



More promotion possibilities for Council staff

For a number of years, Union Syndicale has expressed concerns over the Council's method of calculating the number of annual promotion possibilities. In so doing, it has highlighted the illegality of non-compliance with the provisions set out in the Staff Regulations. At the initiative of the Union Syndicale committee members, the Staff Committee issued [negative opinions](#) on this practice every year. The Administration heavily reduced the number of promotions for colleagues in certain grades (AST 7, AD 12 and AD 13), arguing that a correct application of the rules would unnecessarily accelerate career progression for some colleagues in those grades. After the 2022 exercise, Union Syndicale helped three US members in AST 7 to take legal action. The Court of Justice has now ruled in our favour, providing clarification for staff across all EU institutions.

In its [judgment of 30 April 2025](#), the Court stated that the promotion possibilities are to be calculated in accordance with the Staff Regulations, based on a fixed percentage of staff in active employment at a specific time ("multiplication rates"). It further clarified that institutions do not have the discretion to alter the number of promotion possibilities.

The decision is welcome news for the entire staff of the Council. It has a significant impact on the Council's promotion practices, leading to a higher number of promotion possibilities for colleagues in grade AST 7 for the years from 2022 onwards. For 2022 alone, 19 additional promotion possibilities need to be granted retroactively. Union Syndicale also asks to fully apply the rules in grades AD 12 and AD 13. The decision also helps prevent promotion bottlenecks in the coming years, thereby enhancing future promotion prospects for all colleagues.

Union Syndicale has requested a consultation involving the Administration, the three unions and the Staff Committee to ensure that the decision is fully implemented in our institution.

You will find below more details about the Court case and the final judgement of the case.





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Staff Matters

Legal News from Union Syndicale

Case T-202/23,
Kivikoski and Others v Council,
judgment of 30 April 2025

Promotion – Art. 6(2) SR –
multiplication rates – Annex I section
B – Art. 45 SR – average career
duration – promotion opportunities –
interest to bring an action

**An institution has no discretion to
reduce the number of promotion
opportunities**

This newsletter presents a recent judgment by which the Court has annulled a non-promotion decision of the Council. The Council erred in law when relying on an alleged discretion to reduce the number of vacant posts (i.e. opportunities for promotion) in the promotion exercise. That number actually is to be calculated on the basis of the Staff Regulations as a fixed percentage of staff in active employment at a certain point of time – the so-called “multiplication rates”. Apart from this, the multiplication rates can also be used to determine the average duration of a career in a given grade.

You can continue to send us your suggestions for new subjects or your questions and comments :
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Waiver

Although this newsletter is accurately prepared, it cannot replace individual legal advice. Legal situations are manifold and require both complex analysis and strategic action. You should therefore not rely on general presentations or former case-law alone to draw conclusions for your concrete situation. Please turn to us timely, should you require individual legal advice and/or representation.

Legal Background

Art. 6(2) Staff Regulations (SR): "Without prejudice to the principle of promotion based on merit as laid down in Article 45, that plan [the establishment plan] shall ensure that, for each institution, the number of vacant posts at every grade of the establishment plan on 1 January of each year corresponds to the number of officials in the lower grade in active employment on 1 January of the preceding year, multiplied by the rates laid down in Annex I, section B, for that grade. Those rates shall be applied on a five-year average basis as from 1 January 2014."

Art. 45(1) SR: "Promotion shall be by decision of the appointing authority in the light of Article 6(2). [...] Promotion 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. [...]"

Facts of the Case

The applicants are officials of the Council at grade AST 7. In June 2022, the General Secretariat of the Council published the list of officials eligible for promotion, including those with at least two years of seniority in their grade as of 1 January 2022, as well as the number of promotions available for each function group and grade for the 2022 promotion exercise. This list included the applicants among the 81 officials eligible for promotion to grade AST 8 and announced 18 promotion opportunities for that grade.

A few weeks later, the Council adopted the promotion decision and published the list of AST function group staff members promoted. The applicants' names did not appear on this list. In their complaint (Art. 90(2) SR), the applicants argued that the non-promotion decision contravened Art. 6(2) SR, read in conjunction with Annex I, section B, because 37 promotion opportunities, rather than 18, should have been opened for grade AST 8 in the 2022 promotion exercise, and claimed that this had infringed the principles of equal treatment, foreseeability, and legal certainty.

Decision of the Court

By its judgment of 30 April 2025, the General Court annuls the decision of the Council not to promote the applicants. The Court confirms the unlawfulness of the contested decision in so far as it was based on an incorrect application of the statutory rules on promotion.

1.) On the Admissibility

The parties argued over the question whether the applicants have a legal interest to bring an action, which is a precondition for the admissibility of the action. The Council pleaded that the applicants had failed to show that an annulment of the decision could have given them a prospect of promotion to grade AST 8. On this point, the Court reminds that an action for annulment brought by a natural or legal person is admissible only in so far as that person has an interest in seeing the contested act annulled. Such an interest presupposes that annulment of the act is, in itself, capable of having legal consequences and that the action can, by its result, provide a benefit to the party bringing it. Officials are not entitled to act in the interest of the law or of the institution; they may rely only on grievances that are personal to them. And further, only acts directly and immediately affecting the legal situation of the person concerned may be considered to be of adverse effect. This assessment must be made with regard to the applicant's personal situation.

The Court decided that the non-promotion decision adversely affected the applicants. First, if the names of the applicants do not appear on the list of promotions, this constitutes an implicit refusal to promote them. Second, the provision of Art. 6(2) SR means that the number of vacant posts for each grade on 1 January each year is equal to the number of officials in service at the lower grade on 1 January of the preceding year, multiplied by the rates set for that grade in Annex I section B, here 25%. The term "officials in active employment" to determine the correct number of vacant posts for each grade embraces all those officials in

active employment at the lower grade on 1 January of the preceding year, regardless of their eligibility for possible promotion.

Had the multiplication rates of Art. 6(2) SR been applied, 37 promotion opportunities would have been available for grade AST 8 in the 2022 promotion exercise, instead of the 18 announced by the Council. The applicants would have had the prospect of being promoted in the 2022 promotion exercise on the same basis as other eligible officials and subject to the comparative assessment of merits provided for in Art. 45(1) SR. Consequently, the Court finds that the action is admissible, because the applicants have demonstrated an interest in invoking that the multiplication rates determined by the Council are not compatible with the stipulations in Art. 6(2) SR and, therefore, their interest in bringing an action.

2.) On the Merits

The Court decides that the Council erred in law when applying Art. 6(2) SR. The number of eligible officials for promotion towards AST 8 in the promotion exercise 2022 was 81. The number of promotion opportunities would have been 36.25, which must be calculated as the 25% of 145 officials in active employment on 1 January 2021. The Council had wrongly assumed the number of promotion opportunities to be 18 instead.

The Council argued that the institutions must ensure that the number of posts opened in each promotion exercise approaches the multiplication rates on a five-year basis which reflect the average career progression of officials within their function group. In the opinion of the Council, the institution should have a margin of discretion as to the means available to achieve this objective. If an institution was to observe significant imbalances between the number of officials eligible for promotion in certain grades and the average waiting time in those grades, it would be required to take corrective measures to bring the actual career progression of officials closer to the average waiting time provided for in Annex I, section B SR for the grades concerned. In the absence of corrective measures taken between 2017 and 2022, the implementation of Art. 45 SR would have been compromised, insofar as an institution cannot later adjust the number of officials promoted so that it is consistent with the multiplication rates: once the promotion opportunities for a specific grade have been set, there would not be an opportunity to modify it during the comparative assessment of merits.

However, the Court does not accept this argument of the Council. The words “without prejudice to the principle of promotion based on merit as laid down in Article 45” in Art. 6 (2) SR mean that the SR do not confer a right to be promoted upon an official. Instead, a promotion decision depends not only on the qualifications and abilities of the candidate, but on their assessment in comparison with those of other eligible candidates, and this with each new promotion exercise. It cannot be inferred from Art. 45 SR that the principle of merit-based promotion could be implemented so as to derogate from the application of the multiplication rates when determining the annual number of vacant posts for each grade and, therefore, the number of opportunities for promotion. Multiplication rates pursue two distinct objectives, the Court explains.

First, they are intended to calculate the annual number of posts open to promotion for each grade and, for this purpose, they are applied on a five-year average basis. Second, the rates make it possible, independently of Art. 6(2) SR, to determine the average career duration in a grade. Account must be taken of the multiplication rates that were applicable during the years in which the official was in the grade in question. For this purpose, the limitation of the five-year basis provided for in Art. 6(2) SR does not apply. The question of determining the average career duration in a grade must be distinguished from that of determining the number of posts to be opened at a particular grade for a promotion exercise. The Court continues to state that the Council was not allowed to deviate by applying “corrective measures” from the wording of Art. 6(2) SR and Annex I, section B. Any interpretation of a provision of EU law in light of its context and purpose cannot have the effect of depriving the clear and precise wording of that provision of all useful effect. The provisions of the SR are hierarchically superior to internal “corrective measures”.

Further, the Court decides that the Council could not demonstrate that the application of these rules in the present case, particularly in view of the difference between the number of officials eligible for promotion and the number of promotion opportunities, was such as to prevent the comparative assessment of officials’ merits provided for in Art. 45(1) SR. In result, due to the incorrect application of the statutory rules by the Council, the Court had to annul the Council’s decision not to promote the applicants.



Comments:

1. First, it is useful to distinguish the following terms of relevance in a promotion exercise: the number of staff in active employment in a certain grade on 1 January of the preceding year (here 145); the number of staff eligible for promotion in a given promotion exercise (here 81); the number of opportunities for promotion towards a certain grade – which equals the number of vacant posts in that grade (here 36.25). The number of staff in active employment is to be determined in accordance with Art. 35 SR.

2. The Council wanted to reduce the number of promotions by *modifying the number of opportunities for promotion* towards AST 8. Hence, the present case treats the important question of **whether an institution has got a margin of discretion to modify the number of opportunities for promotion** (vacant posts) in a given promotion exercise. The Council tried to justify its need of discretion by an alleged obligation to ensure that the number of posts vacant approaches, on a five-year basis, the multiplication rates set by section B of Annex I SR, which reflect the average career progression of officials within their function group. The Court refuses this and states that the correct determination must be based on Art. 6(2) SR in connection with the multiplication rates in Annex I, section B, **without there being a margin of discretion** as to the result.

3. Earlier case-law (Case T-484/22, QN / eu-LISA) has already derived this from the dual purpose theory: the Court holds that the multiplication rates, expressed as a percentage in section B of Annex I SR, serve two different purposes:

(1.) under Art. 6(2) SR, they are used to calculate the **annual number of vacant posts open to promotion** for each grade, and thus the opportunities for promotion;

(2.) they are used to determine the **minimum average seniority** in each grade, which also is a condition for the reclassification of staff. In the present case, for the promotion of officials, the Court confirms the dual purpose concept of the multiplication rates by holding that they could, independently of Art. 6(2) SR, also be used to determine the **average duration of a career in a grade**.

4. Under Art. 6(2) SR, the multiplication rates allow the number of posts available for promotions to be calculated, and in that respect, they were applied on a five-year average basis. The same rates, converted into years, are used to determine the average career duration in a grade. For that question, account should be taken of the multiplication rates applicable during the years in which the staff member was in the grade in question. Therefore, the limitation of the five-year basis provided for in Art. 6(2) SR does not apply (Case T-688/15 P, Schönberger / ECA).

5. The Council's main argument was that the number of promotion opportunities should be flexible in order to align with a corridor of an average waiting time on a five-year basis. This has however been refused by the Court.

6. The Court finds it irrelevant for the Council to bring the actual career progression of officials closer to the average waiting time in each grade, in the event of imbalances between the number of officials eligible for promotion in certain grades and the average waiting time in those grades. The Court instead differentiates between the question of determining the number of promotion opportunities to grade AST 8 for the 2022 promotion exercise on one side, and the question of establishing the average career duration within grade AST 7: the number of promotion opportunities is subject to the limitation arising from the five-year average basis under Art. 6(2) SR; the question of establishing the average career duration within grade AST 7 is **not subject to the limitation arising from the five-year average basis**.

7. It is **recommended** that staff who consider themselves to be eligible for promotion should double check the number of staff in active employment on 1 January of the preceding year (regardless of their eligibility for possible promotion) and then verify the correctness of the number of opportunities for promotion towards the next grade (vacant posts), to be calculated on the basis of Art. 6(2) SR and the multiplication rates in Annex I, section B. If that number is wrongly determined by the institution, it has to be corrected.

8. There is no entitlement of a staff member to be promoted. The annulment of a non-promotion decision such as here – based on a wrong determination of the number of opportunities for promotion – does not translate automatically into a promotion of the applicant.

