

APPOINTMENT OF SENIOR OFFICIALS IN THE EUROPEAN UNION; THEORY, LAW AND PRACTICE; CASE-STUDY OF MARTIN SELMAYR'S APPOINTMENT AS THE SECRETARY GENERAL OF THE EUROPEAN COMMISSION

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ABSTRACT

Since its creation, the European Union grew to become a sui generis entity often compared to international organizations and federal states. For over 68 years the Europeanization idea grew through the integration process and the whole European “structure” kept introducing new institutions through its primary law: the European treaties.

It is important to understand that the European Union runs as any other state its own administrative levels of public administration. Thus, the study of the European administrative framework, compared to the legal aspects of the European public administration, is very popular among others these days.

In this context, we would like to focus our research on the legal administrative framework and its procedures regarding the appointment of senior officials in the European Union. We would like to focus on this aspect, as the European Union is often criticized about democratic deficit and non-transparent methods of decision-making. We would like to have a research on this topic to examine the internal methods of the European institutions of appointing unelected officials to carry out the European mission.

Furthermore, we will examine the case of the “fast-track promotion”¹ of Martin Selmayr as Secretary General of the European Commission, the highest post in the European civil service, as it grew to be a scandal regarding his previous position as chief of staff to President of the European Commission, Jean-Claude Juncker.

As explained before, the importance of my thesis is to examine the European Union’s methods of appointing senior officials and whether these practices comply with the legal framework of the Union and occur in respective and transparent practices.

Our research method will be mostly information collection and analysis from articles, books, legal texts and online sources, and we will try to conduct our research in order to present the data collected in the most suitable manner to examine the concerns of this thesis.

This thesis is part of the post-graduate program in International Public Administration of the University of Macedonia.

¹ HANS VON DER BURCHARD, Martin Selmayr: ‘Monster of the Berlaymont’ or committed European? In Politico

<https://www.politico.eu/article/martin-selmayr-monster-of-the-berlaymont-or-committed-european/>

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CHAPTER 1: ORGANIZATIONAL BEHAVIOUR THEORIES

As we are trying to study and understand the European public administration through the aspect of appointments of officials, we need to further understand the study of the wider field of Public Administration. We ought to be able to examine various organizational theories, models and types of bureaucracy. This shall be conducted by studying and reviewing different types of related bibliography and by collecting data through it.

It's important to say that different types of bureaucratic theories and organizational models are studied for almost a century and the field is being examined by many concerned sociologists, economists and political scientists.

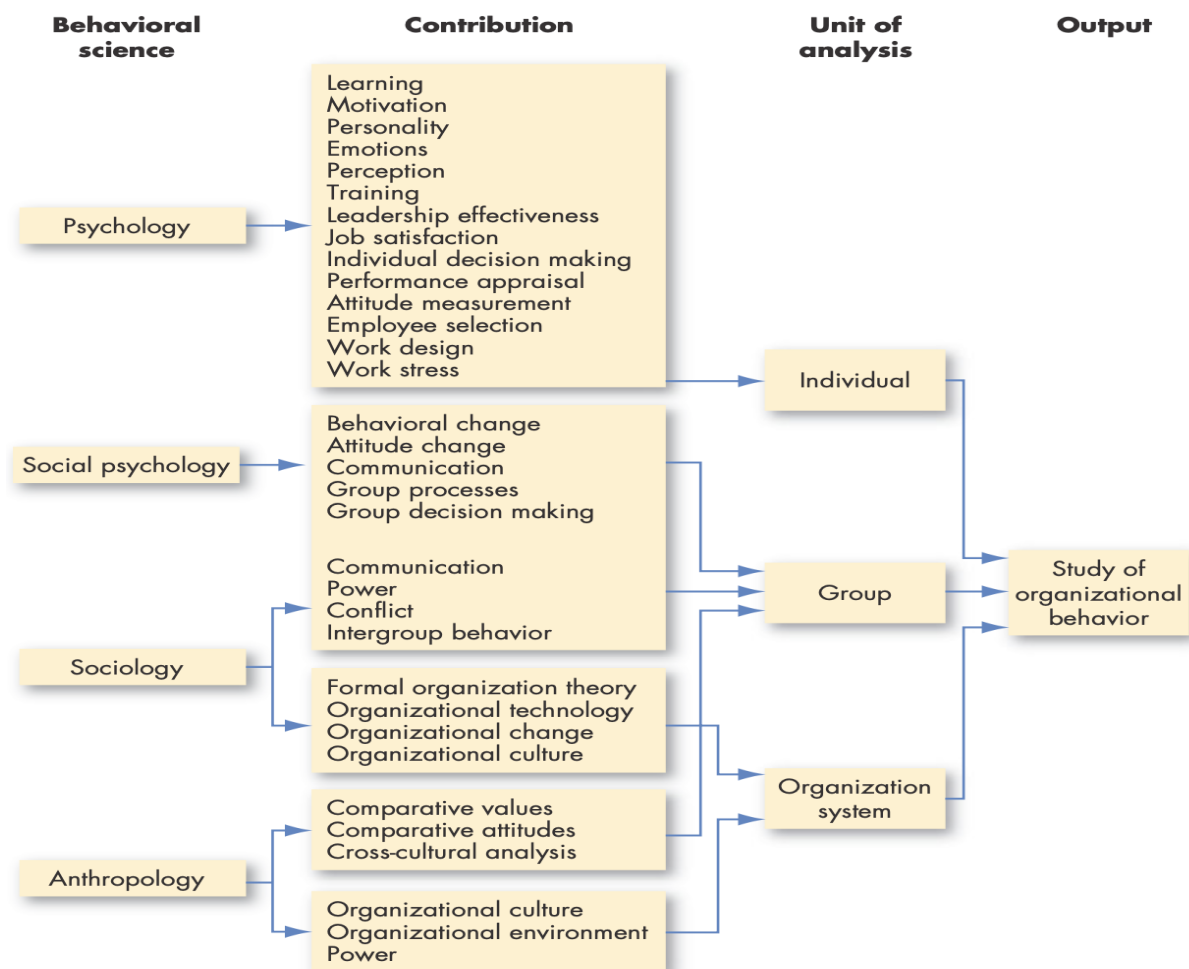
In this chapter we shall analyse and review the major contents of organizational behaviour and its dimensions, but also theories carried out by major researchers such as Max Weber, Frederick Taylor, Herbert Simon, and others who have talked about Public Administration via theories which define the Classical and Scientific Approach, the New Public Management etc.

We shall then be able to use the data collected in order to understand in full detail the European public Administration, which is our main concern in this thesis.

We shall begin our chapter with some definitions regarding the terms "organizational behaviour theories", "organizational structures" and "bureaucracies", and will then proceed by analysing some of the most known theories being studied by concerned scientists.

1.1 THE FIELD OF ORGANIZATIONAL BEHAVIOR THEORY

Trying to understand thoroughly the study of the Organizational Behaviour Theory, we can relate the field with other major scientific fields. Those include Psychology, Sociology, Social Psychology, and Anthropology.² Analysing those fields in detail, we see that they are related to the study of organizational behaviour as follows:³



² Κάτου, Αναστασία. 2017. ΟΡΓΑΝΩΣΙΑΚΗ ΣΥΜΠΕΡΙΦΟΡΑ. Thessaloniki: ΖΥΓΟΣ.

³ Robbins, S.P, and T.A. Judge. 2013. "What Is Organizational Behavior?" In Organizational Behavior, Pearson Education Inc.

Political Science is also considered to be linked with Organizational Behaviour. They are related as Political Science studies the behaviour of people and groups within a political scheme. Thus, this field helps us better understand how people behave within organizations with various forms. Some examples include political conflicts and alliances, or political proposals and policies.

As we need to define the term “organizational behaviour theory”, we come across the conclusion that it is considered to be a scientific field, a social science discipline, as theorists of organization behaviour use the scientific method to examine their theories.⁴ Based on the relevant bibliography, we can say that Organizational Behaviour is a field of study that examines and analyses the way that people and groups behave or act within an organizational environment,⁵ but also the way that they interact with their environment, and their gains as well as the behaviour of their environments with other organisations. This means that this field of study applies the data collected by individuals, groups and organizations in order to make the latter more efficient and productive. This field is also dealing with everyday situations and human habits and behaviours, performance, productivity, motives etc.⁶

Concluding with our definition, it’s important to say that the individuals, the groups and the organizations are considered to be the three major dimensions that affect the whole behaviour. Consequently, regarding individuals, it’s clear that as organizations are formatted by this dimension, i.e. the people, they are considered to form various behaviours within the organization. Furthermore, if we consider the group dimension, those groups affect individuals and their behaviour, thus the whole organization. And finally, considering the organization dimension, we could state that as the groups and individuals interact within an organization, the structures and the management affect their relations with the people and groups in a way that the whole organizational behaviour is affected.

⁴ Miner, John B. 2002. “Theory, Research and Knowledge of Organizational Behavior.” in *Organizational Behavior: Foundations, Theories, and Analyses*, Oxford University Press.

⁵ <https://study.com/academy/lesson/organizational-behavior-theory-in-business.html>.

⁶ Robbins, S.P, and T.A. Judge. 2013. “Introduction.” In *Organisational Behaviour*, Pearson Education Inc.

1.2 FIRST DIMENSION: THE INDIVIDUAL

Examining the first dimension, the people that form an organization, we need to be able to understand various characteristics that build a person. As we try to explain the organizational behaviour of all three dimensions, we shall examine in depth the various components that form the individual organizational behaviour.

The first thing that someone concerned shall observe in order to understand an employee is their biographical characteristics. This category is the easiest to examine, as it is already there for everyone to study. In this category we come across the age factor and its relation to job performance. Many researchers believe that age affects performance in terms of retention and performance indicators. Another section of the biological characteristics is the one of marital status. Literature indicates that marriage plays a significant role as it reduces absences, turnover and increases job satisfaction.⁷

Gender, of course, also belongs to this category. For example, women that are pregnant are more likely to quit their job. In fact, 43% of women quit their job for their children.⁸

The next characteristic about the people is their abilities, which are defined as their capacity to carry out specific tasks in their organization. Those abilities are often studied as mental and physical abilities. Beginning with the mental abilities, we often refer to verbal understanding, number aptitude, memory etc. These could be measured by IQ tests, or even by other specialized contests. But mental intelligence is not enough. The term multiple intelligences⁹ is introduced and it is formed by cognitive, social, emotional and cultural intelligence. This is the trend in contemporary selection methods as there is the need to adapt in everyday situations.

Another significant aspect of the individual dimension is the learning process of each employee. That means that the experience and change that it offers to a person play a valuable role in everyone's professional career, but also to the organization itself. Moreover, by encouraging performance-upgrading practices such as seminars etc., the organization itself gains by each employee experience as well as enhanced performance.

Finally, throughout the bibliography, we come across other aspects that matter in the first dimension of personal behaviour.

⁷ Robbins, Stephen. "Foundations on Individual Behaviour." in Organisational Behaviour,.

⁸ <https://www.forbes.com/sites/andrealoubier/2017/06/08/gender-and-work-the-power-of-flexibility/#6ae12ab27c0f>.

⁹ Gardner, H. 2011. Frames of Mind: The Theory of Multiple Intelligences. Basic Books.

Those aspects include:

- **Values:** They represent a system of each person's mode of conduct. This system is identified through the gravity we put to certain values such as freedom, honesty, respect etc.
- **Attitudes:** They are the actions or behaviours regarding other people or their actions. They play an important role in organizations as they affect interpersonal relations and also affect job satisfaction, thus performance and productivity.
- **Personality and Emotions:** We have to understand the diversity of all employees as human beings. There are lots of personalities such as extroverts, introverts, optimists etc. We can take advantage of these various personalities by selecting the right ones for each job. Now in terms of emotions, they affect productivity and performance. Imagine a happy worker versus a depressive one. There comes the need of the organizations to assure that employees are in a comfortable and non-stressful environment.
- **Perception and Decision Making:** Connected with the above-mentioned aspects, perception is a topic that managers should deal with. In order to motivate their employees, each organization should take in advance how their human resources think and deal with each given task. Also, their decision-making methods. Are they rational? What are the situations before taking a bad decision for the organization?

Examining the human aspects of the organizational behaviour, we can see that diversity plays a key role in order to understand interpersonal relations, and in this case, organizational behaviour. We could say that organizations should consider examining various aspects of human nature of their employees in order to assign specific tasks, and thus to ensure maximizing performance and productivity as well as job satisfaction and low turnover rates.

1.3 THE SECOND DIMENSION: GROUPS AND TEAMS

First of all, to understand this second dimension, we shall find and analyse the terms “groups” and “teams” in order to fully understand the full spectre of organizational behaviour and its components, as groups and teams tend to play a significant role in affecting an individual’s behaviour and motivation and, as a result, performance, outputs and effectiveness of an organization.

To begin with groups, they are defined as a number of people, more than two, that work together in order to achieve a certain goal. Moreover, we can say that *“A group is a set of people who have the same interests or aims, and who organize themselves to work or act together.”*¹⁰

Teams, on the other hand, are groups that have specific skills and abilities and are also driven by a certain cause, and carry out acts that are needed in order to accomplish certain goals. Bibliography states that teams are *“groups of people who work together at a particular job”*¹¹.

1.3.1 CHARACTERISTICS OF GROUPS

By a deeper examination of the group dimension, we come across various aspects of their characteristics, such as reasons of creation, stages of group development, and their inner characteristics such as leadership and cohesiveness.

Firstly, speaking about groups, we have two variations.¹²

- **Formal groups** that are formed by the organization and its needs and are designed with a relationship of authority within managers and employees.
Those groups include:
 - a. Command groups that report directly to specified managers.
 - b. Task groups in order to carry out certain tasks/jobs/orders.

- **Informal groups** that are formed to address social needs, and their individuals may not exist in other formal groups.

¹⁰ <https://www.collinsdictionary.com/dictionary/english/group>.

¹¹ https://www.oxfordlearnersdictionaries.com/definition/english/team_1.

¹² Robbins, Stephen. “Foundations on Individual Behaviour.” in Organizational Behavior,

They consist of:

- a. Interest groups that work together to reach specific interests.
- b. Friendship groups that are formed as they share common characteristics.

As we see, **formal groups** are created for the organization's needs. They are formed in order to help the organization achieve its goals and they are marked by professional relations, authority and goal-oriented tasks. Some are permanent, such as divisions and departments, and they vary regarding to numbers, while **informal groups** are natural gatherings of people in order to satisfy their social needs and interests, and often are characterized by friendly bonds and relations, but they are needed as well as people gain knowledge and help through informal channels of communication, often by social gatherings and companionship.

There are many reasons that attract people to form groups. Individuals often seek to be part of a group or a team for various reasons. Those reasons include:¹³

- **Security**: When people join groups, they feel secure because of the sense that a collective response to various challenges lowers the dangers that may occur.
- **Recognition**: People tend to form groups as those teams are thought to provide them with prestige.
- **Self-esteem**: Individuals experience feelings of dignity and self-respect when they are part of a collective entity.
- **Sociability**: Groups often manage to deal with the social needs and interests of their members, such as political and religious groups.
- **Economic reasons**: Some groups are formed or joined as people are driven by economic gains.

¹³ Βακόλα Μ. και Νικολάου Ι. (2012). Οργανωσιακή ψυχολογία & Συμπεριφορά. Αθήνα: Εκδοτικός Οίκος Rosili.

1.3.2 GROUP DEVELOPMENT

Groups are considered to be valuable assets in every organization's toolkit as they create endless aids and put together the efforts of the employees by shortening the way towards the desired results. But creating a group is often a complicated task as it deals with people and variety of ideas and beliefs. This process, known as group development, becomes reality through five stages.

First comes the **Forming Stage** with the entrance of the members into the group. While this occurs, the members interact with other people in order to know each other and determine the goal of their formation.

Next to the forming stage is the period of the **Storming Stage**. At this moment the environment within a group is tensed and the group might change, with inside coalitions and rivalries. This happens as every "side" tries to express their concerns, ideas and beliefs. Then, debates and compromises take place in order to establish a common ground, always for the good of the organization.

As the storm goes by, the next phase is the **Norming Stage**. Here the team starts to behave collectively and as a well-coordinated entity towards the next stage, which is the **Performing Stage**. At this point, where total integration occurs, the group is at its peak. Here members deal with tasks and difficult jobs needed to be carried out in order to achieve their goal. Everyone is motivated and works towards their desired outcome.

Then comes the final stage, the **Adjourning Stage**. Here if the goal is achieved the group is dismissed and disbanded, often to reconvene in the future.

1.3.3 INSIDE CHARACTERISTICS

As groups are formed in order to combine multiple ideas and strengths, we need to be aware of various characteristics that when studied carefully, are the key to achieving maximum performance and greater outcomes. These characteristics include:¹⁴

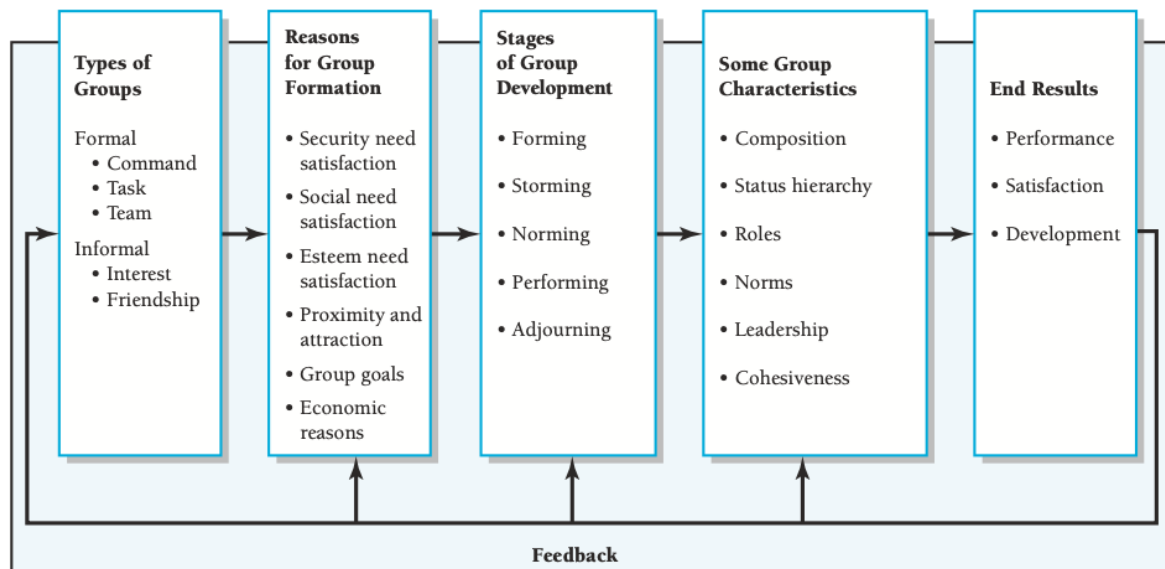
- **Composition:** In this characteristic gender, economic background, race, education, age etc. play their role as they determine the nature of the group. People with equal or similar characteristics compose a homogeneous group, while individuals with many differences compose heterogeneous groups. This is important as homogeneous groups tend to be

¹⁴ Uhl-Bien, M, RF Piccolo, and JR Schermerhorn. 2020. *Organizational Behavior*. Wiley.

more effective and productive but, in many cases, heterogeneous groups often outperform the homogeneous by simply putting together various ideas and experiences.

- **Roles:** In every group there are expected roles which are agreed by every member and manager.
- **Norms:** Usually norms are agreed orally by the group members. They are the standards of behaviour and they may be agreed and applied to the whole group or with partial influence. Norms occur because respect and a healthy environment are needed in a group. Positive feelings are needed in order to achieve maximum productivity.
- **Leadership:** Key characteristic, as every leader influences the other members of a group. In both formal and informal groups, a talented leader/manager is the key to keeping a well-coordinated team standing high for its purpose.
- **Cohesiveness:** This is the similar attitude of the members of a group. Cohesiveness attracts individuals to work together as a group, thus making them work more effectively.

As we have examined the various aspects of forming a group, we can say that a group is often created for a noble cause: to work together in order to achieve certain goals. Often, they are created in need of social creditability and well-being. In Organizational Behaviour, people tend to work together to maximize performance and work faster in order to achieve the organization's goals. Those above-mentioned aspects are displayed below with a table from the bibliography.¹⁵



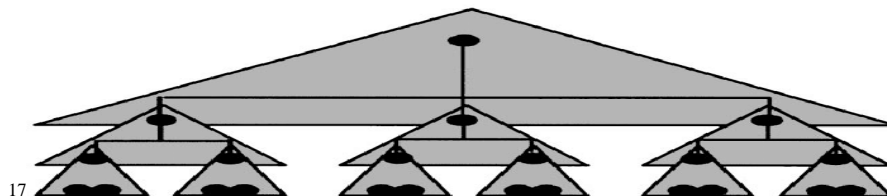
¹⁵ Ivancevich, J, R Konopaske, and M Matteson. 2013. *Organizational Behavior and Management: Tenth Edition*. McGraw-Hill Higher Education.

1.4 THE THIRD DIMENSION: THE ORGANIZATION SYSTEM

As we try to understand and analyse organizational behaviour, we could not refrain from focusing on organizations. As we have seen above, individuals and groups play a major role in organizational behaviour. Both dimensions have a common goal at the end; the well-being and the achievement of the desired goal that are set by their organizations. Defining organizations, we could say that they are “groups of people working together in an organized way for a shared purpose”.¹⁶ This shared purpose is the organization’s mission that through strategic planning, tries to carry out its vision, which is the image of a successful future. Priorities are set by each organization and through values, people work together in order to fulfil that mission. But to achieve the desired goals, the four functions of management (programming, organising, directing and controlling) must exist.

This depends on the **organisational structure**. This structure shows, often through a chart, the way that individuals and groups shall work together and their roles as well as the development of the resources of the organization. This structure is designed by the organization’s leadership/management by four principles:

1. **Division or specialization of labour**, where each manager appoints certain tasks to specialised individuals/groups.
2. **Delegation of authority**, which is the process that certain powers are given to people that are in lower divisions of the hierarchy.



3. **Departmentalisation**, as the organisation is divided into departments that actually construct the organizational structure.
4. **Span of control**, which is the number of people that a manager controls.

Another important aspect of this dimension is the **organizational culture**. Bibliography defines “organizational culture” as the whole of shared values that help people within an organization to

¹⁶ <https://dictionary.cambridge.org/dictionary/english/organization>.

¹⁷ Likert’s linking pin model (1961).

understand which tasks are considered to be acceptable.¹⁸ It is also defined as the whole of actions and values that are expected to be followed by the workforce of an organization.¹⁹ This culture is often described in bibliography as a three-layered iceberg.²⁰ At the first level we have the visible artefacts of the culture, followed by the second layer, which consists of shared values and beliefs, and finally the third layer of basic assumptions. In practice this is explained as follows:

A basic assumption is that a client is fully satisfied with the services provided by an organization. This assumption could be transformed into values such as trust, justice and teamwork. Those values afterwards shall be visible through acts inside the organization, such as fair rewards and collective decision-making. These three layers together form the organizational culture.

But how do organizations survive throughout the years? Are the abovementioned characteristics valuable enough to provide the organization with long-term survival and endurance? Could a small-scaled organization proceed to the next level of being something greater? To understand all these, we shall examine another field of this dimension, **organizational change**.

This process becomes a need to organizations as they try to adapt to both internal and external changes. Those include “globalization, emerging competitors, new technologies, demographic shifts, new markets, and organizational alliances cause organizations to change their structures, processes, and behaviours”.²¹ Changes occur in many areas such as strategy, structure or organizational power.²² These changes often occur with a top-down path as the exhibit²³ shows:

¹⁸ Moorhead, G, and R.W Griffin. 2004. *Organizational Behaviour: Managing People and Organizations*. 7th ed.

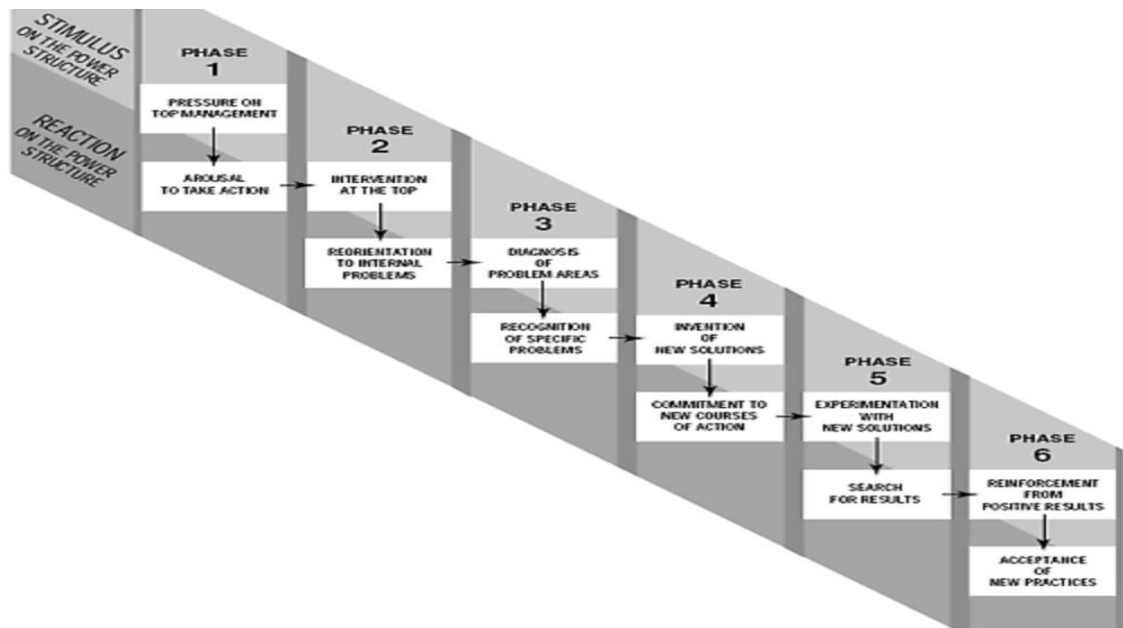
¹⁹ Pettigrew, A.M. 1979. “Studying Organizational Culture.” *Administrative Science Quarterly*: 570–81.

²⁰ Schein, E.H. 1992. *Organizational Culture and Leadership*.

²¹ Ivancevich, J, R Konopaske, and M Matteson. 2013. *Organizational Behavior and Management: Tenth Edition*. McGraw-Hill Higher Education.

²² Wischensky, J. Daniel, and Damanpour. Fariborz. 2006. “Organizational Transformation and Performance: An Examination of Three Perspectives.” *Journal of Managerial Issues*.

²³ Greiner, Larry. “Patterns of Organizational Change.” *Harvard Business Review*.



As we are examining changes within an organization, **training and development** should be considered as a key element of this section. The scope of training as an “educational process that involves the sharpening of skills, concepts, changing of attitude and gaining more knowledge to enhance the performance of the employees”²⁴ strives to keep the employees of any organization in readiness and up to date with new phenomena, global changes and everyday challenges. Life-long training by many organizations provide their work force with the needed tools to adapt, evolve and also to achieve understandings and common grounds regarding working methodology as the number of the employees keeps on rising.²⁵

²⁴ MBA SKOOL team. Training and development in <https://www.mbaskool.com/business-concepts/human-resources-hr-terms/8685-training-and-development.html>.

²⁵ Rammata, Maria. 2018. “International Human Resources Development.” In the University of Macedonia MIPA Book, Thessaloniki, 183–207.

1.5 EPILOGUE OF THE FIRST CHAPTER

Conclusively, we managed to see and investigate the various theories regarding organizational behavior. Through this study we found that organizational behavior occurs not only in the organization's context. It is also an interpersonal dimension that may be combined with groups and other entities. It is also aligned with psychology and the values of each employee. People vary, and their behavior does as well. This is the conclusion of this study. And as people change, organizations could not be left unaffected by this change. This bibliography review shall aid to our further study of the European Public Administration, as this thesis focuses on the wider European context, its ethics and its practices regarding to human resources management, organizational behavior, and finally appointment of officials at higher posts.

CHAPTER 2: HUMAN RESOURCES MANAGEMENT IN THE EUROPEAN UNION

As we are trying in our research to examine the various aspects of recruitment and appointment in the European Union's instruments, we shall focus on the legal aspects and the practices made by the European Union itself regarding its officials. We need to investigate whether the current practices of the European Union regarding the recruitment of officials comply with the principles of Public Administration as well as with its internal laws.

For this purpose, we will mostly examine legal documents regarding the human resources management in the instruments of the European Union. Those instruments include institutions such as the European Commission, the European Parliament and the European Council, and other agencies such as the European Ombudsman's office, the Committee of Regions etc.

In this chapter we shall deal with matters such as the rights and obligations of officials, their recruitment process, and matters in their career development. Those career matters include leaves (family, personal, health etc.), evaluation and promotion policies, social security issues, and many more fields regarding the officials' careers in the European Union.

This is a major topic as both the European Union and its officials seek and aim to a healthy working environment where emphasis is given to the embracement of 'spirit of corps' and they set priorities regarding lawfulness, impartiality, transparency, rights and obligations, and protection of personal and confidential data.²⁶

We shall then proceed with analysing principles and legal aspects regarding the practices made inside the European institutions that concern human resources management, which is a major field in this thesis.

²⁶ Rammata, Maria. 2018. "International Human Resources Management." in *University of Macedonia MIPA Book*, 195–96.

2.1 EUROPEAN PERSONNEL SELECTION OFFICE

2.1.2 GENERAL INFORMATION

The European Personnel Selection Office (EPSO) is the interinstitutional body responsible for the selection of staff for various EU agencies and institutions such as the European Parliament, the Council, the European Commission, the Court of Justice, the Court of Auditors, the European External Action Service, the Economic and Social Committee, the Committee of the Regions, the European Data Protection Supervisor, and the European Ombudsman. This body was established in 2002 to address the needs of making human resources management more efficient, as well as to assist with the selection of officials. These would happen with open and competitive competitions in order to form reserve lists, but the final decision regarding officials' selection remains with each institution that needs to recruit new civil servants. Prior to 2002, the selection process was made exclusively by the interested institutions.

EPSO holds the right to hold open competitions and is the recruiting authority of the Union. In exceptional cases, and only after agreement with the Office, the other institutions may proceed to hold their own competitions regarding recruitments.

Finally, after the selection of the successful candidates, the appointing authorities of the interested institutions shall take decisions in order to appoint selected candidates.

EPSO's duties are defined as the creation of reserve lists, which will consist of successful candidates to the already mentioned competitions and as the assistance that the Office will provide to the institutions and agencies for the purposes of selection of candidates to fulfill certain vacancies and needs.²⁷

EPSO is considered to be as a sui generis institution thanks to its unique scale and to the complexity of its procedures. EPSO usually employs 1500-2000 people per year and addresses up to 60000-70000 applicants per year.²⁸

²⁷2002/620/EC: Decision of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002 establishing a European Communities Personnel Selection Office - Declaration by the Bureau of the European Parliament (OJ L 197, 26.7.2002, p. 53–55).

²⁸ BBC , European Union Jobs, test to be a civil servant, in <https://www.bbc.com/news/av/uk-politics-26580569/european-union-jobs-sitting-the-test-to-be-a-civil-servant>.

EPSO is governed by its highest decision-making body, the Management Board, which consists of one representative from each institution. This Board is responsible for deciding the rules that govern the whole coordination of EPSO, and it also approves the annual agenda of the Office.

This annual work programme of the Office is conducted by a group of representatives nominated by each institution represented in its Management Board. Then EPSO reports and forms the Competition notices after consultation of COPARCO, a joint inter-institutional committee. After the end of the consultation process, the Office notifies the candidates by publishing the notice in the Official Journal of the European Union as well as by informing potential applicants through its website and through the press, with the website remaining the major informing source for candidates.²⁹ All competitions must be organized and carried out with the notice to form the general rule of the competition. A notice must contain:

- the nature of the competition
- the form of the competition
- the job(s) description and analysis as well as its grade
- the needed academic and other evidence that are required
- the structure of the tests (if the competition is based on tests)
- the required knowledge of languages
- the maximum number of applicants
- the form of sorting of the number of successful candidates (alphabetical/merit groups)
- the closing date for the applications.³⁰

2.1.3 ELIGIBILITY

Anyone interested in working for the European Union and its institutions must hold a very high-skilled and ambitious profile. The European Union addresses people with a strong motivation of success and high academic and professional skills that would learn and develop even more through their European civil service careers. Also important to this cause is their ambition to change Europe and the world into a better environment for all the people, along with their ability to work with multi-national and multi-cultural teams, which is the European Union's vision; to shape a European identity. Finally, to work for the European Union, it's important to be results-oriented and always keep the greater European values and interests as the main goal of each European civil servant's career.

²⁹ Special Report No 9/2009 "The efficiency and effectiveness of the personnel selection activities carried out by the European Personnel Selection Office".

³⁰ Van-Biesen, G. (2006, March). Overview of civil service selection procedures in EU context. In *Belgium Seminar on "Civil Service Recruitment Procedures"*, Vilnius (pp. 5-6).

Also, basic criteria for applying for an EU vacancy are that all applicants are EU citizens and speak at least two (2) of the official EU languages, with one of them being English, French or German, with the exception of those who address to linguistic profiles and need to speak at least 3 of the official languages.³¹

The selection process divides into two main career paths:

1. Administrators (University degree holders)
 - They work as specialists or generalists in various fields of EU policy or administration such as law, finance, trade etc.
2. Assistants (secondary education graduates with a minimum of three years of professional experience)
 - They have roles of administrative support in various areas of the EU's concerns

2.1.4 THE SELECTION PROCEDURE

The EPSO office which is responsible for conducting the competitions regarding EU careers usually has three major selection procedures per year for generalists. Those happen in the spring for Graduates/Administrators, in the summer for Linguists, and in the winter for Non-graduates/Assistants. While this is the case for general openings, the competitions for the specialized and contractual staff occur only when there are vacancies that need to be addressed.

The selection process is thought to be a long and multi-stage procedure. It begins with the application, where each candidate shall form an EPSO account and proceed with the completion of an online application. Applications are directed to the various job openings or to temporary and contractual types of recruitment.

Once the competition is published and an application is valid, computer-based tests occur. These tests are taken usually by all applicants and include multiple-choice questions that address to cognitive abilities.

³¹ EPSO eligibility criteria in https://epso.europa.eu/how-to-apply/eligibility_en.

Once succeeded with high ranks, the candidates are called to the assessment centres in EPSO's premises in Brussels. At this stage, EPSO delivers competency-based tests to choose among the best. These tests include case-study analyses, structural interviews and group exercises as EPSO targets to competencies such as analysis and problem-solving, communicating, resilience, teamwork etc.³²

Finally, successful applicants that are called "laureates" find their names in EPSO's reserve lists. Usually one person out of three succeeds and makes it to the reserve lists. Those reserve lists are valid for at least one year. Then the interested institutions check the database of the successful candidates, and invites the laureates to an interview, and if there is a successful match to each institution's needs, a job offer is made. The candidate either accepts the offer or remains on the reserve lists.

2.2 THE STAFF REGULATIONS

As we have examined the selection and the recruitment procedure, we shall now proceed with the examination of the working conditions of the European officials. For this purpose, we shall take into consideration for our research the Regulation No 31 (EEC),³³ which addresses the Staff regulations of officials and the conditions of employments of other servants. This regulation was initially applied to the officials of the European Economic Community and the European Atomic Energy Community. It came into force on the 1st of January 1962. This regulation is binding and applicable to all member states and concerns all the officials of the European Union, either permanent, contractual, or temporary staff. In this thesis we shall focus on the regulations regarding permanent officials and we shall examine various aspects of their careers such as their rights and obligations, their working conditions as well as their payment and retirement procedures.

³² Bearfield, David. 2012. "Selection Procedures." in *Career Opportunities with the European Institutions*, https://youtu.be/jGtWUq686_4.

³³ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ P 045 14.6.1962, p. 1385).

Among other regulations, the European civil servants must be guided by principles that are mentioned in the European Ombudsman's office. These principles include:³⁴

- Commitment to the European Union and its citizens
- Integrity
- Objectivity
- Respect for others
- Transparency.

We shall now proceed with the analysis of the Staff regulations and conditions of employment from the consolidated version valid from 1st of January 2020.

2.2.1 RIGHTS AND OBLIGATIONS

The principles that we have mentioned above can be found in the relevant articles of this chapter of the Staff regulations. To begin our analysis, each employee shall act accordingly with the Union's interests without any external influence from governments, organizations etc. It's important to say that the appointing authority must examine prior to the recruitment any conflict of interests of the applicants and if any are found, the appointing authority shall relieve the candidate from his duties.³⁵

Additionally, each employee must act within a certain framework that complies with the EU regulations and refrain from any actions that offend the European civil service. Thus, every official shall act without any racial, ethical and sexual discrimination and harassment, ensuring that the working environment within the EU institutions is protected by any means of discrimination and foulness, empowering equality and diversity, making this way the European civil service an actual representation of human and labour rights.

Regarding the Union's data and information,³⁶ the officials must carry out their duties without sharing publicly any information without permission. The officials' freedom of speech and expression is secured, but the principles of impartiality and loyalty must be respected. The restriction of sharing

³⁴ Public Service Principles for the EU Civil Service, European Ombudsman, in <https://www.ombudsman.europa.eu/en/document/en/11650>.

³⁵ Regulation No 31 (EEC), 11 (EAEC), art. 11.

³⁶ Regulation No 31 (EEC), 11 (EAEC), art. 17.

information binds the officials even when their service is terminated. This secures the sensitivity of the information gathered by all officials during their active service, but also secures them legally with the termination of the service of the European civil servants.

Article 21 of the Regulation deals with hierarchy and commands. All employees have the obligation of carrying out the tasks that they were given, but also to assist and supervise their superiors. We can see in this article that inside the EU civil service, the hierarchy is used for administrative purposes. The supervisors work with their subordinates and also gain from their advice and experience, making this superior-subordinate relation not a top-down hierarchical chain of command, but rather a horizontal exchange of knowledge, experience and opinion in order to maximize performance.

That is the reason that each official has the right and obligation to inform their superiors of any abnormalities or malpractices in certain commands without any penalties. Additionally, all employees are protected as the appointing authorities of all institutions set the internal regulations that deal with the employees' complaints and interests.

For these purposes, each civil servant owns a personal record that contains his service data and the comments regarding his service. This record is strictly confidential.

This legal information is mentioned in the Staff regulations' section that deals with the rights and obligations of the civil servants. This section aims to provide legal protection to the employees' careers regarding their dignity, privacy and freedom, while also ensuring that their service in the European Union's institutions is profitable to the Union itself, not economically but with the best possible outcomes and results, as the European civil servants carry out their duties for the purposes and interests of the Union.

As we have examined the articles of the regulation related to the employees' rights and obligations, we shall now steer into examining the various legal aspects during the civil servants' careers.

2.2.2 OFFICIALS' CAREERS

- **Administrative Status**

In this section we shall examine through the staff regulations, the legislative context regarding the recruitment, the administrative status, the promotion, and the service termination of the European civil servants.

To begin with the administrative status, as we have examined the recruitment procedures, the legislation states that, each employee is “assigned one of the following administrative statuses”:³⁷

1. Active employment
2. Secondment
3. Leave on personal grounds
4. Non-active status
5. Leave for Military service
6. Parental or Family leave
7. Leave in the interests of the service.

Active employment is the status that defines each employee that carries out their duties as described in the legislation. Employees that are assigned the **Secondment** status are those civil servants that are appointed a temporary duty outside their parent institution or temporarily serve for elected officials/groups in the European Union, always for the interests of the latter. Secondments also occur with a personal application of the officials to serve under other EU institutions/agencies. Secondments are legally governed by rules that deal with the duration and the terms of the secondment.

Officials that for their own reasons and at their own requests are granted unpaid leaves are considered to shift their employment status to “**Leave on personal grounds**”. This leave can only last for 12 months and can be extended, but the whole duration of the leave cannot be over than 12 years.

The next administrative status, which is the “**Non-active status**”, comprises the officials that have become unnecessary to the institutions as the posts may have been reduced due to decisions of the budgetary procedures. The duties of those employees are halted as well as their payments and rights,

³⁷ Regulation No 31 (EEC), 11 (EAEC), art. 35.

but they continue to have their pension rights. Additionally, those employees are entitled to allowances and have priority for two years regarding reinstatements.

The regulation states this status as “**Leave for military service**” which defines the status of servants that their service is suspended due to his military obligations. It’s important to say that, during this period, the officials’ payments that choose to complete their service are postponed, while their pensions and promotion rights continue to exist. On the other hand, when the officials are obligated to complete their military service, their salary is not postponed, but reduced.

The “**Parental or family leave**” refers to the rightful leave that every official is entitled to due to the birth of their child. The officials have the right to claim this leave with a maximum duration of six months, or by a part-time occupation with the right of a twelve-month duration. If the leave is accompanied with a full pause of the officials’ duties, a monthly allowance is 1023.56 euros, while on terms of part-time occupation, the allowance is reduced to the half, i.e. 511.78 euros. As always, the employees that are on a parental or family leave are legally entitled to promotion and social security rights.

Last in this section is the status of “**Leave in the interests of the service**”. The Union has the right, due to institutional and organizational needs, to place officials to other posts. But those officials must be at least five years prior to their pensionable age and with a minimum experience of ten years. The rules that apply to this status are the following:³⁸

- (a) another official may be appointed to the post occupied by the official.
- (b) an official on leave in the interests of the service shall not be entitled to advancement to a higher step or promotion in grade.

- **Reports, advancement to a higher step and promotion**

Each employee is evaluated under an annual report by each appointing committee of each institution. This report evaluates the skills, abilities, efficiency and conduct of each official and it is shared with the interested employee who can comment on its statements.

The employees are advanced to the next step of their grade every two years, unless this report states unsatisfactory results. Additionally, this report contains an opinion, which determines whether an

³⁸ Regulation No 31 (EEC), 11 (EAEC), art. 42c.

official that is graded with minimum AST5 has the competencies to be promoted to an Administrator (AD grades).

Regarding **promotions**, the appointing authorities shall decide to promote officials to the next grade on the basis of their competencies, reports etc. The regulation states that promotions “shall be exclusively by selection from among officials who have completed a minimum of two years in their grade after consideration of the comparative merits of the officials eligible for promotion.”³⁹ The appointing authority, in order to select the best candidate among others, shall take account of the reports on the officials and the languages of the officials regarding their service needs, because the officials that are selected for promotion must be able to prove their ability and competency to work in a third language.

Regarding **promotions of AD employees** to senior grades, most AD employees gain 5-6 promotions from AD 5 to AD 14. This process usually takes 20-25 years⁴⁰. The recruitment to higher posts was traditionally a procedure of political criteria as these people were selected due to their service in national administrations and these appointments usually come into the consideration of the Commissioners. These days, after various reforms, promotions to senior grades have altered with a point-system. Also, regarding directors-general, the recent reforms implemented a six-year maximum appointment with obligatory rotation.⁴¹ The purposes of this reform, and in general of the previous ones, are to ensure that those officials will not be able to create influence and excessive powers as well as to ensure the limit of the member states’ influence to the European Administration.⁴²

³⁹ Regulation No 31 (EEC), 11 (EAEC), art. 45.

⁴⁰ Middelhoek, André and Ahlenius, Inga-Britt and Lelong, Pierre and Tizzano, Antonio and van Gerven, Walter (1999). Second Report on Reform of the Commission. Analysis of current practice and proposals for tackling mismanagement, irregularities and fraud. *Committee of Independent Experts. Volume II, 10 September 1999*. [EU Commission - Working Document].

⁴¹ Peterson, J. “The Prodi Commission: Fresh start or free fall?” In *The changing European Commission*, edited by D.G. Dimitrakopoulos, 15–39. Manchester: Manchester University Press.

⁴² Nedergaard, Peter. 2007. *European Union Administration: Legitimacy and Efficiency*. Leiden: Brill | Nijhoff.

- **Salaries**

Wages in the European Union’s administration are considered to be the highest and the most attractive among others, and often are under criticism. Those wages vary as seen in the tables below (wages shown are due on a monthly basis):⁴³

Members, civil servants and temporary staff

Grade	Position at the ECA	Basic salaries (from-to) in Euros
AD16	Member	22,274
AD16	Secretary General	18,994 – 20,624
AD14 – AD15	Director 'Hors Classe' Advisor	14,837 – 18,994
AD13 – AD14	Senior Administrator	13,113 – 16,787
AD9 – AD14	Principal Manager	8,002 – 16,787
AD5 – AD12	Administrator	4,883 – 13,113
AST10 – AST11	Senior Assistant	9,054 – 11,590
AST1 – AST9	Assistant	2,979 – 9,054
SC1 – SC6	Secretary/Clerk	2,612 – 5,481

Contract staff

Contract staff are engaged by the ECA to perform full-time or part-time duties on posts that are not included in the establishment plan, or to replace officials or temporary staff who are temporarily unable to carry out their duties.

Function group	Grades	Duties	Basic salaries (from-to) in euros
IV	13-18	Administrative, advisory, linguistic and equivalent technical tasks, performed under the supervision of officials or temporary staff.	3531 – 7,408
III	8-12	Executive tasks, drafting, accountancy and other equivalent technical tasks, performed under the supervision of officials or temporary staff.	2,758 – 5,114
II	4-7	Clerical and secretarial tasks, office management and other equivalent tasks, performed under the supervision of officials or temporary staff.	2,154 – 3,531
I	1-3	Manual and administrative support service tasks, performed under the supervision of officials or temporary staff.	2,074 – 3,002

Additionally, under the Staff regulations, the officials may benefit from other allowances added to their basic salaries, such as family and education allowances. Analytically, the European civil servants

⁴³ <https://www.eca.europa.eu/en/Pages/Transparency-staff.aspx>.

are entitled to a minimum expatriate allowance of 567 euros, a basic household allowance of 191 euros, children allowance of 418 euros, and an education allowance of 283 euros.⁴⁴

Officials are entitled to a flat-rate payment due to travel expenses, and these payments are based on kilometric allowance. Those allowances are shown below:⁴⁵

EUR 0 for every km from	0 to 200 km
EUR 0,2110 for every km from	201 to 1 000 km
EUR 0,3518 for every km from	1 001 to 2 000 km
EUR 0,2110 for every km from	2 001 to 3 000 km
EUR 0,0703 for every km from	3 001 to 4 000 km
EUR 0,0340 for every km from	4 001 to 10 000 km
EUR 0 for every km over	10 000 km.

- **Pensions**

The European Union formed a pension scheme for its employees. This plan is structured through the Staff regulations and other official documents. Moreover, officials are required to contribute 11.3% of their basic salary to the pension scheme.⁴⁶ The normal age for pensions in the EU institutions is 65 years, while the mandatory retirement age is 67. The tables below are a comparison between the EU civil service and the national administrations.⁴⁷

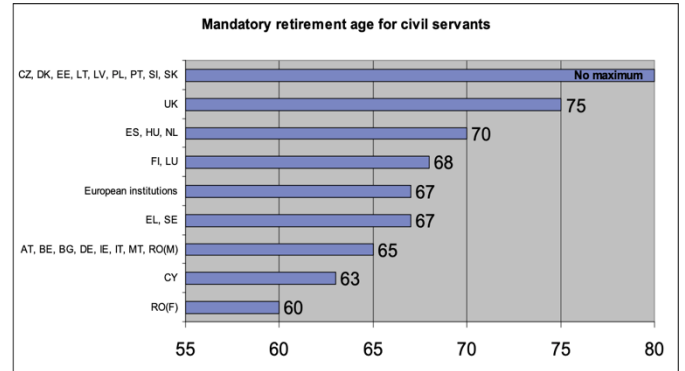
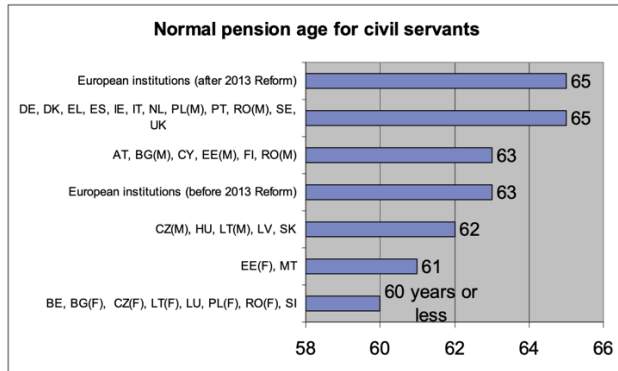
⁴⁴ <http://en.euabc.com/word/814>.

⁴⁵ Regulation No 31 (EEC), 11 (EAEC), ANNEX VII, Section 1, art. 7.

⁴⁶ Council Regulation (EU, Euratom) No 1295/2009 of 22 December 2009 adjusting with effect from 1 July 2009 the rate of contribution to the pension scheme of officials and other servants of the European Union, *OJ L* 348, 29.12.2009, p. 9–9.

⁴⁷ DOCUMENT 52012DC0037

REPORT FROM THE COMMISSION TO THE COUNCIL on the Pension Scheme of European Officials and Other Servants of the European Union.



Analytically, the Staff regulations state that each official that the pensionable age of each official is between 58 and 66, with the optional authorisation of a 1-year service expansion until the age of 70. "The maximum retirement pension shall be 70 % of the final basic salary carried by the last grade in which the official was classified for at least one year. 1,80 % of that final basic salary shall be payable to an official for each year of service."⁴⁸

- **Termination of Service**

Staff regulations article 47 numbers seven causes for the termination of an official's service. These conditions are:

- 1.resignation
- 2.compulsory resignation
- 3.retirement in the interests of the service
- 4.dismissal for incompetence
- 5.removal from post
- 6.retirement
- 7.death

Beginning with the first condition, **resignation** shall be stated by officials in written form where the intentions of the officials are stated undoubtedly. Then the appointing authority of each institution shall confirm the resignation within a month or refuse to do so only when the interested official is under disciplinary proceedings.

Regarding **compulsory resignation**, an official may be required to resign in certain conditions. The Regulation defines these conditions as the official's inability to comply with the following articles of the staff regulations:

⁴⁸Regulation No 31 (EEC), 11(EAEC),art 77

- Art 28(a), which refers to the need of the officials to be citizens/nationals of member-states of the European Union
- Art 39, which refers to the conditions of Secondments of officials
- Art 40, which refers to the conditions of leave on personal grounds
- Art 41 (4), (5), which refer to the conditions of non-active status.
- ANNEX VIII Art 14 (P2) which refers to the reinstatement of an official under the invalidity allowance.

Retirement in the interests of the service are the conditions of termination of service where an official could be retired in the interests of the service. When this condition applies to senior officials, the appointing authority has the right to terminate their service. When the conditions apply to other officials who are not assigned to other posts, they have the right of an allowance.

The next condition on which the service may be terminated is defined by the Staff regulations as **procedures for dealing with incompetence**. Under this section, the Regulation states that the appointing authorities of each institution shall have the structures to examine and identify effectively and in-time cases of incompetence. Moreover, the appointing authority shall examine the reports of the officials mentioned in article 43 and if no professional progress is shown on the basis of three reports, the official shall be downgraded by one grade. Furthermore, the officials are dismissed of their duties if the next two annual reports show a stall to their competencies. During this procedure, the officials are informed about the intentions of the appointing authority and may have hearings, as the examining authority of these cases is the Joint Advisory Committee. If this Committee finds that an official shall be dismissed, then the concerned official is entitled to allowances such as the basic monthly salary of the AST1 grade, family allowances and reimbursement of reasonable expenses during the proceedings.⁴⁹

Progressing to the next section, **retirement**, the Regulation states the eligible age of retiring and the provisions that an official is able to remain operational, as we described above, in the pensions analysis of our chapter.

Last but not least, the Regulation defines, under article 54, the **honorary rank** as a given class by the appointing authorities to officials on termination of their service. This rank, however, has no additional financial benefits.

As we have examined the provisions regarding the careers of the officials under the staff regulations, we shall now proceed with our analysis of the working conditions of the European civil servants.

⁴⁹ Regulation No 31 (EEC), 11 (EAEC), art. 51.

2.2.3 WORKING CONDITIONS

- **Working Hours**

The European civil servants that are under the status of active employment are legally and always at the disposal of the service. The Regulation defines the working hours of the European bureaucrats to vary between 40 to 42 hours on a weekly basis, but any official is obligated to be on stand-by mode at their working place or residency, due to the service's needs. Additionally, each appointing authority may introduce flexible working hours with the officials so as to arrange their working schedule among their supervisors.

European Officials may request for a **part-time** modification of their working hours. In this case, the appointing authorities shall decide whether this permission should be granted. This would be the case under the following conditions:⁵⁰

- For the care of children under the age of nine
- For the care of children between nine and twelve, only if the working time is reduced by a maximum of 20% of the normal working time
- For the care of children until they reach fourteen years of age, if the parent is the sole guardian
- In serious cases, for the care of children after the age of fourteen years of age, with the maximum reduction of 5% in working hours, and without the provisions mentioned in ANNEX IVa, art 3, paragraphs 1-2,⁵¹ which refer to the remuneration based to working hours.
- For the care of seriously ill or disabled first degree relatives
- For the purposes of training and development
- After the age of fifty-eight and for the remaining three years of service before the pensionable age.

Regarding **over-times**, the officials may be required to do so in cases of pressuring and enormous amounts of workload. These over-times might be in the form of night-working, working on Sundays

⁵⁰ Regulation No 31 (EEC), 11 (EAEC), art. 55a.

⁵¹ Regulation No 31 (EEC), 11 (EAEC), ANNEX IVa, Art. 1, pars. 1-2.

or public holidays. The Regulation states that the maximum that an official shall be required to work on an over-time condition shall not exceed one hundred and fifty hours in any six months.

In terms of **shift of working conditions**, officials that are expected to work by default at nights, weekends or bank holidays are legally entitled to special allowances whose rates are determined by the Staff Regulations Committee and the Commission⁵². Furthermore, the amount of the working hours of shift work staff shall not exceed the normal working hours of a year.

- **Leave Policy**

As we have mentioned before in this chapter, the officials are considered to be on leave during their service. This leave policy is governed by articles 57 to 60 and ANNEX V under the Staff regulations.

European officials are entitled to a leave of twenty-four to thirty days of annual paid leave.

Annual leave may be taken at once or in desired periods by the officials, thus a period of fourteen consecutive days of leave must be used.⁵³ If the whole of the annual leave is not used by the end of the current year, then it is subject to transfer to the next calendar year, with its amount not exceeding twelve working days. Annual leave for officials that are authorised to work on a part-time basis is reduced proportionally.

Additionally, officials may apply and receive **special leave**. This leave is granted under certain conditions under ANNEX V, section 2, art. 6 of the Staff regulations. An example of special leave condition is marriage, which grants the official with four days of special leave.

Pregnancy leave is granted to the women that provide a medical certificate. This is a twenty-week leave and begins not earlier than six weeks prior to the possible birth date shown in the certificate, and ends at the latest fourteen weeks after the date of birth.

According to the Regulations, officials are entitled to **sick leave** when they are incapable to carry out their tasks and duties due to a disease or accident. Officials that are absent from their office for more than three days are required to provide with medical certificate to prove their inability. If the officials fail to prove their absence, they are considered as unjustified and are deducted by their annual leave.

⁵² Regulation No 31 (EEC), 11 (EAEC), ars. 111-112.

⁵³ Regulation No 31 (EEC), 11 (EAEC), ANNEX V, Section 1, art. 2.

- **Social Security Benefits**

Officials and their partners, children and other dependants are eligible and rightfully receivers of social security benefits such as **medical insurance**. Legislation provides insurance of 80% of expenses that are spent due to medical needs. Moreover, 85% of the expenditure is covered for the following medical services:⁵⁴

- Medical consultations/appointments
 - Surgeries
 - Hospitalization
 - Pharmaceutical products
 - Laboratory tests and screenings

Additionally, officials are 100% insured for serious illnesses such as cancer, mental illnesses and others that are recognized by the appointing authority.

Article 72 also states that *“One-third of the contribution required to meet such insurance cover shall be charged to the official but so that the amount charged to him shall not exceed 2% of his basic salary”*.

Furthermore, added to the basic medical insurance, the officials **are covered for occupational illnesses** by contributing the 0.1% of their basic salary. Those benefits include payments in the events of:⁵⁵

- Death, to the deceased’s partner and children or successor in accordance with the law of succession
 - Total permanent disability
 - Partial permanent disability of the official.

As we have examined the working conditions of the officials during their career, we shall now proceed with the last chapter of our analysis regarding the Staff regulations, which will be the provisions dealing with disciplinary measures.

⁵⁴ Regulation No 31 (EEC), 11 (EAEC), art. 72.

⁵⁵ Regulation No 31 (EEC), 11 (EAEC), art. 73.

2.2.4 DISCIPLINARY MEASURES

Officials of the European Union must act accordingly and respectfully to the provisions of the Staff regulations. If they fail to do so, whether intentionally or not, the officials are liable to disciplinary acts and measures. The appointing authorities and OLAF are the responsible bodies for ordering disciplinary investigations when they have noticed failures of officials in complying with the Staff regulations. Those investigations are set at the basis of the institutions and the treaties of the European Union and are conducted in order to scrutinize the actions of the European officials. The European Anti-Fraud Office (OLAF) states that the office investigates the following:⁵⁶

- Misconduct
- Performance of personal activities that either amount to **derelection of duty of officials** or are **liable to result in disciplinary or criminal proceedings**.

Some examples of where investigations take place are related to abnormalities in procedures, breaches in confidentiality, falsification of data and documents, actions unduly influenced by institutions or pressure groups, manipulation of recruitment procedures, conflicts of interests, disproportionate management of allowances and grants etc.⁵⁷

Moreover, each institution shall form a **disciplinary board**, which is responsible for determining any fraud in the officials' actions, with the use of hearings and investigation of documents, oral and verbal testimonies regarding the cases. Then the board shall assist the appointing authority on deciding whether a penalty shall be given to the official or close the case instead. In some cases, the appointing authorities act unilaterally without involving the disciplinary board. When the appointing authority decides to impose **penalties** on the concerned official, it may impose the following:⁵⁸

- Written warning or reprimand
- Postponement of the promotion to a higher step for a period of one to twenty-three months
- Temporary downgrade for a period of fifteen days to one year
- Downgrading but in the same function group
- Placement in a lower function group

⁵⁶ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, Article 1.

⁵⁷ OLAF, Investigations Relating to EU staff, in https://ec.europa.eu/anti-fraud/investigations/investigations-relating-eu-staff_en.

⁵⁸ Regulation No 31 (EEC), 11(EAEC), ANNEX IX, Section 3, art.

- Removal from their posts
- When appropriate, pension reduction.

The Regulation states that the appointing authority shall take into consideration various factors before proceeding with the appropriate penalty or disciplinary measure. Analytically, the authority shall consider the nature of the misconduct of the official, the range of the effects of the fault regarding the integrity or interests of the institutions and the Union, the motives of the official as well as their grade and seniority, and the whole career of the official and their actions.⁵⁹

⁵⁹ Regulation No 31 (EEC), 11 (EAEC), ANNEX IX, Section 3, art. 10.

2.3 EPILOGUE OF THE SECOND CHAPTER

As we have examined the Staff regulations and the recruitment procedures, we can say that the European Union tries to implement a stable and just system and environment regarding its internal administrative institutions and its civil service.

Furthermore, regarding the Staff regulations, the European Commission is obligated to form and submit a report to the European Council and the European Parliament every year, evaluating their effects and outcomes.⁶⁰

Moreover, the regulations aim to provide to the service the legal status and guidelines to proceed with the tasks given, with the officials working for the European Union to act in a way appropriate to the status of the Union, reflecting its values and sharing the European “esprit de corps”.

For these purposes, each official of the European Union is considered as an asset, with equal opportunities, rights and obligations, and those are protected under the European Law and the Staff regulations.

Conclusively, the regulations are drawn with the influence of the principles of good public administration⁶¹, providing the European Civil Service with professionalism, efficiency, accountability and transparency. Thus the European officials along the European Civil Service are regarded by the European citizens with respect and pride, as a result of the great European Public Administration and of good governance.

⁶⁰ Regulation No 31 (EEC), 11 (EAEC), art. 113.

⁶¹ OECD, Principles of Public Administration, in SIGMA Publications <http://sigmaweb.org/publications/principles-public-administration.htm>.

CHAPTER 3: ETHICS AND DEONTOLOGY

The European Union as a sui generis entity, with its institutions, is often under criticism and prone to euroscepticism. Among others, the European Union as a system of shared values and common currency, and with a supranational form of governance, seeks to gain the respect and acceptance of the European citizens as well as the whole world. This path is often disrupted, as the European Union is now at a critical situation with the economic crisis, COVID-19, the exit of the United Kingdom and many conflicts, especially in the Middle East. Those abovementioned barriers are strengthened even more with the criticism of the internal procedures of the Union and its internal administration.

Furthermore, the Union's struggle to legitimize its presence as a supranational entity is divided into two factors. First the participation of the European citizens via the European Parliament elections, and second the system that provides the internal administration with transparency, accountability and lawfulness.

For the purposes of this thesis, we shall concentrate on the latter, and in this chapter we shall examine the various aspects regarding the good administration of the European Civil Service and the European Commission. This examination shall occur by analysing data and legal provisions provided in the European Union's primary law, its official documents and treaties.

For the abovementioned purposes, we shall examine thoroughly various aspects of ethics, deontology and good administration. First, it's important to examine some key terms that we will encounter in our research, such as conflicts of interests, whistleblowing, lobbying etc.

We shall then conduct our research, beginning with the ethics of the EU staff. We shall be able to analyse this by focusing on the rules found in the "Code of good administrative behaviour for the staff of the European Commission in their relations with the public" found in the first Annex of the document that refers to the rules of procedure of the European Commission,⁶² as well as the provisions stated in the European Code of Good Administrative Behaviour, implemented by the European Ombudsman's office.⁶³

We shall then collect data and analyse the ethics of the Commissioners by conducting our research by consulting the "Code of conduct for the Members of the European Commission". Our research shall

⁶² Rules of Procedure of the Commission (C (2000) 3614), (OJ L 308 8.12.2000, p. 26).

⁶³ European Ombudsman, The European Code of Good Administrative Behaviour <https://www.ombudsman.europa.eu/publication/3510#/page/5>.

be able to show various topics regarding the Commissioners, such as their political roles, transparency, declarations of interests etc. In this section, the “Independent Ethical Committee” and its duties shall be examined.

Finally, in this chapter we shall be able to analyse the actions of the European Ombudsman’s office as well as its relationship with the European Commission, and also the complaints procedure through the Office.

This chapter will aid in our research, as we shall be able to determine whether the European Commission and the European Civil Service comply with the ethical and deontological standards of service, which is a major concern in this thesis.

3.1 KEY TERMS

3.1.1 CONFLICTS OF INTEREST

Conflicts of interest is a term that is described in bibliography in various factors such as economics, law and public administration.

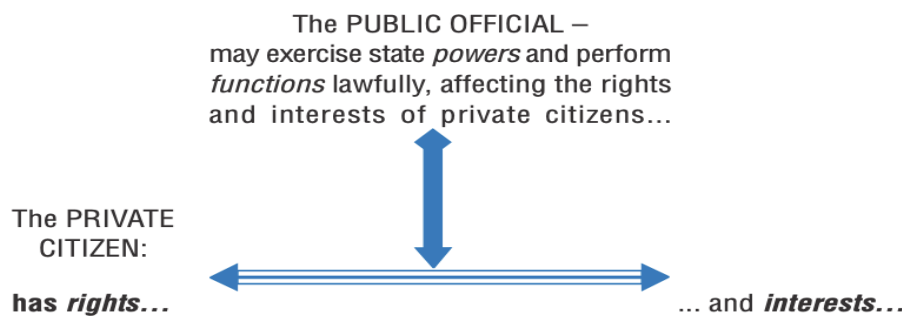
In economics, for example, the term is defined as the potential gain of a party in a transaction, with actions made in a way that harms other parties for economic gains.⁶⁴

In our topic, public administration, conflicts of interest are defined as “the conflict of the public duty and the private interest of a public official, in which the official’s private-capacity interest could improperly influence the performance of their official duties and responsibilities.”⁶⁵

⁶⁴ Mehran, Hamid & Stulz, Rene M., 2007. "The economics of conflicts of interest in financial institutions," *Journal of Financial Economics*, Elsevier, vol. 85(2), pages 267-296.

⁶⁵ OECD, *Toolkit on Managing Conflict of Interest in the Public Sector*, 2005, p. 12.

In bibliography, we can find that the actions of officials that lead to conflict of interests may occur due to reasons that provide them not only with financial gains but also individual gains, such as preferential treatment regarding their career or personal life. Some examples include the impartial involvement of officials in recruitment procedures, the influence of managers to transactions etc. The image below shows the role of the public officials, as the toolkit of the OECD explains:⁶⁶



3.1.2 LOBBYING

Lobbying, as a term, has its origins in the Medieval Latin words “laubia” and “lobia”,⁶⁷ which means entrance, or a structured hall. This is well related to the contemporary term, as lobbying techniques are found in gatherings of officials, MPs and others outside the decision-making rooms.

However, lobbying in its current form represents political actions and influencing of governmental and administrative outcomes. Thus, a definition of lobbying is described in bibliography as “the attempted or successful influence of legislative-administrative decisions by public authorities through interested representatives. The influence is intended, implies the use of communication and is targeted on legislative or executive bodies”.⁶⁸

Lobbying occurs via four methods:⁶⁹

- Coercion
- Encapsulation
- Advocacy
- Argumentation

⁶⁶ OECD, Toolkit on Managing Conflict of Interest in the Public Sector, 2005, p. 15, Diagram 2.1.

⁶⁷ Online Etymology Dictionary, Lobby, in <https://www.etymonline.com/word/lobby>.

⁶⁸ Koeppl, P. (2001). "The acceptance, relevance and dominance of lobbying the EU Commission - A first-time survey of the EU Commission's civil servants." in: Journal of Public Affairs vol. 1(N. 1) 69-80.

⁶⁹ Charrad, Kristina. 2005. “Lobbying the European Union.”

Lobbyists, interest groups, and their methods are often related to unethical practices and abuse of democracy and states. This happens because of some malpractices of lobbyists that include grafting of officials or manipulating the public opinion, often leading to harmful decisions and legislations that are opposed to the collective interests.

On the other hand, lobbying is considered as a precious and fruitful attempt when it meets ethical standards and is used in ways that promotes interests, opinions and knowledge. Good practices of lobbying as well as good intentions are the combination of the term “responsible lobbying”.

Moreover, Transparency International refers to the principles that should be followed, making thus lobbying an efficient practice. These principles are described as follows:⁷⁰

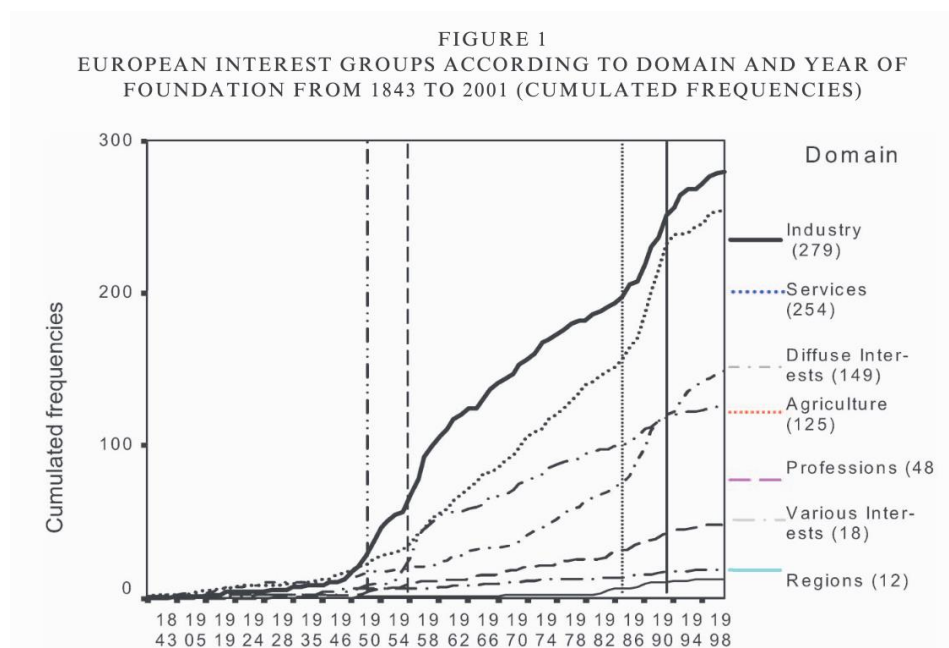
- **Legitimacy**, where lobbyists are required to act in lawful and ethical ways, thus respecting laws, people and the environment
- **Transparency**, as interest groups shall conduct their actions in ways that are open for enquiries and inspection and make their positions accessible to the public
- **Consistency** is required, as lobbying should occur in ways that do not change often, with the stakeholders being knowledgeable of the interests and aims of the private interests’ groups
- **Accountability**, which means that “a professional or organisation will explain to its stakeholders why it is taking a particular decision”⁷¹
- **Opportunity**, which implies that organisations shall conduct communications with stakeholders and interest groups as well as the public in order to have all opinions expressed.

⁷⁰ Transparency International (2015), *Responsible Lobbying: A Short Guide to Ethical Lobbying and Public Policy Engagement for Professionals, Executives and Activists*.

⁷¹ *Ibid*, p. 21.

3.1.3 LOBBYING IN THE EUROPEAN UNION

Interest representation in Europe is present for more than a hundred years. Specifically, with the creation of the European Union and the integration struggle, lobbyists and interest groups have grown widely in the European Union both in range and size. Analytically, we can see the evolution of the various interest groups in Europe in the table below:⁷²



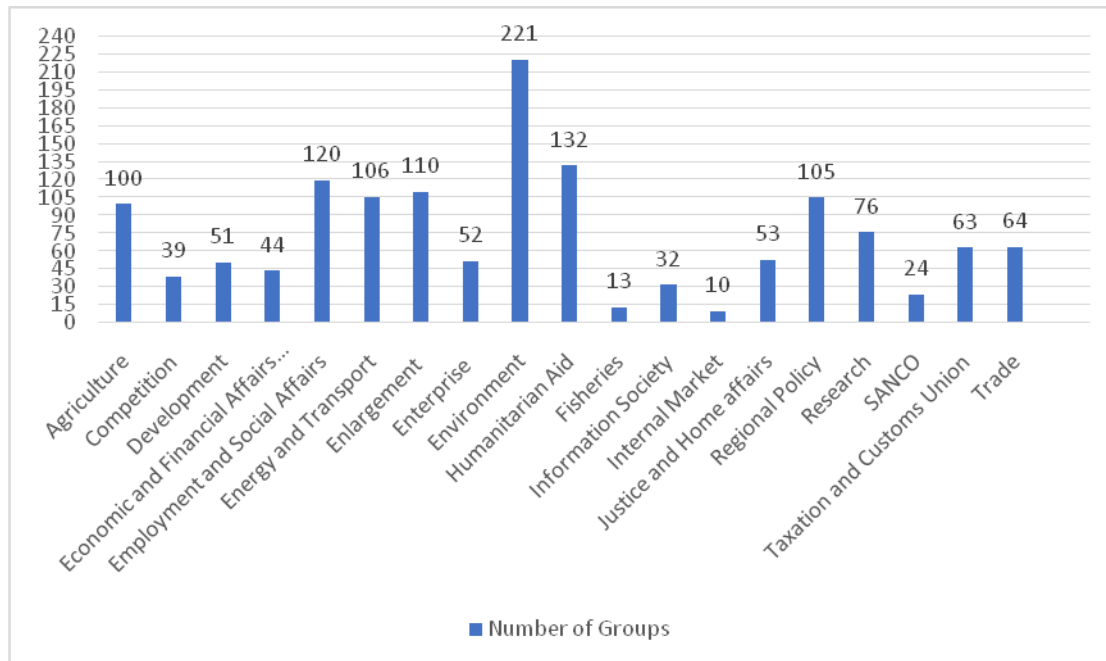
With the help of the table, we can see that interest groups, especially industrial, have been present and active in the European political scene. Especially after the Treaty of Paris in 1951 that established the European Coal and Steel Community, all types of lobbying groups is shown to have increased dramatically.

Bibliography states that, among the other European Institutions, the European Commission is the most targeted area of interest groups. Moreover, various Directorate-Generals are targeted from the various representing groups. The fragmentation of the Commission plays an important role for the lobbyists to be attracted more than the other institutions. The Commission's division into various DGs and Committees is the key that interest groups seek to open the decision-making influence door.⁷³ The

⁷² Jan Beyers, Rainer Eising & William Maloney (2008). *Researching Interest Group Politics in Europe and Elsewhere: Much We Study, Little We Know?*. *West European Politics*, 31:6, 1103-1128.

⁷³ Bouwen, Pieter. 2009. "The European Commission." in *Lobbying the European Union: Institutions, Actors, and Issues, Part II Institutional Demands*, Oxford; New York: Oxford University Press.

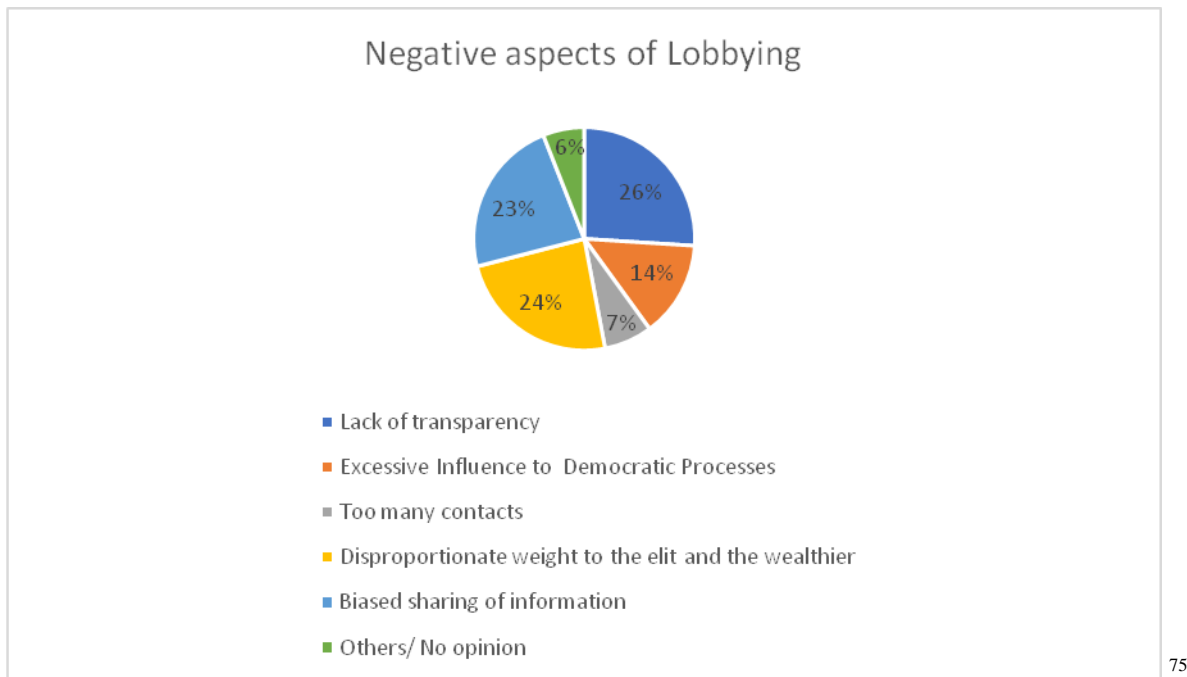
DGs targeted, and specifically the number of groups involved in each Directorate, are shown as an example in the chart below from data of 2007:⁷⁴



⁷⁴ Broscheid, Andreas, and David Coen. 2007. "Lobbying Activity and Fora Creation in the EU: Empirically Exploring the Nature of the Policy Good." *Journal of European Public Policy* 14(3): 346–65.

3.1.4 TRANSPARENCY IN LOBBYING

The European Union is often criticized of being “opaque” in its relations and transactions with other representative groups and interest representation firms. In a research made in Europe, the respondents defined the negative aspects of lobbying as shown in the table below.



Along with the effective aspects of lobbying in the same research, which include the participation of social and economic actors in the procedures as well as the aid of scientific information, we can see that the lack of transparency and the disturbing of the democratic procedures are qualified as the main reasons that define lobbying as negative.

In consideration to these accusations, the Union aims to a clearer and a more transparent modus operandi regarding lobbying and cooperation with the many interest groups. For these purposes, the Union attempted to have an open dialogue with special interest groups in 1993. The text released by the European Commission included some guiding principles that would govern the relations with the interest groups. Those principles⁷⁶ included the **preservation of the open relationship** of the

⁷⁵ Burson Masteller, 2013 Edition, A guide to Effective Lobbying in Europe; The view of Policy Makers, p. 8. <https://www.transparency.cz/wp-content/uploads/Lobbying-in-Europe.pdf>.

⁷⁶ Official Journal of the European Communities, C 63, 5 March 1993, 93/C 63/02.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1993:063:FULL&from=EN>.

Commission and the groups, **the equal share of opportunities to all groups** no matter the size or the origin, **the need of the officials to know “who is who and who does what”** when they deal with representatives, and the **“adoption of simple procedures calling for a minimum amount of human and financial resources and administrative effort”**.

Finally, the European Institutions made a framework for their relationships with the interest groups, as the European Parliament created the **Transparency Register**. This tool is useful, as it shares the details of the represented interests and on whose behalf, as well as the budgets of these transactions. It also contains a public website that all the organizations and interest groups share their information. Among the latter, the register provides a code of conduct regarding the relations of the representatives and the institutions as well as a complaint mechanism.⁷⁷

Finally, OECD published a recommendation of the Council on Principles for Transparency and Integrity in Lobbying. Those principles identified the needs and lacks of the lobbying system. In order to address the abovementioned needs, OECD proposed:⁷⁸

- Building an effective and fair framework for Openness and access
- Enhancing Transparency
- Fostering a culture of Integrity
- Introduced mechanisms for effective implementation, compliance and review.

3.1.5 WHISTLEBLOWING

Whistleblowing is generally accepted as the report of wrongdoing. In a more detailed definition, whistleblowing involves the act of reporting fraud and misconduct in organizations to internal or external parties. When the report is internal, the whistleblower shares the information within an organization, while when it is external the reports are taken by external sources such as media or regulators.⁷⁹ Bibliography also defines the four main characteristics of whistleblowers:⁸⁰

⁷⁷ Transparency Register in <https://ec.europa.eu/transparencyregister/public/>.

⁷⁸ OECD, C (2010)16, RECOMMENDATION OF THE COUNCIL ON PRINCIPLES FOR TRANSPARENCY AND INTEGRITY IN LOBBYING. [https://one.oecd.org/document/C\(2010\)16/en/pdf](https://one.oecd.org/document/C(2010)16/en/pdf).

⁷⁹ Eaton, Tim V. and Akers, Michael D., "Whistleblowing and Good Governance" (2007). *Accounting Faculty Research and Publications*. 9.

⁸⁰ Near, J. P., & Miceli, M. P. (1985). Organizational Dissidence: The Case of Whistleblowing. *Journal of Business Ethics*, 4(1), 1–16.

- 1) They are members of the organization where wrongdoing is reported, and they may retire from their duties before reporting any fraud
- 2) They lack the power to make legitimate alterations in order to prevent fraud or misconduct, thus they report to more powerful resources
- 3) Anonymity is considered an aspect of whistleblowing, yet occasionally, anonymity affects the credibility of the report
- 4) Last but not least, many whistleblowers occupy positions that require certain acts, i.e. auditors, ombudsmen.

3.1.6 WHISTLEBLOWING IN THE EUROPEAN UNION

The European Union endorses its staff to report misconduct, wrongdoing and fraud with special provisions in the Staff regulations. Specifically, Staff Regulations article 22A deals with the obligations of the staff to report such wrongdoings. The regulations state that any official *“becomes aware of facts which give rise to a presumption of the existence of possible illegal activity, including fraud or corruption, detrimental to the interests of the Union , or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials of the Union, shall without delay inform either his immediate superior or his Director-General or, if he considers it useful, the Secretary-General, or the persons in equivalent positions, or the European Anti-Fraud Office (OLAF) direct.”*⁸¹

As we can see, the Union promotes transparency by obliging its staff to report freely those malpractices. Those officials that report breaches of employment law in the European Union staff are somehow protected by the Staff regulations as they endorse staff to report any malpractice without suffering any prejudicial effects regarding their obligation. But the European Union should have introduced a legal framework protecting the whistleblowers, as this was the case with the member states' employees where a directive⁸² on whistleblower protection was introduced, but unfortunately without affecting the European Civil Service, as the EU staff members are under special provisions in employment law and their obligations are governed only by the EU Staff Regulations.⁸³

⁸¹ Regulation No 31 (EEC), 11 (EAEC), art. 22a.

⁸² Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, *OJ L 305*, 26.11.2019, p. 17–56.

⁸³ Make 2020 the year of the EU staff whistleblower, in <https://transparency.eu/euwhistleblower/>.

3.2 GOOD ADMINISTRATIVE BEHAVIOUR IN THE EUROPEAN UNION

Every person is entitled to the right to good administration. These rights also apply in the European context of administration. Moreover, various publications and papers deal with the proper functioning of the administrative behavior in the European Institutions. Thus, the actions and the careers of the European Civil servants are governed by rules contained in the Staff regulations and the Code of Good Administrative Behavior, while the members of the European Commission have their own specific rules and guidelines, which will be analyzed afterwards.

Regarding **conflicts of interest**, EU staff shall be independent and objective. Any conflicts and personal interests must be declared under the Staff regulations. Moreover, staff members shall inform their agency or institution for **outside activities**⁸⁴ and their spouse's occupation. Additionally, any other personal interest that affects the staff's duties must be declared.⁸⁵

Also, the European Commission states that **gifts to staff members** are prohibited, such as favors or money. Specifically, the members of the EU staff may not accept any gift from third parties without permission unless the value of the given items does not exceed the amount of 50 euros and there is no accumulation.⁸⁶ Also the European Commission regulates the actions of officials that intend to **stand for public office or being elected or appointed** to positions. Those officials that aim to do so must be granted by the appointing authority after a request and if so, they must take leave on personal grounds or an annual leave; or they may be authorised to work part-time; or they may continue to work without any change.⁸⁷

⁸⁴ Commission Decision on outside activities and assignments (C (2004)1597).

⁸⁵ Rules for EU civil servants, in https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/ethics-and-good-administration/staff-and-ethics_en.

⁸⁶ COMMUNICATION TO THE COMMISSION Communication from Vice-President Šefčovič to the Commission on Guidelines on Gifts and Hospitality for the staff members https://ec.europa.eu/info/sites/info/files/communication-to-the-commission-guidelines-on-gifts-and-hospitality_2012_en.pdf.

⁸⁷ Practical Guides to Staff ethics and conduct <https://www.asktheeu.org/en/request/1359/response/4906/attach/3/Rapport%20ethics%20EN%20HR.pdf>.

3.2.1 CODE OF GOOD ADMINISTRATIVE BEHAVIOR FOR STAFF OF THE EUROPEAN COMMISSION IN THEIR RELATIONS WITH THE PUBLIC

- 1) The European Commission identified the needs of a reform in the European Public Administration in the early 2000s and adopted a White Paper on reforming the European Commission.⁸⁸ As the Charter of Fundamental Rights includes the right to good administration, the European Commission added a Code of Good Administrative Behavior for the staff of the EU in order to inform the public of what to expect of their relations with the EU staff. As stated, the staff has a duty to serve the best interests of the community and its citizens. For these purposes, the Commission Code of Good Administrative Behavior imposes respect for four main principles⁸⁹: “*Lawfulness*”, as the staff shall act under the provisions laid in the Community’s legislation
- 2) “*Non-discrimination and equal treatment*”, as the Commission promotes the equal treatment for the public without any discriminations regarding the nationality, gender, religious beliefs, disability, age or sexual orientations
- 3) “*Proportionality*” is taken into account by the staff of the EU in order to carry out the expected outcomes and tasks without any administrative or budgetary burdens
- 4) “*Consistency*”, where a spirit of corps is held, and the behavior of the administration follows certain procedures without any abnormal exceptions.

Moreover, this Code addresses the **guidelines for good administrative behavior**, such as objectivity and impartiality, and ensures that information on administrative procedures is offered and exchanged with all related parties within certain deadlines. Regarding the **information on the rights of any interested parties**, the staff shall take into consideration all the concerns of the interested side, shall justify their decisions, and shall state arrangements for appeals.⁹⁰

Additionally, the Code provides the governing rules on **inquiries** such as answering with the most suitable ways to requests for documents. Also, the rules state that the EU staff must reply to any inquiry, either stated via telephone or electronic mail.

⁸⁸ DOCUMENT 52000DC0200(01) REFORMING THE COMMISSION - A WHITE PAPER - PART I /* COM/2000/0200.

⁸⁹ Rules of Procedure of the Commission (C(2000) 3614, ANNEX: Code of good administrative behavior for staff of the European Commission in their relations with the public.

⁹⁰ Ibid.

Regarding **protection of personal and sensitive data**, the Commission Code of Good Administrative Behavior states that officials and the Commission must respect confidential information and personal data, and must respect in particular the following rules, as stated in the Code:

- Rules on protection of personal privacy and personal data
- Obligations related to professional secrecy⁹¹
- Rules on secrecy in criminal investigations
- Confidentiality of matters of the various committees.⁹²

Finally, the Code deals with the right to complain, as it welcomes the public to lodge any complaints through the European Commission or the European Ombudsman's Office.

⁹¹ Treaty establishing the European Community, *OJ C 325*, 24.12.2002, p. 33–184, art. 287.

⁹² Regulation No 31 (EEC), 11 (EAEC), ANNEX II, III, art. 9.

3.2.2 CODE OF CONDUCT FOR THE MEMBERS OF THE EUROPEAN COMMISSION

As stated, “*the Members of the Commission shall refrain from any action incompatible with their duties. Member States shall respect their independence and shall not seek to influence them in the performance of their tasks*”.⁹³

For this purpose, the modus operandi of members of the European Commission, former members, and candidates for the Presidency, as well as for Commissioners-Designate, is governed with the Code of Conduct for the members of the European Commission, which replaced the Code for the Commissioners of 2011.

We shall analyze further this Code that governs the actions of the members of the European Commission.

Firstly, the Code lays down the following seven principles:⁹⁴

1. Devotion of the members for the general interests of the Union
2. Independence, integrity, dignity and loyalty as well as the highest ethical standards regarding the duties of their duties in full coordination with the Treaties
3. The responsibility of the members to retain political contacts to maintain the accountability of the Commission towards the European Parliament and the European electorate
4. The obligation of the members to act collegially for any of the decisions of the Commission
5. The respect of the dignity of their office through their actions and expressions, which must not affect the public perception of the integrity and independence of their office
6. Avoidance of any situation and action that could imply any conflict of interest in their duties
7. The acknowledgment of former members that their obligations have effect even after their term, regarding behavior, appointments or benefits.

Following these principles, the major concern of this Code is the **declaration of interests of the members of the European Commission**. Declaration of interests is considered to be an important procedure, as it gives the opportunity to any institution or organization to clarify the positions of their

⁹³ Treaty on the Functioning of the European Union, Article 245 (ex Article 213 TEC). OJ C 202, 7.6.2016, p. 156.

⁹⁴ Commission Decision of 31 January 2018 on a Code of Conduct for the Members of the European Commission. C/2018/0700/ art. 2 /OJ C 65, 21.2.2018, p. 7–20.

assets and to make sure that the perception of the organization is not harmed by any conflict of interest.

Considering the abovementioned, the European Union's Code of Conduct for the members of the European Commission lays down the interests⁹⁵ that the declaration shall identify, and which shall be available to the public.

Specifically, the declaration of interests shall include any **financial interests**, assets and liabilities that are prone to conflicts of interest. Additionally, the members shall declare any **professional or amateur activities** such as honorary titles that occurred in the ten years prior to the officials' designated date they took office. This includes any **memberships** in clubs and other parties. Additionally, these officials shall declare any **property** owned, independently of the house of themselves and their families. Moreover, the officials shall include in their declarations the **ongoing professional activities of their partners**, naming the nature of the activity as well as the title and the employer, if any.

The decision on the Code of Conduct also lays down the regulation regarding the external activities of the members during their term of office. Considering this, article 8 of the Code states that members are not allowed to be occupied by any other professional activities apart from those of their duties, in order to ensure the independence of the members. In detail, the only external activities that are allowed to be exercised are the **delivery of unpaid courses** regarding European integration, the **publishing of books and involvement in articles, speeches and conferences** as well as the **holding of honorary unpaid posts**, where these posts fall under certain bodies of cultural, political, social or educational nature. These external activities, if any, shall always exist when the president is informed.

Regarding participation in politics during their term, the regulation divides the obligations of the members into two categories:⁹⁶

- A. **Participation in national politics**, where members are allowed to participate only if their duty in the European Union stays prioritized and unaffected. Also, for this to occur, members shall inform the president of their intentions and their roles, and if their role is to stand for election, they must postpone their Commission duties by taking an unpaid electoral leave. Finally, members must refrain from making public political statements, with the exception of participating in an election campaign or of participating in elections.

⁹⁵ Commission Decision of 31 January 2018 on a Code of Conduct for the Members of the European Commission C/2018/0700/ art. 3/ OJ C 65, 21.2.2018, p. 7–20.

⁹⁶ Commission Decision of 31 January 2018 on a Code of Conduct for the Members of the European Commission C/2018/0700/ art. 9-10/ OJ C 65, 21.2.2018, p. 7–20.

B. **Participation in European politics** is allowed where members participate with the European Political Parties, and only if their availability for service is not compromised. They may participate in electoral campaigns for the European Parliament as well as candidates for MEPs and for the position of the President of the Commission, without using any human or material resources of the Union. As to national politics, members must refrain from making public political statements, with the exception of participating in an election campaign or of participating in elections.

Another important aspect that the code deals with is the **post-term of office activities**. That means that after their term, the members are still bound by certain rules and laws. In detail, there is a minimum of a two-year cooling period that doesn't allow the members to engage in any form of professional activity. After the cooling period, the former members shall provide the Commission with a minimum two months' notice, informing the Commission of any upcoming activities. These post-term activities shall only be allowed if they are not related with the activities of the Union, or "give rise to lobbying or advocacy vis-à-vis the Commission and its services."⁹⁷ Some examples of allowed post-term activities include charity, cultural activities, management of assets etc.

After the Commission is informed, the Independent Ethical Committee shall aid with the examination of the provided information, and after its consultation, the Commission shall decide if the planned activity is related to the former Member. This shall not be the case for some types of activities, including the continuation of the service of the former member towards the European Union, the service in their national civil service, their involvement in international organizations, academic careers, honorary ranks, and short-duration activities of 1-2 working days. **Finally, the cooling-period for a former president of the Commission is set by the code to three years.**⁹⁸

The Independent Ethical Committee, as referred to above, is an advisory body that was established with this Code. Moreover, this Committee gives advice to the Commission on ethical issues related with the provisions of the Code as well as addresses certain recommendations regarding ethical aspects. It is composed of three members that are selected for their "competence, experience, independence and professional activities"⁹⁹. These

⁹⁷ Commission Decision of 31 January 2018 on a Code of Conduct for the Members of the European Commission C/2018/0700/ art. 11/ OJ C 65, 21.2.2018, p. 7–20.

⁹⁸ Ibid.

⁹⁹ Ibid, art. 12.

members are appointed by the Commission after proposal of the President on a three-year term.

Finally, the two Annexes of the Code provide the declaration of interests, as analyzed, and the use of the College's global envelope and travel on official business by Commissioners.

3.2.3 THE EUROPEAN OMBUDSMAN'S OFFICE AND THE EUROPEAN CODE OF GOOD ADMINISTRATIVE BEHAVIOR

The Institution of the European Ombudsman's Office was introduced with the Treaty of Maastricht and focuses on improving the protection of the European citizens regarding misconducts and maladministration of the European Institutions. Moreover, it promotes transparency accountability and openness as to decision-making processes and administrative procedures. The European Ombudsman has the obligation to examine complaints about poor administration of the EU institutions and agencies on behalf of citizens, residents, and EU-based companies. These complaints include **unfair conduct, discrimination, abuse of power, lack of information, unnecessary delays and incorrect procedures**¹⁰⁰.

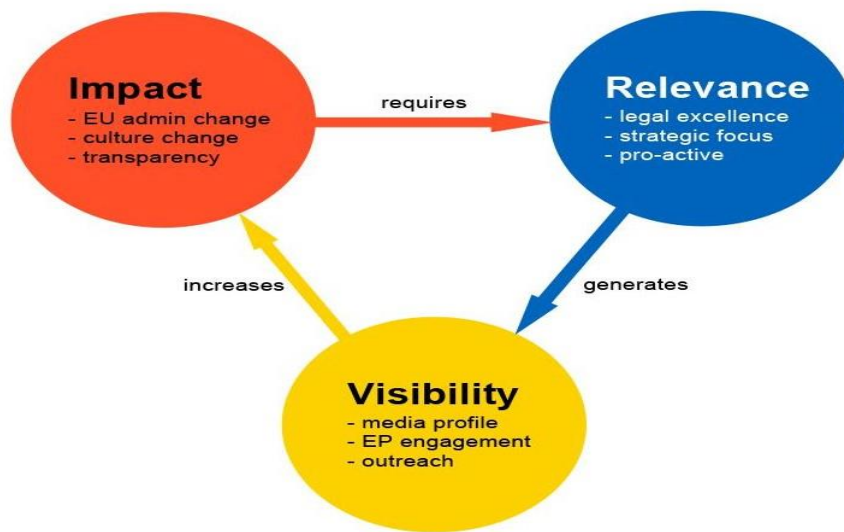
The European Ombudsman is elected by the European Parliament with a term of five years and designs its strategy by combining three pillars that include the "*significant **relevance** within the EU and with our stakeholders; high **visibility** in support of our mission and a real and positive **impact** on the EU administration*",¹⁰¹ as shown in the picture retrieved from the institution's official webpage below:¹⁰²

¹⁰⁰ Overview of the European Ombudsman, in https://europa.eu/european-union/about-eu/institutions-bodies/european-ombudsman_en.

¹⁰¹ European Ombudsman strategy: 'Towards 2024' - Sustaining Impact
<https://www.ombudsman.europa.eu/en/strategy/our-strategy/en>.

¹⁰² European Ombudsman - Our strategic objectives

<https://www.ombudsman.europa.eu/multimedia/infographics/en/14>.



The Office launches investigations, reports and recommendations, with its decisions not to be legally binding. One of these publications is the **European Code of Good Administrative Behavior**.

This Code was first introduced by the European Parliament back in 2001. It provides support to the EU Institutions as it shares the best practices and a European administrative culture that needs to be followed in order to create a well-functioning, transparent and efficient administration that aims to deliver outcomes that address the European citizens' needs, and deals with a broad spectrum of topics. In detail, the Code addresses **lawfulness and absence of discrimination** as it states that all officials shall act under the rules of EU law and their decisions must comply with it, as well as their decisions regarding the public shall be carried out with respect and equality. That means that the officials shall refrain from taking actions based on nationality, sex, color etc., ensuring that discriminate and biased decisions are eliminated.

Proportionality plays a big role as it is one of the principles of public administration, and the Code implies that officials shall act with certain measures related to the cause, while respecting the private interests in relation with the interests of the Union. Article 8 of the Code addresses the **impartiality and independence** of the officials, as according to the Code they shall always act without any preferences and arbitrations shall be independent of personal, political or national interests, and shall refrain from being part of decisions in which they or their families have any interest. Thus, the officials shall be **objective and fair** by acting only after taking into consideration the available data, and shall choose their actions reasonably fairly and without any external influence or personal interests.

Additionally, the officials additionally must act under the law and provide consistency in their behavior by following certain administrative norms of their institutions or agencies and give advice to

the public of any legal matters that need to be pursued. That means that they need to act for the European citizens' general good and be **service-minded** by acting correctly and trying to answer properly to the needs of the public. For these purposes, the officials shall make sure to answer to any enquiry in the same language and give receipts of acknowledgement to make sure that every complaint or question is registered in order to serve the best interests of the Union and the public. Their decisions regarding problems, complaints and enquiries shall be reasonable in terms of time, and without delays they shall be able to answer and help the public within a period of two months after the date of the acknowledgement. If there are any obstacles for doing so, the public shall be informed of the difficulties of the matter.

Moreover, any decision shall be **accountable and evidence-based**, and the public shall be informed for the decisions taken as well as the means and the causes that lead to any action of the officials. Of course, the citizens have the **right to appeal** any decision taken, thus the officials must ensure that they disclose information about the process that must be followed. In detail, they shall indicate the options and the nature of the compensations, the instruments that need to be exercised, and the time-limit that must rule the appeal procedure.

Regarding **data and information**, the Code provides general recommendations as it endorses the officials to deal with personal data with respect to the privacy and integrity of the citizens and to avoid sharing information with third parties if the cause is not legitimate. Moreover, when the public asks for information for any matters concerned, officials shall be able and responsible to answer by sharing appropriate data with clear and understandable manners. That comes with the exception of confidential data, as the officials shall inform the interested person of the nature of the data requested and provide with alternative options. This is also the case for information where an official has no jurisdiction or access and the requester shall be directed to the responsible institution or instrument.

Finally, the Code implies that it shall be implemented by the institutions and its form shall be published with the rights that it provides to the citizens. Any failure shall be a subject of concern to the European Ombudsman's office and after a period of two years, shall be reviewed and discussed. As we analyzed the European Code of Good Administrative Behavior, we find that generally it governs most of the administrative spectrum.¹⁰³ Although the code has no binding legal force, as a recommendation, it tries to protect the interests of the Union and its citizens from maladministration and fraud. This is important, as the right to good administration is mentioned in the treaties of the European Union, making the European Instruments more reliable making the instruments serve the best interests of the people of the European Union.

¹⁰³ Batalli, M. (2018). Principles of Good Administration under the European Code of Good Administrative Behavior. *Pécs Journal of International and European Law*, 1.

3.3 GENERAL CONCLUSIONS OF THE THIRD CHAPTER

Under this chapter, we tried to analyse and conduct our research by seeking the actions made by the European Union and its institutions regarding the ethics and the deontology that shall govern the actions of the European civil servants. We came across various topics that affect the ethical aspects of the European Instruments such as lobbying and interest representation and their outcomes, as well as the actions that balance with the latter such as whistleblowing and other mechanisms like OLAF and the complaints procedure via the European Ombudsman's Office.

Moreover, we can see that the European Union seeks to find ways to introduce measures that rule out any form of maladministration, fraud and foul procedures. These ways are carried out mostly by the European Commission, which tries to find the ways of protecting the institutions from the abovementioned problems. For these purposes, multiple documents were released, such as the codes we analysed in this chapter. It is important to say that the European Commission addresses all interested parties, and that is the reason that different codes of conduct were presented. They tried to address European officials, both senior and junior, with the Staff regulations. Moreover, they address the European Political leadership, the Commissioners with the Code of Conduct for the members of the European Commission. Also, the relations of the European civil service with the public are governed with the relevant Code. So, we can see that every aspect and division of the European Public Administration is targeted regarding ethics, deontology and anti-fraud, and an esprit de corps is ensured towards a better European Civil Service.

Additionally, other instruments offer their services for the abovementioned causes, such as OLAF, which investigates and battles cases of fraud, and the European Ombudsman's Office, with the sole scope of assuring the best outcomes from the Union to the European People.

Even in lobbying, the European Union tries to implement ways of creating a lobby system that achieves the maximum potential of interest representation and overrides its negative aspects such as inequity, financial gains etc. This happens with the Transparency Register, and the principles that the Union embraces which will aid to the better functioning of the institutions and the decision-making process. This also happens with the whistleblowing initiative that the Union supports. These could make lobbying a way of a more efficient administration with openness, transparency and opportunity as the main pillars for a Union that endorses the public to join the decision-making process.

CHAPTER 4: THE APPOINTMENT OF THE SECRETARY GENERAL OF THE EUROPEAN COMMISSION AND THE MARTIN SELMAYR CASE

The final chapter in our thesis deals with the appointment of the Secretary of the European Commission and the procedures that are followed for this task, as well as the case study of the fast-track appointment of Martin Selmayr as the Secretary General in 2018.

We shall deal with this topic, as the Secretary General of the European Commission is considered to be the heart of the institution. In particular, the department of the Secretariat General serves and coordinates the whole function of the Commission, thus it is considered to be a major concern in our research. We shall examine the department's authorities, mission and functions.

Additionally, we shall examine the position of the Secretary General as the higher tier of a senior European civil servant and the procedures of the position's competencies, requirements, and generally the senior official's policy.

Following this, we shall be able to investigate and examine the appointment of Martin Selmayr at the top tier of the European Civil service. This appointment is considered by many as a fraud and an act of maladministration by the European Commission, as Martin Selmayr was appointed in a short time and all the facts that preceded his appointment lead to suspicions of maladministration. We will be able to do so by examining the senior officials' policy, the decision of the appointment, and the reactions made by many actors, both European and international, such as the European Ombudsman, as well as many press releases by major media offices such as POLITICO, THE SPECTATOR etc. We shall examine the answers given by the European Commission as well as the actions that followed.

Finally, we shall be ready to determine whether the actions of the European Commission were legitimate, and if the appointment was held under European Law and the norms that apply to the senior officials' policy.

4.1 THE DEPARTMENT OF THE SECRETARIAT GENERAL

The Secretariat General is the department that is responsible for the whole functioning of the European Commission. It serves the whole College of Commissioners by overseeing the political priorities of the Commission and by ensuring that its actions abide by the principles of collegiality, efficiency and consistency. Moreover, it coordinates the functions of the European Commission in terms of policy development.

The Secretariat General is considered as the service department of the President of the Commission and provides political and administrative support, as well as advice on matters that are held under the responsibilities of the College of the European Commission and the President.

Under the Mission statement of the Secretariat General, its main objectives and authorities are stated as following:¹⁰⁴

The Secretariat General

- Defines the Commission's strategic objectives
- Coordinates, facilitates, advises and arbitrates
- Ensures the smooth operation of the Commission through programming and planning
- Supports structural and administrative reforms
- Functions as the Commission liaison with other institutions such as National Parliaments or European Instruments
- Supports the President of the Commission as a participant in summits
- Is the mainspring in the Commission's work on policies and its representation to international fora
- Provides support to the President for all summits with third parties and partners as well as international organizations
- Is the Commission's link to the European External Action Service
- Ensures that fairness, objectivity, transparency and efficiency govern the relationship of the Commissioners and the Vice-Presidents
- Ensures that the institutions function competently and by the rules of good governance, and that they are modern and service-oriented, with the highest standards of ethics and integrity.

¹⁰⁴ Mission statement of the secretariat-general, in https://ec.europa.eu/info/departments/secretariat-general/mission-statement-secretariat-general_en.

We can see through the mission statement of the Secretariat General that it is a significant department in the functioning of the European Commission as it coordinates and steers the actions and assists the bureaucratic hierarchy to carry out the tasks that are needed to achieve the Commission's goals with efficiency and accuracy. Thus, the proper functioning of the European Union and the goal-delivery is well interconnected with the Secretarial General Department and its contribution to decision-making.

4.2 THE COMPILATION DOCUMENT ON SENIOR OFFICIALS POLICY

As the Commission grew to manage more and more fields of policy, the need of a human capital that would be more efficient, transparent and effective grew. Thus, after the White Paper¹⁰⁵ to reform the Commission and its administrative procedures, the Commission had to ensure that these principles of integrity, quality, efficiency etc. would apply to its senior officials in order to select the highest possible profiles to fulfill the vast posts of the Commission.

As our major concern is the senior officials' appointment, we came across the definition and the grading of the senior officials' post. Senior Officials are defined as the officials that occupy posts and functions that are under the basic post of the Director-General in grades AD15 or AD16 or under posts of Directors, i.e. grades AD15 and AD14.

The **general principles**¹⁰⁶ that govern the senior officials' selection procedure are:

- **Merit**, as the selection procedure must be primarily based on the comparison of the merits of the candidates. In this assessment, the candidates shall be examined not only for their careers, but also for their abilities to work in a multicultural environment and as teams.
- **Gender Balance**, as the equal opportunities policy states. The appointing authorities shall give priorities to women if the candidates are of equal merit. This happens so as to create an environment that develops a balance between women and men.
- **Geographical Balance**, as stated in the Staff regulations "*shall be directed to securing for the institution the services of officials of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States of the Union. No posts shall be reserved for nationals of any specific Member State*"¹⁰⁷.

¹⁰⁵ Document 52000DC0200(01) / Reforming the Commission - A White Paper - Part I.

¹⁰⁶ Compilation Document on Senior Officials Policy, European Commission, art. 3.

¹⁰⁷ Regulation No 31 (EEC), 11 EAEC), art. 27.

Following the general principles, the document that addresses the senior officials' policy refers to the Publication Process. Vacancies shall be published so that the Commission ensures that the highest possible profiles would be informed and apply for a senior post. Publications are governed by article 29 of the Staff regulations, which state that a vacant post must be fulfilled either by a publication of vacancy or a transfer or a promotion.¹⁰⁸ That means that the Commission may choose to appoint a certain official to the post without publishing the vacancy, if this particular candidate has the necessary skills and competencies to fulfil the certain post.

Most of the times and as a general rule, senior posts are filled with people that are under management grades within the European Commission or other European Institutions, and that happens because the Commission aims at an administration that is well-trained and efficient and also shares the "esprit de corps". Therefore, a senior post is usually published internally at a first stage, but there are cases that may be filled with external candidates.¹⁰⁹

After the Publication comes the **appointment procedure**. For this purpose, there are several actors that are engaged in the appointment process. These **actors**¹¹⁰ are described as follows:

- **The Appointing Authority**, which is the European Commission for the appointment of all senior posts.
- **The Consultative Committee on Appointments (CCA)**, founded in 1980, the CCA is the advisory instrument to the Commission for the appointment of senior officials. It is responsible for interviewing, evaluating and shortlisting candidates for various senior posts including the Secretary General.
- **The permanent Rapporteur to the CCA** acts as promoter of successful career development of all senior officials.
- **The Rapporteur for the Case** is appointed by the Commission in order to aid to the whole appointment procedure. The rapporteur is usually a higher-grade official and acts as a full member of the CCA for the selection process.
- **Other Actors**, that include external human resources consultants, assessment centres, independent experts etc. All these actors must work with confidentiality under a contract with the European Commission.

The appointment procedure is a process that follows certain rules.¹¹¹ To begin with the **start of the procedure**, it is the first stage that begins with the acknowledgment of a future vacancy. That means

¹⁰⁸ Regulation No 31 (EEC), 11(EAEC), art. 29.

¹⁰⁹ Compilation Document on Senior Officials Policy, European Commission, art. 4.

¹¹⁰ Ibid art. 5, par. 1.

¹¹¹ Ibid, art. 5.2.

that where an official soon will retire or be transferred to other posts, the responsible actors shall be appointed to begin with the procedure. The next step is the **Vacancy Notice**. The rapporteur to the procedure prepares for the responsible DG the draft notice. This notice includes the detailed job description, the responsibilities of the candidate, and the minimum qualifications for the vacancy. This is a very special step, which is prepared thoroughly, as the notice shall include all the needed skills and qualifications that the candidates must present.

When this notice is approved by the appointing authority, it is published in the Commission's vacancy notices and the invitations for applications are published in the Official Journal of the Union, the web, and where applicable, to the press. It's important to say that whether the vacancy would be externally published, all the interested parties shall be informed with detail about the particular job opening.

Another important aspect of the procedure is the **Information to the Applicants**. At all times, communication, guidance and information must be given to applicants and other interested parties throughout the whole process. If it is needed, the CCA shall arrange preliminary meetings with candidates to inform them about the selection process and answer to enquiries.

Following the publication of the vacancy notice and the communication with the candidates, we shall mention the initial assessment step, which is the setting up of a **pre-selection panel**. This pool of candidates is set up with a shortlist of applicants qualifying for the post under a first initial evaluation.

Next comes the CCA with two phases. At the **first CCA phase**, an evaluation of the pre-selection report occurs and the highest suitable profiles for an interview are identified. At the **second CCA phase**, these candidates are invited to interviews with the CCA and other actors, such as external experts and recruitment assistants. Additionally, and if needed, assessment centres may be organized, with the applicants engaging in group exercises and in-depth interviews. These interviews happen so as to assess the managerial skills of the applicants and as these occur, the CCA adopts an opinion and shortlists candidates along their evaluation sheets. These evaluation sheets contain the evaluation regarding the personal skills and merits of each candidate. With this report, the CCA helps the Commission and its members to select a candidate with the highest possible standards for the post. This report is crucial as it collects and identifies the best profiles suitable for the vast posts of the European Commission, and then is given to the Commissioners to work and proceed with the procedure.

This will happen with **interviews by the members of the European Commission**. This step takes place before any proposal for appointment, and one or more Commissioners must interview and evaluate the candidates shortlisted by the CCA.

After all these stages, the **appointment** occurs by the Commission as the appointing authority under a proposal from the Commissioner for Personnel and Administration and an agreement from the President. The successful candidate must then agree a **mission statement** that includes a precise work programme and objectives related to human and financial resources.

There is a **probationary period**¹¹² following the appointment of nine months before the establishment of the official. This probationary period is related to some general principles such as:¹¹³

- The ability of the officials to perform efficiently and effectively as well as the assessment of their work during these nine months
- A report of corrective measures may be drawn after a period of five months
- A probation report must be prepared one month prior to the expiration of the statutory nine months that include a proposal of establishment, dismissal or extension of the probationary period of the official
- If the probation report proposes dismissal or extension of the probationary period, the official may appeal to the Reports Committee under the Staff Regulations¹¹⁴
- After the appeal or a possible extension, the Appointing authority must announce its decision regarding the actions to be taken for the official's post.

Senior officials are also subject to constant evaluation. This happens to ensure that the officials' ability, efficiency and conduct are constantly high ranked. Thus, the officials are subject to annual performance appraisals,¹¹⁵ which occur to assist senior officials by providing feedback on their performance and their development needs. These appraisals are drawn by reporting officers with communication with the evaluated official and via samples taken with questionnaires by their colleagues and collaborators.¹¹⁶ Then the **annual career development review (CDR)** is drawn that contains all the information needed for the officials.

Moreover, there are more rules that are applied to the senior officials' careers, such as promotions or mobility. But the whole concept of the appointment is described as above, and we can see that it is clearly a very complicated procedure, as it engages many actors, both internal and external, but also the whole procedure follows certain rules that complexifies the process even more. This happens, as the European Commission seeks to find the best possible candidates to fulfil the senior posts of its enormous bureaucracy.

¹¹² Regulation No 31 (EEC), 11 (EAEC), art. 34.

¹¹³ Compilation Document on Senior Officials Policy, European Commission, art. 6.

¹¹⁴ Regulation No 31 (EEC), 11 (EAEC), art. 34.

¹¹⁵ Regulation No 31 (EEC), 11 (EAEC), art. 43.

¹¹⁶ Compilation Document on Senior Officials Policy, European Commission, art. 7 par. 2.

4.3 THE APPOINTMENT OF MARTIN SELMAYR AS THE SECRETARY GENERAL

Martin Selmayr has become a topic of debate at Brussels since his appointment of Secretary General of the European Commission. But who is Martin Selmayr? He was born in West Germany on the 5th of December of 1970 and he studied law. He became a Brussels official in 2004 and served the European Commission in various posts. He also served as the head of Jean-Claude Juncker's electoral campaign for the post of the President of the European Commission and after taking office on November 2014, Martin Selmayr became the President's Head of Cabinet.¹¹⁷

But Martin Selmayr became a topic of reference for his appointment as the Secretary General of the European Commission. It all started as he was appointed Deputy Secretary General of the European Commission. Shortly after this, President Juncker informed the College of the Commissioners that the current Secretary General Alexander Italianer expressed his intention to retire, and that he would like that Martin Selmayr fulfil his post.¹¹⁸ After the official retirement of Secretary General Italianer in March 2018, Selmayr was approved by the College to occupy the position.

A crisis then emerged as a parliamentary debate occurred, with many MEPs claiming that German influence overcame the European interests and that Martin Selmayr was "parachuted" to the European Civil Service's top tier.¹¹⁹ In detail, many MEPs¹²⁰ criticized the appointment as an act that would make the European Union's credibility vulnerable. As liberal MEP Sophie in't Veld, and even Françoise Grossetête, MEP from Selmayr's political group European People's Party stated, "*What better to give grist to the mill of the Euroskeptics?*"¹²¹

We can see that the appointment caused a series of reactions and complaints, thus many actors were involved in the following weeks that the investigations took place.

¹¹⁷ Hendrik Kafsack: "Der starke Mann hinter Juncker," Frankfurter Allgemeine Zeitung, 10 September 2014.

¹¹⁸ Boffey Daniel, The Guardian, Angry MEPs attack Juncker over elevation of his 'monster' Selmayr <https://www.theguardian.com/world/2018/mar/12/nasty-political-games-row-over-top-eu-appointment-martin-selmayr>.

¹¹⁹ Gotev Georgi, EURACTIV, Selmayr-Gate: Storm in an EU teacup <https://www.euractiv.com/section/politics/news/selmayr-case-storm-in-eu-teacup/>.

¹²⁰ Debate about the Appointment of the Secretary-General of the European Commission Martin Selmayr, European Parliament https://youtu.be/9ljc_hZCqH0.

¹²¹ De la Baume Maia et Sayer Zach, POLITICO, MEPs on Selmayrgate: It 'destroys' EU credibility <https://www.politico.eu/article/martin-selmayr-sophie-int-veld-selmayrgate-destroys-eu-credibility-says-liberal-mep/>.

4.3.1 FOLLOWING THE APPOINTMENT

After the accusations, the European Commission claimed that the appointment was made in full compliance with European Law and all other legal rules. This was made by laying down the questions of the Budgetary Control Committee and the Commission's answers¹²² regarding the appointment. Among 195 questions held by the Budgetary Control Committee, there were enquiries that included the conditions for appointment for the Secretary General, the procedure that was followed, and other related facts.

Moreover, the Commission gave answers on how Martin Selmayr managed to be promoted twice in a week within one College meeting by stating that Martin Selmayr was not promoted, as he was already an AD15 official before the appointment took place, and that he could be appointed as Secretary General even without having first been appointed Deputy Secretary General, in regard to his competencies and merits. Also, the Commission stated that the three previous Secretaries-General were appointed with the same process, i.e. transfer, as this was in the best interest of the service.

The Commission underwent 195 pressuring questions and answered to all of them, and as stated, the procedure took place with all legal measures and without any form of maladministration. The appointment, thus, followed all legal measures, but the trust to the European Commission was compromised. Martin Selmayr and President Juncker were accused of a coup in Brussels, and the newly appointed Secretary General was given various nicknames such as the "Monster of EU" or the "top uncivil servant".¹²³ Many accused the Juncker administration of favouritism and influence on the decision-making process, with Martin Selmayr taking office as a classical move of secrecy and power grabbing.¹²⁴

The European Parliament, after examining the answers given by the Commission, adopted a resolution on the 18th of April 2018 that stated the following in its conclusions:¹²⁵

¹²² COMMISSION ANSWERS TO THE QUESTIONS OF THE BUDGETARY CONTROL COMMITTEE OF THE EUROPEAN PARLIAMENT ON THE APPOINTMENT OF MR MARTIN SELMAYR AS THE NEW SECRETARY-GENERAL OF THE EUROPEAN COMMISSION, https://ec.europa.eu/commission/news/european-commission-confirms-appointment-mr-selmayr-secretary-general-decided-full-compliance-all-legal-rules-2018-mar-24_en.

¹²³ The Case of the EU's Martin Selmayr, <https://www.theperspective.se/the-case-of-eus-martin-selmayr/>

¹²⁴ How Martin Selmayr became EU's top (un)civil servant, <https://www.politico.eu/article/martin-selmayr-became-eu-top-uncivil-servant/>.

¹²⁵ 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)).

The European Parliament:

“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.

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;

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;

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;”

Moreover, the Parliament, following its findings, accused the Commission of maladministration, and consequently called for the resignation of Martin Selmayr with a majority of 71% of votes.¹²⁶

4.3.2 THE EUROPEAN OMBUDSMAN’S INVOLVEMENT

The European Ombudsman at the time, Emily O’ Reilly, opened an inquiry after a set of complaints that her office received and after the initial examination of the Budgetary Control Committee and the Parliament’s resolution. Mrs O’ Reilly had to inspect an enormous number of documents and reports to lead her to issue her findings on the 31st of August 2018. In her findings, the Ombudsman points **four instances of maladministration** regarding the appointment of Mr. Selmayr as the Secretary General of the European Commission.

¹²⁶ PARLIAMENT CALLS FOR SELMAYR’S RESIGNATION IN LANDSLIDE VOTE.
<https://www.euractiv.com/section/eu-elections-2019/news/parliament-massively-votes-for-selmayrs-resignation>.

After a long description and explanation of the facts, the Ombudsman addressed¹²⁷ the facts that indicate maladministration as follows:

- I. The Commission initiated the selection procedure for the Deputy Secretary-General's vacancy not for the interests of the service but for ensuring that Mr. Selmayr would become a potential candidate for being transferred to the Secretary General's post
- II. A situation of artificial urgency emerged, as the upcoming retirement of Alexander Italianer was kept secret. This situation facilitated the appointment of Mr. Selmayr. Yet again, even if there was an urgency, the Commission is responsible of not launching a procedure that would identify and evaluate candidates for the Secretary General's post.
- III. The involvement of Martin Selmayr in the cabinet of President Juncker in the past, creates a potential conflict of interest in the "*decision-making leading to the creating of the Deputy Secretary-General vacancy and the approval of the vacancy notice for that position*"
- IV. The committee of senior officials that interviewed Mr. Selmayr for the Deputy Secretary-General's post was not constituted under compliance with the rules of appointment.

¹²⁷ RECOMMENDATION OF THE EUROPEAN OMBUDSMAN IN JOINT CASES 488/2018/KR AND 514/2018/KR ON THE EUROPEAN COMMISSION'S APPOINTMENT OF A NEW SECRETARY-GENERAL, ART. 8. <https://www.ombudsman.europa.eu/en/recommendation/en/102651>.

4.3.3 THE EUROPEAN COMMISSION REPLIES TO THE EUROPEAN OMBUDSMAN

On the 3rd of December of 2018, the European Commission replied to the findings of Mrs. O' Reilly. With its reply, the Commission stated that the appointment took place in compliance with the applied rules regarding the appointment of senior officials. In detail, the Commission responded by laying down the procedure followed as previously stated in nine points:¹²⁸

“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 law² 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 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 . 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; 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

¹²⁸ REPLY FROM THE EUROPEAN COMMISSION TO THE EUROPEAN OMBUDSMAN ON THE RECOMMENDATION IN THE JOINT INQUIRY INTO COMPLAINTS 488/2018/KR AND 514/2018/KR CONCERNING THE COMMISSION'S APPOINTMENT OF A NEW SECRETARY-GENERAL.
[HTTPS://WWW.OMBUDSMAN.EUROPA.EU/PDF/EN/107213.](https://www.ombudsman.europa.eu/pdf/en/107213)

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 EU 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 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 interinstitutional round table on this matter."

With these points, the Commission insists that the normal route for appointment took place and all legal rules were followed as the College of the Commissioners gave its approval, and that the upcoming retirement of Mr. Italianer was not kept in secrecy and no conflict of interest took place. In addition, the Commission responded to the accusations of the Ombudsman related to the instances of alleged maladministration.

Regarding the **instance related to a potential conflict interest**, the Commission replied that the Commission took all the required measures to eliminate any conflict of interests. This happened as senior officials are not part in any stage in the selection process. It is stated that it is not Commission practice for a senior official to be part of the selection and preparation of vacancy notices process, and that the possibility of applying for senior management posts exists for all senior managers without any exception to their current post, whether they are assigned in cabinets or not. In addition to that, the Commission states that any potential conflict of interest is eliminated as Mr. Selmayr recused himself

from the selection process by writing to the CCA. This note¹²⁹ was included in the response from the Commission.

Regarding the **instance of alleged maladministration concerning the composition of the CCA**, the European Commission replied that even though the European Ombudsman correctly pointed that “*a member of the Committee with a personal interest such as to impair his or her independence in a specific matter dealt with by the Committee, shall neither take part in the deliberations nor vote on that matter*”¹³⁰, the current provision is not applicable as the whole cabinet of the President was recused when Mr. Selmayr recused himself with the note to the CCA.

Referring to the **instance of alleged maladministration concerning the purpose behind the selection procedure for the Deputy Secretary-General**, the reply of the Commission stated that the facts did not support this statement. The Commission supported that there was no purpose behind the selection of Mr. Selmayr as he was already eligible as an AD15 official referred to the staff regulations,¹³¹ which made the transfer of Mr. Selmayr legitimate as the post corresponded to his grade.

Finally, concerning the **instance of alleged maladministration concerning the urgency of the appointment and the use of the Article 7 transfer procedure**, the Commission replied that the conclusion of the Ombudsman that the urgency was artificial was based on a misunderstanding of the whole concept of the Staff regulations. Moreover, the Commission stated that it is not needed to present exceptional circumstances to reassign an official to another post and that the transfer was made for the best interest of the service, again under article 7 of the Staff regulations.

We can see that the Commission struggled to prove that the appointment took place in compliance with all legal rules, in contrast to the European Ombudsman’s findings.

¹²⁹ REPLY FROM THE EUROPEAN COMMISSION TO THE EUROPEAN OMBUDSMAN ON THE RECOMMENDATION IN THE JOINT INQUIRY INTO COMPLAINTS 488/2018/KR AND 514/2018/KR CONCERNING THE COMMISSION'S APPOINTMENT OF A NEW SECRETARY-GENERAL, ANNEX: NOTE OF 12 FEBRUARY 2018. [HTTPS://WWW.OMBUDSMAN.EUROPA.EU/PDF/EN/107213](https://www.ombudsman.europa.eu/pdf/en/107213).

¹³⁰ COMMISSION DECISION laying down the Rules of procedure for the Consultative Committee on Appointments (CCA) art. 10. https://www.europarl.europa.eu/cmsdata/140683/C_2007_380_1_OTHER_DOCUMENT_EN_V1_P1_534714.PDF.

¹³¹ Regulation No 31 (EEC), 11 (EAEC), art. 7(1).

4.3.4 THE EUROPEAN OMBUDSMAN'S ASSESSMENT FOLLOWING HER RECOMMENDATION AND THE COMMISSION'S REPLY

Following the reply of the Commission, the Ombudsman published her assessment and stated that the reply did not present new information that were sufficient to alter the findings, thus her recommendation still supported that the appointment did not follow the Commission's own rules, and therefore it was not legal under EU law. Moreover, the assessment followed in six main points.¹³²

First, **there was misuse of the Deputy Secretary-General appointment procedure**, as Mr. Selmayr's appointment as Deputy Secretary-General was not made to the service's best interest, but just to assure that he would serve as Secretary-General following the retirement of Mr. Italianer in contrast to the Staff Regulations that states that "*no appointment or promotion shall be made for any purpose other than that of filling a vacant post as provided in these Staff Regulations*"¹³³.

Second, the **creation of an artificial time constraint**, as the Ombudsman supported, occurred by the secrecy kept in Mr. Italianer's intention to retire. Hence, the Ombudsman strictly supports that the urgency created by the Commission was artificially formed to facilitate the appointment of Martin Selmayr as the Secretary-General.

Third, Mrs. O' Reilly identifies that the European Commission **failed to avoid the risk of a conflict of interest**, as Mr. Selmayr's involvement in the President's Cabinet lead the creation of a vacancy for the Deputy Secretary-General and the approval of the vacancy notice for that post. Additionally, the Ombudsman identified an instance of maladministration of the Staff as the candidates should not be involved at any stage of the preparations or the selection procedure. Moreover, it is a matter of violation of the European Law as the Staff Regulations state that:¹³⁴

1. "*An official shall not, in the performance of his duties and save as hereinafter provided, deal with a matter in which, directly or indirectly, he has any personal interest such as to impair his independence, and, in particular, family and financial interests.*"
2. "*Any official to whom it falls, in the performance of his duties, to deal with a matter referred to above shall immediately inform the Appointing Authority. The Appointing Authority shall*

¹³² DECISION IN THE JOINT INQUIRY IN CASES 488/2018/KR AND 514/2018/KR ON THE EUROPEAN COMMISSION'S APPOINTMENT OF A NEW SECRETARY-GENERAL, ANNEX. [HTTPS://WWW.OMBUDSMAN.EUROPA.EU/EN/DECISION/EN/109855#_FTN10](https://www.ombudsman.europa.eu/en/decision/en/109855#_FTN10).

¹³³ Regulation No 31 (EEC), 11 (EAEC), art. 4.

¹³⁴ Regulation No 31 (EEC), 11 (EAEC), art. 11a.

take any appropriate measure, and may in particular relieve the official from responsibility in this matter.”

3. *“An official may neither keep nor acquire, directly or indirectly, in undertakings which are subject to the authority of the institution to which he belongs, or which have dealings with that institution, any interest of such kind or magnitude as might impair his independence in the performance of his duties.”*

This article also, in its first paragraph, counters the Commission’s statement that there is no legal requirement for senior officials to recuse themselves from the procedures. There is clearly a conflict of interest as Mr. Selmayr was involved in the President’s Cabinet.

Fourth, on the **Composition of the Consultative Committee on Appointments**, the European Ombudsman found that the CCA was not constituted under the rules of procedure of the CCA. Article 10 of the rules of procedure of the CCA should have been applied as Mr. Selmayr had conflicts of interest.

Fifth, on the **Appointment procedure for the Secretary-General’s post**, Mrs. O’Reilly stated that the Commission did not agree to her recommendation to publish a vacancy notice for future vacancies for the Secretary-General’s post. This disagreement leads to future appointments that do not match the best eligibility criteria for the current job, thus candidates that have the skills and merits for a special post like the Secretary-General of the Commission are excluded.

Sixth and final point of the Ombudsman’s assessment on changes to the CCA, **recommendations are made to the Commission to broaden the CCA** to include external actors for future Secretary-General appointments. This recommendation did not find the Commission in agreement.

4.3.5 REACTIONS TO THE “SELMAYRGATE”

Following her assessment, Emily O’Reilly stated that this appointment *“risked jeopardizing the hard-won record of high EU administrative standards and consequently, the public trust”*.¹³⁵

The rapid rise of Martin Selmayr to power and the whole scandal that jeopardized the European Union’s credibility caused a series of reactions from inside and outside the European Union. The Parliament asked for a resignation while many MEPs talked about a coup. MEP Sophie in ’T Veld of ALDE threatened that this could be a reason for many MEPs to stop their support to the European

¹³⁵ Deutsche Welle, EU watchdog slams Juncker cronyism.
<https://www.dw.com/en/eu-watchdog-slams-juncker-cronyism/a-45352702>.

Commission, calling President Juncker to choose between Martin Selmayr's career and the creditability of the European Union.¹³⁶

While the "Selmayrgate" angered many people in the European Union, President Juncker still supported this move and even threatened that if Martin Selmayr was forced to quit, he would have quit as well.¹³⁷

Even the European People's Party, Martin Selmayr's political party, was driven into debates, with many stating that it was a classic move of power grabbing. In detail, MEP Françoise Grossetête stated that "*What we have witnessed with this appointment is nothing less than a power grab from the high administration, with little regard for rules of procedure, and thanks to little arrangements among friends*".¹³⁸

Hence, we can see that the move of promoting Mr. Selmayr in this way drew the European Union into a "fight", and "coup" is the right word to use for this whole appointment.

¹³⁶ Aurora Bosotti, The Express, Juncker ON THE BRINK: EU allies threaten to withdraw help as Commission hangs in balance.
<https://www.express.co.uk/news/world/931173/European-Union-Jean-Claude-Juncker-European-Commission-Martin-Selmayr-video>.

¹³⁷ POLITICO, JUNCKER: IF MARTIN SELMAYR GOES, I GO,
<HTTPS://WWW.POLITICO.EU/ARTICLE/MARTIN-SELMAYR-JUNCKER-GOES-I-GO/>.

¹³⁸ POLITICO, EUROPEAN PEOPLE'S PARTY SPLIT OVER MARTIN SELMAYR PROMOTION
<HTTPS://WWW.POLITICO.EU/ARTICLE/EUROPEAN-PEOPLES-PARTY-EPP-SPLIT-OVER-MARTIN-SELMAYR-PROMOTION-EUROPEAN-COMMISSION/>

CHAPTER 5: GENERAL CONCLUSIONS

Our research took place by analysing data given from various sources such as journals, books, official documents and reports as well as websites and news agencies. We conducted our research firstly by analysing the theories regarding public administration and organizational behaviour. We then proceeded by analysing the European Civil Service and its modus operandi, with references to the officials' careers, from their selection to their retirement and pension. Moreover, ethics and deontology in the European Union were screened and investigated as we proceeded with our case study and the appointment of Martin Selmayr to the highest rank of the European Civil Service, the post of the Secretary-General of the European Commission, as well as the whole scandal that erupted, and the following actions held from different actors such as the European Parliament and the European Ombudsman.

We can see, throughout our research, that the European Union works as a fully and a well-organized organizational structure. It endorses hierarchy, but also supports the horizontal and team working environment. That happens so as to achieve the maximum potential of the officials of the Union. Throughout the Staff regulations, we can see that European Law covers the careers of the officials from beginning to end. Since the selection process, the officials are under a planned and a methodical set of rules that govern their career that provide them with an enormous number of rights and benefits, but also that deal with their obligations. These obligations secure the well-functioning and the high prestige of the European Union.

Regarding the ethics and deontology that need to exist at all times, European Law strictly refers to them with codes of conduct and ways to report fraud, maladministration, and actions that do not refer to the European Union's values.

And finally, "Selmayrgate" ended up in hurting the Union's image and all the values that it promotes. Integrity, transparency, ethics and deontology are all compromised with a scandal that was characterized as a coup and brought tensions to this well-functioning administration.

5.1 PROPOSALS

It is clear that the selection and the process of appointing senior officials, especially to the posts of the Deputy Secretary-General and the Secretary-General of the European Commission, lack transparency and cohesiveness, as we have understood that there was an act of maladministration to the procedure of appointing Mr. Selmayr. The legality of the appointment could also be doubted, as there were some instances that proved that there was lack of transparency, conflicts of interests, and secrecy in the route towards the appointment of Mr. Selmayr, since he was the nominee and the preferred candidate by President Juncker.

Our proposals tend to agree with the recommendation of the European Ombudsman Mrs. Emily O'Reilly and include:

- The involvement of OLAF and other ad-hoc committees to investigate potential maladministration and conflicts of interests **before** the appointment, and issue reports regarding the applicants.
- The introduction of a cooling-off period for a number of years for people serving in posts that may relate to conflict of interests and intent to apply for senior posts.
- All the decisions made by the appointing authorities as well as meetings held must be minuted to ensure the transparency and fairness of the decisions held.
- The CCA should include external members from outside of the Commission for appointments of senior posts to ensure that the best candidate is selected under all legal rules.
- “The Commission should develop a specific appointment procedure for its Secretary-General, separate from other senior appointments.”¹³⁹

¹³⁹ DECISION IN THE JOINT INQUIRY IN CASES 488/2018/KR AND 514/2018/KR ON THE EUROPEAN COMMISSION’S APPOINTMENT OF A NEW SECRETARY-GENERAL, ANNEX.
[HTTPS://WWW.OMBUDSMAN.EUROPA.EU/EN/DECISION/EN/109855#_FTN10](https://www.ombudsman.europa.eu/en/decision/en/109855#_FTN10).

5.2 EPILOGUE

The European Union often faces criticism for lack of transparency. Citizens feel that they are completely disconnected from Brussels. It is true that the European Union has grown, throughout the years that followed its creation, to become a supranational organization that claims to promote democracy, individual liberty and human rights as well as good administration. But the many crises that occurred such as BREXIT and COVID-19 made the European Union's image to fail.

The future for the European Union is difficult, but with the European People united and working together through a well-functioning, transparent and citizen-friendly European Union, the past crises could be a lesson pointing towards a system that protects its citizens from new crises, and endorses and promotes, but most importantly, ensures the values and rights that the Union promotes.

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