Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber, Extended Composition)

23 July 2025 *

(Civil service – Officials – Recruitment – Vacancy notice – Management staff at the Commission – Rejection of candidature – Appointment of another candidate – Irregularity in the recruitment procedure – Manifest error of assessment – Plea of illegality – Legal certainty – Commission President delegating to her Head of Cabinet – Liability)

In Case T-613/23,

James Flett, residing in Brussels (Belgium), represented by L. Levi, lawyer,

applicant,

v

European Commission, represented by M. Brauhoff and A. Sauka, acting as Agents, and by D. Waelbroeck and A. Duron, lawyers,

defendant,

THE GENERAL COURT (Fourth Chamber, Extended Composition),

composed of R. da Silva Passos, President, N. Półtorak, I. Reine, T. Pynnä (Rapporteur) and H. Cassagnabère, Judges,

Registrar: P. Cullen, Administrator,

having regard to the written part of the procedure,

further to the hearing on 9 January 2025,

gives the following

* Language of the case: English.

Judgment

1 By his action under Article 270 TFEU, the applicant, Mr James Flett, seeks, first, annulment of the European Commission's decision of 25 January 2023, by which a person other than the applicant was appointed to the post of Principal Legal Adviser of the Commission Legal Service Trade Policy and World Trade Organisation Team ('the contested decision') and, secondly, compensation in respect of the harm which he claims to have suffered as a result of that decision.

Background to the dispute

2 On 23 May 2022, the Commission published a vacancy notice for the post of Principal Legal Adviser of the Trade Policy and World Trade Organisation Team, setting out in that notice the assessment criteria reflecting the requirements of the post. The vacancy notice stated that the selected candidate would be recruited at grade AD 14 or AD 15.

3 Following the publication of that vacancy notice, eight candidates, including the applicant, applied for that post.

4 On 8 September 2022, those eight candidates were interviewed by the Commission's pre-selection panel. In the course of that interview, the pre-selection panel put five questions to the candidates, in order to evaluate the assessment criteria set out in the vacancy notice, and awarded a score to each candidate.

5 On 27 October 2022, on the basis of the pre-selection report and the related evaluation grids, the Consultative Committee on Appointments ('the CCA'), in the first phase of the selection procedure ('the first phase'), retained the three candidates with the highest scores, including the applicant, who had achieved the highest score. Those three candidates were then to take part in the tests at the assessment centre and to attend an interview with the CCA, as part of the second phase of the selection procedure ('the second phase').

6 On 22 November 2022, the applicant took part in the tests at the assessment centre, which comprised individual and group exercises as well as in-depth interviews focused on management skills. A report was prepared on that basis for each candidate.

7 On 1 December 2022, the applicant was called to attend an interview with the CCA, alongside the two other candidates who were still in the running. At the end of the second phase, the CCA considered that the applicant did not have the 'right mix of skills and experience' and did not retain him for an interview with the President of the Commission ('the President'). Only 'A', another candidate, was selected for that interview.

8 On 25 January 2023, the Commission adopted the contested decision, by which A (and not the applicant) was appointed to the post of Principal Legal Adviser of the Commission Trade Policy and World Trade Organisation Team.

9 On 28 February 2023, the applicant lodged a complaint against the contested decision.

10 On 27 June 2023, the Commission rejected the complaint against the contested decision ('the decision rejecting the complaint').

Forms of order sought

11 The applicant claims that the Court should:

– annul the contested decision;

– annul the decision rejecting the complaint;

– order the Commission to compensate the applicant for the injury caused to him;

– order the Commission to formally apologise and to withdraw the assertion that the applicant was not suitably qualified for the post at issue;

– order the Commission to pay the costs.

12 The Commission contends, in essence, that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

Law

The jurisdiction of the General Court to rule on the fourth head of claim

13 The applicant seeks an order that the Commission formally apologise and withdraw the assertion that he was not suitably qualified for the post at issue.

14 In that regard, it is settled case-law that the EU Courts do not have jurisdiction to issue directions to the administration when exercising judicial review of legality under Article 91 of the Staff Regulations of Officials of the European Union (judgments of 9 December 2020, *GV* v *Commission*, T-705/19, not published, EU:T:2020:590, paragraph 155, and of 30 April 2025, *EL* v *Commission*, T-325/24, not published, EU:T:2025:424, paragraph 10).

15 Consequently, the applicant's claim must be dismissed because the Court does not have jurisdiction to rule on it.

Subject matter of the action

16 The applicant seeks annulment of the contested decision and of the decision rejecting the complaint. He claims that the latter contains more than a mere confirmation of the contested decision, without substantiating his claim in detail.

17 According to settled case-law, an administrative complaint, such as that referred to in Article 90(2) of the Staff Regulations of Officials of the European Union, and its rejection, whether express or implied, constitute an integral part of a complex procedure and are no more than a precondition for bringing the matter before the court. Consequently, the action, even if formally directed against the rejection of the complaint, has the effect of bringing before the

court the act adversely affecting the applicant against which the complaint was submitted, except where the scope of the rejection of the complaint differs from that of the measure against which that complaint was made (see judgment of 11 November 2020, *AD* v *ECHA*, T-25/19, not published, EU:T:2020:536, paragraph 32 and the case-law cited).

18 Furthermore, in view of the evolving nature of the pre-litigation procedure, an express decision rejecting a complaint which contains only further particulars and thus merely reveals, in a detailed manner, the grounds for confirming the earlier decision does not constitute an act adversely affecting the person concerned. Nevertheless, that evolving nature of the pre-litigation procedure means that those further particulars must be taken into consideration in assessing the legality of the contested act (judgment of 7 September 2022, *Migadakis* v *ENISA*, T-507/21, not published, EU:T:2022:507, paragraph 13).

19 In the present case, it should be noted that the decision rejecting the complaint confirms the contested decision, and reveals the grounds relied on to support the contested decision. The fact that the Commission was led, in response to the arguments put forward by the applicant in the complaint, to state the grounds for the contested decision cannot justify the decision rejecting the complaint being regarded as an autonomous act adversely affecting the applicant.

20 Consequently, given that the claim for annulment directed against the decision rejecting the complaint lacks any independent content, the action must be regarded as being formally directed against the contested decision, the reasoning for which is stated in the decision rejecting the complaint. The lawfulness of the contested decision must thus be examined taking into consideration the statement of reasons in the decision rejecting the complaint (see, to that effect, judgment of 2 April 2020, *Veit* v *ECB*, T-474/18, not published, EU:T:2020:140, paragraphs 24 and 25).

The claims for annulment

21 The applicant raises four pleas in law in support of his action. The first plea alleges non-compliance with the provisions governing the recruitment procedure and breach of the principle of sound administration. The second plea alleges manifest errors of assessment. The third plea alleges that the Commission Decision on Gender Equality Policy, contained in the minutes of the 2351st meeting of the Commission in Brussels (Belgium) on 30 September 2020 (PV(2020) 2351 final of 11 November 2020) ('the Equality Policy Decision') is unlawful. The fourth plea alleges that the President's decision to delegate her powers to her Head of Cabinet for the purposes of A's interview was not justified by imperative service needs and is in breach of the principle of legal certainty.

The first plea in law, alleging non-compliance with the provisions governing the recruitment procedure and breach of the principle of sound administration.

22 By his first plea, the applicant claims that the Commission failed to comply with Sections 5.2.6 and 5.2.7 of Commission Decision SEC(2004) 1352/2 of 26 October 2004 laying down its policy for senior management ('the Senior Management Decision') and with Article 1(1) of the CCA Rules of Procedure. In any event, the applicant considers that the Commission acted in breach of the principle of sound administration.

23 In the first place, the applicant submits that, under the second paragraph of Section 5.2.6 of the Senior Management Decision, the CCA was to establish a shortlist including all suitably qualified candidates for the post in the light of the criteria published in the vacancy notice. In that regard, the applicant takes the view that, although the CCA could limit the shortlist to a 'group of candidates', that did not, in the present case, allow it to retain one candidate exclusively on that list, if it were not to act unlawfully or to vitiate its decision by a breach of procedure.

24 Furthermore, the applicant draws attention to the fact that the CCA confirmed, in the first phase, that the applicant was a suitably qualified candidate. In the second phase, the CCA took the view that the applicant did not have the 'right mix of skills and experience', which does not however amount to a change of opinion as against that expressed in the first phase.

25 In the second place, the applicant submits that Article 1(1) of the CCA Rules of Procedure, which requires that the candidates have the aptitude to exercise senior management functions, cannot justify one candidate exclusively being retained at the end of the second phase, short of allowing the CCA to eliminate arbitrarily candidates on the instructions of the Head of the President's Cabinet.

26 In the third place, the applicant submits that the CCA made a comparative assessment of the three candidates retained for the purposes of the second phase.

27 In the fourth place, the applicant submits that he was denied an interview with the President, in breach of Section 5.2.7 of the Senior Management Decision, because he should have been selected for an interview by the CCA at the end of the second phase.

28 In the fifth place, the applicant claims that in the decision rejecting the complaint, the Commission argued that the President retained the option of calling him for an interview, even though his application had been excluded by the CCA at the end of the second phase. However, he submits that the alleged procedural irregularity is not remedied by the existence of such an option.

29 In the sixth place, the applicant submits that the Commission acted in breach of the principle of sound administration.

30 The Commission disputes the applicant's arguments.

31 The applicant claims, in essence, that the fact that he was not shortlisted for an interview with the President at the end of the second phase is due to a breach of the applicable rules of procedure.

32 In the first place, in accordance with Section 5.2.6 of the Senior Management Decision, the CCA must assess only the 'strength of the candidates' merits' in order to ascertain how qualified they are to fill the vacancy, having regard to the results of the in-depth interviews with those candidates and the results of the assessment centre tests, which also include interviews 'focu[s]ed on management skills'. The CCA must then draw up a shortlist of candidates which includes 'all those who, in the [CCA's] view, meet the profile outlined in the original job description, [that is to say,] the suitably qualified candidates.' That shortlist must offer the responsible Commissioners a 'satisfactory choice' of candidates, while remaining of a reasonable length, in order not to impose 'a major burden of comparative assessment of a large number of candidates'.

33 Moreover, Section 5.2.7 of the Senior Management Decision expressly mentions 'the short-listed candidate(s)' interviewed by the portfolio Commissioner. Consequently, given that the CCA is required to exclude the candidates who do not have the skills required by the vacancy notice, in particular the ability to exercise senior management functions, the abovementioned provisions do not preclude one candidate exclusively being retained at the end of the second phase.

34 In the present case, the CCA stated, at the end of the second phase, the applicant's strengths and some aspects requiring improvement, before concluding that 'in view of all the elements assessed during the interview [with the applicant]', he did not have the 'right mix and skills and experience for this particular senior management function'. The CCA therefore did not infringe Section 5.2.6 of the Senior Management Decision when it considered that the applicant did not have the skills required for the post at issue and decided not to shortlist him for an interview with the President. The fact that another candidate exclusively was shortlisted by the CCA at the end of the second phase is not such as to establish an infringement of that provision.

35 In addition, the fact that the applicant was selected by the pre-selection panel, then by the CCA in the first phase, does not conflict with the decision of the CCA to exclude him from the shortlist at the end of the second phase, given the progressive nature of the selection procedure. That progressive nature is apparent, in particular, from the second paragraph of Section 5.2.6 of the Senior Management Decision, which stresses the need to assess, at that stage, how qualified the candidates are to fill the vacancy at issue.

36 Lastly, as the Commission contends, the applicant's claim that the procedure was abused is not substantiated and does not call into question, in any event, the findings made in paragraph 34 above. Therefore, it must be rejected.

37 In the second place, the applicant claims that Article 1(1) of the CCA Rules of Procedure cannot justify him being excluded from the procedure at the end of the second phase, since that article must be applied in compliance with Section 5.2.6 of the Senior Management Decision.

38 Article 1(1) of the CCA Rules of Procedure states that the CCA 'shall assess candidates as to their aptitude to exercise senior management functions'. That selection criterion is also referred to in the vacancy notice, and in Section 5.2.6 of the Senior Management Decision, which provides that the second phase includes, inter alia, interviews 'focu[s]ed on management skills', as recalled in paragraph 32 above.

39 The ability of the candidates to exercise senior management functions must therefore be examined in depth by the CCA in the second phase and can justify, at that advanced stage of the procedure, the exclusion of candidates, notwithstanding the qualifications they may have otherwise.

40 In the present case, the CCA's finding, at the end of the second phase, that the applicant did not have the 'right mix and skills and experience for this particular senior management function' indicates that the applicant did not have the required management abilities for the post at issue.

41 The fact that the applicant was not retained at the end of the second phase having regard to the criterion set out in Article 1(1) of the CCA Rules of Procedure is thus not inconsistent with Section 5.2.6 of the Senior Management Decision.

42 Lastly, the applicant's claims that the CCA has licence to eliminate candidates arbitrarily, acting on the instructions of the President's Head of Cabinet, are unsubstantiated. Furthermore, the non-selection of the applicant at the end of the second phase was based on the reasons reiterated in paragraph 34 above. Those claims by the applicant must therefore be rejected.

43 In the third place, the claim that a comparative assessment was made of the candidates is unfounded. The finding that the applicant did not have the 'right mix of skills and experience' does not indicate that the CCA assessed the applicant's merits in the light of those of the two other candidates who were still in the running. It shows, on the other hand, that, according to the CCA, the applicant did not have the level of skills required to be interviewed by the President, as is apparent from paragraph 34 above.

44 In the fourth place, given that the applicant did not meet the qualifications for the vacancy at issue, the CCA did not shortlist him for an interview with the President. The latter was therefore not required to call him for an interview, as is apparent from Section 5.2.7 of the Senior Management Decision.

45 In the fifth place, Section 5.2.7 of the Senior Management Decision grants the President the option, in certain circumstances, of calling for an interview the candidates excluded at the end of the second phase from the procedure by the CCA, where those retained by the latter are found to be unsatisfactory.

46 Nonetheless, and as the applicant points out, the option mentioned in paragraph 45 above is not the same as a right, for him, to be interviewed by the President, once he was not shortlisted by the CCA at the end of the second phase.

47 In the sixth place, the applicant in the application claims that 'for the reasons set out above, what occurred also amounts, in any event, to a breach of the principle of sound administration'. The applicant thus refers to his arguments alleging that he should have been selected by the CCA at the end of the second phase, without substantiating those arguments in further detail. Inasmuch as those arguments have already been rejected as unfounded, they cannot, in the absence of any other explanation, lead to a finding that there has been a breach of the principle of sound administration.

48 In the reply, the applicant states, moreover, that he 'has serious concerns about the apparent lack of sound administration on the question of the documents and input that constitutes the file at different stages of the procedure'. He claims that the CCA must have the pre-selection report at its disposal during the second phase. He also argues, inter alia, that the President should have received all the documents relating to him. However, he claims that the Commission has not proved that those documents were in fact sent.

49 Such arguments are nevertheless not included in the application, in particular in support of the alleged breach of the principle of sound administration.

50 In the application, the applicant submits only that the file, which was supposedly incomplete, sent by the CCA to the President did not allow the latter to assess in a 'meaningful' way the possibility of calling him to an interview despite his exclusion from the procedure by the CCA. In the applicant's view, the President was thus not in a position to exercise the option mentioned in paragraph 45 above.

51 Accordingly, the applicant does not develop that line of argument to show the existence of a breach of the principle of sound administration, which is invoked separately.

52 It is settled case-law that, under the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union, which is applicable to proceedings before the General Court by virtue of the first paragraph of Article 53 of that Statute, and under Article 76(d) of the Rules of Procedure of the General Court, all applications must state the subject matter of the dispute, the pleas and arguments put forward and a brief statement of those pleas. Those elements must be sufficiently clear and precise to enable the defendant to prepare its defence and the General Court to rule on the application, if necessary without any further information. In order to guarantee legal certainty and the sound administration of justice, it is necessary, for an action to be admissible, that the basic legal and factual particulars relied on are indicated coherently and intelligibly in the text of the application itself (see order of 17 November 2020, *González Calvet* v *SRB*, T-257/20, not published, EU:T:2020:541, paragraph 9 and the case-law cited).

53 Since the application does not show how the Commission is to have failed to comply with the principle of sound administration, the arguments put forward by the applicant at the stage of the reply cannot remedy the lack of clarity of the application.

54 Consequently, in the light of the case-law cited in paragraph 52 above, the sixth complaint must be rejected as inadmissible.

55 It follows that the first plea must be rejected.

The second plea in law, alleging manifest errors of assessment

56 By his second plea, first, the applicant claims that in not recommending him for an interview with the President, while not denying that he was suitably qualified in the light of the criteria published in the vacancy notice, the CCA committed a manifest error of assessment.

57 The applicant submits that that manifest error of assessment by the CCA is closely linked to, whilst being distinct from, the infringement described in the first plea in law. The consequences of that error were not just procedural but also substantive, both for the applicant and for the Commission.

58 Secondly, if the CCA was of the view, at the end of the second phase, that the applicant was not a suitably qualified candidate, the applicant submits that the CCA committed a manifest error of assessment in the light of his qualifications and experience. The CCA's analysis at the end of the first phase could not be invalidated at the stage of the second phase, either on the basis of the assessment centre report referred to in paragraph 6 above or on that of the interview.

59 In the alternative the applicant submits that, irrespective of what the CCA had found, if A was considered a suitably qualified candidate, then the applicant should also have been considered as such and called to attend an interview with the President.

60 The Commission disputes the applicant's claims.

61 In that regard, according to the case-law, an error is manifest only where it can be readily detected, in the light of the criteria to which the legislature intended the exercise of a decision-making power to be subject. Consequently, in order to establish that the administration committed a

manifest error in assessing the facts such as to justify the annulment of a decision, the evidence, which it is for the applicant to adduce, must be sufficient to make the findings of the administration implausible. In other words, a plea alleging a manifest error must be rejected if, despite the evidence adduced by the applicant, the challenged assessment may be accepted as being still true or valid (judgment of 20 October 2021, *ZU* v *Commission*, T-671/18 and T-140/19, not published, EU:T:2021:715, paragraph 199).

62 It must also be observed that the pre-selection panel has, in particular where the vacancy is at a very senior level, broad discretion when comparing the merits of candidates for such a post. Furthermore, the assessments made by the pre-selection panel when it assesses the aptitudes of candidates constitute the expression of a value judgment of the performance of each candidate in the test and come within the abovementioned discretion. Those assessments can be reviewed by the Court only where there is a clear infringement of the rules governing the proceedings of the pre-selection panel. It is not for the General Court to substitute its own assessment for that of the panel (see, to that effect and by analogy, judgment of 21 December 2022, *OM* v *Commission*, T-118/22, not published, EU:T:2022:849, paragraphs 74 and 75).

63 It is therefore necessary to examine the two manifest errors of assessment alleged by the applicant in the light of the foregoing considerations.

64 As regards the first claimed manifest error of assessment, as stated in paragraphs 35 and 39 above, the selection criteria for the candidates evolved at the successive stages of the selection procedure. Therefore, the fact that the assessment of a candidate's merits was specified between the first phase and the second phase does not constitute in itself a manifest error of assessment, but reflects the progressive nature of the requirements fixed with a view to filling the vacancy at issue. The applicant's arguments in that respect must be rejected.

65 As regards the second claimed manifest error of assessment, the applicant alleges, in essence, that the CCA, by taking the view that he was not qualified for the post and that he consequently should not be included on the shortlist submitted to the President, committed a manifest error of assessment.

66 To support his claim, the applicant relies on his experience, his professional qualifications, his successful performance before the pre-selection panel and the CCA in the first phase and on the fact that he was 'thoroughly prepared and believes that he performed very well [in his interview]'.

67 However, the applicant's belief that he answered the questions asked at the interview correctly, first, and his professional experience, as reflected in his curriculum vitae and cover letter, secondly, cannot constitute irrefutable evidence of a manifest error of assessment on the part of the pre-selection panel nor bind that panel in its assessments of the knowledge and abilities he demonstrated during the oral interview (see, by analogy, judgment of 21 December 2022, *OM* v *Commission*, T-118/22, not published, EU:T:2022:849, paragraph 78).

68 In addition, the possession of experience or specialised knowledge in the field covered by the directorate in question may matter less than the possession of outstanding general management, analysis and judgment skills, since experience and technical knowledge can always be gained within the directorate itself (judgment of 11 July 2007, *Konidaris* v *Commission*, T-93/03, EU:T:2007:209, paragraph 74). Likewise, as regards a criterion for the assessment of an aptitude and not for verifying knowledge, it is possible for the panel to evaluate a candidate taking account

both of the answers provided by that candidate to the questions in relation to other criteria and of his or her personality, which could be shown by his or her attitude during the oral test (judgment of 8 July 2010, *Wybranowski* v *Commission*, F-17/08, EU:F:2010:83, paragraph 66).

69 In the present case, as stated in paragraph 34 above, at the end of the second phase, although the CCA pointed out the applicant's strengths, it also noted some aspects requiring improvement, before concluding that he did not have the skills required for the post at issue.

70 Furthermore, the fact that the applicant was selected at the end of the first phase cannot lead to a finding that the CCA made a manifest error of assessment, unless the second phase is to be rendered redundant.

71 Consequently, the matters relied on by the applicant are insufficient to render the CCA's assessments implausible. They are therefore not such as to establish a manifest error of assessment.

72 In the alternative, the applicant submits that, if A was considered a 'suitably qualified candidate' 'with reference to the published criteria', then the applicant should also certainly have been considered to be in the same category, and if one candidate exclusively had to be selected for the next phase of the procedure, that should have been the applicant. At the hearing, the applicant stated that his intention was not to make a comparative assessment between himself and A.

73 Given that the applicant has not identified precisely how his position is to be supported, those claims must be rejected.

74 It follows that the second plea must be rejected.

The third plea in law, alleging that the Equality Policy Decision is unlawful

75 By his third plea, the applicant claims the partial unlawfulness of the Equality Policy Decision, under which the President conferred on her Head of Cabinet the task of interviewing A at the end of the second phase. The contested decision, adopted following that interview, is therefore unlawful.

76 First, the option available to the President to delegate the interview conducted at the end of the second phase conflicts with the rule that the President must herself interview the candidates shortlisted by the CCA.

77 Secondly, that option to delegate has no link with the stated purpose pursued by the Equality Policy Decision.

78 In addition, the President should be able to delegate the conduct of interviews to her Head of Cabinet only as a last resort, if their conduct cannot be delegated to other Commissioners. There is no justification for the President alone, and not the other Commissioners, being afforded that option to delegate to her Head of Cabinet.

79 Furthermore, the applicant argues that the President cannot delegate the conduct of interviews to an official with no political qualifications or credentials.

80 Lastly, the applicant submits that that delegation by the President, which should as a matter of priority be made to other Commissioners and if duly justified for imperative service needs, is made systematically to her Head of Cabinet.

81 The Commission disputes the applicant's claims.

82 First, the Commission considers that applicant's line of argument is inoperative because the conduct of the interview by the President's Head of Cabinet after the second phase did not affect the applicant legally.

83 Next, the Commission disputes the applicant's claims that the Equality Policy Decision is unlawful.

84 Lastly, and in any event, the Commission contends that, if the delegation made in accordance with the Equality Policy Decision were to be deemed unlawful, the contested decision itself would not be vitiated by illegality because the appointing authority, in the present case, was the College of Commissioners. Both the President and Commissioners had all the relevant information to make an autonomous and informed decision.

85 It is necessary, first, to examine whether the arguments submitted by the applicant under his third plea are effective, which the Commission disputes, before assessing their merits.

– *Whether the arguments submitted by the applicant under his third plea in law are effective*

86 The Commission contends that, inasmuch as the applicant was not called to attend an interview with the President, that stage of the selection procedure did not affect him legally. In any event, according to the Commission, it was solely for the College of Commissioners to adopt the contested decision.

87 The applicant, for his part, submits that he was affected by all the stages of the procedure leading to the adoption of the contested decision, even those that post-dated the second phase. In addition, at the hearing, he claimed that it could not be ruled out that, if the President herself had interviewed A, she would also have called the applicant for an interview, pursuant to Section 5.2.7 of the Senior Management Decision.

88 In that regard, it must be observed that the Equality Policy Decision provides that 'candidates shortlisted by the CCA for a Director-General or a senior management post in one of the President's services [will] be interviewed by the President herself [and that, i]f duly justified for imperative service needs, the President [can] delegate this task to other Members of the Commission or her Head of Cabinet before making her proposal for appointment to the College'.

89 The question therefore arises whether, if it were deemed unlawful, the interviewing of A by the President's Head of Cabinet and not by the President herself could lead to the annulment of the contested decision. In that regard, it must be ascertained whether that illegality was liable to cause harm to the applicant.

90 It follows from Section 5.2.7 of the Senior Management Decision that, on the basis of the results of the interviews carried out with the candidate or candidates retained following the second phase, the portfolio Commissioner, in the present case, the President, may consider that the selection

made by the CCA is unsatisfactory. In such a situation, when duly justified and in agreement with the Commissioner for Personnel and Administration, the President may interview candidates not shortlisted at the end of the second phase by the CCA.

91 In accordance with Section 5.2.8 of the Senior Management Decision, the appointment decision is taken by the College of Commissioners, on the basis of the CCA's reasoned opinion and a reasoned proposal from the Commissioner for Personnel and Administration, drawn up in agreement with the President. The latter is to make a decision after the interviews with candidates retained following the second phase, on the basis of the reasoned opinion of the CCA and in agreement with the Director-General concerned, where the appointment concerns a Principal Adviser post. That same section also provides that the portfolio Commissioner, in the present case, the President, must have a leading role in the final choice of the persons who work directly for him or her at senior management level.

92 In the present case, when A was interviewed, the applicant could still have been heard, since the President retained the option of calling him for an interview had she not been satisfied with A's candidature following the latter's interview with her Head of Cabinet. The manner in which that interview was conducted, and therefore the identity of the person who was responsible for it, could have influenced its outcome and, ultimately, the decision of the President as to whether or not to call the applicant for an interview.

93 In addition, although the final appointment decision at issue was solely for the College of Commissioners, in accordance with Section 5.2.8 of the Senior Management Decision, as recalled in paragraph 91 above, the role of the President prior to that appointment remained decisive.

94 It follows from the foregoing that the interviewing of A by the President's Head of Cabinet and not by the President herself was liable to adversely affect the applicant by altering his legal position, therefore the illegality allegedly affecting the conduct of such an interview can lead to the annulment of the contested decision.

95 The Commission's arguments that the third plea is ineffective must therefore be rejected.

– *The unlawfulness of the Equality Policy Decision*

96 In the first place, the applicant claims that the delegation provided for by the Equality Policy Decision conflicts with the general rule that candidates must be interviewed by the President.

97 In that regard, it must be observed that Section 5.2.7 of the Senior Management Decision provides that candidates for a post such as that concerned in the present case must be interviewed by the portfolio Commissioner, here the President, if they are selected by the CCA at the end of the second phase.

98 The option provided by the Equality Policy Decision to delegate the interview conducted following the second phase to the Head of Cabinet must be such as to 'ensure smooth and timely processes' where that is justified by 'imperative service needs'.

99 Inasmuch as that option to delegate seeks to derogate in duly justified cases from the procedure provided for in Section 5.2.7 of the Senior Management Decision, it does not call in question the President's competence as a general rule.

100 In the second place, the applicant claims that the option granted to the President to delegate has no link with the stated purpose of the Equality Policy Decision.

101 However, the applicant does not explain how that absence of a link is capable of affecting the lawfulness of the Equality Policy Decision.

102 In the third place, the applicant submits that the President should have the option to delegate the interview conducted at the end of the second phase to her Head of Cabinet only if that delegation cannot, as a matter of priority, be made to one of the Commissioners.

103 In that regard, the Equality Policy Decision, adopted in 2020 and specifically governing delegations made by the President, derogates from Section 5.2.7 of the Senior Management Decision, as amended in 2007.

104 The Equality Policy Decision adopted in 2020, contrary to the Senior Management Decision as amended in 2007, provides that it is open to the President to delegate, indistinctly and without any order of priority, to her Head of Cabinet in the same way as to a Commissioner.

105 It must be noted that the applicant has not demonstrated that the President should be bound by the same rules on delegation as the Commissioners, in respect of whom an option to delegate is provided for only to other Commissioners, and not to their Head of Cabinet.

106 In the fourth place, the applicant submits that the President's Head of Cabinet, since he has no political legitimacy, is not authorised to interview candidates for Principal Adviser posts.

107 However, the applicant does not rely on any rule precluding an official appointed as Head of Cabinet of the President from interviewing candidates for Principal Adviser posts on an *ad hoc* basis. Moreover, it must be pointed out that the Head of Cabinet works in close cooperation with the President, and that she has a strong relationship of trust with him. That argument must therefore be rejected.

108 Lastly, the applicant argues that the delegation made by the President to her Head of Cabinet is systematic.

109 That argument, which relates to the way in which the Equality Policy Decision is applied, is not such as to prove the unlawfulness of that decision. It must therefore be rejected inasmuch as it relates to the lawfulness of the Equality Policy Decision.

110 In the light of the foregoing, the third plea must be rejected.

The fourth plea in law, alleging the delegation by the President was unlawful

111 By his fourth plea, the applicant challenges the lawfulness of the delegation made by the President to her Head of Cabinet for A's interview in the light of the conditions for delegation laid down by the Equality Policy Decision. He submits that, in the light of those conditions, A's interview by the President's Head of Cabinet was unlawful, that unlawfulness vitiating the procedure as a whole and, accordingly the legality of the contested decision.

112 He argues that that delegation of the interview to the President's Head of Cabinet following the second phase is not justified by imperative service needs. Inasmuch as that delegation was made orally, its justification remains unknown. It was also given insufficient publicity, in breach of the principle of legal certainty.

113 Furthermore, the Equality Policy Decision allows the President to make such a delegation to her Head of Cabinet only where it cannot be made as a matter of priority to Commissioners.

114 The Commission disputes the applicant's claims.

115 First, the Commission contends that the applicant's line of argument is ineffective because the conduct of the interview by the President's Head of Cabinet after the second phase did not affect the applicant legally.

116 In addition, the Commission notes that the Equality Policy Decision does not require the President's delegation to her Head of Cabinet be made in writing. Such a requirement would moreover be such as to place an excessive administrative burden on the President.

– *Whether the arguments submitted by the applicant under his fourth plea in law are effective*

117 The Commission challenges the effectiveness of the fourth plea inasmuch as, since the applicant was not called to attend an interview with the President, that stage of the selection procedure did not affect him legally. In addition, it was solely for the College of Commissioners to adopt the contested decision.

118 For the reasons already set out in paragraphs 88 to 94 above, such a line of argument must be rejected.

– *The illegality of the delegation by the President*

119 The applicant submits that the delegation by the President of the interview to her Head of Cabinet was not justified by imperative service needs, the absence of any document moreover not allowing the existence of such needs to be assessed.

120 In that regard, it must, first, be noted that the wording of the Equality Policy Decision does not require the President, when she wishes to delegate an interview to her Head of Cabinet, to do so in writing.

121 Secondly, the Equality Policy Decision justifies the President's option to delegate by the need to 'streamline certain aspects of the senior management selection procedure to ensure smooth and timely processes'. That requirement for celerity is also referred to in the Guidelines on Appointment Procedures for Senior Officials, which state in Section 5.2 thereof that 'cabinets should try to arrange interviews with short-listed candidates without delay [and that] interviews should take place within one month after transmission of the documentation by the CCA Secretariat'. It follows, as the Commission points out, that a systematic requirement to delegate in writing could conflict with the stated purpose of smooth and timely processes pursued by the Equality Policy Decision.

122 Nevertheless, as noted in paragraph 91 above, the President has a decisive role in the selection procedure for senior management posts such as that at issue. The Equality Policy Decision provides to that effect that 'the candidates shortlisted by the CCA for … a senior management post in one of the President's services [will] be interviewed by the President herself'. The Equality Policy Decision therefore provides, in principle, for a prerogative for the President herself to choose senior officials serving under her authority, in order to establish with those officials a working relationship based on trust, in the light of the high level of responsibility that they are required to exercise.

123 Seen in that light, the Equality Policy Decision renders the delegation made by the President conditional on being 'duly justified for imperative service needs'. Such delegation cannot therefore be made unless that condition is satisfied.

124 In the present case, since, as the Commission states, the President delegated to her Head of Cabinet the conduct of A's interview without that delegation having being made in writing or otherwise documented, the General Court cannot verify, on the basis of the evidence in the file, the existence and the validity of the evidence of the 'imperative service needs' which 'duly justified' that delegation. In addition, when addressed questions on this issue by the General Court at the hearing, the Commission moreover did not set out the specific reasons which led the President to delegate to her Head of Cabinet the task of interviewing A.

125 The Commission did not give any precise information as to the imperative service needs which prevented the President from interviewing A within one month after transmission of the latter's candidature file by the CCA Secretariat, in accordance with Section 5.2 of the Guidelines on Appointment Procedures for Senior Officials referred to in paragraph 121 above.

126 Given that the Commission has not substantiated that the delegation by the President of the interview to her Head of Cabinet was based on 'imperative service needs', it must be concluded that that delegation was in breach of the conditions laid down in the Equality Policy Decision.

127 As regards the issue whether such a breach of the Equality Policy Decision is capable of leading to the annulment of the contested decision, it must be recalled that it has been acknowledged in case-law that the broad discretion granted to the appointing authority in the recruitment procedure for a vacancy at a senior grade brings with it the obligation for that authority to observe the guarantees conferred by the EU legal order in administrative procedures, including the obligation of examining carefully and impartially all the matters relevant to the particular case. That discretion must therefore be exercised with scrupulous observance of all the relevant regulations, in other words not just of the vacancy notice, but also of any procedural rules that the authority has adopted for the exercise of its discretion. Failure to observe procedural rules relating to the adoption of a measure, laid down by the competent institution itself, constitutes a breach of essential procedural requirements (see, to that effect, judgment of 13 December 2007, *Angelidis* v *Parliament*, T-113/05, EU:T:2007:386, paragraphs 61 and 62 and the case-law cited).

128 In addition, if the EU judicature finds, upon examination of the measure at issue, that it was not validly adopted, it must draw the necessary conclusions from the breach of an essential procedural requirement and, consequently, annul the act vitiated by that defect (judgment of 30 May 2024, *Vialto Consulting* v *Commission*, C-130/23 P, EU:C:2024:439, paragraph 55). Likewise, where there is a breach of essential procedural requirements, which are fundamental to

legal certainty, annulment of the vitiated act follows, without it being necessary to establish the existence of harm (see, to that effect, judgment of 13 December 2007, *Angelidis* v *Parliament*, T-113/05, EU:T:2007:386, paragraph 76 and the case-law cited).

129 In the present case, the Equality Policy Decision forms part of the procedural rules with which the Commission must comply for the purposes of conducting the recruitment procedure at issue.

130 In addition, as set out in paragraphs 92 to 94 above, the choice made in the President's recommendation and accordingly the final appointment decision of the College of Commissioners are necessarily influenced by the results of the interviews conducted after the second phase.

131 It follows that the breach of the Equality Policy Decision is a breach of an essential procedural requirement, and as a result entails the annulment of the contested decision.

132 Therefore, the fourth plea must be upheld and the contested decision annulled, without there being any need to rule on the applications for measures of organisation of procedure submitted by the applicant.

Claim for damages

133 The applicant seeks payment of a sum of EUR 100 000 for the non-material harm he claims to have suffered. That amount, in his view, takes into account the fact that the recruitment procedure was a sham, that the Commission refused to rectify the alleged shortcomings of that procedure and that the procedure concerned caused serious harm to the applicant's professional reputation.

134 The applicant submits also that had he been appointed to the post of Principal Legal Adviser, he would have received a higher salary from 1 February 2023.

135 The Commission disputes the applicant's arguments.

136 According to settled case-law, the European Union may incur non-contractual liability only if a number of conditions are fulfilled, namely: (i) the institution's conduct must be unlawful, (ii) actual harm must have been suffered, and (iii) there must be a causal link between the conduct and the harm alleged. Those conditions are cumulative, which means that if one of them is not satisfied, the European Union cannot be held liable (see judgment of 25 June 2020, *XH* v *Commission*, T-511/18, EU:T:2020:291, paragraph 161 and the case-law cited).

137 Since the present judgment has found that the contested decision was vitiated by illegality, the first of the conditions referred to in paragraph 136 above is, in the present case, satisfied.

138 As regards the second condition mentioned in paragraph 136 above, it is necessary to make a distinction between non-material harm and material harm.

139 As regards the non-material harm claimed by the applicant, it is settled case-law that, where the claim for compensation is based on the unlawfulness of the annulled measure, which is the case here, the annulment ordered by the General Court in itself constitutes appropriate and, in principle, sufficient compensation for any non-material harm which the applicant may have suffered, unless the applicant demonstrates having suffered non-material harm that is incapable

of being entirely remedied by that annulment. Thus, it was held that the annulment of an act, where it had no practical effect, could not in itself constitute appropriate and sufficient compensation for all non-material harm caused by the annulled act (see judgment of 14 December 2022, *SU* v *EIOPA*, T-296/21, EU:T:2022:808, paragraphs 108 and 109 and the case-law cited).

140 In the present case, the applicant has not demonstrated that he suffered non-material harm which cannot be compensated for in full by the annulment of the contested decision.

141 In particular, contrary to the applicant's claims, it has not been established that, following the annulment of the contested decision, A will necessarily be re-appointed.

142 The application for compensation in respect of non-material harm brought by the applicant must therefore be rejected as unfounded.

143 As regards the material harm alleged, the applicant must be regarded as seeking, in essence, compensation for the loss of an opportunity to be recruited to the post at issue.

144 According to the case-law, provided that it is adequately substantiated, loss of opportunity constitutes material harm for which compensation may be claimed (see, to that effect, 10 November 2010, *OHIM* v *Simões Dos Santos*, T-260/09 P, EU:T:2010:461, paragraph 104).

145 The applicant adds that, were he to have been selected for the post at issue, he would have been appointed at AD 15, whereas his grade at that time was AD 14, step 2. He thus claims to have suffered harm corresponding to the difference between the basic salaries of those two grades as of the date at which the contested decision took effect.

146 However, the applicant has not substantiated such a claim, which is moreover disputed by the Commission. It has thus not been proven that the applicant would have been recruited at grade AD 15 and not at grade AD 14 to the post at issue. The applicant therefore has not proven actual and certain harm.

147 Furthermore, it is settled case-law that a loss of an opportunity, in order to be established and give rise to compensation, must be actual and definitive (see judgment of 14 December 2022, *SU* v *EIOPA*, T-296/21, EU:T:2022:808, paragraph 83 and the case-law cited). In that regard, it must be observed that, although the President could call the applicant for an interview in the event that A's interview were not found to be satisfactory, she could also call the other candidate not shortlisted by the CCA at the end of the second phase. It thus cannot be accepted in the present case that the loss of opportunity claimed by the applicant is of a genuine nature.

148 Consequently, the application for compensation in respect of material harm must be rejected as unfounded.

149 It follows from the foregoing that the claim for damages must be rejected.

Costs

150 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

151 Since the Commission has been largely unsuccessful, it must be ordered to bear its own costs as well as those incurred by the applicant, in accordance with the form of order sought by the latter.

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby:

1. **Annuls the European Commission's decision of 25 January 2023 appointing the Principal Legal Adviser of the Commission Legal Service Trade Policy and World Trade Organisation Team;**

2. **Dismisses the action as to the remainder;**

3. **Orders the Commission to bear its own costs and to pay those incurred by Mr James Flett.**

da Silva Passos Półtorak Reine

Pynnä Cassagnabère

Delivered in open court in Luxembourg on 23 July 2025.

V. Di Bucci L. Truchot
Registrar President