Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

29 April 2015 *

(Non-contractual liability — Handling by the Ombudsman of a complaint concerning the management of a list of suitable candidates for an open competition — Powers of investigation — Duty to exercise diligence — Loss of opportunity — Non-pecuniary damage)

In Case T-217/11,

Claire Staelen, residing in Bridel (Luxembourg), represented initially by L. Levi, M. Vandenbussche and A. Blot, then by F. Wies and A. Hertzog, and lastly by V. Olona, lawyers,

applicant,

v

European Ombudsman, represented by G. Grill, acting as Agent, and by D. Waelbroeck and A. Duron, lawyers,

defendant,

ACTION for damages seeking to obtain compensation for loss allegedly suffered by the applicant as a result of the European Ombudsman's handling of her complaint concerning mismanagement of the list of suitable candidates in Open Competition EUR/A/151/98, on which she appeared as a successful candidate,

THE GENERAL COURT (Fourth Chamber),

composed of M. Prek, President, I. Labucka and V. Kreuschitz (Rapporteur), Judges,

Registrar: C. Kristensen, Administrator,

having regard to the written procedure and further to the hearing on 9 April 2014,

gives the following

* Language of the case: French.

Judgment

Background to the dispute

I – *The facts predating the complaint to the Ombudsman*

1 On 2 March 1999, a competition notice was published in the *Official Journal of the European Communities* (OJ 1999 C 60 A, p. 10) concerning, inter alia, the organisation of an open competition on the basis of tests with a view to establishing a list of suitable candidates for the recruitment of French-language administrators (EUR/A/151/98) ('Competition EUR/A/151/98'). That competition was organised by the Parliament and by the Council of the European Union. The applicant applied as a candidate in that competition.

2 The applicant, Ms Staelen, was engaged by the European Parliament on 11 November 1999 as a member of the auxiliary staff in category A until 27 November 2000. From the latter date, she was awarded a contract as a member of the temporary staff and was classified in grade A 7, step 3, then in the same grade, step 4. Her contract with the Parliament ended on 26 November 2003. Since that date she has been unemployed.

3 On 8 and 9 June 2000, the applicant participated in written tests for Competition EUR/A/151/98.

4 On 26 October 2000, the President of the Selection Board for Competition EUR/A/151/98 informed the applicant that as she had scored only 17 points in the written test, when the minimum required for that test was 20 points, she would not be admitted to the subsequent tests for that competition. On 12 January 2001, the list of suitable candidates in that competition was established.

5 On 30 January 2001, after her objection had been dismissed, the applicant brought an action at the Court of First Instance against the decision of 26 October 2000.

6 On 5 March 2003, the Court annulled the decision of the Selection Board for Competition EUR/A/151/98 of 26 October 2000 refusing to admit the applicant to tests subsequent to the written test (judgment of 5 March 2003 in *Staelen* v *Parliament*, T-24/01, ECR-SC, EU:T:2003:52).

7 On 22 March 2004, pursuant to the judgment in *Staelen* v *Parliament*, cited in paragraph 6 above (EU:T:2003:52), the Parliament organised oral tests in which the applicant was the only candidate to participate.

8 On 22 July 2004, the applicant lodged an objection seeking notification of the results of her participation in Competition EUR/A/151/98.

9 On 18 August 2004, the Parliament informed the applicant that her name had not been included on the list of suitable candidates because the total number of points scored by her was lower than the number of points scored by the candidate in the last position on the list of suitable candidates.

10 On 19 January 2005, after her objection had been dismissed, the applicant brought an action for annulment and for damages at the Court of First Instance against the decision of 18 August 2004.

11 On 19 May 2005, the Parliament informed the applicant that it had decided to place her name on the list of suitable candidates in Competition EUR/A/151/98 and that that list was valid until 1 June 2007.

12 By order of 18 October 2006 in *Staelen* v *Parliament* (T-32/05, EU:T:2006:328), the Court ruled that there was no longer any need to adjudicate on the action for annulment brought on 19 January 2005 and dismissed the action for damages.

13 As she had not received any job offers, the applicant wrote to several EU institutions, including the Parliament and the European Economic and Social Committee, in order to find a post. Those applications were all rejected.

II – *The complaint to the Ombudsman*

14 On 14 November 2006, the applicant lodged a complaint with the Ombudsman concerning maladministration by the Parliament in its management of the reserve list in Competition EUR/A/151/98 ('the complaint').

15 On 30 January 2007, the Ombudsman informed the applicant that the complaint would be examined and that the Parliament had been requested to submit an opinion on, first, its management of the applicant's file following the inclusion of her name on the list of suitable candidates in Competition EUR/A/151/98 and, second, the applicant's claim that she should be treated fairly in the context of filling vacancies within the EU institutions.

16 On 20 March 2007, the Parliament sent the requested opinion to the Ombudsman.

17 On 3 May 2007, the Ombudsman informed the Parliament that he considered it necessary to inspect its files, among other things so as to ascertain whether and how the other EU institutions had been informed of the Parliament's decision to include the applicant's name on the list of suitable candidates in Competition EUR/A/151/98.

18 On 11 May 2007, the applicant submitted to the Ombudsman her observations on the Parliament's opinion concerning the complaint.

19 On 15 May 2007, the applicant asked the Parliament to extend the validity of the list of suitable candidates in Competition EUR/A/151/98. A copy of that request was forwarded to the Ombudsman on the same date. On the same date, the Ombudsman's Office inspected the Parliament's files. Those files included eight confidential documents.

20 On 16 May 2007, the Ombudsman drew up a 'report on the inspection of the files by the European Ombudsman' ('the inspection report'). That report stated that the Ombudsman's representatives had obtained a copy of eight confidential documents, one of which was described as follows: 'Document entitled "pooling", which is circulated by the European Personnel Selection Office [EPSO], indicating the number of candidates remaining on reserve lists of all competitions organised by the various [European Union] institutions'.

21 On 24 May 2007, the Ombudsman sent the inspection report to the applicant and the Parliament.

22 By letter of 24 May 2007, a copy of which was forwarded to the applicant on the same date, the Ombudsman suggested that the Parliament extend the validity of the list of suitable candidates in Competition EUR/A/151/98 in order to preserve the possibility of a friendly solution in case of a finding of maladministration. On 31 May 2007, the Parliament informed the Ombudsman that it had extended the validity of that list until 31 August 2007. On 6 June 2007, the applicant was informed that the Secretary-General of the Parliament had requested that the procedure be initiated to extend the validity of the list until 31 August 2007. On 17 July 2007, the Parliament informed the applicant that it had decided to extend the validity of the list until 31 August 2007.

23 On 28 August 2007, the applicant sent an e-mail to the Ombudsman in which she stated that the validity of the list of suitable candidates in Competition EUR/A/151/98 which included her name had been extended for only three months, whereas the period of validity of that list of suitable candidates for the initially successful candidates had been longer. By e-mail of 29 August 2007, the Ombudsman replied to the applicant's e-mail.

24 On 15 October 2007, the Parliament informed the applicant that if she so wished, her application file would be retained for a period of two and a half years after the validity of the list of suitable candidates in Competition EUR/A/151/98 had expired. On 19 October 2007, the applicant replied that the fact that the validity of the list had been extended for only three months confirmed that she was suffering discrimination.

25 On 22 October 2007, the Ombudsman sent the applicant his decision on the complaint ('the decision of 22 October 2007'). In that decision, the Ombudsman did not find any instance of maladministration on the part of the Parliament. In support of that finding, he stated in particular that the inspection of the Parliament's files on 15 May 2007 had shown that since May 2005 the Parliament had only recruited French-language administrators with specialised fields of interest. He also stated that that inspection had revealed that the applicant's candidature had been made available to all directorates-general (DGs) within the Parliament (see point 2.4 of the decision). He went on to state: 'the inspection [had] confirmed the information already provided by Parliament in its opinion that the reserve list [of candidates in Competition EUR/A/151/98] indicating the [applicant's] availability had been made available to other [European Union] institutions' and that, furthermore, 'the inspection [had] confirmed that [her] CV had been sent to the service requesting information on [her], namely, to the Council' (see point 2.5 of that decision). Lastly, with regard to the extension of the validity of that list, he observed that this fell within the discretionary powers of the competent administration and commended the Parliament's willingness to extend the validity of the list (see point 2.6 of the decision).

III – *The own-initiative inquiry by the Ombudsman*

26 Following the decision of 22 October 2007, the applicant sent the Ombudsman several letters in which she claimed that he had made errors in relation to the closure of his inquiry into the list of suitable candidates in Competition EUR/A/151/98 and the failure to publish that list officially and to circulate it within the institutions (see, in particular, the letters of 24 January, 14 July and 1 August 2008). The applicant requested that the Ombudsman reopen his inquiry on that basis. In his replies of 1 and 21 July and 1 October 2008, the Ombudsman confirmed the findings he had reached in the decision of 22 October 2007. By letter of 8 October 2008, the applicant put an end to this correspondence by asking the Ombudsman to refrain from writing to her any further.

27 On 5 November 2009, Ms P., a Member of the Parliament, contacted the Ombudsman, at the applicant's request, to ask him to reconsider the decision of 22 October 2007. Ms P. sent the Ombudsman a reminder letter on 4 March 2010.

28 On 10 March 2010, the Ombudsman replied to the letters from Ms P., apologising for the delay in his reply and confirming his finding that there had been no maladministration on the part of the Parliament in the handling of the complaint. In particular, he reaffirmed that his inspection had confirmed that the relevant list of suitable candidates had been brought to the attention of other EU institutions and that an appointing authority's decision concerning the date of expiry of the validity of a list of suitable candidates fell within its discretionary powers.

29 On 14 April 2010, Ms P. contacted the Ombudsman to ask him to send her his comments on the contents of a letter of 17 March 2010 which Mr W., a retired Parliament official and former colleague of the applicant, had sent to her and a copy of which she enclosed. That letter raised questions about the Ombudsman's inquiry and made various accusations against him.

30 In a letter of 1 June 2010, Ms P. accused the Ombudsman of having committed certain wrongful acts, including distorting facts by stating that the list of suitable candidates in Competition EUR/A/151/98 which included the applicant's name had been made available to other institutions. She further stated that the applicant had suffered serious loss as a result of the Ombudsman's conduct and that she therefore expected him to make concrete proposals as to how that loss could be compensated.

31 On 11 June 2010, the Ombudsman replied to the letter from Ms P., apologising for the delay in replying and pointing out that the substance of the letters of 14 April and 1 June 2010 would be thoroughly and rapidly examined, that the case had been assigned to another case-handler and that she would be informed of the result of this examination before the end of June 2010.

32 On 29 June 2010, the Ombudsman informed Ms P. of the result of his examination of her letters of 14 April and 1 June 2010. First, he acknowledged that the first sentence of point 2.5 of his decision contained an error in so far as it stated that 'the inspection confirmed the information already provided by Parliament in its opinion' that the list of suitable candidates in Competition EUR/A/151/98 which included the applicant's name had been made available to other EU institutions. He apologised for this to the applicant and to Ms P. Second, he explained that his conclusion that the list indicating the applicant's availability had been made available to the other EU institutions was based on a 'pooling' document. He expressed his regret that he had previously not made this sufficiently clear. In addition, he acknowledged that that document did not specify the date on which the Parliament had provided the relevant information to EPSO or the other institutions, even though the chronology of events was crucial given the expiry of the validity of the list of suitable candidates on 1 June 2007. He stated that he had therefore decided to open an own-initiative inquiry in order to ascertain whether there had been an instance of maladministration on the part of the Parliament.

33 By letter of the same date, the Ombudsman informed the Parliament of the error contained in point 2.5 of the decision of 22 October 2007, its correction and his decision to open an own-initiative inquiry in order to ascertain whether there had been an instance of maladministration on the part of the Parliament in assessing the applicant's position. Against that background, he asked the Parliament to provide him with an opinion and additional information on several issues. Thus, he asked the Parliament to specify how it had informed EPSO, the Council and the other EU institutions and bodies that the applicant's name had been placed on the list of suitable candidates in Competition EUR/A/151/98, to explain why it had not replied to the applicant's request of 15 May 2007 to extend the validity of that list, to explain whether it had consulted the Council before deciding on whether or not to extend the validity of that list and, if not, to explain why and comment on the fact that the applicant's name had been placed on the list for only two years and three months whereas the names of the other candidates had been included for nearly six and a half years.

34 On 5 July 2010, the Ombudsman had a meeting with Ms P. At that meeting, Ms P. handed over to him a copy of a letter which Mr W. had sent her on 30 June 2010 and in which Mr W. pointed out that the applicant had lost all confidence in the Ombudsman's ability to conduct an objective procedure and that the Ombudsman should therefore close his inquiry forthwith. On the same date, a meeting took place between the Ombudsman's case-handler and Mr W., in the course of which Mr W. confirmed that the applicant suspected that there had been collusion between the Ombudsman and the Parliament.

35 On 12 July 2010, Mr W. informed the Ombudsman that the applicant objected to the new inquiry on account of suspicions of collusion between the Ombudsman and the Parliament. A copy of a document containing the applicant's detailed comments on a new inquiry was provided to the Ombudsman. In that document, the applicant stated that her possible agreement to that inquiry depended on the Ombudsman's responses to her suspicions.

36 By letter of 19 July 2010 sent to Mr W., the Ombudsman responded to the issues raised in the document containing the applicant's detailed comments on a new inquiry. He assured Mr W. that there had not been any collusion and that he would be happy if the applicant consented to the continuation of the own-initiative inquiry.

37 On 26 July 2010, Mr W. replied that he and the applicant reiterated and expanded the accusations made previously. He stated that the applicant maintained her objections to the Ombudsman's new inquiry.

38 On 8 September 2010, the Ombudsman replied to the letter from Mr W. of 26 July 2010, stating in particular that it was not useful to reply to each and every one of the arguments raised by Mr W. and by the applicant, as they appeared to be determined to submit their grievances to other bodies.

39 On 15 November 2010, the Parliament presented an opinion in response to the questions which the Ombudsman had raised with it in his letter of 29 June 2010. In its opinion, it stated that in conformity with its policy in this area all data concerning the applicant had been destroyed two and a half years after the expiry of the validity of the list of suitable candidates in Competition EUR/A/151/98, namely in March 2010. It was therefore unable to document its replies as it would normally do and instead had to rely on the memory of its officials who dealt with the case at the time. In response to the Ombudsman's questions, it confirmed in particular that EPSO, the Council and the other EU institutions and bodies had been informed in good time that the applicant's name had been placed on that list, that the Council had been consulted before the validity of the list was extended and that potentially interested institutions had had more time to contact the applicant than they had in relation to other persons from that list.

40 On 22 November 2010, the Ombudsman asked the Parliament new questions and informed Ms P. by a letter of the same date, a copy of which was forwarded to the applicant. In that letter, he also stated that if the applicant maintained her opposition to the own-initiative inquiry, he would limit his assessment to the information already in his possession and that still to be provided by the Parliament.

41 In its reply of 24 January 2011 to the new questions from the Ombudsman, the Parliament stated that the applicant's file had been destroyed in its entirety and that it therefore no longer possessed any letters or e-mails informing other EU institutions and bodies that the applicant's name had been placed on the list of suitable candidates in Competition EUR/A/151/98.

42 On 31 March 2011, the Ombudsman delivered his decision closing his own-initiative inquiry ('the decision of 31 March 2011'). In that decision, he found that there was no maladministration on the part of the Parliament as regards the handling of the applicant's letter of 15 May 2007 and as regards the period of time during which the applicant's name was included on the list of suitable candidates in Competition EUR/A/151/98. He also found that there were no grounds for further inquiries in view of the applicant's opposition and the absence of an overriding public interest.

Procedure and forms of order sought

43 By application lodged at the Registry of the General Court on 20 April 2011, the applicant brought the present action for damages.

44 The applicant claims that the Court should:

— order the Ombudsman to pay her the amount of EUR 559 382.13 as compensation for past material loss, plus default interest calculated at the rate of two points above the European Central Bank rate;

— order the Ombudsman to pay to the Community pension fund the pension contributions for the applicant corresponding to the basic salaries calculated for the period from June 2005 to April 2011, that is, on the basis of a total amount of EUR 482 225.97;

— order the Ombudsman to pay her on a monthly basis from May 2011 to March 2026 the net amounts corresponding to the fixed salaries for AD officials from grade AD 9, step 2, second year, taking account of the normal career path of an official of that grade, together with corresponding pension fund contributions for the applicant as well as sickness insurance fund contributions;

— order the Ombudsman to pay her the amount of EUR 50 000 as compensation for non-pecuniary loss suffered;

— order the Ombudsman to pay the costs.

45 The Ombudsman contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

46 In the reply, the applicant requested, by way of measures of organisation of procedure and measures of inquiry, that the Court order

— the Ombudsman to produce the documents contained in the inspection file and the letters of 24 May and 31 May 2007 concerning the extension of the validity of the list of suitable candidates in Competition EUR/A/151/98 which had included her name;

— the appearance of Mr Diamandouros, the European Ombudsman at the time when the application was lodged;

— the examination of Ms A. and Ms B. from the Ombudsman's services and of Mr C., Ms P., Ms H. and Mr S. from the Parliament's services in order to clarify the content of the files submitted by the Parliament's staff to the Ombudsman's representatives during the inspection on 15 May 2007.

47 By letter of 25 April 2012, the applicant made a request to the Court to be able to lodge documents obtained in Case F-9/12, *Staelen* v *Parliament*, pending before the Civil Service Tribunal, as new evidence in the present case. That request was granted by decision of the President of the First Chamber of 23 May 2012. By decision of the President of the First Chamber of 19 June 2012, the documents to which that request related and the letter of 6 June 2012 accompanying their submission were placed in the case-file, except for the Parliament's defence in Case F-9/12.

48 On 23 October 2012, the applicant requested the Court to ask the Parliament and the Ombudsman to produce two e-mails concerning the return to the Parliament of copies of certain documents which had been in the Ombudsman's possession since his inspection in May 2007. In response to that request, the Ombudsman submitted the two e-mails in question to the Registry of the General Court. By decision of the President of the First Chamber of 21 November 2012, those e-mails were placed in the case-file.

49 By letter of 19 December 2012, the applicant submitted new evidence to the Registry of the General Court and requested the adoption of measures of organisation of procedure with reference to recent developments in Case F-9/12. By decision of the President of the First Chamber of 24 January 2013, that letter and its annexes were placed in the case-file.

50 On 11 July 2013, the Civil Service Tribunal delivered its judgment in Case F-9/12, in which it ordered the Parliament, first, to compensate material loss assessed *ex aequo et bono* at EUR 10 000 by reason of the applicant's loss of earnings from her inclusion on the list of suitable candidates as a result of the Parliament's conduct and, second, to compensate the non-material loss suffered by the applicant, which was fixed *ex aequo et bono* at EUR 5 000 (judgment of 11 July 2013 in *CC* v *Parliament*, F-9/12, ECR-SC, EU:F:2013:116, paragraphs 124 and 128).

51 Following a change in the composition of the Chambers of the General Court by decision of 17 September 2013 (OJ 2013 C 313, p. 2), the Judge-Rapporteur was assigned to the Fourth Chamber, to which the present case was accordingly allocated.

52 On 28 August 2013, the applicant lodged an appeal against the judgment in *CC* v *Parliament*, cited in paragraph 50 above (EU:F:2013:116) (see Case T-457/13 P).

53 On 6 November 2013, the applicant requested, by way of measures of inquiry, the appearance of Ms O'Reilly, who succeeded Mr Diamandouros in the post of European Ombudsman, on the ground that it was important to ascertain her position on the wrongful acts committed by her predecessor and to what extent she accepted or condemned them.

54 Upon hearing the Report of the Judge-Rapporteur, the General Court (Fourth Chamber) decided to request the parties to reply to certain written questions and decided to open the oral procedure. The parties replied to those written questions within the prescribed period. In addition, the parties presented oral argument and answered the oral questions put by the Court at the hearing on 9 April 2014.

Law

I – *Admissibility*

55 As a preliminary point, the Court notes that it has jurisdiction, under Article 268 TFEU and the second paragraph of Article 340 TFEU, in the case of an action for damages against the Ombudsman (judgments of 23 March 2004 in *Ombudsman* v *Lamberts*, C-234/02 P, ECR, EU:C:2004:174; 10 April 2002 *Lamberts* v *Ombudsman*, T-209/00, ECR, EU:T:2002:94, paragraph 52, and 24 September 2008 *M* v *Ombudsman*, T-412/05, EU:T:2008:397, paragraph 39).

56 However, the Ombudsman expresses doubts as to the applicant's interest in bringing proceedings on the ground that in the present action she is challenging the insufficient scope of the Ombudsman's own-initiative inquiry when she was strongly opposed to that inquiry. In addition, the Ombudsman states that no final decision has been taken on when and how the Parliament informed the other institutions, bodies, offices and agencies that the applicant's name had been added to the list of suitable candidates in Competition EUR/A/151/98. He considers that he could still reopen his inquiry in this regard. Consequently, he believes that the present action is premature.

57 In the applicant's view, she has an interest in bringing proceedings in view of the closure of the two inquiries conducted by the Ombudsman by decisions finding that there had been no instances of maladministration on the part of the Parliament.

58 The Court considers that the fact that the applicant was opposed to the Ombudsman's own-initiative inquiry does not allow her interest in bringing proceedings in this case to be called into question. Even though that inquiry was conducted without the applicant's agreement or support, the applicant does have an interest in bringing proceedings for compensation for any loss she suffered following or in connection with the inquiry, as in this case the question of the applicant's conduct in respect of the inquiry cannot have a bearing on the assessment of the admissibility of the action.

59 It should also be noted that the action for damages was introduced by the FEU Treaty as an autonomous form of action, with a particular purpose to fulfil within the system of actions and subject to conditions on its use dictated by its specific purpose (judgment of 28 April 1971 in *Lütticke* v *Commission*, 4/69, ECR, EU:C:1971:40, paragraph 6, and order of 21 June 1993 in *Van Parijs and Others* v *Council and Commission*, C-257/93, ECR, EU:C:1993:249, paragraph 14). Although actions for annulment and for failure to act seek a declaration that a legally binding measure is unlawful or that such a measure has not been taken, an action for damages seeks compensation for damage resulting from a measure, whether legally binding or not, or from conduct, attributable to a Community institution or body (see, to this effect, judgments of 10 July 1985 in *CMC and Others* v *Commission*, 118/83, ECR, EU:C:1985:308, paragraphs 29 to 31; 15 September 1994 *KYDEP* v *Council and Commission*, C-146/91, ECR, EU:C:1994:329, paragraph 26, and 15 June 1999 *Ismeri Europa* v *Court of Auditors*, T-277/97, ECR, EU:T:1999:124, paragraph 61).

60 The admissibility of the present action for damages cannot therefore be affected by the fact that the Ombudsman has not yet taken a final decision on certain aspects covered by his own-initiative inquiry.

61 Consequently, the action must be declared admissible.

II – *Substance*

A – *Introduction*

62 The applicant claims that the necessary conditions for establishing the European Union's non-contractual liability are met in the present case. With regard to the unlawfulness of the Ombudsman's conduct, the applicant relies on four pleas in law in support of her action.

63 By the first plea in law, the applicant alleges that the Ombudsman infringed Article 3(1) of Decision 94/262/ECSC, EC, Euratom of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (OJ 1994 L 113, p. 15) and Articles 5 and 9.2 of the Implementing provisions adopted by the Ombudsman pursuant to Article 14 of Decision 94/262 ('the Implementing provisions') in so far as, following the complaint and in his own-initiative inquiry, he failed to make all the necessary inquiries to establish the existence of a case of maladministration on the part of the Parliament in the handling of her case.

64 By the second plea in law, the applicant claims that the Ombudsman made several manifest errors of assessment such as to cause her loss in examining the justification for the complaint and following that examination.

65 By the third plea in law, the applicant considers that the Ombudsman was not impartial, did not act with good faith, objectivity and independence and misused his powers in the examination of the complaint and following that examination.

66 By the fourth plea in law, the applicant claims that in the inquiries initiated by him following the complaint the Ombudsman breached the principles of the duty of care and good administration and the 'reasonable time' principle and infringed Articles 14 and 17 of the European Code of Good

Administrative Behaviour adopted pursuant to the resolution of the European Parliament of 6 September 2001 (OJ 2001 C 72, p. 331, 'the Code of Good Behaviour') and Article 41 of the Charter of Fundamental Rights of the European Union.

67 The Ombudsman denies each of these four pleas in law and considers that the applicant's action should be dismissed as unfounded.

B – *The case-law on the European Union's non-contractual liability*

68 It is settled case-law that the non-contractual liability of the European Union within the meaning of the second paragraph of Article 340 TFEU for unlawful conduct on the part of its organs depends on fulfilment of a set of conditions, namely the unlawfulness of the conduct alleged against the institution, the fact of damage and the existence of a causal link between that conduct and the damage complained of (see, to this effect, judgments of 29 September 1982 in *Oleifici Mediterranei* v *EEC*, 26/81, ECR, EU:C:1982:318, paragraph 16; 9 November 2006 *Agraz and Others* v *Commission*, C-243/05 P, ECR, EU:C:2006:708, paragraph 26; and 2 March 2010 *Arcelor* v *Parliament and Council*, T-16/04, ECR, EU:T:2010:54, paragraph 139 and the case-law cited).

69 Given the cumulative nature of those conditions, the action must be dismissed in its entirety where one of those conditions is not satisfied (see judgment in *Arcelor* v *Parliament and Council*, cited in paragraph 68 above, EU:T:2010:54, paragraph 140 and the case-law cited).

70 With regard to the condition relating to the unlawful conduct of an institution, it is required that there be established a sufficiently serious breach of a rule of law intended to confer rights on individuals (judgments of 4 July 2000 in *Bergaderm and Goupil* v *Commission*, C-352/98 P, ECR, EU:C:2000:361, paragraphs 42 and 43, and 9 September 2008 *FIAMM and Others* v *Council and Commission*, C-120/06 P and C-121/06 P, ECR, EU:C:2008:476, paragraph 173). Thus, a wrongful act by an institution giving rise to such a sufficiently serious breach alone is capable of establishing the liability of the European Union.

71 In relation to the requirement that there must be a sufficiently serious breach, the decisive criterion for establishing that a breach of Union law is sufficiently serious is whether the EU institution concerned manifestly and gravely disregarded the limits on its discretion. It is solely where that institution has only considerably reduced, or even no, discretion, that the mere infringement of Union law may suffice to establish the existence of a sufficiently serious breach (see judgments of 10 December 2002 in *Commission* v *Camar and Tico*, C-312/00 P, ECR, EU:C:2002:736, paragraph 54 and the case-law cited, and *Arcelor* v *Parliament and Council*, cited in paragraph 68 above, EU:T:2010:54, paragraph 141 and the case-law cited). The discretion available to the institution concerned therefore plays a determining role in establishing the existence of such a sufficiently serious breach (see, to this effect, judgment of 12 July 2005 in *Commission* v *CEVA and Pfizer*, C-198/03 P, ECR, EU:C:2005:445, paragraph 66 and the case-law cited).

72 Thus, where the Ombudsman has discretion, only where he manifestly and gravely disregarded the limits on his discretion can there be a sufficiently serious breach of Union law which can establish the liability of the European Union. By contrast, where, in the exercise of his functions, the Ombudsman has only considerably reduced, or even no, discretion, the mere infringement of Union law may be sufficient to establish the existence of such a sufficiently serious breach (see, to this effect, judgment in *M* v *Ombudsman*, cited in paragraph 55 above, EU:T:2008:397, paragraph 143).

73 As regards the requirement that the rule of law must be intended to confer rights on individuals, it follows from case-law that the requirement is satisfied where that rule creates an advantage which could be defined as a vested right, is designed for the protection of the interests of individuals or entails the grant of rights to individuals, the content of those rights being sufficiently identifiable (see

judgment of 19 October 2005 in *Cofradía de pescadores 'San Pedro de Bermeo' and Others* v *Council*, T-415/03, ECR, EU:T:2005:365, paragraph 86 and the case-law cited). It also follows from the case-law that that condition is satisfied where the rule of law breached, while referring essentially to interests of a general nature, also ensures the protection of the individual interests of the persons concerned (see judgment of 16 May 2013 in *Gap granen & producten* v *Commission*, T-437/10, EU:T:2013:248, paragraph 22 and the case-law cited).

74 In the present case it must therefore be ascertained whether the Ombudsman committed the alleged unlawful acts in handling the applicant's complaint and during the subsequent own-initiative inquiry. If the Ombudsman did commit unlawful acts, it must be ascertained whether they gave rise to a sufficiently serious breach of rules of law intended to confer rights on individuals.

C – *The alleged unlawful acts*

1. The unlawful acts constituting infringements of Article 3(1) of Decision 94/262, Articles 5 and 9.2 of the Implementing provisions, and breaches of the principles of the duty of care and good administration

a) Preliminary remarks

75 In the first plea in law, the applicant claims that the Ombudsman infringed Article 3(1) of Decision 94/292 and Articles 5 and 9.2 of the Implementing provisions in so far as, in handling the complaint and in his own-initiative inquiry, he failed to make all the necessary inquiries to identify and to clarify the case of maladministration which she had reported. In the first ground for complaint in the fourth plea in law, she claims a breach of the principles of the duty of care and good administration on the same grounds. These grounds for complaint should be dealt with together.

76 First, it should be noted that, as has already been ruled, the Ombudsman enjoys very wide discretion as regards the merits of complaints and the way in which he deals with them, and in so doing he is under no obligation as to the result to be achieved (see, to this effect, judgments in *Ombudsman* v *Lamberts*, cited in paragraph 55 above, EU:C:2004:174, paragraphs 50 and 52, and *M* v *Ombudsman*, cited in paragraph 55 above, EU:T:2008:397, paragraph 143). Consequently, only where he has manifestly and gravely disregarded the limits on his discretion as regards the merits of complaints and the way in which he deals with them can there be a sufficiently serious breach of Union law which can establish the liability of the European Union. The same holds where the Ombudsman assesses the existence of cases of maladministration into which he has conducted an own-initiative inquiry.

77 In addition, with regard to the exercise of the Ombudsman's powers of investigation, under Article 3(1) of Decision 94/262 the Ombudsman must, following a complaint or on his own initiative, conduct all the inquiries 'which he considers justified' to clarify any suspected maladministration in the activities of Union institutions and bodies. Article 4.1 of the Implementing provisions stipulates that the Ombudsman decides whether there are sufficient grounds to justify making inquiries into an admissible complaint. In addition, Article 5 of those provisions defines the powers of investigation held by the Ombudsman, stating that the Ombudsman 'may', inter alia, request Union institutions and bodies to supply information or inspect the file of the institution or the bodies concerned. Under Article 9.2 of those provisions, the Ombudsman's powers of investigation when conducting own-initiative inquiries are the same.

78 Thus, under Article 3(1) of Decision 94/262 and Articles 4.1, 5 and 9.2 of the Implementing provisions, the Ombudsman also has discretion regarding the initiation and the scope of the inquiries to be conducted and regarding the investigation instruments to be used in the handling of a complaint or in an own-initiative inquiry.

79 Accordingly, in the light of the case-law mentioned in paragraph 70 et seq. above, only where he has manifestly and gravely disregarded the limits on his power of inquiry conferred by Article 3(1) of Decision 94/262 and by Articles 4.1, 5 and 9.2 of the Implementing provisions can there be a sufficiently serious breach capable of establishing the liability of the European Union.

80 However, the Ombudsman must exercise his discretion in relation to the inquiry in accordance with higher-ranking rules of Union law.

81 Article 41(1) of the Charter of Fundamental Rights, which establishes a right to good administration, provides that every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union. Article 41(2) of the Charter states that that right includes the right of every person to be heard, before any individual measure which would affect him or her adversely is taken, the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy, and the obligation of the administration to give reasons for its decisions.

82 The word 'includes' in that latter provision shows that the right to good administration is not confined to the three abovementioned guarantees. This is also clear from the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), according to which Article 41 is based on the existence of the Union as subject to the rule of law whose characteristics were developed in the case-law which enshrined inter alia good administration as a general principle of law.

83 The Explanations relating to the Charter of Fundamental Rights refer in particular to the case-law according to which, where a Union institution has a wide discretion, the review of observance of guarantees conferred by the Union legal order in administrative procedures is of fundamental importance. Those guarantees include respect for the principle of diligence, that is to say, for the competent institution, the obligation to examine carefully and impartially all the relevant elements of the individual case (see, to this effect, judgments of 21 November 1991 in *Technische Universität München*, C-269/90, ECR, EU:C:1991:438, paragraph 14; 6 November 2008 *Netherlands* v *Commission*, C-405/07 P, ECR, EU:C:2008:613, paragraph 56; and 9 September 2011 *Dow AgroSciences and Others* v *Commission*, T-475/07, ECR, EU:T:2011:445, paragraph 154).

84 It should be stated in this regard that compliance with the duty of the competent institution to gather, in a diligent manner, the factual elements necessary for the exercise of its broad discretion as well as the review thereof by the European Union Courts are all the more important because the exercise of that discretion is only subject to a limited judicial review of the merits, confined to examining whether a manifest error has been committed. Thus, the obligation for the competent institution to examine carefully and impartially all the relevant elements of the individual case is a necessary prerequisite to enable the European Union Courts to ascertain whether the elements of fact and of law on which the exercise of that broad discretion depends were present (see, to this effect, judgments of 15 October 2009 in *Enviro Tech (Europe)*, C-425/08, ECR, EU:C:2009:635, paragraphs 47 and 62; 11 September 2002 *Pfizer Animal Health* v *Council*, T-13/99, ECR, EU:T:2002:209, paragraphs 166 and 171; and 16 September 2013 *ATC and Others* v *Commission*, T-333/10, ECR, EU:T:2013:451, paragraph 84).

85 Consequently, the discretion conferred on the Ombudsman by Decision 94/262 and by the Implementing provisions regarding the measures of inquiry to be taken in the exercise of his task does not exempt him from respecting the principle of diligence. It follows that, although the Ombudsman is free to decide to initiate an inquiry and that, if he decides to do so, he may take all the measures of inquiry which he considers justified, he must nevertheless satisfy himself that, following those measures of inquiry, he is able to examine carefully and impartially all the relevant elements in order to decide on the merits of an allegation of a case of maladministration and the way in which he deals with that allegation (see, by analogy with the Commission's duty to investigate a complaint, judgment of 17 May 2001 in *IECC* v *Commission*, C-450/98 P, ECR, EU:C:2001:276,

paragraph 57). Respect for the principle of diligence by the Ombudsman in the exercise of his competences is particularly important because he is specifically given the task, under Article 228(1) TFEU and Article 3(1) of Decision 94/262, of identifying and seeking to eliminate instances of maladministration in the general interest and in the interest of the citizen concerned.

86 The Ombudsman does not therefore have discretion concerning respect for the principle of diligence in a specific case. Consequently, a mere breach of the principle of diligence is sufficient to establish the existence of a sufficiently serious breach within the meaning of the case-law mentioned in paragraph 70 above (see, to this effect, judgment of 11 July 2007 in *Schneider Electric* v *Commission*, T-351/03, ECR, EU:T:2007:212, paragraphs 117 and 118).

87 It should also be stated, however, that not every irregularity committed by the Ombudsman constitutes a breach of the principle of diligence as defined in paragraph 83 above. Only an irregularity committed by the Ombudsman in the exercise of his powers of investigation the result of which is that he was not able to examine carefully and impartially all the relevant elements in order to decide on the merits of an allegation of a case of maladministration on the part of an EU institution, body, office or agency and the way in which he deals with that allegation can establish the European Union's non-contractual liability on account of a breach of the principle of diligence (see, to this effect, judgment of 12 July 2001 in *Comafrica and Dole Fresh Fruit Europe* v *Commission*, T-198/95, T-171/96, T-230/97, T-174/98 and T-225/99, ECR, EU:T:2001:184, paragraph 144).

88 Second, with regard to the requirement that the rule of law which is alleged to have been breached must be intended to confer rights on individuals, it should be stated that, according to case-law, the condition relating to protective nature was satisfied where the rule of law breached, while referring essentially to interests of a general nature, also ensured the protection of the individual interests of the persons concerned (see paragraph 71 above). With regard to the principle of diligence or the right to good administration, that principle and that right clearly have a protective nature vis-à-vis individuals (see, to this effect, judgments of 18 September 1995 in *Nölle* v *Council and Commission*, T-167/94, ECR, EU:T:1995:169, paragraph 76, and 9 July 1999 *New Europe Consulting and Brown* v *Commission*, T-231/97, ECR, EU:T:1999:146, paragraph 39). The same is true of the rules governing inquiries conducted by the Ombudsman, as those rules permit an individual to lodge complaints concerning cases of maladministration and to be informed of the outcome of the inquiries conducted in that regard by the Ombudsman (see, to this effect, judgment in *Ombudsman* v *Lamberts*, cited in paragraph 55 above, EU:C:2004:174, paragraph 56).

b) The unlawful acts constituting infringements of Article 3(1) of Decision 94/262 and Articles 5 and 9.2 of the Implementing provisions and breaches of the principles of the duty of care and good administration in the inquiries concerning the decision of 22 October 2007

Introduction

89 In the first part of the first plea in law, the applicant complains that the Ombudsman committed unlawful acts in the examination of the complaint which culminated in the decision of 22 October 2007.

The existence of unlawful acts

90 First, the applicant complains that the Ombudsman did not press the Parliament to obtain certain documents held by the Parliament which he had not received. In order to assess this ground for complaint, reference should be made to the following facts.

91 On 30 June 2007, following the complaint, the Ombudsman decided to investigate the following claims and allegations: '[t]he Parliament did not properly treat the [applicant's] request after her inclusion on the [list of suitable candidates in Open Competition EUR/A/151/98]' and '[t]he [applicant] should be treated fairly in the context of filling a vacancy within the Community institutions'.

92 In the context of that inquiry, the Ombudsman decided to inspect the Parliament's files in relation to the following points:

'1. whether, after the [applicant's] name was added to the list [of suitable candidates in Competition EUR/A/151/98] (on 17 May 2005), the Parliament recruited French-language administrators with the status of officials or members of the temporary staff included on other lists [of suitable candidates];

2. if so, whether the [applicant's] file was considered (and in what way); in this regard, I wish to have access, in particular, to the relevant reasoned decisions on recruitments (including the notes de fin d'affichage (notes comparing the candidates' skills and aptitudes));

3. whether the other Community institutions were informed of the Parliament's decision to include the [applicant] on the list [of suitable candidates in Competition EUR/A/151/98] after that list had been exhausted (following the recruitment of all the candidates on the list) and by what means;

4. the Parliament appears to claim that the list [of suitable candidates] to which the [applicant] was added (in May 2005) was sent to all the DGs and that she also appeared in the summary of lists in force which are sent to the DGs each year.'

93 According to the inspection report, the Parliament's representatives made observations on each of the documents contained in the 'files' prepared for the inspection. However, those observations are not reproduced in the report. Furthermore, the 'files' in question contained the following documents:

'1. list of persons recruited as administrators by the Parliament ... since 1 May 2005;

2. document entitled 'pooling' distributed by EPSO, which indicated the number of candidates remaining on the lists [of suitable candidates] for all the competitions organised by the various EU institutions ...;

3. e-mail sent by the Parliament to the Council, to which the [applicant's] curriculum vitae and candidature were attached;

4. list of all recruitments by the Parliament since May 2005 (grade AD 5);

5. list of all recruitments by the Parliament since May 2005 (senior grade);

6. list of all recruitments of francophones by the Parliament since May 2005 (grade AD 5);

7. document entitled 'Review of lists [of suitable candidates] for EP competitions';

8. list of temporary staff occupying permanent posts in the Parliament.'

94 All these documents were classed as confidential during the administrative procedure. However, in the rejoinder, the Ombudsman enclosed a copy of the EPSO document of 14 May 2007 entitled 'Reserve pooling of successful competition candidates' (the 'pooling' document of 14 May 2007), certain confidential sections of which were blackened out. In that document, it is stated, with regard to Competition EUR/A/151/98, for the field entitled 'FR Administrator', that a list of suitable candidates

had been drawn up on 12 January 2000 and that just one person remained on that list. In addition, in the proceedings before the Civil Service Tribunal in Case F-9/12, the applicant received from the Parliament all the documents contained in those 'files'. On 6 June 2012, the applicant produced those documents in the present proceedings.

95 The applicant notes that, further to the request made in the context of her first three questions reproduced in paragraph 92 above, the Ombudsman did not obtain the information notes concerning the inclusion of her name on the list of suitable candidates in Competition EUR/A/151/98. She alleges that the Ombudsman failed to press the Parliament in order to obtain them.

96 It should be noted in this regard that the Ombudsman did not expressly request access to the information notes in question. He asked 'whether the other Community institutions were informed of the Parliament's decision to include the [applicant's name] on the list [of suitable candidates in Competition EUR/A/151/98] after that list had been exhausted (following the recruitment of all candidates on the list) and by what means'. The Parliament was therefore able to show by any available means that it had informed the other institutions of its decision to include the applicant on that list of suitable candidates. It cannot therefore be alleged that the Ombudsman failed to press specifically to obtain those information notes. Consequently, this ground for complaint raised by the applicant must be rejected as unfounded.

97 The applicant also alleges that the Ombudsman did not have the notes de fin d'affichage which he had requested from the Parliament.

98 It should be pointed out in this regard that, under point 2 of the measures of inquiry taken by the Ombudsman on 30 June 2007 (see paragraph 92 above), the Ombudsman stated that it was only if the Parliament had recruited French-language administrators with the status of officials or members of the temporary staff on other lists of suitable candidates after the applicant's name had been added to the list of suitable candidates in Competition EUR/A/151/98 that it was important for him to have access to the relevant reasoned decisions on recruitments, including the notes de fin d'affichage. It follows that, in the absence of any recruitment of French-language administrators like the applicant by the Parliament, the second measure of inquiry became redundant.

99 It is not disputed that during the inspection the Parliament provided the Ombudsman with lists, first, of persons recruited as administrators by the European Parliament since 1 May 2005, second, of all recruitments by the Parliament since May 2005 (grade AD 5), third, of all recruitments by the Parliament since May 2005 (senior grade) and, fourth, of all recruitments of francophones by the Parliament since May 2005 (grade AD 5). Those lists were produced by the applicant in the present case on 6 June 2012. On the basis of those lists, the Ombudsman concluded, in the decision of 22 October 2007, that from May 2005 the Parliament had only recruited French-language administrators with specialised fields of interest. The applicant neither claimed nor demonstrated following the communication of those lists that the Ombudsman's assessment was incorrect. Consequently, the Ombudsman cannot be reproached for not pressing to obtain those notes de fin d'affichage.

100 Second, the applicant considers that the assessment contained in point 2.5 of the decision of 22 October 2007 is based on an inquiry which was closed without the necessary checks having been carried out and is incorrect.

101 It should be pointed out in this regard that in point 2.5 of the decision of 22 October 2007, the Ombudsman took the following view:

'Furthermore, the inspection confirmed the information already provided by the Parliament in its opinion, namely that the reserve list indicating the [applicant's] availability had been made available to other Community institutions. Furthermore, the inspection confirmed that, upon request, his CV had been sent to the service requesting information on him, namely, to the Council ...'

102 First, the applicant alleges that the Ombudsman wrongly claimed that the Parliament had stated in its opinion of 22 March 2007 that the list of suitable candidates which included her name had been made available to other institutions. That allegation is well founded. The Parliament did not state in that opinion that the list of suitable candidates had been made available to other institutions. The Ombudsman acknowledges that this is the case and that he made an error in this respect. That error consisted in distorting the content of a document, which constitutes a failure to exercise diligence in the investigation of the case and, in particular, in the consideration of a fact which the Ombudsman himself deemed relevant.

103 Second, the applicant alleges that the Ombudsman closed the inquiry despite the fact that the inspection file did not contain any evidence that the relevant list of suitable candidates had been made available to other EU institutions, bodies, offices or agencies. According to the applicant, the 'pooling' document of 14 May 2007 relied on by the Ombudsman did not prove that the list of suitable candidates was made available to other institutions before that date.

104 It should be borne in mind that the Ombudsman had decided to inspect the Parliament's files in order, inter alia, to ascertain 'whether the other Community institutions [had been] informed of the Parliament's decision to include the [applicant's name] on the list of suitable candidates [in Competition EUR/A/151/98] after that list had been exhausted (following the recruitment of all the candidates on the list) and by what means' (see paragraph 92 above). In addition, the parties confirmed at the hearing that the applicant's name was placed on that list on 17 May 2005. On that date, as the applicant claims in the complaint, all the other successful candidates in Competition EUR/A/151/98 had been recruited. Thus, the Ombudsman sought to ascertain whether the other EU institutions, bodies, offices and agencies had been informed of the Parliament's decision of 17 May 2005 to include the applicant's name on that list and by what means.

105 In response to that question, the Parliament provided the Ombudsman with a list contained in the 'pooling' document of 14 May 2007. It is clear from that list that on 14 May 2007 the name of just one candidate remained on the list of suitable candidates in Competition EUR/A/151/98. Since all the other successful candidates in that competition had been recruited before 17 May 2005, the Ombudsman should have deduced from that document that on 14 May 2007 the applicant was the only candidate whose name remained on that list. Because the 'pooling' document of 14 May 2007 could be consulted by the other EU institutions, bodies, offices and agencies, they were able to determine, at least on 14 May 2007, that the applicant was the last successful candidate whose name was on that list of suitable candidates.

106 However, as the Ombudsman acknowledges in the defence, the 'pooling' document of 14 May 2007 does not indicate when and how the inclusion of the applicant's name on the list of suitable candidates in Competition EUR/A/151/98 was communicated by the Parliament to the other EU institutions, bodies, offices and agencies.

107 In his inspection decision, the Ombudsman expressly stated that he wished to inspect the Parliament's file in order to ascertain whether the other EU institutions, bodies, offices and agencies had been informed of the Parliament's decision to include the applicant's name on the list of suitable candidates in Competition EUR/A/151/98 after it had been exhausted and by what means.

108 In addition, the response to the question when and how the EU institutions, bodies, offices and agencies were informed that the applicant's name had been placed on the list of suitable candidates in Competition EUR/A/151/98 constitutes one of the relevant elements covered by the Ombudsman's inquiry into whether, in its management of the applicant's file after that listing, the Parliament was responsible for a case of maladministration. Since the validity of the list initially expired on 1 June 2007 and the communication of that list by the Parliament to the other EU institutions, bodies, offices and agencies could help to improve the applicant's prospects of being recruited, the Parliament's failure to communicate the list to the other EU institutions, bodies, offices and agencies as soon as possible after the applicant's name had been placed on the list on 17 May 2005 could constitute a case of maladministration, irrespective of the existence of an express provision in the applicable legislation requiring such communication.

109 Consequently, by failing, in his inquiry, to investigate when and how the inclusion of the applicant's name on the list of suitable candidates in Competition EUR/A/151/98 had been communicated by the Parliament to the other EU institutions, bodies, offices and agencies, the Ombudsman failed to fulfil his duty of diligence in examining whether and how the EU institutions, bodies, offices and agencies had been informed that the applicant's name had been placed on that list between 17 May 2005 and 14 May 2007, that is to say during much of the period of validity of that list.

110 That conclusion cannot be called into question by the various arguments put forward by the Ombudsman.

111 With regard to the argument that the inspection report does not necessarily contain an exhaustive list of all the documents in the file, but indicates only the documents of which the Ombudsman's representatives had received a copy, it should be stated that in the decision of 22 October 2007 the Ombudsman did not state that he had requested those other documents or refer to them. Furthermore, the Ombudsman has not produced them during the proceedings even though the burden of proof rests with him, as he relies on them to justify that decision. Lastly, the Ombudsman acknowledges that that file did not include other documents, as he stated in the defence that '[the] absence, in the Parliament's file, of letters or e-mails informing the other institutions could be explained by the fact that that information had been communicated orally'. Consequently, the Ombudsman's argument cannot call into question the finding that following his inquiry he did not have all the relevant elements necessary to be able properly to assess the existence of a case of maladministration.

112 With regard to the argument that in a letter of 26 April 2007 EPSO had informed the applicant that 'during the meetings which [it held] regularly with the recruitment officers of the different [i]nstitutions, they systematically exchange[d] information on the status of their own lists of suitable candidates and often ma[de] successful candidates available to the others', it should be noted that in the decision of 22 October 2007 the Ombudsman did not mention that practice. Moreover, it cannot be inferred from that statement when the other EU institutions, bodies, offices and agencies were informed that the applicant's name had been placed on the list of suitable candidates in Competition EUR/A/151/98. Therefore, even if that practice of communicating orally were proven, the Ombudsman still could not simply rely on that fact in this case to conclude that the Parliament had informed the other EU institutions, bodies, offices and agencies of the applicant's availability in good time.

113 Lastly, on the basis of the various 'pooling' documents which the Ombudsman enclosed with his reply to a written question asked by the Court, it should be noted that the information on the inclusion of the names of the successful candidates in Competition EUR/A/151/98 on the list of suitable candidates in that competition communicated in the 'pooling' documents drawn up by EPSO is not wholly reliable. Thus, it is common ground that the applicant's name was placed on the list on 17 May 2005 and it is apparent from the Parliament's documents produced by the Ombudsman during these proceedings that, of the 22 initially successful candidates in that competition, all were

recruited before 31 December 2002 except for one who was recruited on 1 June 2003. Despite the fact that in February 2003 there was just one successful candidate from that competition whose name was still on that list, the EPSO document of 3 February 2003 states that the names of six successful candidates were still included on the list on that date. Similarly, in January 2005, no names of any successful candidates from the competition in question still appeared on the list in question. However, according to the EPSO document of 26 January 2005, there were still two names of successful candidates on the list on that date. Lastly, after 17 May 2005 only the applicant's name still appeared on the list in question. Nevertheless, the EPSO document of 12 December 2005 states that there were still two names of successful candidates on the relevant list.

114 Third, the applicant challenges the assessment set out in point 1.1 of the decision of 22 October 2007 closing the inquiry into the complaint. The applicant considers that the Ombudsman was wrong not to investigate the inconsistent position of the Parliament which, on the one hand, rejected her spontaneous candidatures and, on the other, stated that she could send spontaneous candidatures to all the institutions.

115 With regard to this ground for complaint, the following factors should be borne in mind.

116 Under Article 2(4) of Decision 94/262, a complaint to the Ombudsman must be preceded by the appropriate administrative approaches to the institutions and bodies concerned.

117 In this case, following a request for information sent by the applicant to the Parliament regarding the procedure to be followed in applying for vacancies, the Parliament informed her, in a letter of 5 January 2006, that where vacant posts were to be filled, it was necessary in turn to consider, first, whether the post could be filled by transfer or appointment by way of promotion within the institution concerned and then requests for transfer or whether to hold an internal competition, and that it was only after these possibilities had been exhausted that the list of suitable candidates from an open competition could be consulted. In addition, the Parliament stated that the candidatures of successful candidates in open competitions for vacancies displayed in summary form were automatically rejected as inadmissible.

118 In the complaint, the applicant stated that '[she had] contacted the Parliament in order to ascertain the procedure to follow in order to obtain an appointment' and that '[i]t [had] informed [her] that if [she applied for] vacant posts, [her] candidature would be automatically rejected, as officials and successful candidates from internal competitions had priority (see the Parliament's letter of 5 January 2006, Annex 3)'. She then complained that she had not been offered a single post and stated that it was her conviction that she had been a victim of the Parliament's vindictiveness.

119 In its opinion following the complaint, the Parliament stated that the applicant could send spontaneous candidatures to all the institutions.

120 Lastly, in point 1.1 of the decision of 22 October 2007, the Ombudsman held:

'The [applicant] made a comment in [her] observations that [she] was informed by a Parliament official that [she] was not entitled to apply for Parliament's internal vacancies ... In so far as this comment is to be understood as a new allegation, the Ombudsman points out that the complainant did not make prior administrative approaches to Parliament in this regard ... For that reason, the Ombudsman will not deal with this comment in his decision on the present complaint.'

121 In view of these considerations, it should be noted that the Parliament's alleged inconsistent conduct stems from a position taken by the Parliament after the applicant lodged the complaint. The applicant was not therefore able to report that conduct in the complaint, less still to make the appropriate administrative approaches to the Parliament before reporting that position in the complaint in accordance with Article 2(4) of Decision 94/262. This finding is confirmed by the fact that neither in

her complaint against the Parliament of 14 November 2006 nor in the complaint did the applicant call into question the Parliament's implementation of Article 29 of the Staff Regulations of Officials of the European Union in the version thereof applicable to the present case ('the Staff Regulations'), to the effect that the list of suitable candidates in an open competition may be consulted by the institutions only after the exhaustion of these possibilities of transfer, appointment by way of promotion within the institution concerned, requests for transfer or the possible holding of an internal competition.

122 Consequently, the Ombudsman did not err in taking the view, in point 1.1 of the decision of 22 October 2007, that the alleged inconsistency claimed by the applicant was a new allegation and that it was not preceded by the appropriate administrative approaches to the Parliament. The failure to investigate that inconsistency cannot therefore constitute an infringement of Decision 94/262, the Implementing provisions or the principle of diligence.

123 Fourth, the applicant alleges that the Ombudsman commended the Parliament for extending the validity of the list of suitable candidates on which her name appeared without any concern at the fact that there had been no response to her request for an extension or at the possibility of consultation of the Council.

124 It should be borne in mind that the validity of the list of suitable candidates which included the applicant's name expired on 1 June 2007. On 15 May 2007, the applicant applied to the Secretary-General of the Parliament for an extension of the validity of that list. On 6 June 2007, the Parliament's services replied to that letter. They stated that, at the Ombudsman's request, the Secretary-General of the Parliament had requested the initiation of the procedure for the extension of the validity of the list of suitable candidates in Competition EUR/A/151/98 until 31 August 2007. On 17 July 2007, the Secretariat of the Parliament informed the applicant that, at the Ombudsman's request and pending the outcome of his examination of her case, the Secretary-General of the Parliament had decided to extend the validity of the list until 31 August 2007. Lastly, in point 2.6 of the decision of 22 October 2007, the Ombudsman stated:

'Finally, in reference to the [applicant's] letter of 21 May 2007, containing the information that [she] had contacted Parliament's Secretary-General ... on 15 May 2007 in order to request that the validity of the reserve list [in Competition EUR/A/151/98] be extended, the Ombudsman [recalled] that, in a previous complaint, the Ombudsman held that the choice made by the appointing authority of the date on which a reserve list is to expire is a decision that falls within the discretionary powers of the administration. In this regard, the Ombudsman [commended] Parliament's willingness to extend the validity of the reserve list in question in order to make it possible for him to complete his inquiry on the present case.'

125 Having regard to the content of the Parliament's letter of 6 June 2007, it is wrong to claim that the Parliament failed to respond directly to the request for an extension of the validity of the list of suitable candidates made by the applicant in her letter of 15 May 2007. The Parliament's letter of 6 June 2007 expressly stated that it was in reply to the applicant's letter of 15 May 2007. The fact that the Parliament's letter also indicated that it was at the Ombudsman's request that the procedure for the extension of the validity of the list of suitable candidates until 31 August 2007 had been initiated does not mean that there was no response to the applicant's request for an extension. The Parliament's letter must be understood as a response to the requests made by both the applicant and the Ombudsman to extend that period. In any event, the Court observes that the complaint did not relate to the question whether the Parliament had committed an act of maladministration by failing to respond expressly to the applicant's request to extend the validity of the list of suitable candidates on which her name appeared. Consequently, it cannot be alleged that the Ombudsman failed to investigate these questions following the complaint. Lastly, the extension by the Parliament of the validity of the list of suitable candidates in question until the Ombudsman had completed his inquiry does not seem improper having regard to the requirements of good administration.

126 The applicant also claims the existence of an extension of the validity of the list of suitable candidates without any consultation of the Council. However, the applicant does not explain that allegation adequately. In any event, that question was not part of the object of the complaint. Therefore, it cannot be alleged that the Ombudsman failed to investigate that question following that complaint.

127 Fifth, the applicant alleges that the Ombudsman did not properly investigate, following the complaint, whether she had been discriminated against compared with the other successful candidates in Competition EUR/A/151/98 by reason of the fact that the period for which her name was included on the list of suitable candidates in that competition was shorter than for the other successful candidates.

128 It should be pointed out in this regard that in the complaint the applicant did not claim that she was discriminated against on the ground that the period of validity for which her name was included on the list of suitable candidates in Competition EUR/A/151/98 was shorter than for other successful candidates in the same competition. She submitted that since she was placed on that list, no institution had offered her a post and she had been a victim of the Parliament's vindictiveness on account of the legal actions which she had brought against the Parliament. In addition, she explained that she wanted to obtain 'an appointment or at least to compete fairly for vacancies in all the European institutions'. Lastly, she requested the Ombudsman to open an inquiry 'into maladministration in the management of [her] file on the list of suitable candidates in Competition EUR/A/151/98'.

129 In his letter of 30 January 2007, the Ombudsman requested the Parliament to send him an opinion on the following allegation and request: 'The [applicant] considers that the Parliament has not handled her case properly, [following the inclusion] of her name [on the list of suitable candidates in Competition EUR/A/151/98]' and 'the [applicant] requests that she be treated fairly in connection with the filling of vacancies within the Community institutions'.

130 In its opinion, the Parliament stated that the applicant had not established facts from which it was possible to infer the existence of direct or indirect discrimination compared with the other successful candidates in Competition EUR/A/151/98. In her observations on the Parliament's opinion, the applicant did not challenge that assessment. The inspections by the Ombudsman also did not relate to the discrimination claimed by the applicant in paragraph 127 above (see paragraph 92 above).

131 In her e-mail of 28 August 2007 sent to the Ombudsman's case-handler, the applicant stated:

'As you [know], the Parliament ... [had] agreed to extend the list of suitable candidates [in] Competition EUR/A/151/98 only at your request (mine having been implicitly rejected). The extension granted [was] for only three months (two months of which [fell] within the holiday period), whereas it [seemed] to me that it had extended the initial list for a longer period. According to the Parliament ..., the purpose of that period [was] only to allow you to conclude the inquiry which you [had] conducted.'

132 In the light of these considerations, the applicant cannot allege that the Ombudsman failed, following the complaint, to investigate whether she had been discriminated against compared with the other successful candidates in Competition EUR/A/151/98 by reason of the fact that the period for which her name was included on the list of suitable candidates in that competition was shorter than for the other successful candidates in that competition. That complaint did not contain any such allegation. This is confirmed by the fact that, in her response to the Parliament's opinion, the applicant did not challenge the Parliament's view that she had not established facts from which it was possible to infer the existence of direct or indirect discrimination compared with the other successful candidates in that competition.

133 Furthermore, in so far as the ground for complaint raised by the applicant concerns the extension of the validity of the list of suitable candidates in Competition EUR/A/151/98 by only three months whereas the validity of the initial list of suitable candidates had been extended for a longer period (see the e-mail of 28 August 2007 reproduced in paragraph 130 above) or it was customary to extend the validity of lists of suitable candidates for an open competition for a longer time (see the letter of 19 October 2007), it should be noted that, since the decision to extend the validity of the list of suitable candidates which included the applicant's name was taken by the Parliament in June 2007, it could not be the object of the complaint. It cannot therefore be alleged that the Ombudsman failed to investigate that question following that complaint. In addition, it does not appear that the questions raised by the applicant with the Ombudsman in her abovementioned correspondence had been raised with the Parliament. Lastly, the applicant's vague allegations claiming that the validity of the list had been extended for a longer period for the initially successful candidates in that competition and that it was customary to extend the validity of lists of suitable candidates for an open competition for a longer time are not substantiated. Consequently, it cannot be complained that the Ombudsman failed to investigate those allegations specifically. The ground for complaint alleging a failure to exercise diligence set out in paragraph 127 above must therefore be rejected.

134 Sixth, the applicant considers that the inspection file did not contain any proof that the list of suitable candidates which included her name had been circulated to all the Parliament's DGs with the result that the Ombudsman had wrongly relied solely on the Parliament's claims in this regard.

135 In its opinion of 20 March 2007, the Parliament stated that the lists of suitable candidates had been circulated to all the Parliament's DGs and that a summary of those currently valid lists and of the number of successful candidates available on each list had been sent each year to the DGs. Furthermore, the Ombudsman stated in the course of his inquiry that he wished to inspect the Parliament's files in relation to the fact that '[t]he Parliament seem[ed] to claim that the list of suitable candidates to which [the applicant's name] ha[d] been [added] (in May 2005) ha[d] been sent to all DGs and that [it] [was] also included in the summary of the lists in force sent to the DGs each year'.

136 In her observations on the Parliament's opinion of 20 March 2007, the applicant stated that the Parliament had not provided any evidence to corroborate its claims that the list of suitable candidates in Competition EUR/A/151/98 had been circulated within its DGs.

137 Lastly, in point 2.4 of the decision of 22 October 2007, the Ombudsman explained that 'on the basis of his inspection of the Parliament's relevant file, ... the [applicant's] candidature [had] been made available to all [DGs] within the Parliament'.

138 In the light of these considerations, the statement made by the Ombudsman in point 2.4 of the decision of 22 October 2007, as reproduced in paragraph 137 above, is not accompanied by any specific reference to supporting documents despite the fact that, in her comments on the Parliament's opinion, the applicant had stressed the need for the Parliament's position to be corroborated by evidence.

139 Moreover, the Ombudsman has not produced any evidence in this regard in his written submissions to the Court. He has simply stated that the letter giving notification of the inspection made clear that it concerned the lists in force sent to the DGs each year and that the conclusion in point 2.4 of the decision of 22 October 2007 was reached in the light of the results of the inspection to the effect that '[a]ll [these factors suggested] therefore that [its] representatives ... had actually seen, during the inspection conducted by them, documents confirming that the Parliament had informed its services that the [a]pplicant's name had been added to the list [of suitable candidates] concerned'.

140 Having regard to the above findings, it must be acknowledged that the Ombudsman failed to fulfil his duty of diligence in his inquiry in relation to the notification of all the Parliament's DGs that the applicant's name had been placed on the list of suitable candidates in Competition EUR/A/151/98. The failure to exercise diligence in conducting that inquiry is shown by the fact that the Ombudsman can substantiate the assessment contained in point 2.4 of the decision of 22 October 2007 only by a supposition based on documents whose nature or content he is not able to clarify.

The existence of a sufficiently serious breach

141 In the light of the foregoing, the Ombudsman committed three unlawful acts in his examination of the complaint.

142 First, the Ombudsman distorted the content of the Parliament's opinion (see paragraph 102 above). That distortion stems from a failure to exercise diligence in investigating the case, which constitutes a sufficiently serious breach of Union law to establish the liability of the European Union. The Ombudsman does not enjoy discretion in describing the content of a document.

143 Second, the Ombudsman failed to fulfil his duty of diligence in his examination of the Parliament's circulation to the other EU institutions, bodies, offices and agencies of the information that the applicant's name had been placed on the list of suitable candidates. He does not demonstrate that he investigated and had in his possession the relevant elements to determine if, when and how the list of suitable candidates in question had been circulated to the other EU institutions, bodies, offices and agencies between 17 May 2005 and 14 May 2007 (see paragraph 109 above). In accordance with the case-law cited in paragraph 86 above, this failure to fulfil the duty of diligence constitutes a sufficiently serious breach capable of establishing the liability of the European Union.

144 Third, the Ombudsman failed to fulfil his duty of diligence in his examination of the Parliament's circulation to its DGs of the information that the applicant appeared on the list of suitable candidates (see paragraph 140 above). He has not demonstrated that he investigated and had in his possession the relevant elements to assess the circulation of that information. In accordance with the case-law cited in paragraph 86 above, this failure to exercise diligence constitutes a sufficiently serious breach capable of establishing the liability of the European Union.

145 Since the unlawful acts found in paragraphs 142 to 144 above are capable of establishing the liability of the European Union, the recharacterisation of the circumstances underlying these unlawful acts as also constituting infringements of Article 3(1) of Decision 94/262 and of Articles 5 and 9.2 of the Implementing provisions will not affect the finding of unlawful acts capable of establishing the liability of the European Union.

Conclusion

146 In the light of the above considerations, it must be concluded that the Ombudsman failed in three instances to fulfil his duty of diligence following the investigation of the complaint and that those failures are capable of establishing the liability of the European Union.

c) The unlawful acts constituting infringements of Article 3(1) of Decision 94/262 and Articles 5 and 9.2 of the Implementing provisions and breaches of the principles of the duty of care and good administration in relation to the decision of 31 March 2011

147 In the second part of the first plea in law, the applicant claims that the Ombudsman made several errors in his own-initiative inquiry which establish the liability of the European Union.

148 First, the applicant alleges that the Ombudsman did not verify the veracity of one of the Parliament's statements regarding the content of the Parliament's official register of correspondence.

149 More specifically, in points 77 and 87 of the decision of 31 March 2011 the Ombudsman explained that the Parliament had stated that communications between institutions concerning a particular candidate were, as a rule, not recorded in the official register. According to the Ombudsman, there was no reason to doubt the correctness of that information.

150 According to the applicant, the Ombudsman could not rely on that statement by the Parliament without verification, since, in her view, any official correspondence between institutions is normally recorded in the official register of correspondence and all letters which she had received from the Parliament bore a letter number corresponding to the official register and not to an internal number.

151 It is the opinion of the Court in this regard that the fact that all the letters which the applicant received from the Parliament bore a number from the official register does not give reason to cast doubt on the veracity of the Parliament's statement that correspondence between institutions concerning a candidate was not recorded in the official register of correspondence. Correspondence between the institutions and a candidate is by nature official whilst that is not necessarily the case for correspondence between institutions concerning a candidate. In addition, the object of the Ombudsman's own-initiative inquiry was not the proper maintenance of registers of correspondence by the Parliament, but the Parliament's circulation of the list of suitable candidates which included the applicant's name to the other EU institutions, bodies, offices and agencies. Given the object of the inquiry, the Parliament's statement that it did not have any records in the official register of correspondence between the institutions concerning a particular candidate was potentially unfavourable to it, which increases its credibility. In view of these considerations, the applicant has not put forward sufficient evidence to show that the Ombudsman had failed to fulfil his duty of diligence by relying on the Parliament's statement that there was no record of communications between it and the institutions concerning the applicant in the Parliament's official register of correspondence.

152 That conclusion is not called into question by the fact that the Parliament's practice of not recording the communications between institutions concerning the applicant may be contrary to Article 24 of the Code of Good Behaviour. The compatibility of that practice with that Code was not the object of the Ombudsman's inquiry in this case and the applicant did not lodge a complaint in this regard with the Ombudsman. In addition, that question of compatibility cannot cast doubt on the Parliament's statement that the communications in question were not recorded in a register.

153 Second, the applicant complains that after opening his own-initiative inquiry the Ombudsman refused to investigate whether the Parliament informed the other institutions that her name had been placed on the list of suitable candidates in Competition EUR/A/151/98. In this regard it is not disputed that in the course of the Ombudsman's own-initiative inquiry the applicant objected to the continuation of that inquiry (see letter of 10 July 2010).

154 In addition, in the decision of 31 March 2011 the Ombudsman first found that inquiries should not be undertaken on the ground that the applicant objected to them. He then stated that in the context of an own-initiative inquiry he could make inquiries of his own motion without the applicant's consent if an overriding public interest so required. He nevertheless considered that that was not the situation in this case as he had opened his own-initiative inquiry mainly with the interest of the applicant in mind. In view of these circumstances, he held that the position adopted by the applicant prevented his continued investigation and that he should not proceed with the inquiry (see points 89 to 94 of the decision of 31 March 2011).

155 Having regard to these grounds set out in the decision of 31 March 2011, it should be noted, first of all, that in the context of an own-initiative inquiry the Ombudsman was not required of his own motion to cease an investigation where a person concerned by that investigation objected to it. As the

applicant states, no provision of Decision 94/262 or of the Implementing provisions requires the Ombudsman to obtain the complainant's agreement to conduct inquiries into an EU institution or body. Similarly, no provision requires the Ombudsman to make inquiries on his own initiative only where this is justified by an overriding public interest.

156 However, his duty to conduct an inquiry with diligence requires him to take into account all the relevant elements when he proceeds with investigation measures. Those elements include the attitude of the persons involved and the public interest in the inquiry. The Ombudsman has discretion in weighing those elements in order to determine whether or not to proceed with an inquiry.

157 In this case, the applicant does not contest either the fact that she objected to the Ombudsman's own-initiative inquiry or the fact that that inquiry had no particular public interest to justify it. The Court holds that the Ombudsman did not manifestly and gravely disregard the limits on his discretion in relation to inquiries by relying on the applicant's objection to the measures of inquiry in order to close that own-initiative inquiry. However, by closing that own-initiative inquiry without assessing whether the Parliament had committed acts of maladministration in connection with the notification of its services and of other EU institutions, bodies, offices and agencies that the applicant's name had been placed on the list of suitable candidates in Competition EUR/A/151/98, the Ombudsman failed to rectify, through that inquiry, certain errors which he had made in the inquiry into the complaint and the decision of 22 October 2007. The Ombudsman cannot therefore rely on the conduct of an own-initiative inquiry in order to exempt the European Union from its liability for the errors made by him in the inquiry into the complaint.

158 In so far as the applicant alleges that the Ombudsman did not investigate the Parliament's failure to consult the Council (see point 96 of the decision of 31 March 2011), the Ombudsman was also able to justify that failure to investigate by the applicant's objection to those measures of inquiry.

159 Lastly and in any event, the Court holds that, even if the view were taken that the Ombudsman wrongly refused to investigate because the applicant objected, the applicant could no longer, in accordance with the maxim of *nemini licet venire contra factum proprium*, rely on that error in order to claim compensation from the Union. The applicant may not, without contradicting herself, claim compensation for a failure by the Ombudsman to conduct an own-initiative inquiry because she objected to such an inquiry. This assessment does not affect the fact that it is not possible for the Ombudsman to rely on the conduct of an own-initiative inquiry to exempt the Union from its liability for the unlawful acts which he committed in the inquiry into the complaint and the decision of 22 October 2007.

160 For the above reasons, all the grounds for complaint raised by the applicant in the second part of the first plea in law must be rejected.

d) Conclusion

161 Further to the analysis of the first plea in law, it must be ruled that the Ombudsman committed three unlawful acts capable of establishing the liability of the European Union, as summarised in paragraph 146 above.

2. The unlawful acts constituting manifest errors of assessment

a) Introduction

162 In the second plea in law, the applicant essentially alleges that the Ombudsman made manifest errors of assessment in connection with the decisions of 22 October 2007 and 31 March 2011 which establish the liability of the European Union. The Ombudsman denies that he made those errors.

b) The citation of the Parliament's opinion in the decision of 22 October 2007

163 The applicant recharacterises the ground for complaint set out in paragraph 102 above as a manifest error of assessment. For the reasons given in paragraphs 102 and 142 above, the unlawful act in question establishes the liability of the European Union.

c) The rectification of the decision of 22 October 2007

164 The applicant considers that the Ombudsman made an error, manipulated and misrepresented the facts and is guilty of the criminal offence of forgery by rectifying, on 29 June 2010, point 2.5 of the decision of 22 October 2007 without publishing a corrigendum.

165 With regard to these grounds for complaint, the Court states, first, that although it has jurisdiction to determine whether certain actions of the institutions may establish the liability of the European Union, it does not have jurisdiction to find, on the basis of those actions, that a criminal offence has been committed. Consequently, the allegation concerning a finding by the Court that the Ombudsman is guilty of the criminal offence of forgery is inadmissible.

166 Second, the Court notes that in the decision of the Ombudsman of 29 June 2010, which was addressed to the Parliament and a copy of which was received by the applicant, the Ombudsman had indicated the need to correct the decision of 22 October 2007 because of the error in point 2.5 of that decision, which distorted the content of the Parliament's opinion (see paragraph 102 above). Thus, in the decision of 29 June 2010, the correction to be made was explicitly explained to the applicant and to the Parliament. The applicant cannot therefore claim an unjustified manipulation or a falsification of the decision of 22 October 2007.

167 That correction was then made public by the Ombudsman, who published an amended version of the decision of 22 October 2007, which contains the correction adopted by the decision of 29 June 2010. That amended version of the decision of 22 October 2007 replaced the incorrect initial decision of 22 October 2007. The applicant was thus informed of that correction with full transparency.

168 Consequently, the non-publication of a corrigendum does not constitute an error, less still a falsification of the decision of 22 October 2007. The ground for complaint put forward by the applicant must therefore be rejected.

d) The making available of the list of suitable candidates to the other institutions

169 First, the applicant alleges that, in essence, the Ombudsman, did not recognise as a case of maladministration the fact that the Parliament had not published her name in the Official Journal as a successful candidate in Competition EUR/A/151/98 even though on 25 February 2003 the Parliament had accepted the Ombudsman's recommendation to publish the names of the successful candidates in the competition.

170 It should be noted in this regard that this non-publication was not expressly criticised by the applicant in the complaint. Consequently, the Ombudsman could not be required, on the basis of that complaint, to investigate a possible case of maladministration on the part of the Parliament in this regard.

171 Furthermore, following a written question from the Court, the Ombudsman produced the recommendation which he had made to the Parliament on 11 December 2002 concerning the publication in the Official Journal of the names of the successful candidates in the competition and the letter from the President of the Parliament, dated 25 February 2003, accepting that

recommendation. It is clear from that recommendation that it relates to competitions subsequent to its adoption and that candidates must be informed in the competition notice of the fact that the names of successful candidates will be published.

172 Since the competition in which the applicant participated had been published on 2 March 1999, before the Parliament accepted the abovementioned recommendation and the competition notice for Competition EUR/A/151/98 did not state that the names of successful candidates would be published, the Ombudsman could not have complained that the Parliament failed to adhere to his recommendation which it had accepted on 25 February 2003. If the Ombudsman had considered that the Parliament had committed an act of maladministration by not publishing the applicant's name in the Official Journal following her inclusion on the list of suitable candidates in Competition EUR/A/151/98, he would not have ensured compliance with one of the requirements laid down in his recommendation, namely that all candidates had to be informed of the publication of the names of successful candidates in the competition notice.

173 Lastly, moreover, the Court points out that the names of the other 22 successful candidates in Competition EUR/A/151/98 were not published in the Official Journal. The applicant does not put forward any argument to show that she should benefit from greater publicity than the other 22 successful candidates. In those circumstances, in accordance with both the principle of equal treatment and the fair treatment demanded by the applicant herself in the complaint, just as for the other successful candidates in that competition, the list of suitable candidates in the competition which included the applicant's name was not published in the Official Journal.

174 For the above reasons, the Court considers that the Ombudsman was correct in his view that the Parliament had not committed an act of maladministration by not publishing the applicant's name in the Official Journal as a successful candidate in Competition EUR/A/151/98.

175 Second, the applicant considers that the Ombudsman made several errors by relying on the 'pooling' document of 14 May 2007 to show that the other EU institutions and bodies had access to the information concerning the applicant's availability.

176 First, according to the applicant, the Ombudsman made an error by failing to verify the validity of the Parliament's claim that the 'pooling' document of 14 May 2007 was confidential. According to the applicant, that document was not confidential.

177 It should be noted in this regard that the Ombudsman had access to the full version of the 'pooling' document of 14 May 2007 in the context of his inquiry (see the inspection report). However, the Parliament requested that that document be treated as confidential, to which the Ombudsman agreed. The applicant did not therefore have access to that document during the administrative procedure which culminated in the decisions of 22 October 2007 and 31 March 2011. However, in the course of the present judicial proceedings, the Ombudsman produced a version of the 'pooling' document of 14 May 2007, certain parts of which were blackened out.

178 Under Article 13.3 of the Implementing provisions, the complainant does not have access to documents or information obtained by the Ombudsman from institutions in his inquiry which have been identified to the Ombudsman as confidential. Article 10.1 of the Implementing provisions stipulates that if the complainant so requests, the Ombudsman classifies a complaint as confidential. Those provisions do not lay down an exception or a specific procedure for verifying the validity of requests for confidential treatment.

179 In the light of the above considerations, it was not for the Ombudsman to challenge the requests made by the institutions for the confidential treatment of certain documents or certain information regarding complainants, just as it was not for the Ombudsman to challenge a request made by a complainant for confidential treatment of a complaint.

180 Consequently, the Ombudsman did not make an error by not challenging the request for confidential treatment of the Parliament's documents.

181 Nevertheless, where, in a decision, the Ombudsman bases his assessment on confidential information and a complainant challenges the lawfulness of that decision before a European Union Court, the Ombudsman cannot legitimately rebut the complaints made by the complainant with considerations based on confidential information to which neither the complainant nor the Court has access. If the Ombudsman does not permit the disclosure of that information, in whole or in part, on the ground that it is confidential, the Courts of the European Union shall undertake an examination of the lawfulness of the contested decision solely on the basis of the material which has been disclosed (see, to this effect, judgment of 18 July 2013 in *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, ECR, EU:C:2013:518, paragraph 127).

182 Next, the applicant considers that, in essence, the Ombudsman erred in basing his assessment in the decision of 22 October 2007 on the 'pooling' document of 14 May 2007 when that document did not prove that the information contained in the document had been made available to all the EU institutions, bodies, offices and agencies before or after 14 May 2007.

183 By this ground for complaint, the applicant merely reiterates the alleged unlawful act mentioned in paragraph 103 above, recharacterising it as a manifest error of assessment. For the reasons set out in paragraph 104 et seq. above, it should be recognised that the Ombudsman committed an unlawful act by relying on the 'pooling' document of 14 May 2007 in considering that it had been established that the Parliament had duly informed the other EU institutions, bodies, offices and agencies that the applicant's name had been placed on the list of suitable candidates in Competition EUR/A/151/98.

184 Third, the applicant alleges that the Ombudsman wrongly sought to check with the other EU institutions, bodies, offices and agencies that the list of suitable candidates in Competition EUR/A/151/98 had been circulated to them when he had not himself had it communicated to him in his capacity as an institution.

185 As far as the inquiry into the complaint is concerned, the Ombudsman cannot be considered to have made an error by making inquiries with the Parliament regarding the circulation of the list of suitable candidates in Competition EUR/A/151/98 to other EU institutions, bodies, offices and agencies. First of all, investigations conducted following complaints and the recruitment of officials for his staff are two distinct tasks of the Ombudsman and he cannot be obliged to make a link between complaints which he investigates and the failure to circulate information relevant to recruitment, namely, in this case, the applicant's inclusion on a list of suitable candidates in a competition. Second and in any event, the Ombudsman enjoys discretion as regards the manner in which he intends to conduct his inquiry, and his choice first to make inquiries with the Parliament does not exceed the limits of that discretion.

186 As far as the Ombudsman's own-initiative inquiry is concerned, it cannot be complained that the Ombudsman made inquiries without first having checked whether, in his capacity as an EU institution, he had not received from the Parliament the information that the applicant's name had been placed on the list of suitable candidates in Competition EUR/A/151/98. Aside from the fact that the Ombudsman enjoys discretion in the organisation of his inquiries and may therefore choose which relevant aspect he decides to inspect first, it should be noted that even if the Ombudsman had received that information, that would not necessarily have been sufficient to show that the other EU institutions, bodies, offices and agencies had also received that information. Consequently, the ground for complaint raised by the applicant which is summarised in paragraph 184 above is unfounded.

187 Fourth, the applicant considers that the fact that in the decision of 22 October 2007 the Ombudsman stated that the inspection had confirmed that her curriculum vitae had been sent to the Council but failed to make clear that it had been sent after she so requested shows that the Council did not have information on the list of suitable candidates in Competition EUR/A/151/98, even though it was the

co-organiser of that competition. She also claims that the fact that she received a negative response to her employment application to the European Court of Auditors showed that that institution did not have information about the list. Lastly, she invokes her correspondence with EPSO in 2007 and points out that it could not be inferred from that correspondence that her name had been placed on the EPSO list before 26 April 2007. She alleges that the Ombudsman did not use the information from EPSO which she had submitted to him to rebut the Parliament's claims based on the 'pooling' document of 14 May 2007.

188 These considerations relied on by the applicant support her ground for complaint based on the lack of proof that the other EU institutions, bodies, offices and agencies were informed that her name had been placed on the list of suitable candidates in Competition EUR/A/151/98, resulting in the invalidation of the Ombudsman's assessment in this regard in the decision of 22 October 2007. As the Court recognises that the Ombudsman committed an unlawful act in this regard (see paragraph 104 et seq. above), those considerations do not affect the outcome of the proceedings. The Court does observe, however, that the fact that the Council asked for the applicant's curriculum vitae after she so requested does not provide any proof as regards the provision to the Council of the list of suitable candidates which included the applicant. Similarly, the fact that the Court of Auditors responded to the applicant's application by stating that there were no reported vacancies corresponding to her application does not provide any proof regarding the provision to the Court of Auditors of the list of suitable candidates which included the applicant's name.

189 Fifth, in so far as the applicant considers that in his own-initiative inquiry the Ombudsman made an error by not making inquiries regarding the circulation of the list of suitable candidates in Competition EUR/A/151/98, this ground for complaint is indissociable from the complaint examined in paragraph 153 et seq. above.

e) Point 2.2 of the decision of 22 October 2007

190 The applicant considers that the Ombudsman erred in stating in his letter of 1 October 2008 that he confirmed 'again that point 2.2 of [his] decision [was] based on the statement made by the Parliament in its opinion of 20 March 2007 that the list of suitable candidates [in Competition] EUR/A/151/98 [had] been circulated to all [DGs]'. In her view, the Ombudsman thus indicated that he was not basing his conclusion on the investigation file, but only on unilateral claims made by the Parliament.

191 This ground for complaint raised by the applicant cannot be upheld because, as the Ombudsman states, in point 2.2 of the decision of 22 October 2007 he merely set out the Parliament's position without making any error. He did not assess its position in that point. On the other hand, in so far as the applicant challenges the lack of proof that the list of suitable candidates in Competition EUR/A/151/98 was circulated to all the Parliament's DGs, it should be noted that this ground for complaint is very similar to the complaint examined in paragraph 134 et seq. above and that the applicant correctly identified the lack of proof of such communication.

f) The period of validity of the list of suitable candidates

192 First, the applicant takes the view that the Ombudsman erred, in point 2.6 of the decision of 22 October 2007, in considering that the choice of the date on which a reserve list is to expire is a decision that falls within the discretionary powers of the appointing authority. In her view, the Staff Regulations do not confer such a power on the appointing authority.

193 The Court holds in this regard that it is clear from a combined reading of Articles 29 and 30 of the Staff Regulations that it is for the appointing authority to determine the period of validity of a list of suitable candidates in a competition. The appointing authority enjoys broad discretion in this regard which must be exercised having regard to general principles such as the principle of equal treatment

and the duty to state reasons. Consequently, the Ombudsman did not err in considering that the choice of the date on which such a list is to expire was a decision that fell within the discretionary powers of the administration.

194 Second, in so far as the applicant alleges that the Ombudsman made an error in not finding that the Parliament's decision to extend the validity of the list of suitable candidates which included her name was vitiated by a failure to state reasons, it should be noted that in its letter of 17 July 2007 the Parliament made clear that that extension had been granted in order to allow the Ombudsman to complete his inquiry. Accordingly, the ground for complaint raised by the applicant must be rejected as unfounded.

195 Third, in so far as the applicant considers that the Ombudsman made an error, following the extension of the validity of the inclusion of her name on the list of suitable candidates in Competition EUR/A/151/98, by failing to investigate the discrimination suffered by her compared with the other successful candidates in that competition in respect of the period of time their names were on that list, it should be noted that this ground for complaint has already been raised in the context of the first plea in law. For the reasons set out in paragraph 127 et seq. above, it should be rejected.

196 Fourth, the applicant takes the view that the Ombudsman erred by failing to reply to her letter of 19 October 2007, in which she had informed him that 'the fact that [the validity of] the list of suitable candidates [in Competition EUR/A/151/98] was extended for only [three] months (including [two] months during the holiday period) [confirmed] the discrimination [which she had suffered] for some years, as it [was] customary to extend [lists of suitable candidates in open competitions] for a longer time, for the benefit of the successful candidates, on the one hand, and the different institutions, on the other'. In this regard, the Court considers, first, that in view of the short time between the date on which that letter was written and the date of adoption of the decision of 22 October 2007 it cannot be established with any certainty that the Ombudsman was aware of that letter before the adoption of the decision. In addition and in any event, since the question of discrimination raised in that letter concerns the extension of the period of validity of lists of suitable candidates, it could not be legitimately raised until after the validity of the list which included the applicant's name had actually been extended (see paragraph 132 above). Consequently, this is a new ground for complaint to justify a new complaint, but not an extension of the object of the inquiry into the complaint. The Ombudsman did not therefore make an error by failing to investigate that alleged discrimination following the complaint.

197 Fifth, the applicant considers that in the decision of 31 March 2011 the Ombudsman erred by taking the view that the Parliament did not discriminate against her compared with the other successful candidates in Competition EUR/A/151/98 in respect of the determination of the period of validity of the list of suitable candidates in that competition. In her view, unlike the names of the other candidates which, in 2001, were placed on that list, whose validity expired in 2007, her name was not included until 2005.

198 It should be borne in mind that the principle of equal treatment requires that comparable situations should not be treated differently unless such treatment is objectively justified (judgments of 19 October 1977 in *Ruckdeschel and Others*, 117/76 and 16/77, ECR, EU:C:1977:160, paragraph 7; 16 October 1980 *Hochstrass* v *Court of Justice*, 147/79, ECR, EU:C:1980:238, paragraph 7; and 26 September 1990 *Beltrante and Others* v *Council*, T-48/89, ECR, EU:T:1990:50, paragraph 34). It thus follows that there is a breach of the principle of non-discrimination where two classes of persons whose factual and legal situations are not essentially different are treated differently or where different situations are treated in an identical manner (judgment of 16 April 1997 in *Kuchlenz-Winter* v *Commission*, T-66/95, ECR, EU:T:1997:56, paragraph 55). In order to be compatible with the general principle of non-discrimination, a difference in treatment must be justified on the basis of an objective

and reasonable criterion and must be proportionate to the aim pursued by that difference in treatment (judgment of 2 March 2004 in *Di Marzio* v *Commission*, T-14/03, ECR-SC, EU:T:2004:59, paragraph 83).

199 In this case, the list of suitable candidates in Competition EUR/A/151/98 was created on 12 January 2001. That list initially included the names of 22 successful candidates. As was stated in paragraph 113 above, all those 22 initially successful candidates were recruited before 31 December 2002, except for one who was recruited on 1 June 2003. Thus, all those initially successful candidates had their name included on that list of suitable candidates for at least two years, four months and 20 days.

200 The applicant was not initially among the successful candidates in Competition EUR/A/151/98 whose names had been placed on the list of suitable candidates in that competition created on 12 January 2001 and she successfully challenged this before the General Court (judgment in *Staelen* v *Parliament*, cited in paragraph 6 above, EU:T:2003:52). On 17 May 2005, the applicant's name was included on that list. In a letter of 19 May 2005, the Parliament informed the applicant that her name had been placed on that list, that she was the only successful candidate whose name still appeared on the list and that the list in question would remain in force until 1 June 2007. However, on 6 June 2007, the applicant was informed that the Secretary-General of the Parliament had requested that the procedure for extending the validity of the list until 31 August 2007 be initiated. On 17 July 2007, the applicant was informed that the decision had been taken to extend the validity of the list concerned until 31 August 2007. Thus, the applicant's name was included on the list of suitable candidates in question for two years, three months and 14 days.

201 Consequently, the period for which the applicant's name was included on the list of suitable candidates in Competition EUR/A/151/98 was shorter than that for the other successful candidates in Competition EUR/A/151/98.

202 In the decision of 31 March 2011, the Ombudsman held that there had not been maladministration in respect of the difference claimed by the applicant in the period of validity of the list of suitable candidates in Competition EUR/A/151/98 for which her name had been included and the period for which the names of the other successful candidates in that competition had been included, on the ground that the Parliament had explained to him that these other successful candidates had been recruited within two years of the publication of the list of suitable candidates in Competition EUR/A/151/98, whilst the applicant's name had been listed for slightly more than two years, a longer period of time than that for which the names of the other successful candidates had been included on that list, and that this explanation provided by the Parliament was convincing.

203 Having regard to the facts set out in paragraphs 199 to 201 above, the explanation given by the Parliament was incorrect and the Ombudsman could not, based on that explanation, take the view that there was no maladministration on the part of the Parliament in this regard.

204 The fact that an explanation given by an institution to the Ombudsman in an inquiry may seem convincing does not exempt the Ombudsman from his responsibility to satisfy himself that the facts on which that explanation is based are proven where the explanation constitutes the sole basis for his finding that there is no maladministration on the part of that institution.

205 Thus, the Ombudsman did not act with all due diligence when he found that there was no maladministration on the part of the Parliament, relying on the explanations given by the Parliament regarding the recruitment of the 22 initially successful candidates in Competition EUR/A/151/98 without having received evidence to attest the date of recruitment of each of those successful candidates and when those explanations proved to be unfounded. This failure to exercise diligence may establish the liability of the European Union for the Ombudsman's conduct (see paragraphs 84 to 86 above).

g) The destruction of the applicant's file

206 The applicant essentially considers that the Ombudsman made errors in the course of his inquiries by not objecting to the destruction of her file by the Parliament and by taking the view that it was not necessary to ascertain whether the Parliament had been entitled to destroy not only the personal data contained in her file but the entire file.

207 It should be noted in this regard that on 15 October 2007 the applicant received a letter from the Director-General of the Parliament's Directorate-General for Personnel informing her that the validity of the list of suitable candidates in Competition EUR/A/151/98 had expired on 31 August 2007 and that, if she so wished, her application file would be retained for a period of two and a half years in case of any dispute concerning that competition. Under Articles 2 and 4 of Annex III to the Staff Regulations, pursuant to which Competition EUR/A/151/98 had been organised, the application file comprised the form to be completed by any prospective candidates for a competition and the additional documents or information enclosed therewith. On 19 October 2007, the applicant informed the Ombudsman of the content of the letter of 15 October 2007. In March 2010, the Parliament destroyed the applicant's entire file pertaining to that competition, that is to say, not only the application file, but also the file containing all the documents added after admission to the second stage. On 29 July 2010 the Ombudsman launched his own-initiative inquiry. Lastly, in point 86 of the decision of 31 March 2011, the Ombudsman stated:

'Parliament [had] submitted that the destruction of this file [had been] in conformity with its general policy in this area and had been necessary in order to comply with its duties under data protection rules. It [had] provided a copy of the relevant rules, from which it emerge[d] that data concerning unsuccessful candidates [wa]s to be destroyed 2½ years after the relevant reserve list cease[d] to be applicable. Parliament [had] further explained why it [did] not limit itself to destroying the personal data concerning a given candidate that [wa]s contained in such a file but proceed[ed] to the destruction of the entire file. The Ombudsman note[d] that the way in which Parliament [had] handled its file concerning the complainant appear[ed] to have been in conformity with its general approach in such cases, i.e., to destroy the relevant documents 2½ years after the relevant reserve list cease[d] to be applicable. He consider[ed] that there [wa]s no need to examine, in the present case, whether Parliament [had] acted correctly by destroying not only the complainant's personal data but the entire file. In fact, what [wa]s relevant for present purposes [wa]s that it emerge[d] from the information provided by Parliament that the latter no longer possesse[d] copies of any letters or e-mails informing the other EU institutions and bodies of the fact that the complainant's name had been added to the relevant reserve list that might have existed previously. There [wa]s nothing to suggest that Parliament [had] destroyed the relevant file in order to suppress evidence.'

208 First, the applicant alleges that the Ombudsman did not object to the destruction of her file by the Parliament because, in her view, that destruction would have made it impossible to conclude the Ombudsman's own-initiative inquiry.

209 In this regard, it is not apparent from the material in the file in the present case that the applicant herself objected to the destruction of her file even though she could have done so. Furthermore, in the letter of 19 October 2007, the Ombudsman was merely informed of the destruction of the applicant's application file and not of that file in its entirety. In the light of the content of an application file, the applicant has not explained to what extent it could be of any use in demonstrating that the list of suitable candidates in Competition EUR/A/151/98 was circulated to other EU institutions, bodies, offices and agencies. Given the content of that file, the applicant's failure to demonstrate its relevance and the fact that it has not been established that the Ombudsman knew that the applicant's entire file was to be destroyed and not just her application file, it cannot be complained that the Ombudsman did not object to its destruction.

210 In addition and in any event, the applicant has not demonstrated that, theoretically, her Parliament file alone could show that the other EU institutions, bodies, offices and agencies had been informed that her name had been placed on the list of suitable candidates in Competition EUR/A/151/98. As the Ombudsman states, other sources of information were available, in particular from the Council. However, the applicant objected to the Ombudsman making inquiries with those other EU institutions, bodies, offices and agencies (see paragraph 153 et seq. above). In view of the discretion available to the Ombudsman in the organisation of his inquiries and the possible other sources of information, the Ombudsman's failure to object to the destruction of the applicant's file by the Parliament is not sufficient to establish unlawful conduct by the Ombudsman.

211 Second, the applicant considers that the Ombudsman made a manifest error of assessment in taking the view that it was not necessary to ascertain whether the Parliament was entitled to destroy her entire file, when it was obvious that such destruction was unlawful.

212 In view of the object of the Ombudsman's own-initiative inquiry, the Ombudsman did not err in considering that it was not important to conduct investigations into the destruction of the applicant's entire file by the Parliament. According to point 43 of the decision of 31 March 2011, the object of the own-initiative inquiry was the notification of the other EU institutions, bodies, offices and agencies that the applicant's name had been included on the list of suitable candidates in Competition EUR/A/151/98, the period of validity of that list and the equal treatment of the applicant and of the other successful candidates in that competition in respect of the period of validity of that list.

213 Consequently, the Ombudsman could legitimately refrain, in his own-initiative inquiry, from conducting investigations into whether the Parliament had been entitled to destroy the applicant's entire file.

214 Furthermore, in so far as the applicant complains specifically that the Ombudsman did not make inquiries into the unlawful destruction of her personal data, as the Ombudsman states in the rejoinder, the applicant did not raise a ground for complaint to that effect at the application stage. It follows from Article 44(1)(c) in conjunction with Article 48(2) of the Rules of Procedure of the General Court that the original application must indicate the subject-matter of the proceedings and contain a summary of the pleas in law relied on, and that new pleas in law may not be introduced in the course of the proceedings unless they are based on matters of law or of fact which come to light in the course of the procedure. However, a submission or argument which may be regarded as amplifying a plea made previously, whether directly or by implication, in the original application, and which is closely connected therewith, will be declared admissible (see judgment of 14 March 2007 in *Aluminium Silicon Mill Products* v *Council*, T-107/04, ECR, EU:T:2007:85, paragraph 60 and the case-law cited). In this case, this ground for complaint may not be regarded as amplifying an existing ground. Accordingly, this ground for complaint must be rejected as inadmissible.

215 In addition and in any event, in the course of the inquiries made in this case by the Ombudsman, the applicant never raised such a complaint with the Ombudsman. In her letter of 19 October 2007, the applicant did not object to the destruction of her application file, as notified in the Parliament's letter of 15 October 2007. Following the decision of 22 October 2007 and in the course of the Ombudsman's own-initiative inquiry, the applicant likewise did not complain to the Ombudsman about such an unlawful act. It cannot therefore be complained that the Ombudsman did not conduct inquiries into that question.

h) The reply to the letter of 15 May 2007

216 The applicant alleges that the Ombudsman ignored the fact that the Parliament had failed to reply to her letter of 15 May 2007 in which she requested an extension of the validity of the list of suitable candidates in question.

217 In this regard, it need only be pointed out that in the letter of 6 June 2007 the Parliament expressly stated that that letter was in reply to the applicant's letter of 15 May 2007. In addition, in point 81 of the decision of 31 March 2011 the Ombudsman expressly addressed the question of the reply to the letter of 15 May 2007. It cannot therefore be complained that he ignored the subject of the Parliament's reply to the letter of 15 May 2007. Lastly, it should be noted that the applicant obtained an extension of the validity of the list of suitable candidates in question until 31 August 2007.

218 Consequently, the ground for complaint alleging a failure by the Ombudsman to take into consideration the fact that the Parliament had not replied to the applicant's letter of 15 May 2007 must be rejected as unfounded.

i) The failure to make inquiries into the Parliament's opposition to her appointment

219 The applicant complains that the Ombudsman did not make inquiries into the Parliament's opposition to her appointment.

220 It should be pointed out in this regard that in the complaint the applicant stated that as she was the only successful candidate in Competition EUR/A/151/98 whose name had been included on the list of suitable candidates in that competition not to be appointed, she inferred that she had been the victim of spiteful behaviour within the Parliament. She stated that friends of hers who were officials working in the other EU institutions and whose names she could not mention for reasons of confidentiality had confirmed her suspicion.

221 The Ombudsman decided, following the complaint, to make inquiries into the handling of the applicant's case after her name was placed on the list of suitable candidates in Competition EUR/A/151/98 and into the fairness of the treatment afforded to the applicant in the context of the filling of a vacancy within the EU institutions.

222 This approach is not unlawful. Since the claim of the Parliament's spiteful behaviour is based on an inference and allegations from non-identifiable sources, it was important for him to investigate the circumstances underlying that inference and those allegations. The Ombudsman did so when he defined the object of the inquiry into the complaint.

j) Conclusion

223 It is clear from the examination of the second plea in law that, in addition to the unlawful acts found in the context of the examination of the first plea in law, the Ombudsman failed to exercise diligence by relying on a mere statement by the Parliament regarding the period of time the successful candidates were included on the list of suitable candidates (see paragraph 205 above). That failure to exercise diligence meant that the Ombudsman wrongly considered that certain facts had been proven and therefore erroneously found that there was no maladministration on the part of the Parliament.

3. The unlawful acts by reason of a lack of impartiality, objectivity and independence, the Ombudsman's bad faith and a misuse of powers

224 In the third plea in law, the applicant claims that in the inquiries at issue in this case the Ombudsman demonstrated a lack of impartiality, objectivity and independence, acted in bad faith and misused his powers.

225 First, the applicant questions the lawfulness of the agreement on cooperation of 15 March 2006 between the Parliament and the Ombudsman ('the agreement on cooperation') and the impact of that agreement on the independent and objective treatment of the complaint.

226 In this regard, the Court takes the view that the applicant does not explain sufficiently precisely the purport of her ground for complaint. A simple question is not sufficient to explain why she considers that the Ombudsman is not independent vis-à-vis the Parliament.

227 The only sufficiently precise allegation made by the applicant in connection with the agreement on cooperation is that the Ombudsman did not have the necessary independence on account of the support he received in the exercise of his functions from the Parliament's Legal Service under that agreement.

228 Article 8 of the agreement on cooperation does provide for the possibility of legal cooperation between the Ombudsman and the Parliament. However, the applicant does not provide the slightest evidence that the Ombudsman availed himself of that possibility in this case. In particular, she does not offer any evidence that the Ombudsman received support from the Parliament's Legal Service in the exercise of his investigative functions. Consequently, the ground for complaint raised by the applicant claiming that the Ombudsman does not have the necessary independence by virtue of that agreement must be rejected as unfounded.

229 Second, the applicant considers that the Ombudsman's bad faith and his desire to protect the Parliament is apparent from both the letter of 1 October 2008 and the letter of 10 March 2010, which cite point 2.5 of the decision of 22 October 2007, with the exception of the incorrect passage stating that the Parliament had already indicated in its opinion that the list of suitable candidates showing the applicant's availability had been made available to other institutions.

230 It should be borne in mind that the Ombudsman incorrectly stated in the decision of 22 October 2007 that according to the Parliament's opinion the list of suitable candidates which included the applicant's name had been made available to other institutions (see paragraph 102 above). The omissions in the letters of 1 October 2008 and 10 March 2010 to which the applicant refers were not, however, hidden omissions, as the omissions are replaced by an ellipsis in the quotation. Lastly, in the two letters the Ombudsman recalls the content of his assessment as reproduced in point 2.5 of the decision of 22 October 2007 in so far as it relates to the inspection and not to the Parliament's opinion. In view of these considerations, the omissions to which the applicant refers do not demonstrate bad faith or partiality on the part of the Ombudsman.

231 Third, the applicant considers that the fact that the Ombudsman never required the Parliament to produce evidence that the list of suitable candidates which included the applicant's name had been made available to the other EU institutions and that he was satisfied with the 'pooling' document of 14 May 2007 constitutes an indication of subjectivity and collusion. However, the fact that the Ombudsman did not correctly conduct his inquiry regarding the evidence of the circulation of that list to the other EU institutions, bodies, offices and agencies (see paragraph 103 et seq. above) does not, in itself, constitute an indication of subjectivity or collusion between the Parliament and the Ombudsman. The applicant does not demonstrate that this wrongful act was intentional. That assessment also holds for the wrongful act committed by the Ombudsman on account of the lack of proof that the list had been made available to the Parliament's other DGs.

232 Fourth, for the reasons set out in paragraphs 168 and 179 above, the Ombudsman did not commit a wrongful act by not publishing a corrigendum to the decision of 22 October 2007 and by invoking the confidentiality of certain documents produced by the Parliament. Consequently, those factors cannot be relied on to demonstrate any partiality on the part of the Ombudsman or collusion with the Parliament.

233 Fifth, the applicant claims that the Ombudsman's bad faith is shown by the fact that he ignored her questions, those from Ms P. and those from Mr W. and opened a new inquiry only after three years. However, the Ombudsman cannot be considered to have ignored those questions since he opened an

own-initiative inquiry in response to them. In addition, even if the view were taken that that inquiry was not opened within a reasonable time, that is not sufficient to prove that the Ombudsman acted in bad faith.

234 Sixth, the applicant considers that the Ombudsman knew that his decision to open a new inquiry in July 2010 was destined to fail because he was aware that the Parliament had destroyed all the data concerning her file in March 2010. In her view, the new inquiry was therefore merely an attempt to conceal manifest negligence in the conduct of the first inquiry and showed the Ombudsman's blatant partiality in favour of the Parliament.

235 Those claims are unfounded. For the reasons set out in paragraph 206 et seq. above, the applicant does not show either that the Ombudsman was aware that the Parliament was going to destroy her entire file or that the Ombudsman's own-initiative inquiry was destined to fail. Consequently, those factors do not allow a finding of an intention to conceal manifest negligence or demonstrate partiality on the part of the Ombudsman vis-à-vis the Parliament.

236 Seventh, the applicant considers that the Ombudsman acted in bad faith and attempted to conceal his own wrongful act by concluding in the decision of 31 March 2011 that there was no maladministration, relying on statements made by the Parliament and refusing to ask questions to the other institutions and bodies on his own initiative. In this regard the Court holds that in the present case the fact that the Ombudsman wrongly relied on statements made by the Parliament does not demonstrate to the requisite legal standard the existence of bad faith on the part of the Ombudsman or his desire to conceal his own wrongful act. Similarly, the fact that in this case the Ombudsman refused to proceed with his own-initiative inquiry following the applicant's refusal to cooperate with that inquiry does not constitute proof of the Ombudsman's bad faith or of his concealment of any wrongful act (see paragraph 153 et seq. above).

237 Eighth, the applicant considers that the fact that one week before the decision of 22 October 2007 she received a letter informing her of the arrangements for the destruction of data relating to her application file suggests that the Parliament had been made aware of that decision before her. The Court takes the view that such speculation does not allow a finding of collusion between the Parliament and the Ombudsman.

238 Ninth, the applicant claims that the Ombudsman acted inconsistently in that, on the one hand, he accepted with immediate effect that EPSO manages the list of suitable candidates which included the applicant's name in its database and, on the other, he rejected the publication of that list in the Official Journal on the ground that it was not appropriate to apply the rule on publication with retroactive effect. In this regard, the Court takes the view that the applicant has not explained adequately the reasons why she considered this approach to be inconsistent. In addition and in any event, even if such an approach were to prove inconsistent, that is not sufficient to demonstrate the existence of collusion between the Parliament and the Ombudsman.

239 Tenth, the applicant reiterates her grounds for complaint relating to the period of validity of the list of suitable candidates in Competition EUR/A/151/98, namely, first, that the Ombudsman commended the Parliament for extending the validity of that list without taking account of the Parliament's failure to reply to her request for an extension and, second, that the Ombudsman failed to make inquiries into the purported discrimination between the applicant's situation and the situation of the other successful candidates in Competition EUR/A/151/98, and infers from these considerations the Ombudsman's bad faith or partiality. In the light of these grounds for complaint, it should be noted that, for the reasons set out in paragraph 125 et seq. above, the applicant is wrong to claim that the Parliament did not reply to her. In addition, as far as discrimination is concerned, the wrongful act committed (see paragraph 197 et seq. above) is not sufficient to establish the Ombudsman's bad faith or partiality.

240 Eleventh, the applicant considers it highly suspicious that the Ombudsman did not produce the letter which he sent to the Parliament on 24 May 2007 and the Parliament's reply of 31 May 2007, which concern the extension of the period of validity of the list of suitable candidates in Competition EUR/A/151/98 in which her name was mentioned. Because those documents were produced by the Ombudsman in the rejoinder, that ground for complaint has become devoid of purpose.

241 Furthermore, the applicant considers that the fact that in the decision of 31 May 2011 the Ombudsman twisted the meaning of the Parliament's letter of 6 June 2007 by stating that the Parliament had informed him of the decision to extend the validity of the list of suitable candidates in Competition EUR/A/151/98 constitutes evidence of the Ombudsman's bad faith and of the existence of collusion between the Ombudsman and the Parliament.

242 In this regard, it should be noted that in the letter of 6 June 2007 the Parliament's representative stated that the applicant's letter of 15 May 2007, in which she requested the extension of the validity of the list of suitable candidates in Competition EUR/A/151/98, had been forwarded to him for reply and had been accorded his full attention. In addition, the Parliament's representative told the applicant that, at the Ombudsman's request and pending the outcome of the Ombudsman's examination of the case, the Secretary-General of the Parliament had asked its staff 'to initiate the procedure for the extension [of the validity] of [that list of suitable candidates] until 31 August 2007'.

243 Furthermore, in the decision of 31 March 2011 the Ombudsman stated:

'As regards the question whether Parliament ought to have provided an explicit reply to the complainant's letter of 15 May 2007, it should be recalled that, in this letter, the complainant asked Parliament to extend the validity of the relevant reserve list. The Ombudsman considers that it is obvious that good administrative practice required Parliament to reply to this letter. A thorough review of the submissions made within the framework of [the] complaint ... shows, however, that such a reply was sent. By letter of 6 June 2007, Parliament informed the complainant that, following a request made by the Ombudsman, it had decided to extend the validity of the reserve list concerned until 31 August 2007. A copy of this letter was forwarded to the Ombudsman by the complainant on 8 June 2007. No maladministration can therefore be found as concerns this aspect of the case.'

244 In the light of the above considerations, it is clear that the Parliament's letter of 6 June 2007 constitutes a reply to the letter of 15 May 2007. Second, in that letter the applicant was informed of the initiation of the procedure for the extension of the validity of the list of suitable candidates in Competition EUR/A/151/98 until 31 August 2007. Because that initiative came from the Secretary-General of the Parliament, it implied the Parliament's agreement to such an extension and it was communicated to the applicant, the applicant should have understood that the validity of that list would be extended until 31 August 2007. Consequently, that letter constitutes neither evidence of the Ombudsman's bad faith nor evidence of the existence of collusion between the Ombudsman and the Parliament.

245 Twelfth, according to the applicant, the fact that the Ombudsman replied to her letters of 19 October 2007 and 24 January 2008 on 1 July 2008, shortly after she took her grievances against the Ombudsman to the French Presidency of the Council on 6 May 2008, constitutes evidence of the existence of collusion between the Ombudsman and the Parliament, which was questioned by the French Presidency. This ground for complaint is unfounded. At the hearing, the applicant confirmed that this did not constitute evidence of the existence of such collusion. In addition, the Ombudsman's reply to the applicant's letters shortly after a question from the Parliament, which the applicant describes only as plausible, does not constitute evidence of the existence of collusion between the Ombudsman and the Parliament.

246 Consequently, the various elements adduced by the applicant, taken separately or taken together, cannot demonstrate bad faith, partiality or a subjective approach on the part of the Ombudsman. Similarly, the different arguments advanced by the applicant, taken separately or taken together, cannot demonstrate the existence of collusion between the Ombudsman and the Parliament.

247 In so far as the applicant alleges a misuse of powers, it must be observed that the concept of misuse of powers has a precisely defined scope in Union law and refers to cases where an administrative authority has used its powers for a purpose other than that for which they were conferred on it. A decision amounts to a misuse of powers only if it appears, on the basis of objective, relevant and consistent factors, to have been taken to achieve an end other than that stated (judgments of 25 June 1997 in *Italy* v *Commission*, C-285/94, ECR, EU:C:1997:313, paragraph 52, and 12 April 2013 *Du Pont de Nemours (France) and Others* v *Commission*, T-31/07, EU:T:2013:167, paragraph 334).

248 None of the above arguments put forward by the applicant allow a finding, on the basis of objective, relevant and consistent factors, that the Ombudsman adopted his decisions to conceal unlawful acts committed by him and unlawful acts committed by the Parliament in connection with the management of the list of suitable candidates in Competition EUR/A/151/98.

249 Accordingly, the third plea in law raised by the applicant must be rejected in its entirety.

4. The unlawful acts committed by reason of infringements of the principles of the duty of care and 'good administration', the 'reasonable time' principle, Articles 14 and 17 of the Code of Good Behaviour and Article 41 of the Charter of Fundamental Rights

a) Introduction

250 In the fourth plea in law, the applicant claims that in the relevant inquiries in this case, the Ombudsman infringed the principles of the duty of care and 'good administration', the 'reasonable time' principle, Articles 14 and 17 of the Code of Good Behaviour and Article 41 of the Charter of Fundamental Rights.

251 The grounds for complaint raised by the applicant in connection with this plea in law, which relate to negligence by the Ombudsman in the relevant inquiries, concealment of his errors and the failure to verify the alleged confidentiality tally with those raised in connection with the first three pleas in law. Reference should therefore be made to the assessment of those grounds for complaint in the examination of those pleas in law.

b) The 'reasonable time' principle

252 With regard to the alleged violation of the 'reasonable time' principle, it should be noted that under Article 41 of the Charter of Fundamental Rights every person has the right to have his or her affairs handled within a reasonable time by the institutions and bodies of the Union. Furthermore, it has been ruled that where the duration of a procedure is not set by a provision of EU law, the 'reasonableness' of the period of time taken by the institution to adopt a measure at issue is to be appraised in the light of all of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the parties to the case. Thus, the reasonableness of a period cannot be determined by reference to a precise maximum limit determined in an abstract manner but, rather, must be appraised in the light of the specific circumstances of each case (see judgment of 16 September 2013 in *De Nicola* v *EIB*, T-264/11 P, ECR-SC, EU:T:2013:461, paragraph 49 and the case-law cited).

253 In the present case, the applicant considers that the Ombudsman breached his obligation to handle her affairs within a reasonable time, first by waiting almost three years after the decision of 22 October 2007 to accept that some clarifications were still needed and second by having taken more than four years finally to close the matter. In addition, she alleges that the Ombudsman replied to various letters in an unreasonable time.

254 With regard to these grounds for complaint, a distinction should be drawn between, on the one hand, the period from the adoption of the decision of 22 October 2007 to the start of the Ombudsman's own-initiative inquiry on 29 June 2010, during which the applicant made repeated requests to the Ombudsman ('the first period'), and, on the other, the period from the start of the own-initiative inquiry on 29 June 2010 to the adoption of the decision of 31 March 2011 closing that inquiry ('the second period'). The question whether the Ombudsman complied with the 'reasonable time' principle must be appraised not by reference to the validity of the grounds adduced by the parties in different pleadings, but on the basis of the manner in which the procedures leading to their adoption were conducted.

255 Thus, the first period does not relate a procedure, strictly speaking, but to requests made by the applicant to the Ombudsman, to which the Ombudsman had to reply within a reasonable time. On the other hand, the second period relates specifically to an inquiry procedure culminating in a decision.

256 With regard to the first period, on 24 January 2008 the applicant requested the reopening of the inquiry on the ground that the Ombudsman had not replied and taken account, in the decision of 22 October 2007, of information contained in her letter of 19 October 2007. On 1 July 2008, the Ombudsman replied to those letters, declining the request to reopen the inquiry. Thus, the Ombudsman replied eight and five months, respectively, after the applicant sent the letters, without any particular arguments having been put forward to justify those reply times. As the Ombudsman recognises, those times were unreasonable. In the absence of further evidence, the reply given in this instance, declining the request to reopen the inquiry, did not justify such a passage of time.

257 On 14 July 2008, the applicant asked the Ombudsman to communicate certain documents relating to the publicity given to the inclusion of her name on the list of suitable candidates in Competition EUR/A/151/98. On 21 July 2008, the Ombudsman replied to that letter. That reply time is reasonable.

258 On 1 August 2008, the applicant sent a letter to the Ombudsman in reply to the Ombudsman's letter of 21 July 2008. On 1 October 2008, the Ombudsman replied to that letter. That reply time is reasonable.

259 On 8 October 2008, the applicant responded to the Ombudsman's letter of 1 October 2008. The end of the applicant's letter contains the phrase 'I ask you to refrain from writing to me any further'. In the light of the content of that letter, it cannot be complained that the Ombudsman failed to reply to it.

260 As regards the replies to the letters from Ms P., the applicant cannot claim a possible unreasonable time for those responses because those replies were not sent to the applicant.

261 With regard to the second period, the time which passed between 29 June 2010, the date of the start of the Ombudsman's own-initiative inquiry, and 31 March 2011, the date on which the decision terminating that inquiry was delivered, cannot be considered to be unreasonable because less than one year passed between those two dates.

262 In so far as the applicant alleges that the Ombudsman did not submit to her until 3 May 2007 the Parliament's comments which he had received on 20 March 2007, the Ombudsman rightly observes that in his letter of 3 May 2007 he did not simply pass on the Parliament's opinion. He also informed the applicant of his decision to launch an inquiry, which requires an analysis. Therefore, that time is not unreasonable.

c) Compliance with the Code of Good Behaviour

263 In so far as the applicant claims an infringement of Articles 14 and 17 of the Code of Good Behaviour, it should be noted that that Code is not a legal provision but a resolution of the Parliament amending a draft which had been submitted to it by the European Ombudsman and calling on the Commission to submit a legislative proposal in that respect (see judgment of 11 May 2010 in *PC-Ware Information Technologies* v *Commission*, T-121/08, ECR, EU:T:2010:183, paragraph 90 and the case-law cited). In addition, the Ombudsman stated in the introduction to the Code that it was not a legally binding instrument.

264 Thus, in adopting the Code of Good Behaviour, the Ombudsman's aim was not to lay down rules of law conferring rights on individuals. Consequently, failure to respect those rules is not enough for a finding of a sufficiently serious breach of a rule of law intended to confer rights on individuals which is capable of establishing the liability of the European Union. It is only inasmuch as the provisions of that Code constitute an expression of the fundamental right to good administration as enshrined in Article 41 of the Charter of Fundamental Rights that they are capable of establishing the liability of the European Union.

265 In so far as the applicant complains that the Ombudsman often failed to reply to letters from the applicant or to acknowledge receipt for several months, thereby infringing Articles 14 and 17 of the Code of Good Behaviour, the Court holds that this ground for complaint must be rejected because it is insufficiently precise. The applicant fails to indicate which letters did not receive an acknowledgment of receipt or a reply. Furthermore, with regard to the rule that every letter to an institution must receive an acknowledgement of receipt within a period of two weeks under Article 14 of the Code of Good Behaviour, the Court notes that it is a simple procedural rule which is not expressly provided for by Article 41 of the Charter of Fundamental Rights. Failure to respect that rule cannot therefore constitute a sufficiently serious breach of a rule of law intended to confer rights on individuals which is capable of establishing the liability of the European Union.

266 In so far as the applicant relies on the rule laid down in Article 17 of the Code of Good Behaviour that the official must ensure that a decision on every request or complaint to the institution is taken within a reasonable time-limit, without delay, and in any case no later than two months from the date of receipt, the Court considers that the period of two months is not an absolute time-limit. Compliance with the 'reasonable time' principle in the treatment of a complaint under the Charter of Fundamental Rights must be appraised in the light of the circumstances of the case. Compliance with the 'reasonable time' principle in the context of the treatment of the complaint has already been examined in paragraph 252 et seq. above.

267 For the above reasons, the applicant's arguments based on Articles 14 and 17 of the Code of Good Behaviour must be rejected.

d) Lack of access to the file

268 In so far as the applicant claims that 'the Ombudsman's attitude throughout the procedure also constitutes an infringement of Article 41 of the Charter of Fundamental Rights ... on account ... of the lack of access to the file, the lack of transparency', the Court holds that the applicant does not expound

sufficiently her ground for complaint. She does not explain how, in the present case, the Ombudsman infringed obligations relating to access to the file and transparency. Consequently, this ground for complaint must be rejected.

e) Conclusion

269 In the light of the foregoing considerations, aside from the grounds for complaint tallying with the grounds for complaint raised in the preceding pleas in law, only the unreasonable time in replying to the letters referred to in paragraph 256 above constitutes a wrongful act. Because the applicant has the right to have her requests dealt with in a reasonable time, failure to respect that time constitutes a sufficiently serious breach of a rule of law intended to confer rights on individuals which is capable of establishing the liability of the European Union.

D – *Damage and causal link*

1. Preliminary remarks

270 The applicant claims that she has suffered both material and non-pecuniary loss because of the wrongful acts committed by the Ombudsman.

271 As regards material loss, the applicant essentially claims that because of the wrongful acts committed by the Ombudsman she lost a genuine opportunity of recruitment as an official. Consequently, the applicant claims payment of 'remuneration' from June 2005 to 31 March 2026, that is to say, from the date when her name was placed on the list of suitable candidates in Competition EUR/A/151/98 until the normal retirement age, including pension rights, or at least a proportion of that amount to take account of the loss of opportunity. For the assessment of loss of opportunity, the applicant considers that the Court can apply a coefficient representing the loss of opportunity of appointment by taking into consideration, in particular, the fact that she was the only candidate remaining on that list of suitable candidates. The applicant assesses that loss, for the past, at EUR 559 382.13. For the future, she requests the Court to order the Ombudsman to pay her, on a monthly basis, from May 2011 until March 2026, net amounts, or at least a proportion of those amounts, corresponding to the salaries fixed for officials in function group AD, starting at grade AD 9, step 2, second year, with reference to the normal career path of an official of that grade, supplemented by corresponding pension fund contributions for the applicant and sickness insurance fund contributions.

272 As regards non-pecuniary loss, the applicant considers that she has suffered such loss by reason of the Parliament's obstinacy towards her and the manifest negligence of the Ombudsman, who is supposed to protect citizens' rights. She believes that the procedure initiated before the Ombudsman proved to be a waste of time, energy and money. In addition, she states that she has lost all confidence in that institution established by the Treaty to afford her assistance on account of his attitude, which has caused her non-pecuniary loss. Mere apologies cannot repair the psychological harm caused by those wrongful acts, and the Ombudsman's own-initiative inquiry did not allow the errors made in the decision of 22 October 2007 to be remedied. The applicant therefore assesses the non-pecuniary loss *ex aequo et bono* at EUR 50 000. The Ombudsman disputes each of the arguments put forward by the applicant.

273 In assessing these various arguments, it should be borne in mind that it is settled case-law that the European Union may be rendered liable only if the applicant suffered actual and certain loss (judgments of 27 January 1982 in *De Franceschi* v *Council and Commission*, 51/81, EU:C:1982:20, paragraph 9, and 16 January 1996 *Candiotte* v *Council*, T-108/94, ECR, EU:T:1996:5, paragraph 54).

274 It is incumbent upon the applicant to produce to the European Union judicature the evidence to establish the fact and the extent of such a loss (see, to this effect, judgments of 21 May 1976 in *Roquette frères* v *Commission*, 26/74, ECR, EU:C:1976:69, p. 677, paragraphs 22 to 24; 9 January 1996 *Koelman* v *Commission*, T-575/93, ECR, EU:T:1996:1, paragraph 97; and 28 April 1998 *Dorsch Consult* v *Council and Commission*, T-184/95, ECR, EU:T:1998:74, paragraph 60). In addition, it has been ruled that an action for damages could not be dismissed where, despite the continuing uncertainty regarding its exact quantification, the loss was indisputable and it was possible to put an economic value on it (see, to this effect, judgment in *Agraz and Others* v *Commission*, cited in paragraph 68 above, EU:C:2006:708, paragraph 42).

275 Lastly, it has been ruled that in an action for compensation, there was a causal link where there was a sufficiently direct causal link between the impugned conduct of the institution and the loss pleaded, the burden of proof of which rested on the applicant. The impugned conduct must thus be the decisive cause of the loss (see judgment of 18 December 2009 in *Arizmendi and Others* v *Council and Commission*, T-440/03, T-121/04, T-171/04, T-208/04, T-365/04 and T-484/04, ECR, EU:T:2009:530, paragraph 85 and the case-law cited).

2. Material loss and the causal link between that loss and the unlawful acts committed by the Ombudsman

276 First, the applicant's claim that the Union be ordered to compensate her for the unlawful acts committed by the Ombudsman must be rejected in so far as that claim seeks payment of the full remuneration which the applicant would have received if she had been recruited from June 2005, the date her name was placed on the list of suitable candidates in Competition EUR/A/151/98, until the normal retirement age, including pension rights.

277 The inclusion of the applicant's name on the list of suitable candidates in Competition EUR/A/151/98 did not give her a right to be recruited. The discretion available to the institutions in relation to the recruitment of successful candidates in competitions precludes such a right. Consequently, the damage suffered on account of a wrongful act affecting the inclusion of a person's name on a list of suitable candidates in a competition cannot correspond to the loss of earnings resulting from the loss of that right (see, to this effect, judgment of 21 February 2008 in *Commission* v *Girardot*, C-348/06 P, ECR, EU:C:2008:107, paragraph 65).

278 Accordingly, the unlawful acts committed by the Ombudsman cannot be considered to have caused damage equivalent to the damage that would have been suffered by a person who had a right to be recruited.

279 Second, with regard to the loss of opportunity of recruitment claimed by the applicant, the Court holds that, contrary to the assertion made by the Ombudsman, that claim is not inadmissible in the absence of sufficient precision.

280 Whilst the Court has recognised that it was very difficult, if not impossible, to define a method to quantify precisely the opportunity of recruitment to a job within an institution and therefore to assess the loss resulting from the loss of opportunity (judgment in *Commission* v *Girardot*, cited in paragraph 277 above, EU:C:2008:107, paragraph 60), it did not conclude that a claim for compensation for loss of opportunity had to be dismissed automatically as inadmissible or unfounded. In this case, the applicant has set out a method for calculating the loss of opportunity with sufficient precision. With reference to the ruling in *Girardot*, she has requested that a coefficient be applied to the amount of the remuneration she would have received if she had been recruited from June 2005 at grade AD 8, step 4, until 2026, with reference to the normal career path of an official, supplemented by

the corresponding pension fund contributions and sickness insurance fund contributions and taking into consideration the fact that she was the only candidate remaining on the list of suitable candidates in Competition EUR/A/151/98.

281 However, the applicant's claim for compensation for the loss of opportunity of recruitment must be rejected because there is not a sufficiently direct link between that damage and the unlawful acts committed by the Ombudsman.

282 The distortion by the Ombudsman of the content of the Parliament's opinion in the decision of 22 October 2006 (see paragraph 102 above) does not mean that the applicant lost an opportunity of recruitment. Even if the Ombudsman had found that the Parliament had not indicated in its opinion that the list of suitable candidates which included the applicant's name had been made available to other EU institutions, bodies, offices and agencies, this would not have resulted in either a finding by the Ombudsman of a failure to communicate that list to the other EU institutions, bodies, offices and agencies or the loss of an opportunity of recruitment for the applicant.

283 As regards the breaches by the Ombudsman of his duty of diligence, it should be stated that the decisive cause of a potential loss of opportunity of recruitment for the applicant would reside in the actions of the Parliament and not those of the Ombudsman. It is only if the Parliament, first, did not inform its DGs and the other EU institutions, bodies, offices and agencies that the applicant's name had been placed on the list of suitable candidates in Competition EUR/A/151/98 and, second, did not include the applicant's name on that list for a period of time equivalent to that for which the names of the other successful candidates in that competition were included that the applicant potentially lost an opportunity of recruitment.

284 If the Ombudsman had found that the Parliament had failed to fulfil its obligation of good administration by not informing its DGs and the other EU institutions, bodies, offices and agencies in good time that the applicant's name had been included on the list of suitable candidates in Competition EUR/A/151/98 and by not placing the applicant on the list of suitable candidates for an identical period of time as the other successful candidates, the Ombudsman would have had to cooperate with the Parliament in seeking a friendly solution in order to eliminate the instances of maladministration and satisfy the applicant. Where a friendly solution is not possible or has been unsuccessful, the Ombudsman may either make a critical remark or make a report with draft recommendations, which may lead to a special report with recommendations (see Article 3(5) to (7) of Decision 94/262 and Articles 6 to 8 of the Implementing provisions).

285 As is recognised by the applicant, none of those measures taken by the Ombudsman in respect of the Parliament is legally binding. The fact that cooperation results in a friendly solution depends on both the Ombudsman and the Parliament. In the absence of any binding effect of the measures that may be adopted by the Ombudsman in respect of the Parliament, those measures cannot be regarded as the decisive cause of a loss consisting in the loss of opportunity of recruitment for the applicant (see, to this effect and by analogy, judgment in *Arizmendi and Others* v *Council and Commission*, cited in paragraph 275 above, EU:T:2009:530, paragraph 93).

286 That assessment is not called into question by the applicant's arguments that the Parliament has always followed the Ombudsman's recommendations and that a refusal could have given grounds for an action for damages against the Parliament. The applicant does not prove her allegation that those recommendations were followed. In addition, even if it were proven, this would not provide a sufficiently direct causal link between the unlawful acts committed by the Ombudsman and the loss of opportunity of recruitment for the applicant. Furthermore, the fact that a refusal by the Parliament to follow those recommendations could give grounds for an action for damages does not make those recommendations binding.

287 Lastly, with regard to the Ombudsman's failure to comply with the 'reasonable time' principle (see paragraph 252 et seq. above), it should be stated that the Ombudsman's delay in replying to certain letters from the applicant cannot be the decisive cause of the loss of opportunity of recruitment for the applicant. There is not a sufficiently direct link between the delay in sending those replies and the loss of opportunity of recruitment for the applicant as an official. It cannot be presumed that a reply given in a reasonable time would have a different content and would be favourable for the applicant.

3. Non-pecuniary loss and the causal link between that loss and the unlawful acts committed by the Ombudsman

288 First, it should be noted that the Parliament's alleged obstinacy towards the applicant does not constitute an unlawful act committed by the Ombudsman, with the result that no compensation for non-pecuniary loss can be granted in that respect in the present case, which concerns solely the liability of the European Union by reason of the conduct of the Ombudsman.

289 In addition, the applicant's claim that the unlawful acts committed by the Ombudsman made her 'waste money' comes under material loss. However, that claim is too vague to be able to ascertain whether that loss is actual and certain and it is therefore irrelevant to the outcome of the present case.

290 Next, in so far as the applicant considers that the unlawful acts committed by the Ombudsman created a feeling of wasted time and energy and caused a loss of confidence in that institution, it is certain that the distortion of the content of the Parliament's opinion and the failure to exercise diligence in his duties of inquiry relating to the decision of 22 October 2007 inevitably affected the applicant's confidence in the body created to combat cases of maladministration on the part of the EU institutions. Similarly, in the context of the Ombudsman's own-initiative inquiry, his failure to exercise diligence in his duties of inquiry into the existence of discrimination in relation to the period of time the applicant's name was included on the list of suitable candidates in Competition EUR/A/151/98 compared with the names of the other successful candidates inevitably affected the applicant's confidence in the Ombudsman's Office. The unreasonable time for sending replies to certain letters from the applicant requesting the reopening of the inquiry on the ground that the decision of 22 October 2007 was vitiated by errors further reinforced that loss of confidence. In addition, those errors inevitably gave the applicant the feeling that she had wasted her time and her energy in reporting to the Ombudsman the case of maladministration on the part of the Parliament in relation to the inclusion of her name on the list.

291 The loss caused by the unlawful acts committed by the Ombudsman was reduced by certain actions taken by the Ombudsman. For example, the incorrect reproduction of the Parliament's opinion in the decision of 22 October 2007 was corrected by the Ombudsman on 29 June 2010 (see paragraph 166 above). The Ombudsman offered his apologies for the delay in his replies and his errors. Lastly, the Ombudsman launched a new own-initiative inquiry.

292 However, in this case, the actions taken by the Ombudsman referred to in paragraph 291 above are not sufficient to compensate in full the non-pecuniary loss suffered by reason of the unlawful acts committed. The own-initiative inquiry was launched by the Ombudsman only well after the applicant reported the existence of errors in the decision of 22 October 2007 and it was done only following intervention by a Member of the Parliament. In particular, with regard to the distortion of the content of the Parliament's opinion by the Ombudsman in that decision, it should be stated that this was reported by the applicant in her letter of 1 August 2008 and that the Ombudsman initially failed to rectify that distortion (see letter of 1 October 2008). It was only following the letter from Ms P. of 1 June 2010 and more than one and half years after that distortion was reported by the applicant that the Ombudsman acknowledged and rectified that error in his letter of 29 June 2010. In those circumstances, the apologies offered by the Ombudsman and his correction do not compensate in full

the non-pecuniary loss suffered by the applicant as a result of that distortion. In addition, the Ombudsman's own-initiative inquiry did not compensate in full the non-pecuniary loss caused by his failure to exercise diligence during investigations conducted following the complaint because he did not successfully complete that inquiry into the circulation of the list of suitable candidates which included the applicant's name to the Parliament's DGs and to the other EU institutions, bodies, offices and agencies. The fact that the applicant objected to that own-initiative inquiry does not call into question the existence of her loss of confidence caused by the Ombudsman's failure to conduct a diligent investigation following the complaint. On the contrary, the reason for her objection to the Ombudsman's own-initiative inquiry was that loss of confidence. Lastly, the apologies offered by Ombudsman do not compensate in full the non-pecuniary loss linked to the applicant's loss of confidence caused by the Ombudsman's failure to exercise diligence in the inquiry into the complaint in respect of the period of time that the applicant's name was included on the list of suitable candidates in Competition EUR/A/151/98 and the period of time the names of the other successful candidates in that competition were on that list.

293 The unlawful acts committed by the Ombudsman also constitute the decisive cause of the applicant's loss of confidence in the institution of the Ombudsman and of the perception that the complaint was a waste of time and energy. There is therefore a causal link between those unlawful acts and the non-pecuniary loss pleaded within the meaning of the case-law cited in paragraph 275 above.

294 Lastly, the amount of the non-pecuniary loss suffered by the applicant by reason of the unlawful acts committed by the Ombudsman must, having regard to the circumstances of the present case, be assessed *ex aequo et bono* at EUR 7 000.

III – *The requests for measures of organisation of procedure and measures of inquiry and the submission of new grounds for complaint*

A – *The requests made in the reply*

295 As was explained in paragraph 46 et seq. above, the applicant requested that the Court order a number of measures of organisation of procedure and measures of inquiry.

296 First, with regard to the request to produce the documents contained in the inspection file, it should be noted that the applicant produced those documents before the Court after she had access to those documents in the proceedings in Case F-9/12 (see the applicant's letters of 25 April and 6 June 2012). The President of the First Chamber agreed that those documents would be placed in the case-file subject to an assessment of their admissibility and relevance (see decisions of 23 May 2012 and 19 June 2012).

297 The Court considers that the production of those documents is admissible and that it is relevant to the outcome of the present case (see paragraph 94 et seq. above). Consequently, as the applicant acknowledges in her letter of 25 April 2012, the request for measures of organisation of procedure made in the reply has become devoid of purpose. Only the part of the 'pooling' document of 14 May 2007 whose confidentiality was not lifted is still subject to a request for a measure of organisation of procedure. In this regard, irrespective of the justification for maintaining the confidentiality of certain passages of that document, the Court considers that the outcome of the present case does not necessitate access to that document in its entirety.

298 Second, the request for the production of the letters of 24 and 31 May 2007 concerning the extension of the period of validity of the list of suitable candidates in Competition EUR/A/151/98 has also become devoid of purpose because those letters were annexed to the rejoinder.

299 Third, with regard to the request for the appearance of Mr Diamandouros, the former Ombudsman, and the Ombudsman's and the Parliament's case-handlers with responsibility for the applicant (see paragraph 46 above), the Court considers that it possesses sufficient information from the documents lodged in this case to respond to the different grounds for complaint raised by the applicant. There is therefore no need to hear those persons.

B – *The requests made after the rejoinder*

1. Introduction

300 After the rejoinder, the applicant requested, on 25 April, 6 June, 23 October and 19 December 2012 and on 6 November 2013, to be able to lodge new evidence and new arguments in support of her action. In some of those letters, she also requested that new measures of organisation of procedure and measures of inquiry be adopted by the Court.

301 More specifically, in her letters of 25 April and 6 June 2012, the applicant raised three new grounds for complaint.

302 First, according to the applicant, the fact that a member of the Parliament's Legal Service received a copy of the letter sent by the Parliament to the Council on 21 February 2006 confirms that the Parliament wished to harm the applicant, as she had explained in the complaint. In her view, the failure to investigate the reasons why a member of that Legal Service had received a copy of the letter had prevented the determination of the truth. In addition, she stated that the Ombudsman had not requested that confidentiality be lifted for that letter.

303 Second, according to the applicant, it is apparent from the Parliament's defence in Case F-9/12 that her file had been destroyed not in March 2010, but in July 2010, that is to say, after the Ombudsman's own-initiative inquiry was opened on 29 June 2010. She infers from this that the Parliament had destroyed her file intentionally.

304 Third, the applicant considers that the fact that the Ombudsman and the Parliament had removed the lists of suitable candidates for competitions for non-specialised and specialised administrators in the 'pooling' document of 14 May 2007 was disturbing. In her view, the notion of confidentiality was interpreted in a very one-sided manner by the Parliament, as the lists of suitable candidates for competitions for non-francophones were not removed. She was still convinced that administrators were needed.

305 In her letter of 23 October 2012, the applicant requested that, by way of measures of organisation of procedure and measures of inquiry, the Court ask the Parliament to produce its request to the Ombudsman of 30 June 2011 and the Ombudsman to produce his reply to the Parliament of 1 July 2011, as recorded in the registers concerning the transmission of documents in the Ombudsman's possession following his inspection at the Parliament in May 2007.

306 On 19 December 2012, the applicant submitted new evidence in support of the action which had been obtained following responses from the Parliament and the Council to measures of organisation of procedure adopted by the Civil Service Tribunal in Case F-9/12. On the basis of that evidence, the applicant raised the following grounds for complaint.

307 First, the applicant reiterated her claim that her file had been destroyed after the Ombudsman's own-initiative inquiry had been opened. In her view, the Ombudsman's silence over the Parliament's lie about the destruction of the competition file constituted obstruction of the truth. Furthermore, she claimed that the Ombudsman had not made inquiries into the unlawful destruction of her file by the Parliament.

308 Second, the applicant alleges that the Ombudsman did not consider that the Parliament had committed maladministration even though the Parliament had not produced either the relevant list of suitable candidates in its June 2005 version or a copy of the notes de fin d'affichage for that list.

309 Third, the applicant considered that she had not been informed of the number of vacancies for generalist administrators in grade A 7 between June 2005 and August 2007 or the number of temporary staff with her profile type who were appointed during that period within the EU institutions, bodies, offices and agencies. In her view, such information would show that she had every opportunity of recruitment, which could have been demonstrated by a fair inquiry by the Ombudsman. She therefore requested a new measure of organisation of procedure from the Court, seeking to ascertain the vacancies for generalist administrators within the Parliament and the Council between 2005 and August 2007, the number of temporary or contract staff with a similar profile who were recruited during that period, and the nationality of those recruited.

310 In the letter of 19 December 2012, the applicant also requested new measures of organisation of procedure, namely, first, to ask the Council to produce copies of the letters which she had sent it on 9 February 2006 and 23 January 2007 and, second, to ask the Council and the Parliament to submit a copy of the e-mail which the Council, through Ms E., sent to the Parliament in February 2006 to request her curriculum vitae and her application form, together with any correspondence between the Council and the Parliament regarding her and on the subject of her candidature.

311 On 6 November 2013, the applicant requested the appearance of Ms O'Reilly, the new Ombudsman, in order to ascertain her position on the wrongful acts committed by her predecessor and to determine to what extent she accepted them or condemned them.

2. Assessment

a) The involvement of a member of the Parliament's Legal Service

312 In so far as the applicant claims that the e-mail of 21 February 2006 is rudimentary evidence of the Parliament's opposition to her recruitment, the Court considers that, in view of the complaint, the decision of 22 October 2007 and the fact that the applicant became aware of the e-mail of 21 February 2006 after the rejoinder was lodged, this new ground for complaint is admissible.

313 However, the fact that a member of the Parliament's Legal Service received a copy of an e-mail sent by a Parliament official on 21 February 2006 forwarding the applicant's curriculum vitae and application form to a Council official does not constitute rudimentary evidence that the Parliament blocked any appointment for the applicant. This fact does not show that the Parliament had any bias against the applicant's candidature. The receipt of a copy by a member of the Legal Service can be explained by the administration's wish to ensure the lawfulness of procedures by closely involving the Legal Service of the institution in question. Checking the lawfulness of procedures used is one of the legitimate duties of a Legal Service.

314 With regard to the opinion on the notification of a preliminary check received from the European Parliament's Data Protection Officer on 13 March 2008, relied on by the applicant, it is irrelevant in this regard as it is an opinion subsequent to the e-mail in question and the communication of the applicant's curriculum vitae and application form to the Parliament's Legal Service can be justified having regard to its legitimate duties.

315 Lastly, in so far as the applicant observes that the Ombudsman never requested that confidentiality be lifted for that document, the Court holds that since she does not explain why the Ombudsman should have requested the lifting of confidentiality, that observation is irrelevant in this case.

b) The destruction of the Parliament file

316 The applicant claims that the Parliament wilfully destroyed her file after 29 June 2010, the date of the start of the Ombudsman's own-initiative inquiry. She bases that claim on the e-mails of 30 June and 1 July 2011 between the Parliament and the Ombudsman, the annex to the defence in the present case, which reproduces in list form the documents forming part of the Ombudsman's file on the complaint, and the fact that in its defence in Case F-9/12 the Parliament stated that the applicant's file had been destroyed in July 2010.

317 It should be noted in this regard that the Ombudsman produced the e-mails of 30 June and 1 July 2011 with the result that the request for a measure of organisation of procedure to that effect has become devoid of purpose.

318 In addition, the Ombudsman stated in the present case that the Parliament had destroyed the applicant's file in March 2010, before the start of his own-initiative inquiry.

319 In its observations on measures of organisation of procedure in Case F-9/12, the Parliament stated that it made an error in stating the date of destruction of the applicant's file. It corrected that date and confirmed that the applicant's file had been destroyed in March 2010.

320 Furthermore, contrary to the claim made by the applicant, it is not apparent from the e-mails of 30 June and 1 July 2011 that on those dates the Parliament still held the applicant's file. On the contrary, in the e-mail of 30 June 2011, after explaining that the applicant's file had been destroyed, the Parliament's representative requested a copy of the documents in the Ombudsman's file corresponding to the documents in the Parliament's file, copies of which had been received by the Ombudsman during his inspection.

321 Lastly, although in the list of documents forming part of the Ombudsman's file on the complaint, the reference to 'Confidential documents obtained during the inspection of the case' appears chronologically between 1 June and 10 June 2010, this does not demonstrate that the Parliament had not destroyed those documents in March 2010. It is clear from the note to the file of 10 June 2010 that some time elapsed between the Ombudsman taking possession of those documents following his inspection of the Parliament's files and their registration in the Ombudsman's file.

322 In the light of the above considerations, the applicant does not show that her file was destroyed by the Parliament after the start of the Ombudsman's own-initiative inquiry. Furthermore, for the reasons set out in paragraph 209 et seq. above, the Ombudsman did not commit a wrongful act by failing to make inquiries into the destruction of the applicant's file by the Parliament.

c) Vacancies between 2005 and 2007

323 In order to prove that she had every opportunity of recruitment between June 2005 and August 2007 if the Parliament had not blocked her appointment, the applicant requests the production of the list of vacancies for generalist administrators in grade A 7 between June 2005 and August 2007, the number of temporary staff with the applicant's profile who were appointed during that period and the nationality of those recruited.

324 The Court holds that this request should not be granted as the Ombudsman did not consider that the applicant had no opportunity of recruitment. If the Ombudsman had considered that the applicant had no opportunity of recruitment, he would not have conducted an inquiry into the circulation of the inclusion of the applicant's name on the list of suitable candidates in Competition EUR/A/151/98.

d) The omissions in the ‘pooling’ document of 14 May 2007

325 The ‘pooling’ document of 14 May 2007 contains information from the Parliament and from other EU institutions. The information which was classed as confidential in the version sent to the Court by the Ombudsman was accorded that status by the Parliament and relates to other EU institutions. Contrary to the claim made by the applicant, the omission of data is neither disturbing nor a one-sided interpretation of confidentiality by the Parliament. The Parliament may not disclose data from other institutions without their approval.

326 In addition and in any event, it is not clear from the ‘pooling’ document of 14 May 2007 whether other posts were available for French-language administrators, as the applicant seems to presume. That list indicates persons whose names appear on lists of suitable candidates, but not whether there are job vacancies within the institutions.

327 In view of these considerations, the grounds for complaint raised by the applicant in her letters of 25 April and 6 June 2012 regarding the confidentiality of certain parts of the ‘pooling’ document of 14 May 2007 must be rejected.

e) The Parliament’s failure to produce the relevant list of suitable candidates in its version of June 2005 and the notes de fin d’affichage

328 With regard to the allegation that the list of suitable candidates which included the applicant’s name was never drawn up, it should be noted that in the letter of 19 May 2005 the Secretary-General of the Parliament informed the applicant that her name now appeared on the list of suitable candidates in Competition EUR/A/151/98. In addition, in these proceedings the applicant herself produced a copy of the decision of the Parliament’s Director-General for Personnel of 17 May 2005 stating that the applicant’s name appeared on that list. Accordingly, it is established to the requisite legal standard that the Parliament actually proved that the list exists.

329 With regard to the ground for complaint claiming that the Ombudsman failed to find a case of maladministration on the part of the Parliament in respect of its inability to produce a copy of the notes de fin d’affichage for the list of suitable candidates which included the applicant’s name, it must be stated that this is a new ground for complaint which may not be regarded as amplifying an existing ground or which is based on a new fact. Therefore, this ground for complaint is inadmissible. Inasmuch as the ground for complaint raised by the applicant must be understood as referring to the failure to verify the existence of the notes de fin d’affichage, reference should be made to the assessment set out in paragraph 97 et seq. above.

f) The request for the production of the e-mail from Ms E.

330 The applicant requests the production of the e-mail from Ms E. to which the Parliament replied on 21 June 2006, on the ground that that e-mail contains information confirming the Parliament’s failure to circulate the relevant list of suitable candidates. She essentially considers that that e-mail could potentially show that the Council was informed of her candidature by her and not by the circulation of that list by the Parliament.

331 In this regard, it is clear from the e-mail of 21 February 2006 that a member of the Parliament’s staff circulated the applicant’s curriculum vitae and application form to Ms E., a member of the Council’s staff, following her request. The e-mail of 21 February 2006 is one of the documents included in the ‘files’ prepared for the Ombudsman’s inspection (see paragraph 93 above and the applicant’s letter of 6 June 2012). In the decision of 22 October 2007, the Ombudsman stated that the inspection had confirmed that the applicant’s curriculum vitae had been sent to the ‘service’ requesting information on her, namely the Council.

332 However, there is sufficient evidence in this case that the Ombudsman was unable to prove the statements contained in the decision of 22 October 2007 regarding the provision of adequate information to the other EU institutions, bodies, offices and agencies regarding the placing of the applicant's name on the list of suitable candidates in Competition EUR/A/151/98 from the time she was placed on that list. The e-mail of 21 February 2006 does not invalidate this conclusion. The production of the requested document is not therefore necessary in this case.

333 Furthermore, the request for the production of the letters of 9 February 2006 and 23 January 2007 concerns the same matter. Consequently, for the reasons set out in paragraph 332 above, the applicant's request should not be granted.

g) The request for the appearance of Ms O'Reilly

334 The request for the adoption of a measure of inquiry seeking to order the appearance of Ms O'Reilly must be rejected. The Court considers that the documents submitted in this case are sufficient to assess the merits of the applicant's action.

Conclusion

335 In the light of all the foregoing considerations, the present action must be granted partially.

336 Both in the inquiry into the applicant's complaint which culminated in the decision of 22 October 2007 and in his own-initiative inquiry which culminated in the decision of 31 March 2011, the Ombudsman committed unlawful acts. Those unlawful acts, which consisted in the distortion of a fact, a failure to exercise diligence in certain duties of inquiry and the breach of the 'reasonable time' principle, are sufficiently serious to be able to establish the liability of the European Union. They did not cause the material damage claimed by the applicant, but non-pecuniary damage which has been assessed *ex aequo et bono* at EUR 7 000.

337 The action brought by the applicant is dismissed as to the remainder.

Costs

338 Under Article 87(3) of the Rules of Procedure, the Court may order that the costs be shared where each party succeeds on some and fails on other heads.

339 In the present case, both the Ombudsman and the applicant have succeeded on some and failed on other heads. Consequently, the applicant should be ordered to bear half of her own costs and to pay half of the costs incurred by the Ombudsman and the Ombudsman should be ordered to bear half of his own costs and to pay half of the costs incurred by the applicant.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. **Orders the European Ombudsman to pay Ms Claire Staelen compensation of EUR 7 000;**

2. **Dismisses the action as to the remainder;**

3. **Orders the Ombudsman to bear half of his own costs and to pay half of the costs incurred by Ms Staelen;**

4. **Orders Ms Staelen to bear half of her own costs and to pay half of the costs incurred by the Ombudsman.**

Prek Labucka Kreuschitz

Delivered in open court in Luxembourg on 29 April 2015.

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