



Union
Syndicale
Bruxelles

April 2026

NEWSLETTER
N° 35



Staff Matters

Legal News from Union Syndicale

In this newsletter, we present a judgment by which the Court annulled an appointment for a senior management position. The President of the Commission should have either conducted the selection interview herself or (as internal rules warrant) duly justify the delegation of that interview to her Head of Cabinet by referring to “imperative service needs”. Failure to comply with this – in the view of the Court – amounts to a breach of an essential procedural requirement that rendered the appointment of the applicant’s competitor liable to annulment.

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

StaffMatters@unionsyndicale.eu

Essential procedural requirement –
Equality Policy Decision – selection
of senior management – delegation
of interview

**Court quashes appointment
of Principal Legal Adviser:
the Commission President’s
delegation of interview was
unlawful**

Case T-613/23, James Flett v Commission,
judgment of 23 July 2025

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.

Facts of the Case

In May 2022, the Commission published a vacancy notice for the post of Principal Legal Adviser. Eight candidates, including the applicant, applied for that post. The Commission's pre-selection panel interviewed all of them and retained the three candidates with the highest scores, including the applicant. Those three candidates were then to take part in the tests at the assessment centre and to attend an interview with the Consultative Committee on Appointments (CCA), as part of the second phase of the selection procedure. The applicant took part in the tests at the assessment centre, which comprised individual and group exercises as well as in-depth interviews focused on management skills. A report was prepared on that basis for each candidate. All three remaining candidates were called to attend an interview with the CCA. At the end of the second phase, the CCA considered that the applicant did not have the "right mix of skills and experience" and did not retain him for an interview with the President of the Commission. Only "A", another candidate, was selected for that interview, a task which was carried out by her Head of Cabinet. In January 2023, the Commission adopted the contested decision, by which A (and not the applicant) was appointed to the post of Principal Legal Adviser. After passing through the complaint procedure, the applicant filed an action seeking to annul the Commission's decision appointing competitor A to the post of Principal Legal Adviser.

Decision of the General Court

By its judgment of 23 July 2025, the General Court (GC) annuls the appointment decision of the Commission. The Commission had not complied with the "Equality Policy Decision", which the Court considers to be a breach of an essential procedural requirement. The delegation by the President of the Commission to her Head of Cabinet who conducted the interview with competitor A was found unlawful. The Commission was namely not able to substantiate that this delegation of the interview was based on "imperative service needs" which prevented the President from interviewing A herself within one month after transmission of the latter's candidature file by the CCA Secretariat.

The Court holds that the Commission was compelled to comply with both the "Equality Policy Decision"¹, with the "Senior Management Decision"², and also with the "Guidelines on Appointment Procedures for Senior Officials". These three documents contain rules for the selection of senior management. Section 5.2.7 of the Senior Management Decision states that the short-

¹ the Commission Decision on Gender Equality Policy of 30 September 2020, contained in the minutes of the 2351st meeting of the Commission, PV(2020) 2351 final.

² Commission Decision SEC(2004) 1352/2 of 26 October 2004 laying down its policy for senior management, as amended in 2007.



listed candidates shall be interviewed by the portfolio Commissioner (in the case: the President). The Equality Policy Decision allows the President to delegate the interview conducted following the second phase to the Head of Cabinet and states that this must be such as to “ensure smooth and timely processes” where that is justified by “imperative service needs”.

The Court finds that the Equality Policy Decision provides, in principle, for a prerogative for the President herself to choose senior officials serving under her authority, in order to establish with those officials a working relationship based on trust, in the light of the high level of responsibility that they are required to exercise. Based on this consideration of its purpose, the Court interprets the Equality Policy Decision in the sense that it renders the delegation made by the President conditional on being “duly justified for imperative service needs”, and that such delegation cannot be made unless that condition is satisfied. The President delegated to her Head of Cabinet the conduct of A’s interview without that delegation being made in writing or otherwise documented. This means that the Court cannot verify, on the basis of the evidence in the file, the existence and the validity of the evidence of the “imperative service needs” which “duly justified” the delegation. The Commission did not give any precise information as to the imperative service needs which prevented the President from interviewing A.

Finally, the Court discusses whether such a breach of the Equality Policy Decision is capable of leading to the annulment of the contested decision. The broad discretion granted to the appointing authority in the recruitment procedure for a vacancy at a senior grade brings with it the obligation for that authority to observe the guarantees conferred by the EU legal order in administrative procedures, including the obligation of examining carefully and impartially all the matters relevant to the particular case. That discretion must therefore be exercised with scrupulous observance of all the relevant regulations, not only contained in the vacancy notice, but also of any procedural rules that the authority has adopted for the exercise of its discretion. Failure to observe procedural

rules relating to the adoption of a measure, laid down by the competent institution itself, constitutes a breach of essential procedural requirements. In result, the vitiated act had to be annulled due to the breach of essential procedural requirements (which the Court relates to the principle of legal certainty), without it being necessary to establish the existence of harm.

Beyond this, the applicant had submitted a number of other pleas, which the Court rejected. Amongst others, he alleged that the Equality Policy Decision itself was unlawful. First, he argued that it conflicted with the rule that the President must herself interview the candidates shortlisted by the CCA. Secondly, that option to delegate had no link with the stated purpose pursued by the Equality Policy Decision. Thirdly, the President should be able to delegate the conduct of interviews to her Head of Cabinet only as a last resort, if their conduct cannot be delegated to other Commissioners. Fourthly, the applicant argued that the President could not delegate the conduct of interviews to an official with no political qualifications or credentials. Fifthly, the applicant criticised that that delegation by the President, which should as a matter of priority be made to other Commissioners and if duly justified for imperative service needs, is made systematically to her Head of Cabinet. However, the Court rejects all these arguments directed against the lawfulness of the Equality Policy Decision itself.

Another rejected argument brought forward by the applicant was the fact that having been selected by the pre-selection panel, then by the CCA in the first phase, would conflict with the later exclusion by the CCA from the shortlist at the end of the second phase. Yet, the Court explains this course of action by the „progressive nature of the selection procedure“. Also the applicant’s claim for damages (for material and non-material harm) has been rejected by the Court.

Comments :

1. With this judgment, the Court forces the President of the Commission to either conduct interviews for senior management posts herself or to provide due justification why such interviews are delegated, for “imperative service needs”.
2. There are three general aspects of this Case that count amongst the fundamental specifics of EU Civil Service Law: (1) Once the administration subjects itself to internal rules, the Court is eager to find them legally binding upon the institution.

This is not only the case for criteria or procedures established in the notices, but also those contained in other guidelines or policies. (2) The broader the discretion afforded to the appointing authority, the more scrupulously it is obliged to comply with procedural rules that the authority has adopted for the exercise of its discretion. (3) Where it can be shown that an “essential procedural requirement” is breached, the vitiated act has to be annulled, without it being necessary to establish the

existence of harm, or to establish any potential different outcome of the procedure had the act not been vitiated by the procedural error.¹

3. Apart from the Court's statement that it was not possible for the Commission President to explain why she delegated an interview to her Head of Cabinet, it is remarkable in this judgment is that – although the Court acknowledges that it is the “prerogative of the President herself to choose senior officials serving under her authority” – why an applicant should be allowed to challenge the appointment of a competitor who was on his side deprived of an interview with the President.
4. The legal methodology behind this high level of protection is a concept of judicial review that allows to challenge circumstances which are objectively not in line with some internal rules, no matter whether these rules are originally meant to protect the rights of individuals (or as here the prerogative of the President). The decisive legal link is the qualification by the Court of these rules of process as being “essential procedural requirements”.
5. Where the Commission pleaded that conducting the interview of A by the Head of Cabinet (instead of the President) did not affect the applicant legally, the Court replied on this with an argument belonging to the realm of admissibility of actions when stating that the interviewing of A by the President's Head of Cabinet and not by the President herself was “liable to adversely affect the applicant by altering his legal position”, therefore the illegality allegedly affecting the conduct of such an interview can lead to the annulment of the contested decision.
6. While the President is not under a duty to record a delegation in writing, the fact that in the present case the delegation was not documented prevented the Court to verify the existence and validity of the “imperative service needs” that could have justified a delegation. Through this requirement, the Court effectively introduces an exceptional duty to record a delegation in the case of interviews for senior management positions.
7. It is recommended to staff and candidates to find out about the applicable institutional internal rules, guidelines, etc that govern e.g. (as here) selection processes and which could militate for the compliance with specific procedural guardrails. The large discretion afforded in these and other decision-making processes warrant even more the accurate observance of procedural rules. On the other hand, where procedural mistakes

were committed by an institution having reduced discretion, the errors are less relevant because they have less decisive impact for the procedure's outcome.²

8. The Court is right in relating the protection of essential procedural requirements to the general principle of legal certainty. This principle shall ensure that the applicable rules are known to all stakeholders at the outset. If – as this Case shows – there exist internal rules containing essential procedural requirements, then these rules have to be brought to the knowledge of all candidates on an equal footing, or at least these rules have to be accessible to them. Since Commission's senior management positions are open for application by external candidates, such rules, policies, guidelines, etc. therefore have to be publicly available.

² On details, see Mader, EU Civil Service Law (2024), Chapter 2, VII, 2.



Dr. Oliver Mader M.A. (KCL) is a leading expert in EU Civil Service Law. He advises, lectures and publishes widely on EU Staff Regulations, collective EU civil service law, EU constitutional law, remedies, public procurement, external relations and other aspects related to EU law. As attorney Dr Mader is the founder of [Kanzlei Mader | Mader Law](#), a law firm that champions excellence in EU legal matters and related aspects of international and domestic law. The firm also advises and represents individual EU staff members.

¹ Mader, EU Civil Service Law (2024), Chapter 1, III, 6.