20 February, of the President's intention to appoint Selmayr to the post of SG the following day?**

**On the Legal framework:**

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

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

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

Under both procedures, given that the Secretariat General is a body that depends directly on the President, the appointment is decided by the College based on a proposal by the President. However, in accordance with the principle of legality (of which, moreover, the Commission is a guarantor within the Union, in its capacity as guardian of the Treaties), both the President and the College, in exercising their discretionary powers, are subject to, and must observe, the Staff Regulations. This is supported by the fact that **the posts of SG and DSG are administrative posts and therefore not comparable with the "political" posts of cabinet members**, which are filled through a simple choice made by the relevant member of the College.

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

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

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

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

**On the Possible Legal irregularities:**

- A) Procedure for the appointment of the DSG

**Misuse of powers:** It's hard to believe that right from the outset, the sole purpose of the procedure for the appointment of the DSG was not only to ensure M. Selmayr's eligibility for his contextual transfer to the post of the SG.

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

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

9. **Please provide the CONT Committee with the original text of the Call for candidates for the vacant post of the DSG of the Commission?**
10. **When was the position of the DSG opened? How was it brought to the attention of those who fulfilled the criteria to participate in this vacancy? How many candidatures did the Commission receive? How many candidates took part in the external evaluation? If fewer candidates participated in the external evaluation than candidatures received, can the Commission provide us with reasons why some candidates would change their intention to run for a position of DSG?**
11. **When and where did the external evaluation of the candidate/candidates take place? Who/What company was in charge for this evaluation? What were the results?**
12. **When did the interview with the Consultative Committee on Appointment (CCA) take place? What were the results? How was the CCA composed?**
13. **When exactly took the interview place between the selected candidate and Mr Juncker and Mr Oettinger? How long did that interview last? And what was the result? Please provide the CONT Committee with the minutes of the interview.**

#### **On the Violation of the combined provisions of Article 29 of the Staff Regulations**

(concerning the procedure for promotion, in regard to the principle of indirect non-discrimination, in regard to the principle of effective use of competitive procedures to fill the vacancy as recognised by the Compilation Document on Senior Officials Policy (hereinafter referred to as the "Compilation Document") approved and adopted by the College):

It has been established that only one other candidate, who worked as Selmayr's direct subordinate, submitted an application for the post, and in fact withdrew it even before it was examined by the Consultative Committee on Appointments (CCA). CCA is responsible for reviewing applications before they are submitted to the College for decision.

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

By adopting its internal guidelines, the Commission has clearly set itself the following rule: *"The lists adopted by the CCA should in any event offer the Commissioners a satisfactory choice of candidates. The responsible Commissioners need on the one hand to have the widest choice of suitably qualified candidates and on the other to have a list of candidates for interview which does not impose on them a major burden of comparative assessment of a large number of candidates"* (point 5.2.6 of the Compilation Document). When this is not the case, according to the CCA rules of procedure

(Article 1(2) (2) of Decision C (2007)380), “at the request of one of its members, after hearing the Director-General concerned and, if required, the Rapporteur appointed to follow the specific selection procedure, the CCA may suggest that a wider choice of candidates should be proposed to the Appointing Authority.” A vacancy notice must be published and it must give potential candidates enough time to decide whether or not they wish to apply (this reflects a general principle: cf. C-566/10 P, Italy/ Commission, point 90).

**15. Can the Commission confirm this interpretation of the Staff Regulation? If not, can it point to the incorrect part of our interpretation and also correct the incorrect interpretation?**

The number of candidates (two?) who applied for the post of DSG shows that the publication of the vacancy notice did not ensure the participation of a sufficient number of candidates to allow “a satisfactory choice”.

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

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

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

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

**B) Procedure for the appointment of the SG**

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

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

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

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

In the case under consideration, the request for early retirement and M. Selmayr’s appointment to the posts of DSG and SG took place at the same time. Furthermore no other members of the Commission’s College was said to be informed of these intentions until the meeting of the College of 21 February, with the exception of Mr. Oettinger and Mr. Timmermans.

- 20. In case the statement above is not true – Could the Commission present signed statements of the individual members of the College that they were informed about the planned appointment of M. Selmayr before the exact day of his appointment and present the mails informing them on the issue?**
- 21. Was the issue discussed on beforehand in the preparatory meeting of Heads of Cabinets of all Commissioners? If not, why?**
- 22. Can the Commission insure CONT Committee that the post did not fall vacant, and that staff was notified of the vacancy in accordance with Article 4? What was done in due time to make the call for applicants transparent and made it possible to other eligible persons/potential candidates to run for the post on an equal footing?**
- 23. Can Mr Oettinger explain whether – and in what ways – he ensured compliance with the essential conditions laid down in Article 4 with regard to filling a vacant post (which also apply to the position of SG).**
- 24. Could Mr Oettinger explain in what sense did the appointment of M. Selmayr differ from process of choosing a member of a private office (as appointments to the highest administrative post should follow the Staff Regulations to the last letter)?**
- 25. Could Mr Juncker explain if he considers it a usual decision making procedure, when these kind of important decisions pass the College without any debate?**

**Other questions and requests for documents:**

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

Press articles suggest that Mr. Selmayr still chairs (while already in his new position as SG)-President Juncker's cabinet meetings and that Mrs Martínez, now Head of cabinet of President Juncker, will become the next Commission's DG for the legal service<sup>9</sup>.

**27. Can the Commission confirm or deny these suggestions? How does the Commission plan to exercise its judicial role independently from Commission's political role in case such appointments are made?**

**28. The Commission argues the decision had to be taken immediately because it is of so overriding importance to have no gap in this top post and to have no undue influence and pressure by external actors, such as the Member States. At the same time- If it is true that Mr Juncker knew already since 2,5 years that SG Italianer would leave the service by 1 March/1 April why did he wait then until 31 January to open a Vacancy for the post of DSG? We ask for the answer to this question by President Juncker.**

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

**On M. Selmayr:**

**30. Martin Selmayr has held an AD15 position as the head of Juncker's cabinet since 2017 – but please provide CONT Committee with the full record of his career within the EU institutions:**

- for each position - status (official, seconded official, temporary), grade, date of promotion,
- what concours, besides that of DSG, did he pass? When did he pass those concours? What was his entry grade when starting the service?