

DECISION n°172 of the Management Board of the European Union Agency for Railways on the implementation of the Framework for Learning and Development

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Canada and South Africa continue to meet requirements for endorsement

In November 2017, ESMA published an updated methodological framework for the endorsement of credit ratings in its [Guidelines on Endorsement](#). This new methodological framework incorporated the requirements introduced by CRA 3 that are due to enter into force for the purposes of endorsement from 1 June 2018.

Following an assessment based on this new methodological framework, ESMA finds that the legal and supervisory frameworks of Canada and South Africa will continue to meet the requirements for endorsement under CRAR from 1 June 2018.

As a result, there will be no disruption to EU registered credit rating agencies' ability to endorse credit ratings from these jurisdictions following the entry into force of the new requirements.

Further details

For the full list of all countries that are eligible for the purposes of endorsement under CRAR please visit the following section of ESMA's [website](#).

SMSG comments on the Commission

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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

Today, Commissioner **Oettinger** in charge of the Budget and Human Resources, in agreement with President **Juncker**, sent the European Commission's replies to the additional questions of the European Parliament's Budgetary Control Committee on the appointment of its new Secretary-General which were received on 28 March. All answers were drafted under the authority of Commissioner Oettinger in agreement with President Juncker, and with the support of the Directorate-General in charge of Human Resources and Security, the Commission's Legal Service and the Cabinet of the President.

These responses, which follow those [already submitted](#) by the European Commission on 24 March, are summarised below.

1. Which procedure was followed for the appointment of the Secretary-General, and why?

The EU's [Staff Regulations](#) adopted by the European Parliament and the Council provide for two alternative ways to appoint a Director-General/Deputy Director-General (in accordance with Annex I to the Staff Regulations graded at either AD15 or AD16). These are: (1) appointment by the College of Commissioners following publication of the post and 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. Under the latter provision, officials in grades AD15 or AD16 who hold a post or carry out a function at senior management level are eligible for transfer to another position at senior management level in the Commission if this is considered by the College of Commissioners to be in the interest of the service and if they are in the same function group and grade.

In accordance with the Staff Regulations, the **Article 7 procedure – transfer in the interest of the service** – was used for the appointment of Mr Selmayr as new Secretary-General of the Commission on 21 February 2018. The same procedure had been used for the appointment of the three previous Secretaries-General of the Commission.

Are there different types of Article 7 transfers, and what are the conditions?

Yes, according to the case-law of the EU courts there are two types of transfer under Article 7. The first type – known by its French name "*mutation*" – is simply a modality for filling a vacant post following a publication and a selection procedure (Article 4(3) and Article 29(1)(a)(i) of the Staff Regulations). The second type – referred to as "reassignment with the official's post" or as "autonomous" concept of transfer (Article 7(1) of the Staff Regulations) – does not give rise to a vacancy in the first place, which is why no publication is necessary.

Neither the Staff Regulations nor EU case-law establish any order of preference between the two types of transfer. The appointing authority – in

this case, the European Commission – enjoys wide discretion when it comes to organising its departments in the most efficient way. It therefore has a broad discretion to decide in each specific case which type of transfer best ensures the interest of the service, taking account the specific requirements of the post in question.

In the practice of the Commission, both types of transfer are widely used. It should be noted that without the possibility of “autonomous transfers” through Article 7, the Commission’s policy to ensure the mobility of its senior managers could not be implemented.

For both types of Article 7 transfers two conditions must be met: First, they need to be in the *interest of the service* and, second, the post in question must correspond to the official’s grade.

What does “interest of the service” mean? Is it necessary to first publish a vacancy notice?

The EU courts have held that the concept of *interest of the service* relates notably to *the smooth running of the institution*. It necessarily entails a case-by-case analysis depending on the circumstances of each case and the specific requirements of the post to be filled.

In this respect, the appointing authority – in this case, the European Commission – enjoys a wide margin of discretion, and neither the Staff Regulations nor the case-law require the publication of a vacancy to fulfil the *interest of the service*. Incidentally, the presence of a “serious and urgent situation” is sufficient – but by no means necessary – to demonstrate an *interest of the service*.

The Commission’s practice is based precisely on these principles. During the mandate of this Commission, roughly half of all appointments (50.6%) at the level of Director-General/Deputy Director-General/*Hors Classe* Adviser were effectively transfers under Article 7 of the type “reassignment with the official’s post”, and therefore without prior publication.

What constituted such an “interest of the service” in the case of Mr Selmayr’s transfer to the Secretary-General post?

The Commission decided, using its broad margin of appreciation confirmed by EU case-law, to follow the procedure of “reassignment with the official’s post” without prior publication of the Secretary-General post under Article 7 (see above).

It is considered in the interest of the institution that a position as important as that of the Secretary-General does not fall vacant so as to ensure the full continuity and seamless operation of the European Commission. Since the appointment of Emile Noël in 1958, the Commission’s first Secretary-General, the post of the Secretary-General has never been vacant.

The function of Secretary-General is not an ordinary function at Director-General level. The tasks of the Secretary-General are described in detail in Article 20 of the Commission’s Rules of Procedure^[1], and the successful

exercise of these functions notably requires the trust and confidence of the President (who is the only one who can propose a new Secretary-General). There is only a handful of senior managers in the Commission who bring all the necessary competences for this function, who are willing to take on this job (which is generally seen as one of the most demanding in the Commission) and who have at the same time the trust of the President. It is for this very reason that the transfer of a senior manager, on the basis of Article 7 of the Staff Regulations, who is well known to and trusted by the President has been common practice for the preceding three decisions of the Commission on the appointment of a Secretary-General of the Commission.

In view of these considerations, it was the clear preference of President Juncker that Mr Italianer stayed on as Secretary-General beyond 1 March 2018 and until the end of the mandate. He and his Head of Cabinet made several attempts to convince Mr Italianer to continue in his function and they did so until mid-February. When it became clear that Mr Italianer did not want to continue exercising this function, the Commission had to act without delay, taking account of the important internal and external challenges the EU is facing in this particular moment in time. To name only the most important of these challenges, the Commission has to make its final proposals under the Political Guidelines by end of May as foreseen by the Commission Work Programme, must propose by early May 2018 the next Multiannual Financial Framework and negotiate it, must deal with Brexit (with only one year remaining) and with daily challenges, notably the multilateral rules-based international order.

Accordingly, the Commission could not allow for any disruption in its work, but had to ensure a smooth and swift handover to someone who is already fully familiar with the political priorities of the President and the working methods of the institution. For these reasons, the Head of Cabinet of the President was an obvious choice for the President as Secretary-General since he is familiar with all relevant files and can immediately resume the work. After having obtained the agreement of Commissioner Oettinger and First Vice-President Timmermans, he subsequently proposed his choice to the College which, taking into consideration the best interest of the service, unanimously decided on the transfer of Mr Selmayr to the position of Secretary-General.

As set out above, there is a second condition for such a "reassignment with the official's post" under Article 7 of the Staff Regulations, i.e., that the post corresponds to the candidate's function group and grade. This condition was also fulfilled as Mr Selmayr was an official of grade AD15 (since January 2017) with eight years senior management experience in the Commission.

2. Could Mr Selmayr have been appointed to the position of Secretary-General without having been appointed to the position of Deputy Secretary-General before?

Yes. As an AD15 official holding a senior management function and with eight years of senior management experience, Mr Selmayr was eligible for the post of Secretary-General and could have been directly transferred by a decision of the College using the Article 7 procedure. In this case, however, he would

not have been required to go through a full day Assessment Centre and an interview, as well as an additional assessment and opinion by the Consultative Committee on Appointments.

3. When did Mr Selmayr know he could become the new Secretary-General? Which were the options considered for Mr Italianer's replacement and when?

First of all, it is worth recalling that it was the clear preference of President Juncker and his Head of Cabinet that Mr Italianer stayed on as Secretary-General beyond 1 March 2018 and until the end of the mandate. He and his Head of Cabinet made several attempts to convince Mr Italianer to continue in his function and they did so until mid-February.

However, in parallel, the President had an understandable interest in guaranteeing the smooth functioning of the institution, especially in case Mr Italianer decided to retire in March. This is why the possible succession to Mr Italianer was discussed between the President, Mr Selmayr and Mr Italianer repeatedly in the second half of 2017 and in more detail as of early 2018.

A transfer of Mr Selmayr, a senior manager with the required grade and eight years of senior management experience in the Commission and who had the necessary trust of the President, to the position of Secretary-General was one possible option since early 2018. In spite of fulfilling all the formal requirements, this option only became concrete once both First Vice-President Timmermans and Commissioner Oettinger gave their agreement to the President on 20 February 2018 and once Mr Italianer, on 21 February, sent his retirement letter and announced to the College of Commissioners that he would retire as of 31 March.

If Commissioner Oettinger or First Vice-President Timmermans had rejected President Juncker's proposal, he would not have proposed Mr Selmayr to the College as new Secretary-General.

The appointment of the Secretary-General was and remains a decision reserved for the College as the appointing authority. The College of Commissioners unanimously took the decision to appoint Mr Selmayr Secretary-General on 21 February.

4. Is there a formal difference in the procedure for the appointment of a Secretary-General/Director-General compared with a Deputy Secretary-General/Deputy-Director-General?

No. According to the Staff Regulations and Commission rules, the procedures for the appointment of a Secretary-General/Director-General and for the appointment of a Deputy Secretary-General/Deputy Director-General are identical. This applies both for appointments following a selection procedure and direct transfers.

[\[1\]](#) Under Article 20(1) of the Commission's Rules of Procedure, the Secretary-General has the legal mandate to "assist the President so that, in the context of the political guidelines laid down by the President, the Commission achieves the priorities that it has set."

The complete answers to the questions as submitted to the European Parliament's Budgetary Control Committee can be found [here](#).