Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

13 July 2018 *

(Civil Service — EIB staff — Complaint of psychological harassment — Administrative enquiry — Concept of 'psychological harassment' — Requirement that the conduct complained of must be repetitive in order to constitute 'psychological harassment' — Refusal to initiate disciplinary proceedings against the person responsible for that conduct — Duty of confidentiality in relation to an ongoing administrative enquiry and, subsequently, to the decision terminating the procedure finding that there had been psychological harassment)

In Case T-377/17,

SQ, a member of staff of the European Investment Bank, represented by N. Cambonie and P. Walter, lawyers,

applicant,

v

European Investment Bank (EIB), represented by G. Faedo and K. Carr, acting as Agents, and by B. Wägenbaur, lawyer, and J. Currall, Barrister,

defendant,

APPLICATION under Article 50a(1) of the Statute of the Court of Justice of the European Union and Article 41 of the EIB Staff Regulations seeking, first, the partial annulment of the decision of the President of the EIB of 20 March 2017 and, secondly, compensation in respect of the material and non-material damage allegedly suffered by the applicant as a result of psychological harassment by her superior and the EIB's conduct,

THE GENERAL COURT (First Chamber),

composed of I. Pelikánová, President, P. Nihoul and J. Svenningsen (Rapporteur), Judges,

Registrar: E. Coulon,

having regard to the written part of the procedure,

gives the following

* Language of the case: French.

Judgment

Legal framework

1 In accordance with Article 308 TFEU, the Statute of the European Investment Bank (EIB or 'the Bank') is laid down in Protocol No 5 annexed to that Treaty and to the EU Treaty, of which it forms an integral part. Article 7(3)(h) of that protocol on the Statute of the Bank provides that the Board of Governors is to approve the Rules of Procedure of the Bank. Under Article 31 of the Rules of Procedure, approved on 4 December 1958 and subsequently amended on several occasions, the Board of Directors is to prescribe the regulations concerning the staff of the Bank. In that regard, on 20 April 1960, the Board of Directors of the Bank adopted the Staff Regulations of the Bank ('the EIB Staff Regulations').

2 In the version applicable to the dispute, which resulted from the decision of the Board of Directors of the Bank of 4 June 2013 and entered into force on 1 July 2013, Article 41 of the EIB Staff Regulations provides:

'Disputes of any nature between the Bank and individual members of staff shall be brought before the Court of Justice of the European Union. Any proceedings instituted by a member of staff in respect of an action of the Bank which would adversely affect him must be brought within three months.

In addition to proceedings being instituted before the Court of Justice…, an amicable settlement shall be sought, prior to the institution of any proceedings, before the Bank's Conciliation Board in respect of disputes other than such as arise from application of the disciplinary measures provided for under Article 38.

The request for conciliation must be made within three months of the day of the occurrence of the facts or of the notification of the actions giving rise to the dispute.

The Conciliation Board shall consist of three members. When the Board is obliged to meet, one of its members shall be nominated by the President of the Bank, another by the official concerned, both nominations being made within one week of one party so requesting the other. The third member, who shall be the Chairman of the Board, shall be nominated by the first two nominees within one week of their being nominated. He need not be a member of the Bank. If, within one week following their nomination, the first two members are unable to agree on the nomination of the Chairman, such nomination shall be undertaken by the President of the Court of Justice of the European Union.

The conciliation procedure shall be deemed to have failed if:

– the President of the Court of Justice has not nominated the Chairman [of the Conciliation Board] within four weeks of communication of the President of the Bank's petition to this effect;

– the Conciliation Board does not reach a settlement acceptable to both sides within two weeks of its formation.'

3 On 1 August 2006, the Board of Directors of the Bank adopted a Code of Conduct for staff of the Bank ('the Code of Conduct'). Article 3.6 of that code, entitled 'Dignity at work', provides:

'Harassment and bullying of any kind are unacceptable. Victims of any harassment or bullying may, in accordance with the Bank's Policy on Dignity at Work, bring the matter to the attention of the Director [General and Head of Personnel], without this being held against them. The Bank is obliged to show those in question concern and offer its support.'

4 As regards the concept of psychological harassment in particular, Article 3.6.1 of the Code of Conduct states:

'3. 6.1. Psychological harassment

This takes the form of repeatedly hostile or tasteless remarks, acts or behaviour over a fairly long period by one or more members of staff towards another member of staff. A disagreeable remark or a quarrel in the course of which unpleasant words are voiced in the heat of the moment cannot be said to constitute psychological harassment. On the other hand, when repeated consistently for weeks or months on end, incessant outbursts of temper, victimisation, disagreeable remarks or hurtful innuendoes are clear signs of harassment in the workplace.

…'

5 As early as 2003, however, the Bank also had a 'Policy on Dignity at Work' ('the Dignity at Work Policy'). Under the heading 'Bullying and harassment — what is it?', the Dignity at Work Policy provides:

'Both harassment and bullying may take many forms. The behaviour may be physical or verbal and will often occur over a period of time although serious one-off incidents may take place. It is irrelevant whether the behaviour is intentional or not. The key feature is that harassment and bullying is unwelcome and unacceptable behaviour that demeans the self-respect and confidence of the recipient.

…'

6 The Dignity at Work Policy establishes two internal procedures to deal with cases of bullying and harassment, namely (i) an informal procedure, whereby the member of staff concerned seeks an amicable solution to the problem, and (ii) a formal investigation procedure ('the investigation procedure'), whereby he officially lodges a complaint which is dealt with by an Investigation Panel composed of three persons ('the Investigation Panel'). That Investigation Panel is to conduct an objective and independent investigation and to issue a recommendation to the President of the Bank, who finally decides on the measures to be taken.

7 As regards the investigation procedure, the Dignity at Work Policy provides:

'The staff member brings the matter, either orally or in writing, to the attention of the [Director General and Head of Personnel]. If [the latter] judges [that] there is not a clear immediate disciplinary case, and that the circumstances of the case may qualify as harassment, the staff member may initiate the Investigation Procedure as follows:

1. Staff member writes to the [Director General and Head of Personnel] formally requesting the initiation of the Investigation Procedure, stating the complaint and name of alleged harasser(s).

2. The [Director General and Head of Personnel], in agreement with the Staff Representatives, proposes to the President [of the Bank] the composition of the Panel and fixes a date for investigation to begin no later than 30 calendar days after receipt of complaint.

3. The [Director General and Head of Personnel] immediately acknowledges receipt of the staff member's note, [thus] confirming [to the staff member concerned] that the investigation procedure will begin. In addition, the [Director General and Head of Personnel]:

a. requests the person to set out their complaint in a memo and, if he/she so wishes, to send within 10 days any supporting information or documents in an envelope marked "confidential",

b. requests the person to state in his/her memo whether he/she will call witnesses (without mentioning any names),

c. indicates that upon receipt of the above memo the alleged harasser will be informed of the subject of complaint and necessary information but will not receive a copy of the memo,

d. notifies the person that the complaint cannot be retracted and that the [investigation] procedure must run its course,

e. informs the complainant that the alleged harasser will be reminded that there must be no victimisation of the person at any stage, and that the complaint must be kept strictly confidential by both parties (note to be returned to the [Director General and Head of Personnel], with acknowledgement of receipt, and dated),

f. states that the investigation will begin within 30 calendar days and that both parties will be notified of the date … of their individual hearing, their right to be represented or accompanied and the composition of the Panel.

4. Where the memo from the complainant is received, the [Director General and Head of Personnel]:

a. sends promptly a note to [the] alleged harasser, setting out the subject of the complaint and necessary information and asks for a written response plus, if he/she wishes, any supporting documents/evidence, within 10 days, addressed confidentially to the [Director General and Head of Personnel],

b. requests the person to state in his/her reply whether he/she will call witnesses (without mentioning any names),

c. reminds [the] alleged harasser that there must be no victimisation of the person at any stage, and that the complaint must be kept strictly confidential by both parties (note to be returned to the [Director General and Head of Personnel], with acknowledgement of receipt and dated),

…’

8 As regards the hearing, the investigation procedure under the Dignity at Work Policy reads as follows:

‘The objective of the hearing is to establish what happened and to gather facts, leading to a reasoned recommendation …

The Panel has the flexibility to proceed in the way [it] consider[s] appropriate. Normally the hearing will take the form of a sequence of separate interviews, in the following order:

– first the complainant;

– any witnesses on behalf of the complainant;

– the alleged harasser;

– any witnesses on behalf of the alleged harasser;

…’

9 As regards the outcome of the investigation, the investigation procedure under the Dignity at Work Policy provides:

'Once all parties have been heard, and any other appropriate investigations have been made, the Panel should be in a position to deliberate and to set out a reasoned recommendation. The Panel does not have decision-making powers.

Recommendations might be that:

– the case be discontinued because the two parties have been able to clarify the situation and a solution for the future, which is acceptable to both parties, has been found;

– the case not be considered to constitute intimidation or harassment but a dispute at work that must be examined in greater detail or monitored;

– the complaint be rejected;

– the necessary measures be taken should the Panel find the complaint to be unfounded or malicious;

– disciplinary proceedings [against the alleged harasser] should be initiated.

The Panel's written recommendation shall be drawn up within five days of the end of the investigation and sent to the President of the [Bank] to decide what measures are to be taken.'

10 As regards the decision taken by the President of the Bank, the investigation procedure under the Dignity at Work Policy provides:

'The President [of the Bank]'s decision should indicate any action to be taken, and the timing, for example:

– disciplinary procedure initiated [against the harasser],

– the making of additional enquiries in a specific work unit or department,

– an agreed solution between the parties.

If no finding of harassment is made and there has been no breach of the rules in force, it will be necessary to assure both parties that the [investigation] procedure will not entail any adverse consequences for them.

…'

11 Under the heading 'Data storage', the investigation procedure under the Dignity at Work Policy provides:

'In order to protect all parties concerned, documentation shall be stored in strict confidentiality and information will be disclosed only if absolutely necessary. [The Human Resources Department] shall store, as confidential and under the supervision of the personal data protection officer, files containing the names, dates, complaints and outcomes, with a view to monitoring the policy and to ensure consistency and fairness.'

Background to the dispute

12 The applicant, SQ, a member of staff of the Bank, joined the Bank on 1 April 2008 as [*confidential*] [1] assigned to the [*confidential*] Department ('the department in question').

13 In 2011, the director then in charge of the department in question decided that the applicant should work directly for him and, on that basis, the applicant was entrusted with specific files. Furthermore, from October 2011, the applicant was effectively the head of a team which, in 2013 and 2014, was composed of a press officer, a full-time assistant and a young graduate.

14 According to the applicant, the then acting director of the department in question repeatedly requested that her role be reassessed, that the team led by her be converted into a unit and that she therefore become head of unit.

15 In October 2014, following the director's departure, a new director was appointed ('the new director'). Among other things, he was tasked by the Bank to restructure the department in question because the services provided by it were unsatisfactory and there was a skills gap that had to be filled by external recruitment.

16 In the course of the reorganisation of the department in question, the team led by the applicant was disbanded. The applicant asked the new director on several occasions to have her job description updated, but to no avail.

17 On 2 June 2016, the applicant was placed on medical leave due to burnout.

18 On 8 September 2016, the applicant met with the Head of the Employee Relations and Wellbeing Division, part of the Employee Relations and Administration Department of the Directorate-General (DG) for Personnel, and with a senior staff member of the Human Resources Department. Following that meeting, she sent an email to both interlocutors in which she described certain acts of the new director which she claimed amounted to psychological harassment and gender discrimination. In that email, the applicant requested in particular that an amicable and prompt solution be found to the situation, which could consist in either granting her leave on personal grounds ('LPG') for two years or appointing her to another department as head of unit.

19 On 26 October 2016, using the standard form provided for that purpose, the applicant submitted a request for LPG for two years which, she argued, was justified by the fact that she had been the victim of psychological harassment by the new director and that he had pursued a policy of discrimination based on sex. Thus, first, the applicant explained that LPG for two years would allow the Bank to investigate the offending conduct and take the necessary steps to put an end to the new director's behaviour without her having to fear or suffer possible reprisals. Secondly, LPG would enable her to regain confidence in her managerial skills by joining or setting up a business.

20 On the same day, the applicant submitted, under the Bank's internal rules, a complaint ('the complaint') about the new director's conduct towards her in which she claimed, primarily, that it amounted to psychological harassment for the purpose of Articles 3.6 and 3.6.1 of the Code of Conduct and an infringement of the internal rules on respect for dignity. In the alternative, she contended that the conduct infringed Articles 1.1, 3.1, 3.3 and 3.5 of the Code of Conduct.

21 Also on 26 October 2016, the applicant submitted, under Article 1.5.1 of the Code of Conduct read in conjunction with the 'Whistleblowing Policy' adopted by the Bank on 21 January 2009 ('the Whistleblowing Policy'), a whistleblowing report concerning (i) conduct by the new director which, in

1 Confidential data removed.

her view, evidenced a policy to undermine equal opportunities within the meaning of Article 1.2 of that code, and (ii) discrimination based on sex within the meaning of Article 1.3 thereof ('the whistleblowing report'). In essence, the applicant took issue with the fact that four of the six female members of staff with managerial responsibilities in the department in question had been sidelined to make way for men. The new director had therefore basically surrounded himself with men and had engaged in practices contrary to the Code of Conduct.

Complaint of psychological harassment and whistleblowing report

22 Explaining that her career had ground to a sudden halt after the appointment of the new director, the applicant claimed in the complaint that the new director had developed practices designed to sideline female managers in the department in question and, against that background, to 'break' the applicant who had enjoyed the full confidence of his predecessor. By transferring the applicant to a post without any responsibilities and without any clearly defined objectives, the new director 'marginalised' her.

23 The applicant also contended that the new director had 'dismantled' the three-member team formerly managed by her; questioned the applicant's authority in relation to those three persons and repeatedly criticised her; allocated work theoretically falling within her purview to others; withheld information concerning the handling of files for which she was responsible, particularly by failing to invite her to preparatory meetings for an important meeting with the President of the Bank; failed to provide feedback on her performance which was nevertheless a matter for the new director; and engaged in many malicious acts, including after her placement on sick leave.

24 With regard to the last point, the new director allegedly made disparaging remarks about the applicant to one of her colleagues and friends using an aggressive tone; planned to ask the Human Resources Department to have the applicant medically re-examined despite the medical certificates supplied by her; set the applicant's annual objectives in June 2016 even though she was on sick leave; and, lastly, arranged for the publication of a call for applications with a view to filling the applicant's post even though she had not yet notified DG Personnel that she did not intend to return to work at the end of her medical leave.

25 The applicant also argued that she had been punished by the new director in the context of a selection procedure for a head of unit post. Although she was a candidate for that post, the new director allegedly informed the applicant on 29 June 2015 that he was going to present the new organisation chart of the department in question at the end of the day. Ignoring the fact that the applicant's interview with the selection board for the post of head of unit was to be held the following day, which would normally be decisive for the filling of that post, the new director presented to the staff of the department in question the new departmental organisation chart omitting the applicant from the post of head of unit. This, according to the applicant, demonstrates that the new director had already decided to rule her out of the selection procedure.

26 Furthermore, the applicant claimed that the new director had made tasteless, aggressive, derogatory and accusatory remarks, including at meetings, had issued unreasonable, ridiculous and obscure requests, and had criticised her in her absence. In particular, the new director stated that the Bank's employees should not complain because they were fortunate to have the jobs and wages they had. He also said, when he was appointed director, that he did not understand why he could not dismiss employees he did not like as he saw fit, in contrast to what he had been able to do in previous posts.

27 Moreover, the applicant complained of favouritism towards some members of staff, especially those who had worked at another international organisation and whose recruitment had been facilitated by the new director, and claimed that the new director displayed a critical or disinterested attitude towards the work of staff, including the applicant, who were already in post in the department when he took up his appointment.

28 The applicant thus concluded the complaint by asking the Bank:

– first, to initiate an administrative enquiry, in accordance with the internal rules on respect for dignity, in order to investigate the facts set out in the complaint, including by hearing the applicant, the witnesses she intended to call and any other person with knowledge of the facts;

– secondly, to declare formally that those facts amounted to psychological harassment against her and, where appropriate, against other employees;

– thirdly, to decide, under Article 38 of the EIB Staff Regulations, to initiate disciplinary proceedings against the person or persons to be held responsible, in particular the new director if he should decide not to resign on his own initiative;

– fourthly, to grant the following requests:

  – to allow the applicant to take LPG for two years;

  – to appoint her, upon her return from LPG, to the post of head of unit, either within the department in question or in another department if the former were to remain under the responsibility of the new director;

  – offer her appropriate financial compensation in respect of, first, the non-material damage suffered as a result of the factual allegations made in the complaint and, secondly, the material damage resulting from loss of earnings on account of her not being promoted to the post of head of unit as expected in view of her service record under the guidance and assessment of the former director of the department in question.

29 Also on 26 October 2016, the applicant submitted, under Article 1.5.1 of the Code of Conduct, a whistleblowing report describing (i) a policy of the new director, applied in 2015 and 2016 and not challenged by DG Personnel, to undermine equal opportunities within the meaning of Article 1.2 of that code, and (ii) discrimination based on sex within the meaning of Article 1.3 thereof.

Investigation procedure

30 By email of 3 November 2016, the Director General and Head of Personnel of DG Personnel ('the Head of Personnel') asked the applicant, among other things, whether she intended to call witnesses to appear in connection with the investigation procedure and whether, as regards the note informing the new director of the existence of a complaint concerning him, she wished to draft that note herself or simply comment on the draft note prepared by the department. In her reply sent by email on 6 November 2016, the applicant stated that in accordance with Article 3(a) and Article 4(a) of the rules on the investigation procedure under the Dignity at Work Policy, it was the responsibility of that directorate-general alone to draw up the note based on the applicant's complaint and the evidence submitted in support of it. By email of 9 November 2016, a lawyer from DG Personnel forwarded the applicant the draft note at issue and invited her to submit any comments she may have, which the applicant refused to do, repeating, in an email of 11 November 2016, that such action would be at odds with the applicable provisions entrusting DG Personnel with the preparation of the note to be sent to the person against whom allegations had been made in the complaint.

31 On 17 November 2016, the applicant's adviser contacted the Bank to discuss the terms of a possible amicable settlement.

32 On 18 November 2016, in a joint letter, the Secretary General of the Bank and the Head of Personnel acknowledged receipt of the applicant's requests set out in the previous day's letter from her adviser. They informed the applicant that the Compliance Directorate of the Bank had been given the task of investigating her claims. As regards the possibility of resolving the dispute by means of an amicable settlement, they stated that, in the light of the ongoing administrative proceedings and the seriousness of the allegations, the Bank was unable to grant the applicant's request. In particular, the applicant's claim for compensation seemed to them to be premature so long as the procedures had not established that the allegations were true.

33 By letter of 22 November 2016, the Head of Personnel and the Director of the Employee Relations and Administration Department informed the applicant that the Bank had decided to grant her request for LPG from 1 December 2016 to 31 December 2018, exclusively for the reason given by the applicant concerning her plan to join or set up a business.

34 On 25 November 2016, the three members of the Investigation Panel established within the framework of the investigation procedure were appointed in accordance with the Dignity at Work Policy. The panel was composed of a law lecturer, a psychologist working for the Luxembourg Government and the Bank's former Director of Human Resources, then retired.

35 On 2 December 2016, the applicant forwarded to DG Personnel the names of the seven witnesses she wished the Investigation Panel to hear from and informed the panel at that early stage that, during the interview, she would be assisted by her adviser and her husband.

36 She was notified on 5 December 2016 that the list had been sent to the Investigation Panel which would decide on the action to be taken in response to that request. The applicant was also asked to nominate, in accordance with the Dignity at Work Policy, the one person who would assist her during the interview with the Investigation Panel, with the recommendation that family members be excluded from that choice.

37 On 5 December 2016, the applicant provided additional documents, including a report from her psychiatrist certifying that she had suffered burnout on account of her exposure to the behaviour of the new director. Moreover, on the same date, she formally requested the legal assistance of her adviser and the psychological assistance of her husband.

38 On 9 December 2016, the applicant was notified of the Investigation Panel's decision to hear only three of the seven witnesses she had proposed and to refuse her request, as out of time, to place on the file the information she had sent on 5 December 2016. She was also informed that the Investigation Panel had accepted that she be assisted by the two persons she had indicated.

39 On 12 December 2016, the applicant challenged that procedural decision of the Investigation Panel. It is apparent from an exchange of subsequent emails that, in essence, the Investigation Panel ultimately agreed to examine the documents submitted on 2 December 2016; that the applicant was permitted to place on the file the written statements of the four witnesses whom the Investigation Panel had declined to hear; and that it had been decided, by mutual agreement between the Bank and the applicant, that the hearings before the Investigation Panel would be recorded but later destroyed once the President of the Bank had taken a decision on the case.

40 On 4 January 2017, the applicant, the new director and the three witnesses called by the applicant were heard by the Investigation Panel. The panel subsequently invited the applicant to reply to one last written question, which she did by email from her adviser of 8 February 2017.

41 On 6 February 2017, acting through her adviser, the applicant had nevertheless sent to the President of the Bank and eight other addressees working at the EIB, by post and by email, a letter in which she complained of shortcomings in the EIB's Whistleblowing Policy, in so far as she had not yet received any reply to the whistleblowing report submitted concerning (i) the new director's policy which she claimed undermined equal opportunities, and (ii) discrimination based on sex. She ended that letter by inviting the President of the Bank to consider the whistleblowing report and take the necessary protective or definitive measures before 1 March 2017. If he failed to do so, the applicant argued that, under paragraph III.2.(d) of the Whistleblowing Policy, she be would be obliged to bring the matter before the Ombudsman of the European Union.

Investigation report

42 On 15 March 2017, the Investigation Panel adopted its report ('the report'), in which it found that two aspects of the allegations made by the applicant in the complaint could objectively be regarded as amounting to psychological harassment: first, the fact that the new director had provided an inadequate written reply to the applicant's requests to have her new role in the department in question defined and, secondly, the failure of the new director to fulfil his obligation to agree the applicant's objectives with her one year in advance. The Investigation Panel also considered that the effect of those acts constituting psychological harassment had been compounded by the new director's failure to provide the applicant with appropriate notice of the allocation of certain tasks and with clear information.

43 As for the remainder, the Investigation Panel individually examined the allegations made by the applicant in the complaint but did not find, except as regards those mentioned in the previous paragraph of this judgment, that they could come within the concept of 'psychological harassment'.

44 Concerning the disbandment of the three-person team for which the applicant was responsible, the Investigation Panel stated, in particular, that this had been foreseen in the reorganisation plan for the department in question which had been approved by the Bank's management. Furthermore, in respect of the filling of the head of unit post, the Investigation Panel took the view that the new director had had recourse to a selection procedure even though, within the Bank, directors were able to entrust head of unit responsibilities to persons without going through a selection procedure before a board. In those circumstances, the Investigation Panel considered that while it might have been regrettable that the new director published the new departmental organisation chart the day prior to the applicant's interview for the post of head of unit at issue, it was not in a position to find that an irregularity had been committed in that respect, especially since the applicant was not ranked second for that post in the selection procedure and the selection board had justified its decision to reject her application based on her performance during the interview. Thus, it concluded that no finding of psychological harassment could be made in that context.

45 As regards the fact that the new director questioned the applicant's role as team leader in the department in question and her managerial prerogative to set objectives and evaluate the three team members, the Investigation Panel determined that even though those questions and criticisms from the new director were tasteless, they appeared to have occurred on only one occasion, so that they could not be regarded as constituting a form of psychological harassment.

46 Concerning the definition of the applicant's duties in the department in question following its restructuring, the Investigation Panel found that, as the person in authority, the new director was required to address the applicant's concerns. Thus, according to the Investigation Panel, the lack of detail about the applicant's new role and annual objectives was not only a sign of poor management, but also diminished the self-respect and confidence of the recipient of such behaviour where that

person had expressly sought specific guidance and advice on several occasions. Against that background, the Investigation Panel concluded that the failure to provide information in good time on the applicant's job description and the objectives set for her amounted to psychological harassment.

47 As for the fact that the new director had allocated to other persons some of the tasks formerly entrusted to the applicant, who had worked directly for the previous director, the Investigation Panel stated that it was not clear to what extent those tasks had actually been entrusted to other persons. While finding that the lack of proper communication between superiors and subordinates was indicative of 'poor management', it nonetheless considered that it did not correspond to the definition of psychological harassment, even though it could be a factor in compounding the effect of psychological harassment resulting from the lack of any description of the applicant's job and the objectives set for her.

48 In respect of the alleged withholding of information by the new director, the Investigation Panel found it regrettable but considered that it did not amount to psychological harassment.

49 Concerning the new director's failure to react to and comment on the applicant's emails and questions, the Investigation Panel stated that he had held numerous meetings attended by the applicant so that it could not be found that he had attempted to sideline her. Therefore, the Investigation Panel found that the conduct referred to could not be categorised as a form of psychological harassment.

50 As for the fact that the new director had planned to ask the applicant to undergo a medical examination as a legitimate option open to the Bank in the management of extended periods of sick leave, the Investigation Panel determined that the new director had not taken that step, since, in the end, he had not required the applicant to undergo such an examination. Thus, the Investigation Panel concluded that this was not a 'ground of harassment'.

51 As regards the setting of the applicant's objectives while she was on medical leave, the Investigation Panel, noting that the Bank's medical service had recommended that the new director and head of division involved refrain from contacting the applicant in that connection during her sick leave, considered that this was not a 'ground of harassment'. Similarly, the applicant could not take issue with the Bank for having published the vacancy notice for her post, given that she was on long-term sick leave.

52 In respect of the complaint concerning the new director's use of aggressive language, the Investigation Panel found that the applicant had not provided sufficient evidence to support that claim, particularly in the light of the relatively friendly or polite wording of the emails sent to her by the new director.

53 Concerning the inappropriate criticism allegedly levelled by the new director at the applicant, the Investigation Panel considered that the remarks made did not constitute psychological harassment. As for the fact that the new director prematurely interrupted a meeting between the Deputy Secretary General of the Bank, the applicant and himself, the Investigation Panel determined that the new director had been entitled to take the view that, given the basic questions she had raised at the meeting, the applicant lacked preparation on the subject matter. That being the case, since this was a single event, 'the Investigation Panel c[ould not] accept that it could amount to harassment'.

54 The Investigation Panel also dismissed as unfounded the applicant's complaints relating to the alleged requests for information sent to her by the new director without providing sufficient detail on the purpose of those requests or without them being urgent. Similarly, as regards the remarks the new director allegedly made to other colleagues in relation to the applicant herself and the working conditions at the Bank, the Investigation Panel did not consider the applicant's complaints to be well founded.

55 In respect of the fact that the new director, concerned with filling the expertise gap in the department in question through new external recruits, focused his attention on those persons, with the risk that staff with a longer service record may feel discriminated against, the Investigation Panel determined that even though he had failed to explain the situation properly to existing staff, such conduct did not amount to psychological harassment.

56 While acknowledging that, subjectively, the applicant had suffered and continued to suffer as a result of her work situation, the Investigation Panel reached the conclusion that the new director could be criticised for his poor management and communication skills. However, even though he himself was under considerable pressure to implement a major reorganisation of the department in question, while ensuring the continuity of day-to-day operations, the Investigation Panel found that he was aware of the dissatisfaction felt by the applicant due to the loss of her duties as team leader and, consequently, should have redoubled his efforts to clarify her new role in the department in question. And yet, the new director did not provide a new job description until after the applicant had been placed on sick leave. Thus, his management style and lack of sensitivity towards the applicant for more than two years had, according to the Investigation Panel, diminished her self-esteem, self-confidence and efficiency.

57 At the end of its report, the Investigation Panel recommended that the President of the Bank, first, require the new director to make a formal written apology to the applicant and, secondly, ask him to take account of the effect of his conduct on other staff, with the assistance of job coaching provided by the EIB which would help him gain real awareness of the consequences of his management and/or communication style and develop greater empathy towards the staff under his responsibility.

58 The Investigation Panel added that the President of the Bank might wish to have disciplinary proceedings formally initiated under the Dignity at Work Policy if the new director did not comply with the abovementioned measures or if a further complaint against him were submitted within three years following the decision of the President of the Bank and were declared to be well founded by the Investigation Panel.

Contested decision and measures for its implementation

59 By decision of 20 March 2017 ('the contested decision'), the President of the EIB informed the applicant of the termination of the investigation procedure and, forwarding her the report of the Investigation Panel, stated that he had notified the new director that if, in the future, a further complaint were to be made against him and were considered to be well founded by the Investigation Panel, the President would initiate disciplinary proceedings against him. Furthermore, he informed the applicant that he had asked the new director to make a formal apology to her for the suffering he had caused and had also tasked the Human Resources Department with examining the possibilities for the new director to receive job coaching on his management and communication style.

60 By letter of 23 March 2017 sent to the President of the EIB and, in copy, by email, to the President and the Secretary General of the EIB, the Director of the Employee Relations and Administration Department and the Head of the Employee Relations and Wellbeing Division, the applicant challenged the lawfulness of the contested decision, stating, first, that it was based on a misinterpretation of the concept of psychological harassment and on a fragmented and partly contradictory, even incorrect, analysis of the facts at issue, and, secondly, that the measure it envisaged taking against the new director was inappropriate in the light of the seriousness of the conduct in question in this case. She also requested that, no later than 25 April 2017, the EIB's staff send her the written apology from the new director and make her a possible offer of compensation in respect of the material and non-material damage suffered.

61 By letter of 10 April 2017 co-signed by the Head of Personnel and the Director of the Employee Relations and Administration Department, the signatories of that letter, in reply to an email from the applicant's adviser of 8 March 2017, informed the adviser that the whistleblowing procedure under the Dignity at Work Policy was ongoing and, at that stage, the request for an amicable settlement of the dispute could not therefore be taken into consideration. Furthermore, in that letter, both signatories noted that the applicant's adviser had sent the letter of 6 February 2017, referred to in paragraph 41 of this judgment, to many individuals, even though the subject matter of that letter was highly confidential and was capable of affecting the professional reputation of a member of staff of the EIB. Accordingly, they informed the adviser that such action could constitute a breach of the basic rules on confidentiality in the context of the investigation procedure and might have caused harm to the applicant's colleagues involved in that procedure. Consequently, the applicant's adviser was told that the Bank would consider the legal options open to it for possible actions to be brought before the Luxembourg authorities in order to remedy the situation and possible internal measures within the Bank.

62 By letter of 13 April 2017, the applicant's adviser inter alia asked the Head of Personnel, first, to withdraw formally, by 25 April 2017, the threat set out in the letter of 10 April 2017 that internal action would be taken against the applicant on account of an alleged breach of a duty of confidentiality; secondly, to have disciplinary proceedings initiated against the new director on the ground that he had still not complied with the disciplinary measure which was to send a letter of apology; and thirdly, to make an offer of compensation for the damage caused to the applicant in the amount of one year's salary.

63 By letter of 9 May 2017, the Bank sent the applicant a letter, dated 3 May 2017, in which the new director informed the applicant, in particular, first, that he was 'genuinely sorry for the suffering caused to her by [his] lack of clarity in setting the 2015 objectives and in defining her new role in the department [in question]'; secondly, that he accepted the conclusions of the Investigation Panel regarding the finding of psychological harassment; and thirdly, that he hoped that, despite this difficult experience, they could 'lay the foundations for fruitful and positive cooperation in the future'. The applicant was also notified in the letter of 9 May 2017 that the job coaching for the new director to which reference was made in the contested decision had begun.

64 By letter of 2 June 2017, the applicant submitted a request for conciliation under Article 41 of the EIB Staff Regulations in which she asked the Conciliation Board to annul the contested decision in part in so far as it wrongly played down the seriousness of the psychological harassment at issue and the seriousness of the disciplinary measure that was required in that case. She also sought compensation, first, for the damage suffered on account of the harassment at issue in the amount of EUR 121 992; secondly, for the non-material damage suffered on account of administrative errors in the amount of EUR 25 000; and thirdly, for the damage resulting from the alleged breach by the Head of Personnel of the independence of the whistleblowing procedure and from the threat or intimidation contained in the letter of 10 April 2017, in the amount of EUR 25 000.

Procedure and forms of order sought

65 The applicant brought the present action by application lodged at the Court Registry on 15 June 2017.

66 The applicant claims that the Court should:

– annul in part the contested decision;

– order the EIB to pay compensation in the amounts, respectively, of EUR 121 992, EUR 25 000 and EUR 25 000 for the non-material damage suffered;

– order the EIB to pay the costs.

67 The EIB contends that the Court should:

– dismiss the action;

– order the applicant to pay all the costs.

68 Since the parties had not requested a hearing under Article 106(1) of the Rules of Procedure of the General Court, the General Court (First Chamber), considering that it had sufficient information available to it from the material in the file, decided to rule on the action without an oral part of the procedure, in accordance with Article 106(3) of the Rules of Procedure.

Law

Preliminary remarks on the employment regime specific to the Bank and on compliance with the pre-litigation procedure specific to actions involving the Bank

69 As a preliminary point, it should be recalled that the staff of the Bank are not subject to the Staff Regulations of Officials of the European Union, resulting from Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968, as last amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 ('the EU Staff Regulations'), or the Conditions of Employment of other servants of the Union, texts referred to in Articles 270 and 336 TFEU.

70 The staff of the Bank are subject to a different body of rules, in this case the EIB Staff Regulations adopted under Article 31 of the Rules of Procedure of the Bank, themselves adopted under Article 7(3)(h) of Protocol No 5 annexed to the TEU and the TFEU.

71 As regards the pre-litigation procedure specific to cases involving the Bank, unlike the situation prior to 1 July 2013 (judgments of 27 April 2012, *De Nicola* v *EIB*, T-37/10 P, EU:T:2012:205, paragraph 75, and of 19 July 2017, *Dessi* v *EIB*, T-510/16, not published, EU:T:2017:525, paragraphs 21 to 34), Article 41 of the EIB Staff Regulations now requires the conciliation procedure to be initiated prior to bringing an action against the Bank under that provision.

72 The applicant submitted that, as she had informed the President of the Bank by letter of 14 June 2017, the EIB had not, in the instant case, nominated the member of the Conciliation Board within the period of one week referred to in Article 41 of the EIB Staff Regulations, which began to run when the applicant submitted the request for conciliation on 2 June 2017.

73 While acknowledging, in his reply letter of 26 July 2017, that he had not undertaken the nomination within that period, the President of the Bank nonetheless argued that the one-week period was merely indicative, so that the fact that the Bank had not nominated the member of the Conciliation Board did not amount to one of the two grounds for failure of the conciliation procedure exhaustively listed in Article 41 of the EIB Staff Regulations. During the litigation stage, the Bank did not, however, challenge the admissibility of the present action on account of non-compliance with the conciliation procedure referred to in that article.

74 Since the Bank's failure to nominate the member who is to form part of the Conciliation Board and who is then to choose, in agreement with the member nominated by the applicant, the third member of the board completely prevents the proper establishment of the Conciliation Board, it must be held that the failure to nominate that member by the Bank within the period of one week referred to in Article 41 of the EIB Staff Regulations results in the failure of the conciliation procedure.

75 Consequently, in the present case and with regard to the claims for annulment of the contested decision and the related claims for compensation, the Court must find that when the action was brought, the conciliation procedure had indeed failed because the Bank had not nominated its member of the Conciliation Board within the period prescribed by Article 41 of the EIB Staff Regulations. It follows that the applicant had in fact submitted the dispute relating to those claims to the conciliation procedure before bringing the action, which, therefore, is not premature on any view.

76 Having made those observations, it is now appropriate to examine the claims for annulment and the claims for compensation in turn.

Claims for the annulment in part of the contested decision

77 As a preliminary point, the applicant states that her claims for annulment are directed at the contested decision only in so far as the President of the Bank, first, declined to categorise as psychological harassment the practices described by the applicant and appearing in paragraphs 20 to 25, 31, 34, 46, 50 and 51 of the report ('the acts still in dispute'); secondly, declined to initiate disciplinary proceedings against the new director; and thirdly, ordered that the contested decision remain strictly confidential with respect to the Vice-Presidents of the Bank.

78 Thus, in support of her claims for annulment as so defined, she relies on three pleas in law, alleging, respectively:

– first, errors of law and manifest errors of assessment in the categorisation of the acts still in dispute;

– secondly, an error of law connected with the failure to initiate disciplinary proceedings against the new director;

– thirdly, errors of law and manifest errors of assessment as regards the obligation of the applicant, in her capacity as victim, to keep the contested decision confidential.

First plea in law alleging errors of law and manifest errors of assessment in the categorisation of the acts still in dispute

79 In the first plea, the applicant claims, under two different limbs, first, that the Investigation Panel committed an error of law in considering that the categorisation of some of the acts still in dispute as psychological harassment required those acts to be repetitive, and, secondly, that in contrast to the report's findings, some of the acts still in dispute objectively amounted to psychological harassment.

– First part of the first plea in law

80 In support of the first part of the first plea, the applicant submits that the findings of the Investigation Panel, set out in paragraphs 25, 34 and 46 of the report and endorsed by the President of the Bank in the contested decision, are incorrect to the extent that, in order to refuse to categorise as psychological harassment the conduct at issue in those paragraphs, the Investigation Panel merely noted that such conduct had occurred only once.

81 The applicant argues that in accordance with Article 3.6.1 of the Code of Conduct, the requirement of repetition does not refer to the reproduction of a single identical act but rather the recurrence, over a fairly long period, of displays of hostility resulting from multiple acts or instances of behaviour that are not necessarily and strictly the same. Any interpretation to the contrary would lead to the result, which the applicant describes as absurd, that the recipient of multiple hostile acts would not be regarded as a victim of psychological harassment for the sole reason that those acts are not strictly identical.

82 Thus, the President of the Bank erred in law by finding in the contested decision that disparagement, the withholding of information and verbal aggression, as examined, respectively, in paragraphs 25, 34 and 46 of the report, did not fall within the scope of psychological harassment or could not compound the psychological harassment identified in the Investigation Panel's report.

83 For the sake of completeness, the applicant states, as regards the disparagement she claims to have suffered, that such conduct also took place in April and June 2016. Thus, by endorsing the Investigation Panel's finding that there was only a single instance of disparagement, the President of the Bank committed a manifest error of assessment.

84 The Bank contends that the first part of the first plea should be rejected as unfounded. It asserts that in contrast to the applicant's claims, the definition of psychological harassment set out in Article 3.6.1 of the Code of Conduct, concerning dignity at work, does not merely require the conduct complained of to have been repeated over 'a fairly long period', but also requires the alleged actions to be 'tasteless', in the sense of 'improper', similarly to what is provided for in the case-law on the concept of psychological harassment under Article 12a of the EU Staff Regulations. Furthermore, the Bank submits that the requirement deriving from the word 'repeatedly', set out in Article 3.6.1, refers to the repetition of the same type of acts which have been observed on several occasions and which, on account of such repetition, can then be categorised as improper. It maintains that the applicant's proposition, unlike the case-law, is tantamount to converting acts that are objectively different and separate in time into a single instance of psychological harassment.

85 In any event, the acts still in dispute do not form a whole. On the contrary, it is precisely their isolated and distinctive nature that prevented such a finding of a single instance of conduct amounting, in this case, to psychological harassment.

86 As regards the claim made by the applicant for the sake of completeness, the Bank contends that it lacks any basis in fact as the new director criticised the applicant to a third party only once.

87 As a preliminary point, Court notes that Article 3.6.1 of the Code of Conduct defines psychological harassment as 'repeatedly hostile or tasteless remarks, acts or behaviour over a fairly long period by one or more members of staff towards another member of staff'. That provision of the Code of Conduct must be read alongside the provision of the Dignity at Work Policy defining psychological harassment, according to which 'it is irrelevant whether the behaviour is intentional or not [since t]he key feature is that harassment and bullying is unwelcome and unacceptable behaviour that demeans the self-respect and confidence of the recipient' (judgment of 10 July 2014, *CG* v *EIB*, F-103/11, EU:F:2014:185, paragraph 68).

88 Consequently, in accordance with the definition of psychological harassment in the Dignity at Work Policy, read with Article 3.6.1 of the Code of Conduct, words, attitudes or acts by a member of staff of the Bank towards another member of staff constitute 'psychological harassment' where they have objectively entailed an attack on the self-esteem and self-confidence of that person (judgment of 10 July 2014, *CG* v *EIB*, F-103/11, EU:F:2014:185, paragraph 69).

89 The definition of the concept of 'psychological harassment' in Article 3.6.1 of the Code of Conduct requires the repetition, and in addition 'over a fairly long period', of hostile or tasteless remarks, acts or behaviour in order for such conduct to fall within that concept. Viewed in that light, the definition

bears a similarity to that set out in Article 12a of the EU Staff Regulations, which defines 'psychological harassment', as regards the officials and other members of staff covered by those regulations, as 'improper conduct' taking the form of physical behaviour, spoken or written language, gestures or other acts which take place 'over a period', and are 'repetitive or systematic', which suggests that psychological harassment must be a process that occurs over time and presumes the existence of repetitive or continual conduct that is 'intentional' rather than 'accidental' (see judgments of 13 December 2017, *HQ* v *CPVO*, T-592/16, EU:T:2017:897, paragraph 101, and of 17 September 2014, *CQ* v *Parliament*, F-12/13, EU:F:2014:214, paragraphs 76 and 77).

90 Therefore, the reference in the case-law concerning Article 12a of the EU Staff Regulations to a 'process that occurs over time and presumes the existence of repetitive or continual conduct' can also apply by analogy for the purpose of applying the concept of 'psychological harassment' applicable to members of staff of the Bank (see, by analogy, in relation to the disciplinary regime of the European Central Bank (ECB), judgment of 17 March 2015, *AX* v *ECB*, F-73/13, EU:F:2015:9, paragraph 103).

91 It should be pointed out that the concept of psychological harassment differs from 'sexual harassment' within the meaning of Article 3.6.2 of the Code of Conduct, defined as 'any form of sexual overtures or soliciting that is clearly unwelcome to the person for whom it is intended or any clearly unwelcome remark, gesture or behaviour with sexual undertones' (also see, in a similar way, the definition used in Article 12a(4) of the EU Staff Regulations as regards the officials and other members of staff subject to those regulations).

92 While a finding of sexual harassment does not necessarily depend on the recurrence of the unwelcome behaviour with sexual undertones, a finding of psychological harassment is the outcome of a finding of a set of acts and cannot in principle be made on the basis of a finding of a single isolated act. That is why the fact that a member of staff may have accidentally adopted an inappropriate tone at meetings or in discussions with another member of staff is not, in principle, covered by the concept of psychological harassment (see, by analogy, judgment of 17 September 2014, *CQ* v *Parliament*, F-12/13, EU:F:2014:214, paragraph 95).

93 Nonetheless, to require, as the Bank argues here, that the categorisation of 'psychological harassment' depends on the repetition over time of identical or similar acts is at odds with the notion of a process over time. As a result of that process, psychological harassment may, by definition, be the outcome of a set of different acts by one member of staff of the Bank towards another which, considered in isolation, would not necessarily constitute per se psychological harassment but which, viewed as a whole and in context, including because of their build-up over time, could be regarded as having 'objectively entailed an attack on the self-esteem and self-confidence of that [other member of staff]' to whom the acts were directed, for the purpose of Article 3.6.1 of the Code of Conduct.

94 That is why, when examining whether the acts alleged by the applicant constitute psychological harassment, those facts should be examined both individually and jointly as part of the general working environment created by the behaviour of one member of staff towards another (see, to that effect and by analogy, judgment of 17 September 2014, *CQ* v *Parliament*, F-12/13, EU:F:2014:214, paragraphs 81 and 128).

95 Accordingly, contrary to the Investigation Panel's findings, particularly in paragraphs 25, 34 and 46 of its report, the mere fact that an alleged act was observed only once is not a ground for finding that it does not constitute 'psychological harassment' within the meaning of Article 3.6.1 of the Code of Conduct. On the contrary, it is for the Investigation Panel to examine whether that act, viewed in isolation and together with other acts, might have 'objectively entailed an attack on the self-esteem and self-confidence of that [other member of staff]' to whom the acts were directed, for the purpose of Article 3.6.1 of the Code of Conduct.

96 Since the President of the Bank endorsed the assessment of the Investigation Panel in the contested decision and, therefore, wrongly found that an act had to be repeated in identical terms in order to come within the concept of 'psychological harassment', without regard to the cumulative effect of different acts on the attack on the self-esteem and self-confidence of the recipient of such acts, the first part of the first plea must be upheld.

– Second part of the first plea in law

97 In the second part of the first plea, the applicant submits that by refusing to categorise the acts still in dispute as psychological harassment, the Bank committed a manifest error of assessment. In the reply, she describes eight practices, relating to the acts still in dispute, which she claims were wrongly not recognised as constituting psychological harassment in the contested decision. She also states that the reorganisation of the department in question could not, under any circumstances, justify psychological harassment for the purpose of its implementation.

98 The Bank contends that the second part of the first plea should be rejected. It maintains that the internal difficulties in the department in question existed prior to the arrival of the new director, who 'had been recruited to carry out a reorganisation that had already been decided on and to end a skills shortage within the department'.

99 In order to rule on the merits of the second part of the first plea, in which the applicant questions the assessment of different acts which, even considered in isolation, she claims objectively constitute psychological harassment, it is necessary first of all to examine in turn each of the alleged acts and, against that background, point out that the concept of 'psychological harassment' referred to in Article 3.6.1 of the Code of Conduct is based on an objective concept which, although based on a contextual classification of the actions and behaviour of officials and other members of staff, which is not always straightforward, does not, in any event, call for complex assessments to be carried out, such as those that may have to be conducted in respect of economic concepts (see, concerning trade protection measures, judgments of 7 May 1991, *Nakajima* v *Council*, C-69/89, EU:C:1991:186, paragraph 86, and of 27 September 2007, *Ikea Wholesale*, C-351/04, EU:C:2007:547, paragraph 40), scientific concepts (see, in respect of decisions of the European Chemicals Agency (ECHA), judgment of 7 March 2013, *Rütgers Germany and Others* v *ECHA*, T-94/10, EU:T:2013:107, paragraphs 98 and 99) or technical concepts (see, in respect of decisions of the Community Plant Variety Office (CPVO), judgment of 15 April 2010, *Schräder* v *CVPO*, C-38/09 P, EU:C:2010:196, paragraph 77), which warrant a margin of discretion being afforded to the administrative body in applying the concept in question. Therefore, where it has been alleged that Article 3.6.1 of the Code of Conduct was misapplied, it is necessary to examine whether the Bank erred in its assessment of the facts in the light of the definition of psychological harassment laid down in that provision, not whether that error is manifest.

100 As regards, in the first place, the alleged strategy of 'marginalising' the applicant, evidenced by the disclosure by the new director that she would not be offered the head of unit post to which she aspired, it should be noted that in the complaint, the applicant's sole argument was that it could only be inferred from the new director's decision to present the new departmental organisation chart in the afternoon of 29 June 2015, the day before the interview in the procedure to fill the head of unit position she wished for, that he had implicitly decided that the applicant would not be offered that post. However, in the application, she states more categorically that the new director informed her that she would not be offered the post.

101 Besides that alteration in the claim at issue, the Court considers that the applicant has failed to show that, notwithstanding the fact that that decision had to be taken collectively by a selection board, the new director had already decided, before the interview, the outcome of the recruitment procedure for

the head of unit post and had broken the news that she would not be selected for that post during or on account of the presentation of the new departmental organisational chart at the meeting of 29 June 2015.

102 Furthermore, the Court points out that in her email of 1 July 2015 sent to a member of staff of the Bank, the applicant simply stated that she was not optimistic about the outcome of the selection procedure and, against that background, indicated that the new director had explained to her, regarding the fact that she appeared on a certain post in the new organisation chart he was going to present to the department in question, that he had had to proceed in that way so as to give a complete picture of the department, but that it would not affect her interview with the board. This rather tends to show that the new director had not yet taken any decision on the matter. In any event, the applicant did not feel it was necessary to challenge the outcome of the recruitment procedure for that post, despite claiming that the procedure was biased in favour of one of the new director's former colleagues in another international organisation.

103 In those circumstances, by endorsing the analysis set out in the report of the Investigation Panel, the President of the Bank did not commit any error of assessment in finding, first, that the applicant had not shown that there was any impropriety in the selection procedure in which she was not, in any event, ranked second, just after the person allegedly appointed due to favouritism, and in which she had failed to demonstrate that she had a sufficient grasp of some of the knowledge needed for the post, and, secondly, that that claim could not be considered to constitute psychological harassment.

104 Similarly, as regards, in the second place, the decision to disband the small three-person team formerly managed by the applicant when the department in question was under the supervision of the previous director for whom she worked directly, the Court notes that like the institutions and agencies of the EU, the Bank is free to organise its administrative units taking account of a whole range of factors, such as the nature and scope of the tasks assigned to them, the budgetary possibilities and changes in the Bank's priorities. That freedom includes the power to abolish posts and to change the tasks allocated to surviving posts, in the interests of better organisation of work, and the power to reassign tasks previously carried out by the holder of an abolished post (see, to that effect and by analogy, judgments of 24 April 2017, *HF* v *Parliament*, T-584/16, EU:T:2017:282, paragraph 103, and of 10 September 2014, *Tzikas* v *ERA*, F-120/13, EU:F:2014:197, paragraph 82).

105 Consequently, as the Investigation Panel essentially pointed out, even though the new director should have taken more time to explain to the applicant why it was necessary to adjust the tasks for which she used to be responsible under the supervision of the previous director, the fact remains that the reorganisation of the department in question had been decided on by the Bank before the new director took up his appointment, due to the unsatisfactory performance of that department, so that the disbandment of the team formerly managed by the applicant, in so far as it resulted from the implementation of that restructuring, fell within the broad discretion enjoyed by the Bank in the organisation of its departments and could not reasonably be interpreted as constituting psychological harassment by the new director carrying out the restructuring of the department in question decided on by the Bank.

106 The applicant's claim must therefore be rejected in that regard, without there being any need to accede to her request to have the Court call on the Bank, by way of a measure of organisation of procedure, to produce the periodic reports of the new director in order to ascertain whether his superiors were aware of the problems he had experienced with staff during the restructuring of the department in question, as well as all information gathered from employees of that department by the business partners and medical services concerning the new director's behaviour between October 2014 and June 2016.

107 As regards, in the third place, the comments made in the department by the new director relating to, first, the fact that the Bank's employees should not complain about their working conditions and, secondly, his disappointment that he could not dismiss employees he did not like as he saw fit, as he

had done in previous posts outside the Bank, the Investigation Panel concluded in its report that such comments did not appear to be unreasonable and that the applicant's objections to them were 'unfounded as allegations of harassment'. Such a conclusion was not, in itself, wrong, since it was not established that, as ill-judged as those comments may be for the smooth running of a department, they were necessarily and specifically directed at the applicant. Therefore, they cannot be regarded as threats made against her.

108 As regards, in the fourth place, the fact that the new director questioned the applicant's role as team leader, including by criticising, or even denying, her entitlement to set the objectives of the three members of that team and to evaluate them, it must be pointed out that in view of the broad discretion enjoyed by the institutions in the organisation of their services, neither administrative decisions, even if they are difficult to accept, nor disagreements with the administration over questions relating to the organisation of services, can by themselves prove the existence of psychological harassment (see judgment of 17 September 2014, *CQ* v *Parliament*, F-12/13, EU:F:2014:214, paragraph 98 and the case-law cited).

109 Consequently, since the job of team leader was not formally defined in the relevant rules applicable within the Bank and, in the applicant's case, was a responsibility that had been entrusted to her by the previous director, the President of the Bank did not make an error of assessment in endorsing the Investigation Panel's finding in that respect and in considering that the new director's questioning of the authority of the applicant as team leader, while tasteless, in this case in the light of Article 3.3 of the Code of Conduct, which provides that 'criticism [by immediate superiors] must be expressed openly and honestly, without innuendoes or veiled threats', was not a form of psychological harassment.

110 In the fifth place, in respect of the fact that the applicant was not invited to participate in some meetings, such a decision, in itself, may fall within the discretion of the new director in organising the work of the department. Accordingly, it does not necessarily constitute per se psychological harassment.

111 Similarly, in the sixth place, concerning the fact that the new director prematurely interrupted a meeting between the Deputy Secretary General of the Bank, the applicant and himself, because the applicant lacked preparation on the subject matter of the meeting, such conduct does not necessarily constitute per se psychological harassment against the applicant.

112 As for, in the seventh place, the claim that the new director favoured contact with new recruits under his supervision to the detriment of staff already in post when he took up his appointment, it does not appear that, in itself, such conduct (which is more suggestive of management weakness) could be considered to amount to psychological harassment against the applicant.

113 Lastly, in the eighth place, regarding the applicant's assertion that her career came to an abrupt halt after the departure of the previous director from the department in question and the appointment of the new director, it must be pointed out that just as the promotion of staff members does not preclude them from being a victim of harassment or malicious behaviour on the part of their superiors (judgment of 16 September 2013, *Faita* v *EESC*, F-92/11, EU:F:2013:130, paragraph 89), the fact that the applicant's career progression slowed down does not necessarily in itself amount to psychological harassment.

114 In particular, in circumstances in which the applicant did not challenge her evaluations or the decisions concerning her advancement, which had by then allegedly slowed down, it should be noted that outside the evaluation, promotion and selection processes in which staff members may challenge the decisions concerning them, they cannot have a legitimate expectation that their careers will progress rapidly over a sustained period or that they will attain the level of head of unit in line with assurances given by the predecessor of their current immediate superior.

115 In the light of the foregoing considerations, the Court, first, partly upholds the second part of the first plea in so far as the President of the Bank was not entitled to conclude that the acts still in dispute did not fall within the concept of 'psychological harassment' without examining those acts as a whole and, secondly, rejects that part as to the remainder as regards the Bank's individual assessment of each of the acts still in dispute.

Second plea in law alleging error of law connected with the failure to initiate disciplinary proceedings against the new director

116 In support of the second plea, the applicant's principal argument is that by refusing to initiate disciplinary proceedings against the new director, the President of the Bank infringed both the Dignity at Work Policy and the provisions on disciplinary measures set out in Articles 38 to 40 of the EIB Staff Regulations. She submits that in the present case and notwithstanding the finding of psychological harassment, the President of the Bank did not take any measure against new director, not even a written reprimand. He merely threatened the person concerned that he would initiate disciplinary proceedings against him if he were to reoffend within three years, in line with the recommendations of the Investigation Panel. According to the applicant, who claims to have an interest in bringing proceedings in that regard, the only option open to the President of the Bank in the instant case was to decide to initiate disciplinary proceedings.

117 In particular, the Dignity at Work Policy provides for only five types of measures which do not include the threat of disciplinary proceedings should the person concerned reoffend. The applicant relies on paragraph 68 of the judgment of 13 July 2017, *OZ* v *EIB* (T-607/16, not published, under appeal, EU:T:2017:495), to argue that, in actual fact, the Investigation Panel had no alternative but to reject the complaint or to uphold it and, in the latter case, to recommend disciplinary proceedings, although, in that last respect, the applicant states that she did not ask that the most serious measure necessarily be taken against the new director.

118 Thus, by declining to adopt, at his level, the measure of a written reprimand or the initiation of disciplinary proceedings before the Joint Committee provided for in Article 40 of the EIB Staff Regulations, the President of the Bank disregarded the *ratio legis* of both the Dignity at Work Policy and the provisions on disciplinary measures.

119 In any event, the applicant submits, in the alternative, that even assuming that the President of the Bank enjoys a discretion in the measures to be adopted following the report of the Investigation Panel, the measures taken in the present case are clearly insufficient having regard to the seriousness of the acts alleged or, at the very least, found in the report to constitute psychological harassment. She also relies on a report by the Bank's medical adviser according to which a culture conducive to psychological harassment has existed at the Bank since 2013. Thus, the failure to initiate proceedings in the instant case contributes to the trivialisation of psychological harassment which is nonetheless prohibited at the Bank. In particular, the mere threat of disciplinary proceedings if the person concerned should reoffend within the next three years does not fulfil the functions of prevention and deterrence that should normally attach to an administrative penalty.

120 The Bank contends that the second plea should be dismissed as unfounded and casts doubt on the applicant's interest in bringing proceedings. According to the Bank, no member of staff has an interest in having disciplinary proceedings initiated or a disciplinary measure taken against another member of staff, in this case the new director.

121 As to the substance, the Bank submits that neither the Dignity at Work Policy nor any other provision applicable within it imposes an obligation to initiate disciplinary proceedings, even in a proven case of psychological harassment. The President of the Bank enjoys a broad discretion in defining the measures to be taken in such a case, in the same way as the Investigation Panel is entitled to make

various recommendations but is not necessarily required to recommend the initiation of disciplinary proceedings. The same applies here, in essence, as regards the observance by the President of the principle of proportionality between the seriousness of the identified harassment and the necessary measures to be taken as a result. Against that background, the Bank states that contrary to what the applicant suggests, its President was not entitled to take the measure of a written reprimand without bringing the matter before the Joint Committee, which is an essential procedural requirement.

122 In any event, the Bank rejects the applicant's argument that the measures taken in this case were insufficient in view of the seriousness of the factual findings made by the Investigation Panel and endorsed by the President of the EIB. It maintains that a victim of psychological harassment cannot demand that the objectives of deterrence and prevention be fulfilled in the definition of the measures taken by the President of the Bank in a proven case of harassment, since, according to the Bank, that would be tantamount to conferring on such victims a right to sue in the interests of the law, which is contrary to the case-law.

123 In the further alternative, the Bank contends that although the case in point amounted to psychological harassment, it was not a serious case justifying the immediate initiation of disciplinary proceedings against the new director. Although it had indeed been subjectively perceived by the applicant as serious, the fact of the matter is that the behaviour of the new director was objectively characterised, in all material respects, by poor management and inadequate communication.

124 As a preliminary point, in so far as the applicant challenges the contested decision claiming that it is not an appropriate measure for the President of the Bank to take in response to the complaint, the Bank's argument that she has no interest in bringing proceedings in that regard must be rejected. It is inherent in the requirements for effective judicial review of the contested decision that the applicant be able to challenge, within the framework of this action, the appropriateness of the measures adopted in response to the complaint. The fact that, in doing so, the applicant takes issue with the Bank for not having initiated disciplinary proceedings against a third party, namely the new director, is irrelevant, since it is common ground that, in this plea in law, the applicant does not act in the interests of the law but, on the contrary, puts forward claims that relate to her personally.

– Measures that, under the rules applicable to the EIB, may be recommended by the Investigation Panel and subsequently taken by the President of the Bank in a proven case of psychological harassment

125 Having clarified that point, it should be noted that in accordance with the investigation procedure under the Dignity at Work Policy, the 'recommendations [of the Investigation Panel] might be that:

– the case be discontinued because the two parties have been able to clarify the situation and a solution for the future, which is acceptable to both parties, has been found;

– the case not be considered to constitute intimidation or harassment but a dispute at work that must be examined in greater detail or monitored;

– the complaint be rejected;

– the necessary measures be taken should the [Investigation] Panel find the complaint to be unfounded or malicious;

– disciplinary proceedings [against the alleged harasser] should be initiated.'

126 Formally speaking, the Dignity at Work Policy does not expressly provide that, where the Investigation Panel makes a finding of psychological harassment at the end of its investigation, it is required to recommend the initiation of disciplinary proceedings, which is only one of the five types of recommendation specifically envisaged by that text.

127 However, where a finding of psychological harassment has been made, only the first and fifth types of recommendation apply, namely either the recommendation that the case be discontinued because the two parties have been able to clarify the situation and a solution for the future, which is acceptable to both parties, has been found, or the recommendation that disciplinary proceedings be initiated.

128 Where the parties have not found an acceptable solution for the future, which is the case here since, by challenging the contested decision, the applicant has clearly expressed her disagreement with the measures proposed by the Investigation Panel and upheld by the President of the Bank, the wording of the Dignity at Work Policy suggests that a finding by the Investigation Panel of psychological harassment should generally lead to it recommending the initiation of disciplinary proceedings.

129 As regards the types of decision that the President of the Bank may take based on the report drawn up by the Investigation Panel, the Dignity at Work Policy provides a list of three possible measures. Thus, it states that that decision may be 'for example … disciplinary procedure initiated [against the harasser], the making of additional enquiries in a specific work unit or department, [or] an agreed solution between the parties'. Given the use of the words 'for example', it appears that the list is not exhaustive.

130 As regards the disciplinary action that the President of the Bank may take immediately in response to a proven case of psychological harassment, Article 38 of the EIB Staff Regulations provides for a disciplinary regime, similar to that laid down in Article 86 of the EU Staff Regulations, supplemented by Annex IX thereto, under which three disciplinary measures may be taken depending on the seriousness of the case. While the first, a 'written reprimand' may be taken without the involvement of the Joint Committee (similar to the Disciplinary Board under the EU Staff Regulations), the other two measures can be adopted only after delivery of the opinion of the Joint Committee, the composition of which is governed by Article 40 of the EIB Staff Regulations. Those two measures are 'summary dismissal for grave misconduct, with or without severance grant' and 'summary dismissal for grave misconduct with loss of severance grant and reduction of pension rights'.

131 In that regard, contrary to the Bank's assertions, in the light of the wording of Article 38 of the EIB Staff Regulations, the taking of a measure by the President of the Bank does not require, in all cases, that the matter be brought before the Joint Committee.

– Nature and adequacy of the measures taken in the present case of proven psychological harassment

132 In this case, the Investigation Panel recommended the initiation of disciplinary proceedings, but only if the new director were again to disregard the prohibition of psychological harassment within the Bank. As the President of the Bank endorsed that recommendation of the Investigation Panel, it must be examined whether, as the applicant submits, it could be implemented by him in the instant case.

133 The question therefore arises as to the discretion enjoyed by the President of the Bank in determining the measure or measures he must take where the Investigation Panel has made a finding of psychological harassment as well as whether the measures adopted in this case were appropriate.

134 In that respect, since the body of rules applicable to the Bank does not make provision for a similar concept, the Court must be guided, in the light of the similar objectives pursued by Article 3.2.1 of the Code of Conduct and Article 12a of the EU Staff Regulations, by the case-law concerning the duty to provide assistance under Article 24 of the EU Staff Regulations, according to which, first, 'the Union

shall assist any official, in particular in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances, or any attack to person or property to which he or a member of his family is subjected by reason of his position or duties' and 'it shall jointly and severally compensate the official for damage suffered in such cases, in so far as the official did not either intentionally or through grave negligence cause damage and has been unable to obtain compensation from the person who did cause it'.

135 Concerning the officials and other members of staff covered by the texts referred to in Article 336 TFEU, it is settled case-law that as regards the measures to be taken in a situation falling within the scope of Article 24 of the EU Staff Regulations, the administration enjoys a broad discretion — subject to review by the EU judicature — regarding the choice of measures and methods for implementing Article 24 of the EU Staff Regulations (judgments of 25 October 2007, *Lo Giudice* v *Commission*, T-154/05, EU:T:2007:322, paragraph 137; of 24 April 2017, *HF* v *Parliament*, T-570/16, EU:T:2017:283, paragraph 48; and of 6 October 2015, *CH* v *Parliament*, F-132/14, EU:F:2015:115, paragraph 89).

136 In addition, so far as harassment is concerned, as a general rule the institution cannot take disciplinary or other action against an alleged harasser (whether or not he is an immediate superior of the purported victim) unless the preliminary measures ordered under Article 24 of the EU Staff Regulations clearly establish that the person accused by the official or staff member has engaged in conduct detrimental to the proper functioning of the service or to the dignity and reputation of the purported victim (judgments of 9 November 1989, *Katsoufros* v *Court of Justice*, 55/88, EU:C:1989:409, paragraph 16; of 28 February 1996, *Dimitriadis* v *Court of Auditors*, T-294/94, EU:T:1996:24, paragraph 39; and of 6 October 2015, *CH* v *Parliament*, F-132/14, EU:F:2015:115, paragraph 90).

137 Based on those case-law considerations, it must be held that for the purpose of implementing the Dignity at Work Policy, the President of the Bank enjoys a broad discretion in defining the measures to be taken in response to the Investigation Panel's report.

138 In the present case, the President of the Bank did not consider it necessary to impose a written reprimand on the director in question. Indeed, the Bank has not argued in its defence that the statement that disciplinary proceedings would be initiated against the director should he reoffend within three years should be construed as a reprimand, or that that statement was made in writing and included in the administrative file of the new director. Furthermore, it is common ground that the President of the Bank did not decide to bring the matter before the Joint Committee immediately under Articles 38 and 40 of the EIB Staff Regulations.

139 Thus, in short, in response to a case which he found to involve psychological harassment, the President of the Bank merely told the person who had submitted a complaint under that policy that the member of staff who had harassed her had been informed that disciplinary proceedings would be initiated against him if he were to reoffend within three years.

140 The Court observes, first, that such a measure, applicable only if the interested person reoffends, means that the penalty for proven psychological harassment would be dependent on a fresh finding of improper conduct even though that finding would be conditional on the uncertain decision of the new victim whether or not to submit a complaint under the Dignity at Work Policy.

141 In addition, in light of the objectives pursued by the Code of Conduct and the Dignity at Work Policy and, in particular, the inherent seriousness of all acts of psychological harassment as asserted in those texts adopted by the Bank, it must be held that, in the circumstances of the present case, the measures adopted by the President of the Bank were insufficient and, therefore, inappropriate having regard to the seriousness of the instant case, at least as regards the immediate response to be given to the conduct already identified by the President of the Bank as constituting psychological harassment.

142 Therefore, without prejudice to the fresh overall examination that the Bank will have to carry out in the light of the Court's findings in relation to the first plea, and without it being necessary to rule on whether the Investigation Panel should have attached greater weight when drawing up its recommendations to the alleged complaints of four other members of staff to the Bank's medical service and, furthermore, whether such claims constitute a complaint that is personal to the applicant within the meaning of the case-law which does not confer on officials and other members of staff a right to sue in the interests of the law or of the staff of an EU institution or agency (see, to that effect, judgment of 28 April 2017, *HN* v *Commission*, T-588/16, not published, EU:T:2017:292, paragraph 90 and the case-law cited), the second plea in law must be upheld.

Third plea in law alleging errors of law and manifest errors of assessment as regards the duty of the applicant, in her capacity as victim, to keep the contested decision confidential

143 In support of the third plea, the applicant claims that the Bank was not entitled to require her to keep the existence and content of the contested decision confidential, including with respect to the senior managers of the Bank.

144 She concedes that when a complaint is submitted, the Dignity at Work Policy applies a duty of confidentiality to the victim, the alleged harasser, the witnesses and other participants in the procedure. She states that it is reasonable to protect the reputation of the different protagonists until the facts have been established. However, the applicant argues that once the investigation procedure has been completed, no legal provisions entitle the President of the Bank to require the silence of the person found to be a victim of psychological harassment, as this would encourage the protection of the reputation of the person against whom allegations have been made despite a finding that he committed acts of psychological harassment.

145 Thus, according to the applicant, it is inherent in the Dignity at Work Policy that the person found to be a victim of psychological harassment or, conversely, the person against whom allegations have been wrongfully made should be able to rely on the outcome of the investigation procedure. As for the victim, the same applies inter alia in relation to the restitution of that person's professional integrity and psychological equilibrium. However, that is necessarily dependent on the recognition by all parties of the merits of the complaint and the suffering to which the victim was exposed. In the present case, the applicant has, in particular, an interest in explaining to her next immediate superior or next employer the objective reasons why she was a victim of burnout and had to interrupt her career by means of LPG lasting two years. That is supported by paragraphs 257 and 258 of the judgment of 5 December 2012, *Z* v *Court of Justice* (F-88/09 and F-48/10, EU:F:2012:171).

146 The Bank's requirement to keep the contested decision confidential is also a manifest error of assessment since that decision contributes to promoting psychological harassment at the Bank, even though, in the light of the applicable rules, the onus is on the EIB, also in terms of its duty of care and duty to have regard for the welfare of staff, to ensure that the existence of this case of psychological harassment is made known, so that other potential victims can make their voices heard, including, in the present case, the four other members of the department in question who confided in the Bank's medical adviser on that issue.

147 The Bank contends that in so far as the third plea seeks the annulment of the decision of 10 April 2017, it should be rejected as inadmissible. In any event, the fact that the applicant was reminded of the issue of confidentiality in that letter cannot lead to the annulment of the contested decision because it is an act subsequent to that decision and is incidental to and separable from it. In addition, that basic reminder of the applicant's duty of confidentiality did not involve the imposition of a new duty of confidentiality and, in any case, was justified here.

148 It should be recalled that the legality of the contested measure must be assessed on the basis of the facts and the law as they stood at the time when the measure was adopted (judgments of 7 February 1979, *France* v *Commission*, 15/76 and 16/76, EU:C:1979:29, paragraph 7; of 17 May 2001, *IECC* v *Commission*, C-449/98 P, EU:C:2001:275, paragraph 87; and of 28 July 2011, *Agrana Zucker*, C-309/10, EU:C:2011:531, paragraph 31).

149 In this instance, as the applicant rightly points out, the contested decision bears the words 'strictly confidential' in capital letters. However, it cannot be immediately inferred from those words that the President of the Bank sought to prohibit the applicant from disclosing the existence and content of that decision to other members of staff.

150 In order to understand the implications of those words in the contested decision, reference must be made to both Article 9 of the EIB Staff Regulations and to the investigation procedure under the Dignity at Work Policy. Article 9 provides that, as regards persons external to the Bank, 'members of staff shall not, without prior permission, communicate or divulge any information or documents … relating to the Bank or its activities'. The Dignity at Work Policy states that 'all parties involved in the investigation and hearings, including [the] assistants and witnesses, … shall be subject to the duty of confidentiality'. It also provides that 'in order to protect all parties concerned, documentation shall be stored in strict confidentiality and information will be disclosed only if absolutely necessary'.

151 Thus, it must be acknowledged that by affixing to the contested decision the words 'strictly confidential' in capital letters, the President of the Bank sought to prevent the applicant, in the light of the abovementioned provisions, from disclosing the existence and content of the contested decision both to persons external to the Bank and to other members of staff and senior managers of the Bank. That finding is essentially in line with the Bank's arguments in the defence.

152 Contrary to the assertions of the applicant, that finding is not necessarily supported by the fact that, in the letter of 10 April 2017 — containing the words 'personal and confidential' in capital letters, but which the applicant does not, however, seek to be annulled in this case — it was found that the applicant could be considered to have infringed the rules on confidentiality by sending the email of 6 February 2017, the subject matter of which was 'highly confidential in that, inter alia, it affect[ed] the professional reputation of a member of staff of the EIB', to multiple recipients. On that date, the procedure before the Investigation Panel was ongoing. Accordingly, on that date, the applicant was bound by the duty of confidentiality laid down in the Dignity at Work Policy while the investigation procedure was ongoing and even when she intended to address only the issue of the whistleblowing report she had submitted under the Whistleblowing Policy.

153 On the other hand, the content of the letter of 9 May 2017 confirms that by affixing the words 'strictly confidential' to the contested decision, the President of the Bank intended to prevent the applicant from disclosing the existence and content of the contested decision both to persons external to the Bank and to other staff members and senior managers of the Bank. In the letter of 9 May 2017, the applicant was reminded that, as she was aware, all documents relating to the dignity at work procedure had to be treated with the strictest confidentiality and that the letter of apology from the new director, drawn up in compliance with the contested decision, should not be disclosed or disseminated to third parties by the applicant.

154 It is therefore necessary to determine whether the President of the Bank or its departments were entitled to give the contested decision and the letter of apology from the new director a level of confidentiality the result of which was to prevent the applicant from disclosing to third parties the existence and content of those documents.

155 In that regard, it should be noted that Article 3(d) of the investigation procedure under the Dignity at Work Policy states that, when a member of staff submits a complaint, that complaint 'cannot be retracted and … the procedure must run its course'.

156 Conducting the administrative inquiry through to completion is important in particular because, should the Bank find that there has been psychological harassment upon completion of the administrative inquiry, which may have been conducted with the assistance of a separate department, such as the Investigation Panel, this in itself is likely to have a beneficial effect in the therapeutic process of recovery of an official or other member of staff who has been harassed and may also be used by the victim for the purposes of a national court action. On the other side of the equation, the conduct of an administrative inquiry through to completion may make it possible to disprove the allegations made by the purported victim, thereby making it possible to repair the damage which such an accusation, should it prove to be unfounded, may have caused to the person named as the alleged harasser by an inquiry procedure (see, by analogy, judgment of 6 October 2015, *CH* v *Parliament*, F-132/14, EU:F:2015:115, paragraphs 123 and 124 and the case-law cited).

157 However, if a member of staff of the Bank who has been the victim of psychological harassment were required to stay silent as to the existence of such harassment, the effect would be, besides the fact that that person would no longer necessarily be able to cite illness relating to that psychological harassment to justify possible absences, that the interested party would not be able to rely on the findings made by the Investigation Panel and the President of the Bank in, respectively, the report and the contested decision, particularly in any action brought before a national court against the harasser.

158 Such an interpretation of the rules applicable to the Bank would be at odds with the objective underlying the Code of Conduct and the Dignity at Work Policy to prevent and punish all psychological harassment within the institutions and bodies of the European Union, even though psychological harassment, in so far as it affects the health and dignity of the victim, constitutes a breach of the rights of workers for the purpose of Article 31 of the Charter of Fundamental Rights of the European Union.

159 It follows from all of the foregoing considerations that the third plea must be upheld and, therefore, within the limits of the findings made in paragraphs 115 and 142 of this judgment and in the context of the consideration of the third plea, the contested decision must be annulled.

Claims for compensation

160 The applicant makes three claims for compensation which should be examined in turn.

161 The Bank contends that those claims should be rejected, arguing that there was no fault on its part.

Compensation for non-material damage suffered as a result of the harassment identified in the contested decision

162 According to the applicant, the psychological harassment by the new director caused her damage that the Bank is required to compensate, since the acts found to constitute psychological harassment by the Investigation Panel and the President of the Bank were engaged in by the new director in the performance of his duties. The applicant thus principally claims, as compensation for the damage to her reputation and health, which is evidenced by the medical certificate from her psychiatrist, EUR 121 992, corresponding to one year's gross salary, that is to say half the salary she would have received if she had not been compelled to request two years' LPG in order to distance herself from her harasser at the alleged time.

163 In the alternative, she submits that the amount of compensation claimed on account of the behaviour of the new director cannot be less than the performance bonus he received in 2015 and 2016, the years in which he psychologically harassed the applicant. Assessing the damage caused to her in that way would prevent the interested person being rewarded by the Bank for his wrongful acts which were

recognised as such by the Investigation Panel and the President of the Bank. In order to decide on that alternative claim, the applicant asks the Court to order the EIB to disclose the amount of the performance bonus, either by way of a measure of organisation of procedure or at the hearing, which the applicant did not ultimately request.

164 The Bank contends that the claim for damages should be rejected, arguing that the applicant's demands are not based on any credible medical evidence establishing a link between the identified harassment and the alleged damage to her health. It also maintains that it followed the applicable procedures and initiated them in good time. In particular, it states that the applicant has not demonstrated how the Bank was at fault.

165 It is to be borne in mind that according to settled case-law, whether the EIB incurs non-contractual liability is subject to a number of conditions being met, namely the conduct complained of must be unlawful, actual harm must have been suffered and there must be a causal link between the alleged conduct and the damage purportedly suffered (see judgment of 1 June 1994, *Commission* v *Brazzelli Lualdi and Others*, C-136/92 P, EU:C:1994:211, paragraph 42 and the case-law cited).

166 Furthermore, according to settled case-law also applicable *mutatis mutandis* to disputes between the EIB and its members of staff, disputes between the European Union and its staff, irrespective of the employment regime applied to its staff, are subject to particular rules that form a special category compared with those deriving from the general principles governing the non-contractual liability of the Union in the context of Article 268 TFEU and the second paragraph of Article 340 TFEU. Unlike any other individual acting under those provisions, an official or other member of staff of the European Union is connected to the institution or agency to which he belongs by a legal employment relationship involving a balance of specific reciprocal rights and obligations, which is reflected in the institution's duty to have regard for the welfare of the person concerned. That balance is essentially intended to preserve the relationship of trust which must exist between the institutions and their members of staff in order to guarantee to the public that tasks in the public interest entrusted to the institutions are performed effectively. It follows that where it acts as an employer, the Union's liability is greater, in the form of the obligation to compensate damage caused to its members of staff as a result of any unlawful act committed by it as employer (judgments of 16 December 2010, *Commission* v *Petrilli*, T-143/09 P, EU:T:2010:531, paragraph 46, not reviewed by judgment of 8 February 2011, Review *Commission* v *Petrilli*, C-17/11 RX, EU:C:2011:55, and of 12 July 2012, *Commission* v *Nanopoulos*, T-308/10 P, EU:T:2012:370, paragraph 103), and is not confined, as in the case of actions brought under Article 268 TFEU and the second paragraph of Article 340 TFEU, to sufficiently serious breaches of a rule of law intended to confer rights on individuals.

167 Moreover, in so far as one of the three conditions, set out in paragraph 165 of this judgment, is not satisfied, the action must be dismissed in its entirety without it being necessary to examine the other conditions for non-contractual liability (judgment of 9 September 1999, *Lucaccioni* v *Commission*, C-257/98 P, EU:C:1999:402, paragraph 14).

168 As regards the damage allegedly suffered by the applicant due to the acts of the new director, it should be pointed out that although those acts were committed by him in the performance of his duties, the fact remains that they are likely to trigger the personal liability of the person concerned in the context of an action brought by the applicant before the competent national court, even though, unlike the situation under Article 24 of the EU Staff Regulations, the rules applicable to the EIB do not lay down a duty to provide assistance requiring the Bank to assist the applicant, including financially, in her search for compensation and holding it jointly and severally liable, where appropriate, for damage caused by one of its members of staff to another (see, as regards the scope of the duty to provide assistance under Article 24 of the EU Staff Regulations, judgment of 12 December 2013, *CH* v *Parliament*, F-129/12, EU:F:2013:203, paragraph 57).

169 Thus, the Bank cannot be held liable for the conduct of one of its members of staff towards another unless that conduct was ordered by a superior authority, which is not the case here.

170 It follows that the condition requiring the Bank's conduct to be unlawful is not met as regards the damage allegedly suffered by the applicant on account of 'psychological harassment' attributable to the new director, damage that may, as such, be remedied by means of an action brought against the interested person before a national court.

171 Furthermore, the applicant cannot reasonably argue that the Bank failed in the implementation of its internal procedures when, in this case, it conducted the procedure established in the Dignity at Work Policy through to completion and, in the contested decision, although he did not draw all the necessary conclusions, the President of the Bank acknowledged the existence of psychological harassment in respect of some of the acts of which the new director was accused.

172 It follows that the applicant failed to prove that the Bank was at fault as regards the damage allegedly suffered on account of the new director's psychological harassment of her.

173 In any event, the condition requiring a causal link between the fault and the alleged damage has also not been met in this case.

174 It is apparent from the file that the applicant put forward two grounds in her request for LPG, one of which concerned her desire to distance herself from the department in question during the investigation procedure. By contrast, it does not appear that she asked the Bank to be reassigned temporarily to another department, at least with the same duties, even though she had been willing, by way of an amicable settlement, to accept a promotion to a position in the head of unit function group in another department.

175 Thus, in view of the fact that the administration granted her request only on the other ground, namely to set up or join a business, it appears that her lack of income from the Bank for a period of two years, like the non-material damage in that regard, are the result of her decision to take LPG.

176 It follows from the foregoing that, without there being any need to consider the relevance of the information sought by the applicant concerning the amount of the performance bonus received by the new director, the claims for compensation in respect of non-material damage resulting from the harassment identified in the contested decision must be rejected.

Compensation for non-material damage separable from the unlawfulness affecting the contested decision

177 The applicant claims that she suffered non-material damage that can be separated from the unlawfulness affecting the contested decision and cannot be compensated in full by the mere annulment of that decision.

178 That non-material damage which she assesses *ex aequo et bono* at EUR 25 000 is the result of, first, the decision of the Investigation Panel and the President of the Bank not to investigate all of the improper conduct allegedly engaged in by the new director which was raised by four other members of the department in question; secondly, the Bank's failure to take steps to restore the professional reputation of the applicant and, in particular, the prohibition, during the pre-litigation and litigation procedure, on disclosing to any person within the Bank that she was the victim of psychological harassment; thirdly, the feelings of injustice and distress suffered by her due to the fact that, in order for her rights to be recognised, she was forced to initiate those procedures, including the conciliation procedure; and fourthly, the fact that the new director apologised only belatedly. She also refers to the Bank's reluctance to resolve the dispute amicably, since it was not willing to offer her a head of unit position in another department or compensation.

179 The Bank denies the existence of non-material damage that is separable from the alleged unlawfulness affecting the contested decision, stating, in particular, that it was under no obligation to initiate an investigation procedure concerning the four persons mentioned by the applicant as having been the victims of psychological harassment, since those persons did not file a complaint to that effect and the applicant has no legal interest in bringing proceedings in favour of third parties. Furthermore, given the level of detail and completeness of the applicant's complaint, the Investigation Panel was under no obligation to investigate beyond the allegations made. As regards the applicant's reputation and her duty to keep the contested decision confidential, the Bank fails to see how the applicant suffered non-material damage, particularly because the Bank is entitled to use internal or external remedies in cases of breach by members of its staff or by third parties of the rules on confidentiality applicable within it. As for the absence of any offer of a new position, the Bank notes that the applicant was on LPG and did not therefore intend to return to work in the short term, explaining why no offer of an alternative post was made.

180 It must be recalled that, according to settled case-law, the annulment of an unlawful measure, such as the contested decision, may constitute, in itself, appropriate and, in principle, sufficient compensation for any non-material damage which that measure may have caused. However, that would not be the case where the applicant shows that he has sustained non-material harm that can be separated from the illegality on which the annulment is based and that cannot be compensated in full by that annulment (see, to that effect, judgments of 31 March 2004, *Girardot* v *Commission*, T-10/02, EU:T:2004:94, paragraph 131; of 19 May 2015, *Brune* v *Commission*, F-59/14, EU:F:2015:50, paragraph 80; and of 16 May 2017, *CW* v *Parliament*, T-742/16 RENV, not published, EU:T:2017:338, paragraph 64).

181 In the present case, concerning the decision of the Investigation Panel and the President of the Bank not to investigate all of the improper conduct allegedly engaged in by the new director which was raised by four other members of the department in question, it should be observed that the President of the Bank enjoys a broad discretion in determining the measures necessary in a proven case of psychological harassment.

182 Thus, even though the measures specifically mentioned in the investigation procedure under the Dignity at Work Policy include 'the making of additional enquiries in a specific work unit or department', it cannot be found, in the light of the harassment identified in the contested decision and subject to a fresh examination of the case following the delivery of this judgment, that the President of the Bank overstepped the bounds of his discretion in the instant case by declining, at that stage, to extend the investigation to cover the behaviour of the new director towards persons other than the applicant.

183 As regards the prohibition on the applicant from disclosing the existence and content of the contested decision and of the letter of apology from the new director, it must be held that even though, during the investigation procedure, the applicant was subject to a duty of confidentiality, entailing the obligation to demonstrate moderation and care when sending emails to multiple recipients not directly involved in the investigation procedure or the whistleblowing procedure, the fact remains that the Bank was not entitled to require her, once the investigation procedure had been completed, to remain silent about the psychological harassment which the President of the Bank himself acknowledged she had suffered.

184 That unlawfulness affecting the contested decision imposed a period of unwarranted silence on the applicant, with the result that the prohibition on talking about the issue caused her non-material damage which cannot be compensated in full by the mere annulment of the contested decision (see, to that effect, judgment of 7 February 1990, *Culin* v *Commission*, C-343/87, EU:C:1990:49, paragraph 28).

185 In respect of the Bank's alleged reluctance to resolve the dispute amicably, it must be stated that regardless of the existence of the conciliation procedure under Article 41 of the EIB Staff Regulations, a victim of psychological harassment cannot be entitled to require an institution to compensate that psychological harassment, prohibited by the applicable provisions within the Bank, by the offer of a specific post or, in particular, a post such as head of unit that may be filled through a selection procedure based on the merits of candidates which is open to all members of staff of the institution. Similarly, even if, in order to calm the situation, the Bank might contemplate such a step, particularly in the context of the conciliation procedure, it was not required here to offer the applicant compensation in order to settle the dispute between her and the new director.

186 As for the letter of apology sent to the applicant on 9 May 2018, that is, less than two months after the contested decision, it is true that that letter could have been prepared and sent more quickly. However, the delay is a relative one and does not justify a finding that the Bank committed a wrongful act capable of giving rise to liability.

187 In the light of the foregoing considerations, the Court holds that, on a fair assessment of the non-material damage suffered by the applicant that cannot be compensated in full by the annulment of the contested decision, compensation should be set *ex aequo et bono* at EUR 10 000.

Compensation for non-material damage resulting from alleged misconduct by the Head of Personnel

188 According to the applicant, by letter of 10 April 2017, the Head of Personnel committed two separate wrongful acts causing her damage for which she claims compensation. First, the wording of that letter indicates a failure to take account of Article 2 of the 'Terms of reference' of the Director General of Compliance, who is supposed to carry out his investigations independently of the other directorates-general and departments of the Bank. It shows that the Head of Personnel was aware of the progress made and the steps taken in the whistleblowing procedure and had assumed the powers of the President and Vice-Presidents of the Bank in monitoring the obvious shortcomings in that procedure.

189 Secondly, the applicant submits that the Head of Personnel made threats of retaliation to, or intimidated, her adviser and herself in terms of the dignity at work leaflet and the Whistleblowing Policy, actions which were capable of deterring her, as a victim of psychological harassment, from exercising her rights, particularly against her harasser. In the alternative, the applicant claims that the comments made by the Head of Personnel in the letter of 10 April 2017 infringed the Bank's duty of care and duty to have regard for the welfare of staff, resulting from the Head of Personnel's inquiries into what action could be taken against the applicant and her adviser. In that context, the applicant submits that the statements contained in that letter regarding a possible breach by her of her duties in respect of the confidentiality of the investigation procedure are not substantiated in the least and in actual fact are baseless. In particular, the applicant sees no reason why the information in her letter of 6 February 2017 should be confidential vis-à-vis the President and Vice-Presidents of the Bank, nor does she perceive any potential damage to the new director's reputation, since he had been found guilty of conduct constituting psychological harassment against the applicant.

190 The applicant asserts that the actions of the Head of Personnel left her in a state of uncertainty and deep worry that contributed to a loss of confidence in the impartiality of the Bank, whose senior staff thereby demonstrated that they sought to protect the reputation of the new director whatever the cost rather than help the applicant restore her own professional reputation as a victim of psychological harassment. For those reasons, she claims a minimum amount of EUR 25 000 as compensation for the non-material damage she therefore suffered.

191 The Bank contends, as its main argument, that the claims for compensation relating to the letter of 10 April 2017 are inadmissible, since that letter, which concerns the whistleblowing procedure and is separate from the investigation procedure leading to the adoption of the contested decision, does not impose any duty of confidentiality in connection with that decision. It is not, therefore, a challengeable act and does not reflect the existence of a breach of administrative duty capable of giving rise to compensation. Thus, the claim for compensation in that respect is premature and, in any event, the Bank contends in the alternative that it is unfounded.

192 The Court recalls at the outset that contrary to the Bank's submissions, the fact that the letter of 10 April 2017 is not an act adversely affecting the applicant does not mean that the claims for compensation in issue are inadmissible, as it is common ground that the applicant attributes to the EIB conduct capable of triggering its liability and that, moreover, under Article 41 of the EIB Staff Regulations, those claims are not dependent on the submission of claims for the annulment of that letter or on the admissibility of such claims for annulment.

193 Next, the Court considers that in any event, the claims for compensation must be rejected as to the substance, without it being necessary to determine whether those claims, covered by the second request for conciliation made by the applicant on 14 June 2017, comply with the requirement under Article 41 of the EIB Staff Regulations to submit the dispute to the conciliation procedure prior to the date of bringing the present action, namely 15 June 2017.

194 The Court finds that the first three paragraphs of the letter of 10 April 2017, co-signed by the Head of Personnel and the Director of the Employee Relations and Administration Department, are couched in general terms designed to reassure the applicant that the whistleblowing procedure was ongoing and that the Bank's departments were endeavouring to comply with the applicable internal provisions.

195 Contrary to the applicant's arguments, that general wording does not lead to the conclusion that the Head of Personnel failed to take account of the independence of the Director General of Compliance in the handling of the whistleblowing report she had submitted under the Whistleblowing Policy, nor does it permit the inference that the Head of Personnel was aware of the details of the progress made and measures taken in the whistleblowing procedure or that the Head of Personnel usurped the powers of the President and Vice-Presidents of the Bank in monitoring any obvious shortcomings in the whistleblowing procedure.

196 Concerning the fact that the Head of Personnel informed the applicant that the Bank reserved the right to examine the legal options for defending its interests, including those relating to compliance with the rules on confidentiality applicable within it, it should be noted that when the applicant sent her email of 6 February 2017 to multiple recipients, the investigation procedure initiated as a result of the complaint was ongoing, with the result that she was bound by a duty of confidentiality, even where she intended to refer to the whistleblowing report the procedure for which, moreover, is also subject to rules on confidentiality.

197 In those circumstances, even though the President of the Bank subsequently declared the applicant's complaint to be well founded in part and, therefore, the sending of that email could not unjustifiably affect the new director's professional reputation, the Head of Personnel was nonetheless reasonably entitled to draw the attention of the applicant and her adviser to the fact that the status of complainant in an investigation procedure concerning alleged psychological harassment, or the status of submitter of a whistleblowing report relating to conduct infringing the Code of Conduct, did not release her from the duties of confidentiality applicable across the board in order to guard against any undue damage to the professional reputation of all protagonists — the alleged victim, witnesses and the purported harasser — for the entire duration of the investigation procedure.

198 Finally, it is also not possible to infer from the content of the letter of 10 April 2017 that the Bank or its departments were biased in the handling of the applicant's whistleblowing report, which was still ongoing when this action was brought.

199 In the light of all the foregoing considerations, the Court upholds the claims for annulment in part and the claims for compensation in part, ordering the Bank to pay the applicant EUR 10 000 in respect of non-material damage suffered.

Costs

200 Under Article 134(3) of the Rules of Procedure, where each party succeeds on some and fails on other heads, the parties are to bear their own costs. However, if it appears justified in the circumstances of the case, the Court may order that one party, in addition to bearing his own costs, pay a proportion of the costs of the other party.

201 In the circumstances of the present case, since the claims for annulment were upheld in all material respects and, by failing to nominate its member to the Conciliation Board within the period of one week referred to in Article 41 of the EIB Staff Regulations, the Bank obliged the applicant to exercise her right of action in order to enforce her rights effectively as regards those claims, the Bank should bear its own costs and be ordered to pay half the applicant's costs.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

1. **Annuls in part the decision of the President of the European Investment Bank (EIB) of 20 March 2017, in so far as it applies an incorrect definition of the concept of 'psychological harassment', does not provide for immediate disciplinary action in the event of a proven case of psychological harassment within the EIB, and imposes a duty of confidentiality on the addressee of that decision, contrary to the purposes of an investigation procedure concerning an alleged case of psychological harassment;**

2. **Dismisses the remainder of the claims for annulment;**

3. **Orders the EIB to pay to SQ, in respect of the non-material damage suffered, an amount of EUR 10 000;**

4. **Dismisses the remainder of the claims for compensation;**

5. **Orders the EIB to bear its own costs and to pay half of the costs incurred by SQ;**

6. **Orders SQ to bear half of her own costs.**

Pelikánová Nihoul Svenningsen

Delivered in open court in Luxembourg on 13 July 2018.

[Signatures]

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