ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
18 April 2002 *

In Case T-238/00,

International and European Public Services Organisation (IPSO), whose headquarters is in Frankfurt am Main (Germany),

Union of Staff of the European Central Bank (USE), whose headquarters is in Frankfurt am Main,

represented by T. Raab-Rhein, M. Roth, C. Roth and B. Karthaus, lawyers, with an address for service in Luxembourg,

applicants,

* Language of the case: German.

European Central Bank, represented by J.M. Fernández Martín and J. Sánchez Santiago, acting as Agents, assisted by B. Wägenbaur, with an address for service in Luxembourg,

defendant,

ACTION against the decision of the Vice-President of the European Central Bank of 7 July 2000 refusing to act on certain requests from the applicants seeking amendment of certain parts of the Conditions of Employment of the Staff of the European Central Bank and the Staff Rules of the European Central Bank,

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

composed of: M. Vilaras, President, V. Tiili and P. Mengozzi, Judges,

Registrar: H. Jung,

makes the following

Order

Legal background

1 Under Articles 36.1 and 12.3 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank (ECB) annexed to the EC Treaty ('the ESCB Statute'), the Governing Council of the ECB ('the Governing Council') is responsible for laying down the conditions of employment of the staff of the ECB, on a proposal from the Executive Board of the ECB ('the Executive Board'), and for adopting rules of procedure which determine the internal organisation of the ECB and its decision-making bodies.

2 On 9 June 1998 the Governing Council adopted a decision on the basis of Article 36.1 of the ESCB Statute concerning the adoption of the Conditions of Employment of the staff of the ECB ('the Conditions of Employment'), which was amended on 31 March 1999, and which was published in the *Official Journal of the European Communities* (OJ 1999 L 125, p. 32) at the same time as the Rules of Procedure of the ECB, amended on 22 April 1999 (OJ 1999 L 125, p. 34; corrigendum in OJ 2000 L 273, p. 40, 'the Rules of Procedure'), which were adopted by the Governing Council on the basis of Article 12.3 of the ESCB Statute.

3 Article 21 of the Rules of Procedure, as amended, reads:

'21.1. The employment relationship between the ECB and its staff shall be determined by the Conditions of Employment and the Staff Rules.

21.2. The Conditions of Employment shall be approved and amended by the Governing Council upon a proposal from the Executive Board....

21.3. The Conditions of Employment shall be implemented by Staff Rules, which shall be adopted and amended by the Executive Board.

21.4. The Staff Committee shall be consulted before the adoption of new Conditions of Employment or Staff Rules. Its opinion shall be submitted, respectively, to the Governing Council or the Executive Board.'

4 Article 8 of the Conditions of Employment, concerning the right of ECB staff to strike, reads:

'The right to strike shall be subject to prior written notice from the organising body and to the maintenance of such minimum services as may be required by the Executive Board. The Staff Rules shall further specify these limitations.'

5 Article 9 of the Conditions of Employment lists the sources of the rules applying to ECB staff as follows:

'(a) Employment relations between the ECB and its members of staff shall be governed by employment contracts issued in conjunction with these Conditions of Employment. The Staff Rules adopted by the Executive Board shall further specify the application of these Conditions of Employment.

...

(c) No specific law governs these Conditions of Employment. The ECB shall apply (i) the general principles of law common to the Member States, (ii) the general principles of European Community (EC) law, and (iii) the rules contained in the EC regulations and directives concerning social policy which are addressed to Member States. Whenever necessary, these legal instruments will be implemented by the ECB. EC recommendations in the area of social policy will be given due consideration. In interpreting the rights and obligations under the present Conditions of Employment, due regard shall be shown for the authoritative principles of the regulations, rules and case law which apply to the staff of EC institutions.'

6 Articles 45 and 46 of the Conditions of Employment, concerning representation of the staff of the ECB, provide:

'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.

46. 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.'

7 On the basis of Article 21.3 of the Rules of Procedure and Article 9(a) of the Conditions of Employment, the Executive Board adopted on 1 July 1998 the Staff Rules of the ECB ('the Staff Rules'), Article 1.4 of which provides in particular:

'The provisions of Article 8 of the Conditions of Employment are applied as follows:

...

1.4.2 A strike must be organised by a body which is recognised by the Executive Board as representing a group of members of staff (such as the Staff Committee) or by a body representing at least one sixth of the total members of staff or which, within a Directorate or Directorate General of the ECB, represents at least one third of the members of staff.

1.4.3 The organising body shall inform the Executive Board in writing of the intention to strike at least ten working days before the first day of the

strike. The written notice shall state the precise nature of the dispute, the precise nature of the proposed strike action, and the period during which the strike is going to take place.

1.4.4 The Executive Board of the ECB shall determine, on a case by case basis, the minimum services to be assured at the ECB during the strike.

...

1.4.7 No disciplinary action may be taken against any member of staff participating in a strike unless the member of staff has been nominated to provide the minimum services described above and fails to do so in order to take part in the strike.'

Background to the dispute

8 The International and European Public Service Organisation (IPSO), constituted in the form of a non-registered association under German law, is a trade union which protects the interests of staff of international and European organisations established in Germany. It includes employees of the ECB among its members.

9 The Union of the Staff of the European Central Bank (USE) is also a non-registered trade union association under German law. Its purpose is to protect the interests of the employees of the ECB.

10 The application states that the two applicants represent approximately 24% of ECB staff.

11 Documents in the file indicate that discussions took place during 1999 between the ECB, on the one hand, and the ECB Staff Committee and the two applicant associations, on the other hand, regarding the involvement of the trade union associations in representing the interests of the staff to the Bank. Such representation is in fact provided solely by the Staff Committee, which the Bank, under Article 21.4 of the Rules of Procedure and Articles 45 and 46 of the Conditions of Employment, must consult prior to the adoption of new Conditions of Employment or new Staff Rules and, also, prior to any amendment of those in force.

12 In the context of those discussions, the applicants, by letter of 20 September 1999 to the Vice-President of the ECB, first, stated their position that salary increases, overtime and general conditions of employment should be governed by negotiations and collective agreements and not by unilateral resolutions by the employer, and, second, took note of the fact that the ECB did not intend to enter into negotiation with the trade unions representing its staff.

13 Referring to what had been said earlier by the Vice-President and the Director-General for Administration and Personnel of the ECB, the applicants set out in their letter the reasons why they challenged the position taken by the Bank, which in particular interpreted the Conditions of Employment as meaning that it was legally impossible to enter into collective agreements or, at least, to apply them to individual employment relationships. To interpret them in that way would, as the letter stated, ultimately render the Conditions of Employment unlawful because they would be in breach of International Labour Organisation Conventions Nos 87, 98 and 135, European Community directives and the fundamental right of

freedom of association protected within the Community legal order. The applicants also challenged Article 1.4.2 of the Staff Rules in that it made exercise of the right to strike conditional on the strike being organised by a body recognised by the Executive Board as being representative and, to that end, laid down criteria for recognition which they regarded as arbitrary.

14 The applicants concluded their letter of 20 September 1999 with a request that the ECB state its position as to whether the trade unions operating within the ECB did or did not have the right to call a strike and whether the ECB was ready or not to enter into negotiations with those trade unions.

15 The Vice-President of the ECB, by separate letters dated 18 November 1999, replied to the applicants that the Bank would not determine the conditions of employment of its staff through a process of negotiation with the trade unions.

16 In answer to that reply, the applicants wrote to the Vice-President of the ECB, in a letter of 2 December 1999, asking that the Governing Council should include in the Conditions of Employment a provision (Article 9(e)) providing in particular for the possibility of amending the Conditions of Employment by collective agreements between the trade unions and the ECB.

17 By letter of 28 April 2000, the applicants jointly asked the ECB, again in the person of its Vice-President, first, to state its view on the question raised in their unanswered letter of 2 December 1999 and, second, to amend the rules governing the exercise of the right to strike contained in Article 1.4 of the Staff Rules. In particular, a request was made that the Executive Board withdraw Article 1.4.2 (concerning recognition of the body organising the strike) in its entirety, the last two clauses of Article 1.4.3 (referring to the obligation to state the precise nature of the proposed strike action and the period concerned) and the second part of

Article 1.4.7 (authorising disciplinary action against any member of staff who has failed to provide the minimum services). According to the two trade unions, those provisions, which impose further restrictions on the exercise of the right to strike in addition to those provided for in Article 8 of the Conditions of Employment, were unlawful in both form (they were not adopted by the Governing Council) and substance (they infringe a fundamental right). At the end of the letter, IPSO and USE, citing Article 35(2) of the Rules of Procedure of the Court of First Instance, requested that the ECB's reply be drafted in German.

18 Subsequently, on 7 July 2000, the Vice-President of the ECB sent IPSO and USE identical letters which read as follows:

'In reply to your letter dated 28 April 2000 and following consultation with our legal department, I have the honour to inform you that I do not share your views concerning the validity of the Staff Rules and the alleged limits on the right to strike for the following reasons:

— as regards the validity of the Staff Rules, I consider that the Executive Board was fully empowered to adopt those rules on the basis of Article 36.1 of the ESCB Statute in conjunction with Article 21.3 of the Rules of Procedure. I do not share either your evaluation of the extent of the powers of the Executive Board with regard to the adoption of the Staff Rules or your assessment of the concept of "internal organisation";

— as regards the restrictions imposed on the right to strike by Articles 1.4.2, 1.4.3 and 1.4.7 of the Staff Rules, they implement the Conditions of Employment... by providing detailed rules for applying the general restrictions contained in the Conditions of Employment;

— as regards the content of your letter of 2 December 1999, in which you request the insertion of a new Article 9(e) into the Conditions of Employment, I regret to inform you that I cannot take any action in that regard.

Lastly, you wish to have a reply in German on the basis of the Rules of Procedure of the Court of Justice of the European Communities. I should like to point out that I am replying to your letter as a matter of courtesy and that this informal procedure is not part of a dispute.'

Procedure and forms of order sought

19 By application lodged at the Registry of the Court of First Instance on 11 September 2000, the applicants brought the present action challenging the letter of 7 July 2000 from the Vice-President of the ECB.

20 By a separate document lodged at the Registry on 26 October 2000, the ECB lodged a plea of inadmissibility under Article 114 of the Rules of Procedure. The applicants submitted their observations on the plea of inadmissibility on 11 December 2000.

21 In the application the applicants claim that the Court should:

— annul the defendant's decision of 7 July 2000;

— order the defendant to pay the costs.

22 In its plea of inadmissibility the defendant contends that the Court should:

— dismiss the application as manifestly inadmissible;

— order the applicants to pay the costs.

23 In their observations on the plea of inadmissibility the applicants claim that the Court should:

— rule that the application is admissible;

— in the alternative, reserve a decision on the plea of inadmissibility for the final judgment.

The admissibility of the application

24 Under Article 114(1) of the Rules of Procedure, where a party so requests, the Court of First Instance may decide on inadmissibility without going into the

substance of the case. Under Article 114(3) of those Rules, the remainder of the proceedings are to be oral unless the Court of First Instance decides otherwise; in the present case the Court considers that it has sufficient information from the documents of the case and that there is no need to open oral proceedings.

Arguments of the parties

25 The defendant maintains, first, that the contested letter does not constitute an act open to challenge within the meaning of Article 230 EC. In that regard, it points out that, according to settled case-law, the fact that a letter has been sent by a Community institution to a person in response to a prior request by that person is not sufficient for that letter to be regarded as a decision within the meaning of Article 230 EC, thereby opening the way for an action for annulment. Only measures which produce binding legal effects and are such as to affect the interests of the applicant by bringing about a distinct change in his legal position constitute acts or decisions which may be the subject of an action for annulment under Article 230 EC (Case T-83/92 *Zunis Holding and Others* v *Commission* [1993] ECR II-1169, paragraph 30).

26 The defendant adds that the contested letter has no binding legal effect since it is merely a reply from the Vice-President of the Bank to requests made by the applicants in the context of informal discussions with the ECB. In that regard, it points out, first, that there is no provision which either requires or empowers the Vice-President to take decisions having binding legal effects. It observes, secondly, that in that letter the Vice-President merely informs the applicants that he does not share the legal views expressed in their letter of 2 December 1999 and in their letter of 28 April 2000, to which as he says himself he is only replying out of courtesy.

27 Furthermore, according to the defendant, the contested letter has not brought about any significant alteration in the applicants' legal position. It merely confirms that legal position as it existed before they received the letter.

28 At any event, the defendant maintains that the letter of 7 July 2000 is an act confirming the reply given the applicants in the letters from the Vice-President of the ECB dated 18 November 1999. The Bank had already informed the applicants in those letters that it had no intention of amending the Conditions of Employment nor, implicitly, the Staff Rules, by concluding collective agreements with the trade unions. Since the applicants did not bring an action following receipt of those letters, they could not have provoked a new reaction from the ECB to revive the expired time-limits.

29 Second, the defendant considers that the applicants have no *locus standi*. In that regard, it points to the Community case-law on the conditions for the admissibility of an action for annulment against an act that amounts to a rejection, which must be appraised in the light of the nature of the request to which it constitutes a reply. In particular, the refusal by a Community institution to amend an act may constitute an act whose legality may be reviewed under Article 230 EC only if the act which the Community institution refuses to withdraw or amend could itself have been contested under that provision (*Zunis Holding*, cited above, paragraph 31).

30 In the present case, according to the defendant, the acts which the applicants wish to see amended, namely the Conditions of Employment and the Staff Rules, are legal acts of a general and abstract nature, applicable to all members of the ECB's staff, present and future, taken as a whole. It points out that case-law has consistently held that an organisation formed for the protection of the collective interests of a category of persons cannot be considered to be directly and

individually concerned by a measure affecting the general interests of that category (Case 72/74 *Union syndicale and Others* v *Council* [1975] ECR 401, paragraph 17). In the defendant's view, since the Conditions of Employment and the Staff Rules are not of direct and individual concern to the applicants, the information contained in the letter of 7 July 2000 that the ECB does not propose to amend them cannot constitute an act whose legality can be reviewed under Article 230 EC.

31 The defendant points out, lastly, that the applicants should have brought an action against the provisions of the Conditions of Employment and the Staff Rules which they are challenging within two months of the date on which they became aware of them. As the Conditions of Employment and the Staff Rules were adopted on 9 June and 1 July 1998 respectively, the action brought on 11 September 2000 is, in the absence of new facts, late and hence inadmissible.

32 The applicants maintain, first, that the contested letter constitutes an act open to challenge. They observe that in the context of the consideration of the admissibility of an action for annulment against a decision of an institution which amounts to a rejection, that decision must be appraised in the light of the nature of the request to which it constitutes a reply (Case T-330/94 *Salt Union* v *Commission* [1996] ECR II-1475, paragraphs 32). In that regard they point out that the form in which the acts or decisions are taken is, in principle, irrelevant as regards whether they can be challenged by an action for annulment. In order to establish whether letters sent by an institution constitute acts within the meaning of Article 230 EC, their content and the context in which they were drafted are, however, decisive (Case T-241/97 *Stork Amsterdam* v *Commission* [2000] ECR II-309, paragraph 62).

33 According to the applicants, the requests to which the contested letter replied can by no means be interpreted as being mere requests for information. As for the

letter, it should be interpreted as being a rejection of the requests of 2 December 1999 and 28 April 2000. In fact they clearly reflect the defendant's final view on the applicants' requests, refusing in particular to allow them to take part in amending the Conditions of Employment of ECB staff. The contested letter therefore contains a decision producing binding legal effects with regard to them and so it is an act which may be the subject of an action under Article 230 EC.

34 The applicants also deny that the letter of 7 July 2000 merely confirms the letters from the Vice-President of the ECB of 18 November 1999. In their opinion, whereas in the letters from the Vice-President the ECB, in its capacity as an employer, informed them that it did not intend to enter into collective negotiations regarding the Conditions of Employment, in the letter of 7 July 2000 it informed them, availing itself of the powers conferred on it under Article 36.1 of the ESCB Statute, that it would not create the conditions for the applicability of collective agreements to employment relations and that it would not amend the provisions governing the right to strike.

35 Secondly, the applicants consider they do have *locus standi* and challenge the validity of the defendant's arguments on that point.

36 First they point out that the contested decision is addressed to them. Second, they deny that the acts which the ECB is refusing to amend, namely the Conditions of Employment and the Staff Rules, are regulatory acts. These are not regulations but standard general contractual conditions governed by private law, the legal effects of which result from the conclusion of a private law contract of employment and not from the exercise of regulatory powers by the ECB. In their view, Article 36.1 of the ESCB Statute must be regarded not as a provision conferring legislative powers on the Governing Council of the ECB, but simply as a provision which imposes an obligation on the Governing Council to lay down a uniform contractual framework, that is to say, a general practice intended to

ensure equal treatment for employees. This emerges, first, from the fact that that article does not appear on the list of provisions of the ESCB Statute for which the ECB is empowered under Article 110 EC to lay down implementing regulations and, second, from the fact that the term 'conditions of employment' is used in that article and not 'staff regulations' or 'regulation'.

37 Moreover, even if the Conditions of Employment and Staff Rules were regarded as being of a regulatory nature, the applicants consider themselves to be directly and individually concerned by the rules governing the sources of the conditions applying to employment relations within the ECB (Article 9 of the Conditions of Employment does not mention collective agreements) and by the rules governing the right to strike (Article 1.4 of the Staff Rules). In particular, they are individually concerned by those rules since under the Conditions of Employment and the Staff Rules they have a duty to seek to conclude collective agreements for the benefit of ECB employees in order to participate in restructuring the conditions of employment of their members, and a duty to organise strikes for that purpose if necessary. The acts in question affect them directly and individually because they prevent them from availing themselves of the principles applying to collective agreements, contained in the law of the Member States, in order to represent the interests of their members to the ECB, and to organise strikes. Even the applicants' essential attributes are affected, since it is the conditions under which they can exercise union rights that is at issue.

38 The applicants add that: '[If] the ECB were to enjoy legislative powers in relation to employment law the trade unions would be subject to a legislature which, by adopting the contested acts, prevents the application of the principles governing collective agreements. If the opportunity to conclude collective agreements — the issue that goes to the substance of the application — is part of European protection for fundamental rights, and if that protection applies also to the adoption of European rules, the trade unions would be fundamentally affected by the defendant's acts.' They conclude that the legal act rejecting the requests they

have made to the ECB is of direct and individual concern to them, in so far as that act prohibits them from exercising their fundamental trade union rights.

39 Lastly, the applicants challenge the defendant's arguments regarding the delay in bringing this action. They point out that, according to the defendant's arguments, refusal to withdraw or amend an act can only be challenged within the same time-limit as that laid down for challenging the act itself. The existence of case-law conceding in certain circumstances the possibility of challenging in isolation, under Article 230 EC, refusal to withdraw or amend an act adopted by an institution in their opinion shows that that interpretation is incorrect. Hence, the event that initiates the period within which an action must be brought cannot be the adoption of the act whose amendment is sought, but must be the rejection of the request made for such amendment.

40 The applicants add that the Staff Rules were adopted on the basis of a decision which the ECB itself described as an interim decision, and hence not one which can initiate a period within which an action must be brought. In addition, neither the Conditions of Employment nor the Staff Rules were published in the *Official Journal of the European Communities*. Moreover, at the time the applicants became aware of them they could not but consider, in the absence of any specific rules, that the application of any future collective agreements would not pose any problem, yet they did not discover that the ECB took the view that the application of collective agreements required amendment of the Conditions of Employment until September 1999, when a letter was sent to the Staff Committee, a letter which could not by itself make time start to run for the purposes of their bringing an action. At all events, there was no definitive act as far as they were concerned until the decision rejecting their requests of 2 December 1999 and 28 April 2000, contained in the letter of 7 July 2000.

41 In the alternative, the applicants also maintain that new facts have occurred since the adoption of the Conditions of Employment: the inaugural general assembly of USE took place on 18 March 1999, 'that is, after all the time-limits relating to the [Conditions of Employment] had expired'.

Findings of the Court

42 It should be noted, first of all, that under Article 35.1 of the ESCB Statute the acts or omissions of the ECB are open to review or interpretation by the Community judicature in the cases and under the conditions laid down in the EC Treaty, subject to the special procedure provided for in respect of disputes between the ECB and its staff under Article 36.2 of the ESCB Statute. As the present action for annulment does not concern a dispute between the ECB and its staff, its admissibility must be considered in the light of the conditions laid down in Article 230 EC, to which Article 35.1 of the ESCB Statute refers (see to that effect the order of 30 March 2000 in Case T-33/99 *Méndez Pinedo* v *ECB* [2000] ECR-SC I-A-63 and II-273, paragraph 23).

43 The fourth paragraph of Article 230 EC provides that any natural or legal person may, under the conditions stated in the first three paragraphs of that article, institute proceedings 'against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former'.

44 In deciding whether the present application is admissible, it should first be pointed out that, according to the case-law, the fact that a letter has been sent by a Community institution to a person in response to a prior request by that person is not sufficient for that letter to be regarded as a decision within the meaning of Article 230 EC, thereby opening the way for an action for annulment (*Zunis Holding*, cited above, paragraph 30 and the case-law cited therein). Only measures having binding legal effects of such a nature as to affect the interests of the applicant by having a significant effect on his legal position constitute acts or decisions against which proceedings for annulment may be brought under Article 230 EC (Joined Cases C-68/94 and C-30/95 *France and Others* v

Commission [1998] ECR I-1375, paragraph 62; *Zunis Holding*, cited above, paragraph 30, and Joined Cases T-125/97 and T-127/97 *Coca-Cola* v *Commission* [2000] ECR II-1733, paragraph 77).

45 Secondly, it follows from settled case-law that when an act of an institution amounts to a rejection it must be appraised in the light of the nature of the request to which it constitutes a reply. In particular, the refusal by a Community institution to withdraw or amend an act may constitute an act whose legality may be reviewed under Article 230 EC only if the act which the Community institution refuses to withdraw or amend could itself have been contested under that provision (*Zunis Holding*, cited above, paragraph 31 and the case-law cited therein).

46 In the present case, the applicants requested the ECB, first, to insert into the Conditions of Employment a provision providing for the conclusion of collective agreements and governing the effects of such agreements on employment relations between the Bank and its staff and, second, to withdraw certain parts of Article 1.4 of the Staff Rules which in their view arbitrarily restricted the exercise of the right to strike.

47 The applicants' requests therefore sought to prompt the exercise, to a particular end, of the powers conferred on the Governing Council by Article 36.1 of the ESCB Statute and on the Executive Board by Article 21.3 of the Rules of Procedure and Article 9(a) of the Conditions of Employment for laying down the conditions of employment of the staff of the ECB, and provisions for implementing them, respectively. In those circumstances the applicants may seek the amendment of the Conditions of Employment and the withdrawal of certain provisions of the ECB Staff Rules only in so far as they are directly and individually concerned by those acts within the meaning of the fourth paragraph of Article 230 EC (see to that effect *Zunis Holding*, cited above, paragraph 33).

48 In that regard, as the Court of First Instance held in Case T-333/99 *X* v *ECB* [2001] ECR-SC II-921, paragraphs 61 and 62, a case concerning the legality of a provision of the Conditions of Employment which provided for a disciplinary regime applicable to the staff of the ECB, although the employment relationship between the ECB and its members of staff is of a contractual nature, and not of the type existing between the public service and its officials, the ECB is none the less a Community body which is responsible for the fulfilment of a task in the Community interest and which is empowered to lay down, in the form of regulations, the provisions applicable to its staff.

49 Both the Conditions of Employment and the Staff Rules clearly constitute acts having general scope, which apply to objectively determined situations and produce legal effects with respect to categories of persons envisaged generally and in the abstract (Case T-166/99 *Andres de Dios and Others* v *Council* [2001] ECR II-1857, paragraph 36 and the case-law cited therein). The Conditions of Employment, like the Staff Regulations of Officials of the European Communities, lay down with regard to the European public service the rights and obligations of members of the staff of the ECB, and the Staff Rules, like the general implementing provisions adopted by each Community institution under the first paragraph of Article 110 of the Staff Regulations, lay down the criteria intended to guide the ECB in exercising its discretion, and define more closely the scope of the provisions of the Conditions of Employment that are lacking in clarity (see, regarding this function of the general provisions for implementing the Staff Regulations of Officials, Case T-75/89 *Brems* v *Council* [1990] ECR II-899, paragraph 29, and with regard to the analogy between those provisions and the Staff Rules of the ECB, see *X* v *ECB*, cited above, paragraph 105).

50 The general scope of the Conditions of Employment cannot be called into question because they were adopted by the Governing Council by means of an act referred to as a 'decision'. Consideration of whether an act constitutes a regulation or a decision must address not the form in which the act was adopted but exclusively its substance (*Andres de Dios*, cited above, paragraph 35).

51 However, case-law states that in certain circumstances an act having general scope may be of individual concern to some of the persons concerned, and hence amount to a decision with regard to them. That is the case if the act in question affects a legal or natural person by reason of certain attributes which are peculiar to him or by reason of circumstances which differentiate him from all other persons (*Andres de Dios*, cited above, paragraph 45, and the case-law cited therein).

52 It is therefore necessary to determine, in the light of that case-law, whether the applicants are concerned by the provisions of the Conditions of Employment and the Staff Rules which they have sought in vain to have amended, by reason of certain attributes which are peculiar to them or by reason of circumstances which differentiate them, in regard to those provisions, from all other persons.

53 In that regard, it is appropriate to point out that the applicants maintain that they are affected by those provisions because they have a duty under the Conditions of Employment to seek to conclude collective agreements for the benefit of the employees of the ECB, in order to participate in restructuring the conditions of work and employment of their members, and the duty to organise strikes, where necessary, for that purpose. Representation of the interests of their members by concluding collective agreements and organising strikes fall within the essential functions of a trade union. In so far as they relate to the conditions for implementing trade union rights, the rules limiting the sources of the ECB Staff Rules, excluding collective agreements, and the rules allegedly restricting the exercise of the right to strike do affect them directly and individually. The same applies with regard to the legal act rejecting their requests for amendment of those rules.

54 It must be observed that the applicants can use those arguments to show at most that the defendant is wrong to rely on the case-law concerning the absence of a collective organisation's *locus standi* for the purposes of obtaining the annulment of acts affecting the general interests of the category it is protecting. That case-law is not relevant in this case, since the applicants have challenged the letter

of 7 July 2000 on grounds of the prejudice caused to the legal position each of them holds as a legal entity separate from the members of the ECB staff. Thus, in order to substantiate their *locus standi*, the applicants rely on the fact that their own interest, and not merely the general interests of the staff of the ECB, is affected.

55 However, the attributes claimed by the applicants do not suffice to show that they are individually concerned within the meaning of the fourth paragraph of Article 230 EC by the provisions of the Conditions of Employment and the Staff Rules which they sought to have amended or withdrawn. Those attributes are not in fact peculiar to them, within the meaning of the case-law relating to that article, inasmuch as they are common to any association which, at any time, assumes the task of protecting the interests of the ECB's employees. The provisions of the Conditions of Employment and the Staff Rules applicable to the staff in question affect each of the two applicants in the same way as they affect all other trade union organisations currently or potentially active in defence of the interests of those workers.

56 As for the applicants' argument that they are individually concerned by the relevant provisions of the Conditions of Employment and the Staff Rules, and by the ECB's refusal to amend them, because those acts preclude them from exercising a fundamental right protected under Community law, such as the freedom to exercise trade union rights, it should be stated that consideration, first, of the existence and extent within the Community legal order of the fundamental right to exercise trade union rights and, second, of the possible infringement of that right by the provisions in question, as the applicants themselves point out, goes to the substance of the case.

57 As regards the admissibility of the application, the mere fact that a regulatory act may affect the legal situation of an individual cannot, as the Community judicial system stands at present, suffice to enable that individual to be regarded as directly and individually concerned by that act. Only the existence of specific

circumstances by which a person is differentiated from all other persons and is thereby distinguished individually just as in the case of the person to whom a decision is addressed may enable that person to bring proceedings under the fourth paragraph of Article 230 EC against an act having general scope (see to that effect Joined Cases 10/68 and 18/68 *Eridania and Others* v *Commission* [1969] ECR 459, paragraph 7, and Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraphs 20 and 22). As was observed above, such circumstances do not exist in this case.

58 In those circumstances, the applicants are not individually concerned either by the rules contained in Article 9 of the Conditions of Employment relating to the sources of the ECB Staff Rules or by the rules contained in Article 1.4 of the Staff Rules concerning the exercise by those staff of the right to strike. Therefore, under the case-law cited in paragraphs 44, 45 and 47 above, and in so far as the contested letter amounts to a refusal to amend rules of general scope which are not of individual concern to the applicants, the latter are not entitled to contest that refusal by means of an action for annulment. In that regard, the mere fact that the letter containing that refusal is addressed to the applicants is wholly irrelevant.

59 It follows therefore that the application must be dismissed as inadmissible and there is no need to consider the other arguments raised by the parties.

Costs

60 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, 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 applicants have been unsuccessful and the defendant has asked that they be ordered to pay the costs, the applicants must be ordered to pay their own costs and those incurred by the defendant.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. **Dismisses the application as inadmissible;**

2. **Orders the applicants to bear their own costs and those incurred by the defendant.**

Luxembourg, 18 April 2002.

H. Jung — Registrar

M. Vilaras — President