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Statement of reasons – reclassification of temporary staff – rights of the defence – equality of arms – absence to state reasons – inadequate statement of reasons

Failure to state reasons: Court of Justice annuls decision not to reclassify a staff member

By its judgment of 29 January 2026, the Court of Justice confirms the institutions' obligation to state reasons for their decisions. This principle serves to make clear and unequivocal the reasoning of the EU institution so that persons affected know the reasons for the measure taken and that the competent court may exercise its review. In the absence of a statement of reasons, the institution cannot remedy such a defect by producing that statement later before the EU Courts.

On the other hand, a decision vitiated by a defect resulting from an inadequate statement of reasons may later be rectified, but only if exceptional circumstances justify this. In any case, a supplementary statement of reasons in the course of the proceedings must never infringe the rights of defence and, in particular, the principle of equality of arms. In the concrete case, the appointing authority's decision not to reclassify the agent was vitiated by an inadequate statement of reasons and had to be annulled. Protecting the equality of arms is of wider significance where the institution complements or alters its acts over time. In addition, the judgment clarifies on the principle of correspondence (according to which all pleas of the action have to be closely linked to the complaint in the pre-litigation proceedings) where the additional reasons later provided by the administration have the effect of altering the very essence of the act.

Case C-727/23 P, PB v SRB, judgment of 29 January 2026
Case T-293/22, PB v SRB, judgment of 20 September 2023

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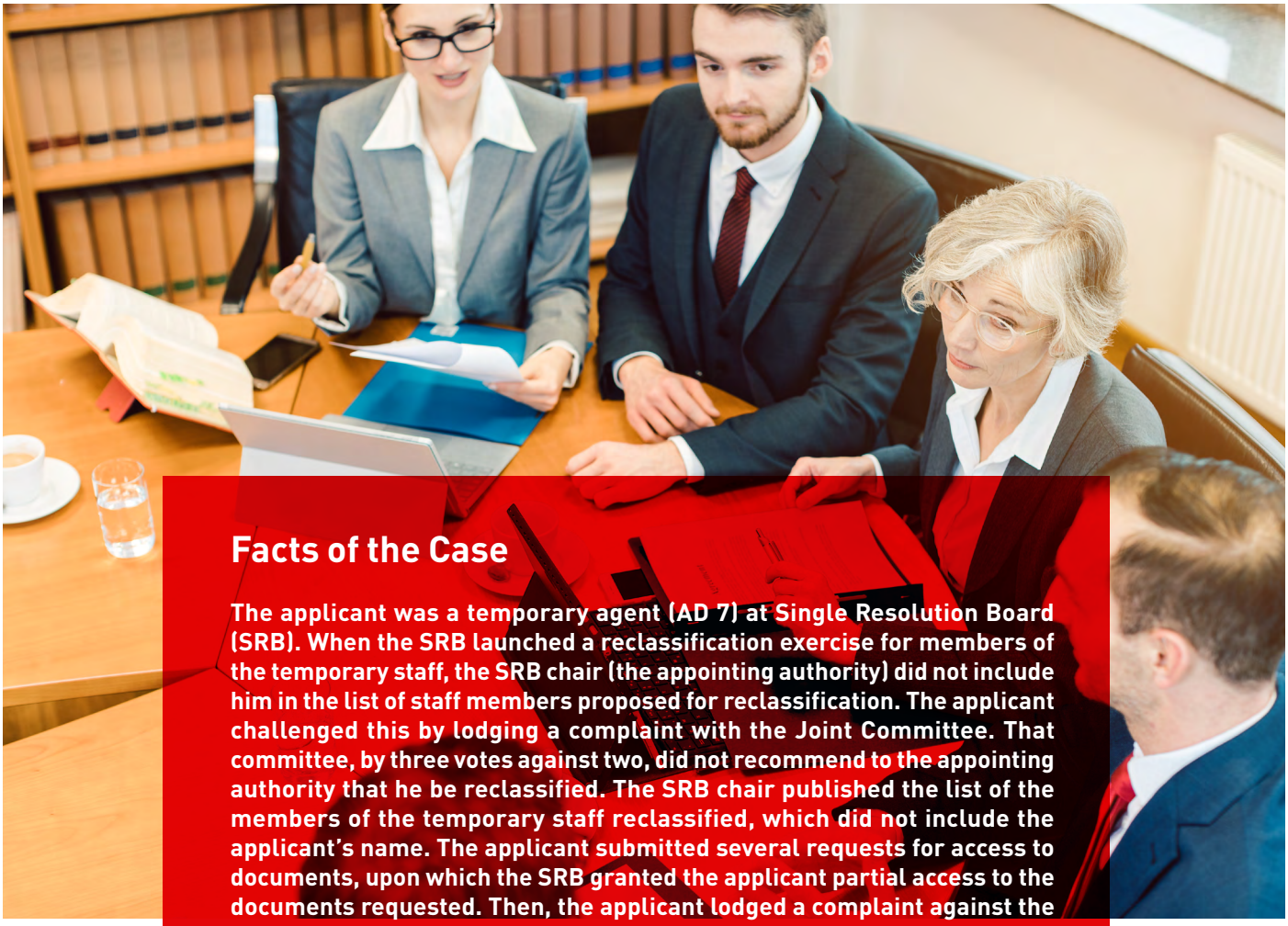

Facts of the Case

The applicant was a temporary agent (AD 7) at Single Resolution Board (SRB). When the SRB launched a reclassification exercise for members of the temporary staff, the SRB chair (the appointing authority) did not include him in the list of staff members proposed for reclassification. The applicant challenged this by lodging a complaint with the Joint Committee. That committee, by three votes against two, did not recommend to the appointing authority that he be reclassified. The SRB chair published the list of the members of the temporary staff reclassified, which did not include the applicant's name. The applicant submitted several requests for access to documents, upon which the SRB granted the applicant partial access to the documents requested. Then, the applicant lodged a complaint against the decision not to reclassify him. That complaint was rejected by decision of the SRB. After the application to the General Court was lodged, the SRB did not renew the applicant's contract.

Decision of the General Court and of the Court of Justice

In first instance, the General Court (GC) had dismissed the applicant's action for annulment. The GC found that the SRB was entitled, in the course of the proceedings, to supplement the statement of reasons for the decision not to reclassify the applicant. Secondly, the GC found that the plea relating to an error of assessment of the applicant's merits had to be rejected as being allegedly inadmissible for an infringement of the principle of correspondence between the administrative complaint and the action.

The Court of Justice (ECJ), however, in its recent appeal decision of January 2026 sets aside this judgment of the GC and annuls the decision of the SRB not to reclassify the appellant. The ECJ finds that the SRB **failed to fulfil its obligation to state reasons**. The SRB – so the ECJ holds - failed to state whether the appellant's merits had proven to be lower or equal to those of other members of the temporary staff in the same grade as his own who had been reclassified or, in the event of equality between the appellant and other members of the temporary staff, to specify the alternative criterion or criteria which had been applied for the purposes of differentiating between those members.

On the institution's obligation to state reasons, the ECJ decides that these reasons must, in principle, be communicated to the person concerned at the same time as the act adversely affecting him or her and that a failure to state reasons cannot be remedied by the fact that the person concerned learns of the reasons for that decision during the proceedings before the EU Courts. It is not in the case of an absence, but of an **inadequacy** of reasoning, and only in the latter case, that grounds put forward in the course of the proceedings may, exceptionally, render devoid of purpose a plea alleging infringement of the obligation to state reasons for the decision concerned. The possibility of remedying, a posteriori, an inadequate statement of reasons, as a procedural defect, by adding reasons in the

course of the proceedings, is not absolute. The ECJ clarifies that such a possibility is limited to 'exceptional cases', where it is established that at least the principal reasons that gave rise to adoption of the administrative decision having an adverse effect have been communicated in a clear and unequivocal fashion to its addressee.

In the case at hand, the SRB had not taken a position on the level of the appellant's merits and did not expressly specify the individual result of the comparative examination of the merits of all the eligible members of the temporary staff in succession. The GC in its first instance judgment had argued that the appellant "could have inferred" from the Joint Committee's opinion that it was the inadequacy of his merits which could have been the reason why he was not reclassified, with the result that the information provided by the SRB in the course of the proceedings made it possible to supplement the reasons for the rejection decision and to provide an adequate statement of reasons for the decision at issue not to reclassify. Now, the ECJ refuses this argumentation of the GC on the basis of the three following grounds:

(1) The **requirement to state reasons must make clear and unequivocal the reasoning** of the EU institution or body concerned which is the author of the act, so as to enable the persons affected to know the reasons for the measure taken and the competent court to exercise its review, and be assessed in the light of all the circumstances of the case, in particular the **content** of the act, the **nature** of the grounds relied on and the **interest** which the addressees of the act or other persons directly and individually concerned by it may have in receiving explanations. The ECJ distinguishes two different situations, namely whether a statement of reasons of a decision may be considered either **absent** or be considered **inadequate**. In the absence of a statement of reasons for the contested decision, the institution or body which adopted it cannot remedy such a defect by producing that statement of reasons before the EU Courts, whereas a decision vitiated by a defect resulting from an inadequate statement of reasons may possibly be rectified a posteriori, but only if exceptional circumstances justify it. Additionally, the absence of a statement of reasons may be found even where the decision in question contains certain elements of reasoning. Thus, a contradictory or unintelligible statement of reasons amounts to a failure to state reasons. The same applies where the statement of reasons in the decision in question is so incomplete that it does not in any way enable the addressee, in the context of its adoption, to understand its author's reasoning. In the present case, neither the decision at issue not to reclassify nor the rejection decision contained an individual ground justifying the non-reclassification of the appellant.

(2) The ECJ adds that even if the Joint Committee's opinion did constitute the initial elements of a statement of reasons for the decision at issue not to reclassify, the **institutions do not, in principle, have a right to remedy their insufficiently reasoned decisions** before the EU Courts and that the courts are under no obligation, in order to assess whether the obligation to state reasons has been satisfied, to take into account additional explanations provided by the institution or body in question during the proceedings. Only in 'exceptional cases', such as those which characterise the circumstances connected with the organisation of a competition with a large number of candidates, in which the EU institution in question is unable, from a practical point of view, to provide each candidate with an adequate statement of reasons in good time, that the statement of reasons may be supplemented by explanations provided by the author of the act during the proceedings. The GC did not verify whether the SRB could rely on the existence of such exceptional circumstances.

(3) Thirdly, the ECJ holds that the GC failed to ascertain whether its decision to accept, exceptionally, that the SRB could supplement the statement of reasons for that decision in the course of the proceedings was likely to **infringe the appellant's rights of defence** and, in particular, to infringe the **principle of equality of arms**. The ECJ justifies this in the following way: even where the EU Courts find that there is an 'exceptional case' in which they may authorise the institution to supplement the statement of reasons for the act having an adverse effect, such authorisation is not automatic in nature. In view of the imbalance between the parties which late communication of the grounds for that act is liable to create, the EU Courts must still ascertain whether the decision to authorise the production of an additional statement of reasons is **not liable to infringe the rights of the defence**. In that regard, it is incumbent on the Court to take into account the stage of the procedure at which the explanations were provided by the EU institution and to ensure that the person concerned was actually able to respond to them. In the present case, by deciding that the SRB should be authorised to supplement the statement of reasons for the decision at issue not to reclassify essentially on the ground that the appellant had been able to infer from a preparatory document for that decision what could be the cause of his failure to be reclassified, the GC did not comply with those principles and, in particular, did not ensure that the appellant's rights of defence were not infringed.

Concluding, the ECJ decides that the GC erred in law when holding that an additional statement of reasons could be provided by the SRB in the course of the proceedings. The decision not to reclassify the appellant was thus vitiated by an inadequate statement of reasons and had to be annulled.

In addition, the ECJ declares that the GC erred in law when it had rejected as inadmissible the appellant's plea alleging an error of assessment of his merits by the SRB. The GC infringed the **principle of correspondence** between the administrative complaint and the action, in so far as it rejected as inadmissible his plea alleging an error of assessment of his merits by the SRB. The principle of correspondence warrants that the appointing authority is in a position to know with sufficient precision the criticisms formulated by the persons concerned with regard to the decision adversely affecting him or her. However, the administration must not interpret complaints in a restrictive manner, but must, on the contrary, examine them **with an open mind**. It follows that, in actions brought by officials, although the relief sought in the application to the EU Courts must be the same as that set out in the complaint and although the application may only contain heads of claim based on the same legal basis as that relied on in the complaint, those heads of claim may, in the contentious stage of the procedure, be developed by the submission of pleas and arguments not necessarily appearing in the complaint, **as long as they are closely linked to it**. In the present case, the ECJ holds that the plea alleging an error in the assessment of the appellant's merits must be regarded as being sufficiently closely linked to the complaint which he had lodged in the pre-litigation procedure.

Finally, the ECJ states on the infringement of the appellant's rights of defence in the context of the statement of reasons. Such an infringement may be found where the additional reasons provided by the administration have **the effect of altering the very essence of the act** having an adverse effect, thus obliging its addressee to adapt its line of argument in a substantial manner in order to respond adequately to the new arguments.

Comments:

1. This Case PB v SRB, generally speaking, broaches the issue of both litigation parties' (staff member and institution) obligations to provide substance to their respective arguments before the matter reaches the EU Courts: on the side of the institution this obligation is called "statement of reasons", on the side of the staff members it is addressed as the "principle (or rule) of correspondence". Both are connected – as this Case shows - by the concepts of the "rights of defence" and the "equality of arms" between staff and institution.[1]

2. The ECJ has curbed a potentially dangerous development which is visible in the approach of the GC in its first instance decisionthe GC **(1)** wanted to allow for the possibility of a later amendment of the statement of reasons by the institutions and **(2)** wanted to preclude an argument of the applicant by way of the principle of correspondence. Such a legal opinion could have incentivised an administration to spare setting out the reasons for its decision-making at an early stage, knowing that the arguments can still be presented later at the Court. This line of jurisprudence would have increased both the workload for the Courts and the risks for the applicants.

On the institutions' obligation to state reasons.

3. Art. 25(2) sent. 2 Staff Regulations (SR), Art. 41(2) c of the Fundamental Rights Charter and Art. 296 TFEU are the legal bases obliging the administration to formally include a reasoning for any decision adversely affecting staff members. The examination of the existence and the scope of the reasons forms part of the review of essential procedural requirements and of the formal legality of the respective decision.

4. The level of judicial scrutiny of the obligation to motivate a decision is the corollary of the absence of judicial control over matters of wide discretion, such as here the comparative assessment of preconditions for reclassification, for promotion, in medical assessments and many other types of decisions. An administration dispensing with sufficient reasons to motivate its decision calls into question the system of separation of functions and the institutional balance between the administration and the judge, as the reasoning is also meant to avoid the dispute being brought before the court. The ECJ repeatedly refers to its decision in Case Di Bernardo (**see our Staff Matters newsletter No. 16**) which related to the annulment of a decision of the selection board in an open competition. There is good reason to assume that the general line of jurisprudence developed by the ECJ case-law in PB v SRB and Di Bernardo is going to be applied in all fields where the administration avails itself of a wide discretion in its decision-making, thus also in many other areas, apart from the concrete case of reclassification.

5. What are the criteria for a sound statement of reasons? In principle, the reasoning has to be provided together with the decision itself. A statement of reasons must be appropriate to the

1 On details, see Mader, EU Civil Service Law (2024), pages 64 ff and 90 ff

measure and must disclose clearly and unequivocally the reasoning followed by the institution which adopted that measure in such a way as to enable the persons concerned to ascertain the reasons for it and to enable the competent court to review its legality. Thus, the level of detail of a statement of reasons depends on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations.

6. The main differentiation in this Case PB v SRB is where the ECJ distinguishes whether a statement of reasons may be either **absent or inadequate**. In the absence of a statement of reasons for the contested decision, the institution cannot remedy the defect by producing that statement of reasons before the EU Courts (but it can be given or amended in the decision rejecting the complaint). If the decision is vitiated by a defect resulting from an inadequate statement of reasons it may only be rectified if exceptional circumstances justify it.

7. A contradictory or unintelligible statement of reasons amounts to a failure to state reasons.

8. The 'exceptional cases' (where a summary statement of reasons is considered to be sufficient) cover situations in which the institution is not in a position, from a practical point of view, to provide each person concerned with an adequate statement of reasons in good time, such as large scale competitions. Nevertheless, also in these situations, the institutors must respect the persons' rights of the defence and ensure the equality of arms. The addressees must have a chance to know the explanations provided by the institution and must actually have been able to respond to them.

9. It is important to retain from this judgment that the protection of the rights of the defence (and here specifically the principle of "equality of arms") comes into play where the institutions complement their decisions by ex post altering their content and/or amend the reasoning provided for the acts adopted. In line with this present judgment in Case PB v SRB such measures of institutions would **(1)** only be legal where the institution is – exceptionally - not in a position, from a practical point of view, to provide each person concerned with an adequate statement of reasons in good time. Where, **(2)** on the other hand, the additional reasons were be provided later by the administration they must never alter the very essence of the act. Otherwise, its addressee would be obliged to adapt its line of argument in a substantial manner in order to respond adequately to the new arguments, which amounts for the staff member to follow a "moving target". This reading of the ECJ judgment in Case PB v SRB would be a big step forward in terms of judicial protection of staff.

On the principle of correspondence

10. The principle (or rule) of correspondence means that the content of a staff member's complaint determines the subject matter of the subsequent dispute at court. Its purpose is the appointing authority is in a position to know with sufficient precision the criticisms formulated by the persons concerned with regard to the decision adversely affecting him or her, and allows the administration to double-check its decision-making and therefore end a dispute before it reaches court. In this sense it is useful to clearly carve out the controversial subject matter already within the complaint. The present ECJ judgment clarifies on this that the administration must not interpret complaints in a restrictive manner, but must, on the contrary, "examine them **with an open mind**". The application may only contain heads of claim based on the same legal basis and same subject matter as that relied on in the complaint, but those heads of claim may later, in the contentious stage of the procedure, be developed by the submission of pleas and arguments not necessarily appearing in the complaint, "**as long as they are closely linked to it**". This is of special importance for any applicant, particularly for those who prepare their complaints without the assistance of a lawyer. Although, this widening of actions' admissibility by the ECJ is welcome, it is advised to consult a lawyer before lodging the complaint, in order to improve the overall chances of success, and to have more legal certainty about the outcome at an early stage.

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