EUROPEAN STABILITY MECHANISM **LUXEMBOURG**

ADMINISTRATIVE TRIBUNAL

JUDGMENT

of 30 June 2026

In Case ESMAT 3/2025,

Thomas Ritter, Appellant,

self-represented

v

European Stability Mechanism, Respondent,

represented by João Sousa Gião, General Counsel of the European Stability Mechanism

Concerning the appeal lodged by the Appellant on 9 September 2025 challenging his evaluation for 2024 under the Personal Development System ("PDS"), and following the written procedure

The Administrative Tribunal of the European Stability Mechanism

Composed, in accordance with Article 8(1) of the Statute, by decision of 11 September 2025, of Virginia MELGAR, then President of the Tribunal, Kieran BRADLEY, President of the Tribunal, and Harissios TAGARAS, Judge,

Renders the present **JUDGMENT**

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I. FACTS AND PROCEDURE

A. *Factual Background*

1. Some facts pertaining to the Appellant's employment relationship with the European Stability Mechanism ("ESM") may be found in the Tribunal's Judgment in Case ESMAT 1/2025, also *Thomas Ritter v European Stability Mechanism*, of 30 January 2026, to which further reference will be made below.

2. The Appellant has been a member of the unit for Asset Liability Management and Financial Structuring (hereinafter, for convenience, "ALM") at the ESM since 1 January 2013. During the relevant period, the Appellant was a Principal Officer.

3. Following a request for "support and mediation", the Appellant was temporarily reassigned to the department of the Chief Financial Officer with effect from 21 March 2022. On the basis of an opinion of the Advisory Committee, the Managing Director set aside this decision on 22 June 2022.

4. In the meantime, on 1 May 2022 the Appellant had started a period of parental leave; this was followed by periods of sick leave which lasted until 30 April 2024. The Appellant was thus absent from the ESM for a period of just over two years.

5. On 5 May 2023, the Appellant had submitted what he describes as a "settlement proposal" to the ESM. It appears from the case file that the Appellant was proposing the voluntary termination of his employment relationship in return for monetary compensation.

6. By letter of 3 August 2023, Christian Bitsch, a lawyer with an address in Frankfurt, informed the ESM that he would henceforth be representing the Appellant as his legal counsel. He informed the ESM that the Appellant intended to "resume work after his fitness for work has been restored" which he assumed would be "from the beginning of October." He also requested the ESM to confirm the Appellant would be entitled to work from his home office, and "propose[d] that he first be employed within the framework of reintegration according to the so-called Hamburg model"; to that end, he further proposed that the ESM "submit a concrete reintegration plan … on the basis of a medical report".

7. By email of 17 August 2023, the Head of Human Resources and Organisation at the ESM ("Head of HR") welcomed the Appellant's intention to return to work at the beginning of October. She informed Dr Bitsch that "national law, and therefore the 'Hamburger Modell' to which [he] refer[s] does not apply to the ESM" but invited him to provide "a concrete reintegration proposal" for the Appellant.

8. By letter of 23 August 2023, Dr Bitsch sent the Head of HR documentation regarding the Hamburg Model and requested that the Appellant be employed from 2 October 2023 on the basis of a scheme providing for the progressive increase in the duration of his working day, starting at 2 hours per day in the first month up to full-time from the fourth month. The letter made a certain number of other requests, including one based on the "European Data Protection Regulation".

9. By email of 30 August 2023, the Head of HR informed Dr Bitsch that he would receive a reply to his letter of 23 August early the following month. She informed him that "the ESM, as an intergovernmental organization, is not subject to the European Data Protection Regulation" and suggested the Appellant contact the ESM Data Protection Officer.

10. Dr Bitsch's letter of 31 August 2023 merits being cited *in extenso*:

> "Unfortunately, I have to note that you have once again failed to respond to our inquiries within the deadlines we set and that you continue to refuse to provide our client with binding information regarding his future employment …
>
> … we are very disappointed that you … are disregarding all of [the Appellant's] employee and human rights.
>
> Against this background, we increasingly suspect that the ESM is in fact endeavouring to end the employment relationship with [the Appellant] and to wear him down. For his part, our client is also tired of the disputes that are ruining his health. He is therefore in principle prepared to comply with your wish for separation, provided that this is accompanied by appropriate economic compensation …
>
> I have … advised my client to file a supervisory complaint against you and the ESM with the German Federal Government … and at the same time to inform the Petitions

Committee of the Deutscher Bundestag about how the ESM is dealing with a German citizen who has so far fulfilled his duties flawlessly and far beyond the call of duty …

Furthermore, I have recommended that the matter be brought before a German court and that our client's claims be enforced there … I would like to point out at this point that hearings before the German courts are always public and that we will of course have no recourse if representatives of the press are present at the hearing and take note of the entire legal dispute … and then publish it if necessary."

11. The Head of HR replied to Dr Bitsch's letters of 23 and 31 August 2023 by email of 7 September 2023. She informed him that therapeutic part-time could be arranged for the Appellant in accordance with the regime applicable at the ESM, which requires a minimum working time of 40%. Some remote working might be possible "to be discussed in the context of him progressively resuming duties as his health condition improves."

12. It appears that the Appellant's legal counsel informed the HR department that the Appellant would be returning to work on 8 January 2024. On 22 December 2023, the "HR-Rewards and Employment" service of the ESM contacted the Appellant to arrange for him to be examined by the ESM Medical Advisor. Attached to the email was a copy of Article 7 of the "Occupational Health Employment Framework – Recovery and reintegration". This reads in part:

"[i]n case of prolonged or repeated work incapacity, members of staff must cooperate with the ESM in any measures aimed to facilitate their workplace reintegration, in particular regarding the review by the ESM Medical Advisor of their fitness for duty."

13. It appears from the case file that the Appellant and the Head of HR had a telephone conversation on 22 April 2024. By email of 25 April 2024, the Head of HR outlined the main points discussed, including the therapeutic part-time regime and the tasks the Appellant would be expected to perform on returning to work. The email also refers to "the conditions that the ESM was ready to accept [in] early December for an agreed termination". The Appellant has not challenged either the fact that such a meeting was held or that his voluntary termination was discussed on that occasion.

14. The Appellant's email of 29 April 2024 to the Head of HR reads in substance as follows:

> "As mentioned before, the proposed (sic) you describe is the equivalent compensation to a unilateral termination from the ESM side. This is not a reasonable proposal give (sic) the damages inflicted.
>
> I would like to inform you that the foreseen end date of my sickness leave is 30 April 2024 and I am resuming my duty as of 1 May 2024.
>
> I am looking forward to receiving the integration plan".

15. The Appellant sent the Head of HR a further email on 30 April 2024, in order to "address some points regarding [his] return to work on May 2nd":

> "First, I want to affirm my readiness to resume my duties at full capacity. There's no need for a part-time integration from my side. I'm eager to fully reintegrate into my role without delay.
>
> Second, concerning your suggestion to contact [the Head of ALM] for discussions about my first day back and tasks, I must clarify that I've never reported to the current head of ALM. Therefore, I believe it's more fitting for the Head of HR to assist in coordinating the smooth reintegration process, given that I'm returning to my original role and workplace".

16. The Appellant also indicated in that email that he did not see a need for mediation.

17. Later that same day, the Head of HR thanked the Appellant for his email but expressed the view that he had informed them of the date of his return at "very short notice, which d[id] not allow the ESM to prepare for a smooth reintegration".

Whistleblowing report and Complaint regarding a settlement offer

18. On 10 May 2022, the Appellant submitted a whistleblowing report, WB2022/1, "regarding institutional irregularities". The Appellant was informed on 12 May 2023 that the Managing Director had rejected the report. According to the Appellant, "on 24 January 2024, the Appellant requested an advisory opinion on the flawed investigations of the WB 2022/1 and respective [Managing Director's] decision".

19. By a Procedural Order of 27 February 2024, the Chair of the Advisory Committee found that the Appellant's request of 24 January 2024 for an advisory opinion did not in fact concern his

whistleblowing report of 2022. Instead, the Appellant sought to challenge the ESM's response to the proposed terms for his voluntary termination; the Committee Chair ruled the request manifestly inadmissible. The Appellant did not challenge the ensuing decision of the Managing Director of 11 April 2024 rejecting his request.

The Appellant's return to work and End Year Review

20. On 2 May 2024, the Appellant returned to work at the ESM.

21. On 6 February 2025, the Appellant's line manager provided him with a first version of her "PDS Year End Review Notes 2024" (hereinafter "PDS Review Notes"), in preparation for the interview due to take place the following day. Also on 6 February 2025, the Appellant submitted his self-assessment for the reference period (May to December 2024, inclusive).

22. The Appellant's line manager recommended that the Appellant be attributed the rating "In progress".

23. On 25 February 2025, following a disciplinary procedure against the Appellant, the Managing Director issued him with a written warning.

24. The Appellant provided comments on the proposed rating in "LIGO" on 9 March 2025.

25. By letter of 14 March 2025, the Head of HR informed the Appellant that the Managing Director had confirmed his PDS category for 2024 as "In progress" (the "first Rating Decision")

26. On 25 April 2025, the Appellant requested an Advisory Opinion challenging the first Rating Decision.

27. On 22 July 2025, the Advisory Committee advised "the Managing Director [to] dismiss in entirety (sic) the Complainant's claims against the [first Rating] Decision".

28. On 29 July 2025, the Appellant submitted comments on the Advisory Opinion to the Managing Director.

29. The Managing Director responded by letter of 2 September 2025, confirming the first Rating Decision and rejecting the Appellant's complaint in its entirety (the "Contested Decision").

B. *Procedure before the Tribunal*

30. The Appellant lodged the present Appeal on 9 September 2025.

31. The ESM's Reply, the Appellant's Rebuttal and the ESM's Final Response were lodged on 24 November 2025, 22 December 2025 and 30 January 2026 respectively.

32. By letters of 22 December 2025, the Tribunal had informed the parties that it was minded to hold a hearing in this case on 3 February 2026, and that it would confirm this date early in the New Year.

33. By email of 8 January 2026, the ESM requested that the hearing be scheduled at a later date, in particular because it foresaw "difficulties in finding an … adequate room with [a] recording system on such short notice", given the unavailability of the EFTA courtroom where previous Tribunal hearings had been held.

34. On 30 January 2026, the Tribunal handed down its judgment in Case ESMAT 1/2025, *Thomas Ritter v European Stability Mechanism,* by which it annulled the Managing Director's decision imposing a written warning on the Appellant, on the ground that the ESM had failed properly to respect the Appellant's right to be heard.

35. By letter of 3 February 2026, in accordance with Rule 16(1)(a), the Tribunal put to the parties a number of questions for written reply. The parties replied within the time limit set.

36. By letter of 9 February 2026, the Tribunal invited the parties to a hearing on 10 March 2026. By email of 11 February 2026, the Appellant confirmed that he would attend in person but requested that he be allowed to attend the hearing remotely. The Tribunal rejected this request by letter of 17 February 2026.

37. On 12 February 2026, the parties provided their Responses to the Tribunal's questions of 3 February 2026.

38. By letter of 17 February 2026, the Tribunal informed the Appellant that the oral hearing in this case would take place on 10 March 2026 and that, as he had provided no reasons to justify his request that he be permitted to attend remotely, this request was rejected. The Tribunal further indicated that it did not consider remote attendance to be appropriate in the present case, as it would deprive the Judges of the immediacy of contact with both parties or their representatives, which is considered the optimum format for a judicial hearing.

39. By email of 20 February 2026, the Appellant confirmed that he would attend the oral hearing in person on 10 March 2026.

40. By email of 2 March 2026, the Appellant requested that the hearing be "adjourned to a later date" as he would be undergoing a surgical procedure on 4 March 2026.

41. By letter of 5 March 2026, the Tribunal informed the parties that the scheduled hearing would "not take place due to the Appellant's unavailability for medical reasons".

42. By letter of 23 March 2026, the Tribunal put a number of supplementary questions to the parties, who each provided their responses within the time limit set.

43. By letter of 10 April 2026, the Tribunal informed the parties that, following their Responses of 30 March 2026 to the Tribunal's supplementary questions, it considered that, in accordance with Rule 10(1) of the Rules of Procedure, the written submissions provided sufficient information to adjudicate the appeal, and invited them to indicate whether they considered an oral hearing necessary and to state the reasons justifying their position. The parties responded within the time limit set (see Section II.D below).

II. LEGAL BACKGROUND

A. *Forms of order sought by the parties*

44. The Appellant requests the following by way of relief:

- "Annulment of the contested decision"
- "Order for a fair reassessment"

- "Restoration of career and financial entitlements"
- "Compensation for moral damages"
- "Reimbursement of legal costs"
- "Joinder with Case ESMAT 1/2025"

45. The ESM requests the Tribunal to:

- "decide that the request for the joinder of Cases ESMAT 1/2025 and ESMAT 3/2025 is inadmissible or should be rejected"
- "decide that the claim of institutional harassment submitted by the Appellant is inadmissible"
- "decide that the Appeal is unfounded"
- "consequently, reject the Appeal and all the Appellant's pleas, requests and conclusions in terms of material damage, moral damage and legal costs.

B. *Appellant's Request for joinder of Case ESMAT 3/2025 with Case ESMAT 1/2025*

46. The Appellant's request for the joinder of Cases ESMAT 3/2025 with Case ESMAT 1/2025 is moot, as the Tribunal handed down its judgment in Case ESMAT 1/2025 on 30 January 2026.

C. *ESM's Request that supporting evidence not be provided to the Appellant*

(i) The ESM's request of 12 February 2026 and subsequent exchanges

47. In its Response of 12 February 2026, the ESM indicated that "[t]he supporting four attachments to this document are confidential documents which should not be transmitted to the Appellant."

48. By letter to the ESM of 17 February 2026, the Tribunal noted that it was "unclear on what legal provision this indication was based, or for what reasons [the ESM] considers that the Tribunal should not provide these attachments to the Appellant" and invited the ESM to clarify these matters.

49. By email of 19 February 2026, the ESM replied as follows:

> "These four attachments are confidential documents or confidential communications between the Managing Director and his legal advisers, i.e. the General Counsel and the in-house legal counsel attached to or advising the Human Resources and Organisation division, or other expert advisers (HR), or they are related to such documents or communications to the Managing Director (for example, following the exercise by the staff of their right to be heard in the context of the PDS in Attachment 2). Those documents and communications should be considered as confidential and privileged information, which was their status at the material time, hence not subject to disclosure then and now.
>
> Additionally, those documents or communications were only shared with the Tribunal to respond to its 3 February 2026 request that the ESM "provide the Tribunal with concrete evidence of how precisely the Managing Director applied this guarantee in the circumstances of the present case".
>
> Having said this, the ESM would have no objection to the communication of Attachment 1 to the Appellant, which is a confidential document containing information not related to the Appellant."

50. The ESM also indicated that the documents were only provided in response to the Tribunal's request for "concrete evidence of how precisely the Managing Director applied th[e] guarantee [against conflict of interest] in the present case".

51. In response to a further request for clarification from the Tribunal, by email of 24 February 2026 the ESM noted that it had not relied on Rule 16(3) of the Rules of Procedure in its Responses of 12 February 2026, but stated that "in accordance with Rule 16(4)" it was under no obligation to disclose Attachments 2, 3 or 4. The ESM further expressed the view that "the 'no obligation to disclose' legal advice provision must include the information about the existence of such legal advice, otherwise the provision would become partially empty".

52. By letter of 25 February 2026, the Tribunal held that "neither [Rule 16(4)] nor any other provision of the Rules of Procedure invoked by the ESM allows it to submit documents to the Tribunal while at the same time determining unilaterally that these may not be disclosed to the other party". The four attachments were declared to be inadmissible.

53. By email of 2 March 2026, the ESM informed the Tribunal that it considered "that the four Attachments are necessary to support its response to the question of the Tribunal of 3 February 2026 on concrete evidence supporting the ESM's submissions" and that the finding that these were inadmissible "may negatively affect proper consideration by the Tribunal of the ESM argumentation in the case at bar." The ESM requested the Tribunal to reverse its finding of inadmissibility and to "communicate them in full to the Appellant". The Tribunal acceded to this request.

(ii) Interpretation of Rule 16 of the Rules of Procedure

54. The starting point for any consideration of the possibility for the ESM to prevent the disclosure to the Appellant of secret or confidential information is the necessity to take account of the principles of *audi alteram partem* and the equality of arms between parties to litigation. The former precludes a Tribunal deciding a case on the basis of substantive considerations on which one or other of the parties has not had the possibility to express its views; it is the reflection in the law governing court proceedings of the right to be heard in international administrative decision-making. The latter seeks to ensure that neither party benefits from an unfair advantage in the conduct of their case. These principles are reflected in different provisions of the Rules of Procedure, for example, the application of the same rules on the presentation of their written pleadings to the Appellant and the ESM, or the rules ensuring that the rebuttal is notified to the ESM and the rejoinder to the Appellant. They are also reflected in Rule 16 of the Tribunal's Rules of Procedure.

55. In recognition of the ESM's character as an international financial institution whose staff may have access to sensitive financial information, it is unexceptionable that the rules governing the work of the Tribunal should permit the ESM under certain circumstances not to disclose certain secret or confidential information in judicial proceedings. Rule 16(2), (3) and (4) of the Tribunal's Rules of Procedure define several different regimes whereby the ESM can protect the confidential character of certain information. Given the differences in the impact of each regime and the conditions for their application, however, it does not fall to the Tribunal to identify from which regime the ESM wishes to benefit. Instead, it was incumbent on the ESM in its Response of 12 February 2026 clearly to indicate the legal basis for its unilateral assertion that the four attachments to its Responses were not to be disclosed to the Appellant.

56. If information on which it relies is “secret or confidential”, the first paragraph of Rule 16(2) allows the ESM to “delete such information from the document produced or produce a summary or redacted version of that document”. Deleting the information means that the Tribunal will not be able to rely on that information to the detriment of the Appellant, and therefore respects the guiding principles identified above. However, this course of action is subject to two conditions: the presentation of “a written explanation of the reasons justifying the non-disclosure in whole or in part of the document” and “the agreement of the Tribunal”. Even if the substantive conditions for the application of this provision had been fulfilled in the present case, the ESM failed to present the first and to request the second.

57. Rule 16(3) governs information or documents whose production “might harm the operations of the ESM”. There is no suggestion that any of the four attachments, which relate to the performance assessment of a single, middle-ranking, member of staff for eight months of 2024, could possibly be covered by this provision; the ESM explicitly confirmed in its email of 24 February 2026 that it was not relying on Rule 16(3).

58. In answer to a query from the Tribunal, the ESM stated that it had intended to rely on Article 16(4). This provides that:

> “[t]he parties shall be under no obligation to disclose any legal advice provided by or through their internal or external legal advisors or counsel.”

59. The ESM has also argued that Rule 16(4) protects from disclosure “information about legal advice” as well as the legal advice itself.

60. The regime of Rule 16(4) is quite absolute where it applies, in that the matter within its scope is simply not disclosed to the Tribunal; as with Rule 16(2), it thus respects the principles of *audi alteram partem* and the equality of arms, in that both parties can benefit from it, but neither party gains an uncovenanted advantage through its application in a given case. That said, where one party does decide to disclose such matter, as Rule 16(4) clearly provides it may and as the ESM has done in the present case, the matter will necessarily be disclosed to the other party. There is no provision of the Rules which would allow the ESM to decide unilaterally that matter submitted to the Tribunal should not be disclosed to the Appellant.

61. As regards the material scope of the Rule 16(4) exception, the first requirement for the application of this provision is that the matter whose disclosure is to be protected is in fact "legal advice". Any matter which is not "legal advice", or which is not "provided by or through [the parties'] internal or external legal advisors or counsel" is therefore not protected from disclosure by this provision.

62. The most pertinent definition of the term "advice" in the present context is "an opinion given or offered as to action" (*Shorter Oxford English Dictionary*, Oxford University Press, 2002, Vol. 1, page 33). Prima facie, this does not cover "information about legal advice". Moreover, in line with the general principles of international administrative law, any exception to rules guaranteeing fundamental principles, such as Rule 16(4), is to be narrowly construed, and no such construction could cover information about legal advice. The ESM's extensive interpretation of this provision may also give rise to inconvenience in practice; the addressee of an unfavourable decision would in principle be more likely to accept it if they were informed that this was based on legal advice, rather than thinking it might have been taken on the whim of the administrative authority responsible.

63. While waiving its right to rely on Rule 16(4) in the present case with respect to the four attachments, the ESM nonetheless insists that they are all "confidential documents" which, in its view, benefit in principle from protection from disclosure. In order to avoid possible future misunderstandings as regards the application of this important rule which, as noted above, can benefit both parties, it is appropriate for the Tribunal to provide some basic guidance as to its interpretation by examining each of the attachments in turn, albeit without disclosing the precise content of each attachment.

64. The first attachment is a copy of the contested decision without its two annexes. Prior to receiving the ESM's Responses of 12 February 2026, the Tribunal was unaware of the very existence of this particular document; this is also apparently true of the Appellant, who instead provided the Tribunal in an annex to his Appeal with an email he had received from the Head of HR communicating to him the performance evaluation on which the Managing Director had decided, though not the formal decision now provided by the ESM. As the ESM has belatedly acknowledged that this document should be provided to the Appellant, the Tribunal will not comment in the present proceedings on the apparent practice of the ESM of

not providing staff members with a copy of administrative decisions which may adversely affect their statutory situation.

65. In the absence of any indication to the contrary, the document in question is a final decision following a statutory procedure. It is not “an opinion … as to action” but the manifestation in concrete form of the action itself, and it cannot therefore rationally be considered to be “advice”. Manifestly, it would not benefit from the protection from disclosure under Rule 16(4).

66. The second attachment, which is entitled “HR Report to the Managing Director” and dated 13 March 2025, comprises five sections. Of these, the first section is merely a factual “Introduction” to and description of the remainder of the document. The Appellant was the author of one section, Appendix 2, entitled “Full text of staff member’s comments on proposed rating”, and the effective author of a second section, section 1.2, entitled “Summary of staff member’s comments on proposed rating”. The Appellant had already been made aware, more than a month before its finalisation, of the content of Appendix 1, being the “Line manager’s assessment on the 2024 PDS exercise” in relation to the Appellant. None of these fur sections can be considered to constitute “advice”, still less “legal advice provided by or through the [ESM’s] internal or external legal advisors or counsel”.

67. Section 1.2 of the document, entitled “HR Recommendation” and concerning the proposed PDS rating might conceivably contain advice. It is not necessary for the Tribunal to examine the content of that section nor to take a position in the present proceedings as to whether it could benefit from protection against disclosure of legal advice under Rule 16(4). The larger point here is that four out of five sections of the attachment clearly do not come within the scope of application of Rule 16(4), and a party may not rely on this provision to prevent the disclosure to the Tribunal, and the other party, of the entirety of a document of which only part constitutes “legal advice provided by or through their internal or external legal advisors or counsel”.

68. The third attachment comprises three emails, without the documents which were, presumably, attached to them, that is, a briefing note concerning an Advisory Committee procedure and a draft decision for the attention of the Managing Director. While it is true that they were exchanged between the Managing Director and his chief legal advisor, the General

Counsel, the emails themselves have no substantive content which could justify their being considered "legal advice" within the meaning of Rule 16(4). The ESM's earlier contention that the third attachment should not be disclosed to the Appellant would not have been founded in law.

69. The fourth attachment is even more devoid of substantive content. It comprises an invitation to an online meeting which was sent by a third staff member to the Managing Director and the General Counsel. The entire substantive content of the email is an indication that the addresses should join the meeting, with a meeting i.d. and a passcode being provided to this end. This is clearly not "legal advice" within the meaning of Rule 16(4) either.

70. The fact that in providing the four attachments the ESM was responding to a request from the Tribunal has no effect on the issue of whether they should be disclosed or not to the Appellant. The Tribunal did not ask for such information for its own benefit but in order to assist it in deciding the Appeal in full knowledge of the facts and in full respect of the principles governing the exercise of the judicial function.

D. *Decision to dispense with an oral hearing*

71. In response to a question from the Tribunal, the Appellant indicated that he did not consider a hearing to be necessary. The ESM, on the other hand, requested that an oral hearing be held in order "to provide both Parties with the opportunity to express their final views in relation to their respective replies to the Tribunal's questions dated 23 March 2026."

72. Rule 10(1) of the Rules of Procedure states that "the procedure before the Tribunal shall consist of a written and an oral part", while Article 8(3) of the Statute stipulates that the "oral part shall comprise a hearing, which may be held in different sessions". It has been the practice of the Tribunal in the past to hold oral hearings in the cases before it.

73. Rule 10(1) also provides, however, that the Tribunal may determine that "the written submissions provide sufficient information to adjudicate the appeal" and decide not to hold a hearing, after consulting the parties. The subject matter of the consultation is whether or not a hearing should be held notwithstanding the sufficiency of the written submissions. The written procedure in the proceedings is already closed at this stage, and it is up to each of the

parties to ensure their written submissions are in principle sufficient for the Tribunal to adjudicate the appeal; the consultation under Rule 10(1) is not a device to allow them to supplement their written pleadings, but to demonstrate to the Tribunal why the holding of an oral hearing would be appropriate.

74. In the present case, both of the parties at different times requested the postponement of a planned oral hearing, which prompted the Tribunal to send them written questions in accordance with Rule 16(1)(a) on two occasions. As a result, the parties have each had no fewer than four opportunities to express themselves in writing: appeal/reply, rebuttal/rejoinder and in their responses to the Tribunal's written questions. It was only after receiving the last written submissions that the Tribunal took the view that it had "sufficient information to adjudicate the appeal".

75. In its email of 16 April 2026, the ESM took the view that a hearing would

- "be in the interest of good administration of justice";
- "provide both Parties with the opportunity to express their final views in relation to their respective replies to the Tribunal's questions dated 23 March 2026", and
- "give the Organisation the opportunity to bring to the Tribunal a number of clarifications regarding ESM's organisational structure and the PDS process following the Appellant's reply of 30 March 2026"

76. While the Tribunal obviously shares the ESM's concern for the good administration of justice, it does not consider it necessary or useful in the present case for the ESM to provide it with "final views" on the Appellant's responses or "clarifications" of its organisational structure or the PDS process, particularly as the ESM was given the opportunity to provide exactly such information in responding to the Tribunal's questions of 3 February 2026 and did in fact provide information which is not manifestly incomplete or irrelevant. Recourse to Rule 16(1) is, moreover, not intended to reopen the exchanges between the parties in the sense that they should necessarily be given the opportunity to respond to each other's responses to the Tribunal's queries.

77. On the contrary, given the organisation's consistent difficulty in providing hearing facilities for the Tribunal, there is reason to consider that the holding of an oral hearing at this stage could delay the conclusion of the present proceedings, possibly beyond the twelve months within

which the Statute indicates the Tribunal should conclude any case, to no obviously useful end. In this regard, the fact that the Tribunal had at an earlier point in time planned to hold a hearing is not relevant to its subsequent decision that the written submissions, as supplemented by the parties, provide sufficient information to adjudicate the appeal.

78. In these circumstances, the Tribunal decided not to hold an oral hearing in the present case.

III. MERITS

79. In his Appeal, the Appellant has grouped his pleas in law under the following eight headings:

"A. On the Procedural Irregularities";

"*B. On the Conflict of Interest and Lack of Impartiality";*

"C. On the Failure to Consider Relevant Evidence";

"D. On the Substantive Errors of Assessment";

"E. On the Exclusion of Professional Assessments";

"F. On the Procedural Defects in Evaluation";

"G. On the Fiction of Consideration of Objections";

"*H. On the Cumulative Effect".*

A. "<u>On the Procedural irregularities"</u>

80. The Appellant's pleas under this heading concern alleged flaws in his reintegration to the ESM in May 2024 which "directly impaired the Appellant's performance in 2024 and render the subsequent evaluation unlawful".

81. He argues that no reintegration plan was prepared in advance and rejects the ESM's reliance on the brevity of the "two days' notice" he provided of his return to work as a justification for this state of affairs: "[a]s early as 23 August 2023, the Appellant's counsel proposed integration under the Hamburg model", while on 7 September 2023 "HR admitted that

therapeutic part-time reintegration could be envisaged but again failed to propose a structured plan. Despite repeated follow-up, no reintegration plan was prepared in advance".

82. The Appellant also alleges that the coaching included in the reintegration plan was "terminated before it began in earnest"; in his view "[t]he premature termination of the team coaching deprived the Appellant of an essential reintegration measure". Moreover, the finding of the Advisory Committee that he had declined individual coaching "mischaracterizes the record"; instead, he "requested a structured, team-based reintegration in line with best practice. Prioritizing team coaching over a narrowly framed offer of individual coaching cannot be equated with non-cooperation".

83. The ESM rejects the Appellant's arguments on all points.

84. In the first place, the Tribunal notes that the Appellant has not demonstrated the existence of any causal link between the purported flaws in the reintegration process and his performance during the reference period. On the contrary, in the Appellant's email of 30 April 2024 to the Head of HR, which the Managing Director cites in the contested decision, reads in part:

> "I want to affirm my readiness to resume my duties at full capacity. There's no need for a part-time integration from my side. I'm ready to fully reintegrate into my role without delay … I've already met the occupational doctor, as required, who confirmed my fitness to resume work. Medically, I'm fully prepared to return on May 2nd".

85. This statement, whose relevance the Appellant has not contested, does not prove that no reintegration measures were necessary or useful. However, it does indicate that, in order to succeed under this head, he should have provided at least some evidence that the alleged deficiencies in the reintegration process in fact affected his performance and the resulting evaluation.

86. It appears from the case file that the Appellant's performance rating of "in progress" was to a very large extent based on his behaviour at the workplace during the reference period rather than any factors which might be attributed to the medical condition from which he was presumably recovering. Thus, for example, in her "PDS Review Notes", the Appellant's line manager noted that

- he “mirrored the work done by other team members, by sharing pictures of his version of charts and other output … This created confusion and negatively affected trust in the team”;
- “he proposed additional changes [to other colleagues] without aligning internally with the colleagues working on this topic in the team. This was below the expected level of interaction within the team and caused unnecessary confusion”;
- he failed to make a “proactive effort to build trust with the team members … his patronizing behaviour had a negative effect on the team environment … I repeatedly encouraged [him] to communicate openly, proactively and timely with me and the team, yet I did not see improvement in his attitude”;
- “he needs to … aim to address past and present issues openly, rather than accumulate negative emotions, which could hinder teamwork and building a trustful relationship”;
- “his attitude in communicating about his findings had a negative effect on the team environment”;
- “[i]t was challenging to communicate feedback to [the Appellant] … we had to spend time discussing even simple comments from my side, like referencing the specific governance document for parts in the note that included quotes from this document

87. A reintegration plan under Article 7 of the General Administrative Order of 12 September 2023 is not designed to shape the behaviour of the returning staff member, particularly one with more than a decade of experience in the organisation, here a Principal Officer returning to his previous position. Instead, the ESM may take “reasonable measures within the context of business needs [which] may include … therapeutic part-time work, flexible work arrangements, or other *medically necessary adjustments* to the member of staff’s work arrangements” (emphasis added).

88. As noted above, on the eve of his return to the ESM, the Appellant indicated that “[t]here’s no need for a part time integration from my side”, while the Head of HR had already confirmed, as early as 7 September 2023, that he would have the possibility of “some remote work”. The Appellant has not shown what “medically necessary adjustments” the ESM failed to take under Article 7 of the General Administrative Order on Occupational Health; indeed, more than nine months after his return to the ESM, his line manager noted that she was “not sure what specific reintegration needs [the Appellant] ha[d] in mind in his self-assessment” in the context of the contested PDS exercise.

89. The Appellant’s plea that the conditions of his reintegration affected his performance during the reference period is rejected as being unfounded in law.

90. For the sake of completeness, it is useful to examine a number of other arguments relied upon by the Appellant in this context.

91. The Appellant argues that the ESM’s assertion that he had provided “two days’ notice” demonstrates its bad faith and that the Managing Director’s reliance on that finding was “procedurally defective”. In his view, the Respondent ignored the indication from his then legal counsel on 3 August 2023 that he would return to work, possibly at the beginning of October 2023.

92. The Appellant’s statement that his then counsel “proposed reintegration under the Hamburg model” is a somewhat truncated and misleading version of events. In his first letter of 3 August 2023, the legal counsel requested the ESM “to confirm in advance that reintegration according to the Hamburg model is an option for you”. This the ESM refused to do on the grounds that it was under no obligation to adopt the Hamburg model. By his third letter, of 31 August 2023, the Appellant’s legal counsel made a number of accusations and threats against the Head of HR personally and the ESM. Moreover, by his own admission, from May to December 2023 the Appellant was actively engaged in negotiations for an agreed termination of his employment relationship with the ESM, and it is clear that discussions on a possible such termination were still ongoing at the end of April 2024. It was only by email on 29 April 2024 that the Appellant credibly indicated that he would be returning to work, having rejected the conditions for an agreed termination which the Head of HR set out in her email of 24 April 2024.

93. Neither the Appellant’s announced return to work on 2 October 2023 nor that on 8 January 2024 in fact materialized. The ESM has asserted, without being contradicted on this point by the Appellant, that, following his non-return to work on 8 January 2024, the Appellant did not give any further indication of his possible return to work prior to his email of 29 April 2024. In the absence of any reliable indication that the Appellant would in fact return to work, when his preferred option until that date appeared to be an agreed termination, the Appellant has not shown how the ESM was under any obligation to prepare a reintegration plan. In this regard, the Tribunal agrees with the conclusion of the Advisory Committee that prior to his

actual reintegration on 2 May 2024 the "advance preparation of a reintegration plan was not reasonably possible".

94. It also follows that, contrary to the Appellant's arguments, the notice period for his reintegration started at the earliest on 29 April 2024 and, given that the ESM was closed on 1 May 2024, was in fact no more than two working days. The delay in providing a reintegration plan was therefore entirely the Appellant's responsibility.

95. The Appellant has also relied on the Respondent's alleged failure to organise team coaching as part of his reintegration.

96. The ESM has stated that "[a]s foreseen in the reintegration plan, team coaching was organized with a professional coach from an external service provider" (hereinafter the "external coach"). It appears that a team session was, in fact, organised on the ESM Behavioural Framework and Code of Conduct.

97. Individual coaching was proposed to the Appellant on 26 September 2024, who at first accepted it and "expressed [his] appreciation for the opportunity", and indicated that he was "looking forward to it". The Appellant failed, however, to follow up on these proposals; though informing the Head of HR that "[f]or personal coaching needs, I will get in touch with you any time in the future I deem it necessary," he did not in fact ever get in touch with the Head of HR to arrange for such coaching.

98. In her email to the Appellant of 17 October 2024, after requesting him to "maintain a polite and respectful dialogue", the Head of HR recalled that "personal coaching was proposed as a follow-up to both the team coaching and your mid-year review … this coaching is not career development-focused but aims to support your alignment with the ESM standards, particularly around the updated Behavioral Framework and fostering collaborative engagement".

99. In his assessment of the collective coaching exercise of 23 October 2024, the external coach noted that other members of the ALM team interviewed individually reported that the Appellant's behaviour "made them uncomfortable and create[d] a feeling of distrust: [the Appellant was] taking notes of any error or mistake, taking photos of emails from his screen, reporting errors directly to management without consulting the team member, raised voices

… Several team members verbally stated that they cannot stay at ESM/ASL in this climate … From the team's perspective, [the Appellant] is lacking self-awareness and self-critique, shows limited empathy, expects actions/improvement from others, while generally polite he can quickly become angry if different positions are stated / doesn't see that those who suffered in the past, have problems today."

100. The external coach further reported verbatim the Appellant's sentiment that "[n]othing that happened to [the Appellant] was because of bad performance or bad behaviour. [He] didn't see where [he had] made any fault". The external coach proposed individual coaching sessions for the Appellant "to focus on the following aspects of emotional regulation:

See shortcomings as part of being human
Accept that others feel what they feel
Integrate new information with acceptance even if it is uncomfortable
Be flexible in thinking patterns and able to update opinions based on new information
Can self-correct and grow, owning and learning from mistakes
See other peoples' boundaries as healthy, and something to respect (existence of needs)."

101. Given the feedback from the other members of the ALM team regarding the Appellant's behaviour, and the advice provided by the external coach regarding the Appellant's needs, the decision not to pursue team coaching does not appear to be unreasonable, still less capable of affecting the validity of the contested performance evaluation. As underlined by the Head of HR, individual coaching was considered necessary to correct the Appellant's alignment with ESM standards rather than take account of his medical condition. The Appellant has not shown either that the absence of team coaching affected his professional performance or that the ESM was under any legal obligation under the applicable provisions to organise team coaching as part of his reintegration into the ESM from May 2024.

102. The Appellant's Plea A is rejected in its entirety as being unfounded in law.

B. <u>“On the Conflict of interest and Lack of Impartiality”, and fourth branch of plea D, “On the Substantive Errors of Assessment”</u>

(i) Arguments of the parties

103. In the present case, the Appellant alleges that the peers on whose “testimonies” the line manager relied “included three colleagues who were direct competitors for the Deputy Head of ALM post, including ‘WB 2022/1 Witness 3’ who had prior history of hostility shown on his testimony as witness used by the External Investigator … on the investigation of the Appellant’s WB 2022/01”. The contested decision is “tainted by bias and conflicts of interests [in so far as t]he same individuals who shaped the disciplinary decision of 24 February 2025 … also drove the contested PDS evaluation. Moreover, key witnesses had personal interests that undermined their impartiality, and one was linked to prior whistleblowing proceedings. These circumstances, taken cumulatively, demonstrate clear deficiencies as to impartiality and fairness”.

104. The Appellant relies on a number of what he describes as “undisputed facts”, that is, the “temporal overlap” of the written warning and the PDS decision, the “overlap in personnel involved in both the Deputy Head application process and the performance evaluation”, and the “documented involvement of ‘WB 2022/1 Witness 3’ … whose prior adversarial role in the Appellant’s whistleblowing case was neither disclosed nor managed”.

105. He further contends that “the Managing Director relied on the same factual matrix and managerial assessments” in adopting the PDS evaluation as he had in adopting the written warning: “[t]his creates a structural conflict of interest” in violation of the principle *nemo iudex in causa sua*, giving rise to “a legitimate doubt as to impartiality, which suffices to invalidate” the contested decision.

106. The fourth branch of the Appellant’s plea D also challenges the reliance by the line manager, and hence the Managing Director, on the “tainted testimony” of the Appellant's colleagues in ALM, three of whom were also allegedly candidates for the post of Deputy Head of the Appellant’s unit, as the Appellant had been. In his view, “[t]estimony from individuals with clear conflicts of interest and personal motives should not have been treated as reliable evidence without disclosure or safeguards. Reliance on such testimony without corroboration constitutes a substantive error of assessment”.

107. The ESM rejects the Appellant's arguments for reasons which will be referred to below as necessary.

(ii) Preliminary observations

108. While there is widespread agreement on the fundamental nature of the requirements of impartiality in administrative decision-making, there is rather less clarity in the case law regarding the application in practice of these requirements.

109. As a starting point, the following citation from the ILOAT is helpful:

> "[i]t is a general rule of law that a person called upon to take a decision affecting the rights or duties of other persons subject to his jurisdiction must withdraw in cases in which his impartiality may be open to question on reasonable grounds. It is immaterial that, subjectively, he may consider himself able to take an unprejudiced decision; nor is it enough for the persons affected by the decision to suspect its author of prejudice" (Judgment No. 5119, 10 February 2026, consideration 14, and case-law cited).

110. The ILOAT also noted that "[a] conflict of interest occurs in situations where a reasonable person would not exclude partiality, that is, a situation that gives rise to an objective partiality. Even the mere appearance of partiality, based on facts or situations, gives rise to a conflict of interest" (loc. cit.). It follows from this view of impartiality that the "appearance of partiality" is to be judged from the perspective of a "reasonable person", rather than that of the complainant, and that such appearance must be based on "facts and situations", rather than speculation, sentiment or the subjective impressions of the person alleging bias.

111. Many international administrative tribunals have adopted the dichotomy between objective and subjective impartiality which has been developed notably by the European Court of Human Rights and the Court of Justice of the European Union. The EU Court of Justice has held that the competent administrative authority must "comply with both components of the requirement of impartiality, which are, on the one hand, subjective impartiality, by virtue of which no member of the institution concerned may show bias or personal prejudice and, on the other, objective impartiality, under which there must be sufficient guarantees to exclude any legitimate doubt as to possible bias on the part of the institution concerned"

(Case C-680/16 P, *Dr August Wolff GmbH & Co. KG Arzneimittel and Remedia d.o.o.v European Commission*, EU:C:2019:257, paragraph 27).

112. Moreover, where a number of administrative entities "are given separate responsibilities of their own in the context of a procedure that is liable to result in a decision adversely affecting a party, each of those [entities] is required, in respect of its own activities, to comply with the requirement of objective impartiality. Consequently, even where only one of them has breached that requirement, such a breach is liable to render the decision adopted by the other at the end of the procedure at issue unlawful" (Case C-680/16 P *Dr August Wolff*, cited above, paragraph 28).

113. It is true that, in so holding, the EU Court of Justice was applying one aspect of Article 41 of the Charter of Fundamental Rights of the European Union, which does not per se bind the ESM. That said, Article 41 of the EU Charter to a very large extent merely reflects values which are common to the Member States of the European Union, and hence to the Member States which belong to the ESM, as well as principles of international administrative law. These include the so-called principles of natural justice which are widely known by their Latin tags: *audi alteram partem*, which the Tribunal applied in Case ESMAT 1/2025, and *nemo iudex in causa sua*, which latter the Appellant has explicitly invoked in the present proceedings.

114. The ESM has fully acknowledged in the present proceedings that it is bound to respect the requirements of impartiality in its administrative decision-making and has itself relied on case law of the CJEU in arguing that the absence of harassment claims against the Appellant's line manager and the Managing Director demonstrates that the Appellant's PDS rating cannot be impugned on grounds of bias.

115. The Appellant argues that the following persons or categories of persons failed to act impartially in the procedure which led to the adoption of the contested decision:

- "key witnesses [who] had personal interests that undermined their impartiality";
- the "individuals who shaped the disciplinary decision", and
- the Managing Director.

(iii) The "key witnesses"

116. The so-called "key witnesses" appear to refer to three other ESM staff members who in each case were, according to the Appellant, both "competitors for the [post of] Deputy Head" of ALM - which the Appellant had applied for unsuccessfully - and witnesses in the investigation of the disciplinary procedure leading to the written warning.

117. In line with the understanding of impartiality of the CJEU outlined above, the Tribunal considers that each of the parties who contributes to the adoption of an administrative decision, such as the PDS evaluation, must act impartially. As the ESM has noted, this is reflected in Article 4(4) of the ESM Code of Conduct which stipulates:

> "[m]embers of staff shall perform their duties objectively and impartially, without allowing themselves to be influenced by personal or political considerations, relationships, or affiliations".

118. The same Code of Conduct defines a "conflict of interest" in the following terms:

> "a situation or circumstance in which private interests of members of staff influence or may influence the objective and impartial performance of their duties. Private interests include any advantages for members of staff, their families or personal acquaintances".

119. It follows that a breach of these requirements by the so-called "key witnesses" would affect the validity of the PDS evaluation which was adopted by the Managing Director on 14 March 2025.

120. The Appellant has not, however, provided any evidence of subjective bias on the part of the three colleagues. He has not even named them, as he might have in his pleadings to the Tribunal, knowing their identity could, if need be, be protected in accordance with Rule 19 of the Rules of Procedure. The Tribunal cannot therefore call these persons as witnesses and is therefore not in a position to uphold the Appellant's allegation in this regard. Furthermore, conduct motivated by subjective bias on the part of the persons concerned would in principle have constituted a breach of the Code of Conduct; it can hardly be expected that the Tribunal would make such a finding in respect of unnamed members of staff on the basis of the unsupported allegations of the Appellant.

121. On the contrary, it is clear from the Appeal, and in particular the "temporal overlap" and the "overlap of personnel" on which he relies, that the Appellant is alleging that bias on the part of the colleagues concerned arose because of the exercise of their functions as ESM staff members, that is, because of their participation as candidates in the selection process for the post of Deputy Head of ALM, as witnesses in the investigation leading to the imposition of the written warning, and as persons consulted in the context of the preparation of the Appellant's PDS evaluation. He is therefore relying on a breach of the requirements of objective, not subjective, impartiality. Indeed, referring to "established CJEU jurisprudence", he explicitly argues that "the standard for objective impartiality in administrative proceedings is not proof of actual bias but whether sufficient procedural guarantees exist to exclude legitimate doubts as to impartiality".

122. Even if the Tribunal could overlook the Appellant's failure to identify the colleagues in question, his contentions in this regard are too vague for the Tribunal to be in a position to examine, still less uphold, them. Though providing dates for the initiation of the action leading to disciplinary proceedings, he states that the selection process took place "[d]uring this period" without further precision. The Tribunal has not been presented in the Appeal with even an outline of the sequence of events. It is therefore unable to come to any findings of fact regarding the selection procedure, and in particular as regards the purported temporal and personnel overlaps on which the Appellant relies.

123. In the absence of such basic information, the Tribunal cannot come to a conclusion on whether persons who allegedly took part as candidates in the procedure in fact also participated in the procedure leading to either the written warning or the PDS evaluation. Rule 13(1)(e) and 13(2) of the Rules of Procedure selection require the Appellant to provide "a statement of the relevant facts" as well as "all documentary evidence adduced in support of the Appellant's case". The Appellant has failed to comply with this provision with respect to his arguments regarding a breach of impartiality on the part of unnamed ALM colleagues. His arguments in this regard are rejected as inadmissible.

124. Moreover, for the avoidance of doubt, even if the Appellant had shown that three ALM colleagues who had participated as candidates in the selection procedure were subsequently consulted in the proceedings leading to the contested decision, this would not have violated the requirements of objective impartiality.

125. The Tribunal notes that the principle that the line manager may consult members of her team regarding the conduct of a possibly troublesome member of that team, and the effects of such conduct on the activities of the team, cannot reasonably be challenged. The alternative would be that the line manager would rely exclusively on her own personal appreciation of such conduct of the person being assessed, which might then be less complete.

126. To this end section 3(2)(b) of the PDS booklet of January 2023 expressly provides that the staff member being assessed may suggest "peers who[m] their manager could ask for feedback on their performance". If the peers of the person being assessed may provide feedback at this person's behest, it would be anomalous if the line manager, who provides the initial assessment, were not entitled to take the initiative to consult the person's peers.

127. It is furthermore clear that the "PDS Review Notes" drawn up by the Appellant's line manager do not indicate that in making her assessment she in fact relied to any improper extent on input from the Appellant's colleagues, none of whom is mentioned in her text. Though the line manager occasionally refers to the negative effects of the Appellant's conduct on "the [ALM] team", the Appellant has not shown that any influence such persons may have had on the content of his performance rating exceeded that provided for in the rules governing the PDS exercise.

128. As both the applicable rules and the logic of performance evaluation allow for the line manager to consult the Appellant's peers, it follows that the contributions of these latter could only be improper if their testimony is in some respects dishonest or misleading. The Appellant has not shown that this was the case in the present proceedings.

129. The Appellant's contentions regarding the alleged lack of impartiality of the so-called "key witnesses" are inadmissible and are in any case unfounded.

(iv) The Appellant's line manager, the Chief Financial Officer and the Head of HR

130. The Appellant has argued that the written warning and contested decision were "both triggered by the same Line manager". He also relies on the so-called "temporal overlap" of the written warning and the confirmation of his PDS rating.

131. At the outset, it is important to underline that the Appellant is not relying on, nor has he demonstrated, any alleged breach of the requirements of subjective impartiality on the part of his line manager, but rather an alleged structural lack of impartiality arising from the participation of the line manager in both the disciplinary procedure and the procedure leading to the contested decision.

132. It is difficult to see how the Appellant's line manager could reasonably not be involved directly in the Appellant's performance evaluation in the present case. Not only was this part of her functions as Head of ALM, but she was the staff member who had the most direct overview of the Appellant's work and professional behaviour during the reference period. The Appellant might have had grounds for complaint if his performance evaluation had been carried out in the first place by a different staff member who was not familiar with his professional performance during the reference period, especially as his line manager was not only available to carry out this task but, it appears from the case file, had taken an active personal interest in the Appellant's reintegration to the ESM right from 2 May 2024.

133. It further appears that the Appellant's challenge to the contested decision on grounds of impartiality is intimately linked to his contentions regarding the conditions of his reintegration. In responding to the Tribunal's questions of 23 March 2026, the Appellant acknowledged that "as a rule, the direct line manager is normally best placed to provide a Year-End PDS review of a staff member's performance" but argued that "additional safeguards" were required in his case, given the "specific context of reintegration and documented workplace tensions".

134. While denying that he was guilty of the behaviour complained of which led to the imposition of the written warning, the Appellant has not sought to argue that this behaviour, as reported in the PDS Review Notes, was not relevant in the context of his performance evaluation. Moreover, though they provide details of the Appellant's work and behaviour during the reference period, and in some cases the negative impact of his behaviour on the activity of the ALM, at no point do the PDS Review Notes accuse the Appellant of "insubordination" or "misconduct", such as were found in the investigation report on which the written warning was based. The Appellant has not argued, still less demonstrated, that these Notes included matter which was not relevant to the evaluation of his performance for the PDS exercise. Nothing in the PDS Review Notes shows that the Appellant's line manager

was structurally unable to carry out her evaluation of his performance without prejudging the outcome of the disciplinary procedure which was then still ongoing.

135. The only mention of the Chief Financial Officer under the heading “On the Conflict of Interest and Lack of Impartiality” is that he was “directly implicated in previous procedures (AC 2022/2, WB 2022/1 and ESMAT 1/2022)”. Even if the Tribunal were also to take into account the Appellant’s statement elsewhere in the Appeal that the Chief Financial Officer was “Deputy Head selection panel member, disciplinary complainant, second line manager and performance evaluator”, these statements and references do not amount to an admissible plea within the terms of Rule 13 of the Rules of Procedure. It is not the Tribunal’s task to trawl through different unsupported allegations of the Appellant to construct a legal argument on his behalf.

136. Similarly, the only specific mention of the Head of HR with potential relevance to the contested decision, albeit set out under a different heading of the Appeal, is the sweeping and unsubstantiated assertion that she displayed a “consistent pattern of procedural obstruction across all cases”. This assertion equally does not amount to a plea on which the Tribunal is in a position to rule.

137. The Appellant’s contentions as regards his line manager are rejected as being unfounded, while those against the Chief Financial Officer and the Head of HR are rejected as being inadmissible.

(v) The Managing Director

138. The arguments the Appellant relies on in his appeal to impugn the Managing Director’s impartiality may be interpreted as relying on two matters: the fact that the Managing Director imposed a disciplinary sanction on the Appellant some three weeks before adopting the first Rating Decision and, second, a more general argument that the evaluation procedure does not offer “sufficient guarantees to exclude legitimate doubts as to impartiality”.

139. His arguments are formulated as follows:

> “By using the ‘Written Warning’ as relevant background for the PDS rating, the Managing Director relied on his own contested disciplinary decision … This creates a structural

conflict of interest: the Managing Director cannot act impartially in a performance evaluation while relying on a disciplinary decision that he himself issued …

The principle *nemo iudex in causa sua* applies with full force here. At the very least, the situation gives rise to a legitimate doubt as to impartiality, which suffices to invalidate the decision under established jurisprudence …

The Managing Director relied on his own contested disciplinary decision as the foundation for the PDS evaluation…

Under established CJEU jurisprudence, the standard for objective impartiality in administrative proceedings is not proof of actual bias but whether sufficient procedural guarantees exist to exclude legitimate doubts as to impartiality".

(a) Subjective impartiality - alleged reliance by the Managing Director on the written warning

140. The Appellant's contentions in this regard are based on the premiss that the written warning was "the foundation for" the contested decision, in other words, that in deciding on the Appellant's PDS rating, the Managing Director took account not only of the behaviour which led to the disciplinary sanction but also the fact of the sanction itself.

141. This was not the case. In the first place, in the email of 14 March 2025 from the Head of HR informing the Appellant of his performance rating, the disciplinary sanction is not mentioned as having played any part in the Managing Director's decision.

142. While the Appellant does not identify it as such, this contention raises a breach of the requirements of subjective impartiality; he has not demonstrated or alleged that there is rule or practice requiring the Managing Director when assessing a staff member's performance to ignore the fact that a disciplinary measure has been imposed on the person being assessed. It is generally accepted that there is a presumption against subjective bias which may only be rebutted by concrete evidence. In the present case, the Appellant has not provided the Tribunal with any such proof.

143. Indeed, he did not even raise the matter before the Advisory Committee, still less demonstrate subjective bias on the part of the Managing Director. At no point in his request for an Advisory Opinion on 25 April 2025 does the Appellant even refer to the written warning. Instead, under the heading "Impartial and Biased Framing" in the request, the Appellant alleged that "the line manager's evaluation presents a one-sided, disproportionately negative tone, especially in areas related to my character and behavior … These elements need to be seen as creating at least a 'legitimate doubt' on the impartiality of the performed (sic) evaluation". He further argues that "discrepancies between the evaluation of my personality by professional tests and evaluation … also create a 'reasonable doubt' regarding the impartiality and objectivity of the assessment".

144. For its part, the Advisory Committee concluded that "the Line Manager's evaluation was not one-sided and … the alleged conflict of interest in the [Appellant]'s application for the Deputy Head of ALM position was unsubstantiated". The Committee clearly took the view that it was not seised of a challenge to the impartiality of the Managing Director, other than that which would arise indirectly if the line manager had, in fact, been biased. The written warning was not referred to in the text of the Advisory Opinion.

145. In his comments on the Opinion, the Appellant argued that the "temporal proximity and interdependency of [the written warning and performance evaluation] support a pattern of prejudgment and retaliation. The M[anaging] D[irector]'s awareness of my appeal to ESMAT while confirming the rating further exacerbates the legitimate doubt as to impartiality".

146. The Managing Director reacted to this argument in the contested decision of 2 September 2025 as follows:

> "The disciplinary measure … was known when I decided to confirm you [sic] PDS category … At the time of taking the [PDS] decision, I was aware of all the previous facts concerning your career at the ESM … including your conduct issues resulting in a written warning, and the performance following your return to work after prolonged absence".

147. The Tribunal takes the view that, as the ESM has argued, the contested challenged decision in the present case is "not at all grounded on the sanction but on the Appellant's performance evaluation". In this regard, it is necessary to distinguish between, on the one hand, the fact of the sanction and, on the other hand, the underlying behaviour of the

Appellant which gave rise to the disciplinary proceedings. For the Managing Director to respond to the Appellant's comments on the Advisory Opinion that "[t]he disciplinary measure … was known" is a statement of the obvious but does not demonstrate that the written warning played any role in his confirmation of the Appellant's performance evaluation, or that his reference to the written warning in the Contested Decision gives rise to legitimate doubts as to the ESM's respect for the principle of objective impartiality.

148. It is clear that, in assessing the Appellant's performance during the reference period, the Appellant's line manager could not ignore his behaviour as described in her PDS Review Notes; clause 7.2 of the PDS booklet stipulates that "[t]he ESM behavioural framework will also be taken into account by line managers when assessing performance each year". It would be extraordinary indeed if the competent authority for performance evaluation were unable to take account of a staff member's conduct on the sole ground that the conduct in question has given rise to a disciplinary sanction. By that token, lesser forms of misconduct which have not given rise to a disciplinary measure would be relevant for performance assessment, while more serious misconduct which has been sanctioned would be excluded from consideration.

149. There is nothing in the case file before the Tribunal to indicate that the fact of the disciplinary sanction influenced either the Appellant's line manager in proposing, or the Managing Director in deciding and subsequently confirming, the Appellant's performance rating. In these circumstances, the fact that the disciplinary sanction was annulled by the Tribunal in Case ESMAT 1/2025 does not affect the validity of the contested performance evaluation decision.

(b) Objective impartiality - Absence of sufficient guarantees to dispel legitimate doubts

150. The Appellant has argued that the "standard for objective impartiality is not proof of actual bias but whether sufficient procedural guarantees exist to exclude legitimate doubts as to impartiality". In his contention "impartiality comprises at least five interconnected requirements:

- A decision-maker should not have personal stakes in the outcome (financial gain, reputational threat, prior position at issue) …

- An organisation should not require decision-makers to affirm or defend prior institutional choices. Where a decision-maker has previously approved a process (an HR investigation, a disciplinary measure) and must now rule on whether that process was lawful, an inherent tension arises) …
- Those who investigated, initiated action, or shaped the record should not be the sole decision-makers on appeals from that record …
- The standard is objective … Actual bias need not be shown; the appearance must be preserved…
- Genuine Consideration of All Material Evidence … Where primary evidence comes from parties in conflict with the staff member, decision-makers must demonstrate that they have seriously weighed contradictory or contextual material".

151. It is not necessary for the Tribunal to take a view on the criteria proposed by the Appellant, as the Tribunal does not consider that their application in the present case would affect the validity of the contested decision.

152. The first criterion defines "personal stakes" as comprising financial gain, reputational threat or a "prior position at issue". Had the Managing Director had some financial stake in adopting the contested decision, this would be a breach of the requirements of subjective impartiality, which the Appellant has not raised in this connection. The Appellant has not shown how adopting the contested decision would have any effect on the Managing Director's professional or personal reputation. The imposition of a disciplinary sanction is an autonomous decision which, as the Tribunal has held above, did not condition the Appellant's performance evaluation, though the behaviour underlying the sanction was clearly relevant for the evaluation.

153. Contrary to the tenor of the Appellant's arguments, the judgment in Case ESMAT 1/2025 did not in any way either uphold or condemn the conclusions of the investigation which gave rise to the written warning, including as regards the Appellant's misconduct. The Tribunal simply did not take any position on these. It falls to the ESM to draw the consequences from the Judgment in the earlier case, including from the reasoning of the Tribunal. If such a warning were again imposed on the Appellant and challenged before the Tribunal on substantive grounds, the Tribunal would then have to evaluate whether those substantive grounds are founded or not.

154. In that regard, the ESM has argued that, along with “consideration of behavioural issues that led to the imposition of the sanction, … [the contested decision] also included the consideration of other, unrelated, behavioural issues”. The ESM has not provided any details as to what those “unrelated, behavioural issues” were, nor explained why some behavioural issues gave rise to a written warning while others were, apparently, not even taken into account in the disciplinary context. Given the decision of the Tribunal in the present case, it is not necessary to take a position on this line of argument, or on whether the contested decision could stand on its own if the ESM’s appreciation of the Appellant’s conduct which gave rise to the written warning were invalidated.

155. The Appellant’s second criterion of impartiality is “Absence of Institutional Pre-Judgment”. As noted above, a disciplinary measure is quite distinct from a performance evaluation. In adopting the former, the Managing Director did not pre-judge his confirmation of the latter.

156. Under the third heading, the Appellant argues essentially that the persons who initiate and shape the record underpinning an administrative decision should not be the “sole decision-maker on appeal from that record”. It is unclear which “record” the Appellant is referring to, and this argument fails for lack of specificity. In any case, the Managing Director does not take the first steps nor “shape the record” with regard to either the disciplinary procedure or that for performance evaluation, nor act as “sole decision-maker”.

157. As to the fourth heading, the Tribunal has already concluded that a reasonable observer, properly informed, would perceive the role of the Managing Director in the PDS process as contributing to, not undermining, impartial decision-making.

158. As to the Appellant’s fifth rubric, his contention regarding the consideration of “contradictory or contextual material” is a reference to his arguments under Plea C, which is dealt with below.

159. The Appellant has failed to show that the ESM has failed to comply with any of his “Substantive Requirements of Impartiality”, whether or not these may be considered an accurate reflection of international administrative law on the issue.

160. In its Responses to the Tribunal's questions of 3 February 2026, the ESM relied on the following procedural guarantees of structural impartiality:

- The possibility for the staff member to submit comments to their line manager
- The possibility for the staff member to be heard by the Managing Director where challenging the envisaged performance rating
- The possibility for the staff member to request an Advisory Opinion.

161. The ESM also noted that "by longstanding administrative practice, the Managing Director takes the decision on the staff performance rating in the context of the PDS review upon the recommendation of the ESM Management Board … to ensure that such PDS decisions reflect a collective approach and [a] levelled organisation-wide perspective". The Management Board is composed of five senior ESM members of staff along with the Managing Director who chairs the Board. While the Board would not have seen the Appellant's comments on his proposed performance evaluation, the members would have been aware of the proposed evaluation itself.

162. In his answers to the Tribunal's questions of 3 February 2026, the Appellant addressed what he considered to be a systemic flaw in the PDS procedure followed in his case and the correct solution. In his view, "[t]he conflict of interest is … not individual but structural: the ESM is being asked to fairly reassess a situation in which its own HR process, its own line managers and its own prior institutional endorsements are at issue". He rejected a possible delegation by the Managing Director of the power to decide on his performance evaluation, inter alia "[a]ll ESM staff operated under the Managing Director's authority within a unified command structure; a delegated decision-maker would ultimately answer to the same management". Should the contested decision be annulled as he contended, the Appellant argued for "a fresh and complete reassessment by evaluators who were not involved in the prior disciplinary or performance procedures, or, alternatively, by the Tribunal applying full and rigorous scrutiny, to ensure that the reassessment is not influenced by prior procedural irregularities".

163. As noted in Plea B(v) above, the Appellant's arguments are based on the erroneous premiss that the written warning influenced the outcome of the PDS process in his case. Moreover, his suggestion that his performance evaluators be carried out by persons "not involved in the … performance procedures" suffers from incoherence on two fronts. In the

first place, these persons would not in principle be in a position properly to evaluate the Appellant’s performance during the reference period, which would deprive the exercise of its primary utility; the Appellant has acknowledged elsewhere that the line manager is the staff member who is best able to carry out the evaluation “as a rule”. Second, unless the evaluators were from outside the organisation – and hence even less well able to evaluate the Appellant’s performance – they would, in the Appellant’s view, be under the influence of the Managing Director in any case.

164. While before the Tribunal, the Appellant has alleged “structural conflicts of interest”, citing notably “the Managing Director’s dual role as decision-maker in both the ‘Written Warning (25 February 2025) and performance confirmation (2 September 2025)”, he has not demonstrated how the PDS evaluation system creates such a conflict of interest. Under this procedure, the Managing Director does not in any sense take the decision on a PDS rating on his own; he is not a *iudex* but the highest administrative authority for staff in the organisation who takes the final decision following a predefined procedure in which several persons with relevant functions intervene, and after considering, where the proposed rating is challenged, the staff member’s comments as provided in LIGO. As the ESM has argued, the intervention of the Managing Director, rather than creating a situation of conflict of interest, allows him to identify and counteract such conflicts of interest as might arise, in particular between the staff member and their line manager.

165. In so holding, the Tribunal recalls the injunction in Article 9(2) of its Statute that in interpreting the internal law of the ESM it “take account of its architecture as a small and efficient organisation”.

166. In these circumstances, the Tribunal finds that the specific role accorded the Managing Director in the PDS procedure is not such as to give rise to legitimate doubts that he acted impartially in adopting the contested decision.

167. It follows that Plea B is rejected in its entirety, as being in part inadmissible and in part unfounded.

C. <u>“On the Failure to Consider Relevant Evidence”</u>

168. Under this rubric, the Appellant is relying, in essence, on the Managing Director’s rejection of two categories of “evidence”. The first is the “complete and comprehensive history of events”, including the follow-up to a whistleblowing report and his reintegration into the ESM after his lengthy period of absence. The second comprises a series of psychometric assessments which were carried out in the context of the selection procedure for the post of Deputy Head of ALM.

(i) The “history of events”

169. It appears from the Appeal that the Appellant submitted a whistleblowing report (“WB2022/1”) on 10 May 2022. He did not challenge the decision of the Managing Director to reject his report, nor has he demonstrated that the handling of this report is relevant to the contested decision in the present case, which was adopted almost three years later and concerns an entirely different reference period.

170. The Appellant also refers, as part of the “history of events”, to his Appeal in Case ESMAT 1/2022, which concerned his PDS rating for 2021. He has not demonstrated the relevance to the present proceedings of his 2022 Appeal, which the Tribunal rejected on 24 March 2023.

171. The Appellant has further relied on his “diligence” in reporting “multiple operational risks” which he argues the ESM has “reframed … as behavioural shortcomings”. While acknowledging that the incidents were indeed reported, and not challenging the “competence, independence, or conclusions of the Risk function responsible for assessing these incidents”, he contends that some of his concerns were “partially ignored, not fully listened to, or not adequately understood at the internal level prior to escalation”, contributing to “a breakdown in professional dialogue”. This breakdown was a factor in the characterisation of his behaviour as “‘patronising’, ‘probing’ or otherwise not aligned with expected behaviours”. The Appellant seeks to argue that what he calls an “unresolved professional disagreement on operational risk handling” has been conflated with his “alleged behavioural deficiencies”.

172. The ESM has noted that some fifteen operational risk incidents were logged between 1 May 2024 and 12 March 2025, including three brought up by the Appellant. It contends that all ALM "team members proactively report and address any issues" and that "[o]perational risk issues and follow up actions were openly discussed in team meetings and team chat"; in this context, the Appellant's views were fully considered by his line manager.

173. The Tribunal notes that, in relying on the "history of events", the Appellant is in effect relying on a manifest error of assessment, the burden of demonstrating which falls on him. He has, however, failed to discharge this burden and has not provided probative evidence of the alleged errors of assessment, still less manifest errors.

174. The matter of the Appellant's reintegration has been dealt with by the Tribunal above in dealing with the Appellant's Plea A. The Tribunal has already rejected the Appellant's narrative as inaccurate and held his arguments in this regard to be unfounded.

(ii) Psychometric reports

175. The Appellant has argued in the second branch of this plea that the "independent psychometric assessments (Hudson, Bridgewater, Thomas-Kilmann, EQ Works) … consistently described him as collaborative, analytical, and team-oriented. These directly contradicted the subjective behavioural descriptors ('patronising', 'not living values') that underpinned the evaluation".

176. In the contested decision, the Managing Director stated that he shared the view of the Advisory Committee that such external personality assessments are "distinct in both purpose and methodology from the performance evaluations" and "do not impact the outcome of the PDS evaluation".

177. The ESM has also argued that "it is not for [an outside] company to have an opinion on the behaviour or attitude of the Appellant at work or assess his actual performance".

178. The Respondent is clearly correct in rejecting the relevance of tests - which are designed to evaluate the Appellant's personality - to an assessment of his behaviour and performance at the workplace during a specific period of time which is based on facts and incidents

observed and recorded in detail by the Appellant's line manager and confirmed by the Managing Director.

179. Far from undermining the validity of the Appellant's PDS rating, the contrast between the Appellant's observed conduct at work during the reference period and the behaviour he might have been expected, on the basis of psychometric testing, to show might be taken as demonstrating an element of intention on the part of the Appellant, rather than his spontaneous reaction to particular situations. As the ESM has not raised this argument in the context of the present proceedings, it is not necessary for the Tribunal to take a position on it.

180. The Appellant's Plea C is rejected in its entirety as being unfounded.

D. <u>"On the Substantive Errors of Assessment"</u>

181. The Appellant raises four matters under this heading:

- the use in the line manger's assessment of "vague, non-SMART or 'SMART-like' criteria";
- the "failure to recognise significant contributions";
- the "disregard of reintegration obligations", and
- the "reliance on tainted testimony".

182. In the first branch of this plea, the Appellant is contesting the line manager's reliance on "undefined descriptors such as 'patronising', 'undermining authority' and 'not living ESM values'" which he argues are "inherently subjective, open to manipulation, and cannot form the lawful basis of a negative performance rating". He further argues, on the basis of the Tribunal's case law, that his performance rating should be annulled because his "objectives had not been formulated in accordance with the SMART methodology".

183. In this regard, the Appellant appears to be relying on a mismatch between the objectives he was set in June 2024 and the evaluation of his performance in the remainder of 2024.

184. In order for this branch of this plea to succeed, the Appellant would need to demonstrate, first, that the ESM was under a legal obligation, following his return to work in May 2024, to set his objectives according to the SMART methodology, second, that it failed to do so, and third that the ESM's purported failure to set objectives which comply with this methodology rendered the contested decision invalid.

185. Regarding the second requirement of the first branch of this plea, the Appellant has not provided the Tribunal in his Appeal with any statement of his objectives, or even a description of these. Instead, he has alleged in general terms of the notion that "performance objectives must be formulated in SMART terms (Specific, Measurable, Achievable, Relevant, Time-bound)". Rule 13(2) of the Tribunal's Rules of Procedure, however, puts the onus on the Appellant to provide "all documentary evidence … in support of [his] case in original or unaltered copy". He has failed to provide the Tribunal with any evidence which would allow it to judge whether the performance objectives were or were not formulated in "SMART" terms.

186. While it is true that the Appellant's objectives might, possibly, be gleaned from a perusal of a number of the documents which the Appellant has provided in the annexes to his Appeal, it is not the task of the Tribunal to carry out the factual and legal analysis which would be required for the Appellant's arguments to be considered as having been properly presented.

187. This branch of Plea D is rejected as inadmissible, without its being necessary for the Tribunal to rule on the first and third requirements identified above.

188. The Tribunal is aware that in its Opinion the Advisory Committee took the view that "the [Appellant]'s 2024 objectives were not formally framed using the SMART methodology". However, while it may on occasion take account of the findings of fact and the legal analysis of the Advisory Committee when these are useful, the Tribunal is not bound by them in any respect.

189. For the sake of completeness, moreover, the Tribunal notes that the phrases "patronising", "undermining authority" and "not living EMS values" were not used in relation to the Appellant's performance on their own or out of context. On the contrary, the line manager provided a significant amount of factual background in her "PDS Review Notes", which allowed the Managing Director when taking the first Rating Decision to appreciate whether these descriptors were well founded or not. These examples amply support the line

manager’s conclusions that the Appellant had in certain respects acted in a manner which was patronising with regard to his colleagues, and/or undermined the authority of his line manager and/or which failed to comply with the values of the ESM.

190. In regard to the second branch of this plea, the Appellant relies on the following “significant contributions”: “quality control of ESG reporting, identification of risk management errors, mentoring of trainees, volunteering as fire marshal, supporting disaster recovery testing, and volunteering to prepare FINCO minutes”. In his view, the PDS evaluation “focus[es] solely on disputed behavioural criticisms [and] creates a distorted and unbalanced picture of the Appellant’s performance”.

191. In effect, the Appellant is invoking a manifest error of appreciation. Here again, he has failed to prove that the Respondent’s actions were manifestly erroneous. On the contrary, the Appellant’s complaint that the evaluation focused solely on his misbehaviour is manifestly unfounded. The PDS Review Notes of the Appellant’s line manager are replete with instances of positive contributions made by the Appellant to the work of the ALM during the reference period, balanced by a number of negative comments regarding his failings, of which some are set out in Plea A, above. Considered as a whole, the Appellant has not demonstrated that the report and hence his overall performance rating, was vitiated by a failure properly to take account of his “significant contributions” or was unbalanced or incomplete.

192. In relation to the third branch of this plea, the Tribunal has already examined, and rejected, in considering Plea A the Appellant’s narrative concerning his reintegration after his lengthy absence from the ESM.

193. The fourth branch of the Appellant’s plea seeks to challenge the reliance by the line manager, and hence the Managing Director, on the “tainted testimony” of the Appellant's colleagues in ALM, three of whom were also allegedly candidates for the post of Deputy Head of the Appellant’s unit, as the Appellant had been. This argument has already been rejected in dealing with Plea B.

194. Plea D in rejected in its entirety as being unfounded.

E. <u>“On the Exclusion of Professional Assessments”</u>

195. The matters on which the Appellant relies under this heading have already been considered under Plea C. For the reasons set out above, this plea is rejected as unfounded.

F. <u>“On the Procedural Defects in Evaluation</u>”

196. The Appellant raises essentially two matters under this rubric:

- the failure of his line manager to discuss the Appellant’s self-assessment during the PDS meeting on 7 February 2025, and
- the ESM’s refusal to provide team coaching for the ALM unit.

197. It appears from an exchange of emails which the Appellant has put in evidence that for the reference year 2024 the staff of the ESM were required to lodge their self-assessment in the LIGO system by 17 January 2025, but that the Appellant only submitted his self-assessment on 6 February 2025, the day before his PDS interview. According to the Appellant, his line manager provided him with a first version of her “PDS Review Notes”, at 11h42 on the morning of 6 February 2025. At the start of the interview, the Appellant was asked if he had had a chance to go through the draft End Year notes and confirmed that he had read it.

198. If the Appellant’s line manager was indeed on mission on 6 February 2025 - and the Appellant has not alleged that she was not - she could hardly have been expected to study the Appellant’s self-assessment with sufficient care and attention before 09h00 the next day, when the PDS interview commenced. The interview therefore proceeded on the basis of the first version of the line manager’s notes for the Appellant’s assessment rather than his self-assessment.

199. The fact that the line manager did not discuss the Appellant’s self-assessment at the PDS interview can be explained by the fact that he had submitted this some weeks after the time limit and must himself take responsibility for its not being discussed at the meeting. In these circumstances, the Appellant may not rely on any breach of the first indent of clause 3(2)(a) of the PDS Booklet to challenge the validity of his 2024 performance evaluation.

200. For the sake of completeness, it appears from the transcript of the PDS interview which the Appellant has provided to the Tribunal that he was given an extensive opportunity to contradict negative appreciations contained in the line manager's draft note for the Review, an opportunity of which the Appellant took full benefit. Moreover, the second version of the Appellant's line manager's "PDS Review Notes" refers to the Appellant's self-assessment at multiple instances. The Appellant has not shown that the fact that the self-assessment was not discussed at the interview in fact led to an unbalanced or a non-participatory evaluation.

201. The second branch of this plea turns on the ESM's decision not to organise team coaching in the framework of the Appellant's reintegration. This matter has been examined in depth, and the Appellant's arguments rejected, in relation to Plea A. This branch of Plea F is therefore also unfounded.

202. Plea F is rejected in its entirety as being unfounded.

G. <u>"On the Fiction of Consideration of Objections"</u>

203. While the Appellant has given this plea a somewhat laconic title, and the ESM has treated it as concerning the Appellant's right to be heard, the Tribunal considers that this plea is essentially based on a claim that the statement of reasons for the contested decision is defective. In particular, the Appellant claims that the Managing Director failed to engage substantively with the matters raised in the Appellant's comments on the Advisory Opinion. In his view, "[t]he result is that the contested decision lacks any demonstrable analysis of the Appellant's rebuttals".

204. While the Appellant claimed to have "submitted a detailed rebuttal to the Advisory Committee opinion … including extensive factual evidence, legal arguments and documentary annexes", he has failed to identify in his Appeal any aspect in which the statement of reasons was in fact defective. In that respect, this plea is inadmissible. As the Tribunal has underlined earlier in this judgment, it is not the Tribunal's task to guess at, and then evaluate, legal arguments which might be discerned from the vague and sweeping assertions in the text of the Appeal and its annexes.

205. In so far as the Appellant's is arguing that the Managing Director has failed to provide *any* statement of reasons, this plea is manifestly unfounded. On the contrary, in

some thirty paragraphs over almost six pages, the Managing Director responds comprehensively to the matters which the Appellant raised in his comments of 29 July 2025 on the Advisory Opinion; in some cases, the Managing Director expressly adopted the views of the Advisory Committee, thereby providing the Appellant with an even more detailed explanation of his position than is set out in the letter.

206. Plea G is therefore rejected in its entirety as being inadmissible, or alternatively, unfounded.

H. ”On the Cumulative Effect”

207. In Plea H, the Appellant contends that “[e]ven if any single defect could arguably be dismissed as inconsequential, the cumulative effect of the errors identified demonstrates that the contested decision is unlawful”.

208. This argument appears to be based on an erroneous conflation of the test for establishing workplace harassment and that for evaluating the validity of an administrative decision. While a multiplicity of relevant incidents, each falling short of harassment, may nonetheless demonstrate that harassment has taken place, the assessment of the validity of an administrative decision, such as a PDS rating, is a binary matter, where zero plus zero plus zero, no matter how often repeated, is still zero.

209. This plea is rejected as unfounded.

210. It follows that the Appeal as a whole is rejected as being in part inadmissible and in part unfounded.

IV. COSTS

211. The appeal has not been successful in whole or in part. In accordance with Article 14(3) of the Statute, the Appellant’s requests for the reimbursement of costs incurred in the present proceedings and in those relating to the Advisory Committee stage are rejected.

V. DECISION

212. In the light of the foregoing, the Administrative Tribunal of the European Stability Mechanism unanimously decides:

a) The Appeal of 9 September 2025 is rejected as in part inadmissible and in part unfounded;
b) Each party shall bear its own costs.

Done in Luxembourg, on 30 June 2026

Virginia MELGAR, President of the Panel

(signed)

Kieran BRADLEY

(signed)

Harissios TAGARAS

(signed)

Tonia Gillett, Registrar

(signed)