Reports of Cases

JUDGMENT OF THE GENERAL COURT (Ninth Chamber)

15 November 2023 *

(Civil service – Officials – Reassignment in the interests of the service – Decision with retroactive effect adopted to comply with judgments of the European Union judicature – Article 266 TFEU – Articles 22a and 22c of the Staff Regulations – Irregularity of the pre-litigation procedure – Principle of good administration – Right to be heard – Principle of impartiality – Reasonable time – Duty to have regard for the welfare of officials – Liability – Non-material damage)

In Case T-790/21,

PL, represented by N. de Montigny, lawyer,

applicant,

v

European Commission, represented by M. Brauhoff and L. Vernier, acting as Agents,

defendant,

THE GENERAL COURT (Ninth Chamber),

composed of L. Truchot, President, H. Kanninen and M. Sampol Pucurull (Rapporteur), Judges,

Registrar: H. Eriksson, Administrator,

having regard to the written part of the procedure,

further to the hearing on 15 March 2023,

gives the following

Judgment

1 By his action based on Article 270 TFEU, the applicant, PL, seeks, first, annulment of the decision of the European Commission of 16 February 2021 reassigning him with retroactive effect to the Directorate-General (DG) Mobility and Transport with effect from 1 January 2013 ('the contested

* Language of the case: French

decision') and of the decision of 16 September 2021 partially rejecting his complaint ('the decision partially rejecting the complaint') and, secondly, compensation for the material and non-material damage which he claims to have suffered.

I. Background to the dispute

2 The present dispute concerns the reassignment of the applicant from the Commission delegation to the West Bank and Gaza Strip to East Jerusalem ('the Delegation'), where he had worked since 16 February 2012, to DG Mobility and Transport, with effect from 1 January 2013 ('the reassignment at issue').

3 The contested decision follows the annulment by the EU judicature of two previous decisions ordering the reassignment at issue and the withdrawal by the Commission of a third decision with the same scope (together, 'the first three reassignment decisions').

4 The factual background to the adoption of those decisions is as follows.

5 On 20 December 2012, the applicant was informed by an email that the reassignment at issue had been approved the day before ('the first reassignment decision'). That decision was challenged by the applicant before the Civil Service Tribunal (Case F-96/13).

6 The circumstances in which the first reassignment decision was adopted were described in paragraphs 2 to 14 of the judgment of 15 April 2015, *PL* v *Commission* (F-96/13, 'the judgment in Case F-96/13', EU:F:2015:29), as follows:

'2 The applicant is an official at the Commission. At the material time, he was classified in grade AD 11 and was initially assigned to the Financial Resources unit of the Joint Resources Directorate of DG Mobility. By decision of the [appointing authority ("the AIPN")] of 16 January 2012, he was transferred to the Finance, Contracts and Audit unit of the Neighbourhood [Policy] Directorate of DG Development and Cooperation – EuropeAid ("DG Development and Cooperation") and assigned as section head to the Delegation …, with effect from 16 February 2012.

3 While he was the head of the Finance, Contracts and Audit section of the Delegation, the latter was the subject of an audit mission by the European Court of Auditors concerning the programme known as [*confidential*].[1] At the end of their mission, the auditors of the Court of Auditors reported deficiencies in the management of that programme. During the same period, the applicant informed various parties of his concerns regarding alleged irregularities in the management of that programme, his concerns about the activities of an international organisation holding several contracts concluded with DG Development and Cooperation, his questions about a risk of conflict of interest arising from the links of particular local staff of the Delegation with that international organisation and his suspicions of corruption in the context of the implementation, by that organisation, of an EU project called [*confidential*]. The Finance, Contracts and Audit section of the Delegation, which manages the [*confidential*] programme, was also the subject of investigations by the European Anti-Fraud Office … opened in 2011 and 2013.

[1] Confidential information omitted.

4 On 15 October 2012, [A], the Delegation's staff representative ("the staff representative"), sent a communication to the Delegation head signed by 21 members of the Delegation …, expressing the frustration of some of the staff following a change of approach in the Delegation's Finance, Contracts and Audit section during the seven months during which the applicant had managed it. It was claimed that that change of approach caused significant delays to project management, even stalling some projects, as well as a loss of credibility with the European Union's partners. The staff representative also stated in that communication that inappropriate conduct undermining the professional integrity of staff members had been reported during the previous seven months and that it continued to occur. The communication ended with a call for the hierarchy to find a rapid solution to that situation, described as having become intolerable.

5 On 22 and 23 October 2012, the head of the Finance, Contracts and Audit unit of the Neighbourhood [Policy] Directorate of DG Cooperation and Development to which the applicant belonged ("the applicant's head of unit") visited the Delegation and met with the colleagues of the person concerned, the latter being absent.

6 A meeting held in Brussels [Belgium] on 25 October 2012, attended inter alia by the applicant's head of unit and the applicant, was devoted to the applicant's conduct and to communication problems between the Finance, Contracts and Audit section and the Operations section within the Delegation.

7 On 9 November 2012, the staff representative sent an email to the applicant's head of unit complaining that his conduct had become even worse. According to the staff representative, the applicant was now criticising the staff for having spoken to the head of unit during the mission on 22 and 23 October 2012. In the same email, the staff representative requested that a preventive measure be taken to protect staff from any harassment.

8 In emails from the Delegation head and the deputy Director-General of DG Development and Cooperation of 12 November 2012, and from his head of unit of 13 November 2012, the applicant was warned about the inappropriateness of his conduct and about the communication problems that he and his section were causing. According to the applicant's superiors, those difficulties affected the Delegation's work and the European Union's political relations in the region.

9 On 20 November 2012, the applicant was informed by telephone that he had been reassigned to headquarters and received an email from the head of the Human Resources in Delegations unit of DG Development and Cooperation, "confirm[ing his] reassignment to headquarters, to [his] DG of origin[, DG Mobility]". That email stated that, "in a few days, during which time procedures will be finalised[,] [he would] receive official notification" and invited him to take the balance of his leave before the end of the year, which meant that he would "be leaving the Delegation shortly".

10 By emails of 28 and 29 November 2012, the applicant asked his delegation head and his head of unit, respectively, to send him a precise list of the facts to which they referred in their previous emails of 12 and 13 November 2012 in order to be able to respond to them.

11 On 4 December 2012, the applicant informed the head of the Human Resources in Delegations unit of DG Development and Cooperation that he was preparing for his departure, but that he had not yet received the official notification of the reassignment decision referred to in the email of 20 November 2012, even though he was required to complete the formalities for relocation.

12 On 6 December 2012, the Delegation head replied to the applicant's email of 28 November 2012, informing the applicant that the problems he had raised were recurrent and that he was unable to take note of them whenever he received a complaint against him.

13 On 10 December 2012, the applicant once again asked the Delegation head to provide him with evidence in support of his criticism. On 12 December of that year, the Delegation head invited the applicant to contact the relevant human resources department for any further communication.

14 On 20 December 2012, a member of staff from the Career and Performance Management unit of DG Human Resources and Security sent the applicant an email informing him that his reassignment to "DG [and] unit: MOVE.SRD (Brussels)", that is to say, to DG Mobility, "[had] been approved" by the Staff Movements team leader in the Career and Performance Management unit in his capacity as AIPN on 19 December 2012, with effect from 1 January 2013. The author of the email also stated that the legal basis for that reassignment was Article 7(1) of the Staff Regulations of Officials of the European Union in the version applicable at that time …, that "that movement [was] recorded and [could] be consulted [via the computerised personnel management system called] 'Sys[p]er 2'", that a copy of that email would be placed in the applicant's file and that "no paper documents [would] be drawn up".'

7 From 1 January 2013, the applicant was promoted to grade AD 12 in the 2013 promotion exercise.

8 On 16 January 2015, the applicant was assigned to the Commission's Representation in London (United Kingdom).

9 By judgment in Case F-96/13, delivered on 15 April 2015, the Civil Service Tribunal annulled the first reassignment decision on the ground of infringement of the applicant's rights of defence.

10 On 15 October 2015, after several exchanges between the Commission and the applicant, a meeting in the context of the implementation of the judgment in Case F-96/13 took place involving the head of the Career and Performance Management unit of DG Human Resources and Security ('unit DG HR.B4') and the applicant, with his adviser and two other heads of unit also in attendance ('the meeting of 15 October 2015').

11 At that meeting, the head of unit DG HR.B4 informed the applicant of her intention, as appointing authority (AIPN), to order the reassignment at issue retroactively, in compliance with the judgment in Case F-96/13. She explained that the purpose of the meeting was to give the applicant the opportunity to make his comments before the decision was taken.

12 The head of unit DG HR.B4 referred to the file of the time, which, in her view, indicated inappropriate conduct on the part of the applicant. In that regard, particular emails dated 27 July 2012, 18 September 2012, 3, 5 and 14 October 2012 and 12 and 13 November 2012 were referred to during the meeting.

13 The applicant commented on the context of the emails. In addition, he explained the report submitted to his superiors on 3 October 2012 concerning the international organisation referred to in paragraph 6 above. He also stated that, between 13 and 20 November 2012, events, of which he was still unaware, had taken place and had led the administration to order the reassignment at issue. In his view, there was a link, which needed to be investigated, between that reassignment and his allegations. The reasons given by the head of unit DG HR.B4 were considered insufficient in the judgment in Case F-96/13.

14 On 22 December 2015, the head of unit DG HR.B4 ordered the reassignment at issue with retroactive effect from 1 January 2013 ('the second reassignment decision').

15 In support of that decision, the head of unit DG HR.B4 noted an 'extremely tense communication situation' between the applicant and his colleagues both in the Delegation and at headquarters, which could, in her view, be such as substantially to affect the proper functioning of the Delegation. In that regard, she expressly referred to the emails from 18 September to 13 November 2012, which had been presented to the applicant at the meeting of 15 October 2015 by the administration, citing a number of extracts.

16 The applicant challenged the second reassignment decision before the Court. By judgment of 13 December 2018, *PL* v *Commission* (T-689/16, 'the judgment in T-689/16', not published, EU:T:2018:925), that decision was annulled on the ground that it had been adopted by an authority lacking competence, having regard to the protection conferred on the applicant by Article 22a of the Staff Regulations of Officials of the European Union ('the Staff Regulations') in his capacity as a whistle-blower.

17 Following that annulment, the acting head of unit DG HR.B4 again adopted the reassignment at issue by decision of 25 June 2019, with retroactive effect from 1 January 2013 ('the third reassignment decision').

18 By application lodged on 18 May 2020 (Case T-308/20), the applicant sought the annulment of the third reassignment decision on the ground, inter alia, that the measure had been adopted by an authority lacking competence.

19 By letter of 27 July 2020, the Director-General of DG Human Resources and Security ('the Director-General of DG HR') informed the applicant of her intention to withdraw the third reassignment decision and to replace it with a new decision taken by her, in her capacity as AIPN. She stated that the purpose of that decision was the reassignment at issue, with retroactive effect from 1 January 2013. The Director-General of DG HR invited the applicant to submit any comments he might have prior to the adoption of a new decision.

20 By letter of 13 August 2020, the applicant asked the Director-General of DG HR to clarify the reasons which had led her to consider that the acting head of unit DG HR.B4 was not the AIPN competent to decide on his reassignment. Taking the view that, in the light of the announced withdrawal of the third reassignment decision, he still benefited from the status of whistle-blower, he claimed that the new decision had to be adopted in accordance with Article 22a of the Staff Regulations. He also noted that the withdrawal of the third reassignment decision would have repercussions on the admissibility of the action brought in Case T-308/20. Lastly, he asked the Commission to take a position on those issues.

21 By letter of 7 September 2020, the Director-General of DG HR stated that, in the light of the grounds of the judgment in Case T-689/16, it appeared that the reassignment decision could be taken only by her. She also stated that the withdrawal of the third reassignment decision was intended to implement that judgment in the most indisputable manner, without waiting for the outcome of the proceedings brought in Case T-308/20. To that end, she reiterated her invitation to the applicant to submit observations on the proposed decision, referred to in the letter of 27 July 2020.

22 By letter of 17 September 2020, the applicant drew attention to the circumstances in which the first reassignment decision had been taken. In particular, that reassignment was announced to him on 20 November 2012, that is to say, less than a month after informing his superiors of possible irregularities in the management of the [*confidential*] programme, his concerns about the activities of an organisation with several contracts concluded with DG Development and Cooperation – EuropeAid ('DG Development and Cooperation'), his questions regarding the risks of conflict of interest arising from the links of particular local and contractual staff of the Delegation with that organisation and his suspicions of corruption in the context of the implementation, by that organisation, of the [*confidential*] project. The applicant also recalled the reasons which had led the Civil Service Tribunal to annul the first reassignment decision, referring to paragraphs 66 and 67 of the judgment in Case F-96/13. He also claimed that, during the meeting of 15 October 2015, the Commission had not provided any new elements or specified any complaint which had arisen after 13 November 2012. In the applicant's view, he was therefore not given a proper opportunity to submit his observations. The applicant also pointed out that, since 10 October 2016, he had asked to be heard by the Director-General of DG HR regarding his situation, characterised by seven reassignments since 1 January 2013 in the interest of the service to posts created specifically for that purpose and eliminated after his departure. The third reassignment decision was also adopted without the applicant having been given a proper opportunity to submit his observations. If, as the Director-General of DG HR had announced, that decision had to be withdrawn at a later date, it would then be for the Commission to inform the applicant of the precise reasons for the reassignment at issue in order to give him a proper opportunity to submit his observations. The Commission would also have to ensure that the new decision would be taken in accordance with the provisions governing his status as whistle-blower. In view of the complexity of the case, which dates back to 2012, the applicant asked for a meeting with the Director-General of DG HR in order to examine, initially on an informal basis, the elements capable of putting an end to that situation.

23 By letter of 9 October 2020, the Director-General of DG HR informed the applicant that he had all the relevant information to enable him to exercise his right to be heard properly. In that regard, she referred to the minutes of the meeting of 15 October 2015 drawn up by the administration and by the applicant, which clearly showed, in her view, the reasons taken into account by the head of unit DG HR.B4 in adopting the second reassignment decision. The Director-General of DG HR recalled that that decision had been annulled by the Court on the sole ground that it had been adopted by an authority lacking competence. She therefore invited the applicant to submit his observations within two weeks, enclosing the minutes with the letter. In addition, she communicated to the applicant the decision to withdraw the third reassignment decision. She stated that the purpose of the withdrawal was to put an end to the existing irregularity linked to the lack of competence of the authority which adopted that decision and that that withdrawal would be followed by the adoption of a new decision to reassign the applicant, after hearing him.

24 By letter of 31 October 2020, the applicant submitted that, as was apparent from paragraphs 60, 61 and 66 of the judgment in Case F-96/13, his superiors had criticised his conduct after 13 November 2012, which he had not been able to challenge. He claimed that the events subsequent to that date were not clarified at the meeting of 15 October 2015, during which the Commission merely reread the email exchanges between the applicant and the Delegation head, on the one hand, and with his head of unit in DG Development and Cooperation, on the other. The applicant pointed out that he had unsuccessfully sought access to a communication bearing the stamp of 26 November 2012 addressed to the members of the Committee for the Management of Resources in the Delegations ('the COMDEL') concerning him and to all the documents relating thereto and, more particularly, to those sent in 2012 by DG Development

and Cooperation to the Commission's Legal Service and to those held by the latter. According to the applicant, the Civil Service Tribunal definitively held that the grounds prior to 13 November 2012 could not legally justify the reassignment at issue. In his view, the information which he had provided to his superiors, without any reaction from them, had been communicated by the European Court of Auditors to the European Anti-Fraud Office (OLAF), which had summoned him on four occasions. On the basis of the same information, the Commission had cancelled all the indirect management contracts entered into with the organisation in question in the context of the [*confidential*] programme. The same information had led the head of the audit mission of the Court of Auditors to refer expressly, during a meeting, to corruption, fraud, nepotism and collusion. As the Finance, Contracts and Audit section head in the Delegation, the applicant was required to take measures to safeguard the interests of the European Union. The reasons for any new reassignment decision which, in his view, do not appear in the letter of 27 July 2020, must therefore be objective, clear and precise in order to enable him to challenge them at a hearing with the competent AIPN, which he requested as a whistle-blower, in order to regularise his administrative situation and to restore his honour and professional dignity.

25 By order of 25 November 2020, *PL* v *Commission* (T-308/20, not published, EU:T:2020:571), the Court held that the action brought by the applicant against the third reassignment decision had become devoid of purpose following its withdrawal. The Commission was ordered to pay the costs of the proceedings, since it was held that, by withdrawing the third reassignment decision, it had implicitly acknowledged that its adoption procedure was not beyond criticism.

26 By email of 11 December 2020, the applicant reiterated to the Director-General of DG HR his request to be heard during a meeting.

27 On 16 February 2021, the Director-General of DG HR adopted the contested decision.

28 In the first three recitals of the contested decision, the Director-General of DG HR stated that the various documents exchanged in 2012 between the applicant and his superiors, whether in DG Development and Cooperation in Brussels (Belgium) or within the Delegation, referred to a 'relationship situation … that was becoming increasingly untenable' and that, in order to ease the situation within the Delegation, it was appropriate to adopt the reassignment at issue, since the administration has broad discretion in the organisation of its departments.

29 The Director-General of DG HR then recalled the procedures that had led to the adoption of the first three reassignment decisions and the reasons that had justified, as the case may be, their annulment by the EU judicature or the withdrawal of a decision by the Commission.

30 In the twelfth recital of the contested decision, the Director-General of DG HR took the view that the applicant benefited from the provisions of Article 22a of the Staff Regulations and that, consequently, she was the AIPN competent to decide on the reassignment at issue.

31 After finding that the applicant had been able to exercise his right to be heard in the context of the exchanges described in paragraphs 19 to 24 above, the Director-General of DG HR stated, in the last recital of the contested decision, that it was appropriate to 'regularise the administrative situation' of the applicant with retroactive effect from 1 January 2013 by adopting a new decision with the same content as the second reassignment decision and based on the same grounds, set out in the first three recitals of the contested decision.

32 In the email transmitting the contested decision, also dated 16 February 2021, the Director-General of DG HR informed the applicant that, in the years preceding the adoption of that decision, he had had ample opportunity to express his views on the reassignment at issue and the reasons justifying it, with the result that a bilateral meeting between the applicant and her did not appear necessary.

33 On 17 May 2021, the applicant lodged a complaint under Article 90(2) of the Staff Regulations against the contested decision, seeking, inter alia, its withdrawal, the annulment of all other decisions adopted against him by authorities lacking competence in the light of his status as a whistle-blower, the removal from the Commission's computerised personnel management system 'Sysper 2' of any other administrative decision adopted improperly between 2013 and 2022 and the payment of the amounts of EUR 100 000 and EUR 250 000 by way of compensation for, respectively, the material and non-material damage alleged.

34 The complaint was submitted using a cover form, which referred to Article 22c of the Staff Regulations and was to be sent to the Appeals and Case Monitoring unit of DG Human Resources and Security ('unit DG HR.E2') of the Commission. The form and the complaint were accompanied by a letter from the applicant addressed to the Director-General of DG HR stating that the complaint was based on Article 22c of the Staff Regulations. The form, the complaint and the letter were sent jointly by email to unit DG HR.E2.

35 By email of 31 May 2021, sent to the applicant, unit DG HR.E2 acknowledged receipt of the submission sent on 17 May 2021, referring to the complaint 'lodged under Article 90(2) of the Staff Regulations' and attaching a document named 'Privacy statement concerning the protection of personal data'. By the same email, the applicant was invited to submit, if he considered it useful, any new documents relating to his complaint within a period of 15 days.

36 By email of 3 June 2021, the applicant asked unit DG HR.E2 to clarify particular aspects of the email of 31 May 2021, after validation by the Director-General of DG HR as the competent AIPN. In the first place, he pointed out that the complaint had been lodged on the basis of Article 22c of the Staff Regulations. In the second place, he asked to be informed of the AIPN's internal rules for handling complaints under that provision. In the third place, he requested that the 15-day period he had been given to submit any relevant documents be suspended pending a response to his request for clarification. In addition, he requested that the confidentiality guaranteed by the Staff Regulations for cases of that kind be respected.

37 By email of 4 June 2021, a person from unit DG HR.E2 stated that the complaint lodged by the applicant on the basis of Article 22c of the Staff Regulations would be dealt with by that unit, in accordance with Article 90(2) of the Staff Regulations and as was made clear by Administrative Notice No 79-2013 of 19 December 2013 concerning the submission of requests under Article 90(1) of the Staff Regulations, complaints under Article 90(2) of the Staff Regulations and requests for assistance under Article 24 of the Staff Regulations, sent as an attachment.

38 By the decision partially rejecting the complaint, notified to the applicant on 16 September 2021, the Member of the Commission responsible for human resources and security ('the Member of the Commission responsible for DG HR'), acting as AIPN, partially upheld the applicant's complaint by agreeing to remove from his Sysper 2 file the third reassignment decision and all the references to Article 22a of the Staff Regulations concerning the reassignment decisions. The remainder of the complaint was rejected. As regards the claim for compensation submitted in the complaint, the Member of the Commission responsible for DG HR considered that it had no

connection with the contested decision, since the alleged damage resulted, in his view, from a series of events that had occurred since 2013. Consequently, that part of the complaint was reclassified as a request under Article 90(1) of the Staff Regulations. The Member of the Commission responsible for DG HR stated that he was not the AIPN competent to deal with that request and that, in those circumstances, a reply would be given in a different decision.

II. Forms of order sought

39 The applicant claims that the Court should:

– annul the contested decision and, so far as necessary, the decision partially rejecting the complaint;

– declare that the Commission failed to take the measures necessary to comply with the judgments in Cases F-96/13 and T-689/16 in accordance with their grounds and infringed the principle of *res judicata*;

– order the Commission to pay compensation in the amount of EUR 250 000 for material damage and in the amount of EUR 100 000 for non-material damage;

– order the Commission to pay the costs.

40 The Commission contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

III. Law

A. Subject matter of the action

41 By his first head of claim, the applicant seeks annulment of the contested decision and, 'so far as necessary', the decision partially rejecting the complaint.

42 In accordance with the principle of economy of procedure, the Court may decide that it is not appropriate to rule specifically on the claims directed against the decision rejecting the complaint where it finds that those claims have no independent content and are, in reality, the same as those directed against the decision against which the complaint has been made (see judgment of 24 April 2017, *HF* v *Parliament*, T-584/16, EU:T:2017:282, paragraph 72 and the case-law cited).

43 In the present case, the claim for annulment of the decision partially rejecting the complaint is not the same as that directed against the contested decision. In support of the former, the applicant specifically claims infringement of the guarantees conferred on whistle-blowers by Article 22c of the Staff Regulations concerning the handling of complaints which they submit in the pre-litigation procedure. First, in the context of the first plea, the applicant claims that the

complaint was not examined by a competent AIPN. Secondly, in support of the first part of the third plea, he asserts that the special treatment of his complaint, guaranteed by Article 22c of the Staff Regulations, was not afforded.

44 The applicant must be able to obtain review by the EU judicature of the lawfulness of the complaint procedure, the purpose of which is to permit and encourage an amicable settlement of the dispute which has arisen between the official and the administration and to require the authority to which the official belongs to review its decision, in compliance with the rules, in the light of any objections raised by that official (see, to that effect, judgment of 19 June 2015, *Z* v *Court of Justice*, T-88/13 P, EU:T:2015:393, paragraphs 143 to 146 and the case-law cited).

45 In those circumstances, it is appropriate to rule not only on the claim for annulment of the contested decision, but also on the claim relating to the decision partially rejecting the complaint.

46 In addition, it should be noted that, by his second head of claim, the applicant asks the Court to declare that the Commission failed to take the measures necessary to comply with the judgments in Cases F-96/13 and T-689/16 in accordance with their grounds and infringed the principle of *res judicata*.

47 In response to a question put by the Court at the hearing, the applicant stated that his second head of claim related to one of the unlawful acts on which the claim for compensation set out in his third head of claim was based.

48 The second and third heads of claim must therefore be construed together as a single head of claim for compensation.

B. Claim for annulment

49 In support of his claim for annulment, the applicant raises three pleas in law, alleging:

– first, lack of competence of the administrative authority which rejected the complaint;

– secondly, infringement of Article 266 TFEU, the principles of *res judicata* and non-retroactivity, abuse of process, infringement of the procedural safeguards enjoyed by him and of the right to be heard effectively and in accordance with the objective pursued by that right;

– thirdly, infringement of Article 22a of the Staff Regulations, the duty to provide assistance and the duty to have regard for the welfare of officials in the context of the reassignment procedure, Article 22c of the Staff Regulations and the protection afforded to whistle-blowers, the duties of diligence, neutrality, impartiality, objectivity, his right to have his file handled fairly by the administration, his legitimate expectations, and an abuse of process.

1. Preliminary remarks

50 As a preliminary point, it is appropriate to recall the obligations incumbent on the administration when it decides to reassign an official.

51 As regards the protection of the rights and legitimate interests of the officials concerned, reassignment decisions are subject to the rules laid down in Article 7(1) of the Staff Regulations. Under that provision, the AIPN, acting solely in the interest of the service and without regard to nationality, is to assign each official by appointment or transfer to a post in his or her function group which corresponds to his or her grade.

52 The institutions thus enjoy broad discretion to organise their departments to suit the tasks entrusted to them and to assign the staff available to them in the light of such tasks, on the condition, however, first, that the staff are assigned in the interest of the service and, secondly, that they respect the equivalence between the grade and the post (see judgment of 27 October 2022, *CE* v *Committee of the Regions*, C-539/21 P, not published, EU:C:2022:840, paragraph 44).

53 Where they cause tensions prejudicial to the proper functioning of a service, internal relationship difficulties may justify the transfer of an official in the interests of the service, without the consent of the official concerned, a fortiori where that service is entrusted with diplomatic missions. Such a measure may even be taken irrespective of the question of responsibility for the incidents in question (see judgment of 12 October 2022, *Paesen* v *EEAS*, T-88/21, EU:T:2022:631, paragraph 213 and the case-law cited).

54 Since the applicant was considered to be an honest whistle-blower for the purposes of Article 22a(3) of the Staff Regulations, it is also necessary to restate the guarantees which he enjoyed in the context of the adoption of the contested decision.

55 The protection laid down in Article 22a(3) of the Staff Regulations is granted, without any formality, to officials who have provided honest information on facts which suggest the existence of illegal activity, for the simple reason of having provided that information (see, to that effect, judgment of 12 December 2014, *AN* v *Commission*, T-512/13 P, EU:T:2014:1073, paragraphs 30 and 31).

56 The fact that a decision unfavourable to an official or other staff member chronologically follows his or her communication of information under Article 22a of the Staff Regulations must lead the Court, when hearing an action brought against that decision, to examine the plea alleging infringement of those provisions with particular vigilance. Nevertheless, it must be borne in mind that that provision does not offer the official protection against any decision capable of adversely affecting him or her but only against decisions connected with the accusations made by him or her (see, to that effect, judgment of 13 December 2017, *CJ* v *ECDC*, T-692/16, not published, EU:T:2017:894, paragraphs 109 and 110).

57 As regards the burden of proof, Section 3 of Communication SEC(2012) 679 final of Vice-President Šefčovič to the Commission of 6 December 2012 on guidelines on whistleblowing ('the Guidelines on whistleblowing') states that it is to be up to the person taking any adverse measure against a whistle-blower to establish that the measure was motivated by reasons other than the reporting of irregularities.

58 Lastly, Article 22c of the Staff Regulations requires the AIPN of each institution to lay down internal rules on, inter alia, the provision to officials referred to in Article 22a(1) of the Staff Regulations of information on the handling of the matters reported by them, the protection of

their legitimate interests and of their privacy, and the procedure for the handling of their complaints. The latter must be dealt with confidentially and, where circumstances so warrant, before the expiry of the time limits laid down in Article 90 of the Staff Regulations.

59 It is in the light of those considerations that the pleas raised by the applicant in support of his claim for annulment of the contested decision and of the decision partially rejecting the complaint must be examined.

2. The first plea, alleging lack of competence of the administrative authority which rejected the complaint

60 The applicant disputes the competence of the Member of the Commission responsible for DG HR to reject his complaint, submitted, in his view, under Article 22c of the Staff Regulations, and not under Article 90(2) of the Staff Regulations. According to the applicant, there is no basis that would allow that competence to be recognised. Moreover, that competence was not recognised by the applicant in his complaint. In his reply, the applicant adds that it was the unit DG HR.E2 that dealt with the complaint, the Member of the Commission responsible for DG HR having merely signed it. However, he claims that such delegation or administrative support is not provided for by the applicable law.

61 The Commission disputes the applicant's arguments as being either inadmissible because they are out of time or unfounded.

62 In that regard, it should be noted that the contested decision was adopted, without delegation, by the Director-General of DG HR as the competent AIPN, in accordance with the rules set out in paragraphs 47 and 48 of the judgment in Case T-689/16.

63 However, in accordance with point 12 of Table V of Annex I to Commission Decision C(2013) 3288 of 4 June 2013 on the exercise of powers conferred by the Staff Regulations on the AIPN and on the authority empowered to conclude contracts of employment (AHCC), as amended by Commission Decision C(2014) 9864 of 16 December 2014 ('the AIPN/AHCC Commission Decision'), complaints against decisions taken in respect of officials of all grades are generally submitted to the Director-General of DG HR. However, footnote 2 to point 12 of the table provides that, where the Director-General of DG HR has adopted a decision without delegation of powers, as is the case here (see paragraph 62 above), the reply to the complaint lodged against that decision must be provided by the Member of the Commission responsible for DG HR.

64 It is true that point 12 of Table V of Annex I to the AIPN/AHCC Commission Decision relates to complaints based on Article 90(2) of the Staff Regulations, whereas the applicant also relies on Article 22c of the Staff Regulations.

65 However, Article 22c of the Staff Regulations itself refers to complaints from officials concerning the way in which they were treated after or in consequence of the fulfilment by them of their obligations under Article 22a of the Staff Regulations, referring, in particular, to Article 90 of the Staff Regulations.

66 In those circumstances, the Member of the Commission responsible for DG HR was competent to rule on the applicant's complaint.

67 As regards the applicant's complaint concerning the handling of his complaint by unit DG HR.E2, it should be noted that neither Article 22c of the Staff Regulations, nor the AIPN/AHCC Commission Decision, nor the Guidelines on whistleblowing prevent that unit from providing support to the competent AIPN. Moreover, the applicant has not submitted any elements capable of proving his argument that the Member of the Commission responsible for DG HR merely signed the draft decision proposed by the services. Therefore, without it being necessary to examine whether they are out of time, it must be held that those complaints are unfounded.

68 It follows from the foregoing that the first plea must be rejected.

3. The second plea, alleging infringement of Article 266 TFEU, the principles of res judicata *and non-retroactivity, abuse of process, infringement of procedural safeguards and the right to be heard*

69 The second plea is divided into three parts.

70 The first part alleges 'infringement of the rights of defence, the right to be heard, the absence of an administrative investigation, infringement of the principle *audi alteram partem*, the principle of equality of arms, Article 41 of the Charter of Fundamental Rights of the European Union, the right to good administration and the obligation to act within a reasonable time'.

71 The second and third parts of the plea, which the Court will examine together, allege, in essence, several infringements concerning the manner in which the judgments in Cases F-96/13 and T-689/16 were implemented by the Commission.

(a) The first part of the plea, alleging infringement of the rights of defence and the right to be heard, the absence of an administrative investigation, infringement of the principle audi alteram partem*, the principle of equality of arms, Article 41 of the Charter, the right to good administration and the obligation to act within a reasonable time*

72 As a preliminary point, it should be noted, as the Commission did, that, in the heading of that part of the plea, the applicant alleges infringement of the principle *audi alteram partem* and the principle of equality of arms, specific to the rights of defence, which are also mentioned. However, those complaints are not developed further. Under Article 76(d) of the Rules of Procedure of the General Court, an application must contain the subject matter of the proceedings, the pleas in law and arguments relied on and a summary of those pleas in law. Since the application does not, as regards those complaints, meet the requirements laid down in that provision, they must be declared inadmissible.

73 In support of this part of the plea, the applicant puts forward, in essence, two complaints, alleging infringement, first, of his right to be heard and, secondly, of the right to good administration guaranteed by Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter') in the absence of an administrative investigation and on the ground that a reasonable time was exceeded.

(1) Infringement of the right to be heard

74 In support of that complaint, the applicant claims that the first three recitals of the contested decision contain a retroactive interpretation of the facts which did not appear in the first three reassignment decisions and in respect of which he was not heard. In addition, he was not informed before the contested decision that the competent AIPN would take into consideration exchanges that had taken place with his superiors in 2012.

75 The applicant adds that the Director-General of DG HR refused to organise a meeting with him, even though the Commission had stated before the Court in Case T-308/20 that the contested decision would be adopted after having duly heard him. According to the applicant, during that meeting, he could have been heard, for the first time, by the competent AIPN on the link between the information which he had communicated under Article 22a of the Staff Regulations, which was sensitive and confidential with regard to the services, and the reassignment at issue, sought purely by way of retaliation by his former superiors at the Delegation, which was under investigation by OLAF.

76 However, instead of hearing the applicant during a bilateral meeting, the Director-General of DG HR merely took account of the exchanges which took place in 2015 between the applicant and the administration concerning the criticisms of his superiors, in the context of a procedure during which he had not been able to benefit from the guarantees afforded by Article 22a of the Staff Regulations, in terms of confidentiality, before a competent AIPN. In the applicant's view, he was also unable to benefit from those guarantees in the context of the exchanges with the administration immediately after the withdrawal of the third reassignment decision.

77 Lastly, the applicant considers that he has been unable to receive a proper hearing almost nine years after the facts complained of.

78 The Commission submits that the applicant's arguments must be rejected.

79 In that regard, it is appropriate to recall that the content of the fundamental right to be heard requires that the person concerned has the opportunity to influence the decision-making process in question, which is likely to ensure, inter alia, that the decision is the outcome of an appropriate balancing of the interests of the service and the personal interests of the individual concerned (see judgment of 13 December 2017, *CJ* v *ECDC*, T-692/16, not published, EU:T:2017:894, paragraph 80 and the case-law cited).

80 In the present case, in accordance with the case-law, the Director-General of DG HR, in her capacity as AIPN, was required to take a decision in compliance with the judgments annulling the original decisions, placing herself at the date of issue of the first reassignment decision (see, to that effect, judgment of 13 December 2017, *CJ* v *ECDC*, T-692/16, not published, EU:T:2017:894, paragraph 56 and the case-law cited).

81 Where, as in the present case, a decision can be adopted only if the right to be heard has been respected, the person concerned must be given the opportunity to make known his or her views on the proposed measure effectively, in the context of an oral or written exchange initiated by the administration, proof of which must be adduced by the latter (see judgment of 10 January 2019, *RY* v *Commission*, T-160/17, EU:T:2019:1, paragraph 45 and the case-law cited).

82 It should be noted that the infringement of the applicant's rights of defence in the context of the adoption of the first reassignment decision was found by the EU judicature in the judgment in Case F-96/13 in the circumstances referred to in paragraph 6 above. In particular, the Civil Service Tribunal found that, although the applicant could not have been unaware of the negative perception of his behaviour by his colleagues and superiors in 2012, the consequence envisaged by the AIPN, namely the reassignment at issue, had not been explained before the adoption of that first decision, meaning he had not been able to put forward his point of view. Moreover, according to the EU judicature, it was apparent from the file that the applicant's superiors had made allegations relating to his behaviour after 13 November 2012, which he had not been able to challenge.

83 However, the contested decision was not adopted under the same conditions.

84 During the meeting of 15 October 2015, referred to in the contested decision, the applicant was informed, inter alia, that the information contained in a series of emails dating from the period from 18 September to 13 November 2012 was capable of justifying the reassignment at issue. No element subsequent to that date was highlighted by the Commission. As can be seen from the detailed minutes of that meeting, the applicant was able to express his point of view on those elements and explain the context in which the emails had been sent, which included his suspicions concerning the organisation referred to in paragraph 6 above and the information which he had communicated to his superiors from 3 October 2012.

85 In adopting the contested decision, the Director-General of DG HR took into consideration the minutes of those meetings, during which the applicant had put forward his point of view. In addition, after announcing the withdrawal of the third reassignment decision, the Director-General of DG HR invited the applicant, on three occasions, to submit observations on the context in which the first and second reassignment decisions had been adopted and which, in her view, was clear from those minutes.

86 In the light of those considerations, it must be held that the right to be heard referred to in paragraph 79 above has been respected.

87 The applicant's arguments do not call that conclusion into question.

88 In the first place, contrary to the applicant's submission, the first three recitals of the contested decision do not contain a new retroactive interpretation of the facts of the dispute at issue. As is apparent from the last recital of that decision, those three recitals merely reproduce, in essence, the content of the second reassignment decision described in paragraph 15 above.

89 In the second place, in her letter of 9 October 2020, the Director-General of DG HR sent the applicant the minutes of the meeting of 15 October 2015, which mention the email exchanges between him and his superiors. It is clear, in essence, from that letter that the Director-General of DG HR intended to take into consideration the information contained in those minutes, on which she invited the applicant to submit observations.

90 In the third place, as is apparent from the order of 25 November 2020, *PL* v *Commission* (T-308/20, not published, EU:T:2020:571), the Commission did indeed state before the Court that it intended to hear the applicant after the withdrawal of the third reassignment decision. However, in accordance with the case-law referred to in paragraph 81 above, respect for the right

to be heard does not require the person concerned to make his or her views known during a meeting, since his or her observations may be obtained in the context of a written exchange, as was the case here.

91 In the fourth place, it is true that, in his capacity as a whistle-blower, the applicant was heard during the meeting of 15 October 2015 by an AIPN lacking competence. However, the evidence discussed during that meeting was described in detail in two sets of minutes, one of which was drawn up by the applicant himself. Thus, those minutes could legitimately be taken into consideration by the Director-General of DG HR for the purposes of adopting the contested decision, after having given the applicant the opportunity to provide additional information.

92 In the fifth place, as the Commission submits, there was nothing to prevent the applicant from providing, in response to the three requests from the Director-General of DG HR, details of the irregularities which he had reported when he worked at the Delegation. Those allegations, in the form of emails sent to his superiors, had already been referred to during the meeting of 15 October 2015 and before the EU judicature in Cases F-96/13 and T-689/16. Compliance with the guarantees claimed by the applicant concerning his status as a whistle-blower will also be examined below in the context of the third plea.

93 In the last place, the applicant's argument that he could not be properly heard almost nine years after the facts must also be rejected. The applicant and the Commission have had extensive written exchanges since 2013 on the subject of the reassignment at issue, including before the EU judicature. Despite the time that had elapsed, the applicant was therefore in a position effectively to put forward his point of view to the Director-General of DG HR on the circumstances in which the first reassignment decision had been adopted.

94 In the light of the foregoing considerations, it must be concluded that the complaint alleging infringement of the right to be heard is unfounded and must be rejected.

(2) Infringement of Article 41(1) of the Charter in the absence of an administrative investigation and because a reasonable time was exceeded

95 In the first place, the applicant claims that, in the contested decision, the Director-General of DG HR ruled in 2021 on his situation between 1 January 2013 and 16 January 2015, the date of his reassignment to the Commission's Representation in London, without the time taken being reasonably and legitimately justified, in breach of Article 41(1) of the Charter. The applicant adds that the successive unlawful acts on the part of the Commission cannot justify that delay. In his view, it was not possible to regularise his situation a posteriori and he should have been compensated.

96 In the second place, the applicant submits that the principle of good administration, guaranteed by Article 41(1) of the Charter, required a careful, effective and concrete analysis of all the elements in a diligent manner, which required the Commission to gather all the factual and legal elements necessary for the exercise of its discretion. In his view, compliance with those obligations required the Director-General of DG HR to conduct an administrative investigation into the facts, which were nine years old, instead of basing her conclusion on the minutes of the meeting of 15 October 2015, held by an AIPN lacking competence, during which certain incomplete exchanges between the applicant and his superiors, which predated 13 November 2012 and were introduced in breach of the protection rules attached to the status of whistle-blower, were referred to.

97 In the third place, the applicant argued in his reply that the Director-General of DG HR should have managed his file alone, without the assistance of her departments and that it was for her to demonstrate that the reassignment at issue in no way resulted, directly or indirectly, from the facts which gave rise to the recognition of his status as a whistle-blower. His direct superior was a person concerned by the facts which were the subject of OLAF's investigation linked to the information he had transmitted in his capacity as a whistle-blower.

98 The Commission claims that the applicant's arguments should be rejected as either inadmissible because they are out of time or unfounded.

99 It is appropriate to examine first of all the applicant's second and third complaints, which concern the manner in which the Director-General of DG HR examined his situation, before analysing the first complaint, which concerns the failure to act within a reasonable time.

100 As regards the applicant's second complaint, alleging that the Director-General of DG HR was required to conduct an investigation, it should be borne in mind that EU law requires administrative procedures to be conducted in compliance with the guarantees afforded by the principle of good administration, enshrined in Article 41 of the Charter. Those guarantees include the duty of the competent institution to examine carefully and impartially all the relevant aspects of a case and to gather all the factual and legal information necessary to exercise its discretion, as well as ensure the proper conduct and effectiveness of the procedures that it implements (see judgment of 11 July 2019, *BP* v *FRA*, T-888/16, not published, EU:T:2019:493, paragraph 162 and the case-law cited).

101 In the present case, even though the facts at issue date from 2012, the Director-General of DG HR had the necessary elements for the exercise of her discretion. In particular, she took account of the detailed minutes of the meeting of 15 October 2015, during which the situation in the Delegation had been discussed with the applicant. It is true, as stated in paragraph 91 above, that that meeting took place before an AIPN lacking competence. However, the minutes refer to precise and objective elements, reproduced in the statement of reasons for the second reassignment decision, on which the applicant was invited to comment again by the Director-General of DG HR on 9 October 2020. Moreover, the findings made by the EU judicature in Case F-96/13 also contributed to establishing the facts at issue.

102 The Director-General of DG HR cannot therefore be criticised for not having conducted an investigation after the withdrawal of the third reassignment decision.

103 As regards the applicant's third complaint, put forward in the reply, that the Director-General of DG HR should have adopted the contested decision without the assistance of her departments, it must be held, without it being necessary to examine whether it was out of time, that it does not allege infringement of the right to good administration, but of the guarantees which, in his view, he enjoys in his capacity as a whistle-blower. That complaint is also formulated, in essence, by the applicant in the context of the third plea, alleging infringement of Articles 22a and 22c of the Staff Regulations, with the result that it will be examined in the context of that plea.

104 As regards the applicant's first complaint, alleging failure to act within a reasonable time in the adoption of the contested decision, in breach of Article 41(1) of the Charter, it should be recalled that the obligation to conduct administrative procedures within a reasonable time is a general principle of EU law whose observance the EU judicature ensures and which is referred to as an

element of the right to good administration in Article 41(1) of the Charter (see judgment of 11 November 2020, *AV and AW* v *Parliament*, T-173/19, not published, EU:T:2020:535, paragraph 131 and the case-law cited).

105 The reasonableness of the length of an administrative procedure must be assessed in the light of the circumstances of each case and, in particular, its context, the various procedural steps followed by the institution, the conduct of the parties in the course of the procedure, the complexity of the case and the importance of what was at stake for the various parties involved in the dispute (see judgment of 14 September 2010, *AE* v *Commission*, F-79/09, EU:F:2010:99, paragraph 105 and the case-law cited).

106 In the present case, the adoption of the contested decision, concerning the reassignment at issue more than eight years after the facts complained of, is principally explained by the annulment of the first and second reassignment decisions and by the Commission's withdrawal of the third reassignment decision.

107 As the Commission points out, only four months elapsed between that withdrawal and the contested decision.

108 However, that constitutes only the final stage of an administrative procedure which had to be revived, owing to the error made by the Commission in the third reassignment decision, in the implementation of the judgment in Case T-689/16, delivered on 13 December 2018.

109 The passage of more than two years between the judgment in Case T-689/16, the implementation of which was not complex, and the contested decision is not reasonable.

110 The same is true of the period of more than eight years which elapsed between the facts complained of and the contested decision, adopted on 16 February 2021 with retroactive effect from 1 January 2013.

111 It is true that that period is in part attributable to interruptions caused by the judicial review and the numerous exchanges between the applicant and the Commission in the context of the implementation of the judgments in Cases F-96/13 and T-689/16.

112 However, the Commission acknowledged at the hearing that the withdrawal of the third reassignment decision taken in compliance with the judgment in Case T-689/16 had contributed to delaying the outcome of the administrative procedure. As a result of the successive errors committed by the Commission and established in the judgments in Cases F-96/13 and T-689/16, that procedure was already lengthy.

113 The contested decision was therefore not adopted within a reasonable time.

114 That being so, it should be borne in mind that infringement of the reasonable time principle does not, as a general rule, justify the annulment of a decision taken at the culmination of an administrative procedure. It is only where the passing of an excessive period is likely to have an effect on the actual substance of the decision adopted at the end of the administrative procedure that non-compliance with the reasonable time principle affects the validity of the administrative procedure (see judgment of 17 May 2018, *Commission* v *AV*, T-701/16 P, EU:T:2018:276, paragraph 46 and the case-law cited). Otherwise, the main practical consequence of the

annulment of that decision would be the perverse effect of further protracting the procedure on the ground that it had taken too long (see, to that effect, judgment of 2 October 2013, *Nardone* v *Commission*, F-111/12, EU:F:2013:140, paragraph 62 and the case-law cited).

115 In the present case, contrary to what the applicant states, the undue delay did not affect the actual content of the contested decision.

116 As held in paragraph 93 above, the time between the facts complained of and the date of adoption of the contested decision did not prevent the applicant from explaining to the Director-General of DG HR his point of view on the reassignment at issue. Similarly, as stated in paragraph 101 above, despite the passage of time, the Director-General of DG HR had all the information necessary to reach her decision.

117 Infringement of the reasonable time requirement guaranteed by Article 41(1) of the Charter does not, therefore, justify the annulment of the contested decision.

118 Consequently, the first part raised in support of the second plea must be rejected.

(b) The second and third parts of the second plea, relating to the implementation of the judgments in Cases F-96/13 and T-689/16

119 The second part put forward in support of the second plea is entitled 'Unchallenged case-law facts, admission of failure to comply with the procedural aim and abuse of process, failure to comply with the duty to have regard for the welfare of officials and the protection afforded to whistleblowers'.

120 The third part of the plea alleges 'infringement of the principles and rules relating to retroactivity and legal certainty[, a] breach of the principles of (objective and subjective) impartiality[, the] intention to adopt the same decision with the same scope and based on the same grounds instead of compensating for the loss of an opportunity to have his procedural rights respected in a timely and effective manner'.

121 In those two parts, which the Court will examine together, the applicant makes a series of observations and complains of several infringements concerning the way in which the judgments in Cases F-96/13 and T-689/16 were implemented by the Commission.

122 The arguments put forward in support of the two parts of the plea are repetitive and, in most cases, not specifically linked to the infringements relied on in the headings of the parts. However, it is possible to identify two sets of arguments.

123 The first set of arguments put forward by the applicant may be linked to abuse of process, failure to comply with the duty to have regard for the welfare of officials and infringement of the principle of impartiality.

124 The second set of arguments supports the allegation of infringement of the principle of non-retroactivity, Article 266 TFEU and the protection afforded to whistle-blowers.

125 It is appropriate to begin by examining that second set of arguments.

(1) Infringement of the principles of non-retroactivity and legal certainty, Article 266 TFEU and the protection afforded to whistle-blowers in the context of the implementation of the judgments in Cases F-96/13 and T-689/16

126 The applicant claims, in essence, that the Commission did not explain why, in adopting the contested decision, it derogated from the principle of non-retroactivity when it was no longer possible for it to examine such an old situation which was definitively closed, particularly in compliance with the protection of the procedural guarantees attaching to his status as a whistle-blower. In his view, complying with the judgments in Cases F-96/13 and T-689/16 therefore entailed abandoning the reassignment at issue and compensating the applicant.

127 The Commission contends that the applicant's arguments are either inadmissible or unfounded.

128 In that regard, it is appropriate to recall the settled case-law, according to which, in order to comply with an annulment judgment and to implement it fully, the institution is required to have regard not only to the operative part of the judgment but also to the grounds which led to the judgment and constitute its essential basis, in so far as they are necessary to determine the exact meaning of what is stated in the operative part. It is those grounds which, on the one hand, identify the precise provision held to be illegal and, on the other, indicate the specific reasons which underlie the finding of illegality contained in the operative part and which the institution concerned must take into account when replacing the annulled measure. Moreover, Article 266 TFEU requires the institution concerned to ensure that any act intended to replace the annulled act is not affected by the same irregularities as those identified in the judgment annulling the original act. Those principles apply a fortiori where the annulment judgment at issue has acquired the force of *res judicata* (see judgment of 10 November 2010, *OHIM* v *Simões Dos Santos*, T-260/09 P, EU:T:2010:461, paragraph 70 and the case-law cited).

129 In order to comply with its obligation under Article 266 TFEU, the institution must adopt specific measures capable of eliminating the illegality committed vis-à-vis the person concerned. Thus, according to the case-law, it cannot plead practical difficulties which might be involved in restoring the applicant to the legal position he or she was in prior to the adoption of the annulled measure in order to avoid that obligation (see judgment of 8 December 2014, *Cwik* v *Commission*, F-4/13, EU:F:2014:263, paragraph 79 and the case-law cited).

130 It is only as an alternative, where implementation of a judgment annulling a measure encounters serious obstacles, that the institution concerned may fulfil its obligation by taking a decision which is such as to compensate fairly for the disadvantage resulting for the person concerned from the annulled decision. In that context, the administration may establish a dialogue with him or her with a view to reaching an agreement offering him or her fair compensation for the illegality of which he or she was the victim (see judgment of 8 December 2014, *Cwik* v *Commission*, F-4/13, EU:F:2014:263, paragraph 80 and the case-law cited).

131 Lastly, it is clear from the case-law referred to in paragraph 80 above that the annulment of a decision has retroactive effect which requires the authority to take a decision by reference to the date on which the annulled decision was adopted. However, this should be distinguished from the retroactive character of a new decision taken by the administration to replace the annulled act. According to the case-law, the principle of legal certainty, which constitutes a general principle of EU law, precludes, as a general rule, a measure from taking effect from a point in time before its publication. According to settled case-law, however, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are

duly respected (see judgment of 5 September 2014, *Éditions Odile Jacob* v *Commission*, T-471/11, EU:T:2014:739, paragraph 102 and the case-law cited). Those expectations arise when the administration gives the person concerned precise, unconditional and consistent assurances, originating from authorised and reliable sources, which give rise to justified expectations on his or her part. Furthermore, those assurances must be in accordance with the provisions of the Staff Regulations and with generally applicable legal rules (see judgment of 7 November 2013, *Cortivo* v *Parliament*, F-52/12, EU:F:2013:173, paragraph 85 and the case-law cited).

132 In the present case, contrary to what the Commission maintains, the plea alleging infringement of Article 266 TFEU is sufficiently explained in the application in compliance with the obligations imposed by Article 76(d) of the Rules of Procedure. The complaint is therefore admissible.

133 In accordance with the principles set out in paragraphs 128 and 129 above, the Commission was required to implement the judgments in Cases F-96/13 and T-689/16 by complying not only with their operative parts but also with the grounds which had led to them and constituted their essential basis, by eliminating the unlawful act committed with regard to the applicant and by ensuring that the new decision was not vitiated by the same irregularities as those identified in those judgments.

134 In the judgment in Case F-96/13, the EU judicature found only that the applicant's rights of defence had been infringed in the circumstances referred to in paragraph 82 above, which led to the annulment of the first reassignment decision. As regards the judgment in Case T-689/16, the EU judicature noted only the lack of competence of the head of unit DG HR.B4 to adopt the second reassignment decision.

135 The implementation of the judgments in Cases F-96/13 and T-689/16 therefore required the Director-General of DG HR, in her capacity as the competent AIPN, to examine the applicant's situation on the date on which the first reassignment decision was adopted, giving him the opportunity to express his views on the alleged tensions and the consequences which she intended to draw from them in her capacity as the competent AIPN, namely the reassignment at issue with retroactive effect from 1 January 2013.

136 After hearing the applicant, the Director-General of DG HR confirmed that the tensions experienced within the Delegation had led to an increasingly untenable relationship situation and that the reassignment at issue was justified. Therefore, in her view, it was necessary to confirm the first reassignment decision and to regularise the applicant's administrative situation. That purpose required the contested decision to have retroactive effect, in accordance with the case-law referred to in paragraph 131 above.

137 Contrary to what the applicant suggests, without putting forward any specific arguments to that end, the principle of legal certainty has not been infringed by that retroactive effect, since neither the EU judicature nor the administration has ever called into question the merits of the reassignment at issue since 2012, nor, a fortiori, given the applicant precise, unconditional and consistent assurances such as to give rise to a legitimate expectation, in accordance with the case-law referred to in paragraph 131 above.

138 Accordingly, the contested decision could have retroactive effect in compliance with the criteria set out in paragraph 131 above.

139 Moreover, it should be noted that compliance with the judgments in Cases F-96/13 and T-689/16 did not encounter serious obstacles for the purposes of the case-law referred to in paragraph 130 above. As stated in paragraphs 93 and 101 above, the passage of time did not prevent the applicant from fully exercising his right to be heard by the Director-General of DG HR, nor did it prevent the latter from having all the contextual elements to decide on the facts at issue, with the result that the Commission was able to remedy the unlawful acts identified in those judgments by adopting a new decision and was not required to compensate the applicant fairly. The contested decision was thus taken in compliance with Article 266 TFEU.

140 Lastly, the applicant does not explain why the fact of having to examine such an old situation when implementing the judgments in Cases F-96/13 and T-689/16 would not ensure compliance with the protection of the procedural guarantees attaching to his status as a whistle-blower.

141 On that basis, the second set of arguments put forward by the applicant in support of the second and third parts of the second plea must be rejected.

(2) Abuse of process, failure to comply with the duty to have regard for the welfare of officials and infringement of the principle of impartiality

142 In support of the first set of arguments identified in paragraph 123 above relating to abuse of process, failure to comply with the duty to have regard for the welfare of officials and infringement of the principle of impartiality, the applicant claims that, in the implementation of the judgments in Cases F-96/13 and T-689/16, the Commission never had the slightest intention of reviewing its position concerning the reassignment at issue.

143 According to the applicant, the tenor of the contested decision was announced from the outset in the exchanges which preceded it. Faced with a fait accompli, the Director-General of DG HR merely adopted the same decision with retroactive effect, formalising a reassignment that had been unlawful since 1 January 2013. The need to 'regularise' the applicant's administrative situation referred to in the contested decision is evidenced by the fact that the first reassignment decision had to be formalised after its adoption on 20 November 2012 and by the Commission's assertion before the EU judicature in Case T-689/16 that it was 'unlikely' that the Director-General of DG HR would have adopted a different decision in 2015 from the decision taken by the head of unit DG HR.B4. The applicant considers that the retroactive effect sought influenced the scope of the measure and not the other way round. He claims that the Commission did not specifically address the aim pursued by the 'procedural steps required' in the judgments in Cases F-96/13 and T-689/16, in particular to enable the applicant to have a genuine chance of influencing the AIPN in the context of an objective and impartial analysis. In the present case, the applicant considers that he was heard merely as a formality.

144 In that regard, it should be noted at the outset that the applicant puts forward essentially the same arguments in support of all the alleged infringements, whereas the concepts of 'impartiality', 'abuse of process' and 'duty to have regard for the welfare of officials' each have a very precise scope.

145 The requirement of impartiality encompasses, first, subjective impartiality, in so far as no member of the institution concerned who is responsible for the matter may show bias or personal prejudice, there being a presumption of personal impartiality in the absence of evidence to the contrary, and, secondly, objective impartiality, in so far as there must be sufficient guarantees to

exclude any legitimate doubt as to possible bias on the part of the institution concerned (see, to that effect, judgment of 16 June 2021, *PL* v *Commission*, T-586/19, not published, EU:T:2021:370, paragraphs 107 and 110 and the case-law cited).

146 The concept of 'misuse of powers' refers to the use of powers by an administrative authority for a purpose other than that for which they were conferred on it. A decision may amount to a misuse of powers only where it appears, on the basis of objective, relevant and consistent factors, to have been taken in order to achieve an end other than that stated (see judgment of 19 June 2013, *BY* v *AESA*, F-81/11, EU:F:2013:82, paragraph 69 and the case-law cited).

147 Lastly, the duty of the administration to look after the well-being of its officials reflects the balance of the reciprocal rights and obligations established by the Staff Regulations in the relationship between the official authority and the civil servants. A particular consequence of this duty and of the principle of good administration is that when the competent authority takes a decision concerning the situation of an official, it should take into consideration all the factors which may affect its decision and that, when doing so, it should take into account not only the interests of the service but also those of the official concerned (see judgment of 25 June 2003, *Pyres* v *Commission*, T-72/01, EU:T:2003:176, paragraph 77 and the case-law cited).

148 The applicant's arguments must be examined in the light of those principles.

149 In the first place, the Director-General of DG HR cannot be criticised for having explained to the applicant, in the context of the exchanges referred to in paragraphs 19 to 24 above, the tenor of the decision that she intended to take. The fact that the administration failed to communicate that information before the adoption of the first reassignment decision justified its annulment by the EU judicature in the judgment in Case F-96/13, on the ground of infringement of the applicant's rights of defence.

150 In the second place, the use of the expression 'regularisation' in the contested decision also does not indicate bias or personal prejudice on the part of the Director-General of DG HR, or the existence of an abuse of process. The unlawful acts affecting the first and second reassignment decisions found by the EU judicature in the judgments in Cases F-96/13 and T-689/16 did not concern the merits of the reassignment at issue, but the conditions of adoption of those decisions. Although the EU judicature did not rule out, in those cases, the adoption of a different decision when implementing its judgments, that decision would have had to remedy the unlawful acts found, in accordance with the case-law referred to in paragraphs 128 and 129 above.

151 In the third place, the conditions of adoption of the first reassignment decision, which were held to be unlawful in the judgment in Case F-96/13, do not affect those of the contested decision. The latter was, moreover, adopted with the aim of correcting the irregularities found.

152 In the fourth place, the Commission's assertion in Case T-689/16 that it was unlikely that the Director-General of DG HR would have taken a different decision in 2015 from the one adopted by the head of unit DG HR.B4 is merely a position adopted by its Legal Service in the proceedings before the Court, which, moreover, does not rule out a different outcome.

153 Lastly, the applicant's argument that he was heard by the Director-General of DG HR merely as a formality is not based on any objective evidence.

154 On the contrary, it should be noted that, as pointed out in paragraph 85 above, the applicant was invited on three occasions to submit his observations on the intention of the Director-General of DG HR to regularise his administrative situation by confirming the reassignment at issue.

155 The first set of arguments put forward by the applicant in support of the second and third parts of the plea is therefore unfounded.

156 In the light of all the foregoing considerations, the second plea must be rejected.

4. The third plea, alleging infringement of Article 22a of the Staff Regulations, the duty to provide assistance and the duty to have regard for the welfare of officials, Article 22c of the Staff Regulations, the duties of diligence, neutrality, impartiality and objectivity, the right to the fair handling of the applicant's file and his legitimate expectations, and abuse of process

157 That plea is divided into four parts, the first alleging infringement of Article 22c of the Staff Regulations, the second alleging infringement of the duty to have regard for the welfare of officials, the third alleging infringement of the principles of objectivity, impartiality and neutrality of the competent AIPN and infringement of the principles of equal treatment and non-discrimination, and the fourth alleging infringement of the rules on the burden of proof laid down in the Guidelines on whistleblowing.

158 As a preliminary point, it should be noted, as the Commission did, that, although breach of the duty to provide assistance is relied on in the heading of the present plea, no arguments are put forward in support of it in the application. That complaint does not therefore satisfy the requirements imposed by Article 76(d) of the Rules of Procedure and must therefore be declared inadmissible. The same applies to the complaint alleging infringement of the applicant's legitimate expectations. The latter is mentioned in the heading of the plea, but it is not developed sufficiently clearly in the application.

159 Having made those clarifications, it is appropriate to begin by examining the first and fourth parts put forward by the applicant in support of the third plea, before examining the other two parts.

(a) The first part of the third plea, alleging infringement of Article 22c of the Staff Regulations

160 The applicant claims that Article 22c of the Staff Regulations requires the Commission to adopt rules for the confidential treatment of complaints lodged by a person who has the status of whistle-blower where he or she considers himself or herself to be the victim of retaliation. According to the applicant, those rules are supposed to cover the three aspects referred to in the second paragraph of Article 22c of the Staff Regulations. However, he claims that no rule including those three aspects exists. In his view, the only rules adopted by the Commission on the basis of Article 22c of the Staff Regulations concern the time limits for processing, the burden of proof, and the competence of the Director-General, and not the departments, to act as AIPN.

161 The applicant adds that the special treatment of whistle-blowers' requests, guaranteed by Article 22c of the Staff Regulations, requires the competent AIPN to act alone, without the assistance of the departments, and that the whistle-blower must be protected by ensuring that he or she is not subject to the same rules as other officials or other staff members so that he or she need not systematically disclose his status as a whistle-blower and the justification for that status.

162 The Commission disputes the applicant's arguments.

163 As a preliminary point, it should be noted that it is not disputed that Article 22c of the Staff Regulations had to be observed in the adoption of the contested decision.

164 Article 22c of the Staff Regulations provides as follows:

'In accordance with Articles 24 and 90, each institution shall put in place a procedure for the handling of complaints made by officials concerning the way in which they were treated after or in consequence of the fulfilment by them of their obligations under Article 22a or 22b. The institution concerned shall ensure that such complaints are handled confidentially and, where warranted by the circumstances, before the expiry of the deadlines set out in Article 90.

The appointing authority of each institution shall lay down internal rules on inter alia:

– the provision to officials referred to in Article 22a(1) or Article 22b of information on the handling of the matters reported by them,

– the protection of the legitimate interests of those officials and of their privacy, and

– the procedure for the handling of complaints referred to in the first paragraph of this Article.'

165 Article 22c of the Staff Regulations was introduced by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (OJ 2013 L 287, p. 15), with the aim of imposing on the AIPN of each institution the obligation to lay down internal rules intended to provide guarantees to whistle-blowers, including a procedure for the handling of complaints concerning the way in which they were treated after or in consequence of the fulfilment by them of their obligations under Article 22a or 22b of the Staff Regulations

166 Contrary to what the applicant claims, the second paragraph of Article 22c does not require that all the rules applicable to whistle-blowers, including where they make complaints, be laid down in a single act.

167 As regards the Commission, certain guarantees referred to in Article 22c of the Staff Regulations were already provided for before the entry into force of that provision in the context of the Guidelines on whistleblowing.

168 Several measures to protect whistle-blowers are set out in those guidelines, including the confidentiality of the whistle-blower's identity, which the Commission is committed to keeping. Under that rule, his or her name is not revealed to any person potentially implicated in the alleged wrongdoings or to any other person without a strict need to know, unless the whistle-blower personally authorises the disclosure of his or her identity, or this is a requirement

in any subsequent criminal proceedings. The rules governing the burden of proof, referred to in paragraph 57 above and on which the applicant relies, are also laid down as a measure for the protection of whistle-blowers. Furthermore, it is stated that, in order for the Commission to be able to apply protective measures, the staff member concerned should identify himself or herself as a whistle-blower to the institution.

169 The AIPN/AHCC Commission Decision, referred to in paragraph 63 above, also lays down specific rules concerning decisions to reassign an official who has reported irregularities in accordance with the procedures laid down in that regard. As is apparent from paragraphs 47 and 48 of the judgment in Case T-689/16, such decisions can be taken only by the Director-General of DG HR, without delegation. As stated in paragraph 63 above, the AIPN/AHCC Commission Decision also establishes the competence of the Member of the Commission responsible for DG HR to rule on complaints lodged by that official against the reassignment decision.

170 Those rules are supplemented by Administrative Notice No 79-2013, referred to in paragraph 37 above. The latter confers on unit DG HR.D 2 (now called DG HR.E2) the power to deal with all requests and complaints, including those submitted by whistle-blowers, with a view to the competent AIPN taking a decision. That communication provides that complaints lodged on the basis of Article 22c of the Staff Regulations must, where the circumstances so warrant, be given a reasoned response within a time limit shorter than the time limits laid down in Article 90 of the Staff Regulations. It is also provided that complaints relating to sensitive issues should not be discussed during interdepartmental consultations.

171 Those rules are further supplemented by those contained in the Privacy statement concerning the protection of personal data referred to in paragraph 35 above. In accordance with that statement, which also refers to Article 22c of the Staff Regulations, access to the personal data contained in the complaint may be granted only to authorised personnel with a strict need to know. Mechanisms for the protection of personal data, such as restricted access within DG Human Resources and Security to the hard drive of unit DG HR.E2, are in place. Moreover, it is recalled that the members of that unit are bound by the duty of confidentiality and discretion.

172 Lastly, it should be noted that a complaint made by a whistle-blower may be submitted, as was the case here, using a covering form which refers to Article 22c of the Staff Regulations. The reference to that provision in the complaint form enables unit DG HR.E2 to identify immediately that the complaint in question is of a sensitive nature, and ensure that measures for the protection of whistle-blowers, restated in paragraphs 165 to 171 above, are applied.

173 It follows that, contrary to what the applicant claims, the Commission has adopted specific rules on the handling of complaints made by whistle-blowers, in accordance with Article 22c of the Staff Regulations.

174 As regards the applicant's argument that the competent AIPN should have acted without the assistance of the departments, no such requirement is imposed either by Article 22c of the Staff Regulations or by any of the internal rules referred to in paragraphs 167 to 172 above. Moreover, the confidentiality of the identity of the whistle-blower is sufficiently protected by those rules.

175 Lastly, with regard to the applicant's argument that the protection afforded to whistle-blowers is intended to prevent them from being obliged systematically to disclose their status as whistle-blowers and justify that status to any person dealing with complaints, the rules referred

to in paragraphs 168 to 172 above do not require those persons to describe the details of the wrongdoings alleged in their complaints. On the contrary, as stated in the Guidelines on whistleblowing, those persons must make themselves known to the institution as whistle-blowers so that the departments can apply the protection measures provided for by the rules adopted in accordance with Article 22c of the Staff Regulations.

176 In the light of those considerations, the first part of the third plea must be rejected.

(b) The fourth part of the third plea, alleging infringement of the rules on the burden of proof laid down in the Guidelines on whistleblowing

177 The applicant claims that, in accordance with Section 3 of the Guidelines on whistleblowing, it is up to the person taking any adverse measure against a whistle-blower to establish that there is no link between the information transmitted in accordance with the obligations laid down in Article 22a of the Staff Regulations and that measure. In the applicant's view, in seeking to regularise a period that had already elapsed, the Commission never sought to protect him against the reassignment at issue, even though it was highly damaging.

178 The Commission contends that the applicant's arguments should be rejected as either inadmissible or unfounded.

179 As a preliminary point, it should be noted that the applicant has not relied on the existence of a manifest error of assessment to challenge the finding, in the contested decision, of the existence of internal relationship difficulties within the Delegation.

180 The applicant submits, however, that the rules on the burden of proof laid down in the Guidelines on whistleblowing were infringed because the Director-General of DG HR did not demonstrate that there was no link between the reassignment at issue and his allegations.

181 It should be noted that the Commission does not dispute that the rules governing the burden of proof laid down in Section 3 of the Guidelines on whistleblowing, referred to in paragraph 57 above, were applicable in the present case.

182 Section 3 of the Guidelines on whistleblowing provides as follows:

'Any staff member who reports a serious irregularity, provided that this is done in good faith and in compliance with the provisions of these guidelines, shall be protected against any acts of retaliation. Regarding burden of proof, it shall be up to the person taking any adverse measure against a whistle-blower to establish that the measure was motivated by reasons other than the reporting.'

183 It is therefore necessary to examine whether the Director-General of DG HR established to the requisite legal standard that the reassignment at issue was motivated by reasons other than the reporting of irregularities by the applicant.

184 In the contested decision, as supplemented by the decision partially rejecting the complaint, the reason given for the reassignment at issue is the internal relationship difficulties, which were apparent from several emails dating from the period from 18 September to 13 November 2012.

In response to the complaint, it is stated that the ground for the reassignment at issue was not the allegations made by the applicant in 2012. In addition, the interpersonal problems between the applicant and his colleagues are referred to.

185 In that regard, it should be noted that, although the applicant's allegations of 3 October 2012 may have made relations between him, his superiors and his colleagues more difficult, the present case concerns interpersonal and attitude problems within the Delegation which preceded those allegations and which were capable of justifying the reassignment at issue, in accordance with the case-law referred to in paragraphs 52 and 53 above.

186 As stated by the Commission, those problems are highlighted, inter alia, in the email sent by the Delegation head to the applicant on 18 September 2012 and were referred to at the meeting of 15 October 2015 (see paragraph 12 above).

187 In that email, the Delegation head informed the applicant that it was the second occasion in a short space of time that he had sought apologies from his colleagues. The Delegation head raised the question as to why those colleagues were making certain comments and reminded the applicant that respect was a two-way street, implying that he was not above reproach in the matter. In addition, he defended the person from whom the applicant sought apologies. Thus, although the context to which the email refers is not identifiable by reading it alone, it makes it possible to identify the existence of interpersonal problems affecting the Delegation which preceded the allegations.

188 Similarly, in the email of 12 November 2012 sent to the applicant, also referred to during the meeting of 15 October 2015 (see paragraph 12 above), the Delegation head referred to communication problems and to complaints from several colleagues that the applicant had adopted an inappropriate verbal and non-verbal attitude. In that email, the Delegation head also asked the applicant to change his attitude, his behaviour and his communication immediately.

189 It is clear from those emails that the incidents were linked to the applicant's attitude and were not isolated, and that he had been alerted to those relationship difficulties on several occasions.

190 In relying on those factors, the Commission discharged its burden of proof under the rules referred to in paragraphs 181 and 182 above by establishing that the reassignment at issue had been based on reasons other than the applicant's reporting of irregularities under Article 22a of the Staff Regulations.

191 The fourth part of the third plea is therefore unfounded and must be rejected.

(c) The second part of the third plea, alleging infringement of the duty to have regard for the welfare of officials

192 The applicant claims that only the interest of the service was taken into consideration in the context of his reassignment to successive redundant posts created for him since 2013, whereas his personal interests and his status as a whistle-blower should also have been taken into account after having heard him on the subject, with the aim of guaranteeing him the best protection.

193 The Commission disputes the applicant's arguments.

194 It should be borne in mind that infringement of the duty to have regard for the welfare of officials was also relied on by the applicant in the second part of the second plea, linked to an alleged misuse of powers and infringement of the principle of impartiality. In support of those complaints, which were rejected (see paragraphs 142 to 155 above), the applicant claimed that, in implementing the judgments in Cases F-96/13 and T-689/16, the Commission had never had the slightest intention of reviewing its position concerning the reassignment at issue.

195 In the context of this part of the plea, the applicant complains of an infringement of the duty to have regard for the welfare of officials on another ground, linked to the failure to take account of his personal interests.

196 In that regard, it should be borne in mind that, although, in accordance with the duty to have regard for the welfare of officials, the competent authority is required, when assessing the interests of the service, to take into consideration all the factors which may affect its decision, including the interests of the staff member concerned, consideration of the official's personal interests cannot extend so far as to prohibit the AIPN from reassigning an official against his or her will if that is in the interests of the service (see judgment of 28 October 2004, *Meister* v *OHIM*, T-76/03, EU:T:2004:319, paragraph 192 and the case-law cited).

197 As is apparent from the analysis of the first part of the second plea, the applicant was given several opportunities to express his views on the reassignment at issue. That reassignment did not prevent his promotion to grade AD 12 in the 2013 promotion exercise. As regards the interest of the service, the applicant does not dispute the relationship difficulties highlighted by the Commission.

198 In the light of those findings, the second part of the third plea must be rejected.

(d) The third part, alleging infringement of the principles of objectivity, impartiality and neutrality of the competent AIPN, and infringement of the principles of equal treatment and non-discrimination

199 The applicant claims that the administration acknowledged that it had acted solely to correct the successive unlawful acts, without having as its purpose the protection which was due to him by virtue of his status as a whistle-blower, in breach of the duty of neutrality, impartiality and objectivity.

200 The applicant adds that the COMDEL should have been consulted by the competent AIPN. In his view, had that committee had been informed in 2012 of the erroneous statement of reasons in support of the reassignment at issue and of the applicant's status as a whistle-blower and of his suspicions of corruption linked to the organisation referred to in paragraph 6 above, a different decision would probably have been taken. DG Budget is a member of that committee and its departments are the ones that had formally lodged a warning against that international organisation.

201 The Commission contends that the applicant's arguments should be rejected as either inadmissible or unfounded.

202 As regards the complaints alleging infringement of the duties of neutrality, impartiality and objectivity, it should be noted, as the Commission observes, that the applicant reiterates the arguments already examined and rejected in the context of the second part of the second plea,

alleging infringement of the principle of impartiality, according to which the Commission confined itself to regularising the applicant's administrative situation, without having the objective of re-examining his situation. For the reasons set out in paragraphs 144 to 155 above, those complaints are unfounded.

203 As regards the infringement of the principles of equal treatment and non-discrimination, referred to in the heading of this part of the plea, the Commission rightly observes that the applicant does not put forward any argument in support of those complaints, with the result that the application does not, on that point, comply with the requirements imposed by Article 76(d) of the Rules of Procedure. Those complaints are therefore inadmissible.

204 The only arguments put forward by the applicant in support of this part of the plea, which were not addressed in the context of the other pleas, concern the failure to consult the COMDEL.

205 In that regard, it should be noted, as the Commission has done, that the applicant does not allege infringement of a specific provision of the Commission Decision of 10 October 2012 on the management of its resources in the EU delegations, which governs the COMDEL and the specific rules for its consultation.

206 The arguments relating to the COMDEL support the infringement of the principles of objectivity, impartiality and neutrality of the competent AIPN, relied on in this part of the plea. In that regard, the applicant states, in the reply, that the COMDEL's intervention would have provided, at the very least, an objective element with regard to the appearance of neutrality and the objectivity of the contested decision, since a third party could have given its assessment of the file.

207 Assuming that the application may be regarded, on this point, as complying with the requirements laid down in Article 76(d) of the Rules of Procedure, it should be noted that the power of the Director-General of DG HR to decide on reassignments of persons who have reported irregularities, referred to in paragraph 48 of the judgment in Case T-689/16, is specifically intended to provide whistle-blowers with the additional guarantees of impartiality, objectivity and neutrality sought by the applicant.

208 Moreover, it is not disputed that the COMDEL had been consulted before the first reassignment decision was adopted. In implementing the judgment in Case F-96/13, the Commission was required only to remedy the unlawfulness which vitiated that decision and which concerned the infringement of the applicant's rights of defence.

209 Moreover, even if it were to be considered that the COMDEL should have been consulted by the Director-General of DG HR before the adoption of the contested decision, it must be recalled that a procedural defect leads to the annulment in whole or in part of a decision only if it is shown that, but for that defect, the administrative procedure could have had a different outcome and, consequently, the contested decision might have been different (see judgment of 2 March 2010, *Evropaïki Dynamiki* v *EMSA*, T-70/05, EU:T:2010:55, paragraph 103 and the case-law cited).

210 There is nothing in the file to show that, were the COMDEL to have been consulted once again, the outcome of the procedure might have been different. As held in paragraphs 184 to 190 above, the reason for the reassignment at issue was the relationship difficulties experienced in the Delegation and had no connection with the reporting of irregularities, in respect of which DG Budget could, if necessary, have reacted within the COMDEL.

211 Accordingly, the third part of the plea and, therefore, the third plea must be rejected as in part inadmissible and in part unfounded.

212 It follows from all the foregoing considerations that the claim for annulment must be rejected.

C. The claim for compensation

213 The applicant claims that the Court should order the Commission to pay compensation in the amount of EUR 250 000 for the material damage suffered and EUR 100 000 for the alleged non-material damage.

214 As regards the unlawful acts relied on, first of all, the applicant refers to the first three reassignment decisions, claiming that they were successively annulled or withdrawn on the ground that they were unlawful.

215 Next, the applicant claims that the contested decision was taken, inter alia, in breach of his right to be heard and his rights of defence, without complying with the rules on the protection of whistle-blowers, of which the status, content of protection and the absence of a limitation in time had already been clarified by the EU judicature. According to the applicant, the first three reassignment decisions are vitiated by the same unlawfulness. During the hearing, in response to a question put by the Court, the applicant stated that the incorrect implementation of the judgments in Cases F-96/13 and T-689/16, in breach of Article 266 TFEU, also formed the basis of his claim for damages.

216 Lastly, the applicant puts forward a number of heads of unlawfulness. He claims to have been reassigned against his will to redundant posts created for him seven times since 2013, without any account having ever been fully taken of the scope of the successive annulments. DG Human Resources and Security did not provide any support during those reassignments. The Director-General of DG HR systematically refused to meet with him, even though the EU judicature considered that the alleged grounds for reassignment had a subjective connotation which required the competent AIPN herself to hear the applicant. He claims he was blacklisted and labelled as 'litigious', without the administration seeking to understand his situation as a whistle-blower. His requests for assistance were all rejected even though no rule was adopted concerning the implementation of the protection afforded to whistle-blowers. There has been a systematic breach of the confidentiality of his personal data caused by the reassignment decisions. With the exception of the contested decision, the successive reassignment decisions were adopted by an authority lacking competence.

217 As regards the alleged damage, the applicant claims to have suffered non-material damage, evaluated before the Court at EUR 100 000, as a result of three factors. First, the applicant complains that his reputation, personal and professional dignity and professional credibility have been damaged by the fact that the Commission unlawfully maintained him in an irregular situation, refusing to draw the necessary lessons from the judgments delivered successively. Secondly, the applicant refers to the uncertainty of his administrative situation for more than nine years, due to the succession of unlawful reassignment decisions, two of which were annulled by the Court, which demonstrates maladministration and a lack of diligence, causing him anxiety and stress. Thirdly, the applicant complains of the successive changes of position and duties since the first reassignment decision, without particular support despite his status as a whistle-blower.

218 In addition, the applicant submits that he has suffered material damage, evaluated at EUR 250 000, linked, first, to pre-litigation costs, which have multiplied since the first reassignment decision was annulled and, secondly, to the situation of jurisdictional and administrative uncertainty, characterised by his assignment since 2013 to redundant posts, which has led to a delay in his career and to him being perceived by his superiors as a troublesome 'black sheep' and, thirdly, to the impossibility for him to benefit from the conditions laid down in Annex X to the Staff Regulations, from an international career, or from promotion on the basis of the results of his professional investment.

219 The Commission contends that the claim for damages should be rejected as either inadmissible or unfounded.

220 In that regard, it must be borne in mind that, in the context of a claim for damages made by an official or servant, the EU institution, body, office or agency can be held liable for damages only if a number of conditions are satisfied: the illegality of the allegedly wrongful act committed by the institution, actual harm suffered, and the existence of a causal link between the act and the damage alleged to have been suffered. The three conditions for liability are cumulative, which means that where one of them is not met, the institution cannot be held liable (see judgment of 16 June 2021, *CE* v *Committee of the Regions*, T-355/19, EU:T:2021:369, paragraph 142 (not published) and the case-law cited).

221 It should also be borne in mind that the pre-litigation procedure for actions for damages differs according to whether the damage for which compensation is sought was caused by an act adversely affecting the official within the meaning of Article 90(2) of the Staff Regulations or from conduct on the part of the administration not involving a decision. In the former case, it is for the person concerned to submit to the administration, within the prescribed time limit, a complaint directed against the act in question. In the second case, on the other hand, the administrative procedure must commence with the submission of a request, within the meaning of Article 90(1) of the Staff Regulations, for compensation and continue, where appropriate, with a complaint against the decision rejecting that request (see judgment of 13 December 2012, *A* v *Commission*, T-595/11 P, EU:T:2012:694, paragraph 111 and the case-law cited).

222 As regards claims for compensation relating to compliance with judgments in accordance with Article 266 TFEU, alleging that the decisions adopted are capable of compensating only partially for the consequences of the unlawful act committed, they may also be submitted in the complaint against those decisions, without the admissibility of the action being conditional on the submission of a request under Article 90(1) of the Staff Regulations (see, to that effect, judgment of 13 September 2011, *AA* v *Commission*, F-101/09, EU:F:2011:133, paragraph 75 and the case-law cited).

223 Lastly, according to settled case-law, an official who has failed to bring, within the time limits laid down in Articles 90 and 91 of the Staff Regulations, an action for annulment of an act allegedly adversely affecting him or her cannot, by means of a claim for compensation for the damage caused by that act, repair that omission and thus procure himself or herself further time for bringing proceedings. Nor can he or she rely on the alleged unlawfulness of that act in an action for damages. In general, an official may not, by means of an action for damages, seek to obtain the same result as he or she would have obtained had he or she been successful in an action for annulment which he or she failed to commence in due time (see judgment of 18 November 2014, *McCoy* v *Committee of the Regions*, F-156/12, EU:F:2014:247, paragraph 96 and the case-law cited).

224 In the present case, it is necessary first to examine the heads of unlawfulness referred to in paragraph 216 above, the admissibility of which is disputed by the Commission, before examining the unlawful acts alleged by the applicant concerning the successive decisions relating to the reassignment at issue described in paragraphs 214 and 215 above.

225 In the reply, the applicant states that the allegations referred to in paragraph 216 above were merely a contextualisation of the actions which led to successive annulments by the EU judicature.

226 At the hearing, the applicant claimed that the description, in those allegations, of the way in which the administration has treated him since the first reassignment decision allows for the provision of chronological elements which may be useful for the Court when ruling on compliance with the reasonable time requirement in the present case. Moreover, the decisions taken by the administration in respect of him since 1 January 2013 are vitiated by the same unlawfulness affecting the reassignment at issue, which relates to the failure to take account of his status as a whistle-blower. Furthermore, that reassignment and the fact of being perceived as a 'black sheep' following his allegations were, in his view, the cause of the successive reassignments.

227 As the Commission has stated, it must be held that the applicant's claims referred to in paragraph 216 above are inadmissible, in accordance with the case-law referred to in paragraphs 221 to 223 above. The damage for which compensation is sought in respect of those heads of unlawfulness does not arise from the contested decision, nor from the implementation of the judgments in Cases F-96/13 and T-689/16, but from a series of forms of conduct not involving a decision on the part of the administration and from other acts adversely affecting the applicant prior to the contested decision which the applicant failed to challenge before the Court.

228 In any event, those heads of unlawfulness are unfounded. The applicant's claims are based, in essence, on the premiss that the reassignment at issue, as confirmed by the contested decision with retroactive effect from 1 January 2013, was decided on the basis of his allegations and that it therefore affected his subsequent career.

229 As was held in paragraph 190 above, the Commission discharged its burden of proof and established to the requisite legal standard that the reassignment at issue was based on reasons other than the allegations made by the applicant. Moreover, in its judgments delivered in Cases F-96/13 and T-689/16, the EU judicature did not call into question the merits of the reassignment at issue.

230 As regards the unlawful acts referred to in paragraph 215 above, they were also relied on by the applicant in support of the claim for annulment of the contested decision and of the decision partially rejecting the complaint.

231 In that regard, suffice it to note that, in accordance with settled case-law, claims for compensation for material or non-material damage must be rejected where they are closely associated with claims for annulment which, as in the present case, have themselves been dismissed as inadmissible or unfounded (see judgment of 24 April 2017, *HF* v *Parliament*, T-570/16, EU:T:2017:283, paragraph 69 and the case-law cited).

232 Lastly, as regards the adoption of a series of unlawful reassignment decisions referred to in paragraph 214 above, the Commission rightly argues that the claims for compensation relating to the unlawful acts found in the judgments in Cases F-96/13 and T-689/16 vitiating the first and

second reassignment decisions have already been examined and rejected by the EU judicature in those judgments. Those complaints therefore conflict with the principle of *res judicata* and are inadmissible.

233 As regards the withdrawal in the course of the proceedings of the third reassignment decision on the ground of unlawfulness (Case T-308/20), it is apparent from the analysis set out in paragraphs 109 to 113 above that that withdrawal contributed to delaying an already lengthy administrative procedure, with the result that the contested decision was not adopted within a reasonable time, in breach of Article 41(1) of the Charter.

234 That unlawfulness does not, however, lead to the annulment of the contested decision, since it has not been established that the failure in the present case to adopt that decision within a reasonable time could have affected its content (see paragraphs 115 to 117 above).

235 However, in accordance with the case-law, breach of the obligation to act within a reasonable time may lead the EU judicature to order the administration, of its own motion, to pay compensation for the non-material damage caused by that breach (see, to that effect, judgment of 14 September 2011, *A* v *Commission*, F-12/09, EU:F:2011:136, paragraphs 225 and 226 and the case-law cited).

236 In the present case, in support of his claim for compensation for non-material damage, the applicant states, inter alia, that, as a result of a series of errors vitiating the first three reassignment decisions, the Commission created a situation of uncertainty which persisted over time with regard to his situation, which constitutes an instance of maladministration and lack of diligence that caused him anxiety and stress beyond what may be regarded as reasonable.

237 The applicant claims that the Court should order the Commission to pay him the sum of EUR 100 000 for all the alleged non-material damaging acts, without distinguishing between them.

238 Even though the applicant has not provided any information which would make it possible to quantify precisely the damage linked to his prolonged state of uncertainty over time, the Court considers, contrary to what the Commission submits, that that fact does not preclude the possibility of fixing *ex aequo et bono* an amount capable of compensating for such damage, the existence of which, in the present case, can be established.

239 In that regard, account must be taken of the fact that the particularly long duration of the administrative procedure, which led to the adoption of the contested decision more than eight years after the facts, is due to successive errors on the part of the administration, which may have caused uncertainty and anxiety on the part of the applicant with regard to his situation, particularly since he relied on his status as a whistle-blower.

240 In those circumstances, the Court considers that the non-material damage suffered by the applicant will be fairly assessed by fixing it *ex aequo et bono* in the present case at the amount of EUR 3 000.

241 In the light of the foregoing, the claim for damages must be upheld in part, in the maximum amount of EUR 3 000, and dismissed as to the remainder.

IV. Costs

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

243 In the circumstances of the present case, it is appropriate to order the Commission to bear, in addition to its own costs, half of the applicant's costs, and to order the applicant to bear the other half of his own costs.

On those grounds,

THE GENERAL COURT (Ninth Chamber),

hereby:

1. Orders the European Commission to pay compensation of EUR 3 000 to PL;

2. Dismisses the action as to the remainder;

3. Orders the Commission to bear, in addition to its own costs, half of the costs incurred by PL, who shall bear the other half of his costs.

Truchot Kanninen Sampol Pucurull

Delivered in open court in Luxembourg on 15 November 2023.

[Signatures]