

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

Case T-63/02

**Maria Concetta Cerafogli and Paolo Poloni**  
v  
**European Central Bank**

(Officials – Staff of the European Central Bank –  
Remuneration – Method of calculation of annual salary adjustment –  
Consultation of Staff Committee –  
Articles 13, 45 and 46 of the Conditions of Employment)

Full text in German . . . . . II - 1405

Full text in all languages in ECR, Section II

**Application for:**

first, annulment of the pay slips sent on 13 July 2001 to the applicants, staff of the European Central Bank (ECB), for the month of July 2001, insofar as they are based on an increase in basic pay of 2.2% and, secondly, orders that the ECB send the applicants pay slips for the month of July 2001 based on an increase in basic pay of at least 2.7%, or, in the alternative, on an increase corresponding to that upheld in the Court's judgment in this case, and pay them the difference between those amounts.

**Held:** The pay slips sent on 13 July 2001 to the applicants, staff of the European Central Bank (ECB), for the month of July 2001 are annulled in so far as the ECB failed to consult the Staff Committee when adopting the salary adjustment for the year 2001. The remainder of the action is dismissed. The European Central Bank shall pay the costs.

### Summary

*1. Officials – Members of staff of the European Central Bank – Pay – Annual pay adjustment – Consultation of the Staff Committee – Obligation of the administration*

*(Conditions of Employment for Staff of the European Central Bank, Arts 45 and 46)*

*2. Officials – Members of staff of the European Central Bank – Representation – Staff Committee – Consultation mandatory – Justification*

*(Conditions of Employment for Staff of the European Central Bank, Art. 46)*

*3. Officials – Members of staff of the European Central Bank – Pay – Method of calculation for annual salary adjustment – Criteria – Discretion of the administration – Judicial review – Limits*

*(Conditions of Employment for Staff of the European Central Bank, Art. 13)*

*4. Officials – Members of staff of the European Central Bank – Actions – Subject-matter – Issue of directions to the administration – Inadmissible – Dispute of a financial nature – Unlimited jurisdiction*

*(Conditions of Employment for Staff of the European Central Bank, Art. 42)*

1. Article 46 of the Conditions of Employment for Staff of the European Central Bank must be interpreted as meaning that the Staff Committee must be consulted in the case of any measure dealing with the service rules and connected with any of the fields referred to in Article 45 of those Conditions of Employment, including staff remuneration. Unless it is to undermine the effectiveness of that obligation, the administration must comply with it wherever consultation of the Staff Committee is such as to have an influence on the substance of the measure to be adopted.

Thus, the salary adjustment for 2001, which was a measure of general application which affected the remuneration of all staff of the Bank even if it was covered by the method for implementing the general salary adjustments for the years 1999 to 2001, had to be the subject of such consultation.

(see paras 20, 21, 23, 25, 27, 33)

See: T-192/99 *Dunnett and Others v EIB* [2001] ECR II-813, para. 90

2. The scope of the obligation to consult the Staff Committee laid down in Article 46 of the Conditions of Employment for Staff of the European Central Bank must be assessed in the light of its aims. Firstly, the consultation is designed to offer all members of staff, through the intervention of the Staff Committee as the representative of their common interests, the possibility of expressing their views before measures of general application relating to them are adopted or amended. Secondly, compliance with that obligation is in the interests both of individual members of staff and of the administration, since it is likely to prevent each member of staff from having to lodge an individual administrative complaint in order to raise the possibility of errors. Such consultation, in being able to prevent the filing of a series of complaints on the same grievance, thereby also serves the interest of sound administration.

(see para. 24)

3. In providing for the Governing Council to adopt, on a proposal from the Executive Board, general salary adjustments with effect from 1 July each year, Article 13 of the Conditions of Employment for Staff of the European Central Bank does not lay down any criteria for making salary adjustments and, in particular, does not require those adjustments to take account of changes in the cost of living in the Land of Hesse or in Frankfurt-am-Main.

Article 13 of the Conditions of Employment has therefore conferred on the Governing Council a broad discretion against which the Court cannot act unless there has been a manifest error or a misuse of powers.

In providing, in the method used for calculating general salary adjustments, for salaries to be adjusted in step with the average increase in salaries paid by the national central banks of 15 Member States and by the Bank for International Settlements (BIS), the Governing Council has introduced objectively justifiable criteria whose appropriateness cannot be questioned by the Community judicature.

(see paras 46-49)

See: T-544/93 and T-566/93 *Abello and Others v Commission* [1995] ECR-SC I-A-271 and II-815, para. 56

4. It is clear from the second paragraph of Article 42 of the Conditions of Employment for Staff of the European Central Bank that the jurisdiction of the Court of First Instance in disputes between the European Central Bank and its staff is restricted to reviewing the legality of the measure or decision, unless the dispute is of a financial nature, in which case the Court has unlimited jurisdiction.

However, it is not for the Court to make findings of fact or to address directions to the European Central Bank.

(see para. 56)

See: T-27/00 *Staff Committee of the ECB and Others v ECB* [2000] ECR-SC I-A-217 and II-987, para. 37; T-20/01 *Cerafogli and Others v ECB* [2001] ECR-SC I-A-147 and II-675, paras 80 and 81; T-333/99 *X v ECB* [2001] ECR II-3021, para. 48