Reports of Cases

JUDGMENT OF THE GENERAL COURT (Ninth Chamber)

26 October 2017*

(Civil service — Officials — Cedefop — Promotion — 2015 promotion exercise — Decision not to promote the applicant to Grade AD 12 — Articles 44 and 45 of the Staff Regulations — Comparison of merits — Obligation to state reasons — Implied rejection of the complaint — Liability)

In Case T-601/16,

Georges Paraskevaidis, residing in Auderghem (Belgium), represented by S. Pappas, lawyer,

applicant,

v

European Centre for the Development of Vocational Training (Cedefop), represented by M. Fuchs, acting as Agent, and by A. Duron, lawyer,

defendant,

ACTION brought under Article 270 TFEU, first, for annulment of the decision of Cedefop of 4 November 2015 not to promote the applicant to Grade AD 12 in the 2015 promotion exercise and, second, for compensation for the harm allegedly suffered,

THE GENERAL COURT (Ninth Chamber),

composed of S. Gervasoni, President, L. Madise and R. da Silva Passos (Rapporteur), Judges,

Registrar: E. Coulon,

gives the following

Judgment

Background to the dispute

1 The applicant, Mr Georges Paraskevidis was established as an official in the General Secretariat of the Council of the European Union on 1 July 1988 in Grade A 7. On 15 July 1996, he was seconded to the European Centre for the Development of Vocational Training (Cedefop) as a temporary agent in order to take up an administrative post, then the post of head of administration.

* Language of the case: French.

2 From 1 January 1999, the applicant was transferred to Cedefop where he became a career civil servant in Grade A 5, Step 2. In 2002, he was reassigned to the post of adviser on administrative reform.

3 When the Staff Regulations of Officials of the European Union were amended, which came into force on 1 May 2004, the applicant was classified in the administrators function group (AD), in Grade AD 11.

4 After being seconded to the European Agency for Reconstruction (EAR) on 1 September 2003, on 16 January 2007, the applicant moved back to Cedefop as the Head of the Finance and Public Procurement Unit. At that time he was classified in Grade AD 11, Step 5.

5 On 1 March 2011, the applicant reached Step 8, the highest step in Grade AD 11. Therefore he asked to be promoted to Grade AD 12, first, in the 2010 promotion exercise, by email of 18 May 2011, then in the 2011 promotion exercise, by letter of 3 October 2011. However, those requests were not granted.

6 At the same time, by letter of 18 May 2011, the applicant requested that his work in the EAR and the merit points he obtained there be taken into account in order to facilitate his promotion in Cedefop. That request was refused, essentially, on the ground that the applicant had been seconded to the EAR not in the interests of the service, and thus as an official, but at his request and in his own interest and, therefore, as a temporary agent. It was not customary at Cedefop to take account of such reference in order to access the merits of a candidate for promotion.

7 On 9 January 2014, the applicant submitted a request to the director of Cedefop, the appointing authority under Article 90(1) of the Staff Regulations, challenging the fact he had not been promoted for 20 years. His request did not receive a favourable response.

8 On 31 March 2015, the applicant's immediate superior sent a list of officials eligible for promotion to the Human Resources Department. The applicant's name appeared on that list, although it was stated that his promotion was second priority.

9 On 6 August 2015, the head of the 'Human Resources Department' of Cedefop published a list of officials eligible to be promoted. The applicant's name appeared among the officials eligible for promotion to Grade AD 12.

10 However, the applicant's name did not appear on the list of officials drawn up by the management committee on 14 October 2015 whose promotion was proposed by the appointing authority.

11 On 4 November 2015, the appointing authority established the list of officials to be promoted which did not include the applicant's name ('the contested decision').

12 On 29 January 2016, on the basis of Article 90(2) of the Staff Regulations, the applicant filed a complaint against the contested decision notified to the appointing authority on 3 February 2016. He argued that the contested decision was vitiated by a manifest error of assessment, that it infringed Articles 44 and 45 of the Staff Regulations and that it breached the principles of equal treatment and the protection of legitimate expectations. The complaint also contained a claim for compensation.

13 On 19 April 2016, the applicant presented oral arguments to the Appeal Committee in support of his complaint.

14 Cedefop did not give an express response to that request, either within the time limit of four months provided for by the Staff Regulations or thereafter.

15 The applicant re-joined the Council on 1 February 2016.

Procedure and forms of order sought

16 By application lodged at the Registry of the Civil Service Tribunal of the European Union on 22 June 2016, the applicant brought the present action, initially registered under number F-31/16.

17 Pursuant to Article 3 of Regulation (EU, Euratom) 2016/1192 of the European Parliament and of the Council of 6 July 2016 on the transfer to the General Court of jurisdiction at first instance in disputes between the European Union and its servants (OJ 2016 L 200, p. 137), the present case was transferred to the General Court as it stood on 31 August 2016 and must henceforth be dealt with in accordance with the Rules of Procedure of the General Court. The case was registered as Case T-601/16 and assigned to the Ninth Chamber.

18 As the parties did not request a hearing pursuant to Article 106(1) of the Rules of Procedure, the General Court (Ninth Chamber) considered that it had sufficient material available to it from the case file and decided, in accordance with Article 106(3) of the Rules of Procedure, to give judgment in the case without holding an oral hearing.

19 The applicant claims that the Court should:

– annul the contested decision;

– order Cedefop to pay him compensation for the material and non-material damage;

– order Cedefop to pay the costs.

20 Cedefop contends that the Court should:

– declare the action partially inadmissible;

– dismiss the application as unfounded in its entirety; and

– dismiss the claim for compensation for the harm allegedly suffered;

– order the applicant to pay the costs.

Law

The claim for annulment

21 The applicant puts forward three pleas in law in support of his application for annulment of the contested decision: The first plea alleges infringement of the obligation to state reasons. The second plea is based on an infringement of Articles 44 and 45 of the Staff Regulations and breach of the principles of equal treatment, the protection of legitimate expectations and entitlement to reasonable career prospects. The third plea is a claim of breach of the duty to have regard for the welfare of officials and of the principle of the protection of legitimate expectations.

22 By its first plea, the applicant submits that the contested decision is vitiated by a failure to state reasons. To that effect, he states, first, that that decision is simply a list of names of officials who have been promoted and, second, that since the decision rejecting his complaint was implied, it does not contain any reasoning.

23 Therefore, no serious argument justifying the contested decision has been put forward, either during the pre-litigation phase or with regard to his earlier requests for promotion.Therefore, the applicant takes the view that he was not in a position to understand the reasons why his name was not among those of the officials promoted.

24 The applicant claims that the only information he had in that regard was mere rumours that his promotion to Grade AD 12 had been refused because it would have resulted in him being classified in a higher grade than both his immediate superior and the Assistant Director of Cedefop. He stated that, even if that were true, such considerations could not legitimately justify the refusal of promotion.

25 Furthermore, the applicant states that where the decision at issue does not contain any statement of reasons, as in the present case, it is clear from the judgments of 3 October 2006, *Nijs* v *Court of Auditors* (T-171/05, EU:T:2006:288, paragraphs 41 to 47), and of 8 October 2008, *Barbin* v *Parliament* (F-81/07, EU:F:2008:125, paragraph 28), that the reasoning cannot be amended at the stage of the legal proceedings. Therefore, the contested decision should be annulled on that basis, despite the explanations provided by Cedefop in the defence.

26 The applicant adds that the rule that there must be correspondence between the complaint and the application supports the view that it is impossible to amend the reasoning of a measure adversely affecting a person at the stage of the legal proceedings, since such a rule prevents him from putting forward new pleas during those proceedings, even though he is ignorant of the reasoning for the decision whose legality he is challenging. He takes the view that such a situation places the parties on an unequal footing, as the administration is in a more favourable position than him.

27 Furthermore, the applicant challenges Cedefop's argument that his knowledge of his evaluation reports, the comments on his performance and an internal note dated 19 July 2013 are sufficient to support a finding that the contested decision was properly reasoned. He argues that, in the present case, accepting such arguments would amount to depriving Article 296 TFEU of any effectiveness and his right to an effective remedy, as provided for in Article 47 of the Charter of Fundamental Rights of the European Union.

28 In addition, while the applicant acknowledges that his application for a post in the Council was made before the adoption of the contested decision, he claims however that that application was a precautionary step in order to counter the possibility of another decision not to promote him.

29 The applicant submits that his opportunity to learn of the reasoning for the contested decision was further limited because he had been included on the list of officials or agents whose promotion had been proposed to the management committee of Cedefop.

30 Cedefop takes the view that, although a complete absence of reasoning cannot be remedied by a statement of reasons given in the course of proceedings, the contested decision was taken in a context known to the applicant and which enabled him to understand the substance, so that the decision must be regarded as being sufficiently reasoned, in accordance with the principles identified in the case-law. Those principles are also set out in the judgment of 3 October 2006, *Nijs* v *Court of Auditors* (T-171/05, EU:T:2006:288), that the applicant himself cites in his arguments.

31 First, Cedefop recalls that a promotion exercise is based on procedural rules of which the applicant, given the nature of his duties, could not have been ignorant, and which were objectively and properly applied in the present case.

32 Second, Cedefop submits that the applicant was aware of the content and level of the assessments about him, the many remarks about him and the way he managed his team and other wrongdoings and irregularities mentioned in an internal note of 19 July 2013 in his personal file. In that

connection, Cedefop emphasises the fact that, in paragraph 19 of his complaint, the applicant clearly identified the criticisms made about him, so that he could not reasonably claim not to know the reasons why his name was not among the officials promoted.

33 Third, the applicant's alleged incomprehension of the reasoning of the contested decision, which allegedly caused him frustration and encouraged him to return to the Council, is contradicted by the fact that the time limit for submitting applications for the post occupied by the applicant at the Council was before the date on which the decision was adopted. It follows that the applicant was in fact able to anticipate the content of that decision, thereby suggesting that he had sufficient knowledge of the context in which it was taken.

34 Furthermore, as regards the inclusion of the applicant's name on the list of officials put forward for promotion by his management committee, Cedefop recalls that the procedure laid down in its General Implementing Provisions (Cedefop/DGE/10/2011 and Cedefop/DGE/11/2011) were correctly followed in the present case and that, even if the applicant's name appeared on the consolidated list of all officials eligible for promotion, drawn up by the management committee, his name was not on the management committee list of officials whose promotion had actually been proposed.

35 Cedefop concludes that it is clear from all of the circumstances, and not only from the contents of the applicant's personnel file, that the latter knew of the context in which the contested decision was taken.

36 In that connection, it must be recalled that, according to settled case-law, the obligation to state reasons laid down by Article 25, second paragraph, of the Staff Regulations, which merely repeats the general obligation enshrined in Article 296 TFEU, is intended to provide the person concerned with sufficient information to assess the merits of the act adversely affecting him and the opportunity to bring an action before the courts of the European Union and second, to enable the latter to review the legality of the act (see judgments of 29 September 2005, *Napoli Buzzanca* v *Commission*, T-218/02, EU:T:2005:343, paragraph 57 and the case-law cited; of 3 October 2006, *Nijs* v *Court of Auditors*, T-171/05, EU:T:2006:288, paragraph 36 and the case-law cited; and of 13 September 2016, *Pohjanmäki* v *Council*, T-410/15 P, not published, EU:T:2016:465, paragraph 77 and the case-law cited). It follows that the obligation to state reasons is an essential principle of EU law, which may only be derogated from for compelling reasons (judgments of 29 September 2005, *Napoli Buzzanca* v *Commission*, T-218/02, EU:T:2005:343, paragraph 57; of 3 October 2006, *Nijs* v *Court of Auditors*, T-171/05, EU:T:2006:288, paragraph 36; and of 4 July 2007, *Lopparelli* v *Commission*, T-502/04, EU:T:2007:197, paragraph 74). That obligation, which is an integral part of the principle of proper administration, as is clear from Article 41(2)(c) of the Charter of Fundamental Rights, the importance of which was strengthened after the entry into force of the Lisbon Treaty by the insertion of Article 15(1) and Article 298(1) TFEU. An open and effective European administration must scrupulously comply with the provisions of the Staff Regulations. In particular, the reasoning of any act adversely affecting staff of the European Union is a necessary condition for ensuring a peaceful working environment in the European Union administration, avoiding giving rise to the suspicion that the management of its personnel is based on arbitrary considerations or favouritism.

37 According to settled case-law, although the appointing authority is not obliged to give reasons for a promotion decision, either to its addressee or to the candidates who were not promoted, it is, on the other hand, obliged to state the grounds for its decision rejecting a complaint lodged pursuant to Article 90(2) of the Staff Regulations by a candidate who was not promoted, the grounds for that decision being deemed to be identical to those for the decision against which the complaint was made (see judgments of 21 May 2014, *Mocová* v *Commission*, T-347/12 P, EU:T:2014:268, paragraph 41 and the case-law cited, and of 13 September 2016, *Pohjanmäki* v *Council*, T-410/15 P, not published, EU:T:2016:465, paragraph 79 and the case-law cited).

38 Thus, the statement of reasons must be made no later than the rejection of the complaint (judgments of 20 February 2002, *Roman Parra* v *Commission*, T-117/01, EU:T:2002:35, paragraph 26, and of 21 May 2014, *Mocová* v *Commission*, T-347/12 P, EU:T:2014:268, paragraph 41).

39 Furthermore, the sufficiency of the statement of reasons must be assessed in the light not just of its wording, but also of the factual and legal context in which the contested act was adopted (see judgments of 14 February 1990, *Delacre and Others* v *Commission*, C-350/88, EU:C:1990:71, paragraph 16 and the case-law cited; of 13 September 2016, *Pohjanmäki* v *Council*, T-410/15 P, not published, EU:T:2016:465, paragraph 78; and of 19 January 2017, *Commission* v *Frieberger and Vallin*, T-232/16 P, not published, EU:T:2017:15, paragraph 41). Since promotions are made by selection, in accordance with Article 45 of the Staff Regulations, it is enough that the reasons given for the rejection of the complaint relate to the application of the conditions governing promotion laid down by law and the Staff Regulations to the official's individual situation (see judgments of 20 February 2002, *Roman Parra* v *Commission*, T-117/01, EU:T:2002:35, paragraph 27, and of 29 September 2005, *Napoli Buzzanca* v *Commission*, T-218/02, EU:T:2005:343, paragraph 60).

40 Furthermore, according to settled case-law, where there is a total absence of reasons before an action is brought, that absence of reasons cannot be made good by explanations provided by the appointing authority following the bringing of an action. At that stage, such explanations no longer fulfil their function, so that the commencement of proceedings puts an end to the possibility for the appointing authority to make good its decision by a response dismissing the complaint (judgment of 9 December 1993, *Parliament* v *Volger*, C-115/92 P, EU:C:1993:922, paragraph 23; see also judgments of 7 February 2007, *Caló* v *Commission*, T-118/04 and T-134/04, EU:T:2007:37, paragraph 268 and the case-law cited, and of 13 September 2016, *Pohjanmäki* v *Council*, T-410/15 P, not published, EU:T:2016:465, paragraph 80 and the case-law cited).

41 The possibility of regularising the total absence of a statement of reasons after an action has been started might prejudice the right to a fair hearing because the applicant would have only the reply in which to set out his pleas contesting the reasons which he would not know until after he had lodged his application. The principle that parties should be equal before the Union judicature would be undermined (judgments of 6 July 2004, *Huygens* v *Commission*, T-281/01, EU:T:2004:207, paragraph 109, and of 29 September 2005, *Napoli Buzzanca* v *Commission*, T-218/02, EU:T:2005:343, paragraph 62; see also, order of 8 March 2012, *Marcuccio* v *Commission*, T-126/11 P, EU:T:2012:115, paragraph 47 and the case-law cited).

42 In the case of an implied rejection of a complaint, which thus lacks formal reasoning, it is the conduct of the administration which is a decisive factor in the origin a dispute in as far as the person concerned feels obliged, in the absence of any response to his complaint with the time limit laid down in Article 90(2) of the Staff Regulations, to bring an action before the General Court in order to obtain a statement of reasons in due form for the decision adopted with respect to him. That manner of acting by the appointing authority, contrary to the requirements of proper administration, calls into question the allocation of the respective functions between the administration, on one hand, and the Union judicature, on the other, as the latter becomes the one and only tribunal before which the person concerned is able to obtain a statement of reasons in accordance with Article 25 of the Staff Regulations. That is all the more regrettable since compliance by the administration with its duty to state reasons during the pre-litigation phase is intended to enable the person concerned to understand the scope of the decision taken with respect to him and, where appropriate, may persuade him that it was well founded and, therefore, not to commence legal proceedings (see, to that effect, judgment of 15 September 2005, *Casini* v *Commission*, T-132/03, EU:T:2005:324, paragraph 34).

43 However, it was held that an inadequate statement of reasons provided in the course of the pre-litigation procedure is not in itself able to justify annulment of the decision adopted where additional information is provided by the appointing authority during the proceedings (judgments of 12 December 2002, *Morello* v *Commission*, T-338/00 and T-376/00, EU:T:2002:314, paragraph 55 and

the case-law cited, and of 4 May 2005, *Sena* v *EASA*, T-30/04, EU:T:2005:161, paragraph 71), it being understood however that, for reasons comparable to those set out in paragraphs 40 to 42 above, the institution may not substitute a completely new set of reasons for the initial, incorrect reasons set out in the act being challenged (see, to that effect, judgment of 29 September 2005, *Napoli Buzzanca* v *Commission*, T-218/02, EU:T:2005:343, paragraph 63 and the case-law cited).

44 Thus, the Court has held that an initial inadequate statement of grounds may be remedied by additional information provided even during the proceedings if the official concerned already had at his disposal before bringing his action information constituting the beginnings of a statement of grounds (see judgments of 20 February 2002 *Roman Parra* v *Commission*, T-117/01, EU:T:2002:35, paragraph 30 and the case-law cited; of 3 February 2005, *Heurtaux* v *Commission*, T-172/03, EU:T:2005:34, paragraph 44 and the case-law cited; and of 3 October 2006, *Nijs* v *Court of Auditors*, T-171/05, EU:T:2006:288, paragraph 45 and the case-law cited).

45 Furthermore, it has been held as regards, in particular, the implied rejection of a complaint concerning a refusal of promotion that grounds stated for a decision are also sufficient if the measure taken concerning the official was adopted in circumstances which are known to him which enable him to understand its scope (see judgments of 15 September 2005, *Casini* v *Commission*, T-132/03, EU:T:2005:324, paragraph 36 and the case-law cited; of 29 September 2005, *Napoli Buzzanca* v *Commission*, T-218/02, EU:T:2005:343, paragraph 64 and the case-law cited; and of 3 October 2006, *Nijs* v *Court of Auditors*, T-171/05, EU:T:2006:288, paragraph 45 and the case-law cited).

46 However, having regard to the importance of the obligation to state reasons with regard to the rights of the defence, it is only exceptionally that the context in which a decision not to promote an official is taken, which was impliedly upheld after a complaint was lodged, may constitute the initial elements of a statement of reasons for the decision (judgment of 29 September 2005, *Napoli Buzzanca* v *Commission*, T-218/02, EU:T:2005:343 paragraph 79; see also, to that effect, judgments of 9 March 2000, *Vicente Nuñez* v *Commission*, T-10/99, EU:T:2000:60, paragraph 44, and of 3 February 2005, *Heurtaux* v *Commission*, T-172/03, EU:T:2005:34, paragraph 47). Thus, in circumstances such as those at issue in the present case, the initial elements of a statement of reasons cannot exist in the absence of any indication by the appointing authority concerning the applicant's specific situation and the comparison of his merits with those of other officials eligible for promotion with regard to the criteria in Article 45 of the Staff Regulations (see, to that effect, judgments of 3 February 2005, *Heurtaux* v *Commission*, T-172/03, EU:T:2005:34, paragraphs 46 to 50, and of 23 October 2013, *Verstreken* v *Council*, F-98/12, EU:F:2013:156, paragraphs 31 and 32; see also, by analogy, judgment of 10 September 2009, *Behmer* v *Parliament*, F-16/08, EU:F:2009:107, paragraph 32).

47 In the present case, it is common ground that the appointing authority has not expressly replied to the complaint, rejecting it by an implied decision.

48 Therefore, the various pieces of evidence put forward by Cedefop must be examined in order to determine whether the context in which the contested decision was taken enabled the applicant to understand its scope and, therefore, to evaluate its merits in the light of the criteria laid down in Article 45 of the Staff Regulations.

49 In that connection, it must be recalled as a preliminary point that, on 19 April 2016, the applicant presented oral argument to the Appeal Committee relied on in support of the complaint (see paragraph 13 above). However, Cedefop does not claim that explanations as to the grounds for the contested decision, even incomplete, were provided to the applicant on that occasion.

50 Furthermore, firstly, Cedefop submits that the applicant performed duties of such kind that he was necessarily aware of the rules applicable to promotion and that he should have understood that those rules had to be correctly and objectively applied to his case for the promotion exercise 2015. However, that evidence is not relevant because the knowledge that the applicant had of criteria to be

taken into account in order to be promoted should not be confused with the knowledge of the way in which those criteria were applied to his situation (see, to that effect and by analogy, judgment of 10 September 2009, *Behmer* v *Parliament*, F-16/08, EU:F:2009:107, paragraph 33 and the case-law cited).

51 The same is true as regards the note of the director of Cedefop of 9 March 2015, sent to all the members of staff of Cedefop and to which the latter refers in the present case. In that note, the director merely described in general terms the criteria which would be applied in the 2015 promotion exercise, both for and against the promotion of officials. It follows that that note was not such as to enable the applicant to understand how those criteria had been applied to his situation.

52 Second, Cedefop claims that the applicant was aware of many criticisms of him professionally, not only as regards the management of his team, but also regarding various irregularities committed in the award procedures for public contracts.

53 In that connection, it is true that, as is clear from the applicant's evaluation reports for 2012 to 2014, he was the subject of criticisms, in particular concerning the management of his teams. In the 2012 evaluation report, the assessor noted, in particular, that in that year he expected '[the applicant] and his team [to adopt] a calmer and more coordinated way of working', but that '[that] had not been fully achieved in the first six months, as certain tensions had arisen on occasion in the unit'. The same report stated that, in spite of the progress noted, 'the applicant still had difficulties in organising his working time optimally … and delegating to members of his team', the assessor noting that the applicant remained 'too involved in redoing, revising or amending the work of his subordinates' to the detriment of the time spent 'pursuing the general priorities and objectives of his unit, the direct management of his team and the resolution of disputes'. In the 2013 evaluation report, the assessor noted in particular that '[the applicant] still needs to make more progress in order to ensure proper communication with members of his staff, to effectively manage disputes and to ensure that reports, planning and administrative deadlines are implemented smoothly'. Finally, in the applicant's 2014 evaluation report, that is the applicant's last evaluation report before the contested decision, the assessor observed that the applicant was 'much more at ease in drafting rules and revising documents and managing staff' and that he still spent too much of his working time 'rewriting, revising or amending documents when he was asked for technical advice'. The assessor again regretted that time was not spent on 'the priorities and general objectives for his unit and the direct management of his team', and stated that in 2015 he expected the applicant to adopt 'a calmer and more organised working method for him and his team'.

54 However, the applicant's evaluation reports for 2012 to 2014 also contain certain positive comments about his work.

55 In particular, it is clear from the 2014 evaluation report that the applicant was 'committed', 'worked long hours' and was 'a person with whom it was pleasant to work', the deputy director of Cedefop noting in that report that the applicant had 'achieved all the objectives which had been assigned to him to a high standard' and mentioned his high level of 'commitment and sense of duty'.

56 More generally, as is clear from the 2012 to 2014 evaluation reports, the overall assessment of the applicant was considered to be satisfactory, his performance having been evaluated in each of those years to level III, that is 'good and which corresponds to the level required for the post occupied'.

57 In addition, the 2012 and 2013 evaluation reports mention an improvement in the applicant's ability to manage. It is clear from the 2012 evaluation report that the applicant had undergone management training in order to improve his skills in that area and that, in that year, he had 'drafted an action plan and begun to put into practice the training received'. However, that report stated that the applicant still had room for improvement in that regard. The following year, the assessor noted in the 2013 evaluation report that 'the applicant has made progress concerning team management' and, in

particular, 'the organisation of regular unit meetings'. While stating that 'there was still some progress to be made', the assessor noted that the applicant had 'delegated more of his supervisory duties … in order to make time for his more direct and organisation management tasks' and thereby acknowledged 'the effort [made by the applicant] to improve his management [skills]'.

58 Finally, in the 2014 evaluation report, the validator noted that in substance the applicant had 'achieved all the objectives he had been set to a high standard' and that his 'high level of commitment and his sense of duty were much appreciated'.

59 In those circumstances, it must be held that the fact that the applicant's evaluation reports for 2012 to 2014 contain critical comments does not enable him to understand how the criteria laid down in Article 45 of the Staff Regulations were applied to his situation, justifying, on completion of the comparison by Cedefop of the merits of the officials eligible for promotion in the 2015 promotion exercise, the decision not to promote the applicant in that exercise.

60 Furthermore, none of the 11 letters and emails to which Cedefop refers in relation to the first plea, in Annexes B.15 and B.19 to B.28 is capable of constituting an explanation, even an inadequate one, as to the way in which the appointing authority assessed the applicant's merit in the 2015 promotion exercise with regard to the criteria laid down in Article 45 of the Staff Regulations.

61 First of all, as regards the two emails exchanged on 9 January 2015 between the members of staff of Cedefop involved in the assessment of the applicant in Annex B.26, it suffices to state that they were not sent to the applicant. Since there is no evidence in the file that a copy of those emails was sent to him in the course of the administrative procedure, those documents cannot constitute the initial elements of a statement of reasons.

62 Furthermore, as regards other documents to which Cedefop refers, most of which predate by more than one year the date on which the contested decision was adopted and some of which are more than five or even seven years prior to it, they do indeed establish that the applicant was aware of certain criticisms made about his management abilities and his treatment of certain public procurement files.

63 However, accepting that mere negative assessments made about an official may suffice as initial elements of a statement of reasons, in circumstances such as those in the main proceedings, risks compromising the purpose of the pre-litigation procedure laid down in Article 90(2) of the Staff Regulations, that is, according to settled case-law, the amicable settlement of disputes which arise at the time of the complaint (judgments of 7 March 1996, *Williams* v *Court of Auditors*, T-146/94, EU:T:1996:34, paragraph 44, and of 3 December 2015, *Cuallado Martorell* v *Commission*, T-506/12 P, EU:T:2015:931, paragraph 64).

64 Such an approach would enable the appointing authority to rely on any negative assessment of a candidate not promoted and of which he was informed in order to avoid its obligation to inform him of a reasoned decision rejecting his complaint, deriving from Article 90(2), second paragraph, of the Staff Regulations and which constitutes a specific expression of the requirement to give reasons for any decision adversely affecting an official laid down in Article 25, second paragraph, of the Staff Regulations and the right to good administration guaranteed by Article 41 of the Charter of Fundamental Rights.

65 Such a failure to respond to a complaint, which is brought against a decision not to promote an official which itself gives no reasons, is likely to give rise to or reinforce feelings of confusion or frustration and thereby create an atmosphere liable to result in the commencement of proceedings before the courts of the European Union which, if the appointing authority had acted with the diligence required, might have been avoided.

66 Third, Cedefop's submissions that the existence of the initial elements of reasoning for the contested decision is established by paragraph 19 of the complaint, in which the applicant stated that '[his] hierarchical superior … expressed orally and in writing his dissatisfaction with the way in which [the applicant] managed [his] team'.

67 That finding at most reflects an assumption by the applicant as to a factor which may have been taken into account by Cedefop in evaluating his merits in the 2015 promotion exercise. However, for the reasons set out in paragraphs 63 to 65 above, the knowledge by the candidate not promoted of negative assessments in respect of him in itself cannot, in principle, replace the reasoning of the decision not to promote that that candidate is entitled to expect from the appointing authority in response to his complaint.

68 Cedefop cannot rely in that regard on the arguments in the judgment of 24 February 2010, *P* v *Parliament* (F-89/08, EU:F:2010:11), in which the Civil Service Tribunal held as regards a dismissal decision that it was clear 'from the words of the complaint themselves … brought by the applicant that, by consulting her personnel file, she learned of the request for dismissal' and 'was thus in a position to know that that request and, subsequently, the contested decision, were based on a breach of trust, both personal and political between her and Mr [A.M] a non-attached member and her immediate superior'. The situation at issue in the present case is not comparable since there is no evidence in the file that during the administrative procedure the applicant could have learned of any document from Cedefop explaining how the criticisms made about his team management skills justified the decision not to promote him, at the conclusion of the comparative examination of the merits laid down in Article 45 of the Staff Regulations.

69 Finally, fourth, the sole fact, relied on by Cedefop, that the applicant had applied for a position in the Council more than one month before the adoption of the contested decision indicates at most, as is clear from the applicant's own explanations, that he was concerned that he would not be promoted and wished to give himself the opportunity to leave Cedefop if the outcome was unsuccessful. However, that fact does not establish that the applicant knew with certainty at that time that he would not be promoted, or in particular that he was aware of the ground justifying the decision not to promote him.

70 It follows from the foregoing that the applicant, before becoming aware of the defence, could at the most suspect that the criticisms against him regarding his management skills in Cedefop and certain irregularities in his handling of certain public procurement files were likely to have an impact on the evaluation of his merits in the 2015 promotion exercise.

71 However, none of the evidence put forward by Cedefop establishes that, before bringing the present action, the applicant was in a position to understand the way in which those criticisms had been taken into account in applying the criteria for evaluating the merits for promotion laid down in Article 45 of the Staff Regulations. It follows that the context in which the contested decision was taken cannot be regarded as reasoning, even insufficient, of that decision.

72 Accordingly, the first plea must be accepted and the contested decision must be annulled, and there is no need to examine the other pleas put forward by the applicant. Nor is there any need in those circumstances to rule on the challenge by Cedefop to the admissibility of a certain number of pieces of evidence submitted in the application and which, according to it, go well beyond the scope of the present dispute and are therefore irrelevant for its resolution.

The claim for damages

73 The applicant seeks compensation for the non-material and material damage he claims to have suffered as a result of the adoption of the contested decision.

74 In that connection, the applicant submits first of all as regards the non-material damage that the complete absence of reasoning in the contested decision constituted a very serious fault on the part of the appointing authority which, in addition to the payment of legal costs, also caused him stress and frustration. He claims that such a fault cannot be properly compensated solely by the annulment of that decision.

75 Furthermore, the applicant claims that his non-material damage also results from Cedefop's conduct which, without carrying out a proper examination of the merits for the purposes of Article 45 of the Staff Regulations, unjustly refused to promote him in spite of his efforts and the actual results that he had achieved in 16 years with that body of the European Union. He stated that the feelings of injustice, frustration and discouragement he felt gave rise to the decision to return to the Council, which resulted in his family having to move and to readjust to a new home. That part of the non-material damage, estimated at EUR 16 000, corresponding to EUR 1 000 for each year of service, is also severable from the contested decision and therefore must be compensated regardless of whether or not that decision is annulled.

76 As regards the material damage, the applicant claims financial loss for the loss of income suffered as compared with the situation in which he would be if he had been promoted, together with default interest at the rate fixed by the European Central Bank (ECB).

77 Cedefop challenges that claims for compensation. It argues that since the contested decision is not vitiated by any illegality, the applicant has not established any fault liable to engage the non-contractual liability of the European Union. It states in that regard that, since officials do not have a right to promotion, the applicant has no grounds for claiming compensation for the financial loss he claims to have suffered. Similarly, it takes the view that the harm allegedly suffered by the applicant as a result of his return to the Council is not attributable to it, since the applicant made the choice on his own initiative. That is confirmed by the steps taken by the applicant to leave Cedefop already before the adoption of that decision. Finally, Cedefop states the estimation by the applicant of the alleged non-material damage is lacking any basis for calculation or any legal basis.

78 In that connection, it must be recalled that, according to settled case-law regarding civil service matters, the European Union could be held liable for damages only if a number of conditions were satisfied as regards the illegality of the allegedly wrongful act committed by the institutions, the actual harm suffered and the existence of a causal link between the act and the damage alleged to have been suffered. Those conditions are cumulative which means that if one of them is not satisfied the European Union cannot be held non-contractually liable (judgment of 1 June 1994, *Commission* v *Brazelli Lualdi and Others*, C-136/92 P, EU:C:1994:211, paragraph 42; see also judgments of 16 December 2010, *Commission* v *Petrilli*, T-143/09 P, EU:T:2010:531, paragraph 45 and the case-law cited, and of 17 May 2017, *PG* v *Frontex*, T-583/16, not published, EU:T:2017:344, paragraph 97 and the case-law cited).

79 It follows that, even if fault on the part of the institution, body, office or agency of the European Union is established, liability can actually arise only once the applicant manages to establish the fact and nature of the loss (see, to that effect, judgments of 9 November 2004, *Montalto* v *Council*, T-116/03, EU:T:2004:325, paragraph 126 and the case-law cited, and of 29 September 2005, *Napoli Buzzanca* v *Commission*, T-218/02, EU:T:2005:343, paragraph 98 and the case-law cited).

80 As regards the material damage relied on by the applicant and the part of the non-material damage he claims to have suffered on account of Cedefop's refusal to promote him, without having carried out a proper examination of his merits for the purposes of Article 45 of the Staff Regulations, it must be held that the damages claimed result, in substance, from the legal defects as to the substance relied on in the second and third pleas in the application for annulment.

81 Since the contested decision is vitiated by a failure to state reasons and must be annulled on that ground (see paragraph 72 above), it must be held that the General Court is not in a position to assess its substance following an examination of its grounds (judgment of 29 September 2005, *Napoli Buzzanca* v *Commission*, T-218/02, EU:T:2005:343 paragraph 99). It must be recalled in that regard that one of the purposes of the statement of reasons is specifically to enable the Courts of the European Union to exercise a review of the legality of the acts before it (see paragraph 36 above).

82 Therefore, pursuant to Article 266, first paragraph, TFEU, Cedefop must decide on the measures necessary to comply with the present judgment and adopt, if appropriate, a new decision supported by sufficient reasoning (see, to that effect, judgments of 29 September 2005, *Napoli Buzzanca* v *Commission*, T-218/02, EU:T:2005:343 paragraph 100, and of 18 November 2015, *Diamantopoulos* v *EEAS*, F-30/15, EU:F:2015:138, paragraph 33). At this stage, the General Court cannot make a finding as to the existence of specific material damage resulting from the refusal to promote the applicant, given that the director of Cedefop must take a new decision.

83 As regards the part of non-material damage resulting from the failure to state reasons in the contested decision, account must be taken of the fact that, as is clear from an examination of the first plea, that it is when the applicant read the defence, served on him more than nine months after the complaint was filed, that he learned for the first time of the explanation of the reasons for which he was not promoted in the 2015 promotion exercise. Thus, it is established that the complete lack of reasoning in the contested decision, on one hand, placed the applicant in a situation of uncertainty as to the reasons why he had not been promoted well before the time limit within which the answer to the complaint was to be given and, on the other hand, it obliged him to commence legal proceedings in order to obtain an explanation for it.

84 The feelings of injustice, confusion or frustration experienced by the applicant (see paragraph 64 above) are attributable solely to the appointing authority's conduct in the pre-litigation phase. That conduct has thereby caused the applicant specific non-material damage which cannot be adequately compensated by the annulment of the contested decision alone (see, by analogy, judgments of 12 December 2002, *Morello* v *Commission*, T-181/00, EU:T:2002:313, paragraphs 131 and 132, and of 15 September 2005, *Casini* v *Commission*, T-132/03, EU:T:2005:324, paragraphs 102).

85 In those circumstances, the General Court, assessing the harm suffered *ex aequo et bono*, considers that the award of EUR 2 000 constitutes adequate compensation for the part of the non-material damage resulting from the failure to state reasons in the contested decision alleged by the applicant, and that therefore the claim for compensation must be upheld solely to that extent.

Costs

86 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. Furthermore, pursuant to the second sentence of Article 134(2) of the Rules of Procedure, where there are several unsuccessful parties the Court is to decide how the costs are to be shared. Finally, under Article 135(2) of the General Court's Rules of Procedure, the General Court may order a party, even if successful, to pay some or all of the costs, if this appears justified by the conduct of that party, including before the proceedings were brought, especially if he has made the opposite party incur costs which the Court holds to be unreasonable or vexatious.

87 In the present case, the applicant has been unsuccessful with regard to part of his claim for compensation, so that Cedefop may be considered to have been successful with regard to that part of the dispute. However, account must be taken of the fact that the contested decision is vitiated by a failure to state reasons, that Cedefop wrongly failed to respond to the applicant's complaint and that, in addition, no initial reasoning enabled him, before bringing the present proceedings, to understand the

reasons justifying the decision not to promote him. Thus, it is Cedefop's attitude during the administrative procedure which obliged the applicant to bring the present action in order to learn of the reasons. Therefore, the Court considers that an equitable assessment of the circumstances in the present case is satisfied by ordering Cedefop to pay all the costs.

On those grounds,

THE GENERAL COURT (Ninth Chamber)

hereby:

1. **Annuls the decision of the director of the European Centre for the Development of Vocational Training (Cedefop) of 4 November 2015 not to promote Mr Georges Paraskevaidis to Grade AD 12 in the 2015 promotion exercise;**

2. **Orders Cedefop to pay Mr Paraskevaidis EUR 2 000 as compensation for the harm he suffered;**

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

4. **Orders Cedefop to pay the costs.**

Gervasoni Madise da Silva Passos

Delivered in open court in Luxembourg on 26 October 2017.

[Signatures]