Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

14 December 2018 *

(Civil Service – Officials – Reform of the Staff Regulations – Regulation (EU, Euratom) No 1023/2013 – Types of posts – Transitional rules for classification in a type of post – Article 31 of Annex XIII to the Staff Regulations – Assistant in transition – Promotion under Article 45 of the Staff Regulations allowed only within the career stream corresponding to the type of post occupied – Access to the type of post 'senior assistant' (AST 10) only in accordance with the procedure laid down in Article 4 and Article 29(1) of the Staff Regulations – Equal treatment – Loss of eligibility for promotion to grade AST 10 – Legitimate expectations)

In Case T-525/16,

GQ, an official of the European Commission, and the other officials of the European Commission whose names appear in the annex,[1] represented by T. Bontinck and A. Guillerme, lawyers,

applicants,

v

European Commission, represented initially by J. Currall and G. Gattinara, subsequently by G. Gattinara and C. Berardis-Kayser and, lastly, by G. Gattinara and G. Berscheid, acting as Agents,

defendant,

supported by

European Parliament, represented initially by M. Dean and N. Chemaï, subsequently by J. Steele, L. Deneys and J. Van Pottelberge, acting as Agents,

and by

Council of the European Union, represented initially by M. Bauer and E. Rebasti, subsequently by M. Bauer and R. Meyer, acting as Agents,

interveners,

APPLICATION under Article 270 TFEU for annulment of the decisions of the Commission by which the appointing authority of that institution classified the applicants in the type of post 'assistant in transition' resulting in the loss, with effect from 1 January 2014, of eligibility for promotion to a higher grade, as those decisions were confirmed by the decision of the appointing authority of 3 July 2014 rejecting the complaints brought by the applicants between 11 and 28 March 2014,

* Language of the case: French.

1 The list of the other officials of the European Commission is attached only to the version notified to the parties.

THE GENERAL COURT (First Chamber),

composed of I. Pelikánová, President, P. Nihoul and J. Svenningsen (Rapporteur), Judges,

Registrar: M. Marescaux, Administrator,

having regard to the written part of the procedure and further to the hearing on 17 October 2018,

gives the following

Judgment

Background to the dispute

1 GQ and the seven other applicants whose names appear in the annex are grade AST 9 officials of the European Commission in the assistants' (AST) function group.

2 It is apparent from Section A of Annex I to the Staff Regulations of Officials of the European Union in the version in force from 1 May 2004 to 31 December 2013 ('the 2004 Staff Regulations') that officials in the assistants' function group, classified in accordance with Article 5 of the Staff Regulations, could progress from grade AST 1 to grade AST 11 by way of promotion under Article 45 of the Staff Regulations, which 'shall be effected by appointment of the official to the next higher grade in the function group to which he belongs', and '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'. Accordingly, pursuant to the 2004 Staff Regulations, grade AST 9 officials occupying the post of assistant were eligible for promotion to grade AST 10 and then to grade AST 11 under Article 45 of those regulations.

3 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) entered into force on 1 November 2013. Recitals 17, 18 and 19 of that regulation are worded as follows:

'(17) The Council requested from the Commission a study and the submission of appropriate proposals on Article 5(4), Annex I, Section A, and Article 45(1) of the [2004] Staff Regulations with a view to establishing a clear link between responsibilities and grade and in order to ensure a greater emphasis on the level of responsibilities when comparing merits in the context of promotion.

(18) Taking that request into account, it is appropriate that promotion to a higher grade should be made conditional on personal dedication, improvement of skills and competences, and the performance of duties the importance of which justifies the official's appointment to that higher grade.

(19) The career stream in the [administrators' (AD) and assistants' (AST)] function groups should be restructured in such a way that the top grades will be reserved for a limited number of officials exercising the highest level of responsibilities. Therefore administrators can only progress as far as grade AD 12 unless they are appointed to a specific post above that grade, and grades AD 13 and 14 should be reserved for those staff whose roles entail significant responsibilities. Similarly, officials in grade AST 9 can be promoted to grade AST 10 only in accordance with the procedure laid down in Article 4 and Article 29(1) of the Staff Regulations.'

4 Article 5(4) of the Staff Regulations, in the version in force from 1 January 2014 ('the new Staff Regulations' or 'the Staff Regulations'), provides:

'A table showing types of posts is given in Annex I, Section A [of the new Staff Regulations]. By reference to that table, the appointing authority of each institution may define in more detail the duties and powers attaching to each type of post after consulting the Staff Regulations Committee.'

5 It is apparent from point 2 of Section A of Annex I to the new Staff Regulations, entitled 'Types of posts in each function group, as provided for in Article 5(4)', that, with regard to the AST function group:

– officials newly appointed to the type of post 'assistant' may progress from grade AST 1 to grade AST 9;

– officials newly appointed to the type of post 'senior assistant' may progress from grade AST 10 to grade AST 11.

6 According to point 2 of Section A of Annex I to the new Staff Regulations, 'assistants' are responsible for 'carrying out administrative, technical or training activities requiring a certain degree of autonomy, in particular with regard to the implementation of rules and regulations or general instructions or as personal assistant of a Member of the institution, of the Head of a Member's private office or of a (Deputy) Director-General or an equivalent senior manager'. As for 'senior assistants', they are responsible for 'carrying out administrative, technical or training activities requiring a high degree of autonomy and carrying significant responsibilities in terms of staff management, budget implementation or political coordination'.

7 Article 45 of the 2004 Staff Regulations was also amended by the addition, in the version of that provision set out in the new Staff Regulations, of the following sentence: 'Unless the procedure laid down in Articles 4 and 29(1) [of the Staff Regulations] is applied, officials may only be promoted if they occupy a post which corresponds to one of the types of posts set out in Annex I, Section A, for the next higher grade.'

8 In the context of the transitional measures set out in Annex XIII to the new Staff Regulations, Article 31 of that annex provides:

'1. By way of derogation from Annex I, Section A, point 2, the following table of types of posts in function group AST shall apply to officials in service on 31 December 2013:

Senior Assistant in transition	AST 10 – AST 11
Assistant in transition	AST 1 – AST 9
Administrative Assistant in transition	AST 1 – AST 7
Support Agent in transition	AST 1 – AST 5

2. With effect from 1 January 2014, the appointing authority shall classify officials in service on 31 December 2013 in function group AST in types of posts as follows:

(a) Officials who were in grade AST 10 or AST 11 on 31 December 2013 shall be assigned to the type of post ["]Senior Assistant in transition["].

(b) Officials not covered by point (a) who were before 1 May 2004 in the former category B or who were before 1 May 2004 in the former category C or D and have become a member of function group AST without restriction, as well as AST officials recruited since 1 May 2004, shall be assigned to the type of post ["]Assistant in transition["].

(c) Officials not covered by points (a) and (b) who were before 1 May 2004 in the former category C shall be assigned to the type of post ["]Administrative Assistant in transition["].

(d) Officials not covered by points (a) and (b) who were before 1 May 2004 in the former category D shall be assigned to the type of post ["]Support Agent in transition["].

3. The assignment to a type of post shall be valid until the official is assigned to a new function corresponding to another type of post. Administrative Assistants in transition and Support Agents in transition may be assigned to the type of post of Assistant as defined in Annex I, Section A, only in accordance with the procedure laid down in Articles 4 and 29(1) of the Staff Regulations. Promotion shall only be allowed within the career streams corresponding to each type of post indicated in paragraph 1.

…'

9 On 16 December 2013, the Commission adopted Decision C(2013) 8968 final laying down general provisions for implementing Article 45 of the new Staff Regulations, published in *Administrative Notice* No 55-2013 of 19 December 2013. Under the second indent of Article 3 of those general implementing provisions, 'officials may be promoted [only] if', 'at the time of the launch of the promotion exercise …, they occupy a post which corresponds to one of the types of post set out in Annex I, Section A, or in Article 30(1) or Article 31(1) of Annex XIII to the [new] Staff Regulations for the grade to which they may be promoted'.

10 Following the taking effect, on 1 January 2014, of the measures referred to in paragraphs 3 to 9 above, the applicants were assigned to the type of post 'assistant in transition', meaning that their career stream allows for progression between grades AST 1 and AST 9. The appointing authority of the Commission thus amended the applicants' individual files, in the human resource management information system known as 'SysPer 2', to indicate that they had been assigned to that type of post with the result that, from 1 January 2014, they were no longer eligible for promotion to the higher grade AST 10.

11 Between 11 and 28 March 2014, the applicants each submitted a complaint in accordance with Article 90(2) of the Staff Regulations against the decisions of the appointing authority, both of general and of individual application, blocking any possibility of promotion for the applicants to grade AST 10 in the context of the annual promotion exercise provided for under Article 45 of the Staff Regulations.

12 By decisions of 3 July 2014, written in identical terms, the appointing authority rejected the applicants' complaints.

Procedure and forms of order sought

13 By application lodged at the Registry of the European Union Civil Service Tribunal on 17 October 2014 and registered under number F-111/14, the applicants brought the present action.

14 By decision of 26 November 2014, the President of the Third Chamber of the Civil Service Tribunal decided, after hearing the parties, to stay the proceedings until the decisions closing the proceedings in *U4U and Others* v *Parliament and Council* (T-17/14) and *USFSPEI* v *Parliament and Council* (T-75/14) had become final.

15 On 10 December 2014 and 20 January 2015 respectively, the Council of the European Union and the European Parliament applied, pursuant to Article 86 of the Rules of Procedure of the Civil Service Tribunal, for leave to intervene in support of the form of order sought by the Commission. They were informed in that regard that their applications would be dealt with once the proceedings had resumed.

16 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 accordingly registered under number T-525/16 and assigned to the First Chamber.

17 Following delivery of the judgment of the Court on 15 September 2016 in *U4U and Others* v *Parliament and Council* (T-17/14, not published, EU:T:2016:489) and the judgment of 16 November 2017 in *USFSPEI* v *Parliament and Council* (T-75/14, EU:T:2017:813), and the fact that no appeal had been brought against those decisions within the time limit provided for in Article 56 of the Statute of the Court of Justice of the European Union, the proceedings were resumed in the present case and the Commission was invited to lodge a defence, which it did within the prescribed time limit, on 15 April 2018.

18 By decision of 17 April 2018, the Parliament and the Council were, in accordance with Article 144 of the Rules of Procedure, granted leave to intervene in support of the form of order sought by the Commission.

19 On 29 and 30 May 2018 respectively, the Parliament and the Council submitted statements in intervention, in respect of which the main parties made no observations.

20 On 30 May 2018, the applicants lodged the reply in the context of the second exchange of pleadings which had been authorised by the Court.

21 Following the submission, in *GM and Others* v *Commission* (T-539/16), of an application for joinder of that case with the present case, the parties were given an opportunity to be heard in that regard and raised no objections.

22 Following the lodging of the rejoinder on 18 July 2018, the written part of the procedure was closed.

23 By decision of 28 September 2018, the parties having been heard, the present case was joined to Cases T-526/16 (*FZ and Others* v *Commission*) and T-540/16 (*FZ and Others* v *Commission*) for the purposes of the oral part of the procedure.

24 The parties presented oral argument at the hearing on 17 October 2018. At the hearing, the Court asked the Commission to provide it, within two weeks, with certain information on the applicants' current position under the Staff Regulations. Following the reply sent by the Commission on 31 October 2018 and the applicants' observations of 13 November 2018, the oral part of the procedure was closed.

25 The applicants claim that the Court should:

– primarily:

  – declare Article 45 of the new Staff Regulations and Annex I thereto, together with the corresponding transitional provisions, unlawful;

– annul the decisions of the appointing authority, both of general and of individual application, to block any possibility of promotion concerning the applicants, as grade AST 9 officials, in the context of the 2014 annual promotion exercise;

– order the Commission to pay the costs;

– in the alternative:

– annul the decisions, of both general and individual and of a general scope, to block any possibility of promotion concerning the applicants, as grade AST 9 officials, in the context of the 2014 annual promotion exercise;

– order the Commission to pay the costs.

26 The Commission contends that the Court should:

– dismiss the action;

– order the applicants to pay the costs.

27 The Parliament contends that the Court should reject 'the arguments of the applicants seeking a declaration that Article 45 of the [new] Staff Regulations is inapplicable'.

28 The Council contends that the Court should:

– dismiss the action;

– order the applicants to pay the costs.

Law

Admissibility of the action

29 As a preliminary point, whilst concluding that the action is admissible, the Commission notes that, in actual fact, the action concerns only the decisions of the appointing authority assigning the applicants to the type of post 'assistant in transition' with effect from 1 January 2014 and that, from that point of view, they had already submitted complaints against that measure, which adversely affects them, within the time limits set out in the Staff Regulations.

30 Since the existence of an act adversely affecting an applicant within the meaning of Article 90(2) and Article 91(1) of the Staff Regulations is an essential requirement for the admissibility of any action brought by officials against the institution in which they serve, it is necessary, in the circumstances of the present case, to determine, first of all, which acts the applicants intend to challenge by means of this action and to assess whether they constitute acts adversely affecting them (see, to that effect, judgment of 28 April 2017, *HN* v *Commission*, T-588/16, not published, EU:T:2017:292, paragraph 39, and order of 16 July 2015, *FG* v *Commission*, F-20/15, EU:F:2015:93, paragraph 43).

31 In that regard, unlike the case of an official occupying an administrator post, who could be assigned to different types of post such as 'senior administrator in transition', 'administrator in transition', 'administrator', 'adviser or equivalent' or 'head of unit or equivalent' (see, to that effect, judgments of 28 April 2017, *HN* v *Commission*, T-588/16, not published, EU:T:2017:292, paragraph 40, and of 16 July 2015, *EJ and Others* v *Commission*, F-112/14, EU:F:2015:90, paragraph 43), the appointing

authority had no choice in the present case but to assign the officials occupying, on 31 December 2013, grade AST 9 assistant posts to the type of post 'assistant in transition' provided for by Article 31(2)(b) of Annex XIII to the new Staff Regulations.

32 However, as the Commission submits, even if the appointing authority is merely applying the provisions of the new Staff Regulations, the decision to apply those provisions for the first time may be regarded as an act adversely affecting an official (see, to that effect, judgments of 4 July 1985, *Agostini and Others* v *Commission*, 233/83, EU:C:1985:291, paragraph 13, and of 20 July 2017, *Barnett and Mogensen* v *Commission*, T-148/16 P, not published, EU:T:2017:539, paragraph 47).

33 Even if, in the light of the wording of Article 31(2) of Annex XIII to the new Staff Regulations, they were adopted in the context of circumscribed powers, the decisions of the appointing authority to assign the applicants to the type of post 'assistant in transition' with effect from 1 January 2014 – as indicated by a reference made, on 30 January 2013, to the assignment to that type of post in the applicants' individual files in SysPer 2 ('the contested decisions') – adversely affect them in so far as they lose their eligibility for promotion to grade AST 10 (see, to that effect, judgments of 28 April 2017, *HN* v *Commission*, T-588/16, not published, EU:T:2017:292, paragraph 42 and the case-law cited, and of 16 July 2015, *EJ and Others* v *Commission*, F-112/14, EU:F:2015:90, paragraph 45). In addition, those decisions were, in any event, challenged by means of complaints brought against them within a period of three months in accordance with Article 90(2) of the Staff Regulations.

34 In those circumstances, the present action must be declared admissible, in so far as it concerns the contested decisions. Furthermore, given the evolving nature of the pre-litigation procedure, the reasons given in the decisions rejecting the applicants' complaints must be taken into account, since those reasons are expected to be the same as those on which the contested decisions are based (see, to that effect, judgments of 9 December 2009, *Commission* v *Birkhoff*, T-377/08 P, EU:T:2009:485, paragraphs 58 and 59, and of 16 January 2018, *SE* v *Council*, T-231/17, not published, EU:T:2018:3, paragraph 22).

The claim for a declaration of unlawfulness of certain provisions of the Staff Regulations

35 With regard to the claim that the Court should declare Article 45 of the new Staff Regulations and the corresponding transitional provisions unlawful, it should be borne in mind that, while it is true that, in the context of a claim for annulment of a decision of individual application concerning an official or other member of staff, that official or other member of staff may, under Article 277 TFEU, invoke the unlawfulness of an act of general application on the basis of which that decision was adopted. Only the Courts of the European Union are entitled, under the terms of Article 277 TFEU, to rule that an act of general application is unlawful and to draw the consequences of the inapplicability which results from this with regard to the act of individual scope contested before them (judgment of 27 October 2016, *ECB* v *Cerafogli*, T-787/14 P, EU:T:2016:633, paragraph 49).

36 However, the finding of illegality made by the EU Courts in accordance with Article 277 TFEU does not have *erga omnes* effect since, while it entails the illegality of the individual contested decision, it leaves the act of general application in the legal order without affecting the legality of other acts which have been adopted pursuant thereto and which were not challenged within the period for appeal (see, to that effect, judgments of 21 February 1974, *Kortner and Others* v *Council and Others*, 15/73 to 33/73, 52/73, 53/73, 57/73 to 109/73, 116/73, 117/73, 123/73, 132/73 and 135/73 to 137/73, EU:C:1974:16, paragraphs 37 and 38, and of 27 October 2016, *ECB* v *Cerafogli*, T-787/14 P, EU:T:2016:633, paragraph 53).

37 It follows that, in the context of a claim for annulment of an act of individual application having adverse effect, the Courts of the European Union do in fact have jurisdiction to declare, incidentally, the unlawfulness of a provision of general application on which the contested act is based. However,

they do not have jurisdiction to make such declarations in the operative part of their judgments (see, to that effect, judgment of 21 October 2009, *Ramaekers-Jørgensen* v *Commission*, F-74/08, EU:F:2009:142, paragraph 37).

38 Consequently, as the Commission rightly submits, the claim that the Court should declare unlawful Article 45 of the new Staff Regulations and Annex I thereto, together with the corresponding transitional provisions, must, in so far as it is not part of a plea of illegality raised under Article 277 TFEU seeking the annulment of the contested decisions, be declared manifestly inadmissible.

The claim for annulment

39 In support of the claim for annulment, the applicants raise, principally, two pleas in law, the first alleging that Article 45 of the new Staff Regulations and Annex I thereto are unlawful, and the second, alleging that those provisions are unlawful given the lack of compensatory transitional measures in respect of the loss of eligibility for promotion of grade AST 9 officials. In the alternative, they raise two other pleas in law, the first relating to the infringement of that article and the existence of a manifest error of assessment, and the second relating to the infringement of the obligation to state reasons.

40 The Commission, supported by the Parliament and the Council, contends that all of those pleas in law should be rejected as unfounded.

The first plea in law, alleging that Article 45 of the new Staff Regulations and Annex I thereto are unlawful

41 According to the applicants, the system established under the new Staff Regulations, making it impossible for grade AST 9 officials assigned to the type of post 'assistant in transition' to be promoted to a higher grade under Article 45 of the new Staff Regulations, in so far as they are not eligible for promotion to grade AST 10 because of the type of post they occupy, breaches the principle of equal treatment, the principle that officials should have reasonable career prospects, the principle of proportionality and the duty to have regard for the welfare of officials. In that context, they submit that, at the time of their recruitment, they were eligible for promotion to grade AST 11 without restriction. Accordingly, Article 45 of the new Staff Regulations and Annex I thereto infringed their acquired rights. They thus invoke the unlawfulness of those provisions.

42 The Commission, supported by the Parliament and the Council, contends that the plea of illegality should be rejected as unfounded.

43 The first plea in law is broken down into six parts which will be examined in turn.

– The first part of the first plea in law, relating to the breach of the principle of equal treatment and the principle that officials should have reasonable career prospects

44 In support of the first part of the first plea in law, the applicants claim that, under Article 5(5) of the Staff Regulations, which provides that 'identical conditions of recruitment and service career shall apply to all officials belonging to the same function group', the EU legislature breached the principle of equal treatment and the principle that officials should have reasonable career prospects.

45 First, the applicants submit that, by stating in Article 31(1) to (3) of Annex XIII to the new Staff Regulations, which provides for 'transitional measures applicable to officials of the Union', that 'promotion shall [henceforth] only be allowed within the career streams corresponding to each type of post', the EU legislature breached the principle of equal treatment and the principle that officials

should have reasonable career prospects by confining the applicants to the type of post 'assistant in transition' thus blocking any possibility of promotion to grade AST 10, with that grade being reserved for officials occupying the transitional type of post 'senior assistant in transition' provided for in Article 31(1) of that annex or the newly defined post referred to in point 2 of Section A of Annex I to the new Staff Regulations, 'senior assistant'.

46 Second, the EU legislature also breached the principle of equal treatment and the principle that officials should have reasonable career prospects by adding, in Article 45 of the new Staff Regulations, the sentence 'unless the procedure laid down in Articles 4 and 29(1) [of the Staff Regulations] is applied, officials may only be promoted if they occupy a post which corresponds to one of the types of posts set out in Annex I, Section A, for the next higher grade'.

47 According to the applicants, they are treated differently to assistants in grades lower than AST 9 since the latter continue to be eligible for promotion based on a comparison of merits over time, whereas the applicants are eligible for promotion to grade AST 10 only in accordance with the procedure set out in Article 4 and Article 29(1) of the Staff Regulations, which does not allow for promotion based on the demonstration of merits over time, since it is essentially based on the assessment of the competences of AST 9 officials wishing to be appointed to a vacant 'senior assistant' post.

48 In addition, the applicants submit that, while assistants of lower grades – AST 1 to AST 8 – are guaranteed promotion in the light of the number of promotions authorised annually by the appointing authority within the institution, they themselves face uncertainty as regards the number of vacancies for 'senior assistants' that the appointing authority will decide to fill annually in accordance with the procedure set out in Article 4 and Article 29(1) of the Staff Regulations. Moreover, in the context of the appointment procedure for such posts, the appointing authority has more discretion than in the context of the promotion procedure, in particular due to the lack of input from the Joint Promotion Committee. The applicants add that, in the context of the appointment procedure, they are in competition not only with other Commission assistants, in the same way as for the comparison of merits carried out under the promotion procedure, but also with assistants from other institutions, which reduces the likelihood of promotion.

49 In that regard, it should be borne in mind that the legal link between an official and the administration is based upon the Staff Regulations and not upon a contract (see, to that effect, judgment of 19 March 1975, *Gillet* v *Commission*, 28/74, EU:C:1975:46, paragraph 4). Accordingly, the rights and obligations of officials may be altered at any time by the EU legislature and, in that context, amending legislation, such as the regulations amending the Staff Regulations adopted under Article 336 TFEU, applies, unless otherwise provided, to the future consequences of situations which arose under the previous legislation. That is so except for situations originating and becoming definitive under the previous legislation, which create acquired rights (judgments of 22 December 2008, *Centeno Mediavilla and Others* v *Commission*, C-443/07 P, EU:C:2008:767, paragraphs 60 to 62, and of 16 July 2015, *EJ and Others* v *Commission*, F-112/14, EU:F:2015:90, paragraph 58).

50 According to the case-law, in the context of the reform of the Staff Regulations, a right is considered to be acquired only when the event giving rise to it occurred before the legislative amendment but that is not the case when the event creating the right did not take place under the legislation that has been amended. Accordingly, where, as in the present case, officials had, until the date on which the new Staff Regulations entered into force, only been eligible for promotion subject to a decision of the appointing authority promoting them to grade AST 10 which it had not yet adopted, in the present case on 1 January 2014, such officials cannot claim an acquired right to remain eligible for that promotion after that date (see, to that effect, judgments of 22 December 2008, *Centeno Mediavilla and Others* v *Commission*, C-443/07 P, EU:C:2008:767, paragraphs 63 to 65, and of 16 July 2015, *EJ and Others* v *Commission*, F-112/14, EU:F:2015:90, paragraph 59).

51 In addition, officials cannot rely on the principle of protection of legitimate expectations in order to oppose the application of a new legislative provision, especially in a sphere in which the legislature enjoys a considerable degree of latitude (judgments of 22 December 2008, *Centeno Mediavilla and Others* v *Commission*, C-443/07 P, EU:C:2008:767, paragraph 91, and of 16 July 2015, *EJ and Others* v *Commission*, F-112/14, EU:F:2015:90, paragraph 60). Accordingly, the applicants' arguments relating to the breach of the principle of legitimate expectations and the alleged acquired rights to their continued eligibility for promotion to grade AST 10, owing to the limitation allegedly placed on their career progression by the EU legislature and/or the Commission and on account of their assignment to the type of post 'assistant in transition', must be rejected.

52 Next, it should be noted that, in view of the wide discretion conferred on the EU legislature, the latter was legitimately entitled to consider, in recital 19 of Regulation No 1023/2013 and in point 2 of Section A of Annex I to the new Staff Regulations, that grades AST 10 and AST 11 should henceforth be reserved for a limited number of officials, in this case assistants exercising the highest level of responsibilities within the meaning of that recital, that is to say 'significant responsibilities in terms of staff management, budget implementation or political coordination'.

53 In particular, contrary to what the applicants claim, the EU legislature was entitled to consider that access to a grade AST 10 'senior assistant' post should no longer be possible in the context of the promotion procedure under Article 45 of the 2004 Staff Regulations which, according to the case-law, seeks to adjust the career progress of officials according to the effort they have made and the merits they have demonstrated,, including over time (judgments of 11 July 2007, *Konidaris* v *Commission*, T-93/03, EU:T:2007:209, paragraph 91, and of 16 July 2015, *EJ and Others* v *Commission*, F-112/14, EU:F:2015:90, paragraph 72), but should henceforth take place under the appointment procedure provided for in Article 4 and Article 29(1) of the Staff Regulations.

54 That procedure for filling a vacant post provided for in Article 29(1) of the Staff Regulations concerns the search, in the interests of the service, within the institution or in other institutions, for the official who is best able to perform the duties involved in the post to be filled. In view of the EU legislature's objective of streamlining public expenditure and strengthening the correlation between functions and grade, the latter was entitled to consider that such a procedure was likely to enable the appointing authority to entrust the most significant and highest level of responsibilities to a limited number of officials with the most appropriate professional skills, in the present case to assistants exercising significant responsibilities and requiring a high degree of autonomy.

55 It should also be pointed out that the appointing authority has wide discretion in the organisation and structuring of its services and, therefore, the level of responsibilities it considers necessary to entrust to its officials and agents (see judgment of 28 April 2017, *HN* v *Commission*, T-588/16, not published, EU:T:2017:292, paragraph 81 and the case-law cited), meaning that it is free, under the supervision of the budgetary authority, to determine and streamline the number of senior assistants it needs.

56 In that regard, contrary to what the applicants argue, the modifications to the Staff Regulations on the career structure for assistants do not conflict with the retention of Article 5(5) in the new Staff Regulations according to which 'identical conditions of recruitment and service career shall apply to all officials belonging to the same function group'. Within the framework of the new Staff Regulations, regardless of the date of recruitment or entry into service, assistants are all subject to identical conditions as regards career progress, that is to say career progression up to grade AST 9 under the promotion procedure provided for in Article 45 of the new Staff Regulations with career advancement beyond that grade, in order to fill posts involving a high level of responsibilities, such as the post of 'senior assistant', being exclusively possible under the procedure provided for in Article 4 and Article 29(1) of the new Staff Regulations.

57 So far as concerns the principle that officials are entitled to reasonable career prospects, it should also be borne in mind that EU law does not specifically enshrine either a principle of continuity of career or a principle of entitlement to a career. By contrast, the case-law has set out the principle of career progression as the specific form of the principle of equal treatment applicable to officials (judgment of 5 March 2008, *Toronjo Benitez* v *Commission*, F-33/07, EU:F:2008:25, paragraphs 87 and 88, and order of 27 September 2011, *Lübking and Others* v *Commission*, F-105/06, EU:F:2011:152, paragraphs 81 and 82).

58 In that regard, it is apparent from Article 5(5) of the Staff Regulations that 'identical conditions of recruitment and service career shall apply to all officials belonging to the same function group'. However, it follows from Article 45 and Article 31(3) of Annex XIII to the new Staff Regulations, which have the same legal force as the articles of the Staff Regulations (see, to that effect, judgments of 24 November 2010, *Commission* v *Council*, C-40/10, EU:C:2010:713, paragraph 61, and of 5 February 2016, *Barnett and Mogensen* v *Commission*, F-56/15, EU:F:2016:11, paragraph 68), that the EU legislature decided that, from 1 January 2014, 'unless the procedure laid down in Articles 4 and 29(1) is applied, officials may only be promoted if they occupy a post which corresponds to one of the types of posts set out in [Section A of Annex I to the Staff Regulations], for the next higher grade' and that, in other words, 'promotion shall only be allowed within the career streams corresponding to each type of post indicated in paragraph 1 [of Article 31 of Annex XIII to the Staff Regulations]'.

59 Accordingly, as is apparent from recital 19 of Regulation No 1023/2013, the EU legislature intended, in the implementation of Article 5(5) of the Staff Regulations, which requires 'identical conditions of recruitment and service career' for all assistants, to 'restructure' the career stream in the assistants' function group by providing for two successive career streams for them, the first from grades AST 1 to AST 9 and the second reserved only for assistants exercising a high level of responsibilities, allowing access to the highest grades, that is to say, AST 10 and AST 11.

60 As the Council observes, by henceforth requiring that, unless the procedure provided for in Article 4 and Article 29(1) of the Staff Regulations applies, officials may be promoted only if they occupy a post corresponding to one of the types of post for the next higher grade, the EU legislature provided for a restriction which applies indiscriminately to all function groups and, within those groups, to all administrators and assistants, regardless of the date of recruitment or entry into service.

61 In any event, there is a breach of the principle of equal treatment, a general principle of EU law enshrined in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union and applicable to EU civil service law, only where two categories of persons whose factual and legal situations are not essentially different receive different treatment in their classification and where that difference in treatment is not objectively justified. When that principle is applied, the situations to be compared must be examined taking account of all the factors characterising those situations (judgment of 16 July 2015, *EJ and Others* v *Commission*, F-112/14, EU:F:2015:90, paragraph 65; see also, to that effect, judgments of 22 December 2008, *Centeno Mediavilla and Others* v *Commission*, C-443/07 P, EU:C:2008:767, paragraph 76; of 15 November 2011, *Nolin* v *Commission*, T-58/11 P, EU:T:2011:664, paragraphs 37 and 38).

62 It is therefore necessary to determine whether grade AST 9 officials assigned to the type of post 'assistants in transition' are in a comparable situation to officials in a lower grade – AST 1 to AST 8 – who remain eligible for promotion under Article 45 of the Staff Regulations.

63 In that regard, so far as concerns officials in their post on 31 December 2013, it should be borne in mind that, contrary to the case of administrators, the appointing authority has a margin of discretion as to the type of post to which the officials in question should be appointed only with regard to assistants of grades AST 1 to AST 7, who may be appointed to transitional posts – 'support agent in transition' (AST 1 – AST 5), 'administrative assistant in transition' (AST 1 – AST 7) or 'assistant in

transition' (AST 1 – AST 9). By contrast, so far as concerns officials, such as the applicants, occupying the post 'assistant' under the 2004 Staff Regulations and who were classified at grade AST 9 on 31 December 2013, they could only be classified in the post 'assistant in transition'.

64 As for assistants in grade AST 1 to AST 8, they are objectively not in the same situation as that of grade AST 9 officials since, unlike the latter and even though, under the 2004 Staff Regulations, they were all classified in the same type of post, they have not yet reached the maximum grade for the type of post in which they have prospects for progression.

65 According to the case-law, the principle of equal treatment means that all officials promoted to the same grade should, where their merits are equal, have the same chance of promotion to the higher grade (see judgment of 16 July 2015, *EJ and Others* v *Commission*, F-112/14, EU:F:2015:90, paragraph 70 and the case-law cited). It is therefore consistent with that principle that assistants in transition and assistants are all subject to the promotion procedure provided for in Article 45 of the Staff Regulations to achieve the highest grade available for those types of posts and that, once they reach grade AST 9, they are all subject to the same procedure, in this case the procedure under Article 4 and Article 29 of the Staff Regulations, in order to be appointed to a post of a higher grade, in this case grade AST 10, in respect of which the number of posts is determined by the appointing authority in accordance with its needs.

66 For the sake of completeness, the Court notes that grade AST 9 officials promoted to grade AST 10 under the appointment procedure provided for in Article 29(1) of the Staff Regulations are no longer in the same situation as officials who were eligible for promotion to grade AST 10 under Article 45 of the 2004 Staff Regulations and who are no longer eligible in that regard following the choice made by the EU legislature to limit the appointment of assistants at grade AST 10 and AST 11 to a limited number of officials exercising the highest level of responsibilities.

67 In any event, the applicants have not claimed or demonstrated that, on 31 December 2013, they were carrying out the highest level of responsibilities within the meaning of recital 19 of Regulation No 1023/2013 or even 'significant responsibilities in terms of staff management, budget implementation or political coordination' within the meaning of point 2 of Section A of Annex I to the new Staff Regulations.

68 In the light of the foregoing considerations, the first part of the first plea in law must be rejected.

– *The second part of the first plea in law, relating to the breach of the principle of proportionality*

69 In support of the second part of the first plea in law, the applicants claim that blocking any possibility of promotion beyond grade AST 9 as a result, in their opinion, of the new provisions of the Staff Regulations, is disproportionate in the light of the stated objective of the EU legislature to reserve the top grades for a limited number of officials exercising the highest level of responsibilities. On the one hand, such an objective was already fulfilled by blocking, under the 2004 Staff Regulations, access to grades AD 15 and AD 16 by administrators, since those grades were reserved for directors and directors-general only. On the other, the measure at issue in the present case cannot be considered an appropriate means of attaining the alleged objective, since the appointing authority could re-evaluate annually the number of grades considered to be reserved for senior officials and, in doing so, unjustifiably reduce the career prospects of officials in the assistants' function group.

70 In that regard, it should be borne in mind that the principle of proportionality requires that measures adopted by EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued. With regard to judicial

review of compliance with those conditions, the Court has accepted that in the exercise of the powers conferred on it the EU legislature must be allowed a broad discretion in areas in which its action involves political, economic and social choices and in which it is called upon to undertake complex assessments and evaluations. Thus the criterion to be applied is not whether a measure adopted in such an area was the only or the best possible measure. Where the EU legislature has a wide discretion, which is the case when adopting, under Article 336 TFEU, modifications to the Staff Regulations and the Conditions of Employment of Other Servants, its legality can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (judgment of 26 February 2016, *Bodson and Others* v *EIB*, T-240/14 P, EU:T:2016:104, paragraphs 116 and 117).

71 In the present case, it is apparent that, with regard to the provisions of the reform, which entered into force on 1 January 2014 and which are at issue in the present case, the EU legislature set itself the legitimate objective of ensuring that promotion to a higher grade is subject to personal dedication, improvement of skills and competences and the performance of official duties, the importance of which justifies the appointment of the official to that higher grade.

72 The EU legislature sought to improve the unsatisfactory state of affairs identified within the EU Civil Service whereby a clear link could not necessarily be established between the responsibilities and the grade of officials. In that regard, it is apparent in particular from the Commission's Report of 30 March 2011 to the European Parliament and the Council on equivalence between old and new career structures (COM(2011) 171 final) that 'the … career structure [of the 2004 Staff Regulations] [could] have greater effects as regards salary structure within Units than originally anticipated' and that 'for example, it [was] not impossible that a head of Unit might earn less than all other officials working in his or her Unit, including his or her secretary[; and that] Heads of Unit [could] be appointed at grade AD 9, whereas administrators [could] reach grade AD 14 (i.e. five grades more as opposed to only one grade more under the previous Staff Regulations) and secretaries/clerks grade AST 11 (two grades more than the entry grade of Heads of Units)'.

73 According to the EU legislature, the focus should therefore be more on the level of responsibilities when considering comparative merits in the context of promotion. In short, it is clear from Regulation No 1023/2013 that the EU legislature sought to put an end to the possibility provided for under the 2004 Staff Regulations of officials being inexorably promoted to the highest grades without having to establish a link between their responsibilities and the grade held, which may have resulted in officials in the assistants' function group being appointed to grades AST 10 or AST 11 without necessarily undertaking high-level or additional responsibilities.

74 In the light of that legitimate objective, the EU legislature was entitled, without disregarding the principle of proportionality, to consider that grades AST 10 and AST 11, creating an entitlement to a particularly high level of remuneration, identical to that of grade AD 10 and AD 11 officials in the administrators' function group, should be henceforth reserved for assistants carrying a high level of responsibility. Such a measure appears appropriate in order to remedy the lack of connection identified between, on the one hand, the high grade to which some assistants have been appointed under the promotion procedure provided for in Article 45 of the Staff Regulations, which is essentially based on merits over time and not on the competences and skills of the officials in question and, on the other, the level of responsibilities entrusted to those officials which may not have varied over time.

75 The fact, put forward by the applicants, that, so far as concerns the administrators' function group, grades AD 15 and AD 16 were, under the 2004 Staff Regulations, reserved only for directors is irrelevant. Moreover, it should be noted that, in the context of the reform which entered into force in 2014, the EU legislature sought to exclude access to the highest grades only through the promotion procedure provided for in Article 45 of the new Staff Regulations both for administrators, who can no longer access grades AD 13 and AD 14 through that procedure alone, and 'assistants' or 'assistants in

transition' for whom access to grades AST 10 and AST 11 through the promotion procedure alone is also henceforth excluded in favour of the appointment-promotion mechanism for the post of 'senior assistant' under the procedure provided for in Article 4 and Article 29(1) of the Staff Regulations.

76 In the light of the foregoing, the second part of the first plea in law must be rejected as unfounded.

– The third part of the first plea in law, relating to the breach of the principle of sound administration and the duty to have regard for the welfare of officials

77 Under the third part of the first plea in law, the applicants claim that, by adopting the contested decisions, the appointing authority failed to take sufficient account of their interests, thus breaching the principle of sound administration and the duty to have regard for the welfare of officials. In addition, they criticise the fact that from now on they will once again be subjected to aptitude tests to establish their ability to perform the duties of a 'senior assistant', even though they have not changed function groups, the appointing authority already subjected them to such tests at the time of their recruitment and they have demonstrated their merits throughout their careers.

78 So far as concerns the breach, alleged by the applicants, of the principle of sound administration and the duty to have regard for the welfare of officials, it must be held that the appointing authority is not entitled, in accordance with those principles, to disregard the provisions of the Staff Regulations adopted by the EU legislature, which are, as such, binding on the appointing authority in the same way as the appointing authorities of other institutions, bodies, offices and agencies of the European Union. In particular, the duty to have regard for the welfare of officials cannot be interpreted as requiring the appointing authority to compensate for the loss of eligibility for promotion to grade AST 10, as laid down by the EU legislature, by means of internal measures designed to create more 'senior assistant' posts at grades AST 10 and AST 11, because such a measure would cause the appointing authority to disregard the legislature's intention by reducing the desired impact of the measures adopted in the context of that reform.

79 It is clear from Regulation No 1023/2013 that the EU legislature sought to put an end to the possibility provided for under the 2004 Staff Regulations that officials may be promoted inexorably to the highest grades without having to establish a link between their responsibilities and the grade held, which may have resulted in officials in the assistants' function group being appointed to grades AST 10 or AST 11 without necessarily undertaking high-level or additional responsibilities.

80 In those circumstances, the appointing authority could only apply the provisions of the Staff Regulations, since it had no margin of discretion in its decisions to classify the applicants in the type of post 'assistant in transition' pursuant to Article 31(2) of Annex XIII to the new Staff Regulations.

81 Consequently, despite the applicants' reported difficulties concerning their now more limited prospects of advancing to a post at grade AST 10 in the light of the more stringent and selective rules regarding access to the type of post 'senior assistant', it was not for the appointing authority to invoke the principle of sound administration or the duty to have regard for the welfare of officials as a reason for not applying the new provisions of the Staff Regulations.

82 It follows that the third part of the first plea in law must be rejected as unfounded.

– The fourth part of the first plea in law, relating to the infringement of acquired rights

83 In support of the fourth part of the first plea in law, the applicants claim that, by blocking any possibility of promotion to grade AST 10 under the promotion procedure provided for in Article 45 of the Staff Regulations, the EU legislature infringed their acquired rights to have their relative merits compared to those of all grade AST 9 officials.

84 In that regard, it is sufficient to point out that where, as in the present case, officials had, until the date on which the new Staff Regulations entered into force, been eligible for promotion subject to a decision of the appointing authority promoting them to grade AST 10 which it had not yet adopted, in the present case on 1 January 2014, such officials cannot claim an acquired right to remain eligible for that promotion after that date (see, to that effect, judgments of 22 December 2008, *Centeno Mediavilla and Others* v *Commission*, C-443/07 P, EU:C:2008:767, paragraphs 63 to 65, and of 16 July 2015, *EJ and Others* v *Commission*, F-112/14, EU:F:2015:90, paragraph 59). In this respect, the case-law of the International Labour Organisation (ILO), which does not concern the Staff Regulations, is irrelevant (see, to that effect, judgment of 13 December 2017, *Arango Jaramillo and Others* v *EIB*, T-482/16 RENV, not published, EU:T:2017:901, paragraph 113).

85 In addition, to the applicants cannot validly claim that restricting access to grade AST 10 for individuals selected following the procedure provided for in Article 4 and Article 29(1) of the Staff Regulations for future 'senior assistant' posts 'manifestly undermines the fundamental conditions of employment which are such as to determine [their] entry into and remaining in [the service of] the institutions' of the European Union.

86 Under the new Staff Regulations, grade AST 9 officials are not excluded from access to grade AST 10, but must, in order to attain such a grade, demonstrate the qualities required by the appointing authority as responding to the high level of responsibilities expected from the holders of such posts. It is not therefore a question of their careers being blocked but, as argued by the Council, a change in the procedure for obtaining a promotion to grades AST 10 and AST 11, the highest grades available within the assistants' function group, in this case by being selected for a new post accompanied by genuine high-level responsibilities justifying the associated high level of remuneration. Accordingly, it is still open for the applicants to participate in a selection procedure under Article 4 and Article 29 of the Staff Regulations in order to fill a 'senior assistant' post, thus making them eligible for promotion to grade AST 10 (see, to that effect, judgment of 28 April 2017, *HN* v *Commission*, T-588/16, not published, EU:T:2017:292, paragraph 86). This is, moreover, what the applicants did which led to six of them being appointed to a senior assistant post making them eligible for promotion to grades AST 10 and AST 11.

87 In the light of the foregoing, the fourth part of the first plea in law must be rejected.

– The fifth part of the first plea in law, relating to the infringement of the rates provided for in Article 9 of Annex XIII and Section B of Annex I to the new Staff Regulations

88 By the fifth part of the first plea in law, the applicants claim that the new provisions of the Staff Regulations infringe the rules and principles relating to promotion rates, as provided for in Section B of Annex I to the new Staff Regulations and in Article 9 of Annex XIII to the new Staff Regulations, since they can no longer benefit from those rates or therefore expect a promotion to grade AST 10.

89 In that regard, it must be stated that that argument cannot be upheld. It is with a view to ensuring greater correlation between grades AST 10 or AST 11 and the level of responsibilities of officials in those grades that the EU legislature ruled out access to those grades only through the promotion procedure provided for in Article 45 of the Staff Regulations which, previously, provided, to some extent automatically, that a certain number of grade AST 9 officials would be promoted to grade AST 10 every year without necessarily having to carry high-level or additional responsibilities.

90 It was therefore logical for the EU legislature to provide that, as a result, the number of 'senior assistant' posts at grade AST 10 would not be precisely determined, under the new Staff Regulations, in accordance with the rates applicable in the context of the promotion procedure. Indeed, the measure adopted in the context of the reform for the Staff regulations sought to ensure that the

appointing authority would determine that number – which is, moreover, limited – in accordance with its genuine need for high-level personnel within the assistants' function group and no longer automatically.

91 In addition, in so far as the fact that the application of the promotion procedure, provided for in Article 45 of the Staff Regulations, which is excluded for the purposes of promotion to grade AST 10, is not contrary to the principle of equal treatment, it is not necessary, in the present case, to consider whether the mechanisms normally applicable under the promotion procedure should have been extended to the procedure provided for in Article 4 and Article 29(1) of the Staff Regulations.

92 On the one hand, limiting the number of posts at grade AST 10 and AST 11 to officials carrying high-level responsibilities, in particular by removing such posts from the promotion procedure alone, is, moreover, an inherent objective of the reform of the Staff Regulations.

93 On the other, it is for the appointing authority to determine the number of senior assistant posts it needs, the desired skills profile to fill those posts and, in addition, to obtain authorisation from the budgetary authority to create such posts. If the EU legislature had decided to require the appointing authority to create a given number of grade AST 10 senior assistant posts annually, that would have had the effect of indirectly re-establishing the promotion procedure which, in its view, failed to ensure that promotion to the highest grades – such as grades AST 10 and AST 11 – was subject to personal dedication, improvement of skills and competences and the performance of high-level responsibilities.

94 Those considerations apply a fortiori to the rates provided for in Section B of Annex I to the Staff Regulations which, as the Commission rightly argues, were, in any event, intended to be applied only until 30 April 2011.

95 In the light of the foregoing, the fifth part of the first plea in law must be rejected.

– The sixth part of the first plea in law, relating to the infringement of the 'pact' concluded between the trade union and staff associations and the Council at the time of the adoption of the previous reform of the Staff Regulations

96 Under the sixth part of the first plea in law, the applicants claim that, by adopting Regulation No 1023/2013, the EU legislature and the Commission, first, infringed the agreement concluded between the Council and the trade union and staff associations ('OSPs') in the context of the previous reform of the 2004 Staff Regulations and, second, failed in their obligation to liaise with the OSPs and, in particular, to consult meaningfully with them by providing the relevant information. So far as concerns, in particular, blocking any possibility of promotion for grade AST 9 assistants, no dialogue had been initiated and, in short, the OSPs were not at all or were badly informed of the planned modifications to the Staff Regulations. The applicants conclude that Articles 27 and 28 of the Charter of Fundamental Rights have been infringed.

97 In that regard, the Court has previously held that the agreement concluded between the Council and the OSPs, in the context of the adoption of the reform leading to the 2004 Staff Regulations, was concerned only with that reform and that, therefore, the subsequent adoption of Regulation No 1023/2013 was not such as to adversely affect that agreement, since allowing such reasoning would limit the competence conferred on the EU legislature by Article 336 TFEU (see, to that effect, judgment of 16 November 2017, *USFSPEI* v *Parliament and Council*, T-75/14, EU:T:2017:813, paragraphs 86 to 89).

98 As to whether the OSPs had been sufficiently informed and consulted during the procedure for the adoption of the new Staff Regulations, including in the light of Articles 27 and 28 of the Charter of Fundamental Rights, the Court has already ruled in great detail on that matter by responding in full

to the complaints raised in that regard by several OSPs in the judgments of 15 September 2016, *U4U and Others* v *Parliament and Council* (T-17/14, not published, EU:T:2016:489, paragraphs 120 to 174) and of 16 November 2017, *USFSPEI* v *Parliament and Council* (T-75/14, EU:T:2017:813, paragraphs 96 to 124).

99 In the absence of a substantively new argument in relation to those put forward in detail and substantiated by the OSPs themselves in the cases giving rise to the judgments referred to in paragraph 98 above, it is necessary, for the same reasons as those set out in those two judgments pending which the present case had been suspended, to reject the sixth part of the first plea in law.

100 In the light of the rejection of its different parts, the first plea in law must be rejected in its entirety.

The second plea in law, alleging that Article 31 of Annex XIII to the new Staff Regulations is unlawful on account of the lack of compensatory transitional measures in respect of the loss of eligibility for promotion of AST 9 officials

101 By their second plea in law, the applicants claim that Article 31 of Annex XIII to the new Staff Regulations is unlawful in that it does not set out, unlike those provided for by Article 30 of that annex with regard to the administrators' function group, transitional measures permitting assistants, in the same way as the measures provided for administrators, to be classified in types of posts creating an entitlement to promotion to grade AST 10 or even to a further increase of their basic salaries. According to the applicants, it amounts to a breach of the principle of equal treatment between those function groups. In addition, the applicants' legitimate expectations as to the adoption of transitional measures have consequently been disregarded.

102 The Commission, supported by the Parliament and the Council, contends that the second plea of law should be rejected as unfounded.

103 In that regard, it should be borne in mind that a breach of the principle of equal treatment occurs where two categories of persons whose factual and legal situations are not essentially different are treated differently and such a difference in treatment is not objectively justified. When that principle is applied, the situations to be compared must be examined taking account of all the factors characterising those situations (see, to that effect, judgments of 22 December 2008, *Centeno Mediavilla and Others* v *Commission*, C-443/07 P, EU:C:2008:767, paragraph 76 and the case-law cited, and of 15 November 2011, *Nolin* v *Commission*, T-58/11 P, EU:T:2011:664, paragraph 38).

104 In addition, in a matter involving the exercise of discretionary powers, such as laying down transitional rules which seek to ensure a fair transition from previous Staff Regulations to new Staff Regulations, the principle of equal treatment is infringed only where the institution in question imposes a distinction which is arbitrary, or manifestly inappropriate in relation to the objective pursued (judgment of 20 March 2012, *Kurrer and Others* v *Commission*, T-441/10 P to T-443/10 P, EU:T:2012:133, paragraph 54).

105 In the present case, it must be held that, because of the very nature of the duties they perform and the minimum requirements for access to those duties, as provided for, in particular, in Article 5(3) of the Staff Regulations, the factual and legal situation of officials in the administrators' function group and of officials in the assistants' function group is objectively and substantially different.

106 Accordingly, in view of the difference in nature of the duties performed by officials in the administrators' function group and by officials in the assistants' function group, the EU legislature was not required to adopt transitional measures or adopt the same transitional measures for those two function groups.

107 Consequently, it was open to the EU legislature, first, to establish, exclusively in respect of administrators in service on 31 December 2013, that they may, depending on their functions and responsibilities, be classified in different types of posts, such as 'administrator', 'administrator in transition', 'senior administrator in transition', 'adviser or equivalent' and 'head of unit or equivalent', according to the level and nature of those responsibilities. Moreover, the creation of the type of post 'senior assistant' is based on a similar logic. Nonetheless, in the absence of comparable situations between those two function groups, the legislature was not required to provide, for the assistants' function group, the possibility of an assignment by way of derogation, such as that provided for in Article 30(3) of Annex XIII to the new Staff Regulations, which is based on the performance of 'special responsibilities' by certain administrators who were designated as such before 31 December 2015.

108 Second, the EU legislature could also provide for transitional measures, such as those provided for in Article 30(5) to (10) of Annex XIII to the new Staff Regulations, for the sole benefit of grade AD 12 and AD 13 administrators based on considerations specific to that function group. In that regard, it could take account, as mentioned by the Council, of the fact that that function group had been the most affected by the previous reform of the Staff Regulations.

109 In any event, contrary to what the applicants claim, they could not establish a legitimate expectation, at the time of their respective recruitment, concerning the fact that their careers should necessarily involve a salary increase corresponding to that of grades AST 10 or AST 11. In the same way, they cannot require the adoption by the EU legislature of transitional measures that apply specifically to their individual situations.

110 In the light of the foregoing, the second plea in law must be rejected.

The third plea in law, alleging infringement of Article 45 of the Staff Regulations and manifest error of assessment

111 In support of the third plea of law raised in the alternative, the applicants allege 'infringement of Article 45 of the Staff Regulations and manifest error of assessment' directed, in essence, against recital 19 of Regulation No 1023/2013 adopted by the EU legislature. In that regard, they claim that, in so far as the 'core' of the promotion scheme provided for under Article 45 had not been modified by that regulation, the EU legislature was required to respect the principles that underpin that scheme and could not therefore exclude the applicants from any comparative evaluation of their merits with a view to their promotion to a higher grade. Accordingly, recital 19 of Regulation No 1023/2013 is in conflict with Article 45 of the Staff Regulations.

112 The Commission, supported by the Parliament and the Council, contends that the third plea in law should be rejected as unfounded.

113 In that regard, it should be borne in mind that the EU legislature may amend the Staff Regulations at any time by means of regulations adopted pursuant to Article 336 TFEU (see order of 23 April 2015, *Bensai* v *Commission*, F-131/14, EU:F:2015:34, paragraph 40 and the case-law cited). However, when it decides to make such amendments, it cannot be criticised for failing to take account of the Staff Regulations since it is the author of them, including any modifications thereto, and the Staff Regulations are not therefore binding on it unlike higher-ranking texts such as treaties.

114 Moreover and in any event, assuming that the third plea in law can be regarded as a plea of illegality raised against recital 19 of Regulation No 1023/2013 and that it is admissible, even though, according to the case-law, a recital cannot, by itself, be the subject of an action for annulment (order of 17 September 2014, *Afepadi and Others* v *Commission*, T-354/12, not published, EU:T:2014:798, paragraph 32), it is clear that, by adopting that recital, as well as the amendment to Article 45 of the

Staff Regulations and Article 31 of Annex XIII to the new Staff Regulations, the EU legislature clearly intended to amend the promotion procedure under Article 45 of the 2004 Staff Regulations by precluding its application to grade AST 9 officials who, henceforth, can only be promoted to grade AST 10 following an appointment procedure for the post of 'senior assistant' at that grade under Article 4 and Article 29(1) of the Staff Regulations. In that regard, contrary to what the applicants claim, the legislature clearly added a sentence to the wording of Article 45 of the new Staff Regulations in order to preclude its application to situations such as those of the applicants in which officials have attained the highest possible grade for the type of post they occupy.

115 The third plea in law must therefore be rejected.

The fourth plea in law, alleging infringement of the obligation to state reasons

116 By its fourth plea in law, raised in the alternative, the applicants criticise the Commission for failing to satisfy its obligation to state reasons by not explaining further, in addition to the explanations set out by the EU legislature in recitals 17 to 19 of Regulation No 1023/2013, the reasons why they were not considered to be exercising the highest level of responsibilities and can henceforth be promoted to grade AST 10 only under the appointment procedure provided for in Article 4 and Article 29(1) of the Staff Regulations.

117 The Commission, supported by the Parliament and the Council, contends that the fourth plea in law should be rejected as unfounded.

118 In that regard, it should be borne in mind that the purpose of the obligation to state reasons laid down in the second paragraph of Article 25 of the Staff Regulations, which merely reproduces the general obligation set out in Article 296 TFEU, is, first, to provide the person concerned with sufficient information to make it possible to determine whether the act is well founded or whether it is vitiated by an error which may permit its validity to be contested before the EU Courts and, second, to enable those Courts to review the lawfulness of the act. The statement of reasons must therefore in principle be notified to the person concerned at the same time as the decision adversely affecting him or her, for failure to state the reasons cannot be remedied by the fact that the person concerned learns the reasons for the act during the proceedings before the EU Courts (judgments of 26 November 1981, *Michel* v *Parliament*, 195/80, EU:C:1981:284, paragraph 22, and of 28 February 2008, *Neirinck* v *Commission*, C-17/07 P, EU:C:2008:134, paragraph 50).

119 However, those principles must be implemented in the light of the evolving nature of the pre-litigation procedure, under which the administrative complaint and its rejection, whether express or implied, constitute an integral part of a complex procedure, in so far as the drawing up of the act laying down the institution's definitive position is completed only after the adoption of the appointing authority's response to the complaint (see, to that effect, judgment of 21 May 2014, *Mocová* v *Commission*, T-347/12 P, EU:T:2014:268, paragraphs 33, 34 and 45).

120 In that context, the Court has observed that the additional statement of reasons, at the stage of the decision rejecting the complaint, was consistent with the purpose of Article 90(2) of the Staff Regulations, on which the reasoned decision rejecting the complaint was based. That provision necessarily implies that the authority called upon to rule on the complaint is not bound solely by the reasons for the decision that is the subject of the complaint, which may be inadequate or non-existent (judgments of 7 July 2011, *Longinidis* v *Cedefop*, T-283/08 P, EU:T:2011:338, paragraph 72, and of 21 May 2014, *Mocová* v *Commission*, T-347/12 P, EU:T:2014:268, paragraph 35).

121 In the present case, the contested decisions were not accompanied by a specific statement of reasons from the appointing authority. In essence, the appointing authority merely implemented the provisions of the new Staff Regulations which took effect on 1 January 2014 and involved, in the case of the applicants, assigning them to the transitional post 'assistant in transition' as indicated by a reference made in the applicants' individual files in SysPer 2 with effect from that date.

122 However, in response to the applicants' complaints, the appointing authority explained that its approach had been to implement the provisions of the Staff Regulations decided on by the EU legislature, without having any discretion in that regard, and it provided them with a detailed explanation of the challenges and arrangements for the implementation of the reform of the Staff Regulations introduced in 2014. Such explanations from the appointing authority are sufficient, in the light of its obligation to state reasons provided for in Article 25(2) of the Staff Regulations, as the author of the contested decisions adopted in the context of circumscribed powers.

123 In so far as, by the present plea, the applicants seek to criticise the EU legislature for failing to satisfy the obligation to state reasons set out in Article 296 TFEU, it has already been held, in specific connection with recitals 17 to 19 of Regulation No 1023/2013, that the statement of reasons on which the amendments to Article 45, and Annexes I and XIII to the new Staff Regulations, relating to the career structure of officials are based, clearly and unequivocally indicate the position of the Parliament and of the Council, thus making it possible for the applicants to know the justifications for the measure taken and for the Court to exercise its power of review (see, to that effect, judgment of 15 September 2016, *U4U and Others* v *Parliament and Council*, T-17/14, not published, EU:T:2016:489, paragraphs 182 and 183).

124 Moreover, it is clear from the new Staff Regulations that it is only if the appointing authority decides, in accordance with its needs, to create 'senior assistant' posts or to fill vacancies for that type of post, that grade AST 9 officials will, under Article 4 and Article 29 of the Staff Regulations, have the opportunity to express an interest in a post of that type and, where appropriate, be selected by the appointing authority to fill the post in question by means of promotion to that post at grade AST 10.

125 It is apparent from the foregoing considerations that the fourth plea in law must be rejected. The action must therefore be rejected in its entirety.

Costs

126 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.

127 As the applicants have been unsuccessful, they must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

128 In accordance with Article 138(1) of the Rules of Procedure, the institutions which have intervened in the proceedings are to bear their own costs.

129 The Parliament and the Council must therefore bear their own costs.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders GQ and the other officials of the European Union whose names appear in the annex to pay the costs;**

3. **Orders the European Parliament and the Council of the European Union to bear their own costs.**

Pelikánová Nihoul Svenningsen

Delivered in open court in Luxembourg on 14 December 2018.

E. Coulon
Registrar

President