

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

1 October 2025 (*)

(Civil service – Officials – Reports procedure – Appraisal report – 2022 appraisal exercise – Right to be heard – Manifest error of assessment – Liability)

In Case T-154/24,

AF, represented by A. Guillerme and F. Patuelli, lawyers,

applicant,

v

Council of the European Union, represented by M. Bauer and I. Demoulin, acting as Agents,

defendant,

THE GENERAL COURT (Fourth Chamber),

composed, at the time of the deliberations, of R. da Silva Passos, President, N. Póltorak (Rapporteur) and I. Reine, Judges,

Registrar: A. Marghelis, Administrator,

having regard to the written part of the procedure,

further to the hearing on 20 March 2025,

gives the following

Judgment

- 1 By her action under Article 270 TFEU, the applicant, AF, seeks (i) the annulment of her 2022 assessment report ('the final assessment report') and (ii) compensation for the material and non-material damage she claims to have suffered as a result of that report.

Background to the dispute

- 2 The applicant is an official and joined the [confidential] (1) Unit of the Secretary-General of the Council ('the GSC') in 2011 ('the [confidential] Unit').

- 3 After several periods of medical absence, the applicant resumed work on 10 January 2022, under reasonable accommodations, and then under the medical half time regime.

- 4 In April 2022, the applicant consulted the grade of a colleague via the staff management IT system Sysper.

- 5 On 18 May 2022, the authority entitled to conclude contracts of employment ('the appointing authority') decided to open an administrative investigation in respect of the applicant ('the administrative investigation') in order to establish whether she had failed to fulfil her obligations under, in particular, (i) Article 12 and Article 17(1) of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), (ii) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of

personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision 1247/2002/EC (OJ 2018 L 295, p. 39), and (iii) the provisions governing the use of IT applications within the GSC, by retrieving personal information relating to a colleague outside the scope of her professional duties and disclosing that information.

6 The Applicant was on sick leave from 9 July 2022 to 5 August 2022, then several times for short periods until the beginning of November and permanently from mid-November 2022 until she left the GSC.

7 On 19 July 2022, the final report of the administrative investigation was sent to the appointing authority. The investigators concluded that the applicant had infringed Articles 11 and 12 and Article 17(1) of the Staff Regulations and Article 4 of Regulation 2018/1725, and the rules governing the use of IT applications within the GSC, including Sysper.

8 On 12 September 2022, the appointing authority informed the applicant that he had decided to open disciplinary proceedings without consultation of the Disciplinary Board.

9 On 16 December 2022, the appointing authority adopted a decision addressing a warning to the applicant pursuant to Article 3(1)(b) of Annex IX to the Staff Regulations, on the ground that she had consulted a colleague's personal data in Sysper outside the scope of her professional duties.

10 In February 2023, the applicant left her position in the [confidential] Unit and was seconded to [confidential].

11 On 1 March 2023, the applicant attended an appraisal meeting with her first reporting officer in the context of the 2022 appraisal exercise.

12 On 7 March 2023, the first reporting officer submitted a draft assessment report to the applicant.

13 On 20 March 2023, the report drawn up by the first reporting officer was issued ('the initial assessment report'). It graded the applicant's 'judgement' aptitude as 'acceptable'. The first reporting officer stated in that regard that 'during the reporting period [the applicant]'s level of discernment and [judgement] was at times not at the level that is to be expected of an experienced [confidential]' and that 'in particular, she at times did not pay sufficient attention to aspects of confidentiality and protection of personal data'. In the overall assessment, she added, on that point, that '[the applicant] needs to be mindful not to overlook rules of confidentiality and data protection in the sensitive area she works in' and that 'on occasion during the reporting period, [the applicant]'s discernment and common sense in this respect was not at the level that is to be expected from a [confidential] at her grade.'

14 On 3 April 2023, the Applicant expressed her disagreement with the initial assessment report.

15 On 21 April 2023, a second meeting with the first reporting officer took place, following which the first reporting officer maintained her assessment. The applicant then requested, in accordance with Article 8(2) of Council Decision of 19 October 1981 laying down the general provisions for the application of Article 43 of the Staff Regulations on periodical reports ('the decision of 19 October 1981'), that the initial assessment report be reviewed by a second reporting officer.

16 On 31 May 2023, the second reporting officer drew up a second assessment report ('the reviewed assessment report'), after having met with the applicant. That new assessment report confirmed the initial assessment report as far as the 'acceptable' grade is concerned, regarding the applicant's judgement, on the ground that 'during the reporting period [the applicant]'s level of discernment and [judgement] was at times not at the level that is to be expected of an experienced [confidential]'. In the overall assessment, the second reporting officer states as follows:

'I also found that [on] several occasions during the reporting period, [the applicant's] judgement and discernment was not up to standards in applying rules of confidentiality and data protection, in particular as a [confidential] with her expertise, experience and grade. While [the applicant] may have needed time to update her knowledge of the applicable rules, I expect colleagues to exercise common

sense as well as utmost restraint and seek advice from colleagues or hierarchy when handling sensitive and/or personal data and to prioritise actions to ensure compliance in this area.’

17 On 12 June 2023, the applicant submitted her comments on the reviewed assessment report.

18 On 8 August 2023, the applicant submitted a request for intervention in respect of the reviewed assessment report before the Reports Committee pursuant to Article 9 of the decision of 19 October 1981.

19 The Reports Committee met with the second reporting officer on 22 September 2023, with the first reporting officer on 25 September 2023 and with the applicant on 2 October 2023.

20 On 17 October 2023, the Reports Committee delivered its opinion, in which it considered that the reviewed assessment report was valid. Following that opinion, the second reporting officer decided not to amend the reviewed assessment report.

21 On 28 November 2023, the final assessment report was adopted, as the reviewed assessment report had become final.

Forms of order sought

22 The applicant claims that the Court should:

- annul the final assessment report;
- order the Council to compensate her for the material and non-material damage she has suffered on account of her grade having been lowered, assessed *ex aequo et bono* and on a provisional basis in the amount of EUR 30 000, together with default interest from the date of delivery of the judgment;
- order the Council to pay the costs.

23 The Council claims that the Court should:

- dismiss the action;
- order the applicant to pay the costs.

Law

24 In support of her claim for annulment of the final assessment report, the applicant puts forward three pleas alleging, first, that the final assessment report is based on materially incorrect facts, secondly, manifest errors of assessment and, thirdly, infringement of the right to be heard and of the principle of good administration.

25 It is appropriate to begin by examining the third plea, before going on to examine the first and second pleas, taken together.

The third plea in law, regarding the infringement of the right to be heard and of the principle of good administration

26 The applicant submits that her right to be heard and compliance with the principle of good administration were not guaranteed in the annual appraisal procedure for 2022, in breach of Article 41 of the Charter of Fundamental Rights of the European Union (‘the Charter’).

27 In that connection, the applicant submits that she was not informed sufficiently early of the first reporting officer’s intention to lower her grade. According to Note No 106/97 of the GSC of 22 July 1997 on the application of Article 43 of the Staff Regulations, the Reports Committee should suggest

that, if a first reporting officer has found that an official has regressed in his or her work or if that officer is considering giving the official a 'less than desirable' rating in his or her report, the official concerned must be informed of this early enough in an informal discussion between him or her and the first reporting officer.

- 28 That lack of information means that, during the appraisal period, the applicant was not given the opportunity to raise the issue of her 'judgement' with the first reporting officer, in order to present her point of view and find a solution, in accordance with the right to be heard. First, although an informal discussion took place between the first reporting officer and the applicant during the mid-term bilateral discussion on 17 June 2022, the applicant claims that she was not made aware of any failure on her side in relation to her judgement or any other matter related to her work. On the contrary, on that occasion, the first reporting officer praised her contribution to the work of the unit. No negative comments were raised regarding the applicant's judgement or any regression in the quality of her work and no suggestions for any necessary improvement in relation to the applicant's performance were made.
- 29 Moreover, the applicant submits that it is apparent from Section B of Part 3 of Staff Note No 99/89 of the GSC of 28 July 1989 on general instructions on the preparation of staff reports that reporting officers should endeavour to illustrate their comments with practical examples, which the applicant's reporting officers were not able to provide in the final assessment report. More specifically, the initial and reviewed assessment reports are highly inaccurate as far as detailed references to actual events are concerned.
- 30 The applicant claims that, given that it is only during the hearing before the Reports Committee that the reporting officers provided an exhaustive list of alleged justifications, she never had the opportunity to submit comments on those justifications before the close of the 2022 appraisal exercise. In addition, she claims that no attention was paid to her when she attempted to understand and then clarify the first examples given by the reporting officers during the meetings.
- 31 The applicant adds that one of the reasons provided by the reporting officer for downgrading her report, namely the alleged alignment of grades within the unit, would not be a sufficient reason for downgrading the applicant's report, even if this were supported by facts, which the applicant argues is not the case.
- 32 As for the fourth point raised by the second reporting officer, the applicant submits that it was never raised with her in 2022, or during her appraisal, and that she first became aware of the issue when she received the opinion of the Reports Committee. As the opinions of the Reports Committee are not acts that are open to challenge, the applicant was left with no possibility to take a position and be heard in that respect.
- 33 Had the applicant been able to state her position on the specific alleged events which led her reporting officers to lower her grades, she argues that she would have been able to show that the alleged facts were incorrect and to convince her reporting officers to revise her assessment upwards before finalising it.
- 34 The Council challenges the applicant's line of argument.
- 35 The Court notes at the outset that, in the third plea, the purpose of the applicant's line of argument is to show, in essence, that she was not heard effectively.
- 36 In that regard, it must be borne in mind that the rights of the defence, which include the right to be heard, are among the fundamental rights forming an integral part of the EU legal order and enshrined in the Charter (see judgment of 8 May 2019, *PT v EIB*, T-571/16, not published, EU:T:2019:301, paragraph 162 and the case-law cited).
- 37 Under Article 41(2) of the Charter, the right to good administration includes, inter alia, the right of every person to be heard before any individual measure which would affect him or her adversely is taken (see judgment of 8 May 2019, *PT v EIB*, T-571/16, not published, EU:T:2019:301, paragraph 163 and the case-law cited).

- 38 According to case-law, the right to be heard applies to any procedure initiated against a person and which may adversely affect his or her interests, even where the applicable rules do not provide for it (see judgment of 8 May 2019, *PT v EIB*, T-571/16, not published, EU:T:2019:301, paragraph 164 and the case-law cited).
- 39 The principle of the right to be heard requires that the person concerned should have been afforded the opportunity effectively to make known his or her views on any matters which might be taken into account to his or her detriment in the measure to be taken. In the context of the appraisal of EU staff, that principle must enable the person concerned, during the appraisal procedure, to defend himself or herself against alleged facts which may be taken into account to his or her detriment in the appraisal report (judgment of 8 May 2019, *PT v EIB*, T-571/16, not published, EU:T:2019:301, paragraph 165).
- 40 Admittedly, that principle may not be interpreted as imposing on the administrative authority an obligation to give prior warning before the procedure resulting in such an appraisal. This does, however, mean that the administration, during the appraisal procedure, may not take into account to the detriment of the person concerned elements which are not included in the individual file of the person concerned or which have not been communicated to him or her beforehand and, more generally, must make that person aware of all the matters which may be taken into account to his or her detriment before the assessment report has become final. The administration must be able to take into account effectively all the relevant matters and the person concerned must be able to correct errors or claim that a specific element that relates to his or her personal situation supports the act being adopted, not being adopted or having specific content (see judgment of 8 May 2019, *PT v EIB*, T-571/16, not published, EU:T:2019:301, paragraph 166 and the case-law cited).
- 41 Accordingly, the mere establishment that the staff member concerned knew of the factual matters on which the assessment report is based cannot be regarded as sufficient to establish that he or she had the opportunity effectively to defend his or her interests prior to the adoption of that report. It is also necessary for the administration to give the person concerned the opportunity to understand that those facts are such as to justify that report (see judgment of 8 May 2019, *PT v EIB*, T-571/16, not published, EU:T:2019:301, paragraph 167 and the case-law cited).
- 42 In addition, proper dialogue is imperative during the reporting exercise since it is key to the appraisal system. The very nature and purpose of dialogue require direct contact between the official under appraisal and the reporting officer. Without direct discussion, an appraisal cannot entirely fulfil its function as a human resources management tool and as an instrument to monitor the professional development of the official concerned. Furthermore, dialogue alone is capable of encouraging a frank and detailed discussion enabling the persons concerned, first, to gauge accurately the nature, reasons for and degree of any differences in opinion between them and, secondly, to arrive at a better understanding between them (see judgment of 25 October 2007, *Lo Giudice v Commission*, T-27/05, EU:T:2007:321, paragraphs 48 and 49 and the case-law cited).
- 43 In the present case, the decision of 19 October 1981 establishes the framework applicable to drawing up annual appraisal reports for GSC officials.
- 44 Article 2(2) of the decision of 19 October 1981 provides as follows:
- ‘Every official shall be the subject of a report by two reporting officers chosen in such a way that the first is sufficiently close to the subject of his report to be able to carry out an informed assessment of the official’s merits and that the second is in a position to make a disinterested evaluation of the general merits of the case.’
- 45 Moreover, where the official concerned challenges the report drawn up by the first reporting officer, Article 7 of the decision of 19 October 1981 provides as follows:
- ‘1. When the official who is the subject of the report does not agree with the report drawn up by the first reporting officer he may, within ten working days after receiving the report:
- request an interview with the first reporting officer which must take place within seven working days following the request[;]

- add his own comments to the report, accompanied by a request for the revision of the report.

The report must be sent to the first reporting officer within ten working days.

2. Following the interview or after receipt of the request for revision, the first reporting officer shall draw up a new report or retain the initial report and shall transmit the report to the official who is the subject thereof, within seven working days ...’

46 Article 8 of the decision of 19 October 1981 defines the procedure applicable where the official under appraisal disagrees with the first reporting officer on the subject of the initial assessment report. It states that ‘where the official who is the subject of the report does not accept the conclusions of the first reporting officer, he shall sign the report, adding a request for revision by the second reporting officer, and shall return the report to the first reporting officer, within seven working days’. Next, ‘the first reporting officer shall transmit the report without delay to the second reporting officer’. Last, ‘the second reporting officer shall draw up a new report which will refer expressly to the report of the first reporting officer and to the comments of the official who is the subject of the report, and shall transmit it to the latter, within fourteen working days’.

47 In the present case, after the initial assessment report drawn up by the first reporting officer was challenged by the applicant, the reviewed assessment report was drawn up by the second reporting officer. After the reviewed assessment report was drawn up by the second reporting officer, the applicant requested the intervention of the Reports Committee, as provided for by Article 9 of the decision of 19 October 1981. The reviewed assessment report became final on 28 November 2023, following the opinion of the Reports Committee of 17 October 2023.

48 It is apparent from the file that the applicant was heard on 1 March 2023 by the first reporting officer when drawing up the initial assessment report and that she was also heard on 21 April 2023 by the first reporting officer during a second meeting. She was then heard by the second reporting officer on 31 May 2023 when drawing up the final assessment report. Moreover, the applicant stated her views to the Reports Committee on 2 October 2023. Moreover, on 3 February and 17 June 2022, informal meetings took place between the applicant and the first reporting officer.

49 In support of her argument, first, the applicant relies on paragraph 5 of Note No 106/97, which states as follows:

‘The Committee suggests that, if a first reporting officer has found that an official has regressed in his work or is considering giving him a “less than desirable” rating in his report, the official concerned should be informed of this early enough in an informal discussion between him and the first assessor: in this way, the official will not be caught unawares at the time of the report and will have had the opportunity to improve his work before the report is drawn up. Such an informal discussion may also be an opportunity to express satisfaction where exceptional work has been carried out.’

50 However, it should be noted that paragraph 5 of Note No 106/97 is not applicable to the present case in so far as that note covered the drawing up of appraisal reports from 1995 to 1997. In any case, the Court observes that paragraph 5 of Note No 106/97 is a non-binding suggestion and a statement of best practices.

51 Secondly, the applicant refers to the judgment of 18 October 2023, *Gomez Calavia v Court of Justice of the European Union* (T-336/22, not published, EU:T:2023:652, paragraphs 44 and 45), from which it is apparent that the intention of a reporting officer to lower grades by applying much more rigorous quality criteria than usual is a ‘vague and general justification’ which is not sufficient alone to place the person concerned in a position to challenge that interpretation.

52 In that regard, it must be noted that, in the present case, the lowering of the grade relating to judgement awarded to the applicant is justified, as recalled in paragraph 16 above, by the fact that the applicant had, on several occasions during the reporting period, showed judgement and discernment that did not meet the required standard with regard to applying rules of confidentiality and data protection, in particular as a [confidential] with her expertise, experience and grade.

- 53 It follows that, by contrast to the case that gave rise to the judgment of 18 October 2023, *Gomez Calavia v Court of Justice of the European Union* (T-336/22, not published, EU:T:2023:652), which concerned the reasons given in the contested decision, not the right to be heard, the reasons given in the final assessment report cannot, in any event, be regarded as a vague and general justification which is not sufficient alone to place the person concerned in a position to challenge his or her appraisal.
- 54 Thirdly, the applicant's argument that she did not have the opportunity to be heard effectively regarding the reasons for the lowering of her grade before closure of the appraisal exercise, in so far as it is only at the hearing stage before the Reports Committee that the reporting officers provided the exhaustive list of the reasons for her appraisal regarding her aptitudes as far as 'judgement' is concerned, is unfounded.
- 55 First, the initial assessment report and the final assessment report state expressly that the applicant had been criticised for the fact that her judgement and discernment did not always meet the required standard with regard to applying rules of confidentiality and data protection. As recalled in paragraph 48 above, the applicant was heard on 1 March 2023 by the first reporting officer when drawing up the initial assessment report and she was also heard on 21 April 2023 by the first reporting officer during a second meeting; that criticism was discussed during those meetings. She was then heard by the second reporting officer on 31 May 2023 when the final assessment report was drawn up. In addition, she submitted her written observations on the initial assessment report and the final assessment report on 3 April 2023 and 12 June 2023, respectively.
- 56 Secondly, it is apparent from the applicant's hearing before the Reports Committee that she acknowledges having been informed, during her second hearing with the first reporting officer, that that reporting officer had observed that the applicant had taken an excessively long time to obtain her encryption key and that she had sent her an email from her personal email account. It should also be noted that the applicant acknowledges, in her written submissions, that she had 'tried to grasp and subsequently clarify the first examples given by the Reporting Officers during the interviews'.
- 57 Moreover, the applicant was also heard on 2 October 2023 by the Reports Committee before it delivered its opinion on 17 October 2023 and the assessment report became final.
- 58 In those circumstances, the Court finds that the applicant was given the opportunity to be heard effectively before the final assessment report was finalised.
- 59 That finding is not called into question by the applicant's allegation that, even if the interview on 31 May 2023 with the second reporting officer formally took place, its purpose could not be fulfilled as the outcome of the interview had already been preordained before it took place, because the second reporting officer declared that she had no intention of amending the first reporting officer's appraisal. It is clear there is no evidence to support that allegation.
- 60 Therefore, the third plea in law must be rejected.

The first and second pleas, alleging that the final assessment report is based on materially incorrect facts and is vitiated by manifest errors of assessment

- 61 In the first and second pleas, the applicant alleges, in essence, that the final assessment report is based on factual errors and is vitiated by manifest errors of assessment.
- 62 First, the applicant submits that the reporting officers criticise her for a data and confidentiality breach that did not take place; the appointing authority himself found that there had been no infringement of Regulation 2018/1725 in the decision that is the subject of the action pending before the General Court, registered under case number T-1047/23. Further, contrary to the statements made by the reporting officers before the Reports Committee, the applicant has never admitted or acknowledged that she retrieved or disclosed confidential information.
- 63 Secondly, the applicant submits that the reporting officers criticise her unfairly for a delay in obtaining her encryption key, while that delay was due to an internal shortcoming within the GSC, independent from her actions and goodwill. The applicant claims in that regard that it is apparent from the relevant

internal correspondence that she reached out repeatedly to IT services and that she sought assistance from the head of office of her unit, to no avail.

64 Thirdly, according to the applicant, the reporting officers also criticise the applicant for a technical issue that must in fact be ascribed to the GSC itself and its IT service, that is, the sending via Gmail of a work-related email.

65 The applicant submits that, on 20 March 2022, she herself detected that technical issue, while she was on medical leave, and that she reported it to the first reporting officer immediately.

66 Moreover, the helpline acknowledged that the issue lay in the incorrect set-up by the IT service of the applicant's GSC email application on her telephone. This was also confirmed by the head of office of the IT customer service of the 'GSC Smart Digital Solutions' Directorate.

67 Fourthly, the applicant submits that the second reporting officer criticised the applicant, for the first time during the hearings before the Reports Committee, for views expressed during a meeting. However, she failed to identify the date and content of the applicant's views or why the second reporting officer had found herself in a difficult position.

68 Fifthly, the applicant claims that it is incorrect to assert that the grades of the [confidential] were lowered generally since 2021, the year in which the first reporting officer took up her duties as head of unit, and that her downgrading was due to the alignment with the grades given to the other [confidential].

69 The Council challenges the applicant's line of argument.

70 As a preliminary point, it should be borne in mind that it is not for the Court to substitute its assessment for that of the persons responsible for appraising the work of the person under appraisal. Reporting officers enjoy a wide discretion when appraising the work of persons upon whom they must report. Consequently, review by the Courts of the European Union of the content of appraisal reports is limited to ensuring that the procedure is conducted in a regular manner and the rules of law are properly applied, the facts are materially correct and there is no manifest error of assessment or misuse of powers (see judgment of 15 June 2022, *QI v Commission*, T-122/21, not published, EU:T:2022:361, paragraph 96 and the case-law cited).

71 In that regard, when the appointing authority sets out the reasons for a reporting officer's appraisal by referring to specific material facts, the Courts of the European Union must verify that those reasons are based on materially correct facts. So doing, the court is not substituting its assessment for that of the reporting officers, but is merely reviewing whether the facts on which the appraisal is based are materially correct (see judgment of 16 March 2022, *TA v Parliament*, T-314/21, not published, EU:T:2022:143, paragraph 42 and the case-law cited).

72 In addition, an error may be said to be manifest only where it may be readily detected in the light of the criteria to which the legislature intended the exercise by the administration of its discretion to be subject (judgment of 15 June 2022, *QI v Commission*, T-122/21, not published, EU:T:2022:361, paragraph 97).

73 Consequently, in order to establish that the administration committed a manifest error in assessing the facts such as to justify the annulment of the contested appraisal report, the evidence, which it is for the applicant to adduce, must be sufficient to make the findings of fact made in those reports implausible. In other words, the complaint alleging a manifest error of assessment must be rejected if, in spite of the evidence put forward by the applicant, the contested assessment still appears to be justified and consistent (see, to that effect, judgment of 15 June 2022, *QI v Commission*, T-122/21, not published, EU:T:2022:361, paragraph 98 and the case-law cited).

74 That is particularly so where the decision at issue is vitiated by errors of assessment which, taken together, are of only minor significance unlikely to have influenced the administration (see judgment of 18 March 2015, *Rajala v OHIM*, F-24/14, EU:F:2015:10, paragraph 44 and the case-law cited).

- 75 It is appropriate to examine the applicant's arguments in support of the first and second pleas in law, alleging factual errors and manifest errors of assessment in the final assessment report, in the light of those considerations.
- 76 It should be borne in mind that the initial assessment report, drawn up by the first reporting officer, was challenged by the applicant and was therefore reviewed by the second reporting officer, who drew up the reviewed assessment report, which became the final assessment report. That report became final on 28 November 2023, after the Reports Committee delivered its opinion on 17 October 2023.
- 77 In essence, the final assessment report confirmed the initial assessment report as far as the 'acceptable' grade is concerned, regarding the applicant's judgement, on the ground that 'during the reporting period [the applicant]'s level of discernment and [judgement] was at times not at the level that is to be expected of an experienced [confidential]'. In the overall assessment, the second reporting officer states as follows:
- 'I also found that at several occasions during the reporting period, [the applicant's] judgement and discernment was not up to standards in applying rules of confidentiality and data protection, in particular as a [confidential] with her expertise, experience and grade. While [the applicant] may have needed time to update her knowledge of the applicable rules, I expect colleagues to exercise common sense as well as utmost restr[ai]nt and seek advice from colleagues or hierarchy when handling sensitive and/or personal data and to prioritise actions to ensure compliance in this area.'
- 78 During her hearing before the Reports Committee, the first reporting officer specified that there were 'three main reasons underpinning the "acceptable" grade for "judgement"', namely 'i) A breach of data protection via the access of Sysper, to which [the applicant] owned up, although the latter's version of events eventually changed; ii) All [confidential] are required to have an encryption key; however, [the applicant] took a very long time to obtain hers; iii) In March 2022, [the applicant] sent [the first reporting officer] a work-related matter via her Gmail'. She also stated that the applicant's appraisal had been downgraded in connection with 'the alignment with the grades given to the other [confidential], who had already experienced this in 2021 when [the first reporting officer] joined the unit.'
- 79 During her hearing before the Reports Committee, the second reporting officer also gave the reasons which had led her to confirm the 'acceptable' grade given to the applicant as far as her 'judgement' is concerned. The minutes for that hearing state as follows:
- 'Regarding the "acceptable" grade for "judgement", [the second reporting officer] maintained that it was informed by a number of issues: i) A breach of data protection via access on Sysper, which the reportee admitted; this breach reflects particularly badly on the unit which is entrusted to handle sensitive staff matters; ii) [the applicant] took a very long time to obtain her encryption key, while all her colleagues did so relatively quickly; iii) [the applicant] sent a work matter via private email to [the first reporting officer]; iv) During a meeting in the context of an Article 42(c) procedure, [the applicant] expressed views which put [the second reporting officer] in a difficult position. [The second reporting officer] added, however, that [the applicant's] actions were born of good intentions'.
- 80 In that regard, as recalled in paragraph 71 above, when reporting officers set out the reasons for their assessment by referring to specific material facts, the Courts of the European Union must verify that those reasons are based on materially correct facts. In the present case, as set out in paragraphs 78 and 79 above, the reporting officers supported their value judgment by specific examples during their hearings before the Reports Committee; by that value judgment, they criticised the applicant for having lacked discernment and judgement in applying rules of confidentiality and data protection, referring to four specific examples.
- 81 The applicant disputes both the material accuracy of the reasons relied on by the reporting officers and the assessment that those reasons testify to the lack of discernment and judgment for which she is criticised.
- 82 Regarding the applicant's claim that the criticism that she committed a personal data breach is unfounded, it is common ground that, in April 2022, the applicant consulted the grade of a colleague via Sysper, so that there is no room for doubt as to the material accuracy of that consultation.

- 83 In addition, the applicant submits that the consultation of the data at issue was legitimate as it was relevant to her carrying out her duties as [*confidential*] and that no disclosure of information took place.
- 84 However, in that connection, the Court observes that, first, the reporting officers did not criticise the applicant for having disclosed personal data and, secondly, the data in question was consulted by the applicant on her own initiative, not in the context of a work-related task assigned to her by her hierarchical superiors, which the applicant confirmed at the hearing.
- 85 Moreover, at the hearing and in answer to a question put by the Court, the Council specified that the assessments made by the reporting officers in the final assessment report were not based on the outcome of the administrative and disciplinary procedures to which the applicant had been subject on account of the consultation of the data at issue, but on account of the consultation at issue itself; this was a fact of which the reporting officers, including the applicant's head of unit, were aware, in so far as it took place within that unit and had been subject to an internal investigation.
- 86 In that context, without there being any need to decide on the issue whether the reporting officers could validly refer to the classification of a 'data protection breach', allegedly committed by the applicant, during their respective hearings before the Reports Committee (see paragraphs 78 and 79 above), the Court finds that they were entitled to conclude, without committing a manifest error of assessment, that the applicant's judgement and discernment did not meet the required standard with regard to applying rules of confidentiality and data protection, having regard, in particular, to her position as a [*confidential*] with her expertise, experience and grade, due to her consultation via Sysper of the data at issue. In that context, the evidence adduced by the applicant is not sufficient to render implausible the 'acceptable' grade given by the reporting officers as regards her judgement, within the meaning of the case-law cited in paragraph 73 above.
- 87 That finding is not liable to be called into question by the applicant's claim that the additional reasons relied on by the reporting officers during their respective hearings before the Reports Committee are not well founded. In so far as the Council was entitled to base the 'acceptable' grade in the final assessment report on the consultation at issue, there is no need to examine whether the other reasons given by the reporting officers are such as to lend further support to that conclusion.
- 88 In the light of those elements, the Court finds that the applicant has not shown that there is an error in the accuracy of the facts or a manifest error in the 'acceptable' grade given in respect of her judgement; that assessment may be acknowledged to be justified and consistent, within the meaning of the case-law cited in paragraph 73 above.
- 89 Having regard to the foregoing, the Court rejects the first and second pleas of the action and rejects in its entirety the claim for annulment of the final assessment report.

The claim for damages

- 90 The applicant claims that she has suffered material and non-material damage, assessed *ex aequo et bono* at EUR 30 000.
- 91 In the first place, regarding the non-material damage, the applicant argues that the condition relating to the illegality of conduct is satisfied, having regard to the illegality of the final assessment report and the GSC's failure to fulfil obligations. The applicant submits that the false accusations made against her in the final assessment report affected her dignity, her professional reputation and her health. In addition, the administration's conduct during the course of the appraisal procedure caused her significant stress and anxiety.
- 92 In those circumstances, the applicant is of the view that she has suffered non-material damage, assessed *ex aequo et bono* at EUR 10 000, which cannot be compensated by the late withdrawal of the final assessment report.
- 93 In the second place, regarding material damage, the applicant claims that that damage results from unjustified grades awarded to her in the final appraisal report and which ruined her chances of promotion in 2023. Given that the promotion system within the GSC is based on scores resulting from

all the appraisal reports in a given grade and since the applicant had not been assessed in 2020 and 2021 due to her state of health, the very low score awarded by the final appraisal report to the applicant in 2022 resulted in the loss of any chance of being promoted in 2023, which also reduces her chance of being promoted in 2024 and the following years.

- 94 Moreover, the applicant submits that an ‘acceptable’ grade in her final report severely limits her chances for any future career development within the GSC, since that grade is attributed only very rarely within the GSC and where there have been serious and repeated failures to fulfil basic staff duties and obligations, after being reminded several times by the hierarchy in this respect, and where staff members refuse to make any efforts to improve, all of which is not the case as regards the applicant.
- 95 The applicant emphasises that, when the application was lodged, she was seconded to another institution, but that secondment comes to an end in January 2025; the final appraisal report seriously impedes her chances of an application for a position within the host institution being successful; the applicant feels happy and appreciated in the host institution, which has a positive impact on her health. In addition, the same scenario will materialise should the applicant decide to come back to the GSC.
- 96 According to the applicant, her grades in the appraisal report were lowered in an attempt to block her career after she decided to leave the [*confidential*] Unit, and that decision was made in retaliation to the legal steps she had taken in order to defend her rights against false accusations and an irregular procedure, as set out in Case T-1047/23. The applicant submits that this is clear from an analysis of the two contrasting meetings she has had with her head of unit, in so far as, at the first bilateral session in June 2022, she was still regarded as a valuable member of the unit and no recommendations were made in relation to her improving her judgement. However, at the appraisal meeting on 1 March 2023, she suddenly was ‘not delivering’ and her judgement became ‘acceptable’.
- 97 The applicant seeks compensation in that regard for the resulting material damage suffered, assessed *ex aequo et bono* at EUR 20 000.
- 98 The Council challenges the applicant’s line of argument.
- 99 Regarding the non-material damage that the applicant claims to have suffered, it is clear that it is based on the claim that the final appraisal report is vitiated by illegalities, in that it contains false accusations against her regarding the processing of confidential information.
- 100 Regarding the material damage that the applicant claims to have suffered, it is based, in essence, on the claim that the ‘acceptable’ grade in the final appraisal report adversely affects the applicant’s chances of finding a position corresponding to her qualifications and of being promoted.
- 101 According to settled case-law, a claim for compensation for damage must be rejected where it is closely associated with a claim for annulment, which has itself been dismissed either as inadmissible or as unfounded (see judgment of 13 July 2022, *TL v Commission*, T-438/21, not published, EU:T:2022:455, paragraph 87 and the case-law cited).
- 102 In that context, having regard to the fact that the claim for damages is closely associated with the claim for annulment, it must be rejected and the action must therefore be dismissed in its entirety.

Costs

- 103 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings. Since the applicant has been unsuccessful, she must be ordered to pay the costs, in accordance with the form of order sought by the Council.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

- 1. Dismisses the action;
- 2. Orders AF to pay the costs.

da Silva Passos

Póltorak

Reine

Delivered in open court in Luxembourg on 1 October 2025.

V. Di Bucci

M. van der Woude

Registrar

President

* Language of the case: English.

1 Confidential information redacted.