

# Internal & External Competitions: What (legal) action to take?

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# What is on the agenda

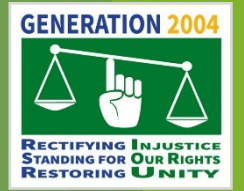


1. Internal Competitions
2. External Competitions
3. Potential actions to take



# INTERNAL COMPETITIONS

# Internal Competitions I

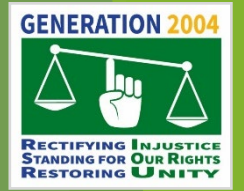


## ✓ The New HR Strategy

- **Commitment to regularly publish internal competitions**
- **Equal opportunities BUT not for all staff**
  - People first in a modern administration
  - Systematic exclusion/limitation of certain staff categories
    - **Limitation to CAs**
      - ✓ No internal competition for FG I
      - ✓ CA FG II – only to AST-SC 1 and 2
      - ✓ CA FG III – AST 1 and 2
      - ✓ CA FG IV – AST 1-4 and AD 5-6

Contract staff in functional groups II, III and IV can apply in internal competitions only after having completed 3 years of service in the institution: 1 chance in a life time contract

# Internal Competitions II



- **AST-SCs**
  - ✓ only AST-SC2
  - ✓ possibility to change to AST profile => announced recently
  - ✓ no certification for AST-SCs
- **ASTs**
  - ✓ only AST2 & AST4
  - ✓ from AST5 and higher no competitions, only certification (permanent staff, not for TAs)
  - ✓ systemic exclusion from AD competitions
    - No provision in SR preventing ASTs applying for AD posts (artificial restriction by the EC => other institutions allow it EP, ECJ)

# Internal Competitions III

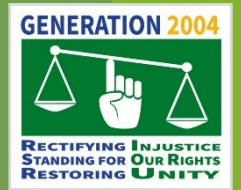
## ✓ Planning

- **DG HR does not inform in time**
- **Delay**
  - AD5 competition published in Q4 instead of Q2 => DDL 27.11.
  - Planning => permanent staff eligible => who? ASTs, AST-SCs
  - Announcement => only TAs AD
- **Still to be published in 2023**
  - AST4 (November/December 2023?)
  - AST-SC=>AST (December 2023?)
  - No info on AD8, AD10, AD12
- **Will the planning of 2024 be impacted?**
  - We are sending a note to clarify with DG HR & improve planning
  - People cannot plan & prepare
  - No concrete bibliography

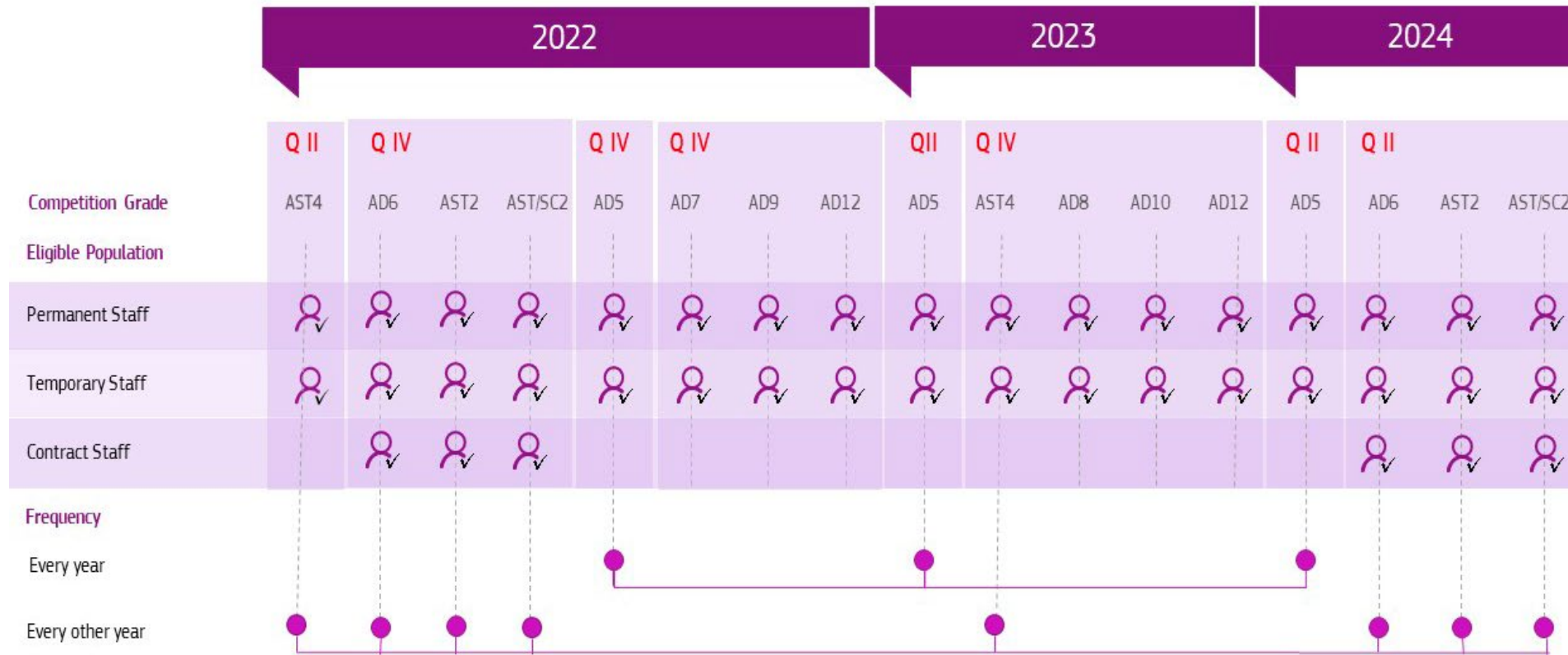


# Internal Competitions III

## ✓ Indicative Planning



2022 Cycle of Internal Competitions  
2024 Frequent and inclusive career opportunities



# Internal Competitions V

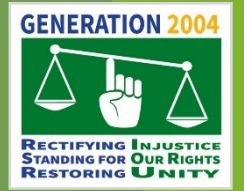


## ✓ Received complaints for 2022 cycle

- **Technical issues**
- **Phrasing/language** of some of the answers
  - Poor drafting & typos
- **Scope of the questions**
  - “EU knowledge” is very broad
  - closed list of topics/policy areas for future competitions - e.g. travelling by bus and coach directive, specific articles of the staff regulations etc.
- ❖ **Caused huge delays and dissatisfaction among staff**



# Internal Competitions IV



## ✓ Reform of certification

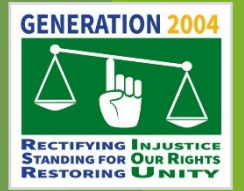
- Reducing costs, resources & time

## ✓ Our actions:

- **Meeting with Mr Mueller (Head of CAB Hahn) January 2023**
  - AD competitions for ASTs & AST-SCs + certification (also TAs)
  - Reform certification since there is a direction of external competitions
  - Yearly competitions for CAs (including those without any competitions)
- **Meeting with the Commissioner (possible common actions with the other TUs)**

# EXTERNAL COMPETITIONS

# External Competitions



✓ 2022/2023 cycle experienced many issues

➤ **Technical problems**

- Poor management of the online testing by the US based contractor, poor software, differences between providers (calculator, paper etc.)

➤ **Equal treatment**

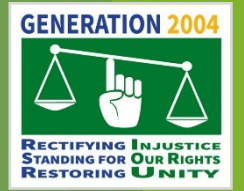
- purchasing laptop, renting hotel room, etc.

➤ **Data protection**

- Recording people, their rooms, access to their content
- recommendations of EDPS ignored



# External Competitions - EPSO Reform

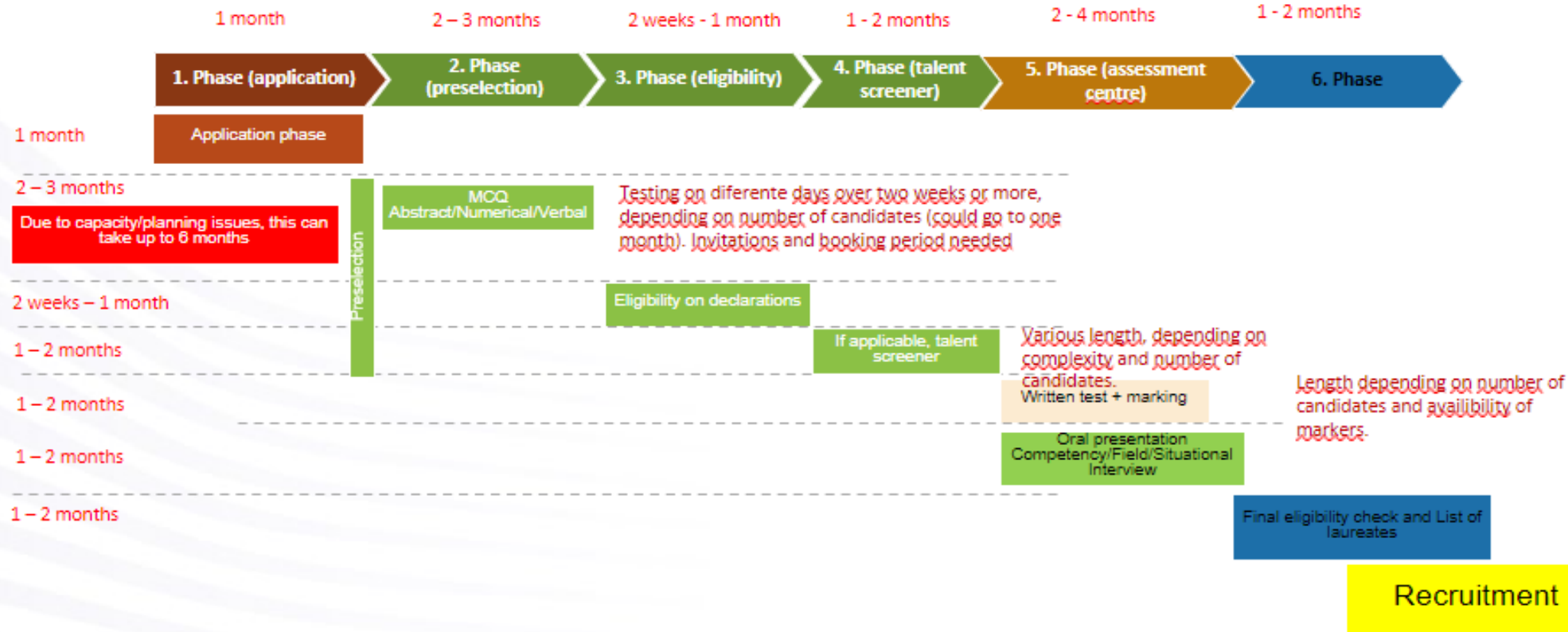


## ✓ New model of EPSO competitions

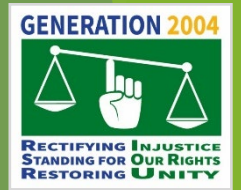
- **EPSO's governing body** (inter-institutional Management Board) decided on 31 January 2023
- Aim:
  - Improve the **speed** => length perceived a major obstacle for young people
  - **Attract** talented Europeans from the MS
  - Emphasis put on **qualifications** of candidates

# OLD COMPETITION EPSO MODEL

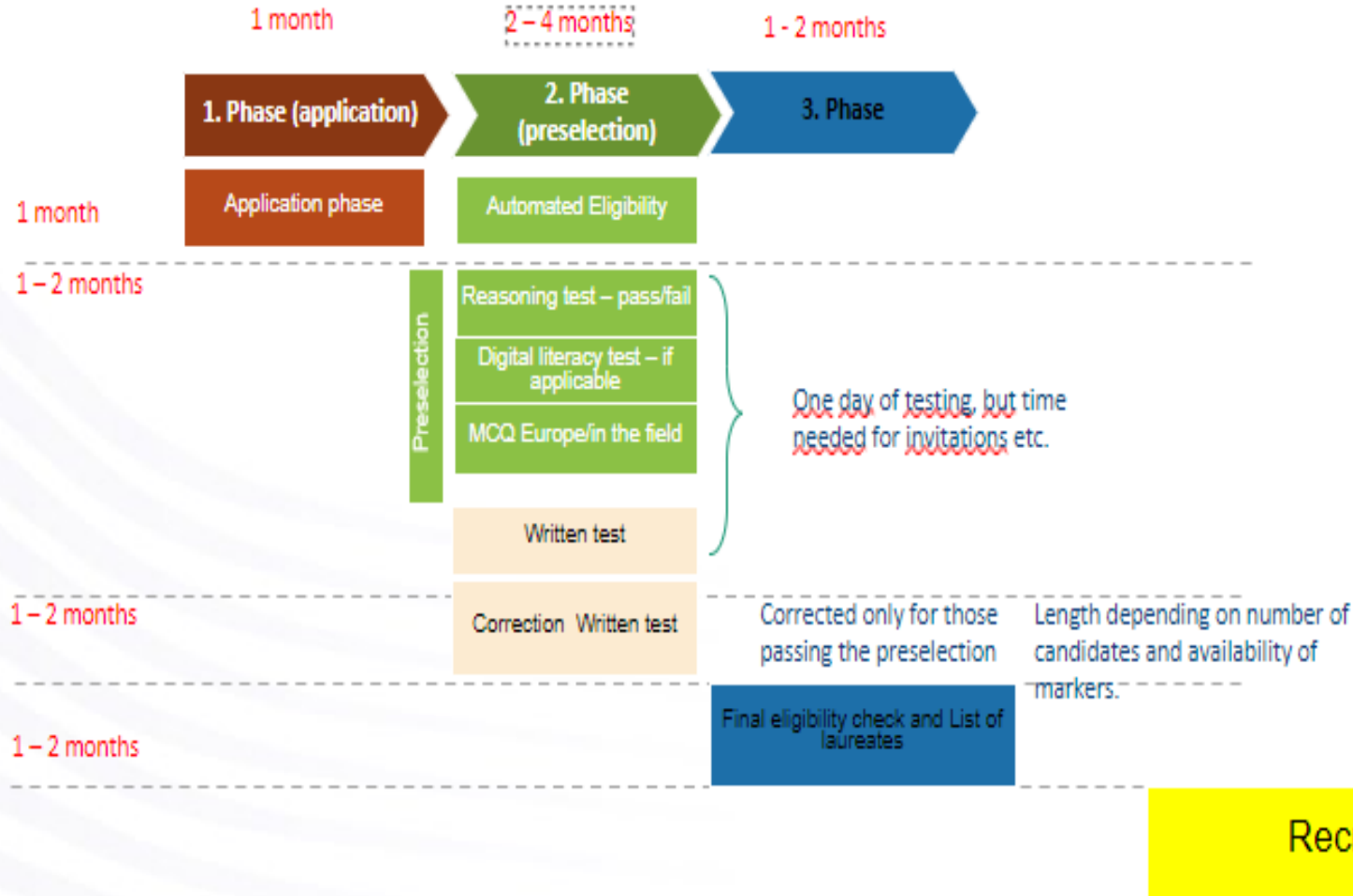
TOTAL ESTIMATED TIME:  
8 - 13 months (up to 17 months if  
capacity issues for CBT)



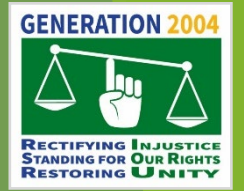
# NEW COMPETITION EPSO MODEL



TOTAL ESTIMATED TIME:  
4 - 7 months (timing kept assuming  
no delays in planning and delivery)



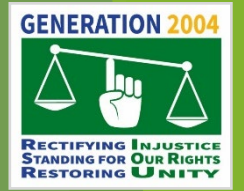
# What did Generation 2004 do?



## ✓ Our VP in charge of EPSO in CSC

- **Attending all meetings and contributing to the actions of the Front Common and Central Staff Committee**
- More details on EPSO competitions => inter-syndical conference on **end November 2023 or early December** tbc.
- **Our in-house lawyer**
- Help on requests for review and Art. 90(2) complaints

# Impact of EPSO pause on internal competitions



- ✓ **External hiring influences the nr. of possible recruited staff internally**
  - **5% ceiling for CAs of total colleagues hired**
  - **20% of ASTs appointed to ADs**
    - Impact on certification
    - No access to internal competitions



# WHAT (LEGAL) ACTION(S) TO TAKE

## Pre-appeal procedures:

**Technical and organisational issues:** query within 3 calendar days via FMB only.

**Complaints about Multiple-Choice-Question (MCQ) Test** (error question/item): within 3 calendar days via FMB.

Possible outcome: ‘neutralisation’ question(s) containing error(s), redistribution points to remaining questions. The marking of the tests remains as indicated in the relevant sections of the notice of competition.

**Requests for review:** manifest errors of assessment and/or procedural breaches (letter to the SB).

The SB enjoys a wide margin of discretion in making value judgements about candidates’ performance, qualifications, and experience ([Case F-73/11, CB v Commission, EU:F:2013:50, para. 81](#); [Case C-16/07 P, Chetcuti v Commission, EU:C:2008:549, paras 74-77](#)).

Limit: the notice of competition must not contravene SR, see paras 39-48 (division of competences between the appointing authority and the selection board) of Case F 119/14, in particular para 43.

**NB.:** No request for review is possible in relation to MCQ test results.

## Appeal procedures:

**Administrative complaints** (Article 90(2) SR): **3-month deadline**

Objective: annulment of the Selection Board (SB) decision.

The AA cannot overturn a value judgment made by a SB and has no legal powers to change the substance of a Selection Board's decision.

**Judicial appeal** (Article 270 TFEU and Article 91 SR): **3-month deadline**

Objective: annulment of Commission's negative decision.

**Complaint to the European Ombudsman** (Article 228(1) TFEU and Article 2(4) Decision 94/262 of 9 March 1994): within **2 years** of the date on which the facts on which it is based came to the attention of the person lodging the complaint and must be preceded by the appropriate administrative approaches to the institutions and bodies concerned

Objective: Help to uncover maladministration and make recommendations to the institution concerned

## Article 90(2) complaint: neutralisation' question(s) (COM/AD/03/2022 (AD5))

**Scope:** unfair and discriminatory treatment resulting from neutralisation of 3 questions - an error of assessment in the determination of the pass mark

**AA decision:** negative (November 2023)

The AA by applying the neutralisation method, the SB proceeded in line with a standard practice and in compliance with the jurisprudence of the Union courts:

(...) where a selection board, faced with an error in one question out of 50 in a preselection test, cancels that question and apportions the points allocated for the marking of that question amongst the remaining questions, it is making lawful use of its powers and having recourse to a measure which is consistent with the principle of proportionality" ([Case T-174/99, Giulietti and others v Commission, EU:T:2001:126, paras 58-59](#); [Case T-49/03, Schumann v Commission, EU:T:2004:314, paras 53-55](#); [Joined Cases F-20/08, F-34/08 and F-75/08, Jorge Aparicio e.a. v Commission, EU:F:2009:132, para. 77](#)).

The neutralisation procedure applied is to be considered an objective and proportionate measure that is in line with the principle of equal treatment. Moreover, no breach of the notice of competition can be identified.

**Next step:** no judicial review, likely complaint to the European Ombudsman

## Article 90(2) complaint: AST non-eligible for a competition (I) (COM/AD/03/2022 (AD5))

**Scope:** annulment of SB decision declaring candidate non-eligible

The complainant relies on four arguments: (i) a violation of Article 29(1)(d) and Article 29(3) SR, (ii) a violation of Article 31 SR, (iii) a violation of legitimate expectations, and (iv) a difference in treatment in terms of career opportunities compared to other categories of staff members.

**AA decision:** negative (September 2023)

Violation of Article 29(1)(d) and Article 29(3) SR: rejected as unfounded.

Pursuant to Article 5 SR (*‘the nature and importance of the duties’*) the administration, within its margin of discretion, organised this internal competition, reflecting the current recruitment needs, in accordance with the interests of the service and its expressed objectives, whilst fully respecting the provisions of the SR.

Violation of Article 31 SR: rejected

The administration has a wide margin of discretion in setting the criteria, including the eligibility criteria, of each internal competition. There is no obligation to admit to an internal competition every person working for the institution in question and that officials and other agents have no absolute right to participate in internal competitions ([Case T-73/17, RS v Commission, pars 39 and 40](#), and [Case T-79/17, Schoonjans v Commission, para. 29.](#)). Internal competitions may be subject to different eligibility criteria than those set for open competitions.

## Article 90(2) complaint: AST non-eligible for the competition (II) (COM/AD/03/2022 (AD5))



### Violation of legitimate expectations: rejected

No assurances were given by the Commission in the sense that AST staff members would be eligible for AD internal competitions.

No breach of legitimate expectations as defined by settled case-law ([Case T-696/14 P, Montagut Viladot v Commission, EU:T:2016:30, paras 43 and 45](#) ; [case F-69/15, Kaufmann v Commission, EU:F:2016:140, para 53](#)).

The principle of unicity of the civil service, as stated in Article 9(3) of the Treaty of Amsterdam does not mean that the institutions have to make identical use of the discretion accorded to them under the SR. On the contrary, in the management of their staff, the institutions enjoy, as employers, autonomy ([Judgment of the General Court of 7 September 2022, OE v European Commission, T-486/21, EU:T:2022:517, para. 71 and the case-law cited therein](#)).

### Difference in treatment in terms of career opportunities: rejected as unfounded

There is no breach of the principle of equal treatment (comparable situations must not be treated differently and different situations must not be treated in the same way, unless such treatment is objectively justified) because the complaint's situation (AST) is not comparable to that of other staff members in a different function group.

## What's next?

Other similar cases? Let G2004 know about ...

### Judicial appeal(s):

#### Legal action

There is no collective redress (class actions) under EU law. G2004 may help to find an external lawyer (legal advice on real chances to challenge successfully AA decision(s)). **Add-value:** reducing costs of individual and separate consultations. **Constraint:** Not everybody is at the same stage of the procedure.

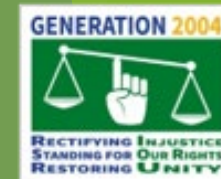
### Ombudsman:

#### Political pressure

Individual complaint's ( G2004 coordination) - template (s) - possible extension to other type of cases to be denounced to the Ombudsman, if disputed matters justify it.

**COM/AD5/2023 (AD5) - Deadline for applications: 27.11**

ASTs non-eligible: a) Art. 90(2) complaint against exclusion ASTs notice of competition (deadline: 27.12); b) apply and lodge Art. 90(2) complaint against SB decision (non-eligible/exclusion).



# Q&As





# Thank you for your attention!

You can contact us:

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