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P8_TA(2018)0117

Integrity policy of the Commission, in particular the appointment of the Secretary-General of the European Commission**European Parliament resolution of 18 April 2018 on the integrity policy of the Commission, in particular the appointment of the Secretary-General of the European Commission (2018/2624(RSP))**

(2019/C 390/08)

The European Parliament,

- having regard to the statement by the Commission of 12 March 2018 on the integrity policy of the Commission, in particular the appointment of the Secretary-General of the European Commission,
 - having regard to the replies given by the Commission on 25 March 2018 to the written questions asked by members of the Committee on Budgetary Control and during the hearing held by that committee on 27 March 2018,
 - having regard to Article 14(1) of the Treaty on European Union,
 - having regard to the Staff Regulations for European Union civil servants and in particular Articles 4, 7 and 29 thereof,
 - having regard to the case-law of the Court of Justice of the European Union,
 - having regard to the motion for a resolution of the Committee on Budgetary Control,
 - having regard to Rule 123(2) of its Rules of Procedure,
- A. whereas it is fundamental that the European Commission, as guardian of the Treaties, acts in conformity with the letter and the spirit of the rules;
 - B. whereas trust in the European project and in the European Union will only be maintained if the European Union institutions act as role models in the fields of the rule of law, transparency and good administration, and are seen to have sufficient internal checks and balances to react adequately whenever these fundamental principles are threatened;
 - C. whereas, under the Treaties, all EU institutions are autonomous in matters related to their organisation and personnel policy, including when choosing their top civil servants on the basis of merit, experience and trust, in line with the Staff Regulations and their respective rules of procedure;
 - D. whereas posts published externally frequently result in the selection of internal candidates who do not meet the requirements for applying under internal rules, thereby circumventing regular career progression;
 - E. whereas appointments to high-level posts such as that of Secretary-General should be made independently of other appointments, thereby avoiding any suspicion of non-transparent package deals or trade-offs based on privileged information;
 - F. whereas the European Ombudsman is currently conducting an inquiry into the appointment procedure in question, and Parliament is confident that the Ombudsman will inform the Commission and the Parliament of her views and of any possible instances of maladministration she has discovered which would need to be followed up;
 - G. whereas the Commission acknowledged shortcomings in its communications relating to the appointment and recognised the need to strengthen its efforts in that field;
 - H. whereas the staff committees, as elected representatives of the staff of the EU institutions, have requested transparent procedures for appointments to all management positions;

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1. Regrets that the procedure for the appointment of the new Secretary-General of the European Commission on 21 February 2018 was conducted in a manner which provoked widespread irritation and disapproval in public opinion, among Members of the European Parliament and within the European civil service; notes that the result of this procedure constitutes a reputational risk not only for the European Commission but for all the European Union institutions; calls on the Commission to acknowledge that this procedure and the communication about it towards the media, Parliament and the general public have negatively influenced its own reputation;

Factual elements

2. Notes that:

- on 31 January 2018, the post of Deputy Secretary-General was published with the standard deadline of ten working days for applications (i.e. 13 February 2018);
- only two candidates applied, one man and one woman, both from the cabinet of the Commission President; the new Secretary-General was one of the applicants for the post; the second candidate applied for the vacancy on 8 February 2018, went through the full-day assessment centre on 12 February 2018, withdrew her application prior to the interview with the Consultative Committee on Appointments (CCA) scheduled for 20 February 2018, and was then appointed as the Commission President's new Head of Cabinet;
- the new Secretary-General went through the procedure provided for in Article 29 of the Staff Regulations which included:
 - a) a full-day assessment centre (15 February 2018);
 - b) an interview (16 February 2018), assessment and opinion (20 February 2018) by the CCA;
 - c) an interview with the Commissioner responsible for Budget and Human Resources, and the President of the European Commission (20 February 2018);
- no minutes were drafted for these interviews, nor was their length recorded;
- the College – by unanimous decision – appointed the Head of Cabinet of the Commission President as Deputy Secretary-General on 21 February 2018;
- subsequently, during the same meeting, the then Secretary-General announced his retirement having, on the morning of the same day, sent a formal letter to the President stating his intention to retire on 31 March 2018;
- the President of the European Commission and his Head of Cabinet had known since 2015 that the then Secretary-General intended to retire soon after March 2018, an intention which was reconfirmed in early 2018; the President had not, however, divulged this information in order not to undermine the authority of the then Secretary-General, but he had communicated with his Head of Cabinet;
- after the repeated failure of his efforts to persuade the then Secretary-General to extend his tenure, the President of the European Commission should, at the very minimum, have alerted the Commissioner responsible for Budget and Human Resources of the impending vacancy, so that steps to fill that vacancy could have been initiated in the normal, best-practice and timely manner;
- acting on a proposal from the President, in agreement with the Commissioner for Budget and Human Resources, and without the appointment of a new Secretary-General having been placed on the agenda of the meeting, the College decided to transfer the newly appointed Deputy Secretary-General with his post, pursuant to Article 7 of the Staff Regulations, to the position of Secretary-General of the European Commission (reassignment without publication of the post);

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Career path of the new Secretary-General

3. Notes that:

- the new Secretary-General joined the European Commission as a grade AD6 official in November 2004, having passed the open AD competition COM/A/10/01; was promoted to grade AD7 in 2007, to grade AD8 in 2009, to grade AD9 in 2011 and to grade AD10 in 2013;
- as of 10 February 2010, and while still being in grade AD8 in his basic career, he was seconded as Head of Vice-President Reding's Cabinet, where he occupied the function of Head of Cabinet at grade AD14, at Director level, in accordance with the Rules on the Composition of Cabinets in force at the time (SEC(2010)0104);
- the new Secretary-General took leave on personal grounds (CCP) from 1 April 2014 to 31 May 2014 in order to act as campaign manager for the EPP lead candidate for President of the European Commission;
- following his reintegration on 1 June 2014, he was assigned as an AD14 official as Principal Adviser to the Directorate-General for Economic and Financial Affairs;
- after having successfully completed a selection procedure, the new Secretary-General was appointed Principal Adviser to the European Bank for Reconstruction and Development with effect as of 1 July 2014; with this appointment he became a grade AD14 official in his basic career;
- from 1 July 2014 to 31 October 2014, the new Secretary-General was seconded at grade AD14 as head of the transition team of the President-elect of the European Commission;
- on 1 November 2014, he was seconded as Head of the President's Cabinet at grade AD15 in accordance with the Rules on the Composition of Cabinets in force since 2004 (see decisions SEC(2004)0185, SEC(2010)0104 and C(2014)9002);
- on 1 January 2017, he was promoted to grade AD15 in his basic (non-secondment) career as an official in the framework of the 10th Senior Officials Promotion Exercise, a decision taken by the College of Commissioners (PV(2017)2221); hence, prior to the meeting of 21 February 2018, in his basic career he was a Commission official in grade AD15, Principal Adviser in the Directorate-General for Economic and Financial Affairs;

4. Draws attention to the extremely rapid career of the new Secretary-General who, over a period of slightly more than 13 years, has progressed from AD6 to AD15, during which time he spent eight years in different cabinets (after the first cabinet he was promoted from AD10 to AD14; after the second cabinet from AD14 to AD15);

Career paths of previous Secretaries-General

5. Stresses that, according to the Commission, the three previous Secretaries-General became Director, Director-General and Head of Cabinet before being transferred to the function of Secretary-General, whereas the new Secretary-General has not performed any management tasks within the Commission services; points out, in particular, that on 21 February 2018 he was not Deputy Secretary-General in function and has served less than 14 months in the basic AD15;

Appointment procedure

6. Notes that, according to the Commission, the new Secretary-General was transferred in the interest of the service under Article 7 of the Staff Regulations and that the position was not published because the post was not considered vacant; notes, hence, that no official could apply since the procedure was organised through a reassignment with post rather than as a transfer in the strict sense with proper publication of the vacant post;

7. Notes that the Commission used the same procedure of transfer under Article 7 of the Staff Regulations for the three previous Secretaries-General (transfer with post rather than transfer in the strict sense); underlines, nevertheless, that none of the previous Secretaries-General were successively appointed Deputy Secretary-General and Secretary-General during the same College meeting; underlines also that all three previous Secretaries-General were proposed to the College during the very same College meeting at which their respective predecessors were transferred to a different post or announced their retirement;

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8. Stresses that the appointment by transfer was initiated by the President of the European Commission in agreement with the Commissioner responsible for Budget and Human Resources and after consultation of the First Vice-President (who was consulted about the name of the candidate but definitively not on the procedure);
9. Acknowledges that it is not Commission practice to transfer Directors in grade AD15 to Director-General posts, but notes that the Commission considers that, legally, the College could have decided to transfer a principal advisor to the post of Secretary-General;
10. Questions why the Commission used different procedures for the appointments of Deputy Secretary-General and Secretary-General for the same candidate and during the same College meeting;

Findings

11. Stresses that the replies given by the Commission show that the President and his Head of Cabinet had been aware since 2015 of the intention of the former Secretary-General to retire soon after 1 March 2018, an intention which he reconfirmed in early 2018; underlines that this knowledge would have allowed for a regular appointment procedure for his successor by one of the two public procedures foreseen by the Staff Regulations: (1) appointment by the College following publication of the post and a selection procedure under Article 29 of the Staff Regulations; or (2) transfer in the interest of the service pursuant to Article 7 of the Staff Regulations, also upon publication of the post in order to allow any interested official to apply for such transfer;
12. Takes note of the Commission's view that the publication of a post need not be considered the rule under the Staff Regulations, notably with regard to the position of Secretary-General which requires not only special experience but also a particular level of trust by the President and the College of Commissioners;
13. Underlines that, by opting for the transfer procedure under Article 7 of the Staff Regulations in the form of reassignment of the newly appointed Deputy Secretary-General with his post to the position of Secretary-General, it was not necessary to publish the post of the retiring former Secretary-General; notes that while the same procedure was used for the appointments of previous Secretaries-General, those persons had previously occupied Director-General posts with high management and budgetary responsibilities; stresses, however, that this tradition of non-publication has reached its limits insofar as it does not correspond to the modern standards of transparency by which the Commission, the European Parliament and other EU institutions should abide;
14. Notes the Commission's widespread practice of filling positions through internal transfers in the form of reassignment with post, a practice which is also used for senior positions; whilst recognising the wide margin of discretion open to the institutions in this regard, is concerned that this may undermine the principle of equality of opportunities and the selection of the best qualified candidates; calls on all Union institutions to fill positions through such transfers only with proper notification of staff, in line with the case-law of the Court of Justice of the European Union, and to give preference to open and transparent procedures aimed at selecting the best qualified candidates;
15. Underlines that only the President, the Commissioner responsible for Budget and Human Resources, the First Vice-President and the former and new Secretaries-General knew in advance of the meeting of the College of Commissioners on 21 February 2018 that the proposal for the immediate appointment of the new Secretary-General would be made;
16. States that this procedure seems to have taken all other members of the College by surprise and avoided a discussion being held among the Commissioners, since the appointment of a new Secretary-General did not appear on the agenda of the meeting of the College of Commissioners on 21 February 2018;
17. Is deeply concerned that this way of proceeding with the appointment of the new Secretary-General could cast doubt on the preceding procedure for the appointment to Deputy Secretary-General insofar as it might not have served the purpose of filling this vacancy in the first place, but rather of allowing for the transfer of this post to the post of Secretary-General under Article 7 of the Staff Regulations without publication of the post; considers that, although such a way of proceeding might satisfy purely formal requirements, it nevertheless runs against the spirit of the Staff Regulations and prevents competition for the post by any other eligible staff;

Conclusions

18. Is disappointed that not a single Commissioner seems to have questioned this surprise appointment, asked for this appointment decision to be postponed or requested a discussion of principle on the role of a future Secretary-General in the Commission and on how that role is understood, while noting that this item was not on the agenda;

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19. Recalls that Directors-General in the European institutions are in charge of hundreds of staff members and the implementation of substantial budgets as authorising officers, and also have an obligation to sign a declaration of assurance in their annual activity report at the end of each financial year; questions therefore the Commission's claim that the Head of the President's Cabinet could be considered as equivalent to a Director-General position in terms of management and budgetary responsibilities without having occupied such a position, as was the case of the previous Secretaries-General of the Commission; points out that the internal communication from the President to the Commission governing the composition of the private offices of the Members of the Commission and of the Spokesperson's service of 1 November 2014 does not supersede or modify the Staff Regulations;

20. States that the two-step nomination of the Secretary-General could be viewed as a coup-like action which stretched and possibly even overstretched the limits of the law;

21. Stresses that Parliament cannot find any 'serious and urgent situation', as explained by the Parliament's Legal Service, to justify the use of the procedure of reassignment under Article 7 of the Staff Regulations without publication of the post;

Required action

22. Is aware that the revocation of a favourable administrative act is generally not possible due to legal constraints, but nevertheless asks the Commission to reassess the procedure of appointment of the new Secretary-General in order to give other possible candidates within the European public administration the possibility to apply and hence allow for a wider choice among potential candidates from the same function group and grade; calls on the Commission to conduct open and transparent application procedures in the future;

23. Points out that in order to maintain an excellent and independent, loyal and motivated European civil service, the Staff Regulations need to be applied in letter and spirit; stresses that this requires notably that Articles 4, 7 and 29 of the Staff Regulations need to be fully respected so that all 'vacant posts in an institution shall be notified to the staff of that institution, once the appointing authority decides that the vacancy is to be filled' and that this obligation of transparency also needs to be respected for transfers under Article 7 of the Staff Regulations, apart from in very exceptional and duly motivated cases, as recognised by the Court of Justice;

24. Recalls that only through the proper publication of vacant posts is it possible to secure a wide gender-balanced choice of the most qualified candidates, allowing for informed and optimal appointment decisions; stresses that publication procedures whose sole purpose is to fulfil the formal requirement for publication must be avoided by all European institutions and bodies;

25. Recommends that the decision-making processes and procedures of the College of Commissioners need to be strengthened in order to avoid any indiscriminate waving-through of appointments or other important decisions, and that it is therefore necessary for all such items to be included in the draft agenda;

26. Calls, in this context, on all institutions and bodies of the European Union to also put an end to the practice of 'parachuting' people into positions which runs the risk of damaging procedures and thus the credibility of the EU; stresses that political influence must not undermine the application of the Staff Regulations; is of the opinion that all vacant posts should be published in the interest of transparency, integrity and equal opportunities; stresses that should institutions nevertheless decide to deviate from this principle they should only do so within the narrow margins set by the case-law of the Court of Justice of the European Union;

27. Proposes that officials from staff representative bodies sit on Parliament's senior management selection panels;

28. Asks the Commission and all other EU institutions concerned to revoke any decisions by which they consider the function of Head of Cabinet of the President as equivalent to the function of Director-General and the function of Head of Cabinet of a Commissioner as equivalent to the function of Director; also asks the Commission to ensure that the next revision of the Staff Regulations under the ordinary legislative procedure provides for valuable career options, both for officials who have followed the traditional career path and for members of cabinets;

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- with regard to Article 7 by clarifying the transfer procedure of reassignment with the official's post, which has only been developed by case-law,
- by integrating the relevant internal rules for members of private offices/cabinets, and
- by laying down fully transparent procedures for appointing Secretaries-General;

29. Calls on the Commission to review, before the end of 2018, its administrative procedure for the appointment of senior officials with the objective of fully ensuring that the best candidates are selected within a framework of maximum transparency and equal opportunities, thereby also setting an example for the other European institutions;

30. Acknowledges that Article 17 of the Commission's Rules of Procedure attributes particular management responsibilities to the Secretary-General who should have wide-ranging managerial experience and the confidence of the President; sees the need to update and clarify these Rules in order to guarantee the neutrality of the role of the Secretary-General in a (party) political environment; expects to be informed of such an update by September 2018;

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31. Instructs its President to forward this resolution to all the European institutions.
