For the attention of the Appointing Authority

**Complaint based on Article 90§2 of the Staff Regulations**

*Blocking of AST 9 careers*

I, the undersigned [*SURNAME, first name*], an official of grade [AST9] in [Institution], [*staff number*], domiciled at [address],

Hereby submit a complaint under the terms of Article 90 §2 of the Staff Regulations.

I. SUBJECT:

1. I hereby request withdrawal of the decision of the Appointing Authority (AA), which I have read on 14 April 2014 via my promotion file contained in the "SYSPER 2 management system". (Annex 1) to block any possibility of promotion in my case, as an official of grade AST 9, in the context of the annual promotion exercise provided for in Article 45 of the Staff Regulations.
2. This decision constitutes the implementation of Article 45 and of Annex I of the Staff Regulations, which came into force on 1 January 2014 and which I claim is illegal. I also invoke the illegality of article 31 of Annex XIII of the Staff Regulations, in that it makes no provision for transitional measures for AST 9 grades comparable to those in place for AD 12 and AD 13 grades.

II. THE FACTS:

1. I was recruited on [*date*] as a grade [XX] official in [*Institution*]. I was promoted to grade AST 9 on [*date*].
2. My duties are as follows: [*brief description of functions and career development*].
3. The definition of the various types of posts set out in Annex I of the Staff Regulations states that my post comes under the job description of “Assistant”.
4. On 14 April 2014, I have been informed of the appointing authority's decision to exclude myself from the annual promotion exercise as provided by Article 45 of the Statute. This decision takes the form of an amendment to my promotion file and was communicated tome via the "SYSPER 2 management system" (Annex 1).
5. Since that time, the contents of my promotion file has been modified as follows:

“Cannot be proposed for promotion

Reason for the exclusion : You don’t occupy a post which corresponds to one of the types of posts to be promoted in the higher grade, therefore you are not eligible for promotion.

Excluded for promotion

Reason for the exclusion : You don’t occupy a post which corresponds to one of the types of posts to be promoted in the higher grade, therefore you are not eligible for promotion”.

III. ADMISSIBILITY:

1. The act adversely affecting me is the decision taken pursuant to Article 45 and Annex I of the Staff Regulations to block my career by removing any possibility of promotion by way of the annual promotion exercise, insofar as I was not classified as a Senior Assistant on 31 December 2013.
2. This decision takes the form of an amendment to my promotion file and was communicated tome via the "SYSPER 2 management system" on 14 April 2014 (Annex1)
3. The admissibility of this complaint, directed against an act adversely affecting me within the meaning of Articles 90 and 91 of the Staff Regulations and submitted within the statutory time limit of three months, cannot be contested.

IV. LEGAL FRAMEWORK:

1. Recital 19 of the European Parliament and Council regulation modifying the Staff Regulations for European Union civil servants and the Conditions of Service of Other Servants of the European Communities states that:

“*The* *career stream in the AD and 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. Administrators can therefore 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, Paragraph 1 of the Staff Regulations.”*

1. Article 5 §5 of the Staff Regulations stipulates:

*“Identical conditions of recruitment and service career shall apply to all officials belonging to the same function group”.*

1. Article 45 of the Staff Regulations stipulates:

 *“Promotion shall be by decision of the Appointing Authority in the light of Article 6, Paragraph 2. Unless the procedure laid down in Articles 4 and 29, Paragraph 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 Annex I, Section A for the next higher grade. Promotion shall be effected by way of appointment of the official to the next higher grade in the function group to which he/she belongs. Promotion shall ensue exclusively by selection among officials who have completed a minimum of two years’ service 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 relevant officials, the use of languages in the exercise of their duties other than the languages for which they have produced evidence of thorough knowledge in accordance with point (f) of Article 28 and the level of responsibilities exercised by them”.*

Point B of Annex I of the Staff Regulations in force since 1 January 2014 sets the multiplication rate (known as “promotion rate”) at 8% for AST 9 and 15% for AD 12 and Under the former Staff Regulations, these rates were set at 20% for AST 9 and 25% and 20% for AD 12 and 13 respectively.

1. Section 5 of Annex XIII of the Staff Regulations lays down certain transitional measures for officials of the AD and AST grades in service on 31 December 2013. The content of these transitional measures is significantly different, depending on whether the official belongs to the AST function group or the AD function group.
2. Two types of posts have therefore been created for the AD grade. These relate to Senior Administrators in transition (grade AD 14) and Administrators in transition (grade AD 13). The post of Senior Administrator in transition was created for officials of grade AD 14 who were not Director or equivalent, Head of Unit or equivalent or Adviser or equivalent on 31 December 2013. The post of Administrator in transition was created for officials of grade AD 13 on 31 December who were not Head of Unit or equivalent or Adviser or equivalent.
3. Administrators of grade AD 12 or AD 13 with more than 2 years’ seniority at step 5 of their grade will receive, from 1 January 2016, an increase in their basic salary equivalent to the difference between the salary corresponding to steps 3 and 4 in their respective grades.
4. The posts of Senior Assistant in transition and Assistant in transition were created for the AST grade. An official of grade 10 or 11 on 31 December 2013 is therefore classified under the post of Senior Assistant in transition. Officials attested after the 2004 reform or recruited after 1 May 2004 are classified under the post of Assistant in transition (grades AST 1 to AST 9). Former category B officials who entered their posts before the 2004 reform and who do not have grades AST 10 or 11 are also now classified as Assistant in transition AST 1 to AST 9.
5. The Staff Regulations make no provision for any transitional measures relating to a salary increase similar to those in place for AD grades with more than two years’ seniority at step 5 of their grade.
6. ***The illegality of Article 45 and Annex I of the Staff Regulations - Breach of the principle of equal treatment, of the principle of reasonable career prospects and of the principle of proportionality***
7. The principle of equal treatment and non-discrimination is recognised by Article 1d of the Staff Regulations. In addition, Article 5 §5 of the Staff Regulations expressly stipulates that officials belonging to the same function group are subject to the same conditions of recruitment and service career.
8. Furthermore, case law has pronounced that the principle of reasonable career prospects is a special form of the principle of equal treatment applicable to officials[[1]](#footnote-1).
9. In this case, I believe that the decision of the AA to block any possibility of promotion in my case in the context of the annual promotion exercise provided for by Article 45 of the Staff Regulations constitutes unequal treatment compared to the situation of officials in the same function group and is in breach of the principle of reasonable career prospects.
10. Firstly, the career block introduced by Article 45 of the Staff Regulations is inconsistent with the aforementioned principles. Therefore, in application of the new Staff Regulations, “*Unless the procedure set out in Article 4 and Article 29, Paragraph 1 applies, officials can only be promoted if they occupy a position which corresponds to one of the types of posts set out in Annex I, Section A for the next higher grade*”.
11. As a result of this provision, officials of grade AST 9 who would not be regarded as “Senior Assistants” can no longer benefit from promotion to higher grades via the annual promotion exercise provided for by Article 45 of the Staff Regulations. They can only be promoted within the framework of a promotion procedure related to a vacant post pursuant to Article 29 of the Staff Regulations.
12. Such a distinction between promotion paths open to officials belonging to the same function group is illegal. Indeed, the number of promotions obtained through the provisions of Article 29 is minimal compared with the number of promotions obtained in the annual promotion exercise. As an official of grade AST 9, I have no guarantee concerning the number of posts open to me via this method. What is more, in accordance with the provisions of Article 29, the appointment procedures for vacant posts place not only officials from the same institution seeking a transfer or promotion in competition with each other, but also officials from other institutions. There are therefore fewer opportunities for advancement outside the annual promotion exercise, and they cannot be considered to accord career prospects similar to those of other officials in my function group.
13. In addition, the promotion procedure under the terms of Article 29 of the Staff Regulations provides inferior guarantees for officials compared with the annual promotion exercise set out under Article 45 of the Staff Regulations. Indeed, the procedure for promotion by filling vacant posts provides the relevant AA with much greater discretionary power and does not require the mandatory intervention of the joint promotion committee which provides the AA with a list of those officials considered suitable for promotion following consideration of their comparative merits. As an official of grade AST 9, I am consequently not subject to the same career development conditions as other officials in the AST function group.
14. Secondly, the notion of belonging to the same function group prohibits such a career block for AST officials based on whether or not their responsibilities involve staff management, budget implementation or political coordination. The fact that I cannot expect any advancement beyond grade AST 9 due to my responsibilities is contrary to the provisions of Article 5 §1 of the Staff Regulations, which makes no distinction between the different grades in the AST function group and refers in general terms to “executive and technical duties”.
15. In any case, the new provisions of the Staff Regulations providing for a career block for AST 9 officials are disproportionate in view of the declared objective of reserving the higher grades for a limited number of officials exercising duties at the highest level. Indeed, the version of the Staff Regulations in force prior to 1 January 2014 already provided for the most senior grades being reserved for high-level senior managers, defined as those in grades AD 15 and AD 16. Introducing a restriction on the careers of AST officials cannot be considered an appropriate means of achieving the aforementioned objective. The Administration simply cannot arbitrarily reassess and increase the number of grades having to be “reserved for high-level senior managers”, thus unjustifiably reducing the career opportunities of officials.
16. Consequently, the decision by the AA to block any possibility of promotion in my case in the context of the annual promotion exercise provided for in Article 45 of the Staff Regulations, in that it is based on Article 45 and Annex I of the Staff Regulations, which are illegal, is itself illegal and must therefore be withdrawn.
17. ***The illegality of Article 31 of Annex XIII of the Staff Regulations – In breach of the principle of equal treatment and of the principle of legitimate expectations due to the absence of transitional measures for AST 9 officials***
18. The transitional measures provided for by Annex XIII of the Staff Regulations result in Administrators of grade AD 12 or AD 13 with more than 2 years’ seniority at step 5 of their grade being entitled, from 1 January 2016, to an increase in their basic salary equivalent to the difference between the salary corresponding to steps 3 and 4 in their respective grades. There are no transitional measures in the Staff Regulations relating to a salary increase for AST grades with more than two years’ seniority at step 5 of their grade.
19. It can therefore be seen that the result of the decision concerning the non-promotion of officials of AD grade is that they are entitled to an increase in their basic salary, while remaining in the same grade.
20. As a grade AST 9 official, I am automatically excluded from the list of officials suitable for promotion and promoted by means of the promotion exercises based on Article 45 of the Staff Regulations. However, I do not receive a salary increase as a result of this decision equivalent to that in place for officials of grades AD 12 and 13 in a similar situation.
21. Such a difference in the treatment of officials in the AD and AST function groups is in breach of the principles of equal treatment and non-discrimination.
22. According to established case law, there is a breach of the principle of equal treatment when two categories of people, whose factual and legal situations are essentially the same, are treated differently.
23. In addition, when a legislative change is made in a statutory context, the legislator must adopt transitional measures when the staff in place are likely to be able to claim legitimate expectations under the terms of the statutory rules in force before they were amended. In this regard, Recital 29 of Regulation 1023/2013 stipulates that “*there should be transitional provisions allowing the gradual implementation of new regulations and measures without prejudice to the rights and legitimate expectations of the staff in place prior to the present changes to the Staff Regulations coming into force*".
24. In this case, the officials in both function groups AST and AD have all seen their career development opportunities widely affected by the entry into force of the new Staff Regulations for European Union civil servants. These civil servants found themselves in the same factual and legal situation when faced with the application of the new provisions blocking their careers and undermining their legitimate expectations in terms of career development and access to the higher grades in their function groups.
25. The absence of transitional measures relating to an increase in basic salary for AST 9 officials equivalent to those in place for AD 12 and AD 13 grades is therefore inconsistent with the general legal principles of EU, including the principles of equal treatment and legitimate expectations.
26. The transitional measures for officials in the AD function group provided for in Article 30 of the Staff Regulations must therefore, by analogy, be applied to AST 9 officials.
27. The decision to block any possibility of promotion in my case in the context of the annual promotion exercise provided for in Article 45 of the Staff Regulations must therefore be withdrawn for as long as this means that, as a grade AST 9 official, I am not entitled to an increase in my basic salary.

CONCLUSION:

I request the AA to recognise the illegality of Article 45 and Annex I of the Staff Regulations, which has been implemented as the contested decision, and to therefore proceed with withdrawal of its decision to block any possibility of promotion for me in the context of the annual promotion exercise under Article 45 of the Staff Regulations..

*Signed in [town/city], on [date]*

*Surname, first name and signature*

Annex 1: Excerpt from the promotion file contained in the "SYSPER 2 management system".

1. EU Civil Service Tribunal Ruling, 27 September 2011, Lübking / Commission, case no. F-105/06, point 82. [↑](#footnote-ref-1)