

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)  
20 November 2003 \*

In Case T-63/02,

**Maria Concetta Cerafogli and Paolo Poloni**, officials of the European Central Bank, residing in Frankfurt am Main (Germany), represented by T. Raab-Rhein, C. Roth and B. Karthaus, lawyers, with an address for service in Luxembourg,

applicants,

v

**European Central Bank**, represented by V. Saintot and T. Gilliams, acting as Agents, and by B. Wägenbaur, lawyer, with an address for service in Luxembourg,

defendant,

APPLICATION, first, for annulment of the decisions contained in the salary statements sent to the applicants, members of staff of the European Central Bank (ECB), on 13 July 2001 for the month of July 2001, in so far as they are drawn up on the basis of a salary increase of 2.2%, and, second, for the ECB to be ordered by the Court to send the applicants' salary statements for the month of July 2001,

\* Language of the case: German.

drawn up on the basis of a salary increase of at least 2.7% or, in the alternative, on the basis of an increase corresponding to that specified in the judgment of the Court in this case, and to pay them the sum corresponding to the difference between those amounts,

THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: J. Azizi, President, M. Jaeger and N. Forwood, Judges,  
Registrar: D. Christensen, Administrator,

having regard to the written procedure and further to the hearing on 8 October 2003,

gives the following

**Judgment**

**Legal background**

- 1 Pursuant to Article 36.1 of the Protocol on the Statute of the European System of Central Banks (ESCB) and of the European Central Bank (ECB), annexed to the EC Treaty, the Conditions of Employment for Staff of the European Central Bank

(hereinafter ‘the Conditions of Employment’) were adopted by the Governing Council (OJ 1999 L 125, p. 32). In the version applicable to the facts of this case, they provide *inter alia* as follows:

‘13. The Governing Council, on a proposal from the Executive Board, shall adopt general salary adjustments, which shall take effect on 1 July of each year.

...

42. After all available internal procedures have been exhausted, the Court of Justice of the European Communities shall have jurisdiction in any dispute between the ECB and a member or a former member of its staff to whom these Conditions of Employment apply.

Such jurisdiction shall be restricted to the legality of the measure or decision, unless the dispute is of a financial nature, in which case the Court of Justice shall have unlimited jurisdiction.

...

45. A Staff Committee whose members are elected by secret ballot shall represent the general interests of all members of staff in relation to contracts of employment; staff regulations and remuneration; employment, working, health and safety conditions at the ECB; social security cover; and pension schemes.

The Staff Committee shall be consulted prior to changes in these Conditions of Employment, the Staff Rules and related matters as defined under paragraph 45 above.'

## Facts

- 2 The applicants concluded contracts of employment for an indefinite period with the ECB in 1998. Those contracts provide *inter alia* that the Conditions of Employment and amendments thereto are an integral part of the contract.
  
- 3 Pursuant to Article 13 of the Conditions of Employment, the Executive Board of the ECB developed a method for implementing the general salary adjustments for the years from 1999 to 2001 (hereinafter 'the method of calculation'). On 20 June 1999, after the Staff Committee had been consulted by the Executive Board of the ECB and on the proposal of the Executive Board, the Governing Council of the ECB adopted the method of calculation.
  
- 4 By note of 14 July 1999, the Vice-President of the ECB, Mr Noyer, informed the members of staff of the ECB of the adoption and substance of the method of calculation.
  
- 5 The method of calculation, as adopted by the Governing Council, provided that the annual adjustments in the remuneration of the ECB staff would be based on the average trend of salaries paid by the national central banks of the 15 Member States and by the Bank for International Settlements (BIS) (hereinafter 'the reference banks'). The ECB was to rely in that regard on the data provided by those reference banks relating to the salary adjustments made during the current

year. The salary adjustments made by those reference banks for the current year were to be weighted on the basis of the number of employees of each of those banks. Where application of that method would have resulted in a nominal reduction of salaries, the Governing Council could depart from it. In his note of 14 July 1999 to the members of staff, Mr Noyer made it clear that, in the event that the data for the current year were 'not available', the data from the previous year would be used.

- 6 By letter of 11 July 2001, Mr Noyer informed the members of staff and the Staff Committee of the ECB that the Governing Council had fixed the salary adjustment for 2001 at 2.2% with effect from 1 July 2001 (hereinafter 'the salary adjustment for 2001').
  
- 7 On 13 July 2001, the responsible directorate of the ECB sent to the applicants the salary statements at issue, which show a salary increase of 2.2%.
  
- 8 The applicants first submitted requests for an administrative review of those salary statements, which were rejected on 5 October 2001, and subsequently grievances under the grievance procedure, which were rejected on 3 January 2002.

#### **Procedure and forms of order sought**

- 9 By application lodged at the Court Registry on 4 March 2002, the applicants brought the present action.

10 The applicants claim that the Court should:

- annul the decisions contained in the salary statements sent to the applicants for the month of July 2001, imposing a ceiling of 2.2% on the salary increase granted in respect of 2001;
  
- order the ECB to send to the applicants salary statements for the month of July 2001 drawn up on the basis of an annual salary adjustment of at least 2.7% or on the basis of an adjustment corresponding to that established by the judgment of the Court in the present case;
  
- order the ECB to pay to the applicants the difference between the remuneration determined according to the method set out in the previous head of claim and the remuneration actually paid;
  
- order the ECB to pay the costs.

11 The defendant contends that the Court should:

- dismiss the action;
  
- make an appropriate order as to costs.

## The application for annulment

- 12 The applicants raise two pleas in law, alleging, first, that the ECB failed to consult the Staff Committee with regard to the salary adjustment for 2001 and, second, that it infringed Article 13 of the Conditions of Employment by the method of calculation applied in respect of that year.
- 13 The Court therefore has before it two objections of illegality relating to the legal bases of the individual decisions contained in the salary statements at issue. Those objections concern, in the context of the first plea in law, the procedure followed for the salary adjustment for 2001 and, in the context of the second plea in law, the method of calculation applied. Since there is a direct legal connection between those measures of general application, on the one hand, and the individual decisions contained in the salary statements at issue — the measures contested in the present case, for which, for the first time, the ECB applied the salary adjustment for 2001 of 2.2% on the basis of the method of calculation —, on the other, those objections are admissible.

### *Failure to consult the Staff Committee on the salary adjustment for 2001*

#### Arguments of the parties

- 14 The applicants submit that, under Articles 45 and 46 of the Conditions of Employment, the ECB was required to consult the Staff Committee not only before the method of calculation was adopted in 1999, but also before fixing the salary adjustment for 2001, on the basis of which the applicants' salaries were calculated.

- 15 In their view, the salary adjustment for 2001 was a matter relating to remuneration, as referred to in Articles 45 and 46 of the Conditions of Employment, on which the Staff Committee had to be consulted beforehand. The applicants also dispute that the salary adjustment for 2001 was merely an application of the method of calculation. There was, in their view, a genuine need to consult the employees of the ECB through its Staff Committee before deciding on that adjustment.
- 16 The defendant disputes that under Articles 45 and 46 of the Conditions of Employment it is required to consult the Staff Committee prior to every application of the method of calculation, that is to say, in this case, that it was required to do so prior to the salary adjustment for 2001.
- 17 In its view, the mere fact that the salary adjustments relate to remuneration, to which reference is made in Articles 45 and 46 of the Conditions of Employment, does not in any way render such consultation mandatory. On the contrary, it follows from the wording of those provisions that the 'related matters' mentioned in Article 46 of the Conditions of Employment refer to the Conditions of Employment and the Staff Rules. Consequently, those 'related matters' concern only legislative acts.
- 18 That interpretation is, it claims, borne out by the purpose of those provisions. The obligation to consult is justified by the fact that the legislature has wide discretion as regards general rules of law. However, contrary to what the applicants maintain, application of the method of calculation allows no discretion and requires no interpretation. Under the method of calculation, the ECB is bound by the statistical data sent in by the reference banks and merely undertakes a mathematical application of the method of calculation.

## Findings of the Court

- 19 It must be examined whether, as the applicants maintain, the ECB was obliged, under Articles 45 and 46 of the Conditions of Employment, to consult the Staff Committee not only prior to the adoption of the method of calculation in 1999, but also before fixing, by that method, the salary adjustment for 2001, or whether, as the defendant argues, such consultation on the salary adjustment for 2001 was not mandatory.

### — Interpretation of Article 46 of the Conditions of Employment

- 20 Under Article 46 of the Conditions of Employment, the Staff Committee must be consulted prior to ‘changes in [the] Conditions of Employment, the Staff Rules and related matters as defined under [Article] 45 [of those same Conditions of Employment]’, matters which include those connected with ‘remuneration’.
- 21 It is clear, first, from the wording chosen by the legislature that Article 46 of the Conditions of Employment does not restrict the obligation to consult the Staff Committee to the amendment of ‘legislative acts’, as the defendant argues, but imposes that obligation to consult in the case of any measure dealing either with the service rules themselves or with ‘matters’ relating to those rules and connected with any of the fields referred to in Article 45 of those Conditions of Employment, including staff remuneration.

- 22 Second, as the defendant rightly points out, it follows from a systematic and teleological interpretation of Article 46 of the Conditions of Employment that the scope of the obligation to consult is restricted to amendment of acts of general application. As is clear from Article 45 of the Conditions of Employment, the Staff Committee was set up to represent the 'general interests of all members of staff'.
- 23 In that same context, account must also be taken of the fact that consultation of the Staff Committee amounts merely to a right to be heard. Consequently, it is one of the most modest forms of participation in a decision-making process, since in no circumstances does it involve any obligation for the administration to act upon the observations made by the Staff Committee in the course of the consultation. That being so, unless it is to undermine the effectiveness of the obligation to consult, the administration must comply with that obligation whenever consultation of the Staff Committee is such as to have an influence on the substance of the measure to be adopted (see, to that effect, Case T-192/99 *Dunnett and Others v EIB* [2001] ECR II-813, paragraph 90).
- 24 Moreover, the scope of the obligation to consult the Staff Committee, as imposed by the legislature, must be assessed in the light of its objectives. First, that consultation is intended to afford all members of staff, through that committee, the opportunity to be heard prior to the adoption or amendment of acts of general application which concern them. Second, compliance with that obligation is in the interests both of the various members of staff and of the administration in that it serves to avoid the need for each member of staff to raise, by way of an individual administrative procedure, the existence of possible errors. By the same token, such consultation, being such as to prevent the submission of a series of individual applications pursuing the same grievance, also serves the principle of sound administration.

## — Application to this case

- 25 In the present case, the salary adjustment for 2001 was a measure of general application which affected the remuneration of all ECB staff. According to the express wording of Article 45 of the Conditions of Employment, staff remuneration is one of the fields for which the Staff Committee was set up in order to represent the general interests of all members of staff. The salary adjustment for 2001 was therefore clearly a matter relating to the rules governing employment within the ECB for the purposes of Article 46 of the Conditions of Employment, which concerns the obligation to consult that committee beforehand.
- 26 Secondly, the salary adjustment for 2001 involved an amendment of the remuneration of all ECB staff since it gave rise to a change in the salary levels of all members of staff.
- 27 In that regard, the defendant wrongly maintains that the rules to be followed for such an amendment, at the time of the salary adjustment for 2001, were, to a very large extent, predetermined by the method of calculation, so that consultation was not required for every application of the method of calculation
- 28 In view of the objective of the obligation to consult provided for in Article 46 of the Conditions of Employment (see paragraphs 23 and 24 above), the staff, represented by the Staff Committee, continue to have an interest in being consulted prior to each general application of the method in order to be in a position to satisfy themselves that no error arises which is liable to harm the interests of the staff in relation to remuneration, whether it be an error in how the basic data relevant to the calculation are taken into account or an error of calculation as such.

- 29 Moreover, as the defendant conceded at the hearing in response to the Court's oral questions, the annual application of the method of calculation did not consist of a mere mathematical calculation. It is clear from the statistical data provided by the reference banks that, in the case of some banks, no figure for the salary adjustments made by them during the current year was available. In such situations, various statistical methods were applied in order to calculate the figure for those adjustments. Consequently, to a certain extent, application of the method of calculation necessitated a prior selection of the statistical data to be used, which was likely to influence the result of that application.
- 30 Contrary to the contentions of the ECB at the hearing, the supervision exercised in that respect by the members of the Governing Council, however important it may be, has a different purpose. That supervision relates solely to that body's own specific responsibilities and functions and cannot replace that exercised by the Staff Committee, which represents the interests of all the members of staff.
- 31 In such a situation, the possibility that consultation of the Staff Committee might have had an influence on the substance of the salary adjustment for 2001 cannot be excluded.
- 32 For those reasons, Article 46 of the Conditions of Employment must be interpreted in the light of its underlying objective, that is to say, participation, in an advisory capacity, by the staff representatives in safeguarding the interests of the staff, in particular in the field of remuneration.
- 33 Consequently, while there is no need to rule on whether the Staff Committee was properly consulted at the time of the adoption of the method of calculation in 1999, the plea in law alleging failure to consult the Staff Committee with regard to the salary adjustment for 2001 must be upheld.

- 34 However, within the limits of its power of review, the Court considers it appropriate to examine, in the interests of proper administration of justice, the validity of the second plea in law, alleging infringement of Article 13 of the Conditions of Employment.

*Infringement of Article 13 of the Conditions of Employment*

Arguments of the parties

- 35 The applicants submit that the method of calculation, on the basis of which the salary adjustment for 2001 was adopted, is not consistent with Article 13 of the Conditions of Employment. In their view, it follows from the interpretation of that provision that the salary adjustment should not be made, as the method of calculation requires, on the basis of the average trend of salaries paid by the reference banks, but should be fixed on the basis of the increase in the cost of living at the seat of the ECB in Frankfurt am Main (Germany) or, more generally, in the *Land* of Hesse (Germany).
- 36 In view of the fact that Article 13 of the Conditions of Employment does not lay down any criteria for the salary adjustment, it is necessary, pursuant to Article 9(c) of the Conditions of Employment, to supplement it by applying the corresponding provisions of the Staff Regulations of Officials of the European Communities (hereinafter ‘the Staff Regulations’), namely Articles 64 and 65 of those regulations.
- 37 The applicants point out that the first paragraph of Article 64 of the Staff Regulations provides that ‘[a]n official’s remuneration... shall be weighted at a rate above, below or equal to 100%, depending on living conditions in the various places of employment’. Consequently, the salary adjustment at the ECB

should take account, in exactly the same way as the weighting laid down in that provision does for remuneration, of a valid price index for a specified geographical region, of certain aspects of social and economic policy and of the requirements of staff recruitment.

- 38 That interpretation is confirmed by the wording of Article 13 of the Conditions of Employment ('general salary adjustments') from which it is clear that the remuneration of employees of the ECB must be adjusted in line with a given variable ('an eine gegebene Größe'). That adjustment should also be applied to all the staff and should not result from a parameter freely determinable between the parties to the contract of employment, but be fixed by reference to an objective criterion, namely the criteria mentioned in the previous paragraph.
- 39 Similarly, according to the applicants, their interpretation of Article 13 of the Conditions of Employment is borne out by the purpose of that provision, which is to maintain the ability of the ECB to attract a highly qualified workforce. That purpose would be frustrated if the adjustments to the remuneration remained below the trend of the cost of living. Those adjustments would therefore result in a loss of the effective purchasing power of the staff of the ECB.
- 40 Article 13 of the Conditions of Employment should therefore be interpreted as requiring, at the very least, maintenance of the purchasing power of the staff of the ECB.
- 41 However, cost of living and, therefore, purchasing power are local phenomena since the employees of the ECB live at the seat of the ECB in Frankfurt am Main or in the surrounding region, namely the *Land* of Hesse. By contrast, only one of the reference banks has its head office in Frankfurt am Main, namely the Deutsche Bundesbank (the German central bank). Moreover, the trend of salaries at that bank does not necessarily reflect the increase in the cost of living in the *Land* of Hesse.

- 42 The applicants point out that the cost of living in the *Land* of Hesse increased, between June 2000 and June 2001, by approximately 2.7%. Consequently, the ECB's salary adjustment for 2001 remained below the increase in the cost of living and results in a loss of the effective purchasing power of its employees.
- 43 In their reply, the applicants further argue that the failure to take into consideration the cost of living in Frankfurt am Main results in unequal treatment as between the staff of the ECB employed in Frankfurt and Washington (United States) respectively. They point out that, contrary to the requirements of the method of calculation, the ECB takes into account changes in purchasing power for the purposes of the remuneration of its staff employed in Washington.
- 44 The defendant rejects that argument.

### Findings of the Court

- 45 It must be determined whether, under Article 13 of the Conditions of Employment, it was permissible for the salary adjustment to be made, as required by the method of calculation, on the basis of the average trend of salaries paid by the reference banks or whether, as the applicants maintain, that adjustment had to be fixed on the basis of the increase in the cost of living at the seat of the ECB in Frankfurt am Main or in the *Land* of Hesse.
- 46 First, it is to be remembered that Article 13 of the Conditions of Employment provides that the Governing Council, on a proposal from the Executive Board, is to adopt general salary adjustments with effect from 1 July of each year.

- 47 Consequently, as the defendant rightly points out, Article 13 of the Conditions of Employment does not impose any criterion for making the salary adjustments and, in particular, does not provide that those adjustments must take account of changes in the cost of living in the *Land* of Hesse or in Frankfurt am Main.
- 48 Article 13 of the Conditions of Employment has therefore conferred on the Governing Council a wide discretion in this context, the exercise of which the Court can declare illegal only where there is a manifest error or a misuse of powers (see, to that effect, Joined Cases T-544/93 and T-566/93 *Abello and Others v Commission* [1995] ECR-SC I-A-271 and II-815, paragraph 56).
- 49 However, by providing, in the method of calculation, for salary adjustment on the basis of the average trend of salaries paid by the reference banks, the Governing Council has established objectively verifiable criteria the appropriateness of which cannot be called in question by the Community judicature. It should be recalled that, under Article 107(1) EC, the national central banks compose, together with the ECB, the ESCB and that, under Article 3 of the Statute of the BIS of 20 January 1930, as amended on 8 January 2001, the main task of the BIS is to ensure cooperation between the national central banks.
- 50 Contrary to what the applicants maintain (see paragraph 36 above), even though Article 13 of the Conditions of Employment does not lay down any criteria for the salary adjustment, there is nevertheless no need to supplement it by applying Articles 64 and 65 of the Staff Regulations. Under Article 9(c) of the Conditions of Employment, in such situations, the general principles of law common to the Member States, the general principles of Community law and the rules contained in the regulations and directives concerning social policy which are addressed to Member States are to be applied. The applicants do not even claim that Articles 64 and 65 of the Staff Regulations fall within one of the categories mentioned in Article 9(c) of the Conditions of Employment.

- 51 Even if it is necessary, for the interpretation of Article 13 of the Conditions of Employment, to have recourse to Articles 64 and 65 of the Staff Regulations, it should be recalled that the objective of the Staff Regulations, as regards the remuneration of officials, is *inter alia* to ensure that all officials enjoy equal purchasing power irrespective of their place of employment, in accordance with the principle of equal treatment (*Abello and Others v Commission*, cited in paragraph 48 above). However, unlike the Community institutions and agencies to which the Staff Regulations apply, the employees of the ECB have until now almost all been employed at the seat of that institution in Frankfurt am Main.
- 52 Moreover, as the defendant rightly states, the method of calculation takes account, to a certain extent, of the criterion of changes in the cost of living, even though it does so on a wider geographical scale and more indirectly by taking into account the adjustment of salaries in the reference banks.
- 53 Consequently, the plea in law alleging infringement of Article 13 of the Conditions of Employment must be rejected as unfounded, without there being any need to assess the arguments of the parties concerning the selection of the basic data relating to changes in the cost of living in the *Land* of Hesse.
- 54 In so far as the applicants submit, in the context of that plea in law, that the ECB treats its employees in Washington — where there is branch office of the ECB with three permanent employees — differently from its employees at the seat, it must be pointed out that, under Article 48(2) of the Rules of Procedure of the Court, no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the

procedure. Since the applicants do not even maintain that their plea, essentially, of breach of the principle of the prohibition of discrimination is based on matters of law or of fact which have come to light in the course of the procedure, that plea in law must be rejected as inadmissible.

### The other heads of claim

- 55 By their second and third heads of claim (see paragraph 10 above), the applicants request that the Court order the defendant, first, to send to the applicants salary statements for the month of July 2001 drawn up on the basis of an annual salary adjustment of at least 2.7% or on the basis of an adjustment corresponding to that established by the judgment of the Court in the present case and, second, to pay to the applicants the difference between the remuneration determined according to the method set out in second head of claim and the remuneration actually paid.
- 56 In that regard, it is stated in the second paragraph of Article 42 of the Conditions of Employment that the jurisdiction of the Court in disputes between the ECB and members of its staff is restricted to the legality of the measure or the decision, unless the dispute is of a financial nature, in which case the Court has unlimited jurisdiction. On the other hand, it is not for the Court to address directions to the ECB (order of the Court in Case T-27/00 *Staff Committee of the ECB and Others v ECB* [2000] ECR-SC I-A-217 and II-987, paragraph 37; order of the President of the Third Chamber of the Court in Case T-20/01 *Cerafogli and Others v ECB* [2001] ECR-SC I-A-147 and II-675, paragraphs 80 and 81; and Case T-333/99 *X v ECB* [2001] ECR II-3021, paragraph 48).

- 57 In this case, even though those heads of claim are expressed as requests for directions to be addressed to the defendant, they may be construed as meaning that the applicants request that the Court exercise its unlimited jurisdiction, in such a way that it orders the defendant to pay to the applicants the amounts resulting from the findings which it makes in the course of its consideration of the action for annulment.
- 58 However, in view of the fact that the second plea in law, alleging that the method itself is illegal, must be rejected, the present claims must also be rejected.
- 59 In the light of all the foregoing, the decisions contained in the salary statements addressed to the applicants for the month of July 2001 must be annulled, in so far as they apply the salary adjustment for 2001, since the ECB failed to consult the Staff Committee at the time of the adoption of that adjustment.

## Costs

- 60 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the defendant has been unsuccessful, it must be ordered to bear all the costs, in accordance with the form of order sought by the applicants.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Annuls the decisions contained in the salary statements addressed to the applicants, members of staff of the European Central Bank (ECB), on 13 July 2001 for the month of July 2001, in so far as the ECB failed to consult the Staff Committee at the time of the adoption of the salary adjustment for 2001;
2. Dismisses the remainder of the application;
3. Orders the European Central Bank to pay the costs.

Azizi

Jaeger

Forwood

Delivered in open court in Luxembourg on 20 November 2003.

H. Jung

Registrar

J. Azizi

President