Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL (Third Chamber)

20 July 2016*

(Civil service — Officials — Article 45 of the Staff Regulations — 2014 promotion exercise — General implementing provisions for Article 45 of the Staff Regulations — List of officials proposed for promotion by the Directors-General and heads of service — Omission of the applicant's name — Possibility of challenging before the Joint Promotion Committee the list of officials proposed for promotion — Consideration of the comparative merits of the officials eligible for promotion — Opinions adopted by a joint body — Obligation to state grounds)

In Case F-112/15,

ACTION brought under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof,

HL, official of the European Commission, residing in Brussels (Belgium), represented by R. Rata, lawyer,

applicant,

v

European Commission, represented by C. Berardis-Kayser, G. Berscheid and A.-A. Gilly, acting as Agents,

defendant,

THE CIVIL SERVICE TRIBUNAL (Single Judge),

Judge: J. Svenningsen,

Registrar: X. Lopez Bancalari, Administrator,

having regard to the written procedure and further to the hearing on 10 June 2016,

gives the following

Judgment

1 By application received at the Tribunal Registry on 3 August 2015, HL seeks the annulment of the decision of the appointing authority of the European Commission ('the appointing authority'), communicated to the staff of that institution on 14 November 2014, not to promote him to Grade AD 7 in the 2014 promotion exercise.

* Language of the case: English.

Legal framework

The Staff Regulations of Officials of the European Union

2 Under the first paragraph of Article 43 of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), 'the ability, efficiency and conduct in the service of each official shall be the subject of an annual report as provided for by the appointing authority of each institution in accordance with Article 110 [of the Staff Regulations; that] report shall state whether or not the performance level of the official has been satisfactory[;] the appointing authority of each institution shall lay down provisions conferring the right to lodge an appeal within the reporting procedure, which has to be exercised before the lodging of a complaint as referred to in Article 90(2) [of the Staff Regulations]'.

3 Article 45(1) of the Staff Regulations provides that 'promotion shall be by decision of the appointing authority in the light of Article 6(2) [of the Staff Regulations; it] shall be effected by appointment of the official to the next higher grade in the function group to which he belongs[; it] shall be exclusively by selection from among officials who have completed a minimum of two years in their grade after consideration of the comparative merits of the officials eligible for promotion[;] when considering comparative merits, the appointing authority shall in particular take account of the reports on the officials, the use of languages in the execution of their duties other than the language for which they have produced evidence of thorough knowledge in accordance with point (f) of Article 28 [of the Staff Regulations] and the level of responsibilities exercised by them'.

Commission Decision of 16 December 2013 laying down general provisions for implementing Article 45 of the Staff Regulations

4 Commission Decision C(2013) 8968 final of 16 December 2013 laying down the general provisions for implementing Article 45 of the Staff Regulations ('the GIP for Article 45'), published in *Administrative Notice* No 55-2013 of 19 December 2013, was adopted in order to adapt the Commission's system of promotion, taking into account the amendments to Article 45 of the Staff Regulations resulting from the entry into force of Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (OJ 2013 L 287, p. 15).

Provisions relating to Joint Promotion Committees and Joint Preparatory Groups

5 Under point 1 of Annex I to the GIP for Article 45, relating to the Joint Promotion Committee, the latter 'shall compare the merits of the officials eligible for promotion on the basis of the lists of officials proposed for promotion by the Directors-General, and take into account the complaints lodged against non-inclusion on the lists[;] it shall then issue its recommendations regarding officials to be promoted, addressed to the appointing authority'.

6 It is stated in point 2.2 of Annex I to the GIP for Article 45 that the Joint Promotion Committee for officials in the administrators' function group (AD) ('the JPC') is to be chaired by the Director-General of the Directorate-General (DG) for Human Resources and Security ('DG Human Resources') and is to consist of ex officio members, namely Directors-General of the Commission's Directorates-General and departments and Directors of the administrative offices, and fifteen members designated by the Central Staff Committee. An analogous committee is provided for in point 2.3 of the same annex, relating to officials in the assistants' function group (AST).

7 In accordance with point 2.4 of Annex I to the GIP for Article 45, each joint promotion committee is to adopt its own rules of procedure, decide on its working methods and may set up one or more intermediate joint working parties (joint preparatory groups) to carry out preparatory work. In

accordance with that provision, the JPC has established a joint preparatory group for officials in the administrators' function group ('the JPG'), the task of which, pursuant to the same provision, is to 'carry out preparatory work'.

8 It is stated in Article 3(2) of the Rules of Procedure for the joint promotion committees ('the JPC Rules of Procedure'), entitled 'Quorum for deliberating', that, in order for each JPC to adopt opinions and recommendations, the chair or his or her alternate must be present, together with thirty members entitled to vote, out of which fifteen are Directors-General of the Commission's Directorates-General and services and fifteen are designated by the Central Staff Committee. Article 6(1) of the JPC Rules of Procedure provides that opinions and recommendations are to be adopted by a simple majority of the members of the JPCs who are entitled to vote.

9 Furthermore, it is apparent from Article 1 of the ['Rules of Procedure for the Joint Preparatory Groups of the JPCs'] that, inter alia, at least one joint preparatory group is to be set up for each Joint Promotion Committee, also referred to as the Joint Promotion Committee preparatory group, which is to be composed of three members designated by the Director-General of DG Human Resources and three members designated by the Central Staff Committee. The Chair of each joint preparatory group is to be designated by the Director-General of DG Human Resources. Article 2 of those rules of procedure provides that the joint preparatory group is to prepare the corresponding deliberations of the JPC and the draft opinions relating to appeals brought under Article 5(7) of the GIP for Article 45. Under Article 5(2) and (3) of those rules of procedure, the examination of appeals relating to non-proposal for promotion must close with the adoption by the JPC, on the basis of the draft which has been prepared by the joint preparatory group, either of a reasoned opinion confirming the non-proposal or of a recommendation for promotion of the interested party.

Provision relating to the promotion procedure

10 Article 5 of the GIP for Article 45, relating to the promotion procedure, provides:

'...

3. Within each Directorate-General, the Directors shall consult the reporting officer referred to in the general provisions for implementing Article 43 of the Staff Regulations.

4. In each Directorate-General, following the consultation under paragraph 3 above, the Director-General, Deputy Directors-General, Directors and, where appropriate, the Principal Advisers, shall proceed with the examination of the comparative merits of the officials eligible for promotion. ...

5. Following the examination in paragraph 4 above, the Director-General shall hold a discussion with a delegation appointed by the Central Staff Committee.

6. Following the discussion in paragraph 5 above, the Director-General shall communicate to all the Directorate-General's staff the list of the officials he or she wishes to propose for promotion and shall forward this list to the Joint Promotion Committee referred to in Annex I [to the GIP for Article 45].

7. The jobholder shall have five working days from the date of publication of this list in which to lodge a complaint with the Joint Promotion Committee against the fact that he or she is not on the list, with supporting arguments. On receipt of the lists referred to in paragraph 6, the Joint Promotion Committee, taking into account any complaints it has received, shall compare the merits of the officials eligible for promotion and present for the attention of the appointing authority the list of officials it recommends for promotion. At the same time, it shall forward the complaints and the discrepancies, if any, referred to in Annex III [to the GIP for Article 45].

8. Once it has received the information referred to in paragraph 7 above, and has at its disposal the files of all the officials eligible for promotion, the appointing authority shall carry out a final comparison of the merits of the eligible officials and, taking into account the budgetary resources available, shall adopt the list of officials promoted. ...

9. The list of officials promoted shall be published for the attention of all Commission Staff … by means of an [*Administrative Notice*]. Each official shall be invited to consult his/her promotion file.

10. ...

11. Publication of the list of officials promoted referred to in paragraph 9 constitutes communication of the decision within the meaning of Article 25 of the Staff Regulations. ...

12. ...'

Background to the dispute

11 Having taken up duties on 16 July 2007 with the Commission's DG Competition as an official in grade AD 5, the applicant was promoted to grade AD 6 with effect from 1 January 2011. Since 16 September 2011, he has been assigned to DG Research and Innovation.

12 On 14 April 2014 the appointing authority launched the 2014 promotion exercise by means of *Administrative Notice* No 16-2014.

13 In accordance with the conditions set out in Article 5(2) to (5) of the GIP for Article 45, the Director-General of DG Research and Innovation, to which the applicant belonged for the purposes of the 2014 promotion exercise, decided not to include his name on the list of officials that he wished to propose for promotion. That list was published on 24 June 2014.

14 On 27 June 2014 the applicant, in accordance with the procedure provided for in Article 5(7) of the GIP for Article 45, contested before the JPC the fact that he was not included in the abovementioned list ('the appeal').

15 On 26 September 2014 the JPG, tasked by the JPC to examine appeals on a preparatory basis and to issue draft 'reasoned opinions' for its attention, unanimously issued, to the JPC, the draft 'reasoned opinion' not to recommend the applicant for promotion to grade AD 7 ('the draft opinion of the JPG'). That draft had to be subsequently submitted to the JPC.

16 All the JPG's draft opinions concerning promotion were finally submitted to the JPC and were due to be discussed with a view to being adopted at the JPC meeting held on 22 October 2014. However, as is apparent from the applicant's individual electronic file, a screenshot of which has been provided by him, 'due to an absence of quorum [the JPC] was not in a position to issue a recommendation [to the appointing authority]'. The staff-representative members of the JPC withdrew from the JPC meeting on 22 October 2014, so that the JPC could not, during that meeting, endorse or otherwise the JPG's draft opinion concerning the applicant's appeal in the context of the promotion recommendations that the JPC was supposed to adopt in accordance with Article 5(7) of the GIP for Article 45.

17 On 14 November 2014 the Commission published in *Administrative Notice* No 41-2014 a communication containing the list of promoted officials for the 2014 promotion exercise. The applicant's name was not included on that list ('the decision of non-promotion').

18 By note of 13 February 2015, the applicant, under Article 90(2) of the Staff Regulations, lodged a complaint against the decision of non-promotion. In support of his complaint, he relied on (i) infringement of Article 45 of the Staff Regulations due, on the one hand, to the manifest inability of the appointing authority to undertake a comparison of the merits of the officials eligible for promotion in accordance with the new procedure established by the GIP for Article 45 and, on the other hand, a manifest error of assessment; (ii) infringement of Article 25 of the Staff Regulations due to failure to state reasons in the draft opinion of the JPG; (iii) violation of the rights of the defence; (iv) breach of the principle of good administration; (v) breach of the principle of equal treatment, and, finally (vi) non-respect of the promotion rates referred to in Annex I, Section B to the Staff Regulations in so far as the applicant had completed three years in grade AD 6 at the time of the 2014 promotion exercise.

19 By decision of 4 June 2015 ('the decision rejecting the complaint'), the appointing authority rejected the applicant's complaint.

Procedure and forms of order sought

20 Following the second exchange of pleadings, the parties were asked, by letters from the Registry of the Tribunal dated 16 March 2016, to inform the Tribunal whether they agreed that Article 59(2) of the Rules of Procedure might be applied in the present case and, furthermore, the Tribunal requested them to submit their observations under Article 15(2) of the Rules of Procedure. The applicant and the defendant having adopted positions, on 21 March 2016, on those two issues, the Tribunal then decided, under the abovementioned provisions, to refer the case to a single Judge, the Judge-Rapporteur, and, because of the applicant's request for an opportunity to adopt a position on the arguments developed by the Commission in the rejoinder, to open the oral part of the procedure, to join the present case to Case F-113/15 (*Adriaen and Others* v *Commission*) for the purposes of that part of the procedure and to organise a joint hearing for both cases on 24 May 2016, of which the parties were informed by letter from the Tribunal Registry dated 30 March 2016. Subsequently, the hearing was deferred to 10 June 2016.

21 The applicant claims that the Tribunal should:

— annul the decision of non-promotion;

— order the Commission to pay the costs.

22 The Commission contends that the Tribunal should:

— dismiss the action as, primarily, manifestly inadmissible and, in the alternative, manifestly unfounded;

— order the applicant to pay the costs.

Law

Admissibility

Arguments of the parties

23 The Commission submits, in its statement of defence, that the action is inadmissible on the ground that the applicant does not have a legal interest in bringing proceedings in this case since, according to that institution, he has not proved that the alleged illegality on which he is relying directly and individually affected the decision of non-promotion. The arguments put forward in support of the present case to call into question the adequacy of the 2014 promotion exercise are in fact theoretical, since the applicant, who does not claim that the appointing authority committed a manifest error of assessment in the consideration of comparative merits it carried out in the present case, has not indicated how, specifically, the newly-implemented promotion procedure within the Commission had an adverse effect on him directly and individually.

24 In response, the applicant claims that his action is admissible, since he has an interest in bringing an action for annulment of the decision of non-promotion. He stresses that he is not pleading the illegality of Article 45 of the Staff Regulations or of the GIP for Article 45, which therefore proves that, by his action, he is not acting in the interests of the law as the Commission contends.

Findings of the Tribunal

25 According to settled case-law, a claim for annulment is not admissible unless the applicant has an interest in seeing the contested measure annulled. Such an interest can be present only if the annulment of the measure is itself capable of having legal consequences for the person concerned or, to put it another way, if the action is liable, if successful, to procure an advantage for the party who has brought it (judgment of 26 February 2013 in *Labiri* v *EESC*, F-124/10, EU:F:2013:21, paragraph 56, and order of 22 April 2015 in *ED* v *ENISA*, F-105/14, EU:F:2015:33, paragraph 20 and the case-law cited).

26 Thus, an official or other member of staff is not entitled to act in the interests of the law or of the institutions and may put forward, in support of an action, only such claims as relate to him personally (see orders of 8 March 2007 in *Strack* v *Commission*, C-237/06 P, EU:C:2007:156, paragraph 64, and of 16 December 2015 in *Bärwinkel* v *Council*, F-118/14, EU:F:2015:154, paragraphs 41 and 58).

27 In the present case, the Tribunal takes the view that, contrary to what the Commission argues, the applicant does have an interest in bringing an action for annulment of the decision of non-promotion. Admittedly, he is challenging in general terms the manner in which the 2014 promotion exercise was conducted by the appointing authority. In doing so, even if he does not allege that the appointing authority committed a manifest error in considering his merits as against those of other AD 6 officials eligible for promotion and, therefore, does not specifically set out which of his merits the appointing authority failed to take sufficiently into account, he nevertheless disputes that the decision of non-promotion, which is of direct and individual concern to him, was the result of a consideration of comparative merits as required under Article 45(1) of the Staff Regulations.

28 The Commission's plea of inadmissibility must therefore be rejected.

The claim for annulment

29 In the examination of the legality of the decision of non-promotion — the only act adversely affecting the applicant which he is seeking to have annulled — it is appropriate, in view of the evolving nature of the pre-litigation procedure, to take into consideration the reasons given in the decision rejecting the complaint, those reasons being deemed to cover the contested decision also (judgment of 13 June 2012 in *Mocová* v *Commission*, F-41/11, EU:F:2012:82, paragraph 21; judgment of 10 September 2014 in *Tzikas* v *ERA*, F-120/13, EU:F:2014:197, paragraph 79, and judgment of 5 February 2016 in *Barnett and Mogensen* v *Commission*, F-56/15, EU:F:2016:11, paragraph 41, on appeal before the General Court, Case T-148/16 P).

30 In support of his action, the applicant puts forward two pleas in law, which it is appropriate to examine one after the other, alleging infringement of Article 45(1) of the Staff Regulations and infringement of Article 25 of the Staff Regulations respectively.

First plea in law: infringement of Article 45(1) of the Staff Regulations

– Arguments of the parties

31 In support of his first plea, the applicant claims that the method followed by the appointing authority in the 2014 promotion exercise does not ensure that the appraisals of all officials eligible for promotion are comparable, in particular because the Commission did not lay down, for the purposes of the adoption of the appraisal reports, a common appraisal scale and did not ensure that the reporting officers in the various Directorates-General of the institution used harmonised assessment criteria in the reporting exercises under Article 43 of the Staff Regulations.

32 The applicant makes two criticisms, which he refers to as 'methodological ineptitude' and 'structural ineptitude', namely (i) the inadequacy of the methodology used by the appointing authority to consider comparative merits and (ii) the inadequacy of the administrative procedures used in the conduct of the 2014 promotion exercise, reflected in particular in the compartmentalisation of the consideration of comparative merits within the various Directorates-General.

33 Specifically, as regards the methodology adopted by the appointing authority, the applicant, pointing out that his appraisal reports for 2011, 2012 and 2013 were entirely verbal, were drafted in very general terms and lack any comparative scale, considers that those reports reflect the subjectivity of the reporting officer. This is borne out, in the applicant's view, by the 2014 Promotion Exercise Report of the Joint Monitoring Committee, which is tasked under Article 5(12) of the GIP for Article 45 with examining each promotion exercise in the Commission ('the Joint Monitoring Committee'). That report highlighted the fact that 'some issues already pointed out in previous years were found once again in a certain number of [appraisal] reports', namely '[the] absence of specific objectives and assessment criteria', 'reports that were too short, lacking concrete examples, or not detailed enough to enable an accurate assessment of performance to be made and/or reports simply copied from previous exercises', and 'a tendency to "homogenise" reports with very positive comments, which continues to make the comparison of merits in the grade difficult'. The applicant mentions the fact that, in the report in question, which should be regarded as reflecting the position adopted by the appointing authority itself 'the [Joint Monitoring Committee] draws [the appointing authority's] attention to the fact that concrete examples about the level of the jobholder's responsibilities are frequently lacking in the appraisal report [and that this] makes the comparison of merits during the appeal phase more difficult'.

34 The applicant also relies on the contents of a note dated 9 October 2014 by which three staff-representative members of the JPC requested the inclusion on the agenda of the subsequent JPC meeting a point concerning 'the application of the provisions of Article 45(1) of the Staff Regulations regarding merit in the management of the appeals phase of the [2014] promotion exercise'.

35 The applicant observes that, in that note, those three members of the JPC stated, in respect of the 2014 promotion exercise, that they had the impression that the consideration of comparative merits was 'not analytical enough, and … it [did] not seem possible to classify all candidates in descending order of merit, and then [to propose] the top candidates for promotion'; that, 'even when a final review of the cases to be proposed for promotion [was] conducted, the apparent absence of objective and documented criteria for translating the "particular factors" that integrate merit on an appropriate scale ... [made it] in [their] opinion unlikely that a proper comparison of merit within ... the [entire] grade [could be] conducted, as [required] by Article 45(1) [of the Staff Regulations] and Article 5(7) of [the GIP for Article 45]'. According to those members of the JPC, 'the apparent absence of a graded scale for comparison of merit render[ed it] exceedingly difficult to conduct a homogeneous and objectively impartial "consideration of the comparative merits of the officials [in the same grade] eligible for promotion"' and 'with the current procedure, there [was] no guarantee that all officials in [the same] grade proposed for promotion [had] demonstrated more objective merit than all eligible officials in [the] grade [ultimately] excluded from promotion'.

36 In the applicant's view, the fact that the JPC was unable to adopt its recommendations on promotion at the meeting on 22 October 2014 confirms his doubts as to the appropriateness of the consideration of comparative merits carried out by the appointing authority in the case before the Tribunal.

37 The applicant also criticises the methodology used in the drafting of officials' appraisal reports, arguing that they are entirely verbal and dependent on the drafting skills and personal linguistic knowledge of the reporting officers. He thus criticises the appointing authority for not providing for a methodological tool to convert the verbal assessment into a quantifiable, graded or numerical scale such as to ensure objective and impartial comparability across the various appraisal reports of the officials eligible for promotion, in breach of the requirements laid down by the Tribunal in the judgments of 18 March 2015 in *Ribeiro Sinde Monteiro* v *EEAS* (F-51/14, EU:F:2015:11, on appeal before the General Court, Case T-278/15 P) and of 3 June 2015 in *Gross* v *EEAS* (F-78/14, EU:F:2015:52, on appeal before the General Court, Case T-472/15 P).

38 As regards the allegation of 'structural ineptitude', the applicant claims that the appointing authority was not authorised to allocate promotion quotas at Directorate-General level, since that is tantamount to compartmentalising the consideration of comparative merits of the officials eligible for promotion at the level of each Directorate-General whereas it should be exercised at institutional level, as required under Article 45(1) of the Staff Regulations. According to the applicant, in the procedure followed under the 2014 promotion exercise, the JPC could not correct that bias because, when examining the appeals brought before it, its mandate under the GIP for Article 45 and the JPC Rules of Procedure was limited to considering comparative merits 'on the basis of the lists of officials proposed for promotion by the Directors-General'.

39 The Commission contends that the Tribunal should reject the plea, submitting that the Tribunal, in the judgments of 22 September 2015 in *Silvan* v *Commission* (F-83/14, EU:F:2015:106, on appeal before the General Court, Case T-698/15 P) and 15 December 2015 in *Bonazzi* v *Commission* (F-88/15, EU:F:2015:150), has already addressed, in an identical regulatory context and in respect of the same promotion exercise, arguments analogous to those raised by the applicant.

– Findings of the Tribunal

40 In view of the content of his arguments, the applicant must be construed, by his first plea, to be alleging that the appointing authority (i) failed to conduct a consideration of comparative merits on the basis of reliable and comparable sources and (ii) limited that comparative consideration to the AD 6 officials eligible for promotion initially proposed by the various Directors-General of the institution. Consequently, according to the applicant, no consideration of the comparative merits of the officials eligible for promotion was carried out in the present case, which justifies the annulment of the decision of non-promotion.

41 It should be recalled at the outset that Article 45(1) of the Staff Regulations expressly provides that, for the purposes of the consideration of comparative merits of officials eligible for promotion, the appointing authority is in particular to take account of the staff reports on the official's performance of his duties in the grade which he occupies at the time of the relevant promotion exercise and that, in this respect, pursuant to settled case-law the staff report constitutes an indispensable criterion of assessment each time the official's career is taken into consideration by the administration (see judgments of 27 January 1983 in *List* v *Commission*, 263/81, EU:C:1983:17 paragraphs 25 and 26; of 3 March 1993 in *Vela Palacios* v *ESC*, T-25/92, EU:T:1993:17, paragraph 43, and of 11 July 2007 in *Konidaris* v *Commission*, T-93/03, EU:T:2007:209, paragraph 88).

42 As regards the criticism concerning the lack of comparability of the appraisal reports drawn up by the appointing authority according to the new 'analytical' methodology applied in the 2014 promotion exercise, it should be pointed out that pursuant to settled case-law, the appointing authority possesses, for the purposes of considering the comparative merits of officials eligible for promotion as provided for in Article 45(1) of the Staff Regulations, a wide discretion (see, to that effect, judgments of 21 April 1983 in *Ragusa* v *Commission*, 282/81, EU:C:1983:105, paragraphs 9 and 13; of 15 January 2014 in *Stols* v *Council*, T-95/12 P, EU:T:2014:3, paragraph 29, and of 2 March 2016 in *Loescher* v *Council*, F-84/15, EU:F:2016:29, paragraph 56).

43 However, the wide discretion thus conferred on the appointing authority is limited by the need to consider candidates' comparative merits carefully and impartially, in the interest of the service and in accordance with the principle of equal treatment. In practice, that consideration must be carried out on a basis of equality, using comparable sources of information (see judgments of 15 September 2005 in *Casini* v *Commission*, T-132/03, EU:T:2005:324, paragraph 53 and the case-law cited; of 15 January 2014 in *Stols* v *Council*, T-95/12 P, EU:T:2014:3, paragraph 32, and of 15 December 2015 in *Bonazzi* v *Commission*, F-88/15, EU:F:2015:150, paragraph 50).

44 In this connection, the EU judicature has admittedly already held, when ruling on previous cases, that there is considerable heterogeneity in the appraisals of officials in the various services of an institution and that that heterogeneity is the source of difficulty when the appointing authority is required to consider the comparative merits of all officials concerned, in accordance with the principle of equal treatment (see, to that effect, judgments of 19 October 2006 in *Buendía Sierra* v *Commission*, T-311/04, EU:T:2006:329, paragraph 169, and of 3 June 2015 in *Gross* v *EEAS*, F-78/14, EU:F:2015:52, paragraph 44, on appeal before the General Court, Case T-472/15 P). Thus, the obligation to conduct a comparison of merits on a basis of equality and using comparable sources of information, which is inherent in Article 45 of the Staff Regulations, requires a procedure or method capable of neutralising the subjectivity resulting from the appraisals made by the different reporting officers in the reports drawn up under Article 43 of the Staff Regulations and which must be assessed in accordance with Article 45(1) thereof (see judgment of 18 March 2015 in *Ribeiro Sinde Monteiro* v *EEAS*, F-51/14, EU:F:2015:11, paragraph 41, on appeal before the General Court, Case T-278/15 P).

45 However, the appointing authority has the power to undertake a consideration of comparative merits according to the procedure or method which it considers most appropriate (judgments of 1 July 1976 in *de Wind* v *Commission*, 62/75, EU:C:1976:103, paragraph 17, and of 14 July 2011 in *Praskevicius* v

Parliament, F-81/10, EU:F:2011:120, paragraph 53). As is recognised in the case-law, there is no obligation on the institution concerned to adopt a particular appraisal and promotion system, given the wide discretion which it has to implement the objectives of Article 45 of the Staff Regulations in accordance with its own needs for the organisation and management of its staff (judgments of 14 February 2007 in *Simões Dos Santos* v *OHIM*, T-435/04, EU:T:2007:50, paragraph 132; of 22 September 2015 in *Silvan* v *Commission*, F-83/14, EU:F:2015:106, paragraph 24, on appeal before the General Court, Case T-698/15 P, and of 15 December 2015 in *Bonazzi* v *Commission*, F-88/15, EU:F:2015:150, paragraph 62).

46 Furthermore, the merit appraisal system called into question by the applicant in the present case is considerably different to that currently applied at the European External Action Service (EEAS), which the Tribunal was called upon to consider in the cases which gave rise to the judgments of 18 March 2015 in *Ribeiro Sinde Monteiro* v *EEAS* (F-51/14 EU:F:2015:11, on appeal before the General Court, Case T-278/15 P) and of 3 June 2015 in *Gross* v *EEAS*, (F-78/14, EU:F:2015:52, on appeal before the General Court, Case T-472/15 P). As the Tribunal has already observed, the system applicable at the EEAS was exclusively based on the wording of the comments of the reporting officers and made it impossible methodically to identify differences in the appraisal of officials as practised by the various reporting officers in accordance with their own subjective approach (judgments of 22 September 2015 in *Silvan* v *Commission*, F-83/14, EU:F:2015:106, paragraph 28, on appeal before the General Court, Case T-698/15 P, and of 15 December 2015 in *Bonazzi* v *Commission*, F-88/15, EU:F:2015:150, paragraph 63).

47 In the present case, the appraisal reports drawn up by the Commission's appointing authority following the new analytical methodology, such as those provided by the applicant and the report excerpts which appear in the decision rejecting the complaint, reveal a careful, detailed and structured form of appraisal, based on identical criteria and parameters applied in a uniform manner in the appraisal of all the officials concerned. Moreover, it has already been held in respect of that new methodology, in a case challenging the same promotion exercise, that the reporting officers received instructions and training on how to conduct appraisal and promotion exercises in a homogeneous manner (see judgment of 15 December 2015 in *Bonazzi* v *Commission*, F-88/15, EU:F:2015:150, paragraph 64).

48 As regards the applicant's contention that the Commission's recently-introduced promotion system results in the officials of the institution proposed for promotion being filtered at Directorate-General level, it must be recalled that sole responsibility for promotion decisions, and for the consideration of comparative merits provided for in Article 45 of the Staff Regulations, rests with the appointing authority (judgments of 4 February 1987 in *Bouteiller* v *Commission*, 324/85, EU:C:1987:59, paragraph 11, and of 15 December 2015 in *Bonazzi* v *Commission*, F-88/15, EU:F:2015:150, paragraph 83).

49 In this connection, first, while Article 45(1) of the Staff Regulations requires the appointing authority to consider, prior to any promotion decision, the comparative merits of all officials eligible for promotion, the appointing authority may be assisted by the administrative services at the various hierarchical levels, in accordance with the principles inherent in the operation of any hierarchical administrative structure. Thus, the appointing authority may provide for prior consideration within each Directorate-General of the personal files of officials eligible for promotion, even if such prior consideration cannot take the place of the comparative consideration which must be undertaken subsequently by the promotion committee, where provision is made for such consideration, and then in any event by the appointing authority at the end of the promotion exercise with a view to adopting promotion decisions or decisions of non-promotion, there being express provision in the Staff Regulations only for the latter comparative consideration (see, to that effect, judgments of 30 November 1993 in *Tsirimokos* v *Parliament*, T-76/92, EU:T:1993:106, paragraph 17, and of 22 September 2015 in *Silvan* v *Commission*, F-83/14, EU:F:2015:106, paragraph 48 and the case-law cited, on appeal before the General Court, Case T-698/15 P).

50 In the context of the promotion procedure provided for by the GIP for Article 45, it is true that the appointing authority cannot be allowed simply to consider the merits of those officials who are placed at the top of the lists prepared by the various services or Directorates-General (judgment of 22 September 2015 in *Silvan* v *Commission*, F-83/14, EU:F:2015:106, paragraph 48, on appeal before the General Court, Case T-698/15 P). However, in the context of the identification — which is decentralised at the level of the Directorates-General of the institution — of the officials eligible for promotion who are to be proposed for promotion at that stage to the appointing authority, as it is arranged under the GIP for Article 45, the exercise by officials who were not proposed for promotion at that stage by their respective Directors-General and heads of service of their right, laid down by the GIP for Article 45, to submit an appeal to the JPC against those decisions not to propose them for promotion enables those officials to have before that joint body a consideration of their comparative merits not only at the level of their respective Directorates-General, but also at that of the institution as a whole (see judgment of 22 September 2015 in *Silvan* v *Commission*, F-83/14, EU:F:2015:106, paragraph 50, on appeal before the General Court, Case T-698/15 P).

51 Second, the Tribunal notes that the appointing authority may have a joint advisory body such as the JPC take part in the preparatory stage of its decisions on promotion, and may also provide for that body to be assisted by another joint body, here the JPG, whose adopted draft reasoned opinions it may take into account (judgment of 15 December 2015 in *Bonazzi* v *Commission*, F-88/15, EU:F:2015:150, paragraph 89 and the case-law cited). By bringing their appeals, the officials eligible for promotion but not proposed for it by their Directors-General and heads of service have, under the appeals procedure established by the GIP for Article 45, the opportunity to bring their cases to the attention of the appointing authority by obliging it on the basis of their challenges, the draft reasoned opinions of the JPG and, as appropriate, the recommendations of the JPC to examine in detail their respective situations in its final consideration under Article 5(8) of the GIP for Article 45, undertaken at the end of the promotion procedure, of the comparative merits of all officials eligible for promotion with a view to adopting decisions on promotion.

52 Third and in any event, the appointing authority satisfies its obligations under the Staff Regulations if it highlights clearly in the decision rejecting the complaint, as it has done in the present case, the fact that it has, on the basis of all the information available and in particular the appraisal reports of the officials eligible for promotion, itself compared the merits of all officials eligible for promotion, irrespective of whether or not they were included on the initial lists of officials proposed for promotion by the Directors-General and heads of service of the institution (see, to that effect, judgments of 21 September 1999 in *Oliveira* v *Parliament*, T-157/98, EU:T:1999:173, paragraph 50, and of 15 December 2015 in *Bonazzi* v *Commission*, F-88/15, EU:F:2015:150, paragraph 87).

53 In that regard, the fact that, in a note of 9 October 2014, three staff-representative members of the JPC expressed criticism regarding the conditions under which the 2014 promotion exercise was conducted and the fact that the Joint Monitoring Committee also criticised the manner in which the appraisal reports used for that promotion exercise were compiled cannot invalidate such a finding. Those statements of position of advisory bodies or of members of such bodies in no way prove that the appraisal reports specifically concerning the AD 6 officials eligible for promotion were deficient or insufficiently homogeneous while, on the other hand, the Tribunal notes that the excerpts from appraisal reports of AD 6 officials eligible for promotion included in the decision rejecting the complaint are comparable and that, as regards the applicant's appraisal reports — reports which he has not moreover challenged through an action before the Tribunal pursuant to Article 270 TFEU but only through an appeal within the reporting procedure — they contain assessments allowing for an accurate comparative picture of the level and quality of the applicant's professional performance.

54 The applicant's argument concerning the appointing authority's failure in the present case to consider the comparative merits of the officials eligible for promotion as required under Article 45(1) of the Staff Regulations must therefore be rejected.

55 In any event, the Tribunal recalls that, in relation to decisions on promotion adopted by the administration, the EU judicature's judicial review must be confined to consideration of whether, regard being had to the various considerations which have influenced the administration in making its assessment, the appointing authority has remained within reasonable limits and has not used its power in a manifestly incorrect way, it being understood that the EU judicature cannot substitute its assessment of the qualifications and merits of those officials for that of the appointing authority (see, to that effect, judgments of 21 April 1983 in *Ragusa* v *Commission*, 282/81, EU:C:1983:105, paragraphs 9 and 13; of 15 January 2014 in *Stols* v *Council*, T-95/12 P, EU:T:2014:3, paragraph 29, and of 2 March 2016 in *Loescher* v *Council*, F-84/15, EU:F:2016:29, paragraph 56).

56 In order to preserve the effectiveness of the discretion which the legislature saw fit to confer on the appointing authority in connection with promotion, the EU judicature may not annul one of its decisions solely on the ground that it considers there to be evidence raising plausible doubts about its assessment, or even proving that there has been an error of assessment (judgments of 15 January 2014 in *Stols* v *Council*, T-95/12 P, EU:T:2014:3, paragraph 30; of 15 December 2015 in *Bonazzi* v *Commission*, F-88/15, EU:F:2015:150, paragraph 48, and of 2 March 2016 in *Loescher* v *Council*, F-84/15, EU:F:2016:29, paragraph 57). Only a finding of manifest error can lead to the annulment of a decision on promotion and, in that respect, the evidence that the applicant must adduce must be sufficient to render implausible the assessment of the facts made in that decision. In other words, the complaint alleging a manifest error of assessment must be rejected if, in spite of the evidence put forward by the applicant, the contested assessment appears in any event to be plausible (judgments of 26 March 2015 in *CW* v *Parliament*, F-41/14, EU:F:2015:24, paragraph 47, and of 2 March 2016 in *Loescher* v *Council*, F-84/15, EU:F:2016:29, paragraph 57).

57 The Tribunal notes that, in the context of the present action and as the applicant himself has stated in paragraphs 13 and 25 of the reply, the applicant does not claim that the GIP for Article 45 are unlawful and does not explicitly rely on a plea alleging a manifest error of assessment by the appointing authority in its consideration of his comparative merits.

58 In the light of all the foregoing considerations, the first plea must be rejected as unfounded.

The second plea: infringement of Article 25 of the Staff Regulations

– Arguments of the parties

59 In support of his second plea, the applicant argues that the JPG disregarded the requirements resulting from the obligation to state grounds laid down in Article 25 of the Staff Regulations in so far as it dismissed his appeal, lodged against the non-inclusion of his name on the list of officials proposed for promotion by the Director-General of DG Research and Innovation, without setting out in detail the reasons for that dismissal. He argues that the appeal must be recognised and treated as a 'legitimate complaint within the meaning of Article 25 [of the Staff Regulations] and the case-law' since the dismissal decision adopted in response to his appeal before the JPC constitutes an act adversely affecting him. He relies also on a note of 9 October 2014, prepared by three members of the JPC, in which they considered that '"[the] rejected appellant" is entitled to have the corresponding decision communicated to him/her under the requirements established by Article 25 of the Staff Regulations[, namely that] the decision must be communicated "at once" … "in writing" … [and] must state "the grounds on which it is based"'.

60 The Commission contends that the plea should be rejected, arguing that, considering that the decision rejecting the complaint contains no fewer than 24 pages, it complied fully with the requirements under the case-law regarding the statement of reasons to be given for decisions of non-promotion and that, contrary to what is claimed by the applicant, neither the draft opinion of the JPG nor even the recommendation to be adopted by the JPC constitute acts having an adverse effect within the

meaning of Article 90 of the Staff Regulations which could, as such, be the subject of a separate complaint. It is for the non-promoted official to lodge a complaint against the final decision by which the appointing authority adjudicated on his case at the end of the promotion exercise and to raise, in that context, the illegality of the preparatory act, namely of the draft opinion of the JPG and/or of the reasoned opinion of the JPC.

– Findings of the Tribunal

61 According to settled case-law, although the appointing authority is not required to state the reasons for its decisions on promotion, it is nevertheless required to state the reasons for that decision in the decision on the complaint, and to do so in an individualised manner (judgment of 15 December 2015 in *Bonazzi* v *Commission*, F-88/15, EU:F:2015:150, paragraph 96 and the case-law cited).

62 In that context, the adequacy of the statement of reasons is to be assessed in the light of the factual and legal context in which the contested act is adopted. Since promotions are, in accordance with Article 45 of the Staff Regulations, made by selection of the appointing authority, it is enough that the reasons given for the rejection of the complaint relate to the application to the official's individual situation of the conditions governing promotion laid down by law and the Staff Regulations (judgment of 15 December 2015 in *Bonazzi* v *Commission*, F-88/15, EU:F:2015:150, paragraph 97 and the case-law cited).

63 Moreover, in the case of a statement of reasons for a decision adopted in a procedure affecting a large number of officials, the appointing authority cannot be expected, when rejecting a complaint, to provide reasons for its decision which go further than the claims relied on in that complaint, for example by explaining in particular why the merits of each of the officials promoted were greater than those of the author of the complaint. The statement of reasons for the rejection of the complaint need only deal with the satisfaction of the legal conditions under which the Staff Regulations determine the regularity of procedure, so the appointing authority is not required to disclose to the non-promoted official details of its comparison of his merits or to set out in detail why it considered that the promoted officials ought to be promoted (judgment of 15 December 2015 in *Bonazzi* v *Commission*, F-88/15, EU:F:2015:150, paragraph 98 and the case-law cited).

64 In the present case it is clear that, in the decision rejecting the complaint, the appointing authority observed the requirements under the case-law cited above.

65 As regards the draft opinion of the JPG, the Tribunal must point out that that advisory body and the JPC are not necessarily required to justify their positions in detail (see judgment of 19 October 2006 in *Buendía Sierra* v *Commission*, T-311/04, EU:T:2006:329, paragraph 143). In any event, the Tribunal considers, as the Commission has argued, that the draft opinion of the JPG and the recommendation to be adopted by the JPC are simply preparatory acts for the appointing authority's final decision and, furthermore, are adopted only by mere advisory bodies and not by the appointing authority. Thus, they are without prejudice to the final position to be adopted by the administration at the end of the promotion exercise and therefore cannot be regarded as acts having an adverse effect within the meaning of Article 90(2) of the Staff Regulations, it being nevertheless possible to challenge those preparatory acts incidentally in a complaint lodged against the appointing authority's final decision, such as the decision of non-promotion, and subsequently in an action brought before the Tribunal under Article 270 TFEU (see, to that effect, judgment of 11 May 2010 in *Nanopoulos* v *Commission*, F-30/08, EU:F:2010:43, paragraph 108 and the case-law cited).

66 For the sake of completeness, the Tribunal finds that, even if it were to accept that the draft opinion of the JPG is not, in breach of the requirements in Article 5(2) and (3) of the Rules of Procedure for the Joint Preparatory Groups of the JPCs, 'reasoned' within the meaning of those internal provisions in force at the Commission, such a breach of those internal provisions, committed not by the appointing

authority but by a mere joint advisory body not provided for under the Staff Regulations, would not be sufficient to result in the annulment of the decision of non-promotion, itself adopted by the appointing authority. In the decision rejecting the complaint the appointing authority stated to the requisite legal standard why it was confirming the decision of non-promotion, thereby complying with the requirements under the case-law, recalled in paragraphs 61 to 63 above, relating to the obligation to state reasons in promotion procedures.

67 Accordingly, the second plea must be rejected as unfounded.

68 Since the claim for annulment has been dismissed, the action must be dismissed in its entirety.

Costs

69 Pursuant to Article 101 of the Rules of Procedure, subject to the other provisions of Chapter 8 of Title 2 of those Rules, the unsuccessful party is to bear his own costs and is to be ordered to pay the costs incurred by the other party if they have been applied for in the other party's pleadings. Under Article 102(1) of those Rules, if equity so requires, the Tribunal may decide that an unsuccessful party is to bear his own costs, but is to pay only part of the costs incurred by the other party, or even that he is not to be ordered to pay any costs.

70 For the reasons set out above, the applicant has been unsuccessful in his action. Furthermore, in its pleadings the Commission has expressly asked that the applicant be ordered to pay the costs. Since the circumstances of the present case do not warrant application of Article 102(1) of the Rules of Procedure, the applicant must bear his own costs and be ordered to pay the costs incurred by the Commission.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (Single Judge),

hereby:

1. **Dismisses the action;**

2. **Declares that HL shall bear his own costs and orders him to pay the costs incurred by the European Commission.**

Svenningsen

Delivered in open court in Luxembourg on 20 July 2016.

W. Hakenberg
Registrar

J. Svenningsen
Judge