JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
6 March 2001 *

In Case T-192/99,

Roderick Dunnett, residing in Luxembourg (Luxembourg),

Thomas Hackett, residing in Rameldange (Luxembourg),

Mateo Turró Calvet, residing in Rameldange,

represented by A. Dashwood and W.-J. Outhwaite, Barristers, with an address for service in Luxembourg,

applicants,

v

European Investment Bank, represented by J.-P. Minnaert and Z. Zachariadis, acting as Agents, assisted by A. Barav, Barrister and avocat, with an address for service in Luxembourg,

defendant,

* Language of the case: English.

APPLICATION for annulment of both the decision to abolish, as of 1 January 1999, the system of special conversion rates and the salary statements of the applicants in which that decision was applied,

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

composed of: J. Azizi, President, K. Lenaerts and M. Jaeger, Judges,

Registrar: B. Pastor, Principal Administrator,

having regard to the written procedure and further to the hearing on 12 October 2000,

gives the following

Judgment

Legal context and facts

1 The applicants are members of the staff of the European Investment Bank (hereinafter 'the EIB' or 'the Bank'). This dispute concerns a measure taken by the EIB on the introduction of the euro on 1 January 1999.

2 Article 17 of Annex VII to the Staff Regulations of Officials of the European Communities (hereinafter 'EC Staff Regulations') allows officials, subject to certain conditions, to have part of their remuneration transferred in a currency other than that of the country where they perform their duties. Under Article 17(3) of Annex VII to the EC Staff Regulations such transfers 'shall be made at the exchange rate [used for the implementation of the general budget of the European Communities]; the amounts transferred shall be multiplied by a coefficient representing the difference between the weighting for the country in whose currency the transfer is made and the weighting for the country in which the official is employed.'

3 The Staff Regulations of the EIB (hereinafter 'EIB Staff Regulations') do not include any equivalent provision. However, by decision of 23 March 1982, the Board of Directors of the EIB (hereinafter 'the Board of Directors') agreed that the Management Committee of the EIB (hereinafter 'the Management Committee') could allow staff to transfer a part of their salary, which was paid in Belgian or Luxembourg francs, into another currency at a special conversion rate.

4 The staff of the EIB were informed of the decision of 23 March 1982 by a note of 25 March 1982 which provides:

'2.1. A... decision based on the practice followed in the other European institutions allows the Management Committee to authorise EIB staff to benefit, from 1 March 1982 until further decision to be made by 1 September 1982 at the latest, from the conversion rates provided for by the EC Staff Regulations for transfers made in a Community currency other than the Belgian or Luxembourg franc of up to 35% of net monthly salary.

The conversion rates provided for in the EC Staff Regulations are the rates of exchange in force on 1 July 1981 adjusted by the weighting used by the Community institutions.

2.2. This facility is only allowed in respect of sums used for expenditure or investment in currencies other than the Belgian or Luxembourg franc...'.

5 On 27 July 1982 the Board of Directors decided 'to retain the privilege of the conversion rates applicable to transfers by officials of the Communities in currencies other than the Belgian or Luxembourg franc of up to 35% of net monthly salary'.

6 The system in question, which allowed the transfer of part of the salary of EIB staff in a currency other than the Belgian or Luxembourg franc at a special conversion rate fixed annually and determined on the basis of the weighting fixed by the institutions for the country in whose currency the transfer was made (hereinafter 'the system of special conversion rates'), was maintained for several years.

7 At its meeting of 1 March 1995, the Management Committee approved the modification of the system of special conversion rates. By a note of 24 March 1995, staff of the Bank were given detailed information of the change, as follows: '... The Management Committee has decided to adjust the criteria for granting special rates in the EIB to bring them into line with those in force in the Community institutions and take account of the new arrangements recently introduced by those institutions'. The note explained that 'the measures adopted are principally intended to refocus and clarify the concept of special rates and ensure they fulfil their original purpose'. It was pointed out in a footnote that the

system of special conversion rates was introduced in 1982 to 'safeguard the purchasing power of Bank staff outside Luxembourg'.

8 The changes decided on in March 1995 were to be introduced gradually in three stages, the first beginning on 1 July 1996, the second on 1 July 1997 and the third on 1 July 1998.

9 On 10 February 1998 the Human Resources Department of the EIB sent a note to the Management Committee in which it proposed *inter alia* the abolition, from 1 January 1999, of the system of special conversion rates. At its meeting of 17 February 1998 the Management Committee approved that proposal in principle.

10 Consultations with staff representatives about the abolition of the system of special conversion rates began in March 1998.

11 On 17 March 1998 the Human Resources Department of the EIB sent a note entitled 'L'euro et son impact sur les activités RH' (The Euro and its impact on human resources activities) to staff representatives. In that note the Department stated at point 2.3:

'For the currencies of IN countries [the countries participating in economic and monetary union] the maintenance of special conversion rates after 1 January 1999 will be incompatible with the existence of fixed and irrevocable rates. For those currencies there can no longer be "exchange operations" as such but only conversion, and it will thus be impossible to justify entering the amounts derived from the conversion of the euro into such currencies in the accounts as exchange differences.

For the currencies of pre-IN countries, the situation is rather different since those currencies will continue to fluctuate against the euro. However, numerous reasons, relating to economics and equity, call for their abolition. In terms of economics, the convergence criteria as defined in the Treaty have been met in most of those countries. The maintenance of special conversion rates for pre-IN currencies would give rise to discrimination against staff whose countries of origin adopt the euro'.

12 The staff representatives replied to that note by a note of 3 April 1998 in which they expressed their regret at not having been officially involved earlier since the Management Committee had by then already made the crucial decisions. As regards the abolition of the conversion rates, it was explained in that note at point 1.2:

'The application of special conversion rates is the result of the Commission's taking account of weightings. Those weightings will not disappear on 1 January 1999.

...

According to official statistics, while almost all the staff use the facility (that is to say the right to transfer a part of their salary using the special conversion rate), 52.5% of the transfers are currently made in FRF, 27.5% in DEM and 20% in GBP.

Obviously, the introduction of the euro does not in itself justify the abolition of weightings. Rather, consideration of the constraints imposed on staff of the Bank should lead it to adopt a flexible global approach.

What can we conclude? The application of the special conversion rates for the above three currencies to 35% of remuneration (to which each member of staff is entitled) results in an average increase in salary of 7.7%.

The [staff representatives] propose that as of 1 January 1999, the salary scale should be converted from the Luxembourg franc to the euro using the following formula:

EURO SALARY = LUF SALARY × OFFICIAL CONVERSION RATE × 1.077'.

13 On 6 May 1998 the Human Resources Department replied to the note from the staff representatives of 3 April 1998. In its note (RH/Adm/98-883/MG), the department first of all pointed out that '[i]n accordance with Article 109l(4) of the EC Treaty, the conversion rates between European Monetary Union country currencies and the euro will be fixed irrevocably by the Council, on a Commission proposal, on 1 January 1999.' It went on to state:

'As from that date it will no longer be meaningful to speak of exchange rates or of any exchange risk.

...

Against that background it is clear that the only conversion rates the Bank will be able to use from 1 January 1999 will be those officially fixed by its shareholders.

The special conversion rates will therefore disappear as of that date irrespective of whether or not the Bank has expressed its scales in euro.

The abolition from 1 January 1999 of the practice of special conversion rates for transfers of part of a salary is therefore inescapable. For reasons of policy and of credibility, the Bank cannot be seen to be the only one of the European institutions not to express its scales in euro from 1 January 1999 in accordance with the rates officially set by its shareholders.'

14 In a communication of 13 May 1998, the staff representatives 'noted that the Human Resources Department had answered practically none of their questions'. They alleged that 'the attitude of the Human Resources Department is to stall any discussion'. In the same note it was further stated: 'The staff representatives insist that a constructive proposal should be put forward by the Human Resources Department... to compensate staff properly for the anticipated loss of purchasing power; the deadline for the introduction of the euro is inescapable and a practical solution must be found at official level very soon'. The staff representatives stated that they were 'prepared to pursue genuine negotiations on the subject at the earliest opportunity' and stated that they 'awaited further proposals from the Human Resources Department'.

15 By note of 28 May 1998, the Human Resources Department informed the staff representatives as follows:

'2.1.... As regards staff in service and in line with the arrangements set out in our note of 6 May 1998, special conversion rates will be abolished as of 1 January 1999, from which date the conversion rates of currencies of countries participating in EMU and the euro will be fixed irrevocably. The Bank will

therefore not be able to use rates other than those set by its shareholders for the conversion of salary and pension scales.'

16 At paragraph 2.3 of its note the Human Resources Department made the following proposal:

'An arrangement affecting all staff could be proposed to the Management Committee for immediate implementation. It would consist in maintaining for the second half of 1998 the current special conversion rates and implementing arrangements.

It will be recalled that, in 1995, in the course of the review of policy on salaries, it was decided to spread out over three years with effect from 1 July each year the implementation of certain arrangements for staff in service. The arrangements to be implemented in the final stage, that is to say from 1 July 1998, consist in the payment of part of the remuneration at a special conversion rate, without documentary proof, up to the limit of the expatriation allowance (16%, 8% or 4%) in the currency of the State of a staff member's nationality or domicile. The method of payment should be as follows: transfers should be made from accounts at banks in the country of the staff member's nationality or domicile.

With your agreement, this proposal could be made in the very near future and, if possible, could be announced to staff in the forthcoming Bulletin *Euro Info EIB* RH 2nd Issue, to be devoted chiefly to special conversion rates and the impact of the euro on the EIB pension scheme.'

17 In a note of 5 June 1998 (RH/Adm/98-1108) to the Management Committee, the Human Resources Department proposed to that committee that the system of special conversion rates be abolished as of 1 January 1999, and that, in the absence of any response from the committee, the proposal would be deemed to be approved. The note which, at the head of the first page, bore the words: 'For decision — approval will be deemed to have been given in the absence of objections by 11 June 1998 at 0030 hrs', read as follows:

'1. Special conversion rates

1.1. The special conversion rates for all staff in service or retired (staff and diplomatic corps) will be abolished as of 1 January 1999, from which date the conversion rates for currencies of countries participating in EMU and the euro will be fixed irrevocably. The Bank will therefore not be able to use rates other than those set by its shareholders for either the conversion or the payment of salary and pension scales in euros.

1.2. After consulting staff representatives, and taking account of the fact that new and stricter implementing arrangements for special rates are to be introduced for staff as of 1 July 1998, the following practical steps could be taken:

— All staff (staff and diplomatic corps) would still be able to benefit from the maintenance of the special conversion rates in force and the current implementing arrangements for the next six months (July to December 1998).

— Certain members of staff posted to outside offices (London) could temporarily receive an appropriate allowance equivalent to the amount lost on abolition.

— Certain pensioners (staff and diplomatic corps) for whom the special conversion rate for the currency of their country of residence is currently applied to the whole of their pension, will have that benefit discontinued before the end of the transitional period (31.12.2001) gradually and on a sliding scale according to the amount the benefit represents.

...

3. Opinion of staff representatives

The [staff representatives] have noted that salaries and pensions as well as other staff allowances will be expressed and paid in euro as of 1 January 1999.

The [staff representatives] have drawn the attention of the Management Committee to the significant loss of purchasing power entailed by the abolition of the special conversion rates. Compared with the current position the staff representatives estimate that loss (on the basis of enquiries made of staff) at 3.5% on average and estimate that it affects 90% of Bank staff.

The [staff representatives] consider that the interim measures proposed in paragraph 2 represent a first step in a balanced treatment of the issue but take the view that other arrangements should be looked at.

The [staff representatives] will, at the appropriate juncture, make known their view on the other proposals which the Human Resources Department intends to put forward.

...'

18 The minutes for 10 and 11 June 1998 state:

'On the basis of note RH/Adm/98-1108 of 5 June 1998 the Management Committee approves the practical arrangements for the transition to the euro described in paragraphs 1 and 2 of the note...'.

19 Staff of the EIB were informed of the decision taken by Bulletin *Euro Info EIB* RH 2nd Issue dated June 1998 in the following terms:

'At present, staff members can transfer part of their net remuneration into a currency other than the [Belgian or Luxembourg franc] at special conversion rates set each year.

In accordance with Article 109l(4) of the EC Treaty, the conversion rates between EMU country currencies and the euro will be fixed irrevocably by the Council, on a Commission proposal, on 1 January 1999.

As from that date it will no longer be meaningful to speak of exchange rates or of any exchange risks between currencies in these countries. The euro will become the single currency of the participant countries with fixed conversion rates against the national currency units and these will then become subdivisions of the euro.

The communiqué of the European Council on adoption of the euro stipulates that the rates used in determining the value of the euro will be the current ERM bilateral central rates which reflect the economic fundamentals of the participating countries and are compatible with sustainable convergence among these countries.

The EIB will not therefore be able to use rates other than those officially fixed by its shareholders. This makes abolition of the special conversion rates inescapable, irrespective of whether or not the Bank has expressed its scales in euro.

In the interests of fairness and equal treatment, the discontinuation of special conversion rates from 1 January 1999 will extend to all staff regardless of whether they are nationals of an IN country (participant in the euro zone) or a pre-IN country (non participant). In the meantime it has been decided to prolong the transitional special rate arrangements up to 31 December 1998. A note to staff on this subject will be circulated shortly.

Where pension recipients might be affected by the euro's introduction their situation will be adjusted progressively in accordance with arrangements of which they will be notified.'

20 That communication was followed by a staff note dated 19 June 1998 in which it was stated that the Management Committee had 'approved extension of the application of the special conversion rates, in keeping with existing arrangements, until 31 December 1998, before their abolition on 1 January 1999.'

21 According to the minutes of the meeting of the Board of Directors of 23 February 1999, the board 'endorsed the decision of the Management Committee to discontinue the system of special conversion rates on salaries and pensions'.

22 By letter of 3 March 1999 to the President of the EIB, the applicants made a written request for conciliation pursuant to Article 41 of the EIB Staff Regulations. The second paragraph of that article provides:

'In addition to proceedings being instituted before the Court of Justice, an amicable setlement shall be sought before the Bank's Conciliation Board in respect of disputes other than such as arise from application of [disciplinary measures].'

23 A Conciliation Board was appointed and met on 4, 10 and 12 May 1999 to consider proposals and counter-proposals submitted by the applicants and by the EIB respectively. On 17 May 1999 the Conciliation Board put forward proposed terms for an amicable settlement. However, those terms were not acceptable to the EIB, which put forward counter-proposals on 4 and 30 June 1999 which were unacceptable to the applicants.

Procedure and forms of order sought

24 By application lodged at the Registry of the Court of First Instance on 31 August 1999 the applicants brought an action pursuant to the first paragraph of Article 41 of the EIB Staff Regulations.

25 The applicants claim that the Court should:

— declare that the internal note to the Management Committee dated 5 June 1998 and the minutes of the decision of the Management Committee thereon dated 10 and 11 June 1998 do not, taken together, constitute a valid decision of the Management Committee to abolish, as from the introduction of the single currency on 1 January 1999, the so-called 'special conversion rate' which had been applicable, pursuant to the decisions of the Board of Directors, ever since March 1982, to part of the remuneration of officials of the Bank paid in currencies other than Belgian or Luxembourg francs;

— in the alternative, annul the said decision purportedly taken by the Management Committee;

— further or in the alternative, annul the decision taken by the Board of Directors on 23 February 1999, purporting to confirm retroactively the decision of the Management Committee purportedly taken in June 1998;

— further annul the salary statements issued to the applicants in respect of their remuneration for the month of January 1999 and for successive months, in so far as the salary statements contain no element resulting from the application of that 'special conversion rate';

— order the payment to the applicants by the EIB, with interest, of the difference between the amounts which the applicants have received by way of remuneration since 1 January 1999, and the amounts which they would have received if the 'special conversion rate' had been applied, and for a declaration that the 'special conversion rate' remained applicable pursuant to the relevant decisions by the Board of Directors of the EIB; and

— order the payment by the EIB of the applicants' costs of these proceedings, as well as the costs of the prior conciliation procedure.

26 The EIB contends that the Court should:

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

— order the applicants to pay the costs.

27 The EIB also contends that the Court should order that Annexes I, II, XVI, XVII, XVIII, XXI, XXIII, XXIX, XXX, XXXI and XL to the application should be withdrawn from the Court file and returned to it, without the applicants making or keeping a copy.

28 By letter of 16 February 2000 the applicants stated that they would not lodge a reply. In the same letter they asked the Court to order the EIB to disclose several documents mentioned in the defence.

29 By letter of 6 April 2000 the EIB made observations on the letter of 16 February 2000.

30 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure under Article 64 of the Rules of Procedure, asked the EIB to produce the minutes of the meeting of the Management Committee of 17 February 1998. The latter complied with that request.

31 The parties presented oral argument and replied to the Court's questions at the hearing on 12 October 2000.

The requests for the withdrawal or disclosure of certain documents

32 The EIB contends that Annexes I, II, XVI, XVII, XVIII, XXI, XXIII, XXIX, XXX, XXXI and XL to the application are confidential internal documents which were improperly obtained by the applicants. Referring to Article 8 of the EIB Staff Regulations and Article 6 of the Convention on the Representation of the Staff of the EIB and to the orders of the Court of Justice of 19 March 1985 in Case 232/84 *Commission* v *J-L Tordeur and Others* (not published in the European Court Reports) and of 15 October 1986 in Case 31/86 *Levantina Agricola Industrial* v *Council* (not published in the European Court Reports), the EIB requests that those documents be removed from the file and returned to it, without copies being made or retained by the applicants.

33 However, the Court points to the particular nature of the present proceedings in which the applicants seek to establish the illegality of the decision of the EIB to

discontinue the system of special conversion rates by calling into question *inter alia* the proper conduct of the procedure for consulting staff representatives before the adoption of that decision. The assessment of the merits of the application thus requires consideration of a number of the internal documents of the EIB.

34 It is to be noted that the documents in Annexes I and II to the application are the decisions of the Management Committee of 11 June 1998 and of the Board of Directors of 23 February 1999. Since the Court is called upon to rule on the legality of those decisions, those annexes are clearly relevant to the settlement of the present dispute. Annexes XVI, XVII and XVIII to the application, that is to say the notes from the Human Resources Department to staff representatives of 17 March, 6 May and 28 May 1998, concern the consultation which took place before the adoption of the decision to abolish the system of special conversion rates. In view of the pleas on the merits relied on in the present case (see paragraph 77 et seq. below), it is essential that those annexes remain on the file. Next, it is notable that the EIB, in its account of the relevant facts in the case, itself referred to the decision of the Board of Directors of 24 June 1998 (defence, paragraph 38), to the note from the Human Resources Department to the Management Committee of 9 October 1998 (defence, paragraph 41), to the note from the Human Resources Department to the Management Committee of 3 December 1998 (defence, paragraph 45) and to the decision of the Management Committee of 9 December 1998 (defence, paragraph 45). Those notes and decisions appear in Annexes XXIII, XXIX, XXX and XXXI to the application respectively. As regards Annex XXI, which is the note from the Human Resources Department to the Management Committee of 21 July 1998, the EIB quoted an extract from it in support of its contentions (defence, paragraph 175). The EIB itself has thus acknowledged the relevance of Annexes XXI, XXIII, XXIX, XXX and XXXI to the application for the settlement of the present dispute and has thus implicitly accepted that it cannot request their withdrawal from the file. As regards Annex XL, that is to say the note of 6 June 1996 from the Human Resources Department to staff representatives, the college of representatives states that it sent that document to the applicants (enclosure with the letter from the applicants of 16 February 2000). Since the note in question, which contains no confidential information, gives a detailed description of the system of special conversion rates, it must also be considered relevant to the settlement of the present dispute (see, to that effect, the order of the Court of First Instance in Joined Cases T-134/94, T-136/94 to T-138/94, T-141/94, T-145/94, T-147/94, T-148/94, T-151/94, T-156/94 and T-157/94 *NMH Stahlwerke and Others* v *Commission* [1997] ECR II-2293, paragraphs 47 and 48).

35 Annexes I, II, XVI, XVII, XVIII, XXI, XXIII, XXIX, XXX, XXXI and XL to the application should therefore be retained on the court file.

36 The applicants ask the Court to order the disclosure of various documents listed in table 2 enclosed with the letter of 16 February 2000, which were cited in the defence but were never forwarded to it. In the alternative the applicants ask the Court not to take account of evidence in the defence which is based on undisclosed documents.

37 The Court notes that several documents of which the applicants request disclosure were annexed to the application and have therefore already been placed on the court file. The documents concerned are the following: the decision of the Management Committee of 11 June 1998 to abolish the system of special conversion rates (Annex I to the application), the note from the Human Resources Department of 17 March 1998 entitled 'The euro and its impact on human resources activities' (Annex XVI to the application), the note from the Human Resources Department to the staff representatives of 6 May 1998 (Annex XVII to the application), the note from the Human Resources Department to the staff representatives of 28 May 1998 (Annex XVIII to the application), the note from the Human Resources Department to the Management Committee of 21 July 1998 (Annex XXI to the application), the decision of the Board of Directors of 24 June 1998 (Annex XXIII to the application) and the note from the Human Resources Department to the Management Committee of 9 October 1998 (Annex XXIX to the application).

38 The disclosure of the minutes of the meeting of the Management Committee of 17 February 1998 was requested and obtained as one of the measures of organisation of the procedure (see paragraph 30 above). The notes from the staff representatives of 3 April and 13 May 1998 were produced at the hearing at the request of the Court.

39 All the other documents listed by the applicants in their letter of 16 February 2000 were described briefly in the defence. Since the applicants give no indication

as to their possible relevance to the present dispute, the request that those documents — which are all internal documents and thus, as a rule, not subject to disclosure to the applicants (see, to that effect, the order in *NMH Stahlwerke and Others* v *Commission*, cited above at paragraph 34, paragraph 35) — be placed on the court file must be rejected.

The first head of claim, seeking a declaration that there was no decision abolishing the system of special conversion rates

40 The applicants first raise the question whether a decision to abolish the system of special conversion rates was, in fact, adopted by the Management Committee on 11 June 1998. If not, the decision of the Board of Directors of 23 February 1999 could not have given the abolition of the disputed mechanism retroactive force by 'endorsing' a non-existent decision of the Management Committee. Should it prove to be the case that no decision was taken the salary statements received by the applicants from January 1999 onwards should be annulled in so far as they contain no element relating to the application of the special conversion rates.

41 The Court finds that, on 11 June 1998, the Management Committee adopted a decision to abolish the system of special conversion rates (hereinafter 'the decision of 11 June 1998'). Note RH/Adm/98-1108 of 5 June 1998 from the Human Resources Department to the Management Committee, which bore the words 'For decision — approval will be deemed to have been given in the absence of objections by 11 June 1998 at 0030 hrs', provided in paragraph 1.1.: 'The special conversion rates for all staff... will be abolished as of 1 January 1999'. It is clear from the minutes of 10 and 11 June 1998 (see paragraph 18 above) that that measure along with others proposed in paragraphs 1 and 2 of the note of 5 June 1998 were approved by that committee. The staff of the EIB were informed of that decision by the Bulletin *Euro Info EIB* 2nd Issue of June 1998.

42 In the circumstances the applicants cannot claim that there was no decision of 11 June 1998.

43 Consequently, the head of claim seeking a declaration that the decision abolishing the system of special conversion rates did not exist must be rejected.

The other heads of claim

Admissibility

The allegation that the application was out of time

44 The EIB contends that the action is inadmissible since it was not brought within the period of two months prescribed in the fifth paragraph of Article 230 EC. It points out that the applicants had already received their salary statements for January 1999 on the 15th of that month with the result that the application lodged on 31 August 1999 was out of time.

45 The applicants point out that the action was brought within two months of the failure of the conciliation procedure being recorded on 30 June 1999.

46 The Court of First Instance observes that, in its judgment in Case 110/75 *Mills* v *European Investment Bank* [1976] ECR 955, paragraph 18, the Court of Justice held that, under Article 179 of the EC Treaty (now Article 236 EC), it had jurisdiction in any dispute between the European Investment Bank and its servants.

47 In accordance with Article 3 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), the Court of First Instance has jurisdiction to rule in the present dispute.

48 As regards the conditions of admissibility of actions brought under Article 236 EC, that article does not prescribe any period for bringing an action but uses the terms: 'within the limits and under the conditions laid down in the Staff Regulations or the Conditions of Employment [of other servants]'. Since it has operational autonomy as regards the rules applicable to its staff, the EIB has the authority to lay down the conditions for admissibility of actions concerning disputes between it and its staff, while respecting the general principles of Community law.

49 In fact, the EIB Staff Regulations merely provide, in Article 41 concerning means of redress, that the Court of Justice — and, thus, the Court of First Instance under Article 3 of Decision 88/591 — has jurisdiction, without prescribing any period for bringing an action in a dispute between the Bank and its staff.

50 The EIB, having failed to prescribe a period for bringing actions in its Staff Regulations, cannot claim that the limitation period of two months laid down by the fifth paragraph of Article 230 EC is applicable in the present case. Moreover, it must be borne in mind that this action is brought on the basis of Article 236 EC and Article 41 of the EIB Staff Regulations, and not on Article 230 EC at all.

51 In the absence of any indication in the Treaty or in the EIB Staff Regulations as to the time-limit for bringing actions in disputes between the Bank and its staff, it is for the Court of First Instance to fill the gap in the system of remedies (order of the Court of First Instance in Case T-33/99 *Méndez Pinedo* v *ECB* [2000] ECR-SC II-273, paragraph 32).

52 In that regard, the Court of First Instance must weigh the entitlement of those subject to its jurisdiction to effective protection by the courts, which is one of the general principles of Community law (order in *Méndez Pinedo* v *ECB*, cited in paragraph 51 above, paragraph 32) and implies that such persons must have a sufficient period of time available to them to assess the lawfulness of the act adversely affecting them and if necessary prepare their case, against the need for legal certainty which requires that, after a certain time, measures taken by Community bodies become definitive (see, to that effect, the orders of the Court of First Instance in Case T-202/97 *Koopman* v *Commission* [1998] ECR-SC I-A-163 and II-511, paragraphs 23 to 25, and in Case T-74/99 *Meyer* v *Council* [1999] ECR II-1749, paragraph 13).

53 The reconciliation of those various interests requires that disputes between the Bank and its staff should be brought before the Community judicature within a reasonable period.

54 In order to determine whether the applicants have brought their action within a reasonable period, account must be taken of the conditions on time-limits for bringing actions laid down by Articles 90 and 91 of the EC Staff Regulations. It must be held that, although the staff of the Bank are subject to specific regulations drawn up by the Bank, disputes between the Bank and its staff are comparable in nature to disputes between the Community institutions and their officials or other servants, which are covered by Articles 90 and 91 of the EC Staff Regulations. Moreover, in the present case, the applicants decided to invoke the conciliation procedure under Article 41 of the EIB Staff Regulations, which, although optional, pursues the same objective as the compulsory pre-litigation procedure under Articles 90 and 91 of the EC Staff Regulations, that of

permitting an amicable settlement of their differences (judgment of the Court of First Instance in Case T-57/89 *Alexandrakis* v *Commission* [1990] ECR II-143, paragraph 8).

55 As regards the commencement of the limitation period for bringing actions, the Bank contends that it is clear from the second paragraph of Article 41 of the EIB Staff Regulations (see above, paragraph 22) that the conciliation procedure does not affect the limitation period for bringing an action before the Community judicature. That period begins to run from the time of notification of the act adversely affecting the member of staff concerned. The application lodged on 31 August 1999 is clearly out of time since the applicants received their salary statements for January 1999 on 15 January 1999.

56 However, this Court holds that the very fact that the second paragraph of Article 41 of the Rules of Procedure provides for an optional conciliation procedure leads to the conclusion that, if a member of the EIB staff requests the application of that procedure, the limitation period for bringing an action before the Community judicature does not start to run until the conciliation procedure has been concluded, provided that the member of staff has made his request for conciliation within reasonable time of having been notified of the act adversely affecting him and that the duration of the conciliation procedure itself is reasonable. To hold otherwise would mean that an EIB employee would be obliged to bring an action before the Community judicature at a time when he was still endeavouring to have the matter settled amicably.

57 In the present case, the applicants submitted a written request for conciliation on 3 March 1999, that is to say one and a half months after the issue of their salary statements for January 1999 on 15 January 1999. The failure of the conciliation procedure was recorded on 30 June 1999, four months after the initiation of the conciliation procedure. The application was then lodged at the Registry of the Court of First Instance on 31 August 1999, that is to say two months after the failure of the conciliation procedure.

58 In the light of the time-limits laid down in Articles 90 and 91 of the EC Staff Regulations, it must be held that the applicants brought their action within a reasonable time.

The heads of claim seeking annulment of the decision of 11 June 1998 and the decision of the Board of Directors of 23 February 1999

59 The EIB contends that the decision of 11 June 1998 and the decision of the Board of Directors of 23 February 1999 (hereinafter 'the decision of 23 February 1999') are measures of general application which cannot be the subject of a direct action. Moreover, the decision of 23 February 1999 is a measure which merely endorses the decision of 11 June 1998.

60 The applicants reply that the decision of 11 June 1998 constitutes a bundle of individual decisions.

61 The Court observes that, by the decision of 11 June 1998, the Management Committee decided to abolish the system of special conversion rates from 1 January 1999. The decision of 11 June 1998 is intended to produce legal effects with regard to a group of persons, that is to say, the staff of the EIB, on a general and abstract basis (Case T-482/93 *Weber* v *Commission* [1996] ECR II-609, paragraph 62). Even if the staff of the EIB constitute a limited category, that does not make it possible to consider the decision of 11 June 1998 as a bundle of individual decisions. The general scope of a measure is not called into question by the possibility of determining more or less precisely the number or even the identity of the persons to whom it applies at a given time, where, as in the present case, such application takes effect by virtue of an objective legal or factual situation defined by the measure in the light of its purpose (Case 6/68 *Zuckerfabrik Watenstedt* v *Council* [1968] ECR 409, at p. 415).

62 It follows that the decision of 11 June 1998 is a measure of general application which, according to settled case-law, cannot be the subject of a direct action by the applicants (orders in Case T-14/91 *Weyrich* v *Commission* [1991] ECR II-235, paragraph 46, and Case T-72/92 *Benzler* v *Commission* [1993] ECR II-347, paragraph 20, and judgment in Case T-13/93 *Cordier* v *Commission* [1993] ECR II-1215, paragraph 54).

63 As regards the head of claim seeking annulment of the decision of 23 February 1999 this Court notes that by that decision the Board of Directors 'endorsed the decision of the Management Committee to discontinue the system of special conversion rates on salaries and pensions'. The decision of 23 February 1999 is thus also a measure of general application and is, moreover, a confirmatory act which, as such, is not open to review (Case T-4/90 *Lestelle* v *Commission* [1990] ECR II-689, paragraphs 24 to 27; Case T-64/92 *Chavane de Dalmassy and Others* v *Commission* [1994] ECR-SC I-A-227 and II-723, paragraph 25, and Case T-130/96 *Aquilino* v *Council* [1998] ECR-SC I-A-351 and II-1017, paragraph 34).

64 It follows that the heads of claim seeking annulment of the decisions of 11 June 1998 and 23 February 1999 are inadmissible.

The head of claim seeking annulment of the salary statements issued to the applicants from January 1999

65 The EIB contends that this head of claim is also inadmissible. First, at the time the application was lodged the salary statements for January 1999 were already definitive. Second, the salary statements for subsequent months were purely confirmatory acts and not open to review.

66 The Court notes, first, that a salary statement is a measure adversely affecting an official and may be the subject of an action (Case 262/80 *Andersen and Others* v *Parliament* [1984] ECR 195, paragraph 4; *Chavane de Dalmassy and Others* v *Commission*, cited at paragraph 63 above, paragraph 20). The salary statements for the month of January 1999 adversely affect the applicants *inter alia* to the extent that the system of special conversion rates is not applied in them.

67 It has already been held that the applicants brought their action within a reasonable time even though they were notified of the act adversely affecting them on 15 January 1999 (see paragraph 58 above).

68 It must therefore be held that this head of claim is admissible in so far as it concerns the annulment of the applicants' salary statements for January 1999.

69 However, this head of claim must be held inadmissible in so far as it concerns the annulment of salary statements after January 1999 (but see paragraphs 107 to 109 below). The definitive abolition of the system of special conversion rates was implemented for the first time in the salary statements of January 1999. To the extent that the salary statements for months subsequent to January 1999 no longer apply that system, they are acts confirmatory of the salary statement of January 1999 (see, to that effect, Case 23/80 *Grasselli* v *Commission* [1980] ECR 3709, paragraph 18, and Case 29/80 *Reinarz* v *Commission* [1981] ECR 1311, paragraph 10).

The head of claim seeking an order that the EIB pay to the applicants, with interest, the difference between the amounts which the applicants have received by way of remuneration since 1 January 1999, and the amounts which they would have received if the special conversion rate had been maintained.

70 By this head of claim the Court is asked to issue instructions to the EIB. As the EIB contends, it is settled case-law that such an application is inadmissible (Case C-5/93 P *DSM* v *Commission* [1999] ECR I-4695, paragraph 36; Case T-156/89 *Valverde Mordt* v *Court of Justice* [1991] ECR II-407, paragraph 150, and Case T-583/93 *P* v *Commission* [1995] ECR-SC I-A-137 and II-433, paragraph 17). In any event, if this application were to be considered to be a claim for damages it would have to be declared inadmissible, as it does not meet the requirements of Article 19 of the EC Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance (Case T-13/96 *TEAM* v *Commission* [1998] ECR II-4073, paragraph 27).

Conclusion

71 The action is admissible only in so far as it seeks the annulment of the applicants' salary statements for January 1999.

Merits

72 The applicants submit that their salary statements for January 1999 should be annulled because the decisions of 11 June 1998 and 23 February 1999, which, they allege, are unlawful, are applied in those statements. The Court of First Instance thus has a twofold plea of illegality before it.

73 However, it is clear that the possible illegality of the decision of 23 February 1999 cannot in any way affect the legality of the salary statements of the applicants for

January 1999. Those statements were drawn up before the adoption of the decision of 23 February 1999. The plea of illegality relied on with regard to that decision is thus inadmissible.

74 As regards the plea of illegality raised in respect of the decision of 11 June 1998, the Court finds that there is a direct legal connection between the salary statements for January 1999 in which for the first time the system of special conversion rates was not applied, on the one hand, and the decision of 11 June 1998 which abolished that system as of 1 January 1999, on the other. The plea relied on with regard to the decision of 11 June 1998 is therefore admissible (Joined Cases T-305/94 to T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *Limburgse Vinyl Maatschappij and Others* v *Commission* [1999] ECR II-931, paragraph 291).

75 The applicants rely on six pleas in support of their claim that the decision of 11 June 1998 is unlawful. The first is that the EIB has no authority to vary unilaterally its legal relations with its staff. The second is that there was an error of law in that the EIB considered the abolition of the disputed mechanism to be legally inevitable. The third is that there was no proper consultation of staff representatives during the procedure leading to the adoption of the decision of 11 June 1998. The fourth is that there was a breach of Article 19 of the EIB Rules of Procedure. The fifth is that there was a breach of the contracts of employment between the EIB and its staff and the sixth is that there was a breach of the principle of legitimate expectations.

76 The Court considers that it is appropriate to examine the third plea first.

The plea that there was no proper consultation of staff representatives during the procedure leading to the adoption of the decision of 11 June 1998

77 The applicants submit that the decision to abolish the system of special conversion rates is unlawful because it was adopted without proper consultation of staff representatives, in breach of Article 24 of the EIB Staff Regulations and their implementing measures contained in the Convention governing staff representation at the EIB (hereinafter 'the Convention'). They explain, in that regard, that the EIB Bank had already decided to abolish the system of special conversion rates before consultation with staff representatives was initiated. Furthermore, consultation was based on a false premiss, that is to say the view of the Human Resources Department, adopted in March 1998 and considered to be beyond dispute, that the continuance of the system of special conversion rates following the introduction of the euro was legally impossible.

78 The EIB contends that from March 1998 staff representatives were consulted by the Human Resources Department on the implications of the introduction of the euro. The college of staff representatives gave its opinion before the decision to abolish the system of special conversion rates was taken, as is clear from the note of 5 June 1998 to the Management Committee. In the circumstances, the staff representatives were properly consulted.

79 The Court notes that the first paragraph of Article 24 of the Rules of Procedure provides as follows:

'Staff representatives, elected by secret ballot, shall represent the general interests of the staff vis-à-vis the Bank.'

80 That provision was implemented by the Convention, drawn up in 1984 and last amended in 1995. Article 24 of the Convention provides:

'Consultation

The College of Staff Representatives shall contribute to the formulation of personnel policy. It shall draw up proposals, on its own initiative, and shall examine any proposal drawn up by the administration for submission to the Management Committee in the areas listed in Annex I hereto.

The [staff representatives] and the Administration shall set up Working Parties with a view to studying proposals for submission to the Management Committee.

The Staff Representatives shall state their position in the form of a reasoned opinion appended to each proposal submitted to the Management Committee in these areas.'

81 The areas listed in Annex I to the Convention include, in first place, 'remuneration'.

82 It follows that the college of staff representatives must be consulted on any proposal which the administration intends to submit to the Management Committee concerning *inter alia* remuneration.

83 The EIB contends that the system of special conversion rates cannot be considered to be part of remuneration within the meaning of Annex I to the Convention to which Article 24 thereof refers. According to the EIB, the applicants cannot therefore claim that, under those provisions, the college of staff representatives should have been consulted before the adoption of the decision to abolish the system of special conversion rates.

84 The Court finds that, in abolishing that system, the Bank unilaterally withdrew from its staff a financial advantage which it had granted without interruption since 1982, even if the system was modified in 1995, and which, according to the calculations of the staff representatives, which have not been challenged, represented on average a sum equivalent to 3.5% of the remuneration of staff of the Bank (see paragraph 17 above). In a note from the Human Resources Department of 9 October 1998 it was, moreover, pointed out that the 'abolition of special conversion rates would have a direct and significant impact on the remuneration of staff'.

85 It is notable that Article 24 of the Convention merely enshrines a general principle common to the laws of the Member States which is applicable under Article 44 of the EIB Staff Regulations, to the contracts concluded between the Bank and its staff: under a general principle of employment law, an employer can unilaterally withdraw a financial advantage which he has freely granted to his employees on a continuous basis only after consultation of those employees or their representatives.

86 Accordingly, even though the benefit which EIB staff derived from the system of special conversion rates did not form part of their remuneration within the meaning of Annex I to the Convention as referred to in Article 24 thereof, the fact remains that the Bank was bound to consult staff representatives under a general principle of employment law before taking the decision, in June 1998, to

withdraw the benefit in question, which had been granted without interruption since 1982.

87 That analysis is confirmed by the expert's report produced by the Bank during the procedure before the Court (Annex 11 to the defence). In that report, in which the Bank's authority to abolish unilaterally the system of special conversion rates is stressed (p. 43), it is explained that, under 'general principles of labour law common to the Member States of the European Union', '[the] unilateral decision, *however, has to be taken in bona fide and has to be fair and just*', which '*means that, when taking the decision... sufficient notice must be given so that timely... consultation of the representatives of the employees can take place...*' (p. 41, emphasis added by the Court).

88 Furthermore, the Human Resources Department has itself acknowledged, in a note of 17 March 1998 on 'The euro and its impact on human resources activities' (see paragraph 11 above), that the Bank's authority to abolish the system of special conversion rates could only be exercised on the condition that it 'respected the procedures laid down, *inter alia* for consultation with bodies representing staff' (paragraph 2.2.2 of the note).

89 The consultation of staff representatives which the Bank is obliged to organise under a general principle of labour law common to all the Member States in no way implies that those representatives have a right of co-decision on any abolition of a financial benefit such as that derived from the system of special conversion rates. As is emphasised in the expert's report produced by the EIB, the right to be

consulted 'leav[es] the managerial prerogative of the employer intact' (pp. 41 to 42, footnote 6).

90 However such consultation must be such as to have an influence on the substance of the measure adopted (see, by analogy, Case 165/87 *Commission* v *Council* [1988] ECR 5545, paragraph 20, and Case C-392/95 *Parliament* v *Council* [1997] ECR I-3213, paragraph 22, and the Opinion of Advocate General Léger in Case C-21/94 *Parliament* v *Council* [1995] ECR I-1827, point 25), which implies that it must be 'timely' and 'bona fide' (expert's report, cited above, p. 41).

91 It is necessary to examine in the light of those principles whether the staff representatives were properly consulted in the procedure leading to the adoption of the decision of 11 June 1998.

92 It is clear from the documents before the Court that, before adopting the decision of 11 June 1998, the administration informed staff representatives that the abolition of special conversion rates for currencies participating in economic and monetary union ('IN countries') was an inevitable consequence of the introduction of the euro. According to the administration, even if it had wanted to maintain that system it could not have done so. Thus, the note of 17 March 1998 from the Human Resources Department to the staff representatives states that 'it will thus be impossible [to maintain the system of special conversion rates]' (see above, paragraph 11). The note of 6 May 1998 from the Human Resources Department to the staff representatives confirms that 'it is clear that the only conversion rates the Bank will be able to use from 1 January 1999 will be those officially fixed by its shareholders' and that '[t]he special conversion rates will therefore disappear as of that date irrespective of whether or not the Bank has expressed its scales in euro'. The note concludes '[t]he abolition from 1 January 1999 of the practice of special conversion rates for transfers of part of a salary is therefore inescapable' (see above, paragraph 13). In its note of 28 May 1998 to

the staff representatives, the Human Resources Department again stated that from 1 January 1999:

'[t]he Bank will... not be able to use rates other than those set by its shareholders for the conversion of salary and pension scales' (see paragraph 15 above).

93 However, the abolition of the system of special conversion rates for countries not participating in economic and monetary union ('pre-IN countries') was presented as a policy decision by the Bank, which maintains that the introduction of the euro does not prevent the maintenance of the system for those countries. Concerns over equal treatment of EIB staff were at the root of the decision to abolish the system also for currencies of pre-IN countries (see paragraphs 11 and 19 above). Furthermore, the Bank took the view that 'we cannot "reward" the nationals of a country which has a negative attitude towards the euro. This is a policy matter' (minutes of the meeting of 7 September 1998 of the ad hoc working party on the euro; Annex XXVI to the application).

94 However, the Court finds that, even for the currencies of IN countries, the maintenance of the special conversion rates was still possible after 1 January 1999. It must be borne in mind in that connection that the system in question enabled EIB staff to transfer part of their remuneration into a currency other than Belgian or Luxembourg francs using a special conversion rate, which was the rate of exchange set annually by the Council multiplied by a weighting set by the Community institutions for the country of the currency concerned. The system of weightings laid down by Article 64 of the EC Staff Regulations was not abolished with the transition to the euro. To maintain the system of special conversion rates for the currencies of IN countries after 1 January 1999, the Bank needed only to multiply the exchange rates irrevocably fixed by the Council on 1 January 1999 by the weightings for the countries concerned.

95 It follows that the abolition of the system of special conversion rates was not an inevitable consequence of the introduction of the euro.

96 Moreover, given the purpose of the system of special conversion rates, the Bank could not reasonably consider that the introduction of the euro made the abolition of the system inevitable.

97 It must be borne in mind, in that connection, that by modifying the system of conversion rates in 1995, the Bank intended to 'adjust the criteria for granting special rates in the EIB in line with those in force in the Community institutions and... take account of the new arrangements recently introduced by those institutions'. The change was 'intended to refocus and clarify the concept of special rates and bring them into line with their original purpose' which was to 'safeguard the purchasing power of Bank staff outside Luxembourg' (note to staff of 24 March 1995, see paragraph 7 above).

98 As the Human Resources Department points out in its letter of 16 December 1998 to the applicants and other Bank staff, 'the single currency... will not eliminate differences in the relative costs of living inside the EMU area. Such differences will continue to prevail within the EMU as well as within the EU as a whole' (Annex XXXII to the application). Furthermore, as the applicants themselves observe, Article 17 of Annex VII to the EC Staff Regulations which, under certain conditions, allows officials of the institutions to have part of their emoluments transferred into a currency other than that of the country in which they are employed, subject to a weighting for the country of the currency chosen (Case T-236/97 *Ouzounoff Popoff* v *Commission* [1998] ECR-SC I-A-311 and II-905, paragraph 34), and which inspired the system of special conversion rates applicable to staff of the EIB (see paragraphs 2, 3 and 7 above), was not amended following transition to the euro.

99 It must also be noted that the fact that, for its retired staff, the Bank made provision for gradual abolition from 1 January 1999 of the system of special

conversion rates, demonstrates that it knew that, even after 1 January 1999, the financial advantage in question could be maintained, at least temporarily. Thus, it is clear from a letter of 31 August 1998 to retired staff of the Bank (Annex XXII to the application) that: 'the special rates applied to [the] pension[s] will be frozen at their current level (i.e. the rates fixed on 1.7.1997)' and 'their effect will be decreased by one quarter per year as from 1 January 1999, so that they will be phased out by 31 December 2001'. If, as the Bank alleges, the introduction of the euro had made the application of the system of special conversion rates impossible, it would not have been possible to provide for any transitional period before the abolition of the advantage for retired staff.

100 In the consultations which took place from March 1998 onwards, the staff representatives stressed from the outset, after receiving the first note, of 17 March 1998, from the Human Resources Department concerning the abolition of the special conversion rates (RH/Adm/98-0556/ZZ), that the Bank's premiss was mistaken. Thus, in their note of 3 April 1998, they explained:

'The application of special conversion rates is the result of the Commission's taking account of weightings. Those weightings will not disappear on 1 January 1999.' They maintained that 'obviously, the introduction of the euro does not in itself justify the abolition of weightings'.

101 However, in reply to the note of 3 April 1998, the Human Resources Department, in its note of 6 May 1998, insisted on the inevitability of the abolition of the conversion rates as a result of transition to the euro (see paragraph 13 above).

102 The staff representatives replied by note of 13 May 1998, observing that 'the attitude of the Human Resources Department is to stall any discussion'. They stated that they were none the less 'prepared to pursue genuine negotiations on the subject at the earliest opportunity' (see paragraph 14 above). However, no further consultation of the staff representatives took place before the decision of 11 June 1998 was adopted.

103 It follows from the foregoing that in the procedure leading to the adoption of the decision of 11 June 1998, in presenting the abolition of the system of special conversion rates from 1 January 1999 for the currencies of the IN countries as the inevitable consequence of transition to the euro and in maintaining that point of view until the adoption of the decision of 11 June 1998, whilst being aware that its premiss was not correct (see paragraph 99 above), the Bank did not conduct bona fide consultations with staff representatives on the abolition of the financial advantage in question. That finding applies to the abolition of special conversion rates for currencies of both IN countries and pre-IN countries: the abolition of the system for those countries was presented as necessary to avoid unequal treatment of Bank staff following the purportedly inevitable abolition of the system of special conversion rates for IN countries as a result of transition to the euro.

104 Thus the consultation of staff representatives conducted by the Bank was not such as to have an influence on the substance of the decision which the Management Committee took on 11 June 1998 (see, by analogy, the judgments cited in paragraph 90 above).

105 In those circumstances, and without its being necessary to rule as to whether, in the present case, the consultation which began in March 1998 was timely given that, on 17 February 1998, the Management Committee had already given its agreement in principle to the proposal to abolish the system of special conversion

rates from 1 January 1999 (see paragraph 9 above), it must be held that the Bank breached the general principle of employment law expressed in Article 24 of the Convention in that it did not hold bona fide consultations with staff representatives before adopting the decision of 11 June 1998.

106 Accordingly, the decision of 11 June 1998 to abolish the system of special conversion rates is unlawful.

107 The Court also finds that the applicants, unlike EIB staff who did not dispute their salary statement for January 1999, never manifested their agreement to the abolition of the system of special conversion rates. Accordingly, the illegality of the decision of 11 June 1998 as a result of the failure to hold bona fide consultations with staff representatives on the abolition of the system of special conversion rates was not remedied in the case of the applicants by the tacit consent *ex post facto* of those represented.

108 Since an unlawful decision was applied in drawing up the applicants' salary statements for January 1999, they will be annulled and it is unnecessary to rule on the other pleas and arguments raised by the applicants.

109 Under Article 233 EC, it is for the Bank to take the necessary measures to comply with this judgment. However, since the applicants' salary statements for January

1999 must be annulled because an unlawful act of general application, namely the decision of 11 June 1998, was applied to them, the Bank will be obliged, when it decides on the measures to be taken under Article 233 EC, also to take into account the unlawfulness of the applicants' salary statements for the months following January 1999 in so far as the same unlawful decision was applied to them.

Costs

110 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 applicants have applied for costs and the Bank has in the main been unsuccessful, the Bank will be ordered to pay the costs.

111 The application by the applicants that the Bank be ordered to pay the costs incurred in the administrative procedure must be rejected. According to Article 91 of the Rules of Procedure, recoverable costs are regarded as including 'expenses necessarily incurred by the parties for the purpose of the proceedings'. By 'proceedings' that provision refers only to proceedings before the Court of First Instance and does not include any prior stage. That follows in particular from Article 90 of the Rules of Procedure, which refers to 'proceedings before the Court of First Instance' (Joined Cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 *Cimenteries CBR and Others* v *Commission* [2000] ECR II-491, paragraph 5134). In any event, if that application is to be considered as an application for damages, it must be declared inadmissible as it does not fulfil the requirements laid down by Article 19 of the EC Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure (see *TEAM* v *Commission*, cited above at paragraph 70, paragraph 27).

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. **Annuls the applicants' salary statements for January 1999 in so far as the system of special conversion rates is not applied in them.**

2. **Declares the remainder of the application inadmissible.**

3. **Orders the European Investment Bank to pay the costs.**

Azizi Lenaerts Jaeger

Delivered in open court in Luxembourg on 6 March 2001.

H. Jung J. Azizi

Registrar President