



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

15 September 2016*

[Text rectified by order of 28 November 2016]

(Remunerations and pensions of officials and other servants of the European Union — Annual adjustment — Regulations (EU) Nos 422/2014 and 423/2014 — Irregularities during the procedure for the adoption of the acts — Failure to consult trade unions)

In Case T-456/14,

Association des Fonctionnaires Indépendants pour la Défense de la Fonction Publique Européenne/Association of Independent Officials for the Defence of the European Civil Service (TAO-AFI), established in Brussels (Belgium),

Syndicat des Fonctionnaires Internationaux et Européens/Union of International and European Civil Servants — European Parliament Section (SFIE-PE), established in Brussels,

represented by M. Casado García-Hirschfeld and J. Vanden Eynde, lawyers,

applicants,

v

European Parliament, represented by A. Troupiotis and E. Taneva, acting as Agents,

and

Council of the European Union, represented by M. Bauer and E. Rebasti, acting as Agents,

defendants,

supported by

European Commission, represented initially by J. Currall and G. Gattinara, and subsequently by Gattinara and F. Simonetti, acting as Agents,

intervener,

* Language of the case: French.

APPLICATION pursuant to Article 263 TFEU seeking the annulment of Regulations (EU) Nos 422/2014 and 423/2014 of the European Parliament and of the Council of 16 April 2014 adjusting, with effect from 1 July 2011 and 1 July 2012 respectively, the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto (OJ 2014, L 129, p. 5 and p. 12 respectively),

THE GENERAL COURT (Eighth Chamber),

composed of D. Gratsias, President, M. Kancheva (Rapporteur) and C. Wetter, Judges,

Registrar: S. Bukšek Tomac, Administrator,

having regard to the written part of the procedure and further to the hearing on 18 March 2016,

gives the following

Judgment

Background to the dispute

- 1 The Staff Regulations of Officials of the European Union ('the Staff Regulations'), annexed to Regulation No 31 (EEC), No 11 (EAEC) laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 45, 14.6.1962, p. 1385 — Special Edition 1959-62, November 1972), amended by Regulation (EU, Euratom) No 1080/2010 of the European Parliament and the Council of 24 November 2010 (OJ 2010 L 311, p. 1), provides in Article 64:

'An official's remuneration expressed in euros shall, after the compulsory deductions set out in these Staff Regulations or in any implementing regulations have been made, be weighted at a rate above, below or equal to 100%, depending on living conditions in the various places of employment.

These weightings shall be adopted by the Council, acting by a qualified majority on a proposal from the Commission as provided in Article 16(4) and (5) [TEU].'

- 2 Article 65 of the Staff Regulations provides:

'1. The Council shall each year review the remuneration of the officials and other servants of the Union. This review shall take place in September in the light of a joint report by the Commission based on a joint index prepared by the Statistical Office of the European Union in agreement with the national statistical offices of the Member States; the index shall reflect the situation as at 1 July in each of the countries of the Union.

During this review the Council shall consider whether, as part of economic and social policy of the Union, remuneration should be adjusted. Particular account shall be taken of any increases in salaries in the public service and the needs of recruitment.

2. In the event of a substantial change in the cost of living, the Council shall decide within two months what adjustments shall be made to the weightings, and if appropriate to apply them retrospectively.

3. For the purposes of this article, the Council shall act by a qualified majority on a proposal from the Commission as provided in Article 16(4) and (5) [TEU].'

- 3 Under Article 82(2) of the Staff Regulations, where the Council, in accordance with Article 65(1) of the Staff Regulations, decides to adjust remunerations, the same adjustment is to be applied to pensions.
- 4 Pursuant to Article 65a of the Staff Regulations, the rules for implementing Articles 64 and 65 thereof are set out in Annex XI to the Staff Regulations.
- 5 Annex XI, headed ‘Rules for implementing Articles 64 and 65 of the Staff Regulations’, includes several chapters: Chapter 1, comprising Articles 1 to 3, headed ‘Annual review of remuneration provided for in Article 65(1) of the Staff Regulations’, and Chapter 4 headed ‘Creation and withdrawal of correction coefficients (Article 64 of the Staff Regulations)’.
- 6 Article 1 of Annex XI to the Staff Regulations, which is part of Section 1 in Chapter 1 of that annex, provides that, for the purposes of the review provided for in Article 65(1) of the Staff Regulations, the statistical office of the European Union, Eurostat, is to draw up before the end of October every year a report on changes in the cost of living in Brussels (Belgium) (Brussels International Index), changes in the cost of living outside Brussels (economic parities and implicit indices) and changes in the purchasing power of salaries of national civil servants in central government in eight Member States (specific indicators). Article 1 also contains details of the process to be followed by Eurostat, with the cooperation of the Member States, in order to calculate those changes.
- 7 Article 3 of Annex XI to the Staff Regulations, which forms Section 2 in Chapter 1 of that annex, headed ‘Arrangements for the annual adjustment of remuneration and pensions’, provides:

‘1. Under Article 65(3) of the Staff Regulations, the Council, acting on a Commission proposal and on the basis of the criteria set out in Section 1 of this Annex, shall take a decision before the end of each year adjusting remuneration and pensions, with effect from 1 July.

2. The amount of the adjustment shall be obtained by multiplying the Brussels International Index by the specific indicator. The adjustment shall be in net terms as a uniform across-the-board percentage.

3. The amount of the adjustment thus fixed shall be incorporated, in accordance with the following method, in the basic salary tables appearing in Article 66 of the Staff Regulations ...

...

5. No correction coefficient shall be applicable in Belgium and Luxembourg. The correction coefficients applicable:

(a) to the salaries of officials of the European Union serving in each of the Member States and in certain other places of employment,

(b) pensions paid in the other Member States for the part corresponding to the acquired rights acquired before 1 May 2004,

shall be determined on the basis of the ratios between the corresponding economic parities referred to in Article 1 of this Annex and the exchange rates specified in Article 63 of the Staff Regulations for the relevant countries.

The procedures laid down in Article 8 of this Annex concerning the retrospective application of correction coefficients in places of employment with a high rate of inflation shall apply.

...’

- 8 Article 8 of Annex XI to the Staff Regulations fixes the dates when the annual and intermediate adjustments of the correction coefficient are to come into effect for places with a high cost-of-living increase.
- 9 Chapter 5 of Annex XI to the Staff Regulations is headed 'Exception Clause'. It consists solely of Article 10 which provides:
- 'If there is a serious and sudden deterioration in the economic and social situation within the Union, assessed in the light of objective data supplied for this purpose by the Commission, the latter shall submit appropriate proposals on which the European Parliament and Council shall decide in accordance with Article 336 [TFEU].'
- 10 Under Article 15(1) of Annex XI to the Staff Regulations, its provisions are to apply from 1 July 2004 to 31 December 2012.
- 11 In December 2010 the Council stated that 'the latest financial and economic crises that [had] occurred within the [European Union] and that result[ed] in substantial fiscal adjustments and increased job uncertainty in several Member States create[d] a serious and sudden deterioration of the economic and social situation within the Union'. The Council asked the Commission to submit, on the basis of Article 10 of Annex XI to the Staff Regulations and in the light of objective data supplied for that purpose by the Commission, appropriate proposals in time for the European Parliament and the Council to examine and adopt them before the end of 2011 (judgment of 19 November 2013, *Commission v Council*, C-63/12, EU:C:2013:752, paragraph 12).
- 12 On 13 July 2011, the Commission presented a report to the Council on the exception clause (Article 10 of Annex XI to the Staff Regulations) (COM(2011) 440 final). According to that report, the indicators showed that a gradual economic recovery was underway within the Union. The report concluded that there was no serious and sudden deterioration in the economic and social situation within the European Union during the reference period from 1 July 2010, the date when the last annual adjustment of remuneration took effect, and mid-May 2011, the date when the latest data were made available, and that there was no need to submit a proposal under Article 10 of Annex XI to the Staff Regulations. Examination of the report of 13 July 2011 led to subsequent discussions within the Council, the outcome being that a further request was made by the Council to the Commission that Article 10 should be applied and that an appropriate proposal for the adjustment of remuneration should be submitted in time for the European Parliament and the Council to examine and adopt it before the end of 2011 (judgment of 19 November 2013, *Commission v Council*, C-63/12, EU:C:2013:752, paragraphs 13 to 15).
- 13 In response to that request, the Commission submitted Communication COM(2011) 829 final of 24 November 2011, providing supplementary information to the report of 13 July 2011, which was based on, inter alia, the European economic forecasts published by the Commission's Directorate-General for Economic and Financial Affairs on 10 November 2011. In that supplementary information, the Commission stated that those forecasts 'show[ed] worsening trends for 2011 as compared to the Forecast released in spring both as regards economic and social indicators and that the European economy [was] currently experiencing a turmoil.' Nonetheless, it considered that, taking into account a number of factors, the Union was not facing an extraordinary situation for the purposes of Article 10 of Annex XI to the Staff Regulations such as to justify the adoption of measures going beyond the loss of purchasing power brought about by the 'normal' method laid down in Article 3 of Annex XI. It stated that, consequently, it was not in a position to trigger the exception clause without being in breach of Article 10. On the same date, the Commission submitted a proposal for a Council Regulation adjusting, with effect from 1 July 2011, the remuneration and pension of the officials and other servants of the European Union and the correction coefficients applied thereto (COM(2011) 820 final), with an explanatory memorandum ('the November 2011 proposal for adjustment of

remuneration'). The adjustment of remuneration proposed on the basis of the 'normal' method laid down in Article 3 of Annex XI to the Staff Regulations was 1.7% (judgment of 19 November 2013, *Commission v Council*, C-63/12, EU:C:2013:752, paragraphs 16 and 17).

- 14 Moreover, on 13 December 2011, the Commission forwarded to the Parliament and the Council a proposal for a regulation of the Parliament and the Council amending the Staff Regulations ('the December 2011 proposal for amendment of the Staff Regulations').
- 15 By Council Decision 2011/86/EU of 19 December 2011 concerning the Commission's proposal for a Council Regulation adjusting with effect from 1 July 2011 the remuneration and pension of the officials and other servants of the European Union and the correction coefficients applied thereto (OJ 2011 L 341, p. 54), the Council decided not to adopt the November 2011 proposal for adjustment of remuneration.
- 16 On 3 February 2012, the Commission brought an action for the annulment of Decision 2011/866 (Case C-63/12). It also sent the Presidency of the Council a letter dated 25 January 2012, registered at the Secretariat of the Council on 20 February 2012, calling on it to adopt, pursuant to Article 265 TFEU, the November 2011 proposal for adjustment of remuneration within two months of receipt of that letter. The Council 'took note' of that letter.
- 17 On 26 April 2012, the Commission brought an action on the basis of Article 265 TFEU, by which it asked the Court of Justice to declare that, by not adopting the November 2011 proposal for adjustment of remuneration, the Council had failed to fulfil its obligations under the Staff Regulations (Case C-196/12).
- 18 On 9 February 2013, the Council brought its own action seeking, by way of principal claim, annulment of the Communication from the Commission of 24 November 2011, in so far as the European Commission there definitively refused to submit appropriate proposals to the European Parliament and to the Council on the basis of Article 10 of Annex XI of the Staff Regulations and the November 2011 remuneration adjustment proposal; and, in the alternative, a declaration, under Article 265 TFEU, of an infringement of the Treaties by reason of the Commission's failure to submit appropriate proposals to the European Parliament and to the Council on the basis of Article 10 of Annex XI to the Staff Regulations (Case C-66/12).
- 19 On 23 October 2013, following tripartite negotiations, the Parliament and the Council adopted the December 2011 proposal for amendment of the Staff Regulations, in the form 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 regulation inter alia introduced in Annex XI to the Staff Regulations a new method for the annual adjustment of remuneration referred to in Article 65(1) of the Staff Regulations.
- 20 However, Article 19 of Annex XIII to the Staff Regulations, as amended by Regulation No 1023/2013, provided that Articles 63 to 65, 82 and 83a of the Staff Regulations, Annexes XI and XII thereto and Articles 20(1), 64, 92 and 132 of the Conditions of Employment of Other Servants as in force before 1 November 2013, that is to say, the provisions on adjustments to remuneration and pensions of officials and other servants of the European Union, continued to be in force exclusively for the purpose of any adjustment required to comply with a judgment of the Court of Justice of the European Union under Article 266 of the Treaty on the Functioning of the European Union on the application of those articles.

- 21 On 19 November 2013, the Court of Justice dismissed the actions brought by the Commission in Cases C-63/12 and C-196/12, and, in consequence, declared that there was no need to adjudicate on the action brought by the Council in Case C-66/12 (judgments of 19 November 2013, *Council v Commission*, C-66/12, EU:C:2013:751; 19 November 2013, *Commission v Council*, C-63/12, EU:C:2013:752; and 19 November 2013, *Commission v Council*, C-196/12, EU:C:2013:753).
- 22 On 29 November 2013, the Commission informed the representative trade unions and staff associations ('OSPs') that a social dialogue meeting concerning the judgments of 19 November 2013, *Council v Commission* (C-66/12, EU:C:2013:751); 19 November 2013, *Commission v Council* (C-63/12, EU:C:2013:752); and 19 November 2013, *Commission v Council* (C-196/12, EU:C:2013:753) would be held on 2 December 2013.
- 23 On 9 December 2013, the Vice-President of the Commission in charge of administration informed the staff representatives that, in agreement with the President, he was going to propose to the college a salary adjustment of 0.9% for 2011, with effect from 1 July 2011, and 0.9% for 2012, with effect from 1 July 2012.
- 24 On 10 December 2013, the Commission informed the staff representatives that, on the same day, on the basis of Article 10 of Annex XI to the Staff Regulations, it had provided the Parliament and the Council with proposals for regulations adjusting the remuneration and pensions of officials and other servants of the European Union by 0.9%, for 2011, with effect from 1 July 2011, and 0.9% for 2012, with effect from 1 July 2012.
- 25 On 17 December 2013, following an information meeting organised by the Vice-Presidency of the Commission, the Central Staff Committee indicated, by a declaration addressed to the College of Commissioners, that it disagreed with the regulatory proposals referred to in paragraph 24 above, taking the view that the figures reproduced in those proposals were completely arbitrary, not based on any specific statistics or objective factors whatsoever and were completely lacking any technical basis.
- 26 By letters of 18 December 2013 and 26 February 2014, the applicants, the Association des Fonctionnaires Indépendants pour la Défense de la Fonction Publique Européenne/Association of Independent Officials for the Defence of the European Civil Service (TAO-AFI) and the Syndicat des Fonctionnaires Internationaux et Européens/Union of International and European Civil Servants — European Parliament Section (SFIE-PE), informed the President of the Parliament of their disagreement about the Commission's new proposal, on the ground that it was not founded on any verifiable method of calculation and was based on considerations of expediency.
- 27 By internal email of 19 December 2013, the Director-General of Human Resources of the Commission, Ms Irene Souka, informed the Commission staff, inter alia, that the Commission had a legal obligation to submit new remuneration adjustment proposals for 2011 and 2012 to the Parliament and the Council and that those proposals provided for an adjustment of 0.9% for 2011, with effect from 1 July 2011, and 0.9% for 2012, with effect from 1 July 2012. It was further stated in that email that the Parliament's Legal Affairs Committee had lent its support to those proposals on 16 December 2013 and that they were now to be forwarded to the Council at the beginning of 2014.
- 28 By a letter of 22 January 2014, Ms Souka replied to an open letter dated 25 November 2013 and an email of 13 January 2014, addressed to Mr Šefčovič, Vice-President of the Commission, by an OSP. In that letter, she observed, inter alia, that two social dialogue meetings had been held before the Commission's proposal concerning the remuneration adjustment was submitted to the Parliament and the Council, including an exchange of views with all OSPs on 2 December 2013 pertaining to the various alternatives available to the Commission in the light of the judgment of 19 November 2013, *Commission v Council* (C-63/12, EU:C:2013:752), and a presentation to all OSPs by Mr Šefčovič on 9 December 2013 on the approach that the Commission intended to adopt in that regard.

- 29 On 4 March 2014, a tripartite negotiation on that proposal took place between the Parliament, the Council and the Commission, which led to an agreement on the annual remuneration and pensions adjustment for officials and other servants of the European Union for 2011 and 2012.
- 30 By email of 7 March 2014, the Commission informed the applicants that, under the agreement that resulted from the tripartite negotiation of 4 March 2014, the annual adjustments were to be 0% for 2011, with effect from 1 July 2011, and 0.8% for 2012, with effect from 1 July 2012. It explained that that agreement was the result of intense negotiations with the Parliament and the Council following the judgment of 19 November 2013, *Commission v Council* (C-63/12, EU:C:2013:752), and was also in keeping with its wish to reach an expeditious and reasonable agreement on all matters relating to the annual remuneration adjustment. The Commission further indicated that, although its initial proposal was an adjustment of 0.9% for 2011 and 0.9% for 2012, it had had to take account of the Council's mandate, which allowed for an adjustment of 0% for 2011 and 0% for 2012, and of the discretion recognised in the Court's judgment for the Parliament and the Council.
- 31 On 11 March 2014, the Parliament adopted, in plenary session, its position on a compromise text resulting from the tripartite negotiation of 4 March 2014, according to which a remuneration and pension adjustment rate of 0% for 2011 and 0.8% for 2012 would be applied, with a freeze on remuneration and pensions for 2013 and 2014. On 16 April 2014, the Council approved the Parliament's position and, pursuant to Article 294(4) TFEU, Regulations (EU) Nos 422/2014 and 423/2014 of the European Parliament and of the Council of 16 April 2014 adjusting with effect from 1 July 2011 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto (OJ 2014, L 129, p. 5 and p. 12 respectively) ('the contested regulations') were adopted.
- 32 The recitals of Regulation No 422/2014 read as follows:
- (1) In its judgment in Case C-63/12, *Commission v Council*, the [Court of Justice] clarified that the institutions [were] obliged to decide each year on the adjustment of remuneration, either by undertaking a "mathematical" adjustment according to the method laid down in Article 3 of Annex XI to the Staff Regulations, or by setting aside that "mathematical" calculation in accordance with Article 10 thereof.
 - (2) The purpose of Article 19 of Annex XIII to the Staff Regulations, as amended by Regulation [No 1023/2013], is to enable the institutions to take the necessary measures to settle their disputes concerning the 2011 and 2012 adjustments of remuneration and pensions in compliance with a judgment of the Court of Justice, taking due account of the legitimate expectation of staff that the institutions are to decide each year on the adjustment of their remuneration and pensions.
 - (3) In order to comply with the judgment of the Court of Justice in Case C-63/12, where the Council establishes that there is a serious and sudden deterioration in the economic and social situation within the Union, the Commission is to submit a proposal under the procedure laid down in [Article 336 TFEU] in order to involve the [Parliament] in the legislative process. On 4 November 2011, the Council stated that the financial and economic crisis taking place within the Union, and resulting in substantial fiscal adjustments in most Member States, constituted a serious and sudden deterioration of the economic and social situation within the Union. The Council thus requested the Commission, in accordance with Article 241 TFEU, to implement Article 10 of Annex XI to the Staff Regulations and to submit an appropriate remuneration adjustment proposal.
 - (4) The [Court] has confirmed that, under the exception clause, the [Parliament] and the Council have a wide margin of discretion as regards the adjustment of remuneration and pensions. Economic and social data for the period from 1 July 2010 to 31 December 2011, such as the

financial and economic crisis affecting a number of Member States in autumn 2011 which caused an immediate deterioration in the economic and social situation in the Union and resulted in substantial macroeconomic adjustments, the high level of unemployment and the high level of public deficit and debt in the Union, make it appropriate to set the adjustment of remuneration and pensions in Belgium and Luxembourg to 0% for 2011. That adjustment is part of a global approach to settle the disputes regarding the 2011 and 2012 adjustments of remuneration and pensions, which also involves an adjustment of 0.8% for 2012.

- (5) Consequently, during a period of five years (2010-2014) the adjustment of remuneration and pensions of officials and other servants of the European Union is as follows: in 2010, the application of the method laid down in Article 3 of Annex XI to the Staff Regulations resulted in an adjustment of 0.1%. For 2011 and 2012 the result of the global approach to settle the disputes regarding the 2011 and 2012 adjustments of remuneration and pensions leads to an adjustment of 0% and 0.8%, respectively. Furthermore, as part of the political compromise on the reform of the Staff Regulations and of the Conditions of Employment of Other Servants, it was decided to freeze remuneration and pensions for the years 2013 and 2014.'

33 The recitals of Regulation No 423/2014 read as follows:

- (1) In its judgment in Case C-63/12, *Commission v Council*, the [Court of Justice] clarified that the institutions [were] obliged to decide each year on the adjustment of remuneration, either by undertaking a “mathematical” adjustment according to the method laid down in Article 3 of Annex XI to the Staff Regulations, or by setting aside that “mathematical” calculation in accordance with Article 10 thereof.
- (2) The purpose of Article 19 of Annex XIII to the Staff Regulations, as last amended by Regulation [No 1023/2013], is to enable the institutions to take the necessary measures to settle their disputes concerning the 2011 and 2012 adjustments of remuneration and pensions in compliance with a judgment of the Court of Justice, taking due account of the legitimate expectation of staff that the institutions are to decide each year on the adjustment of their remuneration and pensions.
- (3) In order to comply with the judgment of the Court of Justice in Case C-63/12, where the Council establishes that there is a serious and sudden deterioration in the economic and social situation within the Union, the Commission is to submit a proposal under the procedure laid down in [Article 336 TFEU] in order to involve the [Parliament] in the legislative process. On 25 October 2012, the Council stated that the Commission’s assessment as presented in its report on the exception clause did not reflect the serious and sudden deterioration in the economic and social situation in the Union in 2012, as the publicly available objective economic data suggested. The Council thus requested the Commission to submit, in accordance with Article 10 of Annex XI to the Staff Regulations, an appropriate proposal for the salary adjustment for 2012.
- (4) The [Court] has confirmed that, under the exception clause, the [Parliament] and the Council have a wide margin of discretion as regards the adjustment of remuneration and pensions. Economic and social data for the period from 1 July 2011 to 31 December 2012, such as the aftermath of the economic downturn in autumn 2011 resulting in economic recession in the Union and a deteriorating social situation, as well as the continuing high levels of unemployment and of public deficit and debt in the Union, make it appropriate to set the adjustment of remuneration and pensions in Belgium and Luxembourg to 0.8% for 2012. That adjustment is part of a global approach to settle the disputes regarding the 2011 and 2012 adjustments of remuneration and pensions, which also involves an adjustment of 0% for 2011.

(5) Consequently, during a period of five years (2010-2014) the adjustment of remuneration and pensions of officials and other servants of the European Union is as follows: in 2010, the application of the method laid down in Article 3 of Annex XI to the Staff Regulations resulted in an adjustment of 0.1%. For 2011 and 2012 the result of the global approach to settle the disputes regarding the 2011 and 2012 adjustments of remuneration and pensions leads to an adjustment of 0% and 0.8%, respectively. Furthermore, as part of the political compromise on the reform of the Staff Regulations and of the Conditions of Employment of Other Servants, it was decided to freeze remuneration and pensions for the years 2013 and 2014.'

Procedure and forms of order sought by the parties

- 34 By application lodged at the General Court Registry on 16 June 2014, the applicants brought the present action.
- 35 By document lodged at the Court Registry on 10 September 2014, the Commission sought leave to intervene in support of the forms of order sought by the Parliament and the Council.
- 36 By separate documents lodged at the Court Registry on 17 September 2014, the Parliament and the Council raised objections of inadmissibility under Article 114(1) of the Rules of Procedure of the General Court of 2 May 1991.
- 37 On 31 October 2014, the applicants lodged their observations on the objections of inadmissibility raised by the Parliament and the Council.
- 38 By order of 25 February 2015, the General Court decided to reserve its decision on the objection of inadmissibility for the final judgment.
- 39 The Parliament and the Council filed their defences on 14 April 2015.
- 40 By order of 15 April 2015, the President of the Eighth Chamber of the General Court granted the Commission leave to intervene.
- 41 The Commission lodged its statement in intervention on 29 May 2015.
- 42 On 20 July 2015, the applicants lodged their observations on the Commission's statement in intervention.
- 43 On 22 January 2016, the Court addressed a number of questions to the parties by way of measures of organisation of procedure provided for in Article 89(3)(a) and (b) of the Rules of Procedure. The parties responded to that measure of organisation of procedure on 8 February 2016.
- 44 The applicants claim that the Court should:
- annul the contested regulations;
 - order the Parliament and the Council to pay the costs.
- 45 The Parliament and the Council, supported by the Commission, contend that the Court should:
- declare the action inadmissible;
 - in the alternative, dismiss the action;

— order the applicants to pay the costs.

Law

46 The applicants put forward a single plea in law in support of their action, alleging infringement of essential procedural requirements of the contested regulations, owing to the Parliament's and the Council's failure to observe their procedural rights provided for by Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ 2002, L 80, p. 29), Article 9(3), Articles 10, 10a, 10b, 10c, 24b, 55 of, and Article 1 of Annex II to, the Staff Regulations, as amended by Regulation No 1023/2013, and by the Framework Agreement of 12 July 1990 and the Framework Agreement of 18 December 2008 concluded by the Parliament and the Commission respectively with several OSPs, which guaranteed the exercise of rights to information and consultation of OSPs, as enshrined in Articles 27 and 28 of the Charter of Fundamental Rights of the European Union and Article 154 TFEU.

Admissibility

47 The Parliament and the Council each submit that the action for annulment is inadmissible, on the grounds that, first, since the contested regulations were adopted under the ordinary legislative procedure, they fall within the category of measures of general application, in respect of which, under the fourth paragraph of Article 263 TFEU, the admissibility of actions for annulment brought by natural or legal persons is subject to observance of the conditions of direct and individual concern, which are not met in the present case. Second, nor do the applicants fulfil the requirements laid down by the case-law for admissibility of an action for annulment brought by an association.

48 The Commission concurs in the line of argument put forward by the Parliament and the Council.

49 The applicants submit that they do meet the requirement of direct and individual concern laid down by the fourth paragraph of Article 263 TFEU. They are directly affected by the contested regulations inasmuch as they have the immediate effect of depriving them of their right to consultation and of their right of negotiation, enshrined in Articles 27 and 28 of the Charter of Fundamental Rights, on which they may rely as recognised OSPs, on the basis of the provisions of Directive 2002/14, Article 9(3), Articles 10, 10a, 10b, 10c, 24b, 55 of, and Article 1 of Annex II to, the Staff Regulations, as amended by Regulation No 1023/2013, and the provisions of the Framework Agreement of 12 July 1990, concluded by the OSPs and the Parliament, and also the Framework Agreement of 18 December 2008, concluded by the OSPs and the Commission. Furthermore, they are individually affected by the contested regulations by reason of their status as EU staff representatives, which distinguishes them in relation to any other person. They are also differentiated by reason of the recognition of their role as official interlocutors in the Framework Agreement of 12 July 1990 and the Framework Agreement of 18 December 2008.

50 The applicants submit they are also entitled to bring proceedings on the basis of the case-law on admissibility of actions for annulment brought by associations, observing that, in accordance with that case-law, their status as recognised negotiators is affected directly and individually by the contested regulations inasmuch as they produce legal effects liable to bring about a significant change to the legal position as a social partner.

51 Moreover, the applicants dispute the Commission's arguments to the effect that they may not derive rights under the Framework Agreement of 18 December 2008 on the ground that they do not meet the criteria of representativeness laid down therein. First of all, they submit that, unlike SFIE-PE, SFIE — Commission Section is not a party to the present action, with the result that the

Commission's arguments concerning its lack of representativeness are irrelevant. Secondly, they submit that TAO-AFI has not received any notification from the Commission concerning a possible suspension of its rights under that framework agreement, as provided for under Article 11 thereof and that, in any event, it is a member of the PLUS confederation, which itself is a representative union grouping.

- 52 It must be borne in mind in that regard that, as correctly pointed out by the Parliament and the Council, the contested regulations were adopted on the basis of Article 336 TFEU, in accordance with the ordinary legislative procedure.
- 53 It is, therefore, clear that the contested regulations fall within the category of measures of general application, in respect of which, under the fourth paragraph of Article 263 TFEU, the admissibility of actions for annulment brought by natural or legal persons is subject to observance of the conditions of direct and individual concern (see, to that effect, judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraphs 56 to 60).
- 54 Contrary to the applicants' assertions in paragraph 10 of the application, even if it were established that they had a right to information and consultation in respect of the remuneration and pension adjustment proposal submitted by the Commission to the Parliament and the Council, which led to the adoption of the contested regulations, that does not establish that they are directly affected by those regulations.
- 55 However, it must be remembered that, in accordance with settled case-law, actions brought by associations, be they OSPs or groupings of OSPs, have been held to be admissible in three types of situations: (i) where a legal provision expressly confers on professional associations a number of powers of a procedural nature; (ii) where the association represents the interests of its members which themselves have *locus standi*; and (iii) where the association is differentiated by reason of the impact on its own interests as an association, in particular because its position as a negotiator has been affected by the measure of which the annulment is sought (see, to that effect, orders of 8 September 2005, *Lorte and Others v Council*, T-287/04, EU:T:2005:304, paragraph 64 and the case-law cited, and 3 April 2014, *CFE-CGC France Télécom-Orange v Commission*, T-2/13, not published, EU:T:2014:226, paragraphs 27 to 31).
- 56 In the present case, the applicants do not purport to represent the interests of their members, officials and other servants of the EU, who themselves would be entitled to bring proceedings, but maintain that they have legal standing to bring proceedings inasmuch as: (i) the contested regulations have affected their own interests, and (ii) their procedural rights have been infringed by the Council and the Parliament.

Whether the applicants' own interests are affected

- 57 It should be borne in mind that, according to the case-law, an organisation formed for the protection of the collective interests of a category of persons, cannot be regarded as being directly and individually concerned by a measure affecting the general interests of that category (judgment of 18 March 1975, *Union syndicale and Others v Council*, 72/74, EU:C:1975:43, paragraph 17).
- 58 Furthermore, the mere fact that those organisations took part in the negotiations which preceded the adoption of the contested regulations is not sufficient to change the nature of the right of action which, in the context of Article 263 TFEU, they may possess in relation to those provisions (see, to that effect, judgment of 18 March 1975, *Union syndicale and Others v Council*, 72/74, EU:C:1975:43, paragraph 19).

- 59 Consequently, it is for the applicants to demonstrate that they are differentiated in relation to the contested regulations by reason of their own interests being affected in their capacity as an OSP.
- 60 In the present case, the applicants have merely asserted that the contested regulations affected their position as negotiator in their capacity as staff representative under the Framework Agreement of 12 July 1990 and the Framework Agreement of 18 December 2008, in so far as they produce binding legal effects.
- 61 Accordingly, it is clear that the applicants have failed to demonstrate that the contested regulations affect their own interests as described in the case-law cited in paragraph 55 above.

The existence of a legal provision expressly conferring a number of procedural powers on professional associations

- 62 In their single plea in law, the applicants submit, in essence, that the procedural guarantees provided for in the provisions of Directive 2002/14, Article 9(3), Articles 10, 10a, 10b, 10c, 24b, 55 of, and Article 1 of Annex II to, the Staff Regulations, the Framework Agreement of 18 December 2008 and the Framework Agreement of 12 July 1990, the purpose of which is to enable the exercise of OSPs' rights to information and consultation, enshrined in Articles 27 and 28 of the Charter of Fundamental Rights and Article 154 TFEU, were not observed in the adoption of the contested regulations, which constitutes an infringement of their essential procedural requirements.
- 63 The Parliament and the Council submit that the applicants do not enjoy any procedural guarantees in the context of the remuneration adjustment that led to the adoption of the contested regulations. Thus, in the Parliament's submission, the applicants do not derive any procedural rights directly from Article 336 TFEU or from Articles 27 and 28 of the Charter of Fundamental Rights. Nor can the applicants derive any procedural rights from the provisions of the Staff Regulations on which they rely. Article 9(3) of the Staff Regulations does not contain any reference to OSPs; rather, it concerns solely the tasks of the Staff Committee.
- 64 Moreover, Article 10 of the Staff Regulations, which provides for consultation of the Staff Regulations Committee on any proposal for revision of the Staff Regulations, is not applicable in the present case, since the contested regulations are, according to the Parliament and the Council, merely an amendment to the Staff Regulations and not a 'revision' thereof. This is particularly clear from the use of the expression 'each year review the remunerations' in Articles 64 and 65 of the Staff Regulations and in Annex XI to the Staff Regulations, which governs the rules for applying those provisions. Thus, according to the Parliament and the Council, although the legislator's intention had been to submit the proposals for amending the basic rules of the Staff Regulations to the procedure under Article 10 thereof, that is not the case for amendments to the Staff Regulations linked to remuneration adjustment. This also holds true for Article 10a and Article 10b of the Staff Regulations, which also concern the proposals for revision of the Staff Regulations referred to by Article 10 of the Staff Regulations.
- 65 Moreover, even if Article 10 of the Staff Regulations were applicable, it would not provide any procedural rights for the OSPs, since the rights in question are reserved for the Staff Regulations Committee. Nor do Articles 10b and 10c of the Staff Regulations provide for any such rights. The Parliament and the Council observe that, in any consultations that may concern proposals for revision of the Staff Regulations under Article 10b, the OSPs act without prejudice to the powers of the Staff Committees under the Staff Regulations. Similarly, they submit that any agreements that may be concluded by an institution with OSPs covered by Article 10c, 'may not entail any amendment of the Staff Regulations or any budgetary commitments, nor may they affect the working of the institution concerned'. Otherwise, in their submission, only officials employed by those institutions that have

concluded such agreements and that play a role in the adoption of the contested regulations would be able to rely on those procedural rights, which would give rise to discrimination against EU officials employed by other institutions.

- 66 The Parliament and the Council submit that the scope of Directive 2002/14, also relied on by the applicants, is unrelated to the remuneration adjustment procedure for EU officials.
- 67 The Commission adds that the applicants cannot derive any procedural guarantee from the Framework Agreement of 18 December 2008, as they are not representative OSPs for the purposes of that agreement.
- 68 It should be noted at the outset in that regard that the second to fourth paragraphs of Article 154 TFEU, relied on by the applicants, merely lay down the circumstances in which the Commission exercises its power of initiative in the EU's implementation of its competences in the field of social policy, as defined in Article 153 TFEU. Thus Article 154 TFEU provides that, before presenting its social policy proposals, the Commission is required to consult the social partners about the possible focus of EU action, then, if it decides that action is desirable, to consult the social partners about the content of the planned proposal, with that consultation potentially being the opportunity for those partners to make the Commission aware of their willingness to conclude amongst themselves an agreement at EU level in accordance with the process provided for in Article 155 TFEU. It is therefore clear that Article 154 TFEU does not provide for a general right to information and consultation for OSPs.
- 69 It should also be borne in mind that, according to the case-law, the fact that a person intervenes in one way or another in the procedure leading to the adoption of an EU measure may distinguish that person as an individual in relation to the measure in question only when the applicable EU law grants that person certain procedural guarantees. Except where there is an express provision to the contrary, neither the process of enacting measures of general application nor those measures themselves require, under the general principles of EU law, such as the right to a hearing, the participation of the persons affected as the interests of those persons are deemed to be represented by the political bodies called to adopt those measures (judgment of 2 March 2010, *Arcelor v Parliament and Council*, T-16/04, EU:T:2010:54, paragraph 119).
- 70 Articles 27 and 28 of the Charter of Fundamental Rights, also relied on by the applicants, lay down the right to consultation and information for workers in undertakings and the right of negotiation and collective action. Thus, according to the case-law, those provisions apply to the EU institutions in their relations with their staff, as is apparent from the judgment of 19 September 2013, *Review Commission v Strack* (C-579/12 RX-II, EU:C:2013:570). Nevertheless, according to the very wording of those provisions, the exercise of the rights laid down therein is limited to the cases and conditions imposed by EU law.
- 71 It is therefore necessary to ascertain whether the provisions of EU law relied on by the applicants, other than Articles 27 and 28 of the Charter of Fundamental Rights, provide for procedural rights on which they may rely on the date of adoption of the contested regulations.
- 72 First of all, the applicants rely on Directive 2002/14 in support of their line of argument. It should be borne in mind that, according to settled case-law, as directives are addressed to the Member States and not to the EU institutions, the provisions of that directive cannot be treated as imposing any obligations on the EU institutions in their relations with their staff (see, to that effect, judgments of 9 September 2003, *Rinke*, C-25/02, EU:C:2003:435, paragraph 24, and 21 May 2008, *Belfass v Council*, T-495/04, EU:T:2008:160, paragraph 43).

- 73 However, as has been held previously, the fact that a directive does not per se bind the institutions does not preclude rules or principles laid down in that directive from being relied on as against institutions when they are not themselves set out as the specific expression of fundamental rules of the Treaty and general principles that are directly binding on those institutions (see, to that effect, judgments of 9 September 2003, *Rinke*, C-25/02, EU:C:2003:435, paragraphs 25 to 28; 21 September 2011, *Adjemian and Others v Commission*, T-325/09 P, EU:T:2011:506, paragraph 56; and 30 April 2009, *Aayhan and Others v Parliament*, F-65/07, EU:F:2009:43, paragraph 113).
- 74 Likewise, a directive may be binding on an institution where the latter, within the scope of its organisational autonomy and within the limits of the Staff Regulations, has sought to carry out a specific obligation laid down by a directive or in the specific instance where an internal measure of general application itself expressly refers to measures laid down by the Union legislature pursuant to the Treaties. Lastly, the institutions must, in their conduct as employer and in accordance with their duty to cooperate in good faith, take account of legislative provisions adopted at EU level (judgment of 30 April 2009, *Aayhan and Others v Parliament*, F-65/07, EU:F:2009:43, paragraphs 116 to 119).
- 75 In the present case, there is nothing indicating that the Parliament and the Council, in adopting the contested regulations, intended to give effect to a specific obligation laid down in Directive 2002/14 or that a measure of general application internal to those institutions refers expressly to the provisions of that directive.
- 76 The fact remains that the establishment in Directive 2002/14 of a general framework for information and consultation of workers constitutes an expression of general principles of EU law laid down in Article 27 of the Charter of Fundamental Rights which are binding on the Parliament and the Council.
- 77 Article 1(1) of Directive 2002/14 provides that ‘the purpose of this Directive is to establish a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings or establishments within the Community’.
- 78 Article 2(f) and (g) of Directive 2002/14 provides that ‘information’ means ‘transmission by the employer to the employees’ representatives of data in order to enable them to acquaint themselves with the subject matter and to examine it’, whilst ‘consultation’ means ‘the exchange of views and establishment of dialogue between the employees’ representatives and the employer’. Employees’ representatives are defined in Article 2(e) of Directive 2002/14 as being ‘the employees’ representatives provided for by national laws and/or practices’.
- 79 Article 4 of Directive 2002/14, entitled ‘Practical arrangements for information and consultation’, provides as follows:
- ‘...
2. Information and consultation shall cover:
- (a) information on the recent and probable development of the undertaking’s or the establishment’s activities and economic situation;
- (b) information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;
- (c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by the Community provisions referred to in Article 9(1).

3. Information shall be given at such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, prepare for consultation.

4. Consultation shall take place:

- (a) while ensuring that the timing, method and content thereof are appropriate;
- (b) at the relevant level of management and representation, depending on the subject under discussion;
- (c) on the basis of information supplied by the employer in accordance with Article 2(f) and of the opinion which the employees' representatives are entitled to formulate;
- (d) in such a way as to enable employees' representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate;
- (e) with a view to reaching an agreement on decisions within the scope of the employer's powers referred to in paragraph 2(c).'

80 Under Article 1(1), Article 2(f) and g), and Article 4 of Directive 2002/14, firstly, that those provisions lay down minimum requirements for employee information and consultation, without prejudice to more favourable provisions for employees and, secondly, that employee information and consultation are to be organised through staff representatives as provided for by national legislation or practices.

81 Moreover, under Article 9(3) of the Staff Regulations, it is the Staff Committee that is to 'represent the interests of the staff vis-à-vis their institution and maintain continuous contact between the institution and the staff', and also 'contribute to the smooth running of the service by providing a channel for the expression of opinion by the staff.'

82 Article 10b of the Staff Regulations further provides that, although '[the OSPs] act in the general interest of the staff', their action is to be 'without prejudice to the statutory powers of the Staff Committees'.

83 It follows that the obligation for the Parliament and the Council to comply with the minimum requirements for employee information and consultation provided for by Directive 2002/14 concerns the Staff Committees and not the OSPs.

84 Therefore, even if account is taken of the Council's and the Parliament's duty to cooperate in good faith in their conduct as employer, the applicants cannot rely on compliance with procedural guarantees derived from Directive 2002/14 in that regard.

85 Next, the applicants rely on a number of provisions of the Staff Regulations from which they purport to derive procedural guarantees.

86 On the date of adoption of the contested regulations, Article 10 of the Staff Regulations provided for the consultation of officials by means of the Staff Regulations Committee, a joint body composed of an equal number of representatives of the EU institutions and representatives of their Staff Committees, on all Commission proposals to revise the Staff Regulations.

87 In the present case, the recitals of the contested regulations refer to the Treaty on the Functioning of the European Union, the Staff Regulations, in particular Article 10 of Annex XI to the Staff Regulations.

- 88 It must be remembered that, under Article 65a of the Staff Regulations, the purpose of Annex XI thereto is to set out the rules for implementing Articles 64 and 65 of the Staff Regulations. Under Article 82(2) of the Staff Regulations, those rules also apply to vested pensions.
- 89 Article 10 of Annex XI to the Staff Regulations, which is the only article in section 5 entitled ‘Exception clause’, allows for derogations, subject to certain conditions set out in paragraph 9 above, from the regular annual adjustment method for remuneration and pensions provided for in Article 3 of Annex XI to the Staff Regulations, the content of which is set out in paragraph 7 above.
- 90 Although the application of Article 10 of Annex XI to the Staff Regulations requires the use of the procedure provided for in Article 336 TFEU, like a revision of the Staff Regulations, the fact remains that, unlike a revision, it is, under Article 65a of the Staff Regulations, merely a rule of application of Articles 64 and 65 of the Staff Regulations.
- 91 This is confirmed by Chapter 7 of Annex XI to the Staff Regulations entitled ‘Final provision and review clause’, which provides for a revision of the rules of application of Articles 64 and 65 of the Staff Regulations in the true sense of the term (see, to that effect, judgment of 24 November 2010, *Commission v Council*, C-40/10, EU:C:2010:713, paragraph 74).
- 92 Under Article 15 of Annex XI to the Staff Regulations, as amended most recently by Regulation No 1080/2010, ‘[t]he provisions of [that annex] [were] to apply from 1 July 2004 to 31 December 2012’.
- 93 Under Article 15 of Annex XI to the Staff Regulations, ‘[t]hey [were to] be reviewed at the end of the fourth year particularly in the light of their budgetary implications, and ‘[t]o this end, the Commission [was to] submit a report to the European Parliament and the Council and, where appropriate, a proposal to amend [Annex XI to the Staff Regulations] on the basis of [Article 336 TFEU]’.
- 94 [As rectified by order of 28 November 2016] Further support for this can be found in the fact that the sole purpose of the contested regulations was to adjust the remuneration and pensions of officials and other servants of the European Union, as the leading coefficients affecting remuneration and pensions for 2011, as regards Regulation No 422/2014, and for 2012, as regards Regulation No 423/2014, which is also very clear from their respective headings and recitals, the content of which is referred to in paragraphs 32 and 33 above.
- 95 It follows that Article 10 of the Staff Regulations did not apply in the procedure that led to the adoption of the contested regulations. Accordingly, the applicants cannot rely on procedural rights purportedly derived from that provision to show that they have *locus standi* in the present case.
- 96 It should also be noted that the other provisions of the Staff Regulations relied on by the applicants do not contain any reference to procedural guarantees on which they might have relied in the adoption of the contested regulations.
- 97 This is true of Article 10a of the Staff Regulations, concerning the time periods within which the Staff Committee, the Joint Committee or the Staff Regulations Committee must deliver opinions requested of them, Article 9(3) of the Staff Regulations, concerning the scope of the Staff Committee’s role, and Article 1 of Annex II to the Staff Regulations, which lays down the rules for elections to the Staff Committee. This also holds true for Article 24b of the Staff Regulations, pertaining to the right of officials to be members of a trade union, and Article 55 of the Staff Regulations, concerning the working hours of officials, both of which are also relied on by the applicants.

98 It should be noted, however, that the fact that OSPs cannot derive procedural rights from Article 9(3), Articles 10, 10a, 10b, 10c, 24b, 55 of, and Article 1 of Annex II to, the Staff Regulations, does not preclude them from availing themselves of such rights on the basis of other provisions of EU law, including of the Staff Regulations.

99 Thus, Article 10b and 10c of the Staff Regulations each allows the Commission to consult the representative OSPs on proposals for revision of the Staff Regulations and each institution to conclude, with its representative OSPs, agreements pertaining to its staff.

100 [As rectified by order of 28 November 2016] It is, moreover, on the basis of, inter alia, Articles 10b and 10c of the Staff Regulations and Articles 27 and 28 of the Charter of Fundamental Rights that the Framework Agreement of 12 July 1990 and the Framework Agreement of 18 December 2008 were concluded by the Parliament and the Council with a number of OSPs.

101 It should be noted that, contrary to the Parliament's and the Council's assertions, the fact that such agreements 'may not entail any amendment of the Staff Regulations or any budgetary commitments, nor may they affect the working of the institution concerned' and that the signatory OSPs must operate 'in each institution subject to the statutory powers of the Staff Committee' is not per se an impediment to those agreements' being intended to confer procedural guarantees on those OSPs.

– The Framework Agreement of 18 December 2008

102 Regarding the Framework Agreement of 18 December 2008 concluded between the Commission and a number of OSPs, including TAO-AFI (Alliance) and SFIE Bruxelles (Alliance), it should be noted that, under Article 1 of that framework agreement, it 'governs relations between the [Commission] and the [OSP]s'. It is stated in Article 3 of that framework agreement that '[t]he [Commission] wishes to underline its recognition of the importance of the role and responsibility of the trade unions and staff associations by involving them in the most transparent and effective way possible in the life of the Union's institutions and bodies', and that the OSPs are to act in the general interest of the staff without prejudice to the powers conferred on the Staff Committees by the Staff Regulations.

103 Title 3 of the Framework Agreement of 18 December 2008 introduces a concertation procedure. Under Article 14(2) of that framework agreement, concertation may be held in connection with 'amendments to the Staff Regulations of Officials, the annexes thereto and the Conditions of Employment of Other Servants' and 'new rules and decisions or amendments to existing rules and decisions concerning implementation of the Staff Regulations of Officials or the Conditions of Employment of Other Servants'.

104 Under Article 16 of the Framework Agreement of 18 December 2008, concertation may take place at administrative, technical or political level and, 'at each concertation level, the signatory parties shall work to reach an agreement'.

105 Articles 17 and 18 of the Framework Agreement of 18 December 2008 lay down the detailed rules for concertation at the different levels.

106 Article 17 of the Framework Agreement of 18 December 2008 provides:

'Administrative or technical concertation is organised at the request either of the Administration or of a signatory representative organisation.

Technical concertation may be organised either directly or in the event of disagreement following administrative concertation.

Requests submitted by the signatory representative organisations must be presented and justified as clearly as possible in writing.

The Administration has [10] working days to grant a request for concertation.

Refusals to grant concertation must be justified in writing.

The timetable for the preparation and holding of concertation meetings must be notified within ten working days of acceptance of the request following prior consultation of the signatory representative organisations.

Concertation shall begin after the relevant documents have been sent within six weeks of the Administration's reply to the request for concertation.

If the request for concertation is refused, a social dialogue meeting shall be held at administrative level at the request of a signatory representative organisation.'

107 Article 18 of the Framework Agreement of 18 December 2008 provides:

'Political concertation shall take place with the Commissioner responsible for personnel and administration.

Following technical concertation, political concertation may be held if there is disagreement on the part of the members of the concertation body representing the majority of the signatory representative organisations.

Where there is majority agreement at technical level, one or more signatory representative organisations with at least 20% representativeness at central level may request political concertation.

Following technical concertation, if there is unanimous agreement on the part of the members of the concertation body representing the signatory representative organisations, the concertation process shall be closed.'

108 Under Article 19 of the Framework Agreement of 18 December 2008, '[f]ollowing concertation at any level, a document recording the majority agreement or disagreement shall be drawn up ...'.

109 Under Article 20 of the Framework Agreement of 18 December 2008, '[i]n the event of persistent disagreement at political level, either the Commissioner or the signatory representative organisations may propose the opening of a conciliation procedure'.

110 The conciliation procedure provided for in Article 20 of the Framework Agreement of 18 December 2008 involves, firstly, for conciliation proceedings proposed by the trade unions and staff associations, the sending to the Commissioner of a request for the opening of a conciliation procedure listing the items submitted for concertation; secondly, the opening of a cooling-off period during which the Commissioner is to report to the full Commission on the positions of all the parties, which period should not generally exceed ten working days; and, thirdly, the convening of a conciliation meeting, to take place at a meeting of the concertation body sitting in restricted configuration.

111 Moreover, under Article 21 of the Framework Agreement of 18 December 2008, participation by the signatory representative OSPs and the Commission in inter-institutional concertation proceedings is to take place in accordance with the Commission rules in force. Thus, before participation by the Commission in inter-institutional concertation proceedings, a preparatory meeting may be held between the Administration and the signatory representative OSPs. Also, the results of

inter-institutional concertation negotiations may be submitted for validation within the Commission in the concertation bodies provided for by the Framework Agreement, except if the Commission and a majority of the signatory representative organisations consider that such validation is not necessary.

- 112 On a reading of the provisions of the Framework Agreement of 18 December 2008 set out in paragraphs 102 to 111 above, it cannot be questioned that the scope of the concertation procedure provided for therein extended to the adoption of the contested regulations, irrespective of whether it is categorised as ‘amendments to the Staff Regulations’ or ‘new rules and decisions or amendments to existing rules and decisions concerning implementation of the Staff Regulations of Officials or the Conditions of Employment of Other Servants’.
- 113 The Commission argues, however, that the applicants cannot rely on procedural guarantees provided for in the Framework Agreement of 18 December 2008, because they were signatory representative OSPs for the purposes of the Framework Agreement when the Commission sent the Parliament and the Council the regulatory proposal referred to in paragraph 24 above.
- 114 The applicants observe, first, that the present action was not brought by the OSP SFIE — Commission Section, but by the OSP SFIE-PE, with the result that the Commission’s arguments about its lack of representativeness are irrelevant in the present case. Secondly, they argue that TAO-AFI was a cosignatory of the Framework Agreement of 18 December 2008 but did not receive any notification from the Administration advising it of the suspension of its rights under that framework agreement, as provided for in Article 11 thereof. Moreover, TAO-AFI continues to be the addressee of notes addressed to representative organisations as President of the PLUS confederation, itself recognised as being representative. The applicants add that, as PLUS is a confederation, no steps may be taken by it without the agreement of TAO-AFI, and vice versa. TAO-AFI participates on an equal footing with the PLUS confederation each time a social dialogue meeting is called. Furthermore, the PLUS confederation is co-chaired equally, with one of the co-chairs being proposed by TAO-AFI. In addition, the co-chairs of the PLUS confederation are automatically invited to each social dialogue meeting held by the Commission, including regular meetings with the Vice-President of the Commission.
- 115 Title 2 of the Framework Agreement of 18 December 2008, concerning recognition of the trade unions and staff associations, provides as follows:

‘Article 6: Recognition

The parties agree on the principle of official recognition of the trade unions and staff associations of [Commission] personnel.

This recognition implies the acceptance by each party of the other as a social dialogue partner.

Article 7: Criteria for recognition of the trade unions and staff associations

Trade unions and staff associations shall be recognised

- if they declare that their statutory aim is the defence of the interests of all members of staff without any discrimination based on any ground, such as function group, nationality, nature of connection with the Commission, gender, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation;
- if they confirm that they have been legally constituted.

Article 8: Groupings of recognised trade unions and staff associations

Recognised trade unions and staff associations may act alone or may form groupings of recognised trade unions and staff associations.

A grouping is defined as an organisational structure of a federal, confederal or other nature, governed by an official agreement notified to the [Commission], bringing together two or more recognised trade unions or staff associations in one or more places of employment.

The term “organisation” shall be used in this Agreement to refer either to a trade union/staff association or to a grouping thereof.

The organisations may be affiliated to international and/or national trade union organisations.

Article 9: representativeness of the organisations

The [Commission] shall recognise as representative the recognised organisations which meet the following two criteria:

- they represent at least 6% of [Commission] staff at central level and 5% at local level (in a single place of employment);
- they have at least 400 fully paid-up members who are officials, other servants or retired officials of the [Commission].

Organisations meeting the above representativeness criteria shall be permitted to sign this Framework Agreement as signatory representative organisations.

Their signature may be accompanied by the co-signature of the member elements of the signatory representative groupings.

Article 10: Representativeness criteria to be fulfilled by the organisations

- (a) The results of the statutory elections of the local sections of the Staff Committee shall be calculated as follows.

The calculation shall be based on the number of votes cast and weighted in accordance with the method laid down in Annex 2. The adjustment of representativeness as provided for in Annex 2 shall take place after a complete round of elections for the local sections of the Staff Committee.

However, at the written request of a representative organisation, the adjustment may be made on the occasion of each election of a local section of the Staff Committee.

- (b) The number of members of the organisations shall be notified by a declaration by the chairman of the organisation to an independent body selected in accordance with the concertation rules.

After verification, this body shall notify the Administration as to whether or not the organisations exceed the threshold. The verification procedure shall be as follows: submission of a copy of the organisation’s articles of association, of proof that the members are fully paid-up and of documentation proving that regular meetings are held by the organisation with its members. The declaration and the verification of the threshold of the representative organisations shall be made every three years.

The independent body may not under any circumstances notify the Administration or any other body of the exact number of members of an organisation.

Article 11: Loss and restoration of representativeness

Any signatory representative organisation which no longer meets one of these criteria shall be notified by the Administration and its rights as a representative organisation under this Framework Agreement shall be suspended within three months.

Such rights shall be immediately restored on verification that the thresholds in question have again been reached.

The Administration shall notify the other signatory representative organisations accordingly.'

- 116 It should be noted that, at the time of conclusion of the Framework Agreement of 18 December 2008, the Alliance confédérale des syndicats libres (Confederal Alliance of Free Trade Unions) was allowed to be a signatory of that framework agreement as a representative grouping of recognised OSPs, and that its signature was accompanied by the cosignature of its constituent OSPs, including TAO-AFI.
- 117 It should also be noted that, in 2004, TAO-AFI and another OSP formed a grouping of recognised OSPs, namely the PLUS confederation. The case file indicates that, on 17 September 2012, TAO-AFI, that other OSP and another grouping of recognised OSPs informed Ms Souka, Director-General of Human Resources of the Commission, that that other grouping of recognised OSPs was henceforth part of the PLUS confederation, and that that confederation was leaving the Confederal Alliance of Free Trade Unions and was seeking to become a direct intermediary as a representative organisation in the social dialogue.
- 118 Moreover, in a memorandum of 17 April 2013 addressed to representative OSPs, Ms Souka indicated that, pursuant to Article 10 of the Framework Agreement of 18 December 2008, on 13 and 20 March 2013 a bailiff had assessed the representativeness criterion on the basis of the number of members and that, following the communication of the record of findings forwarded to the Commission on 8 April 2013, the following OSPs were considered representative for the purposes of the Framework Agreement: the Confederal Alliance of Free Trade Unions, the Union Syndicale Fédérale (USF), the PLUS confederation, Génération 2004, the Fédération de la fonction publique européenne and USFIU-U4U. That memorandum further stated that the representative organisations enjoyed the benefit of all the provisions laid down in that framework agreement.
- 119 It follows that, in the procedure leading to the adoption of the contested regulations, TAO-AFI was not acting alone in the social dialogue, but was a member of a grouping of recognised OSPs for the purposes of Article 8 of the Framework Agreement of 18 December 2008 that fulfilled the conditions of representativeness laid down in Article 9 of the Framework Agreement.
- 120 Moreover, the present action was instituted by SFIE-PE which, as the applicants themselves observe, was not a signatory to the agreement of 18 December 2008, and by TAO-AFI, not by the union grouping to which the latter belongs. Nor is it apparent from the case file that TAO-AFI itself fulfilled the conditions of representativeness provided for by Article 9 of the Framework Agreement of 18 December 2008 before, during or even after that period.
- 121 Therefore, the applicants' argument that TAO-AFI did not receive notification of their loss of representativeness as provided for by Article 11 of the Framework Agreement of 18 December 2008, which precedes the suspension of the rights under the agreement, is irrelevant in the present case. The fact that TAO-AFI continues to be the addressee of the notes sent by the Commission to representative organisations in its capacity as co-chair of the PLUS confederation, relied on by the applicants, is also irrelevant because, as explained in paragraph 120 above, the action was not brought

by the PLUS confederation, but by TAO-AFI. Similarly and for the same reason, the applicants' argument that TAO-AFI cannot act without authorisation from the PLUS confederation must be rejected.

122 In the light of the foregoing considerations, it is clear that the applicants cannot be deemed to have *locus standi* in the present case by virtue of protection of the procedural guarantees provided for by the Framework Agreement of 18 December 2008.

– The Framework Agreement of 12 July 1990

123 Regarding the Framework Agreement of 12 July 1990 concluded between the Parliament and a number of trade unions and professional organisations, including SFIE-PE, it should be noted that, under Article 1 of that agreement, '[t]he Parliament endorses the principle of the official recognition of the [OSPs] which are signatories to this agreement and of those which will accede to it in the future [OSPs]'.

124 Article 2 of the Framework Agreement of 12 July 1990 provides as follows:

'The [OSPs] which are signatories to this agreement, hereinafter referred to as "the trade unions", declare that they:

- (a) have as one of the objectives laid down in their statutes the defence of the interests and rights of all the staff members of the Institution;
- (b) are organisations lawfully constituted as legal persons, exercising their activities on the basis of statutes and functioning in accordance with democratic principles, their policies being determined and their executive bodies elected by all their members;
- (c) exercise their activities independently.'

125 Under Article 3 of the Framework Agreement of 12 July 1990, '[t]he trade unions may be grouped together in federations and be affiliated, either directly or indirectly, to international trade unions'.

126 Title II of the Framework Agreement of 12 July 1990 introduces the following concertation and conciliation procedure:

'Article 4

Consultation between the parties shall cover:

- (a) proposed modifications to the Staff Regulations and to the Conditions of Employment of Other Servants;
- (b) any significant modification to the general employment or working conditions of officials or other servants; the trade unions and the Staff Committee shall lay down by common agreement the cases covered by this paragraph;
- (c) matters of general interest, in keeping with the scope laid down in Article 7.

Article 5

The consultation procedure shall be conducted in a manner consistent with the tasks and powers conferred on the Staff Committee by the Staff Regulations. One aim of the procedure shall be to promote the quality and effectiveness of industrial relations.

Article 6

1. The consultation procedure shall enable the parties to set out and compare their respective positions with the aim of reaching common standpoints.

The trade unions shall be represented in the consultation procedure by an Inter-Trade Union Committee, whose composition and working methods they themselves shall lay down. The Staff Committee shall be involved in the consultation procedure. The trade unions and the Staff Committee undertake at all times to form a single delegation representing the staff.

In the cases provided for in paragraphs a and b of Article 4, the representatives of Parliament's authorities shall be appointed by the Secretary-General.

2. Consultation concerning modifications to the Staff Regulations shall take place during the preparations for meetings of the Staff Regulations Committee and of the College of Heads of Administration.

3. The consultation procedure shall be opened between the parties at the request of one or other of them; once a formal request has been submitted, meetings must be held within a maximum period of two weeks.

Article 7

1. At the beginning of each annual parliamentary period (September) a general consultation meeting shall be held, which shall be convened by the President of [the] Parliament.

2. In addition to the President of Parliament, that consultation meeting shall bring together representatives of all the trade unions which are signatories to this agreement, the Secretary-General and any other person designated by the President. Three representatives of the Staff Committee shall also be present at the meeting.

Article 8

The parties undertake to lay down, in a protocol to be annexed to this agreement, a conciliation procedure to be employed in the event of a strike.'

¹²⁷ As is apparent from Article 4 of the Framework Agreement of 12 July 1990, the scope of the concertation procedure provided for therein extends to 'proposed modifications to the Staff Regulations', 'any significant modification to the general employment or working conditions of officials or other servants' and to 'matters of general interest'.

¹²⁸ Firstly, regarding 'proposed modifications to the Staff Regulations', it should be noted that Article 6(2) of the Framework Agreement of 12 July 1990 provides that concertation relating to modification of the Staff Regulations is to take place at the time of preparation for meetings of the Staff Regulations Committee and of the College of Heads of Administration. It must be remembered that, under Article 10 of the Staff Regulations, the Staff Regulations Committee is to be consulted about any proposal for revision of the Staff Regulations. It follows that the 'proposed modifications to the Staff Regulations' referred to in Article 4(a) of the Framework Agreement correspond to the proposals for

revision of the Staff Regulations referred to in Article 10 of the Staff Regulations. However, as found in paragraph 95 above, Article 10 of the Staff Regulations was not applicable in the procedure that led to the adoption of the contested regulations. It follows that Article 4(a) of the Framework Agreement of 12 July 1990, in referring to the scenario of revision of the Staff Regulations for the purposes of Article 10 thereof, does not provide a legal basis for the application in the present case of the concertation procedure provided for by that same framework agreement.

129 Secondly, regarding Article 4(c) of the Framework Agreement of 12 July 1990, it should be noted that it refers to ‘matters of general interest, in keeping with the scope laid down in Article 7’. Under that latter article, the President of the Parliament is required to call a general concertation meeting at the beginning of each annual parliamentary period, in September. It may thus be inferred therefrom that it is during that annual concertation meeting that the questions of general interest submitted for concertation will be decided.

130 In the present case, the applicants submit, in their sole substantive plea in law, that the annual concertation meeting referred to in Article 7 of the Framework Agreement of 12 July 1990 was not held, with the result that the adoption of the contested regulations could not hypothetically be put down as a question of general interest at that meeting.

131 It should be noted in that regard that, even if that were true, the Parliament cannot rely on that fact in order to justify non-application of the concertation procedure, since under Article 7 of the Framework Agreement of 12 July 1990, it is precisely the Parliament that was to call the annual concertation meeting. However, the fact that the annual concertation meeting was not held in September 2013 is irrelevant in the present case. Given that the Court’s decision in Cases C-63/14, C-66/12 and C-196/12 was delivered only on 19 November 2013 and the fact that the Commission forwarded its remuneration adjustment proposal to the Parliament only on 10 December 2013, the adoption of the contested regulations could not in any event have been the subject-matter of discussions at the annual concertation meeting which was to be held in September 2013. Accordingly, Article 4(c) of that framework agreement could not justify the application of the concertation procedure provided for therein at the time of adoption of the contested regulations.

132 Thirdly, regarding ‘significant modification to the general employment or working conditions of officials or other servants’, it should be noted that Article 4(b) of the Framework Agreement of 12 July 1990 provides that ‘the [OSPs] and the Staff Committee shall lay down by common agreement the cases covered by this paragraph’.

133 In response to a measure of organisation of procedure adopted by the Court on the basis of Article 89(3)(a) and (b) of the Rules of Procedure, the applicants and the Parliament produced a text entitled: ‘The Staff Committee of [the Parliament] and signatory organisations of the framework agreement [of 12 July 1990] fix, by mutual agreement, pursuant to [Article 4(b) of the Framework Agreement of 12 July 1990], the following distribution: Distribution of responsibilities between the Staff Committee and the [OSPs] meeting within the inter-union committee’ (‘the Agreement on the distribution of responsibilities between the Staff Committee and the OSPs’).

134 It is stated in the letter accompanying the Agreement on the distribution of responsibilities between the Staff Committee and the OSPs sent by the inter-union committee to the President of the Parliament that the text of that agreement was approved by the inter-union committee at its meeting of 17 September 1996, as voted unanimously by the OSPs belonging to the Framework Agreement of 12 July 1990, and that it was approved by the Staff Committee at its meeting of 30 September 1996 by 16 votes for, one vote against and four abstentions.

135 Point III of the Agreement on the distribution of responsibilities between the Staff Committee and the OSPs provides:

‘Without prejudice to the provisions and procedures of the Staff Regulations, action by the [OSPs] meeting in the inter-union committee shall consist in defining, amending and evaluating staff policy and be carried out in all areas relating to the general conditions of employment of staff. These shall include in particular:

- modification of general conditions of employment in all cases where there is a decision by the Council on the Commission’s proposal, and concerning the staff of all institutions (Staff Regulations, Conditions of Employment of Other Servants, remuneration), and the implementation thereof;
- significant modification of the employment or working conditions, and the general implementing provisions and rules adopted within the Institution or by the College of Heads of Administration;
- the search for solutions in the event of shortcomings in advisory bodies or participation in management, or in the event of serious disagreements within those bodies;
- modification of the conditions of operation of advisory bodies or participation in management (creation, changes in sphere of responsibility, changes to composition);
- questions of general interest and claims relating to areas not covered by the advisory bodies or participation in management.’

136 Under point IV of the Agreement on the distribution of responsibilities between the Staff Committee and the OSPs, a revision of that agreement may be undertaken at the request of one of the parties.

137 The Parliament observes that the Agreement on the distribution of responsibilities between the Staff Committee and the OSPs is not binding inasmuch as it effects a distribution of responsibilities that goes beyond those referred to in Article 4(b) of the Framework Agreement of 12 July 1990. By way of example, the Parliament observes that ‘modification of general conditions of employment in all cases where there is a decision by the Council on the Commission’s proposal, and concerning the staff of all institutions (Staff Regulations, Conditions of Employment of Other Servants, remuneration), and the implementation thereof’ usually comes under Article 4(a) of that framework agreement.

138 In the Parliament’s submission, it follows from the Agreement on the distribution of responsibilities between the Staff Committee and the OSPs that the OSPs can have a role in a consultation about remuneration matters only if: (i) the remuneration-related matter genuinely constitutes a significant modification of working conditions, and (ii) it genuinely is the subject-matter of a consultation held in accordance with the rules of the Framework Agreement of 12 July 1990.

139 The Parliament further observes that numerous criticisms have been directed at the Framework Agreement of 12 July 1990 in recent years and at the Agreement on the distribution of responsibilities between the Staff Committee and the OSPs, both by the OSPs and the Staff Committee. Thus, some OSPs have taken the view that that framework agreement should be amended, but to date this has been impeded by the unanimity clause. Similarly, the Parliament produced the decision adopted by the Staff Committee at its meeting of 30 March and 1 April 2014, by which it called for revision of that framework agreement, following an examination of its compatibility with the Staff Regulations, and of the Agreement on the distribution of responsibilities between the Staff Committee and the OSPs, so that it reflects the distribution of responsibilities henceforth fixed by Article 9(3) and Articles 10 to 10c of the Staff Regulations, and entrusted its President with the task of referring the matter to the competent authorities of the Parliament.

140 [As rectified by order of 28 November 2016] As the Parliament argues, the Agreement on the distribution of responsibilities between the Staff Committee and the OSPs must be interpreted in the light of Article 4(b) of the Framework Agreement of 12 July 1990, to the effect that it does not allocate to the Staff Committee or the OSPs responsibilities extending beyond the very subject-matter of that provision, which refers to ‘significant modification[s] to the general employment or working conditions of officials or other servants’. It follows that that agreement on distribution of responsibilities does not extend the scope of Article 4(b) of that framework agreement to those cases coming within Article 4(a) and (b) of that framework agreement.

141 It is in the light of that consideration that the first indent of point III of the Agreement on the distribution of responsibilities between the Staff Committee and the OSPs must be interpreted as covering cases where a significant modification of the general conditions of employment is liable to result from a decision of the Council on the Commission’s proposal concerning remuneration.

142 Given the purpose of the contested regulations, the aim of which was to adapt the remuneration and pensions of officials and other servants of the European Union and the corrector coefficients affecting remuneration and pensions for 2011 and 2012, and the use of the exception clause provided for in Article 10 of Annex XI to the Staff Regulations, which allows for non-application of the annual remuneration adjustment method provided for in Article 3 of that same annex and empowers the Commission to submit ‘appropriate proposals’, the conclusion is that those regulations were liable to give rise to a significant modification of the general conditions of employment within the meaning of Article 4(b) of the Framework Agreement of 12 July 1990 and, therefore, be subject to the concertation procedure provided for therein.

143 Contrary to the Parliament’s submissions, the question whether the contested regulations ultimately have brought about significant modifications of the general employment and working conditions of officials and other servants of the European Union is irrelevant for the purpose of determining the applicability of procedural provisions which, by their very nature, precede the adoption of those regulations.

144 It follows that SFIE-PE could, in the procedure that led to the adoption of the contested regulations, rely on the procedural guarantees provided for in the Framework Agreement of 12 July 1990.

145 In the light of the foregoing considerations, the conclusion is that, in accordance with the case-law referred to in paragraph 55 above, SFIE-PE has *locus standi* under Article 263 TFEU to seek annulment of the contested regulations. The action is, however, inadmissible in so far as it was brought by TAO-AFI, as the applicants have failed to prove how it has *locus standi* to act on its behalf in the present case.

Substance

146 In support of their sole plea in law, the applicants submit, in essence, that they were not consulted in the procedure that led to the adoption of the contested regulations. They argue in particular that they were not consulted by the Commission on the proposal to amend the Staff Regulations before that proposal was submitted to the Parliament and the Council, and that nor were they consulted on that proposal by the Parliament during the tripartite negotiation. In their reply, the applicants add that the contested regulations were adopted in contravention of the tripartite concertation procedure governing relations with staff as provided for in the Council’s decision of 23 June 1981. They criticise in particular the Parliament for having refused to take part in that concertation procedure as part of the adoption of the contested regulations.

- 147 That lack of consultation infringed their rights to information and consultation as enshrined in Articles 27 and 28 of the Charter of Fundamental Rights and Article 154 TFEU, as guaranteed by the provisions of Directive 2002/14, Article 9(3), Articles 10, 10a, 10b, 10c, 24b, 55 of, and Article 1 of Annex II to, the Staff Regulations, as amended by Regulation No 1023/2013, and by the Framework Agreements of 12 July 1990 and of 18 December 2008, concluded by the Parliament and the Commission respectively with a number of OSPs, and of the Council's decision of 23 June 1981 establishing a tripartite concertation procedure.
- 148 In that regard, it should be noted at the outset that, according to the case-law, as SFIE-PE did not put forward any new element of fact or law such as to justify its lateness, that part of the sole plea in law alleging infringement of the concertation procedure provided for by the Council's decision of 23 June 1981, raised for the first time in the reply, must be dismissed as inadmissible (judgment of 8 March 2007, *France Télécom v Commission*, T-340/04, EU:T:2007:81, paragraph 164).
- 149 As to the applicants' statement to the effect that Article 9(3), Articles 10a, 24b and 55 of the Staff Regulations, and Article 1 of Annex II to the Staff Regulations, were infringed in the procedure that led to the adoption of the contested regulations, it must be remembered that, under the first paragraph of Article 21 of the Staff Regulations of the Court of Justice of the European Union, applicable to the procedure before the General Court pursuant to the first paragraph of Article 53 of that same Statute, and Article 44(1)(c) of the Rules of Procedure of 2 May 1991, applicable at the time the application initiating proceedings is lodged, that application must, inter alia, contain a statement summarising the pleas relied on. It must, accordingly, specify the grounds on which the action is based, with the result that a mere abstract statement of the grounds is not sufficient to satisfy the requirements of the Statute of the Court of Justice and the Rules of Procedure. That statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the action, if necessary, without any further information. In order to ensure legal certainty and the sound administration of justice, it is necessary — if an action or, more specifically, a plea in law, is to be admissible — that the basic legal and factual particulars relied on be indicated coherently and intelligibly in the application itself. Since the applicants did not provide any specific explanation for their complaint alleging infringement of Article 9(3), Articles 10a, 24b and 55 of, and Article 1 of Annex II to, those Staff Regulations, this complaint must be held to be inadmissible.
- 150 Regarding the alleged infringement of Article 154 TFEU, Directive 2002/14 and Article 10 of the Staff Regulations, it should be noted that they do not apply in the procedure that led to the adoption of the contested regulations, with the result that this complaint must be dismissed as unfounded.
- 151 Regarding the alleged infringement of the procedural guarantees provided for by the agreement of 18 December 2008, it must be remembered that, although SFIE-PE may not derive procedural rights from that agreement, of which it is not a signatory, failure to comply with the procedural rules relating to the adoption of an EU act, established by the competent institutions themselves, such as those arising from that agreement, constitutes an infringement of essential procedural requirements for the purposes of the second paragraph of Article 263 TFEU, which the Union judicature may examine of its own motion (see, to that effect, judgments of 13 December 2007, *Angelidis v Parliament*, T-113/05, EU:T:2007:386, paragraph 62; 2 October 2009, *Cyprus v Commission*, T-300/05 and T-316/05, not published, EU:T:2009:380, paragraphs 205 and 206; and 8 July 2010, *Commission v Putterie-De-Beukelaer*, T-160/08 P, EU:T:2010:294, paragraph 63).
- 152 In the present case, however, it is clear that there is nothing in the case file indicating that there was any undermining of the procedural opportunities open to signatory representative OSPs for the purposes of Article 8 of that agreement.
- 153 It is accordingly appropriate to consider the merits of the part of the single plea in law alleging infringement of the Framework Agreement of 12 July 1990.

- 154 The applicants submit, in essence, that the Parliament failed to hold the annual concertation meeting provided for by Article 7 of the Framework Agreement of 12 July 1990, despite emails to that effect sent to the President of the Parliament. They state that that framework agreement does not provide for any particular formalities for a request for concertation, although it does make specific provision for a formal concertation procedure in Article 7.
- 155 It should be noted at the outset that the applicants seem to confuse the annual concertation meeting which, under Article 7 of the Framework Agreement of 12 July 1990, must be held at the initiative of the President of the Parliament at the beginning of each parliamentary period, with the concertation procedure properly speaking being undertaken by the parties, pursuant to Article 6(3) of that framework agreement, at the request of one of them.
- 156 In so far as the applicants' line of argument is directed at the alleged failure to hold the annual concertation meeting, it must be borne in mind, as explained in paragraph 131 above, that even if that were true, it has no bearing on the procedure under which the contested regulations were adopted, as that meeting in any event would have had to be held at a time when the Commission had not yet submitted the remuneration adjustment proposal to the Parliament.
- 157 Should the applicants' line of argument be directed at the Parliament's refusal to engage the concertation procedure, it must be borne in mind that, under Article 6(3) of the Framework Agreement of 12 July 1990, concertation meetings are to be opened within two weeks following a formal request, although, as the applicants observe, that framework agreement does not specify what constitutes a formal request to have the concertation procedure opened.
- 158 It must be considered, however, that such a request must, at the very least, refer expressly to the concertation procedure provided for by the Framework Agreement of 12 July 1990 and be addressed to the institution concerned.
- 159 In the present case, it is clear that the documents referred to by the applicants are not formal requests to have the concertation procedure opened within the meaning of Article 6(3) of the Framework Agreement of 12 July 1990.
- 160 First of all, regarding the letters from the Central Staff Committee, dated 17 December 2013 and 4 March 2014, in which it complains, *inter alia*, about the lack of prior concertation concerning the remuneration adjustment proposal submitted by the Commission to the Parliament and the Council, and the purely political basis for the figures proposed, which are not based on any objective statistical data and do not reflect the Commission's margin for manoeuvre, it is clear that they were not addressed to the Parliament, but rather the Commission, and their purpose was to ask the Commission to defend the interests of its staff and withdraw its remuneration adjustment proposal.
- 161 Next, regarding the open letter dated of 18 December 2013, from the applicants to the President of the Parliament, the content of which is largely identical to that of the email sent by the Central Staff Committee to the Commission on 17 December 2013, it is clear that it does not contain any request for a concertation meeting to be held; rather, its purpose is to ask the President of the Parliament to confirm that the Commission's initial remuneration adjustment proposal of 1.7% for 2011 and 2012 is not negotiable.
- 162 Lastly, regarding the open letter addressed to the President of the Parliament on 26 February 2014, it is clear that neither SFIE-PE nor the trade union grouping to which SFIE-PE belonged at the time is a signatory and that its purpose is to ask the Parliament, as co-legislator, to review the Commission's remuneration adjustment proposal in the light of 'existing objective data' and to take account 'of the given economic and social situation and, where applicable, other appropriate factors to be taken into consideration, such as human resource management, in particular recruiting requirements', as the

Court of Justice had invited the Commission to do in its judgments of 19 November 2013, *Commission v Council* (C-63/12, EU:C:2013:752), and 19 November 2013, *Commission v Council* (C-196/12, EU:C:2013:753).

- 163 It follows that the applicants have failed to demonstrate that the provisions of the Framework Agreement of 12 July 1990 were infringed when the contested regulations were adopted.
- 164 In the light of all the foregoing considerations, the single plea in law put forward in the present case must be rejected as unfounded.

Costs

- 165 Under Article 134(1) 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 forms of order sought by the Parliament and the Council.
- 166 The Commission shall bear its own costs, in accordance with Article 138(1) of the Rules of Procedure.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders the Association des Fonctionnaires Indépendants pour la Défense de la Fonction Publique Européenne/Association of Independent Officials for the Defence of the European Civil Service (TAO-AFI) and the Syndicat des Fonctionnaires Internationaux et Européens/Union of International and European Civil Servants — European Parliament Section (SFIE-PE) to pay the costs;**
- 3. Orders the European Commission to bear its own costs.**

Gratsias

Kancheva

Wetter

Delivered in open court in Luxembourg on 15 September 2016.

[Signatures]

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