Reports of Cases

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

5 October 2020*

(Civil service – Officials – Official with United Kingdom nationality at the date of entering the service – Withdrawal of the United Kingdom from the European Union – Acquisition of the nationality of the country of employment during the course of a career – Loss of the expatriation allowance – Equal treatment – Principle of non-discrimination – Article 4(1) of Annex VII to the Staff Regulations)

In Case T-18/19,

Colin Brown, residing in Brussels (Belgium), represented by I. Van Damme, lawyer,

applicant,

v

European Commission, represented by T. Bohr and D. Milanowska, acting as Agents,

defendant,

supported by

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

intervener,

APPLICATION under Article 270 TFEU seeking, first, annulment of the decision of 19 March 2018 of the Office for the Administration and Payment of Individual Entitlements (PMO) withdrawing the applicant's entitlement to the expatriation allowance and to the payment of travel expenses and, secondly, re-establishment of those benefits with effect from 1 December 2017,

THE GENERAL COURT (Fourth Chamber, Extended Composition),

composed of S. Papasavvas, President, S. Gervasoni, P. Nihoul, R. Frendo (Rapporteur) and J. Martín y Pérez de Nanclares, Judges,

Registrar: L. Ramette, Administrator,

having regard to the written part of the procedure and further to the hearing on 27 February 2020,

gives the following

* Language of the case: English.

Judgment

I. Background to the dispute

1 The applicant, Colin Brown, was originally a national of the United Kingdom only and lived there until 1996. He studied in Italy in 1996 and 1997, then in Belgium from September 1997 to June 1998. The applicant then served as a trainee in the European Commission in Brussels (Belgium) from 1 October 1998 to 28 February 1999. Finally, he worked full time in the private sector in Belgium from 1 March 1999 to 31 December 2000.

2 The applicant began working for the Commission on 1 January 2001. The Office for the 'Administration and Payment of Individual Entitlements' (PMO) of the Commission granted him the expatriation allowance under Article 4(1)(a) of Annex VII to the Staff Regulations of Officials of the European Union ('the Staff Regulations').

3 On 23 June 2016, the citizens of the United Kingdom of Great Britain and Northern Ireland voted in a referendum in favour of their State's withdrawal from the European Union. After the adoption by the United Kingdom Parliament, on 13 March 2017, of the European Union (Notification of Withdrawal) Act 2017, the Prime Minister of the United Kingdom notified the European Council, on 29 March 2017, of the United Kingdom's intention to withdraw from the European Union and the European Atomic Energy Community (Euratom) in accordance with Article 50(2) TEU.

4 On 27 June 2017, the applicant applied for Belgian nationality, which he obtained on 3 November 2017. He notified PMO of that change in circumstances on 19 January 2018.

5 On 23 February 2018, the applicant was informed, first, that his entitlement to the expatriation allowance was withdrawn with effect from 31 October 2017 because he had obtained Belgian nationality and, secondly, that as a consequence he also lost his entitlement to payment of travel expenses pursuant to Article 8 of Annex VII to the Staff Regulations.

6 Following a request for an explanation, the applicant received an email, on 5 March 2018, stating that withdrawal of the expatriation allowance was justified under Article 4(1)(b) of Annex VII to the Staff Regulations by the fact that he had resided in Belgium since 1997.

7 On 19 March 2018, PMO replaced the decision of 23 February 2018 by a new decision setting 1 December 2017 as the date on which entitlement to the expatriation allowance and payment of travel expenses were withdrawn from the applicant ('the contested decision').

8 On 17 June 2018, the applicant filed a complaint, which was rejected by decision of the appointing authority (AIPN) of 15 October 2018.

II. Procedure and forms of order sought

9 The applicant brought this action by application lodged at the Court Registry on 11 January 2019.

10 The Commission lodged its defence on 20 March 2019.

11 Following a change in the composition of the Chambers of the Court, the President of the General Court, by decision of 25 March 2019 and pursuant to Article 27(3) of the Rules of Procedure of the General Court, reassigned the case to a new Judge-Rapporteur, attached to the Fifth Chamber.

12 By document lodged at the Court Registry on 12 April 2019, the Council of the European Union sought leave to intervene in the present proceedings in support of the form of order sought by the Commission.

13 On 9 May 2019, the applicant filed his reply.

14 By decision of 13 May 2019, the President of the Fifth Chamber of the Court granted the Council leave to intervene.

15 On 18 June 2019, the Commission lodged the rejoinder.

16 The intervener lodged its statement in intervention on 25 June 2019 and the applicant submitted his observations thereon within the prescribed period.

17 Following a change in the composition of the Chambers of the Court, pursuant to Article 27(5) of the Rules of Procedure, the Judge-Rapporteur was assigned to the Fourth Chamber, to which the present case was, consequently, allocated.

18 Acting on a proposal from the Fourth Chamber, the General Court decided, pursuant to Article 28 of the Rules of Procedure, to refer the case to a chamber sitting in extended composition. The Vice-President of the General Court was called to sit in the Fourth Chamber, Extended Composition, pursuant to the decision of the Plenum of the Court of 4 October 2019 on the formation of Chambers and assignment of Judges to Chambers (OJ 2019 C 372, p. 3) and to act as President of that Chamber in accordance with Article 11(4) of the Rules of Procedure.

19 Acting on a proposal of the Judge Rapporteur, the Court (Fourth Chamber, Extended Composition) decided (i) to open the oral part of the procedure, (ii) to put written questions to the parties, in the context of the measures of organisation of procedure provided for in Article 89 of the Rules of Procedure, requesting them to answer those questions at the hearing, and (iii) to ask the European Parliament, the Court of Justice of the European Union and the Court of Auditors to supply information, in accordance with Article 24 of the Statute of the Court of Justice of the European Union. That request for information sought to find out how those three institutions interpret Article 4(1) of Annex VII to the Staff Regulations and how they apply it where an official or an agent already with the nationality of a Member State obtains, during the course of his or her career, the nationality of the State in whose territory the place where he or she is employed is situated.

20 The parties presented oral argument and answered the written and oral questions put by the Court at the hearing on 27 February 2020. At the hearing, the Commission and the Council were asked to provide the Court with the numbers of officials entitled to the expatriation allowance who had acquired the nationality of their country of employment and to specify how many, among them, have lost the benefit of that allowance.

21 In the context of the measures of organisation of procedure provided for in Article 89 of the Rules of Procedure, on 9 March 2020, the Court requested the Commission to produce an information notice from the Council of 11 December 1959, which it had read at the hearing.

22 The Commission and the Council submitted, within the prescribed period, their replies to the questions put to them by the Court at the hearing and by way of a measure of organisation of procedure.

23 On 4 May 2020, the applicant submitted his observations on the figures and the document provided after the hearing by the Commission and the Council. In those observations, the applicant regretted the incomplete nature, in his view, of those figures without, however, requesting that they be supplemented.

24 On 14 May 2020, the oral part of the procedure was closed and the case entered the deliberation stage.

25 The applicant claims that the Court should:

– annul the contested decision;

– order that his entitlement to the expatriation allowance and payment of his travel expenses be restored with effect from 1 December 2017;

– order that the allowances which were not paid between 1 December 2017 and the date of re-establishment of his entitlement to those benefits be paid to him, together with interest;

– if the Court accepts the plea of illegality raised in the application, annul the application of Article 4(1)(b) of Annex VII to the Staff Regulations, until such time as the institutions replace it with non-discriminatory provisions;

– order the Commission to pay the costs.

26 The Commission contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

27 The intervener contends that the Court should dismiss the action.

III. Law

A. The first head of claim

28 In support of his first head of claim, seeking annulment of the contested decision, the applicant puts forward four pleas in law, alleging:

– infringement of Article 4(1)(a) of Annex VII to the Staff Regulations;

– breach of the principle of equality and non-discrimination, in that the contested decision makes his entitlement to the expatriation allowance subject to the requirements prescribed by Article 4(1)(b) of Annex VII to the Staff Regulations;

– breach of the principle of equality and non-discrimination, in that the contested decision interpreted Article 4(1)(b) of Annex VII to the Staff Regulations in breach of that principle;

– a plea of illegality against Article 4(1) of Annex VII to the Staff Regulations.

29 In his first plea, which can be divided into two parts, the applicant disputes the Commission's ability to reassess his entitlement to the expatriation allowance. In the first part of that plea, he submits that Article 4(1)(a) of Annex VII to the Staff Regulations does not allow that entitlement to be reassessed in the event that a new nationality is acquired. In the second part, he claims that the Commission at the very least should have taken account of the constraint he was under as a result of the United Kingdom's possible withdrawal from the European Union. The first plea thus appears to rely not only on an infringement of Article 4(1)(a) of Annex VII to the Staff Regulations, as stated by the applicant, but also on the existence of that constraint.

30 In his second plea, which can also be divided into two parts, the applicant submits that the principle of equality and non-discrimination precluded his entitlement to the expatriation allowance from being reassessed in the light of the requirements prescribed by Article 4(1)(b) of Annex VII to the Staff Regulations. In the first part, he claims that he was treated as if he had had Belgian nationality during the 10 years preceding his entering the service, whereas he was a United Kingdom national during that time. In the second part, he states that, in the circumstances of the present case, application of that provision affected officials with United Kingdom nationality more than all others.

31 In his third plea, the applicant contemplates, in the alternative, the scenario in which nothing precludes the Commission from reassessing his entitlement to the expatriation allowance on the basis of Article 4(1)(b) of Annex VII to the Staff Regulations, but submits that, in any event, the principle of equality and non-discrimination should have led to a different interpretation of that provision.

1. The first plea in law, alleging infringement of Article 4(1)(a) of Annex VII to the Staff Regulations and the existence of a constraint

32 As already set out in paragraph 29 above, in the first plea, the applicant denies that the acquisition of Belgian nationality could justify the reassessment of his entitlement to the expatriation allowance.

(a) The first part, alleging infringement of Article 4(1)(a) of Annex VII to the Staff Regulations

33 The applicant submits that Article 4(1)(a) of Annex VII to the Staff Regulations does not allow an official's entitlement to the expatriation allowance to be reassessed on the ground that that official has acquired, during the course of his or her career, the nationality of the country where that official is employed. Given the purpose of the expatriation allowance, which is to compensate officials for the extra expense and inconvenience of taking up employment entailing a change of residence, review of the situation at that stage may occur only if the place of employment changes.

34 Article 4(1) of Annex VII to the Staff Regulations reads as follows:

'An expatriation allowance … shall be paid:

(a) to officials:

– who are not and have never been nationals of the State in whose territory the place where they are employed is situated, and

– who during the five years ending six months before they entered the service did not habitually reside or carry on their main occupation within the European territory of that State. For the purposes of this provision, circumstances arising from work done for another State or for an international organisation shall not be taken into account;

(b) to officials who are or have been nationals of the State in whose territory the place where they are employed is situated but who during the ten years ending at the date of their entering the service habitually resided outside the European territory of that State for reasons other than the performance of duties in the service of a State or of an international organisation.'

35 Those provisions, like all provisions of EU law which confer entitlement to financial benefits, must be interpreted strictly (see judgment of 18 July 2017, *Commission* v *RN*, T-695/16 P, not published, EU:T:2017:520, paragraph 54 and the case-law cited).

36 It must be noted in this regard that Article 4(1) of Annex VII to the Staff Regulations does not expressly provide that entitlement to the expatriation allowance may be reassessed in the light of a change in circumstances during the course of an official's career.

37 However, since the expatriation allowance is paid on a monthly basis, the administration cannot continue to pay it where an event occurs that substantially alters the situation of the person receiving that benefit in so far as it affects the conditions governing the grant of that allowance. In that case, and in the absence of any provision to the contrary, the administration must review the situation (see, to that effect, judgment of 26 June 2013, *Achab* v *EESC*, F-21/12, EU:F:2013:95, paragraph 26). By contrast to the retroactive withdrawal of a decision, revocation as regards the future is always possible when the circumstances that justified that decision no longer exist. That is the case, inter alia, under the law relating to the public service, when it is apparent that continued payment of elements of remuneration would be irregular. The Staff Regulations themselves, in Article 85 thereof, confirm this in that it recognises by implication that undue payments may be stopped (see, to that effect, judgment of 9 March 1978, *Herpels* v *Commission*, 54/77, EU:C:1978:45, paragraphs 38 to 40).

38 Moreover, as the Court has already held, the wording of Article 4(1)(a) of Annex VII to the Staff Regulations does not in any way support the conclusion that payment of the expatriation allowance constitutes an established right (see, to that effect, judgment of 28 September 1993, *Magdalena Fernández* v *Commission*, T-90/92, EU:T:1993:78, paragraph 32).

39 Moreover, the applicant does not dispute the very idea of a review but merely submits that reassessment of entitlement to the expatriation allowance can occur only if the place of employment of the official concerned changes, and not when a new nationality is acquired.

40 In that regard, the applicant submits, first, that the acquisition of a new nationality during the course of a career cannot justify a reassessment of the entitlement to the expatriation allowance because the phrase 'who are not and have never been' nationals of the country of employment, in Article 4(1)(a) of Annex VII to the Staff Regulations, refers only to the officials' situation at the time of their entering the service, which corresponds to the time at which the decision regarding that allowance is made.

41 However, the requirement that the expatriation allowance is to be paid to officials who 'are not … nationals' of the country of employment is worded in the present tense. Thus, given the iterative nature of the payment of that allowance, that wording does not preclude the officials concerned from having to continue throughout their career to fulfil the requirement of not being nationals of the country of employment in order to retain that allowance under Article 4(1)(a) of Annex VII to the Staff Regulations (see, to that effect, judgment of 26 June 2013, *Achab* v *EESC*, F-21/12, EU:F:2013:95, paragraph 28).

42 The applicant disputes the relevance of that judgment on the ground that, unlike him, Mr Achab, a third-country national, was not a national of a Member State at the time of his recruitment and was granted in that regard an exception in order to enable him to be recruited. However, the fact that Mr Achab was not a national of a Member State is irrelevant in respect of Article 4 of Annex VII to the Staff Regulations, which is based on the nationality of the country of employment and not on that of the country of origin. Moreover, it is indeed the acquisition of that second nationality during the course of their career that justified, both in Mr Achab's case and in that of the applicant, the cessation of payment of the expatriation allowance granted to them under Article 4(1)(a).

43 Furthermore, the fact that Article 4(1)(a) of Annex VII to the Staff Regulations also makes the grant of the expatriation allowance conditional upon officials 'hav[ing] never been nationals' of the country of employment does not preclude either the interpretation that acquisition of that nationality during the course of a career entails the loss of entitlement to that allowance under that provision.

44 In addition, Article 4(1) of Annex VII to the Staff Regulations stems from Article 4(1) of Annex VII to Council Regulation No 31 (EEC), 11 (EAEC) of 18 December 1961 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ, English Special Edition, Series I Volume 1959-1962, p. 135), in its original version. It is apparent from the Council's information notice of 11 December 1959 (see paragraph 21 above) that, during the *travaux préparatoires* that resulted in the adoption of that provision, the legislature examined several criteria for granting the expatriation allowance but opted for the nationality criterion because it was 'more precise and simpler to apply' in comparison with others, while being aware that it 'd[id] not remove all issues ([especially] in case of … dual nationality)'.

45 It follows from the foregoing that the legislature did not intend to regulate all the situations that may arise but that it chose to employ wording that would, in the vast majority of cases, simplify the adoption of decisions concerning entitlement to the expatriation allowance. In accordance with the case-law referred to in paragraph 35 above, only if drafted differently would Article 4(1)(a) of Annex VII to the Staff Regulations have ruled out any reassessment, during the course of a career, of the entitlement to that allowance following the acquisition of a new nationality.

46 The applicant submits, secondly, that acquiring the nationality of the country of employment after entering the service is but one form of developing ties with that country and becoming integrated. According to the case-law, Article 4(1) of Annex VII to the Staff Regulations does not allow the AIPN to withdraw the expatriation allowance on the ground that the extra expense and inconvenience resulting from taking up employment are sufficiently compensated at one point in an official's career or that the official is now sufficiently integrated in that country.

47 In that regard, it should be noted that it is apparent from the Council's information notice of 11 December 1959 (see paragraph 21 above) that the expatriation allowance was conceived as an allowance 'given as compensation for material expenses and moral inconvenience resulting from the fact that the official is away from his place of origin' and that 'officials generally maintain family ties … with their region of origin'. As asserted by both the applicant and the Commission, such inconvenience and extra expense are likely to last throughout the official's career and even intensify over the course thereof, despite integration in the country of employment.

48 It has been held accordingly that the purpose of the expatriation allowance is to compensate for the extra expense and inconvenience of taking up employment with the European Union (judgments of 13 July 2018, *Quadri di Cardano* v *Commission*, T-273/17, EU:T:2018:480, paragraph 44, and of 28 February 2019, *Pozza* v *Parliament*, T-216/18, not published, EU:T:2019:118, paragraph 24) of officials who, in order to be able to exercise their duties permanently and comply with Article 20 of the Staff Regulations, are obliged to change their residence from their State of domicile to the State of employment (see, to that effect, judgment of 16 May 2007, *F* v *Commission*, T-324/04, EU:T:2007:140, paragraph 47).

49 As such, and as observed by the Council, the expatriation allowance allows for recruitment on the broadest possible geographical basis from among nationals of Member States of the European Union, in accordance with the first paragraph of Article 27 of the Staff Regulations, and thereby ensures geographical balance within the EU civil service, which is, moreover, required by the spirit of the European Union (see, to that effect, judgment of 4 March 1964, *Lasalle* v *Parliament*, 15/63, EU:C:1964:9, p. 38).

50 With that in mind, the legislature only provided that integration of officials in the State of the place of their employment precludes payment of the expatriation allowance if those officials 'during the five years ending six months before they entered the service did not habitually reside or carry on their main occupation' there. In other words, by providing that clarification, the legislature ruled out the

possibility that integration resulting from the fact that, during the course of their career, the officials concerned established their habitual residence in the country of employment and work there could prevent such payment.

51 By contrast, as set out in paragraphs 41 to 45 above, the legislature did not rule out, with the wording that it chose for Article 4(1)(a) of Annex VII to the Staff Regulations, that the specific form of integration that is the acquisition of the nationality of the country of employment after entry into service could constitute a substantial change in circumstances capable of leading to the loss of the expatriation allowance. By making that choice, the legislature remained within the scope of its considerable degree of latitude in laying down the Conditions of Employment of Officials of the European Union (see, to that effect, judgments of 22 December 2008, *Centeno Mediavilla and Others* v *Commission*, C-443/07 P, EU:C:2008:767, paragraph 91, and of 4 March 2010, *Angé Serrano and Others* v *Parliament*, C-496/08 P, EU:C:2010:116, paragraph 86), including with regard to remuneration (see, to that effect, judgment of 13 December 2018, *Carpenito* v *Council*, T-543/16 and T-544/16, not published, EU:T:2018:955, paragraph 60).

52 In those circumstances, PMO did not misinterpret Article 4(1)(a) of Annex VII to the Staff Regulations by finding that the acquisition of the nationality of the country of employment during the course of a career triggered the reassessment of the entitlement to the expatriation allowance.

53 The first part of the first plea is therefore unfounded.

(b) The second part, alleging that the Commission failed to take account of the constraint resulting from the United Kingdom's possible withdrawal from the European Union

54 The applicant submits that the Commission should have taken account of the fact that he was constrained to apply for Belgian nationality because it seemed to him at that time to be the only solution in order to remain employed in the event of the United Kingdom's withdrawal from the European Union. The applicant argues that the College of Commissioners before 28 March 2018 provided no guarantee to officials with United Kingdom nationality that they would not be required to resign if, in the event that the United Kingdom's withdrawal became effective, they were no longer nationals of a Member State.

55 In order to examine this part of the plea, it should be recalled at the outset that it is apparent from Article 49 of the Staff Regulations, read in the light of Article 28(a) thereof, that officials who cease to fulfil the requirement of being nationals of a Member State of the European Union may be required to resign by reasoned decision of the AIPN, as the applicant rightly submits.

56 It should also be noted that it is common ground between the parties that officials with United Kingdom nationality received no guarantee that Article 49 of the Staff Regulations would not be applied to them in the event of its withdrawal before the applicant applied for, and even obtained, Belgian nationality on 27 June 2017. As stated by the applicant, it was only on 28 March 2018 that the Commission decided that the AIPN would not exercise its discretion under that provision, except where duly justified in specific cases, such as conflicts of interest or due to international obligations.

57 Finally, it should be pointed out that mere notification by the United Kingdom of its intention to withdraw from the European Union did not alter the legal situation of its nationals (see, by analogy, judgment of 26 November 2018, *Shindler and Others* v *Council*, T-458/17, EU:T:2018:838, paragraph 44).

58 That being said, the applicant bases the Commission's alleged obligation to take account of the constraint that he was facing on case-law relating to Article 4(3) of Annex VII to the Staff Regulations. In response to a question raised at the hearing, the applicant stated that the constraint alluded to in his written submissions could amount to *force majeure*, the conditions for which would be satisfied in the present case.

59 With regard to Article 4(3) of Annex VII to the Staff Regulations, it must be borne in mind that that provision treats officials who, by marriage, automatically acquired and cannot renounce the nationality of the country of employment in the same way as officials who are not and have never been nationals of that country.

60 The applicant does not dispute that that provision is unrelated, as such, to the present case. However, he argues that it enshrines case-law that is itself based on the finding that, whilst the decision to marry is voluntary, marriage had the effect, under the laws of certain Member States, of automatically conferring on the wife the nationality of her spouse, with no possibility of renouncing it. The applicant is of the opinion that that situation is comparable to that in which he now finds himself. In his view, whilst his desire to continue working for the Commission after the United Kingdom's withdrawal from the European Union is the result of a personal choice, the acquisition of Belgian nationality, by contrast, was forced upon him.

61 It is appropriate, in this regard, to recall the case-law to which the applicant alluded and from which Article 4(3) of Annex VII to the Staff Regulations stems. In its judgment of 20 February 1975, *Airola* v *Commission* (21/74, EU:C:1975:24, paragraph 12), the Court of Justice found that nationality imposed on a female official upon her marriage with a national of another Member State, with no possibility of renouncing it, must be excluded on the ground that Article 4 of Annex VII to the Staff Regulations has to be interpreted in such a way as to avoid any unwarranted difference of treatment as between male and female officials who are in comparable situations (judgment of 20 February 1975, *Airola* v *Commission*, 21/74, EU:C:1975:24, paragraphs 9 to 11).

62 It follows that, contrary to the applicant's assertion, that case-law is based, not on the fact, as such, that the nationality of the country of employment was imposed upon the official, but on the discriminatory nature of the domestic legislation from which EU law could draw no inference.

63 Breach of the general principle of equality and non-discrimination, which underlies the case-law starting with the judgment of 20 February 1975, *Airola* v *Commission* (21/74, EU:C:1975:24), and Article 4(3) of Annex VII to the Staff Regulations, is the subject of the second, third and fourth pleas, which will be examined below.

64 With regard to *force majeure*, and assuming that the argument based thereon is admissible as an amplification of the constraint alluded to in the written submissions, it is settled case-law, in various spheres of EU law, that *force majeure* is characterised by two elements: (i) the existence of abnormal and unforeseeable circumstances beyond the control of the person concerned (judgments of 18 December 2007, *Société Pipeline Méditerranée et Rhône*, C-314/06, EU:C:2007:817, paragraph 23; of 25 January 2017, *Vilkas*, C-640/15, EU:C:2017:39, paragraph 53; and order of 28 May 2013, *Honnefelder* v *Commission*, T-130/13 P, EU:T:2013:276, paragraph 19) and (ii) the fact that, although the abovementioned circumstances are not limited to cases in which performance of an obligation is an absolute impossibility, they must nevertheless be such that performance would entail unreasonable sacrifices (see, to that effect, judgments of 17 December 1970, *Internationale Handelsgesellschaft*, 11/70, EU:C:1970:114, paragraph 23; of 15 December 1994, *Bayer* v *Commission*, C-195/91 P, EU:C:1994:412, paragraph 32; and of 19 June 2019, *RF* v *Commission*, C-660/17 P, EU:C:2019:509, paragraph 37).

65 Nonetheless, it is also settled case-law that since the concept of *force majeure* does not have the same scope in the various spheres of application of EU law, its meaning must therefore be determined by reference to the legal context in which it is to operate (see judgment of 25 January 2017, *Vilkas*, C-640/15, EU:C:2017:39, paragraph 54 and the case-law cited).

66 In the present case and having regard to the context of the case, it must be found that, by its line of argument, the applicant claims that the United Kingdom's withdrawal from the European Union that made him face the risk of being required to resign constituted a case of *force majeure* relieving PMO from its obligation to review his situation in the light of the Belgian nationality that he had acquired.

67 Even if the United Kingdom's intention to withdraw from the European Union was an abnormal and unforeseeable circumstance beyond the applicant's control, the evidence provided by the applicant does not prove that review of his situation under the circumstances of the case would have been unreasonable in the light of the consequences thereof.

68 It is true that the applicant submits, with regard to the United Kingdom's intention to withdraw from the European Union and the possible consequences of that withdrawal for officials with United Kingdom nationality, that the Commission itself encouraged them to apply for Belgian nationality. In that connection he submits an email from the President of the Commission sent to them as early as 24 June 2016. The fact remains, however, that the President of the Commission simply assured them that the 'door [wa]s not closing on [them]', that he would work together with the Presidents of the other institutions to ensure that all could continue counting on their experience and that the 'Staff Regulations w[ould] be read and applied in a European spirit'. It does not show that the Commission encouraged the interested parties to acquire the nationality of their country of employment. The applicant also submits a press article dated 3 May 2018 reporting a position statement from the President of the Commission as well as the minutes of an informal meeting of 29 January 2018 between the staff and the Vice-President of the Commission responsible for, inter alia, Human Resources. However, the meeting and the statement postdate the applicant's acquisition of Belgian nationality and thus could not have driven him to take that step either.

69 In the end, it is not apparent that the loss of the expatriation allowance constituted an unreasonable burden having regard to the full and complete guarantee obtained by the applicant that he would remain employed in the event of the United Kingdom's withdrawal from the European Union by acquiring Belgian nationality.

70 Moreover, while the Court of Justice has held that any withdrawal of a Member State from the European Union is liable to have a considerable impact on the rights of all EU citizens (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 64), it has not thereby suggested that the European Union is in any way required to offset the effects thereof.

71 Accordingly, a situation of *force majeure* must be ruled out in the present case, and it is unnecessary to examine whether or not, despite the lack of express reference to *force majeure* in Article 4 of Annex VII to the Staff Regulations, it could nonetheless be invoked in the light of the scheme and the objectives of that provision.

72 Given all of the foregoing, and in the absence of any constraint capable of being taken into account as a matter of law, there is no need to rule on the applicant's argument based on the judgment of 26 June 2013, *Achab* v *EESC* (F-21/12, EU:F:2013:95), and on the need to distinguish the present case, characterised by a situation of constraint, from the case that gave rise to that judgment, in which the interested party could have pursued his career even without acquiring Belgian nationality.

73 It follows that the second part of the first plea is unfounded and that the first plea must be rejected in its entirety.

2. The second plea in law, alleging breach of the principle of equality and non-discrimination, in that the applicant's entitlement to the expatriation allowance was reassessed in the light of the requirements prescribed by Article 4(1)(b) of Annex VII to the Staff Regulations

74 As stated in paragraph 30 above, in the second plea of the application, the applicant submits that the principle of equality and non-discrimination precluded the Commission from reassessing his situation under Article 4(1)(b) of Annex VII to the Staff Regulations.

75 For the purposes of examining that plea, it must be observed at the outset that, in essence, under Article 4(1)(a) of Annex VII to the Staff Regulations, entitlement to the expatriation allowance for officials who are not nationals of the country of employment depends on the place of their habitual residence during the five years preceding their entering the service whereas, pursuant to Article 4(1)(b) of that annex, for officials who are such nationals, that entitlement is assessed in the light of their place of habitual residence over a period of 10 years.

76 Moreover, according to settled case-law, for officials who are not nationals of the country of employment, the grant of the expatriation allowance is refused only if they have resided there for the entire five-year reference period, whereas, for officials who are nationals of that country, the fact that they kept or established their habitual residence there, albeit for a very short time in the 10-year reference period, is sufficient to result in the refusal or loss of the grant of that allowance (judgments of 27 February 2015, *EESC* v *Achab*, T-430/13, EU:T:2015:122, paragraph 54, and of 13 July 2018, *Quadri di Cardano* v *Commission*, T-273/17, EU:T:2018:480, paragraph 47).

77 It must be recalled, lastly, that, after having recognised the applicant's entitlement to the expatriation allowance at the date of his entering the service on the basis of Article 4(1)(a) of Annex VII to the Staff Regulations, PMO withdrew that entitlement on the basis of Article 4(1)(b) of that annex because he was henceforth to be regarded as an official 'who [is] … a national' of his country of employment.

78 Both parts of the second plea raised in the application must be examined in the light of these premisses.

(a) The first part, alleging breach of the principle of equal treatment and non-discrimination in comparison with officials with Belgian nationality and officials who moved their main centre of interests

79 The applicant maintains that, by applying Article 4(1)(b) of Annex VII to the Staff Regulations to him, the Commission treated in the same way two different categories of persons, namely, on the one hand, persons with Belgian nationality, or more generally that of the State of employment at the date of their entering the service, who resided there during the 10-year reference period referred to in that provision and were recruited without having been in a situation of expatriation, and, on the other hand, persons who, like him, did not have the nationality in question at the date of their entering the service and therefore, unlike the first category of persons, could not be presumed to have close ties with the country of employment. The applicant also claims, conversely, that he was treated differently from other officials who, like him, left their main centre of interests in order to enter the service of the institutions and still kept their entitlement to the expatriation allowance.

80 It must be recalled that, according to the case-law, the principle of equal treatment prohibits comparable situations from being treated differently or different situations from being treated in the same way, unless such treatment, whether different or equal as the case may be, is objectively justified (see judgment of 22 September 2017, *Wanègue* v *Committee of the Regions*, T-682/15 P, not published, EU:T:2017:644, paragraph 64 and the case-law cited). Regard must be had, in that connection, to both matters of law and of facts (see, to that effect, judgment of 26 June 2013, *Achab* v *EESC*, F-21/12, EU:F:2013:95, paragraph 39).

81 Next, it is admitted that, in so far as setting the requirements for entitlement to the expatriation allowance involves the exercise of discretion by the institutions, the principle of equal treatment would be disregarded only if Article 4(1) of Annex VII to the Staff Regulations entailed a difference of treatment which is arbitrary or manifestly inappropriate in relation to its purpose (see judgment of 13 December 2004, *E* v *Commission*, T-251/02, EU:T:2004:357, paragraph 124 and the case-law cited).

82 In the present case, it should also be noted that the nationality on which Article 4(1) of Annex VII to the Staff Regulations is based gives rise to a presumption that multiple and close ties exist between the person with that nationality and that person's country of nationality (see, to that effect, judgments of 11 July 2007, *B* v *Commission*, F-7/06, EU:F:2007:129, paragraph 39, and of 5 December 2012, *Bourtembourg* v *Commission*, F-6/12, EU:F:2012:175, paragraph 26).

83 Thus, and generally, having regard to that meaning of nationality, the purpose of the expatriation allowance (see paragraph 48 above) and the discretion enjoyed by the EU legislature (see paragraph 81 above), the latter could legitimately presume that staff members who are or have been nationals of the country of employment did not bear the extra expense and inconvenience which the expatriation allowance was intended to compensate for, at least not at the same level of intensity as staff members without that nationality. Therefore, the EU legislature, with no arbitrary or manifestly inappropriate difference of treatment, was able to establish a distinction between officials according to the criterion of their current or previous nationality. For the same reasons the legislature was also entitled to make the grant of the expatriation allowance to officials who are or have been nationals of the country of employment subject to strict requirements, including that of having habitually resided outside the country of employment during the 10-year reference period (see, by analogy, judgment of 4 December 2008, *Blais* v *ECB*, F-6/08, EU:F:2008:160, paragraph 102).

84 The applicant, however, emphasises that his situation is particular. He points out that he was not a Belgian national during the 10-year reference period laid down in Article 4(1)(b) of Annex VII to the Staff Regulations and even that his main centre of interests at the time was in Troon, United Kingdom, as the Commission had established at the time of his entering the service. The applicant is therefore of the opinion that the presumption underlying that provision, namely that he maintained multiple and close ties with Belgium, his country of employment, during that time, is unfounded in his case.

85 As asserted by the applicant, application to him of Article 4(1)(b) of Annex VII to the Staff Regulations is based on a fiction because he was treated as if he had been a Belgian national before entering the service, in 2001, whereas he obtained that nationality only 17 years later. The Commission does not dispute this but claims that the combination in the contested decision of two elements, namely acquisition of the nationality of the country of employment after his entering the service and the applicant's presence in the territory of that country before his recruitment, constituted a reasonable approach to the situation in the light of the wording of Article 4(1) of Annex VII to the Staff Regulations, which, it should be recalled, does not enshrine any specific provision as to how to resolve the issue of the acquisition of a new nationality during the course of a career (see paragraphs 41, 44 and 51 above).

86 Against that background, it should be noted that, unlike reimbursement of removal expenses and payment of the installation allowance, the expatriation allowance is intended to be paid throughout the period of service. Consequently, compliance with the principle of equality and non-discrimination is required not only at the time of entering the service but also over time when reassessing entitlement thereto in the light of a change in circumstances.

87 Not applying Article 4(1)(b) of Annex VII to the Staff Regulations to the applicant from the time at which he became a Belgian national would amount to treating him more favourably than those born with Belgian nationality who entered the service of an institution in Belgium and had to satisfy the strict requirements imposed by that provision in order to be entitled to the expatriation allowance

throughout their own career. Calling into question the applicant's entitlement to the expatriation allowance in 2018, after he acquired Belgian nationality, makes it possible for the applicant to be treated in the same way as Belgians who, due to their ties with Belgium, are denied entitlement to that allowance.

88 Moreover, not applying Article 4(1)(b) of Annex VII to the Staff Regulations to the applicant would also distinguish him from Belgian nationals who have severed all ties with Belgium for a long period of time but who, in the same way as the applicant, spent some time there during the 10-year reference period before entering the service of the European Union and becoming employed in that country. Such nationals are denied the expatriation allowance pursuant to Article 4(1)(b) of Annex VII to the Staff Regulations (see, to that effect, judgment of 13 July 2018, *Quadri di Cardano* v *Commission*, T-273/17, EU:T:2018:480, paragraphs 28, 46 and 47).

89 Furthermore still, not applying Article 4(1)(b) of Annex VII to the Staff Regulations to the applicant, who became a Belgian national during the course of his career, would also mean treating him more favourably than those born with Belgian nationality who renounced that nationality in favour of another one, that of the United Kingdom like the applicant for instance, but who spent some time in Belgium before being recruited there by an institution.

90 Lastly, officials, such as the applicant, who acquire the nationality of the country of employment during the course of their career are no longer in the same situation as those officials who have not expressed the intention to formalise their ties with that country by acquiring its nationality. At the very least, the acquisition of that nationality creates closer political ties with that country than those, by comparison, conceded to nationals of other Member States under Article 22 TFEU.

91 In addition, as the Commission acknowledged at the hearing and as is shown by the Council's information notice of 11 December 1959 cited above (see paragraph 21), Article 4(1) of Annex VII to the Staff Regulations is the result of a compromise between various options. Its objective is not to regulate expressly all the situations and issues that might arise but to provide simple and objective criteria readily applicable in the vast majority of cases (see paragraph 45 above).

92 Faced with such a *quod plerumque fit*, it should be noted that, even though in borderline cases fortuitous problems must arise from the introduction of a general and abstract system of rules, the legislature cannot be criticised for resorting to categorisation, provided that, based on objective factors, it is not in essence discriminatory having regard to the objective which it pursues (see, to that effect, judgments of 15 January 1981, *Vutera* v *Commission*, 1322/79, EU:C:1981:6, paragraph 9, and of 15 April 2010, *Gualtieri* v *Commission*, C-485/08 P, EU:C:2010:188, paragraph 81).

93 The applicant considers, however, that his situation raises systemic questions concerning the interpretation of Article 4(1) of Annex VII to the Staff Regulations that may affect a broad category of officials.

94 It is apparent nevertheless from a press article to which the applicant refers that the Commission employed 32 847 persons at the material time. In addition, according to the information supplied by the Commission at the Court's request (see paragraph 20 above), there were 98 Commission staff members with United Kingdom nationality upon entering the service and working in Brussels who acquired Belgian nationality after the referendum on the withdrawal from the European Union. Also according to the figures provided by the Commission, of these, 40 officials retained the expatriation allowance, 23 lost it and 35 lost the foreign residence allowance to which they were previously entitled under Article 4(2) of Annex VII to the Staff Regulations. Lastly, according to the press article to which the applicant refers, the Commission, across all places of employment, still employed 700 United Kingdom nationals after the United Kingdom's withdrawal. As for the Council, according to the figures provided to the Court, the number of officials and agents with solely United Kingdom nationality at the time of the abovementioned referendum was 80 and 30 at the time of the United

Kingdom's effective withdrawal from the European Union, the difference being due to departures or the acquisition of another nationality. Specifically, 14 officials and agents with United Kingdom nationality declared that they acquired Belgian nationality during that period. After reviewing their situation following that acquisition, three of them lost the expatriation allowance and seven lost the foreign residence allowance.

95 It is apparent also from the information requested of the Parliament, the Court of Justice of the European Union and the Court of Auditors (see paragraph 19 above) that, at the Court of Justice of the European Union, 52 officials and agents who obtained Luxembourg nationality during the course of their career continue to receive the expatriation allowance by virtue of Article 4(1)(b) of Annex VII to the Staff Regulations and that, at the Court of Auditors, out of 23 United Kingdom nationals who received that allowance and acquired Luxembourg nationality, 20 retained it under that provision and 3 lost it because they had resided in Luxembourg during the 10 years preceding their entering the service.

96 It therefore follows from all of those figures that the situation which the applicant says he is facing does not raise systemic questions and that, as stated by the Council, the legislature did not act unlawfully when it applied the nationality criterion to categorise approximately 50 000 officials and agents of the European Union in order to define when they are entitled to the expatriation allowance.

97 Consequently, PMO cannot be considered to have acted in breach of the principle of equality and non-discrimination by interpreting Article 4(1) of Annex VII to the Staff Regulations as meaning that (i) it allowed the applicant's situation to be reviewed after he had obtained Belgian nationality, (ii) that review was to be carried out in the light of Article 4(1)(b) thereof and (iii) it was appropriate, for that purpose, to have regard to the 10-year reference period preceding his entering the service.

98 That conclusion is not invalidated by the applicant's argument that being treated as if he had been a Belgian national residing in Belgium during the 10-year reference period resulted in the Commission overlooking the fact that, before acquiring that nationality during the course of his career, he had previously exercised his rights of free movement in order to take up employment with the institutions. The applicant submits, in that connection, that the Court of Justice, in its judgment of 14 November 2017, *Lounes* (C-165/16, EU:C:2017:862, paragraph 49), held in this regard that the situation of nationals of one Member State who precisely exercised their freedom of movement by going to and staying legally in the territory of another Member State cannot be treated in the same way as a purely domestic situation merely because the persons concerned, while staying in the host Member State, acquired the nationality of that State in addition to their nationality of origin.

99 However, it must be stated that, in that judgment, the question was whether a national of a Member State who had exercised her right to move and reside freely in another Member State could still rely on the rights of free movement and residence laid down in Article 21(1) TFEU in that other State, even though she had acquired the nationality of that other State, and whether she could, as a consequence, also rely on the right to lead a normal family life in that country, together with her family members, namely her spouse, an illegally staying third-country national (judgment of 14 November 2017, *Lounes*, C-165/16, EU:C:2017:862, paragraphs 51 and 52).

100 In the present case, however, the applicant fails to show that the contested decision affects the rights which he derives from Article 21(1) TFEU in Belgium. On the contrary, in response to questions put to him at the hearing, the applicant stated that his wife had, inter alia, French nationality and that his family resided in France and not in Belgium. Moreover, the contested decision is not based on the applicant's situation being treated in the same way as a purely domestic situation. It is based solely on the fact that, during the 10-year reference period, the applicant had, under the exercise of his right to move and reside freely in the territory of other Member States, habitually resided within the meaning of Article 4(1)(b) of Annex VII to the Staff Regulations in the country of employment of which he subsequently became a national.

101 In view of the foregoing, the first part of the second plea is unfounded.

(b) The second part, alleging breach of the principle of equal treatment and non-discrimination to the detriment of officials who are United Kingdom nationals

102 The applicant contends that, under the circumstances of the case, the interpretation of Article 4(1)(b) of Annex VII to the Staff Regulations on which the contested decision is based is discriminatory in that it affects de facto officials who are United Kingdom nationals more than any other nationals. With the prospect of the United Kingdom's withdrawal from the European Union, those officials were alone in having to acquire a new nationality in order not to lose their employment. According to the applicant, such discrimination cannot be justified by reference to the objective of the expatriation allowance.

103 The Commission nevertheless notes, rightly so, that the acquisition of a second nationality is not a situation that affects exclusively United Kingdom nationals and that the revision in that case of the staff members' administrative situation applies to all.

104 Thus, in its information Newsletter No 18 of February 2016, that is to say, before the referendum on the United Kingdom's withdrawal from the European Union which took place on 23 June 2016, the Commission pointed out to its entire staff that acquiring the nationality of the country of employment in the course of professional life could have an impact on entitlement to the expatriation allowance and required a new assessment.

105 In addition, the Commission had already adopted that stance in Administrative Notice No 317 of 14 April 1981 on the expatriation allowance and the foreign residence allowance, which was thus circulated *in tempore non suspecto*, outside any prospect of withdrawal of the United Kingdom.

106 Furthermore, in view of paragraphs 64 to 70 above, it is not apparent that the consequences of acquisition by officials with United Kingdom nationality of the nationality of their country of employment were such that they should have led the Commission to refrain from reviewing the applicant's situation with regard to his entitlement to the expatriation allowance.

107 The second part of the second plea is therefore unfounded.

108 Consequently, the second plea must be rejected in its entirety.

3. The third plea in law, derived from the principle of equality and non-discrimination, in that the contested decision interpreted Article 4(1)(b) of Annex VII to the Staff Regulations in breach of that principle

109 As set out in paragraph 31 above, in the third plea the applicant claims that, even if the Commission was entitled to reassess his entitlement to the expatriation allowance on the basis of Article 4(1)(b) of Annex VII to the Staff Regulations, it failed to interpret correctly, in the light of the principle of non-discrimination, the requirement that, in order to be entitled to that allowance, the official concerned must have 'habitually resided outside the European territory' of the country of employment.

110 According to the applicant, in order to comply with the principle of non-discrimination, that requirement should have been interpreted by taking account of the fact that Article 4(1) of Annex VII to the Staff Regulations is based on the presumption that officials who are nationals of a Member State maintain multiple and close ties with that State. Conversely, the applicant submits that officials who were not nationals of the country of employment during the 10-year reference period cannot be presumed to have had at that time such ties with that country. Accordingly, the applicant suggests that, in the case of officials acquiring the nationality of the country of employment during the course

of their career, the concept of habitual residence in Article 4(1)(b) of Annex VII to the Staff Regulations is not to be interpreted strictly, as it is in the case of officials who already had that nationality before entering the service. That concept should rather be interpreted as it is in the context of Article 4(1)(a) of the annex with regard to officials who did not have that nationality. Thus, officials who acquired the nationality of their country of employment after their entering the service should lose their entitlement to the expatriation allowance only if they had habitually resided there for five years or more during the 10-year reference period laid down in Article 4(1)(b) of Annex VII to the Staff Regulations. The applicant claims that, had that interpretation been adopted, the Commission would have had to find that he had habitually resided outside the place of employment during that period and would have had to maintain his entitlement to the expatriation allowance.

111 It is, however, appropriate to recall that recourse to interpretation is possible only in so far as it is compatible with the wording of the provision at issue and that the very principle of interpretation in conformity with a rule of superior binding force cannot serve as the basis for an interpretation that is *contra legem* (see, by analogy, judgment of 19 September 2019, *Rayonna prokuratura Lom*, C-467/18, EU:C:2019:765, paragraph 61 and the case-law cited).

112 In Article 4(1)(b) of Annex VII to the Staff Regulations, the requirement of 'habitual' residence, on which the granting of the expatriation allowance depends, refers to a place of residence situated outside the European territory of the country of employment, with the result that, conversely, and as is apparent from the case-law cited in paragraph 76 above, for officials with the nationality of their country of employment, any residence in that country, even for a short period of time, is sufficient to result in the refusal or loss of the grant of entitlement to that allowance as soon as it can be characterised as habitual. In addition, that provision refers to a 10-year reference period, with the result that its application cannot be based on a five-year reference period which in no way was contemplated by the legislature.

113 Consequently, an interpretation, as advocated by the applicant, of Article 4(1)(b) of Annex VII to the Staff Regulations as meaning that officials who acquired the nationality of their country of employment during the course of their career should lose their expatriation allowance only if they had habitually resided there for five years or more during the 10-year reference period preceding their entering the service is incompatible with the wording of that provision and with its scope, as consistently interpreted by the case-law.

114 Furthermore, and as has already established in paragraph 90 above, that interpretation would amount to treating officials who acquired the nationality of their country of employment during the course of their career in the same way as those who never acquired that nationality and who did not formalise in that way the existence of multiple and close ties with that country.

115 The interpretation of the concept of habitual residence for the purposes of Article 4(1)(b) of Annex VII to the Staff Regulations essentially as relating to a five-year stay in the country of employment, as suggested by the applicant, must therefore be rejected.

116 It follows that the applicant submits to no avail that he has not severed his ties with the United Kingdom, of which indeed he remains a national, and that he applied for Belgian nationality solely in order to remain employed, without intending to stay permanently in Belgium.

117 According to the rationale behind the expatriation allowance, recalled in paragraphs 44 and 48 above, the issue is not whether or not the applicant has severed all contact with the country of his first nationality but to determine whether, during the reference period, he had with his country of employment, of which he is now a national, sufficient ties for him to be denied the expatriation allowance having regard to the requirements prescribed by Article 4(1)(b) of Annex VII to the Staff Regulations. That is the case here. The applicant habitually resided in Belgium and worked there at least between 1 March 1999 and 31 December 2000. In that regard, the fact, assuming that it is

established, that he took work solely in anticipation of recruitment by an EU institution is irrelevant. Being present and carrying out work in the future place of employment do not constitute preconditions for recruitment and cannot be regarded as facilitating recruitment.

118 Furthermore, it cannot be inferred in any way from Article 4 of Annex VII to the Staff Regulations that its authors intended to attach particular importance to the point at which the person concerned transferred his or her residence outside the State of which that person is or has been a national, or to the reasons which determined that transfer (judgment of 25 September 2014, *Grazyte* v *Commission*, T-86/13 P, EU:T:2014:815, paragraphs 58 and 78).

119 In addition, weighing United Kingdom nationality against Belgian nationality, which the applicant seeks to do, and recognising, as he suggests, the fact that that first nationality is preponderant for him, would amount to applying the doctrine of effective nationality which the Court of Justice expressly ruled out in its judgment of 14 December 1979, *Devred* v *Commission* (257/78, EU:C:1979:294, paragraph 14).

120 Lastly, it follows from the rejection of the applicant's proposed interpretation of the concept of habitual residence that he claims to no avail that the Commission disregarded the principle of protection of legitimate expectations by considering, in the contested decision, that, on the one hand, he was so integrated in Belgian society at the time of his recruitment that he had to prove that he had not resided in Belgium during the 10 years preceding his entering the service, whereas it had taken the view that, on the other hand, he was not integrated there when it had recognised his entitlement to the expatriation allowance at the time of his recruitment.

121 Since the requirement of 'habitual' residence is less stringent in the context of Article 4(1)(a) of Annex VII to the Staff Regulations than in that of Article 4(1)(b) of that annex, PMO was able to conclude, without contradicting itself or disregarding the principle of protection of legitimate expectations, that the expatriation allowance was to be granted on the basis of the former provision at the date of the applicant's entering the service and that the allowance was to be withdrawn on the basis of that latter provision upon review of his situation, after he had acquired Belgian nationality. Moreover, the applicant can rely on that principle even less since Commission officials were expressly informed of the consequences that they might face if they were to acquire the nationality of the country of employment (see paragraphs 104 and 105 above).

122 In the light of the foregoing, the third plea in law is unfounded.

4. The fourth plea in law, raising a plea of illegality against Article 4(1) of Annex VII to the Staff Regulations

123 As a subsidiary plea, if the preceding pleas were to be rejected, the applicant puts forward a plea of illegality against Article 4(1) of Annex VII to the Staff Regulations in so far as he claims that it discriminates against persons in his situation, for the reasons put forward in support of the first and second pleas.

124 To the extent that that plea is upheld, the applicant, without formally setting out a separate head of claim, seeks an order from the Court requiring the institutions to amend that provision in order to remove that discrimination.

125 However, examination of the first two pleas, to which the applicant merely refers, led to the conclusion that Article 4(1) of Annex VII to the Staff Regulations is not discriminatory either in itself or in its application in the present case.

126 Furthermore, the applicant's request that the Court order the institutions to amend Article 4(1) of Annex VII to the Staff Regulations in order to remove any discrimination is not only unfounded but also falls outside the Court's jurisdiction since the latter cannot issue directions to the institutions (see, to that effect, judgment of 27 February 2018, *Zink* v *Commission*, T-338/16 P, not published, EU:T:2018:98, paragraph 39).

127 It follows that the fourth plea in law must be rejected as unfounded and that the applicant's request contained therein is inadmissible.

128 In the light of all of the foregoing, the applicant's claim for annulment must be rejected.

B. The second, third and fourth heads of claim

129 In his second and third heads of claim, the applicant requests the Court to order the Commission to pay him the expatriation allowance and reimburse his travel expenses, which are linked to that allowance, as from 1 December 2017, together with default interest.

130 In his fourth head of claim the applicant seeks from the Court, if it upholds the plea of illegality put forward in the application, annulment of 'the application [to him] of Article 4(1)(b) of Annex VII to the Staff Regulations, until such time as the institutions replace it with non-discriminatory provisions'.

131 Those heads of claim must, however, be rejected as they are ancillary to the heads of claim for annulment in respect of which it has been demonstrated that they must be rejected.

132 It follows that the action must be dismissed in its entirety.

Costs

133 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, according to Article 135(1) of the Rules of Procedure, 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.

134 Under Article 138(1) of the Rules of Procedure, the Member States and institutions which have intervened in the proceedings are to bear their own costs.

135 In the circumstances of the present case, the Court finds that it is appropriate for each of the main parties to bear its own costs. In addition, as an intervening institution, the Council must bear its own costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby:

1. Dismisses the action;

2. Orders Mr Colin Brown and the European Commission to bear their own respective costs;

3. Orders the Council of the European Union to bear its own costs.

Papasavvas Gervasoni Nihoul

Frendo Martín y Pérez de Nanclares

Delivered in open court in Luxembourg on 5 October 2020.

E. Coulon
Registrar

S Papasavvas
President