Reports of Cases

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

7 February 2019*

(Civil service — Officials — Article 42c of the Staff Regulations — Placing official on leave in the interests of the service — Equal treatment — Prohibition of discrimination on grounds of age — Manifest error of assessment — Right to be heard — Duty to have regard for the welfare of officials — Responsibility)

In Case T-11/17,

RK, former official of the Council of the European Union, represented initially by L. Levi and A. Tymen, and subsequently by L. Levi, lawyers,

applicant,

v

Council of the European Union, represented by M. Bauer and R. Meyer, acting as Agents,

defendant,

supported by

European Parliament, represented by A. Troupiotis and J.A. Steele, acting as Agents,

intervener,

APPLICATION under Article 270 TFEU, seeking, first, annulment of the undated decision of the Council, adopted on the basis of Article 42c of the Staff Regulations of Officials of the European Union, to place the applicant on leave in the interests of the service and, so far as necessary, the decision of 27 September 2016 rejecting the complaint lodged by the applicant, and, secondly, compensation for the damage allegedly suffered by the applicant,

THE GENERAL COURT (Second Chamber, Extended Composition),

composed of M. Prek, President, E. Buttigieg (Rapporteur), F. Schalin, B. Berke and M.J. Costeira, Judges,

Registrar: G. Predonzani, Administrator,

having regard to the written part of the procedure and further to the hearing on 1 June 2016,

gives the following

* Language of the case: French.

Judgment

I. Background to the dispute

1 The Staff Regulations of Officials of the European Union ('the Staff Regulations') were amended 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).

2 Recitals 1, 3, 7 and 12 of Regulation No 1023/2013 state:

'(1) The European Union, and its more than 50 institutions and agencies, should continue to be equipped with a high-quality European public administration, so as to enable it to achieve its objectives, implement its policies and activities and perform its tasks to the highest possible standard in accordance with the Treaties in order to meet the challenges, both internal and external, that it will face in the future and to serve the citizens of the Union.

…

(3) Given the size of the European civil service when measured against the objectives of the Union and its population, a decrease in the number of staff of the institutions and agencies of the Union should not lead to any impairment of the performance of their tasks, duties and functions in accordance with the obligations and powers under the Treaties. In this regard, there is a need for transparency in relation to the personnel costs incurred by each institution and agency with respect to all categories of staff employed by them.

…

(7) A broader aim should be to optimise the management of human resources in a European civil service characterised by its excellence, competence, independence, loyalty, impartiality and stability, as well as by cultural and linguistic diversity and attractive recruitment conditions.

…

(12) In its conclusions of 8 February 2013 on the multiannual financial framework, the European Council pointed out that the need to consolidate public finances in the short, medium and long term requires a particular effort by every public administration and its staff to improve efficiency and effectiveness and to adjust to the changing economic context. That call reiterated in fact the objective of the 2011 Commission proposal for amendment of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union, which strove to ensure cost-efficiency and acknowledged that challenges currently faced by the European Union require a particular effort by each and every public administration and each and every member of its staff to improve efficiency and to adjust to the changing economic and social context in Europe …'

3 Article 1(24) of Regulation No 1023/2013 provided for the addition, in Chapter 2 of Title III of the Staff Regulations, of Section 7, entitled 'Leave in the interests of the service', containing a single provision: Article 42c. Under that provision:

'At the earliest 5 years before the official's pensionable age, an official with at least 10 years of service may be placed by decision of the appointing authority on leave in the interests of the service for organisational needs linked to the acquisition of new competences within the institutions.

The total number of officials placed on leave in the interests of the service each year shall not be higher than 5% of the officials in all institutions who retired the previous year. The total number thus calculated shall be allocated to each institution according to their respective numbers of officials at 31 December of the preceding year. The result of such allocation shall be rounded up to the nearest whole number in each institution.

Such leave shall not constitute a disciplinary measure.

The duration of the leave shall correspond in principle to the period until the official reaches pensionable age. However, in exceptional situations, the appointing authority may decide to put an end to the leave and reinstate the official.

When the official placed on leave in the interests of the service reaches pensionable age, he shall automatically be retired.

Leave in the interests of the service shall be governed by the following rules:

(a) another official may be appointed to the post occupied by the official;

(b) an official on leave in the interests of the service shall not be entitled to advancement to a higher step or promotion in grade.

An official thus placed on leave shall receive an allowance calculated in accordance with Annex IV.

At the official's request, the allowance shall be subject to contributions to the pension scheme, calculated on the basis of that allowance. In such a case, the period of service as an official on leave in the interests of the service shall be taken into account for the purpose of calculating years of pensionable service within the meaning of Article 2 of Annex VIII.

The allowance shall not be subject to a correction coefficient.'

4 Regulation No 1023/2013 came into force on 1 November 2013 and Article 42c of the Staff Regulations has been applicable since 1 January 2014.

5 The applicant, RK, is a former official of the Council of the European Union. She joined the General Secretariat of the Council ('the GSC') on 16 March 1989 and was established as an official on 16 September 1989. During her career, she was assigned to various directorates-general and departments. From 1 April 2013 to 30 June 2016, she was assigned to the post of assistant in the Staff Development Unit ('the SDU') in Directorate-General A (Administration).

6 By Staff Note No 71/15 of 23 October 2015 ('SN 71/15'), the Secretary-General of the Council provided information on the institution's implementation of Article 42c of the Staff Regulations. According to that note:

'… EU institutions must constantly innovate and modernise, which implies that officials need to acquire new competences and update their knowledge to keep up with developments. Such new competences may be related for example to new IT tools, new systems for the production of European Council/Council documents, new public procurement or internal auditing procedures, new working methods, new management or organisational skills.

The purpose of leave in the interests of the service is to allow officials who are having difficulty in acquiring new skills and adapting to a changing working environment to be placed on leave before they reach pensionable age. …

For 2015, five (5) possibilities are available to the Council and the European Council …'

7 On 12 November 2015, the applicant had a meeting with the Head of the SDU, during which the latter informed the applicant of her intention to request the Administration to place the applicant on leave in the interests of the service, in accordance with Article 42c of the Staff Regulations.

8 The proceedings and content of that meeting are summarised in a note from the Head of the Staff Development Unit (SDU) dated 18 November 2015 addressed to the Director of Human Resources and Personnel Administration (the 'HRPA Director'). In that note, the Head of the SDU requested the Administration to place the applicant on leave in the interests of the service, under Article 42c of the Staff Regulations.

9 On 25 November 2015, the applicant met with the HRPA Director in the presence of an official accompanying the applicant, an observer appointed by the Staff Committee and the Head of Unit of the Legal Advisers to Administration. At that meeting, the HRPA Director set out the legal framework of Article 42c of the Staff Regulations and summed up the reasons why she considered that that provision was applicable to the applicant. The applicant expressed her disagreement with the proposed measure.

10 Following that meeting, on 25 November 2015, the HRPA Director sent a note to the Director-General for Administration recommending that the Director-General for Administration, in his capacity as the appointing authority, put the applicant on leave in the interests of the service on the basis of Article 42c of the Staff Regulations, as of 31 December 2015. Annexed to that note were another note to the Head of the SDU of 18 November 2015 and an overview of the applicant's career history.

11 By note of 30 November 2015, the Director-General for Administration notified the applicant of his intention to place her on leave in the interests of the service, and invited her to submit her observations within 10 working days.

12 The applicant submitted her written observations on 7 December 2015. She asked the appointing authority to review his intention to apply Article 42c of the Staff Regulations to her and, in any event, to reconsider doing so in 2015 so as to allow her sufficient time to prepare for being placed on leave from a financial and psychological point of view.

13 On 8 December 2015, the applicant was heard by the Director-General for Administration.

14 By an undated decision of the Director-General for Administration, in his capacity as appointing authority, of which the applicant acknowledged receipt on 4 February 2016, she was placed on leave in the interests of the service with effect from 30 June 2016. The reasons given for the adoption of that measure in respect of the applicant were set out in paragraph 10 of the abovementioned decision.

15 In the first place, according to paragraph 10(a) of the abovementioned decision, the SDU, to which the applicant was assigned, was adapting its working methods in line with reforms underway in other departments within the Directorate for Human Resources and Personnel Administration. The changes consisted mainly in introducing automated processes and procedures, undertaking new activities, digitalising workflow systems and other processes and adopting interinstitutional IT solutions applicable to all human resources monitoring systems. It was stated that the pace of those changes needed to be maintained in order to fit the new approaches to human resources and personnel administration being put in place at the GSC.

16 In the second place, according to paragraph 10(b) of the abovementioned decision, in order to carry out such reforms, suitable expertise and a certain degree of flexibility and adaptability on the part of staff were required.

17 (confidential)

18 (confidential)

19 (confidential)

20 (confidential)

21 The appointing authority also stated that the decision referred to in paragraph 14 above would take effect on 30 June 2016, in order to give the applicant the necessary time to prepare, psychologically and financially, for being placed on leave.

22 By note of 8 February 2016, the Head of the Individual Entitlements Unit sent the applicant some information on her financial entitlements in relation to leave in the interests of the service.

23 On 29 April 2016, the applicant lodged a complaint against the decision referred to in paragraph 14 above, pursuant to Article 90(2) of the Staff Regulations. That complaint was rejected by express decision of the Secretary-General of the Council of 27 September 2016.

II. Procedure and forms of order sought

24 By application lodged at the Registry of the General Court on 6 January 2017, the applicant brought the present action.

25 By document lodged at the Registry of the General Court on 16 January 2017, the applicant requested that she be granted anonymity under Article 66 of the Rules of Procedure of the General Court. By decision of 17 February 2017, the General Court granted that request.

26 On 4 April 2017, the Council lodged its defence.

27 By document lodged at the Registry of the General Court on 5 May 2017, the European Parliament sought leave to intervene in the present proceedings in support of the form of order sought by the Council.

28 By document lodged at the Registry of the General Court on 2 June 2017, the applicant requested that certain information contained in the application and its annexes be treated as confidential with regard to the Parliament.

29 On 14 June 2017 the applicant lodged her reply.

30 By document lodged at the Registry of the General Court on 21 June 2017, the applicant requested that certain information contained in the application and its annexes be treated as confidential with regard to the Parliament.

31 By order of the President of the Second Chamber of the General Court of 28 June 2017, the Parliament was granted leave to intervene in support of the form of order sought by the Council. It was stated that the transmission to the intervener of documents which have been served or, if appropriate, which are to be served on the main parties would be limited to non-confidential versions. A decision on the merits of the application for confidential treatment would, should the need arise, be made subsequently, in the light of any objections that may be submitted in that regard.

32 The Parliament did not lodge any objections within the prescribed period to the abovementioned requests for confidential treatment submitted by the applicant.

33 On 28 July 2017, the Council lodged its rejoinder.

34 On 18 August 2017 the Parliament filed its statement in intervention.

35 By document lodged at the Registry of the General Court on 21 August 2017, the applicant requested that certain information contained in the application and its annexes be treated as confidential with regard to the Parliament. The Parliament did not lodge any objections within the prescribed period to that request.

36 By document lodged at the Registry of the General Court on 11 September 2017, the Council stated that it did not have any observations on the Parliament's statement in intervention.

37 By document lodged at the Registry of the General Court on 13 October 2017, the applicant submitted its observations on the Parliament's statement in intervention.

38 On 18 October 2017, the Registry of the General Court notified the parties of the close of the written part of the procedure.

39 By letter of 7 November 2017, the applicant made a reasoned application, under Article 106 of the Rules of Procedure, to be heard during the oral stage of the procedure.

40 On a proposal from the Second Chamber, the General Court decided, on 10 April 2018, pursuant to Article 28 of the Rules of Procedure, to assign the case to a Chamber sitting in extended composition.

41 Acting on a proposal from the Judge-Rapporteur, the General Court (Second Chamber, Extended Composition) decided to open the oral procedure and, by way of measures of organisation of procedure as provided for in Article 89 of the Rules of Procedure, requested that the parties give written answers to certain questions and lodge certain documents. The parties complied with those requests within the period prescribed.

42 At the hearing on 1 June 2018, the parties presented oral argument and submitted their answers to the General Court's questions.

43 The oral procedure was closed by decision of the President of the Second Chamber (Extended Composition) of the General Court on 17 July 2018, after the Council had lodged a series of documents requested by the General Court at the hearing, by way of a measure of organisation of procedure.

44 The applicant claims that the Court should:

– annul the decision referred to in paragraph 14 above and, so far as necessary, annul the decision of 27 September 2016 rejecting the applicant's complaint ('the decision rejecting the complaint');

– order the Council to pay damages by way of compensation for the material and non-material damage suffered;

– order the Council to bear all the costs of these proceedings.

45 The Council contends that the Court should:

– dismiss the action;

– order the applicant to bear the costs.

46 The Parliament contends that the action should be dismissed.

III. Law

A. Subject matter of the action

47 In the context of the first head of claim, the applicant seeks the annulment of the decision referred to in paragraph 14 above and, 'so far as necessary', the annulment of the decision rejecting the complaint. It is therefore necessary to clarify the relationship between these two decisions and, thus, the subject matter of the present action.

48 It should be borne in mind that, according to settled case-law, an administrative complaint, such as that referred to in Article 90(2) of the Staff Regulations, and its rejection, whether express or implied, constitute an integral part of a complex procedure and are no more than a precondition for bringing the matter before the court. Consequently, an action, even if formally directed against the rejection of the complaint, has the effect of bringing before the court the act adversely affecting the applicant against which the complaint was lodged (see, to that effect, judgment of 17 January 1989, *Vainker* v *Parliament*, 293/87, EU:C:1989:8, paragraphs 7 and 8), except where the rejection of the complaint has a different scope from that of the measure against which the complaint was lodged (judgment of 25 October 2006, *Staboli* v *Commission*, T-281/04, EU:T:2006:334, paragraph 26).

49 Indeed, every decision which is a straightforward rejection of a complaint, whether it be express or implied, only confirms the act or failure to act to which the complainant takes exception and is not, by itself, a decision which may be challenged, and accordingly the conclusions directed against that decision without content independent from the original decision must be regarded as being directed against the original act (see judgment of 19 June 2015, *Z* v *Court of Justice*, T-88/13 P, EU:T:2015:393, paragraph 141 and the case-law cited).

50 An express decision rejecting a complaint may, in the light of its content, not be confirmatory of the measure contested by the applicant. That is the case where the decision rejecting the complaint contains a re-examination of the applicant's situation in the light of new elements of law or of fact, or where it changes or adds to the original decision. In such circumstances, the rejection of the complaint constitutes a measure subject to review by the court, which will take it into consideration when assessing the legality of the contested measure, or will even regard it as an act adversely affecting the applicant, replacing the contested measure (judgment of 15 September 2017, *Skareby* v *SEAE*, T-585/16, EU:T:2017:613, paragraph 18).

51 In the present case, the applicant submits that the application for annulment of the decision rejecting the complaint is admissible, since that decision contains new elements, as compared to the decision referred to in paragraph 14 above, without explaining, however, what those elements are. The Council and the Parliament have not taken a position on the question of defining the subject matter of the action and, more generally, have not disputed the admissibility of the application for annulment of the two decisions mentioned in the applicant's first head of claim.

52 In that regard, it should be noted, first of all, that the complaint and the action before the General Court were brought within the periods prescribed by Articles 90 and 91 of the Staff Regulations.

53 Secondly, it must be held that the decision rejecting the complaint confirms the decision referred to in paragraph 14 above and the reasons given for it. Moreover, the decision rejecting the complaint, without carrying out a review of the applicant's situation based on new elements of law or of fact, addresses the objections raised in the complaint and thereby supplements the statement of reasons provided in the decision referred to in paragraph 14 above. In those circumstances, it must be

considered that the only act adversely affecting the applicant is the decision referred to in paragraph 14 above ('the contested decision') and that the lawfulness of that decision must be examined also taking into account the statement of reasons contained in the decision rejecting the complaint (see, to that effect, judgment of 13 December 2017, *HQ* v *OCVV*, T-592/16, not published, EU:T:2017:897, paragraphs 20 and 21).

B. The admissibility of certain documents lodged by the Council on 6 June 2018

54 It should be recalled that, at the hearing, the General Court requested that the Council lodge, within 1 week, the documents referred to in footnotes 8 and 9 of the decision rejecting the complaint. However, on 6 June 2018, the Council lodged not only the two abovementioned documents (Annexes E.1 and E.6 to the procedural document of 6 June 2018), but also four further documents not referred to in the General Court's request (Annexes E.2 to E.5 to the procedural document of 6 June 2018), and presented the content of the latter in paragraphs 4 to 7 of the procedural document of 6 June 2018. It follows that the documents contained in the abovementioned Annexes E.2 to E.5, the document contained in Annex E.1 concerning the SDU meeting of 29 January 2015 (also not referred to in the General Court's request) and the arguments set out in paragraphs 4 to 7 of the procedural document of 6 June 2018 are inadmissible under Article 85(3) of the Rules of Procedure, in so far as they are not referred to in the request made by the General Court at the hearing, and in so far as the Council provided no explanation as to why they were not lodged previously.

C. The application for annulment

55 In support of her application for annulment, the applicant raises four pleas in law, the first being a plea of illegality of Article 42c of the Staff Regulations, the second alleging infringement of Article 42c and SN 71/15, errors of fact and manifest errors of assessment, the third alleging infringement of the right to be heard, and the fourth alleging infringement of the duty to have regard for the welfare of officials and infringement of the principle of sound administration.

1. The first plea in law, alleging that Article 42c of the Staff Regulations is unlawful

(a) Preliminary observations

56 The applicant submits that Article 42c of the Staff Regulations is unlawful, in so far as it infringes the principle of equality before the law and the principle of non-discrimination based, in particular, on age, enshrined in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) and Article 1d of the Staff Regulations.

57 In that context, the applicant submits that, in so far as Article 42c of the Staff Regulations applies expressly to officials and agents 'at the earliest 5 years before [their] pensionable age', it introduces a difference in treatment on grounds of age, as defined in Article 2(2)(a) of Directive 2000/78. According to the applicant, that difference in treatment is not objectively and reasonably justified by a legitimate aim within the meaning of Article 6(1) of Directive 2000/78. Moreover, even if it were to be considered that Article 42c of the Staff Regulations pursues a legitimate aim, the means employed to achieve it are neither appropriate nor necessary within the meaning of Article 6(1) of Directive 2000/78.

58 The Parliament and the Council dispute the applicant's arguments and contend that the present plea should be rejected.

59 As a preliminary point, it is necessary to determine the provisions in the light of which the plea of illegality raised by the applicant must be examined.

60 In that regard, it should be noted that the principle of equal treatment is a general principle of EU law, enshrined in Article 20 of the Charter of Fundamental Rights, of which the principle of non-discrimination laid down in Article 21(1) of the Charter is a particular expression (judgment of 5 July 2017, *Fries*, C-190/16, EU:C:2017:513, paragraph 29).

61 Moreover, Article 51(1) of the Charter of Fundamental Rights provides that its provisions are addressed to the institutions, bodies, offices and agencies of the European Union with due regard for the principle of subsidiarity.

62 It follows that the legality of Article 42c of the Staff Regulations, which was inserted in the Staff Regulations by Regulation No 1023/2013, must be assessed in the light of the higher-ranking rule that is Article 21(1) of the Charter of Fundamental Rights, referred to in the applicant's arguments, which prohibits any discrimination based, inter alia, on age.

63 As regards the applicant's reference to Directive 2000/78, it is necessary, first, to set out the relevant provisions of that directive.

64 Article 1 of Directive 2000/78, entitled 'Purpose', provides:

'The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.'

65 Article 2 of Directive 2000/78, entitled 'Concept of discrimination', provides in paragraphs 1 and 2:

'1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:
(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary …'

66 Article 6 of Directive 2000/78, entitled 'Justification of differences of treatment on grounds of age', provides in paragraph 1:

'Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;

(b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;

(c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.'

67 Secondly, it should be recalled that it is clear from the third paragraph of Article 288 TFEU that directives are binding, as to the result to be achieved, upon each Member State. It follows that Directive 2000/78, as is stated, moreover, in Article 21 thereof, is addressed to the Member States, and not to the institutions. The provisions of that directive cannot, therefore, be treated, as such, as imposing any obligations on the institutions in the exercise of their legislative or decision-making powers (see, to that effect and by analogy, judgments of 9 September 2003, *Rinke*, C-25/02, EU:C:2003:435, paragraph 24, and of 21 May 2008, *Belfass* v *Council*, T-495/04, EU:T:2008:160, paragraph 43), nor can they, as such, justify a plea of illegality of Article 42c of the Staff Regulations (see, to that effect, judgment of 21 September 2011, *Adjemian and Others* v *Commission*, T-325/09 P, EU:T:2011:506, paragraph 52)

68 However, even if Directive 2000/78 cannot, as such, be a source of obligations for the EU institutions in the exercise of their legislative or decision-making powers for the purposes of governing employment relationships between them and their staff, the fact remains that the rules or principles laid down or established in that directive may be relied on against those institutions where those rules or principles themselves appear only as the specific expression of fundamental rules of the Treaties and of general principles imposed directly on those institutions (see, to that effect, judgment of 14 December 2016, *Todorova Androva* v *Council and Others*, T-366/15 P, not published, EU:T:2016:729, paragraph 34 and the case-law cited).

69 The Court has recognised that the principle of non-discrimination on grounds of age, which is a general principle of EU law, is given specific expression by Directive 2000/78 in the field of employment and occupation (see, to that effect, judgment of 13 November 2014, *Vital Pérez*, C-416/13, EU:C:2014:2371, paragraph 24 and the case-law cited).

70 It follows that, even if the provisions of Directive 2000/78 cannot, as such, justify a plea of illegality of Article 42c of the Staff Regulations, they may be a source of inspiration for determining the obligations of the EU legislature as regards the European Union civil service, while taking into account the specific aspects of the civil service. This is how the General Court will consider Directive 2000/78 in the present case.

71 As regards the applicant's reliance on Article 1d of the Staff Regulations, it should be recalled that that provision prohibits any discrimination, including on grounds of age, in the application of the Staff Regulations. That provision was inserted into the Staff Regulations by Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities (OJ 2004 L 124, p. 1).

72 Since Article 1d of the Staff Regulations appears in the same regulatory act as Article 42c of the Staff Regulations, namely in the Staff Regulations, and is therefore at the same level as Article 42c in the hierarchy of rules, Article 1d does not constitute a rule in the light of which the legality of Article 42c

of the Staff Regulations may be assessed. Moreover, the applicant clarified that the reference to Article 1d of the Staff Regulations had been made only in so far as that provision establishes the general principle of equality before the law and the principle of non-discrimination, inter alia, on grounds of age.

73 In the light of the foregoing considerations, it must be concluded that the legality of Article 42c of the Staff Regulations must be assessed in the light of Article 21(1) of the Charter of Fundamental Rights, while taking into account, within the limits set out in paragraph 70 above, Directive 2000/78.

74 As has been pointed out (see paragraph 60 above), Article 21(1) of the Charter of Fundamental Rights lays down the principle of non-discrimination, which is a specific expression of the principle of equal treatment, enshrined in Article 20 of the Charter.

75 The Court has consistently held that the principle of equal treatment requires that comparable situations must not be treated differently, and different situations must not be treated in the same way, unless such treatment is objectively justified (see judgment of 5 July 2017, *Fries*, C-190/16, EU:C:2017:513, paragraph 30 and the case-law cited).

76 It must be examined, first of all, whether Article 42c of the Staff Regulations establishes a difference in treatment on grounds of age and, secondly, if so, whether that difference in treatment is nevertheless compatible with Article 21(1) of the Charter of Fundamental Rights in that it satisfies the criteria set out in Article 52(1) thereof (see, to that effect, judgment of 5 July 2017, *Fries*, C-190/16, EU:C:2017:513, paragraph 35).

(b) The existence of a difference in treatment on grounds of age

77 It should be recalled that Article 42c of the Staff Regulations applies 'at the earliest 5 years before [the] pensionable age' of the officials concerned. The Council specified that that provision is applicable to officials in the age range between 55 and 66 years. It is clear from the applicable regulatory framework and from the explanations provided by the Council in its written response to a question from the General Court that that age range is determined on the basis of the following reasoning.

78 As regards officials who entered into service before 1 January 2014, account should be taken of the fifth subparagraph of Article 22(1) of Annex XIII to the Staff Regulations, which provides:

'For officials in service before 1 January 2014 pensionable age to be taken into consideration for all references to the pensionable age in these Staff Regulations shall be determined in accordance with the above provisions, save as otherwise provided for in these Staff Regulations.'

79 That retirement age varies between 60 and 65, depending on the age of the official on 1 May 2014, as is clear from the first four subparagraphs of Article 22(1) of Annex XIII to the Staff Regulations.

80 Under subparagraph (a) of the first paragraph of Article 52 of the Staff Regulations, officials who entered into service after 1 January 2014 are to be retired at age 66.

81 It follows that, since officials with 10 years of service may be placed on leave in the interests of the service at the earliest 5 years before their pensionable age, leave in the interests of the service potentially concerns officials aged between 55 (for those who were aged 60 or over on 1 May 2014, and whose pensionable age was therefore set at 60) and 66 (for those who were recruited after 1 January 2014 and whose pensionable age has therefore been set at 66).

82 Since Article 42c of the Staff Regulations applies only to officials in the age range between 55 and 66 years, and does not apply to younger officials not within that age range, that provision establishes a difference in treatment on grounds of age.

83 It should be noted that the Council has doubts as to whether Article 42c of the Staff Regulations may be covered by the concept of discrimination within the meaning of Article 2 of Directive 2000/78, in so far as it does not refer to a 'particular age', but to the pensionable age of the officials concerned, which may vary. It is therefore a support measure for retirement intended not to discriminate between one particular age and another, but to mitigate the 'sunset effect' of retirement. In support of this reasoning, the Council also observes that the application of Article 42c of the Staff Regulations is subject to a second condition, independent of age, namely that the official concerned must have at least 10 years of service.

84 That argument put forward by the Council concerns the justification for difference in treatment on grounds of age, under Article 42c of the Staff Regulations, and does not call into question the existence of that difference in treatment. Since that provision applies only to officials in a particular, clearly identified age range, it introduces a difference in treatment based directly on age, notwithstanding the fact that the abovementioned age range is determined according to the pensionable age of the officials concerned. The question of whether that difference in treatment constitutes discrimination prohibited by Article 21 of the Charter of Fundamental Rights is a separate question from that concerning the existence of a difference in treatment.

85 Moreover, in response to the Council's arguments set out in paragraph 83 above, it must be held that the fact that Article 42c of the Staff Regulations lays down other conditions unrelated to age, such as that relating to the length of service of the officials concerned and that relating to the existence of 'organisational needs linked to the acquisition of new competences', does not negate the fact that, where those conditions are satisfied, officials who are within the age range in question are treated differently from officials who are not within that age range.

86 According to the case-law, for the EU legislature to be accused of breaching the principle of equal treatment, it must have treated comparable situations differently, thereby putting some persons at a disadvantage in comparison to others (see judgment of 16 December 2008, *Arcelor Atlantique and Lorraine and Others*, C-127/07, EU:C:2008:728, paragraph 39 and the case-law cited). That case-law shows that it is necessary to examine, in the present case, whether the difference in treatment on grounds of age, established by Article 42c of the Staff Regulations, puts officials in the age range in question at a disadvantage in comparison to those who are not in that age range (see, to that effect, judgment of 5 July 2017, *Fries*, C-190/16, EU:C:2017:513, paragraph 33).

87 In this case, officials who are within the age range in question and are, therefore, potentially subject to the measure provided for in Article 42c of the Staff Regulations may have their administrative status changed against their will, inasmuch as they would cease to be in 'active employment', within the meaning of Article 36 of the Staff Regulations, and be placed 'on leave in the interests of the service'. Moreover, those officials would no longer receive career development opportunities in so far as, under subparagraph (b) of the sixth paragraph of Article 42c of the Staff Regulations, they would not be entitled to advancement to a higher step or promotion in grade.

88 Officials who are not subject to the application of Article 42c of the Staff Regulations do not suffer such disadvantages in their career.

89 Moreover, officials who are placed on leave in the interests of the service undoubtedly suffer a reduction in their employment income as a result of, inter alia, the fact that they no longer receive the basic salary, since that salary is replaced by an allowance, as provided for in the seventh paragraph of Article 42c of the Staff Regulations. Under that provision, the allowance is calculated in accordance with Annex IV to the Staff Regulations. Thus, officials placed on leave in the interests of the service are

entitled, for the first 3 months of the application of the measure, to a monthly allowance equal to their basic salary; from the fourth to the sixth months of the application of the measure, to a monthly allowance equal to 85% of their basic salary; and, from the seventh month of application until the end of the period of leave (namely until they reach pensionable age), to a monthly allowance equal to 70% of their basic salary. According to the ninth paragraph of Article 42c of the Staff Regulations, that allowance is not subject to a correction coefficient. Furthermore, the abovementioned financial loss is potentially exacerbated by the fact that the officials concerned are no longer entitled to advancement to a higher step or promotion in grade, as noted above.

90 Officials who are not within the age range in question and to whom, therefore, Article 42c of the Staff Regulations is not applicable, do not suffer the financial disadvantages identified in paragraph 89 above.

91 In the light of the foregoing considerations, it must be concluded that Article 42c of the Staff Regulations establishes a difference in treatment on grounds of age.

(c) Compliance with the criteria set out in Article 52(1) of the Charter of Fundamental Rights.

92 Under Article 52(1) of the Charter of Fundamental Rights, any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and must respect the essence of those rights and freedoms. Subject to the principle of proportionality, restrictions may be made only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

93 In the present case, it must be held that the difference in treatment on grounds of age, established by Article 42c of the Staff Regulations, is provided for by 'law' within the meaning of Article 52(1) of the Charter of Fundamental Rights, in so far as that provision is derived from Regulation No 1023/2013 (see, to that effect, judgment of 5 July 2017, *Fries*, C-190/16, EU:C:2017:513, paragraph 37).

94 Moreover, it must be held that the abovementioned difference in treatment concerns a matter which has a limited scope in the context of the EU civil service, namely the matter of certain officials fulfilling a number of conditions, including that relating to age, being placed on leave in the interests of the service. Therefore, that difference in treatment 'respects the essential contents' of the principle of non-discrimination within the meaning of Article 52(1) of the Charter of Fundamental Rights (see, to that effect, judgment of 5 July 2017, *Fries*, C-190/16, EU:C:2017:513, paragraph 38 and the case-law cited).

95 In support of that conclusion, it should be noted that the second subparagraph of Article 42c of the Staff Regulations provides that the total number of officials placed on leave in the interests of the service each year is not to be higher than 5% of the total number officials in all institutions who retired the previous year. It is therefore clear that, taking into account that ceiling and the conditions for the application of Article 42c of the Staff Regulations, laid down in the first subparagraph of that provision, the number of officials placed on leave in the interests of the service each year is very limited, as is also apparent from the written responses from the Council and the Parliament to a question asked by the General Court. For example, the Council stated that four of its officials were placed on leave in the interests of the service each year between 2015 and 2017, out of a total of 2 757 officials in service at the Council on 31 December 2017.

96 The General Court will examine the question whether the two remaining conditions, laid down in Article 52(1) of the Charter of Fundamental Rights, justifying the difference in treatment on grounds of age established by Article 42c of the Staff Regulations are satisfied in the present case. Those conditions are that the difference in treatment on grounds of age meets an objective of general interest recognised by the European Union, and that it is proportionate.

(1) The question whether the difference in treatment on grounds of age, established by Article 42c of the Staff Regulations, meets an objective of general interest recognised by the European Union

97 The Council, supported by the Parliament, contends, in essence, that the difference in treatment on grounds of age, established by Article 42c of the Staff Regulations, pursues three objectives of general interest in the framework of staff policy. In the first place, that difference in treatment pursues the objective of optimising the institutions' investment in vocational training, allowing them to focus that investment on officials who still have a reasonable period of employment remaining before retirement. In the second place, the abovementioned difference in treatment pursues the objective of supporting officials who are close to retirement and who have been unable to acquire new competences or to adapt to the changes in the working environment within the institutions. In the third place, that difference in treatment pursues the objective of maintaining a balanced age structure between young officials and older officials, which, in turn, favours the recruitment and promotion of those young officials, innovation and the exchange of experience, and geographic diversity.

98 The applicant disputes the existence of the three abovementioned objectives. She submits that the only objective pursued by Article 42c of the Staff Regulations is that of reducing the institutions' costs and number of staff by 'getting rid' of officials who are close to retirement and receive high salaries. That objective is not, however, a legitimate 'employment policy, labour market and vocational training' objective, within the meaning of Article 6(1) of Directive 2000/78, justifying the difference in treatment on grounds of age established by Article 42c of the Staff Regulations.

99 In the first place, it is necessary to ascertain whether the objectives stated by the institutions exist. In that regard, it is necessary to take into account the provisions of Article 42c of the Staff Regulations and, where appropriate, the general context thereof, in order to identify the underlying objective of the difference in treatment on grounds of age established by that article (see, by analogy, judgments of 16 October 2007, *Palacios de la Villa*, C-411/05, EU:C:2007:604, paragraphs 56 and 57; of 21 July 2011, *Fuchs and Köhler*, C-159/10 and C-160/10, EU:C:2011:508, paragraph 39, and of 6 November 2012, *Commission* v *Hungary*, C-286/12, EU:C:2012:687, paragraph 58).

100 As regards the first objective, namely the optimisation of investment in vocational training, it should be noted, first of all, that the application of Article 42c of the Staff Regulations is subject to the existence of 'organisational needs linked to the acquisition of new competences'. The reference to the 'acquisition of new competences' shows that there is a link between the abovementioned provision and vocational training.

101 Moreover, it is clear from the case file and, in particular, from the conclusions of the European Council of 7 and 8 February 2013, that Regulation No 1023/2013 and, therefore, Article 42c of the Staff Regulations, were adopted in the context of budgetary constraints for the European public administration, when Member States were seeking to improve their efficiency and effectiveness and to gradually reduce the number of staff at the institutions by 5% over the period 2013-2017.

102 Furthermore, it should be recalled that the considerations set out in recitals 1, 3, 7 and 12 of Regulation No 1023/2013 refer, first, to the European Union's need to continue to be equipped with a high-quality European public administration (recital 1) capable of performing the institutions' tasks in the context of a reduction in the number of staff (recital 3), secondly, the need to optimise the management of human resources (recital 7) and, thirdly, by reference to the conclusions of the European Council, the need to improve efficiency and effectiveness, the need to adjust to the changing economic context and the effort to ensure cost-efficiency (recital 12).

103 The abovementioned recitals of Regulation No 1023/2013 show that the EU legislature's intention was to pursue the objective of managing the expenditure of the European public administration effectively in terms of cost-efficiency, thus enabling the maintenance of a high-quality European public administration and, ultimately, allowing the European Union to achieve its objectives, implement its

policies and perform its tasks in the context of budgetary constraints and of the reduction in the number of staff at the institutions. In the light of that finding and of the considerations set out in paragraph 100 above, it should be concluded that the existence of the objective of optimising investment in vocational training for officials, pursued by the EU legislature by means of the difference in treatment on grounds of age under Article 42c of the Staff Regulations, has been established.

104 In the second place, without there being any need to verify the existence of the two other objectives stated by the institutions, it is necessary to examine whether the first stated objective, the existence of which has been established, constitutes an objective 'of general interest recognised by the Union' within the meaning of Article 52(1) of the Charter of Fundamental Rights.

105 The first stated objective is, in essence, that of the sound management of public finances in terms of cost-efficiency, in the context of budgetary constraints and of the reduction in the number of staff at the institutions. In that regard, it should be pointed out that, under Article 310(5) TFEU, the EU budget is to be implemented in accordance with the principle of sound financial management. Moreover, Article 30(1) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1) provides that appropriations are to be used in accordance with the principle of sound financial management, namely in accordance with the principles of economy, efficiency and effectiveness. The second subparagraph of Article 30(2) of Regulation No 966/2012 states that the principle of efficiency concerns the best relationship between resources employed and results achieved. It follows from those provisions that the EU legislature's objective of ensuring, by means of the difference in treatment on grounds of age established by Article 42c of the Staff Regulations, the optimisation of the institutions' expenditure on vocational training constitutes an objective 'of general interest recognised by the Union'.

106 Moreover, in so far as the first stated objective concerns the institutions' vocational training policy, it comes within the scope of the first subparagraph of Article 6(1) of Directive 2000/78, which identifies vocational training objectives as being among the legitimate aims justifying differences in treatment on grounds of age established by national measures. It follows, also on the basis of the aforementioned directive, which is a source of inspiration for determining the obligations of the EU legislature in the present case (see paragraph 70 above), that the first stated objective constitutes an objective 'of general interest recognised by the Union' within the meaning of Article 52(1) of the Charter of Fundamental Rights (see, by analogy, judgment of 5 July 2017, *Fries*, C-190/16, EU:C:2017:513, paragraphs 42 and 43).

107 In the light of the foregoing considerations, it must be concluded that the difference in treatment on grounds of age, established by Article 42c of the Staff Regulations, meets at least one objective of general interest recognised by the European Union, within the meaning of Article 52(1) of the Charter of Fundamental Rights.

108 That conclusion is not called into question by the applicant's arguments set out in paragraph 98 above. Irrespective of the question, raised in those arguments, of whether the objective of reducing costs and staff numbers in the institutions may constitute, as such, an objective of general interest recognised by the European Union, it must be found that the applicant has not demonstrated that that is the only objective pursued by Article 42c of the Staff Regulations. In that regard, it should be recalled that the existence of at least one other legitimate objective pursued by the EU legislature, in this case the objective of optimising investment in vocational training for officials, has been established.

109 Since the difference in treatment on grounds of age, established by Article 42c of the Staff Regulations, meets at least one objective of general interest recognised by the European Union, it is necessary to examine whether that difference in treatment complies with the principle of proportionality within the meaning of Article 52(1) of the Charter of Fundamental Rights (see, to that effect, judgment of 5 July 2017, *Fries*, C-190/16, EU:C:2017:513, paragraph 39).

(2) Proportionality

110 In order to examine the proportionality of the difference in treatment on grounds of age established by Article 42c of the Staff Regulations, it is necessary to examine whether that difference in treatment is appropriate for attaining the objective pursued and does not go beyond what is necessary in order to attain it (see, to that effect, judgment of 5 July 2017, *Fries*, C-190/16, EU:C:2017:513, paragraph 44).

111 In that regard, by analogy with the broad discretion enjoyed by the national legislature in defining measures capable of achieving a particular aim in the field of social and employment policy (judgments of 16 October 2007, *Palacios de la Villa*, C-411/05, EU:C:2007:604, paragraph 68; of 5 March 2009, *Age Concern England*, C-388/07, EU:C:2009:128, paragraph 51, and of 9 September 2015, *Unland*, C-20/13, EU:C:2015:561, paragraph 57), it must be acknowledged that the EU legislature has broad discretion in defining measures capable of achieving an objective of general interest in the framework of staff policy. In view of that broad discretion, the review by the court concerns, in this case, the question of whether or not it is reasonable for the EU legislature to take the view that the difference in treatment on grounds of age, established by Article 42c of the Staff Regulations, may be appropriate and necessary in order to achieve the stated legitimate objective (see, by analogy, judgments of 16 October 2007, *Palacios de la Villa*, C-411/05, EU:C:2007:604, paragraph 72; of 12 January 2010, *Petersen*, C-341/08, EU:C:2010:4, paragraph 70, and of 9 September 2015, *Unland*, C-20/13, EU:C:2015:561, paragraph 65).

112 So far as concerns the first stated objective, relating to the optimisation of investment in vocational training, it should be recalled that Article 42c of the Staff Regulations was adopted in the context of budgetary constraints and of the reduction in the number of staff at the institutions. As is apparent from the case file, a gradual 5% reduction in the number of staff over the period 2013-2017 was applicable to all EU institutions, bodies and agencies. The abovementioned provision was also adopted as part of a drive to improve the efficiency and effectiveness of the European public administration in terms of cost-efficiency, as is apparent, in particular, from recital 12 of Regulation No 1023/2013.

113 The Council stated that, in such a context, and in order to carry out their changing tasks with reduced staff numbers, the institutions must change their working methods and officials must adapt and regularly acquire new competences. In addition to those circumstances, the computerising and digitalisation of procedures also present opportunities which lead to a reduced requirement for lower-skilled jobs. On account of all of those circumstances, the institutions are compelled to invest heavily in the continuous training of their officials.

114 The Council contended that, in the light of those factors, Article 42c of the Staff Regulations permits the institutions to focus investment in vocational training on officials who still have a reasonable period of employment remaining before retirement, and to offer a form of early retirement to officials who are at the end of their career.

115 Indeed, it cannot be disputed that, given the requirement for officials to acquire new competences and, therefore, the need for the institutions to invest in vocational training in the context of budgetary constraints and of the reduction in the number of staff, placing officials who are approaching pensionable age on leave frees up the funds that would have been used to pay for their vocational training, so that those funds can be used for the vocational training of younger officials who have a longer career in the institutions ahead of them. It follows that placing those officials on leave

contributes to the optimisation of investment in vocational training in that it helps to improve the relationship between the costs associated with that investment and the benefits obtained by the institutions. It must therefore be concluded that, in view of the broad discretion enjoyed by the EU legislature (see paragraph 111 above), the difference in treatment on grounds of age, established by Article 42c of the Staff Regulations, constitutes an appropriate means of achieving the first objective pursued by the EU legislature.

116 As regards the question whether the abovementioned difference in treatment goes beyond what is necessary for attaining the objective pursued, that difference in treatment must be viewed against its legislative background and account must be taken both of the damage that it may cause to the officials concerned and of the benefits derived from it by, in particular, the institutions (see, to that effect and by analogy, judgment of 5 July 2017, *Fries*, C-190/16, EU:C:2017:513, paragraph 53).

117 As regards the benefits derived from it by the institutions, it must be held that the optimisation of investment in vocational training, which is an objective of the difference in treatment on grounds of age, helps to enable the institutions, ultimately, to continue to carry out their tasks in the context of budgetary constraints and of the reduction in the number of staff.

118 Moreover, placing the abovementioned difference in treatment in the context of Article 42c of the Staff Regulations and of the Staff Regulations in general, it must be observed that leave in the interests of the service is, ultimately, a staff management tool available to the institutions, in so far as it constitutes an administrative status which may be assigned to officials in addition to the other administrative statuses, which are, according to Article 35 of the Staff Regulations: active employment, secondment, leave on personal grounds, non-active status, leave for military service and parental or family leave.

119 Furthermore, it must be held that there are no provisions in the Staff Regulations which constitute 'alternatives' to the measure provided for in Article 42c of the Staff Regulations. In particular, and in so far as the applicant refers to Article 51 of the Staff Regulations concerning professional incompetence, it should be noted that that provision is intended to identify and sanction the unsatisfactory performance of tasks by an official, and applies irrespective of considerations relating to the interests of the service, whilst the measure adopted under Article 42c of the Staff Regulations is implemented in the interests of the service.

120 As an additional staff management tool, Article 42c is, by its very nature, beneficial for the institutions.

121 As regards the damage caused to the officials concerned, account should be taken of the considerations set out in paragraphs 87 to 89 above.

122 At the same time, it should be noted that, as the Council rightly contends in that regard, those officials are placed on leave in the interests of the service on reasonable financial terms. It should be observed, in particular, that the officials concerned receive a monthly allowance until the end of the leave, and the way in which that allowance is calculated (explained in paragraph 89 above) is not regarded by the General Court as being unreasonable. Moreover, as is apparent from the eighth subparagraph of Article 42c of the Staff Regulations, the officials concerned may continue to contribute to the pension scheme and thus increase the amount of their pension. The condition relating to the 10-year length of service, laid down in Article 42c of the Staff Regulations, also contributes to the proportionality of the measure referred to in that provision, in the sense that, as the Parliament rightly notes, that condition results in the measure being applied to officials whose level of earnings and pension rights is such that it mitigates the financial disadvantages of being placed on leave. Finally, it is important to recall that, first, the measure provided for in Article 42c of the Staff Regulations is subject to a number of conditions laid down in the first subparagraph of that provision; secondly, the adoption of that measure is not mandatory for the institutions, which have broad discretion as regards adoption of the

measure; and, thirdly, the total number of officials who can be subject to that measure each year is capped at 5% of the total number of officials in all institutions who retired the previous year (see paragraph 95 above).

123 In the light of all the considerations set out in paragraphs 117 to 122 above, it does not appear unreasonable for the EU legislature to consider it necessary to provide for leave in the interests of the service only for officials within the age range in question, and not for officials not falling within this range, in order to attain the legitimate objective of optimising investment in vocational training. It must therefore be concluded that the difference in treatment on grounds of age established by Article 42c of the Staff Regulations is proportionate to the first stated legitimate objective.

124 In so far as it has been established that the difference in treatment on grounds of age is proportionate to the first stated objective, it must be concluded that that difference in treatment, established by Article 42c of the Staff Regulations, does not infringe Article 21 of the Charter of Fundamental Rights in that it satisfies the criteria set out in Article 52(1) thereof. Consequently, the plea of illegality raised against Article 42c of the Staff Regulations must be rejected.

2. The second plea in law, alleging infringement of Article 42c of the Staff Regulations and Staff Note 71/15 and errors of fact and manifest errors of assessment

125 The applicant submits that the contested decision infringes Article 42c of the Staff Regulations and Staff Note 71/15, and that it is vitiated by manifest errors of assessment and errors of fact. In that context, she disputes, in essence, the assessment of 'organisational needs', within the meaning of the abovementioned provision of the Staff Regulations, both within the SDU and in the GSC as a whole, and submits that the Council has failed to demonstrate how the supposed changes in the GSC's working methods would make adaptation more difficult for her than for any other official in the institution. The applicant also submits that her staff report does not demonstrate an inability on her part to adapt to the new requirements of the service.

126 The Council disputes the applicant's arguments and contends that this plea should be rejected.

(a) The determination of the legal framework applicable in the present case and the extent of the judicial review

127 It should be recalled that Article 42c of the Staff Regulations expressly provides that the officials concerned may be placed on leave in the interests of the service. It also provides that there must be 'organisational needs linked to the acquisition of new competences' in order for that article to be applicable.

128 Moreover, it should be recalled that, by SN 71/15, the Secretary-General of the Council provided information on the institution's implementation of Article 42c of the Staff Regulations. It is apparent from that staff note and from the clarification provided in the context of the decision rejecting the complaint (see, in particular, paragraph 29 of that decision), that, when applying Article 42c of the Staff Regulations, the Council takes into account the following two factors: first, it takes into account the 'organisational needs linked to the acquisition of new competences' in the institution, in the sense that it assesses whether the institution needs to adapt and modernise its working methods and organisation and whether that modernisation requires the acquisition of new competences on the part of the officials concerned, and, secondly, it takes into account the ability of those officials to acquire such competences and adapt to a changing working environment.

129 In paragraph 29(ii) of the decision rejecting the complaint, the Council stated that the assessment of the second factor identified in paragraph 128 above requires some prognostication in that it is necessary to establish whether, based on the information at the appointing authority's disposal at the time of its decision, it is reasonable to presume that the officials concerned will have difficulty adapting to future changes in the working environment.

130 It is apparent from the legal framework, which in this case is Article 42c of the Staff Regulations (as stated in SN 71/15, which is binding on the Council), that the assessment of the two factors identified in paragraph 128 above is a prospective assessment.

131 The applicant disputes the legality of the Council's interpretation of Article 42c of the Staff Regulations. First, she submits that, in SN 71/15, the Council misinterpreted that article in providing that the leave in the interests of the service is a measure to be applied to 'officials who are having difficulty in acquiring new skills and adapting to a changing working environment'. Second, she submits that, on account of that unlawful misinterpretation, the Council's reasoning, set out in paragraph 83 of the defence, that it is necessary to 'assess officials' potential to acquire new competences and adapt to a changing working environment', must also be rejected in so far as it is based on assumptions which are not authorised by the wording of Article 42c of the Staff Regulations.

132 In view of the arguments put forward by the applicant, it is necessary to review the compatibility of the Council's approach, as described in SN 71/15 and clarified in the decision rejecting the complaint and in its written pleadings before the General Court, with the higher-ranking rule, namely Article 42c of the Staff Regulations (see, to that effect, judgment of 22 September 2015, *Barnett* v *CESE*, F-20/14, EU:F:2015:107, paragraph 52 and the case-law cited).

133 In that regard, it should be recalled that Article 42c of the Staff Regulations makes express reference to the 'interests of the service'. As the Council stated in its written response to a question from the General Court, 'organisational needs linked to the acquisition of new competences', which are also referred to in that article, constitute a specific aspect of the interests of the service.

134 In so far as 'organisational needs' are linked to the 'acquisition of new competences' and constitute only one specific aspect of the interests of the service in the context of Article 42c of the Staff Regulations, it must be concluded that the wording of that provision does not prohibit the Council from taking into account, as an 'organisational [need] linked to the acquisition of new competences', the ability of the officials concerned to '[acquire] new competences and [adapt] to a changing working environment', as set out in SN 71/15.

135 Taking into account a personal characteristic of the officials concerned is, moreover, not contrary to the *ratio legis* of Article 42c of the Staff Regulations. Indeed, in so far as it has been established that that provision pursues the objective of optimising, in terms of cost-efficiency, the institutions' investment in vocational training, it appears to be compatible with that objective that the Council take into account, for the purpose of determining the investment cost of vocational training, the ability of the officials concerned to acquire new competences and to adapt to a changing working environment. Taking into account a personal characteristic of the officials concerned also appears justified by the fact that the application of Article 42c of the Staff Regulations has an adverse impact on them and that it can be imposed on them against their will (see paragraphs 87 to 89 above). It follows that taking into account a personal characteristic of the officials concerned means that that provision will be applied to them less rigidly.

136 It must therefore be concluded that the Council's assessment of the ability of the officials concerned to acquire new competences and adapt to a changing working environment is compatible with Article 42c of the Staff Regulations.

137 Moreover, in so far as the aim of that assessment is to pursue the interests of the service, it must necessarily relate to the future ability (the potential) of the officials concerned to acquire new competences and adapt to a changing working environment, and must therefore involve an element of prognostication, as the Council rightly contends. If that were not the case, the assessment would not pursue the interests of the service. Therefore, it should also be concluded that the element of prognostication involved in the assessment of the second factor identified in paragraph 128 above is compatible with Article 42c of the Staff Regulations.

138 It is apparent from the legal framework provided for by Article 42c of the Staff Regulations and SN 71/15 that the Council was, in this case, required to assess two factors as 'organisational needs linked to the acquisition of new competences', namely, first, the institution's future organisational needs requiring the acquisition of new competences and, secondly, the applicant's ability to acquire those previously identified new competences, in order ultimately to assess the cost-efficiency of investing in vocational training for the applicant, in accordance with the objective pursued by Article 42c of the Staff Regulations.

139 As regards the extent of the judicial review of the assessment of the 'organisational needs linked to the acquisition of new competences', the applicant challenged the consideration set out in paragraph 27 of the decision rejecting the complaint, according to which the appointing authority has broad discretion in the application of Article 42c of the Staff Regulations. According to the applicant, since the measure adopted under that provision has negative consequences for the officials concerned, there should be a more thorough judicial review of that measure.

140 In that regard, it should be recalled that 'organisational needs linked to the acquisition of new competences' constitute one specific aspect of the interests of the service under Article 42c of the Staff Regulations. It is clear from the case-law that the institutions have broad discretion in determining what the interests of the service are, regardless of the examination in the context of which, or the decision for which, it is to be taken into account (see judgment of 16 May 2018, *Barnett* v *EESC*, T-23/17, not published, under appeal, EU:T:2018:271, paragraph 36 and the case-law cited). In particular, the institutions have been recognised as having such broad discretion in relation to the termination of temporary staff contracts (judgment of 12 December 2000, *Dejaiffe* v OHIM, T-223/99, EU:T:2000:292, paragraph 53). It follows that, even following the logic of the applicant's arguments set out in paragraph 139 above, there is no reason not to recognise the broad discretion conferred on the institutions as regards the assessment of 'organisational needs linked to the acquisition of new competences' given that the consequences for the officials concerned of being placed on leave in the interests of the service are no more serious than the consequences they would suffer as a result of the termination of an employment contract. Moreover, and in any event, as the Council rightly observes, the interests of the official concerned do not constitute a decisive factor in determining the extent of the appointing authority's discretion in the assessment of the interests of the service, but must be taken into consideration by the appointing authority by virtue of its duty to have regard for the welfare of officials. The applicant's arguments, set out in paragraph 139 above, must therefore be rejected.

141 It follows from the wide discretion conferred on the administration as regards the application of Article 42c of the Staff Regulations that the General Court can call into question that application only in cases of manifest error of assessment, material inaccuracy or misuse of powers (see, to that effect, judgments of 12 December 2000, *Dejaiffe* v *OHIM*, T-223/99, EU:T:2000:292, paragraph 53 and the case-law cited, and of 16 May 2018, *Barnett* v *EESC*, T-23/17, not published, under appeal, EU:T:2018:271, paragraphs 36 and 38).

(b) The assessment of future organisational needs

142 As a preliminary point, it should be noted that it is apparent from the case file that, in the present case, the Council assessed the organisational needs not only of the unit to which the applicant was assigned, namely the SDU, but also those of the entire institution, namely the GSC. The applicant disputed the approach taken by the Council and submitted that supposed organisational needs justifying the adoption of a decision under Article 42c of the Staff Regulations must be those only of the unit to which the officials concerned are assigned. If that were not the case, there would be a risk of arbitrary decisions by the institutions.

143 The applicant's analysis must be rejected. First of all, it has no basis in the wording of Article 42c of the Staff Regulations, which refers to 'organisational needs … within the institutions'. Moreover, given the Council's broad discretion as regards the assessment of organisational needs and, ultimately, the interests of the service, the approach it has taken in the present case, whereby the organisational needs not only of the SDU, but also of the GSC as a whole, are taken into account, is not vitiated by a manifest error of assessment. Indeed, the Council has explained, without being challenged, that the applicant holds a general post, and may therefore be assigned, for organisational needs and in the interests of the service, to a post outside the SDU or the Directorate-General Administration. Therefore, in view of the applicant's potential for reassignment, the Council did not commit a manifest error of assessment in assessing the organisational needs not only of the SDU, but also of the GSC as a whole.

144 Next, the applicant does not accept that the Council has demonstrated, in the present case, the existence of future organisational needs of the SDU and of the GSC as a whole. As regards the assessment of those organisational needs of the SDU, she submits, in particular, that the transition from one IT system to another does not constitute, in itself, a 'major' change, contrary to what the Council maintains in the decision rejecting the complaint, and that only the initial introduction of an IT system constitutes such a change. However, according to the applicant, an IT system was already in place in the SDU. As regards the changes in working methods within the GSC, referred to by the Council, the applicant disputes the relevance of those changes to her, and complains that the Council has failed to explain how those changes would affect her specifically. It is for the Council to demonstrate both that the changes are real and that they will lead to the applicant having difficulty in acquiring new competences and adapting to the changes.

145 It is apparent from paragraph 10(a) of the contested decision that the Council identified, among the future organisational needs of the SDU, the introduction of automated methods and procedures, such as electronic archiving, and the digitalisation of workflow systems and of processes. Moreover, it is stated in paragraph 30 of the decision rejecting the complaint that the SDU has been working since November 2014 on a project to replace the 'Ariane' system with the Commission system 'SYSPER', and to implement the shared 'Learning Management System'. That information is borne out, inter alia, by the note from the Head of the Staff Development Unit of 18 November 2015 (see paragraph 8 above).

146 In paragraph 10(d) of the contested decision, the Council stated, inter alia, that all GSC departments were affected by the constantly changing nature of IT. In paragraph 31 of the decision rejecting the complaint, the Secretary-General of the Council explained that the GSC has made, or is in the process of making, numerous changes to which GSC staff, and more specifically AST staff, must adapt. Those changes consist of further computerising working methods, inter alia by replacing paper diaries with the 'Outlook' system, finalising texts using 'track-changes', distributing texts by e-mail rather than internal post and replacing paper forms with electronic forms.

147 It is clear from the foregoing that, in this case, the Council assessed the future organisational needs of the SDU and of the GSC as a whole. Moreover, the applicant has not submitted any precise and specific information to challenge the existence of those organisational needs and demonstrate that the

Council committed errors of fact or manifest errors of assessment. In particular, her claim that she was not informed of the existence of new organisational needs in the SDU does not prove that those new needs did not exist. Furthermore, that claim is unfounded in so far as the Council produced before the General Court the documents mentioned in footnotes 8 and 9 of the decision rejecting the complaint, and referred to in paragraph 145 above, which prove that the applicant had been informed of the existence of IT projects concerning the SDU. It must therefore be concluded that the applicant has not succeeded in calling into question the Council's assessment of the future organisational needs.

148 It is also appropriate to review the legality of the Council's assessments relating to the applicant's ability to acquire the new competences required and to adapt to a changing working environment. In that regard, the applicant's arguments, set out in paragraph 144 above, on the nature and significance of the changes in the SDU and on the relevance to her of the changes taking place in the GSC, will be examined in the context of that review, in so far as they involve an examination of the organisational needs in relation to the applicant's ability to acquire the new competences required and to adapt to a changing working environment.

(c) The applicant's ability to acquire new competences and adapt to a changing working environment

149 (confidential)

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156 (confidential)

157 In the first place, the applicant disputes the Council's approach of taking into account her 2011 and 2012 staff reports. According to the applicant, those reports were irrelevant in so far as, first, they were older than her 2013 and 2014 staff reports, which were good, and, second, she was reassigned on 1 April 2013. According to the applicant, her ability to adapt should have been assessed in view of her actual duties and the actual needs of the service, and not in view of past or hypothetical needs.

158 In that regard, it should be noted that the Council did not commit a manifest error of assessment in taking into account the applicant's 2011 and 2012 staff reports, the content of which, moreover, was not disputed by the applicant. Although those reports are, admittedly, less relevant than more recent reports, the fact remains that, in general, the taking into account of several years of staff reports relating to the officials concerned, rather than just one or 2 years' worth, provides a more robust basis for drawing conclusions as to their ability to adapt to a changing working environment.

159 In the second place, the applicant submits that her 2013 and 2014 staff reports were good, in particular as regards the competence 'Adaptation to the requirements of the service', and that the Council sought to use the rare criticisms made in those reports to justify the contested decision. Those criticisms are not relevant to the assessment of her ability to adapt to a changing working environment.

160 (confidential)

161 (confidential)

162 (confidential)

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168 (confidential)

169 (confidential)

170 (confidential)

171 In the fourth place, as regards the applicant's arguments set out in paragraph 144 above, it should be noted that, admittedly, it is not apparent from the case file that the future organisational needs of the SDU and of the GSC as a whole consisted in the transition from a non-computerised working environment to a computerised working environment. In other words, those organisational needs did not entail radical changes to working methods. However, given the information available to the Council on the applicant's professional competences and conduct, covering her employment in different departments over several years, as summarised in paragraph 167 above, it must be held that the Council could, without committing a manifest error of assessment, presume that the applicant had great difficulty in adapting to changes in working methods which were less radical and consisted of moving from one IT system to another.

172 In the light of all the foregoing considerations, it must be concluded that the Council's assessments relating to the applicant's ability to acquire new competences and adapt to a changing working environment are not vitiated by a manifest error of assessment. It follows that, having regard also to the rejection of the applicant's complaints concerning the Council's assessment of the future organisational needs, this plea must be dismissed.

3. The third plea in law, alleging infringement of the right to be heard

173 The applicant submits that her right to be heard was infringed because the note of 25 November 2015 from the HRPA Director had not been sent to her during the pre-litigation procedure. That note was taken into account by the appointing authority in the context of the adoption of the contested decision. As she was unaware of that note and of its contents, the applicant asserts that she was unable effectively to defend herself before the adoption of the contested decision.

174 The Council disputes the applicant's arguments and contends that this plea should be rejected.

175 As a preliminary point, it should be noted that the contested decision placing the applicant on leave in the interests of the service against her will undoubtedly constitutes an act adversely affecting her, in so far as it led to, in particular, a change in her administrative status and the termination of her employment at the Council, and caused her financial damage. It follows that for the adoption of such a

decision, it is necessary to apply the principle of respect for the rights of defence, a fundamental principle of EU law which must be guaranteed even in the absence of any rules governing the procedure in question (see, to that effect, judgment of 6 December 2007, *Marcuccio* v *Commission*, C-59/06 P, EU:C:2007:756, paragraph 46 and the case-law cited).

176 The rights of defence, now enshrined in Article 41 of the Charter of Fundamental Rights, which, according to the EU Courts, is a provision of general application (judgments of 22 November 2012, *M.*, C-277/11, EU:C:2012:744, paragraph 84, and of 11 September 2013, *L* v *Parliament*, T-317/10 P, EU:T:2013:413, paragraph 81), include, while being more extensive, the procedural right provided for in paragraph 2(a) of that article, of every person to be heard, before any individual measure which would affect him or her adversely is taken (see, to that effect, judgments of 22 November 2012, *M.*, C-277/11, EU:C:2012:744, paragraph 87 and the case-law cited; of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431, paragraph 31, and of 5 October 2016, *ECDC* v *CJ*, T-395/15 P, not published, EU:T:2016:598, paragraph 54 and the case-law cited).

177 In accordance with established case-law, the right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely (see judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 39 and the case-law cited).

178 The right to be heard conferred on any addressee of a decision adversely affecting him has a dual function: first, to enable the case to be examined and the facts to be established in as precise and correct a manner as possible and, second, to ensure that the person concerned is in fact protected. The right to be heard is intended, inter alia, to guarantee that any decision adversely affecting a person is adopted in full knowledge of the facts, and its purpose is to enable the competent authority to correct an error and to enable the person concerned to submit such information relating to their personal circumstances as will argue in favour of the adoption or non-adoption of the decision, or in favour of its having a specific content (see, to that effect, judgments of 18 December 2008, *Sopropé*, C-349/07, EU:C:2008:746, paragraph 49; of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 38, and of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431, paragraphs 37 and 59).

179 It is clear from the foregoing considerations that, in this case, the contested decision should not have been adopted until after the applicant had been given the opportunity effectively to put forward her views concerning the factors forming the basis of that decision, in the context of an oral or written exchange of views initiated by the appointing authority, proof of which must be adduced by the latter (see, to that effect, judgment of 6 December 2007, *Marcuccio* v *Commission*, C-59/06 P, EU:C:2007:756, paragraph 47). In that regard, it should be recalled that the contested decision was based, in particular, on considerations relating to the organisational needs of the SDU and of the GSC as a whole, and on the applicant's ability to acquire new competences and adapt to a changing working environment. Those considerations of the contested decision were based largely on the considerations set out in paragraphs 4.1 to 4.5 of the note from the HRPA Director of 25 November 2015, which was not sent to the applicant during the pre-litigation procedure. It must be ascertained whether the failure to send that note infringed the applicant's right to be heard, as she claims it did.

180 In that regard, it should be recalled that the applicant had a meeting with the Head of the SDU on 12 November 2015 and a meeting with the HRPA Director on 25 November 2015. Although there are no minutes of those meetings, it is clear from the notes of 18 November 2015 and of 25 November 2015, written, respectively, by two of the applicant's superiors, that the applicant was informed at those meetings both of the organisational needs of the SDU and the GSC, and of the reasons why the administration considered that she did not have the ability to adapt to a changing working environment. The applicant did not dispute before the Court that she was informed of both of those factors at the meetings.

181 Given that those two meetings took place, it must be concluded that the applicant was able effectively to put forward her views concerning the two abovementioned factors, in the context of her written observations of 7 December 2015 addressed to the appointing authority. She was thus able, in particular, to submit that, in her post, there were no proposed changes in software or working methods, and she was able to challenge, based inter alia on her 2013 and 2014 staff reports, the administration's view that she had difficulty in acquiring new competences.

182 Moreover, the two abovementioned meetings enabled her effectively to put forward her views during her hearing by the Director-General for Administration, in his capacity as appointing authority, on 8 December 2015.

183 On the basis of the foregoing considerations, it must be concluded that the failure to send the HRPA Director's note of 25 November 2015 to the applicant before the adoption of the contested decision did not infringe the applicant's right to be heard. That conclusion is not called into question by the judgment of 3 June 2015, *BP* v *FRA* (T-658/13 P, EU:T:2015:356), relied on by the applicant. The present case is different from the case that gave rise to the abovementioned judgment in so far as, in this case, unlike in *BP* v *FRA*, first, the applicant was informed at the two aforementioned meetings with her superiors of the main reasons for the adoption of the contested measure against her and, second, she was heard by the appointing authority on two occasions before the adoption of that measure, both in writing and orally. It is clear from the facts, as presented in paragraph 14 of the judgment of 3 June 2015 *BP* v *FRA* (T-658/13 P, EU:T:2015:356), that the applicant in that case had not been informed of the main reasons for the adoption of the contested measure (which consisted, in particular, of a decision not to renew a contract for an indefinite period) prior to the adoption of that measure, and had not been heard by the appointing authority (judgment of 3 June 2015, *BP* v *FRA*, T-658/13 P, EU:T:2015:356, paragraph 62).

184 On the basis of the foregoing considerations, the present plea must be dismissed.

4. The fourth plea, alleging infringement of the duty to have regard for the welfare of officials and of the principle of sound administration

185 The applicant submits that the fact that the HRPA Director's note of 25 November 2015 was not sent to her constitutes an infringement of the duty to have regard for the welfare of officials on the part of the Council, in so far as, by failing to send her that note, the Council did not give her the opportunity to express her views on the possibilities for her reassignment to other services within the GSC which were allegedly considered in the abovementioned note.

186 (confidential)

187 (confidential)

188 The Council disputes the applicant's complaints.

189 As a preliminary point, it should be noted that the administration's duty to have regard for the welfare of officials, as expounded in the case-law, reflects the balance of reciprocal rights and obligations established by the Staff Regulations in the relationship between the administration and the civil servants. A particular consequence of this balance is that when the administration takes a decision concerning the situation of an official, it should take into consideration all the factors which may affect its decision and that, in so doing, it should take into account not only the interests of the service but also those of the official concerned (judgments of 28 May 1980, *Kuhner* v *Commission*, 33/79 and 75/79, EU:C:1980:139, paragraph 22, and of 29 June 1994, *Klinke* v *Court of Justice*, C-298/93 P, EU:C:1994:273, paragraph 38).

190 At the same time, it is apparent from the case-law that requirements of the duty to have regard for the welfare of officials cannot prevent the appointing authority from adopting the measures it deems necessary in the interests of the service (see judgment of 13 January 1998, *Volger* v *Parliament*, T-176/96, EU:T:1998:1, paragraph 76 and the case-law cited). The EU Courts have also pointed out that, although it is the case that, in taking a decision concerning the situation of an official, the authority must take into account not only the interest of the service, but also those of the official concerned, that consideration cannot prevent the authority from undertaking a rationalisation of departments if it deems that this is necessary (see judgment of 13 January 1998, *Volger* v *Parliament*, T-176/96, EU:T:1998:1, paragraph 76 and the case-law cited).

191 It is in the light of those principles that the applicant's complaints must be examined.

192 As regards the first complaint, set out in paragraph 185 above, it should be recalled that, in her note of 25 November 2015, the HRPA Director considered and rejected the option of reassigning the applicant, either within the Directorate for Human Resources and Personnel Administration or within the GSC, based on the future organisational needs of those departments in terms of the changes to their IT systems and on the applicant's ability to acquire new competences. However, as was found in the examination of the third plea for annulment, the applicant had the opportunity effectively to submit her observations on the two aforementioned factors in her note of 7 December 2015 and during her hearing by the appointing authority on 8 December 2015. It follows that the failure to send the applicant the HRPA Director's note of 25 November 2015 did not actually adversely affect the applicant's interests and does not constitute an infringement of the duty to have regard for the welfare of officials incumbent on the Council.

193 As regards the applicant's second complaint, set out in paragraph 186 above, it should be noted that, as is clear from the case file, during the pre-litigation procedure, the applicant requested that the administration not apply Article 42c of the Staff Regulations to her and, in the alternative, that it postpone the application of that article until after 31 December, as initially provided for.

194 In the light of the case-law cited in paragraph 190 above, the Council could not use the interests of the applicant as a basis for the non-application of Article 42c of the Staff Regulations. Nevertheless, taking into account her interests, the Council did postpone the start-date for her leave until 30 June 2016, therefore granting her request. It follows that, in this case, the Council acted in accordance with its duty to have regard for the welfare of the applicant.

195 As regards the applicant's third complaint, it is sufficient to note that the applicant did not demonstrate, in the context of her second plea for annulment, that the Council's decision to place her on leave in the interests of the service was vitiated by a manifest error of assessment. In so far as the Council's assessment of the interests of the service was not manifestly incorrect, it must be concluded that the applicant's third complaint must be rejected. (*confidential*)

196 On the basis of the foregoing considerations, the present plea, and, therefore, the application for annulment, must be dismissed.

D. The claim for compensation

197 The applicant submits that the contested decision caused her material and non-material damage.

198 The material damage essentially consists of a loss of income due to the contested decision, and the Council should give due effect to the annulment of that decision as regards the applicant's remuneration, taking into account, in particular, the adverse effects on her career advancement.

199 The non-material damage suffered by the applicant was caused by the contested decision itself, which is unjustified and based on reasons which are incorrect. That decision affected the applicant's trust in her institution. The non-material damage suffered is exacerbated by the circumstances in which the contested decision was adopted. (*confidential*). The applicant evaluates the non-material damage suffered *ex aequo et bono* at EUR 10 000.

200 The Council contends, principally, that the applicant's claim for compensation should be rejected.

201 It must be recalled that a claim for compensation in respect of material or non-material damage must be dismissed where it has a direct link with an action for annulment which has itself been dismissed as inadmissible or unfounded (see, to that effect, judgment of 24 April 2017, *HF* v *Parliament*, T-570/16, EU:T:2017:283, paragraph 69 and the case-law cited).

202 In this case, it must be found that the applicant's claim for compensation is closely connected with the application for annulment which has been rejected, in so far as both the material and non-material damage claimed by the applicant was caused by the contested decision and the circumstances of its adoption. In those circumstances, the claim for compensation must be rejected and, consequently, the action must be dismissed in its entirety.

IV. Costs

203 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. However, in accordance with Article 135 of the Rules of Procedure, if equity so requires, the General Court may decide that an unsuccessful party is to pay only a proportion of the costs of the other party in addition to bearing his own costs, or even that he is not to be ordered to pay any costs. Furthermore, the General Court may order a party, even if successful, to pay some or all of the costs, if this appears justified by the conduct of that party, including before the proceedings were brought, especially if he has made the opposite party incur costs which the General Court holds to be unreasonable or vexatious.

204 In this case, it should be noted that the HRPA Director's note of 25 November 2015 was not annexed to the decision rejecting the complaint, contrary to what was stated in paragraph 43 thereof. That note was sent to the applicant only during the procedure before the Court, namely when the Council lodged its defence.

205 It should also be noted that two documents, mentioned in footnotes 8 and 9 of the decision rejecting the complaint, concerning the assessment of the organisational needs carried out in the context of that decision, were not annexed to that decision, contrary to what was stated in those footnotes. Those two documents were eventually sent to the applicant after the hearing, in the context of a measure of organisation of the procedure adopted by the General Court (see paragraph 54 above).

206 The General Court considers that the Council's failure to annex the three abovementioned documents to the decision rejecting the complaint, despite the indication to the contrary in that decision, made it more difficult, in particular, to prepare the application. The failure to annex the documents referred to in paragraph 205 above also contributed to the extension of the oral part of the procedure.

207 In those circumstances, the General Court considers that the Council's conduct justifies ordering the Council to bear its own costs and, moreover, to pay 20% of the costs incurred by the applicant.

208 The Parliament shall bear its own costs, in accordance with Article 138(1) of the Rules of Procedure.

On those grounds,

THE GENERAL COURT (Second Chamber, Extended Composition),

hereby:

1. **Dismisses the action.**

2. **Orders RK to bear 80% of her own costs;**

3. **Orders the Council of the European Union to bear its own costs and 20% of the costs incurred by RK.**

4. **Orders the European Parliament to pay its own costs.**

Prek Buttigieg Schalin

Berke Costeira

Delivered in open court in Luxembourg on 7 February 2019.

[Signatures]

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