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Staff Matters

Legal News from Union Syndicale

This newsletter presents a judgment of the Court of Justice (ECJ) on the transfer request of a seconded official. The ECJ sets aside a judgment of the General Court and annulled the decision of EUIPO which had rejected a job application of the appellant on the ground that she was originally an official of the Commission. The case clarifies that a transfer application can be regarded as an application seeking to fill a vacant post. The seconded staff member's file responding to an internal vacancy notice should have been taken into account. This judgment has the potential to facilitate interinstitutional mobility.

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Interinstitutional transfer –
Art. 8 SR – Art. 29 SR – vacant post –
Art. 4 SR – secondment - mobility

**Court of Justice reinforces
interinstitutional mobility:
a transfer may be applied for in
response to an internal
vacancy notice**

Case C-364/23 P, ZR v EUIPO,
judgment of 12 June 2025
Case T-400/21, ZR v EUIPO,
judgment of 29 March 2023

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. 8(1) Staff Regulations (SR): “An official seconded to another institution of the European Union may, after a period of six months apply to be transferred to that institution”

Art. 29(1) SR: “Before filling a vacant post in an institution, the [Appointing Authority] shall first consider: (a) whether the post can be filled (...) within the institution; (b) whether requests for transfer have been received from officials of the same grade in other institutions (...)”

Art. 4 SR: “No appointment or promotion shall be made for any purpose other than that of filling a vacant post as provided in these Staff Regulations. (...) If the vacancy cannot be filled by transfer, appointment to a post in accordance with Article 45a or promotion, it shall be notified to the staff of the other institutions, and/or an internal competition shall be organised.”

Facts of the Case

The appellant, an official of the European Commission, was seconded to EUIPO in 2013. In 2019, the appellant concluded a new five-year contract with EUIPO. In March 2020, EUIPO published an internal call for expressions of interest which aimed at appointing as officials of EUIPO a number of temporary and contract agents in the context of the annual transfer exercise. The appellant responded to that call, requesting a transfer to EUIPO. In April 2020, EUIPO published both an external vacancy notice for recruiting a temporary agent and an internal vacancy notice addressed to officials and temporary agents. The appellant submitted her application in response to the internal vacancy notice. On the same day, the appellant referred to that vacancy notice and applied to be transferred to EUIPO. In September 2020, the Appointing Authority rejected her application. In November 2020, EUIPO appointed a temporary agent, selected following the publication of the external vacancy notice. The complaint of the appellant (Art. 90(2) SR) against that decision was rejected by EUIPO; she filed her action to the General Court in July 2021.

Decision of the General Court

By its judgment of 29 March 2023 the General Court (GC) dismissed the action for annulment of the appellant. The GC held that the job application at issue was to be characterised as a transfer application, based on Art. 8(1) SR, and not as an application in response to the internal vacancy notice. It also held that such a transfer application, by its very nature, could not be regarded as seeking to fill a vacant post which is the subject of a vacancy notice, so that, in examining the application at issue, EUIPO was not required to take into consideration Art. 29(1)(b) SR or the rules laid down in Art. 4 SR.

Decision of the Court of Justice

By its appeal decision of 12 June 2025 the Court of Justice (ECJ) sets aside the above judgment of the GC and annuls the decision of EUIPO rejecting her application by which she sought to be transferred. EUIPO was not allowed to reject the application of the appellant on the ground that she was originally an official of the Commission. An institution that receives, in connection with a recruitment procedure that

has been extended beyond the possibilities provided for in that Art. 29(1)(a) SR, a transfer application submitted under Art. 8 SR is under an obligation to take it into consideration and to examine it with a view to filling the vacant post concerned. The application should have been taken into consideration and examined by the Appointing Authority as an application in response to the internal vacancy notice.

While the GC had held that EUIPO was not required to apply Art. 29(1)(b) and Art. 4 SR, assuming that both stipulations only serve at bringing vacant posts to the attention of staff from other institutions, the ECJ first notes that the concepts of 'transfer' in Art. 29(1)(b) and in Art. 8 SR are equivalent; and that under Art. 8 SR an official of an EU institution seconded to another institution may, after a period of six months, apply to be transferred to the latter institution. Art. 29(1) SR sets out an order of priority: it accords priority to officials already serving in the institution as compared with officials of other institutions, and it accords priority to officials of other institutions over persons on lists of suitable candidates drawn up following a competition. Art. 8 SR warrants that officials of an institution who have been seconded to another institution for at least six months have the right to apply to be transferred. In order for this right to be effective, the institution must take an application into consideration and examine it with a view to filling the vacant post concerned, where a recruitment procedure "has been extended beyond the possibilities" provided for in Art. 29(1) (a) SR.

The ECJ concluded that the GC erred in law when stating that, by its very nature, an interinstitutional transfer application, made on the basis of Art. 8(1) SR, cannot be

regarded as "seeking to fill a vacant post which is the subject of a vacancy notice". The GC erred in law when it ruled out the possibility of the application at issue being taken into consideration and examined as an application in response to the internal vacancy notice based on Art. 29(1) SR, on the ground that that application was based on Art. 8 SR and that those two provisions could not, in view of the GC, be applied concurrently.

As a consequence of its different legal view on the scope of Art. 8 SR and Art. 29(1) SR, the ECJ identified some other errors of law in the judgment of first instance. The GC on its side had assumed that the principle of equal treatment was not infringed, because the situation of the appellant and that of the candidate who was recruited on a temporary basis following the publication of the external vacancy notice were covered by two separate sets of rules, so that those situations were allegedly not comparable. The ECJ continues to argue that the internal vacancy notice did not specify under which points of Art. 29(1) SR it was published (within the institution/across institutions). Moreover, under that notice both officials and temporary agents could apply. The Appointing Authority had considered it necessary to extend the recruitment procedure beyond the possibilities provided for in that Art. 29(1)(a) SR in order to have the opportunity to appoint a person of the highest standard of efficiency, ability and integrity. It was under an obligation to take it into consideration and to examine it with a view to filling the vacant post concerned. In result, the decision of EUIPO by which it had refused the transfer application of the appellant had to be annulled.



Comments :

1. The rules of the SR and CEOS apply to staff of EUIPO further to Art. 143(1) of the EUIPO Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark.
2. The ZR case is about the request of an interinstitutional transfer in response to an internal vacancy notice. While the seconded staff member's application should have been taken into account, EUIPO refused it on the ground that the appellant was originally an official of the Commission.
3. The ECJ judgment clarifies on the applicability of norms, on the priority stages in recruitment and the eligibility for filling a vacant post, which is of significance for the recruitment process and for staff who want to transfer to another institution. The ECJ effectively reinforces the right under Art. 8 SR of an official seconded to another institution to apply (after a period of six months) for transfer to that institution: this is possible even if the notice is drawn up for an internal vacancy.
4. Art. 29(1) SR establishes stages of priority. It should be borne in mind that the specific constellation of the case was a "recruitment procedure that has been extended beyond the possibilities provided for" in Art. 29(1)(a) SR, which means that the Appointing Authority shall first consider filling the vacant post within the institution, and shall then proceed to take requests for transfer from officials of the same grade in other institutions into account.
5. A consequence of this judgment is that it facilitates the integration of staff in other institutions by way of secondment and later transfer, and thus it has the potential to open up the employment market by reducing mobility hurdles between institutions.
6. The recommendation for staff seconded and seeking to be transferred to another institution is to apply (also) for posts in internal vacancy notices. The present ZR case warrants that their applications, even if in staged priority, have to be considered.
7. Going beyond the case, a transfer may also occur towards other services of the same institution. In that case it is done by assignment to another post in accordance with Art. 4, 7 and 29 SR, i.e. after the post has been advertised and the applications have been assessed.
8. On the terminology: a transfer (French mutation, but also – confusingly – transfert) in the proper sense of the word occurs only when an official is transferred to a vacant post (emploi vacant). This is subject to the formalities prescribed in Art. 4 and 29 SR. By contrast, these formalities do not apply to a change in the assignment of duties (reaffectation) of the official, since such a change (transfert) does not respond to a vacant post.¹

¹ For details: Mader, EU Civil Service Law (2024), Chapter 3, II, 16.



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