

## Decision of the European Ombudsman closing the inquiry into complaint 1576/2011/ANA against the European External Action Service (EEAS)

Decision

**Case** 1576/2011/ANA - **Opened on** 12/09/2011 - **Recommendation on** 29/08/2013 -

**Decision on** 14/04/2014 - **Institution concerned** European External Action Service ( Draft recommendation accepted by the institution ) |

### The background to the complaint

1. The complaint concerns the handling, by the Commission and, following its establishment, the EEAS, of the 2009 appraisal and promotion procedure vis-à-vis the complainant.
2. On 9 June 2009, the appraisal and promotion procedure covering the period 1 January to 31 December 2008 was concluded and the complainant was awarded performance level II [1] and 5 promotion points [2] .
3. In his internal appeal of 16 June 2009, the complainant argued that the statements in his 2008 appraisal report correspond to performance level IB. Following the submission of the opinion of the Joint Appraisal and Promotion Committee ('JAPC'), the internal appeal process was concluded and the complainant's report was confirmed. However, the number of promotion points awarded to the complainant was raised to 6.
4. On 5 February 2010, the complainant lodged a complaint under Article 90(2) of the Staff Regulations ('SR') against his appraisal report.
5. In its decision of 10 May 2010 on the complainant's Article 90(2) complaint ('the 10 May 2010 decision'), the Commission informed the complainant that his complaint had been upheld and that his evaluation and promotion file would be returned to the competent service for review. By letter of the same day, the Commission forwarded the decision on the complainant's Article 90(2) complaint to the competent service noting the incoherence between the qualitative assessment and the performance level in his appraisal report.
6. In response to his inquiries, on 3 May 2011, the EEAS informed the complainant that his revised appraisal report for 2008 had been available on Sysper2 [3] since 6 April 2011.



7. On 8 July 2011, the EEAS reminded the complainant that he should either accept and sign the report or refuse it and lodge an appeal. In his reply, the complainant explained that the report available on Sysper2 still indicated performance level II and 6 promotion points. In its response of the same day, the EEAS confirmed the performance level and promotion points and explained that it was the qualitative assessment that had been changed in order to achieve coherence.

8. On 27 July 2011, the complainant lodged the present complaint with the European Ombudsman.

## **The subject matter of the inquiry**

9. The Ombudsman opened an inquiry into the following allegation and claim.

### **Allegation:**

The EEAS carried out the review of the complainant's 2008 appraisal report in a manner that is inconsistent with the applicable rules and with the principles of good administration.

### **Claim:**

The EEAS should carry out a review of the complainant's 2008 appraisal report, maintain the original qualitative part of his report and, in order to achieve coherence between the qualitative part of the report and the performance level and promotion points, amend the performance level and promotion points.

## **The inquiry**

10. On 12 September 2011, the Ombudsman asked the EEAS for an opinion on the complainant's allegation and claim. On 13 January 2012, the Ombudsman received the EEAS's opinion on the complaint. Following a preliminary examination of the EEAS's opinion by the Ombudsman's services, on 30 January 2012, the Ombudsman decided to carry out further inquiries and ask the EEAS to provide him with a supplementary opinion in which the EEAS was invited to address the substance of the complainant's allegation, including his supporting arguments, as well as his claim. On 2 April 2012, the EEAS sent its supplementary opinion on the complaint. Both the opinion and the supplementary opinion were forwarded to the complainant for observations. On 29 May 2012, the complainant submitted his observations.

11. On 29 August 2013, the Ombudsman addressed a draft recommendation to the EEAS. On 10 December 2013, the EEAS sent its detailed opinion on the Ombudsman's draft



recommendation. On 16 December 2013, the complainant submitted his observations on the EEAS's detailed opinion.

## The Ombudsman's analysis and conclusions

### A. Allegation that the EEAS carried out the review of the complainant's 2008 appraisal report in a manner that is inconsistent with the applicable rules and with the principles of good administration and related claim

#### Arguments presented to the Ombudsman

12. In support of his allegation, the complainant submitted the following arguments: (a) the EEAS infringed the rules governing the appraisal and promotion procedure [4] ; (b) the EEAS failed to respect the principles of fairness and objectivity; (c) the EEAS acted contrary to the logic of the appraisal and promotion system; (d) the EEAS undermined the complaint procedure under Article 90(2) SR.

13. Regarding point (a), the complainant argued that the GIP 43 decision establishes a sequence of actions. In that sequence, the qualitative assessment part of his appraisal report precedes the attribution of the performance level and the award of promotion points. In retroactively re-engineering the qualitative assessment so as to achieve coherence with the performance level and promotion points, the EEAS committed a manifest illegality.

14. Regarding point (b), the complainant argued that the qualitative part of his appraisal report constituted a true, fair and objective assessment of his actual performance. It was drafted by the reporting and countersigning officers and accepted by the complainant. The EEAS changed the evaluation of his performance, as regards efficiency, from "[a] s a result, [the complainant] has more than delivered on his 2008 objectives " to "[a] s a result, [the complainant] has delivered on his 2008 objectives " and from "[o] n managing his team, he has exceeded targets " to "[o] n managing his team he has met his targets ". As regards abilities, the assessment of his performance was changed from "[the complainant] is an exceptional official ..." to "[the complainant] is a very strong and capable official ..." and as regards conduct in the service from "[h] e is committed to his work and the institution - delivering above and beyond the normal call of duty for an official " to "[h] e is committed to his work and the institution ". The complainant argued that these changes have the effect that the 2008 appraisal report no longer reflects a fair and objective appraisal of his performance.

15. Regarding point (c), the complaint took the view that the emphasis of the procedure is on a merit-based promotion system. He argued that the merit of an official is established in the qualitative part of the appraisal report. By changing that part of the appraisal report in order to render it coherent with a predetermined performance level and promotion points, the EEAS



undermines the very objective of a merit-based appraisal and promotion system.

**16.** Regarding point (d), the complainant argued that Article 90(2) SR is the only means provided by the SR for an official to contest a decision which affects his statutory rights. In the circumstances, the complainant submitted a complaint in order to try to rectify a decision which he considered prejudicial to his interests. The Appointing Authority's ('AA') decision to uphold his complaint thus meant that it agreed with his reasoned argument that there was inconsistency between the qualitative part of his appraisal report and the performance level and promotion points awarded and that the only way of rectifying this was to award him a higher performance level and more promotion points. The result of the review which led to giving the complainant a less favourable qualitative assessment while maintaining the performance level and promotion points punished the complainant instead of providing him with redress. Consequently, by implementing the AA's decision in this manner, the EEAS undermined and prejudiced the very intent and purpose of the complaints procedure under Article 90(2) SR.

**17.** In its opinion, the EEAS stated that, on 6 April 2011, a new appraisal report was drawn up in accordance with the 10 May 2010 decision. However, on 19 July 2011, the complainant lodged another appeal against that report in accordance with the internal rules. The EEAS pointed out that dealing with an appeal once the appraisal and promotion exercise for that period had been concluded presented significant problems. The EEAS stated that, once the Commission's Directorate-General for Human Resources ('DG HR') had a method in place to take into account all the IT, procedural and legal aspects, it would implement the AA's decision. The EEAS observed that DG HR hoped to have a method approved by all the departments concerned early the following year, and only afterwards would the EEAS be able to take the necessary decisions regarding the complainant.

**18.** In the further inquiries, the Ombudsman noted that the EEAS basically argued that it was not in a position to proceed with the complainant's 2008 appraisal report due to technical and procedural problems. However, the EEAS did not show why the said problems should prevent it from completing a review on the basis of the 10 May 2010 decision. On this basis, the Ombudsman asked the EEAS to address the substance of the complaint.

**19.** In response, the EEAS argued in its supplementary opinion that, while the Head of Delegation wrote the qualitative part of the complainant's appraisal report, it was the responsibility of the countersigning officer to proceed to the comparison of merits of staff members in the same grade and to confirm, complement or possibly modify the qualitative appraisal. The EEAS noted that the complainant's report as reviewed reaches a better level of coherence between the qualitative appraisal and the performance level granted. This was reconfirmed by the countersigning officer.

**20.** The EEAS pointed out that the complainant's report acknowledges his competences and aptitudes. It argued, however, that the performance level he obtained was the result of a comparison of the merits of the officials in the same grade (AD 12) within the EEAS, a grade that comprises a significant number of officials holding management posts, which makes the comparison of merits even more competitive.



**21.** The EEAS noted that the complainant's second appeal, which was lodged on 19 July 2011, would be examined by the JAPC as soon as the technical and procedural problems were resolved. The EEAS confirmed that the technical and procedural problems created by the fact that an appeal with regard to a newly drawn up report had to be dealt with by the JAPC, when the appraisal and promotion exercise for that period had been concluded, made it impossible to deal with the complainant's appeal rapidly. The EEAS underlined that all officials in the complainant's situation were treated in the same way.

**22.** As regards the delay in the implementation of the AA's decision, the EEAS pointed out that DG HR had informed the complainant via direct e-mail exchanges of the technical problems involved to make sure he understood the causes of the delay. This also concerned the (partial) annulment of his report, which implied the annulment of the promotion points. However, it was impossible to delete the obsolete points in the promotion file in Sysper2 because they contained multiple links to other information contained in the database, such as the promotion lists and the results of quotas and calculations concerning the entire staff.

**23.** In his observations, the complainant argued that both the EEAS's opinion and the supplementary opinion were disappointing in that they addressed his arguments in a cursory and dismissive manner. The complainant also expressed his dissatisfaction with the fact that the EEAS's submissions focused on the procedural and technical problems related to Sysper2.

**24.** The complainant outlined the arguments he put forward in his complaint to the Ombudsman and observed that the EEAS had only very partially addressed points (a) and (b) of his complaint, while points (c) and (d) remained completely unanswered. Instead, the EEAS made an unconvincing attempt to hide behind supposed "*technical and procedural*" problems.

**25.** In general terms, the complainant argued that the EEAS's submissions were contradictory, misleading and even false.

**26.** In particular, the complainant argued that the EEAS's submissions were misleading and confirmed his arguments that the retroactive revision of the qualitative appraisal in his appraisal report, that is, changing the established facts, was illegal. In this regard, the complainant disputed the EEAS's contention that the AA's decision gave it the right to revise his qualitative appraisal to reach a "*better level of coherence between the qualitative appraisal and the performance level granted*". On the contrary, the AA's decision upheld his Article 90(2) complaint based on the argument that he should have been awarded a higher performance level and more promotion points that are consistent with his performance as expressed in his qualitative report.

**27.** Furthermore, the complainant contested the EEAS's interpretation of how the AA's decision should be implemented and argued that his qualitative assessment was confirmed by the two countersigning officers, the JAPC and the appeal assessor. Any incoherence between his original qualitative assessment and the performance level and promotion points awarded should have been corrected then; the qualitative assessment could not be revised afterwards.



**28.** Moreover, the complainant argued that the re-appraisal exercise must follow the procedure laid down in the GIP 43 decision, which means that the EEAS cannot first determine a level of performance and then draft a qualitative assessment that is "*coherent*". By retroactively changing the qualitative assessment in his appraisal report to conform to a pre-determined performance level, the EEAS acted in breach of the appraisal procedures set out in the GIP 43 decision.

**29.** In addition, the complainant argued that, in the original appraisal exercise, the JAPC awarded him an additional promotion point, which was confirmed by the appeal assessor. This confirms that there was incoherence between the qualitative assessment in his appraisal report and the promotion points awarded by the countersigning officer. The JAPC and the appeal assessor corrected the inconsistency by awarding him more promotion points, not by revising his qualitative assessment.

**30.** The complainant underlined that he made an Article 90(2) complaint to try to obtain redress in a case where he believed that his rights had been prejudiced, not to be placed in a worse position. In this respect, the complainant argued that he cannot be placed in a worse position as a consequence of the AA's decision in his favour. On the contrary, the AA's decision had given rise to a legitimate expectation that he would be placed in a better position. If the EEAS's implementation of the AA's decision were to be allowed to stand, this would mean that the qualitative assessment in his appraisal report would be much less favourable in terms of his actual performance. He would also risk being awarded fewer promotion points than were originally assigned. This can under no circumstances be seen as a fair outcome of a complaints process as a consequence of which his appeal was upheld.

**31.** As regards the EEAS's arguments concerning the technical problems to which the EEAS attributed the considerable delays, the complainant noted that, in general terms, Sysper2 is nothing but an administrative IT system that cannot in itself give rise to new rights, obligations and procedures with legal effect or in any way impinge on existing legally established rights, obligations and procedures.

**32.** Furthermore, the complainant argued that the delay of over two years in dealing with the AA's decision in a legally correct and conclusive manner is completely unjustified. Despite the EEAS's assurances that his "*inherent rights*" at the time would be maintained, the delays and the way his re-appraisal was handled had already prejudiced his rights, for example in terms of legitimate expectations and due process, under the appraisal and promotion system and the complaints procedure envisaged by Article 90(2) SR.

**33.** Lastly, the complainant pointed out that his claim could be settled on the basis of Article 8(6), paragraph 4 of the GIP 43 decision [5] which offers a solution that would respect both the AA's decision and the legal basis for the re-appraisal exercise.

## **The Ombudsman's assessment leading to a draft**



## recommendation

**34.** In order to examine whether the EEAS's review of the complainant's 2008 appraisal report is in line with the applicable rules and the principles of good administration, the Ombudsman first defined the framework of the analysis.

**35.** Article 43 of the Staff Regulations provides that "*the ability, efficiency and conduct in the service of each official shall be the subject of a periodical report*". This provision requires the EU institutions to carry out a regular appraisal of the ability, efficiency and conduct of officials and draw up a report. These reports serve manifold objectives including the promotion (Article 45 of the Staff Regulations) or demotion (Article 51 of the Staff Regulations) of officials.

**36.** In its case-law, the Court has held that "*... every official has a right to have his work recognised by means of an appraisal carried out in a just and equitable manner*" [6] .

**37.** It is inherent in the transparency and accountability of the appraisal procedure and the legal repercussions that this has for EU officials that the qualitative value judgements made by the assessors in the above procedure find expression in analytical assessments, including numerical indicators. As the Court has held, there must be coherence between the qualitative assessment and the numerical indicators in the form of points [7] . In the drawing up of an appraisal report, the purpose of the descriptive comments in the report is to justify the assessments expressed as points. Those comments serve as the basis for establishing the appraisal, which constitutes a quantified transcription of those comments, and enable the official to understand the marking awarded. Consequently, in such a report, the comments must be consistent with the marks awarded to such an extent that the marking must be regarded as a quantified or analytical transcription of the comments [8] .

**38.** On this basis, the Ombudsman took the view that the EEAS was right to focus, in accordance with both the Court's case-law and the AA's instructions, on ensuring coherence between the qualitative assessment and the promotion points awarded to the complainant. What remained to be answered was whether achieving coherence should have taken place by virtue of a revision of the qualitative assessment of the report or by adjusting the performance level and the promotion points awarded.

**39.** As a preliminary consideration in addressing this question, the Ombudsman noted that, as the Court has consistently held, periodic reports contain assessments which cannot be reviewed by the Court save in order to identify irregularities of form, manifest factual error or misuse by the persons involved in the drawing up of the reports of their power of appraisal [9] . The Ombudsman considered that the Ombudsman's review should follow the same approach when dealing with complaints concerning the award of promotion points.

**40.** As regards the substance, the Ombudsman acknowledged that Article 7(6) of the GIP 43 decision gives the countersigning officer the task to verify whether the appraisal standards have been applied consistently, to compare merits and to confirm, complete or modify the individual qualitative appraisal. In principle, therefore, the countersigning officer may not only raise the





qualitative assessment of the official's appraisal but may also lower it. However, the Ombudsman considered that this can only happen before the performance level is awarded. This is because both Articles 6 and 7(7) of the GIP 43 decision require that the award of the performance level to an official be made " *on the basis of the individual qualitative appraisal* " [10] . Hence, in the present case, the lowering of the complainant's qualitative assessment was not envisaged by the GIP 43 decision. In addition, should there be any doubt about the correct interpretation of the GIP 43 decision, the Ombudsman took the view that the case-law of the Court cited above should be interpreted to mean that an official's qualitative assessment temporally and logically precedes the award of performance level and promotion points (numerical indicators) and that the latter must correspond to that qualitative assessment in the official's report.

**41.** Moreover, regarding the complainant's argument in his Article 90(2) complaint that a higher performance level (IB) corresponded to his performance, the Ombudsman considered that, taking into account the tenor and spirit of the AA's decision upholding the complaint, that decision should be understood as implying an improvement of the complainant's position. On the basis of the evidence on file, the Ombudsman agreed with the complainant that the lowering of the qualitative assessment part of his 2008 appraisal report also went against the spirit of the 10 May 2010 decision.

**42.** The Ombudsman was not convinced that technical considerations relating to Sysper2 could have been invoked to deny the complainant the correct and timely implementation of the AA's decision. In this regard, the complainant was right to point out that Sysper2 is simply an IT tool and that the rights and obligations of officials are laid down in the SR and the implementing provisions and, in the present case, the GIP 43 decision.

**43.** The Ombudsman therefore noted with concern the EEAS's statement that obsolete promotion points may not be removed from the system following an appeal after the appraisal procedure had been finalised. This statement appeared to imply that the reason for the EEAS changing the complainant's qualitative assessment rather than the promotion points was that the latter could no longer be changed on Sysper2. That statement undermined rather than supported the EEAS's position.

**44.** Moreover, the Ombudsman found that the defence put forward by the EEAS that, while Sysper2 makes it impossible to handle appeals after the appraisal had been finalised, all officials in the same position had been treated equally was far from convincing. On the contrary, this showed that the EEAS may be faced with entrenched problems in handling appeals against staff reports and excessive delays that are of a general character.

**45.** In light of these considerations, the Ombudsman found that the EEAS should have conformed to the AA's decision requesting it to ensure coherence between the complainant's qualitative assessment and the performance level and promotion points awarded, by revising the performance level and promotion points in the complainant's 2008 appraisal report. By failing to do this, the EEAS committed an instance of maladministration.





46. The Ombudsman acknowledged that the promotion exercise is based on a comparative assessment of merits in a very competitive context and grade level. However, having regard to Article 8(6), paragraph 4 of the GIP 43 decision, the Ombudsman agreed with the complainant that these considerations should not set an obstacle to the EEAS in assuring coherence between the qualitative assessment in the complainant's original report and the awarded performance level and promotion points by amending the latter. Therefore, the Ombudsman found that the complainant's original qualitative assessment should be reinstated in line with his claim.

47. In light of the above considerations and in the circumstances of the case, the Ombudsman made the following draft recommendation to the EEAS:

*" The EEAS should ensure that, if as a result of a complaint under Article 90(2) of the Staff Regulations, the Appointing Authority instructs it to ensure the coherence between the qualitative assessment of an official and the performance level and promotion points awarded, it implements that decision by revising the performance level and promotion points.*

*In the present case, the EEAS should reinstate the original qualitative assessment in the complainant's 2008 appraisal report and revise the performance level and promotion points accordingly. "*

## **The arguments presented to the Ombudsman after the draft recommendation**

48. In its detailed opinion, the EEAS reiterated its position about the delay in dealing with the complainant's appraisal report.

49. The EEAS then explained that, taking into account the Ombudsman's draft recommendation, the countersigning officer reinstated the original comments, that is, the qualitative assessment in the complainant's 2008 appraisal report. To ensure consistency, an improved performance level IB was awarded to the complainant. The EEAS stated that performance level IB indicates that the holder has frequently exceeded the expected level of performance.

50. The EEAS also informed the Ombudsman that the complainant had introduced a further appeal against the modified appraisal report which was ongoing. It added that once the JAPC adopts its opinion, it will be transmitted to the appeal assessor and the latter will take his decision and finalise the report.

51. In his observations, the complainant expressed his satisfaction at the fact that, after the Ombudsman's draft recommendation, his original appraisal report had been fully reinstated.

52. The complainant added, however, that he remained unconvinced that the EEAS will address the underlying problems of sound and professional management in dealing with



appeals against staff reports in a legally correct and timely manner. In this context, he raised three specific issues.

**53.** Firstly, the complainant (a) expressed doubt as to whether his 2008 report would be finalised soon, as the EEAS stated in its detailed opinion. Because of the long delays in the appraisal process thus far, the complainant suggested that it might be appropriate for the Ombudsman to call on the EEAS to finalise the re-appraisal procedure without any further delays and in any event before the end of the first quarter of 2014.

**54.** Secondly, the complainant (b) argued that the delays in dealing with the reappraisal of his 2008 report have significantly prejudiced his rights under the appraisal and promotion system. He argued that, although he was promoted to grade AD13 as from 1 January 2013, had the re-appraisal of his appeals been carried out within a reasonable timeframe and resulted in the outcome envisaged by the AA's 10 May 2010 decision, it would not be unreasonable to assume that he would have received his promotion at least one year earlier. He would thus, for example, have been able to benefit from the rules governing the transition from the previous to the current promotion system.

**55.** Thirdly, the complainant (c) clarified that he requested to be awarded at least performance level IB and contested the EEAS's statement that the award of performance level IB is a "*significant improvement to the previous level*", arguing that this depended on the number of promotion points that he would be awarded. Should he be awarded only 7 promotion points, this could hardly be seen as a "*substantial improvement*" compared to the 6 points originally awarded.

## **The Ombudsman's assessment after the draft recommendation**

**56.** The Ombudsman notes that the thrust of the complainant's grievance and the corresponding draft recommendation was that, in order for the EEAS to achieve coherence between the qualitative assessment and the performance level and promotion points to be awarded to the complainant, it should revise the performance level and promotion points and not the qualitative assessment. In its detailed opinion, the EEAS explained that it had reinstated the original qualitative assessment and favourably revised the complainant's performance level. The complainant confirmed that this has happened. The Ombudsman therefore finds that the EEAS has accepted the draft recommendation and taken adequate action to implement it. She welcomes the EEAS's positive and constructive response.

**57.** It is true that, as the complainant pointed out, the EEAS does not yet appear to have decided on the number of promotion points to be awarded to the complainant. However, the EEAS convincingly explained that, because of the complainant's appeal against the modified appraisal report, this report could not yet be finalised and that, as a consequence, the decision on the promotion points could not yet be taken. As regards point (a) raised by the complainant, the Ombudsman notes that there are no indications that the EEAS is delaying the finalisation of the report.



58. As regards points (b) and (c) raised by the complainant in his observations, it should be noted that they go beyond the scope of the complaint submitted to the Ombudsman and, consequently, the scope of the draft recommendation that the latter addressed to the EEAS. If the complainant wishes to pursue these issues further, he must first raise them with the EEAS.

59. On the basis of the above considerations, the Ombudsman closes the case.

## B. Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion:

**The EEAS has accepted the Ombudsman's draft recommendation and taken adequate action to implement it.**

The complainant and the EEAS will be informed of this decision.

Emily O'Reilly

Done in Strasbourg on 14 April 2014

[1] Article 6 of the Commission Decision of 18 June 2008 on general provisions for implementing Article 43 of the Staff Regulations (hereinafter, 'the GIP 43 decision') envisages five performance levels corresponding to the individual qualitative appraisal of Commission officials. These are: Performance level IA - the performance of the jobholder consistently exceeded expectations with regard to efficiency, ability and conduct in the service; Performance level IB - the performance of the jobholder frequently exceeded expectations with regard to efficiency, ability and conduct in the service; Performance level II - the performance of the jobholder fully met expectations with regard to efficiency, ability and conduct in the service; Performance level III - the performance of the jobholder partly met expectations with regard to efficiency, ability and conduct in the service; Performance level IV - the performance of the jobholder did not meet any expectations with regard to efficiency, ability and conduct in the service.

[2] The promotion points awarded may range from 0 (minimum) to 12 (maximum).

[3] Sysper2 is the European Commission's IT tool dedicated to human resources management.

[4] The GIP 43 decision, the Commission Decision of 19 December 2008 on the rules for the appraisal and promotion of staff working in the External Service of the Commission, and Commission Administrative Notice No 1-2009 of 7 January 2009.



[5] " *Where the appeal assessor decides to amend the report and the amendment affects the performance level, his decision is exempt from the respect of the maximum percentages referred to in Article 6(3)* ".

[6] Case C-198/07 *P Gordon v Commission* [2008] ECR I-10701, ECR-SC I-B-2-25 and II-B-2-193, paragraph 45.

[7] Case T-173/04 *Carius v Commission* [2006] ECR-SC I-A-2-243 and II-A-2-1269, paragraph 106. See also Case T-157/04 *De Bry v Commission* [2005] ECR-SC I-A-199 and II-901, paragraph 67.

[8] Case F-43/06 *Talvela v Commission* [2007] ECR-SC I-A-1-249 and II-A-1-1375, paragraph 92; Case F-28/06 *Wandschneider v Commission* [2007] ECR-SC I-A-1-431 and II-A-1-2443, paragraph 109. As explained in footnotes 1 and 2 above, Article 6(1) of the Commission's GIP 43 decision recognises five performance levels. These performance levels also correspond to the award of points used for the promotion exercise within the Commission.

[9] Case 207/81 *Ditterich v Commission* [1983] ECR 1359, paragraph 13.

[10] There is a similar provision in Article 4(3) and (4) of the Commission Decision of 19 December 2008 on the rules for the appraisal and promotion of staff working in the External Service of the Commission.