Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

4 April 2017*

(Appeal — Non-contractual liability of the European Union — Handling by the European Ombudsman of a complaint concerning the management of a list of suitable candidates in an open competition — Breaches of the duty to act diligently — Concept of a 'sufficiently serious breach' of a rule of EU law — Non-material damage — Loss of confidence in the office of the European Ombudsman)

In Case C-337/15 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 6 July 2015,

European Ombudsman, represented initially by G. Grill, and subsequently by L. Papadias and P. Dyrberg, acting as Agents,

appellant,

the other party to the proceedings being:

Claire Staelen, residing in Bridel (Luxembourg), represented by V. Olona, avocate,

applicant at first instance,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, T. von Danwitz, J.L. da Cruz Vilaça and A. Prechal (Rapporteur), Presidents of Chambers, J.-C. Bonichot, A. Arabadjiev, C. Toader, M. Safjan, E. Jarašiūnas, C.G. Fernlund, C. Vajda, S. Rodin and F. Biltgen, Judges,

Advocate General: N. Wahl,

Registrar: V. Giacobbo-Peronnel, Administrator,

having regard to the written procedure and further to the hearing on 6 September 2016,

after hearing the Opinion of the Advocate General at the sitting on 27 October 2016,

gives the following

* Language of the case: French.

Judgment

1 By this appeal, the European Ombudsman asks the Court to set aside in part the judgment of the General Court of the European Union of 29 April 2015, *Staelen* v *Ombudsman* (T-217/11, 'the judgment under appeal', EU:T:2015:238), by which the General Court upheld in part the action brought by Ms Claire Staelen seeking compensation for the damage she claimed to have suffered as a result of the Ombudsman's handling of her complaint concerning mismanagement by the European Parliament of the list of suitable candidates in Open Competition EUR/A/151/98, on which she appeared as a successful candidate ('the list of suitable candidates').

Legal context

2 The third recital 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) is worded as follows:

'Whereas the Ombudsman, who may also act on his own initiative, must have access to all the elements required for the performance of his duties; whereas to that end [EU] institutions and bodies are obliged to supply the Ombudsman, at his request, with any information which he requests of them, ...'

3 Article 3 of Decision 94/262 provides:

'1. The Ombudsman shall, on his own initiative or following a complaint, conduct all the enquiries which he considers justified to clarify any suspected maladministration in the activities of [EU] institutions and bodies. …

2. The [EU] institutions and bodies shall be obliged to supply the Ombudsman with any information he has requested of them and give him access to the files concerned. …

…'

4 Recital 2 of Decision 2008/587/EC, Euratom of the European Parliament of 18 June 2008 amending Decision 94/262 (OJ 2008 L 189, p. 25) states:

'Citizens' confidence in the capacity of the Ombudsman to conduct thorough and impartial inquiries in alleged cases of maladministration is fundamental to the success of the Ombudsman's action.'

Background to the dispute

5 On 14 November 2006, Ms Staelen lodged a complaint with the Ombudsman concerning alleged maladministration by the Parliament in its management of the list of suitable candidates.

6 At the end of that inquiry ('the initial inquiry'), the Ombudsman adopted a decision on 22 October 2007 in which it was concluded that there had been no maladministration on the part of the Parliament ('the decision of 22 October 2007').

7 On 29 June 2010, the Ombudsman decided to launch an inquiry on the Ombudsman's own initiative in order to reassess whether there had been any maladministration by the Parliament ('the own-initiative inquiry').

8 On 31 March 2011, the Ombudsman issued a decision closing the own-initiative inquiry and finding, again, that there had been no maladministration in the Parliament's activities ('the decision of 31 March 2011').

The action before the General Court and the judgment under appeal

9 By application lodged at the General Court Registry on 20 April 2011, Ms Staelen brought an action for the Ombudsman to be ordered to compensate her on account of the material and non-material damage she claimed to have suffered as a result of various alleged failures on the part of the Ombudsman in the context of the initial and own-initiative inquiries.

10 Ruling, in paragraphs 75 to 161 of the judgment under appeal, on a first set of complaints made by Ms Staelen, concerning the fact that the Ombudsman had allegedly failed, both in the initial inquiry and in the course of the own-initiative inquiry, to carry out all the checks necessary to identify and to clarify the instances of maladministration reported in Ms Staelen's complaint, the General Court began by making a number of 'preliminary remarks' in paragraphs 75 to 88 of its judgment.

11 The General Court held, in essence, in paragraphs 75 to 85 of its judgment, that, although the Ombudsman enjoys very wide discretion as regards the assessment of the merits of complaints referred to the Ombudsman and the way in which they are dealt with, and also in respect of the investigative tools to be used when handling a complaint or in an own-initiative inquiry, and the Ombudsman is, in that context, under no obligation as to the result to be achieved, that discretion does not exempt the Ombudsman from respecting the principle of diligence, meaning the obligation to examine carefully and impartially all the relevant elements of the individual case.

12 In this connection, the General Court set out, in paragraphs 85 to 87 of its judgment, the following considerations:

> '85 ... 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 … 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 …
>
> 87 It should also be stated, however, that not every irregularity committed by the Ombudsman constitutes a breach of the principle of diligence … 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 ...'

13 The General Court then went on, in paragraphs 89 to 146 of the judgment under appeal, to consider the various actions of the Ombudsman in connection with the conduct of the initial inquiry criticised by Ms Staelen, and concluded its examination in that respect by ruling, in paragraphs 141 to 146 of its

judgment, that the Ombudsman had, in three respects, breached the duty to act diligently, and that those breaches were sufficiently serious to render the European Union liable. Those breaches related to the fact that the Ombudsman had (i) distorted the content of an opinion of the Parliament; (ii) failed to fulfil the duty to act diligently in the context of the investigation to determine whether the information that Ms Staelen's name had been placed on the list of suitable candidates had been circulated by the Parliament to the other institutions, bodies, offices and agencies of the European Union; and (iii) also failed to fulfil that duty in the context of the Ombudsman's inquiry to determine whether the Parliament had communicated that information to its own directorates-general.

14 Going on to rule next, in paragraphs 162 to 223 of the judgment under appeal, on a second set of complaints made by Ms Staelen, regarding manifest errors of assessment allegedly made by the Ombudsman, the General Court concluded, in paragraphs 205 and 223 of its judgment, that there was a sufficiently serious breach, by the Ombudsman, of the Ombudsman's duty to act diligently, in the investigation as to whether Ms Staelen had been discriminated against compared with the other successful candidates on account of the length of time for which her name was included on the list of suitable candidates. That sufficiently serious breach arose from the fact that the Ombudsman had concluded that there was no maladministration on the part of the Parliament, having relied in that regard on nothing more than a statement by the Parliament concerning the period of time for which the other successful candidates were included on the list of suitable candidates and having received no evidence of the dates of recruitment of those successful candidates, a statement which, it subsequently transpired, was incorrect.

15 As regards a third set of complaints, alleging, in particular, a purported breach of the 'reasonable time' principle, the General Court further held, in paragraph 269 of the judgment under appeal, that the unreasonable time taken by the Ombudsman to reply to two letters from Ms Staelen constituted a sufficiently serious breach of a rule of EU law intended to confer rights on individuals which was capable of rendering the European Union liable.

16 Lastly, the General Court considered whether it was possible to conclude that there was any loss that might be compensated and a causal link between that loss and the various failures previously identified, and held, in paragraphs 288 to 294 of the judgment under appeal, that that was indeed the case as regards the non-pecuniary loss suffered by Ms Staelen on account of (i) a loss of confidence in the institution of the Ombudsman and (ii) a feeling of having wasted time and energy as a result of those failures.

17 In conclusion, having found that the Ombudsman had failed, in the initial and own-initiative inquiries, in four instances to fulfil the duty to act diligently and, moreover, had taken an unreasonable period of time to reply to two letters from Ms Staelen, the General Court upheld Ms Staelen's action in part, ordering the Ombudsman to pay her EUR 7 000 by way of compensation for the non-material damage suffered.

Forms of order sought and procedure before the Court of Justice

18 By her appeal, the Ombudsman claims that the Court should:

— set aside the judgment under appeal, first, in so far as it determines (i) that the Ombudsman committed several unlawful acts constituting sufficiently serious breaches of EU law, (ii) that non-material damage has actually been established, and (iii) that there is a causal link between the unlawful acts identified by the General Court and that non-material damage; and, second, in so far as it orders the Ombudsman to pay compensation of EUR 7 000;

— in so far as the Court sets aside the judgment under appeal, principally, itself rule on Ms Staelen's application and dismiss it as unfounded;

— in the alternative, refer the case back to the General Court in so far as the judgment under appeal is set aside; and

— make a fair and equitable order as to costs.

19 In her response, Ms Staelen asks the Court to:

— dismiss the appeal as inadmissible in part and, in any event, unfounded;

— order the Ombudsman to pay her compensation of EUR 50 000 for the non-material damage suffered; and

— order the Ombudsman to pay all the costs relating to the appeal and to the proceedings at first instance.

20 On 8 October 2015, Ms Staelen lodged a cross-appeal against the judgment under appeal. The cross-appeal was dismissed by order of the Court of Justice of 29 June 2016, *Ombudsman* v *Staelen* (C-337/15 P, not published, EU:C:2016:670), made pursuant to Article 181 of the Rules of Procedure of the Court of Justice. In that order, the Court reserved judgment on the main appeal and on the costs relating to the cross-appeal.

Admissibility of Ms Staelen's application for the Ombudsman to be ordered to pay her a sum of EUR 50 000

21 As is apparent from paragraph 19 of the present judgment, the claims made in the response lodged by Ms Staelen are, first, that the Court should dismiss in its entirety the Ombudsman's appeal and, second, that the Ombudsman should be ordered to pay Ms Staelen EUR 50 000 to compensate for the non-material damage allegedly caused by the Ombudsman.

22 It should, however, be noted in that regard that, under Article 174 of the Rules of Procedure of the Court of Justice, a response must seek to have the appeal allowed or dismissed, in whole or in part.

23 Consequently, Ms Staelen's application for the Ombudsman to be ordered to pay her a sum of EUR 50 000 is inadmissible.

The appeal

24 The Ombudsman puts forward five grounds of appeal.

First ground of appeal

25 By the first ground of appeal, which is in four parts, the Ombudsman claims that the General Court made errors of law with respect to one of the conditions for establishing the non-contractual liability of the European Union, that is the requirement of a 'sufficiently serious' breach of a rule of EU law intended to confer rights on individuals.

First part of the first ground of appeal

– Arguments of the parties

26 The Ombudsman submits that the General Court erred in law when it held, in paragraph 86 of the judgment under appeal, that a mere breach by the Ombudsman of the principle of diligence, that is to say, the obligation to examine carefully and impartially all the relevant elements of an individual case, is sufficient to establish the existence of a 'sufficiently serious' breach of a rule of EU law intended to confer rights on individuals and, therefore, of an unlawful act capable of rendering the European Union liable.

27 Ms Staelen contends that the first part of this ground of appeal is inadmissible because it is for the General Court, not the Court of Justice on appeal, to assess the facts.

28 As to the substance, she contends that the General Court made no error of law, the Court of Justice having notably made clear, in paragraph 50 of the judgment of 23 March 2004, *Ombudsman* v *Lamberts* (C-234/02 P, EU:C:2004:174), that, when conducting an inquiry, the Ombudsman is under an obligation to use her best endeavours, which corresponds exactly to compliance with the duty to act diligently in respect of which the Ombudsman thus has no discretion.

– Findings of the Court

29 As a preliminary point, it should be noted that, as is clear from Article 20(2)(d) TFEU, the right to apply to the Ombudsman in the event of maladministration in the activities of the institutions, bodies, offices or agencies of the European Union is a right, conferred in particular on Union citizens, that is also enshrined in Article 43 of the Charter of Fundamental Rights of the European Union.

30 Under Article 228(1) TFEU, the Ombudsman is empowered to receive, examine and report on complaints concerning instances of maladministration in the activities of the institutions, bodies, offices or agencies of the European Union. That provision states that, in accordance with her duties, the Ombudsman is to conduct inquiries for which she finds grounds either on her own initiative or on the basis of complaints submitted to her, and that, where she establishes an instance of maladministration, she is to refer the matter to the institution, body, office or agency concerned, which has a period of three months in which to inform her of its views, before she is then to forward a report to the Parliament and the institution, body, office or agency concerned and inform the person lodging the complaint of the outcome of such inquiries.

31 As regards the possibility that a person who has referred a complaint to the Ombudsman may put in issue the European Union's liability because of the way in which that complaint has been handled, the Court of Justice has already stated that it is appropriate to refer to its settled case-law, according to which a right to reparation is afforded where three conditions are met: the rule of law infringed must be intended to confer rights on individuals; the breach must be sufficiently serious; and there must be a direct causal link between the breach of the obligation on the author of the act and the damage sustained by the injured party. As to the second condition, the Court has, in the same context, also noted that the decisive test for finding that a breach of EU law is sufficiently serious is whether the EU institution or body concerned manifestly and gravely disregarded the limits on its discretion (judgment of 23 March 2004, *Ombudsman* v *Lamberts*, C-234/02 P, EU:C:2004:174, paragraph 49 and the case-law cited).

32 The Court has also made clear, in respect to that last point, that, in order to determine whether there has been a sufficiently serious breach of EU law rendering the European Union non-contractually liable as a result of the conduct of the Ombudsman, regard must be had to the particular nature of the

latter's functions. In that context, it should be borne in mind that the Ombudsman is merely under an obligation to use her best endeavours and enjoys wide discretion (judgment of 23 March 2004, *Ombudsman* v *Lamberts*, C-234/02 P, EU:C:2004:174, paragraph 50).

33 The Court has held, furthermore, that, although the Ombudsman enjoys very wide discretion as regards the merits of complaints and the way in which they are to be dealt with, and, in that context, is under no obligation as to the result to be achieved, even if review by the Courts of the European Union must consequently be limited, it is nevertheless possible that in very exceptional circumstances a person may be able to demonstrate that the Ombudsman has committed a sufficiently serious breach of EU law in the performance of her duties that is liable to cause damage to the citizen concerned (see, to that effect, judgment of 23 March 2004, *Ombudsman* v *Lamberts*, C-234/02 P, EU:C:2004:174, paragraph 52).

34 It must also be borne in mind that the duty to act diligently which is inherent in the principle of sound administration and applies generally to the actions of the EU administration in its relations with the public requires that that administration act with care and caution (see, to that effect, judgment of 16 December 2008, *Masdar (UK)* v *Commission*, C-47/07 P, EU:C:2008:726, paragraphs 92 and 93).

35 It should be noted in the light of those considerations, in the first place, as regards the admissibility of the first part of the first ground of appeal, that the Ombudsman is thereby taking issue not with an assessment of the facts by the General Court, as Ms Staelen claims, but with an error of law allegedly made by that court in taking a misconceived view of the notion of 'sufficiently serious breach' of EU law capable of giving rise to possible non-contractual liability on the part of the European Union. It follows that the first part of this ground of appeal is admissible.

36 In the second place, as regards the substance, it must be noted that, by ruling as it did in paragraph 86 of the judgment under appeal that a mere breach of the principle of diligence is sufficient to establish the existence of a sufficiently serious breach that may render the European Union liable, on the ground that the Ombudsman does not have discretion concerning respect for that principle in a specific case, the General Court disregarded, in various respects, the principles referred to in paragraphs 31 to 33 of the present judgment.

37 As is apparent from the settled case-law of the Court referred to in paragraph 31 of the present judgment, only a sufficiently serious breach, not merely any breach, of a rule of EU law protecting individuals is capable of giving rise to non-contractual liability on the part of the European Union. Furthermore, where an EU institution or body has been given a discretion, only that particular institution's or body's manifest and grave disregard of the limits on that discretion is capable of constituting a sufficiently serious breach of EU law.

38 The same applies in the event of a breach by the Ombudsman of the duty to act diligently, which does not automatically amount to unlawful conduct that may result in liability being incurred by the European Union, but must be assessed, as noted in paragraphs 32 and 33 of the present judgment, taking into account the fact that, in the performance of her duties, the Ombudsman is merely under an obligation to use her best endeavours and enjoys very wide discretion as regards (i) the merits of complaints and the way in which they are to be dealt with; (ii) the way in which open inquiries and investigations are to be conducted; and (iii) analysis of the information gathered and of the conclusions to be drawn from that analysis.

39 In stating, in paragraph 86 of the judgment under appeal, that the Ombudsman did not have any discretion concerning respect for the principle of diligence in a specific case, before going on to infer from this that a mere breach of that principle was therefore sufficient to establish the sufficiently serious nature of that breach, the General Court clearly intended to draw on the case-law of the Court, referred to in paragraph 71 of the judgment under appeal, according to which, where an EU institution has only considerably reduced, or even no, discretion, the mere infringement of EU law

may suffice to establish the existence of a sufficiently serious breach of that law (see, in particular, judgment of 10 December 2002, *Commission* v *Camar and Tico*, C-312/00 P, EU:C:2002:736, paragraph 54 and the case-law cited).

40 However, the General Court could not thereby decide that the conditions under which the European Union incurs non-contractual liability on the basis of a breach of the duty to act diligently were satisfied without taking into consideration the field or the circumstances or the context in which that duty was imposed on the EU institution or body concerned (see, to that effect, judgment of 30 January 1992, *Finsider and Others* v *Commission*, C-363/88 and C-364/88, EU:C:1992:44, paragraph 24).

41 In order for it to be concluded that there is a sufficiently serious breach of the Ombudsman's duty to act diligently, it is therefore necessary to establish that, by failing to act with all the requisite care and caution, the Ombudsman gravely and manifestly disregarded the limits on her discretion in the exercise of her powers of investigation. Whilst having regard to that context, account must, to that end, be taken of all aspects characterising the situation concerned, including, in particular, the obviousness of the lack of care shown by the Ombudsman in the conduct of the investigation (see, to that effect, inter alia, judgments of 30 January 1992, *Finsider and Others* v *Commission*, C-363/88 and C-364/88, EU:C:1992:44, paragraph 22, and of 10 July 2003, *Commission* v *Fresh Marine*, C-472/00 P, EU:C:2003:399, paragraph 31), whether it was excusable or inexcusable (see, to that effect, inter alia, judgments of 30 January 1992, *Finsider and Others* v *Commission*, C-363/88 and C-364/88, EU:C:1992:44, paragraph 22, and of 4 July 2000, *Haim*, C-424/97, EU:C:2000:357, paragraphs 42 and 43), or whether the conclusions drawn from the Ombudsman's examination were inappropriate and unreasonable (see, to that effect, judgment of 22 October 1991, *Nölle*, C-16/90, EU:C:1991:402, paragraph 13).

42 It must further be stated that, as the Ombudsman argued, the mere fact, highlighted by the General Court in paragraph 85 of the judgment under appeal, that it is the task of the Ombudsman to identify instances of maladministration by other EU institutions and bodies cannot justify the finding in paragraph 86 of that judgment.

43 The Ombudsman can certainly be expected, notably in the light of the task conferred on her by the Treaty, to take particular care to comply with the obligation to act diligently by conducting an inquiry with care and caution, the Ombudsman being only obliged, however, to use all means at her disposal. Nevertheless, it cannot be inferred from the foregoing that the slightest breach by the Ombudsman of the duty to act diligently in carrying out such investigations would automatically constitute a 'sufficiently serious breach' of that duty, for the purposes of the case-law referred to in paragraphs 31 and 32 of the present judgment.

44 Lastly, and as the Ombudsman has correctly observed, the clarification in paragraph 87 of the judgment under appeal — according to which only an irregularity committed by the Ombudsman the result of which is that she was unable to examine carefully and impartially all the relevant elements in order to decide on the merits of an allegation of a case of maladministration can establish the European Union's non-contractual liability — does not in any way affect the considerations set out in paragraph 41 of the present judgment. That clarification relates to the possible consequences of the irregularity identified, not to the nature of the action or omission concerned, or to the sufficiently serious nature of the breach of EU law that that irregularity represents.

45 It follows from the foregoing that, by ruling in general terms, in paragraph 86 of the judgment under appeal, that a 'mere' breach by the Ombudsman of the principle of diligence amounted to a 'sufficiently serious breach' of a rule of EU law protecting individuals that could result in non-contractual liability being incurred by the European Union, the General Court made an error of law.

46 Such an error of law cannot, however, in the present case, in itself lead to the judgment under appeal being set aside. In order to determine whether that should be the case, it is necessary to ascertain whether, as the Ombudsman maintains in the second, third and fourth parts of her first ground of appeal and in the second ground of appeal, the General Court did in fact go on to apply the erroneous principle laid down in paragraph 86 of the judgment under appeal, and whether that error of law thus vitiated the findings in which the General Court characterised the various actions of the Ombudsman as 'sufficiently serious breaches' of the duty to act diligently.

Second, third and fourth parts of the first ground of appeal

– Arguments of the parties

47 By the second, third and fourth parts of the first ground of appeal, the Ombudsman submits that, in view of the error of law made by the General Court in paragraph 86 of the judgment under appeal, the General Court also erred in law when it ruled, in paragraphs 142 to 144 of its judgment, that the three breaches of the duty to act diligently attributed to the Ombudsman in this case were 'sufficiently serious' to establish the non-contractual liability of the European Union.

48 With regard to the second part of this ground of appeal, the Ombudsman maintains that, in ruling, in paragraph 142 of the judgment under appeal, that the Ombudsman had committed a sufficiently serious breach by distorting, in the decision of 22 October 2007, the content of an opinion of the Parliament solely on the ground that the Ombudsman does not enjoy any discretion in describing the content of a document, the General Court failed to fulfil its obligation to take all the relevant elements into account in order to determine whether there was such a breach.

49 The Ombudsman goes on to argue, in support of the third and fourth parts of the first ground of appeal, concerning paragraphs 143 and 144 respectively of the judgment under appeal, that, by simply stating that the alleged failures to fulfil the duty to act diligently in the investigations — which were intended to establish whether the Parliament had informed the other institutions and its own directorates-general that Ms Staelen's name had been placed on the list of suitable candidates — constituted, in the light of the principle laid down by the General Court in paragraph 86 of the judgment under appeal, 'sufficiently serious breaches' of EU law, the General Court did not establish that such breaches existed, it presupposed it.

50 Furthermore, by ruling, in paragraph 143 of the judgment under appeal, that the Ombudsman had not established whether the information referred to in the preceding paragraph of the present judgment had been circulated to the other EU institutions, the General Court contradicted itself, according to the Ombudsman, since it also ruled, in paragraph 105 of the judgment under appeal, that those institutions had had that information at least since 14 May 2007.

51 As regards paragraph 144 of the judgment under appeal, relating to the circulation of that information to the directorates-general of the Parliament, the Ombudsman claims that the General Court also failed to have regard to the specific nature of the Ombudsman's duties when it found that, in the checks carried out by the Ombudsman, the latter is obliged to obtain and to incorporate into her files written evidence in respect of every aspect of the inquiry.

52 According to Ms Staelen, it is for the General Court to assess matters of fact and of law to establish whether a lack of diligence constitutes a wrongful act and, moreover, whether it constitutes a sufficiently serious breach of EU law, and the second, third and fourth parts of the Ombudsman's first ground of appeal are accordingly inadmissible. In any event, in her submission, the General Court's analysis in paragraphs 142 to 144 of the judgment under appeal is not vitiated by any error of law.

– Findings of the Court

53 As regards the admissibility of the second, third and fourth parts of the first ground of appeal, it is important to note that, according to the settled case-law of the Court of Justice, it is clear from the second subparagraph of Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that the General Court has exclusive jurisdiction, first, to find the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and, second, to assess those facts. By contrast, when the General Court has found or assessed the facts, the Court of Justice has jurisdiction to review the legal characterisation of those facts by the General Court and the legal conclusions it has drawn from them (see, in particular, judgment of 3 September 2009, *Moser Baer India* v *Council*, C-535/06 P, EU:C:2009:498, paragraph 31 and the case-law cited). Thus, the Court of Justice has repeatedly observed that the question whether the General Court could, properly in law, conclude from those facts that the EU institutions had failed in their duty to act diligently is a question of law subject to the review of the Court of Justice on appeal (see, in particular, judgment of 3 September 2009, *Moser Baer India* v *Council*, C-535/06 P, EU:C:2009:498, paragraph 34 and the case-law cited). The same applies when determining whether such a failure is, moreover, to be classified as a 'sufficiently serious breach' of EU law, and one that may give rise to the European Union's non-contractual liability.

54 However, contrary to Ms Staelen's contention, the second, third and fourth parts of the first ground of appeal do not seek a re-examination of the General Court's findings of fact but are intended, in essence, to challenge the legal characterisation applied by the General Court and on the basis of which it decided that the Ombudsman had, in this instance, committed sufficiently serious breaches of EU law.

55 It follows that the plea of inadmissibility raised by Ms Staelen must be rejected.

56 As to the substance, and as regards the second part of the first ground of appeal, it must be noted that the General Court held, in paragraph 102 of the judgment under appeal, that, by stating in point 2.5 of the decision of 22 October 2007 that the inspection carried out had confirmed what the Parliament had already indicated in its opinion, that is to say, that the list of suitable candidates had been made available to other EU institutions, when in fact that opinion contained no such indication, the Ombudsman had, due to a failure to exercise diligence, distorted the content of the document concerned.

57 It must be pointed out in that regard that although, as has been noted in paragraph 38 of the present judgment, the Ombudsman enjoys very wide discretion in the performance of her duties, notably with regard to the way in which complaints are to be dealt with and investigated, the fact remains that, in describing the content of a document sent to the Ombudsman, in order, as in this case, to support the conclusions reached in a decision closing an inquiry, the Ombudsman has only a reduced, or even no, discretion. Consequently, the General Court was entitled, having regard to the case-law referred to in paragraph 39 of the present judgment, to rule, in paragraph 142 of the judgment under appeal, that the Ombudsman's distortion of the content of the Parliament's opinion of 20 March 2007 constituted a sufficiently serious breach capable of rendering the European Union liable.

58 In the light of the foregoing, the second part of the first ground of appeal must be rejected.

59 As regards the third and fourth parts of this ground of appeal, it is apparent from paragraphs 143 and 144 of the judgment under appeal that, for the purpose of defining as 'sufficiently serious' the breaches of the duty to act diligently identified in paragraphs 109 and 140 of the judgment under appeal, which concern the shortcomings in the Ombudsman's investigation into the circulation of the list of suitable candidates to other institutions and to the Parliament's directorates-general, respectively, the General Court merely referred to the considerations set out in paragraph 86 of the judgment under appeal.

60 The error of law made by the General Court in paragraph 86 of the judgment under appeal, as identified on examination of the first part of the first ground of appeal, thus vitiated the finding by which, in paragraphs 143 and 144 of that judgment, the General Court described the failures to act diligently attributed to the Ombudsman in this case as sufficiently serious breaches capable of establishing the liability of the European Union.

61 In those circumstances, the third and fourth parts of the first ground of appeal must be upheld, and there is no need to examine the other supporting arguments put forward by the Ombudsman.

62 It follows from all of the foregoing that the first ground of appeal must be upheld with respect to the first, third and fourth parts thereof, but rejected with respect to the second part.

Second ground of appeal

Arguments of the parties

63 By the first part of the second ground of appeal, the Ombudsman maintains that, in ruling, in paragraphs 205 and 223 of the judgment under appeal, that the Ombudsman breached the principle of diligence by relying on an explanation given by the Parliament when, in her action, Ms Staelen had in fact complained of a manifest error of assessment by the Ombudsman, the General Court ruled *ultra petita*.

64 By the second part of this ground of appeal, the Ombudsman submits that the General Court erred in law when it ruled, in paragraph 204 of the judgment under appeal, that the fact that an explanation given by an EU institution in an inquiry may seem convincing does not exempt the Ombudsman from the responsibility to ensure that the facts on which that explanation is based are proved, when that explanation constitutes the sole basis for the Ombudsman's finding that there is no maladministration.

65 By the third part of the second ground of appeal, the Ombudsman submits that, even if it had to be concluded that the Ombudsman made the error attributed by the General Court, the fact remains that that court did not consider whether such an error constitutes a sufficiently serious breach of EU law. In paragraph 205 of the judgment under appeal, the General Court merely ruled that the failure to exercise diligence which it had identified may render the European Union liable.

66 As regards the first part of the second ground of appeal, Ms Staelen contends that, in finding that the Ombudsman had failed to fulfil the duty to act diligently, the General Court did not raise a complaint that was not included in the application, and that the General Court was entitled, as the court hearing the substance of the case, to re-characterise the matters of fact and of law presented in that case.

67 As regards the second and third parts of the second ground of appeal, Ms Staelen contends that, while the Ombudsman may of course rely on information given by an EU institution, provided that there is nothing to cast doubt on the reliability of that information, that is not the case in this instance, since verifying the administration's assertions is the very essence of the Ombudsman's task.

Findings of the Court

68 As a preliminary point, it must be borne in mind that, in paragraph 205 of the judgment under appeal, the General Court ruled that the Ombudsman had not acted with all due diligence in finding that there was no maladministration on the part of the Parliament in relation to the period of time for which Ms Staelen was included on the list of suitable candidates, relying in that respect on nothing more than a statement from the Parliament regarding the recruitment of the 22 initially successful

candidates in Open Competition EUR/A/151/98 and having received no evidence of the date on which each of them was recruited, when that statement, it subsequently transpired, was incorrect. In the same paragraph, the General Court went on to conclude, referring in that respect to paragraphs 84 to 86 of the judgment under appeal, that that failure to exercise diligence could render the European Union liable.

69 In paragraph 223 of the judgment under appeal, the General Court again stated that that failure to exercise diligence meant that the Ombudsman had wrongly considered certain facts to have been proved and therefore erroneously found that there was no maladministration on the part of the Parliament.

70 As regards the first part of the second ground of appeal, it is true that, as the Ombudsman notes and as is, moreover, apparent from paragraphs 162 and 197 of the judgment under appeal, Ms Staelen claimed in support of her action before the General Court that the Ombudsman had made a manifest error of assessment by finding, in the decision of 31 March 2011, following the own-initiative inquiry, that the Parliament had not discriminated against her as compared with the other successful candidates in Open Competition EUR/A/151/98 so far as concerns the period for which the list of suitable candidates was valid.

71 Ruling on that plea, the General Court held, in paragraphs 202 to 205 of the judgment under appeal, that the Ombudsman had in this instance failed to fulfil the duty to act diligently by wrongly omitting to ascertain whether an assertion by the Parliament regarding the periods of time for which Ms Staelen and the other successful candidates in the competition concerned were included on the list of suitable candidates was well founded. In so doing, the General Court ruled, in essence, that the Ombudsman had, through a lack of care and caution, made an error of assessment that led to the Ombudsman concluding, wrongly, that there were no grounds for finding that there had been maladministration by the Parliament.

72 In those circumstances, it must be held that, by thus re-characterising the plea put forward, the General Court did not distort that plea, nor, therefore, did it rule *ultra petita*, and consequently the first part of the second ground of appeal must be rejected.

73 Furthermore, while it is not necessary to adjudicate on the second part of this ground of appeal, it must be noted, as regards the third part, that, in ruling in paragraph 205 of the judgment under appeal that the failure to act diligently in this instance that is attributed to the Ombudsman was a sufficiently serious breach capable of establishing the liability of the European Union, merely referring in that respect to the arguments in paragraphs 84 to 86 of that judgment, the General Court made an error of law similar to those already noted on examination of the third and fourth parts of the first ground of appeal.

74 The General Court's error of law concerning the meaning of 'sufficiently serious breach' of EU law in paragraph 86 of the judgment under appeal, as identified, on examination of the first part of the first ground of appeal, in paragraph 45 of the present judgment, did indeed vitiate the assessment on the basis of which the General Court accepted that characterisation in paragraph 205 of the judgment under appeal.

75 It follows from the foregoing considerations that the third part of the second ground of appeal must be upheld.

Third ground of appeal

Arguments of the parties

76 By the third ground of appeal, the Ombudsman maintains that, in ruling, in paragraph 269 of the judgment under appeal, that the Ombudsman's failure to respect the fact that Ms Staelen was entitled to receive a reply to her letters within a reasonable period of time constitutes a 'sufficiently serious breach' of a rule of EU law intended to confer rights on individuals, and in concluding, as a result, that the Ombudsman incurs liability if that reasonable period of time is exceeded, the General Court disregarded the distinction that must be made between a mere breach of EU law and one that is 'sufficiently serious' in nature. In so doing, the General Court failed to fulfil its obligation to take into account all the relevant elements that would enable it to determine that issue.

77 Ms Staelen denies that there was any error of law in that regard.

Findings of the Court

78 Having held, in paragraph 256 of the judgment under appeal, that the Ombudsman had, twice, failed to fulfil the obligation to reply to letters from Ms Staelen within a reasonable time, the General Court confined itself, in paragraph 269 of its judgment, to stating simply that, by thus infringing Ms Staelen's right to receive a reply within a reasonable time, the Ombudsman had committed a sufficiently serious breach of a rule of EU law intended to confer rights on individuals which was capable of establishing the liability of the European Union.

79 The General Court thus regarded any breach of the duty to act within a reasonable time as a sufficiently serious breach of a rule of EU law.

80 In so doing, the General Court disregarded the case-law of the Court of Justice referred to in paragraphs 31 to 33 of the present judgment.

81 Furthermore, the General Court did not give any reasons for the 'sufficiently serious' nature of the breach of EU law which it had previously identified.

82 It should be observed in that regard that the obligation to state the reasons on which decisions of the Court are based arises under Article 36 of the Statute of the Court of Justice of the European Union, which applies to the General Court by virtue of the first paragraph of Article 53 of the Statute, and Article 117 of the Rules of Procedure of the General Court (see, to that effect, judgment of 4 October 2007, *Naipes Heraclio Fournier* v *OHIM*, C-311/05 P, not published, EU:C:2007:572, paragraph 51).

83 It is, moreover, apparent from the settled case-law of the Court that the statement of the reasons on which a judgment is based must clearly and unequivocally disclose the General Court's thinking, so that the persons concerned can be apprised of the justification for the decision taken and the Court of Justice can exercise its power of review (see, in particular, judgment of 20 January 2011, *General Química and Others* v *Commission*, C-90/09 P, EU:C:2011:21, paragraph 59 and the case-law cited).

84 In the present case, the absence of any statement of reasons to support the characterisation of a 'sufficiently serious breach' used by the General Court in paragraph 269 of the judgment under appeal makes it impossible for the Court of Justice to assess whether, as the Ombudsman in essence maintains by her third ground of appeal, the General Court did or did not make an error of law by using that characterisation.

85 That absence of a statement of reasons, which goes to an issue of infringement of essential procedural requirements and thus hinders judicial review by the Court of Justice, involves a matter of public policy which may be raised by the Court of its own motion (see, to that effect, judgments of 20 February 1997, *Commission* v *Daffix*, C-166/95 P, EU:C:1997:73, paragraph 24, and of 28 January 2016, *Quimitécnica.com and de Mello* v *Commission*, C-415/14 P, not published, EU:C:2016:58, paragraph 57 and the case-law cited).

86 In those circumstances, the Ombudsman's third ground of appeal must be upheld.

Fourth ground of appeal

Arguments of the parties

87 The Ombudsman claims that the General Court erred in law by characterising, in paragraph 290 of the judgment under appeal, and indeed without any explanation, the adverse effect on a complainant's confidence in the office of the Ombudsman caused by the Ombudsman's errors as 'non-pecuniary loss'.

88 Ms Staelen denies that there was any error of law in that regard.

Findings of the Court

89 It is apparent from paragraph 290 of the judgment under appeal that the non-material damage which the General Court acknowledged Ms Staelen to have suffered relates, in the present case, on the one hand, to her loss of confidence in the institution of the Ombudsman and, on the other, to her feeling or perception of having wasted her time and energy in relation to the complaint which she made to that EU body.

90 The fourth ground of appeal, which criticises the judgment under appeal with respect to the first component of that non-material damage, that is to say, the loss of confidence in the institution of the Ombudsman, is in two parts. The Ombudsman complains both that the General Court wrongly characterised that component as 'non-pecuniary loss' and that it used that characterisation without any explanation.

91 As regards the first part of this ground of appeal, it must be borne in mind that, according to the settled case-law of the Court, the damage for which compensation is sought must be actual and certain (see, in particular, judgments of 7 February 1990, *Culin* v *Commission*, C-343/87, EU:C:1990:49, paragraph 27; of 14 May 1998, *Council* v *de Nil and Impens*, C-259/96 P, EU:C:1998:224, paragraph 23; and of 21 February 2008, *Commission* v *Girardot*, C-348/06 P, EU:C:2008:107, paragraph 54 and the case-law cited).

92 It is certainly undeniable that, given the task conferred on the Ombudsman, it is essential that EU citizens have confidence in the capacity of the Ombudsman to conduct thorough and impartial inquiries in alleged cases of maladministration. As is emphasised in recital 2 of Decision 2008/587, such confidence is, moreover, also fundamental to the success of the Ombudsman's action.

93 However, it must be noted, first, that such considerations apply, to a very large extent, equally to any institution, body, office or agency of the European Union called upon to take a decision on an individual application, whether it be a complaint, as in this instance, or an action, or, more generally, any request in respect of which those institutions, bodies, offices or agencies are obliged to take action.

94 Second, any loss of confidence in the office of the Ombudsman that may result from actions taken in the course of the Ombudsman's inquiries is likely to affect, indiscriminately, everyone entitled to lodge a complaint with the Ombudsman at any time.

95 It follows from this that the General Court erred in law by characterising the loss of confidence in the institution of the Ombudsman alleged by Ms Staelen as non-material damage that may be compensated. Accordingly, the first part of the fourth ground of appeal must be upheld, and there is no need to rule on the second part.

Fifth ground of appeal

96 By the fifth ground of appeal, the Ombudsman claims that the General Court erred in law when it ruled, in paragraphs 292 and 293 of the judgment under appeal, that the unlawful act committed by the Ombudsman in the context of the own-initiative inquiry was the decisive cause of the non-material damage suffered by Ms Staelen relating to her loss of confidence in the office of the Ombudsman.

97 In view of the conclusion reached in paragraph 95 of the present judgment, it is no longer necessary to rule on this fifth ground of appeal.

The setting aside in part of the judgment under appeal

98 Since the first, third and fourth parts of the first ground of appeal, the third part of the second ground of appeal and the third ground of appeal have been declared well founded, it follows that the General Court was able to characterise as sufficiently serious breaches of EU law capable of establishing non-contractual liability on the part of the European Union four of the five unlawful actions attributed to the Ombudsman in the judgment under appeal only by making an error of law in respect of three of those actions and by failing to state any reasons in the case of the fourth. Furthermore, the fourth ground of appeal has been upheld on the ground that the General Court erred in law when it characterised any loss of confidence by Ms Staelen in the office of the Ombudsman that may have resulted from the way in which the Ombudsman carried out the investigation in this instance as non-pecuniary loss that could be compensated.

99 In those circumstances, there is no legal basis for the General Court's decision to order the Ombudsman to pay compensation to Ms Staelen.

100 It follows from this that point 1 of the operative part of the judgment under appeal must be set aside.

101 It is not, however, necessary to set aside point 2 of the operative part, by which the General Court dismissed Ms Staelen's action as to the remainder, since that decision is unaffected by the fact that the first to fourth grounds of appeal are, in part, well founded.

102 Lastly, in view of the fact that the judgment under appeal is to be set aside in part, the General Court's decision on costs and, therefore, points 3 and 4 of the operative part of the judgment under appeal must also be set aside.

The action before the General Court

103 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the Court of Justice quashes the decision of the General Court, it may itself give final judgment in the matter, where the state of the proceedings so permits. That is the case here.

104 With regard, in the first place, to the breaches of the Ombudsman's duty to act diligently, it will be recalled that these relate, first of all, to the failure, in the context of the initial inquiry, to investigate when and how Ms Staelen's inclusion on the list of suitable candidates was communicated to the other institutions, bodies, offices and agencies of the European Union.

105 As regards that breach, it must be held that it is sufficiently serious to be capable of giving rise to the non-contractual liability of the European Union.

106 The answer to the question as to when and how the institutions, bodies, offices and agencies of the European Union were informed that Ms Staelen had been placed on the list of suitable candidates constituted one of the relevant elements covered by the Ombudsman's inquiry to determine whether, in its management of Ms Staelen's file after that listing, the Parliament was responsible for a case of maladministration. In addition, checking that her inclusion had indeed been communicated to the other institutions, bodies, offices and agencies of the European Union, and by what means, was one of the expressly stated aims of the Ombudsman's inspection decision.

107 However, the Ombudsman was satisfied in that respect with the mere disclosure by the Parliament of what was known as a 'pooling' document, dated 14 May 2007, which indicated that, on that date, only one candidate remained on the list of suitable candidates. The Ombudsman thus inferred from that document that Ms Staelen was the only candidate whose name was still on that list, and that the other institutions, bodies, offices and agencies of the European Union had, in consequence, and in view of the fact that that document could be consulted, been in a position to be aware of that information, at the very least from 14 May 2007 onwards.

108 Even if the Ombudsman could reasonably have inferred from the document in question that the other institutions, bodies, offices and agencies of the European Union were aware of Ms Staelen's entry on the list of suitable candidates, at the very least from the date of that document, 14 May 2007, the fact remains that, as the Ombudsman admitted in the defence, that did not mean that it was possible to determine when and how that entry, supposedly made as early as 17 May 2005, was communicated by the Parliament to those institutions, bodies, offices and agencies.

109 It follows from this that, by concluding, in point 2.5 of the decision of 22 October 2007, that Ms Staelen's entry on the list of suitable candidates had indeed been communicated by the Parliament to the other EU institutions, referring in that respect notably to the result of an inspection which was manifestly flawed in that respect, the Ombudsman, through a lack of care and caution, made an inexcusable error of assessment and thereby gravely and manifestly disregarded the limits on the Ombudsman's discretion in the conduct of an inquiry.

110 Next, as regards the breach of the Ombudsman's duty to act diligently in relation to the fact that the Ombudsman was essentially unable to substantiate the finding in point 2.4 of the decision of 22 October 2007 other than by means of a supposition based on documents the nature and content of which the Ombudsman was unable to clarify, this, too, must be regarded as a sufficiently serious breach.

111 First, the initial inquiry and the inspection conducted by the Ombudsman related, in particular, to the question whether the entry of Ms Staelen's name on the list of suitable candidates had been made available to all directorates-general of the Parliament. Second, in point 2.4 of the decision of 22 October 2007, the Ombudsman confirmed in that respect that, in the light of the inspection of the Parliament's file, Ms Staelen's candidacy had indeed been made available to those directorates-general.

112 Having thus made such an assertion, in relation to an aspect that was relevant to the identification of a possible case of maladministration and to which the initial inquiry had specifically related, in the decision of 22 October 2007 closing that inquiry, yet having failed in that decision to refer more specifically to the documents capable of substantiating that assertion, or to substantiate that assertion

with anything other than mere supposition, expressed in written submissions to the General Court in the following terms: 'all [of this suggested] therefore that [its] representatives … had … 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]', the Ombudsman, through a lack of care and caution, made inexcusable errors and gravely and manifestly disregarded the limits on the Ombudsman's discretion in the conduct of an inquiry.

113 Lastly, the Court must turn to the breach of the duty to act diligently arising from the fact that the Ombudsman concluded, in the decision of 31 March 2011 closing the own-initiative inquiry, that there was no maladministration on the part of the Parliament with respect to the periods of time for which Ms Staelen and the other successful candidates in Open Competition EUR/A/151/98 were, respectively, included on the list of suitable candidates, the Ombudsman having been content as regards that aspect of the inquiry with an explanation given by the Parliament, yet having failed to ensure that the facts on which that explanation was based were proved.

114 In that respect, the Court has already held that, where an administration is called upon to conduct an inquiry, it is for that administration to conduct it with the greatest possible diligence in order to dispel the doubts which exist and to clarify the situation (see, to that effect, judgment of 11 November 1986, *Irish Grain Board*, 254/85, EU:C:1986:422, paragraph 16).

115 In the present case, it is evident from the file submitted to the Court that the Ombudsman found, in the decision of 31 March 2011, that the difference claimed by Ms Staelen between the period of the validity of her own inclusion on the list of suitable candidates and that of the other successful candidates did not amount to maladministration attributable to the Parliament, the Ombudsman having judged the Parliament's explanation in that regard to be convincing, namely that the other successful candidates had been recruited in the two years following publication of that list, while Ms Staelen's name had been included on the list for a little over two years.

116 It is also undisputed in the light of that file that the own-initiative inquiry and the inspection carried out in this case by the Ombudsman, which sought to establish whether the Parliament's conduct amounted to maladministration, related, inter alia, precisely to the question whether Ms Staelen had been included on the list of suitable candidates for a shorter period of time than the other successful candidates.

117 In those circumstances, the Ombudsman could not, without making an inexcusable error and thereby gravely and manifestly disregarding the limits on the Ombudsman's discretion in the conduct of the inquiry, conclude, in the decision of 31 March 2011 closing that inquiry, that that had not been the case and that there had therefore been no discrimination against Ms Staelen, relying in that respect exclusively on nothing more than an explanation from the institution concerned, without making any attempt, using the means of investigation available under Article 3(2) of Decision 94/262, to obtain more detailed information to check that the exculpatory matters invoked by the Parliament and underpinning that explanation could be established.

118 As regards, in the second place, Ms Staelen's claim regarding an infringement of her right to have her requests dealt with within a reasonable period of time, it must admittedly be noted that the periods of time — five and eight months, respectively — taken by the Ombudsman to reply, on 1 July 2008, to two letters sent by Ms Staelen, the first dated 19 October 2007, and the second dated 24 January 2008, may, on the face of it, seem particularly long.

119 However, and notwithstanding the fact that it is common ground that the Ombudsman should have replied more promptly to the two letters mentioned above, it cannot be held in this instance that, in replying so belatedly to those letters, the Ombudsman was guilty in this instance of a 'sufficiently serious breach' of a rule of EU law protecting individuals, within the meaning of the case-law of the Court of Justice referred to in paragraphs 31 and 32 of the present judgment.

120 It must be noted that the letter from Ms Staelen of 19 October 2007 sought to inform the Ombudsman of a letter from the Parliament dated 15 October 2007, dealing with the expiry of the list of suitable candidates on 31 August 2007. As to the letter of 24 January 2008, its purpose was to ask the Ombudsman whether, in view of the information contained in the letter of 19 October 2007, the Ombudsman was intending to consider the possibility of reopening the initial inquiry which had, in the meantime, been closed by the decision of 22 October 2007.

121 As regards the letter of 19 October 2007, the complaint to the Ombudsman concerns the fact, not that the Ombudsman failed to communicate to Ms Staelen the decision of 22 October 2007 closing the initial inquiry, having failed to take into account, as appropriate, the information contained in that letter, but simply that the Ombudsman took too long to reply to that letter. The Ombudsman stated, moreover, in the defence submitted to the General Court, that that letter was only received on 22 October 2007, when the decision to close the initial inquiry had already been taken.

122 It follows notably from the foregoing that neither that complaint nor the complaint relating to the Ombudsman's delay in subsequently replying to the letter of 24 January 2008 concerns, in the present case, the way in which the Ombudsman conducted or concluded the initial and own-initiative inquiries.

123 In view, in particular, of the fact that the Ombudsman had, by the decision of 22 October 2007, just closed an inquiry which had lasted for almost a year, it cannot be concluded that, merely because the Ombudsman failed initially to reply to the letter thus sent *in extremis* by Ms Staelen on 19 October 2007, before receiving, on 24 January 2008, her request concerning the possible reopening of the inquiry on the basis of the information contained in that letter of 19 October 2007, the Ombudsman gravely and manifestly exceeded the limits on the Ombudsman's discretion, referred to in paragraph 33 of the present judgment, as regards the merits of complaints and the way in which they are to be dealt with, or that, in that context, the Ombudsman infringed a right of Ms Staelen's to have her requests considered within a reasonable period of time.

124 Nor, moreover, can it be concluded, against the same background, that, having been invited to consider the possibility of reopening the inquiry which had just been closed, the Ombudsman then gravely and manifestly exceeded those limits, or infringed a right of Ms Staelen's to have her requests considered within a reasonable period of time, by failing to respond to that invitation for five months after its receipt.

125 Accordingly, the mere fact that the Ombudsman replied somewhat belatedly to the two letters from Ms Staelen mentioned above cannot give rise to non-contractual liability for the European Union.

126 It follows from all of the foregoing that, in conducting the initial and own-initiative inquiries, the Ombudsman committed three 'sufficiently serious breaches' of the duty to act diligently within the meaning of the case-law referred to in paragraphs 31 and 32 of the present judgment, as well as the breach correctly found by the General Court — as is apparent from this Court's examination of the second part of the first ground of appeal — in relation to the Ombudsman's distortion of the content of the Parliament's opinion of 20 March 2007, which constitutes a set of sufficiently serious breaches capable of rendering the European Union liable.

127 In those circumstances, it is necessary to go on to consider whether those breaches have caused Ms Staelen actual and certain non-material damage, within the meaning of the case-law referred to in paragraph 91 of the present judgment, although the Court must also be satisfied that that damage is the direct consequence of those breaches (see, to that effect, in particular, judgment of 28 June 2007, *Internationaler Hilfsfonds* v *Commission*, C-331/05 P, EU:C:2007:390, paragraph 23 and the case-law cited).

128 Since the Court has, in paragraph 95 of the present judgment, upheld the first part of the fourth ground of appeal, it must first of all be stated, for the reasons set out in paragraphs 92 to 94 of the present judgment, that Ms Staelen is not entitled to claim non-material damage capable of being compensated in connection with any loss of confidence on her part in the office of the Ombudsman as a result of such breaches.

129 That said, Ms Staelen also claimed to have suffered non-material damage in relation, in essence, as her written submissions to the General Court make clear, to the feeling of 'psychological harm' which she claims to have experienced as a result of the way in which her complaint to the Ombudsman was dealt with.

130 Neither the apology made by the Ombudsman nor the belated correction of the error relating to the distortion of the content of the Parliament's opinion, nor, finally, the own-initiative inquiry have, in this instance, compensated for the non-material damage thus caused.

131 In those circumstances, it must be held that the non-material damage sustained by Ms Staelen will be adequately compensated by the payment to her of EUR 7 000 in damages.

Costs

132 Article 184(2) of the Rules of Procedure of the Court of Justice provides that, where the appeal is unfounded or where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to the costs. Under Article 138(1) of those rules, which apply to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Article 138(3) of those rules provides that, where each party succeeds on some and fails on other heads, the parties are to bear their own costs, but that if it appears justified in the circumstances of the case, the Court may order that one party, in addition to bearing its own costs, is to pay a proportion of the costs of the other party.

133 In the present case, although the Ombudsman's appeal has been upheld and the judgment under appeal has consequently been set aside in part, the Court, giving final judgment on Ms Staelen's action, has, in part, upheld it. Furthermore, the Ombudsman has applied for a fair and equitable order to be made as to costs.

134 Consequently, it must be held, in the light of the circumstances of the case, that the Ombudsman is to bear her own costs and to pay the costs incurred by Ms Staelen in relation both to the proceedings at first instance and to the present appeal.

135 Furthermore, since the costs relating to the cross-appeal brought by Ms Staelen in the present proceedings were, as provided for by Article 137 of the Rules of Procedure of the Court of Justice, applicable to the procedure on appeal by virtue of Article 184(1) of those rules, reserved in the order of 29 June 2016, *Ombudsman* v *Staelen* (C-337/15 P, not published, EU:C:2016:670), the Court must, in accordance with those provisions, rule on those costs in the present judgment closing the proceedings.

136 Since Ms Staelen has been unsuccessful in the cross-appeal and the Ombudsman has applied for costs, Ms Staelen must, in accordance with Article 138(1) of the Rules of Procedure of the Court of Justice, be ordered to pay the Ombudsman's costs in relation to the cross-appeal and to bear her own.

On those grounds, the Court (Grand Chamber) hereby:

1. **Declares the application made by Ms Claire Staelen in her response for the European Ombudsman to be ordered to pay her compensation in the amount of EUR 50 000 inadmissible;**

2. **Sets aside points 1, 3 and 4 of the operative part of the judgment of the General Court of the European Union of 29 April 2015,** *Staelen* **v** *Ombudsman* **(T-217/11, EU:T:2015:238);**

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

4. **Orders Ms Claire Staelen to bear her own costs and to pay those incurred by the European Ombudsman in relation to the cross-appeal, dismissed by order of 29 June 2016,** *Ombudsman* **v** *Staelen* **(C-337/15 P, not published, EU:C:2016:670);**

5. **Orders the European Ombudsman to bear her own costs and to pay those incurred by Ms Claire Staelen in relation both to the proceedings at first instance and to the main appeal.**

[Signatures]