



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

16 November 2017*

(Action for annulment — Time limit for bringing proceedings — Inadmissibility — Non-contractual liability — Reform of the Staff Regulations and of the CEOS — Regulation (EU, Euratom) No 1023/2013 — Irregularities during the procedure for the adoption of acts — Failure to consult the Staff Regulations Committee and the trade unions — Sufficiently serious breach of a rule of law intended to confer rights on individuals)

In Case T-75/14,

Union syndicale fédérale des services publics européens et internationaux (USFSPEI), established in Brussels (Belgium), represented initially by J.-N. Louis and D. de Abreu Caldas, and subsequently by J.-N. Louis, lawyers,

applicant,

v

European Parliament, represented by A. Troupiotis and E. Taneva, acting as Agents,

and

Council of the European Union, represented initially by M. Bauer and A. Bisch, and subsequently by M. Bauer and M. Veiga, acting as Agents,

defendants,

supported by

European Commission, represented initially by G. Gattinara and J. Currall, and subsequently by G. Gattinara and G. Berscheid, acting as Agents,

intervener,

APPLICATION, first, pursuant to Article 263 TFEU, for the annulment of Article 1(27), (32), (46), (61), (64)(b), (65)(b) and (67)(d) of 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) and, secondly, pursuant to Article 268 TFEU, for compensation for the damage alleged to have been suffered by the applicant following the adoption of Regulation No 1023/2013 in breach of the 2004 reform, Articles 12 and 27 of the Charter of Fundamental Rights of the European Union, Article 10 of the Staff Regulations, and the consultation procedure provided for in the Council Decision of 23 June 1981,

* Language of the case: French.

THE GENERAL COURT (Eighth Chamber),

composed of A.M. Collins, President, M. Kancheva (Rapporteur) and J. Passer, Judges,

Registrar: M. Marescaux, Administrator,

having regard to the written part of the procedure and further to the hearing on 13 June 2017,

gives the following

Judgment

I. Background to the dispute

- 1 The Staff Regulations of Officials of the European Union ('the Staff Regulations') and the Conditions of Employment of Other Servants of the European Union ('CEOS') are annexed to Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ, English Special Edition, Series I Volume 1959-1962, p. 135).
- 2 The Staff Regulations and the CEOS have been amended on many occasions since their adoption, including by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 (OJ 2013 L 287, p. 15).
- 3 In particular, Article 1(27), (32), (46), (61), (64)(b), (65)(b) and (67)(d) of Regulation No 1023/2013 amended Articles 45, 52 and 66a of the Staff Regulations as well as Article 7 of Annex V and Article 8 of Annex VII to the Staff Regulations.
- 4 The procedure that led to the adoption of Regulation No 1023/2013 began on 7 September 2011 with the consultation of the trade unions and staff associations ('OSPs') about a draft revision of the Staff Regulations. Administrative, technical and political consultations relating to that draft revision then took place between the European Commission and the OSPs on 6 October, 28 October and 7 November 2011 respectively.
- 5 By letter of 21 November 2011, the Commission submitted to the Staff Regulations Committee a proposal for a regulation of the European Parliament and of the Council amending the Staff Regulations and the CEOS ('the proposal for amendment of the Staff Regulations').
- 6 By letter of 12 December 2011, the Staff Regulations Committee informed the Commission that it had examined the proposal for amendment of the Staff Regulations but that, on the basis of the votes cast, the majority it needed under Article 20 of its rules of procedure in order to be able to give an opinion on that proposal had not been reached.
- 7 By letter of 13 December 2011, the Commission sent the proposal for amendment of the Staff Regulations to the European Parliament and the Council of the European Union.
- 8 On 25 April 2012, the Parliament's Legal Affairs Committee adopted its report on the proposal for amendment of the Staff Regulations.

- 9 By letter of 24 January 2013, the President of the Committee of Permanent Representatives (Coreper) asked the Parliament to clarify its position on its possible participation as co-legislators in the consultation procedure provided for in the Council Decision of 23 June 1981 establishing a tripartite consultation procedure for staff relations.
- 10 By letter of 4 March 2013, the President of the Parliament declined the invitation to participate in the consultation procedure provided for in the Council Decision of 23 June 1981, on the ground that it was for the Council alone to adapt the social dialogue provided for in that decision to the new situation created by the transition to the ordinary legislative procedure for revising the Staff Regulations following the entry into force of the Treaty of Lisbon. In that letter, he stated that the Consultation Committee established by that decision was intended to ensure that the views of officials are known to the representatives of the Member States before those representatives legislate and that the Council receives information enabling it to take its decisions in full knowledge of the relevant facts. He was of the view that, following the entry into force of the Treaty of Lisbon, that decision had become, if not obsolete, at least a purely internal matter. He went on to say that he could not see any way for the Parliament to participate in the Consultation Committee, for two reasons. The first was the lack of any legal basis for such participation. The second was the absence of any need for such participation, the objective of listening to the views of the staff representatives before legislating being achieved by more direct and flexible means at the Parliament. On this point, the President of the Parliament stated that, within the Parliament, discussions were public, information was readily available and both the rapporteur and the shadow rapporteurs on revision of the Staff Regulations were and would continue to be in constant dialogue with the OSPs and the other interested parties at all stages of the drafting and adoption of the report of the Legal Affairs Committee. He further explained that the Vice-President of the Parliament, the Secretary-General of the Parliament, the Head of Cabinet of the President of the Parliament and the Director-General for Personnel of the Parliament had, together, spoken at the Parliament's general staff meeting about progress on the revision of the Staff Regulations, and that, in that context, the Vice-President of the Parliament had addressed in detail all of the issues which had been raised. He also stated that that meeting had been attended by staff not only from the Parliament but also from other institutions, including the Council.
- 11 On 25 April 2013, the Council informed the OSPs of all the institutions of the Parliament's response of 4 March 2013 and of the discussions on a draft declaration interpreting its decision of 23 June 1981.
- 12 On 6 May 2013, the Council adopted a declaration interpreting its decision of 23 June 1981 with a view to its application in the ordinary legislative procedure to be used for the proposal for amendment of the Staff Regulations.
- 13 On the same day, at the request of two OSPs, the Consultation Committee held a meeting. No minutes were taken at that meeting but the Secretary-General of the Council informed the Council's General Secretariat staff of that meeting and of the views which had been exchanged there by email of 6 May 2013. The Secretary-General of the Council also gave an oral account of that meeting to Coreper on 8 May 2013.
- 14 The first trilogue negotiation between the Parliament, the Council and the Commission took place on 13 May 2013. The President of Coreper met representatives of the Council OSPs on the same day. He informed them of the outcome of Coreper's meeting of 8 May 2013 and took note of their views.
- 15 On 27 May 2013, the general meeting of the Council's General Secretariat staff asked the Council's Secretary-General to convene a meeting of the Consultation Committee. That request was confirmed by the Union syndicale fédérale on 7 June 2013.

- 16 Several other trilogue negotiation meetings, concerning political matters, were held on 28 May and 3, 11 and 19 June 2013. Technical meetings of experts and informal meetings between the President of Coreper, the Vice-President of the Commission and the Parliament Rapporteur took place over that period. At the meeting on 19 June 2013, the Parliament, the Council and the Commission reached a provisional compromise on the main elements of the reform.
- 17 On 20 June 2013, in response to the request from the Union syndicale fédérale, a meeting of the Consultation Committee was held. The President of Coreper set out the main elements of the compromise, including restricting careers in the AD function group to grades AD 12/13, and answered questions about the package, including removal of the objective of ensuring career equivalence before and after the 2004 reform. On the same day, he informed Coreper of the outcome of the trilogue negotiation of 19 June 2013.
- 18 On 21 June 2013, at a general meeting of the Council's General Secretariat staff, the Director-General of the Council's 'Administration' Directorate-General (DG) set out the main elements of the compromise.
- 19 On 25 June 2013, the provisional text of the compromise between the Parliament, the Council and the Commission was simultaneously sent to the Member States' delegations, the members of the Consultation Committee and all staff in the Council's General Secretariat. On the same day, another trilogue negotiation meeting was held to examine that text.
- 20 On 26 June 2013, Coreper examined the outcome of the trilogue negotiations and heard the oral account of the Consultation Committee meeting of 20 June 2013 given by the Secretary-General of the Council.
- 21 On 27 June 2013, the text of the compromise was voted on by the Parliament's Legal Affairs Committee.
- 22 On the morning of 28 June 2013, one OSP, the Union syndicale-Bruxelles, submitted a request for a meeting of the Consultation Committee to the Secretary-General of the Council, who refused that request on the ground, first, that, in accordance with the statement annexed to the Council Decision of 23 June 1981, the Consultation Committee was suspended on account of the serious disruptions to the normal working of the Council caused by three consecutive days of strikes, and, secondly, that the Parliament's Legal Affairs Committee had already approved the text of the final compromise.
- 23 On the same day, Coreper carried out a final examination of the compromise on the amendment of the Staff Regulations and approved it, its approval having been reported by the Secretary-General of the Council to all staff in the Council's General Secretariat.
- 24 By letter dated 28 June 2013, the President of Coreper informed the President of the Parliament's Legal Affairs Committee of Coreper's approval of the text of the provisional compromise. In that same letter, he stated that he was 'able to confirm that, if the [Parliament] adopt[ed] its position at first reading, in accordance with Article 294(3) TFEU, in the form established in the provisional compromise contained in the annex to that letter (submitted for review by the two institutions' lawyer-linguists), the Council [would] approve the [Parliament's] position, pursuant to Article 294(4) TFEU, and the act would be adopted in the wording corresponding to the Parliament's position, submitted, if necessary, to the two institutions' legal and linguistic experts'.
- 25 On 2 July 2013, the Parliament, sitting in plenary session, adopted its position at first reading on the text of the compromise agreed with the Council and the Commission during their informal dealings.

- 26 By letter of 5 July 2013, the Commission sent the Staff Regulations Committee the Parliament's position at first reading of 2 July 2013, stating that, in its view, the proposal for amendment of the Staff Regulations, which it had submitted to the Staff Regulations Committee on 21 November 2011, had not been substantially amended during the ordinary legislative procedure. It also pointed out in that letter that, although Article 10 of the Staff Regulations was not applicable at that stage of the ordinary legislative procedure, it nonetheless wished to be made aware of any observations the Co-Presidents of the Staff Regulations Committee might have. To that end, it asked to be sent the Staff Regulations Committee's opinion within a period of 15 working days, that is to say by 26 July 2013 at the latest.
- 27 On 17 July 2013, the staff committee representatives on the Staff Regulations Committee replied to the Commission in a statement in which they explained that they had been unable to reach agreement with the representatives of the EU administrative authorities on the Staff Regulations Committee on changing the agenda for the meeting to be held by that committee so that the latter could adopt observations rather than an opinion. They questioned the lateness with which the matter had been referred to the Staff Regulations Committee and the usefulness, in those circumstances, of an opinion from the Staff Regulations Committee on the Parliament's position at first reading, and criticised the infringement of the principles of social dialogue.
- 28 On 10 October 2013, the Council approved the Parliament's position and, pursuant to Article 294(4) TFEU, adopted Regulation No 1023/2013 in the wording corresponding to the Parliament's position.
- 29 Following the signature of the legislative act by the President of the Parliament and the President of the Council on 22 October 2013, Regulation No 1023/2013 was published in the *Official Journal of the European Union* on 29 October 2013.

II. Procedure and forms of order sought

- 30 By application lodged at the Registry of the General Court on 23 January 2014, the applicant, the Union syndicale fédérale des services publics européens et internationaux (USFSPEI), brought the present action.
- 31 By documents lodged at the Court Registry on 6 and 10 June 2014 respectively, the Parliament and the Council each raised a plea of inadmissibility pursuant to Article 114(1) of the Rules of Procedure of the General Court of 2 May 1991.
- 32 By document lodged at the Court Registry on 25 June 2014, the Commission sought leave to intervene in support of the forms of order sought by the Parliament and the Council.
- 33 On 1 August 2014, the applicant submitted observations on the pleas of inadmissibility raised by the Parliament and the Council.
- 34 By order of 5 December 2014, the President of the Eighth Chamber (previous formation) reserved its decision on the pleas of inadmissibility for the final judgment.
- 35 On 9 December 2014, the Court put a question to the parties. The Council, the Parliament and the applicant replied to that question on 18 December 2014, 6 January and 7 January 2015 respectively.
- 36 By order of 28 January 2015, the President of the Eighth Chamber granted the Commission leave to intervene.
- 37 The Commission lodged its statement in intervention on 12 March 2015. The applicant and the Council lodged their observations on the statement in intervention on 1 and 10 June 2015 respectively.

- 38 On 14 January 2016, the President of the Eighth Chamber decided, pursuant to Article 69(d) of the Rules of Procedure of the General Court, to stay the proceedings in the present case pending the decision in the case having since given rise to the judgment of 15 September 2016, *U4U and Others v Parliament and Council* (T-17/14, not published, EU:T:2016:489).
- 39 Following a change in the composition of the Chambers of the General Court, the Judge-Rapporteur was assigned to the Eighth Chamber (new composition), to which the present case was consequently assigned on 6 October 2016.
- 40 On 24 October 2016, the Court asked the parties to state their views on the conclusions to be drawn in the present case from paragraphs 144 to 171 of the judgment of 15 September 2016, *U4U and Others v Parliament and Council* (T-17/14, not published, EU:T:2016:489). The Parliament, the Council and the Commission replied to the question put by the Court on 8 November 2016. The applicant replied to that question on 18 November 2016.
- 41 The applicant claims that the Court should:
- annul Article 1(27), (32), (46), (61), (64)(b), (65)(b) and (67)(d) of Regulation No 1023/2013;
 - order the Parliament and the Council to pay it a token sum of EUR 1 to compensate for the non-material harm suffered;
 - order the Parliament and the Council to pay the costs.
- 42 The Parliament and the Council, supported by the Commission, contend that the Court should:
- principally, dismiss the action as inadmissible;
 - in the alternative, dismiss the action as unfounded;
 - order the applicant to pay the costs.

III. Law

- 43 In its action, the applicant, a federation of trade unions of the institutions and bodies of the European Union, makes both a claim for the annulment of Regulation No 1023/2013 and a claim for compensation.
- 44 With regard, in the first place, to the claim for annulment, this asks the Court to annul Article 1(27), (32), (46), (61), (64)(b), (65)(b) and (67)(d) of Regulation No 1023/2013 ('the contested provisions') in so far as those provisions amend Articles 45, 52 and 66a of the Staff Regulations as well as Article 7 of Annex V and Article 8 of Annex VII to the Staff Regulations. Furthermore, the applicant seeks the annulment of the solidarity levy introduced by Article 46 of Regulation No 1023/2013 for the year 2014, on the ground that that levy was linked to application of the method for adjusting remuneration and that that method was not applied in 2014.
- 45 In support of its claim for annulment, the applicant raises, in essence, four pleas in law alleging, first, infringement of Article 27 of the Charter of Fundamental Rights of the European Union, Article 21 of the European Social Charter, signed at Turin on 18 October 1961, as revised, Article 10 of the Staff Regulations, and the consultation procedure provided for in the Council Decision of 23 June 1981; secondly, infringement of the agreement on the 2004 reform and the principle of acquired rights; thirdly, infringement of Article 21 of the Charter of Fundamental Rights; and, fourthly, infringement of the principle of proportionality, respectively.

46 With regard, in the second place, to the claim for compensation, this asks the Court to make good the non-material harm allegedly suffered by the applicant as a result of the breaches of administrative duty committed by the institutions in the adoption of Regulation No 1023/2013. At the hearing, the applicant was asked by the Court to indicate whether, in support of its claim for compensation, it was raising, in addition to infringement of Article 12 of the Charter of Fundamental Rights, all of the heads of illegality on which it is relying in support of its claim for annulment. In answer to that question, the applicant stated that, in support of its claim for compensation, it was raising the heads of illegality alleging infringement of essential procedural requirements in the adoption of Regulation No 1023/2013, inasmuch as the staff representatives had no way of being informed and were themselves unable to inform the Member States about certain matters in connection with the consultation meeting, and infringement of the 2004 agreement.

A. The claim for annulment

47 The Parliament, the Council and the Commission argue that, since the application was sent to the Court Registry on 23 January 2014, the claim for annulment of the contested provisions must be dismissed as inadmissible because the time limit laid down in Article 263 TFEU expired on 22 January 2014. The Parliament, the Council and the Commission further submit that the applicant does not meet the conditions of direct and individual concern which the fourth paragraph of Article 263 TFEU attaches to the admissibility of actions for annulment brought by natural or legal persons against acts of general application adopted under the ordinary legislative procedure.

48 In this regard, it should be recalled that, in accordance with settled case-law, the time limits for bringing actions under Article 263 TFEU are a matter of public policy and are not subject to the discretion of the parties or the Court (see order of 19 April 2016, *Portugal v Commission*, T-556/15, not published, EU:T:2016:239, paragraph 22 and the case-law cited).

49 Under the sixth paragraph of Article 263 TFEU, the proceedings provided for in that provision are to be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

50 In the present case, it is to be noted that Regulation No 1023/2013 was published in the *Official Journal of the European Union* on 29 October 2013.

51 With regard to the rules on the calculation of time limits, it should be recalled that, pursuant to Article 101(1)(b) of the Rules of Procedure of 2 May 1991, a period expressed in months is to end with the expiry of whichever day in the last month falls on the same date as the day during which the event or action from which the period is to be calculated occurred or took place.

52 Article 101(2) of the Rules of Procedure of 2 May 1991 provides that, if the period would otherwise end on a Saturday, Sunday or official holiday, it is to be extended until the end of the first following working day; the list of official holidays drawn up by the Court of Justice and published in the *Official Journal of the European Union* is to apply to the General Court.

53 However, under Article 102(1) of the Rules of Procedure of 2 May 1991, where the period of time allowed for commencing proceedings against a measure adopted by an institution runs from the publication of that measure, that period is to be calculated, within the meaning of Article 101(1)(a) of the Rules of Procedure of 2 May 1991, from the end of the 14th day after publication of the measure in the *Official Journal of the European Union*.

54 In addition, Article 102(2) of the Rules of Procedure of 2 May 1991 provides that the prescribed time limits are to be extended on account of distance by a single period of 10 days.

- 55 The applicant submits that Article 102(1) of the Rules of Procedure of 2 May 1991 does not specify whether that provision refers to working days or calendar days and that it is therefore appropriate to adopt the interpretation most favourable to the applicant, meaning that the time limit for bringing proceedings ran from the end of the 14th working day after the date of publication of Regulation No 1023/2013, that is to say 18 November 2013. According to the applicant, the time limit for bringing proceedings laid down in Article 263 TFEU therefore expired on 18 January 2014. However, since 18 January 2014 was a Saturday, expiry of the time limit was deferred until Monday, 20 January 2014, to which the 10-day extension on account of distance should be added. In the applicant's view, it follows that the time limit for bringing proceedings expired on 30 January 2014 and that the application was indeed made before that time limit expired.
- 56 The applicant further submits that, even in the event that Article 102(1) of the Rules of Procedure of 2 May 1991 were to be interpreted as meaning that the time limit for bringing proceeding ran from the end of the 14th calendar day after the date of publication of Regulation No 1023/2013, that is to say 12 November 2013, the proceedings were indeed brought within that time limit. For, the applicant contends, in that event, the two-month time limit for bringing proceedings laid down in Article 263 TFEU would expire on 12 January 2014. However, since 12 January 2014 was a Sunday, expiry of the time limit would be deferred to the end of the next working day, that is to say 13 January 2014, to which the 10-day extension on account of distance would have to be added. The time limit for bringing proceedings would thus have finally expired on 23 January 2014.
- 57 In this regard, it should be recalled that, under Article 101(1)(d) of the Rules of Procedure of 2 May 1991, any procedural time limit prescribed by the Treaties, the Statute or the Rules of Procedure 'shall include official holidays, Sundays and Saturdays'. It follows that, contrary to what the applicant claims, the period of 14 days 'after the date of publication of the measure in the *Official Journal of the European Union*', to which Article 101(2) of the Rules of Procedure of 2 May 1991 refers, includes without a shadow of a doubt official holidays, Sundays and Saturdays. It should also be recalled that, in accordance with well-established case-law, Article 101(2) of the Rules of Procedure of 2 May 1991, which refers solely to the case where the period ends on a Saturday, Sunday or official holiday, is applicable only where the entire period, including the extension on account of distance, ends on a Saturday, Sunday or official holiday (see order of 20 November 1997, *Horeca-Wallonie v Commission*, T-85/97, EU:T:1997:180, paragraph 25 and the case-law cited).
- 58 In the present case, it follows that, taking into account the fact that Regulation No 1023/2013 was published in the *Official Journal of the European Union* on 29 October 2013, the time limit for bringing proceedings laid down in Article 263 TFEU ran from 12 November 2013 and expired on 22 January 2014. Since the application was brought on 23 January 2014, it was therefore lodged at the Court Registry after the time limit for bringing proceedings had expired.
- 59 It should be recalled that the strict application of the rules of procedure serves the requirements of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice. Thus, in accordance with the second paragraph of Article 45 of the Statute of the Court of Justice of the European Union, no derogation from the procedural time limits may be made save where the circumstances are quite exceptional, in the sense of being unforeseeable or amounting to *force majeure* (see judgment of 22 September 2011, *Bell & Ross v OHIM*, C-426/10 P, EU:C:2011:612, paragraph 43 and the case-law cited; orders of 30 September 2014, *Faktor B. i. W. Gëšina v Commission*, C-138/14 P, not published, EU:C:2014:2256, paragraph 17, and of 28 November 2014, *Quanzhou Wouxun Electronics v OHIM — Locura Digital (WOUXUN)*, T-345/14, not published, EU:T:2014:1048, paragraph 17).
- 60 In the present case, the applicant has not claimed, either in the application or even in its reply to a written question from the Court, that any of the abovementioned circumstances is present here.

61 Consequently, the action is clearly inadmissible in so far as it seeks the annulment of the contested provisions, there being no need even to examine the heads of inadmissibility based on the applicant's lack of standing that were raised by the Parliament and the Council in their pleas of inadmissibility.

B. The claim for compensation

1. Admissibility

62 The Parliament, the Council and the Commission maintain that, in accordance with case-law, since the applicant's claim for compensation is closely linked to its claim for annulment and rests on complaints identical to the latter, and its claim for annulment is inadmissible, the claim for compensation should also be dismissed as inadmissible.

63 In this regard, it should be pointed out that, contrary to what the Parliament, the Council and the Commission submit, in the judgment of 4 July 2002, *Arne Mathisen v Council* (T-340/99, EU:T:2002:174), to which they refer, the Court did not find the claim for compensation to be inadmissible on account of its close connection with the claim for annulment previously found to be inadmissible.

64 In that judgment, the Court rejected the claim for compensation on account of its close connection with the claim for annulment on the ground that the examination of the pleas in law raised in support of that claim for annulment had not revealed any illegality committed by the institution responsible for the act or, therefore, any fault of such a nature as to render it liable (judgment of 4 July 2002, *Arne Mathisen v Council*, T-340/99, EU:T:2002:174, paragraph 135).

65 It follows from the approach taken by the Court in the judgment of 4 July 2002, *Arne Mathisen v Council* (T-340/99, EU:T:2002:174) that, in certain circumstances, that is to say where the claim for compensation is based only on the adoption of the act the annulment of which is sought and the applicant does not put forward in support of the claim for compensation any new heads of claim by comparison with those raised in support of the claim for annulment, a finding as to the absence of any illegality following an examination of the pleas in law raised in support of the claim for annulment immediately eliminates one of the conditions for the incurrence of non-contractual liability on the part of the European Union, that is to say the existence of a fault on the part of the institution responsible for the act.

66 In the present case, although the claim for compensation has its origin in the adoption of the provisions of Regulation No 1023/2013 which the applicant also seeks to have annulled, it is important to note, first, that the rejection of the claim for annulment is based not on a finding of an absence of illegality but on a finding as to its inadmissibility, and, secondly, that the applicant puts forward in support of its claim for compensation a new head of claim by comparison with those which it raised in support of the claim for annulment, that is to say the infringement of Article 12 of the Charter of Fundamental Rights.

67 In addition, in accordance with the principle of the autonomy of legal remedies, a finding that a claim for annulment is inadmissible, whether because is time-barred or because the applicant lacks standing, is not, in principle, such as to have any bearing on the admissibility of a claim for compensation (see, to that effect, order of 4 May 2005, *Holcim (France) v Commission*, T-86/03, EU:T:2005:157, paragraphs 48 and 50).

- 68 It should be recalled, after all, that the conditions laid down in the sixth paragraph of Article 263 TFEU do not apply in actions for damages brought on the basis of Article 340 TFEU and that, pursuant to Article 46 of the Statute of the Court of Justice of the European Union, actions for damages against the European Union are to be barred after a period of five years.
- 69 As for the argument based on the case-law relating to the European civil service, as relied on by the Parliament and the Council, it should be pointed out that that case-law is limited to financial disputes between officials and servants of the European Union, on the one hand, and the institution employing them, on the other (see, to that effect, order of 29 November 1994, *Bernardi v Commission*, T-479/93 and T-559/93, EU:T:1994:277, paragraph 39). The present dispute, however, is between a federation of trade unions the members of which are trade unions representing the interests of officials and servants of the European Union at the Parliament and the Council in their capacity as co-legislators.
- 70 In the light of the foregoing considerations, the claim for compensation is admissible. The pleas raised by the Parliament and the Council as to the inadmissibility of that claim must therefore be rejected.

2. Substance

- 71 It should be recalled that, pursuant to the second paragraph of Article 340 TFEU, in the case of non-contractual liability, the European Union is, in accordance with the general principles common to the laws of the Member States, to make good any damage caused by its institutions or by its servants in the performance of their duties.
- 72 According to settled case-law, it is apparent from the second paragraph of Article 340 TFEU that the non-contractual liability of the European Union and the exercise of the right to compensation for damage suffered depend on the satisfaction of a number of conditions, namely the unlawfulness of the conduct of which the institutions are accused, the fact of damage and the existence of a causal link between that conduct and the damage complained of (judgments of 29 September 1982, *Oleifici Mediterranei v EEC*, 26/81, EU:C:1982:318, paragraph 16, and of 9 September 2008, *FIAMM and Others v Council and Commission*, C-120/06 P and C-121/06 P, EU:C:2008:476, paragraph 106).
- 73 If any one of those conditions is not satisfied, the entire action must be dismissed and it is unnecessary to consider the other conditions for non-contractual liability on the part of the European Union (judgment of 14 October 1999, *Atlanta v European Community*, C-104/97 P, EU:C:1999:498, paragraph 65; see also, to that effect, judgment of 15 September 1994, *KYDEP v Council and Commission*, C-146/91, EU:C:1994:329, paragraph 81). Moreover, the EU judicature is not required to examine those conditions in any particular order (judgment of 18 March 2010, *Trubowest Handel and Makarov v Council and Commission*, C-419/08 P, EU:C:2010:147, paragraph 42; see also, to that effect, judgment of 9 September 1999, *Lucaccioni v Commission*, C-257/98 P, EU:C:1999:402, paragraph 13).
- 74 In the present case, it is important to note that the applicant bases its claim for compensation on the existence of breaches of administrative duty. Although there is no precise definition of the concept of a 'breach of administrative duty', this is generally recognised as being an action or omission by one or more officials of the administration in the performance of their duties which gives rise to a failure to fulfil the obligations incumbent on the department concerned. Unlike a personal breach of duty, a breach of administrative duty is not attributable to the officials of the department concerned but to the department itself and, therefore, to the administration.
- 75 In this instance, however, it is clear that the breaches to which the applicant refers relate to the legislative activity of the European Union. This is the case with the alleged infringement of the agreement on the 2004 reform. The applicant submits, after all, that that infringement stems from the adoption of certain specific provisions of Regulation No 1023/2013.

- 76 The same is true of the alleged infringement of the consultation procedure. It follows from the judgment of 15 September 2016, *U4U and Others v Parliament and Council* (T-17/14, not published, EU:T:2016:489, paragraph 96) that the rules laid down in the Council Decision of 23 June 1981, which provide for the consultation procedure, form part of the procedural rules relating to the adoption of Regulation No 1023/2013, any failure to comply with which constitutes an infringement of the essential procedural requirements of the regulation. In those circumstances, it is indeed the European Union's liability for its legislative activity which the applicant is seeking to establish rather than its liability for the breaches of administrative duty alleged to have been committed by the Council and the Parliament in the context of the procedure for the adoption of Regulation No 1023/2013.
- 77 Furthermore, there is no need to consider the nature of the breach arising from the alleged infringement of Article 12 of the Charter of Fundamental Rights, which enshrines the freedom of assembly and of association, since the applicant does not put forward any arguments at all to demonstrate the existence of such an infringement.
- 78 With regard more specifically to liability for legislative activity, the Court has already held that, although the principles in the legal systems of the Member States governing the liability of public authorities for damage caused to individuals by legislative measures vary considerably from one Member State to another, it was however possible to state that the public authorities can only exceptionally and in special circumstances incur liability for legislative measures which are the result of choices of economic policy (judgment of 25 May 1978, *Bayerische HNL Vermehrungsbetriebe and Others v Council and Commission*, 83/76, 94/76, 4/77, 15/77 and 40/77, EU:C:1978:113, paragraph 5).
- 79 The Court has therefore held in particular that, in the light of the provisions of the second paragraph of Article 340 TFEU, the European Union does not incur liability on account of a legislative measure which involves choices of economic policy unless a sufficiently serious breach of a superior rule of law for the protection of the individual has occurred (judgments of 13 June 1972, *Compagnie d'approvisionnement, de transport et de crédit and Grands Moulins de Paris v Commission*, 9/71 and 11/71, EU:C:1972:52, paragraph 13; of 25 May 1978, *Bayerische HNL Vermehrungsbetriebe and Others v Council and Commission*, 83/76, 94/76, 4/77, 15/77 and 40/77, EU:C:1978:113, paragraph 4; and of 8 December 1987, *Les Grands Moulins de Paris v EEC*, 50/86, EU:C:1987:527, paragraph 8).
- 80 The Court has also stated in this regard that the rule of law which must thus be found to have been infringed must have been intended to confer rights on individuals (see, to that effect, judgments of 4 July 2000, *Bergaderm and Goupil v Commission*, C-352/98 P, EU:C:2000:361, paragraphs 41 and 42, and of 19 April 2007, *Holcim (Deutschland) v Commission*, C-282/05 P, EU:C:2007:226, paragraph 47).
- 81 Moreover, the Court has further held that the strict approach taken towards the liability of the European Union in the exercise of its legislative activities is due to two considerations. First, even where the legality of measures is subject to judicial review, exercise of the legislative function must not be hindered by the prospect of actions for damages whenever the general interest of the European Union requires legislative measures to be adopted which may adversely affect individual interests. Second, in a legislative context characterised by the exercise of a wide discretion, which is essential for implementing a European Union policy, the European Union cannot incur liability unless the institution concerned has manifestly and gravely disregarded the limits on the exercise of its powers (judgment of 5 March 1996, *Brasserie du pêcheur and Factortame*, C-46/93 and C-48/93, EU:C:1996:79, paragraph 45).
- 82 The question whether the conditions governing the incurrance of liability on the part of the European Union are satisfied in this case must therefore be assessed in the light of the case-law principles set out above.

(a) Infringement of the agreement on the 2004 reform

- 83 The applicant submits that it took part as an all-staff representative, along with the other OSPs, in the consultation procedure provided for in the Council Decision of 23 June 1981 for the purposes of the reform of the Staff Regulations and the CEOS that culminated in the adoption of Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations and the CEOS (OJ 2004 L 124, p. 1). It was in the context of that consultation procedure that an agreement concerning the reform in question is said to have been concluded with the Council. According to the applicant, that agreement concerned the OSPs' acceptance of several measures to modernise the career path of officials and other servants of the European Union and a special levy to reflect the costs of social policy, improving working conditions and conditions at the European Schools and ensuring ongoing social harmony by not claiming any adjustments to pay or pensions greater than those arising from the multiannual adjustment mechanism. Citing, *inter alia*, recitals 11 and 12 of Regulation No 723/2004, the applicant submits that the modernisation measures involved regrading staff into two function groups, administrators (AD) and assistants (AST), introducing a linear career path, applying a principle of career equivalence and facilitating progress from the first function group to the second function group by means of a new certification mechanism. According to the applicant, those measures also entailed the introduction of flexible working arrangements including in particular, subject to certain conditions, the right to work part time, to take advantage of job sharing arrangements and to obtain extended leave on personal grounds, the introduction of new provisions on family-related leave and, more particularly, the right to more flexible maternity leave, paternity leave, adoption and parental leave as well as leave in case of a serious illness of a family member. The modernisation measures were accepted by the OSPs, including the applicant, as noted in recital 38 of Regulation No 723/2004, in return for the codification in the Staff Regulations and the CEOS of the annual pay adjustment mechanism and its guaranteed application until 31 December 2012.
- 84 The applicant submits that it invested its credibility in its agreement to the reform of the Staff Regulations and the CEOS introduced by Regulation No 723/2004, not only in the eyes of all the staff but also in the eyes of the legislature and the other institutions of the European Union. In its contention, the fact that Regulation No 1023/2013 reneges on the terms of the agreement in question, in particular by amending Article 45(1) of the Staff Regulations and introducing a new function group, as well as on the linear career path and career equivalence principles, undermines its credibility.
- 85 The applicant further argues that, in the absence of transitional measures, the amendments made to Article 45(1) and Article 52 of the Staff Regulations, as well as to Article 4 of Annex IVa to the Staff Regulations, by Article 1(27), (32) and (64) of Regulation No 1023/2013 infringed the principle of the acquired rights of officials and other servants of the European Union under the agreement on the 2004 reform.
- 86 In this regard, in the first place, it should be pointed out that the applicant's view is based on the erroneous premiss that the agreement on the 2004 reform concluded between the Council and the OSPs as part of the adoption of Regulation No 723/2004 may be regarded as a superior rule of law with which the European Union legislature was required to comply when adopting Regulation No 1023/2013.
- 87 For, while there is no need to comment on whether the agreement concluded between the OSPs and the Council in the course of the consultation procedure was legally binding on the latter when it adopted Regulation No 723/2004, it is clear that that agreement was concerned only with the 2004 reform. The effects of such an agreement cannot therefore be extended to all subsequent amendments made to the Staff Regulations by the European Union legislature without depriving the latter of the opportunity to exercise the competence conferred on it by Article 336 TFEU.

- 88 Furthermore, it should be recalled that the Court has already held that, since the legal link between an official and the administration is based upon the Staff Regulations, the rights and obligations of officials may be altered at any time by the legislature (judgment of 22 December 2008, *Centeno Mediavilla and Others v Commission*, C-443/07 P, EU:C:2008:767, paragraph 60).
- 89 It follows that, in the light of the subject matter of the 2004 agreement, the adoption of Regulation No 1023/2013 was not such as to adversely affect that agreement.
- 90 In the second place, as regards the alleged infringement of the principle of acquired rights, it must be observed, first, that, if such illegality proved to be present, it would not strictly speaking constitute an infringement of the 2004 agreement, as that agreement has been defined by the applicant. The alleged infringement of the 2004 agreement said to have arisen from the amendment of a number of provisions of the Staff Regulations by Regulation No 1023/2013 must, after all, be distinguished from infringement of the principle of acquired rights enjoyed by officials and other servants of the European Union.
- 91 On the other hand, it should be pointed out that the provisions in question do not adversely affect the principle of acquired rights in the present case. It is, after all, well established that amending legislation, such as the regulations amending the Staff Regulations, applies, unless otherwise provided, to the future consequences of situations which arose under previous legislation. That is so except for situations originating and becoming definitive under the previous legislation, which create acquired rights. Thus, a right is considered to be acquired when the event giving rise to it occurred before the legislative amendment. However, that is not the case when the event creating the right did not take place under the legislation that has been amended (see judgment of 22 December 2008, *Centeno Mediavilla and Others v Commission*, C-443/07 P, EU:C:2008:767, paragraphs 61 to 63 and the case-law cited).
- 92 With regard first of all to the applicant's argument that officials in grades AD 12 and AD 13 who had accumulated sufficient merits to be promoted to the higher grade in 2011 or 2012 but were not promoted for budgetary reasons are now deprived of the opportunity to do so by Article 45(1) of the Staff Regulations, as amended by Article 1(27) of Regulation No 1023/2013, on the sole ground that they are not in one of the posts mentioned in Annex I, Section A, to the Staff Regulations, it should be pointed out that this is tantamount to saying that the officials in question lost not the right to be promoted but the right to be eligible for promotion. As the Parliament rightly notes, however, the officials in question did not have an acquired right to the continued application to them of the system of promotion existing prior to the reform introduced by Regulation No 1023/2013.
- 93 Secondly, the Court also rejects the applicant's proposition that Article 1(32) of Regulation No 1023/2013, on the one hand, and Article 1(64)(b) of the same regulation, on the other hand, which amended Article 52 of the Staff Regulations, laying down the conditions under which an official may be retired, and Article 4 of Annex IVa to the Staff Regulations, concerning the calculation of the salary of an official over the age of 55 who is authorised to work half time in order to prepare for his or her retirement, respectively, deprived officials aged 55 or over who had been eligible to apply for those measures prior to 1 January 2014, the date on which those provisions entered into force, of those rights from that date until they reached the age of 58.
- 94 For, contrary to what the applicant claims, it is clear that it was Article 1(34) of Regulation No 1023/2013, amending Article 55a(2) of the Staff Regulations, to which Article 4 of Annex IVa to the Staff Regulations refers, which pushed back the age from which an official may apply to work half time to prepare for his or her retirement at 58. It is also important to note that, under the Staff Regulations in the version applicable until 31 December 2014, an official's eligibility for early retirement and the right to work half time in order to prepare for his or her retirement were subject to the satisfaction of a number of conditions compliance with which had to be assessed by the appointing authority and the submission of an application to that effect by the official concerned. A

favourable decision by that authority was alone capable of creating an acquired right for officials. The amendment of these provisions did not therefore, in and of itself, adversely affect the acquired rights of the officials in question.

- 95 In the light of the foregoing considerations, it is appropriate to find that the European Union cannot be held liable for the alleged infringement of the agreement on the 2004 reform.

(b) Infringement of Article 27 of the Charter of Fundamental Rights, Article 10 of the Staff Regulations and the consultation procedure provided for in the Council Decision of 23 June 1981

- 96 The applicant claims that Regulation No 1023/2013 was adopted in breach of Article 27 of the Charter of Fundamental Rights, which enshrines the right of workers to information and consultation. That infringement is said to arise from a failure to comply with the obligations laid down in Article 10 of the Staff Regulations and with the consultation procedure provided for in the Council Decision of 23 June 1981.

(1) Infringement of Article 10 of the Staff Regulations

- 97 The applicant submits in particular that, given the substantial nature of the amendments made by the Parliament and the Council to the proposal for revision of the Staff Regulations initially submitted to the Staff Regulations Committee during the trilogue negotiations, the Commission was required, pursuant to Article 10 of the Staff Regulations, to re-submit the proposal as amended to the Staff Regulations Committee in such a way as to enable the latter to give its opinion in an appropriate and timely manner. In the event, it argues, the Commission simply sent the Staff Regulations Committee the amended version of its initial proposal for revision of the Staff Regulations for information purposes, without giving it the opportunity to state its views in good time.
- 98 In this connection, it should be recalled that, under Article 10 of the Staff Regulations, the Staff Regulations Committee is to be consulted by the Commission on all proposals to revise the Staff Regulations.
- 99 Article 10 of the Staff Regulations imposes on the Commission a consultation obligation which extends not only to formal proposals but also to the introduction by it of substantial amendments to proposals which have already been considered, unless, in the latter case, the amendments correspond, in essence, to those proposed by the Staff Regulations Committee (judgments of 11 July 2007, *Centeno Mediavilla and Others v Commission*, T-58/05, EU:T:2007:218, paragraph 35, and of 15 September 2016, *U4U and Others v Parliament and Council*, T-17/14, not published, EU:T:2016:489, paragraph 129).
- 100 Such an interpretation is dictated both by the wording of Article 10 of the Staff Regulations and by the role assumed by the Staff Regulations Committee. First, by providing for consultation without reservation or exception on any proposal for revision of the Staff Regulations, that provision attaches a wide scope to the obligation laid down by it. Its terms are therefore manifestly irreconcilable with a narrow interpretation of its scope. Second, the Staff Regulations Committee, as a joint body composed both of representatives of the administrative authorities and of democratically elected representatives of the staff of all institutions, is called upon to take into consideration and express the interests of the European Union civil service as a whole (judgments of 11 July 2007, *Centeno Mediavilla and Others v Commission*, T-58/05, EU:T:2007:218, paragraph 36, and of 15 September 2016, *U4U and Others v Parliament and Council*, T-17/14, not published, EU:T:2016:489, paragraph 130).

- 101 It follows that, when the Commission amends its proposal for revision of the Staff Regulations during the ordinary legislative procedure, it has an obligation to re-consult the Staff Regulations Committee before the legislative provisions concerned are adopted by the Council, if that amendment substantially affects the tenor of the proposal (judgment of 15 September 2016, *U4U and Others v Parliament and Council*, T-17/14, not published, EU:T:2016:489, paragraph 135).
- 102 In the present case, it is clear that, although the Commission exercised its power of legislative initiative in submitting the proposal for amendment of the Staff Regulations to the Parliament and the Council on 13 December 2011, it did not exercise that power in order to amend that proposal (see, to that effect, judgment of 15 September 2016, *U4U and Others v Parliament and Council*, T-17/14, not published, EU:T:2016:489, paragraph 136).
- 103 It is true that the Commission participated in the trilogue negotiations held during the ordinary legislative procedure at issue. However, according to point 13 of the Joint Declaration on practical arrangements for the codecision procedure (Article 251 of the EC Treaty) (OJ 2007 C 145, p. 5), which was made by the Parliament, the Council and the Commission on 13 June 2007 and which governs such informal meetings, the Commission's role at the stage of first reading in the Parliament is to promote the contacts established in order 'to facilitate the conduct of proceedings at first reading' and to exercise 'its right of initiative in a constructive manner with a view to reconciling the positions of the ... Parliament and the Council, with due regard for the balance between the institutions and the role conferred on it by the Treaty' (see, to that effect, judgment of 15 September 2016, *U4U and Others v Parliament and Council*, T-17/14, not published, EU:T:2016:489, paragraph 137).
- 104 Thus, the fact that the trilogue negotiations, which, in the present case, were held at the stage of the first reading by the Parliament, and in which the Commission participated in the role defined in paragraph 103 above, culminated in a compromise between the Parliament and the Council aimed at amending the proposal for amendment of the Staff Regulations cannot be regarded as constituting an amendment of that proposal by the Commission itself (see, to that effect, judgment of 15 September 2016, *U4U and Others v Parliament and Council*, T-17/14, not published, EU:T:2016:489, paragraph 138).
- 105 Furthermore, the Parliament's adoption at first reading of a text amending the proposal for amendment of the Staff Regulations also cannot be regarded as an amendment by the Commission itself of its initial proposal (see, to that effect, judgment of 15 September 2016, *U4U and Others v Parliament and Council*, T-17/14, not published, EU:T:2016:489, paragraph 139).
- 106 It follows from the foregoing that the Commission was not obliged to re-consult the Staff Regulations Committee pursuant to Article 10 of the Staff Regulations either after the conclusion of the trilogue negotiations held at the stage of the first reading in the Parliament or after the latter's adoption of its proposal at first reading (see, to that effect, judgment of 15 September 2016, *U4U and Others v Parliament and Council*, T-17/14, not published, EU:T:2016:489, paragraph 140).
- 107 Consequently, irrespective of the substantial nature of the amendments adopted by the Parliament at first reading, the applicant's arguments alleging infringement of Article 10 of the Staff Regulations must be dismissed.

(2) Infringement of Article 27 of the Charter of Fundamental Rights and the consultation procedure

- 108 The applicant argues that, in the present case, the consultation procedure was unlawful in so far as it had not been adapted, following the entry into force of the Treaty of Lisbon, to provide for participation by the Parliament, now a co-legislator, in the adoption of the Staff Regulations of Officials of the European Union.

- 109 The applicant also claims that, contrary to what is indicated in paragraph 170 of the judgment of 15 September 2016, *U4U and Others v Parliament and Council* (T-17/14, not published, EU:T:2016:489), one OSP, the Union syndicale-Bruxelles, on 28 June 2013, that is to say before Coreper began its final examination of the text of the final compromise, had requested a meeting of the Consultation Committee but that request had been turned down by the Secretary-General of the Council on the ground, first, that, in accordance with the statement annexed to the Council Decision of 23 June 1981, the Consultation Committee was suspended on account of the serious disruptions to the normal working of the Council caused by three consecutive days of strikes, and, secondly, that the Parliament's Committee on Legal Affairs had already approved the text. The applicant goes on to say that the President of the Union syndicale-Bruxelles challenged the Council's Secretary-General on its decision not to convene a meeting of the Consultation Committee, on the ground that point 4 of the 'agreement of 24 May 2004 between the Deputy Secretary-General of the Council and the OSPs on the arrangements to be applied in the event of a concerted work stoppage by the staff of the General Secretariat of the Council', which provides that the strike notice is to be used by the two parties to negotiate a settlement of the dispute, where appropriate by the appointment of a mediator, was never implemented in the present case and did not therefore enable the strike to be avoided. The applicant also submits that, in accordance with the agreement in question, 'a strike shall not prevent Council meetings from being held' and 'the Deputy Secretary-General shall draw up the list of officials required to perform their duties on the basis of a list of the posts critical to the institution's decision-making process'. In the applicant's view, it follows from the foregoing that the Secretary-General of the Council was wrong to refuse to organise the meeting of the Consultation Committee on the ground that the normal working of the Council was disturbed.
- 110 The applicant further claims that the Council Decision of 23 June 1981 had been adopted on the basis of an agreement with the OSPs, as demonstrated, in its submission, by the fact that the Council had in the past submitted amendments to that decision to the OSPs, and that it could not therefore amend that decision unilaterally as it did by the interpretative decision of 6 May 2013. The applicant also argues that the text of the interpretative declaration was not communicated to the OSPs until 26 May 2013, that is to say three weeks after the meeting of the Consultation Committee on 6 May 2013.
- 111 The applicant further submits that, notwithstanding the fact that no text was available at the two meetings of the Consultation Committee on 6 May and 20 June 2013, those meetings might still have been useful if due regard had been had to Article 8 of the Council Decision of 23 June 1981, which provides that, 'in the course of their work, the members of the Consultation Committee shall endeavour to the greatest extent possible to align their positions and thus to permit the submission of a report to the Council setting out common positions', and that, 'in so far as this is not possible, the report shall set out the different positions'. During those two meetings, however, the applicant submits, the President of the Consultation Committee simply allowed the President of Coreper to give a brief account, on 6 May 2013, of the Council's intentions and, on 20 June 2013, of the Parliament's intentions, and then allowed the OSP representatives to present their views. Thus, it contends, no attempt was made to align the positions and there is no written report of those meetings.
- 112 In this regard, it should be noted, in the first place, with regard to the Parliament's non-participation in the consultation procedure provided for in the Council Decision of 23 June 1981, that, contrary to what the applicant submits, this does not constitute an infringement of the right of workers to information and consultation enshrined in Article 27 of the Charter of Fundamental Rights.
- 113 The consultation procedure provided for in the Council Decision of 23 June 1981 should, after all, be considered in the legal context in which it was established. That decision was adopted by the Council at a time when the Council was alone competent to adopt the Staff Regulations of officials and other servants of the European Union. By definition, therefore, such a procedure was not appropriate for the purposes of revising the Staff Regulations under the ordinary legislative procedure. It was for that reason that the Council, as indicated in paragraph 12 above, adopted an interpretative declaration of its decision of 23 June 1981, following the Parliament's refusal to participate in the consultation

procedure provided for in the aforementioned decision as co-legislator (judgment of 15 September 2016, *U4U and Others v Parliament and Council*, T-17/14, not published, EU:T:2016:489, paragraphs 145 and 146).

- 114 The Parliament's refusal to participate in the consultation procedure provided for in the Council Decision of 23 June 1981 would be capable of constituting an infringement of Article 27 of the Charter of Fundamental Rights only if that provision imposed an obligation on the EU institutions to consult the OSPs about proposals for revision of the Staff Regulations, and if the Parliament had not engaged in any such consultation in the present case (judgment of 15 September 2016, *U4U and Others v Parliament and Council*, T-17/14, not published, EU:T:2016:489, paragraph 147).
- 115 It should be recalled that, in accordance with the very wording of Article 27 of the Charter of Fundamental Rights, exercise of the rights enshrined there is confined to the cases and the circumstances provided for by EU law. In the present case, it follows from Article 10b of the Staff Regulations that proposals to revise the Staff Regulations may be the subject of consultation with representative OSPs. Institutions which have not unilaterally committed to doing so are not therefore required to engage in such consultation (judgment of 15 September 2016, *U4U and Others v Parliament and Council*, T-17/14, not published, EU:T:2016:489, paragraph 148).
- 116 Consequently, even if, contrary to what may have been suggested by the letter of 4 March 2013 which the President of the Parliament sent to the Council in response to the latter's invitation to the Parliament to participate in the consultation procedure provided for in the Council Decision of 23 June 1981, the OSPs were not consulted by the Parliament about the amendments to the Staff Regulations introduced by the contested provisions, this would not constitute an infringement of the right of workers to information and consultation enshrined in Article 27 of the Charter of Fundamental Rights (judgment of 15 September 2016, *U4U and Others v Parliament and Council*, T-17/14, not published, EU:T:2016:489, paragraph 149).
- 117 In the second place, with regard to the amendment of the Council Decision of 23 June 1981, it should be observed, on the one hand, that, contrary to what the applicant submits, the Council was entitled to make unilateral amendments to that decision in the form of the interpretative declaration of 6 May 2013. It follows, after all, from the review clause in the Decision of 23 June 1981 that 'the Council may examine at any time, either on its own initiative or at the request of the members of the Consultation Committee representing the staff or of the chief administrative officials referred to in the third indent of Section I, paragraph 2(a), the results of the application of these provisions with a view to deciding whether any amendments should be made to them'. That finding cannot be called into question by the applicant's assertion that the Council has previously submitted draft amendments to the Decision of 23 June 1981 to the OSPs in order to obtain their agreement. There is, after all, nothing in the document produced by the applicant in support of that assertion to indicate that the Council sought the OSPs' agreement on the amendments that it was planning to make to the Decision of 23 June 1981, but only that it sought their observations on those amendments. What that document shows, therefore, is not that the Council considered itself bound by such observations but that it wished to take note of the OSPs' views on the amendments it had in mind.
- 118 On the other hand, it is clear from the evidence adduced by the Council that, contrary to what the applicant submits, the administrative services of the Council's General Secretariat gave the OSPs an opportunity to express their views on the planned amendment to the Decision of 23 June 1981 at a meeting on 23 April 2013, and that the text of the draft interpretative declaration was sent to the OSPs participating in the Consultation Committee on 30 April 2013, before being submitted to Coreper on 2 May 2013 and adopted by the Council on 6 May 2013.
- 119 In the third place, with regard to the applicant's argument that the Secretary-General of the Council was wrong to refuse to grant the request made by the Union syndicale-Bruxelles on 28 June 2013 to organise a meeting of the Consultation Committee, it should be noted, first, that, in accordance with

Guideline 7 of the interpretative declaration of the Council Decision of 23 June 1981, the statement annexed to that decision to the effect that, ‘in the event of the normal working of the Council being disrupted, the consultation procedure will be automatically suspended’ remained fully applicable. It is clear from extensive evidence furnished by the Council that, following a notice lodged by three Council OSPs on 20 June 2013 of strikes on 26, 27 and 28 June 2013, strike action did take place over those three days. That action, in which a substantial number of officials, representing a third of all staff, participated, caused 19 Council working group meetings to be cancelled. It should also be noted, as the Council points out, that the General Secretariat of the Council also had to organise the European Council taking place on 27 and 28 June 2013. The evidence adduced by the Council shows, however, that, on 25 June 2013, the three Council OSPs had lodged a definitive notice of strike action in relation to working at weekends and on public holidays and overtime for the period from 25 June to 11 July 2013.

- ¹²⁰ In the light of those circumstances, the view must be taken that, on the date when the Union syndicale-Bruxelles asked for a meeting of the Consultation Committee be organised, the normal working of the Council was disrupted by strike action and the consultation procedure was therefore automatically suspended. That finding cannot be called into question by the applicant’s argument that the Council did not make use of the options available under the agreement of 24 May 2004 between the Deputy Secretary-General of the Council and the OSPs on the arrangements to be applied in the event of a concerted work stoppage by the staff of the General Secretariat of the Council for avoiding strike action or limiting its effects. That agreement is unrelated to the provisions of the Council Decision of 23 June 1981 laying down the conditions under which the consultation procedure is organised.
- ¹²¹ Secondly, it should be pointed out that, according to point (d) of the declaration interpreting the Council Decision of 23 June 1981, the application of that decision ‘is without prejudice to the provisions of the Treaties and in particular the timeline and the operation of the ordinary legislative procedure under Article 294 TFEU’. It should be recalled that, although the text of the provisional compromise was sent to the OSPs participating in the Consultation Committee on the evening of 24 June 2013, the Union syndicale-Bruxelles waited until 12.39 on 28 June before requesting a meeting of the Consultation Committee, notwithstanding that Coreper was due to start its final examination of the text of the compromise at 15.00 that same day. Organising a meeting of the Consultation Committee before Coreper examined the text of the compromise would have made it necessary to postpone that examination. As the Council points out, however, the Irish Presidency had struck a political compromise with the Parliament in what were particularly difficult political circumstances and in the context of a push to achieve a political agreement before the end of its presidency at the end of June 2013. The Coreper meeting on the afternoon of 28 June 2013 took place in the final hours of the Irish Presidency and was therefore the last opportunity for the Presidency to convince Coreper to accept the compromise it had negotiated. What is more, as the Council also observes, the course of the legislative procedure was marked by a political link between political agreement between the Parliament and the Council on the reform of the Staff Regulations, on the one hand, and political agreement with the Parliament on the multiannual financial framework, on the other, the latter being another issue of considerable political sensitivity which was negotiated during the Irish Presidency. It was that political link which enabled Coreper, immediately following the political agreement on the multiannual financial framework, to accept the compromise on the reform of the Staff Regulations. Delaying Coreper’s deliberations would have entailed a risk that the compromise on the reform of the Staff Regulations would be rejected.
- ¹²² Such circumstances must also be regarded as being capable of justifying the refusal of the Secretary-General of the Council to organise a meeting of the Consultation Committee on 28 June 2013.

- 123 In the fourth place, with regard to the applicant's argument that the meetings of the Consultation Committee of 6 May and 20 June 2013 were not in conformity with the Council Decision of 23 June 1981 inasmuch as, despite the parties' not having endeavoured to align their positions, no written summary of their different positions had been produced, it should be pointed out that the Council cannot be criticised for having failed to produce a written summary of the different positions of the parties, in particular those of the OSPs, when the OSPs themselves, including the applicant, argue that they were unable to give a useful account of their views at those meetings because of the excessively general way in which the reform was presented.
- 124 It follows from the foregoing considerations that the European Union also cannot be held liable for the alleged infringement of Article 27 of the Charter of Fundamental Rights, Article 10 of the Staff Regulations or the Council Decision of 23 June 1981.

(c) Infringement of Article 12 of the Charter of Fundamental Rights

- 125 In the part of its application which it devotes to the claim for compensation, the applicant submits that the European Union's liability for the adoption of Regulation No 1023/2013 follows in particular from the infringement of Article 12 of the Charter of Fundamental Rights, which enshrines the freedom of assembly and of association. As has already been pointed out in paragraph 77 above, however, the applicant does not put forward any specific arguments in this regard, with the result that, in accordance with the case-law relating to Article 44(1)(c) of the Rules of Procedure of 2 May 1991, which were applicable at the time when the application was lodged, such an argument must be dismissed as inadmissible (judgment of 7 November 2013, *Budziewska v OHIM — Puma (Bounding feline)*, T-666/11, not published, EU:T:2013:584, paragraph 34).
- 126 It follows from the foregoing considerations that the applicant has not been able to demonstrate that, in the present case, the Parliament, the Council and the Commission committed a sufficiently serious breach of a rule of law intended to confer rights on individuals within the meaning of the case-law cited in paragraph 79 above.
- 127 Since the first condition for the incurrence of non-contractual liability on the part of the European Union is not met in the present case, the claim for compensation must be rejected, there being no need to determine whether the other two conditions of such liability are met.
- 128 Accordingly, the present action must be dismissed as being in part inadmissible, in so far as it seeks the annulment of the contested provisions, and in part unfounded, in so far as it seeks reparation for harm caused to the applicant.

IV. Costs

- 129 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Parliament and the Council applied for costs and the applicant has been unsuccessful, the latter must be ordered to bear its own costs and to pay those incurred by the Parliament and the Council. Furthermore, in accordance with Article 138(1) of the Rules of Procedure, the Commission shall bear its own costs.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders the Union syndicale fédérale des services publics européens et internationaux (USFSPEI) to pay not only its own costs but also those incurred by the European Parliament and the Council of the European Union;**
- 3. Orders the European Commission to bear its own costs.**

Collins

Kancheva

Passer

Delivered in open court in Luxembourg on 16 November 2017.

[Signatures]

Contents

I. Background to the dispute	2
II. Procedure and forms of order sought	5
III. Law	6
A. The claim for annulment	7
B. The claim for compensation	9
1. Admissibility	9
2. Substance	10
(a) Infringement of the agreement on the 2004 reform	12
(b) Infringement of Article 27 of the Charter of Fundamental Rights, Article 10 of the Staff Regulations and the consultation procedure provided for in the Council Decision of 23 June 1981	14
(1) Infringement of Article 10 of the Staff Regulations	14
(2) Infringement of Article 27 of the Charter of Fundamental Rights and the consultation procedure	15
(c) Infringement of Article 12 of the Charter of Fundamental Rights	19
IV. Costs	19