



## Reports of Cases

### JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

13 March 2013\*

(Rules governing the payment of expenses and allowances to Members of the European Parliament — Additional pension scheme — Decisions rejecting applications seeking to benefit from the provisions in force before the amendment to the additional pension scheme in 2009 — Plea of illegality — Acquired rights — Legitimate expectations — Proportionality — Equal treatment)

In Joined Cases T-229/11 and T-276/11,

**Lord Inglewood**, residing in Penrith (United Kingdom), and the other 10 applicants whose names are set out in the Annex, represented by S. Orlandi, A. Coolen, J.-N. Louis, É. Marchal and D. Abreu Caldas, lawyers,

applicants in Case T-229/11,

**Marie-Arlette Carlotti**, residing in Marseilles (France), represented by S. Orlandi, A. Coolen, J.-N. Louis, É. Marchal and D. Abreu Caldas, lawyers,

applicant in Case T-276/11,

v

**European Parliament**, represented by N. Lorenz, M. Windisch and K. Pocheć, acting as Agents,

defendant,

APPLICATIONS for annulment of the European Parliament's decisions refusing to grant the applicants their voluntary additional pension early, at the age of 60 or in part in the form of a lump sum,

THE GENERAL COURT (Fourth Chamber),

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

Registrar: C. Kristensen, Administrator,

having regard to the written procedure and further to the hearing on 7 November 2012,

gives the following

\* Language of the cases: French.

## Judgment

### Legal context

- 1 The Bureau of the European Parliament ('the Bureau') is a body of the 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 required to take, inter alia, financial, organisational and administrative decisions on matters concerning Members of the Parliament.
- 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 The Rules of 12 June 1990, in the version applicable in March 2009, provided inter alia as follows:

#### '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 entitled '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 Parliament was adopted by Decision 2005/684/EC, Euratom of the European Parliament of 28 September 2005 (OJ 2005 L 262, p. 1), 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.
2. The pension rights acquired prior to the date of entry into force of the Statute 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, or who, pursuant to Article 25 of the 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, 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, following a finding that the financial position of the additional pension fund had deteriorated, 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 rules governing the PEAM [were] suspended;
- ... that these precautionary measures w[ould] 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 decision of 1 April 2009'). Those amendments include 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 3 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 the 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, as from 2010, the liquidity available in the fund would be insufficient to meet the pension payment obligations. The pension fund, in the Bureau's view, 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.

### **Background to the dispute**

- 15 The applicants, Lord Inglewood and the other 10 applicants whose names are set out in the Annex, and also Ms Marie-Arlette Carlotti, were Members of the Parliament. In that capacity, they belonged to the additional pension scheme and made contributions to the fund for various periods prior to July 2009.
- 16 By applications lodged at the Registry of the General Court on 19 May and 10 August 2009 respectively, the applicants brought actions for annulment of the decisions of 9 March 2009 (see paragraph 12 above) and of 1 April 2009. By order of 15 December 2010 in Joined Cases T-219/09 and T-326/09 *Albertini and Others v Parliament* [2010] ECR II-5935, the Court dismissed those actions as inadmissible, on the ground, inter alia, that the applicants were not individually concerned by the decision of 1 April 2009 in so far as it was a measure of general application.
- 17 By letters sent to the Parliament between 20 January and 15 March 2011, the applicants requested to be able to receive their pensions under the voluntary additional pension scheme in accordance with the rules in force prior to the adoption of the decision of 1 April 2009.
- 18 In particular, Mr Georges Berthu, Mr Guy Bono, Ms Marie-Arlette Carlotti, Mr Brendan Donnelly, Ms Catherine Guy-Quint, Lord William Richard Inglewood, Ms Nicole Thomas-Mauro, Mr Gary Titley, Mr Vincenzo Viola and Ms Maartje van Putten requested to be able to receive their pensions at the age of 60. Mr David Robert Bowe and Ms Christine Margaret Oddy requested to be able to receive their pensions early (as of age 56, in the case of Mr Bowe, and without specifying the exact point in time, in the case of Ms Oddy). Furthermore, Mr Bowe also requested to be able to receive part of his additional pension in the form of a lump sum. Mr Donnelly, Lord Inglewood, Ms Oddy and Mr Titley stated that they also intended to request such a payment of their pension as a lump sum without having expressly made, at that stage, such a request.
- 19 By letters sent by the Parliament between 10 February and 28 March 2011, the applicants were informed that their requests had been rejected ('the contested decisions'). In those letters, the Head of the 'Members' Salaries and Social Entitlements' Unit of the Parliament stated, inter alia, that, by

decision of 1 April 2009, the retirement age of former Members had been raised from 60 to 63 and that the possibility of payment of part of the pension rights in the form of a lump sum had been abolished.

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

- 20 By applications lodged at the Registry of the General Court on 20 April 2011 and 31 May 2011 respectively, the applicants brought the present actions.
- 21 By order of 15 September 2011, after hearing the parties, the President of the Fourth Chamber of the General Court decided to join the present cases for the purposes of the written procedure, the oral procedure and the judgment.
- 22 On 5 and 17 October 2012 respectively, following a measure of organisation of procedure adopted by the Court, the applicants and the Parliament submitted certain documents and replied to the Court's questions.
- 23 On 29 October 2012, within the context of a measure of organisation of procedure, the Court put questions to the Parliament for answer at the hearing.
- 24 The applicants claim that the Court should:
- declare the decision of 1 April 2009 unlawful;
  - annul the contested decisions;
  - order the Parliament to pay the costs.
- 25 The Parliament contends that the Court should:
- dismiss the actions;
  - order the applicants to pay the costs.

### **Law**

- 26 In support of their actions, the applicants put forward a plea of illegality with regard to the decision of 1 April 2009 and rely on five pleas in law put forward, in essence, in support of that plea of illegality, alleging, first, infringement of their acquired rights and infringement of the principles of legal certainty and of the protection of legitimate expectations; secondly, infringement of the principles of proportionality and of equal treatment; thirdly, infringement of Article 29 of the PEAM Rules; fourthly, a manifest error of assessment; and, fifthly, infringement of good faith in the performance of contracts.
- 27 It must be pointed out, in that regard, that the decision-making content of the contested decisions, which consists in refusing the applicants their additional pensions at age 60, early or in part as a lump sum, is determined by the decision of 1 April 2009, which repealed those possibilities. Consequently, the contested decisions are linked decisions and the actions can be upheld only if the plea of illegality is well founded. By contrast, if no illegality can be found to exist with regard to the decision of 1 April 2009, the actions will have to be dismissed.



*The first plea, alleging infringement of acquired rights and infringement of the principles of legal certainty and of the protection of legitimate expectations*

- 28 The first plea put forward by the applicants is divided into two parts, the first alleging infringement of their acquired rights and the second alleging infringement of the principles of legal certainty and of the protection of legitimate expectations.

The first part, alleging infringement of the applicants' acquired rights

- 29 The applicants invoke the case-law of the European Union according to which acquired rights cannot, in principle, be called into question. They submit that the increase in the retirement age to 63 infringes Article 27(2) of the Statute for Members (see paragraph 8 above). They take the view that they acquired the right to an additional pension prior to 1 April 2009. Such a right arose, in their view, when they had paid contributions for the minimum period and it is thus in accordance with the rules for payment as set out in the provisions of the Rules of 12 June 1990 in force at that time that the detailed rules for enjoyment of that right ought to be determined. At the stage of the reply, they add that, in accordance with the judgment of 18 October 2011 in Case T-439/09 *Purvis v Parliament* [2011] ECR II-7231, the decision of 1 April 2009 does not apply to the eight applicants who ceased to hold office as Members prior to 2009, since they had already acquired their right to the pension at the time when they ceased to hold office.
- 30 The Parliament submits, in essence, that the conditions for the acquisition of the right to an additional pension provided for by the Rules of 12 June 1990 are cumulative and that it is therefore only the satisfaction of the last condition that constitutes the event giving rise to the right to the pension.
- 31 As the applicants submit that the decision of 1 April 2009 infringed their acquired rights, it is necessary to ascertain, first of all, whether they had in fact acquired a right to the additional pension at the time when that decision entered into force.
- 32 It must be borne in mind, in that regard, that the decision of 1 April 2009 is of general application and, therefore, legislative in nature, since it applies to all Members of the European Parliament who are or may become members of the voluntary pension fund (order in *Albertini and Others v Parliament*, paragraph 16 above, paragraph 42). As a measure of general application which is not addressed to a particular party, that decision did not need to be notified individually, but had to be published to enter into force. A fundamental principle in the European Union legal order requires that a measure adopted by the public authorities cannot be applicable to those concerned before they have the opportunity to make themselves acquainted with it (Case 98/78 *Racke* [1979] ECR 69, paragraph 15).
- 33 Since what is in issue here is not a measure in respect of which Article 254 EC provided for publication in the Official Journal, any other appropriate form of publication must be considered to be sufficient. As the Parliament states, inasmuch as the decision of 1 April 2009 constituted a measure of internal organisation, it must be accepted that the parties concerned could be informed of it in accordance with the rules established within the institution as regards such measures. In that regard, the Court of Justice has already held that an amendment to an annex to the PEAM rules could be communicated to Members in office in accordance with the Parliament's traditional methods of internal communication and did not have to be notified individually with acknowledgement of receipt to the Members concerned (Case C-470/00 P *Parliament v Ripa di Meana and Others* [2004] ECR I-4167, paragraphs 67 and 70).

- 34 In that regard, publication on the Parliament's intranet site, in accordance with the common practices of the Parliament, was sufficient as regards the Members in office. By contrast, as former Members no longer have access to the Parliament's intranet site, publication on the Internet was necessary with regard to them. It therefore remains to be examined when such publication took place in the present case.
- 35 In response to questions put by the Court, first, the Parliament stated that the minutes of the Bureau's meeting of 1 April 2009, containing the decision of 1 April 2009, were disseminated on its intranet site, in all the language versions, on 11 May 2009. Secondly, the Parliament stated that that decision had been available on its Internet site as from 12 or 13 May 2009, except for the versions in Danish and Slovak, which were not available until 27 May 2009. Those statements, supported by screen prints showing that the documents in question were created or altered on the dates stated, have not been challenged by the applicants.
- 36 Consequently, the applicants' argument that the decision of 1 April 2009 cannot be applied to them, on the ground that there was no notification in the prescribed manner, must be rejected.
- 37 The Court takes the view that the Parliament has therefore proved, to the required legal standard, that the decision of 1 April 2009 was published on its intranet site on 11 May 2009 and on its Internet site on 13 and 27 May 2009, depending on the language versions. As a measure of general application, that decision was to enter into force at the same time in respect of all persons whose legal position was affected by it, both for reasons of legal certainty and for reasons relating to the principle of equal treatment (see, to that effect, Case C-221/09 *AJD Tuna* [2011] ECR I-1655, paragraph 113). Furthermore, as the person concerned must have the opportunity to make himself acquainted with a measure in order for it to be applicable to him, as has been stated in paragraph 32 above, it is the date on which the last of the persons concerned had that opportunity that must be taken into account in this respect.
- 38 Consequently, it must be held that, in the light of the circumstances of the present case and, in particular, of the fact that some of the persons concerned by the decision of 1 April 2009 no longer had access to the Parliament's internal means of communication, that decision entered into force, for all the members of the additional pension scheme, on 27 May 2009. It is therefore by reference to that date that the existence of acquired rights in respect of the applicants must be examined.
- 39 It is necessary to distinguish, in that regard, between the right to the 'normal' additional pension at age 60, on the one hand, and the right to the early additional pension as from the age of 50 and the right to receive part of the pension as a lump sum, on the other.

– The right to the additional pension at age 60

- 40 Under Article 1(1) of the Rules of 12 June 1990 (see paragraph 4 above), 'Members of the European Parliament who have paid [additional] 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'. It is clear from that wording that, in order to acquire the right to an additional pension, a Member must satisfy, cumulatively, all the conditions stated, namely, first, have paid additional contributions to the pension scheme for at least two years, secondly, have ceased to hold office and, thirdly, be 60. Thus, it is the satisfaction by a Member or a former Member of the last of those conditions, whichever that may be, that constitutes the event giving rise to his right to an additional pension.



- 41 That finding is not called into question by the judgment in *Purvis v Parliament*, paragraph 29 above. The applicants rely in particular on paragraph 37 of that judgment, which is worded as follows:

‘The Court takes the view that 14 July 2009 should be held [to be the relevant date for the purposes of determining the applicable law regarding the applicant’s right to the pension]. 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 ... This is not in dispute between the parties. In addition, the applicant ceased to hold office on that date. ... 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.’

- 42 While it is true, in that regard, that the second sentence of that paragraph is formulated in such a way that, read in isolation, it may indeed give the impression that the fact alone of ceasing to hold office as a Member constitutes the event which gives rise to the right to the additional pension, it is, however, apparent from the context, and from other paragraphs in the same judgment, that that sentence does not set out a general principle, but refers only to the actual circumstances of the case being decided, in which the applicant’s ceasing to hold office as a Member was the last condition, of those set out in Article 1(1) of the Rules of 12 June 1990, to be satisfied.
- 43 First, the second sentence of paragraph 37 of the judgment in *Purvis v Parliament*, paragraph 29 above, is based – although it does not cite the wording thereof – on Article 1(1) of the Rules of 12 June 1990, which sets out, as has just been stated in paragraph 40 above, three cumulative conditions for the acquisition of the right to an additional pension.
- 44 Secondly, it is stated, in the second sentence of paragraph 38 of the judgment in *Purvis v Parliament*, paragraph 29 above, that Article 1(1) of the Rules of 12 June 1990 must be interpreted as meaning that the pension rights of Members are automatically due to them ‘as soon as the conditions specified therein are met’. If only the condition relating to a Member’s ceasing to hold office were determinant, the reference to ‘conditions’ in the plural in that sentence would have no meaning.
- 45 Thirdly, the first sentence in paragraph 50 of the judgment in *Purvis v Parliament*, paragraph 29 above, states that ‘Members acquire their entitlement to the additional pension at retirement age, which is fixed at 60 in accordance with Article 1 of the Rules of 12 June 1990’. The fact that that sentence in turn refers to only one of the conditions mentioned in that provision, which is different from the one referred to previously, is attributable to the fact that it is part of the rebuttal of a specific argument put forward by the applicant in that case, a rebuttal based on a line of reasoning relating to age. Consequently, read in conjunction with the second sentence of paragraph 37 of the same judgment, it illustrates the circumstance that the fact that one of the conditions for acquiring the right to the pension, referred to in Article 1(1) of the Rules of 12 June 1990, is referred to in isolation does not imply that it is more important than the others, let alone that it is the only determinant condition.
- 46 Furthermore, in their applications – which predate the delivery of the judgment in *Purvis v Parliament*, paragraph 29 above –, the applicants themselves argued that they had all satisfied another isolated condition among those mentioned in Article 1(1) of the Rules of 12 June 1990, namely that relating to the minimum period of contribution, in order to claim that they had, for that reason alone, acquired a right to the pension, irrespective of their age and of the date on which they ceased to hold office as Members. That reasoning, which confuses the fulfilment of the minimum period of contribution with the date of acquisition of the right to the pension, is merely an additional illustration of the fact that the right to the pension may be acquired only at the time at which all of the conditions of Article 1(1) of the Rules of 12 June 1990 have been cumulatively satisfied.
- 47 Consequently, since none of the applicants was aged 60 on 27 May 2009, they had not yet acquired the right to the additional pension at that time.

– The right to the early additional pension as from the age of 50 and the right to payment of part of the additional pension in the form of a lump sum

- 48 In contrast to the right to the ‘normal’ pension, which is acquired automatically at the time when the Member in question satisfies the legal conditions set out in Article 1(1) of the Rules of 12 June 1990 (see paragraph 44 above), the acquisition of the right to the early pension presupposed in addition, in accordance with the first sentence of the former Article 3 of those rules, that the person concerned had reached the age of 50 and had made an express request to that effect.
- 49 Although it is true that the majority of the applicants – namely, Mr Berthu, Mr Bowe, Mr Donnelly, Lord Inglewood, Ms Oddy, Ms Thomas-Mauro, Mr Viola and Ms Van Putten, all of whom had, as at 27 May 2009, ceased to hold office as Members and were over 50 – had the right to apply, prior to the entry into force, on 27 May 2009, of the decision of 1 April 2009, for an early additional pension, none of them submitted such an application prior to that date. Consequently, they could not have acquired a right to the early pension.
- 50 As regards the right to payment of part of the additional pension in the form of a lump sum, this was only one option regarding payment of the pension which the Members who were members of the scheme could choose. The choice of that option therefore presupposed that a right to the pension already existed. As has been shown above, however, the applicants had not acquired, as at 27 May 2009, either a right to the additional pension or a right to the early additional pension. Consequently, the abolition of the possibility of payment of part of the pension in the form of a lump sum could not affect rights which had been acquired by the applicants.
- 51 The other arguments put forward by the applicants do not make it possible to call that finding into question.
- 52 First, the applicants rely on Article 27(2) of the Statute for Members, relating to the protection of acquired rights under the additional pension scheme (see paragraph 8 above), and on a note from the Secretary-General of the Parliament of 24 November 2005, which refers to that provision.
- 53 It is sufficient to point out, in that regard, that, as the Statute for Members did not enter into force until 14 July 2009, as the applicants themselves state in their applications, that article was not applicable to the decision of 1 April 2009, which entered into force before it. Furthermore, as has been established in paragraphs 47, 49 and 50 above, the applicants could not prove any acquired right requiring protection prior to the entry into force of that decision on 27 May 2009. Consequently, the applicants cannot derive any argument from Article 27(2) of the Statute for Members.
- 54 Secondly, the applicants maintain, at the stage of the reply, that, in the light of the specific nature of the performance of the duties of a Member, each term of office within a series of terms of office as a Member must be considered separately, with the result that, at the end of each term of office, the pension rights relating to a term of office are acquired.
- 55 That head of claim is based implicitly but necessarily on the conclusion, which the applicants draw from the judgment in *Purvis v Parliament*, paragraph 29 above, that the right to the additional pension is acquired at the time when a Member ceases to hold office, without regard to the other conditions set out in Article 1(1) of the Rules of 12 June 1990 (see paragraph 29 above). It is on that assumption alone, and thus, in particular, by disregarding the normal pension age of 60, that the applicants could automatically have acquired, at the end of each of their successive terms of office, an isolated pension right in respect of the contributions which they had paid during each of those terms of office.

- 56 As has been established in paragraph 40 above, however, a right to the additional pension arises only at the time when the Member in question satisfies the last of the cumulative conditions, whichever that may be, set out in Article 1(1) of the Rules of 12 June 1990. For all of the applicants in the present cases, the last of those conditions will be that relating to age, since they have all contributed for the minimum period, have all ceased to hold office and none of them has yet reached the pension age (60 prior to 14 July 2009 and 63 after that date). Consequently, even if the right to the pension had to be calculated separately in respect of each of the successive terms of office completed by the applicants, as they submit, that would not lead to the conclusion that they had acquired a right to the pension before the entry into force of the decision of 1 April 2009.
- 57 Consequently, that head of claim must be rejected as ineffective, without it being necessary to examine whether, as the Parliament submits, it is inadmissible or unfounded.
- 58 Thirdly, the applicants put forward 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 analysed as part of the examination of the second plea.
- 59 In the light of the foregoing, the first part of the first plea, alleging infringement of acquired rights, must be rejected.

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

– The head of claim alleging infringement of the principle of legal certainty

- 60 With regard to the infringement of the principle of legal certainty, the applicants put forward two main arguments. Firstly, they claim that, by adopting the decision of 1 April 2009, the Bureau infringed the legal certainty attached to the ‘additional pension contract’ and infringed the principle of the continuity of contracts. Secondly, according to the applicants, the Bureau was not competent to amend the Rules of 12 June 1990. Thirdly, the contested decisions were, they submit, accompanied by retroactive effects.
- 61 First, it is sufficient to bear in mind, in that regard, that the Court has already held that the additional pension scheme fell exclusively within the scope of the powers as a public authority which are vested in the Parliament so that it is able to perform the tasks entrusted to it by the Treaties. Consequently, the rights and obligations of the Parliament and of Members who are part of that scheme are governed by the internal rules and statutes which bind them, and are not therefore contractual but rather a matter of public law, a finding which is not called into question by the fact that the person concerned joined that scheme voluntarily (see, to that effect, *Purvis v Parliament*, paragraph 29 above, paragraphs 58 to 62).
- 62 Secondly, the Court has held that the Bureau was competent to adopt the decision of 1 April 2009 (*Purvis v Parliament*, paragraph 29 above, paragraphs 63 and 64).
- 63 Thirdly, the Court has held, in essence, that the decision of 1 April 2009 did not produce effects before its entry into force, since it affected only those Members who had not yet acquired a right to the additional pension at that time, and that it did not therefore have retroactive effects (*Purvis v Parliament*, paragraph 29 above, paragraphs 65 and 66).
- 64 Consequently, the head of claim alleging infringement of the principle of legal certainty must be rejected, in its entirety, as unfounded.

– The head of claim alleging infringement of the principle of the protection of legitimate expectations

- 65 The applicants state that they acceded to the additional pension scheme on the basis of clear and pre-established conditions and that the objective pursued by the Bureau cannot take precedence over their interest in maintaining their acquired rights. Furthermore, that legitimate expectation was, they argue, reinforced by calculations made by way of example on 27 April 2001 by the ASBL, which were carried out on the basis of the rules applicable before the adoption of the decision of 1 April 2009. Lastly, the Parliament acknowledged, in the Bureau's decision of 1 April 2009, that it had to guarantee respect for the commitments made with regard to the members of the additional pension scheme, regardless of the position of the fund.
- 66 Suffice it to point out, in that regard, that the Court has already held that the Parliament did not provide any assurance which could have given rise, on the part of Members belonging to the additional pension scheme, to a legitimate expectation that the conditions of that scheme were not going to be amended in the future (*Purvis v Parliament*, paragraph 29 above, paragraph 70), that the estimates provided by the ASBL on 27 April 2001 did not come from the Parliament (*Purvis v Parliament*, paragraph 29 above, paragraph 71) and that the commitment, made by the Bureau, in the name of the Parliament, at its meeting on 1 April 2009, to guarantee the right of members of the scheme to the additional pension which could be retained after exhaustion of the pension fund seeks merely to guarantee, in the likely event that the fund would be exhausted before payment of all the pension rights accumulated by the members, the acquired pension rights of Members (*Purvis v Parliament*, paragraph 29 above, paragraph 73). As has, however, been stated in paragraphs 47, 49 and 50 above, the applicants had not acquired pension rights as at 27 May 2009.
- 67 Consequently, the head of claim alleging infringement of the principle of the protection of legitimate expectations must be rejected and, therefore, the first plea must be rejected in its entirety.

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

The head of claim alleging infringement of the principle of proportionality

- 68 The applicants submit that the decision of 1 April 2009 is disproportionately prejudicial to their interests. The tendency, which may be observed in compulsory pension schemes, to grant the right to the pension at the age of 63 is, they contend, irrelevant in respect of the voluntary pension scheme which is the subject-matter of the present cases. Furthermore, they consider it disproportionate to abolish all the 'special methods of payment' provided for in the former Articles 3 and 4 of the Rules of 12 June 1990. In particular, they submit, it would have been possible to reduce the part of the pension rights payable as a lump sum, rather than abolishing that option, without that giving rise to financing problems for the fund.
- 69 The Parliament disputes those arguments.
- 70 It must be borne in mind as a preliminary point that, by virtue of the principle of proportionality, the legality of European Union rules is subject to the condition that the means employed must be appropriate to attainment of the legitimate objective pursued by those rules 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).
- 71 Furthermore, it must be borne in mind that the legislature has a broad discretion in the reform of a social security system (Case T-135/05 *Campoli v Commission* [2006] ECR-SC I-A-2-297 and II-A-2-1527, paragraphs 71 and 72, and Case F-54/06 *Davis and Others v Council* [2007] ECR-SC I-A-1-165 and II-A-1-911, paragraph 65), such as the additional pension scheme which is the



subject-matter of the present dispute. In such an area, it is only if a measure is manifestly inappropriate, having regard to the objective which the competent institution is required to pursue, that its lawfulness can be affected (see *NMB France and Others v Commission*, paragraph 70 above, paragraph 70 and the case-law cited, and *Campoli v Commission*, paragraph 143).

72 Lastly, 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 of the President of the General Court 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, 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, any subsequent positive development in the additional pension fund's assets cannot be taken into account for the purpose of examining the proportionality of the measures adopted under the decision of 1 April 2009.

– The legitimacy of the objective pursued

73 With regard to the objective pursued by the decision of 1 April 2009, the Bureau set out, on the adoption of that decision, four objectives to be attained, namely:

- to ensure that Members who have contributed to the voluntary additional 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.

74 It must be held that, within the framework of the exercise of its powers to regulate the additional pension scheme (*Purvis v Parliament*, paragraph 29 above, paragraphs 63 and 64), the Parliament could legitimately pursue those objectives. It must in particular be borne in mind, in that regard, that the additional pension scheme is based on an actuarial calculation in which the total of the annual contributions made by members and by the Parliament must, in principle, cover all of the pension rights acquired in the same year, with the member's contribution corresponding to a third and that of the Parliament to two thirds (see, to that effect, *Purvis v Parliament*, paragraph 29 above, paragraph 45). If it transpires, in such a scheme, that the estimates as to the return on the fund's assets, on the basis of which the amount of the contributions have been established, were overly optimistic, it must be concluded from this that the contributions made by members and by the Parliament in the past were in actual fact too low to finance the corresponding pension rights. In order to rebalance the scheme, there is thus justification, as a matter of principle, in making both the members and the Parliament contribute.

75 Against that background, it is necessary to reject the applicants' argument that considerations applicable to compulsory pension schemes are irrelevant for the purpose of justifying an increase in retirement age in a voluntary additional pension scheme. It is, admittedly, true, in that regard, that it follows from the third recital in the preamble to the decision of 1 April 2009 that the age of 63 as the new retirement age appears to have been chosen by reference to the retirement age provided for by Article 14 of the Statute for Members. However, the fact remains that, as is apparent from the first and second recitals in the preamble to that decision, and from all of the circumstances surrounding its adoption, the fundamental reason for the decision to increase the retirement age under the additional

pension scheme was the difficult financial situation of the additional pension fund, in particular the acute liquidity crisis foreseeable in the near future, and not the wish to align with a particular retirement age provided for in other schemes. Consequently, that argument must be rejected.

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

76 With regard to the appropriateness of the measures adopted to attain the intended objective, it is necessary, first, to recall the economic situation of the pension fund at the beginning of 2009, as described in, inter alia, 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 decision of 1 April 2009. That position was characterised by a sharp fall in value, owing in particular 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 contributions from Members who were not re-elected to the Parliament 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.

77 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	30/06/2007	30/06/2008	30/09/2008	31/12/2008	28/02/2009
Asset value (EUR)	202 153 585	218 083 135	189 406 299	180 628 488	159 047 636	144 973 916

78 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.

79 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 million from August 2009 onwards. It was also forecast that, as from 2010, the fund's liquidity was going to be insufficient to honour its obligations to pay the pensions and that, consequently, it would have had to sell off assets to pay those pensions. It is clear from the cash reports of the pension fund dated 28 February 2009 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 million. According to the note from the Secretary-General of the Parliament of 1 April 2009, it was forecast that all the fund's assets would be exhausted by 2023.

80 Those forecasts had been made on the basis of *ex ante* simulations carried out by the Parliament on 1 April 2009, taking into account an independent actuarial study, commissioned by the Parliament, assessing the situation of the fund as at 30 June 2007 ('the initial study'), and the updates to that study which covered the periods up to 31 December 2008 and to 28 February 2009. Those simulations forecast 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 would 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, that 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 forced the fund to sell off some of its assets at prices which were greatly reduced owing to the economic crisis. By contrast, those simulations did not take account of former Members who could apply to take early retirement as of the age of 50 as that option had been chosen only rarely in the past.



- 81 In the light of all of those factors, it appears that the decision of 1 April 2009 was liable to attain or, at least, promote a number of the objectives referred to in paragraph 73 above.
- 82 The increase in the retirement age by three years, the abolition of the possibility of receiving part of the pension in the form of a lump sum and the abolition of the option of early retirement had the effect of deferring payments which the fund would otherwise have had to make as of the second half of 2009. Consequently, those measures were liable to prevent, in the immediate future, a liquidity crisis in the pension fund, a sell-off of securities on unfavourable terms and a significant loss of profit, thereby achieving the fourth of the objectives referred to in paragraph 73 above.
- 83 Furthermore, in contrast to the other two measures, the increase in retirement age was not neutral in terms of the actuarial value of the pensions which members could expect to receive, since the total period for which they would receive a pension was reduced by three years, while the monthly amount to be received by future pensioners was maintained. Consequently, that measure was also liable to improve the coverage rate of the pensions to be paid, in relation to the figures set out in paragraph 78 above, thereby promoting the first, second and third of the objectives referred to in paragraph 73 above.
- 84 The applicants have not disputed in general terms the difficult economic position of the pension fund, as described in paragraphs 76 to 79 above, but have advanced two arguments designed to call into question the extent of the deficit forecast and the amount of liquidity available, as stated by the Bureau.
- 85 First, the applicants refer to a passage from the initial study cited in paragraph 80 above. It is apparent, in essence, from that passage that the choice by a member to receive part of his pension in the form of a lump sum is almost neutral from an actuarial perspective and does not therefore contribute to any deficit in the funding of the pension fund.
- 86 In that regard, first, it must be borne in mind that the Court has already held that the initial study was based on, inter alia, a forecast of an annual return on the fund's assets of 6.99%, which was based on a projection of the trend prior to 30 June 2007, whereas the actual trend was consistently negative throughout the period from 30 June 2007 to 28 February 2009. The Court concluded that the findings of that study are of no relevance with regard to the financial position of the additional pension fund at the time when the decision of 1 April 2009 was adopted (*Purvis v Parliament*, paragraph 29 above, paragraphs 103 and 104).
- 87 Secondly, in any event, the passage from the initial study cited by the applicants relates only to the payment of part of the pension as a lump sum and not to early retirement or to the increase in the retirement age.
- 88 The argument relating to a passage from the initial study must therefore be rejected.
- 89 Secondly, the applicants claim that the value of the pension fund's liquid resources was approximately EUR 8 million on 28 February 2009, and not approximately EUR 5 million, as the Parliament claims (see paragraph 79 above). They claim, in that regard, that there was a manifest error of assessment on the part of the Bureau. The applicants base their argument on an exchange of e-mails dating from March 2011. The first e-mail 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.'

90 It must be borne in mind in that regard, that the Court has already held that the figure of EUR 8 million of cash referred to in the e-mail of 30 March 2011, cited above, is without doubt based on a confusion between the cash immediately available without costs being incurred, on the one hand, and the cash assets invested in investment accounts which were not immediately available without costs being incurred, on the other (*Purvis v Parliament*, paragraph 29 above, paragraph 111).

91 Consequently, the argument derived from that exchange of e-mails must be rejected, as must the head of claim alleging a manifest error of assessment.

– The choice of the least onerous measure

92 With regard to the choice of the least onerous measure, in the first place, the applicants submit that it is disproportionate to abolish all possibility for the members of the additional pension scheme to obtain part of their pension in the form of a lump sum when provision could perhaps have been made to limit the percentage of the pension capable of being received early or as a lump sum.

93 First, it must be pointed out in that regard that the approximate calculations contained in paragraph 79 above assumed that each of the 105 former Members who belonged to the additional pension scheme and were liable to apply to receive their pension in the second half of 2009 would opt to receive the maximum amount of their pension, namely 25%, in the form of a lump sum. It is therefore the case that those figures represented, in that regard, 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.

94 Secondly, as was pointed out in paragraph 80 above, those calculations did not take into account possible applications for early retirement, thus disregarding an admittedly limited, but genuine, financial risk to the pension fund. It must be stated, in that regard, that, 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. In this context, it must, moreover, be borne in mind that both the abolition of the option of payment in the form of a lump sum and the abolition of the option of early retirement were neutral measures from an actuarial perspective. Consequently, the abolition of those options must be considered to be a measure imposing a low onus on the members of the additional pension scheme.

95 It follows that neither the abolition of the possibility of payment of part of the pension in the form of a lump sum nor the abolition of the option of early retirement can be considered to be manifestly inappropriate, within the meaning of the case-law cited in paragraph 71 above, for the purpose of attaining the objectives pursued by the decision of 1 April 2009, as listed in paragraph 73 above. Consequently, those measures complied with the principle of proportionality.

96 In the second place, the applicants submit that the increase of three years in the retirement age required the application of transitional measures in order for it to be proportionate.

97 First, it must be pointed out, in that regard, that the decision of 1 April 2009 provided for a transitional measure. Although the retirement age was, as a general rule, raised to 63 as from the first day of the seventh term – namely as of 14 July 2009 –, members of the scheme who were aged 60 on that date could, within a three-month period, still apply to receive their pensions. The applicants are thus seeking additional transitional provisions for the benefit of former Members who had not yet reached the age of 60 as at 14 July 2009.

98 Secondly, it is important to bear in mind that, as has been pointed out in paragraph 74 above, if it transpires, in a pension scheme based on a fund, that the estimates as to the return on the fund's assets, on the basis of which the amount of the contributions have been established, were overly

optimistic, it must be concluded from this that the contributions made in the past were in actual fact too low to finance the corresponding pension rights and there is thus, as a matter of principle, justification, in order to rebalance the scheme, in making both the members and the Parliament contribute.

- 99 In the present case, as regards the Parliament's contribution, it must be pointed out that, under the decision of 1 April 2009, first, it withdrew, in respect of the cases provided for in Article 1(5) and (6) of the Rules of 12 June 1990, where a member decided to leave the scheme and to have his contributions reimbursed, the clauses under which it could have its share of the contributions reimbursed, which was thus, in those cases, retained by the pension fund, and, secondly, it guaranteed the right of Members who belonged to the additional pension scheme to receive their pension, even if the pension fund were to be exhausted.
- 100 In that regard, it does not matter whether, as the applicants submitted at the hearing, such an undertaking on the part of the Parliament already existed prior to the decision of 1 April 2009. Even if that were the case, it is necessary to take into account the fact that, in spite of the adoption of the measures taken in that decision, the premature exhaustion of the pension fund remained foreseeable.
- 101 Thus, it is apparent from the initial study that the pension fund will have to make payments under the additional pension scheme until 2088. By contrast, a report by the actuary for the additional pension fund, which was drawn up in April 2010 and took account of the situation as at 31 December 2009, the findings of which have not been called into question by the parties, concludes that, having regard to the measures adopted under the decision of 1 April 2009, the exhaustion of the fund has been deferred by only three years to 2026, in particular by reason of an exceptional return of 17% for 2009.
- 102 Consequently, the Parliament will, in all probability, bear all the expenditure of the pension fund from 2026 to 2088.
- 103 As regards the contribution of members of the additional pension scheme, it has already been pointed out in paragraph 94 above that the abolition of the possibilities of receiving the pension early or of receiving part of it in the form of a lump sum was neutral from an actuarial perspective. Consequently, the increase in the retirement age was the only measure which affected the value of the pensions which members could expect to receive and which could therefore be categorised as affecting the future entitlements of the members.
- 104 Thirdly, it must be pointed out, as the Parliament has done, that any adoption of transitional measures would have jeopardised the promotion of the objectives referred to by the decision of 1 April 2009. That is particularly true as regards the increase in the retirement age, which had in particular the effect of deferring by three years the start of payments under the additional pension scheme in respect of all the members of the scheme who were no longer Members of the Parliament and who had not yet reached the age of 60 as at 14 July 2009, thereby contributing to safeguarding the liquidity of the fund. The adoption of transitional measures in favour of those members would have brought forward the date at which they could apply to receive their additional pensions.
- 105 In that respect, account must also be taken of the fact that the additional pension scheme for Members of the Parliament was in 2009 destined to disappear. First, under Article 27(4) of the Statute for Members (see paragraph 8 above), there could be no new members of the scheme after the end of the sixth term on 13 July 2009. Secondly, on that same date, the pension fund was going to cease receiving contributions from a large number of members who had not been re-elected to the Parliament. Lastly, under the derogating provision referred to in paragraph 97 above, those among the members who had not been re-elected who were aged 60 or over could apply to receive a pension as from 14 July 2009.

- 106 Consequently, it was not possible progressively to rebalance the additional pension scheme for Members of the Parliament over a number of years by providing for more generous transitional measures. On the contrary, it was vital to adopt measures guaranteeing the maintenance of a level of liquidity which was sufficient to avoid any premature sell-off of the pension fund's assets in the immediate future. In such circumstances, any additional concession in favour of members approaching the age of 60 risked jeopardising the realisation of the objectives pursued by the decision of 1 April 2009. Consequently, since the adoption of less onerous measures would not have sufficed to promote, to the same extent, the various objectives referred to in paragraph 73 above, there was justification for adopting measures affecting future pension entitlements, namely, to increase the retirement age, without providing for transitional measures in favour of members approaching the age of 60 as at 14 July 2009.
- 107 It is necessary to add, in that regard, that the increase in the retirement age did not go further than what was necessary to attain those objectives, as required by the case-law cited in paragraph 70 above. As has been pointed out in paragraphs 100 and 101 above, that measure could merely defer the date of premature exhaustion of the fund; however, that exhaustion remained foreseeable. Consequently, in particular, the goal of 'avoiding as far as possible any financial impact on European taxpayers' was not completely attained. That is all the more reason why the measures adopted under the decision of 1 April 2009 cannot therefore be described as being manifestly inappropriate having regard to the objectives referred to in paragraph 73 above, within the meaning of the case-law cited in paragraph 71 above.
- 108 Lastly, in the third place, the applicants submit that the absence of transitional measures cannot be justified, in the light of the principle of proportionality, having regard to the objective pursued by the decision of 1 April 2009, since the latter contains no relevant reasoning to make it possible to ascertain whether such measures would have jeopardised that objective. They added, at the hearing, that the members of the Board of the ASBL had not been consulted prior to the adoption of that decision. In that regard, it must be pointed out that, although it is true that the first and second recitals in the preamble to the decision of 1 April 2009 constitute merely a brief summary of the financial situation of the pension fund, the fact remains that they demonstrate clearly the need to safeguard its liquidity as far as possible. As is apparent from the considerations set out in paragraphs 104 to 106 above, it is precisely that need which justifies the Bureau in refraining from including additional transitional measures in the decision of 1 April 2009. Furthermore, prior to the adoption of that decision, the financial situation of the pension fund and the measures envisaged to correct it had been exhaustively covered by several meetings with the managers of that fund and the representatives of the ASBL, the last of which took place on 31 March 2009. In those circumstances, the applicants cannot reasonably claim a lack of relevant reasoning as regards the absence of transitional measures.
- 109 Consequently, the head of claim alleging infringement of the principle of proportionality must be rejected.

#### The head of claim alleging infringement of the principle of equal treatment

- 110 The applicants claim that the decision of 1 April 2009 is discriminatory in so far as it increases the pension age without providing for transitional measures. In that regard, the applicants cite two examples relating to the amendment of the Community pension schemes in respect of which they submit that the Council of the European Union provided for transitional measures. Furthermore, they claim that there is discrimination between Members who reached the age of 60 before 14 July 2009 and were able to receive the additional pension directly at age 60, on the one hand, and those who reached the age of 60 after that date and will have all the limitations arising out of the decision of 1 April 2009 applied to their acquired rights, on the other. The Members who reached the age of 60



before 14 July 2009 cannot, they argue, be distinguished, in terms of acquired rights and legitimate expectations, from younger Members and, in particular, from those who, prior to that date, satisfied the conditions for the early pension or who were approaching 60 years of age.

111 The Parliament disputes those arguments.

112 It follows from settled case-law 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).

113 Furthermore, in a field in which the legislature has a broad discretionary power, the Court, in its review of observance of the principle of equal treatment and non-discrimination, is confined to determining that the institution concerned has not applied arbitrary or manifestly inappropriate distinctions (see *Campoli v Commission*, paragraph 71 above, paragraph 97, and *Davis and Others v Council*, paragraph 71 above, paragraph 65 and the case-law cited).

114 In the present case, in the first place, the applicants compare the amendment of the additional pension scheme with the amendment of the pension scheme for European Union 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 Courts of the European Union 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). They seek to demonstrate by way of that comparison that they, like the persons covered by those regulations, ought to have benefited from transitional measures.

115 In this connection, first, as regards the transitional provisions laid down in respect of Members of the Commission and of the Courts of the European Union in office prior to 1 May 2004, under Regulation No 1292/2004, it must be stated that those provisions cannot be used as a framework of reference in the present case as they do not concern the increase in the retirement age, but only the reduction in the annual accrual rate of pension rights.

116 Secondly, as regards the amendment of the pension scheme for European Union officials, the increase in retirement age from 60 to 63 introduced by Regulation No 723/2004 was valid as such, in respect of officials employed as at 1 May 2004, only on condition that they had not yet reached the age of 30. In respect of officials in service on that date who were between 30 and 49 years of age, the retirement age was staggered according to age, between 62 years and 8 months and 60 years and 2 months. Lastly, for officials in service on 1 May 2004 who were 50 years of age or who had completed 20 years of service, the retirement age remained set at 60.

117 In essence, the transitional measures adopted under Regulation No 723/2004 consisted therefore, first, in an exemption in respect of certain officials who were in service on the date of entry into force of the amendments and, secondly, in the staggered application of the amendments, on the basis of the age of the officials in service on the date of their entry into force.

- 118 Against that background, first, it is, however, important to point out that the old-age pension which European Union officials may expect to receive constitutes, in the majority of cases, the most important, if not the only component of the old-age income to which they are entitled by virtue of their professional activities. By contrast, a term of office as a Member of the Parliament is not in general in the nature of a sole professional activity. It is thus normally held after or before other periods of professional activity on the part of the Member, or even in parallel to such activity. Consequently, the additional pension under the scheme at issue constitutes, as a general rule, only a portion of the old-age income of former Members, as the latter will normally have acquired other pension rights in the course of their other professional activities. It follows that an amendment to the additional pension scheme is not likely to affect members of that scheme in the same manner as that in which European Union officials are affected by an amendment to their pension scheme.
- 119 Secondly, the amendment to the pension scheme for European Union officials adopted under Regulation No 723/2004 was based on grounds which are different from those advanced by the decision of 1 April 2009 in respect of the amendments to the additional pension scheme for Members of the Parliament.
- 120 As regards the increase in retirement age under the pension scheme for European Union officials, recital 29 in the preamble to Regulation No 723/2004 states that '[d]emographic changes and the changing age structure of the population concerned are imposing ever-increasing burdens upon the Community pension scheme and require that the pension age be increased and the annual rate of accrual of pension rights be reduced, subject however to transitional measures for officials already in service'. It is clear from that recital that the increase in the retirement age of officials and the reduction in the annual rate of accrual of pension rights constituted an adaptation of the pension scheme to progressive demographic changes and not a reaction to an acute crisis in respect of that scheme. In such a situation, it was possible, and even necessary, to provide for transitional measures in favour of officials in service at the time when the amendments entered into force.
- 121 By contrast, as has already been pointed out in paragraph 75 above, it is apparent from the first and second recitals in the preamble to the decision of 1 April 2009, and from all of the circumstances surrounding its adoption, that the fundamental reason for that decision – and, in particular, for the decision to increase the retirement age under the additional pension scheme – was the imminent liquidity crisis of the additional pension fund. That crisis was not the result of progressive demographic changes, but of the combined effects of the financial crisis, which had greatly reduced the value of the fund's assets, on the one hand, and of the imbalance between the diminished revenue of the scheme in the form of contributions, due to the absence of new members as from the seventh term beginning in 2009, and its expenses, which were increased on account of the imminent retirement of a large number of non-re-elected Members, on the other. It must be pointed out, in that regard, that that imbalance formed an integral part of the additional pension scheme by reason of its transitional nature, resulting in its progressive disappearance as from the entry into force of the Statute for Members at the beginning of the seventh term on 14 July 2009.
- 122 In contrast to the situation of the pension scheme for European Union officials in 2004, the situation of the additional pension fund at the beginning of 2009 was thus characterised by a specific emergency which justified reducing the use of transitional measures in favour of members of the additional pension scheme to a strict minimum. It must be added, in that regard, that, since there were no new members of the additional pension scheme as from 14 July 2009, the measures adopted under the decision of 1 April 2009 related in actual fact only to those Members who were already members of the scheme at that time. In those circumstances, the adoption of additional transitional measures in favour of former members, comparable to the measures provided for in respect of officials under Regulation No 723/2004, would have rendered the measures adopted entirely meaningless.



- 123 It follows that, as the reason for the amendments to the additional pension scheme was the specific emergency prevailing at the beginning of 2009, as regards the liquidity and the coverage rate of the pension rights, the applicants' position is not similar to that of the European Union officials affected by the amendments to their pension scheme which were introduced by Regulation No 723/2004.
- 124 Accordingly, since the Members of the European Parliament, on the one hand, and the officials of the European Union, on the other hand, are in factual and legal situations which differ in essential respects, it was possible for them to be treated differently with regard to the adoption of transitional measures.
- 125 In the second place, the applicants make a comparison between Members who reached the age of 60 prior to 14 July 2009 and could receive their pension at age 60, on the one hand, and those who reached the age of 60 after that date and could receive their pension only at age 63, on the other. Whereas the first group could receive their additional pensions as from 1 August 2009, the second group had to wait until at least 1 August 2012. A slight difference in age could therefore result in a deferment of three years in receiving the additional pension for 100 or so of the more than 1 000 members of the additional pension scheme, according to the statements of the parties.
- 126 That situation is attributable to the combined effect of Article 1(1) and 1(1a) of the Rules of 12 June 1990, as recast by the decision of 1 April 2009. That latter decision introduced a deadline, namely 14 July 2009, for the entry into force of the increase in the retirement age to 63, with the result that members of the scheme who were aged 60 before that date and who were not (re-)elected as Members of the Parliament for the seventh term could receive their additional pensions as from 14 July 2009.
- 127 The Parliament stated at the hearing, in reply to a question put by the Court, that, although it is true that the negative effects resulting from the measures adopted by the decision of 1 April 2009 are thus borne by only 10% of the members of the additional pension scheme, it had, none the less, considered that measure to be less onerous than measures which would affect the monthly amount of the pension, such as a general reduction in the monthly amount of the pensions which would have affected all the members of the scheme, including those already in receipt of their additional pensions.
- 128 In that regard, first, it must be stated that the members of the scheme who were already receiving their additional pensions as at the date of the entry into force of the decision of 1 April 2009 had already acquired in full, at that time, their rights to the additional pension, whereas that was not the case with regard to the applicants, as has been established in paragraph 47 above.
- 129 Consequently, since the applicants, on the one hand, and the members of the scheme who were already receiving their additional pensions on the date of the entry into force of the decision of 1 April 2009, on the other, are in different factual and legal situations, it was possible for them to be treated differently.
- 130 Secondly, as regards the transitional measure provided for in favour of members of the scheme reaching the age of 60 in the period between the entry into force, on 27 May 2009, of the decision of 1 April 2009 and the end of the sixth term, namely on 13 July 2009 (see paragraph 97 above), it must be pointed out that, in a situation where the law is amended, it is normal, indeed necessary, to fix a deadline with effect from which the new law will apply to existing factual situations. The setting of such a deadline is therefore in principle lawful, even if it inevitably has the effect that situations which can be distinguished only slightly from each other *ratione temporis* are treated differently.
- 131 Furthermore, it must be pointed out that the last members of the scheme who were able to receive the additional pension at age 60 could be distinguished from the group of the applicants, who had to wait until they reached the age of 63, inasmuch as they had already reached retirement age before the end of the sixth term on 13 July 2009. They thus satisfied all the conditions laid down in Article 1(1) of the

Rules of 12 June 1990 for receiving the additional pension, with the sole exception, for those who were Members of the Parliament during the sixth term, of that relating to their having ceased to hold office. By contrast, the applicants had not yet, at the time when the law was amended on 14 July 2009, reached retirement age according to the rules in force at that time.

- 132 As the Parliament has correctly pointed out, the criterion of age used by the decision of 1 April 2009 is not only an objective factor, which is reasonable and independent of the will of the legislature, but also forms an integral part of every pension scheme, as the factor which determines the time of retirement and of payment of the pension. Consequently, such a criterion cannot, in itself, be considered to be discriminatory or disproportionate in the context of an amendment to a pension scheme.
- 133 In those circumstances, the difference in treatment to which the applicants were subject in contrast to Members of the Parliament who had reached the age of 60 before 14 July 2009 cannot be categorised as arbitrary or as manifestly inappropriate within the meaning of the case-law cited in paragraph 113 above.
- 134 It follows that the head of claim alleging infringement of the principle of equal treatment must be rejected, as must also the second plea in its entirety.

*The third plea, alleging infringement of Article 29 of the PEAM Rules*

- 135 The applicants claim that the Bureau infringed 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 it adopted the decision of 1 April 2009.
- 136 The Parliament disputes those arguments.
- 137 It must be borne in mind, in that regard, that the Court has already held, first, that Article 29 of the PEAM Rules is concerned simply with the interpretation and implementation of those rules and not with their amendment and, secondly, that, in accordance with the provisions of the Rules of Procedure of the Parliament, the Quaestors attend meetings of the Bureau in an advisory capacity (*Purvis v Parliament*, paragraph 29 above, paragraphs 120 to 122).
- 138 Although the applicants added, at the stage of the reply, that the mandatory consultation of the Quaestors cannot be regarded as having been properly satisfied under the pretext that they attend meetings of the Bureau in an advisory capacity, which would be contrary to the established practice of the Parliament and render Article 29 of the PEAM Rules redundant, first, it must be held that, as is apparent from the words '[i]n addition', with which paragraph 122 of the judgment in *Purvis v Parliament*, paragraph 29 above, begins, it is only by way of addition that the Court based an argument on the attendance of the Quaestors at meetings of the Bureau pursuant to the Rules of Procedure of the Parliament. The argument that Article 29 of the PEAM Rules did not cover the amendment to the PEAM Rules was in itself a sufficient basis on which to reject the plea alleging infringement of that provision.
- 139 Secondly, although the applicants invoke an established practice of the Parliament, they have neither specified what that practice is nor provided evidence of its existence.
- 140 Thirdly, the applicants claim that, if the Quaestors had been formally consulted, they would have requested the opinion of the Legal Service and of actuarial experts in 1999 at the time when the Rules of 12 June 1990 were amended. However, apart from the fact that that argument is based on mere supposition on the applicants' part as regards the initiatives that the College of Quaestors would have taken, their reference to the involvement of the Quaestors at the time of the events which took place in 1999 is contradicted by the content of the file. As is apparent from the note from the College of

Quaestors of 29 August 1998 for the attention of the Bureau, which was provided by the applicants, it was at the request of the Bureau, and not at the request of the Quaestors, that the amendments were at that time examined by the Legal Service.

141 It follows that the applicants' third plea must be rejected.

*The fourth plea, alleging a manifest error of assessment*

142 The applicants submit that the ground relied on in the third recital in the preamble to the decision of 1 April 2009 for raising to 63 the age at which the right to the additional pension is acquired, derived from developments in the old-age pensions sector in the Member States, is unlawful and that the increase in the age at which the right to the pension is acquired infringes Article 27(2) of the Statute for Members.

143 The Parliament takes issue with those arguments.

144 As regards, first, the alleged infringement of Article 27(2) of the Statute for Members, it has been established in paragraph 53 above that that Statute was not yet in force at the time when the decision of 1 April 2009 was adopted and that that decision could not therefore have infringed the provisions of the Statute.

145 Secondly, regarding the argument relating to the ground relied on in the third recital in the preamble to the decision of 1 April 2009, it has been established in paragraph 75 above that the fundamental reason for the decision to increase the retirement age under the additional pension scheme was the difficult financial situation of the additional pension fund. Since that reason is sufficient to justify the increase in the retirement age, as has been established in paragraphs 70 to 109 above, the issue of whether the Bureau legitimately used additional grounds is not capable of having any bearing on the outcome of the present case. Consequently, that argument must be rejected as ineffective.

146 It follows that the fourth plea must be rejected.

*The fifth plea, alleging infringement of good faith in the performance of contracts*

147 On the basis of the existence of a contractual relationship between themselves and the Parliament, the applicants claim that the decision of 1 April 2009 is potestative and constitutes a breach of contract.

148 Suffice it to point out, in that regard, that, as was stated in paragraph 61 above, in reference to the findings made in the judgment in *Purvis v Parliament*, paragraph 29 above, the rights and obligations of the Parliament and of members of the additional pension scheme are governed by the internal rules and statutes which bind them, and are therefore not contractual in nature.

149 The fifth plea must for that reason be rejected.

150 Since all of the pleas in law advanced by the applicants in support of their plea of illegality against the decision of 1 April 2009 must be rejected, that plea of illegality must be rejected. It follows that the decision of 1 April 2009 formed a valid basis for the contested decisions. Consequently, in accordance with the findings made in paragraph 27 above, the actions must be dismissed in their entirety.

## Costs

<sup>151</sup> Under Article 87(2) of the Rules of Procedure of the General 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 applicants have been unsuccessful, they must be ordered to pay the costs, in accordance with the form of order sought by the Parliament.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

- 1. Dismisses the actions;**
- 2. Orders Lord Inglewood and the other 10 applicants whose names are set out in the Annex, as well as Ms Marie-Arlette Carlotti, to pay the costs.**

Pelikánová

Jürimäe

Van der Woude

Delivered in open court in Luxembourg on 13 March 2013.

[Signatures]

## Annex

**Georges Berthu**, residing in Longré (France),

**Guy Bono**, residing in Saint-Martin-de-Crau (France),

**David Robert Bowe**, residing in Leeds (United Kingdom),

**Brendan Donnelly**, residing in London (United Kingdom),

**Catherine Guy-Quint**, residing in Cournon d'Auvergne (France),

**Christine Margaret Oddy**, residing in Coventry (United Kingdom),

**Nicole Thomas-Mauro**, residing in Épernay (France),

**Gary Titley**, residing in Bolton (United Kingdom),

**Maartje van Putten**, residing in Amsterdam (Netherlands),

**Vincenzo Viola**, residing in Palermo (Italy).

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