

**NON-PAPER FOR THE 7th MEETING OF THE CDDH AD HOC NEGOTIATION GROUP ("47+1")
ON THE ACCESSION OF THE EUROPEAN UNION TO THE EUROPEAN CONVENTION ON
HUMAN RIGHTS**

Submitted by the delegation of the European Union

Compilation of cases in the area of Basket 4 ("The Common Foreign and Security Policy")

I. Introduction

At its 6th meeting (29 September - 1 October 2020), the CDDH *ad hoc* negotiation Group on the accession of the European Union to the European Convention on Human Rights ("47+1 Group") discussed the EU acts in the area of the common foreign and security policy (CFSP) and the objections raised by the Court of Justice of the European Union (CJEU) in Opinion 2/13. The European Union agreed to provide a brief compilation of recent judgments for consideration at the 47+1 Group's next meeting.

By way of introduction, it is recalled that, in respect of CFSP acts, the CJEU held in Opinion 2/13 that:

251. [...] it must be noted that the Court has not yet had the opportunity to define the extent to which its jurisdiction is limited in CFSP matters as a result of those provisions.

254. Nevertheless, on the basis of accession as provided for by the agreement envisaged, the ECtHR would be empowered to rule on the compatibility with the ECHR of certain acts, actions or omissions performed in the context of the CFSP, and notably of those whose legality the Court of Justice cannot, for want of jurisdiction, review in the light of fundamental rights.

255. Such a situation would effectively entrust the judicial review of those acts, actions or omissions on the part of the EU exclusively to a non-EU body, albeit that any such review would be limited to compliance with the rights guaranteed by the ECHR.

256. The Court has already had occasion to find that jurisdiction to carry out a judicial review of acts, actions or omissions on the part of the EU, including in the light of fundamental rights, cannot be conferred exclusively on an international court which is outside the institutional and judicial framework of the EU (see, to that effect, Opinion 1/09, EU:C:2011:123, paragraphs 78, 80 and 89).

257. Therefore, although that is a consequence of the way in which the Court's powers are structured at present, the fact remains that the agreement envisaged fails to have regard to the specific characteristics of EU law with regard to the judicial review of acts, actions or omissions on the part of the EU in CFSP matters.

Since Opinion 2/13, the Court has had the opportunity to interpret the Treaty provisions concerning the jurisdiction of the Court in respect of CFSP acts and, based on the principle of an effective judicial protection which underpins the rule of law, concluded that any limitations should be interpreted narrowly.

II. Relevant provisions in the Treaty on European Union (TEU), the Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights of the EU ("the Charter")

Article 19 TEU

"1. The Court of Justice of the European Union [...] shall ensure that in the interpretation and application of the Treaties the law is observed.

Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.

2. The Court of Justice shall consist of one judge from each Member State. It shall be assisted by Advocates-General.

The General Court shall include at least one judge per Member State.

[...]

3. The Court of Justice of the European Union shall, in accordance with the Treaties:

(a) rule on actions brought by a Member State, an institution or a natural or legal person;

(b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions;

(c) rule in other cases provided for in the Treaties. "

Article 24(1) TEU, second sub-paragraph

"[...] The Court of Justice of the European Union shall not have jurisdiction with respect to [Chapter II Specific provisions on the common foreign and security policy of Title V of the TEU], with the exception of its jurisdiction to monitor compliance with Article 40 of this Treaty and to review the legality of certain decisions as provided for by the second paragraph of Article 275 of the Treaty on the Functioning of the European Union. [...]"

Article 40 TEU

"The implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences referred to in Articles 3 to 6 of the Treaty on the Functioning of the European Union.

Similarly, the implementation of the policies listed in those Articles shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences under this Chapter."

Article 275 TFEU

"The Court of Justice of the European Union shall not have jurisdiction with respect to the provisions relating to the common foreign and security policy nor with respect to acts adopted on the basis of those provisions.

However, the Court shall have jurisdiction to monitor compliance with Article 40 of the Treaty on European Union and to rule on proceedings, brought in accordance with the conditions laid down in the fourth paragraph of Article 263 of this Treaty, reviewing the legality of decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter 2 of Title V of the Treaty on European Union."

Article 263 TFEU

"The Court of Justice of the European Union shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.

[...]"

Article 265 TFEU

"Should the European Parliament, the European Council, the Council, the Commission or the European Central Bank, in infringement of the Treaties, fail to act, the Member States and the other institutions of the Union may bring an action before the Court of Justice of the European Union to have the infringement established. This Article shall apply, under the same conditions, to bodies, offices and agencies of the Union which fail to act.

The action shall be admissible only if the institution, body, office or agency concerned has first been called upon to act. [...]"

Article 267 TFEU

“The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Treaties;
- (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

[...]”

Article 268 TFEU

“The Court of Justice of the European Union shall have jurisdiction in disputes relating to compensation for damage provided for in the second and third paragraphs of Article 340.”

Article 47 of the Charter

“Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.”

Article 52 of the Charter

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.”

III. Cases of interest on the CJEU's jurisdiction for CFSP acts

Since 2013, four cases listed below are particularly relevant on the EU Courts' review of acts, actions or omissions performed in the context of the CFSP.

The first two judgments concern restrictive measures against natural or legal persons and deal with the jurisdiction of the CJEU to rule on CFSP acts in different types of procedures (preliminary ruling procedures and actions for damages respectively).

The last two judgments concern acts adopted in the area of CFSP other than restrictive measures (public procurement and staff management respectively).

1. Judgment of 28 March 2017, Case C-72/15, *Rosneft*, EU:C:2017:236

Summary of the relevant facts

This case arose in the context of national court proceedings in the United Kingdom brought by Rosneft, an oil company registered in Russia. The proceedings concerned restrictive measures adopted by the European Union and imposed on certain Russian entities. Rosneft claimed that the restrictive measures adopted by the European Union and the national measures to implement them were invalid. The High Court of Justice (England & Wales) asked the Court of Justice of the European Union for a preliminary ruling on the validity of the measures in question.

Relevant findings in the judgment:

60 As a preliminary point, while, pursuant to the last sentence of the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU, the Court does not, as a general rule, have jurisdiction with respect to the provisions relating to the CFSP and the acts adopted on the basis of those provisions [...], it must however be recalled that the Treaties explicitly

establish two exceptions to that rule. First, both the last sentence of the second subparagraph of Article 24(1) TEU and the second paragraph of Article 275 TFEU provide that the Court has jurisdiction to monitor compliance with Article 40 TEU. Second, the last sentence of the second subparagraph of Article 24(1) TEU confers on the Court jurisdiction to review the legality of certain decisions referred to in the second paragraph of Article 275 TFEU. The latter provision confers on the Court jurisdiction to give rulings on actions, brought subject to the conditions laid down in the fourth paragraph of Article 263 TFEU, concerning the review of the legality of Council decisions, adopted on the basis of provisions relating to the CFSP, which provide for restrictive measures against natural or legal persons.

62 [...] with respect, in the first place, to the jurisdiction of the Court to monitor

compliance with Article 40 TEU, it must be observed that the Treaties do not make provision for any particular means by which such judicial monitoring is to be carried out. That being the case, that monitoring falls within the scope of the general jurisdiction that Article 19 TEU confers on the Court to ensure that in the interpretation and application of the Treaties the law is observed. In establishing this general jurisdiction, Article 19(3)(b) TEU states, further, that the Court is to give preliminary rulings, at the request of national courts or tribunals, on, inter alia, the validity of acts adopted by the institutions of the European Union.

63 *Consequently, the Court has jurisdiction to give a ruling on a request for a preliminary ruling concerning the compliance of Decision 2014/512 with Article 40 TEU.*

64 *In the second place, the issue arises whether the Court has jurisdiction to give preliminary rulings on the validity of decisions adopted in relation to the CFSP [...] where they prescribe restrictive measures against natural or legal persons.*

65 *In accordance with the wording of the last sentence of the second subparagraph of Article 24(1) TEU and the second paragraph of Article 275 TFEU, the Treaties have conferred on the Court the jurisdiction to review the legality of Council decisions providing for the imposition of restrictive measures on natural or legal persons. Accordingly, whereas Article 24(1) TEU empowers the Court to review the legality of certain decisions as provided for in the second paragraph of Article 275 TFEU, the latter article provides that the Court has jurisdiction to rule on proceedings, brought in accordance with the conditions laid down in the fourth paragraph of Article 263 TFEU, concerning that review of legality.*

66 *The review of the legality of acts of the Union that the Court is to ensure under the Treaties relies, in accordance with settled case-law, on two complementary judicial procedures. The FEU Treaty has established, by Articles 263 and 277, on the one hand, and Article 267, on the other, a complete system of legal remedies and procedures designed to ensure judicial review of the legality of European Union acts, and has entrusted such review to the Courts of the European Union [...].*

67 *It is inherent in that complete system of legal remedies and procedures that persons bringing proceedings must, when an action is brought before a national court or tribunal, have the right to challenge the legality of provisions contained in European Union acts on*

which a decision or national measure adopted in respect of them is based, pleading the invalidity of that decision or measure, in order that the national court or tribunal, having itself no jurisdiction to declare such invalidity, consults the Court on that matter by means of a reference for a preliminary ruling, unless those persons unquestionably had the right to bring an action against those provisions on the basis of Article 263 TFEU and failed to exercise that right within the period prescribed [...].

68 Accordingly, requests for preliminary rulings which seek to ascertain the validity of a measure constitute, like actions for annulment, a means for reviewing the legality of European Union acts [...].

69 That essential characteristic of the system for judicial protection in the European Union extends to the review of the legality of decisions that prescribe the adoption of restrictive measures against natural or legal persons within the framework of the CFSP.

71 [...] given that the implementation of a decision providing for restrictive measures against natural or legal persons is in part the responsibility of the Member States, a reference for a preliminary ruling on the validity of a measure plays an essential part in ensuring effective judicial protection, particularly, where, as in the main proceedings, both the legality of the national implementing measures and the legality of the underlying decision adopted in the field of the CFSP itself are challenged within national legal proceedings. Having regard to the fact that the Member States must ensure that their national policies conform to the

Union position enshrined in Council decisions, adopted under Article 29 TEU, access to judicial review of those decisions is indispensable where those decisions prescribe the adoption of restrictive measures against natural or legal persons.

72 [...] one of the European Union's founding values is the rule of law [...].

73 It may be added that Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection, requires, in its first paragraph, that any person whose rights and freedoms guaranteed by EU law are violated should have the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article. It must be recalled that the very existence of effective judicial review designed to ensure compliance with provisions of EU law is of the essence of the rule of law [...].

74 While, admittedly, Article 47 of the Charter cannot confer jurisdiction on the Court, where the Treaties exclude it, the principle of effective judicial protection nonetheless implies that the exclusion of the Court's jurisdiction in the field of the CFSP should be interpreted strictly.

*76 In those circumstances, provided that the Court has, under Article 24(1) TEU and the second paragraph of Article 275 TFEU, jurisdiction *ex ratione materiae* to rule on the validity of European Union acts, that is, in particular, where such acts relate to restrictive measures against natural or legal persons, it would be inconsistent with the system of effective judicial protection established by the Treaties to interpret the latter provision as excluding the possibility that the courts and tribunals of Member States may refer questions to the Court on*

the validity of Council decisions prescribing the adoption of such measures.

77 Last, the Court must reject the argument that it falls to national courts and tribunals alone to ensure effective judicial protection if the Court has no jurisdiction to give preliminary rulings on the validity of decisions in the field of the CFSP that prescribe the adoption of restrictive measures against natural or legal persons.

78 The necessary coherence of the system of judicial protection requires, in accordance with settled case-law, that when the validity of acts of the European Union institutions is raised before a national court or tribunal, the power to declare such acts invalid should be reserved to the Court under Article 267 TFEU [...]. The same conclusion is imperative with respect to decisions in the field of the CFSP where the Treaties confer on the Court jurisdiction to review their legality.

79 That conclusion is confirmed by the essential objective of Article 267 TFEU, which is to ensure that EU law is applied uniformly by the national courts and tribunals, that objective being equally vital both for the review of legality of decisions prescribing the adoption of restrictive measures against natural or legal persons and for other European Union acts. With respect to such decisions, differences between courts or tribunals of the Member States as to the validity of a European Union act would be liable to jeopardise the very unity of the European Union legal order and to undermine the fundamental requirement of legal certainty [...].

2. Judgment of 6 October 2020, *Bank Refah Kargaran*, Case C-134/19 P, EU:C:2020:793

Summary of the relevant facts

In 2010 and 2011, the financial funds and resources of Bank Refah Kargaran, an Iranian Bank, were frozen in the context of the European Union's restrictive measures against Iran targeting nuclear proliferation activities. In 2013, the General Court of the European Union annulled the measures insofar as they concerned Bank Refah Kargaran. In 2015, Bank Refah Kargaran brought a new action before the General Court, this time seeking damages from the European Union for the harm caused. The General Court dismissed the action. Bank Refah Kargaran brought an appeal before the Court of Justice of the European Union. The Court of Justice had to rule on the question whether the General Court had erred in law by declaring that it lacked jurisdiction to hear and determine the action for damages for the harm allegedly suffered by the appellant as a result of the CFSP decisions adopted under Article 29 TEU.

Relevant findings in the judgment:

31 [...] Article 275 TFEU does not expressly mention the jurisdiction of the Court of Justice of the European Union to rule on harm allegedly caused by restrictive measures taken in CFSP Decisions.

32 Nevertheless, first, the final sentence of the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU introduce a derogation from the jurisdiction of general scope which Article 19 TEU confers on the Court of Justice of the European Union in order to ensure that in the interpretation and application of the Treaties the law is observed. Consequently, Article 24(1) TEU and the first paragraph of Article 275 TFEU must be interpreted restrictively [...].

33 Second, an action for damages is an autonomous form of action, with a particular purpose to fulfil within the system of legal remedies and subject to conditions for its use dictated by its specific purpose [...].

34 Third, an action for damages must be assessed having regard to the whole of the system established by the treaties for the judicial protection of the individual [...].

35 [...] one of the European Union's founding values is the rule of law [...].

36 It may be added that Article 47 of the Charter of Fundamental Rights of the European Union, which constitutes a reaffirmation of the principle of effective judicial protection, requires, in its first paragraph, that any person whose rights and freedoms guaranteed by EU law are violated should have the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article. The very existence of effective judicial review designed to ensure compliance with provisions of EU law is of the essence of the rule of law [...].

37 Indeed, [...] the Court of Justice of the European Union has jurisdiction to rule on an action for damages in so far as it concerns restrictive measures provided for by regulations based on Article 215 TFEU.

38 That article, which serves as a bridge between the objectives of the EU Treaty in matters of the CFSP and the actions of the European Union involving economic measures falling within the scope of the FEU Treaty, permits the adoption of legislation by the Council, acting by a qualified majority on a joint proposal from the High Representative and the Commission, in order to give effect to restrictive measures where such measures fall within the scope of the FEU Treaty, and, in particular, to ensure their uniform application in all the Member States [...].

39 In those circumstances, [...] the necessary coherence of the system of judicial protection provided for by EU law requires that, in order to avoid a lacuna in the judicial protection of the natural or legal persons concerned, the Court of Justice of the European Union must also have jurisdiction to rule on the harm allegedly caused by restrictive measures provided for in CFSP Decisions.

42 Moreover, the public designation of persons subject to restrictive measures is accompanied by opprobrium and suspicion [...], in respect of which it cannot be ruled out that they cause harm and justify bringing an action for damages in compensation thereof.

43 Therefore, the principle of effective judicial protection of persons or entities subject to

restrictive measures requires, in order for such protection to be complete, that the Court of Justice of the European Union be able to rule on an action for damages brought by such persons or entities seeking damages for the harm caused by the restrictive measures taken in CFSP Decisions.

44 Accordingly, it must be held that the General Court and, in the case of an appeal, the Court of Justice, have jurisdiction to rule on an action for damages in so far as it seeks to obtain compensation for the harm allegedly caused by restrictive measures taken against natural or legal persons pursuant to CFSP Decisions.

3. Judgment of 12 November 2015 in Case C-439/13 P, Elitaliana Spa, EU:C:2015:753

Summary of the relevant facts

The EU mission in Kosovo (Eulex Kosovo) was established under the Common Foreign and Security Policy. This case concerned a tender procedure for the award of a public contract for, among others, rescue and medical evacuation flights for Eulex Kosovo. Elitaliana Spa, an unsuccessful tenderer, brought an action against Eulex Kosovo before the General Court of the European Union. It asked for the annulment of the decision awarding the contract and claimed compensation for the loss suffered as a result of not having been awarded the contract. The General Court dismissed the action. Elitaliana brought an appeal before the Court of Justice of the European Union. In its judgment on appeal, the Court of Justice ruled on the question whether the limitation on the Court's jurisdiction in respect of certain CFSP acts excluded the Court's jurisdiction to interpret and apply the provisions of the Financial Regulation in this case.

Relevant findings in the judgment:

43 Under the first subparagraph of Article 41(2) TEU, 'operating expenditure to which the implementation of [the] Chapter [concerning the specific provisions on the CFSP] gives rise shall... be charged to the Union budget, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise'.

44 That provision is reiterated, in substance, in Article 4(2)(a) of the Financial Regulation.

45 In accordance with Article 17 TEU and Article 317 TFEU, it is the Commission's responsibility to implement the European Union budget.

46 It follows from Article 16(2) of Joint Action 2008/124 that '[a]ll expenditure' of the Eulex Kosovo Mission 'shall be managed in accordance with the rules and procedures applicable to the general budget of the [European Union]'.

47 In the present case, it is not disputed that the Eulex Kosovo Mission is civilian in nature and that the expenditure relating to the helicopter-support service for the Eulex Kosovo

Mission was to be allocated to the European Union budget.

48 Therefore, the measures at issue, whose annulment was sought on the basis of an infringement of the rules of EU public procurement law, related to the award of a public contract which gave rise to expenditure to be charged to the European Union budget. Accordingly, the contract at issue is subject to the provisions of the Financial Regulation.

49 Having regard to the specific circumstances of the present case, the scope of the limitation, by way of derogation, on the Court's jurisdiction, which is provided for in the final sentence of the second subparagraph of Article 24(1) TEU and in Article 275 TFEU, cannot be considered to be so extensive as to exclude the Court's jurisdiction to interpret and apply the provisions of the Financial Regulation with regard to public procurement.

4. Judgment of 19 July 2016, H., Case C- 455/14 P, EU:C:2016:569

Summary of the relevant facts

The European Union Police Mission (EUPM) Bosnia and Herzegovina was established under the Common Foreign and Security Policy. H was an Italian magistrate who was seconded to the EUPM in Sarajevo. The Head of Mission took two decisions the effect of which was to redeploy her, for operational reasons, to a post in the Banja Luka regional office. H brought an action for annulment and a claim for damages before the General Court of the European Union. The General Court held that it lacked jurisdiction to hear the action since the contested decisions pertained to an operational action decided upon and carried out under the Common Foreign and Security Policy. On appeal, the Court of Justice of the European Union considered whether the General Court had erred in law by dismissing the action for lack of jurisdiction.

Relevant findings in the judgment:

42 In the present case, the contested decisions are admittedly set in the context of the CFSP. Those decisions, taken by the Head of the EUPM in Bosnia and Herzegovina [...] in order to fill, by redeployment, a position in a regional office of that mission, indeed relate to an operational action of the European Union decided upon and carried out under the CFSP, an action which [...] has, in essence, the objective of supporting the law enforcement agencies in Bosnia and Herzegovina in their fight against organised crime and corruption.

43 However, such a circumstance does not necessarily lead to the jurisdiction of the EU judicature being excluded [...].

44 In the present case, it must thus be noted that [...] the EU judicature has jurisdiction, in accordance with Article 270 TFEU, to rule on all actions brought by EU staff members having been seconded to the EUPM. They remain subject to the Staff Regulations during the period of their secondment to the EUPM and, therefore, fall within the jurisdiction of the EU judicature,

in accordance with Article 91 of those regulations.

45 Admittedly, it is apparent from Decision 2009/906 that staff seconded to the EUPM in Bosnia and Herzegovina by the Member States and staff seconded to it by the EU institutions are not, in several respects, in a similar, or identical, situation.

50 However, it must be noted that it is also apparent from the provisions of that decision that staff members seconded by the Member States and those seconded by the EU institutions are subject to the same rules so far as concerns the performance of their duties 'at theatre level'.

51 By virtue of the second sentence of Article 5(4) of that decision, national authorities have transferred operational control of their personnel, teams and units to the Civilian Operation Commander, who, pursuant to Article 5(2), exercises command and control of the

EUPM in Bosnia and Herzegovina at the strategic level and, in that capacity, issues instructions to the Head of Mission, in accordance with Article 5(3) and Article 9(3).

52 Moreover, as is apparent from Article 6(1) to (3) and Article 9(5) of Decision 2009/906, the Head of Mission exercises, as the person responsible for the EUPM 'at theatre level', command and control over that mission, in particular over personnel, teams and units 'from contributing States' which have been assigned by the Civilian Operation Commander, and the Head of Mission is, furthermore, entrusted with ensuring the coordination and day-to-day management of the EUPM in Bosnia and Herzegovina by giving all necessary instructions to 'all' staff for the effective conduct of the mission in that theatre.

54 While the decisions adopted by the competent authorities of that mission relating to the allocation of the human resources assigned to it by the Member States and the EU institutions for the purpose of performing activities undertaken at theatre level have an operational aspect falling within the CFSP, they also constitute, by their very essence, acts of staff management, just like all similar decisions adopted by the EU institutions in the exercise of their competences.

55 In those circumstances, the scope of the limitation, by way of derogation, on the Court's jurisdiction, which is laid down in the final sentence of the second subparagraph of Article 24(1) TEU and in the first paragraph of Article 275 TFEU, cannot be considered to be so extensive as to exclude the jurisdiction of the EU judiciary to review acts of staff management relating to staff members seconded by the Member States the purpose of which is to meet the needs of that mission at theatre level, when the EU judiciary has, in any event, jurisdiction to review such acts where they concern staff members seconded by the EU institutions [...].

57 Any other interpretation would, in particular, have the consequence that, where a single act of staff management relating to 'field' operations concerns both staff members seconded by the Member States and staff members seconded by the EU institutions, the decision rendered with regard to the former would be liable to be irreconcilable with that rendered by the EU judiciary with regard to the latter.