



## Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

19 July 2016\*

(Appeal — Common foreign and security policy (CFSP) — Decision 2009/906/CFSP — European Union Police Mission (EUPM) in Bosnia and Herzegovina — National staff member on secondment — Redeployment in a regional office of that mission — Final sentence of the second subparagraph of Article 24(1) TEU — First paragraph of Article 275 TFEU — Actions for annulment and compensation — Jurisdiction of the EU judiciary — Article 263 TFEU, Article 268 TFEU and the second paragraph of Article 340 TFEU))

In Case C-455/14 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 29 September 2014,

H, residing in Catania (Italy), represented by M. Velardo, avvocato,

appellant,

the other parties to the proceedings being:

**Council of the European Union**, represented by A. Vitro and F. Naert, acting as Agents,

**European Commission**, represented by F. Erlbacher, G. Gattinara and J.-P. Keppenne, acting as Agents, with an address for service in Luxembourg,

**European Union Police Mission (EUPM) in Bosnia and Herzegovina**, established in Sarajevo (Bosnia and Herzegovina),

defendants at first instance,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, M. Ilešič, L. Bay Larsen, T. von Danwitz and C. Lycourgos, Presidents of Chambers, A. Rosas, E. Juhász, A. Borg Barthet, J. Malenovský, E. Levits, J.-C. Bonichot, M. Berger, K. Jürimäe, M. Vilaras and E. Regan (Rapporteur), Judges,

Advocate General: N. Wahl,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 18 January 2016,

after hearing the Opinion of the Advocate General at the sitting on 7 April 2016,

\* Language of the case: English.

gives the following

### Judgment

- 1 By her appeal, H seeks the setting aside of the order of the General Court of the European Union of 10 July 2014 in *H v Council and Others* (T-271/10, not published, ‘the order under appeal’, EU:T:2014:702), by which the General Court dismissed as inadmissible her action seeking, first, annulment of the decision of 7 April 2010, signed by the Chief of Personnel of the European Union Police Mission (EUPM), by which the appellant was redeployed to the post of ‘Criminal Justice Adviser — Prosecutor’ in the regional office of Banja Luka (Bosnia and Herzegovina) and, if needed, of the decision of 30 April 2010, signed by the Head of Mission referred to in Article 6 of Council Decision 2009/906/CFSP of 8 December 2009 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (OJ 2009 L 322, p. 22), confirming the decision of 7 April 2010 and, secondly, an order that the Council, the European Commission and the EUPM pay damages.

### Legal context

- 2 By virtue of Article 1(1) of Council Joint Action 2002/210/CFSP of 11 March 2002 on the European Union Police Mission (OJ 2002 L 70, p. 1), an EUPM was established to follow on from the United Nations International Police Task Force in Bosnia and Herzegovina.

- 3 On the basis of Article 28 TEU and Article 43(2) TEU, the EUPM was extended a number of times, on the last occasion until 31 December 2011 by Decision 2009/906.

- 4 Article 2 of that decision, headed ‘Mission statement’, provides in its first paragraph:

‘As part of the broader rule of law approach in [Bosnia and Herzegovina] and in the region, [the] EUPM, while retaining residual capacities in the fields of police reform and accountability, shall primarily support the competent Law Enforcement Agencies of [Bosnia and Herzegovina] in the fight against organised crime and corruption, notably focusing on State level Law Enforcement Agencies, on enhancement of the interaction between police and prosecutor and on regional and international cooperation.’

- 5 Article 4 of that decision, headed ‘Structure of the Mission’, provides in paragraph 1:

‘[The] EUPM shall be structured as follows:

- (a) main headquarters in Sarajevo, composed of the Head of the Mission and staff as defined in the Operation Plan (OPLAN);
- (b) four Regional Offices in Sarajevo, Banja Luka, Mostar and Tuzla;

...’

- 6 Article 5 of that decision, headed ‘Civilian Operation Commander’, provides in paragraphs 2 to 4:

‘2. The Civilian Operation Commander, under the political control and strategic direction of the Political and Security Committee (PSC) and the overall authority of the High Representative of the Union for Foreign Affairs and Security Policy (HR), shall exercise command and control of [the] EUPM at the strategic level.

3. The Civilian Operation Commander shall ensure proper and effective implementation of the Council's decisions as well as the PSC's decisions, including by issuing instructions at the strategic level as required to the Head of Mission and providing him with advice and technical support.

4. All seconded staff shall remain under the full command of the national authorities of the seconding State or EU institution concerned. National authorities shall transfer Operational Control (OPCON) of their personnel, teams and units to the Civilian Operation Commander.'

7 Article 6 of Decision 2009/906, headed 'Head of Mission', provides in paragraphs 1 to 5:

'1. The Head of Mission shall assume responsibility for, and exercise command and control of [the] EUPM at theatre level.

2. The Head of Mission shall exercise command and control over personnel, teams and units from contributing States as assigned by the Civilian Operation Commander together with administrative and logistic responsibility including over assets, resources and information placed at the disposal of [the] EUPM.

3. The Head of Mission shall issue instructions to all EUPM staff for the effective conduct of [the] EUPM in theatre, assuming its coordination and day-to-day management, and following the instructions at the strategic level of the Civilian Operation Commander.

4. The Head of Mission shall be responsible for the implementation of [the] EUPM's budget. For this purpose, the Head of Mission shall sign a contract with the Commission.

5. The Head of Mission shall be responsible for disciplinary control over the staff. For seconded staff, disciplinary action shall be exercised by the national or EU authority concerned.'

8 Article 7 of that decision, headed 'EUPM staff', provides:

'...

2. [The] EUPM shall consist primarily of staff members seconded by Member States or EU institutions. Each Member State or EU institution shall bear the costs related to any of the staff seconded by it, including travel expenses to and from the place of deployment, salaries, medical coverage and allowances other than applicable daily allowances, as well as hardship and risk allowances.

3. International civilian staff and local staff may also be recruited by [the] EUPM, as required, on a contractual basis, if the functions required are not provided by personnel seconded by Member States.

...

4. All staff shall abide by the Mission-specific minimum security operating standards and the Mission security plan supporting the EU field security policy. As regards the protection of EU classified information with which staff are entrusted in the course of their duties, all staff shall respect the security principles and minimum standards established by the Council Decision 2001/264/EC of 19 March 2001 adopting [the] Council's security regulations [OJ 2001 L 101, p. 1] ...'

9 In Article 8 of that decision, headed 'Status of the Mission and EUPM staff', paragraph 2 is worded as follows:

'The State or EU institution having seconded a staff member shall be responsible for answering any claims linked to the secondment, from or concerning the staff member. The State or EU institution in question shall be responsible for bringing any action against the seconded person.'

10 Article 9 of that decision, headed ‘Chain of command’, provides:

- ‘1. The EUPM shall have a unified chain of command, as a crisis management operation.
2. The PSC shall exercise political control and strategic direction of [the] EUPM under the responsibility of the Council.
3. The Civilian Operation Commander, under the political control and strategic direction of the PSC and the overall authority of the HR, shall be the commander of [the] EUPM at the strategic level and, as such, shall issue instructions to the Head of Mission and provide him with advice and technical support.

...

5. The Head of Mission shall exercise command and control of [the] EUPM at theatre level and shall be directly responsible to the Civilian Operation Commander.’

11 Article 10 of Decision 2009/906, headed ‘Political control and strategic direction’, provides in paragraph 1:

‘The PSC shall exercise, under the responsibility of the Council, political control and strategic direction of [the] EUPM. The Council hereby authorises the PSC to take the relevant decisions in accordance with the third subparagraph of Article 38 [TEU]. This authorisation shall include the powers to appoint a Head of Mission, upon a proposal of the HR, and to amend the [Concept of Operations] and the [Operation Plan]. The powers of decision with respect to the objectives and termination of [the] EUPM shall remain vested in the Council.’

12 The first paragraph of Article 91 of the Staff Regulations of Officials of the European Communities, established by Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ, English Special Edition 1968 (II), p. 30), as amended by Regulation (EU, Euratom) No 1080/2010 of the European Parliament and of the Council of 24 November 2010 (OJ 2010 L 311, p. 1) (‘the Staff Regulations’), provides that ‘the Court of Justice of the European Union shall have jurisdiction in any dispute between the Union and any person to whom these Staff Regulations apply regarding the legality of an act affecting such person adversely ...’.

### **Background to the dispute and the contested decisions**

- 13 H is an Italian magistrate who was seconded to the EUPM in Sarajevo (Bosnia and Herzegovina) by decree of the Italian Minister for Justice of 16 October 2008, in order to perform the duties of ‘Criminal Justice Unit Adviser’ from 14 November 2008.
- 14 By decree of that minister of 7 April 2009, the appellant had her secondment extended until 31 December 2009, in order to perform the duties of ‘Chief Legal Officer’. By decree of that minister of 9 December 2009, the appellant’s secondment was further extended until 31 December 2010, in order for her to continue to perform the same duties.
- 15 By decision of 7 April 2010, signed by the Chief of Personnel of the EUPM, the appellant was redeployed for operational reasons to the post of ‘Criminal Justice Adviser — Prosecutor’ in the Banja Luka regional office, from 19 April 2010.

- 16 After receiving the decision of 7 April 2010, the appellant contacted the Italian authorities and she lodged a complaint.
- 17 By email of 15 April 2010, an official of the Permanent Representation of the Italian Republic to the European Union informed the appellant that the decision of 7 April 2010 had been suspended.
- 18 By decision of 30 April 2010, signed by the Head of Mission referred to in Article 6 of Decision 2009/906, the Head of Mission responded to the appellant's complaint by confirming the decision of 7 April 2010 (together 'the contested decisions'). He stated in the decision that he himself had taken the decision of 7 April 2010 and that the operational reason for the appellant's redeployment was the need for prosecutorial advice in the Banja Luka office.
- 19 On 4 June 2010, the appellant brought an action against the EUPM before the Tribunale amministrativo regionale del Lazio (Regional Administrative Court, Lazio, Italy) for annulment of the decision of 7 April 2010 and compensation for the harm allegedly suffered. At the hearing held before the Court of Justice, the appellant stated that those proceedings were still pending. The appellant also applied to that Italian court for suspension of the operation of that decision.

### **The proceedings before the General Court and the order under appeal**

- 20 By application lodged at the Registry of the General Court on 16 June 2010, the appellant brought an action before that court for annulment of the contested decisions and an award of damages.
- 21 By separate documents, the Council and the Commission both put forward an objection of inadmissibility pursuant to Article 114 of the Rules of Procedure of the General Court, in the version then applicable, submitting, in essence, that the contested decisions were measures that pertained to an operational action decided upon and carried out under the common foreign and security policy (CFSP), so that, in the light of the final sentence of the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU, the General Court had no jurisdiction to hear the action brought before it.
- 22 The appellant claimed that both of the objections put forward should be dismissed, on the ground that the contested decisions were not political or strategic measures relating to the CFSP and that a lack of jurisdiction of the General Court would deny her the right to an effective remedy as the national courts could neither annul those decisions nor order the institutions of the European Union to compensate her for the harm that they had caused.
- 23 By the order under appeal, the General Court, holding that it lacked jurisdiction to hear the action, dismissed it as inadmissible.

### **Forms of order sought**

- 24 By her appeal, the appellant claims that the Court should:
- set aside the order under appeal, in so far as the General Court dismissed her action as inadmissible;
  - refer the case back to the General Court for judgment; and
  - order the defendants at first instance to pay the costs.

25 The Council contends that the Court should:

- dismiss the appeal;
- substitute grounds so far as concerns the delegation of powers; and
- order the appellant to pay the costs.

26 The Commission contends that the Court should:

- set aside the order under appeal;
- dismiss the action as inadmissible;
- in the alternative, dismiss the action as inadmissible in so far as it is brought against the Commission and refer the case back to the General Court for judgment; and
- order the appellant to bear the costs.

### **The appeal**

27 The appellant raises two grounds in support of her appeal. The first ground of appeal alleges infringement of Article 114 of the Rules of Procedure of the General Court, in the version in force on the date of the order under appeal, and of the rights of the defence. The second ground of appeal alleges that the General Court erred in law when it declared that it lacked jurisdiction to hear and determine the action.

#### *Arguments of the parties*

28 By the second ground of appeal, which it is appropriate to examine first, the appellant criticises the General Court, in the first part, for finding that the contested decisions did not fall within its jurisdiction by virtue of the final sentence of the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU and, in the second part, for attributing those decisions to the national authorities.

29 As regards the first part of this ground of appeal, the appellant submits that the contested decisions are mere administrative acts concerning the allocation of human resources, therefore falling within the day-to-day management of the EUPM's operations in Bosnia and Herzegovina. Only the acts of the European Council and the Council referred to in Article 25 TEU and adopted in accordance with the procedure laid down in Article 31 TEU constitute acts relating to the CFSP.

30 Furthermore, according to the appellant, the jurisdiction of the EU judicature to review the legality of the contested decisions follows from the wording of Article 215 TFEU and the second paragraph of Article 275 TFEU, as well as from the objectives pursued by those provisions, which confer on the Court jurisdiction to review the legality of decisions providing for restrictive measures against natural or legal persons. Since the contested decisions have, in the present case, produced legal effects in her regard, they are open to judicial review, in accordance with the judgment of the General Court of 8 October 2008 in *Sogelma v EAR* (T-411/06, EU:T:2008:419).

31 The Commission, referring to the judgments of 27 February 2007 in *Segi and Others v Council* (C-355/04 P, EU:C:2007:116, paragraphs 51 to 54), and 24 June 2014 in *Parliament v Council* (C-658/11, EU:C:2014:2025, paragraph 70), contends that the final sentence of the second

subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU do not mean that all acts adopted in the context of the CFSP automatically fall outside the jurisdiction of the EU judicature. As the limitation on the Court's jurisdiction in relation to the CFSP is a derogation from the rule of general jurisdiction laid down in Article 19 TEU, it should be narrowly construed. The interpretation adopted by the General Court that it lacked jurisdiction for the sole reason that the contested decisions were taken by a body set up by a measure adopted pursuant to Chapter 2 of Title V of the EU Treaty is contrary to the wording, the general scheme and the objectives of those provisions of the Treaties.

- 32 Indeed, according to the Commission, the EU institutions may be obliged to adopt acts or be the source of actions or omissions which, although occurring in the context of the CFSP, do not relate, as acts of sovereign policy, to the exercise of the CFSP. Those who drafted the Treaties intended to exclude only these acts from the scope of the Court's jurisdiction. The system as established by the Treaties thus distinguishes between acts of sovereign policy and acts of implementation which are adopted on the basis of the former. Even though the latter acts are adopted on the basis of Chapter 2 of Title V of the EU Treaty, the Court's jurisdiction in respect of those acts follows from the general rules set out in Article 263 TFEU, without this having to be established explicitly.
- 33 Furthermore, the Commission contends that a teleological interpretation of the Treaties, which are characterised by the requirement of respect for fundamental rights, requires the words 'certain decisions as provided for by the second paragraph of Article 275 TFEU' used in the final sentence of the second subparagraph of Article 24(1) TEU to be interpreted as covering all measures adopted by an EU institution against a person which produce legal effects in relation to him that potentially infringe his fundamental rights.
- 34 The Commission therefore proposes two alternative interpretations of the final sentence of the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU, which lead, in part, to different results in terms of jurisdiction of the EU judicature, the first consisting in examining the content of the act, action or omission at issue and the second being based on the pleas put forward before the EU judicature. Under the first interpretation, the Court should conclude that the EU judicature has no jurisdiction to hear the present case, since the contested decisions constitute operational acts falling within the CFSP which do not produce legal effects in relation to the appellant in a way that is potentially incompatible with her fundamental rights. As regards the application of the second interpretation, it should lead to an examination of the pleas submitted in the application at first instance. If the Court were to follow that interpretation, it would have to dismiss the action as inadmissible, in part, for lack of jurisdiction and, for the remainder, either refer the case back to the General Court or decide on the admissibility and substance of the action.
- 35 The Council contends that the first part of the second ground of appeal should be rejected. It submits, first of all, that the exclusion of CFSP acts from the jurisdiction of the EU judicature extends, under the first paragraph of Article 275 TFEU, to all the Treaty provisions concerning the CFSP and all acts 'adopted on the basis of those provisions'. That exclusion also covers the actions of a 'CFSP mission'. Article 24(1) TEU and the first paragraph of Article 275 TFEU cover not only the role of the European Council and the Council but also the role of the HR and that of the Member States in implementing the CFSP.
- 36 Next, the Council submits that the concept of 'restrictive measures' within the meaning of the second paragraph of Article 275 TFEU cannot be given a broad scope. In fact, that concept covers exclusively the sanctions policy of the European Union. Furthermore, the words used in that provision have a narrower meaning than that of acts 'intended to produce legal effects', referred to in Article 263 TFEU. In that regard, no analogy can be drawn with the judgment of the General Court of 8 October 2008 in *Sogelma v EAR* (T-411/06, EU:T:2008:419, paragraphs 33 to 57), given that, first, the case which

gave rise to that judgment concerned an action against a ‘Community’ body in the context of the former first pillar and not a decision relating to the CFSP and, secondly, as opposed to the body in question in that case, the EUPM does not have legal personality.

- 37 Lastly, as regards the nature of the contested decisions, the Council submits that they are set in the context of an operational decision on security and defence policy, falling outside the jurisdiction of the EU judicature. The redeployment of a prosecutor in a crisis management mission operating in a fragile environment cannot be considered a purely administrative decision. In that regard, the fact that such a decision can be qualified as an act of ‘day-to-day management’ does not signify that it is purely administrative, as day-to-day management decisions include most operational decisions such as, in particular, those whose purpose is to decide the location and methods of an intervention.
- 38 In the alternative, the Council contends that, in so far as the contested decisions contain elements of an administrative nature, they cannot be separated from the operational elements. Nothing permits a restrictive interpretation of the expression ‘any claims linked to the secondment’, which features in Article 8 of Decision 2009/906, by distinguishing between the secondment decision and its implementation by a contract. On the contrary, it is apparent from Article 6(5) of that decision, which provides that, for seconded staff, disciplinary action is a matter for the seconding administrative authority, that decisions concerning the conditions of application of the secondment fall within the competence of the Member States.

#### *Findings of the Court*

- 39 Pursuant to the final sentence of the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU, the Court does not, in principle, have jurisdiction with respect to the provisions relating to the CFSP or with respect to acts adopted on the basis of those provisions (judgments of 24 June 2014 in *Parliament v Council*, C-658/11, EU:C:2014:2025, paragraph 69, and 12 November 2015 in *Elitaliana v Eulex Kosovo*, C-439/13 P, EU:C:2015:753, paragraph 41).
- 40 However, the aforementioned provisions introduce a derogation from the rule of general jurisdiction which Article 19 TEU confers on the Court to ensure that in the interpretation and application of the Treaties the law is observed, and they must, therefore, be interpreted narrowly (judgments of 24 June 2014 in *Parliament v Council*, C-658/11, EU:C:2014:2025, paragraph 70, and 12 November 2015 in *Elitaliana v Eulex Kosovo*, C-439/13 P, EU:C:2015:753, paragraph 42).
- 41 In that regard, it must be noted that, as is apparent from both Article 2 TEU, which is included in the common provisions of the EU Treaty, and Article 21 TEU, concerning the European Union’s external action, to which Article 23 TEU, relating to the CFSP, refers, the European Union is founded, in particular, on the values of equality and the rule of law (see, to that effect, in particular, judgment of 27 February 2007 in *Segi and Others v Council*, C-355/04 P, EU:C:2007:116, paragraph 51, and Opinion 2/13 of 18 December 2014, EU:C:2014:2454, paragraphs 168 and 169). The very existence of effective judicial review designed to ensure compliance with provisions of EU law is inherent in the existence of the rule of law (see judgment of 6 October 2015 in *Schrems*, C-362/14, EU:C:2015:650, paragraph 95 and the case-law cited).
- 42 In the present case, the contested decisions are admittedly set in the context of the CFSP. Those decisions, taken by the Head of the EUPM in Bosnia and Herzegovina, which was established on the basis of Article 28 TEU and Article 43(2) TEU, in order to fill, by redeployment, a position in a regional office of that mission, indeed relate to an operational action of the European Union decided upon and carried out under the CFSP, an action which, as is apparent from the first paragraph of Article 2 of Decision 2009/906, has, in essence, the objective of supporting the law enforcement agencies in Bosnia and Herzegovina in their fight against organised crime and corruption.

- 43 However, such a circumstance does not necessarily lead to the jurisdiction of the EU judicature being excluded (see, to that effect, judgments of 24 June 2014 in *Parliament v Council*, C-658/11, EU:C:2014:2025, paragraphs 69 to 74, and 12 November 2015 in *Elitaliana v Eulex Kosovo*, C-439/13 P, EU:C:2015:753, paragraphs 43 to 50).
- 44 In the present case, it must thus be noted that, as the Council itself stated at the hearing before the Court, the EU judicature has jurisdiction, in accordance with Article 270 TFEU, to rule on all actions brought by EU staff members having been seconded to the EUPM. They remain subject to the Staff Regulations during the period of their secondment to the EUPM and, therefore, fall within the jurisdiction of the EU judicature, in accordance with Article 91 of those regulations.
- 45 Admittedly, it is apparent from Decision 2009/906 that staff seconded to the EUPM in Bosnia and Herzegovina by the Member States and staff seconded to it by the EU institutions are not, in several respects, in a similar, or identical, situation.
- 46 In particular, staff members seconded by the Member States remain, by virtue of the first sentence of Article 5(4) of that decision, under the full command of their national authorities, whereas staff members seconded by the EU institutions remain, according to that provision, under that of the institutions.
- 47 Similarly, it is apparent from Article 6(5) of that decision that disciplinary action taken against staff members seconded by the Member States falls within the competence of the national authorities, while the same action, when taken against staff members seconded by the EU institutions, falls within the competence of those institutions.
- 48 Furthermore, according to Article 7(2) of that decision, the Member States must bear the costs relating to their seconded staff, such as, in particular, travel expenses to and from the place of deployment, salaries, medical coverage and certain allowances, while the EU institutions are required to bear the same costs where they relate to their own seconded staff.
- 49 In addition, by virtue of Article 8(2) of Decision 2009/906, the Member States' authorities are competent to answer any claims linked to the secondment from a staff member seconded by them or concerning such a staff member, whereas the EU institutions are competent to answer such claims where they come from a staff member seconded by them or concern such a staff member.
- 50 However, it must be noted that it is also apparent from the provisions of that decision that staff members seconded by the Member States and those seconded by the EU institutions are subject to the same rules so far as concerns the performance of their duties 'at theatre level'.
- 51 By virtue of the second sentence of Article 5(4) of that decision, national authorities have transferred operational control of their personnel, teams and units to the Civilian Operation Commander, who, pursuant to Article 5(2), exercises command and control of the EUPM in Bosnia and Herzegovina at the strategic level and, in that capacity, issues instructions to the Head of Mission, in accordance with Article 5(3) and Article 9(3).
- 52 Moreover, as is apparent from Article 6(1) to (3) and Article 9(5) of Decision 2009/906, the Head of Mission exercises, as the person responsible for the EUPM 'at theatre level', command and control over that mission, in particular over personnel, teams and units 'from contributing States' which have been assigned by the Civilian Operation Commander, and the Head of Mission is, furthermore, entrusted with ensuring the coordination and day-to-day management of the EUPM in Bosnia and Herzegovina by giving all necessary instructions to 'all' staff for the effective conduct of the mission in that theatre.

- 53 Similarly, it follows from Article 7(4) of that decision that all the staff of that mission must abide by the mission-specific minimum security operating standards and the mission security plan supporting the EU 'field' security policy.
- 54 While the decisions adopted by the competent authorities of that mission relating to the allocation of the human resources assigned to it by the Member States and the EU institutions for the purpose of performing activities undertaken at theatre level have an operational aspect falling within the CFSP, they also constitute, by their very essence, acts of staff management, just like all similar decisions adopted by the EU institutions in the exercise of their competences.
- 55 In those circumstances, the scope of the limitation, by way of derogation, on the Court's jurisdiction, which is laid down in the final sentence of the second subparagraph of Article 24(1) TEU and in the first paragraph of Article 275 TFEU, cannot be considered to be so extensive as to exclude the jurisdiction of the EU judicature to review acts of staff management relating to staff members seconded by the Member States the purpose of which is to meet the needs of that mission at theatre level, when the EU judicature has, in any event, jurisdiction to review such acts where they concern staff members seconded by the EU institutions (see, by analogy, judgments of 24 June 2014 in *Parliament v Council*, C-658/11, EU:C:2014:2025, paragraph 73, and 12 November 2015 in *Elitaliana v Eulex Kosovo*, C-439/13 P, EU:C:2015:753, paragraph 49).
- 56 That interpretation is confirmed by the jurisdiction conferred on the Court to rule, first, by virtue of Article 11(3)(b) and (6) of Council Decision (CFSP) 2015/1835 of 12 October 2015 defining the statute, seat and operational rules of the European Defence Agency (OJ 2015 L 266, p. 55), on actions brought by national experts seconded to that agency and, secondly, by virtue of Article 42(1) of Decision 2012/C 12/04 of the High Representative of the Union for Foreign Affairs and Security Policy of 23 March 2011 laying down the rules applicable to national experts seconded to the European External Action Service (OJ 2012 C 12, p. 8), on actions brought by national experts seconded to that service.
- 57 Any other interpretation would, in particular, have the consequence that, where a single act of staff management relating to 'field' operations concerns both staff members seconded by the Member States and staff members seconded by the EU institutions, the decision rendered with regard to the former would be liable to be irreconcilable with that rendered by the EU judicature with regard to the latter.
- 58 Consequently, the General Court and, in the event of an appeal, the Court of Justice have jurisdiction to review such acts. That jurisdiction stems, respectively, as regards the review of the legality of those acts, from Article 263 TFEU and, as regards actions for non-contractual liability, from Article 268 TFEU, read in conjunction with the second paragraph of Article 340 TFEU, taking into account Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the European Union.
- 59 In the present case, as the contested decisions reassigned the appellant within the EUPM in Bosnia and Herzegovina, they constitute acts of staff management whose purpose is the redeployment of members of the mission at theatre level and not, contrary to what the General Court held, in essence, in paragraphs 45 and 46 of the order under appeal, acts concerning questions linked to the secondment, within the meaning of Article 8(2) of Decision 2009/906. Accordingly, those decisions, although adopted in the context of the CFSP, do not constitute acts referred to in the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU. Consequently, they fall within the jurisdiction of the EU judicature under the general provisions of the FEU Treaty referred to in the previous paragraph of the present judgment.
- 60 It follows that the General Court erred in law when it held, in paragraph 58 of the order under appeal, that it had no jurisdiction to hear the action by which the appellant sought, at first instance, annulment of the contested decisions and an award of damages.

61 The first part of the second ground of appeal must therefore be upheld.

62 In the light of the foregoing, the order under appeal must be set aside for this reason alone, without it being necessary to examine the first ground of appeal or the second part of the second ground of appeal.

### **Referral of the case back to the General Court**

63 In accordance with Article 61 of the Statute of the Court of Justice of the European Union, if the appeal is well founded, the Court is to set aside the decision of the General Court. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

64 For the reasons set out in paragraphs 39 to 60 of the present judgment, inasmuch as the objections of inadmissibility raised by the Council and the Commission before the General Court allege that the latter lacks jurisdiction to rule on the action, they must be dismissed as unfounded.

65 Furthermore, inasmuch as the Commission contests, by the objection raised before the General Court, the admissibility of the action in so far as it is directed against it, it must be held that, as the Commission is not involved in the chain of command of the EUPM in Bosnia and Herzegovina and the contested decisions do not concern the implementation of the EUPM's budget, which, pursuant to Article 6(4) of Decision 2009/906, requires the conclusion of a contract between the Head of Mission and the Commission, those decisions cannot be imputed to the Commission. Consequently, the action must be dismissed as inadmissible in so far as it is directed against the Commission.

66 On the other hand, it follows from Article 10(1) of Decision 2009/906 that the Head of the EUPM in Bosnia and Herzegovina, who adopted the contested decisions, is appointed by the PSC referred to in Article 38 TEU. Furthermore, by virtue of Article 5(3) and Article 9(3) and (5) of that decision, he is under the authority of the Civilian Operation Commander who, in accordance with Article 5(2) and Article 9(3) of that decision, is himself placed under the control of the PSC and the overall authority of the HR.

67 First, as is apparent from Article 5(2), Article 9(2) and Article 10(1) of Decision 2009/906, the PSC exercises political control and strategic direction of the EUPM under the responsibility of the Council. Secondly, pursuant to Article 5(3) of that decision, the Civilian Operation Commander must ensure proper and effective implementation both of the PSC's decisions and of those of the Council.

68 It follows that the contested decisions are imputable to the Council and that, accordingly, the action is admissible only in so far as it is directed against the Council.

69 The question whether the contested decisions are unlawful or capable of giving rise to damages from the European Union entails the examination, in a context in which the EU institutions enjoy a broad discretion, of complex questions of fact, on the basis of matters which have not been examined by the General Court and which have not been debated before the Court of Justice.

70 In these circumstances, the state of the proceedings in the present case does not permit judgment to be given.

71 Consequently, the case must be referred back to the General Court for judgment on the substance of the action in so far as it is directed against the Council, and the costs must be reserved.

On those grounds, the Court (Grand Chamber) hereby:

1. **Sets aside the order of the General Court of the European Union of 10 July 2014 in *H v Council and Others* (T-271/10, not published, EU:T:2014:702);**
2. **Dismisses H's action as inadmissible in so far as it is directed against the European Commission and the European Union Police Mission (EUPM) in Bosnia and Herzegovina;**
3. **Refers the case back to the General Court of the European Union for judgment on the substance of the action in so far as it is directed against the Council of the European Union;**
4. **Reserves the costs.**

[Signatures]