Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

1 September 2021 *

(Institutional law – Member of the EESC – OLAF investigation into allegations of psychological harassment – Decision to discharge a member from his duties involving the management and administration of staff – Action for annulment – Challengeable act – Admissibility – Measure taken in the interest of the service – Legal basis – Rights of the defence – Refusal of access to the annexes to the OLAF report – Disclosure of the substance of the witness statements in the form of a summary – Liability)

In Case T-377/20,

KN, represented by M. Casado García-Hirschfeld and M. Aboudi, lawyers,

applicant,

v

European Economic and Social Committee (EESC), represented by M. Pascua Mateo, K. Gambino, X. Chamodraka, A. Carvajal García-Valdecasas and L. Camarena Januzec, acting as Agents, and A. Duron, lawyer,

defendant,

APPLICATION, first, under Article 263 TFEU for annulment of the decision of the EESC of 9 June 2020 and, second, under Article 268 TFEU for compensation for the damage allegedly suffered by the applicant,

THE GENERAL COURT (Eighth Chamber),

composed of J. Svenningsen (Rapporteur), President, C. Mac Eochaidh and T. Pynnä, Judges,

Registrar: M. Marescaux, Administrator,

having regard to the written part of the procedure and further to the hearing on 21 April 2021,

gives the following

* Language of the case: French.

Judgment

Background to the dispute

1 The applicant, KN, has been a member of the European Economic and Social Committee (EESC) since 1 May 2004. Between April 2013 and 27 October 2020, he was president of the Employers' Group within the EESC ('Group I').

2 On 6 December 2018, after having been informed of allegations concerning the applicant's behaviour towards other members of the EESC and members of the EESC's staff, the European Anti-Fraud Office (OLAF) opened an investigation in respect of him. The applicant was informed that that investigation had been opened by letter of 18 October 2019.

3 On 25 November 2019, the applicant was interviewed by OLAF at a hearing. By emails of 26 and 29 November 2019, he supplemented his hearing with written statements.

4 By letter of 4 December 2019, OLAF, in accordance with Article 9(4) of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by OLAF and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ 2013 L 248, p. 1), invited the applicant to comment, in writing and within 10 working days, on the facts concerning him, as set out in a summary attached to that letter. Those facts related to the applicant's behaviours towards A, B and C and more generally in respect of the members of the staff of the Group I secretariat.

5 On 17 December 2019, the applicant submitted his comments on the summary of the facts concerning him.

6 By letter of 16 January 2020, OLAF informed the applicant that the investigation had been closed and the final report ('the OLAF report') had been sent to the Belgian federal public prosecutor's office and the president of the EESC. The president was, inter alia, asked to treat the transcripts of the witness and whistle-blower hearings 'in the strictest confidence' given that they contained 'very sensitive' information, 'that could further expose the respective individuals'. Moreover, the president of the EESC was explicitly asked to consult OLAF should access to those transcripts be requested.

7 In accordance with Article 11 of Regulation No 883/2013, the OLAF report was accompanied by recommendations on the actions which should be taken following the investigation. Thus, first, OLAF recommended to the Belgian federal public prosecutor's office that judicial proceedings be initiated against the applicant regarding facts allegedly constituting psychological harassment of A and B, as those facts might constitute a criminal offence within the meaning of Article 442 *bis* of the Code pénal belge (Belgian Criminal Code). Second, further regarding those facts, and also allegedly abusive behaviour towards C and D as well as other members of staff having worked or still working in the Group I secretariat, OLAF recommended to the EESC that it consider initiating the procedure referred to in Article 8 of the Code of Conduct of the Members of the EESC which entered into force on 20 February 2019 ('the 2019 Code of Conduct'), and in Part Four of the Rules of Procedure of the EESC, and that it take 'any measures so as to prevent any further harassment by [the applicant] in the workplace'.

8 By email of 21 January 2020, the applicant asked the president of the EESC to initiate the procedure referred to in Article 8 of the 2019 Code of Conduct, concerning possible breaches of that code, by convening a meeting of the advisory committee on the conduct of members established by Article 7 of that code ('the advisory committee') prior to the following day's planned vote by Group I to designate that group's candidate for the election of the president of the EESC.

9 At a meeting held on 21 January 2020, which the applicant attended, the president of the EESC informed the members of the bureau of the EESC that the OLAF report and the recommendations accompanying that report had been received on 16 January 2020.

10 By note of 22 January 2020, the president of the EESC passed on the OLAF report to the advisory committee and requested that, in accordance with Article 7(4) of the 2019 Code of Conduct, it give an opinion on the alleged breaches of that code within 30 calendar days. The president of the EESC indicated, however, that, with a view to ensuring the protection of the witnesses and whistle-blowers, the transcripts of their OLAF hearings were not being passed on to the advisory committee.

11 On the same day, the members of Group I decided to put the applicant forward as a candidate for the election of the president of the EESC which was due to take place in October 2020.

12 By note of 10 February 2020, the chair of the advisory committee invited the applicant to a hearing scheduled for 6 March 2020.

13 By letter of 17 February 2020 to the chair of the advisory committee, the applicant, inter alia, asked to receive a 'copy of all the documents directly linked to the allegations [raised against him], subject, of course, to the principle of confidentiality'.

14 In response to a request made by the EESC, OLAF, by email of 20 February 2020, indicated that, as a general rule, certain information should not be communicated to the person concerned, including personal data of third parties, in particular of witnesses and whistle-blowers, and the legal evaluation of the facts carried out by OLAF. The EESC was also asked to pass to OLAF the non-confidential version of the report which the EESC was considering passing on to the applicant, prior to sending it to him. For information, OLAF also attached to its email the guidelines on the use of its final reports by the services of the European Commission in the context of recovery procedures and other measures in the direct expenditure and external aid sector.

15 On 4 March 2020, a version of the OLAF report from which certain data were omitted in order, inter alia, to preserve the anonymity of the witnesses and whistle-blowers, and which did not contain any of the annexes, was sent to the applicant ('the non-confidential version of the OLAF report').

16 By email of 4 March 2020 to the chair of the advisory committee, the applicant, inter alia, requested that his hearing, scheduled for 6 March 2020, be postponed to a later date, in order for him to have more time to familiarise himself with the non-confidential version of the OLAF report.

17 On 6 March 2020, the advisory committee, composed of two members from each of the EESC's three groups, conducted the applicant's hearing, after having separately heard from OLAF investigators and a former member of the EESC, D, as a whistle-blower.

18 At his hearing, the applicant complained, inter alia, about the limited access which he had been granted to the OLAF report.

19 At her hearing, D objected to the presence on the advisory committee of one of the members of Group I, E, on the grounds that he had a conflict of interests. That conflict of interests arose from the fact that, at the request of the applicant, he had carried out an investigation within the Group I secretariat and, on conclusion of that investigation, prepared a report containing allegations concerning the behaviour of A, which report was then used by the applicant to win a vote of confidence at a meeting of the Group I bureau on 25 October 2018.

20 The applicant's second hearing by the advisory committee, scheduled for 17 March 2020, was unable to take place, on account of the restrictions put in place in response to the health crisis related to COVID-19. Thereafter, neither the advisory committee nor the applicant requested that such a second hearing be arranged.

21 By letter of 2 April 2020, the advisory committee informed the president of the EESC that E would not participate in the advisory committee's deliberations on the applicant's case, since he had a conflict of interests. That letter also stated that, in those circumstances, the second member of Group I on the advisory committee, F, had refused to be associated with the decision to exclude E from the deliberations and that consequently she would not participate in the advisory committee's deliberations relating to the applicant's case either.

22 By letter of 7 April 2020 to the president of the EESC, the applicant indicated that he was suffering from health problems and that, as a result, he was unable to perform his duties as president of Group I for an indefinite period. The vice-president of Group I was assigned to temporarily carry out those duties during the applicant's sick leave.

23 By letter of 28 April 2020 to the president of the EESC, the advisory committee, in accordance with Article 8(2) of the 2019 Code of Conduct, gave its recommendations concerning the alleged breaches of the code of conduct by the applicant. The advisory committee invited, inter alia, the president of the EESC to take the following measures:

'1.) The advisory committee, taking into account the [hearings of OLAF and the applicant] on 6 March 2020 and having carefully studied the transcript of the [OLAF] hearing of [the applicant] and OLAF's final report, concurs with OLAF's factual findings and the legal conclusions arising from them. The advisory committee thus finds that [the applicant] has, by virtue of his conduct towards EESC staff and former members, breached [Rule] 1(4) of the Rules of Procedure of the [EESC], Article 4(1) of the Code of Conduct [of the Members of the EESC] of 17 January 2013, Article 4(1) of the [2019 Code of Conduct] and Article 31(1) of the Charter of Fundamental Rights of the European Union. In addition, the advisory committee notes that in the course of the OLAF inquiry, the procedural rights of the accused were fully respected.

2.) For repeated and grave breaches of core provisions of EU law[,] [the applicant] should be deprived of the right to issue instructions to, and hence have authority over, the staff of the Group I secretariat.

3.) In consequence of the removal of the right to issue instructions, [the applicant should be] suspended as Group I president since the position of president is closely related to the right to issue instructions to staff. This suspension [should apply] irrespective of the fact that, due to illness, [the applicant] has delegated the office of Group I president to [the] Group I vice-president … until his recovery.

4.) …, the EESC president, is asked to invite [the applicant] to withdraw his candidacy – confirmed by the Group I members on 23 January 2020 – for the office of EESC president, so as to avert damage to the EESC and its members.

5.) In the event of an investigation by the Belgian public prosecutor's office, the EESC [should introduce] an application to join proceedings as a civil party in a case against [the applicant] …'

24 By letter of 12 May 2020, the president of the EESC invited the applicant, in accordance with Article 8(3) of the 2019 Code of Conduct, to provide him with any written observations which he may have on the recommendations issued by the advisory committee.

25 On 13 May 2020, the European Parliament adopted Decision (EU) 2020/1984 on discharge in respect of the implementation of the general budget of the European Union for the financial year 2018, Section VI – European Economic and Social Committee (OJ 2020 L 417, p. 469), by which it postponed the adoption of a decision on granting the Secretary-General of the EESC discharge in respect of the implementation of the budget of the EESC for the financial year 2018. The following day, the Parliament adopted Resolution (EU) 2020/1985 with observations forming an integral part of the decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2018, Section VI – European Economic and Social Committee (OJ 2020 L 417, p. 470), under which the EESC was asked to inform it, by the end of September 2020, of the measures taken to follow up the recommendations appearing in the OLAF report.

26 On 27 May 2020, the president of the EESC, in accordance with Article 8(3) of the 2019 Code of Conduct, consulted the enlarged presidency of the EESC.

27 By letter of 2 June 2020 to the president of the EESC, the applicant provided his observations on the advisory committee's recommendations. The applicant claimed, inter alia, that the advisory committee had breached his rights of defence, inasmuch as, since the annexes to the OLAF report had not been available to him, he had been unable to set forth his comments on those annexes.

28 By note of 3 June 2020, the president of the EESC sent the advisory committee's recommendations and the applicant's written observations thereon, and the non-confidential version of the OLAF report and the decision of the Parliament on the postponement of the budgetary discharge to the members of the bureau of the EESC in order for them to adopt a decision on the applicant. A draft decision was also annexed to that note.

29 At its meeting behind closed doors on 9 June 2020, the bureau of the EESC adopted the decision which is the subject of the present action ('the contested decision'), by 21 votes for, 4 votes against and 1 abstention, with one other vote having been invalidated. The sole article of that decision is worded as follows:

'The Bureau

1. takes note of the conclusions of OLAF and of the Advisory committee on the conduct of members concerning the responsibility of [the applicant] … vis-à-vis the acts of harassment and misconduct of which he is accused,

2. notes that the sanctions provided for in the [2019 Code of Conduct] are not applicable in the case at hand[,] due to the principle of no punishment without law (*nulla poena sine lege*),

3. asks [the applicant] to:

– resign from his duties as president of Group I,

– withdraw his application for the position of EESC president[,]

4. discharges [the applicant] from all activities involving the management or administration of staff,

5. tasks the Secretary-General with taking the necessary steps to ensure that, should proceedings be initiated by the public prosecutor against [the applicant], the EESC shall join those proceedings as a civil party,

6. tasks the Secretary-General with communicating this decision to OLAF and the European Parliament; the decision may, as appropriate, also be communicated to other institutions and/or bodies of the Member States[.]

This decision forms an integral part of the minutes of the Bureau meeting of 9 June 2020 and its dissemination is restricted.'

30 The contested decision was notified to the applicant on 17 June 2020.

31 By decision of 15 July 2020, the plenary assembly of the EESC, on request by the auditorat du travail de Bruxelles (Labour Auditor, Brussels, Belgium) and after having obtained input from the applicant, lifted the immunity which he enjoyed. Then, by decision of 28 July 2020, the plenary assembly of the EESC decided that the EESC would join the proceedings initiated against the applicant before the tribunal correctionnel de Bruxelles (Criminal Court, Brussels, Belgium) as a civil party.

32 The applicant's absence for illness came to an end on 28 August 2020.

33 By letter of 1 September 2020, the Director of the EESC's Directorate for 'Human Resources and Finance' informed the applicant of the fact that, by way of enforcement of the contested decision, he was discharging him from his duties involving the management and administration of the staff of the Group I secretariat. The applicant was, in addition, invited to designate another member of Group I to deal with the day-to-day administration of the secretariat of that group.

34 On 8 September 2020, Group I put forward another of its members as a candidate for the presidency of the EESC, and the applicant withdrew his candidacy for that election.

35 On 27 October 2020, on expiry of the applicant's mandate, Group I elected a new president. On the same day, the candidate put forward by Group I was elected president of the EESC.

36 By Council Decision (EU) 2020/1636 of 30 October 2020 appointing a member of the European Economic and Social Committee for the period from 21 September 2020 to 20 September 2025 (OJ 2020 L 369, p. 1), the applicant, further to a proposal by the Republic of Poland, was appointed a member of the EESC for the period from 21 September 2020 to 20 September 2025.

Procedure and forms of order sought

37 By application received at the Registry of the Court on 18 June 2020, the applicant brought the present action.

38 By separate document lodged at the Registry of the Court on the same day, the applicant made an application for interim measures seeking the suspension of the operation of the contested decision. That application was dismissed by order of 22 July 2020, *KN* v *EESC* (T-377/20 R, not published, EU:T:2020:353), for lack of urgency, and the costs were reserved.

39 By another separate document lodged at the Registry of the Court on the same day, the applicant requested that the Court decide the case under the expedited procedure provided for by Article 152 of the Rules of Procedure of the Court. By decision of 24 July 2020 notified to the applicant on 27 July 2020, the Court (Eighth Chamber) rejected that request.

40 By document lodged at the Registry of the Court on 29 June 2020, the applicant requested anonymity under Article 66 of the Rules of Procedure, which was granted to him.

41 By document lodged at the Registry of the Court on 31 August 2020, the applicant made a new application for interim measures, based on the alleged existence of new facts within the meaning of Article 160 of the Rules of Procedure, seeking the suspension of the operation of the contested decision. That application was dismissed by order of 19 October 2020, *KN* v *EESC* (T-377/20 R II, not published, EU:T:2020:505), for lack of urgency, and the costs were reserved.

42 On conclusion of a second exchange of written pleadings, the written part of the procedure was closed on 25 November 2020.

43 By letter of 18 December 2020, the applicant, under Article 106(2) of the Rules of Procedure, requested that a hearing be held.

44 By letter from the Registry of 9 February 2021, the EESC was asked by the Court, as part of the measures of organisation of procedure, to produce, where necessary in the form of a non-confidential version, the annexes to the OLAF report, including the transcripts of the witness and whistle-blower hearings, without prejudice to the provisions of Article 92(3) and Article 103 of the Rules of Procedure.

45 By letter of 23 February 2021, the EESC explained that the annexes to the OLAF report were confidential and could not, therefore, be passed on to the applicant. In those circumstances, the EESC took the view that the documents requested should be produced only through an order for a measure of inquiry under Article 91(b) of the Rules of Procedure, as their treatment had to be governed by Article 103 of the Rules of Procedure.

46 By letter from the Registry of 5 March 2021, the Court, by way of a measure of organisation of procedure, put questions to the parties for written response, and the parties complied with that request within the time allowed.

47 By order of 9 March 2021, the Court ordered the EESC, under Article 92(3) of the Rules of Procedure, to produce the annexes to the OLAF report, including the hearing transcripts of the witnesses and whistle-blowers, which were provided to it by OLAF by note of 16 January 2020. It was, moreover, specified that, at that stage of the procedure, those documents would not be communicated to the applicant unless the EESC was able to produce, in addition to the complete version of those documents, a non-confidential version of them.

48 On 17 March 2021, the EESC produced the confidential version of the annexes to the OLAF report.

49 On 30 March 2021, the Court decided that the documents produced by the defendant in accordance with the order for a measure of inquiry of 9 March 2021 were relevant in order for it to rule on the dispute and of a confidential nature. The Court decided, moreover, to adopt a measure of organisation of procedure concerning the means by which those documents could be brought to the attention of the applicant.

50 By letter from the Registry of 30 March 2021, the applicant's lawyers were asked by the Court to give a confidentiality undertaking before receiving a copy of the confidential version of the annexes to the OLAF report. On 7 April 2021, the applicant's lawyers sent the signed confidentiality undertakings back to the Court.

51 By letter from the Registry of 7 April 2021, the applicant's lawyers were asked by the Court to identify, in the confidential version of the annexes to the OLAF report, any elements the substance of which was not found in the non-confidential version of the OLAF report to which the applicant had had access and, where applicable, to set out the additional observations, capable of affecting the result of the administrative procedure, which the applicant could have submitted during that procedure if he had been privy to those elements. The applicant's lawyers complied with that request within the period prescribed.

52 The parties presented oral argument at the hearing on 21 April 2021. During the hearing, the EESC asked to be allowed to respond in writing to the observations submitted by the applicant's lawyers on the confidential version of the annexes to the OLAF report. Following receipt, on 5 May 2021, of the EESC's written observations, the Court closed the oral part of the procedure.

53 The applicant claims that the Court should:

– declare the action admissible;

– annul the contested decision;

– order the EESC to pay him an amount of EUR 200 000 by way of compensation for the non-material damage suffered and an amount of EUR 50 000 by way of compensation for the material damage suffered;

– order the EESC to pay all the costs.

54 The EESC contends that the Court should:

– dismiss the action as inadmissible;

– in the alternative, dismiss the action as unfounded;

– order the applicant to pay the costs, including those related to the proceedings for interim measures and the request for an expedited procedure.

Law

Admissibility of the claim for annulment

55 Without formally raising a plea of inadmissibility by separate document, the EESC nevertheless argues that the action for annulment should be dismissed as inadmissible.

56 In the first place, the EESC maintains that the invitations made to the applicant to resign from his duties as president of Group I and withdraw his candidacy for the position of president of the EESC did not have any binding legal effects, since the decision to resign or withdraw his candidacy belonged to the applicant alone.

57 In the second place, the EESC considers that the decision to discharge the applicant from his duties involving the management and administration of the staff of the Group I secretariat was merely an EESC internal reorganisation measure, taken by the administration on the basis of its power to organise its services freely. It is apparent from the judgment of 25 February 1988, *Les Verts* v *Parliament* (190/84, EU:C:1988:94), that measures which have only internal legal effects, within the administration, give rise to no rights or obligations vis-à-vis third parties and do not constitute acts which are challengeable under Article 263 TFEU.

58 In the third place, with regard to the other elements of the contested decision, which relate, first, to the EESC's joining the proceedings before the tribunal correctionnel de Bruxelles (Criminal Court, Brussels) as a civil party and, second, to the communication of the contested decision to a number of institutions or bodies of the European Union or Member States, the EESC considers that they were 'purely implementing measures in respect of OLAF's recommendations', which may not be the subject of an action for annulment either.

59 The applicant contests that line of argument.

60 In the present case, the bureau of the EESC, by the contested decision, adopted three measures against the applicant, and it is therefore necessary to examine whether those measures may be the subject of judicial review under Article 263 TFEU.

Invitations to resign from the position of president of Group I and withdraw his candidacy for the position of president of the EESC

61 In paragraph 3 of the sole article of the contested decision, the bureau of the EESC asked the applicant to resign from his duties as president of Group I and withdraw his candidacy for the position of president of the EESC.

62 According to the case-law, all acts adopted by the institutions, bodies, offices or agencies of the European Union, whatever their nature or form, which are intended to produce binding legal effects such as to affect the applicant's interests by bringing about a distinct change in his or her legal position, may be the subject of an action for annulment (see judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraph 69 and the case-law cited).

63 However, in the present case, as the EESC correctly argues, the invitations to resign from the position of president of Group I and withdraw his candidacy for the position of president of the EESC do not, by nature, have any binding legal effect within the meaning of that case-law.

64 Since the bureau of the EESC does not have the power to require one of its members to resign from the position of president of a group or withdraw his or her candidacy for the election of the president of the EESC, the applicant was free to decide not to act on those invitations.

65 In the present case, despite those invitations, the applicant furthermore remained president of Group I until the expiry of his mandate on 27 October 2020.

66 It is true that, on 8 September 2020, when Group I put forward another of its members as a candidate for the presidency of the EESC, and almost three months after the adoption of the contested decision, the applicant agreed to withdraw his candidacy.

67 However, the present action, brought on 18 June 2020, is not directed against the applicant's decision, of 8 September 2020, to withdraw his candidacy for the position of president of the EESC but against the bureau's invitation to withdraw that candidacy, which may not be characterised as an act adversely affecting him (see, by analogy, judgment of 12 May 2015, *Dalli* v *Commission*, T-562/12, EU:T:2015:270, paragraph 155).

68 It follows that, inasmuch as it asks the applicant to resign from his duties as president of Group I and withdraw his candidacy for the position of president of the EESC, the contested decision does not have any binding legal effects. Consequently, the claim for annulment must be dismissed as inadmissible inasmuch as it is directed against those invitations.

Decision to discharge the applicant from his duties involving the management and administration of staff

69 In paragraph 4 of the sole article of the contested decision, the bureau of the EESC discharged the applicant from his duties involving the management and administration of staff.

70 In accordance with Rule 80(1) of the Rules of Procedure of the EESC, 'the groups shall each have a secretariat which reports directly to the group president'. Under Rule 80(2) and (3) of those rules, the powers of the appointing authority and the authority empowered to conclude contracts of employment ('the AHCC'), in respect of the members of the staff of the group secretariat, are to be exercised 'on a proposal from the group president'.

71 In the present case, it is apparent from the letter of 1 September 2020 from the Director of the EESC's Directorate for 'Human Resources and Finance', mentioned in paragraph 33 above, that the effect of the decision to discharge the applicant from his duties involving the management and administration of staff was that he could no longer be involved in the recruitment, appraisal, reclassification, training, missions or time management of the members of the staff of the Group I secretariat.

72 Those tasks and that remit therefore relate to competencies linked to the exercise of hierarchical authority which the applicant held as president of Group I, as is apparent, moreover, from the advisory committee's recommendations, mentioned in paragraph 23 above.

73 On that point, at the hearing, the EESC also confirmed the definitive nature of such a measure, indicating that the applicant could no longer perform such duties involving the management and administration of staff, even if he had been re-elected as president of Group I after the expiry of his mandate. The fact, also invoked by the EESC at the hearing, that it may have cause to review the contested decision in future if the circumstances which justified the adoption of that decision were to change, to take account, for example, of the outcome of the criminal proceedings initiated against the applicant, cannot be taken into account in assessing the admissibility of the action, as that assessment must be carried out by reference to the situation prevailing when the application was lodged (see, to that effect, judgment of 24 October 2013, *Deutsche Post* v *Commission*, C-77/12 P, not published, EU:C:2013:695, paragraph 65 and the case-law cited).

74 Consequently, in view of the nature and scope of those tasks, it must be held that the decision to discharge the applicant from his duties involving the management and administration of staff produces binding legal effects such as to affect the applicant's interests by bringing about a distinct change in his legal position (see, by analogy, judgment of 22 October 2002, *Pflugradt* v *ECB*, T-178/00 and T-341/00, EU:T:2002:253, paragraph 81).

75 Finally, the EESC's argument that the first paragraph of Article 263 TFEU limits the jurisdiction of the Courts of the European Union to acts intended to produce legal effects vis-à-vis third parties does not invalidate that conclusion.

76 It is settled case-law that that qualification is meant to exclude acts that do not adversely affect any person, in so far as they relate exclusively to the internal organisation of an administration and produce effects only within that sphere, without creating any right or obligation vis-à-vis third parties (see judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraph 73 and the case-law cited).

77 While it is true that the decision to discharge the applicant from his duties involving the management and administration of staff concerns the internal organisation of the EESC, the fact remains that that decision is addressed to the applicant, within the meaning of the fourth paragraph of Article 263 TFEU, and adversely affects him inasmuch as it deprives him of the hierarchical authority which he exercised, under Rule 80 of the Rules of Procedure of the EESC, in respect of the members of the staff of the Group I secretariat (see, to that effect, judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraph 74), contrary to the EESC's submissions.

78 Moreover, since, at least in this context, the applicant is a legally distinct person from the EESC, it cannot be concluded that the present dispute is not between the EESC and a third party, within the meaning of the first paragraph of Article 263 TFEU (see, to that effect and by analogy, judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraph 75, and Opinion of Advocate General Bobek in *SatCen* v *KF*, C-14/19 P, EU:C:2020:220, point 111).

79 In the light of the foregoing, it must be concluded that the claim for annulment is admissible inasmuch as it is directed against the decision to discharge the applicant from his duties involving the management and administration of staff.

Instructions given to the Secretary-General of the EESC

80 In paragraphs 5 and 6 of the sole article of the contested decision, the bureau of the EESC tasked the Secretary-General of the EESC with 'taking the necessary steps', first, to ensure that, should legal proceedings be initiated against the applicant, the EESC would join those proceedings as a civil party and, second, to ensure that a copy of that decision was communicated, inter alia, to OLAF and the Parliament.

81 In response to the EESC's plea of inadmissibility, the applicant failed, however, to advance any specific arguments in his written pleadings or in the course of the hearing to explain how that element of the contested decision brings about a distinct change in his legal position, within the meaning of the case-law cited in paragraph 62 above.

82 Regarding the EESC's intention to join proceedings before a national court as a civil party, it should be recalled that the ability to assert one's rights through the courts and the judicial control which that entails constitute the expression of a general principle of law which underlies the constitutional traditions common to the Member States and which is also laid down in Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (judgments of 15 May 1986, *Johnston*, 222/84, EU:C:1986:206, paragraphs 17 and 18, and of 17 July 1998, *ITT Promedia* v *Commission*, T-111/96, EU:T:1998:183, paragraph 60), and in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

83 By joining as a civil party proceedings before a national court initiated against the applicant, the EESC does not intend itself to change the applicant's legal position, since it is merely taking part in proceedings which may change his legal position through the decision of a court. Where applicable, it would be the decision of the national court ruling on the proceedings which would change the applicant's legal position. Consequently, the EESC's intention to join the proceedings initiated against the applicant as a civil party cannot be considered to be a decision which is open to challenge under Article 263 TFEU (see, by analogy, judgment of 15 January 2003, *Philip Morris International* v *Commission*, T-377/00, T-379/00, T-380/00, T-260/01 and T-272/01, EU:T:2003:6, paragraph 79).

84 Moreover, it is important to note that, even assuming that the bringing of proceedings before a national court by an EU institution could be the subject of an action for annulment under Article 263 TFEU, the present action is not directed against the decision of the plenary assembly of the EESC of 28 July 2020 to join the proceedings initiated against the applicant as a civil party, but against the contested decision, which could constitute, at the very most, a preparatory measure in respect of the assembly's decision.

85 Finally, as to the decision to task the Secretary-General of the EESC with communicating the contested decision to certain institutions or bodies of the Member States, it is sufficient to note, as the EESC does, that that measure does not have any binding legal effects in respect of the applicant. The addressees of that communication remain free, within the limits of their respective powers, to assess the content and significance of the information contained in that decision and, consequently, the actions which should, where necessary, be taken by way of follow-up.

86 Consequently, the claim for annulment must be dismissed as inadmissible inasmuch as it is directed against the instructions given by the bureau of the EESC to the Secretary-General of the EESC.

87 In view of all of the foregoing, the action for annulment must be declared admissible only inasmuch as it is directed against the decision to discharge the applicant from his duties involving the management and administration of staff ('the measure at issue') and inadmissible as to the remainder.

Substance

88 In support of his action, the applicant raises four pleas in law, alleging:

– first, breach of the rights of the defence, the right to good administration, the right to be heard and the principle of proportionality;

– second, breach of the principles of the presumption of innocence and impartiality;

– third, breach of the principles of non-retroactivity and legal certainty and the principle that penalties must have a proper legal basis;

– fourth, breach of the 'principle of the confidentiality of disciplinary proceedings and judicial investigations', Article 10(2) of Regulation No 883/2013 and Article 4(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ 2018 L 295, p. 39).

89 Since the third plea in law raised by the applicant requires, inter alia, that the Court examine the question of whether the measure at issue has a legal basis which empowered the bureau of the EESC to adopt it, and that is a question which is a matter of public policy (see judgment of 13 May 2014, *McBride and Others* v *Commission*, T-458/10 to T-467/10 and T-471/10, not published, EU:T:2014:249, paragraphs 25 to 28 and the case-law cited), it is appropriate to examine it first.

Third plea in law, alleging breach of the principles of non-retroactivity and legal certainty and the principle that penalties must have a proper legal basis

90 In support of that plea in law, the applicant maintains, in essence, that the measure at issue has no legal basis and that the bureau of the EESC was not competent to impose such a sanction on him.

91 In that regard, the applicant argues that the sanctions set out in Article 8 of the 2019 Code of Conduct cannot be imposed to deal with events which took place prior to the entry into force of that code. As to the Code of Conduct of the Members of the EESC of 17 January 2013 ('the 2013 Code of Conduct'), it does not provide for the possibility of imposing any form of sanction on a member of the EESC who has breached its provisions.

92 The EESC contests that line of argument.

93 As a preliminary point, it must be recalled that, although it is necessary, in order to comply with the principles of legal certainty and the protection of legitimate expectations, to apply the substantive rules in force at the date of the facts at issue, even if those rules are no longer in force when an EU body adopts an act, the procedure for adopting an act of an EU institution must be

carried out in accordance with the rules in force at the time of adoption (see, to that effect, judgment of 14 June 2016, *Commission* v *McBride and Others*, C-361/14 P, EU:C:2016:434, paragraph 40).

94 Therefore, the applicant cannot claim that the EESC breached those principles by adopting the measure at issue according to the procedure instituted by the 2019 Code of Conduct, a fortiori inasmuch as it is apparent from paragraph 8 above that the applicant himself asked the president of the EESC to initiate that procedure.

95 In that regard, the first subparagraph of Article 8(3) of the 2019 Code of Conduct provides that the president of the EESC, after having invited the member concerned to submit written observations on the advisory committee's recommendations, is to consult the enlarged presidency and then ask the bureau to make a decision on the measures that may be taken in accordance with the Members' Statute and the EESC's Rules of Procedure.

96 In the present case, at the end of that procedure, the bureau of the EESC first of all concluded, in paragraph 2 of the sole article of the contested decision, that no sanction could be imposed on the applicant without thereby breaching the principle that penalties must have a proper legal basis. Then, in paragraph 4 of the sole article of the contested decision, the bureau of the EESC adopted the measure at issue.

97 Inasmuch as the parties disagree on the nature of the measure at issue, and the analysis of the third plea in law depends on the question of whether that measure constitutes a sanction or not, it is necessary to classify the contested decision, on the understanding that the classification given to that measure by the parties in question cannot bind the Court (see, to that effect and by analogy, judgment of 19 October 2017, *Bernaldo de Quirós* v *Commission*, T-649/16, not published, EU:T:2017:736, paragraph 19).

98 From the outset, the EESC's argument that the measure at issue does not constitute a sanction, on the grounds that it does not adversely affect the applicant, must be dismissed for the reasons given in paragraphs 69 to 79 above.

99 Nevertheless, the mere fact that the measure at issue adversely affects the applicant, which justifies a finding that the action for annulment is admissible on that point, cannot, however, mean that that measure must be classified as a disciplinary sanction within the meaning of the second subparagraph of Article 8(3) of the 2019 Code of Conduct (see, to that effect and by analogy, judgment of 19 October 2017, *Bernaldo de Quirós* v *Commission*, T-649/16, not published, EU:T:2017:736, paragraph 24 and the case-law cited).

100 In that regard, in the contested decision, the bureau of the EESC justified the adoption of the measure at issue by reference to the recommendations of OLAF, which advised that the necessary measures be taken to prevent any further harassment by the applicant in the workplace. The EESC also specified that the aim of the measure at issue was to enable it to comply with its obligation to protect its staff against the risk of harassment.

101 In addition, from the point of view of its effects, it must also be observed that the measure at issue is not equivalent to any of the sanctions provided for in the second subparagraph of Article 8(3) of the 2019 Code of Conduct, namely a written warning, inclusion of that warning in the bureau

minutes and, where applicable, in the plenary session minutes, or temporary suspension of the member from any duties as rapporteur, president or member of a study group and from any participation in missions and extraordinary meetings.

102 Therefore, in view of its content and effects, it cannot be held that the measure at issue is of a punitive nature and constitutes a sanction. Its purpose is not to sanction, penalise or blame the applicant for a possible breach of the obligations arising under the code of conduct, but its aim is one of prevention, namely to guarantee better protection of the officials and other staff of the EESC, in the interests of the proper functioning of the Group I secretariat.

103 In that regard, it is also important to note that the applicant did not put forward any evidence to establish that the measure at issue is not, in reality, intended to achieve the aim claimed by the EESC or that it does not meet a real need of the service.

104 Therefore, in an environment of tensions which were prejudicial to the proper functioning of the service, the bureau of the EESC was entitled, in the circumstances of the present case, to take the view that it was in the interest of the service to discharge the applicant from certain administrative tasks falling within the exercise of hierarchical authority (see, to that effect and by analogy, judgments of 7 March 1990, *Hecq* v *Commission*, C-116/88 and C-149/88, EU:C:1990:98, paragraph 22; of 28 October 2004, *Meister* v *OHIM*, T-76/03, EU:T:2004:319, paragraphs 79 to 81; and of 19 October 2017, *Bernaldo de Quirós* v *Commission*, T-649/16, not published, EU:T:2017:736, paragraph 40), without its constituting, at the same time, given the content and effects of such a measure, a decision of a disciplinary nature.

105 In that regard, according to Rule 9(8) of the Rules of Procedure of the EESC, the bureau is to be responsible, inter alia, for ensuring that in carrying out the tasks entrusted to it by the Treaty, the Committee makes good use of the human and budgetary resources available to it. Given that the measure at issue is about making good use of the human resources of the EESC, in this case those of the Group I secretariat, the bureau of the EESC was indeed the body competent to adopt such a measure, at the end of the procedure provided for by the first subparagraph of Article 8(3) of the 2019 Code of Conduct.

106 In view of the foregoing, the applicant's argument that the bureau of the EESC imposed a sanction on him in breach of the principles of non-retroactivity and legal certainty and the principle that penalties must have a proper legal basis must be rejected, and the third plea in law must, therefore, be rejected as unfounded.

First plea in law, alleging breach of the rights of the defence, the right to good administration, the right to be heard and the principle of proportionality

107 In support of that plea in law, the applicant claims, in essence, that the EESC breached his rights of defence.

108 In that regard, first of all, the applicant maintains that he did not have a reasonable period of time in which to familiarise himself with the OLAF report and prepare his defence. According to the applicant, the possibility cannot be excluded that the content of the contested decision may have been different if he had had such a reasonable period of time.

109 Next, the applicant considers that his rights of defence were breached because he was unable effectively to submit his observations prior to the adoption of the contested decision, as he had not been granted full access to his case file, in particular to the legal evaluation of the facts set out in the OLAF report and the transcripts of the witness and whistle-blower hearings annexed to that report. In their observations on the confidential version of the annexes to the OLAF report produced by the EESC in response to the measure of inquiry, the applicant's lawyers argued, in essence, that the content of certain witness statements gathered by OLAF in the course of the investigation was not found in the non-confidential version of the OLAF report to which the applicant had had access, so that his right to a proper hearing had been breached.

110 Finally, he argues that the EESC breached the principle of proportionality by failing to provide itself with the instruments necessary to implement, in an appropriate manner, its 'zero tolerance' policy concerning the prohibition and prevention of harassment in the workplace, to which reference is made in the contested decision. The EESC, on the contrary, contrived to avoid any adversarial procedure prior to imposing the early termination of the applicant's duties.

111 The EESC contests that line of argument.

112 By way of a preliminary point, it must be recalled that, under the principle of respect for the rights of the defence, the addressees of decisions which significantly affect their interests must be placed in a position in which they can effectively make known their views as regards the information on which the administration intends to base its decision (see judgment of 5 October 2016, *ECDC* v *CJ*, T-395/15 P, not published, EU:T:2016:598, paragraph 55 and the case-law cited).

113 In that regard, it is apparent, inter alia, from the case-law that the applicant was entitled, in order to be able effectively to submit his observations to the bureau of the EESC before it took a decision, to disclosure of a summary, at the very least, of the statements made by the various persons consulted during the investigation procedure, as those statements were used by OLAF, in its report, in order to make recommendations to the president of the EESC, on which the bureau based the measure at issue, and such a summary should have been disclosed while respecting, if necessary, the principle of confidentiality (see, to that effect, judgments of 4 April 2019, *OZ* v *EIB*, C-558/17 P, EU:C:2019:289, paragraph 57; of 25 June 2020, *HF* v *Parliament*, C-570/18 P, EU:C:2020:490, paragraph 60; and of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraph 121).

114 In that context, in order to ensure that witness statements remain confidential and that the objectives of such confidentiality are respected, while ensuring that the applicant is properly heard before a decision adversely affecting him or her is adopted, the Court of Justice has held that certain techniques may be used, such as anonymisation, or even disclosure of the substance of the witness statements in the form of a summary, or the redaction of some of the content of those statements (see, to that effect, judgments of 4 April 2019, *OZ* v *EIB*, C-558/17 P, EU:C:2019:289, paragraph 59, and of 25 June 2020, *HF* v *Parliament*, C-570/18 P, EU:C:2020:490, paragraph 66).

115 Finally, in order to effectively make known his views as regards the information on which the bureau of the EESC intended to base its decision, the applicant had to be given a sufficient period of time in which to do so (see judgment of 18 December 2008, *Sopropé*, C-349/07, EU:C:2008:746, paragraph 37 and the case-law cited).

116 In the present case, it is common ground that the applicant had access only to a non-confidential version of the OLAF report, which did not contain any of the annexes, which the EESC justified on the basis of the need to protect the identity of the whistle-blowers and the confidentiality of the witness statements gathered.

117 From the outset, it is necessary to dismiss the EESC's argument that the first plea in law must be dismissed on the grounds that the bureau of the EESC also had access only to that non-confidential of the OLAF report, that is to say that it was unable, prior to the adoption of the contested decision, to familiarise itself, inter alia, with the transcripts of the witness and whistle-blower hearings.

118 That argument is factually incorrect. In accordance with point (a) of the second subparagraph of Rule 4(1) of the Rules of Procedure of the EESC, the president of the EESC is a member of the bureau, and the president, by note of 16 January 2020, did receive the confidential version of the OLAF report, including the annexes accompanying it, which the EESC admitted at the hearing.

119 However, the fact that a member of the bureau of the EESC had access to the confidential version of the OLAF report does not constitute a breach of the applicant's rights of defence. Respect for that principle, which includes the right to be heard, requires that, subject to any confidentiality requirements, a person accused of harassment have, prior to the adoption of a decision adversely affecting him or her, the opportunity to make known his or her views effectively (see, to that effect, judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraphs 116 and 117).

120 In that regard, the EESC argues that the applicant had sufficient access to the OLAF report because, unlike in the situations which gave rise to the judgments of 4 April 2019, *OZ* v *EIB* (C-558/17 P, EU:C:2019:289); of 25 June 2020, *HF* v *Parliament* (C-570/18 P, EU:C:2020:490); and of 25 June 2020, *SatCen* v *KF* (C-14/19 P, EU:C:2020:492), the non-confidential version of the OLAF report contains a summary disclosing the substance of the witness statements gathered by OLAF in the course of the investigation, so that the applicant's rights of defence were adequately protected.

121 In view of that argument, it is necessary to examine whether the non-confidential version of the OLAF report contains a summary of the witness statements gathered in the course of the investigation, before determining, if applicable, whether that summary reflects the substance of the witness statements gathered by OLAF and, finally, to analyse whether the applicant had a sufficient period of time in which to prepare his defence and submit his observations.

– Presence in the non-confidential version of the OLAF report of a summary of the statements of the witnesses and whistle-blowers interviewed

122 In that regard, it is important to note, first of all, that the non-confidential version of the OLAF report has 30 pages. In paragraph 2.2 of its report, headed 'Evidence collected', OLAF indicated that it had 'grouped the similar witness statements while trying to stick to the largest possible extent to the exact wording used by staff of the Secretariat', with a view to protecting the confidentiality of the witness statements gathered. In addition, regarding the members of staff who did not express a wish that their identity be obscured or those whom OLAF considered not to be directly exposed to the applicant's hierarchical authority, their identity appears in the report and was not obscured in the non-confidential version of the OLAF report sent to the applicant.

123 The non-confidential version of the OLAF report thus contains a detailed summary of each of the alleged behaviours on the part of the applicant, illustrated by references to specific occurrences, in respect, inter alia, of A, B and C, who are referred to by name in the non-confidential version of the OLAF report, and the members of the staff of the Group I secretariat. OLAF also described the effects which those behaviours had, according to the witnesses interviewed, had on the health of those persons.

124 In addition, for each of the alleged behaviours on the part of the applicant, the report contains references to the statements of the persons interviewed which are sometimes direct, in the form of quotations in inverted commas, and sometimes indirect, in the form of anonymised reformulations of those statements. OLAF was also careful to indicate whether the allegations made against the applicant were corroborated by witnesses and, where applicable, to specify the number of witnesses and their capacity. Where an allegation was not corroborated by any witness statements, OLAF also indicated that.

125 It is apparent from the foregoing that the non-confidential version of the OLAF report contains a summary of the statements of the witnesses and whistle-blowers interviewed. In those circumstances, the existence of such a summary, within the meaning of the case-law cited in paragraph 114 above, means that it cannot be concluded automatically that the failure to provide the annexes to the OLAF report constitutes an irregularity which inevitably affected the legality of the measure at issue. It is necessary to examine, first, whether that summary reflects the substance of the witness statements gathered by OLAF.

– *Question of whether that summary reflects the substance of the statements of the witnesses and whistle-blowers interviewed*

126 In his observations on the confidential version of the annexes to the OLAF report, the applicant mentioned a number of elements which, according to him, did not appear in the non-confidential version of the OLAF report which was provided to him to enable him to exercise his rights of defence prior to the adoption of the contested decision. The applicant concludes that the EESC breached his rights of defence by providing him with only the non-confidential version of the OLAF report, which did not contain any of the annexes, prior to the adoption of the contested decision.

127 First, the applicant maintains that only after having familiarised himself with the content of the witness statements gathered could he have been in a position to understand the precise significance of certain questions which he was asked at his OLAF hearing. If the applicant had been able to familiarise himself with those witness statements, which mention events sometimes dating back a long time, he could have better defended himself. The applicant refers, by way of example, to a question concerning an event which allegedly took place in his office in the presence of two witnesses, which he was unable to answer, because the identity of those witnesses was not revealed to him.

128 It must, however, be found that that argument does not concern the question of whether the EESC breached the applicant's rights of defence and, in particular, whether the summary appearing in the non-confidential version of the OLAF report, prepared by the EESC in collaboration with OLAF, reflects the substance of the witness statements gathered in the course of the investigation.

129 In any event, it is sufficient to recall that, in the course of the investigation, the legislative framework applicable to OLAF precludes, in principle, a right to access OLAF's file on the part of the person concerned. It is only if the authority to which the final report is addressed intends to adopt an act which adversely affects the person concerned that that authority must, in accordance with the procedural rules which apply to it, provide access to OLAF's final report in order to enable that person to exercise his or her rights of defence (judgment of 28 November 2018, *Le Pen* v *Parliament*, T-161/17, not published, EU:T:2018:848, paragraph 67).

130 Therefore, when his testimony was heard by OLAF, the applicant did not have to be provided with the statements of the witnesses and whistle-blowers in order to answer the investigators' questions.

131 The Court finds, moreover, that the questions put to the applicant at his hearing were sufficiently precise and that he was able to answer them without any difficulty. The fact that, in response to certain questions, the applicant indicated that he did not recall or was not in a position to answer them without further information does not invalidate that finding.

132 With regard to one of the parts of question No 12, to which the applicant responded that he was not in a position to identify the event to which it related without knowing the identity of the persons who were present, it is important to note that he nevertheless added that he did not believe that such an event had ever occurred.

133 In those circumstances, the argument based on the allegedly imprecise nature of the questions put to the applicant by the OLAF investigators, in view of the detailed content of the witness statements gathered, must be dismissed.

134 Second, the applicant points out that a number of witnesses mentioned the existence of a report drawn up by E, a member of Group I, concerning the difficulties and concerns experienced by the staff of the Group I secretariat in respect of A, which is not mentioned in the non-confidential of the OLAF report. That report could have shed a different light on the version of the facts presented by A.

135 It is apparent, however, from the case file, in particular the minutes of the applicant's hearing, that he knew about that report and therefore nothing prevented him, where appropriate, from mentioning it in the course of the procedure by which the contested decision was drafted, to put into context or qualify the behaviours which were alleged on his part in respect of A. The existence of that report was furthermore explicitly mentioned before the advisory committee, which led to the withdrawal of the member of Group I, sitting on that committee, who had written that report.

136 Therefore, the argument based on the absence of any references to that report in the non-confidential of the OLAF report is not capable of establishing a breach of the applicant's rights of defence.

137 Third, the applicant argues that one of the witnesses was sanctioned for having made false accusations against him in the past, which was recalled by another witness. That information, however, does not appear in the non-confidential version of the OLAF report.

138 However, as the EESC correctly points out, that information appears explicitly in the non-confidential version of the OLAF report, in paragraph 1.4, headed 'Similarity with a case concerning a former Head of Secretariat'. Consequently, nothing prevented the applicant from setting forth his observations in that regard prior to the adoption of the contested decision.

139 Fourth, the applicant explains that some witnesses stated that they had encountered difficulties with A. In particular, a number of witnesses mentioned a troubled relationship with her, which affected the proper functioning of the unit. In addition, two witnesses stated that A's behaviour in respect of them was aggressive, and one witness added that the applicant should not be held solely responsible for the whole situation. However, according to the applicant, neither the names of the witnesses nor any references to their statements appear in the non-confidential version of the OLAF report to which he had access, whereas that information allows OLAF's conclusions to be put into context and qualified.

140 It is apparent, however, from the case file that the difficulties encountered by certain members of the staff of the Group I secretariat with A were not only known to the applicant but, moreover, appear explicitly in the summary contained in the non-confidential version of the OLAF report.

141 At his OLAF hearing and in his written comments on the note on the facts concerning him, the applicant had already stated that certain members of staff had complained about A and that that had, in his opinion, affected the proper functioning of the secretariat.

142 In addition, the non-confidential version of the OLAF report states, inter alia, the following:

'During their interviews with OLAF[,] at least six staff members of the Secretariat expressed their opinion that A had been struggling to meet the competencies and abilities required for the job. At least three staff members of the Secretariat reported having had difficulties in identifying who to address (the Head or the Deputy Head of the Secretariat) due to the lack of clarity of the situation. Staff also reported that subsequently A showed also an aggressive attitude towards them. A staff member stated that staff were expecting a Head of Unit who would rather deal with the pressure coming from [the applicant] and defend them. In this sense[,] staff remained disappointed by A.'

143 It must therefore be held that the substance of the witness statements gathered appears in the non-confidential version of the OLAF report. It thus cannot validly be claimed that the EESC breached the applicant's rights of defence on that point.

144 Fifth, the applicant argues that it is apparent from the non-confidential version of the OLAF report that the investigation also concerned two other persons. If the bureau of the EESC had had knowledge of that, it could have assessed their respective roles in the alleged events, including in respect of B. Similarly, the applicant could have made reference to that to put into context the allegations raised against him.

145 It is apparent, however, from the letter of 3 June 2020, by which the bureau of the EESC was asked to take a decision on the applicant's case, that the president of the EESC also passed on to the bureau the note from the Director-General of OLAF of 16 January 2020, in which the identity of the other two persons concerned by the OLAF investigation appears.

146 Furthermore, it must be observed that the non-confidential version of the OLAF report mentions, on a number of occasions, the substance of the statements of a number of witnesses concerning the role played by the other two persons covered by the OLAF investigation. The applicant was therefore in a position to set forth any observations which he may have had on those elements in the course of the procedure by which the contested decision was drafted.

147 Sixth, the applicant maintains that one witness stated that she had never witnessed any inappropriate behaviour on his part. However, that information does not appear in the non-confidential version of the OLAF report.

148 It must, however, be found that the statement of the witness in question is more nuanced.

149 It is true that, in response to the question of whether she had witnessed situations during which the applicant had behaved badly in respect of the members of the staff of the Group I secretariat or whether the applicant was in the habit of criticising members of staff, the witness answered that she was unaware of that.

150 However, that witness also stated that, in her opinion, one of the aspects of the '[applicant's] personality [was that he wa]s authoritarian with a big ego' and that she 'did not experience much of the unpleasant side of [the applicant], because G was in between [them]'. Similarly, that witness added that she 'heard that [the applicant] shouted [at] staff in his office[,] but [that she] ha[d] never experienced it [her]self'. Finally, in response to the question of whether she would describe the applicant's behaviour in respect of members of staff as harassment, that witness stated that she had 'never experienced such … behaviour from [the applicant]' but that she could 'imagine that some people might have themselves provoked this type of behaviour' and that, 'knowing [the applicant's] character, which [wa]s like milk, he c[ould] "boil over" very easily'.

151 Moreover, that witness mentioned the situation of three colleagues who had encountered difficulties in their dealings with the applicant. Finally, that witness concluded that '[the applicant] ha[d] a difficult personality', that he 'may not have wanted to misbehave[,] but [that] his reactions might have been easily perceived as harassment', that 'it also depend[ed] on how sensitive the other person [wa]s', that 'all colleagues from the Secretariat ha[d] complained about him' and that 'had it not been for the bond and the solidarity between them, they could have broken down'.

152 It follows that the claim that that witness stated that she had never witnessed any inappropriate behaviour on the part of the applicant is incomplete and does not reflect the substance of that testimony.

153 Seventh, the applicant maintains that a number of witness statements confirm that no measures were taken by the Secretary-General of the EESC to resolve, in a timely manner, the difficulties encountered by some members of the staff of the Group I secretariat. In particular, the applicant refers to the decision of the Secretary-General of the EESC to appoint A at the end of her probationary period, despite the applicant's proposal that she not be appointed, which contributed to a worsening of the existing tensions within the Group I secretariat. The non-confidential version of the OLAF report, however, makes the applicant appear solely responsible for that situation, without taking account of the responsibility of the AHCC.

154 Like the EESC, the Court observes that that claim contradicts the statement made by the applicant at his OLAF hearing, according to which he 'did not want to dismiss A' and, 'in collaboration with H, [the decision was made] to give a positive opinion with regard to the probation period'.

155 In any event, it is apparent, inter alia, from his observations on the note on the facts of 4 December 2019 that the applicant has already argued that the decision of the Secretary-General of the EESC to appoint A had, in his opinion, contributed to a worsening of the existing tensions within the unit. In addition, the fact that the Secretary-General of the EESC carries out AHCC duties in respect of the members of the staff of the Group I secretariat is not a new element of which the applicant could have become aware only on reading the confidential version of the annexes to the OLAF report.

156 Therefore, it cannot be claimed that the EESC breached the applicant's rights of defence on that point.

157 Eighth, the applicant takes the view that the obscuring of the information relating to the legal framework relevant to the OLAF report prevented him from setting forth his observations on the legal basis used to classify his behaviour as psychological harassment. That argument is consistent with the line of argument developed in the application and the reply relating to the obscuring of the legal evaluation of the facts carried out by OLAF which, according to him, was not justified and prevented him from exercising his rights of defence.

158 With regard to the legal framework, it must be observed, as the EESC does, that it is, inter alia, set out in the note on the facts that was provided to the applicant on 4 December 2019.

159 As to the obscuring, in the non-confidential version of the OLAF report, of the legal evaluation of the facts carried out by OLAF, it must be found that it does not affect the legality of the contested decision.

160 It is important to note that the object of the procedure conducted by the EESC against the applicant was to determine whether the alleged acts and behaviours on his part, as identified by OLAF pursuant to its investigation, justified the adoption of a measure under the first subparagraph of Article 8(3) of the 2019 Code of Conduct. In accordance with Article 11(4) of Regulation No 883/2013, such an examination falls solely within the competence of the EESC and therefore does not depend on the legal evaluation of the facts carried out by OLAF. Thus, the EESC had to make its own legal evaluation of the facts established in the course of the investigation in order to evaluate whether it was appropriate to adopt a measure against the applicant.

161 Consequently, the failure to communicate the legal evaluation of the facts carried out by OLAF is not capable of establishing a breach of the applicant's rights of defence.

162 Finally, ninth, without raising a plea of illegality in respect of Article 103 of the Rules of Procedure, the applicant nevertheless maintains that, inasmuch as the confidential version of the annexes to the OLAF report could not be communicated to him, in accordance with the confidentiality undertakings given by his lawyers, their observations were minimal and could not, in any case, act as a substitute for the observations which he could have made if he himself had had access to those annexes.

163 In that regard, it is important to point out that, with a view to ensuring observance of the adversarial principle, Article 103(3) of the Rules of Procedure expressly provides for the possibility, which the Court used in the present case, to bring to the attention of a main party certain information or material which is relevant to the outcome of the dispute and of a confidential nature, making its disclosure subject to the giving of specific undertakings. It is apparent, in addition, from paragraph 191 of the Practice Rules for the Implementation of the Rules of Procedure that such an undertaking may involve a party's representatives' undertaking not to communicate that information or material to their client or a third party.

164 Thus, by measure of organisation of procedure of 7 April 2021, the Court first of all asked the applicant's lawyers to identify precisely, in the confidential version of the annexes to the OLAF report, any elements the substance of which, in their opinion, was not found in the summary, appearing in the non-confidential version of the OLAF report, of the facts and evidence gathered.

165 However, it follows from the foregoing that the applicant's lawyers failed to identify any element of the confidential version of the annexes to the OLAF report the substance of which was not already found in the non-confidential version of the OLAF report. Such a step could be undertaken without communicating to the applicant the confidential version of the annexes to the OLAF report. In the absence of the identification of any such elements, it is therefore, in any event, unnecessary to examine the additional observations, capable of affecting the result of the administrative procedure, which the applicant could have submitted himself during that procedure if he had been privy to those documents.

166 In view of all of the foregoing, it must therefore be concluded that, notwithstanding the failure to provide the annexes to the OLAF report, the EESC disclosed to the applicant the substance of the witness statements gathered, in the form of a summary, within the meaning of paragraph 66 of the judgment of 25 June 2020, *HF* v *Parliament* (C-570/18 P, EU:C:2020:490).

– *Question of whether the applicant was given a sufficient period of time in which to submit his observations on the non-confidential version of the OLAF report*

167 In that regard, while it is true that the applicant did not receive the non-confidential version of the OLAF report until 4 March 2020, at 12.40, that is barely two days prior to his advisory committee hearing, which took place on 6 March 2020, at 15.00, it is important, however, to note, first, that, as at that date, the applicant already had a relatively precise knowledge of the facts which were alleged against him.

168 After having answered OLAF's questions at a hearing in the course of which the identity of certain persons who considered themselves victims of his behaviour was revealed, the applicant received, on 4 December 2019, a note on the facts recording, in summary, the behaviours which were alleged on his part, on specific occasions, towards A, B and C and more generally in respect of the members of the staff of the Group I secretariat. The applicant was also able to set forth his comments on that note within 10 working days.

169 The fact, brought up by the applicant at the hearing, that that note did not contain any allegations relating to his behaviour towards D, a former member of the EESC, is not relevant in the present case. By letter of 18 October 2019, the applicant was informed of the fact that the investigation opened against him related to allegations concerning his behaviour, inter alia, in respect of members of the EESC, and, at his OLAF hearing, he was invited to express his views on the allegations concerning his behaviour towards D. Moreover, it is apparent from the foregoing that

the measure at issue seeks to protect the members of the staff of the Group I secretariat and ensure the proper functioning of that service. Therefore, the fact, even assuming that it had been established, that the applicant was unable to set forth his comments, prior to the adoption of the OLAF report, on the behaviour which was alleged on his part in respect of a former member of the EESC, who therefore does not belong to the staff of the Group I secretariat, is not capable of establishing that the measure at issue was adopted in breach of his rights of defence. Finally, in any event, it must be held, for the reasons set out below, that the applicant was, prior to the adoption of the contested decision, given a sufficient period of time in which to set forth any comments which he may have had on all of the behaviours which were alleged on his part in the OLAF report.

170 It is important to point out, second, that the advisory committee did not send its recommendations to the president of the EESC until 28 April 2020 and that the contested decision was not adopted until 9 June 2020, that is more than three months after the non-confidential version of the OLAF report was sent to the applicant.

171 In that regard, while it is not apparent from the case file that the advisory committee expressly invited the applicant to submit observations in writing to supplement what he had said at the first hearing on 6 March 2020, following the cancellation of the second hearing scheduled for 17 March 2020, it nevertheless remains the case that nothing prevented the applicant from sending that committee, in writing, any information which he considered relevant for the purposes of his defence.

172 Third, on 12 May 2020, the applicant was invited, by the president of the EESC, to formulate any observations on the recommendations issued by the advisory committee. He submitted his written comments on those recommendations on 2 June 2020.

173 In his written observations of 2 June 2020 on those recommendations and even though a period of nearly three months had passed since the non-confidential of the OLAF report was provided to him, on 4 March 2020, the applicant did not set forth any arguments concerning the content of that report and, in particular, on the facts alleged against him.

174 It follows that, between 4 March 2020, the date on which the applicant received the non-confidential version of the OLAF report, and 9 June 2020, the date on which the contested decision was adopted, the applicant's views on the content of that report were heard on two occasions and the applicant had, during that period, a sufficient period of time in which to effectively familiarise himself with that report, set forth his observations on it and prepare his defence.

175 Finally, there are no arguments to substantiate the claim based on an alleged breach of the principle of proportionality, the applicant having merely disputed, in a general and abstract manner, that 'the content of the contested decision' was 'appropriate and necessary', without setting out arguments enabling the Court to assess the merits of that assertion. That claim must, therefore, be dismissed.

176 In view of all of the foregoing, it must be concluded that the measure at issue was not adopted in breach of the applicant's rights of defence.

177 The first plea in law must, therefore, be dismissed as unfounded.

Second plea in law, alleging breach of the principles of the presumption of innocence and impartiality

178 The applicant criticises the EESC for having noted, in the contested decision, that he breached the provisions of the Charter, the Rules of Procedure of the EESC and the 2019 Code of Conduct.

179 According to the applicant, the principle of the presumption of innocence, set out, inter alia, in Article 48 of the Charter, requires that the members of the bureau of the EESC do not start from the preconceived idea that he committed the acts which are alleged on his part by OLAF. By not carrying out its own investigation after the OLAF investigation was completed, the EESC did not examine the circumstances of the alleged breaches or draw its own conclusions concerning his behaviour.

180 The advisory committee also breached that principle. That advisory body exceeded its authority to give opinions by stating, in its recommendations to the president of the EESC, that the applicant had committed acts of harassment, without hearing his views.

181 In addition, the principle of impartiality was breached inasmuch as the two members representing Group I on the advisory committee did not participate in the deliberations concerning the applicant. Since those members were not replaced, the advisory committee lacked impartiality, which affected the content of the recommendations issued and of the contested decision inasmuch as the bureau of the EESC merely confirmed those recommendations.

182 Finally, the president of the EESC objectively failed in his duty of impartiality, by instructing the services of the EESC not to conduct an investigation into the same facts, which amounts to an affirmation of the applicant's guilt.

183 The EESC contests that line of argument.

– *First claim, alleging breach of the principle of the presumption of innocence*

184 By way of a preliminary point, it must be recalled that the principle of the presumption of innocence, set out in Article 6(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and in Article 48(1) of the Charter, is a fundamental right which confers rights on individuals which are enforced by the Courts of the European Union (judgment of 4 October 2006, *Tillack* v *Commission*, T-193/04, EU:T:2006:292, paragraph 121). According to those provisions, respect for the presumption of innocence requires that everyone charged with a criminal offence be presumed innocent until proved guilty according to law (judgment of 3 July 2019, *PT* v *EIB*, T-573/16, EU:T:2019:481, paragraph 360 (not published)).

185 However, it is apparent from the foregoing that the purpose of the measure at issue is not to allege a breach on the part of the applicant of the rules of the code of conduct and that it does not constitute a sanction. In addition, the adoption of that measure is without prejudice to the applicant's possible guilt under the provisions of national law. Consequently, the first claim of the second plea in law must be rejected as ineffective (see, to that effect, judgment of 14 April 2021, *RQ* v *Commission*, T-29/17 RENV, not published, EU:T:2021:188, paragraph 114 and the case-law cited).

186 In any case, it must be recalled that the measure at issue was adopted under two distinct procedures, namely an OLAF investigation seeking to establish facts, followed by an evaluation by the EESC of the possible measures to be adopted in view of the facts established in the course of the investigation. As part of that internal EESC procedure, it is apparent from the foregoing that the applicant became aware of the results of the investigation before the bureau adopted the contested decision and that his rights of defence were respected.

187 Contrary to the applicant's submissions, his right to be presumed innocent in no way implied that the EESC was obliged to carry out a new investigation after receipt of the final report. To the contrary, while, in accordance with Article 11(4) of Regulation No 883/2013, the EESC was obliged to take such action pursuant to the final report as its results warranted, it was nevertheless free to determine the content of the measures to be taken in response to OLAF's recommendations (see, to that effect, order of 25 October 2018, *UI* v *Commission*, T-370/18, not published, EU:T:2018:770, paragraph 13; see also, to that effect and by analogy, judgment of 6 April 2006, *Camós Grau* v *Commission*, T-309/03, EU:T:2006:110, paragraph 51).

188 Moreover, the applicant has not adduced any evidence to demonstrate that the EESC had decided, from the outset of the procedure, to adopt the contested decision, irrespective of the explanations provided by him (see, to that effect, judgment of 9 July 2002, *Zavvos* v *Commission*, T-21/01, EU:T:2002:177, paragraph 341). Furthermore, after having heard the applicant's views, the bureau of the EESC departed from the opinion of the advisory committee, which recommended the adoption of more severe sanctions than those listed in the second subparagraph of Article 8(3) of the 2019 Code of Conduct, by not imposing any sanctions on him.

189 The claim alleging breach of the principle of the presumption of innocence must therefore, in any event, be dismissed as unfounded.

– *Second claim, alleging breach of the principle of impartiality*

190 Notwithstanding that the principle of the presumption of innocence does not apply in the present case, the EESC was nevertheless required during the administrative procedure to respect the fundamental rights of the European Union, which include the right to good administration enshrined in Article 41 of the Charter (see, to that effect, judgment of 11 July 2013, *Ziegler* v *Commission*, C-439/11 P, EU:C:2013:513, paragraph 154).

191 Thus, Article 41(1) of the Charter provides that every person has the right, inter alia, to have his or her affairs handled impartially by the institutions of the European Union. That requirement of impartiality encompasses, on the one hand, subjective impartiality, in so far as no member of the institution concerned who is responsible for the matter may show bias or personal prejudice, and, on the other hand, objective impartiality, in so far as there must be sufficient guarantees to exclude any legitimate doubt as to bias on the part of the institution concerned (see, to that effect, judgment of 11 July 2013, *Ziegler* v *Commission*, C-439/11 P, EU:C:2013:513, paragraph 155 and the case-law cited).

192 In the present case, regarding an alleged lack of objective impartiality, the applicant merely maintains that the president of the EESC should have asked for a new investigation to be opened before affirming his guilt.

193 However, such an argument must be dismissed, inasmuch as the EESC was in no way obliged to carry out a new investigation before adopting the contested decision.

194 The right to good administration did not require the EESC to carry out such an investigation, which would have had the same object as that previously conducted by OLAF. The EESC only had to examine in a diligent manner the results of the OLAF investigation, set out in its report, and allow the applicant to defend himself in the face of the content of that report and the possible consequences for him, which it did in fact do.

195 Moreover, the statements of the president of the EESC, to which the applicant refers, do not reveal any lack of impartiality, whether subjective or objective, inasmuch as he merely indicated that, in accordance with Article 11(4) of Regulation No 883/2013, the EESC was obliged to take action further to OLAF's recommendations and to inform OLAF of the actions which would be taken on that basis.

196 Regarding the alleged lack of subjective impartiality, the applicant merely maintains that the advisory committee lacked impartiality when it issued recommendations in the absence of the two members of Group I, namely E and F. The applicant fails to explain, however, how that shows bias or personal prejudice within the meaning of the case-law cited in paragraph 191 above.

197 It is sufficient, in any case, to find that the withdrawal of E responded precisely to the concern that the impartiality of the advisory committee should not be undermined, as the decision to make that withdrawal was made on account of the existence, as far as E was concerned, of a conflict of interests. In addition, with regard to F, her absence is not attributable to the advisory committee, given that she decided, on her own initiative, not to participate in the advisory committee's deliberations relating to the applicant's case. In any event, the applicant fails to explain why the absence of those two members is capable of raising a legitimate doubt as to the impartiality of the advisory committee, especially since the provisions of the 2019 Code of Conduct do not provide that the ability of the advisory committee to issue recommendations is subject to the presence of any quorum.

198 The second claim advanced by the applicant, alleging breach of the principle of impartiality, must therefore be dismissed as unfounded, and the second plea in law must, consequently, be rejected in its entirety.

Fourth plea in law, alleging breach of Article 10(2) of Regulation No 883/2013, the confidentiality of disciplinary proceedings and judicial investigations, and Article 4(1) of Regulation 2018/1725

199 The applicant maintains that members of OLAF's staff breached Article 10(2) of Regulation No 883/2013 by stating, before the Parliament's Committee on Budgetary Control, that he was guilty of harassment, which led the members of that committee to believe that his guilt was established even before the advisory committee and the bureau of the EESC had adopted a position on that matter.

200 Furthermore, the Parliament also breached the 'principle of confidentiality' by circulating information suggesting guilt on the part of the applicant regarding the facts alleged. That resulted in a breach of the secrecy of disciplinary proceedings and judicial investigations, which is all the more serious given that OLAF, at the same time, acknowledged that the applicant's behaviour had had no financial impact on the EU budget.

201 Finally, the president of the EESC also breached the 'principle of confidentiality' by disclosing the content of the final report at the meeting of the bureau of the EESC on 21 January 2020. In addition, according to the applicant, the EESC should have asked the Parliament to omit his personal data from its various communications relating to its budget or the facts alleged against him.

202 The EESC contests that line of argument.

203 It should be recalled that the Courts of the European Union may dismiss a plea or complaint as ineffective where they find that that plea or complaint is not capable, in the event that it is well founded, of leading to the annulment sought (see judgment of 19 November 2009, *Michail* v *Commission*, T-50/08 P, EU:T:2009:457, paragraph 59 and the case-law cited).

204 In that regard, it is sufficient to note, as the EESC does, that the arguments concerning the actions of the Parliament and the statements of OLAF before the Parliament's Committee on Budgetary Control, which bodies are not parties to the present proceedings, do not affect the legality of the contested decision, given that they are not attributable to the EESC, which is the author of the contested decision.

205 Consequently, the arguments relating to the alleged breach, by OLAF and the Parliament, of Article 10(2) of Regulation No 883/2013 and Article 4(1) of Regulation 2018/1725 must be dismissed as ineffective.

206 As to the argument based on the fact that the president of the EESC revealed to the members of the bureau, at the meeting on 21 January 2020, the content of the OLAF report, invoked for the first time in the reply, it must be dismissed as unfounded, irrespective of its admissibility under Article 84(1) of the Rules of Procedure.

207 Even though he was present at that meeting, the applicant has not adduced any evidence to refute the EESC's explanations which indicate that the president merely informed the members of the bureau of the existence of the OLAF report and the recommendations accompanying it, solely in preparation for the referral of the matter to the advisory committee.

208 It is apparent, in addition, from the case file that the other members of the bureau ultimately did not become aware of the content of the non-confidential version of the OLAF report until 3 June 2020, when the advisory committee sent its recommendations to the president of the EESC, after the applicant had been able to set forth his observations on the content of that report and on those recommendations.

209 In view of the foregoing, the fourth plea in law must be dismissed as partly ineffective and partly unfounded.

Claim for damages

210 The applicant seeks, under the second paragraph of Article 340 TFEU, to have the EESC ordered to pay him an amount of EUR 250 000 by way of compensation for the material and non-material damage which he claims to have suffered.

211 The applicant's non-material damage is constituted by the exclusion from his professional environment to which he was subject. In that regard, the remarks of the Director of OLAF before the Parliament's Committee on Budgetary Control, on 3 February 2020, caused irreparable harm to his honour and reputation inasmuch as the Director informed the members of that committee of the content of the final report without the applicant's views' being heard and without its having been demonstrated that the accusations made against the applicant had had a financial impact on the European Union.

212 Next, by initiating disciplinary proceedings against him without a defined regulatory framework and by making reference, in the contested decision, to the decision of the Parliament of 13 May 2020 on discharge in respect of the implementation of the general budget of the European Union for the financial year 2018 and to the resolution of the Parliament of 14 May 2020, the EESC also caused harm to the applicant's reputation and honour.

213 Thus, the fact that he was unable to express his views on the facts concerning him gave rise to a sense of frustration, anxiety and injustice on the part of the applicant, which had serious repercussions for his state of health and his private life and resulted directly from OLAF's conduct.

214 For those reasons, the applicant seeks compensation for his non-material damage, which he assesses *ex aequo et bono*, on a provisional basis, at an amount of EUR 200 000, which is proportionate to the faults committed by the EESC, the Parliament and OLAF. In the reply, the applicant indicated, however, that he was leaving it to the Court to assess the amount due by way of compensation for his non-material damage.

215 The applicant's material damage is constituted by the costs which he has incurred for the purposes of defending himself since January 2020, which he assesses at EUR 50 000. Moreover, if the action were to be dismissed, it would be unacceptable for the applicant to be ordered to pay the fees incurred by the EESC for the services of an external lawyer.

216 The EESC contests that line of argument.

217 In that regard, it is clear from settled case-law that the European Union may incur non-contractual liability only if a number of conditions are fulfilled, namely the existence of a sufficiently serious breach of a rule of law intended to confer rights on individuals, the fact of damage and the existence of a causal link between the breach of the obligation resting on the author of the act and the damage sustained by the injured parties (see judgment of 10 September 2019, *HTTS* v *Council*, C-123/18 P, EU:C:2019:694, paragraph 32 and the case-law cited; see also, to that effect, judgment of 19 April 2012, *Artegodan* v *Commission*, C-221/10 P, EU:C:2012:216, paragraph 80).

218 Moreover, if any one of those three conditions is not satisfied, the action must be dismissed in its entirety and it is unnecessary to consider the other conditions for non-contractual liability (see judgment of 29 April 2020, *Tilly-Sabco* v *Council and Commission*, T-707/18, not published, EU:T:2020:160, paragraph 114 and the case-law cited).

219 In the present case, it must be observed that, according to the applicant, the alleged damage suffered by him arose, inter alia, from the unlawful conduct of OLAF before the Parliament's Committee on Budgetary Control.

220 However, in the application, the applicant designated the EESC as the only defendant.

221 Therefore, in the context of the present action, the applicant is entitled to seek to have the EESC ordered to pay compensation for the damage allegedly suffered only on account of unlawful conduct on the part of that body. To obtain compensation for damage caused by another institution, it is the responsibility of the applicant to direct his claim for damages against the institution accused of the act giving rise to liability (see, to that effect, order of 2 February 2015, *Gascogne Sack Deutschland and Gascogne* v *European Union*, T-577/14, not published, EU:T:2015:80, paragraph 23 and the case-law cited).

222 With regard to the actions of the EESC, it is necessary to recall the case-law according to which claims for compensation for material or non-material damage must be rejected where they are closely associated with claims for annulment which have themselves been dismissed as inadmissible or unfounded (see judgment of 19 December 2019, *ZQ* v *Commission*, T-647/18, not published, EU:T:2019:884, paragraph 202 and the case-law cited).

223 It is clear from the foregoing that the contested decision is not illegal in any respect and that the procedure by which it was drafted was conducted in accordance with the applicant's rights of defence. In any event, the applicant fails to explain how the mere fact that reference was made, in the contested decision, to the decision of the Parliament of 13 May 2020 on discharge in respect of the implementation of the general budget of the European Union for the financial year 2018 and to the resolution of the Parliament of 14 May 2020 constitutes a sufficiently serious breach on the part of the EESC of a rule of law intended to confer rights on individuals.

224 Consequently, since the first condition for the European Union to incur liability is not satisfied in the present case, the claim for damages must be dismissed and it is unnecessary to consider the other conditions for it to incur liability.

225 The action must, in those circumstances, be dismissed in its entirety.

Costs

226 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicant has been unsuccessful, he must be ordered to pay the costs, including those relating to the proceedings for interim measures, in accordance with the form of order sought by the EESC.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders KN to pay the costs, including those relating to the proceedings for interim measures.**

Svenningsen Mac Eochaidh Pynnä

Delivered in open court in Luxembourg on 1 September 2021.

[Signatures]