



Picard ruling

[Version FR](#)

Following the Picard ruling by the Court of Justice (see below) on 15 March, which enshrined the principle of continued membership of the European Union pension scheme in the event of continued contribution, Commissioner Hahn's cabinet informed the European Commission's staff representation that this ruling would be applied to all colleagues concerned in the Commission, even if they had not lodged an appeal. The same would apply to all colleagues in the other institutions.

A discussion is underway between the different administrations within the institutions to study the extent of the population concerned in its diversity. The outstanding questions concern in particular the application of this judgement to all colleagues in the same situation as the agent who lodged the appeal, but not only, let us quote as an example the case of inter-agency mobility for which U4U supported the similar treatment of the file before the EU Court, alongside one of its members. All officials and other staff could be affected and hopefully also retired staff for whom entitlements have already been calculated on the basis of an illegal interpretation.

Once the decision has been taken by the Administration, a communication should be sent to staff. The date and details of this communication are of course not yet known, but the Commission's staff representation, as a common front, has undertaken to follow the matter closely, so that things are done as soon as possible and in a coherent manner. We have also asked that the Administration itself communicate on this issue.

At this stage, it is therefore unnecessary to introduce Article 90s, as suggested by some unions. U4U has checked this last point with its lawyer. In the light of the application of this ruling, it would be possible, if necessary, to introduce Article 90s at a later stage. So no worries for the moment. Let's give the Administration time to cover all aspects that go beyond individual cases. Let's wait and see if further action needs to be taken. We will keep you informed.

A short analysis of the ruling

The Court of Justice has issued an [important ruling](#), which clarifies two points:

1- Qualification as an act adversely affecting a person

According to the case law, only acts or measures producing binding legal effects of such a nature as to affect directly and immediately the applicant's interests by bringing about a substantial change in his or her legal position are acts adversely affecting him or her within the meaning of Article 90(2) of the Statute.

The applicant had asked the PMO about his situation and received a reply which the PMO described as purely informative and not capable of being regarded as a decision giving rise to a complaint. However, the Court considered that it was appropriate to examine the content and context of the act, as well as the powers of the institution that had issued it, rather than focusing solely on its form, which would be tantamount to giving precedence to the form of the act over its substance (96 et seq.). In this case, the PMO's reply indicated to the applicant the provisions of the texts that the administration considered applicable to his situation (102 et seq.). The PMO's reply was of a nature to directly and immediately affect the applicant's legal situation, which is sufficient to consider it as an act adversely affecting him, as this intermediate act (108 et seq.) did produce autonomous legal effects.

2- Continuity of employment contracts

The applicant was in service before the 2014 Staff Regulations took effect, which inter alia modified the provisions concerning the retirement age and the accrual rate. He therefore requested to be able to benefit from the transitional provisions of the Staff Regulations. The PMO refused to allow him to do so on the ground that his contract had been substantially modified after the entry into force of the Staff Regulations.

The Court found that the applicant had worked continuously in the service of the EU and thus contributed to the financing of the pension scheme (117 et seq.) and that it followed that he was indeed entitled to benefit, by analogy, from these transitional provisions.

Conclusion

This judgment, which the Commission must apply to all the staff concerned, confirms on the one hand that persons who entered the service of the EU before the entry into force of the 2014 Staff Regulations are entitled to the application of the transitional provisions and on the other hand that, as far as pension rights are concerned, the continuity of contributions to the pension fund is sufficient to establish the unity of the employment relationship, whatever the other contractual changes.

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