Reports of Cases

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

26 July 2023 *

(Action for annulment and compensation – International contracted staff with the EU Special Representative in Bosnia and Herzegovina – Common foreign and security policy – Termination of the employment contract following the withdrawal of the United Kingdom from the European Union – Jurisdiction of the EU Courts – Contractual nature of the dispute – Absence of arbitration clause and jurisdiction clause – Articles 263, 268, 272 and 274 TFEU – Regulation (EU) No 1215/2012 – Admissibility – Identification of the defendants – Concept of 'EU institution, body, office or agency' – Partial lack of competence and inadmissibility)

In Case T-776/20,

Robert Stockdale, residing in Bristol (United Kingdom), represented by N. de Montigny, lawyer,

applicant,

v

Council of the European Union, represented by A. Vitro, M. Bauer and J. Rurarz, acting as Agents,

European Commission, represented by D. Bianchi and G. Gattinara, acting as Agents,

European External Action Service (EEAS), represented by S. Marquardt, K. Kouri, R. Spáč and S. Rodríguez Sánchez-Tabernero, acting as Agents,

and

EU Special Representative in Bosnia and Herzegovina, represented by B. Bajic, acting as Agent, and by E. Raoult, lawyer,

defendants,

THE GENERAL COURT (Seventh Chamber, Extended Composition),

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

Registrar: H. Eriksson, Administrator,

* Language of the case: French.

having regard to the written part of the procedure,

further to the hearing on 17 November 2022,

gives the following

Judgment

1 By his action under Articles 263, 268 and 272 TFEU, the applicant, Mr Robert Stockdale, requests, primarily, (i) that the decision of the European Union Special Representative ('the EUSR') in Bosnia and Herzegovina of 17 November 2020 to terminate his employment contract with effect from 31 December 2020 ('the termination decision') be declared unlawful, and that he be awarded compensation for the damage he allegedly suffered as a result of that decision, (ii) that his contractual relationship with the EUSR in Bosnia and Herzegovina be reclassified as a permanent contract, (iii) that he receive compensation for the damage he allegedly suffered as a result of the failure of the Council of the European Union, the European Commission and the European External Action Service (EEAS) to adopt a clear status applicable to him and, alternatively, that the European Union be declared to be non-contractually liable in the event that his principal claims are dismissed.

Background to the dispute

2 The applicant is a national of the United Kingdom of Great Britain and Northern Ireland, who held the post of Head of Finance and Administration with the EUSR in Bosnia and Herzegovina.

3 The appointment of EUSRs is provided for in Article 33 TEU, a provision falling under Chapter 2, Title V of the Treaty on European Union, on the Common Foreign and Security Policy (CFSP), according to which 'the Council may, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, appoint a special representative with a mandate in relation to particular policy issues. The special representative shall carry out his mandate under the authority of the High Representative'.

4 On 11 March 2002, the Council adopted Joint Action 2002/211/CFSP on the appointment of an EUSR in Bosnia and Herzegovina (OJ 2002 L 70, p. 7).

5 Subsequently, the Council adopted various successive acts by which it appointed, without interruption, an EUSR in Bosnia and Herzegovina for a fixed-term mandate.

6 At the time when the present action was brought, on 29 December 2020, the EUSR in Bosnia and Herzegovina was appointed by Council Decision (CFSP) 2019/1340 of 8 August 2019 appointing the European Union Special Representative in Bosnia and Herzegovina (OJ 2019 L 209, p. 10) for the period from 1 September 2019 to 31 August 2021. His mandate was extended until 31 August 2023 by Council Decision (CFSP) 2021/1193 of 19 July 2021 extending the mandate of the European Union Special Representative in Bosnia and Herzegovina and amending Decision (CFSP) 2019/1340 (OJ 2021 L 258, p. 46).

7 The applicant was recruited under an initial fixed-term contract with the EUSR in Bosnia and Herzegovina, with effect from 15 February 2006 and for a period not exceeding the EUSR's mandate. From 1 March 2007, the applicant concluded 16 successive fixed-term contracts with

the EUSR in Bosnia and Herzegovina. The last fixed-term contract concluded by the applicant ('the contract at issue'), according to Article 5 thereof, ran from 1 September 2019 to 31 August 2021.

8 In parallel with his 17 successive fixed-term contracts, the applicant signed 13 tripartite contracts with the Commission and the EUSR in Bosnia and Herzegovina, appointing him as Interim Head of Office with effect from 1 July 2007.

9 The tripartite contracts in question provided that, in the event of the death or resignation of the EUSR in Bosnia and Herzegovina, accident or illness preventing him from carrying out his duties, or the end of the contribution agreement between the Commission and the EUSR, the applicant would become responsible for managing the funds allocated to the EUSR. The last Interim Head of Office contract was signed by the applicant on 7 October 2019 (the 'Interim Head of Office contract').

10 On 24 January 2020, the representatives of the European Union and the United Kingdom signed the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 7) ('the Agreement on the withdrawal of the United Kingdom'). On 30 January 2020, the Council adopted Decision (EU) 2020/135 on the conclusion of the Agreement on the withdrawal of the United Kingdom (OJ 2020 L 29, p. 1). According to Article 1 of that decision, the Agreement on the withdrawal of the United Kingdom was approved on behalf of the European Union.

11 At midnight on 31 January 2020, the United Kingdom withdrew from the European Union and the European Atomic Energy Community and, on 1 February 2020, the Agreement on the withdrawal of the United Kingdom entered into force, in accordance with Article 185 thereof.

12 Article 126 of the Agreement on the withdrawal of the United Kingdom sets out a transition period starting on the date of entry into force of that agreement and ending on 31 December 2020. During that period, in accordance with Article 127(6) of the same agreement, the reference to 'Member States' in EU law was to be understood as including the United Kingdom.

13 On 24 June 2020, the applicant sent a letter to the EUSR in Bosnia and Herzegovina asking him about his rights and complaining of discrimination in the event that his role should ultimately be deemed redundant if the EUSR's office in Bosnia and Herzegovina were transferred to the EU Delegation in that State, and therefore to the EEAS. In particular, he pointed out that, for the EUSR's international staff, there were no severance or unemployment rights, nor was there any provision for a pension.

14 On 7 July 2020, the EUSR in Bosnia and Herzegovina forwarded the request to the head of the European Commission's Foreign Policy Instruments Service, explaining that the applicant had questions about the terms and conditions of his employment, especially with a view to the likely termination of the contract at issue in connection with the withdrawal of the United Kingdom from the European Union. On 13 July 2020, a head of unit at that service replied that the service was not responsible for human resources management of CFSP staff and recommended that the EUSR in Bosnia and Herzegovina consult the EEAS on the subject. In addition, she emphasised that, as far as the financial aspects of the applicant's request were concerned, no severance payment or pension contribution could be paid to him under the terms of the contract at issue.

15 On 15 September 2020, the EUSR in Bosnia and Herzegovina contacted the EEAS, forwarding the applicant's letter of 24 June 2020.

16 On 28 September 2020, the applicant wrote to the EUSR in Bosnia and Herzegovina, requesting that he obtain further information on whether the applicant could remain employed beyond the end of the transition period, which expired on 31 December 2020 in accordance with the Agreement on the withdrawal of the United Kingdom. After the EUSR referred the matter to the Commission's Foreign Policy Instruments Service, its director replied to him on 2 October 2020 that no exceptions were envisaged for UK nationals and that their contracts would end on 31 December 2020.

17 On 17 November 2020, the EUSR in Bosnia and Herzegovina adopted the termination decision by which he gave notice of termination of the contract at issue, the decision taking effect on 31 December 2020.

18 On 25 November 2020, the applicant wrote to the EUSR in Bosnia and Herzegovina requesting a review of the termination decision.

Forms of orders sought

19 The applicant claims that the Court should:

– principally:

– declare the termination decision unlawful;

– as to the rights arising from his employment contract with the EUSR in Bosnia and Herzegovina:

– reclassify his contractual relationship as a permanent contract,

– rule that he was subject to discrimination as to the ground for dismissal and order, in that respect, the defendants to pay him EUR 10 000, plus interest, in respect of psychological damage,

– declare that the defendants breached their contractual obligations and, in particular, the obligation to serve valid prior notice in the context of the termination of a permanent contract,

– order the defendants to reinstate him or, alternatively, to pay him compensation to be determined in due course and provisionally set at EUR 393 850.08, plus interest;

– as to the other rights based on discriminatory treatment compared with other EU servants:

– declare that he should have been recruited as a member of the temporary staff of the Council, the Commission or the EEAS and declare that those three defendants treated him in a discriminatory manner concerning his remuneration, pension rights and related benefits, and the guarantee of subsequent employment,

– order the Council, the Commission and the EEAS to compensate him for the loss of remuneration, pension, allowances and benefits caused by the infringements of EU law, and to pay interest on those amounts,

– fix a time limit for the parties to set that allowance, taking account of the grade and step in which the applicant should have been recruited, the average increase in remuneration, the development of his career, the allowances which he should then have received under those temporary staff contracts, less the remuneration he actually received;

– alternatively, order the Council, the Commission and the EEAS to compensate him for the non-contractual liability of the European Union, resulting from the failure to respect his fundamental rights, in an amount provisionally set at EUR 400 000;

– order the defendants to pay the costs.

20 In the pleas of lack of competence and inadmissibility raised under Article 130 of the Rules of Procedure of the General Court, the Council, the Commission and the EEAS contend that the Court should:

– dismiss the action as being inadmissible in so far as it concerns them;

– order the applicant to pay the costs.

21 In a plea of lack of competence and inadmissibility raised under Article 130 of the Rules of Procedure, the EUSR in Bosnia and Herzegovina contends, in essence, that the Court should:

– dismiss the action as inadmissible;

– order the applicant to pay the costs.

Law

22 Under Article 130(1) of the Rules of Procedure, if the defendant so requests, the General Court may give a ruling on lack of competence or inadmissibility without going to the substance of the case. Under Article 130(7) of the Rules of Procedure, the Court is to decide on the application as soon as possible or, where special circumstances so justify, reserve its decision until it rules on the substance of the case.

23 In the present case, the defendants applied for a ruling on lack of competence and inadmissibility. In those circumstances, the Court considers it necessary to give a ruling on those applications before going to the substance of the case.

24 In essence, by his action, the applicant submits:

– a principal head of claim relating to the termination decision, by which he claims that the Court should (i) declare the termination decision unlawful, (ii) order the defendants to pay him EUR 10 000 by way of compensation for psychological damage resulting from that decision and (iii) order his reinstatement or, alternatively, order the defendants to pay him EUR 393 850.08 by way of compensation for material damage resulting from that decision ('the first head of claim');

– a principal head of claim relating to the succession of fixed-term contracts concluded with the EUSR in Bosnia and Herzegovina, by which he claims that the Court should (i) reclassify his contractual relationship with the EUSR in Bosnia and Herzegovina as a permanent contract and (ii) find that the defendants breached their contractual obligations and, in particular, the obligation to serve valid prior notice in the context of the termination of a permanent contract ('the second head of claim');

– a principal head of claim based on discriminatory treatment, by which he alleges that the Council, the Commission and the EEAS did not subject international contracted staff recruited under the CFSP to the Conditions of Employment of Other Servants of the European Union ('CEOS'), or did not adopt a legal regime for those staff comparable to the CEOS, and thus claims that the Court should order those three defendants to compensate him for the damage suffered as a result of the absence of such status ('the third head of claim');

– an alternative head of claim, in the event that the first three heads of claim are dismissed, in which he seeks an order against the Council, the Commission and the EEAS to pay him EUR 400 000 on the basis of the non-contractual liability of the European Union resulting from the failure to respect his fundamental rights ('the fourth head of claim').

25 To answer the pleas of lack of competence and inadmissibility, it is necessary, in the present case, to examine (i) whether the Court has jurisdiction to rule on the first and second heads of claim, (ii) whether the formal requirements for the application have been met, (iii) whether the pre-litigation procedure provided for in the Staff Regulations of Officials of the European Union ('the Staff Regulations') has been complied with, and (iv) whether the action is admissible in respect of all the defendants.

The jurisdiction of the Court to rule on the first and second heads of claim in the absence of an arbitration clause

26 In their respective pleadings, the defendants submit that the first and second heads of claim are linked to the contract at issue and are therefore contractual in nature. They also observe that the contract at issue does not include an arbitration clause and argue that this makes it possible to exclude the jurisdiction of the Court on the basis of Article 272 TFEU.

27 At the hearing, the defendants explained that, having regard to the plea alleging the applicant's loss of nationality of a Member State, the termination decision was to be regarded as an act of a public authority separable from the contract at issue. Thus, according to the defendants, the Court has jurisdiction to review the legality of that act on the basis of Article 263 TFEU and therefore to rule on the first head of claim in so far as the applicant seeks the annulment of that act.

28 Conversely, as regards the applicant's other claims made under the first and second heads of claim, the defendants argued, both at the hearing and in response to a question put by the Court in connection with a measure of organisation of procedure, that neither the provisions of the contract at issue nor the provisions of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1; the 'Brussels Ia Regulation') made it possible to identify a competent national court. At the hearing, they argued that such claims could fall within the jurisdiction of the courts of Bosnia and Herzegovina, the place of establishment of the EUSR in Bosnia and Herzegovina and the place of performance of the contract at issue. The EUSR also pointed out that Article 17 of the contract at issue provided for the jurisdiction of an arbitration body, which should be considered to have jurisdiction to rule on the claims, the applicant having failed to demonstrate that the jurisdiction of such a body infringed his right to an effective remedy.

29 For his part, the applicant submits, in essence, that the Court has jurisdiction to rule on the first and second heads of claim on the basis of Article 272 TFEU, pursuant to the arbitration clause contained in the Interim Head of Office contract.

30 Alternatively, the applicant argues that, on the basis of the Brussels Ia Regulation, the Belgian courts could have jurisdiction to rule on the first and second heads of claim and that, in the event that the jurisdiction of the courts of the Member States is excluded, the Court should declare that it had jurisdiction, on the basis of Articles 263 and 268 TFEU, to rule on all the claims made under those heads of claim.

Nature of the first and second heads of claim

31 To determine whether the first and second heads of claim fall within the definition of contractual matters, it should be recalled that, according to the settled case-law of the Court of Justice, an action for annulment for the purposes of Article 263 TFEU must be available in the case of all measures adopted by the institutions, whatever their nature or form, which are intended to have legal effects capable of affecting the interests of the applicant by bringing about a distinct change in his legal position. Therefore, where there is a contract between the applicant and one of the institutions, an action may be brought before the EU judicature on the basis of Article 263 TFEU only where the contested measure aims to produce binding legal effects falling outside of the contractual relationship between the parties and which involve the exercise of public powers conferred on the contracting institution in its capacity as administrative authority (see judgment of 25 June 2020, *SC* v *Eulex Kosovo*, C-730/18 P, EU:C:2020:505, paragraphs 31 and 32 and the case-law cited).

32 Furthermore, in order to determine whether an action has as its object the contractual liability of the European Union or its non-contractual liability, the Courts of the European Union must ascertain whether that action concerns a claim for damages based objectively and comprehensively on rights and obligations of contractual or non-contractual origin. For those purposes, those courts must ascertain, in the light of an analysis of the various elements of the case file, such as, in particular, the rule of law allegedly infringed, the nature of the damage claimed, the conduct complained of and the legal relationship between the parties in question, whether there is a genuine contractual context between them, linked to the subject matter of the dispute, the detailed examination of which is essential in order to rule on that action (see, to that effect, judgment of 18 April 2013, *Commission* v *Systran and Systran Luxembourg*, C-103/11 P, EU:C:2013:245, paragraph 66).

33 In the present case, in the first place, the applicant, by the first head of claim, submits claims relating to the termination decision (see paragraph 24 above).

34 In that regard, it is true that the ground for the termination decision was the fact that, because of the withdrawal of the United Kingdom from the European Union, the applicant no longer had the nationality of a Member State. This meant – according to the EUSR in Bosnia and Herzegovina – that he could no longer remain on his staff.

35 However, contrary to the defendants' submissions at the hearing, that fact does not in itself mean that the termination decision produces binding legal effects falling outside of the contractual relationship between the applicant and the EUSR in Bosnia and Herzegovina and which involve the exercise of public powers, as provided for in the case-law referred to in paragraph 31 above.

36 First, the purpose of the termination decision is the early termination of the contract at issue, such that the effects of that decision do not extend beyond the contract. Second, as noted by the Council in its plea of lack of competence and inadmissibility, Article 16 of the contract at issue provides for the possibility of unilateral termination by either party subject to four weeks' notice. It is thus clear that that decision, by which the EUSR in Bosnia and Herzegovina unilaterally terminated the contract at issue with the requisite notice, was taken on the basis of the powers he derives from that contract. Lastly, the ground for the termination decision is the fact that, from the date of entry into force of the Agreement on the withdrawal of the United Kingdom, the applicant would lose the status of national of a Member State and would therefore no longer meet one of the requirements of the contract at issue. Indeed, the terms of reference, which formed an integral part of the contract at issue, as follows from Articles 1 and 18 thereof, stipulated that the Head of Finance and Administration of the EUSR in Bosnia and Herzegovina should be a citizen of an EU Member State.

37 Accordingly, the termination decision has a direct link with the contract at issue. It follows that the applicant's claims under the first head of claim, closely linked to that decision (see paragraph 24, first indent, above), arise from the contract at issue and are therefore contractual in nature.

38 In the second place, by the second head of claim, the applicant submits claims regarding his entire employment relationship with the EUSR in Bosnia and Herzegovina, which was made up of successive fixed-term contracts and which the applicant claims should be reclassified as a permanent contract. Therefore, the applicant's claims under the second head of claim are also contractual in nature, in so far as they arise from all the successive fixed-term contracts he concluded with the EUSR.

The jurisdiction of the General Court to rule on the first and second heads of claim under Article 272 TFEU

39 Under Article 272 TFEU, 'the Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Union, whether that contract be governed by public or private law'.

40 The jurisdiction of the General Court is limited to that set out in Article 256 TFEU, as specified in Article 51 of the Statute of the Court of Justice of the European Union. Under those provisions, the General Court may adjudicate at first instance on contractual disputes only where these are brought before it on the basis of an arbitration clause. In the absence of such a clause, to do so

would be to extend its jurisdiction beyond the limits placed by Article 274 TFEU on the disputes of which it may take cognisance, since that article specifically gives national courts or tribunals ordinary jurisdiction over disputes to which the European Union is a party (see, to that effect, judgment of 8 May 2007, *Citymo* v *Commission*, T-271/04, EU:T:2007:128, paragraph 53, and order of 30 September 2014, *Bitiqi and Others* v *Commission and Others*, T-410/13, not published, EU:T:2014:871, paragraph 26).

41 In the present case, it should be noted that the successive employment contracts of the applicant, on which the first and second heads of claim are based, do not contain an arbitration clause giving jurisdiction to the General Court as the court hearing the contractual dispute.

42 Moreover, the applicant cannot rely on the arbitration clause contained in the Interim Head of Office contract to establish the jurisdiction of the Court.

43 First, the Interim Head of Office contract is not intended to establish an employment relationship between the applicant and the other parties to the contract, but to assign to him certain specific duties. Moreover, as the Council points out, this is an annex to the contribution agreement concluded periodically between the Commission and the EUSR in Bosnia and Herzegovina within the framework of the delegation granted to the EUSR for the implementation of the budget, in accordance with the first sentence of Article 5(3) of Decision 2019/1340 ('the management of the expenditure shall be subject to a contract between the EUSR [in Bosnia and Herzegovina] and the Commission').

44 Second, the Interim Head of Office contract is ancillary to the applicant's fixed-term contracts. Indeed, under the terms of Article 8 of the Contribution Agreement concluded by the Commission and the EUSR in Bosnia and Herzegovina and bearing the reference CFSP/2019/15, 'the Interim Head of Office must belong to the staff of the EUSR [in Bosnia and Herzegovina]'. Furthermore, according to the Interim Head of Office contract, which refers in its preamble to Article 8 of the Contribution Agreement CFSP/2019/15, it is provided that, 'should the Interim Head of Office be a member of staff employed by the EUSR [in Bosnia and Herzegovina], his remuneration, rights and obligations shall continue in accordance with the terms and conditions of his employment contract'.

45 Lastly, the Interim Head of Office contract is conditional, since it is likely to apply only in certain situations involving the EUSR in Bosnia and Herzegovina, such as death, incapacity or resignation, or in the event of a vacancy between successive mandates of two EUSRs in Bosnia and Herzegovina (see paragraph 9 above). However, at the date of the termination decision, by which the applicant's duties with the EUSR in Bosnia and Herzegovina ended, none of the above conditions had been fulfilled, such that the Interim Head of Office contract did not have to be implemented.

46 In view of the foregoing, in the absence of an arbitration clause in the applicant's fixed-term contracts, the Court does not have jurisdiction to rule on the first and second heads of claim under Article 272 TFEU.

The jurisdiction of the Court to rule on the first and second heads of claim under Articles 263 and 268 TFEU

47 As noted in paragraphs 37 and 38 above, the applicant's claims made under the first and second heads of claim arise from his employment contracts, which do not contain an arbitration clause giving jurisdiction to the General Court as the court hearing the contractual dispute under Article 272 TFEU (see paragraph 41 above). Consequently, in accordance with the principles summarised in paragraph 40 above, those heads of claim fall, in principle, within the jurisdiction of the national courts under Article 274 TFEU.

48 Nevertheless, when – in the context of a contractual dispute – the EU judicature declines the jurisdiction conferred on it by Articles 263 and 268 TFEU, it is to ensure that those provisions are interpreted consistently with Articles 272 and 274 TFEU and, accordingly, to preserve the coherence of the judicial system of the European Union, which is a complete system of legal remedies and procedures designed to ensure review of the legality of acts of the institutions, bodies, offices and agencies of the European Union, and compensation for the damage caused by the European Union (see, to that effect, judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraphs 80 to 82).

49 Therefore, in the context of a contractual dispute, the EU judicature may not decline the jurisdiction conferred on it by the TFEU when this has the effect of exempting from any judicial review, either by the EU courts or the national courts, the acts of the institutions, bodies, offices and agencies of the European Union or a claim for compensation for damage caused by the European Union (see, to that effect, judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraphs 84 and 85).

50 In those circumstances, despite the contractual nature of the first and second heads of claim, to ensure that an effective judicial review exists, the Court may decline the jurisdiction conferred by Articles 263 and 268 TFEU only once it has satisfied itself that the applicant may bring such claims before a national court under Article 274 TFEU – that is to say, a court of a Member State.

51 Therefore, it cannot be accepted that, as the defendants submitted at the hearing, those heads of claim could fall within the jurisdiction of the Bosnian courts, which are not courts of a Member State. Similarly, the argument of the EUSR in Bosnia and Herzegovina that the applicant had the option of referring the matter to the arbitration body provided for in Article 17 of the contract at issue for a ruling on those heads of claim must be rejected, since such a body cannot be considered to have jurisdiction to the exclusion of the courts of the European Union or the courts of the Member States, even if it meets the criteria of independence and impartiality.

52 In view of the foregoing, it is necessary to ascertain whether the content of the contract at issue or, failing that, the applicable rules of EU law, make it possible to identify a court of a Member State with jurisdiction to rule on the first and second heads of claim.

– *Contractual provisions*

53 In the first place, it should be noted that none of the applicant's employment contracts contained a clause giving jurisdiction to the court of a Member State. Indeed, apart from the first employment contract, those contracts only contained a clause relating to the 'settlement of disputes', pursuant

to which the matter could be referred to an arbitration body in the event of a failed attempt at an amicable settlement of the dispute between the parties to those contracts, the arbitral award not being subject to appeal.

54 In the second place, it is apparent from Articles 1 and 18 of the contract at issue that the applicant undertook to comply with the Standard Operating Procedures of the EUSR in Bosnia and Herzegovina, a general document applying to all members of the EUSR's staff. As regards the remedies available to members of staff, Chapter 11 of the Standard Operating Procedures, entitled 'Appeals and Disputes', includes an Article 11.1, entitled 'Appeals', which provides that a member of staff of the EUSR in Bosnia and Herzegovina may submit an appeal against an act adversely affecting him or her to the EUSR, and an Article 11.2, entitled 'Settlement of disputes', which only provides for the possibility of recourse to an arbitration body whose awards are not subject to appeal.

55 It follows from the foregoing that the applicant's employment contracts do not make it possible to identify a court of a Member State with jurisdiction to rule on the first and second heads of claim.

– *Provisions of EU law*

56 With regard to the provisions of EU law relating to the jurisdiction of the courts of the Member States, the EU legislature adopted the Brussels Ia Regulation, which – as is clear from recitals 4 and 15 thereof – seeks to unify the rules of conflict of jurisdiction in civil and commercial matters by means of highly predictable rules of jurisdiction. Therefore, the purpose of that regulation is to strengthen the legal protection of persons established in the European Union by enabling the applicant to identify easily the court in which he or she may sue and a normally well-informed defendant to reasonably foresee in which court he or she may be sued (judgment of 4 October 2018, *Feniks*, C-337/17, EU:C:2018:805, paragraph 34).

57 Contrary to the defendants' arguments during the hearing, it must be considered that the Brussels Ia Regulation applies in the present case. In that regard, Article 1(1) thereof provides that 'this Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*)'. However, in the present case, it can be inferred from paragraph 36 above that the termination decision does not constitute an act of State authority within the meaning of Article 1(1) of the Brussels Ia Regulation, but is based on the contract at issue. Therefore, the first head of claim relates to civil and commercial matters within the meaning of Article 1 of that regulation. Likewise, it can be inferred from the points made in paragraph 38 above that the second head of claim also relates to the same matters.

58 Since, in the present case, the first and second heads of claim concern a dispute of a contractual nature which is intended to fall within the general jurisdiction of the national courts under Article 274 TFEU (see paragraph 40 above), it is necessary to examine whether the provisions of the Brussels Ia Regulation make it possible to identify a court of a Member State with jurisdiction to rule on them.

59 For individual employment contracts, the rules of jurisdiction are laid down in Article 21 of the Brussels Ia Regulation, which reads as follows:

'1. An employer domiciled in a Member State may be sued:

(a) in the courts of the Member State in which he is domiciled; or

(b) in another Member State:
(i) in the courts for the place where or from where the employee habitually carries out his work or in the courts for the last place where he did so; or
(ii) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

2. An employer not domiciled in a Member State may be sued in a court of a Member State in accordance with point (b) of paragraph 1.'

60 In the first place, the application of Article 21 of the Brussels Ia Regulation confers jurisdiction on the national court of the place of residence of the employer, such that it is necessary to identify the applicant's employer.

61 In that respect, according to the case-law of the Court of Justice, a worker has a hierarchical relationship with his or her employer, the existence of which must, in each particular case, be assessed on the basis of all the factors and circumstances characterising the relationship between the parties (see, to that effect, judgment of 20 October 2022, *ROI Land Investments*, C-604/20, EU:C:2022:807, paragraphs 30 to 32). Therefore, to determine who a worker's employer is, it is necessary to identify the entity which actually exercises authority over the worker, which bears, in reality, the relevant wage costs, and which has the actual power to dismiss that worker (see, to that effect, judgment of 16 July 2020, *AFMB and Others*, C-610/18, EU:C:2020:565, paragraphs 56 and 61).

62 In the present case, it should first be noted that the applicant concluded all of his employment contracts with the EUSR in Bosnia and Herzegovina, who was designated therein as the 'employer'.

63 Second, according to Article 6(1) of Decision 2019/1340, the EUSR in Bosnia and Herzegovina is 'responsible for constituting a team', 'within the limits of [his] mandate and the corresponding financial means made available' and he must 'keep the Council and the Commission promptly informed of the composition of the team'. Article 6(2) of the same decision provides that 'Member States, institutions of the Union and the EEAS may propose the secondment of staff to work with the EUSR [in Bosnia and Herzegovina]', that 'the salary of such seconded personnel shall be covered by the Member State, the institution of the Union concerned or the EEAS, respectively' and that 'international contracted staff shall have the nationality of a Member State'.

64 On the one hand, it follows from those provisions that the EUSR in Bosnia and Herzegovina may recruit international contracted staff, whom the EUSR may choose independently from the Council, the Commission or the EEAS; it is only after making his or her choice that he or she must inform the Council and the Commission, as confirmed at the hearing. On the other hand, it follows from the same provisions that the remuneration of members of the international contracted staff recruited by the EUSR is deducted from the budget allocated to the EUSR, such that it is he or she who bears the actual cost of that remuneration.

65 Lastly, as noted in paragraph 54 above, the EUSR in Bosnia and Herzegovina has adopted Standard Operating Procedures that apply to all staff members working with him or her and are referred to in the contract at issue. From these, it is apparent that:

– the EUSR in Bosnia and Herzegovina has the power to dismiss his or her contract staff members (see Article 12.2);

– the decision to renew the contract of an international contract staff member may only be taken on the initiative and at the absolute discretion of the EUSR in Bosnia and Herzegovina (see Article 5.6);

– the EUSR in Bosnia and Herzegovina is the disciplinary authority for his or her staff members (see Article 10.2.5);

– the EUSR in Bosnia and Herzegovina is responsible for the annual performance appraisal of his or her staff members with more than six months of engagement (see Article 5.4);

– the EUSR in Bosnia and Herzegovina fixes the working hours and working time of his or her staff and must approve any change in normal working hours as well as any request for overtime, which is compensated with additional leave days or, in exceptional circumstances, subject to the authorisation of the EUSR in Bosnia and Herzegovina, by the payment of compensation (see Article 7.1);

– the EUSR in Bosnia and Herzegovina must approve any request for annual or special leave from a member of his or her staff and it is he or she who may, on an exceptional basis, grant a contracted staff member compensation for leave not taken before the end of his or her contract (see Articles 7.2 and 7.3).

66 In those circumstances, for the performance of his employment contracts, the applicant was placed under the effective authority of the EUSR in Bosnia and Herzegovina, who was therefore his employer within the meaning of Article 21 of the Brussels Ia Regulation.

67 However, since the EUSR in Bosnia and Herzegovina is established in Sarajevo (Bosnia and Herzegovina), the court of his place of residence is not under the jurisdiction of a Member State. Thus, Article 21(1)(a) of the Brussels Ia Regulation does not make it possible to identify a court of a Member State with jurisdiction to rule on the first and second heads of claim.

68 In the second place, the applicant's employment contracts were also to be performed in Sarajevo. This is apparent, with regard to the contract at issue, from Article 3 thereof and the applicant's terms of reference attached to that contract. Therefore, Article 21(1)(b)(i) of the Brussels Ia Regulation does not make it possible to identify, on the basis of the place where the applicant carried out his work, a court of a Member State with jurisdiction to rule on the first and second heads of claim.

69 In the third place, it is not apparent from the documents in the file that the applicant habitually carried out his work in several countries, such that the rules of jurisdiction provided for in Article 21(1)(b)(ii) of the Brussels Ia Regulation do not apply to his situation.

70 In the fourth place, the applicant relies on Article 20(2) of the Brussels Ia Regulation, which means considering an employer who is not domiciled in a Member State to be domiciled in the Member State in which that employer has a branch, agency or other establishment. For that provision to apply, the dispute must concern acts relating to the management of those entities or commitments entered into by them on behalf of the parent body, if those commitments are to be performed in the State in which the entities are situated (see, to that effect, judgment of 19 July 2012, *Mahamdia*, C-154/11, EU:C:2012:491, paragraph 48 and the case-law cited).

71 In the present case, however, it cannot be inferred that the applicant's real employer – namely the EUSR in Bosnia and Herzegovina – has a branch, agency or any other establishment on the territory of a Member State, nor a fortiori that the first and second heads of claim concern acts relating to such entities.

72 Similarly, as the applicant states, the Council, the Commission and the EEAS all have their seat in Brussels (Belgium), while Article 8(1) of the Brussels Ia Regulation allows, where there are a number of defendants, for them all to be sued in the courts for the place where any one of them is domiciled. Nevertheless, it is clear from the case-law of the Court of Justice that that provision is not intended to apply to a defendant who is not domiciled in another Member State, in the case where he or she is sued in proceedings brought against several defendants, some of whom are also persons domiciled in the European Union (see, to that effect, judgment of 11 April 2013, *Sapir and Others*, C-645/11, EU:C:2013:228, paragraph 56). Thus, Article 8(1) of that regulation does not allow the applicant to sue the EUSR in Bosnia and Herzegovina before the courts of Brussels as regards the first and second heads of claim.

73 Moreover, under Article 20(1) of the Brussels Ia Regulation, Article 8(1) of that regulation only applies – as regards employment contracts – 'in the case of proceedings brought against an employer'. However, as observed in paragraph 66 above, the applicant's employer was the EUSR in Bosnia and Herzegovina. Thus, the first and second heads of claim, in so far as the application names the Council, the Commission and the EEAS as defendants, all three of which have their seat in Brussels, do not constitute proceedings brought against an employer. Therefore, the rule laid down in the latter provision does not apply.

74 It follows from the foregoing that, with regard to the first and second heads of claim relating to the contract at issue, Article 6(1) of the Brussels Ia Regulation should, in principle, apply. This is a general provision according to which, 'if the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall … be determined by the law of that Member State'.

75 The application of Article 6(1) of the Brussels Ia Regulation would imply that the jurisdiction of a national court is random, to the extent that it is the law of each Member State that determines whether the courts of that Member State may hear the dispute, with the possible consequence that, ultimately, no court of a Member State has jurisdiction. Such an outcome is particularly likely in the present case since – like the EUSR in Bosnia and Herzegovina – the applicant is domiciled in a third country (the United Kingdom). Furthermore, it is not obvious that the present dispute has a connection with either Member State, which would justify a court in that State having jurisdiction.

76 However, as noted in paragraphs 48 and 49 above, the Court may not, in the context of a contractual dispute involving the European Union, decline the jurisdiction conferred on it by Articles 263 and 268 TFEU when this leads to the exclusion from any judicial review, by the

courts of the European Union or by the courts of the Member States, of decisions adopted by an institution, body, office or agency of the European Union or an application for compensation for the damage caused by the European Union.

77 In those circumstances, it is for the Court to examine whether the claims made under the first and second heads of claim fall within the jurisdiction it derives from those provisions and, if so, to declare that it has jurisdiction to rule on those claims.

78 In that respect, the Court has jurisdiction, on the basis of Article 263 TFEU, to rule on the claim made by the applicant under the first head of claim, concerning the legality of the termination decision, which is a decision adopted by an EU entity established under the Treaties, namely the EUSR in Bosnia and Herzegovina, and which must therefore be imputed to an EU institution, body, office or agency. Thus, it must be considered that under that head of claim, the applicant seeks the annulment of that decision. Similarly, in so far as, under that head of claim, the applicant seeks financial compensation for the psychological damage allegedly suffered as a result of the termination decision, that claim must be regarded as seeking to establish non-contractual liability on the part of the European Union, for which the Court has jurisdiction on the basis of Article 268 TFEU.

79 As to the request made by the applicant under the first head of claim for the Court to order his reinstatement as a member of staff of the EUSR in Bosnia and Herzegovina, that request must be dismissed on the ground that the Court lacks jurisdiction to hear it.

80 Indeed, according to case-law, the Courts of the European Union cannot, in principle, issue orders to an EU institution, body, office or agency without encroaching upon the prerogatives of the administration (see judgments of 2 October 2014, *Strack* v *Commission*, C-127/13 P, EU:C:2014:2250, paragraph 145 and the case-law cited, and of 9 September 2020, *P. Krücken Organic* v *Commission*, T-565/18, not published, EU:T:2020:395, paragraph 23 and the case-law cited). That principle applies, in general, in an action for damages by which an applicant seeks an order requiring the defendant institution to take specific measures to compensate for the alleged damage (see, to that effect, orders of 14 January 2004, *Makedoniko Metro and Michaniki* v *Commission*, T-202/02, EU:T:2004:5, paragraph 53, and of 17 December 2008, *Portela* v *Commission*, T-137/07, not published, EU:T:2008:589, paragraph 46).

81 Admittedly, Article 268 and the second paragraph of Article 340 TFEU, relating to the non-contractual liability of the European Union, allow the grant of compensation in kind, which may, if necessary, if it accords with the general principles of non-contractual liability common to the laws of the Member States, take the form of an injunction to do or not to do something, which may lead the defendant institution to adopt a given conduct (order of 3 September 2013, *Idromacchine and Others* v *Commission*, C-34/12 P, not published, EU:C:2013:552, paragraph 29; see also, to that effect, judgment of 10 May 2006, *Galileo International Technology and Others* v *Commission*, T-279/03, EU:T:2006:121, paragraph 63).

82 Nevertheless, such a scenario can only be envisaged in certain cases, where the applicant is claiming damage that cannot be entirely remedied by compensation, and whose specific characteristics require an injunction to do or not to do something, particularly if that injunction is intended to address the root cause of damage where the effects are ongoing. That is not the case here, since the applicant was able to quantify the extent of the material damage he allegedly suffered as a result of the termination decision, which he estimates at EUR 393 850.08, or the salary he did not receive for three years owing to his dismissal.

83 Furthermore, in so far as, under the first head of claim, the applicant requests, as an alternative to his request for reinstatement, that the defendants should be ordered to pay him EUR 393 850.08 as compensation for the material damage allegedly suffered as a result of the termination decision, that request must be regarded as seeking to establish non-contractual liability on the part of the European Union, for which the Court has jurisdiction on the basis of Article 268 TFEU.

84 Lastly, as regards the second head of claim, the request that the Court should order the reclassification of his employment contract as a permanent contract must be regarded as an application for the Court to issue directions to the EUSR in Bosnia and Herzegovina, as the applicant's employer (see paragraph 66 above). However, according to the case-law referred to in paragraph 80 above, the Court does not have jurisdiction to rule on an application of that type. Furthermore, even supposing that such an application were to be regarded as seeking to make good damage caused by the failure to conclude a permanent contract, it would not be a situation in which the Court could issue directions, in the light of the case-law referred to in paragraph 81 above. Indeed, any damage caused by the failure to conclude a contract for a certain consideration could, if necessary, be compensated by the Court ordering the European Union to pay a sum of money to the applicant.

85 In addition, the other request made under the second head of claim seeking a declaration from the Court that the defendants breached their contractual obligations is not made in support of an application for annulment within the meaning of Article 263 TFEU. Nor is that request made in support of a claim for compensation, which the Court could examine under Article 268 TFEU. Accordingly, such a request must be regarded as seeking only that the Court make an abstract ruling. However, the powers that the Court derives from the Treaties, and in particular from Articles 263 and 268 TFEU, do not allow it to adopt a position by means of a general declaration or statement of principle (see, to that effect, order of 9 December 2003, *Italy* v *Commission*, C-224/03, not published, EU:C:2003:658, paragraphs 20 and 21; order of 25 October 2011, *DMA Die Marketing Agentur and Hofmann* v *Austria*, T-472/11, not published, EU:T:2011:631, paragraph 10; and judgment of 21 March 2012, *Fulmen and Mahmoudian* v *Council*, T-439/10 and T-440/10, EU:T:2012:142, paragraph 41).

86 Therefore, the second head of claim must be dismissed, in its entirety, on the ground of lack of competence of the Court.

Conclusion

87 In view of all of the foregoing, first, the pleas should be dismissed in so far as they are based on the lack of competence of the Court to rule on the first head of claim in respect of the application for annulment of the termination decision, for which the Court has jurisdiction on the basis of Article 263 TFEU, and in respect of the applicant's claims for financial compensation for the psychological and material damage allegedly suffered as a result of that decision, for which the Court has jurisdiction on the basis of Article 268 TFEU.

88 Second, the application made under the first head of claim for an order reinstating the applicant as a member of staff of the EUSR in Bosnia and Herzegovina must be dismissed on the ground of lack of competence.

89 Third, the second head of claim must also be dismissed on the ground of lack of competence.

Pleas of inadmissibility arising from non-compliance with the formal requirements of the application

90 The Council, the EEAS and the EUSR in Bosnia and Herzegovina argue that the application disregards the formal requirements imposed by Article 76 of the Rules of Procedure. Jointly or separately, they rely on the lack of clarity (i) of the form of order sought as a whole, (ii) of its legal basis, (iii) of the fourth head of claim in particular and (iv) of the pleas relied on in support of the heads of claim.

91 Under the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union, which is applicable to proceedings before the General Court in accordance with the first paragraph of Article 53 thereof, and Article 76(d) of the Rules of Procedure of the General Court, all applications must contain the subject matter of the proceedings, the pleas in law and arguments relied on and a summary of those pleas in law. Those particulars must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the action, if necessary without other supporting information. In order to guarantee legal certainty and the sound administration of justice it is necessary, if an action is to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the text of the application itself (see judgment of 25 January 2018, *BSCA* v *Commission*, T-818/14, EU:T:2018:33, paragraph 95 and the case-law cited).

92 Furthermore, it is for the applicant to choose the legal basis of its action and not for the EU judicature itself to choose the most appropriate legal basis (see judgment of 15 March 2005, *Spain* v *Eurojust*, C-160/03, EU:C:2005:168, paragraph 35 and the case-law cited).

93 Lastly, an application seeking compensation for damage caused by an EU institution must state the evidence from which the conduct which the applicant alleges against the institution can be identified, the reasons why the applicant considers that there is a causal link between the conduct and the damage it claims to have suffered, and the nature and extent of that damage (see judgment of 2 March 2010, *Arcelor* v *Parliament and Council*, T-16/04, EU:T:2010:54, paragraph 132 and the case-law cited).

94 It is in the light of those considerations that the present pleas of inadmissibility must be examined.

95 In addition, having regard to the dismissal, due to the lack of competence of the Court, of the applicant's request seeking his reinstatement as a member of staff of the EUSR in Bosnia and Herzegovina and his requests made under the second head of claim (see paragraphs 88 and 89 above), the examination of the pleas of inadmissibility should be confined to the applicant's other requests.

The plea of inadmissibility based on the lack of clarity of the form of order sought by the applicant as a whole

96 The Council states that the *petitum* of the application lists three heads of claim, whereas the part of the application containing the legal arguments lists only two.

97 Nevertheless, it is clear from the form of order sought by the applicant, as set out at the beginning and end of the application, and summarised in paragraph 24 above, that the applicant's heads of claim consist of three principal claims and one alternative claim.

98 Contrary to the Council's submission, this presentation is consistent with the reference to two heads of claim in the part of the application devoted to the legal arguments. From reading that part of the application, it is apparent that, on the one hand, the reference in the application to a first principal head of claim refers to the three principal claims set out in the form of order summarised in paragraph 24, first to third indents, above. On the other hand, the second head of claim referred to in the application is alternative and thus corresponds to the fourth head of claim summarised in the fourth indent of paragraph 24 above.

99 Therefore, the plea of inadmissibility based on the lack of clarity of the form of order sought by the applicant as a whole must be dismissed.

Plea of inadmissibility alleging lack of clarity of the legal basis of the action

100 The Council, the EEAS and the EUSR in Bosnia and Herzegovina submit that the legal basis for the action is not sufficiently clear.

101 It is true that the application is somewhat vague as regards the provisions on the basis of which it was lodged. The first page of the application contains the heading 'Action for annulment and damages', where it is stated that the applicant is bringing an action for annulment and damages pursuant to Articles 263, 268 and 272 TFEU.

102 In the first place, however, despite the lack of clarity of the application, from reading the parts relating to the jurisdiction of the Court and the legal arguments, it is apparent that the applicant submitted the first principal head of claim to the Court on the basis of Article 272 TFEU and the arbitration clause contained in the Interim Head of Office contract. Moreover, it is clear from the application that that head of claim is relied on, alternatively, on the basis of Articles 263 and 268 TFEU, as the applicant confirmed at the hearing.

103 In the second place, by the third head of claim, the applicant seeks compensation for damage linked to decisions purportedly made by the Council, the Commission and the EEAS regarding the recruitment and management policy in respect of international contracted staff hired by the EUSR in Bosnia and Herzegovina, on the basis of Article 268 TFEU, which the applicant confirmed in his observations on the pleas of lack of competence and inadmissibility.

104 In the third place, the fourth alternative head of claim, in the event of the principal heads of claim being dismissed, specifically refers to the non-contractual liability of the European Union. It follows that this head of claim is based on Article 268 TFEU.

105 In the light of the foregoing, the plea of inadmissibility based on the lack of clarity of the legal basis of the action must be dismissed.

Plea of inadmissibility alleging lack of clarity of the fourth head of claim in particular

106 The Council argues that the fourth head of claim does not set out in a sufficiently clear manner the three conditions establishing the non-contractual liability of the European Union.

107 In addition, the Commission argues, in essence, that the fourth head of claim lacks clarity in so far as the applicant does not determine the respective share of liability of the various defendants, nor the fault that can be attributed to them. However, EU law does not recognise collective and blanket liability.

108 Despite these objections, it is sufficiently clear from the content of the application that the applicant's fourth head of claim is put forward in the alternative, in the event that his first three heads of claim are dismissed as inadmissible or unfounded. According to the applicant, any such dismissal would have to be attributed to the failure by the Council, the Commission and the EEAS to adopt a sufficiently clear legal framework allowing him, inter alia, to bring proceedings before an identifiable court in accordance with detailed rules. The applicant thus alleges an infringement of the principle of equal treatment and non-discrimination, the principle of legal certainty, the principle of the protection of legitimate expectations and the principle of good administration, as well as a failure to uphold the duty to have regard for the interests of officials. He therefore seeks compensation for damage estimated at EUR 400 000.

109 As for the Commission's argument based on the lack of identification of the failings attributed to each of the three defendants under the fourth head of claim, such a circumstance does not prevent that head of claim from being admissible, since the content of the application suggests that the applicant considers that the defendants could all have been involved in adopting a general regime applicable to CFSP contract staff. Similarly, the Commission wrongly criticises the applicant for not having determined the respective share of liability of each of the defendants. Contrary to its argument, it is clear from the judgment of 13 November 1973, *Werhahn Hansamühle and Others* v *Council and Commission* (63/72 to 69/72, EU:C:1973:121, paragraph 8), that, in the context of an action for non-contractual liability, an order applied for jointly against several institutions against which the matter giving rise to liability is alleged is not inadmissible.

110 Consequently, the plea of inadmissibility based on the lack of clarity of the fourth head of claim must be dismissed.

Plea of inadmissibility alleging lack of clarity of the pleas relied on with regard to the various heads of claim

111 In the Council's view, the application does not clearly state the pleas in law relating to each of the heads of claim.

112 In that regard, it must be considered, first, that in support of the first head of claim, the applicant relies on a single plea alleging an infringement of the principle of equal treatment in general and, in so far as he is protected by English law, in particular. The applicant claims that that infringement arises from the ground for the termination decision – namely, the applicant's nationality. The applicant also claims to have been the victim of unequal treatment compared with other staff from the United Kingdom subject to the Conditions of Employment of Other Servants of the European Union ('CEOS'), since, by virtue of a derogation offered to them, they could remain in post despite the withdrawal of the United Kingdom from the European Union. Furthermore, the application suggests that the applicant is seeking an order for the defendants to pay him compensation of EUR 10 000 for psychological damage suffered as a result of the allegedly discriminatory ground for the termination decision, and compensation of EUR 393 850.08 for material damage linked to that decision.

113 Second, it is apparent from the content of the application that, by the third head of claim, the applicant criticises the Council, the Commission and the EEAS for having failed to adopt a legal regime comparable to that of the CEOS with a view to applying it to international contracted staff recruited under the CFSP, and in particular by the EUSR in Bosnia and Herzegovina, or alternatively for having failed to apply the CEOS to those staff. The applicant argues that such a failure is contrary to Article 336 TFEU and resulted in a system that is discriminatory against the international contracted staff of the EUSR in Bosnia and Herzegovina, compared with contract staff subject to the CEOS, particularly those working for the same EUSR in his capacity as Head of Delegation of the European Union to that State. According to the applicant, this unequal treatment caused him damage corresponding to the amount of the entitlements and benefits he would have received had he been hired as a temporary member of staff subject to the CEOS, for which he seeks compensation under this head of claim.

114 Third, with regard to the fourth head of claim, the applicant argues in essence that, should his first three heads of claim be dismissed, such a dismissal would be due to the absence of a sufficiently clear legal framework allowing him to bring a case before a court in accordance with precise rules and procedures (see paragraph 108 above). In the application, the applicant submits that, by failing to provide that legal framework, the Council, the Commission and the EEAS infringed the principle of equal treatment and non-discrimination, the principle of legal certainty, the principle of protection of legitimate expectations and the principle of good administration, and failed to uphold its duty to have regard for the interests of officials.

115 It is true that a number of the pleas put forward in the fourth head of claim, based on an infringement of the purported principle of protection of individuals and of the European Code of Good Administrative Behaviour, are not expanded upon further to explain what those infringements consist of. However, although those pleas do not meet the requirements of Article 76(d) of the Rules of Procedure, such a finding does not render inadmissible the fourth head of claim as a whole, which is sufficiently supported by the pleas set out in paragraph 114 above.

Conclusion

116 In view of all of the foregoing, the pleas of inadmissibility based on the applicant's failure to comply with the formal requirements imposed by Article 76 of the Rules of Procedure are dismissed.

Plea of inadmissibility alleging the inadmissibility of the third and fourth heads of claim for non-compliance with the pre-litigation procedure provided for in Articles 90 and 91 of the Staff Regulations

117 The Council submits that the third and fourth heads of claim are inadmissible in so far as they were not preceded by the pre-litigation phase provided for under Article 270 TFEU. According to the Council, since, under those heads of claim, the applicant is seeking compensation for damage corresponding to the amounts he would have received had his successive fixed-term contracts been concluded – no longer with the EUSR in Bosnia and Herzegovina, but with an authority able to conclude contracts under the CEOS – he should, in accordance with Article 90(1) of the Staff Regulations, have submitted a request for the reclassification of those contracts and a compensation claim to the authority he considers competent.

118 Article 270 TFEU, read in conjunction with Article 256(1) TFEU, gives the Court jurisdiction in 'any dispute between the Union and its servants within the limits and under the conditions laid down in the Staff Regulations … and the [CEOS]'. The means of redress available and, in particular, the relevant time limits and procedural rules, are laid down in Articles 90 and 91 of the Staff Regulations, to which Article 46 of the CEOS refers.

119 In that regard, it is clear from the case-law that those means of redress do not apply only to persons who have the status of officials or employees other than local staff; they also apply to persons claiming that status (see judgment of 23 January 1997, *Coen*, C-246/95, EU:C:1997:33, paragraph 17 and the case-law cited).

120 In the present case, it should be pointed out that, by the third head of claim, introduced on the basis of Article 268 TFEU, the applicant claims that the Court should order the Council, the Commission and the EEAS to compensate him for the damage he has suffered as a result of their alleged failure to enact a regime applicable to international contracted staff working for the EUSR in Bosnia and Herzegovina or, at the very least, for not having extended the application of the CEOS to those staff. Such a failure meant that the applicant was automatically hired as a contract staff member of the EUSR in Bosnia and Herzegovina under fixed-term contracts subject to English law, which meant that he was discriminated against compared with temporary members of staff working for the same EUSR and subject to the CEOS.

121 It is in that context that the applicant submits that he should have been granted the status of temporary member of staff of the EEAS (there being no other applicable legal status), and seeks compensation for damage corresponding to the allowances and benefits he could have claimed as a temporary member of staff recruited under the CEOS, in the absence of another comparison framework. Moreover, in his observations on the pleas of lack of competence and inadmissibility, the applicant stated that he does not seek the reclassification of his contract as a temporary member of staff.

122 As for the fourth head of claim, the applicant does not claim the status of temporary member of staff under the CEOS, but alternatively seeks, in essence, in the event that the first three heads of claim are dismissed, compensation for the damage suffered in the absence of a clear legal regime allowing him, inter alia, access to a court.

123 In those circumstances, the claims for damages made in the third and fourth heads of claim fall under Article 268 TFEU and not under Article 270 TFEU, such that the applicant cannot be accused of not having complied with the pre-litigation procedure provided for in Articles 90 and 91 of the Staff Regulations.

124 It follows that the plea of inadmissibility based on the inadmissibility of the third and fourth heads of claim for non-compliance with the pre-litigation procedure provided for in Articles 90 and 91 of the Staff Regulations must be dismissed.

Pleas of inadmissibility relating to the identification of the defendant(s)

125 The Council, the Commission and the EEAS dispute that they can be the defendant in respect of the first and second heads of claim, given that they were never parties to the contract at issue and that their role as regards the EUSR in Bosnia and Herzegovina does not involve managing his

contract staff. The termination decision in particular is not imputable to them, since it was adopted by the EUSR in Bosnia and Herzegovina, which should be regarded as a body, office or agency of the European Union capable of being the defendant for the first head of claim.

126 Furthermore, as regards the third head of claim, the Commission argues that it is not responsible for the decision to use a succession of fixed-term contracts for international contracted staff hired by CFSP entities. It observes that it is for the Council to adopt, where appropriate, decisions establishing the status of CFSP staff.

127 For his part, the applicant explains that he had named four defendants in the application in view of the lack of independence of the EUSR in Bosnia and Herzegovina, who is subordinate both to the Council and to the Commission and the EEAS. He states that the Council appoints the EUSR, that the Commission is responsible for monitoring the performance of the EUSR's mandate and that the EEAS is the EUSR's employer. The applicant further submits that the EUSR in Bosnia and Herzegovina is not covered by the third head of claim in so far as he is not competent to adopt a framework for the employment of the international contracted staff working for him.

128 In view of the rejection, due to the lack of competence of the Court, of the applicant's request for his reinstatement as a member of staff of the EUSR in Bosnia and Herzegovina and his requests submitted under the second head of claim (see paragraphs 88 and 89 above), the examination of these pleas of inadmissibility should be confined to the applicant's other claims.

First head of claim

129 As concluded in paragraph 87 above, the Court has jurisdiction to examine the first head of claim, on the basis of Article 263 TFEU, in so far as it seeks annulment of the termination decision and, on the basis of Article 268 TFEU, in so far as it seeks financial compensation for the psychological and material damage allegedly caused by that decision.

130 In that respect, under the first paragraph of Article 263 TFEU, actions for annulment may be brought against acts originating from certain designated institutions, but also, more generally, against acts adopted by bodies, offices or agencies of the European Union, provided they are acts aimed at producing binding legal effects (order of 4 June 2013, *Elitaliana* v *Eulex Kosovo*, T-213/12, EU:T:2013:292, paragraph 19). Actions for annulment must be brought against the EU institution, body, office or agency that adopted the act in question (see order of 19 November 2018, *Iccrea Banca* v *Commission and SRB*, T-494/17, EU:T:2018:804, paragraph 19 and the case-law cited).

131 Furthermore, under Article 268 TFEU and the second paragraph of Article 340 TFEU, in the case of non-contractual liability, the Court has jurisdiction in disputes relating to compensation for damage caused by the institutions of the European Union or by its servants in the performance of their duties. The term 'institution' used in the second paragraph of Article 340 TFEU refers not only to the EU institutions listed in Article 13(1) TEU, but also covers all other bodies, offices and agencies of the European Union established on the basis of the Treaties and intended to contribute to the achievement of the European Union's objectives (see, to that effect, judgment of 10 April 2002, *Lamberts* v *Ombudsman*, T-209/00, EU:T:2002:94, paragraph 49 and the case-law cited).

132 Thus, in the context of an action for non-contractual liability of the European Union, the latter is represented before the Court by the institution, body, office or agency against which the matter giving rise to liability is alleged (see, to that effect, order of 6 January 2015, *Kendrion* v *European Union*, T-479/14, not published, EU:T:2015:2, paragraph 15 and the case-law cited).

133 In the present case, the first head of claim relates to the termination decision, which is imputable to the EUSR in Bosnia and Herzegovina. Accordingly, it should be examined whether the EUSR in Bosnia and Herzegovina can be classified as a body, office or agency of the European Union capable of being a defendant in an action brought on the basis of Articles 263 and 268 TFEU.

134 In that regard, to determine whether an entity or structure coming under or working within the European Union's organisational framework may be regarded as an office or agency of the European Union, it is necessary to ascertain whether, in the light of the provisions governing the status of the entity or structure concerned, it has sufficient legal capacity in order to be considered as an independent body of the European Union and may be recognised as having legal capacity to be a defendant (see, to that effect, order of 4 June 2012, *Elti* v *Delegation of the European Union to Montenegro*, T-395/11, EU:T:2012:274, paragraphs 27 to 29). In particular, the entity or structure in question must be classified as an office or agency of the European Union when, on the one hand, it has a mandate intrinsically linked to the functioning of the European Union and, on the other hand, it is legally distinct from the existing institutions, bodies, offices and agencies of the European Union (see, to that effect and by analogy, order of 3 March 2022, *Commission* v *Council*, C-551/21, EU:C:2022:163, paragraph 14).

135 With regard to the EUSR in Bosnia and Herzegovina, first it should be noted that, in accordance with Article 33 TEU, he was appointed by the Council, on a proposal from the High Representative of the European Union for Foreign Affairs and Security Policy ('the High Representative'), to carry out a mandate in relation to particular policy issues (see paragraph 3 above). Thus, the EUSR has a mandate intrinsically linked to the functioning of the European Union.

136 Second, according to Article 4(1) of Decision 2019/1340, the EUSR in Bosnia and Herzegovina is 'responsible for the implementation of the mandate'. Although that article also states that the EUSR is 'acting under the authority of the [High Representative]', that authority only covers the performance of the EUSR's mandate as defined in Article 3 of that decision, and not administrative management in connection with the mandate, particularly as regards staff.

137 In addition, several provisions of Decision 2019/1340 demonstrate that the EUSR in Bosnia and Herzegovina is legally distinct from other institutions, bodies, offices or agencies of the European Union. First, Article 5(2) and (3) of that decision confers the legal capacity on the EUSR to award contracts and purchase goods. It also requires the EUSR to conclude a contract with the Commission on the management of expenditure. Second, as noted in paragraph 63 above, Article 6(2) of that decision allows staff to be seconded to the EUSR by institutions of the European Union or the EEAS.

138 Lastly, in respect of the management of its contract staff, the EUSR in Bosnia and Herzegovina has legal capacity to act independently. On the one hand, it is clear from Article 6(1) and (2) of Decision 2019/1340 that the EUSR is 'responsible for constituting a team' and has the legal capacity to conclude contracts to recruit international staff, whom he chooses without the need for approval from other institutions, bodies, offices or agencies of the European Union. The EUSR then informs the Council and the Commission of the composition of the team (see

paragraphs 63 and 64 above). On the other hand, the decision refers to 'members of the EUSR's staff' (Article 7), 'members of the EUSR's team' (Article 8), 'personnel under the EUSR's direct authority' (Article 10) and the 'EUSR and the EUSR's staff' (Article 13).

139 Consequently, for the purposes of the present case concerning matters relating to the management of staff of the EUSR in Bosnia and Herzegovina, the EUSR must be considered to have the same status as the bodies, offices and agencies of the European Union, capable of being the defendants in an action based on Articles 263 and 268 TFEU, within the meaning of the case-law referred to in paragraphs 130 to 132 above. It follows that the first head of claim is admissible in so far as it concerns the EUSR in Bosnia and Herzegovina.

140 With regard to the Council, it is true that that institution appoints the EUSR in Bosnia and Herzegovina, defines the terms and duration of the EUSR's mandate and may decide to terminate it early. However, that circumstance does not call into question the independence and legal capacity of the EUSR as regards the management of his staff, as noted in paragraph 138 above. Furthermore, although Article 4(2) of Decision 2019/1340 provides that the Council, through the Political and Security Committee (PSC), provides strategic guidance and political direction to the EUSR, the first head of claim only concerns matters relating to the management of the EUSR's staff and so cannot be linked to acts of a strategic or political nature. It follows that this head of claim is inadmissible in so far as it concerns the Council.

141 With regard to the Commission, it should be noted that, in accordance with Article 5(3) of Decision 2019/1340, the management of expenditure is the subject of a contract between the Commission and the EUSR in Bosnia and Herzegovina. In addition, the EUSR is accountable to the Commission for all expenditure. Thus, the Commission's role in relation to the EUSR in Bosnia and Herzegovina is to monitor the budgetary implementation of the EUSR's mandate. However, the first head of claim relates to the management of the EUSR's staff by the EUSR in Bosnia and Herzegovina and not to the EUSR's implementation of his budget. Therefore, the first head of claim must be dismissed as inadmissible in so far as it concerns the Commission (see, by analogy, judgment of 19 July 2016, *H* v *Council and Others*, C-455/14 P, EU:C:2016:569, paragraph 65).

142 With regard to the EEAS, it is true that the EUSR in Bosnia and Herzegovina is also Head of Delegation of the European Union to that State and, in that capacity, a member of the temporary staff of the EEAS. First, however, the contract at issue – and the fixed-term contracts that preceded it – were signed exclusively by the EUSR in Bosnia and Herzegovina, in that capacity, without reference to his status as Head of Delegation of the European Union to Bosnia and Herzegovina. Second, Article 1(4) of Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (OJ 2010 L 201, p. 30) provides that the EEAS 'shall be made up of a central administration and of the Union Delegations to third countries and to international organisations', without including EUSRs. Third, it is clear from the documents in the file, and in particular from an EEAS working document dated 16 March 2016, that the staff of an EUSR in a third country are not the same as those assigned to the EU delegation in that State, including when, as in the case of Bosnia and Herzegovina, the EUSR and the Head of the EU delegation are the same person. Consequently, the first head of claim is inadmissible in so far as it concerns the EEAS.

Third head of claim

143 As noted in paragraph 132 above, in an action to establish the non-contractual liability of the European Union, the latter is represented before the Court by the institution, body, office or agency against which the matter giving rise to liability is alleged.

144 In the present case, by the third head of claim, the applicant submits, under Article 268 TFEU, a claim for compensation based on discriminatory treatment. In that claim, he alleges that the Council, the Commission and the EEAS did not subject international contracted staff recruited under the CFSP to the CEOS, or failed to adopt a legal regime comparable to the CEOS for those staff.

145 It follows that the matter giving rise to the non-contractual liability of the European Union alleged by the applicant lies in the decisions made, at the institutional level, as to the legal regime applicable to contract staff recruited under the CFSP.

146 In the first place, the applicant claims that a regime applicable to international contracted staff recruited by the EUSR in Bosnia and Herzegovina should have been adopted on the basis of Article 336 TFEU, under which 'the European Parliament and the Council shall, acting by means of regulations in accordance with the ordinary legislative procedure … lay down the Staff Regulations … and the [CEOS]'. Nevertheless, the EUSR in Bosnia and Herzegovina comes under the CFSP (see paragraph 3 above) and it is clear from Article 24(1) TEU and Article 31(1) TEU that the adoption of legislative acts is excluded in matters of common foreign and security policy.

147 Accordingly, Article 336 TFEU is not appropriate, in the present case, for identifying the institution or institutions against which the matter giving rise to liability is alleged under the third head of claim.

148 In the second place, it should be noted that, under Article 26 TEU, the Council is responsible for framing the CFSP and taking the decisions necessary for defining and implementing it on the basis of the general guidelines and strategic lines defined by the European Council. However, the adoption, where appropriate, of a legal regime applicable to CFSP contract staff falls within the implementation of that policy and is therefore a matter for the Council.

149 In that regard, as the applicant points out, it follows from a combined reading of points 1.5 and 3.3 of Communication C(2012) 4052 final of 26 June 2012 on the rules for the financial management of CFSP missions that the Commission had suggested that the Council apply the CEOS to contract staff of CFSP missions and EUSRs.

150 However, the suggestion was not followed up because the Member States' delegations could not reach an agreement within the Council, as can be seen from a memorandum sent by the Council presidency to the Permanent Representatives Committee (Coreper) on 22 May 2013. In particular, the memorandum explained that delegations would need time to study the legal, institutional and

operational implications prior to the implementation of any change to the current regime for CFSP missions. Delegations also believed that the situation of EUSRs requires further discussion. That memorandum was accompanied by a proposal which, with regard to the EUSRs, stated that:

'Council considers that the situation of EUSRs requires further discussion, and that the status quo should remain in place for the time being. Council can agree on the following at this point:

…

– to continue to examine the options for alternatives to the situation whereby each EUSR is personally responsible for the budget and personally employs the staff, including the possibility of establishing an EUSR support cell and to report to Coreper by 31 March 2014.'

151 Furthermore, on 13 March 2014, the General Secretariat of the Council drafted a memorandum approving new guidelines on the appointment, mandate and financing of EUSRs, the text of which was adopted by the Council's Working Party on Foreign Relations, following discussions on the basis of an EEAS draft paper, which followed a conclusion of the Council's Working Party on General Affairs of 17 December 2013, according to which it was necessary to adopt those new guidelines. According to the memorandum, the Member States' delegations considered it necessary to clarify the legal, institutional and operational implications of applying a new set of rules for contracted staff in CSDP missions to the contracted staff of the EUSRs.

152 In those circumstances, it must be considered that the adoption of a legal regime applicable to CFSP contract staff is a decision made at the Council level, as the EEAS also pointed out in its plea of lack of competence and inadmissibility.

153 In the third place, it should be noted that under Article 33 TEU, the appointment of an EUSR is a matter for the Council, on a proposal from the High Representative.

154 In addition, the first subparagraph of Article 28(1) TEU provides that where the international situation requires operational action by the European Union, the Council adopts the necessary decisions and that they lay down their objectives, scope, the means to be made available to the European Union, if necessary their duration, and the conditions for their implementation. Thus, in the specific context of the CFSP, it is for the Council to decide on the means to be made available to the European Union and on the conditions for the implementation of the decisions it adopts as part of the relevant operational action of the European Union, which include staff resources made available to that action (see, to that effect, judgment of 10 November 2021, *Jenkinson* v *Council and Others*, T-602/15 RENV, on appeal, EU:T:2021:764, paragraph 226).

155 Admittedly, Decision 2019/1340 does not refer to Article 28 TEU specifically, but only to 'the Treaty on European Union, and in particular Article 33 and Article 31(2) thereof'. Nevertheless, that decision involves operational action under the CFSP, in so far as it establishes an EUSR in Bosnia and Herzegovina whose mandate is, in essence, to support EU action in relation to particular policy issues in that State by liaising with local authorities, and who has a budget and team for the purposes of that mandate.

156 Moreover, Joint Action 2002/211, by which the EUSR in Bosnia and Herzegovina was appointed for the first time, was adopted in accordance with Article 14 EU (in its version prior to the entry into force of the Treaty of Lisbon), paragraph 1 of which contains a similar provision to the current version of Article 28 TEU. In addition, Council Decision 2012/330/CFSP of 25 June 2012

amending Decision 2011/426/CFSP appointing the European Union Special Representative in Bosnia and Herzegovina (OJ 2012 L 165, p. 66) and Council Decision 2013/351/CFSP of 2 July 2013 amending Decision 2011/426/CFSP appointing the EUSR in Bosnia and Herzegovina (OJ 2013 L 185, p. 7) were adopted after the entry into force of the Treaty of Lisbon on the basis, inter alia, of Article 28 TEU.

157 Thus, the appointment of the EUSR in Bosnia and Herzegovina does indeed fall under Article 28 TEU, as a result of which, in accordance with the case-law referred to in paragraph 154 above, it is for the Council to decide on the staff available to the EUSR.

158 That conclusion is supported by the guidelines on the appointment, mandate and financing of EUSRs, referred to in paragraph 151 above. Section C of those guidelines states that the Council decision appointing an EUSR should cover several elements, including the rules on the constitution and composition of the EUSR's team.

159 In those circumstances, the adoption of a status applicable to the international contracted staff of the EUSR in Bosnia and Herzegovina is a matter for the Council.

160 In the fourth place, the EEAS argued at the hearing, on the basis of Article 30(1) TEU, that the Council could not adopt a legal regime applicable to CFSP contract staff without a proposal to that effect, either from the High Representative or from a Member State. However, it follows from that article, according to which 'any Member State, the High Representative …, or the High Representative with the Commission's support, may refer any question relating to the [CFSP] to the Council and may submit to it, respectively, initiatives or proposals', that the High Representative and the Member States have a right of initiative, but that this does not constitute a monopoly, nor a condition for the Council to be able to adopt an act such as a decision on the legal regime for CFSP contract staff in general, or the EUSR in Bosnia and Herzegovina in particular. Thus, that article does not preclude the Council from deciding to adopt such a regime on its own initiative, if it considers it necessary, or requesting the High Representative to submit a proposal to that effect.

161 That conclusion is supported by the evidence in the file. On the one hand, it is apparent from paragraph 151 above that the guidelines on the appointment, mandate and financing of EUSRs were reviewed at the instigation of the Council's Working Party on General Affairs. On the other hand, those guidelines state that, with regard to the procedure for appointing an EUSR, 'where it considers that the political context so requires, the Council may invite the [High Representative] to present a proposal for the appointment of an EUSR with a mandate in relation to a particular policy issue'.

162 In view of the foregoing, it must be concluded that any failure to adopt a general regime applicable to CFSP contract staff in general or to the contract staff of the EUSR in Bosnia and Herzegovina in particular must be imputed to the Council. The third head of claim is therefore admissible in so far as it concerns the Council, and inadmissible in so far as it concerns the Commission and the EEAS.

Fourth head of claim

163 By his fourth head of claim, put forward as an alternative to the first three heads of claim, the applicant claims that the Council, the Commission and the EEAS, on the basis of the non-contractual liability of the European Union, should be ordered to pay him the sum of EUR 400 000 on the ground that his employment conditions did not respect his fundamental rights.

164 However, as can be seen from paragraphs 148 to 162 above, it is for the Council to determine the employment conditions of the contract staff of the EUSR in Bosnia and Herzegovina. Accordingly, the Council must be identified as the defendant as regards the fourth head of claim.

165 It is true that the applicant also refers to the pleas in law in support of the first and second heads of claim, which refer to the EUSR in Bosnia and Herzegovina in his capacity as employer. Nevertheless, the applicant did not seek to establish the non-contractual liability of the European Union for the actions of the EUSR in Bosnia and Herzegovina under the fourth head of claim. Indeed, both in the application and in his observations on the pleas of lack of competence and inadmissibility, the applicant states that the fourth head of claim concerns the EU institutions, which, from an overall reading of his pleadings, must be understood as a reference not to the EUSR in Bosnia and Herzegovina, but to the Council, the Commission and the EEAS, even though the EEAS is not an institution within the meaning of Article 13 TEU.

166 In view of the foregoing, the fourth head of claim must be declared admissible in so far as it concerns the Council, and inadmissible in so far as it concerns the Commission and the EEAS.

Conclusion

167 In view of all the foregoing considerations, first, as regards the first head of claim, the Court has jurisdiction (i) to rule on the application for annulment of the termination decision on the basis of Article 263 TFEU and (ii) to rule on the claims for financial compensation for the psychological and material damage allegedly suffered by the applicant as a result of that decision on the basis of Article 268 TFEU. Those claims are admissible in so far as they concern the EUSR in Bosnia and Herzegovina, and inadmissible in so far as they concern the Council, the Commission and the EEAS.

168 Furthermore, the request for reinstatement of the applicant as a member of staff of the EUSR in Bosnia and Herzegovina must be dismissed on the ground of lack of competence.

169 Second, the second head of claim must also be dismissed in its entirety on the ground of lack of competence.

170 Third, the third and fourth heads of claim, for which the Court has jurisdiction under Article 268 TFEU, are admissible in so far as they concern the Council and inadmissible in so far as they concern the Commission and the EEAS.

Costs

171 Under Article 133 of the Rules of Procedure, a decision as to costs is to be given in the judgment or order which closes the proceedings. However, under Article 135(1) of the Rules of Procedure of the General Court, if equity so requires, the 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 or her own costs, or even that he or she is not to be ordered to pay any costs.

172 It follows from the grounds set out in the present judgment that this closes the proceedings in so far as they concern the Commission and the EEAS, since those defendants, in respect of whom the action must be dismissed, have expressly claimed that the applicant should be ordered to pay the costs.

173 Nevertheless, as noted in paragraphs 140 to 142 above, the EUSR in Bosnia and Herzegovina operates in a complex legal situation, characterised by his links with the Council, the Commission and the EEAS. Therefore, it was, without doubt, difficult for the applicant to identify the defendants when bringing the present action. In those circumstances, the Court considers that it is just and equitable to order the Commission and the EEAS to bear their own costs.

174 Moreover, the present judgment does not close the proceedings in so far as they concern the Council and the EUSR in Bosnia and Herzegovina. Accordingly, the costs incurred by the applicant and by those two defendants relating to the pleas of lack of competence and inadmissibility must be reserved.

On those grounds,

THE GENERAL COURT (Seventh Chamber, Extended Composition)

hereby:

1. Dismisses the action:

– **on the ground of lack of competence, in so far as it seeks to order the reinstatement of Mr Robert Stockdale as a member of staff of the European Union Special Representative in Bosnia and Herzegovina;**

– **on the ground of lack of competence, in so far as it seeks to reclassify Mr Stockdale's fixed-term contracts as a single permanent contract and to find that the defendants have breached their contractual obligations;**

– **as inadmissible, in so far as it concerns the Council of the European Union, the European Commission and the European External Action Service (EEAS), in so far as it seeks annulment of the decision of the European Union Special Representative in Bosnia and Herzegovina of 17 November 2020 by which Mr Stockdale's employment contract was terminated and compensation for the damage allegedly caused by that decision;**

– **as inadmissible as to the remainder, in so far as it concerns the Commission and the EEAS;**

2. Dismisses the pleas of lack of competence and inadmissibility as to the remainder;

3. Orders the Commission and the EEAS to bear their own costs relating to the pleas of lack of competence and inadmissibility;

4. Reserves the costs incurred by Mr Stockdale, by the Council and by the European Union Special Representative in Bosnia and Herzegovina relating to the pleas of lack of competence and inadmissibility.

da Silva Passos Valančius Reine

Truchot Sampol Pucurull

Delivered in open court in Luxembourg on 26 July 2023.

[Signatures]

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