JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

18 October 2011 *

In Case T-439/09,

John Robert Purvis, residing in Saint Andrews (United Kingdom), represented by S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers,

applicant,

v

European Parliament, represented initially by H. Krück, A. Pospíšilová Padowska and G. Corstens, and subsequently by N. Lorenz, A. Pospíšilová Padowska and G. Corstens, acting as Agents,

defendant,

APPLICATION for annulment of the European Parliament's decision of 7 August 2009 which refused to grant the applicant his voluntary additional pension in part in the form of a lump sum,

* Language of the case: French.

THE GENERAL COURT (Fourth Chamber),

composed of I. Pelikánová (Rapporteur), President, K. Jürimäe and M. van der Woude, Judges,

Registrar: K. Pocheć, Administrator,

having regard to the written procedure and further to the hearing on 29 March 2011,

gives the following

Judgment

Legal context

1 The Bureau of the European Parliament ('the Bureau') is a body of the European Parliament. Pursuant to Rule 22(2) of the Rules of Procedure of the Parliament, in the version applicable to the facts of the case (OJ 2005 L 44, p. 1), entitled 'Duties of the Bureau,' the Bureau is to take inter alia financial, organisational and administrative decisions on matters concerning Members of the European Parliament ('Members').

2 To that end, the Bureau adopted the Rules Governing the Payment of Expenses and Allowances to Members ('the PEAM Rules').

3 On 12 June 1990, the Bureau adopted the Rules Governing the Additional (Voluntary) Pension Scheme for Members ('the Rules of 12 June 1990'), which can be found in Annex VII to the PEAM Rules.

4 In the version applicable in March 2009, the Rules of 12 June 1990 provided inter alia:

'*Article 1*

1. Pending the adoption of a single Statute for Members, and irrespective of the pension rights referred to in Annexes I and II, after ceasing to hold office, Members of the European Parliament who have paid voluntary contributions to the pension scheme for at least two years shall be entitled to a pension for life payable from the first day of the calendar month following the date when they reach the age of 60 years.

...

Article 2

1. The amount of the pension shall be 3.5 % of 40 % of the basic salary of a Judge at the Court of Justice of the European Communities for each full year in office plus one-twelfth of that sum for each complete month.

2. The maximum pension shall be 70 % (and the minimum pension 10.5 %) of 40 % of the basic salary of a Judge at the Court of Justice of the European Communities.

3. The pension shall be calculated and paid in euros.

Article 3

Former Members or Members leaving office before reaching the age of 60 years may request that their pension be paid immediately, or at any time between leaving office and age 60, provided that they are not less than 50 years of age. In that case, the pension shall be the amount calculated on the basis of Article 2(1) multiplied by a coefficient determined by reference to the Member's age when they start to draw their pension, as shown in the following table:

…

Article 4 (payment of part of the pension as a lump sum)

1. A maximum of 25 % of the pension rights calculated on the basis of Article 2(1) may be paid as a lump sum to members or former members of the voluntary pension scheme.

2. This option must be exercised prior to the date on which payments begin and shall be irreversible.

3. Subject to the ceiling referred to in paragraph 1 above, a lump-sum payment shall not affect or reduce the pension rights of a Member's surviving spouse or dependent children.

4. The lump sum shall be calculated on the basis of the age of the Member when the pension takes effect, using the following table: …

5. The lump sum shall be calculated and paid in euros. Payment shall be made prior to the first pension payment.

…'

5 The additional pension fund was created on the establishment — by the Quaestors of the Parliament — of the non-profit-making association Fonds de pension — députés au Parlement européen ('the ASBL'), which in turn established an open-ended investment company under Luxembourg law, Fonds de pension — Députés au Parlement européen, Société d'investissement à capital variable ('the SICAV'), which was entrusted with the technical management of the investments.

6 The Statute for Members of the European Parliament was adopted by Decision 2005/684/EC, Euratom of the European Parliament of 28 September 2005 (OJ 2005 L 262, p. 1; 'the Statute for Members'), and entered into force on 14 July 2009, the first day of the seventh parliamentary term.

7 The Statute for Members introduced a final pension scheme for Members, under which Members are entitled, without making any contributions, to an old-age pension from the age of 63.

8 The Statute for Members lays down transitional provisions applicable to the additional pension scheme. In that regard, Article 27 of the Statute provides:

‘1. The voluntary pension fund set up by Parliament shall be maintained after the entry into force of this Statute for Members or former Members who have already acquired rights or future entitlements in that fund.

2. Acquired rights and future entitlements shall be maintained in full. Parliament may lay down criteria and conditions governing the acquisition of new rights or entitlements.

3. Members who receive the salary [introduced by the Statute] may not acquire any new rights or future entitlements in the voluntary pension fund.

4. The fund shall not be open to Members who are first elected to Parliament after this Statute becomes applicable.

…’

9 By decisions of 19 May and 9 July 2008, the Bureau adopted the implementing measures for the Statute for Members (OJ 2009 C 159, p. 1; ‘the implementing measures’). Pursuant to Article 73 of those decisions, the implementing measures entered into force on the same date as the Statute for Members, that is to say, on 14 July 2009.

10 Article 74 of the implementing measures provides that, subject to the transitional provisions laid down in Title IV, the PEAM Rules are to cease to be valid on the date on which the Statute for Members enters into force.

11 Article 76 of the implementing measures, entitled 'Additional pension', provides:

'1. The (voluntary) additional old-age pension paid pursuant to Annex VII to the PEAM Rules shall continue to be paid pursuant to that annex to those persons who were in receipt of that pension prior to the date of entry into force of the Statute [for Members].

2. The pension rights acquired prior to the date of entry into force of the Statute [for Members] pursuant to the aforementioned Annex VII shall be maintained. They shall be honoured in accordance with the conditions laid down by that annex.

3. Members elected in 2009:

(a) who were Members during a previous parliamentary term, and

(b) who have already acquired or were in the process of acquiring rights in the additional pension fund, and

(c) in respect of whom the Member State of election has adopted a derogation pursuant to Article 29 of the Statute [for Members], or who, pursuant to Article 25 of that statute, have themselves opted for a national scheme, and

(d) who are not entitled to a national or European pension deriving from the exercise of their mandate as Members of the European Parliament

may continue to acquire new rights after the date of entry into force of the Statute [for Members], pursuant to the aforementioned Annex VII.

4. Members must pay their contributions to the additional pension fund from their own income.'

12 On 9 March 2009, a deterioration in the financial situation of the optional pension fund having been noted, the Bureau decided:

— 'to designate a Working Party … to meet with representatives of the Board of the Voluntary Pension Fund to assess the situation;

— … with immediate effect, that as provisional and precautionary measures, the possibility to make use of Articles 3 and 4 of Annex VII to the [PEAM Rules] be suspended;

— … that these precautionary measures will be reviewed by the Bureau at a forthcoming meeting in the light of the facts established and the results of the contacts and findings of the Working Party.'

13 On 1 April 2009, the Bureau decided to amend the Rules of 12 June 1990. The amendments include, inter alia, the following measures:

— with effect from the first day of the seventh parliamentary term, that is to say, from 14 July 2009, the increase in the retirement age from 60 to 63 (Article 1 of the Rules of 12 June 1990);

— with immediate effect, the repeal of the possibility of payment of part of the pension rights in the form of a lump sum (Article 4 of the Rules of 12 June 1990);

— with immediate effect, the repeal of the possibility of early retirement from the age of 50 (Article 4 of the Rules of 12 June 1990).

14 By way of justification for these measures, in the first and second recitals in the preamble to the decision of 1 April 2009 the Bureau cited a sharp fall in value of the pension fund, owing to the impact of the current financial and economic crisis, and the prospect that, following the entry into force of the Statute for Members in July 2009, and as a result of the cessation of Members' contributions and inadequate returns on its investments, there was a risk that, from 2010, the liquidity available in the fund would be insufficient to meet the pension payment obligations. In the view of the Bureau, the pension fund therefore risked having to sell off assets, which is why measures had to be taken to safeguard the liquidity of the fund as far as possible.

15 This decision was notified by the administration of the Parliament to all Members by an email of 18 May 2009.

Background to the dispute

16 The applicant, John Robert Purvis, was a Member of the Parliament from 1979 to July 1984 and from July 1999 to July 2009. He belonged to the additional pension scheme and made contributions to the fund for 10 years, from August 1999 to July 2009.

17 On 8 January 2009, the Members' Pay and Social Entitlements unit of the Parliament sent to the applicant two provisional calculations, which stated that he was entitled to claim, from 1 August 2009, either a monthly pension of EUR 2706.20 or 25% of his pension as a lump sum, an amount of EUR 81429.56, and a monthly pension of EUR 2029.65.

18 On 24 April 2009, the applicant applied to receive his additional pension, from the end of the sixth parliamentary term, in part in the form of a lump sum and in part in the form of pension, as calculated above.

19 By letter of 7 August 2009, the applicant was informed that his application had been rejected ('the contested decision'). In that letter, the head of the Members' Pay and Social Entitlements unit of the Parliament pointed out inter alia that the possibility of receiving payment of part of the pension rights in the form of a lump sum had been abolished by the decision of the Bureau of 1 April 2009. He concluded that 'since the current rules no longer allow payment of part of the pension as a lump sum, your pension entitlement was settled on 1 August 2009, without taking account of your request for payment of 25% as a lump sum.'

Procedure and forms of order sought

20 By application lodged at the Registry of the Court on 23 October 2009, the applicant brought the present action.

21 Since the applicant produced new evidence at the hearing on 29 March 2011, the Parliament was granted a period of two weeks in which to submit its observations on that evidence. The Parliament submitted its observations on 8 April 2011. By letter of 25 May 2011, at the invitation of the Court, the applicant submitted his observations on the Parliament's observations of 8 April 2011.

22 The applicant claims that the Court should:

— declare that the decisions of the Bureau of 9 March and 1 April 2009 are unlawful in so far as they amend the additional pension scheme and abolish the special methods of payment of the additional pension;

— annul the contested decision;

— order the Parliament to pay the costs.

23 The Parliament contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Law

1. *The conclusions to be drawn from the present judgment*

24 The applicant claims that, by decision of 17 June 2009, the Bureau decided inter alia that the future judgment in the present case would apply to all the members of the additional pension fund.

25 The Parliament submits that the present action was notified to it only on 19 November 2009 and that it could not therefore have made such an undertaking on 17 June 2009.

26 It is sufficient to point out in this regard that it is settled case-law that the Courts of the European Union are not entitled, when exercising judicial review of legality, to issue directions to the institutions or to assume the role assigned to them; rather, it is for the administration concerned to adopt the necessary measures to implement a judgment given in proceedings for annulment (Case T-67/94 *Ladbroke Racing* v *Commission* [1998] ECR II-1, paragraph 200; Joined Cases T-374/94, T-375/94, T-384/94 and T-388/94 *European Night Services and Others* v *Commission* [1998] ECR II-3141, paragraph 53; and Case T-155/04 *SELEX Sistemi Integrati* v *Commission* [2006] ECR II-4797, paragraph 28).

27 Accordingly, in so far as the applicant is asking the Court to rule on the conclusions to be drawn from the present judgment, such an application must be rejected as inadmissible.

2. *Substance*

28 In support of its action, the applicant advances four pleas in law alleging, firstly, infringement of acquired rights and of the principle of legal certainty; secondly, infringement of the principles of equal treatment and of proportionality; thirdly, a breach of Article 29 of the PEAM Rules; and, fourthly, a breach of the principle of good faith in the implementation of contracts. In addition, he raises a plea of illegality against, inter alia, the Bureau's decision of 1 April 2009.

The wording of the pleas in law and the plea of illegality

29 It must be pointed out, first of all, that the parties are in agreement that the contested decision forms the subject-matter of the present action only in so far as the applicant has been refused the possibility of receiving 25 % of his pension in the form of a lump sum. In addition, in that connection, the contested decision is a mandatory decision. Indeed, since Article 4 of the Rules of 12 June 1990, which provided for the possibility for a Member of the Parliament to receive a part (up to 25 %) of his pension in the form of a lump sum, was repealed by the Bureau's decision of 1 April 2009, the Directorate-General for Finance of the Parliament had no scope for discretion and had no other option than to reject the application made by the applicant on the basis of that provision.

30 In addition, as the Parliament rightly points out, the applicant does not advance any specific plea in law against the contested decision, rather he merely contests, by his four substantive pleas in law, the content of that decision in so far as he was refused the possibility of receiving 25 % of his pension in the form of a lump sum. In addition, as has just been pointed out, that content is determined by the Bureau's decision of

1 April 2009. Accordingly, the action can be allowed only if the plea of illegality is well founded. If, however, no illegality can be found to exist in relation to that decision, the action must be dismissed.

31 In view of these facts, the four pleas in law advanced by the applicant must be interpreted as having been advanced exclusively in support of the plea of illegality that, from a formal perspective, he has raised separately.

The scope of the plea of illegality

32 The applicant submits that the contested decision is based on the Bureau's decisions of 9 March and 1 April 2009. He claims that both of those decisions are unlawful in so far as they abolish the possibility for a Member to receive part of his pension in the form of a lump sum.

33 The Parliament takes the view that the plea of illegality may be directed only against the Bureau's decision of 1 April 2009. In its view, the decision is final in nature and thus subsumes the Bureau's provisional decision of 9 March 2009.

34 Furthermore, the two parties are in agreement that the plea of illegality relates solely to the abolition of the possibility, provided for in the earlier version of Article 4 of the Rules of 12 June 1990, to pay a Member part of his pension in the form of a lump sum. By contrast, the increase in the retirement age and the abolition of the possibility of taking early retirement from the age of 50, which are also provided for in the Bureau's decision of 1 April 2009, do not form the subject-matter of the present dispute.

35 As a preliminary point, it must be borne in mind that, in accordance with settled case-law, a plea of illegality must not go beyond what is necessary to resolve the dispute. The intention of Article 241 EC is not to allow a party to contest at will the applicability of any act of a general nature in support of any application. There must a direct legal link between the individual decision contested and the general act in question (see Joined Cases T-222/99, T-327/99 and T-329/99 *Martinez and Others* v *Parliament* [2001] ECR II-2823, paragraph 136 and the case-law cited).

36 The question raised is therefore which is the relevant date for the purposes of determining the applicable law and, therefore, against which of the decisions the plea of illegality is raised. There are three possible dates in this regard: 24 April 2009, the date on which the applicant made his application to receive the additional pension; 14 July 2009, the date on which he ceased to hold office, thus giving rise to his entitlement to the additional pension; and 7 August 2009, the date on which the contested decision was adopted.

37 The Court considers that 14 July 2009 should be held to be the relevant date. The event giving rise to the right to the additional pension is defined by Article 1(1) of the Rules of 12 June 1990 as the day on which the Member ceases to hold office (see paragraph 4 above). This is not in dispute between the parties. In addition, the applicant ceased to hold office on that date. Furthermore, it must be pointed out that, on 24 April 2009, it was impossible to determine his pension rights with certainty since, on that date, the term of his office as a Member and the total duration of his contributions were not yet definite, since the applicant could have been re-elected to the Parliament or even have ceased to be a Member before the end of his term of office, as a result of his resignation or death. It follows that, before 14 July 2009, any calculation of the applicant's pension rights was therefore necessarily provisional in nature. Accordingly, the date on which the applicant acquired his pension rights, namely 14 July

2009, should be held to be the relevant date for the purposes of determining the applicable law in the present case.

38 It must be made clear in this context that the decision determining the pension rights of Members who belong to the additional pension scheme is not only a mandatory decision, in that the administration of the Parliament has no discretion when determining the pension rights, but is in fact exclusively declaratory in nature with regard to the content of those rights. Indeed, the wording of Article 1(1) of the Rules of 12 June 1990, namely that '… after ceasing to hold office, Members of the European Parliament who have paid … contributions to the [additional] pension scheme for at least two years shall be entitled to a pension for life payable from the first day of the calendar month following the date when they reach the age of 60 years', can only be interpreted as meaning that the pension rights of Members are automatically due to them by the mere application of the Rules of 12 June 1990 as soon as the conditions specified therein are met. In such circumstances, the decision by which the Parliament determines the pension rights of a Member who belongs to the additional pension scheme merely has the effect of informing that Member of the scope of his pension rights, thus affording him the opportunity, in the event of a difference of opinion as to the exact content of those rights, to have the Courts of the European Union review the application of the Rules of 12 June 1990 and to establish within the administration the payments to be made on the basis of those rights.

39 By contrast, if the date on which the application to receive the additional pension was made were to be held to be the relevant date, this might give rise to the application of different rights to people whose pension entitlement in fact comes into existence at the same time. Indeed, if two Members who ceased to hold office on 14 July 2009 made such applications, one before 9 March 2009 and the other after that date, the former would be entitled to receive part payment as a lump sum and the latter would not. It is, however, settled case-law that the application of different treatment to two classes of persons whose factual and legal situations are not essentially different constitutes a breach of the principle of equal treatment (see Case T-135/05 *Campoli* v *Commission* [2006] ECR-SC I-A-2-297 and II-A-2-1527, paragraph 95 and the case-law cited).

40 The same argument may be used to rule out the date on which the contested decision was adopted, namely 7 August 2009. The choice of the date of the adoption of the decision on the application to receive the additional pension would make the applicable law dependent on the speed with which the administration processes applications by Members, thus introducing an arbitrary element and even affording opportunities for manipulation or abuse. In particular, two Members who ceased to hold office at the same time and lodged their pension applications at the same time might be subject to the application of different rules, merely by virtue of the fact that the Parliament ruled on their respective applications on different dates.

41 In the light of the analysis conducted above, it must therefore be held that 14 July 2009 is the relevant date for the purposes of determining the applicable law. Since the Bureau's decision of 9 March 2009 no longer had any legal effect on that date, it could not have served as the basis of the contested decision. For the purposes of the examination of the plea of illegality, it is therefore necessary to analyse the legality of the Bureau's decision of 1 April 2009 alone.

The first plea in law

42 The first plea in law advanced by the applicant is divided into two limbs alleging, respectively, infringement of acquired rights and infringement of the principles of legal certainty and of the protection of legitimate expectations.

The first limb, alleging infringement of acquired rights

43 The applicant relies on case-law to the effect that acquired rights cannot, in principle, be called into question. He submits that his pension rights must be determined

in accordance with the rules in force when he ceased to hold office as a Member. In his view, the abolition of the possibility to receive his pension in part in the form of a lump sum infringes Article 27(2) of the Statute for Members and adversely affects the methods of payment with regard to acquired pension rights, which are inseparable from the acquired rights to a pension. He submits that there is a risk specific to Members, distinguishing their scheme as a matter of fact from that of officials of the European Communities ('European officials') and justifying the view that the payment of the pension in part in the form of a lump sum is an essential component of the pension.

44 Nevertheless, it is clear from case-law that the applicant cannot claim an acquired right unless the facts giving rise to his right arose under rules in force prior to the amendment made to that scheme which he contests by his action (see, to that effect, Case 28/74 *Gillet* v *Commission* [1975] ECR 463, paragraph 5, and *Campoli* v *Commission*, cited in paragraph 39 above, paragraph 78). Although that case-law relates to European officials, the principle set out therein is intended to apply generally and, in particular, to the situation at issue here. Furthermore, an application of the principle laid down in that case-law is likewise proposed by the parties.

45 In addition, the additional pension scheme for Members shares a key characteristic with the pension scheme for European officials. Indeed, the officials' pension scheme follows in principle a capitalisation model which could be classed as a 'virtual' fund scheme, since, although, in reality, the contributions of those officials feed into the budget of the European Union, no employer contributions are in fact paid and the expenditure related to the payment of pensions under that scheme is covered by that budget, the actuarial balance of the scheme is calculated as if there were a pension fund. This means, in particular, that the combined total of the annual contributions made by a European official and the hypothetical employer contribution must correspond to the actuarial value of the pension rights acquired by that official in the same year, an essential feature of a 'funded' pension scheme. Accordingly, the characteristics of the pension scheme for European officials are very similar to those of the

additional pension scheme for Members, since the two systems specify an actuarial calculation as part of which the annual contribution must correspond to one third of the pension rights acquired in the same year (with the employer contribution, in this case the contribution from the Parliament, covering the remaining two thirds).

46 Finally, as has already been stated in paragraph 37 above, the event giving rise to the entitlement to the additional pension is defined in Article 1(1) of the Rules of 12 June 1990 as the day on which the Member ceases to hold office. The applicant in fact ceased to hold office on 14 July 2009. It follows that, on the entry into force of the Bureau's decision of 1 April 2009, which was notified to all Members on 18 May 2009 and which abolished inter alia the possibility of paying part of the pension as a lump sum, the applicant had not yet acquired the entitlement to his pension. Accordingly, he cannot claim in this regard that there has been an infringement of his acquired rights.

47 This conclusion cannot be called into question on the basis of the other arguments advanced by the applicant.

48 With regard, in the first place, to the applicant's argument that the office of a Member presents a specific risk as compared with that of European officials, namely the need to find new employment at the end of the term of office as a Member, and that the payment of his pension in part in the form of a lump sum would enable him to manage that risk, this argument must be rejected for several reasons.

49 Firstly, Annex V to the PEAM Rules already provided for a transitional end-of-service allowance paid to outgoing Members, either by their Member State of origin or by

the Parliament itself. It is true that the PEAM Rules do not expressly state that that allowance was intended to assist the individual to find new employment after the end of his term of office. However, the Statute for Members, which has been in force since 14 July 2009 and which abolished the PEAM Rules, still provides for the payment of a transitional allowance. In this regard, recital 13 in the preamble to the decision of the Parliament adopting the Statute for Members states that '[t]he transitional allowance provided for in Articles 9(2) and 13 [of the Statute] is intended, in particular, to bridge the period between the end of a Member's term of office and his/her taking up a new post'. It may be assumed that the reason for the transitional allowance did not change with the adoption of the Statute for Members and that, even before the entry into force of that statute, the purpose of that allowance was therefore to assist the individual to find new employment. In view of the existence of this allowance, therefore, the justification for the special methods of payment of the additional pension on account of the risk involved in finding new employment is, at the very least, not a requirement, even though it is conceivable that the payment of part of that pension in the form of a lump sum could in fact in the past have been used for such ends in specific cases.

50 Secondly, Members acquire their entitlement to the additional pension at the retirement age, which is fixed at 60 in accordance with Article 1 of the Rules of 12 June 1990. A payment of the pension in part in the form of a lump sum for the purposes of finding new employment does not therefore seem necessary, since a retired Member does not in principle have to take up new professional activity.

51 Thirdly, the particular arrangement whereby part of the pension is paid as a lump sum was introduced only in March 1999, that is to say, several years after the creation of the scheme on 12 June 1990. Since it did not therefore initially form part of the additional pension scheme, this particular arrangement cannot constitute an essential characteristic of that scheme.

52 In the second place, the applicant relies on the note from the Secretary-General of the Parliament of 24 November 2005, in which the prohibition on the infringement of acquired rights was repeated. The relevant passages of that note read as follows:

'21. With effect from the entry into force of the Statute for Members, Article 27 of the Statute shall form the legal basis for the Pension Fund. Pursuant to paragraph 2 of that article, "acquired rights and future entitlements shall be maintained in full. Parliament may lay down criteria and conditions governing the acquisition of new rights and entitlements".

22. With this in mind, and for a fixed interim period, the Bureau may, subject to compliance with the legal basis of Article 199 EC, make amendments to the Pension Scheme for the future, but it must preserve the rights acquired, in particular the rights of former Members who are already in receipt of a pension or who have contributed to the Fund and are still awaiting payment of the pension. As is clear [from an analysis of the scope of the principle of respect for acquired rights], that principle does not prevent, in respect of Members in office, a change in the parameters which may affect their pension rights from the entry into force of the amendments.'

53 It must be pointed out in this regard that the note from the Secretary-General of the Parliament of 24 November 2005 is such as to confirm the view of the Parliament rather than that of the applicant. Indeed, as the applicant himself states in paragraph 29 of the application, a distinction is drawn in that note between three categories of persons: former Members who are already in receipt of a pension, former Members who have contributed to the fund and are still awaiting payment of the pension and Members in office who are currently contributing to the fund. On 24 November 2005, the date on which that note was published, as on 1 April 2009, the applicant fell within the third category, that of Members in office. However, it is clearly stated in the note in question that, although the first two categories are covered by the application of the principle of the protection of acquired rights, that principle does not prevent

amendments to the pension scheme for the future from having effects on the pension rights of Members falling within the third category from the entry into force of the amendments adopted by the Bureau.

54 In the third place, the applicant relies on Article 27(2) of the Statute for Members regarding the protection of acquired rights. However, since that statute entered into force only on 14 July 2009, as the applicant himself points out in paragraph 26 of the application, that article did not apply to the Bureau's decision of 1 April 2009, which came into force before it. In addition, as observed in paragraph 46 above, the applicant could not establish any acquired right requiring protection prior to his ceasing to hold office as a Member on 14 July 2009. Accordingly, the applicant cannot advance an argument on the basis of Article 27(2) of the Statute for Members.

55 In the fourth place, the applicant advances an argument relating to the unlawful absence of transitional measures. In this regard, it is sufficient to point out at this stage that this argument is not relevant in the context of the plea in law alleging infringement of acquired rights. It will therefore be considered as part of the examination of the second plea in law.

56 In the light of the foregoing, the first limb of the first plea in law, alleging infringement of acquired rights, must be rejected.

The second limb, alleging infringement of the principles of legal certainty and of the protection of legitimate expectations

— The complaint alleging infringement of the principle of legal certainty

57 With regard to infringement of the principle of legal certainty, the applicant puts forward two main arguments. Firstly, the applicant claims that, by adopting the decision

of 1 April 2009, the Bureau committed a breach of the legal certainty attached to the 'additional pension contract' and infringed the principle of the continuity of contracts. Secondly, in the view of the applicant, the Bureau was not competent to amend the Rules of 12 June 1990. Thirdly, the contested decision was accompanied by retroactive effects.

58 As a preliminary point, it must be observed that the additional pension scheme falls exclusively within the rights conferred by public law on the Parliament so that it is able to perform the tasks entrusted to it by the Treaties.

59 Indeed, one of the fundamental concerns in any parliamentary system is to guarantee the independence, including the financial independence, of the members as representatives of the people, who are meant to act in the general interest of the people. As is stated in the fourth recital in the preamble to the Statute for Members, the freedom and independence of Members are not mentioned in any provision of primary law. However, Rule 2 of the Rules of Procedure of the Parliament provides that 'Members … shall exercise their mandate independently'. Similarly, Article 2(1) of the Statute for Members states that 'Members shall be free and independent' and Article 9(1) of that statute provides that 'Members shall be entitled to an appropriate salary to safeguard their independence'. Even though the Statute for Members entered into force only on 14 July 2009 and does not therefore apply to the facts of the present case, those provisions, in particular the latter, stem from a general principle inherent in any system of democratic parliamentary representation. It must be pointed out in this regard that the guarantee of an appropriate salary, thus safeguarding the independence of Members, cannot be limited merely to the Member's term of office but must also cover, to an appropriate degree, a transitional period following the end of that term of office and provide for a pension which is determined by the period of time for which the individual in question has been a Member of the Parliament. This idea of guaranteeing the financial independence of Members is moreover confirmed in the rules relating to Members of the Commission and Members of the Courts of the European Union, in respect of whom there is a similar need to ensure that they are able to perform their duties on a wholly independent basis, unaffected by individual interests.

60 It follows that the additional pension scheme forming the subject-matter of the present dispute is part of the statutory provisions which are intended, as a matter of general interest, to ensure the financial independence of Members. It must be borne in mind in this regard that, prior to the entry into force of the Statute for Members, Members were subject, inter alia in relation to their emoluments, to national provisions (see, in that regard, Case 208/80 *Bruce of Donington* [1981] ECR 2205, paragraphs 12 and 21), which differed greatly from one another, in particular as regards allowances whilst in office and pension schemes. It was in these circumstances that the additional pension scheme was introduced as a transitional measure pending the entry into force of a single Statute for Members in order to ensure minimum cover, in particular for Members from Member States in which the pension scheme provided for Members was insufficient. That transitional nature is made expressly clear in Article 1(1) of the Rules of 12 June 1990, which establishes the additional pension scheme '[p]ending the adoption of a single Statute for Members'.

61 Accordingly, the creation of the additional pension scheme and its amendment where needed must be regarded as measures of internal organisation which are intended to ensure the proper functioning of the Parliament and which, on that basis, fall within the rights conferred by public law on the Parliament so that it is able to perform the tasks entrusted to it by the Treaties. The rights and obligations of the Parliament and of Members under that scheme are therefore governed by the provisions laid down in statutes which bind them, and are thus not contractual but rather a matter of public law. Furthermore, since the legal framework and, in particular, the rights and obligations which may follow from the applicant's membership of the additional pension scheme were determined unilaterally by the Parliament, the fact that the applicant joined that scheme voluntarily does not alter the nature of his relationship with the Parliament, which remains governed by public law.

62 The arguments advanced by the applicant alleging infringement of the principle of legal certainty 'attached to the additional pension contract' and of the principle of the continuity of contracts must therefore be rejected.

63 The argument raised by the applicant in the context of the second limb of the first plea in law, alleging a lack of competence on the part of the Bureau to amend the Rules of 12 June 1990, must likewise be rejected.

64 It is in fact settled case-law that, where rules fall within the scope of measures of internal organisation of the Parliament, those rules come within the scope of the Parliament's competence and the measures which it is for the Parliament to adopt pursuant to the first paragraph of Article 199 EC (see, to that effect, *Bruce of Donington*, cited in paragraph 60 above, paragraph 15). As has just been set out above, the establishment and, as the case may be, the amendment of the additional pension scheme must be regarded as measures of internal organisation intended to ensure the proper functioning of the Parliament. It must be pointed out in this regard that the Rules of 12 June 1990 form part of the PEAM Rules, adopted by the Bureau on the basis of Rule 22(2) of the Rules of Procedure of the Parliament in the version applicable to the facts of the case, which authorises the Bureau inter alia to take financial, organisational and administrative decisions on matters concerning Members (see paragraphs 1 to 3 above). In turn, the Rules of Procedure were adopted on the basis of the first paragraph of Article 199 EC, which provides that the Parliament is to adopt its Rules of Procedure. Accordingly, the argument advanced by the applicant alleging a lack of competence on the part of the Bureau to adopt the decision of 1 April 2009 cannot succeed.

65 Furthermore, in so far as the applicant might also have intended to raise the complaint alleging infringement of the principle of legal certainty outside of the contractual context, it must be recalled that the fundamental requirement of legal certainty, in its various forms, aims to ensure that situations and legal relationships governed by Community law remain foreseeable (Case C-63/93 *Duff and Others* [1996] ECR I-569, paragraph 20; Case T-73/95 *Oliveira* v *Commission* [1997] ECR II-381, paragraph 29; and Case T-20/03 *Kahla/Thüringen Porzellan* v *Commission* [2008] ECR II-2305, paragraph 136). The principle of legal certainty precludes, inter alia, a Community measure from taking effect from a point in time before its publication (Case 98/78 *Racke* [1979] ECR 69, paragraph 88; Case 224/82 *Meiko-Konservenfabrik* [1983] ECR

2539, paragraph 12; and Case T-357/02 *Freistaat Sachsen* v *Commission* [2007] ECR II-1261, paragraph 95). In the present case, it is not apparent from the documents before the Court that the Bureau's decision of 1 April 2009 produced effects prior to its notification to all Members on 18 May 2009. Indeed, the abolition of the possibility of payment of part of the pension in the form of a lump sum applied only from that date. Thus Members who had ceased to hold office prior to that date, and had therefore acquired rights to the additional pension, were not affected by that decision.

66 Contrary to the applicant's claims, the contested decision is not therefore accompanied by retroactive effects.

67 Accordingly, the complaint alleging infringement of the principle of legal certainty must be rejected in its entirety as unfounded.

— The complaint alleging infringement of the principle of the protection of legitimate expectations

68 The applicant states, first of all, that he made contributions to the additional pension scheme over a period of 10 years on the basis of clear and pre-established conditions such that he legitimately believed that he would be able to receive part of his pension in the form of a lump sum. Thus the objective pursued by the Bureau cannot take precedence over his interest in maintaining his acquired rights. Furthermore, that legitimate expectation was reinforced by the provisional calculations of his pension, produced in January 2009 by the administration of the Parliament, and by the calculations made by way of example on 27 April 2001 by the ASBL. All those calculations mentioned the possibility of receiving part of his pension in the form of a lump sum. Finally, the Parliament acknowledged, in the Bureau's decision of 1 April 2009, that it

had to guarantee respect for the commitments made concerning the members of the additional pension scheme, regardless of the position of the fund.

69 It is settled case-law that, in order for an individual to be able to rely on the principle of the protection of legitimate expectations, the authorities must have given him precise assurances and have caused him to entertain legitimate expectations. Precise, unconditional and consistent information from authorised and reliable sources constitutes such assurances (see Joined Cases T-66/96 and T-221/97 *Mellett* v *Court of Justice* [1998] ECR-SC I-A-449 and II-1305, paragraphs 104 and 107 and the case-law cited, and Case T-273/01 *Innova Privat-Akademie* v *Commission* [2003] ECR II-1093, paragraph 26).

70 In the first place, the fact that the possibility of receiving the additional pension in part in the form of a lump sum existed when the applicant joined the additional pension scheme in July 1999 cannot be regarded as an assurance by the Parliament that the conditions of that scheme were not going to be amended in the future.

71 In the second place, with regard to the estimates provided by the ASBL on 27 April 2001, it must be pointed out first of all that those estimates do not originate from the Parliament. They are not therefore from an authorised and reliable administrative source for the purposes of the case-law, such that those calculations are incapable of forming the basis of the applicant's legitimate expectations. Furthermore, in any event, those calculations, which appear under the heading 'Guidance Note C', were addressed to all Members and former Members who belong to the additional pension scheme, as is clear from the introductory wording of the document. In addition, that document contains merely examples of calculations and the ASBL clearly stated that those estimates did not apply to Members still in office. Finally, no element of those calculations was personalised, precise or unconditional. Accordingly, the guidance note was purely informative, general in scope and provided by way of example; it could not therefore have formed the basis of the applicant's legitimate expectation regarding the method of payment of the additional pension.

72 In the third place, with regard to the calculations provided by the administration on 8 January 2009, it was expressly stated in the title of the document sent out that those calculations were merely provisional. The calculations had been provided on the assumption that the applicant would take retirement at the end of the sixth parliamentary term, since 1 August 2009 is stated as the date on which the pension rights are acquired and account is taken of the contributions made by the applicant up to July 2009. It follows from this that the calculations in question were hypothetical in nature, since the Parliament could not make any commitment regarding either the date of the end of the applicant's term of office or the retention unchanged of the provisions of the Rules of 12 June 1990, including in particular those governing the special methods of payment. The calculations made by the administration on 8 January 2009 were therefore incapable of constituting assurances within the meaning of the case-law cited in paragraph 69 above. In this context, it must be borne in mind that it has already been held that statements relating to their pension rights supplied by way of information to European officials by the competent departments of the appointing authority do not have the character of measures creating rights for the addressees (Joined Cases 19/69, 20/69, 25/69 and 30/69 *Richez-Parise and Others* v *Commission* [1970] ECR 325, paragraphs 18 to 20). That case-law may be applied *mutatis mutandis* to the present case.

73 In the fourth place, it is true that, at its meeting on 1 April 2009, the Bureau not only adopted the decision of that same date but also made the commitment, in the name of the Parliament, to guarantee 'the right of members of the Scheme to the additional pension which could be retained after exhaustion of the Pension Fund, and that, equally, any capital remaining in the Fund after all pension entitlements had been honoured would be transferred to the European Parliament'. However, that commitment clearly seeks merely to guarantee, in the likely case that the pension fund will be exhausted before the payment of all the pension rights accumulated by the members, the acquired pension rights of Members. In addition, as set out in paragraphs 46 to 51 above, the special methods of payment do not form part of those acquired rights, such that the commitment made on 1 April 2009 by the Parliament cannot have created a legitimate expectation on the part of the applicant in this regard.

74 Finally, one of the passages of the note from the Secretary-General of the Parliament of 24 November 2005, cited above in paragraph 52 and on which the applicant himself relies, specifically mentions the possibility that amendments to the rules governing the additional pension scheme may affect the additional pension entitlements of Members in office, the applicant being one of those in office. It follows that the information received by the applicant from the administration could not under any circumstances have been consistent with his acquisition of rights to the special methods of payment.

75 It follows from all the foregoing that the information upon which the applicant relies was not precise, unconditional and consistent within the meaning of the case-law cited in paragraph 69 above and cannot therefore serve to demonstrate an infringement of the principle of the protection of legitimate expectations in the present case.

76 Accordingly, the complaint alleging infringement of the principle of the protection of legitimate expectations must be rejected, as must, therefore, the first plea in law in its entirety.

The second plea in law, alleging infringement of the principles of equal treatment and of proportionality

The complaint alleging infringement of the principle of equal treatment

77 The applicant claims that the Bureau's provisional decision of 9 March 2009 is discriminatory in so far as it abolishes the possibility of receiving part of the pension in the form of a lump sum without providing for transitional measures. The applicant

cites two examples in this regard relating to the amendment of the Community pension schemes in respect of which the Council provided for transitional measures not only regarding the acquisition of new rights, but also in relation to the conditions governing the commencement of the pension entitlement.

78 The Parliament disputes those arguments.

79 It has been consistently held that there is a breach of the principle of equal treatment where two classes of persons whose factual and legal situations are not essentially different are treated differently or where different situations are treated in an identical manner (Case T-100/92 *La Pietra* v *Commission* [1994] ECR-SC I-A-83 and II-275, paragraph 50, and Case T-66/95 *Kuchlenz-Winter* v *Commission* [1997] ECR II-637, paragraph 55; see also, to that effect, Case T-251/02 *E* v *Commission* [2004] ECR-SC I-A-359 and II-1643, paragraph 123).

80 It must be observed in that regard that the Bureau's decision of 1 April 2009 applies equally to all Members and former Members who belong to the additional pension scheme. Indeed, all Members taking their retirement after the entry into force of that decision are in factual and legal situations which exhibit no essential differences and to which identical treatment is applied.

81 Nevertheless, the applicant compares the amendment of the additional pension scheme for Members with the amendment of the pension scheme for European officials introduced following the entry into force of Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the

European Communities (OJ 2004 L 124, p. 1), and with the amendment of the pension scheme for Members of the European Commission and Members of the Community Courts introduced following the entry into force of Council Regulation (EC, Euratom) No 1292/2004 of 30 April 2004 amending Regulations No 422/67/EEC and No 5/67/Euratom determining the emoluments of the President and Members of the Commission and of the President, Judges, Advocates General and Registrar of the Court of Justice and of the President, Members and Registrar of the Court of First Instance (OJ 2004 L 243, p. 23). He seeks to demonstrate by way of that comparison that he, like the persons covered by those regulations, should have benefited from transitional measures.

82 However, the applicant's situation is not comparable to that of the persons covered by the regulations on which he relies. Firstly, with regard to the amendment of the pension scheme for European officials, the applicant refers solely to the increase in their retirement age introduced by Regulation No 723/2004. It must be pointed out in this regard that, as is clear from paragraph 34 above, neither the increase in the retirement age nor the abolition of the possibility of taking early retirement, for which provision is made in the Bureau's decision of 1 April 2009, forms the subject-matter of the present dispute. Accordingly, the applicant is in a different situation from that of the European officials to which he refers, and he cannot therefore base an argument on their different treatment.

83 Secondly, as is clear from Article 1(5) of Regulation No 1292/2004, which is cited in the application, the amendments made to the pension scheme for Members of the Commission and of the Courts of the European Union included a decrease in the accrual rates of pension rights and, therefore, a reduction in the actual amount of the pension which those persons were entitled to claim. The transitional measures adopted in this regard maintained the accrual rate of pension rights for Members of the institutions at issue who were in post on 1 April 2004. By contrast, in the present case, neither the amount of the applicant's pension nor the accrual rate of pension rights was amended by the Bureau's decision of 1 April 2009. The abolition of the possibility of receiving part of the pension in the form of a lump sum in fact removes only one

method of payment of the pension, without however affecting the actuarial value of the pension which Members who belong to the additional pension scheme may claim.

84 In this connection, the Parliament stated, without being contradicted by the applicant, that the possibility of paying part of the pension in the form of a lump sum was initially conceived to be *in abstracto* financially neutral as compared with the payment of the pension in its entirety in monthly instalments. Furthermore, the actuarial neutrality of this special method of payment is also highlighted in the information for members of the additional pension scheme, drafted on 27 April 2001 by the ASBL and entitled 'Guidance Note C' (see paragraph 71 above), which the applicant himself produced. The passage in question reads as follows:

'In addition, it must be borne in mind that possibility of early retirement and the lump-sum amount are both calculated so that their effect on the Fund is financially neutral. In other words, although those options may represent a "gain" for certain members — who, for example, exercised the "early retirement" and/or "lump-sum amount" options and then died shortly thereafter — one or other of those options or the two of them combined would represent a "loss" for other members who live for an exceptionally long period of time.'

85 This point must therefore be treated as a fact which is not in dispute between the parties and which the Court itself does not have to examine. Accordingly, it must be assumed that the reduction in the annual amount of the pension, assuming a part payment as a lump sum, as provided for in the table in Article 4(4) of the Rules of 12 June 1990, reflects the precise actuarial value of the lump-sum payment. It must be stated in this connection that that assumption applies irrespective of the age of the Member, since the value of the lump-sum payment provided for in the table varies

depending on the age of the Member at the effective date of his pension, thus taking into account his individual life expectancy.

86 It follows that, unlike the amendments to the pension scheme for Members of the Commission and of the Courts of the European Union introduced by Regulation No 1292/2004, the amendments to the additional pension scheme for Members introduced following the entry into force of the Bureau's decision of 1 April 2009 did not affect the actuarial value of the pension which the members of that scheme could expect.

87 Accordingly, since the Members of the European Parliament, on the one hand, and the Members of the Commission and of the Courts of the European Union, on the other hand, are in factual and legal situations which are essentially different as regards the impact of the amendments made on the actuarial value of their pension rights, they could be treated differently with regard to the adoption of transitional measures.

88 In this context, the argument advanced by the applicant and raised as part of the first plea in law, namely that the exercise of discretion by the Parliament — assuming the existence of such a discretion were to be established — is abusive given the absence of transitional measures, must likewise be rejected. As is clear from the analysis conducted above, the applicant could not rely on acquired rights when the Bureau's decision of 1 April 2009 came into force (see paragraph 46 above), and, in addition, the abolition of the possibility of paying part of the pension in the form of a lump sum had no effect on the actuarial value of the pension which the applicant could expect (see paragraph 86 above).

89 The complaint alleging infringement of the principle of equal treatment must therefore be rejected.

The complaint alleging infringement of the principle of proportionality

90 The applicant claims that the contested decision is disproportionately prejudicial to his interests. In his view, the part of his pension rights paid as a lump sum could be reduced — and not abolished — without this causing financing problems for the fund. Furthermore, he asks the Parliament for precise information about the number of pension scheme members, former members and their entitled dependants affected by the Bureau's decisions of 9 March and 1 April 2009.

91 It must be borne in mind as a preliminary point that, by virtue of the principle of proportionality, the legality of Community rules is subject to the condition that the means employed must be appropriate to attainment of the legitimate objective pursued and must not go further than is necessary to attain it, and, where there is a choice of appropriate measures, it is necessary, in principle, to choose the least onerous (Case T-162/94 *NMB France and Others* v *Commission* [1996] ECR II-427, paragraph 69).

92 Furthermore, in accordance with a general principle of Community law, the legality of a measure must be assessed in the light of the circumstances of law and of fact existing at the time when that measure was adopted (see order in Joined Cases T-125/03 R and T-253/03 R *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission* [2003] ECR II-4771, paragraph 69 and the case-law cited; see also, to that effect, Case C-449/98 P *IECC* v *Commission* [2001] ECR I-3875, paragraph 87, and Case T-296/97 *Alitalia* v *Commission* [2000] ECR II-3871, paragraph 86). Accordingly, contrary to the claim made by the applicant at the hearing, any subsequent positive development in the additional pension fund's assets cannot be taken into account for the purposes of

examining the proportionality of the measures adopted under the Bureau's decision of 1 April 2009.

— The legitimacy of the objective pursued

93 With regard to the legitimacy of the objective pursued, on the adoption of its decision on 1 April 2009 the Bureau set out four objectives to be attained, namely:

— to ensure that Members who have contributed to the voluntary pension scheme receive a pension therefrom;

— to avoid as far as possible any financial impact on European taxpayers;

— to ensure that any costs are distributed fairly and with due regard to the need to explain decisions to the general public;

— to preserve the pension fund's liquidity as far as possible.

94 It must be held that, within the framework of the exercise of its powers to regulate the additional pension scheme (see paragraph 64 above), the Parliament could legitimately pursue those objectives.

— The appropriateness of the measures adopted to attain the intended objective

95 With regard to the appropriateness of the measures adopted to attain the intended objective, it is necessary to recall the economic position of the pension fund at the beginning of 2009, as described inter alia in paragraphs 4 to 6 of the note from the Secretary-General of the Parliament of 1 April 2009 addressed to the members of the Bureau and in the first and second recitals in the preamble to the Bureau's decision of 1 April 2009. That position was characterised by a sharp fall in value, owing to the impact of the current financial and economic crisis, and by the prospect that, following the entry into force of the Statute for Members in July 2009, and as a result of the cessation of Members' contributions and inadequate returns on its investments, there was a risk that the liquidity available in the fund would be insufficient to meet the pension payment obligations.

96 In particular, the value of the fund's assets fell by 28.3 % between the end of 2006 and early 2009, as the following table shows:

	31/12/2006	30/6/2007	30/6/2008	30/9/2008	31/12/2008	28/2/2009
Asset value (EUR)	202 153 585	218 083 135	189 406 299	180 628 488	159 047 636	144 973 916

97 Similarly, the coverage rate of the pensions to be paid, which had stood at 92 % on 30 June 2007, was only 63 % on 31 December 2008.

98 Furthermore, according to the note from the Secretary-General of the Parliament of 1 April 2009, the monthly cost of the pensions to be paid was estimated to be EUR 1 000 000 from August 2009 onwards. In its response to the written questions put by the Court, the Parliament stated that, as at 1 April 2009, it had been estimated that 105 Members who belonged to the additional pension scheme were going to apply to take their retirement in the second half of 2009. That figure was determined taking into account only the pension scheme members who were to reach the age of 60 in the second half of 2009 and on the basis of the average re-election rate of Members, which stood at 50 %. If each of those 105 Members had applied to receive 25 % of their additional pension as a lump sum, this would have represented an additional cost of some EUR 7 900 000 for the fund, which — given the low level of available liquidity — would have required the fund to sell off some of its assets at prices which were greatly reduced owing to the economic crisis. In this connection, it is clear from the cash reports of the pension fund dated 28 February 2009, provided by the Parliament, that the combined liquid resources of the ASBL and the SICAV, that is to say, the assets immediately available without additional costs, to settle current obligations, stood at that date at approximately EUR 5 000 000.

99 The calculations and estimates provided by the Parliament must be regarded as being plausible. In particular, the total amount of EUR 7 900 000 to which it refers, assuming that each of the 105 Members liable to apply to take retirement in the second half of 2009 had applied to receive a lump-sum payment of 25 % of their pension, seems realistic. Indeed, this corresponds to an average of around EUR 75 250 per pension scheme member, which is of the same order of magnitude as the lump-sum amount of a little over EUR 81 400 which the applicant could have claimed on the basis of Article 4 of the Rules of 12 June 1990, which was repealed by the Bureau's decision of 1 April 2009.

100 In the light of all the foregoing, it appears that the Bureau's decision of 1 April 2009, and in particular the abolition of the possibility of receiving part of the pension in the form of a lump sum, was likely to prevent in the immediate future a liquidity crisis in the pension fund, a sell-off of securities on unfavourable terms and a non-negligible

loss of profit. That being the case, the decision was likely to achieve the fourth of the objectives stated in paragraph 93 above. Furthermore, that measure was at least liable to promote the other three objectives, even though it was certainly insufficient to attain them. In any event, the decision did not go beyond what was necessary to attain those objectives, as required by the case-law cited in paragraph 91 above.

101 The applicant has not disputed in general terms the economic position of the pension fund, as described in paragraphs 95 to 98 above, but has advanced three arguments to contest the necessity of the measures adopted under the Bureau's decision of 1 April 2009.

102 In the first place, the applicant refers to the opinion of actuarial experts independent of the Parliament set out in a study conducted by an actuarial consultancy. That study, which was commissioned by the Parliament and is dated November 2007, analyses the financial situation of the pension fund from the perspective of the effects following the entry into force of the Statute for Members from 2009. Paragraph 4 of the executive summary of that report reads as follows:

'The conversion factors used for a lump-sum payment, compared to the corresponding conversion factors given by the UK tables rated down by 4, are almost neutral. If a member chooses a lump-sum payment at the retirement age, it does not contribute to any deficit in the funding and would not affect the contribution rate paid by the European Parliament and its members.'

103 In this regard, it must be pointed out that that study was completed in November 2007 on the basis of data updated on 30 June 2007. As is expressly stated in the study, it is based on assumptions which, in all likelihood, differ from the actual future trend.

By way of example, the authors of the study take as the starting point the assumption, based on a forward projection of the trend prior to 30 June 2007, that the assets of the fund will produce an annual return of 6.99 %. However, as is clear from the table reproduced in paragraph 96 above, the trend in the value of the assets was negative throughout the period from 30 June 2007 to 28 February 2009, such that the assumptions made regarding the return were proved to be false by the actual trend.

104 Accordingly, the findings of the actuarial study, based on clearly out-of-date data and on assumptions which had been proved incorrect as at 1 April 2009, are of no relevance to the financial position of the additional pension fund when the Bureau's decision of that same date was adopted. In particular, they are incapable of casting doubt on the provisional calculations made in February 2009 in the light of the financial situation as it stood at that time.

105 The argument based on the opinion expressed by the authors of the actuarial study must therefore be rejected.

106 In the second place, in the course of the hearing the applicant submitted the minutes of a meeting of the SICAV board of directors held on 3 December 2008. Point 10 of those minutes, entitled 'Investment Committee Report', states the following:

'It was reported and noted that after the European elections in June 2009 the Fund would be required to pay out around [EUR] 6 to €7 million in capital pension payments to new pensioners of the scheme. Consequently, [the fund-managing bank] would need available sufficient liquid assets within the Fund to meet these capital calls in August 2009.'

107 In the view of the applicant, it is clear from that passage that, from that date onwards, provisions had been adopted to ensure that sufficient liquidity was available in August 2009 to meet the applications for lump-sum payments which could be expected from the new pensioners who were members of the additional pension scheme.

108 However, as the Parliament rightly pointed out at the hearing and in its observations of 8 April 2011, the passage cited in paragraph 106 above merely demonstrates that it was necessary to make available additional liquidity to enable the pension fund to meet the foreseeable applications for payment in the form of a lump sum in August 2009 and that securities were going to have to be sold off to that end. Indeed, if the situation had been otherwise, it would not have been necessary to highlight the need to adopt provisions in that regard. By contrast, that passage does not show that the abolition of the possibility of requesting payment of part of the pension in the form of a lump sum was unlikely to save the pension fund from having to sell off securities on unfavourable terms in 2009.

109 The argument based on the minutes of the meeting of the SICAV board of directors held on 3 December 2008 must therefore be rejected, without it being necessary to rule on the admissibility of this item of evidence.

110 In the third place, the applicant claims that the value of the pension fund's liquid resources was approximately EUR 8 000 000 on 28 February 2009, and not approximately EUR 5 000 000 as the Parliament claims (see paragraph 98 above). In this connection, firstly, in the course of the hearing he submitted the full version of the report on the value of the pension fund's assets as at 28 February 2009 ('the 02/2009 report'), which includes the cash reports provided by the Parliament (see paragraph 98 above). In his view, the 02/2009 report indicates that the SICAV held liquid assets of EUR 6 921 988 rather than the EUR 3 869 848.69 stated in the report presented by

the Parliament. Secondly, the applicant enclosed as an annex to his observations of 25 May 2011 an exchange of emails dating from March 2011. The first email was sent on 30 March 2011 by a member of the investment committee of the pension fund to the pension fund administrator and contains, inter alia, the following passage:

'The total cash level at the end of February 2009 was approximately EUR 8 [million]:

Cash SICAV 6 885 045 EUR (including 3 869 848 EUR (page 11 of the 2009 02 27 NAV package))

Cash ASBL 1 172 163 EUR.'

111 In this regard, firstly, with regard to the applicant's argument that the amount of EUR 6 921 988 stated at the end of the 'CASH amount' line in the table entitled 'Asset distribution' contained in the 02/2009 report should be taken into account in order to calculate the liquid resources of the SICAV, it must be held that, as the Parliament observed at the hearing, that figure clearly does not refer to the resources immediately available to the SICAV but to amounts which it held in different currencies in investment accounts and which were therefore not immediately available in their entirety without costs being incurred. Indeed, if the situation had been otherwise, the inclusion of those amounts in the cash report of the SICAV, which forms part of the 02/2009 report, would have to have been expected. On the contrary, the view must therefore be taken that the sum of EUR 3 869 848.69 stated in the cash report of the SICAV is included within the sum of EUR 6 921 988 stated at the end of the 'CASH amount' line in the table entitled 'Asset distribution'.

112 Secondly, although the value of the liquid resources of the ASBL stated in the email of 30 March 2011 and cited in paragraph 110 above — the amount of EUR 1 172 163 — corresponds to the amount stated in the 02/2009 report, the amount of EUR 6 885 045 stated in relation to the liquid resources of the SICAV does not correspond to any of the data contained in the 02/2009 report. Since the parties have not disputed the substantive accuracy of the figures contained in the 02/2009 report, as produced by the applicant at the hearing, and in the absence of any explanation by the applicant as to the basis of calculation of the amount of EUR 6 885 045 or the reason why that figure should take precedence over the data contained in the 02/2009 report, the information contained in that email is not capable of calling into question the findings made in paragraph 98 above regarding the value of the liquid resources of the pension fund as at 28 February 2009.

113 Thirdly, it must be held that, contrary to the claims made by the applicant in his observations of 25 May 2011, both the amount of the contributions paid by the Parliament for the month of February 2009 and that of the contributions of members of the pension fund for that month are included under the heading 'Contributions' in the cash report of the ASBL, which forms part of the 02/2009 report.

114 The arguments based on the 02/2009 report and the information provided by the applicant in an annex to his observations of 25 May 2011 must therefore be rejected, without it being necessary to rule on the admissibility of that report and that information as evidence.

— The choice of the least onerous measure

115 With regard, finally, to the choice of the least onerous measure, the applicant submits that it is disproportionate to abolish any possibility for the members of the additional pension scheme to obtain part of their pension in the form of a lump sum, whereas

provision could perhaps have been made to limit the percentage of the pension capable of being received early or as a lump sum.

116 It must be pointed out in this regard that the approximate calculations contained in paragraph 98 above assume that each of the 105 former Members who belonged to the additional pension scheme and who were liable to apply to receive their pension in the second half of 2009 would opt to receive the maximum amount of their pension, that is 25 %, in the form of a lump sum. It is therefore the case that those figures represent the worst-case scenario and that it was possible that the actual expenditure by the fund in the second half of 2009 would be lower. However, that scenario could by no means be ruled out. In addition, given the economic position of the pension fund as described above, a prudent measure which maintained the maximum short-term liquidity of the fund was required. This is all the more true if account is taken of the fact, as pointed out in paragraph 100 above, that the measures adopted were in fact insufficient to attain three of their four intended objectives and, in particular, the second objective of avoiding any financial impact on European taxpayers. In this context, it must be borne in mind that the abolition of the option of payment in the form of a lump sum was neutral from an actuarial perspective. By contrast, other measures which could have been envisaged, such as a reduction in the pensions or an increase in the contributions, which would certainly have been much more likely to promote or even attain the other three objectives, would have entailed a fall in the actuarial value of the pensions which the pension scheme members could expect. Accordingly, the abolition of the special methods of payment and, in particular, of the possibility of paying part of the pension in the form of a lump sum was the least onerous measure for the members of the additional pension scheme.

117 It follows from the foregoing that the abolition of the possibility of paying the pension in part in the form of a lump sum was consistent with the principle of proportionality.

118 The second plea in law must therefore be rejected.

The third plea in law, alleging a breach of Article 29 of the PEAM Rules

119 The applicant claims that the Bureau breached Article 29 of the PEAM Rules by failing to consult the Secretary-General of the Parliament and the College of Quaestors of the Parliament before adopting the decision of 1 April 2009.

120 As a preliminary point, it is necessary to recall Article 29 of the PEAM Rules, which states that '[i]n accordance with the instructions issued by the President, the Quaestors and the Secretary-General shall be responsible for [the] interpretation and proper implementation [of the PEAM Rules]'.

121 It is clear from its wording that Article 29 is concerned simply with the interpretation and implementation of the PEAM Rules and not their amendment. Furthermore, as has been pointed out in paragraph 64 above, the Bureau was competent to amend the PEAM Rules.

122 In addition, it must be observed that, as is clear from the note from the Secretary-General of the Parliament of 1 April 2009, the decision of 1 April 2009 was adopted by the Bureau on the proposal of the Secretary-General, and that, pursuant to Rule 21(2) of the Rules of Procedure of the Parliament in the version applicable to the facts of the present case, the Quaestors are to attend meetings of the Bureau in an advisory capacity.

123 The third plea in law put forward by the applicant must therefore be rejected.

The fourth plea in law, alleging a breach of the principle of good faith in the implementation of contracts

124 On the basis of the existence of a contractual relationship between himself and the Parliament, the applicant claims that the Bureau's decisions of 9 March and 1 April 2009 are not only potestative but also equivalent to a breach of contract. He adds that, despite the contractual origin of his rights, the Court remains competent to assess the legality of the contested decision, which may be separated from the contract between him and the Parliament.

125 This plea in law is based on the assumption that the relationship between the applicant and the Parliament is contractual in nature. However, as is clear from paragraphs 58 to 61 above, that relationship is a relationship governed by the statutes which bind the applicant and the Parliament and therefore falls within the rights conferred by public law on the Parliament so that it is able to perform the tasks entrusted to it by the Treaties.

126 The fourth plea in law must therefore be rejected.

127 Since all the pleas in law advanced by the applicant in support of his plea of illegality brought against the Bureau's decision of 1 April 2009 have been rejected, the plea of illegality must be rejected. It follows that the decision of 1 April 2009 formed a valid basis for the contested decision. Accordingly, in accordance with the findings made in paragraph 30 above, the action must be dismissed in its entirety.

Costs

128 Under Article 87(2) of the Rules of Procedure of the Court, 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 applicant has been unsuccessful, and the Parliament has applied for costs, he must be ordered to pay the costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders John Robert Purvis to pay the costs.**

Pelikánová Jürimäe Van der Woude

Delivered in open court in Luxembourg on 18 October 2011.

[Signatures]

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