

ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)  
24 October 2000 \*

(Members of staff of the European Central Bank – Administrative circular –  
Time-limit for bringing an action – Inadmissibility)

In Case T-27/00,

**Staff Committee of the European Central Bank**, established in Frankfurt am Main,  
Germany,

**Johannes Priesemann**, member of staff of the ECB, residing in Frankfurt, Germany,

**Marc van de Velde**, member of staff of the ECB, residing in Usingen-Kransberg,  
Germany,

**Maria Concetta Cerafogli**, member of staff of the ECB, residing in Frankfurt am Main,  
Germany,

represented by N. Pflüger, R. Steiner and S. Mittländer, Rechtsanwälte, Frankfurt am  
Main, with an address for service in Luxembourg at the office of A. Schiltz, Association  
Luxembourgeoise des Employés de Banque et d'Assurance, 29 Avenue Monterey,

applicants,

v

**European Central Bank (ECB)**, represented by C. Zilioli, Deputy General Counsel,  
and J.M. Fernández-Martin, of its Legal Service, acting as Agents, with an address for  
service in Luxembourg at the office of R. Horper, of the Legal Service of the Central  
Bank of Luxembourg, 2 Boulevard Royal,

defendant,

\* Language of the case: English.

APPLICATION for annulment, pursuant to Article 236 EC and Article 36 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, of Administrative Circular No 11/98 of 12 November 1998 concerning ECB Internet usage policy,

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

composed of: P. Mengozzi, President, V. Tiili and R.M. Moura Ramos, Judges,

Registrar: H. Jung,

makes the following

**Order**

**Legal background and facts of the case**

- 1 The Protocol on the Statute of the European System of Central Banks and of the European Central Bank ('the ECB'), annexed to the EC Treaty ('the Statute of the ESCB'), contains, in particular, the following provisions:

**'Article 35**

**Judicial control and related matters**

- 35.1 The acts or omissions of the ECB shall be open to review or interpretation by the Court of Justice in the cases and under the conditions laid down in this treaty. The ECB may institute proceedings in the cases and under the conditions laid down in this treaty.

...

## Article 36

### Staff

- 36.1 The Governing Council, on a proposal from the Executive Board, shall lay down the conditions of employment of the staff of the ECB.
- 36.2 The Court of Justice shall have jurisdiction in any dispute between the ECB and its servants within the limits and under the conditions laid down in the conditions of employment.'
- 2 The Conditions of Employment for Staff of the ECB (Decision of the ECB of 9 June 1998 on the adoption of the Conditions of Employment for Staff of the European Central Bank as amended on 31 March 1999; OJ 1999 L 125, p. 32; 'the Conditions of Employment') provide, in particular:

#### 'Part 8 Appeals and disciplinary procedures

41. Members of staff may ask for an administrative review of complaints and grievances in respect of the consistency of actions taken in their individual cases with the personnel policy and conditions of service of the ECB, using the procedure laid down in the Staff Rules. Members of staff who remain dissatisfied following the administrative review procedure may use the grievance procedure laid down in the Staff Rules.

Such procedures may not be used to challenge:

- (i) any decision of the Governing Council or any ECB policy, including any policy laid down in these Conditions of Employment or in the Staff Rules;
  - (ii) any decision for which special appeals procedures exist; or
  - (iii) any decision not to confirm the appointment of a member of staff serving a probationary period.
42. After all available internal procedures have been exhausted, the Court of Justice of the European Community [*sic*] shall have jurisdiction in any dispute between

the ECB and a member or a former member of its staff to whom these Conditions of Employment apply.

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

...

## Part 9 Staff representation

...

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.'

- 3 Those provisions are amplified by the ECB Staff Rules ('the Staff Rules') which state, in particular, that:

'Part 8 Appeals and disciplinary procedures

...

### 8.2 Appeals to the Court of Justice of the European Union [*sic*]

The provisions of Article 42 of the Conditions of Employment are applied as follows:

- 8.2.1 Appeals to the Court of Justice of the European Community [*sic*] shall be filed within two months. This period shall begin:

on the date on which the member of staff concerned is notified of the final decision taken in a grievance procedure or on the date on which the period of one month which applies in the grievance procedure expires without such a decision having been taken. Nevertheless, when the final decision in a grievance procedure is taken after this one-month period but before the two-month period for filing an appeal has expired, the period for filing an appeal shall start to run afresh.'

- 4 Article 11.2 of the ECB Rules of Procedure of 22 April 1999, as amended, provides that 'without prejudice to Articles 36 and 47 of the Statute, the Executive Board shall enact organisational rules ... Such rules shall be obligatory for the staff of the ECB.' Pursuant to that provision, on 12 November 1998, the Executive Board adopted Administrative Circular No 11/98 on ECB Internet usage policy ('the circular' or 'the contested act'). That circular lays down and makes public the conditions under which Internet services are made available to ECB staff. It establishes the policy of the ECB on Internet usage and the rights and obligations of ECB members of staff related thereto. The circular was adopted without consultation with the ECB Staff Committee.
- 5 The circular was brought to the attention of members of staff in electronic form on 12 November 1998 and in hard copy the following day.
- 6 By letter of 20 December 1999, the ECB Staff Committee asked the Vice-President of the ECB, Mr Noyer, to withdraw the circular, on the ground that the Committee had not been consulted pursuant to Article 46 of the Conditions of Employment.
- 7 By letter of 10 January 2000, the Director-General of Administration and Personnel replied, stating that such rules were not subject to consultation with the Staff Committee.
- 8 In January 2000, the ECB Staff Committee collectively asked for an administrative review of the Executive Board decision adopting the circular.
- 9 However, without exhausting the internal administrative remedies provided for under Articles 41 and 42 of the Conditions of Employment and specified by Articles 8.1 and 8.2 of the Staff Rules, the ECB Staff Committee, on its own behalf, and three of its members, on an individual basis, brought the present action for annulment of the circular

on the ground that the ECB Staff Committee had not been consulted before the adoption of that circular.

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

- 9 By application lodged at the Registry of the Court of First Instance on 15 February 2000, the applicants brought the present action.
- 11 By document lodged at the Court Registry on 18 May 2000, the ECB raised a plea of inadmissibility. The applicants lodged their observations on the plea of inadmissibility on 26 June 2000.
- 12 The applicants claim that the Court should:
  - order the defendant to cease and desist from deriving the rights or obligations of its staff from Administrative Circular No 11/98;
  - order the defendant to withdraw the circular and inform the staff of the ECB about that withdrawal in writing;
  - order the defendant to cease and desist from adopting rules addressed to its staff as a collective and intended to govern the behaviour thereof without those rules being the subject of consultation with the Staff Committee;
  - confirm that the circular is null and void owing to the fact that it infringes the rights of the Staff Committee under Article 46 of the Conditions of Employment;
  - order the defendant to pay the costs.

13 The defendant contends that the Court should:

- dismiss the application as inadmissible;
- order the applicants to pay the costs.

### **The alleged procedural irregularity**

14 The applicants submit that the ECB cannot be represented by an agent since it is not an institution of the Community as required by the first paragraph of Article 17 of the EC Statute of the Court of Justice, which is applicable to the Court of First Instance pursuant to Article 46 of the Statute.

15 That submission cannot be upheld. In accordance with the second paragraph of Article 1 of the Rules of Procedure of the Court of First Instance, 'institutions' means the institutions of the Communities and bodies which are established by the Treaties, or by an act adopted in implementation thereof, and which may be parties before the Court of First Instance. Accordingly, the ECB may be represented by an agent.

### **The admissibility of the application for annulment**

16 As regards the basis for its plea of inadmissibility, the defendant raises three pleas. The first plea alleges the lack of *locus standi* of the ECB Staff Committee. The second alleges failure to follow the ECB internal administrative review procedures. The third alleges failure to comply with the time-limit for bringing an action.

- 17 It is appropriate to examine the third plea first.

*The third plea alleging failure to comply with the time-limit for bringing an action*

Pleas and arguments of the parties

- 18 The defendant submits that even if the applicants could challenge an internal ECB administrative circular without exhausting the internal administrative remedies, the time-limit within which the action should have been brought under any provisions applicable would have expired. It contends that the applicants became aware of the existence of the circular on 12 November 1998 and that the periods allowed for the purpose of submitting any complaint or bringing any action began to run from that moment. The admissibility of an action more than 15 months after the contested act was adopted and made public would clearly be contrary to the principle of legal certainty underlying the public-policy nature of such time-limits.
- 19 The defendant also submits that the action should have been brought pursuant to the fourth paragraph of Article 230 EC, since, as the applicants themselves state in their application, the contested act does not concern the individual rights of staff. In this respect, it contends that, according to the case-law with respect to Article 236 EC in relation to Articles 90 and 91 of the Staff Regulations of officials of the European Communities ('the EC Staff Regulations'), only acts which directly and immediately affect the legal situation of the official concerned by reason of their legal, material or financial consequences may be challenged under such provisions. It points out that the time-limit for the commencement of an action for annulment under Article 230 EC would also have expired long ago.
- 20 The applicants challenge the plea of inadmissibility. They claim that neither the ECB Staff Committee nor the applicants Priesemann, van de Velde and Cerafogli were under an obligation to follow an internal administrative review procedure before commencing an action for annulment. Pursuant to Article 236 EC and Article 36.2 of the Statute of the ESCB, it is necessary to initiate an internal review procedure only where the Conditions of Employment provide for the possibility of such a procedure. They do not



provide for the possibility of an administrative review on the ground of failure to consult. Furthermore, in the applicants' submission, the circular concerns an ECB 'policy' which is explicitly excluded from any internal review procedure. That is why the question of the time-limit for the commencement of the action does not arise.

- 21 The applicants submit that the EC Staff Regulations cannot be applied by analogy by interpreting Article 41 of the Conditions of Employment and Article 8.1 of the Staff Rules. Consequently, they claim that, since internal review was not required, there is also no time-limit that can be raised as a bar to the applicants' action, even by means of interpretation. In their submission, that argument is supported by the fact that the principles of the limitation of actions are not applicable where an ECB act of management, in the nature of a policy, is implemented, since it has the character of a legal norm.
- 22 Finally, the applicants do not deny that the ECB sent the e-mails which are annexed to the plea of inadmissibility raised by the defendant. They do not dispute that the circular was distributed in hard copy. However, the ECB Staff Committee, as a body, has never received the circular, since that body is not included in the e-mail list 'to all staff'. The ECB Staff Committee's attention was drawn to the circular only following complaints from individual members of staff.

#### Findings of the Court

- 23 Under Article 114 of the Rules of Procedure, where a party applies to the Court of First Instance for a decision on admissibility without going to the substance of the case, the remainder of the proceedings is to be oral unless the Court of First Instance otherwise decides. In this case, the Court of First Instance finds that it has sufficient information from the documents before it to adjudicate without opening the oral procedure.

- 24 The contested act was adopted by the ECB on 12 November 1998. The individual applicants (Mr Priesemann, Mr van de Velde and Ms Cerafogli) do not deny having been made aware of it on the same day. However, the ECB Staff Committee asserts that, as a body, it has never received the circular.
- 25 As regards that assertion, the Court finds that the ECB Staff Committee can act only through its representatives. Since its spokesperson, Mr Priesemann, was made aware of the circular on 12 November 1998, the Court finds that the ECB Staff Committee, as a body, was also made aware of it simultaneously.
- 26 Consequently, it is necessary to determine whether the present action was commenced within the prescribed time-limit.
- 27 The applicants brought the present proceedings pursuant to Article 236 EC and Article 36.2 of the Statute of the ESCB.
- 28 In this respect, it must be observed that Article 36.2 of the Statute of the ESCB refers, in respect of the conditions under which the Community judicature may have jurisdiction in a dispute between the ECB and its servants, to the Conditions of Employment.
- 29 In accordance with Article 42 of the Conditions of Employment, an action may be brought before the Community judicature only after all available internal procedures have been exhausted. It is common ground that the applicants did not pursue to the end the administrative review or grievance procedures provided for under Article 8.1 of the Staff Rules.

- 30 However, the applicants claim that they were permitted to bring an action before the Court of First Instance without exhausting the internal ECB procedures.
- 31 Even if, in order to challenge an administrative circular, it is not necessary to exhaust the internal ECB procedures, the two-month time-limit for bringing an action before the Court of First Instance, which is laid down in Article 8.2.1 of the Staff Rules implementing Article 42 of the Conditions of Employment, is applicable. Since the action was commenced more than 15 months after the adoption and publication of the contested act, it was brought out of time.
- 32 That interpretation is supported by the settled case-law of the Court of Justice according to which the strict application of the Community rules on procedural time-limits serves the requirements of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice (see, in particular, the order in Case C-239/97 *Ireland v Commission* [1998] ECR I-2655, paragraph 7).
- 33 Finally, even if Article 35.1 of the Statute of the ESCB had to be applied, it must be recalled that that provision refers to the cases and conditions laid down in the Treaty and, as a consequence, to the fifth paragraph of Article 230 EC which provides that annulment proceedings are to be instituted within two months of the publication of the measure, or of its notification to the applicant, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be (order in Case T-33/99 *Méndez Pinedo v ECB* [2000] ECR-SC II-273, paragraph 23).
- 34 It follows that, in all those situations, the action, which was commenced more than 15 months after the adoption and publication of the contested act, is out of time.

- 35 Accordingly, it is not necessary to examine the other pleas.
- 36 It is clear from the foregoing that the applicants' claim for annulment must be regarded, in any event, as out of time and, consequently, dismissed as inadmissible.
- 37 As regards the other claims, they seek the issue of directions from the Court of First Instance to a Community institution. Since, according to settled case-law, the Court of First Instance does not have jurisdiction to issue such directions, the other claims must be dismissed as inadmissible (see, for example, Case T-124/96 *Interporc v Commission* [1998] ECR II-231, paragraph 61).

### Costs

- 38 The defendant contends that the application has a vexatious character because the inadmissibility of the application should have been obvious to the applicants.
- 39 The applicants dispute that assertion.
- 40 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. However, Article 88 of the Rules of Procedure provides that, without prejudice to the second subparagraph of Article 87(3), in proceedings between the Communities and their servants the institutions are to bear their own costs. Pursuant to that subparagraph, the Court of First Instance may order a party to pay costs which it considers that party to have unreasonably or vexatiously caused the opposite

party to incur. The Court does not consider the application to be vexatious. Since the applicants have been unsuccessful, the parties will therefore bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby orders:

1. The application is dismissed as inadmissible.
2. The parties shall bear their own costs.

Luxembourg, 24 October 2000.

H. Jung  
Registrar

P. Mengozzi  
President