Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

2 October 2024*

(Civil service – Contract staff – Refusal to reimburse annual travel expenses for dependent children – Article 8(1) of Annex VII to the Staff Regulations – Action for annulment – Act adversely affecting an official – Decision which definitively lays down the position of the administration – Admissibility – Principle of sound administration – Duty to have regard for the welfare of staff)

In Case T-448/22,

PW, represented by S. Rodrigues and A. Champetier, lawyers,

applicant,

v

European External Action Service (EEAS), represented by A. Ireland, S. Falek and R. Coesme, acting as Agents,

defendant,

THE GENERAL COURT (Fourth Chamber),

composed of R. da Silva Passos, President, S. Gervasoni and T. Pynnä (Rapporteur), Judges,

Registrar: V. Di Bucci,

having regard to the written part of the procedure, in particular:

– the written questions put by the Court to the parties and their replies to those questions, which were lodged at the Court Registry on 20 March 2024,

– the written question put by the Court to the EEAS and the latter's reply, which was lodged at the Court Registry on 30 April 2024, and the applicant's observations on that reply, which were lodged at the Court Registry on 28 May 2024,

having regard to the fact that no request for a hearing was submitted by the parties within three weeks after service of notification of the close of the written part of the procedure, and having decided to rule on the action without an oral part of the procedure, pursuant to Article 106(3) of the Rules of Procedure of the General Court,

* Language of case: English.

gives the following

Judgment

1 By his action under Article 270 TFEU, the applicant, PW, seeks annulment of the implied decision of 30 July 2021 rejecting his request for payment of annual travel expenses for the whole of 2020 as regards his dependent children.

Background to the dispute

2 On 16 February 2020, the applicant joined the Delegation of the European Union in Washington, DC (United States) as a member of the contract staff of the European External Action Service (EEAS) under Article 3a of the Conditions of Employment of Other Servants of the European Union ('the Conditions of Employment'). The applicant's wife was working for the European Parliament in Brussels (Belgium).

3 By note of 9 March 2020, the European Commission's Office for the Administration and Payment of Individual Entitlements (PMO) informed the applicant of his entitlements and financial allowances under Annex VII to the Staff Regulations of Officials of the European Union ('the Staff Regulations'). The note stated that family allowances were being paid to the applicant's wife and that annual travel expenses were handled by the EEAS. It added, in footnote 6, that 'in case of children where both parents work[ed] in the institutions, [the parents were] free to apply for the payment of annual travel expenses for [their] child(ren) on the basis of the place of origin of the other parent, if that [was] more advantageous', and that 'in such case, a joint request signed by both parents will be necessary'.

4 On 23 June 2020, the applicant contacted the EEAS to request payment of annual travel expenses for himself and his dependent children. The EEAS replied on the same day that the payment of annual travel expenses had been entered in his remuneration for August 2020 and sent him a screenshot of what would be included in that payment. Following that response, the applicant requested that the payment for his dependent children be added, to which the EEAS replied, again on 23 June 2020, that it was not possible to make the correction to the annual travel expenses, since the applicant's children were not recorded in Sysper as his dependants. In order to be able to make the payment, the EEAS advised the applicant to contact the PMO and request that it review his family composition and dependants.

5 On 26 June 2020, the applicant asked the PMO to correct the fact that his children were not recorded in Sysper as his dependants. He added that, until that date, all allowances, including the annual travel expenses for the round trip between Brussels and Madrid (Spain), had been paid to his wife, but that, from February 2020, they should be paid to him, for a round trip between Washington and Madrid. On the same day, the PMO explained that the note of 9 March 2020 confirmed that the family allowances were being paid to the applicant's wife and gave instructions to the applicant on how to proceed so that the annual travel expenses for the couple's dependent children would be paid to him.

6 Also on 26 June 2020, the applicant requested that payment of annual travel expenses for the couple's dependent children be transferred to his account, a request which was confirmed by his wife, in accordance with the PMO's instructions, on 29 June 2020.

7 By email of 29 June 2020, the PMO confirmed to the applicant that it had transferred the payment of annual travel expenses for the couple's children to the applicant's account with effect from 1 January 2021. The PMO explained that the payment of annual travel expenses was made every year with the June salary payment and that, accordingly, requests relating to it had to be made by 2 May and could not be applied retroactively. Since the applicant's request had been submitted after 2 May 2020, the transfer could not take effect until 1 January 2021. The PMO stated, therefore, that the annual travel expenses for the couple's children had been paid to the applicant's wife for 2020.

8 By email of 9 July 2020, the PMO confirmed its position, stating that the note of 9 March 2020 clearly explained that payment was not automatically made to the parent for whom the distance was more advantageous, but on request. On account of her higher grade, the applicant's wife received the family allowances and, as a result, the payment of annual travel expenses. Therefore, a joint request to transfer the annual travel expenses for the couple's dependent children to the applicant should have been made before 2 May 2020.

9 Both the email of 29 June 2020 and that of 9 July 2020 stated that the 'message [in question] [was] sent for information purposes only and d[id] not constitut[e] a decision … that could give rise to a complaint under Article 90 of the Staff Regulations'.

10 On 27 July 2020, the applicant challenged the PMO's position, noting, in particular, that the deadline imposed by the PMO had not been referred to either in the note of 9 March 2020 or in other instructions given when he took up his duties.

11 With the salary for July 2020, the applicant's wife received payment of annual travel expenses for the couple's dependent children, calculated on the basis of the distance between Brussels and Madrid.

12 On 30 July 2020, the PMO reiterated its position as explained in the emails of 29 June and 9 July 2020 and added that payment of annual travel expenses for the couple's children had already been made to the applicant's wife by the Parliament.

13 By note of 19 November 2020, the PMO informed the applicant that, following the couple's joint request, the family allowances for their four dependent children had been transferred to the applicant's account with effect from 1 November 2020, while the household allowance continued to be paid to his wife.

14 By email of 7 December 2020, the applicant informed the EEAS that he had succeeded in registering his dependent children in Sysper and requested correction of the payment of annual travel expenses for 2020. He repeated that request on 14 and 18 January 2021.

15 By email of 18 January 2021, the EEAS informed the applicant that, following corrections made in the Sysper system, a payment of '2/12' for his dependent children would be made with his salary for February.

16 By email of 11 February 2021, the applicant informed the EEAS that he had not received payment of the travel expenses with his salary for February, sent the EEAS his payslip and asked it when the payment of annual travel expenses would be made.

17 On 12 February 2021, the EEAS confirmed that the payment had been correctly entered into Sysper and asked the PMO to check why it had not been made. On the same day, the PMO stated that, although the entitlements had been correctly entered into Sysper, it was too late to make the payment with the salary for February and that the payment would be made with the salary for March.

18 By email of 15 March 2021, the applicant informed both the EEAS and the PMO that the payment had not been made with his salary for March and requested that it be made as soon as possible. On the same day, the PMO, having copied the EEAS into its message, confirmed that the payment would be made in April.

19 By email of 23 March 2021, the applicant asked both the EEAS and the PMO to check that everything was in order for that payment to be made correctly with his salary for April.

20 By email of 29 March 2021, the PMO informed the applicant that, after a detailed analysis of his file, it appeared that he had already received payment of annual travel expenses with his salaries for August 2020 (EUR 9 882.10), December 2020 (EUR 1 273.32) and February 2021 (EUR 3 506.26) and sent the applicant a table with relevant information in that regard.

21 By email of 30 March 2021 addressed to the PMO, and copying in the EEAS, the applicant disputed the total amount indicated by the PMO in its email of 29 March 2021. Recalling the steps which he had taken to have his children entered into Sysper as his dependants, he explained that he considered that he was entitled to receive payment of the full annual travel expenses for his dependent children in respect of the year 2020. He requested that the administration reconsider its position and that payment of all the relevant sums be made. By email of 7 June 2021, the applicant repeated that request.

22 The EEAS did not respond to those emails.

23 On 28 October 2021, the applicant lodged a complaint under Article 90(2) of the Staff Regulations against the ‘implicit decision dated 30 July 2021 refusing to correct the calculation of the reimbursement of … annual travel expenses for 2020’, alleging infringement of Articles 7 and 8 of Annex VII to the Staff Regulations, the principle of good administration and the duty to have regard for the welfare of its staff.

24 By decision of 14 April 2022, his complaint was rejected as inadmissible, since the EEAS considered that the act adversely affecting the applicant was the email of 18 January 2021.

Forms of order sought

25 The applicant claims that the Court should:

– annul the implied decision of 30 July 2021;

– annul, in so far as necessary, the decision rejecting the complaint;

– order the EEAS to pay the costs.

26 The EEAS contends that the Court should

– dismiss the action as inadmissible;

– in any event, dismiss the action as unfounded;

– order the applicant to pay the costs.

Law

Admissibility

27 The EEAS raised a plea of inadmissibility by which it argues that the action is inadmissible because the complaint has not been brought against an act adversely affecting the applicant for the purposes of Article 90(2) of the Staff Regulations. The EEAS submits that it cannot be considered that an implied decision was taken on 30 July 2021. First, the act adversely affecting him was the EEAS email of 18 January 2021, the date on which the EEAS expressed its final position concerning the payment of annual travel expenses for the couple's dependent children for 2020. Secondly, the PMO's email of 29 March 2021 was confirmatory in nature and cannot be regarded as containing new and substantial facts which would allow the applicant's email of 30 March 2021 to be regarded as a request for review under Article 90(1) of the Staff Regulations.

28 In any event, the EEAS considers that the three-month period for contesting an act adversely affecting an official by means of a complaint lodged under Article 90(2) of the Staff Regulations was not complied with. Since the act adversely affecting the applicant was the email of 18 January 2021, the three-month period expired well before 28 October 2021, the date on which the complaint was lodged.

29 Under Article 90(2) of the Staff Regulations, 'any person to whom [the] Staff Regulations apply may submit to the appointing authority a complaint against an act affecting him adversely, either where the said authority has taken a decision or where it has failed to adopt a measure prescribed by the Staff Regulations' and 'the complaint must be lodged within three months'.

30 Article 91(2) of the Staff Regulations provides that an action before the Court is inadmissible if a prior complaint has not been lodged within a period of three months.

31 According to settled case-law, only measures which come from the competent authority and which produce binding legal effects of such a kind as to directly and immediately affect the applicant's interests by bringing about a distinct change in his or her legal position constitute acts adversely affecting him or her, and such measures are those which definitively establish the position of the institution (judgments of 10 January 2006, *Commission* v *Alvarez Moreno*, C-373/04 P, EU:C:2006:11, paragraph 42; of 20 May 2010, *Commission* v *Violetti and Others*, T-261/09 P, EU:T:2010:215, paragraph 46; and of 8 October 2014, *Bermejo Garde* v *EESC*, T-530/12 P, EU:T:2014:860, paragraph 45).

32 In the present case, the email of 18 January 2021 is from the EEAS unit responsible for human resources, the 'Rights, Obligations and Medical Cell Division'. It was signed by an assistant in that unit. It explains to the applicant that he had not previously been sent a response, despite his request in December, because it was necessary to await an agreement between the EEAS and the

Parliament regarding the transfer of entitlements. It stated that no correction could be made in December, because his children were still recorded on his wife's account. In that email, the author of the email informed the applicant as follows:

'I see now however that everything seems to be OK in sysper so I will proceed with the payment of 2/12 for you children that you will receive with your salary of February.'

33 It is necessary to analyse whether that email definitively lays down the position of the institution which sent it, for the purposes of the case-law cited in paragraph 31 above, taking account of the fact that classification as an act adversely affecting an official does not depend on the form or title of that act, but is determined by its substance (see, to that effect, order of 15 January 2009, *Braun-Neumann* v *Parliament*, T-306/08 P, EU:T:2009:6, paragraph 32).

34 In that regard, it should be noted, first, that the EEAS's reply as expressed in the email of 18 January 2021 is not sufficiently precise, as the applicant argues. The reference to a payment of '2/12' does not in itself make it possible to understand to what that fraction refers, in view of the number of parameters (annual payments for four children). Although, in the light of subsequently available information, in particular the PMO's email of 29 March 2021, the EEAS's reply became more explicit and enabled the applicant to request, by his email of 30 March 2021, payment of '12/12', the information given by the EEAS in the email of 18 January 2021 was not sufficient to be regarded as a decision definitively laying down the position of the EEAS and to trigger, as a result, the start of the time limit for making a complaint.

35 Secondly, even assuming that the response regarding '2/12' was sufficiently precise for it to be understand that 2 out of 12 months (of the entitlement to the payment of annual travel expenses) for each of the applicant's four children would be paid, it remained a partial response, since it gave no indication as to how the administration would treat the other 10 months.

36 It is clear from the file that the email of 18 January 2021 is a response to the applicant's email of 7 December 2020, by which he informed the EEAS that he had completed validation of the registration of his dependent children in Sysper and requested correction of the payment of annual travel expenses, a request repeated on 14 and 18 January 2021.

37 However, although the applicant's request concerned payment of the full annual travel expenses for 2020, the reference to a payment of '2/12' for the applicant's children did not make it possible to understand that payment of the remainder of the sum was being refused. Read in the light of the applicant's request, to which it constituted a response, the email of 18 January 2021 could have led him to understand that payment of the remaining sum would follow.

38 Thirdly, the context of the adoption of the act, namely the conduct of the EEAS following the email of 18 January 2021, shows that the EEAS itself did not consider its position to be definitive.

39 On 11 February 2021, the applicant sent an email to the EEAS stating that he had not received payment of travel expenses for his dependent children with his salary for February and provided the EEAS with his payslip. The payslip included a payment of EUR 3 506.26 for annual travel expenses. The applicant repeated the request for payment of annual travel expenses on 15 March 2021. On both occasions, the PMO replied that payment would be made with the following month's salary.

40 It was only after a third request from the applicant, on 25 March 2021, that the PMO informed him, by email of 29 March 2021, that, after a detailed analysis of the file, it appeared that he had already received reimbursement of the annual travel expenses for his dependent children with his salaries for August 2020 (EUR 9 882.10), December 2020 (EUR 1 273.32) and February 2021 (EUR 3 506.26) and sent him a table with the relevant information in that regard.

41 Accordingly, the email of 18 January 2021 cannot be regarded as laying down the EEAS's definitive position on the payment of annual travel expenses for the applicant's dependent children for the purposes of the case-law set out in paragraph 31 above. It cannot therefore constitute the event from which the three-month period provided for by Article 90(2) of the Staff Regulations begins to run.

42 Nor can the email of 29 March 2021 constitute the event from which that period starts to run. First, the email was sent by the PMO and not the EEAS, which is the competent authority in this matter, as the EEAS explains in its written pleadings and in its replies to the questions put by the Court and as is apparent from the note of 9 March 2020 (see paragraph 3 above). Secondly, although, in that email, the PMO explained to the applicant that he had 'been paid already … the travel allowance', it did not take a position on the applicant's request for full payment of annual travel expenses for his dependent children in respect of the year 2020. Moreover, none of the parties argues that the email of 29 March 2021 constitutes an act adversely affecting an official.

43 It follows that the applicant was entitled, pursuant to Article 90(1) of the Staff Regulations, to submit to the administration, on 30 March 2021, a request that it take a decision relating to him.

44 Failure to reply to that request within a period of four months from the date on which it was made constitutes, in accordance with Article 90(2) of the Staff Regulations, an implied decision rejecting it and the applicant was entitled to lodge a complaint seeking its annulment on 28 October 2021, in accordance with the three-month period provided for in Article 90(2) of the Staff Regulations (see, to that effect, judgment of 16 October 1980, *Hochstrass* v *Court of Justice*, 147/79, EU:C:1980:238, paragraph 3).

45 It follows that the action is admissible.

The subject matter of the dispute

46 According to settled case-law, although the applicant's claims seek also annulment of the decision rejecting his complaint, in so far as necessary, the present action has the effect of bringing before the General Court the act adversely affecting the applicant against which the complaint was lodged, namely the implied decision rejecting the applicant's claim for payment of all the sums to which he considered he was entitled in respect of annual travel expenses (see, to that effect, judgments of 17 January 1989, *Vainker* v *Parliament*, 293/87, EU:C:1989:8, paragraph 8, and of 5 December 2000, *Campogrande* v *Commission*, T-136/98, EU:T:2000:281, paragraph 27), except where the rejection of the complaint has a different scope from that of the act against which the complaint was lodged (judgment of 21 May 2014, *Mocová* v *Commission*, T-347/12 P, EU:T:2014:268, paragraph 34).

47 In the present case, the decision rejecting the complaint, which finds that the complaint is inadmissible, lacks any content independent of the implied decision of 30 July 2021.

48 In those circumstances, the action must be regarded as seeking annulment of the implied decision of 30 July 2021 rejecting the applicant's request for payment of annual travel expenses for the whole of 2020 as regards his dependent children.

Substance

49 In support of his claims for annulment, the applicant puts forward two pleas in law, alleging:

– first, infringement of Article 8(1) of Annex VII to the Staff Regulations and the principle of good administration;

– secondly, breach of the duty to have regard for the welfare of officials (the duty of care).

The first plea in law, alleging infringement of Article 8(1) of Annex VII to the Staff Regulations and the principle of good administration

50 The applicant submits that the EEAS claimed that the data entered into Sysper concerning his children was incorrect, even though those data should have been correctly entered in his Sysper profile since 2014. The applicant claims to have requested the correction of his data in Sysper two to three months before the correction was made, in November 2020. As a consequence, he was not able to receive payment of annual travel expenses in full, but only for two months, starting in November 2020. Partial payment infringed his right to payment for a full calendar year. Moreover, the EEAS Human Resources Department were fully aware of those errors, which are not the responsibility of the applicant and should not be detrimental to him. It is not necessary for the applicant's children to appear as dependants in order for the applicant to be entitled to payment of annual travel expenses in respect of them.

51 The applicant adds that he cannot lose his entitlement to payment of annual travel expenses for his dependent children on the ground that he failed to submit his request before 2 May 2020. The note of 9 March 2020, states, in footnote 6, that 'in case of children where both parents work for European institutions, [they are] free to apply for the payment of the annual travel expenses for [their] child(ren) on the basis of the place of origin of the other parent', without specifying a deadline. Footnote 9 to the same document states that the deadline, 'if entering into service', is 'one year after the end of the probation[ary] period' and, 'in case of mobility or entry into service without [a] probation[ary] period', after '1 year', which is misleading information. The applicant could rely on that information, which had been communicated to him personally, rather than on information available on the intranet of his department of which he was not even aware. In the interests of sound administration, the EEAS should have referred to the deadline of 2 May in the note of 9 March 2020.

52 Moreover, according to the applicant, the EEAS could not rely on the Parliament's payment of travel expenses for 2020 to his wife, since the behaviour of one appointing authority cannot determine the actions of another.

53 The applicant adds, in his replies to the questions put by the General Court, that it is apparent from the information submitted by the EEAS that it is the latter which is competent to lay down the conditions for payment of annual travel expenses to its staff posted outside the European Union. No formal decision exists whereby the EEAS adopts the conditions laid down by the PMO for that payment.

54 The EEAS refutes the applicant's arguments and contends that the deadline laid down for changing the recipient of the payment of annual travel expenses for the current year, namely 2 May, was not met by the applicant and that the annual travel expenses had already been paid to his wife. In addition, the payment of travel expenses to the applicant for two months is an administrative error to his benefit. It is not possible to pay a staff member the annual travel expenses for only two months.

55 As a preliminary point, it should be noted that, despite the applicant's assertion, in the heading of his first plea, of an infringement of Article 7(1) of Annex VII to the Staff Regulations, he does not put forward any arguments concerning such an infringement.

56 It should be recalled that the first subparagraph of Article 8(1) of Annex VII to the Staff Regulations provides that 'officials entitled to the expatriation or foreign residence allowance shall be entitled, within the limit set out in paragraph 2, in each calendar year to a flat-rate payment corresponding to the cost of travel from the place of employment to the place of origin … for themselves and, if they are entitled to the household allowance, for the spouse and dependants within the meaning of Article 2' of that annex. The second subparagraph of Article 8(1) of that annex provides that 'where a husband and wife are both officials of the European Union, each has the right in respect of himself or herself and in respect of dependants to the flat-rate payment of travelling expenses, in accordance with the above provisions', that 'each dependant shall be entitled to one payment only' and that 'the payment in respect of dependent children is fixed at the request of the husband or wife, on the basis of the place of origin of one or other of them'.

57 According to the case-law, the objective of Article 8(1) of Annex VII to the Staff Regulations is to enable the official and his or her dependants to return to the official's place of origin once or twice a year in order to maintain family, social and cultural links there (see judgment of 16 February 2005, *Reggimenti* v *Parliament*, T-354/03, EU:T:2005:54, paragraph 68 and the case-law cited; judgment of 30 April 2019, *Ardalic and Others* v *Council*, T-523/16 and T-542/16, not published, EU:T:2019:272, paragraph 104). However, it was in the exercise of its discretion that the legislature decided that members of the EU civil service would be reimbursed for the annual travel expenses incurred in connection with their annual leave, even though no higher rule of EU law or of international law required it to confer such an entitlement on officials and members of their families. Accordingly, it has, a fortiori, a wide discretion to determine the conditions and arrangements for such reimbursement (see judgment of 30 April 2019, *Ardalic and Others* v *Council*, T-523/16 and T-542/16, not published, EU:T:2019:272, paragraph 48, and the case-law cited).

58 Under Article 8(2) of Annex VII to the Staff Regulations, annual travel expenses are paid as a flat-rate amount based on an allowance per kilometre of geographical distance between the place of employment and place of origin of the official or other staff member.

59 After consulting the Staff Regulations Committee and the Staff Committee, the Commission adopted the decision of 16 December 2013 laying down general provisions giving effect to Article 8 of Annex VII to the Staff Regulations ('the general implementing provisions'), applicable to the EEAS by virtue of the Decision of the High Representative of the Union for Foreign Affairs and Security Policy of 3 February 2014 amending Annex I of the Decision of the High Representative of 22 November 2011 on General Implementing Provisions for giving effect to the Staff Regulations and to the Conditions of Employment.

60 The first subparagraph of Article 1 of the general implementing provisions provides that a staff member who takes up an appointment in the course of a calendar year and who in that year completes at least nine months of active employment is to be entitled to the full payment of annual travel expenses provided for in Article 8 of Annex VII to the Staff Regulations, which is a flat-rate amount. Only if, during that year, he or she completes less than nine months of active employment is the official or other staff member to be entitled to only part of that payment, calculated in twelfths on a pro rata basis according to the number of months' active service.

61 Under Article 7 of the general implementing provisions, the payments provided for in Article 8 of Annex VII to the Staff Regulations are to be made each year, in July at the latest, on the basis of the family circumstances of each official or other staff member.

62 Under the terms of the service-level agreement between the PMO and the EEAS, adopted on 5 January 2011, payment of the salaries of EEAS staff is to be made by the PMO. The EEAS also delegated the management of the payment of annual travel expenses to the PMO for EEAS staff posted within the European Union. Pursuant to Article 16(1) of that agreement, the PMO laid down the conditions under which payment of annual travel expenses is granted to a new recipient in respect of staff posted within the European Union, including the deadline of 2 May. The intranet page provided by the applicant states that payment is made to the parent receiving the allowances when both parents work for EU institutions, and that payment of annual travel expenses is made on the basis of the place of origin of one of the parents, following a formal request signed by both parents. It is also specified on the same intranet page that that request cannot be applied retroactively, that the payment is made with the salary for June and that, consequently, requests made after 2 May will not be processed for the current year.

63 In response to a written question put by the Court, the EEAS, the competent authority for the management of annual travel expenses for staff posted outside the European Union, stated that it had decided to adhere to the PMO rule, in the interests of equal treatment and in order to allow the smooth and consistent processing of the entering of the various individual entitlements. Accordingly, the rule set out on the intranet page referring to the 2 May deadline makes no distinction between staff posted within the European Union and those posted outside the European Union.

64 That rule is accessible to staff via the intranet. It reflects the implied decision of the EEAS to align the arrangements applicable to the two categories of staff, that is to say staff members posted within the European Union and those posted outside the European Union. It thus constitutes an internal directive aimed at ensuring that the officials concerned receive the same treatment as regards the payment of annual travel expenses. According to settled case-law, the decision of an institution communicated to all its staff and setting out the applicable procedure as part of its discretion constitutes an internal directive which must, as such, be regarded as a rule of conduct which the administration imposes on itself and from which it may not depart without specifying the reasons for doing so, since otherwise the principle of equality of treatment would be infringed (see, by analogy, judgments of 9 July 2003, *Efthymiou* v *Commission*, T-22/01, EU:T:2003:197, paragraph 54, and of 14 December 2022, *SU* v *EIOPA*, T-296/21, EU:T:2022:808, paragraph 51 and the case-law cited).

65 It follows that, in order to manage the payment of annual travel expenses for dependent children within the time limit laid down in Article 7 of the general implementing provisions, the PMO was able legitimately to set the deadline of 2 May each year for submitting the request provided for by Article 8(1) of Annex VII to the Staff Regulations, which determines which of the parents' places

of origin will be taken into account as the basis for payment. Setting such a deadline is both reasonable and necessary to ensure that the administration is able to manage a large number of files and pay annual travel expenses within the time limit provided for by the general implementing provisions.

66 Moreover, in view of the flat-rate nature of the payment and the deadline set by the general implementing provisions for making it, the PMO did not exceed its discretion when it stipulated that the request provided for in Article 8(1) of the Staff Regulations could not be applied retroactively. Compliance with that deadline is not a precondition for the payment of annual travel expenses, which is a right provided for in the Staff Regulations and which will be made to one or other of the parents, but merely aims to enable the administration to have information in good time relating to the geographical distance on the basis of which the amount of the payment is calculated.

67 In the present case, it is apparent from the file that the annual travel expenses were paid to the applicant's wife on the basis of the distance between Brussels and Madrid. The applicant, who entered into the service of the EEAS on 16 February 2020, had sufficient time to submit, together with his wife, the request provided for in Article 8(1) of Annex VII to the Staff Regulations before 2 May 2020.

68 Moreover, the applicant cannot validly claim that he was unaware that, in order for the annual travel expenses for his dependent children to be calculated on the basis of his place of employment, it was necessary for him and his wife to submit a joint request to that end. First, that request is provided for by the Staff Regulations and it follows from the case-law that officials and other staff members are deemed to know the Staff Regulations (see, to that effect, judgment of 19 May 1999, *Connolly* v *Commission*, T-34/96 and T-163/96, EU:T:1999:102, paragraph 168 and the case-law cited). Moreover, the applicant was expressly and personally informed of the possibility of making such a request, which had to be made jointly by both parents, by the note of 9 March 2020 addressed to him.

69 As regards the time limit within which that request must be made, the applicant submits that he had been led to believe that the period for making that request was one year because of footnote 9 to the note of 9 March 2020, which stated that the deadline would, 'if entering into service', be 'one year after the end of the probation[ary] period' and, 'in case of mobility or entry into service without [a] probation[ary] period', after '1 year'.

70 That argument cannot be accepted. It is clear from a mere reading of the note of 9 March 2020 that footnote 9 concerns the rights relating to a removal following entry into the service or a transfer, and not the annual travel expenses, with which footnote 6 is concerned.

71 Nor can the applicant validly claim that he was unaware of the deadline for making the joint request provided for in Article 8(1) of Annex VII to the Staff Regulations and that he thought he had made that request in good time.

72 First, that time limit is accessible to EEAS staff on the intranet page provided by the applicant, which is sufficient to establish the knowledge of officials and other staff members in post who have access to it (see, to that effect and by analogy, judgment of 13 March 2013, *Inglewood and Others* v *Parliament*, T-229/11 and T-276/11, EU:T:2013:127, paragraphs 33 and 34). Secondly, in the light of Article 7 of the general implementing provisions, which provides that annual travel expenses are to be reimbursed by July at the latest, it may be inferred that a request for such

payment must be made in good time before that period, in order to enable the administration to process it. Thirdly, the applicant states that he was first registered as being in the service of the European Union in 2014, which means that he had had the opportunity to familiarise himself with the payment procedures, while he entered into the service of the EEAS in February 2020, which gave him sufficient time, as a diligent staff member, to inform himself and make, together with his wife, the request provided for by Article 8(1) of Annex VII to the Staff Regulations, before 2 May 2020.

73 It follows that, given that the joint request by the applicant and his wife was not completed until 29 June 2020, the EEAS did not infringe Article 8(1) of Annex VII to the Staff Regulations by failing to pay in full the annual travel expenses for the applicant's dependent children on the basis of the distance between Madrid and Washington.

74 That conclusion cannot be called into question by the applicant's arguments concerning the errors in his Sysper account and an alleged infringement of the principle of sound administration.

75 As is apparent from the case file as a whole, the alleged errors in Sysper and the lack of a clear reply from the EEAS concerning the applicant's rights had no bearing on the refusal to pay in full the travel expenses for the couple's children on the basis of the distance between Washington and Madrid. That refusal is the result of the applicant's late submission of the joint request provided for by Article 8(1) of Annex VII to the Staff Regulations, as pointed out by the PMO, which manages payments on behalf of the EEAS, in the email of 29 June 2020, and as recalled by the EEAS in the decision rejecting the complaint of 14 April 2022. It is because of that delay in making the joint request that the annual travel expenses for the couple's dependent children were paid to the applicant's wife, on the basis of the distance between Brussels and Madrid, and not to the applicant.

76 The first plea must therefore be rejected in its entirety.

The second plea in law, alleging breach of the duty to have regard for the welfare of officials (the duty of care)

77 The applicant submits that the EEAS failed to comply with the duty to have regard for the welfare of officials (the duty of care), because it did not take into account his interests, the particular context of the COVID-19 pandemic or the fact that the root of the problem lay in administrative errors made by the administration.

78 According to settled case-law, the administration's duty to have regard for the welfare of its staff reflects the balance of reciprocal rights and obligations that the Staff Regulations have created in relations between the public authority and public service employees. That duty, together with the principle of sound administration, implies in particular that when the competent authority takes a decision concerning the situation of an official, it should take into consideration all the factors which may affect its decision and that when doing so it should take into account not only the interests of the service but also those of the official concerned (see judgment of 25 June 2003, *Pyres* v *Commission*, T-72/01, EU:T:2003:176, paragraph 77 and the case-law cited).

79 First of all, the applicant puts forward no argument as to how the administration failed to balance his interests against the interests of the service where it merely applied to his case the time limit for submitting the joint request provided for in Article 8(1) of Annex VII to the Staff Regulations.

80 Nor does the applicant explain how his health is affected within the meaning of the case-law cited in paragraph 78 above. The general reference to the COVID-19 pandemic, which resulted in teleworking being arranged for him and in his return to Brussels, is not sufficient in that regard.

81 Lastly, as stated in paragraph 75 above, the alleged errors made by the administration in the management of his file have no bearing on the fact that the annual travel expenses for the couple's children were paid to the applicant's wife and not to the applicant, which was due to the late submission of the joint request provided for in Article 8(1) of Annex VII to the Staff Regulations. Accordingly, that situation cannot constitute a breach of the duty to have regard for the welfare of officials (the duty of care).

82 It follows that the applicant's arguments cannot succeed and that his second plea is rejected.

83 Accordingly, the action must be dismissed in its entirety.

Costs

84 Under Article 135(2) of the Rules of Procedure of the General Court, the Court may order a party, even if successful, to pay some or all of the costs, if this appears justified by the conduct of that party, including before the proceedings were brought.

85 In the present case, it is clear from the file that the applicant was unable, despite his numerous requests, to obtain a clear and complete response from the competent authority, namely the EEAS, concerning the substance of his request for payment of annual travel expenses for the whole of 2020 as regards his children. Even in its decision rejecting the complaint, the EEAS merely rejected the complaint as inadmissible. The fact that the EEAS wrongly considered that the applicant's complaint was made out of time increased, at least in part, the likelihood of the dispute arising (see, to that effect, judgment of 23 April 2018, *CRM* v *Commission*, T-43/15, not published, EU:T:2018:208, paragraphs 105 to 108).

86 Accordingly, the Court considers that the circumstances of the case justify an order that the EEAS bear its own costs and pay half of the costs incurred by the applicant. For his part, the applicant is to bear half of his own costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders the European External Action Service (EEAS) to pay its own costs and half of the costs incurred by PW;**

3. **Orders PW to pay half of his own costs.**

da Silva Passos Gervasoni Pynnä

Delivered in open court in Luxembourg on 2 October 2024.

V. Di Bucci
Registrar

S. Papasavvas
President