Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

14 December 2017 *

(Civil service — Officials — Staff members — Remuneration — Staff of the EEAS serving in a third country — Article 10 of Annex X to the Staff Regulations — Annual assessment of the allowance for living conditions — Decision reducing the allowance for living conditions in Ghana from 25% to 20% — Plea of illegality)

In Case T-575/16,

David Martinez De Prins, an official of the European External Action Service residing in Accra (Ghana), and the other officials and staff members of the European External Action Service whose names are set out in the annex,[1] represented by N. de Montigny and J.-N. Louis, lawyers,

applicants,

v

European External Action Service (EEAS), represented by S. Marquardt, acting as Agent, and by M. Troncoso Ferrer, F.-M. Hislaire and S. Moya Izquierdo, lawyers,

defendant,

ACTION brought under Article 270 TFEU for annulment of the applicants' salary statements for March 2015 and their subsequent salary statements, in so far as that those statements apply the decision of the EEAS of 23 February 2015 reducing, from 1 January 2015, the living conditions allowance for European Union staff employed in Ghana,

THE GENERAL COURT (Fifth Chamber),

composed of D. Gratsias, President, I. Labucka and I. Ulloa Rubio (Rapporteur), Judges,

Registrar: X. Lopez Bancalari, Administrator,

having regard to the written part of the procedure and further to the hearing on 27 April 2017,

gives the following

* Language of the case: French.

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

Judgment

Legal framework

1 Article 1 of Annex X to the EU Staff Regulations, in the version applying prior to the entry into force of Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (OJ 2013 L 287, p. 15), that is to say, the version applicable to the dispute ('the Staff Regulations'), lays down the special and exceptional provisions applicable to officials of the European Union employed in a third country.

2 Article 10 of Annex X to the Staff Regulations reads:

'1. An allowance for living conditions shall be fixed, according to the official's place of employment, as a percentage of a reference amount. This reference amount shall comprise the total basic salary, plus the expatriation allowance, household allowance and dependent child allowance, less the compulsory deductions referred to in the Staff Regulations or in the regulations adopted to implement them.

…

The parameters taken into account for fixing the allowance for living conditions shall be the following:

– health and hospital environment,

– security,

– climate,

to which three parameters shall be applied a weighting of 1:

– degree of isolation,

– other local living conditions,

to which two parameters shall be applied a weighting of 0.5.

…

The allowance for living conditions fixed for each place of employment shall be reviewed and, where appropriate, adjusted each year by the appointing authority after the opinion of the Staff Committee has been obtained.

…'

3 Article 1 of the Decision of the High Representative of the Union for Foreign Affairs and Security Policy of 17 December 2013 on the living conditions allowance and the additional allowance referred to in Article 10 of Annex X to the Staff Regulations ('the Decision of 17 December 2013') provides as follows:

'The parameters set out in Article 10(1) of Annex X to the Staff Regulations shall be assessed by the appointing authority, using, for example, information provided by reliable public or private international sources, by the Member States, or by the Union delegations and the departments of the institutions and bodies of the European Union.'

4 The first paragraph of Article 2 of the Decision of 17 December 2013 provides that:

‘After consulting the [European External Action Service] and Commission Staff Committees, the appointing authority shall determine, to take effect on 1 January each year, the percentages of the living conditions allowance for the different places of employment. …’

5 Article 7 of the Decision of 17 December 2013 reads as follows:

‘The appointing authority shall set the percentage referred to in Article 2 for all places of employment on the basis of the information available to it, referred to in Article 1.

The parameters taken into account for setting the living conditions allowance include:

– health and hospital environment,

– security,

– climate,

– degree of isolation,

– other local living conditions.

For each parameter, the appointing authority shall determine the degree of difficulty, using a points system. These data are then transposed into a comparison table, giving a final score from which the percentage assigned for the living conditions allowance is derived.

The methodology used is embodied in guidelines adopted by the [European External Action Service] in agreement with the Commission departments responsible, after consulting the [Living Conditions Allowance] Technical Group.

The [Living Conditions Allowance] Technical Group is an ad hoc consultative body comprising members of the administration and staff representatives of both the Commission and the [European External Action Service]. The staff representatives shall be appointed by the Staff Committee of their institution. Decisions reached by the [Living Conditions Allowance] Technical Group shall take the form of recommendations at the request of the appointing authority. The Technical Group shall be consulted in particular in relation to the decisions referred to in the first and third paragraphs of Article 2.’

6 By decision of 3 December 2014, the Chief Operating Officer of the EEAS adopted the guidelines establishing the methodology to fix the living conditions allowances and the granting of rest leave (‘the Guidelines’). That decision, adopted on the basis of the decision of 17 December 2013, entered into force on 1 January 2015.

7 The parameters taken into account for setting the living conditions allowance (‘the LCA’) in the Decision of 17 December 2013 were replicated and applied in the Guidelines. Specifically, Article 1 of the Guidelines provides:

‘1. When fixing the percentages of the [LCA] for the various places of employment, the Appointing Authority shall take the following parameters into account:

– Health and hospital environment,

– Security,

– Climate,

– Degree of isolation,

– Other local living conditions.

2. Each of the parameters shall be assessed and shall receive the following score:

– 1 where living conditions are equivalent to those in the European Union,

– 2 where living conditions are rather difficult compared to those in the European Union,

– 3 where living conditions are difficult compared to those in the European Union,

– 4 where living conditions are very difficult compared to those in the European Union,

– 5 where living conditions are extremely difficult compared to those in the European Union.

…'

8 Article 2 of the Guidelines provides:

'1. Health and hospital environment

The score for [the parameter] "[h]ealth and hospital environment" shall be determined on the basis of the comparative "Health Map" established by "International SOS" and, where appropriate, [on the basis of] other information obtained from reliable international public or private sources.

2. Security

The score for [the parameter] "[s]ecurity" shall be determined on the basis of the "Country Threat Assessment" (CTA) database managed by the security services within the institutions and, where appropriate, [on the basis of] other information obtained from reliable international public or private sources.

3. Climate

The score for [the parameter] "[c]limate" shall be determined on the basis of data obtained from the World Meteorological Organization and, where appropriate, [on the basis of] other information obtained from reliable international public or private sources.

4. Degree of isolation

The score for [the parameter] "[d]egree of isolation" shall be determined on the basis of data communicated by the delegations in reply to a questionnaire and, where appropriate, [on the basis of] other information obtained from reliable international public or private sources.

5. Other local living conditions

The score for [the parameter] "[o]ther local living conditions" shall be determined on the basis of data communicated by the delegations in reply to a questionnaire and, where appropriate, [on the basis of] other information obtained from reliable international public or private sources.'

9 Article 3 of the Guidelines provides:

‘Assessment of the countries will be organised in 3 steps:

1. First assessment per country at administrative level (MDR.C6, MDR.B1 and DEVCO.R4).

2. Intermediary assessment: [v]erification of the first assessment for regional coherence and comparability with similar countries (MDR.C6 and DEVCO.R4 with [European External Action Service] and Commission geographical services).

3. Final assessment and comparison with Member States data through the consultation of the Steering Committee for Delegations ‘EUDEL’.

Step 1: The first assessment

Administrative services prepare an initial assessment of each parameter, attributing a score from 1 to 5 according to the system described under Article 2. The results are entered into a comparative table and an estimation of the budgetary impact will be established.

Step 2: Verification of the assessment for regional coherence and comparability with similar countries

The regional assessment will take into account regional similarities or disparities, specific isolation factors or local conditions that are comparable in the region. The geographical services will evaluate whether the results of Step 1 appear appropriate from a regional perspective. Similarly, at this stage of the method, the results of comparable countries (comparable in size, level of development, emerging countries, OECD countries, small territories or islands) will be verified.

A report concluding the Step 2 phase will be established, including a summary of the opinions received, and an estimation of the budgetary impact.

Step 3: The final assessment

In the final assessment phase the Steering Committee for Delegations ‘EUDEL’ has at its disposal the intermediate results following Step 1 and Step 2. At this stage of the procedure the EUDEL proceeds with a comparative analysis and issues the final assessment …

This final assessment allows adjusting the scores. A final report will be established with a description of the proceedings and the conclusions, including a justification of the scores that have been adjusted and an estimation of the budgetary impact.’

10 Article 4 of the Guidelines provides:

‘Pursuant to Article 7 of Decision HR DEC(2013) 013 of the High Representative of the Union for Foreign Affairs and Security Policy of 17 December 2013 on the living conditions allowance and the additional allowance, the LCA Technical Group shall be consulted.

The Appointing Authority shall determine the percentages of the living conditions allowance for the different places of employment.’

Background to the dispute

11 The applicants, Mr David Martinez De Prins and the other persons whose names are set out in the annex, are officials or staff members employed at the European Union Delegation in Ghana ('the Delegation in Ghana').

12 On 23 February 2015, the Chief Operating Officer of the European External Action Service (EEAS) adopted, under Article 10 of Annex X to the Staff Regulations, a decision adjusting the amount of the LCA paid to staff employed in third countries ('the decision of 23 February 2015'). By that decision the LCA rate applicable to EU staff employed at the delegation in Ghana was reduced, from 25% to 20% of the reference amount.

13 The EEAS applied the decision of 23 February 2015 for the first time when drawing up the applicants' salary statements for March 2015, including the retrospective reduction of the LCA for the months of January and February 2015.

14 On 21 May 2015, the applicants lodged a complaint under Article 90(2) of the Staff Regulations with the appointing authority or the authority empowered to conclude contracts of employment ('the AECE') against the decision of 23 February 2015 as evidenced by their salary statements for March 2015.

15 By decision of 15 September 2015, the appointing authority and the AECE dismissed that complaint.

16 The applicants, without being contradicted by the EEAS, state that they did not learn of the decision of 15 September 2015 until 17 December 2015.

Procedure and forms of order sought

17 By application received at the Registry of the European Union Civil Service Tribunal on 28 December 2015, the applicants brought the present action. The case was registered as Case F-153/15.

18 The defence was lodged by the EEAS at the Registry of the Civil Service Tribunal on 23 March 2016.

19 Pursuant to Article 3 of Regulation (EU, Euratom) 2016/1192 of the European Parliament and of the Council of 6 July 2016 on the transfer to the General Court of jurisdiction at first instance in disputes between the European Union and its servants (OJ 2016 L 200, p. 137), the present case was transferred to the General Court in the state in which it was found as at 31 August 2016. It was registered as Case T-575/16.

20 By letter from the Registry of the General Court of 22 March 2017, the EEAS was invited to comply with measures of organisation of procedure adopted pursuant to Article 89(3)(a) and (d) and Article 90(1) of the Rules of Procedure of the General Court. It replied to the question raised by the Court in that regard and provided the documents requested of it within the time limit set.

21 The parties presented oral argument at the hearing held on 27 April 2017.

22 The applicants claim that the Court should:

– 'declare the decision of 23 February 2015 inapplicable, in so far as it reduces the LCA for European Union staff employed at the delegation in Ghana with effect from 1 January 2015';

– annul their salary statements for March 2015 and all subsequent salary statements, in so far as they apply the decision of 23 February 2015;

– order the EEAS to pay the costs.

23 The EEAS contends that the Court should:

– dismiss the action as unfounded;

– order the applicants to pay the costs.

24 By order of 19 May 2017, the President of the Fifth Chamber of the General Court decided to reopen the oral procedure and requested the EEAS, by way of a measure of organisation of procedure, to lodge certain documents. The EEAS replied to that request from the Court and provided the documents requested of it within the time limit set.

Law

Subject matter of the dispute

25 By their first head of claim, the applicants ask the Court to 'declare the decision of 23 February 2015 inapplicable, in so far as it reduces the LCA for European Union staff employed at the delegation in Ghana with effect from 1 January 2015'.

26 In that regard, it should be noted that, according to settled case-law, Article 277 TFEU gives expression to the general principle conferring upon any party to proceedings the right to challenge indirectly, for the purpose of obtaining the annulment of an act against which it can bring proceedings, the validity of a previous act of an EU institution which constitutes the legal basis of the contested act, if that party was not entitled to bring a direct action, under Article 263 TFEU, challenging the act which thus affected him without his having been in a position to seek its annulment. However, the possibility afforded by Article 277 TFEU of pleading the inapplicability of a rule or act of general application forming the legal basis of the contested implementing act does not constitute an independent right of action and recourse may be had to it only as an incidental plea. Article 277 TFEU may not be invoked in the absence of an independent right of action (see judgment of 27 October 2016, *ECB* v *Cerafogli*, T-787/14 P, EU:T:2016:633, paragraphs 42 and 43 and the case-law cited).

27 In the present case, in their second head of claim the applicants seek the annulment of their salary statements for March 2015 and all subsequent salary statements, in so far as they apply the decision of 23 February 2015. Furthermore, the pleas in law allege the unlawfulness of that decision. Consequently, as the applicants confirmed moreover at the hearing, they must be regarded as putting forward, by their first head of claim, a plea of illegality, for the purposes of Article 277 TFEU, against the decision of 23 February 2015, which is an act of general application, in support of their second head of claim, which seeks annulment of the individual decisions applying that measure.

28 However, according to case-law, that plea of illegality is admissible only if the applicants have the right to seek annulment of those individual decisions, a point which will be considered below.

29 By their second head of claim, the applicants ask the Court to annul their salary statements for March 2015 and all subsequent salary statements, in so far as they apply the decision of 23 February 2015.

30 In that regard, it should be noted that for any action brought by an official or retired official against the institution by which he is or was employed to be admissible, it is a necessary condition that there be an act adversely affecting him within the meaning of Article 90(2) and Article 91(1) of the Staff Regulations. According to settled case-law, only measures the legal effects of which are binding on

and capable of affecting, directly and immediately, the interests of the applicant by bringing about a distinct change in his legal position are acts which may be the subject of an action for annulment preceded, as required by Article 91 of the Staff Regulations, by a complaint (judgments of 14 February 1989, *Bossi* v *Commission*, 346/87, EU:C:1989:59, paragraph 23; of 18 September 2008, *Angé Serrano and Others* v *European Parliament*, T-47/05, EU:T:2008:384, paragraph 61, and of 16 July 2015, *EJ and Others* v *Commission*, F-112/14, EU:F:2015:90, paragraph 40).

31 Salary statements, such as those challenged in the present case, may constitute acts having an adverse effect and may, as such, be the subject of a complaint and ultimately an action (orders of 20 March 2014, *Michel* v *Commission*, F-44/13, EU:F:2014:40, paragraph 49, and of 23 April 2015, *Bensai* v *Commission*, F-131/14, EU:F:2015:34, paragraph 34).

32 That is so where a decision the subject matter of which is purely financial is liable, due to its nature, to be reflected in such a salary or pension statement. In that case, notification of the monthly salary or pension statement has the effect of setting time running for the purposes of the time limits for making a complaint and bringing an action, provided for respectively in Article 90(2) and Article 91(3) of the Staff Regulations, against an administrative decision, where the fact and scope of that decision become apparent, clearly and for the first time, from that statement (see judgment of 5 February 2016, *Barnett and Mogensen* v *Commission*, F-56/15, EU:F:2016:11, paragraph 33 and the case-law cited).

33 That is particularly the case in situations where the rights affected, following, for example, the amendment of a measure of general application, are essentially or purely financial in nature. In such a case, the cessation of a payment or a reduction in its amount, which will be apparent from the salary or pension statement following the amendment, can only result from a decision of the competent service to apply the measure of general application to the official or retired member of staff concerned (judgment of 23 April 2008, *Pickering* v *Commission*, F-103/05, EU:F:2008:45, paragraph 74; see also judgment of 5 February 2016, *Barnett and Mogensen* v *Commission*, F-56/15, EU:F:2016:11, paragraph 34 and the case-law cited).

34 However, a salary or pension statement, by its nature and purpose, does not have the characteristics of an act adversely affecting an official where it merely expresses in financial terms the effect of earlier legal decisions concerning the administrative situation of the official or retired official (judgment of 23 April 2008, *Pickering* v *Commission*, F-103/05, EU:F:2008:45, paragraph 72), or in other words, where it is apparent that it is merely confirmatory of those prior administrative decisions (see to that effect judgment of 4 September 2008, *Lafili* v *Commission*, F-22/07, EU:F:2008:104, paragraph 33).

35 In particular, if, according to the case-law cited in paragraphs 32 and 33 above, the salary statement showing, clearly and for the first time, a purely financial decision constitutes an actionable measure, the salary statements for subsequent months constitute acts which are purely confirmatory of that decision and cannot be the subject of an action for annulment (see judgment of 11 December 2007, *Sack* v *Commission*, T-66/05, EU:T:2007:370, paragraph 31 and the case-law cited).

36 In the present case, the Court is required to review the legality of the applicants' salary statements with effect from March 2015, not as such but in so far as they reflect the decision of the appointing authority and the AECE to apply in the case of the applicants the new LCA rate laid down for European Union staff employed at the delegation in Ghana, with effect from 1 January 2015, in the decision of 23 February 2015, which constitutes a measure of general application.

37 In those circumstances, the second head of claim, in so far as it seeks in essence annulment of the decision of the appointing authority and the AECE, contained in the applicants' salary statements for March 2015, to apply to them the new LCA rate as laid down in the decision of 23 February 2015, must be declared admissible, since the fact that the institution concerned is only applying the rules of general application in force is irrelevant in that respect (judgment of 4 July 1985, *Agostini and Others* v

Commission, 233/83, EU:C:1985:291, paragraph 13). On the other hand, the applicants are not entitled to seek annulment of the subsequent salary statements, which in any event constitute acts which are purely confirmatory.

38 Consequently, the plea of illegality in respect of the decision of 23 February 2015 made in the context of the first head of claim must also be declared admissible.

Substance

39 The applicants, in essence, put forward five pleas relating to the unlawfulness of the decision of 23 February 2015. The first alleges a procedural irregularity, the second an error of law, the third infringement of the principle of non-retroactivity, the fourth an error of assessment and the fifth inadequate reasoning.

40 In support of their first plea, the applicants contend that the decision of 23 February 2015 is unlawful since it is vitiated by irregularity, resulting from failure to comply with the procedure for fixing the LCA as laid down in the Guidelines. They contend that that procedure did not take place in accordance with the Guidelines in so far as, first, no consultation was held in order to rectify the failure to update the assessment that had become outdated and, second, the EEAS Technical Group ('the Technical Group') was not properly consulted. Furthermore, the applicants stated at the hearing that, since the heads of delegation had not been consulted at regional level, Step 2 of that procedure had not taken place correctly, thereby invalidating the procedure as a whole.

41 The EEAS challenges the applicants' arguments.

42 In that regard, first, it should be noted that, with regard to the procedure for fixing the LCA, Articles 3 and 4 of the Guidelines lay down rules that must be followed in order for the decision adopted at the end of that procedure to be valid.

43 Article 3 of the Guidelines provides that the procedure for fixing the LCA is organised in three steps. In Step 1 an assessment is carried out at national level for each place of employment. In Step 2 a regional comparison is made in order to ensure consistency between the different places of employment and, at the end of that stage, a report is drawn up. In Step 3 an overall comparison is made of the results of Step 1 and Step 2, which allows the scores to be adjusted, and, at the end of that stage, a final report is drawn up with a description of the proceedings and the conclusions, including a justification of the scores that have been adjusted and an estimation of the budgetary impact.

44 Furthermore, Article 4 of the Guidelines provides that the Technical Group must be consulted and will give its view in the form of a recommendation at the request of the appointing authority.

45 Secondly, under Article 10 of Annex X to the Staff Regulations, the LCA can be reviewed and, where appropriate, adjusted each year only after the opinion of the EEAS Staff Committee ('the Staff Committee') has been obtained.

46 It is therefore in the light of Article 10 of Annex X to the Staff Regulations and Articles 3 and 4 of the Guidelines that it is necessary to consider whether, in the present case, the procedure for fixing the LCA which preceded the adoption of the decision of 23 February 2015 was valid.

47 It is appropriate to consider, first of all, whether the three-step procedure for fixing the LCA, as provided for in the Guidelines, was complied with. In that regard, the Court, by a measure of organisation of procedure, requested the EEAS to produce, inter alia, the reports drawn up at the end of Step 2 and Step 3 of the procedure for fixing the LCA. The EEAS, in reply to the question put to it

by the Court, provided three tables giving the number of points assigned to each parameter according to the degree of difficulty and the final score reflecting the LCA rate allocated to each place of employment, for each of the three steps of that procedure.

48 In the light of the documents in this case and the answers given by the EEAS to the questions put by the Court, it appears that Step 2 and Step 3 of the procedure for fixing the LCA were not complied with in full. First, with regard to the Step 2 of the procedure, although Article 3 of the Guidelines provides that a regional assessment must be made, taking into account regional similarities or disparities, the table submitted by the EEAS, consisting only of a table without any additional explanations, does not make it clear that the results obtained for each place of employment were actually compared with other similar results in order to ensure a degree of regional coherence. Furthermore, although that article requires a report to be drawn up on the conclusions reached together with a summary of the opinions received, these were not supplied.

49 Moreover, the EEAS acknowledged at the hearing that no consultation of all the heads of delegation together took place at regional level in West Africa and in Europe during Step 2 of the procedure for fixing the LCA.

50 Secondly, with regard to Step 3 of the procedure for fixing the LCA, although Article 3 of the Guidelines provides that a final report is to be drawn up at the end of that stage, with a description of the proceedings carried out during it and the conclusions reached, including a justification of the scores that had been adjusted, no such final report was provided, the EEAS having produced only a table, which gives no description of the proceedings or conclusions containing a justification of the scores that had been adjusted. Hence, it is not possible to check whether that step was carried out in accordance with the requirements of that article.

51 Moreover, in response to questions at the hearing, the EEAS also acknowledged that it was not in a position to provide assurances that the reports that should have been adopted at the end of Step 2 and Step 3 of the procedure for fixing the LCA had been drawn up.

52 Next, it is necessary to consider the deadline for sending the documents to the Technical Group. The applicants point out in that connection the inefficiency of the mechanism for consulting the Technical Group, in the light of the administration's practice of sending out background documents only two days before the Technical Group meets, which makes it impossible to assess all the information needed for one hundred and twenty places of employment. In that regard, it should be noted that, although Article 4 of the Guidelines provides for consultation of the background documents by the Technical Group, there is no formal requirement either in the Guidelines or in the Decision of 17 February 2013 that sets a minimum deadline for sending out such documents. However, the absence of such a requirement does not exempt the EEAS from the requirement to act with due diligence, as part of its responsibilities, in order to ensure those documents are sent to the Technical Group sufficiently far in advance to enable it to carry out a full examination of them before delivering its opinion, given that those documents relate to one hundred and twenty places of employment. It is apparent from the documents in this case that Step 3 of the procedure for fixing the LCA was not completed until 21 January 2015, that the documents were not sent to the Technical Group until 23 January 2015 and that the latter gave its opinion on 26 January 2015. That timetable cannot be regarded as appropriate for considering there was proper consultation of that group. In addition, since the EEAS did not provide the reports that should have been adopted at the end of Step 2 and Step 3 of that procedure, it must be inferred that the Technical Group did not receive all the documents it needed in order to give its opinion.

53 Moreover, it is apparent from the Staff Committee's letter to the Personnel Director of EEAS of 19 February 2015 that that committee's opinion with regard to the decision of 23 February 2015 was positive, subject to two comments. In its first comment, the committee noted the failure to consult the heads of delegation in West Africa and in Europe and asked specifically that the assessment

concerning the delegation in Ghana should be declared to be under observation. In its second comment, the committee points out that when the Technical Group is being consulted it is essential that the members of the group should receive the documentation at least 10 days before the date of the meeting in order to be able to examine it properly.

54 Lastly, the applicants maintain that there was no consultation in order to remedy the failure to update the assessment that had become outdated. In that regard, it should be noted that Article 2 of the Guidelines states that the 'degree of isolation' and 'other local living conditions' parameters will be determined on the basis of data supplied by the delegations in reply to a questionnaire. In the present case, in order to determine the score assigned to those two parameters in the case of the delegation in Ghana, the EEAS took as its basis an assessment made in July 2014. Since the Guidelines establishing the new methodology for fixing the LCA were adopted in December 2014, that is to say six months after the assessment was made at that delegation, and the delegation was at no time consulted further in order to remedy that failing, it cannot be excluded that proper consultation would have made it possible to verify the assessment criteria and conduct an assessment that was more closely in accord with the local circumstances and with the Guidelines.

55 It is clear from all the above considerations that the applicants are right to contend that the procedure for fixing the LCA as provided for in the Guidelines was not properly followed in this case.

56 For a procedural irregularity to entail in the present case the annulment of the applicants' salary statements issued from March 2015 until 28 December 2015, in so far as they apply the new LCA rate as set by the decision of 23 February 2015, it must be shown that in the absence of such irregularity the contested decision might have been substantively different and that, therefore, those salary statements themselves would have applied a different LCA rate (see, to that effect and by analogy, judgment of 13 July 2000, *Hendrickx* v *Cedefop*, T-87/99, EU:T:2000:191, paragraph 64 and the case-law cited).

57 A procedural irregularity such as this can therefore be penalised by annulment of the contested decision only if it is shown that that irregularity could have had an influence on the content of the decision (see, to that effect, judgments of 29 October 1980, *van Landewyck and Others* v *Commission*, 209/78 to 215/78 and 218/78, not published, EU:C:1980:248, paragraph 47, and of 9 March 1999, *Hubert* v *Commission*, T-212/97, EU:T:1999:39, paragraph 53). That is so in the present case since it cannot be excluded that proper consultation could have had an influence on the content of the decision of 23 February 2015. Nor can it be excluded, moreover, that the absence of reports at the end of Step 2 and Step 3 of the procedure for fixing the LCA was likely to harm the applicants' interests and thus invalidate that procedure so far as they were concerned, since, without those irregularities in the course of the procedure, the decision of 23 February 2015 might have been substantively different.

58 In that connection, it is important to point out that the review, and where appropriate the adjustment of the LCA, give rise to an annual exercise covering all the places of employment in order to take changing circumstances into account. That exercise includes an analysis of the living conditions prevailing in each place of employment, in order to determine whether or not they are equivalent to those encountered in the European Union. The objective of updating the LCA is therefore to ensure that the amount of the allowance corresponds to the living conditions in a given place of employment on an annual basis. In that regard, having all the data provided by the delegations and complying with the consultation mechanism are of great importance for finding out about the local circumstances in each place of employment and being able to take changing circumstances into account. Moreover, a comparison of the results with living conditions in other similar regions, with living conditions in the European Union and with living conditions generally is essential in order to ensure a certain degree of accuracy and consistency. The irregularities committed during the procedure for fixing the LCA,

namely the lack of consultation and the failure to draw up reports at the end of Step 2 and Step 3 of that procedure, have an impact that is likely to affect assessment of the real situation of the delegation in Ghana and changes in it in relation to the previous year.

59 It is therefore appropriate, without there being a need to examine the applicant's other pleas, to annul the applicants' salary statements for March 2015 in so far as they apply the new LCA rate for officials and staff members employed at the delegation in Ghana, as laid down in the decision of 23 February 2015, because of the procedural irregularity vitiating that decision.

Costs

60 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the EEAS has been unsuccessful, it must be ordered to pay the costs, as applied for by the applicants.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

1. **Annuls the salary statements of Mr David Martinez De Prins, and of the other officials and staff members of the European External Action Service (EEAS) whose names are set out in the annex, issued by the EEAS for March 2015, in so far as those statements apply the decision of the EEAS of 23 February 2015 reducing, with effect from 1 January 2015, the living conditions allowance paid to European Union staff employed in Ghana;**

2. **Dismisses the action as to the remainder;**

3. **Orders the EEAS to pay the costs.**

Gratsias Labucka Ulloa Rubio

Delivered in open court in Luxembourg on 14 December 2017.

[Signatures]