



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Ninth Chamber)

14 September 2017*

(Civil service — EIB staff — Remuneration — Annual adjustment of the scale of basic salaries —
Calculation method — Economic and financial crisis)

In Joined Cases T-504/16 and T-505/16,

Jean-Pierre Bodson, member of the staff of the European Investment Bank, residing in Luxembourg (Luxembourg), and the other EIB staff members whose names are listed in the annex,¹ represented by L. Levi, lawyer,

applicants in Case T-504/16,

Esther Badiola, member of the staff of the European Investment Bank, residing in Luxembourg, and the other EIB staff members whose names are listed in the annex, represented by L. Levi, lawyer,

applicants in Case T-505/16,

v

European Investment Bank (EIB), represented initially by T. Gilliams and G. Nuvoli, and subsequently by G. Faedo and M. Gilliams, acting as Agents, assisted by A. Dal Ferro, lawyer,

defendant,

APPLICATION based on Article 270 TFEU seeking, first, the annulment of the decisions, contained in the salary statements for February 2013 and subsequent months, applying to the applicants the decision of the EIB Board of Directors of 18 December 2012, the decision of the EIB Management Committee of 29 January 2013, the article published online on 5 February 2013 and the information note of 15 February 2013 informing staff of the adoption of those two decisions and, secondly, an order requiring the EIB to pay to the applicants a sum corresponding to the difference between the amount of remuneration paid pursuant to those decisions and the amount of the remuneration due under the scheme resulting from the decision of the EIB Board of Directors of 22 September 2009, together with damages to compensate for the harm allegedly suffered by the applicants by reason of their loss of purchasing power and uncertainty about the changes made to their remuneration,

THE GENERAL COURT (Ninth Chamber),

composed of S. Gervasoni, President, R. da Silva Passos and K. Kowalik-Bańczyk (Rapporteur), Judges,

Registrar: G. Predonzani, Administrator,

* Language of the case: French

¹ The list of the other applicants is annexed only to the version sent to the parties.

having regard to the written part of the procedure and further to the hearing on 4 May 2017,
gives the following

Judgment

Background to the dispute

- 1 The applicants, Mr Jean-Pierre Bodson and the other persons whose names are listed in the annex in Case T-504/16, on the one hand, and Mrs Esther Badiola and the other persons whose names are listed in the annex in Case T-505/16, on the other hand, are members of the staff of the European Investment Bank (EIB).
- 2 The emoluments of members of the staff of the EIB include a basic salary, bonuses and various benefits and allowances. Regular adjustment of the scale of basic salaries is also provided for.

Adoption of a method for the annual adjustment of the scale of basic salaries

- 3 On 29 June 2009, the human resources department of the EIB presented the Management Committee of the EIB ('the Management Committee') with a proposal for the introduction, with effect from 2010, of a new method for the annual adjustment of the scale of basic salaries, one based on inflation. According to the proposal, the scale of basic salaries for any given year would be adjusted in line with the average of the rate of inflation forecast for Luxembourg for the year in question and the rates of inflation recorded for the two preceding years.
- 4 On 30 June 2009, the Management Committee approved the proposal and transmitted it to the EIB's Board of Directors ('the Board of Directors') and to the Board of Directors' Sub-Committee on Staff Remuneration ('the Sub-Committee on Remuneration').
- 5 Following several meetings, the last of which was held on 21 September 2009, the Sub-Committee on Remuneration adopted a recommendation in favour of the adoption of the new method. That recommendation was worded as follows:

‘The [Sub-Committee on Remuneration] supports the introduction of a new approach for the annual [basic salary scale] adjustment rate, based on the Luxembourg inflation over three sliding years. This approach should be maintained for a period of seven years. It will be then considered whether to keep it or amend it. In addition, it will be assessed whether the sliding mechanism follows the actual inflation rate. If not, the [basic salary scale] adjustment rate will be re-aligned to the inflation rate, upward or downward. The first assessment and eventual recalibration will be conducted in 2012 for the [basic salary scale] adjustment of 2013. From then onward the recalibration will be conducted every year.’
- 6 On 22 September 2009, the Board of Directors adopted a decision ('the 22 September 2009 decision') approving the recommendation from the Sub-Committee on Remuneration. By that decision, the EIB thus adopted, for a period of seven years, an inflation-based method for the annual adjustment of the scale of base staff salaries ('the 2009 method').
- 7 By a note addressed to staff members on 25 September 2009, the Chairman of the EIB informed the latter of the adoption of the 22 September 2009 decision. The note explained that the subject of that decision was the adoption of a 'more simple and transparent method [for adjusting the scale of basic

salaries]', in view of two particular factors, namely the 'efforts required of the [EIB] and its staff to respond to the crisis by increasing the volume of its business considerably' and 'the attention paid by governments and the general public to the remuneration and bonuses of bank staff'.

The annual adjustment of the scale of basic salaries for 2012

- 8 On 13 December 2011, the Board of Directors approved, for the year 2012, a staff costs budget that allowed for a 2.8% increase in the scale of basic salaries, in accordance with the 2009 method, for staff generally, that is to say, staff members of grades C to K, but of just 1.8% for other staff members, that is to say, senior managerial staff.

The annual adjustment of the scale of basic salaries for 2013

- 9 In autumn 2012, the Management Committee submitted to the EIB staff remuneration committee ('the Committee on Remuneration'), which in 2010 had replaced the Sub-Committee on Remuneration, for its opinion thereon, a proposal for a 5.1% increase in 2013 in the staff costs budget for active members of staff. The purpose of that increase was to finance, first, as to 1.5%, the costs associated with step progression based on performance, promotions and reclassification and, secondly, a 3.6% increase in the scale of basic salaries, in accordance with the 2009 method, which took into account in 2013 a 0.9% upward adjustment to reflect the rate of inflation actually recorded in the preceding years.
- 10 In an opinion which it adopted following meetings held on 22 October, 19 November and 17 December 2012 ('the December 2012 Opinion'), the Committee on Remuneration stated that, in light of current economic and social conditions and political realities in the Member States, it could not approve the 5.1% increase in the budget for staff costs for active staff members proposed by the Management Committee. Consequently, the Committee on Remuneration, first, made a recommendation to the Board of Directors to limit that increase to 2.3% and, secondly, called on the Management Committee to decide how the increase should be allocated and what level of internal resources should, if necessary, be utilised in order to make up the budget. It also proposed, in the same opinion, that the 2009 method be altered so as to include provisions allowing for greater flexibility in times of economic crisis.
- 11 On 18 December 2012, the Board of Directors approved the EIB's operational plan for the period 2013 to 2015, which provided for a 2.3% increase, in 2013, in the budget for staff costs for active staff members ('the 18 December 2012 decision').
- 12 An internal circular relating to the EIB's operational plan for the period 2013 to 2015 states:
- 'Given the current economic and political climate and the austerity measures in place in many Member States, our shareholders must ... give the perception of equitable treatment in domestic and European affairs. The EIB budget therefore takes into consideration the reductions to national budgets with a 2013 expenditure [for active members of staff] budget increase ... of 2.3% ...'
- 13 At its meeting on 18 December 2012, the Board of Directors did not, however, object to the budget for staff costs for active members of staff being increased by up to and additional 1.0% by using internal resources resulting from the 'Noria' effect, which is defined by the parties as the savings made when staff members retire and are either replaced by new, younger staff members whose salaries are lower, or not replaced at all, thus making an overall salary increase of 3.3% possible.
- 14 On 23 January 2013, the EIB's Head of Personnel sent the Management Committee a note asking it to approve measures to implement the 18 December 2012 decision. The note stated, inter alia, that the 3.3% increase in the budget for staff costs for active members of staff did not allow an increase, in accordance with the 2009 method, of 3.6% in the scale of basic salaries. Given that the increase in the

budget for staff costs for active members of staff was also required to finance, as to 1.5%, step progression based on performance, promotions and reclassification, the Head of Personnel proposed an increase in the scale of basic salaries of just 1.8%, which meant adjusting the scale by half the rate which would have resulted from the application of the 2009 method.

- 15 On 29 January 2013, the Management Committee approved the measures to implement the 18 December 2012 decision proposed by the Head of Personnel ('the 29 January 2013 decision').
- 16 On 5 February 2013, an article posted on the EIB's intranet ('the 5 February 2013 article') informed staff of the approval, on 29 January 2013, by the Management Committee, of the budget for staff costs and, in particular, of the rate of 1.8% fixed for the increase in the scale of basic salaries for 2013.
- 17 On 15 February 2013, the EIB's Head of Personnel also sent EIB staff members a note informing them of the annual adjustment of the scale of basic salaries for 2013 ('the information note of 15 February 2013').
- 18 The annual adjustment of the scale of basic salaries for 2013 resulting from the decisions of 18 December 2012 and 29 January 2013 was applied for the first time in the applicants' salary statements for February 2013.

Procedure and forms of order sought

- 19 By applications lodged at the Registry of the European Union Civil Service Tribunal on 8 May 2013, the applicants, along with two other EIB staff members, brought the present actions, which were registered respectively under numbers F-41/13 and F-43/13.
- 20 By letter lodged at the Registry of the European Union Civil Service Tribunal on 13 November 2013, the representative of the applicants in Case F-41/13 informed the Tribunal that the two other staff members mentioned in paragraph 19 above were withdrawing their actions.
- 21 By order of 9 December 2013 of the President of the Third Chamber of the Civil Service Tribunal, the names of the two persons mentioned in paragraphs 19 and 20 above were removed from the list of applicants.
- 22 On 13 February 2014, by way of measures of organisation of the procedure adopted on the basis of Article 55(2)(b) of its Rules of Procedure, the Civil Service Tribunal called on the parties in Cases F-41/13 and F-43/13 to submit their observations on the consequences, if any, to be drawn from the judgments of 12 February 2014, *Bodson and Others v EIB* (F-83/12, EU:F:2014:15), and of 12 February 2014, *Bodson and Others v EIB* (F-73/12, EU:F:2014:16). The parties complied with that request within the prescribed period.
- 23 By order of 16 June 2014, the President of the Third Chamber of the Civil Service Tribunal stayed the proceedings in Cases F-41/13 and F-43/13 until the General Court delivered final judgment in Cases T-240/14 P and T-241/14 P, *Bodson and Others v EIB*, those cases being appeals against the judgments of 12 February 2014, *Bodson and Others v EIB* (F-83/12, EU:F:2014:15), and of 12 February 2014, *Bodson and Others v EIB* (F-73/12, EU:F:2014:16), for the reason that in the present two cases, the applicants put forward a plea of breach of the essential conditions of their contracts of employment, as did the applicants in Cases T-240/14 P and T-241/14 P.
- 24 Following delivery of the judgments of 26 February 2016, *Bodson and Others v EIB* (T-241/14 P, EU:T:2016:103), and of 26 February 2016, *Bodson and Others v EIB* (T-240/14 P, EU:T:2016:104), the Civil Service Tribunal lifted the stay of the proceedings and, on 3 March 2016, by way of measures of

organisation of the procedure adopted on the basis of Article 55(2)(b) of its Rules of Procedure, called on the parties to submit their observations on the consequences, if any, to be drawn from those judgments. The parties complied with that request within the prescribed period.

- 25 Pursuant to Article 3 of Regulation (EU, Euratom) 2016/1192 of the European Parliament and of the Council of 6 July 2016 on the transfer to the General Court of jurisdiction at first instance in disputes between the European Union and its servants (OJ 2016 L 200, p. 137), Cases F-41/13 and F-43/13 were transferred to the General Court in the state in which they stood on 31 August 2016. They were registered under numbers T-504/16 and T-505/16 respectively.
- 26 On 3 February 2017, by way of measures of organisation of the procedure adopted on the basis of Article 89(3)(d) of its Rules of Procedure, the General Court requested the EIB to produce a number of documents that had not been published in the *Official Journal of the European Union* and which form the background to the present cases, in particular, Annex 3 to Minutes PV/09/09 of the meeting of the Board of Directors of 22 September 2009, which set out the 22 September 2009 decision. The EIB complied with that request within the prescribed period.
- 27 By decision of 7 March 2017, the President of the Ninth Chamber of the General Court, after taking the views of the parties, joined Cases T-504/16 and T-505/16 for the purposes of the oral part of the procedure and the decision closing the proceedings, in accordance with Article 68 of the Rules of Procedure.
- 28 The applicants each claim that the Court should, in so far as he or she is concerned:
- annul:
 - the decisions contained in their salary statements for February 2013, applying the decisions of 18 December 2012 and 29 January 2013;
 - all the decisions contained in their subsequent salary statements applying those same decisions;
 - and, in so far as is necessary, the article of 5 February 2013 and the information note of 15 February 2013;
 - order the EIB to pay:
 - by way of compensation for financial loss, damages provisionally assessed at EUR 30 000 per applicant, based, first, on the difference resulting from the implementation of the abovementioned decisions and the scheme resulting from the 2009 method, since 1 January 2013, together with late payment interest at the European Central Bank (ECB) rate for main refinancing operations, plus three percentage points, and, secondly, damages to compensate for the harm suffered by reason of their loss of purchasing power;
 - EUR 1 000 per applicant by way of compensation for non-material damage;
 - if necessary, should it fail to produce them voluntarily, call on the EIB, by way of measures of organisation of the procedure, to produce the following documents:
 - the minutes of the meeting of the Board of Directors of 18 December 2012;
 - the minutes of the meeting of the Management Committee of 29 January 2013;
 - the notes from the EIB's human resources department (personnel) RH/P&O/2009-0083 of 26 June 2009 and personnel/ASP/2013-5 of 23 January 2013;

- Annex 3 to Minutes PV/09/09 of the meeting of the Board of Directors of 22 September 2009;
- its business plan for the period 2013 to 2015;
- order the EIB to pay the costs.

29 The EIB contends that the Court should:

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

Law

The measures of organisation of procedure requested by the applicants

- 30 The applicants ask the General Court to adopt measures of organisation of the procedure ordering the EIB to produce certain documents in the event that it fails to produce them voluntarily.
- 31 However, it must be observed, first, that the applicants acknowledge that the EIB has produced, in an annex to its defence, the documents sought, albeit that the 22 September 2009 decision was not produced.
- 32 Secondly, by the measures of organisation of the procedure mentioned in paragraph 26 above, the Court called on the EIB to produce the 22 September 2009 decision, and the EIB complied with that request within the prescribed period.
- 33 Consequently, there is no longer any need to rule on the applicants' request for measures of organisation of the procedure.

The claims for annulment

- 34 The Court regards it as necessary to examine separately the claims for annulment depending on whether they are directed against the article of 5 February 2013 and the information note of 15 February 2013, on the one hand, or against the decisions contained in the applicants' salary statements for February 2013 and subsequent months, on the other.

The claims for annulment of the article of 5 February 2013 and the information note of 15 February 2013

- 35 At the outset, it must be recalled, in the first place, that purely internal disputes between the EIB and its members of staff are subject to a special regime. Such disputes, which are similar in nature to disputes between institutions of the European Union and their officials and other employees, are subject to judicial review pursuant to Article 270 TFEU and Article 50a of the Statute of the Court of Justice of the European Union (see, to that effect, judgments of 15 June 1976, *Mills v EIB*, 110/75, EU:C:1976:88, paragraphs 5 to 18, and of 23 February 2001, *De Nicola v EIB*, T-7/98, T-208/98 and T-109/99, EU:T:2001:69, paragraphs 93, 94 and 100).

- 36 In addition, on 20 April 1960, the Board of Directors adopted staff regulations applicable to the members of the staff of the EIB, which were last amended, in so far as is relevant to the present dispute, on 1 January 2009 ('the Staff Regulations'). The first paragraph of Article 41 of the Staff Regulations provides that 'disputes of any nature between the [EIB] and individual members of staff shall be brought before the Court of Justice of the European Union'.
- 37 Accordingly, in so far as concerns disputes between the EIB and its staff members, only disputes concerning individual members of staff may be brought before the General Court. Consequently, while EIB staff members may, under certain circumstances, in the context of an individual action, plead the illegality of measures of general application, they may not, on the other hand, directly seek the annulment of those measures (see, to that effect, judgment of 28 September 2011, *De Nicola v EIB*, F-13/10, EU:F:2011:161, paragraph 54).
- 38 In the second place, it is settled case-law that, if it cannot affect the interests of its addressee or alter his legal position from that prior to its receipt, a measure of a purely informative character cannot form the subject matter of an action for annulment (see, to that effect, judgment of 11 December 2012, *Sina Bank v Council*, T-15/11, EU:T:2012:661, paragraphs 30 and 31 and the case-law cited).
- 39 In the present case, contrary to what the applicants argue, the article of 5 February 2013 and the information note of 15 February 2013 do no more than inform the staff of the EIB of the adoption of the 29 January 2013 decision, which was intended to produce legal effects with regard to a category of persons, namely the members of the staff of the EIB apprehended generally and in the abstract, and is, therefore, a measure of general application. It follows that the article and the information note, first of all, are not in themselves measures of individual application and, secondly, are of a purely informative character and cannot therefore adversely affect the applicants.
- 40 Consequently, the claims for the annulment of the article of 5 February 2013 and the information note of 15 February 2013 are, on two separate grounds, inadmissible.

The claims for annulment of the decisions contained in the applicants' salary statements for February 2013 and subsequent months

- 41 The applicants plead that the decisions of 18 December 2012 and 29 January 2013, which the decisions contained in their salary statements for February 2013 and subsequent months applied, are illegal.
- 42 In support of that plea of illegality the applicants put forward three distinct pleas in law alleging, first, infringement of the 22 September 2009 decision, secondly, infringement of the principle of the protection of legitimate expectations and, thirdly, breach of the fundamental conditions of their employment contracts.
- 43 By their first plea in law, the applicants maintain that the decisions of 18 December 2012 and 29 January 2013 are illegal in that they were taken, in so far as concerns adjustment of the scale of basic salaries for 2013, without regard to the 2009 method adopted by the 22 September 2009 decision.
- 44 In this connection, the EIB does not dispute the fact that applying the 2009 method would have resulted in an increase in the scale of basic salaries of 3.6% in 2013 and that, consequently, the 1.8% increase in that scale which resulted from the decisions of 18 December 2012 and 29 January 2013 was a departure from that method for the year 2013.

- 45 However, the EIB argues that it was not required to apply the 2009 method for the year 2013. First of all, it explains that that method was merely an internal directive with no binding force. Secondly, the Board of Directors in fact altered that method by means of the 18 December 2012 decision. Thirdly, the context of economic crisis constituted, in any event, a case of *force majeure* justifying derogation from the 2009 method.
- 46 It must immediately be observed that relations between the applicants and the EIB, even though contractual in origin, are essentially governed by regulations (see, to that effect, judgments of 12 February 2014, *Bodson and Others v EIB*, F-83/12, EU:F:2014:15, paragraph 107, and of 12 February 2014, *Bodson and Others v EIB*, F-73/12, EU:F:2014:16, paragraph 55). Indeed, Article 29 of the EIB's internal regulations, which became Article 31 in April 2012, provides that regulations relating to EIB staff are laid down by the Board of Directors and that the Management Committee is to adopt detailed rules for their application.
- 47 Accordingly, the first paragraph of Article 20 of the Staff Regulations states that the scale of basic salaries for the categories of staff defined in Article 14 is set out in Annex I to the regulations. Annex I states that the scale of basic salaries is to be regularly updated.
- 48 It must be clarified that, under those provisions, the EIB has a discretion in establishing and unilaterally changing the components of staff remuneration (see, to that effect, judgments of 26 February 2016, *Bodson and Others v EIB*, T-241/14 P, EU:T:2016:103, paragraphs 51 and 57, and of 26 February 2016, *Bodson and Others v EIB* T-240/14 P, EU:T:2016:104, paragraphs 39 and 44) and consequently in setting and updating the scale of basic staff salaries.
- 49 However, in the exercise of that discretion, the EIB may determine in advance the criteria which are to apply for a given period of time to periodic adjustments of the scale of basic staff salaries, and may thus commit itself to observing such criteria when making annual adjustments to the scale through the course of the relevant period (see, to that effect, judgments of 5 June 1973, *Commission v Council*, 81/72, EU:C:1973:60, paragraph 11; of 26 June 1975, *Commission v Council*, 70/74, EU:C:1975:93, paragraphs 20 and 21; and of 24 November 2010, *Commission v Council*, C-40/10, EU:C:2010:713, paragraphs 64 and 71).
- 50 In the present case, it is common ground that, by the 22 September 2009 decision, the Board of Directors adopted a method for the annual adjustment of the scale of basic salaries which was to apply for a period of seven years.
- 51 Given that, it is necessary, in the first place, to determine whether that method was binding in nature, as the applicants allege, or merely an internal directive, as the EIB argues.
- 52 In this connection it must first be pointed out that the 22 September 2009 decision was adopted, on the proposal of the Management Committee and after taking the opinion of the Sub-Committee on Remuneration, by the Board of Directors, which, under the then applicable Article 29 of the EIB's internal regulations, was the body responsible for adopting regulations relating to staff.
- 53 Next, it is not disputed that the 2009 method, described in paragraphs 3 and 5 above, determines precisely and exhaustively the factors to be taken into account in calculating the yearly adjustments to the scale of basic salaries for a period of seven years. Thus, by adopting that method, the Board of Directors laid down specific provisions for the implementation of the first paragraph of Article 20 of the Staff Regulations and Annex I thereto the purpose of which was to provide a framework for, and thus restrict the EIB's discretionary power when determining the annual adjustments to the scale of basic salaries (see, to that effect, judgment of 24 November 2010, *Commission v Council*, C-40/10, EU:C:2010:713, paragraphs 67 and 68).

- 54 Lastly, it is clear from the wording of the 22 September 2009 decision and from the context in which that decision was adopted that, contrary to its claim, the EIB's intention was that the decision should be binding. Consequently, that decision cannot be regarded as a mere internal directive from which the EIB could depart, provided that it gave its reasons for doing so (see, to that effect, judgment of 5 June 1973, *Commission v Council*, 81/72, EU:C:1973:60, paragraph 8).
- 55 That conclusion cannot be invalidated by the arguments which the EIB bases, first, on the fact that the 2009 method provided for an adjustment in 2013, secondly, on the fact that, by contrast with the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union, the 2009 method contains no system of exceptions, thirdly, on the fact that, in the December 2012 Opinion, the Committee on Remuneration had suggested allowing for greater flexibility in years of economic crisis and, fourthly, on the fact that the 2009 method was applied only to certain categories of staff in 2012, after having been applied only with difficulty in 2011.
- 56 Indeed, first of all, the adjustment mechanism for 2013, which was precisely defined by the 2009 method, was part of the detailed rules for the application of that method. The sole purpose of that adjustment was to correct, for the year 2013, the adjustment of the scale of basic salaries in the event that the application of the 2009 method for the years 2010 to 2012 did not result in the indexation of the scale at the rate of inflation actually recorded for those years. Moreover, it is important to emphasise that, as was pointed out in paragraph 9 above, the 3.6% increase in the scale of basic salaries which resulted from the application in 2013 of the 2009 method takes into account the adjustment for 2013. Therefore, that adjustment constituted neither an exception enabling the EIB to derogate from the 2009 method nor evidence of the non-binding nature of the 2009 method. On the contrary, it is additional evidence of the binding nature of that method.
- 57 Secondly, it is certainly common ground that, by contrast with Annex XI to the Staff Regulations of Officials of the European Union, originally established by Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ, English Special Edition 1968(I), p. 30), the 22 September 2009 decision contains no provisions that permit derogation from the 2009 method in the event that a deterioration in the economic and social situation within the European Union is observed. Nevertheless, the presence or absence of a system of exceptions is, in itself, completely irrelevant for the purposes of determining whether the 2009 method is binding or non-binding.
- 58 Thirdly, the Committee on Remuneration expressly suggested, in the December 2012 Opinion, that the 2009 method should be modified so as to include provisions that allow for greater flexibility in the event of an economic crisis, which tends to confirm that, without such modification, the 2009 method had to be applied in 2013.
- 59 Fourthly, the fact that the 2009 method was applied only partially in 2012, inasmuch, in the case of some staff members, namely senior managerial staff, the annual adjustment of the scale of their basic salaries was lower than that provided for by the 2009 method, has no bearing on the conclusion that that method, which moreover was applied correctly to all staff in 2010 and 2011, is binding in nature.
- 60 It follows that, by adopting the 22 September 2009 decision, the EIB, by a unilateral decision, bound itself, for the period of validity of that decision, that is to say seven years, in the exercise of its discretion under the Staff Regulations, to comply with the 2009 method. Consequently, the EIB cannot rely, in the context of the annual adjustment of the scale of basic staff salaries, on a discretion going beyond the criteria laid down in that method (see, to that effect, judgment of 24 November 2010, *Commission v Council*, C-40/10, EU:C:2010:713, paragraph 71).

- 61 In addition, it must be observed that the criteria laid down by the 2009 method make it possible to determine precisely the amount of the increase in the scale of basic salaries that must be made each year. Consequently, that method leaves the EIB with no discretion when adopting decisions for the adjustment of the scale each year. That, moreover, was the intention of the Board of Directors on adopting the 2009 method. Indeed, it is clear from the note from the Chairman of the EIB of 25 September 2009, mentioned in paragraph 7 above, that the Board of Directors had wished to apply a ‘more simple and transparent method’ to the periodic adjustment of the scale of basic salaries.
- 62 That being so, the EIB’s argument that the 2009 method was not binding, or was at least flexible, must be rejected.
- 63 In the second place, it is necessary to verify whether the 2009 method was still applicable in 2013, as the applicants maintain, or whether it had by that time been modified by the 18 December 2012 decision, as the EIB argues.
- 64 First, it must be pointed out in this connection that, not only does the 18 December 2012 decision contain no provisions repealing, suspending or modifying the 22 September 2009 decision, but it also makes no reference to that decision.
- 65 Secondly, it should be noted that those decisions, although both adopted by the same body and in accordance with the same procedure, are different in nature and have distinct purposes. The 22 September 2009 decision, for all that it was adopted in the context of preparing the budget for 2010, is regulatory in nature and multi-annual, inasmuch as it lays down a method for framing, over a number of years, the annual adjustment of one of the components of staff remuneration, namely the scale of basic salaries. The 18 December 2012 decision, on the other hand, is essentially a budgetary measure adopting the EIB’s operational plan for 2013 to 2015 and setting, in that context, the rate of the increase in the budget for staff costs for active staff members for one year, that is to say 2013. Nor is it argued that that decision contained any regulatory provisions regarding the remuneration of EIB staff.
- 66 Given that, the 18 December 2012 decision cannot be regarded as having modified the 2009 method. Moreover, it should be noted that the same applies to the 29 January 2013 decision, for the same reasons and a fortiori, inasmuch as it emanated from the Management Committee and not the Board of Directors.
- 67 In the third place, it is necessary to examine the EIB’s argument that the economic context in the autumn of 2012 constituted a case of *force majeure* justifying the non-application in 2013 of the 2009 method.
- 68 In this connection, it must be recalled that, according to the case-law, while the concept of *force majeure* does not presuppose absolute impossibility, it nevertheless requires the non-performance of the act in question to be attributable to circumstances, beyond the control of the person claiming *force majeure*, that were abnormal and unforeseeable and the consequences of which could not have been avoided despite the exercise of all due diligence (judgments of 8 March 1988, *McNicholl*, 296/86, EU:C:1988:125, paragraph 11; of 4 March 2010, *Commission v Italy*, C-297/08, EU:C:2010:115, paragraph 85; and of 30 June 2016, *Jinan Meide Casting v Council*, T-424/13, EU:T:2016:378, paragraph 76).
- 69 In the present case, it is clear from the statement of reasons, mentioned in paragraph 10 above, for the December 2012 Opinion and from the wording of the internal circular mentioned in paragraph 12 above, that, in the decisions of 18 December 2012 and 29 January 2013, the EIB departed from the 2009 method in order to take account of the current economic and social conditions and political realities in the Member States and to give the appearance of equitable treatment in domestic and European affairs.

- 70 However, first of all, it must be observed that, although the EIB referred to a situation of economic crisis, it has submitted no precise details or figures regarding the severity of that crisis or its impact on its own financial situation. In particular, the EIB has not established, or even alleged that it would have been impossible, or at least excessively difficult for it to fund the expenditure resulting from application of the 2009 method, as had been proposed initially by the Head of Personnel and subsequently by the Management Committee.
- 71 Secondly, it is clear from the wording of the note which the Chairman of the EIB sent to staff on 25 September 2009, summarised in paragraph 7 above, that it had already taken account of the economic crisis when the 2009 method was adopted. That being so, and since the EIB does not mention any deterioration in the economic situation between September 2009 and the autumn of 2012, it has also failed to demonstrate that the economic context pertaining when the decisions of 18 December 2012 and 29 January 2013 were adopted was unforeseeable at the time when the 22 September 2009 decision was adopted.
- 72 It follows that the EIB has not established that the economic and social context, or the political imperatives which it alleges, constitute abnormal and unforeseeable circumstances the consequences of which it could not have avoided despite the exercise of due diligence, and thus a case of *force majeure*.
- 73 That being so, and given the facts, mentioned in paragraphs 57 and 61 above, that the 2009 method contains no system of exceptions and that it leaves the EIB with no discretion, the situation of economic crisis on which the EIB relies is not capable of justifying an adjustment of the scale of basic staff salaries in 2013 below that which would have resulted from application of the 2009 method.
- 74 It thus follows from the foregoing, without it being necessary to examine the second and third pleas in law put forward by the applicants, that the decisions of 18 December 2012 and 29 January 2013 infringed the 22 September 2009 decision and are therefore illegal.
- 75 Consequently, the decisions contained in the applicants' salary statements for February 2013 and subsequent months, taken on the basis of the decisions of 18 December 2012 and 29 January 2013, to increase the scale of the applicants' basic salaries by only 1.8% are also illegal and must therefore be annulled.

The claims for damages

- 76 First, as regards the financial damage alleged by the applicants, it must be recalled that, under Article 266 TFEU, it will be for the EIB to take the measures necessary to comply with the present judgment and, in particular, to adopt, in observance of the principle of legality, any measure which is such as to compensate fairly for the disadvantage resulting for the applicants from the annulled measures (see judgment of 15 September 2005, *Casini v Commission*, T-132/03, EU:T:2005:324, paragraph 98 and the case-law cited), without prejudice to the possibility for the applicants to bring an action at a later stage against the measures adopted by the EIB to comply with the present judgment. That being so, the applicants' claims for damages to compensate their financial loss are premature (see, to that effect, judgments of 7 June 2011, *Larue and Seigneur v ECB*, F-84/09, EU:F:2011:71, paragraph 64, and of 29 September 2011, *Bowles and Others v ECB*, F-114/10, EU:F:2011:173, paragraphs 79 and 80).
- 77 Secondly, regarding the non-material damage which the applicants claim they have suffered, it must be recalled that, according to the case-law, the annulment of an unlawful measure may constitute, in itself, adequate and, in principle, sufficient compensation for all non-material damage which that measure may have caused, unless the applicant can show that he has suffered non-material damage which is separable from the unlawfulness which is the basis for the annulment and which is incapable of being

entirely repaired by that annulment (see, to that effect, judgments of 7 February 1990, *Culin v Commission*, C-343/87, EU:C:1990:49, paragraphs 27 to 29, and of 9 December 2010, *Commission v Strack*, T-526/08 P, EU:T:2010:506, paragraph 58).

- 78 In the present case, the applicants merely claim that they have suffered non-material damage as a result of being placed in a situation of uncertainty as regards the changes made to their remuneration, without providing any explanation of the severity or consequences for them of that uncertainty. Moreover, it is clear from the article of 5 February 2013 and the information note of 15 February 2013 that, even before receiving their salary statements for February 2013, which applied for the first time the 1.8% increase in the scale of basic salaries decided upon for 2013, the applicants had been informed of the level of that adjustment and consequently the uncertainty which they mention cannot be established. That being so, it must be observed that the applications contain not the slightest demonstration of the extent of the non-material damage that the applicants allegedly suffered. Still less do they address the question of whether that harm can or cannot be wholly repaired by the annulment of the contested decisions.
- 79 In light of the foregoing, the applicants' claims for damages must be dismissed.

Costs

- 80 Under Article 134(1) 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.
- 81 Since the EIB has been substantially unsuccessful, it must be ordered to pay the costs in accordance with the form of order sought by the applicants.

On those grounds,

THE GENERAL COURT (Ninth Chamber)

hereby:

- 1. Annuls the decisions of the European Investment Bank (EIB) applying the decision of the EIB Board of Directors of 18 December 2012 and the decision of the EIB Management Committee of 29 January 2013 contained in the salary statements for February 2013 and subsequent months of Mr Jean-Pierre Bodson and the other members of the EIB's staff whose names are listed in the annex in Case T-504/16, on the one hand, and of Mrs Esther Badiola and the other members of the EIB's staff whose names are listed in the annex in Case T-505/16, on the other hand;**
- 2. Dismisses the actions as to the remainder;**
- 3. Orders the EIB to pay the costs.**

Gervasoni

da Silva Passos

Kowalik-Bańczyk

Delivered in open court in Luxembourg on 14 September 2017.

[Signatures]