



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Seventh Chamber, Extended Composition)

12 October 2022*

(Civil service – Official – EEAS staff posted to a third country – Head of delegation – Management trial period – Final assessment report for the management trial period – Act not having an adverse effect – Inadmissibility – Reassignment to a non-management post at EEAS headquarters – Obligation to state reasons – Right to be heard – Conditions for application to heads of delegation of Article 11 of Commission Decision C(2008) 5028/2 of 9 September 2008 on middle management staff – Non-inclusion of documents in the personnel file – Interests of the service – Misuse of powers – Request for assistance – Decision rejecting the request – Liability)

In Case T-88/21,

Sandra Paesen, residing in Beersel (Belgium), represented by M. Casado García-Hirschfeld, lawyer,

applicant,

v

European External Action Service (EEAS), represented by S. Marquardt and R. Spáč, acting as Agents,

defendant,

THE GENERAL COURT (Seventh Chamber, Extended Composition),

composed, at the time of the deliberations, of R. da Silva Passos, President, V. Valančius, I. Reine, L. Truchot and M. Sampol Pucurull (Rapporteur), Judges,

Registrar: L. Ramette, Administrator,

having regard to the written part of the procedure,

following the hearing on 7 April 2022,

gives the following

* Language of the case: French.

Judgment¹

- 1 By an action based on Article 270 TFEU, the applicant, Mrs Sandra Paesen, seeks, first, (i) annulment of the final assessment report for the management trial period ('the end-of-probation report') concerning her, (ii) of the decision of the European External Action Service (EEAS) of 10 April 2020 reassigning her to a non-management post ('the first contested decision') and (iii) of the EEAS decision of 12 May 2020 rejecting the applicant's request for assistance ('the second contested decision'), and, second, compensation for the material and non-material damage which the applicant has suffered.

Background to the dispute

- 2 The applicant is an official of the European Union. She entered the service of the Council of the European Union in 2004 and was transferred to the EEAS in 2011.
- 3 By decision of the High Representative of the Union for Foreign Affairs and Security Policy ('the High Representative') of 17 July 2018, the applicant was appointed Head of the Delegation of the Union to the Republic of Malawi ('the Delegation in Malawi') with effect from 1 September 2018.
- 4 On the same date, the applicant was subject to a nine-month management trial period, in accordance with Commission Decision C(2008) 5028/2 of 9 September 2008 on middle management staff ('Decision 5028/2'), made applicable to the EEAS by Decision PROC EEAS(2011) 002 of the Chief Operating Officer of the EEAS of 29 November 2011.
- 5 On 18 March 2019, in the light of the mid-term probation report, according to which the applicant's leadership and management skills were deemed to be unsatisfactory, the management trial period was extended by six months with effect from 1 June 2019.
- 6 From 16 to 25 September 2019, the EEAS Inspection Service carried out an ad hoc inspection mission in the Delegation.
- 7 On 14 October 2019, the draft inspection report drawn up by the ad hoc inspection mission ('the draft inspection report') was sent to the applicant for comment. The draft contained twelve recommendations concerning the management of the Delegation, six of which were addressed to the applicant in her capacity as Head of Delegation.
- 8 On 27 November 2019, the Secretary-General of the EEAS sent the applicant the end-of-probation report, according to which the applicant's leadership and management skills were deemed to be unsatisfactory.
- 9 Furthermore, the Secretary-General of the EEAS also informed the applicant that the High Representative considered that she had not performed satisfactorily during that probationary period and that she was considering reassigning her to a non-management post at EEAS headquarters.
- 10 On 29 November 2019, the applicant sent her comments on the draft inspection report to the Secretary-General of the EEAS.

¹ Only the paragraphs of this judgment which the Court considers it appropriate to publish are reproduced here.

- 11 On 12 December 2019, the applicant sent her comments on the end-of-probation report to the Secretary-General of the EEAS.
- 12 On 18 December 2019, the applicant reiterated to the Secretary-General of the EEAS her comments on the end-of-probation report and on the conditions under which she had completed the management trial period, and requested access to the documents on which that report was based.
- 13 On 19 December 2019, the Managing Director for Africa ('the Managing Director Africa'), sent comments to the EEAS Inspection Service on the draft inspection report.
- 14 On 11 January 2020, the applicant asked the High Representative to confirm her as Head of Delegation in Malawi.
- 15 On 17 January 2020, the applicant sent a request for assistance ('the request for assistance') based on Article 24 of the Staff Regulations of Officials of the European Union ('the Staff Regulations') to the Director of Human Resources of the EEAS, asking for an administrative investigation to be launched on the ground that she was the victim of psychological harassment by her superiors, in particular the Managing Director Africa and the Head of the Division for Southern Africa and the Indian Ocean ('the Head of Division Africa 2').
- 16 On 29 January 2020, the applicant was sent the final version of the inspection report of the ad hoc inspection mission ('the final inspection report').
- 17 On 22 March 2020, the applicant was authorised to leave her place of employment and return to Belgium for medical and family reasons. From the same date, she was successively placed on sick leave and annual leave until 1 September 2020.
- 18 On 30 March 2020, the applicant sent additional information to the EEAS Human Resources Directorate in order to complete the request for assistance.
- 19 By letter of 10 April 2020, the High Representative adopted the first contested decision, by which he reassigned the applicant to a non-management post at EEAS headquarters with effect from 1 May 2020.
- 20 By decision of 30 April 2020, the applicant was assigned to the Economic and Global Issues Division of the EEAS with effect from 1 May 2020.
- 21 On 12 May 2020, the Director of Human Resources of the EEAS adopted the second contested decision, by which she rejected the request for assistance.
- 22 On 10 July 2020, the applicant lodged a complaint under Article 90(2) of the Staff Regulations against the end-of-probation report and the abovementioned decisions of 10 April, 30 April and 12 May 2020 and sought EUR 60 000 in compensation for the non-material damage which she had suffered, as well as reimbursement of her costs and legal fees.
- 23 On 4 November 2020, the appointing authority rejected the complaint ('the decision rejecting the complaint').

Forms of order sought

- 24 The applicant claims that the Court should:
- annul the contested decisions and, in the alternative, the end-of-probation report and, in so far as necessary, the decision rejecting the complaint;
 - order the EEAS to compensate her for the material and non-material damage allegedly suffered;
 - ‘withdraw from the procedure’ Annexes D.2, D.3 and D.4 to the rejoinder;
 - order the EEAS to pay the costs.
- 25 The EEAS contends that the Court should:
- dismiss the action as being in part inadmissible and in part unfounded;
 - order the applicant to pay the costs.

Law

...

The claim for annulment of the end-of-probation report

- 38 The admissibility of the action is a matter of public policy which must be raised by the General Court (see, to that effect, judgment of 5 March 2020, *Credito Fondiario v SRB*, C-69/19 P, EU:C:2020:178, paragraph 54 and the case-law cited).
- 39 In that regard, it should be noted that for any action brought by an official against an act of the institution by which he or she is or was employed to be admissible, it is a necessary condition that there be an act adversely affecting him or her within the meaning of Article 90(2) and Article 91(1) of the Staff Regulations. According to settled case-law, only measures the legal effects of which are binding on and capable of affecting, directly and immediately, the interests of the applicant by bringing about a distinct change in his legal position may be the subject of an action for annulment (see, to that effect, judgment of 14 December 2017, *Martinez De Prins and Others v EEAS*, T-575/16, EU:T:2017:911, paragraph 30 and the case-law cited).
- 40 In particular, it is apparent from settled case-law concerning the admissibility of actions for annulment that it is necessary to look to the substance of the contested acts, as well as the intention of those who drafted them, in order to classify those acts. In that regard, it is, in principle, acts which definitively determine the position of the institutions, bodies, offices or agencies of the European Union upon the conclusion of an administrative procedure, and which are intended to have legal effects capable of affecting the interests of the applicant, which are open to challenge, and not intermediate measures whose purpose is to prepare for the definitive decision or measures which are mere confirmation of an earlier measure which was not challenged within the prescribed period (see judgment of 25 June 2020, *SatCen v KF*, C-14/19 P, EU:C:2020:492, paragraph 70 and the case-law cited).

- 41 In the present case, first, the end-of-probation report which the applicant seeks to have annulled is governed by Decision 5028/2 (see paragraph 4 above).
- 42 In accordance with Article 11 of Decision 5028/2, persons newly appointed to middle management posts are subject to a nine-month management trial period, with a mid-term probation report after five months, and an end-of-probation report one month before the end of the nine-month period. That probationary period may, in exceptional circumstances, be extended by up to six months, at the end of which a final assessment report is drawn up.
- 43 Furthermore, according to the third subparagraph of Article 11(4) of Decision 5028/2, if at the end of the probationary period (namely, after 15 months maximum), the probation is unsuccessful on the ground that one of the competencies to be assessed is deemed to be insufficient, the appointing authority must propose reassignment of the staff member concerned to a non-management post.
- 44 Thus, it follows from the wording of the third subparagraph of Article 11(4) of Decision 5028/2, as acknowledged by the EEAS in its written response to the measures of organisation of procedure, that where an end-of-probation report contains at least one ‘insufficient’ in respect of a management competency, the appointing authority which issued the report is to issue not a decision, but a proposal to reassign the official concerned to a non-management post, which is to be addressed to the High Representative as the appointing authority competent for the reassignment of the official, including after an extension of the managerial trial period.
- 45 Secondly it has been held that the rationale for the probationary period under the second paragraph of Article 44 of the Staff Regulations, in the version in force until 31 December 2013, was sufficiently similar to that for the probationary period required of temporary staff under Article 14 of the Conditions of Employment of Other Servants, in the version in force until 31 December 2013, and therefore that it was possible to draw on the case-law relating thereto (see, to that effect, judgment of 12 May 2016, *FS v EESC*, F-50/15, EU:F:2016:119, paragraph 97).
- 46 The probationary period for newly appointed heads of delegation of the EEAS, pursuant to Decision 5028/2, is also similar to the probationary period required of temporary staff. Thus, a report such as the end-of-probation report cannot be compared to annual appraisal reports which are drawn up over the entire course of an official’s career, and which constitute acts adversely affecting that official (see, to that effect, judgment of 25 June 2020, *XH v Commission*, T-511/18, EU:T:2020:291, paragraph 133 and the case-law cited).
- 47 Probation reports, the purpose of which is to prepare the decision of the administration whether to appoint the person concerned as an established official at the end of his or her probationary period or to dismiss that person, have the sole purpose of preparing a particular decision on the part of the administration, to which they are therefore closely linked, and consequently, do not constitute acts adversely affecting the official (see, to that effect, judgment of 25 June 2020, *XH v Commission*, T-511/18, EU:T:2020:291, paragraph 134).
- 48 Similarly, where an end-of-probation report is negative, its sole purpose is to prepare a particular decision on the part of the administration, namely the decision to reassign the official in question to another, non-management, post, to which that report is thus closely linked.

- 49 Thirdly, it is true, as the EEAS points out, that under the second paragraph of Article 44 of the Staff Regulations, the advancement in step provided for in that provision for officials appointed, inter alia, as heads of unit, is subject to the condition that their performance has been satisfactory, within the meaning of Article 43 of the Staff Regulations, during the first nine months following their appointment.
- 50 However, it should be noted that the exceptional advancement in step provided for in the second paragraph of Article 44 of the Staff Regulations is applicable to officials appointed as heads of unit, directors or directors-general, and not to staff of the EEAS who, like the applicant, are newly appointed as heads of delegation, whose duties are defined in Article 5 of Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the EEAS (OJ 2010 L 201, p. 30).
- 51 Consequently, the fact that the second paragraph of Article 44 of the Staff Regulations refers to Article 43 of the Staff Regulations has no bearing on the fact that the end-of-probation report for EEAS heads of delegation is a preparatory act.
- 52 Fourthly, it is also true that the second subparagraph of Article 11(4) of Decision 5028/2 refers to Article 43 of the Staff Regulations by providing that the end-of-probation report must be attached to the annual appraisal report governed by the latter provision.
- 53 However, an assessment report for a management trial period which is placed in the personal file of an official cannot, in principle, still produce effects of any kind following the decision adopted at the end of the probationary period, by which he or she was established and which had as its sole purpose the preparation of that decision (see, by analogy, judgment of 25 June 2020, *XH v Commission*, T-511/18, EU:T:2020:291, paragraph 136 and the case-law cited).
- 54 Thus, even if a mid-term probation report or end-of-probation report contains a certain number of observations on the official's or other staff member's fitness for work, it cannot, in principle, be taken into account either by a promotion committee (see, by analogy, judgment of 25 June 2020, *XH v Commission*, T-511/18, EU:T:2020:291, paragraph 137) or, as the EEAS acknowledged at the hearing, by the Consultative Committee on Appointments ('the CCA') provided for in Decision PROC HR(2011) 005 of the High Representative of 9 March 2011, nor by the appointing authority, in a new procedure for the selection of heads of delegation.
- 55 Lastly, it should be noted that, in the context of an action against the decision adopted at the end of the management trial period, it is permissible for the applicant to rely on defects in acts prior to the decision and closely linked to it and, in particular, defects which, in the applicant's view, affect the end-of-probation report (see, to that effect, judgment of 3 December 2015, *Sesma Merino v OHIM*, T-127/14 P, EU:T:2015:927, paragraph 24 and the case-law cited).
- 56 In the light of all the foregoing, although the first contested decision to reassign the applicant to a non-management post constitutes an act adversely affecting her, in so far as it definitively determines the administration's position and thereby affects the applicant's interests directly and immediately, the same does not apply to the end-of-probation report, which is merely a preparatory act for that decision.
- 57 In those circumstances, the claim for the annulment of the final assessment report is inadmissible and must be rejected.

The claim for annulment of the first contested decision

58 In support of this claim, the applicant raises, in essence, six pleas in law alleging, first, infringement of the obligation to state reasons and of Article 25 of the Staff Regulations; secondly, infringement of the right to good administration and of the right to be heard; thirdly, infringement of Article 11 of Decision 5028/2 and of Decision ADMIN (2019) 31 of the EEAS of 15 November 2019 on the exercise and sub-delegation of the powers conferred on the appointing authority and on the authority authorised to conclude contracts of employment ('Decision ADMIN (2019) 31'); fourthly, infringement of Article 26 of the Staff Regulations; fifthly, a manifest error of assessment and infringement of Article 7(1) of the Staff Regulations; and, sixthly, misuse of powers.

...

The second plea, alleging infringement of the right to good administration and of the right to be heard

71 The applicant alleges, in essence, first, an irregularity in the consultation of the CCA, secondly, an infringement of the right to be heard and, thirdly, an infringement of the right to good administration.

...

– The second part of the second plea, alleging infringement of the right to be heard

79 In the context of this part of the plea, the applicant relies, in essence, on the following four complaints.

80 First, the applicant submits that, in response to the letter of the Secretary-General of the EEAS of 27 November 2019 notifying her of the end-of-probation report, she submitted comments which were not followed up. The applicant claims that she was not in a position to influence the appointing authority's decision-making process, as evidenced by the fact that the first contested decision does not refer to the comments which she submitted on 12 December 2019 and 30 January 2020, and that the decision in no way shows that the appointing authority actually exercised its discretion in the light of the comments she submitted on that report.

81 Secondly, the applicant considers that the end-of-probation report contains subjective claims which are not supported by documentary evidence, and therefore that the absence of documentary evidence has undoubtedly prevented her from being able to take a comprehensive view of all the facts and documents on which the first contested decision is based.

82 Thirdly, the applicant states that, in accordance with Decision ADMIN (2019) 31, she should have been heard by the High Representative.

83 Fourthly, the applicant submits that she was not given the opportunity to discuss the content of the end-of-probation report with her superiors before it was sent to her by the Secretary-General of the EEAS on 27 November 2019, which is contrary to the provisions of the Staff Regulations and the applicable internal rules.

- 84 The EEAS disputes the claims made by the applicant.
- 85 It should be recalled that, under Article 41(2) of the Charter, the right to good administration includes the right of every person to be heard before an individual measure which would affect him or her adversely is taken.
- 86 Accordingly, the right to be heard guarantees every person the opportunity to make known his or her views effectively during an administrative procedure and before the adoption of any decision liable to affect his or her interests adversely (see judgment of 21 October 2021, *Parliament v UZ*, C-894/19 P, EU:C:2021:863, paragraph 89 and the case-law cited).
- 87 In particular, a decision to reassign an official serving in a third country affects his or her administrative status, since it alters the place and the conditions for the performance of his or her duties and also their nature. It may also affect the career of that official in so far as it may influence his or her professional prospects, since some duties may, whilst being equally classified with others, lead more readily to promotion by reason of the nature of the duties performed. It can also lead to a reduction in his or her remuneration (see, to that effect, judgment of 6 December 2007, *Marcuccio v Commission*, C-59/06 P, EU:C:2007:756, paragraph 45 and the case-law cited).
- 88 It follows that a proposed decision to reassign an official against his or her wishes, in a situation where the performance of management functions is unsatisfactory, as in the present case, requires the application of the principle of respect for the rights of defence, a fundamental principle of EU law which must be guaranteed even in the absence of any rules governing the procedure in question (see, by analogy, judgment of 6 December 2007, *Marcuccio v Commission*, C-59/06 P, EU:C:2007:756, paragraph 46 and the case-law cited).
- 89 It is in the light of those principles that the plea alleging infringement of the right to be heard must be examined.
- 90 In the present case, first, it is common ground that, by letter of 27 November 2019, the Secretary-General of the EEAS sent the applicant the end-of-probation report and informed her that, on the basis of that report, the High Representative was considering reassigning her to a non-management post at EEAS headquarters, in accordance with Article 11(4) of Decision 5028/2.
- 91 In addition, by the same letter, the Secretary-General of the EEAS invited the applicant to submit her comments in writing, within 14 days, before the adoption of a final decision.
- 92 Secondly, in addition to the written comments, dated 12 December 2019 and 11 January 2020, which the applicant sent to the Secretary-General of the EEAS and the High Representative respectively, it is apparent from the proceedings that the applicant had a telephone conversation with the Secretary-General on 17 December 2019 and that the following day the applicant sent her further written comments.
- 93 In those circumstances, it must be held that the applicant was given the opportunity to make known her views effectively before the adoption of the first contested decision, and to submit the information which, in her view, would argue in favour of the non-adoption of such a decision. Thus, the applicant is incorrect in claiming that her right to be heard before the adoption of the first contested decision was infringed.

- 94 The arguments which the applicant has put forward before the Court are not capable of calling that conclusion into question.
- 95 In the first place, the applicant is not justified in arguing that she should have been heard by the appointing authority before the adoption of the final assessment report.
- 96 First, it should be noted that Decision 5028/2 does not impose any such an obligation on the appointing authority.
- 97 Secondly, it is true that it was held in paragraph 75 of the judgment of 16 September 2013, *Wurster v EIGE* (F-20/12 and F-43/12, EU:F:2013:129), in relation to a management skills assessment report governed by the general implementing provisions concerning middle management staff of the European Institute for Gender Equality (EIGE), that any person who is the subject of an assessment report which may have consequences for his or her career must be given the opportunity to submit his or her comments before the report becomes final, even where there is no express provision to that effect.
- 98 However, that conclusion was based on the case-law relating to annual appraisal reports. Since they are capable of having an influence over the entire course of an official's career, those reports are acts adversely affecting that official (see paragraph 46 above). This is not the case for end-of-probation reports (see paragraphs 56 and 57 above).
- 99 The same applies to the judgment of 9 October 2013, *Wahlström v Frontex* (F-116/12, EU:F:2013:143), also relied on by the applicant in support of her argument.
- 100 Furthermore, it follows from the case-law cited in paragraphs 86 to 88 above that, although the right to be heard guarantees every person who is the addressee of an act adversely affecting him or her the opportunity to be heard prior to the adoption of that act, that right is not guaranteed in respect of a preparatory act (see judgment of 22 November 2018, *Brahma v Court of Justice of the European Union*, T-603/16, EU:T:2018:820, paragraph 71 (not published) and the case-law cited).
- 101 Thus, in the present case, it was sufficient for the applicant to be heard before the adoption of the first contested decision, by which she was reassigned to a non-management post. The appointing authority cannot be criticised for not having heard her before adopting the end-of-probation report, which constitutes a preparatory act for that decision (see paragraph 56 above).
- 102 That conclusion is borne out by the fact, referred to in paragraphs 45 and 46 above, that the rationale for a probationary period comparable to that required of newly appointed heads of delegation, as in the present case, is sufficiently similar to the probationary period required of new officials for the General Court to draw on the case-law relating thereto.
- 103 It follows from that case-law relating to probation reports, which is applicable by analogy, that respect for the rights of the defence of a dismissed probationary official implies that the latter must have been given the opportunity, during the administrative procedure leading to the dismissal decision, effectively to make known his or her views on the truth and relevance of the facts and circumstances on the basis of which the appointing authority adopted its decision. Thus, since the reasons for that decision are based on the assessments contained in that official's assessment report, the right to be heard is guaranteed where that official has commented on those assessments and has had the opportunity to state his or her position on any document which the

institution intends to use against him or her (see, to that effect, judgment of 6 June 2019, *Bonnaïfous v EACEA*, T-614/17, not published, EU:T:2019:381, paragraphs 79, 80 and 93 and the case-law cited).

- 104 In the present case, as stated in paragraph 63 above, the reasons for the first contested decision are based on the assessments contained in the applicant's end-of-probation report, and it is common ground that the applicant commented on those assessments.
- 105 In those circumstances, the applicant was, in the course of the administrative procedure leading to the first contested decision, put in a position effectively to make known her views on the truth and relevance of the facts and circumstances on the basis of which the appointing authority adopted its decision.
- 106 In the second place, the applicant cannot reasonably claim that she was unable to take a view on documents which, in her view, were necessary to support the subjective assessments contained in the end-of-probation report, since the existence of such documents is not established and is not apparent from the documents before the Court.
- 107 In the third place, the applicant is not justified in arguing that she should have been granted an interview with the High Representative, since it is settled case-law that the exchange by which the official concerned must be given the opportunity effectively to make known his or her views concerning the draft decision which may adversely affect his or her interests may be oral or written (see, to that effect, judgments of 6 December 2007, *Marcuccio v Commission*, C-59/06 P, EU:C:2007:756, paragraph 47, and of 6 April 2022, *FC v EUAA*, T-634/19, not published, EU:T:2022:222, paragraph 48 and the case-law cited).
- 108 Furthermore, while Decision ADMIN (2019) 31, applicable from 16 November 2019, provided that the High Representative was the competent authority for the adoption of decisions to reassign heads of delegation in the interests of the service, it is not apparent from the wording of that decision that the EEAS is required to organise an interview between the High Representative and a head of delegation in circumstances such as those in the present case.
- 109 In the fourth place, the applicant is not justified in arguing that her written comments were not followed up, that she was not in a position to influence the appointing authority's decision-making process and that the first contested decision in no way shows that the appointing authority actually exercised its discretion in the light of the written comments which she submitted.
- 110 Although for the rights of the defence and the right to be heard to be observed, the EU institutions must enable the person concerned by the act adversely affecting him or her to make his or her views known effectively, those institutions cannot be required to accept those views (see, to that effect, judgments of 7 July 2017, *Arbuzov v Council*, T-221/15, not published, EU:T:2017:478, paragraph 84, and of 27 September 2018, *Ezz and Others v Council*, T-288/15, EU:T:2018:619, paragraph 330).
- 111 Furthermore, the first contested decision expressly refers to the comments made by the applicant in her letter of 12 December 2019. While that decision also refers to the applicant's comments of 1 January 2020, it is clear from the proceedings, as the EEAS states, that this is a clerical error and that the High Representative intended to refer to the applicant's comments of 11 January 2020.

112 Lastly, the applicant cannot reasonably criticise the High Representative for not having referred, in the first contested decision, to the comments of 30 January 2020 which she had sent to the latter's Head of Cabinet in response to the letter of 19 December 2019 from the Managing Director Africa mentioned in paragraph 13 above. Those comments were not related, at least not directly, to the procedure initiated by the EEAS in order to guarantee the applicant's right to be heard before the adoption of the first contested decision.

113 The present part of the plea is therefore unfounded and must be dismissed.

...

The third plea, alleging infringement of Article 11 of Decision 5028/2 and Decision ADMIN (2019) 31

129 In support of that plea, the applicant relies, in essence, on five pleas in law alleging, first, that the mid-term probation report was irregular; secondly, that the conditions under which the management trial period was conducted were abnormal; thirdly, that there were no objectives and indicators during the management trial period; fourthly, that the end-of-probation report was irregular; and, fifthly, that the first contested decision was a matter for the High Representative.

130 The EEAS disputes the applicant's claims.

...

– The third complaint of the third plea, alleging the absence of objectives and indicators during the management trial period

157 The applicant complains that there was a lack of regular follow-up from her superiors and the human resources department, and in particular that no objectives were set and no action plan was drawn up, which deprived her of any indicators against which her performance could be measured and which could enable her to remedy any shortcomings, contrary to Article 11(3) and the second subparagraph of Article 11(4) of Decision 5028/2.

158 In that regard, it follows from the first subparagraph of Article 11(3) of Decision 5028/2 that the mid-term review must be conducted on the basis of a previously agreed statement incorporating objectives and unambiguous performance indicators, linked to standard management tasks or skills.

159 Furthermore, the principle of continuous assessment during the management trial period, which is mentioned in Article 11(2) of Decision 5028/2, necessarily implies that the final assessment must be conducted on the basis of the same document incorporating objectives and unambiguous performance indicators as the one drawn up for the mid-term review.

160 It should be noted at the outset that, in the present case, the EEAS and the applicant did not agree a formal document, containing objectives and unambiguous performance indicators, linked to standard management tasks or skills prior to the applicant's probationary period. To that extent, the first subparagraph of Article 11(3) of Decision 5028/2 was infringed.

- 161 As regards, first, the setting of objectives, it should be noted that, according to the case-law, where there are rules within the institution which require an official to be set objectives at the beginning of an appraisal period, infringement of those rules is substantial and warrants a declaration that the contested appraisal at issue is unlawful on the ground that the job description was not adequate in terms of fixing objectives (see judgment of 12 May 2016, *FS v EESC*, F-50/15, EU:F:2016:119, paragraph 100 and the case-law cited).
- 162 However, the case-law referred to in paragraph 161 above, which concerns the assessment of an official, must be applied taking into account the level of responsibility associated with the post to which the official is assigned and the previous experience of the official appointed to that post. In the present case, the applicant was appointed as Head of Delegation with the task of representing the European Union in the country where the delegation is accredited, which necessarily implies, first, a high level of responsibility and, secondly, a strong capacity for management and a high degree of autonomy, irrespective of whether specific objectives have been set.
- 163 In that regard, it must be stated that the duties of a head of delegation, which are defined in Article 5(2) to (4) and (8) of Decision 2010/427, are not strictly comparable to the middle management duties which are entrusted to a head of unit and described in Article 4 of Decision 5028/2.
- 164 In particular, unlike a head of unit, a head of delegation represents the European Union in the country where the delegation is accredited, before both the authorities of that country and the diplomatic services of the Member States and international organisations.
- 165 Moreover, the separation, particularly geographical, between the EEAS headquarters and the delegations necessarily requires a greater capacity on the part of a head of delegation to carry out his or her management duties autonomously, as compared with a head of unit who is under the direct supervision of his or her superiors.
- 166 In the present case, in order to be appointed as Head of Delegation in Malawi, the applicant applied for the post on the basis of a job description and a vacancy notice, both of which set out specific management objectives.
- 167 In particular, the job description for the post of Head of Delegation in Malawi included, in the section concerning the duties of that post, a subsection on human resource management, which identified the following tasks: evaluating the individual performance of the staff of that delegation; identifying the training needs of the staff; exercising supervisory responsibility in relation to professional incompetence, harassment and disciplinary problems and complying with the procedures relating to those matters; and exercising social and ethical responsibility in relation to the staff.
- 168 Moreover, the vacancy notice stated that the tasks of the Head of Delegation in Malawi were, inter alia, to ensure the sound management of the delegation, including financial management and correct application of the existing rules concerning the security of individuals, goods and property as well as information, to manage crises and to ensure continuity of delegation operations, including in the framework of business continuity.
- 169 Thus, both the job description and the vacancy notice for the post of Head of Delegation in Malawi contained details of the human resource management and managerial tasks of that post.

- 170 In that regard, while it is true that the purposes and characteristics of a job description and a vacancy notice are, in principle, different from those of a document setting the objectives of an official, it cannot be ruled out a priori that management objectives which may be set for the assessment of the completion of a management trial period cannot be contained in the job description and vacancy notice for the post occupied by the head of delegation who is required to serve such a probationary period.
- 171 Thus, in the present case, it must be held that the management tasks specified in the job description and the vacancy notice for the post of Head of Delegation in Malawi were defined therein with sufficient precision to constitute specific objectives in the context of the applicant's management trial period.
- 172 Furthermore, since the applicant applied for the post of Head of Delegation in Malawi on the basis of the job description and the vacancy notice for that post, she was necessarily aware of those objectives and, in view of her application, she must be regarded as having agreed to them prior to taking up her duties.
- 173 Consequently, it must be found in the present case, that the details of the management tasks specified in the job description and the vacancy notice for the post of Head of Delegation in Malawi could serve as management objectives in accordance with, and for the application of, Decision 5028/2.
- 174 Secondly, with regard to the setting of unambiguous performance indicators in advance, it should be noted, first, that it follows from the wording of Article 1(2) of Decision PROC EEAS(2011) 002 of 29 November 2011 that the provisions contained, inter alia, in Decision 5028/2 apply '*mutatis mutandis*' to EEAS staff.
- 175 In the present case, first, it is clear from the selection criteria set out in the vacancy notice for the post of Head of Delegation in Malawi that candidates for that post had to demonstrate proven experience in leading and motivating teams, particularly in a multidisciplinary and multicultural environment, as well as strong managerial, communication and analytical skills, combined with sound judgment.
- 176 Secondly, it is apparent from the documents before the Court that, at the time of the applicant's appointment as Head of Delegation in Malawi, the EEAS Human Resources Directorate had published a document setting out the competencies required of all EEAS managers, and giving specific examples of situations, in order to enable the officials concerned to assess whether they possessed the fourteen competencies listed in that document and whether they would be able to demonstrate them effectively.
- 177 Lastly, it is not apparent from the circumstances of the case brought before the Court that the applicant asked her superiors to set performance indicators in order to assess her management skills at the end of the probationary period, even though Decision 5028/2 provides that such indicators must be agreed by the official subject to the management trial period.
- 178 In that context, it appears that the applicant had sufficient knowledge of what was expected in terms of the assessment of her performance during her probationary period as Head of Delegation in Malawi.
- 179 Consequently, the present complaint must be dismissed.

...

On those grounds,

THE GENERAL COURT (Seventh Chamber, Extended Composition)

hereby:

- 1. Dismisses the action;**
- 2. Orders Mrs Sandra Paesen to pay the costs.**

da Silva Passos

Valančius

Reine

Truchot

Sampol Pucurull

Delivered in open court in Luxembourg on 12 October 2022.

[Signatures]