



Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

26 March 2020*

(Civil service — ECB staff — Programme of support for transition to a career outside the ECB — Rejection of an application to take part in that programme — Eligibility conditions — Different lengths of service required depending on whether a staff member is in a single salary band or a salary broadband — Allocation to a salary band on the basis of the type of employment — Equal treatment — Proportionality — Manifest error of assessment)

In Case T-547/18,

Raivo Teeäär, residing in Tallinn (Estonia), represented by L. Levi, lawyer,

applicant,

v

European Central Bank (ECB), represented by D. Camilleri Podestà and F. Malfrère, acting as Agents, and by B. Wägenbaur, lawyer,

defendant,

APPLICATION under Article 270 TFEU and Article 50a of the Statute of the Court of Justice of the European Union for, first, annulment of the decision of the ECB of 27 February 2018 rejecting the applicant's application for the pilot programme of support for transition to a career outside the ECB and, in so far as necessary, the ECB's decision of 3 July 2018 rejecting the applicant's special appeal against the abovementioned decision of 27 February 2018 and, secondly, compensation for the damage he allegedly suffered as a result of that decision.

THE GENERAL COURT (First Chamber),

composed of P. Nihoul, acting as President, J. Svenningsen (Rapporteur) and U. Öberg, Judges,

Registrar: P. Cullen, Administrator,

having regard to the written part of the procedure and further to the hearing on 9 July 2019,

gives the following

* Language of the case: English.

Judgment

Background to the dispute

- 1 On 1 July 2004, the applicant, Mr Raivo Teeäär, took up his duties at the European Central Bank (ECB), starting his career in that institution as a Senior Production Expert in the ‘Banknotes’ Directorate. When he was recruited, the applicant was 50 years old. In accordance with the vacancy notice, he was allocated to the F/G salary band of the ECB salary structure, which that role fell within. In that salary band, he was placed at step 136, given the length, level and relevance of his professional experience.
- 2 Since his recruitment, the applicant has progressed steadily within his salary band. In January 2011, after seven years and six months, he reached the ceiling for that salary band, which corresponds to step 169. Thereafter, no further advancement was possible in that salary band.
- 3 The ECB salary structure consists of 12 single salary bands, designated by the letters A to L, and two salary broadbands, designated by the letters E/F and F/G. Each salary band includes several steps which go from a minimum to a maximum salary value. The salary broadbands, such as the F/G salary band, correspond to the integration of two single salary bands, here the F salary band and the G salary band, so that the start of the F/G salary band is the same, in terms of annual income, as that of the F salary band, whilst its ceiling is the same as that of the G salary band.
- 4 Specifically, the F salary band comprises steps 1 to 98, the G salary band comprises steps 1 to 99 and the F/G salary band comprises steps 1 to 169, having regard to a partial overlap between the F and the G salary bands. Steps 71 to 98 of the F salary band correspond to steps 1 to 28 of the G salary band.
- 5 Accordingly, the salaries associated with steps 1 to 98 of the F salary band correspond to the salaries associated with steps 1 to 98 of the F/G salary band and the salaries associated with steps 1 to 99 of the G salary band correspond to the salaries associated with steps 71 to 169 of the F/G salary band.
- 6 The allocation of staff members to a given salary band, whether single or broad, is determined by the type of post occupied, as is apparent from an ECB document entitled ‘Allocation of Positions to Bands — List of Generic Job Titles’. For the same type of post, progression is possible only within the salary band thus determined, that is from one step to a higher step in the same salary band. A change of salary band is possible only following a recruitment procedure proper for a different position in that other salary band (internal promotion), unless there is an exceptional ‘*ad personam*’ promotion or a position upgrade.
- 7 On the basis of Article 36.1 of the Protocol on the Statute of the European System of Central Banks and of the ECB (ESCB) and the Rules of Procedure of the ECB, the Governing Council of the ECB adopted the Conditions of Employment for Staff of the ECB (‘the Conditions of Employment’) by decision of 9 June 1998, amended on 31 March 1999 (OJ 1999 L 125, p. 32). In the version applicable to the present proceedings, Article 11(e) of the Conditions of Employment concerns support for a career transition outside the ECB (‘CTS’) for ECB staff members who resign under the conditions and in accordance with the procedure laid down by the ECB Staff Rules (‘the Staff Rules’).
- 8 In order to implement Article 11(e) of the Conditions of Employment for the first time, the Executive Board of the ECB adopted Decision ECB/2012/NP18 of 24 August 2012 amending the Staff Rules as regards assistance for voluntary transition to a career outside the ECB, which inserted Article 2.3 of the Staff Rules, which introduced a pilot programme for CTS, limited to a maximum of 50 persons, which was accessible in 2013 and 2014. Article 2.3.1 of the Staff Rules provided that staff members

with contracts of indefinite duration who had remained for at least 8 consecutive years in the same single salary band or at least 12 consecutive years in the same salary broadband satisfied the conditions for eligibility under the CTS pilot programme.

- 9 On 12 August 2014, the applicant applied for the CTS pilot programme ('the CTS application'). In accordance with the procedure, the CTS application contained a notice of resignation taking effect on 13 December 2014, subject to the acceptance of that application. In addition to that application, the applicant submitted a memorandum setting out the reasons for his request that his application be taken into consideration despite the fact that he did not satisfy the requirement of 12 years' service laid down in Article 2.3.1 of the Staff Rules for staff members in a salary broadband.
- 10 The CTS application was rejected by decision of 18 August 2014, on the ground that the applicant did not satisfy the condition as to length of service, since he had remained in the F/G salary broadband for less than 12 years.
- 11 On 8 September 2014, the applicant informed the relevant ECB departments of his decision to retire, with effect from 18 December 2014.
- 12 The request for an administrative review of the decision rejecting the application for CTS, made by the applicant on 14 October 2014, was rejected by a decision of 9 December 2014.
- 13 The applicant retired with effect from 18 December 2014.
- 14 The complaint lodged by the applicant on 9 February 2015 against the decision of 9 December 2014 was rejected by a decision of 2 April 2015.
- 15 Following the action brought by the applicant on 9 June 2015 against the decision of 18 August 2014, that decision was annulled by the judgment of 17 November 2017, *Teeäär v ECB* (T-555/16, not published, EU:T:2017:817), on account of the lack of competence *ratione materiae* of the author of that decision.
- 16 Article 2.3 of the Staff Rules resulting from Decision ECB/2012/NP18, which established the CTS pilot programme, was repealed by Decision ECB/2017/NP19 of 17 May 2017 amending the ECB Staff Rules as regards support for voluntary transition to a career outside the ECB. That decision established a new CTS programme, which was accessible from 1 July to 31 October 2017, setting a uniform condition as to length of service of eight years in the same salary band.
- 17 In order to comply with the judgment of 17 November 2017, *Teeäär v ECB* (T-555/16, not published, EU:T:2017:817), the Executive Board of the ECB adopted, on 27 February 2018, a new decision on the basis of Article 2.3 of the Staff Rules in its original version, by which it rejected the application for CTS ('the contested decision').
- 18 The special appeal against the contested decision lodged by the applicant on 3 May 2018 was rejected by decision of the Executive Board of the ECB of 3 July 2018.

Procedure and forms of order sought

- 19 The applicant brought the present action by application lodged at the Court Registry on 14 September 2018.
- 20 The applicant claims that the Court should:
 - annul the contested decision;

- if necessary, annul the decision of the Executive Board of the ECB of 3 July 2018;
 - order the ECB to pay compensation for the material damage caused to the applicant, estimated at EUR 101 447, together with default interest calculated at the annual rate of the ECB's main refinancing operations plus three percentage points;
 - order the ECB to pay the costs.
- 21 The ECB contends that the Court should:
- dismiss the application;
 - order the applicant to pay the costs.

Law

Admissibility of the evidence submitted at the hearing by the applicant

- 22 At the hearing, the applicant lodged an additional document, which he presented as a letter sent by the ECB to its Staff Committee before the introduction of salary broadbands within the ECB and as being capable of supplementing the reply given by the ECB to the written question put to it by the Court concerning the history and origins of the creation of those salary bands. When asked to specify the practical implications of that document, the applicant stated that it established that the introduction of salary broadbands should not have a negative effect for members of staff at the top of the G single salary band or the F/G salary broadband, whereas the introduction of CTS had such an effect for staff members in a salary broadband.
- 23 It should be noted that it is not apparent from those explanations that the document in question has any direct connection with the Court's written question concerning the introduction of salary broadbands. Since the applicant intends to refer to that document in order to support his arguments relating to the adverse consequences which, in his view, CTS has for staff members in an identical situation to his own, and since he does not claim that that document could not have been produced together with the application, it must be held to be inadmissible, in accordance with Article 85 of the Rules of Procedure of the General Court.

Subject matter of the action

- 24 According to settled case-law, claims for annulment formally directed against the decision rejecting a complaint have the effect of bringing before the Court the act against which the complaint was submitted, where those claims, in themselves, have no independent content (see, to that effect, judgment of 24 April 2017, *HF v Parliament*, T-584/16, EU:T:2017:282, paragraph 72 and the case-law cited).
- 25 In the present case, given that the decision rejecting the complaint merely confirms the contested decision, it must be held that the claims for annulment of the decision rejecting the complaint have no independent content and that there is therefore no need to rule specifically on that claim, even though, in the examination of the lawfulness of the contested decision, account should be taken of the statement of reasons given in the decision rejecting the complaint, since that statement of reasons is deemed to be the same as that of the contested decision (see, to that effect, judgment of 16 January 2018, *SE v Council*, T-231/17, not published, EU:T:2018:3, paragraph 22 and the case-law cited).

The claims for annulment

- 26 In support of his claims for annulment, the applicant puts forward four pleas.
- 27 By the first two pleas, the applicant puts forward a plea of unlawfulness in respect of Article 2.3.1 of the Staff Rules, a provision which the contested decision applies to him. The first plea alleges infringement of the principle of equal treatment and of the principle of proportionality and a manifest error of assessment and the second plea alleges infringement of Article 21 of the Charter of Fundamental Rights of the European Union ('the Charter') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16), on grounds of discrimination based on age.
- 28 To the extent that Article 2.3.1 of the Staff Rules is not to be regarded as unlawful, the applicant puts forward, in the alternative, two other pleas, alleging, thirdly, a manifest error of assessment and a breach of the duty to have regard for the welfare of staff and, fourthly, infringement of Article 2.3.1 of the Staff Rules.

The first plea in law, alleging the unlawfulness of Article 2.3.1 of the Staff Rules on the basis of infringement of the principle of equal treatment and of the principle of proportionality and a manifest error of assessment

- 29 The applicant submits that the dual length-of-service condition laid down in Article 2.3.1 of the Staff Rules constitutes a difference in treatment and that that difference in treatment is, in general, arbitrary, in so far as it draws a distinction between staff members in a single salary band and those in a salary broadband, and, in any event, with respect to members of staff who, like him, had reached the ceiling of a salary broadband before having acquired 12 years' seniority in that salary band. If necessary, in so far as the provision of different length-of-service conditions is formally justified by the existence of two different categories of salary bands, the discrimination stems both from Article 2.3.1 of the Staff Rules and from the list of generic job titles, which determines, for each type of post, the salary band, single or broad, to which that post belongs.
- 30 The distinction at issue is generally arbitrary, since the fact that a salary broadband includes more steps than a single salary band, with the result that persons recruited to a single salary band will more frequently reach the ceiling of their salary band, bears no relation to the objectives of CTS, which are to facilitate transition to a career outside the ECB, encourage increased turnover of permanent staff and foster internal mobility.
- 31 The distinction is particularly arbitrary with regard to members of staff who, like the applicant, are in a salary broadband, but who, on appointment, were allocated to a step in the part of that salary broadband which corresponds to the second of the two single salary bands which were combined to form the salary broadband (that is to say, the G salary band in the case of the F/G salary broadband). Having regard to the number of steps separating those members of staff from the ceiling of the salary broadband in question, their situation is identical, in terms of progression possibilities, to the situation of those in a single salary band. Consequently, the distinction at issue is inappropriate in relation to the objectives of CTS. That situation is not exceptional, since it concerned 18% of the members of staff recruited between 2010 and 2012.
- 32 In addition, the distinction at issue is contrary to the principle of proportionality, since the ECB did not choose the least onerous way of attaining CTS's objectives. It could have laid down, for all members of staff, a length-of-service condition linked to having reached the ceiling for their salary band for the same number of years.

- 33 Finally, the distinction at issue is also based on a manifest error of assessment, since it does not reflect the objective of compensating for allegedly reduced career opportunities for members of staff allocated to a single salary band.
- 34 The ECB states that the purpose of the CTS pilot programme was to offer support for career reorientation to members of staff who had worked for a long time at the ECB and who had remained in the same salary band, irrespective of the number of incremental steps, and not to members of staff who were stuck at the end of their salary band. The distinction at issue is based on the fact that the salary broadbands have around 50% more steps than single salary bands. It follows from this that the situation of a person in a salary broadband can be compared only with that of persons in the same type of salary band.
- 35 The ECB accepts that the correlation between allocation to a salary broadband and the existence of greater opportunities for advancement corresponds to a typical standard case, but submits that a legislator is permitted take such a situation as a basis, without also being required to provide for systems of exceptions to take account of atypical situations. It submits, moreover, that it had a broad discretion in the political choices which it made as a 'legislator' for the purposes of drawing up the framework for that pilot programme.
- 36 In the context of a specific analysis, the ECB states, first, that, when the CTS pilot programme entered into force, 794 persons were allocated to the F/G salary broadband, 5 persons were allocated to the F single salary band and 7 persons were allocated to the G single salary band, without any of those 7 persons having benefited from the CTS pilot programme. Secondly, it was impossible for a person recruited in the G salary band to be treated more favourably than the applicant because of the eight-year length-of-service condition applicable to staff members in that single salary band, since, on the date on which that pilot programme came into force, the 7 persons in the G salary band had been promoted, and not recruited, to that salary band.
- 37 As a preliminary point, it must be recalled that the principle of equal treatment, which is a general principle of EU law, enshrined in Articles 20 and 21 of the Charter and which applies to EU civil service law, requires, inter alia, that comparable situations must not be treated differently unless such treatment is objectively justified (see, to that effect, judgments of 12 November 2014, *Guardian Industries and Guardian Europe v Commission*, C-580/12 P, EU:C:2014:2363, paragraph 51 and the case-law cited, and of 16 July 2015, *EJ and Others v Commission*, F-112/14, EU:F:2015:90, paragraph 65 and the case-law cited).
- 38 The factors which distinguish different situations, and the question whether those situations are comparable, must be determined and assessed in the light of the subject matter of the provisions in question and of the aim pursued by them, whilst account must be taken for that purpose of the principles and objectives of the field in question (see judgment of 7 March 2017, *RPO*, C-390/15, EU:C:2017:174, paragraph 42 and the case-law cited).
- 39 Where a difference in treatment between two comparable situations is found, the principle of equal treatment is not infringed in so far as that difference is duly justified (see judgment of 7 March 2017, *RPO*, C-390/15, EU:C:2017:174, paragraph 52 and the case-law cited).
- 40 That is the case where the difference in treatment relates to a legally permitted objective pursued by the measure having the effect of giving rise to such a difference and is proportionate to that objective. Where the regulatory authority has a wide discretion, judicial review of compliance with those conditions must be limited to review as to manifest error (see, to that effect, judgment of 7 March 2017, *RPO*, C-390/15, EU:C:2017:174, paragraphs 53 and 54 and the case-law cited).

- 41 In that regard, it should be noted that, when it lays down rules relating to matters concerning the arrangements applicable to the staff it employs, the ECB enjoys broad autonomy on account of its functional independence (see, to that effect, judgment of 22 October 2002, *Pflugradt v ECB*, T-178/00 and T-341/00, EU:T:2002:253, paragraph 48). In addition, the institutions have broad discretion in determining what the interests of the service are, regardless of the examination in the context of which, or the decision for which, those interests are to be taken into account (see judgment of 16 May 2018, *Barnett v EESC*, T-23/17, not published, EU:T:2018:271, paragraph 36 and the case-law cited). In such a case, the principle of non-discrimination or equal treatment would be disregarded only if the measure in question entailed a difference of treatment which was arbitrary or manifestly inappropriate in relation to the purpose of that measure (see, to that effect, judgment of 15 April 2010, *Gualtieri v Commission*, C-485/08 P, EU:C:2010:188, paragraph 72).
- 42 It must also be stated that although in particular situations fortuitous problems are bound to arise from the introduction of any general and abstract system of rules, there are no grounds for taking exception to the fact that an authority with legislative power has resorted, in the organisation of its services, to categorisation, provided that it is not in essence discriminatory having regard to the objective which it pursues (see, to that effect, judgment of 15 April 2010, *Gualtieri v Commission*, C-485/08 P, EU:C:2010:188, paragraph 81 and the case-law cited).
- 43 In the present case, Article 2.3.1 of the Staff Rules established a difference in treatment between ECB staff members according to whether they are in a salary broadband or a single salary band, by providing that the staff in the broadband, who represent a large proportion of staff, are eligible for the CTS pilot programme after 12 years of service in their salary band, whereas the length of service required for the staff in the single band is only 8 years.
- 44 Therefore, in accordance with the case-law referred to in paragraphs 38 to 42 above, it is necessary to identify the subject-matter and objective of the CTS pilot programme in order to determine whether the situations of persons in one or other category of salary band are comparable and, if so, whether or not the difference in treatment established is justified.
- 45 As regards whether the situations are comparable, it should be noted that, in the ECB's reply to the written question put to it by the Court concerning the objectives of CTS, the ECB stated that CTS had resulted from a reflection following the recognition that it was facing a 'demographic challenge'. It stated that, for reasons connected with the recruitment criteria which were implemented at the time of its creation, a substantial part of its staff would remain in post for a relatively long period and would then retire over a relatively short period.
- 46 That situation resulted, in particular, in limiting the opportunities for internal promotion to a higher salary band and, therefore, was such as to demotivate members of staff wishing to take up new duties.
- 47 Following the reflection initiated as a result of that recognition, the ECB decided to adopt a specific measure designed to encourage the early departure of some of the staff, namely the members of staff who were most likely to have worked for a long time at the ECB while remaining in the same salary band, without focusing that measure on staff members in the age bracket affected by the 'demographic challenge'.
- 48 It is therefore apparent that the objective of establishing a pilot programme for CTS was to deal preventatively with a number of risks likely to undermine the proper functioning of the ECB in the near future, by creating early vacancies of posts so as to enable new persons to be recruited and to increase the opportunities for internal promotion for existing staff. Since that measure corresponded to a desire to maintain or improve the quality of the services provided as part of the performance of the ECB's tasks, it was linked to the interests of the service.

- 49 In that context, the purpose of the CTS pilot programme was to prompt the voluntary early departure of some of the members of staff who had worked for a certain number of years within the ECB whilst remaining in the same salary band, while distinguishing members of staff in a single salary band from those in a salary broadband, by encouraging that departure in the form of support for a career transition outside the ECB, in particular from a financial point of view. Although that purpose could be regarded, from the point of view of members of staff potentially interested in professional reorientation, as a favourable measure, the fact remains that it was primarily linked to the interest of the service, having regard to the objectives it was intended to serve.
- 50 At the same time, in its reply to the written questions put by the Court, the ECB also stated that the primary purpose of creating salary broadbands was to enable career development over many years for the types of posts in which development at different levels of responsibility was possible on the basis of experience gained. That evidence has not been disputed by the applicant, who merely claimed at the hearing that the ECB had ensured that the introduction of the salary broadbands was not detrimental to the members of staff who were then in post.
- 51 Thus, it must be pointed out that, as opposed to single salary bands, the two salary broadbands (E/F and F/G) objectively correspond to a potentially long career path, which promotes the stability of staff occupying posts for whom experience acquired in the actual performance of the duties concerned within the institution is likely to constitute an advantage for the performance of that institution's tasks, particularly in terms of expertise, and therefore of efficiency and responsibilities assumed. The list of posts concerned shows that they correspond, in essence, to technical duties with responsibility ('experts' for the F/G salary band, 'specialists' or 'analysts' for the E/F salary band), without being managerial positions, most of which are linked to the performance of the ECB's specific tasks. That was the case, in particular, as regards the applicant, who was employed as a production expert in the 'Bank Notes' Directorate.
- 52 Consequently, the situations of the two categories of persons concerned can be distinguished by an essential element from the point of view of the interest of the service, namely that they correspond to different types of roles, some of which the ECB wanted to be performed by a more permanent staff. Thus, since a staff member in a salary broadband has, in general, greater scope for advancement in his or her salary band than a staff member in a single salary band, the respective situations of staff finding themselves in one or other of the salary bands cannot be regarded as comparable in the light of the purpose and aim of the CTS pilot programme, as identified in paragraphs 48 and 49 above. Where an institution seeks to retain, over a reasonably long time, staff members performing certain types of duties, it is logical that those concerned do not have such strong incentives to leave that institution early as staff members who perform duties for which the same objective does not exist. That precaution contributes to maintaining, or even improving, the quality of the services provided as part of the performance of that institution's tasks and consequently falls within the interests of the service.
- 53 In any event, it must be held that, even assuming that the situations of staff members in one or other category of salary band are comparable, the difference in treatment consisting of the fixing of an eligibility criterion of 12 years for those performing the type of duty falling within a salary broadband and of an eligibility criterion reduced to 8 years for those performing duties in a single salary band is objectively justified, for the same reasons as those set out in paragraphs 51 and 52 above.
- 54 Moreover, the manner in which the duties in the two salary broadbands, identified in paragraph 51 above, were taken into account is proportionate, in so far as the four-year difference as regards the eligibility criterion for the CTS pilot programme, which exists between the two categories of staff members, corresponds approximately to the difference in salary progression between a single salary band and a salary broadband. It follows from the data in paragraph 4 above that there is a

mathematical ratio where 8 years of service for staff members in a single salary band and the number of steps that such a salary band comprises, namely 99 steps, corresponds to just under 14 years of service for staff members in a salary broadband, comprising 169 steps.

- 55 Lastly, as is apparent from the case-law cited in paragraph 42 above, it must be acknowledged that, since it had to introduce rules of general application in an area in which it has a wide discretion and a wide autonomy, the ECB, as it maintains, could, without making a manifest error of assessment, rely on standard situations, not being required, in addition, to provide for a system of exceptions to take account of atypical situations, such as that of the applicant.
- 56 As regards the alternative eligibility criterion which the applicant argues should be taken into consideration, based on the fact that he had been at the ceiling of a salary band for a certain number of years, without making a distinction according to the type of salary band, it is clear that it corresponded to another choice on the part of the ECB in the context of its staff management policy.
- 57 As stated in paragraphs 40 and 41 above, first, when it lays down rules relating to matters concerning the arrangements applicable to the staff it employs, the ECB enjoys broad autonomy on account of its functional independence. Secondly, the institutions enjoy a wide discretion in determining the interest of the service, judicial review being limited to verifying whether the choices made are not the result of a manifest error.
- 58 In that context, account must be taken of the fact that, as is apparent in particular from paragraphs 51 to 54 above, the criterion based on years of service adopted for the CTS pilot programme was objective and consistent with the career structure within the ECB based on the type of employment.
- 59 Furthermore, as the ECB noted, a criterion based on the fact of having reached the salary band ceiling was likely to make recently recruited members of staff eligible for CTS, but at a very high level in a salary band.
- 60 Moreover, such a criterion was likely to give rise to a further difference in treatment. It follows from the answers given by the ECB to the written questions put by the Court that, of the 987 members of staff who were in a salary broadband on 1 January 2013, only 161 had been allocated on their recruitment to a step corresponding to a step in the higher single salary band. Therefore, that criterion favoured a minority of staff members, namely those who, of those 161 persons, had been allocated, at the time of their recruitment, to a step relatively close to the ceiling for their salary broadband. Conversely, assuming that an annual progression of four to five steps could be regarded as normal by reference to the applicant's progression in his salary band (advancement from step 136 to step 169 in 7 and a half years), the likelihood that members of staff initially allocated to the lower part of a salary broadband would be eligible was low, or even non-existent.
- 61 Furthermore, the difficulties referred to in paragraphs 58 and 59 above, which would have required additional provisions to avoid unreasonable situations or to avoid significant differences in treatment, give credence to the ECB's assertion that the measure at issue serves the objective of designing simple and easy to apply rules.
- 62 Similarly, it must be noted that the assertion that members of staff who have reached the ceiling of the salary band to which they belong no longer have career prospects, which the applicant puts forward in order to demonstrate the appropriateness of the alternative criterion which he proposes, does not take account of all the career prospects within the ECB. It should be noted that those prospects result not only from advancement to a higher step in a given salary band, but also from progression to different levels of responsibility for certain types of role and, generally, from opportunities for internal promotion, to a higher salary band. Those possibilities are important for staff members with extensive professional experience, which is necessarily the case for those who are at the top of their salary band.

Furthermore, one of the objectives of CTS is specifically to encourage internal promotion on account of the freeing up of positions caused by the early departure of certain staff members in posts in higher salary bands, so that CTS itself responds to the type of concerns raised by the applicant.

- 63 Finally, it is not irrelevant for the purpose of assessing the proportionality of the seniority criterion at issue to point out that it was part of a pilot programme which was required to undergo an *ex post* evaluation, as is apparent from recital 2 of Decision ECB/2012/NP18 (see, by analogy, judgment of 7 March 2017, *RPO*, C-390/15, EU:C:2017:174, paragraph 69).
- 64 Therefore, even if the situation of staff members in a salary broadband was comparable to the situation of those in a single salary band in the light of the purpose and objectives of CTS, it cannot be considered that the use, in respect of the CTS pilot programme, of the length-of-service criterion at issue, which thus appears to be justified, constituted a manifest error.
- 65 It follows from all the foregoing considerations that Article 2.3.1 of the Staff Rules was not contrary to the principle of equal treatment or, in so far as those questions could be examined separately, vitiated by an infringement of the principle of proportionality or a manifest error of assessment, in so far as it fixed an eligibility threshold for the CTS pilot programme corresponding to 12 years of service for members of staff allocated to the salary broadbands, whereas that threshold was 8 years of service for those in single salary bands.
- 66 Therefore, the present plea in law must be rejected as unfounded.

The second plea, alleging the unlawfulness of Article 2.3.1 of the Staff Rules on the basis of infringement of Article 21 of the Charter and of Directive 2000/78 as a result of discrimination on grounds of age

- 67 According to the applicant, persons at a similar level in the salary bands are of a similar age. Since staff members allocated to a salary broadband had to wait four more years in order to be eligible for the CTS pilot programme than those in a single salary band, the applicant submits that they had to be older than the staff in the single salary band in order to benefit from that programme. Therefore, Article 2.3.1 of the Staff Rules contains an implied age condition. That condition amounts to discrimination based directly on age in relation to members of staff allocated to a salary broadband and that discrimination is not objectively justified for the same reasons as those set out in the first plea.
- 68 The ECB submits that there is no correlation between age and allocation to a single salary band or allocation to a salary broadband, or between age and years of service in a salary band, or between age and level of allocation in a salary band. Therefore, there is no difference of treatment directly or indirectly linked to age.
- 69 It should be recalled that the principle of non-discrimination on grounds of age, which is a general principle of EU law, was given specific expression by Directive 2000/78 in the field of employment and occupation (judgment of 19 January 2010, *Küçükdeveci*, C-555/07, EU:C:2010:21, paragraph 21) and that the prohibition of any discrimination on grounds, inter alia, of age is laid down in Article 21 of the Charter. Moreover, not only is Directive 2000/78 a source of inspiration in disputes concerning the staff of the EU institutions as regards determining the obligations of the competent regulatory authority with regard to the principle of non-discrimination on grounds of age (see, to that effect, judgment of 7 February 2019, *RK v Council*, T-11/17, EU:T:2019:65, paragraphs 68 to 70 and the case-law cited), but it is also binding on the ECB by virtue of Article 9(c) of the Conditions of Employment.
- 70 In the present case, it must be held that the eligibility conditions for the CTS pilot programme did not contain any direct reference to the age of members of staff.

- 71 Moreover, the distinction made between staff members according to the type of salary band which they are in has no bearing on the age of those staff members.
- 72 It should be noted in that regard that the years of service in any salary band depends solely on when a person was recruited or, possibly, promoted to a salary band.
- 73 As regards a situation such as that of the applicant and on which he bases his action, namely recruitment to a salary broadband, it should be noted that such recruitment is possible at any stage in a person's career, in particular to the second part of the salary band, as the example of the applicant demonstrates, but also earlier in a person's career, or even at the beginning of that career.
- 74 That second scenario is, moreover, the most common, since, as is apparent from the data from the ECB which is reproduced in the applicant's pleadings, of the 458 persons recruited by that institution between 2010 and 2012, 82% were allocated to the first part of a salary broadband.
- 75 Consequently, commencing employment at the ECB, and thus allocation to a salary band, may take place at almost any stage of professional life and, therefore, at almost any age during a person's professional life.
- 76 It follows from the foregoing that it cannot be ruled out that a staff member, owing to his or her recruitment at the start of his or her career, may have 12 years of service in a salary broadband before reaching the age of 40, so that he or she is eligible for the CTS pilot programme, or that a staff member, because he or she was recruited or promoted at the end of his or her career, may not have completed 8 years of service in a single salary band at the age of 55, with the result that he or she is not eligible for that programme.
- 77 It is true that it is possible that in the case of two persons recruited at the same time and at the same age, one in a single salary band and the other in a salary broadband, that one might be eligible for the CTS pilot programme and the other might not. However, that situation resulted not from discrimination on grounds of age, but from the time of recruitment and the type of salary band which they were in, which is determined by the type of role performed, those being parameters independent of age, the second of which was regarded as consistent with the objectives and purpose of CTS in the response to the first plea.
- 78 As to the remainder, although the applicant concludes his reasoning as to the existence of a difference in treatment on grounds of age, in paragraph 80 of the application, by stating that CTS 'provides for a difference in treatment which is based directly on age', he claims in paragraph 72 of the application that there is indirect discrimination based on age, therefore it is necessary to examine that possibility.
- 79 In accordance with the definition in Article 2(2)(b) of Directive 2000/78, indirect discrimination is to be taken to occur where an apparently neutral provision, criterion or practice would put persons of a particular age at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. Furthermore, it follows from Article 10(1) of that directive that the finding of discrimination must be based on facts from which it may be presumed that there has been direct or indirect discrimination.
- 80 In the present case, it follows from the data appearing in the summary drawn up after the closure of CTS (Annex A.14) that the implementation of that measure led to the early departure of 7 persons under the age of 45, 15 persons aged between 45 and 54 and 23 persons over the age of 54. Those figures show that, in practice, the contested length-of-service criterion did not favour, or disadvantage, among members of staff, those in a particular age bracket.

81 Furthermore, even assuming that there may be a link in the present case between the years-of-service criterion and age, it should be noted that, in any event, any difference in treatment would appear to be justified on the same grounds, relating to the interests of the service, as those set out in paragraphs 48 and 50 to 54 above, in the context of the response to the first plea, since the principle of non-discrimination, based inter alia on grounds of age, laid down in Article 21 of the Charter, is merely a particular expression of the principle of equal treatment, which is enshrined in Article 20 of the Charter (see, to that effect, judgment of 7 February 2019, *RK v Council*, T-11/17, EU:T:2019:65, paragraph 60 and the case-law cited).

82 Consequently, it must be held that Article 2.3.1 of the Staff Rules did not discriminate on grounds of age to the detriment of staff members in a salary broadband in so far as it set an eligibility threshold for the CTS pilot programme corresponding to 12 years of service for members of staff allocated to the salary broadbands, whereas that threshold was 8 years of service for those in single salary bands.

83 Therefore, the second plea must be rejected as unfounded.

Third plea, alleging manifest error of assessment and breach of the duty to have regard for the welfare of staff

84 The applicant submits that the ECB made both a manifest error of assessment and breached the duty to have regard for the welfare of staff by failing to carry out a sufficiently detailed examination of the implications of the disputed length-of-service condition, even though that condition resulted in distortion in the light of the principle itself of career transition and discrimination or injustice in certain cases, and by failing to interpret Article 2.3.1 of the Staff Rules in such a way as to avoid those consequences. That could particularly have been the case, in respect of the applicant, by applying the new rules, which no longer make any distinction according to single salary bands or salary broadbands, in the context of the measures necessary to comply with the judgment of 17 November 2017, *Teeäär v ECB* (T-555/16, not published, EU:T:2017:817).

85 The ECB disputes the merits of that plea. It argues in particular that the duty to have regard for the welfare of staff is circumscribed by compliance with the rules, so that it could not apply derogations not provided for in Article 2.3.1 of the Staff Rules or misconstrue the scope *ratione temporis* of that provision and of the provision which replaced it.

86 It should be noted, as a preliminary point, that it follows from the response to the first plea that the present plea cannot be upheld in so far as it is based on the assumption that the disputed length-of-service condition leads to a distortion in the light of the principle itself of career transition. Therefore, it is necessary to examine whether the duty to have regard for the welfare of staff required the ECB to accept the applicant's application for CTS on the ground that, in his case, the eligibility condition laid down in Article 2.3.1 of the Staff Rules led to an unfavourable and inappropriate result.

87 In that regard, it is sufficient to note that the provision at issue did not provide for any exception or possibility to derogate from the length-of-service condition, with the result that the ECB was bound to apply it.

88 The duty of the administration to have regard for the welfare of its staff reflects the balance of the reciprocal rights and obligations in the relationship between the public authority and its staff. That duty implies in particular that when the authority takes a decision concerning the situation of an official or other staff member, it must take into consideration all the factors which may affect its decision, and when doing so it should take into account not only the interests of the service but also those of the member of staff concerned. However, the protection of the rights and interests of

members of staff must always be limited by compliance with the rules in force (see, by analogy, judgment of 5 December 2006, *Angelidis v Parliament*, T-416/03, EU:T:2006:375, paragraph 117 and the case-law cited).

89 Consequently, the ECB cannot be criticised for having applied Article 2.3.1 of the Staff Rules in the version in force on the date when the applicant's application for the CTS pilot programme was submitted.

90 Therefore, the third plea in law must be rejected as unfounded.

The fourth plea, alleging infringement of Article 2.3.1 of the Staff Rules

91 The applicant submits that the concept of 'salary broadband' is not clearly defined in the rules applicable to the staff of the ECB and points out that his contract does not state that the F/G — Band to which he was allocated is a 'salary broadband'. In the light of that lack of precision, it must be held that the applicant was allocated to a single salary band, within the meaning of Article 2.3.1 of the Staff Rules, and, therefore, that he had to demonstrate only eight years of service, so that his application for the CTS pilot programme was admissible.

92 The ECB submits that paragraph 4 of Annex 1 to the Conditions of Employment contains a definition of the concept of salary broadbanding. It also notes that the Conditions of Employment were expressly made part of the applicant's contract and that he was contractually allocated to the adjacent F and G salary bands. Therefore, it is irrelevant that the applicant's contract referred to 'the F/G salary band', without specifying that it was a salary broadband.

93 It should be noted that the concept of salary broadband is in fact defined in paragraph 4 of Annex 1 to the Conditions of Employment as 'a combination of two adjacent salary bands'. That definition must be seen in the light of the salary structure in paragraph 1 of that annex, which includes bands A, B, C, D, E, F, E/F, G, F/G, H, I, J, K and L, from which it follows that only the E/F and F/G salary bands are a combination of two adjacent salary bands.

94 As the ECB submits, the Conditions of Employment formed part of the applicant's contract of employment, since they were annexed to the ECB's letter of 9 February 2004 containing the conditions of his employment as an integral part of that contract.

95 Consequently, the words 'F/G — Band' in that letter must be interpreted as providing that the applicant is to be allocated to the F/G salary broadband as a production expert, irrespective of the fact that the word 'broad' was not used.

96 Moreover, it follows from the note annexed by the applicant to his application for the CTS pilot programme that he had interpreted the ECB's letter of 9 February 2004 containing the conditions of his employment in that way.

97 Consequently, the fourth plea put forward by the applicant in support of his claim for annulment and, therefore, the application for annulment must also be rejected as unfounded.

The claim for damages

98 The applicant requests that the ECB be ordered to pay him a sum corresponding to the support which he would have received had his application for the pilot project for CTS been accepted, estimated at EUR 101 447, plus interest.

- 99 The ECB contends that the claim for damages should be dismissed since, in its view, the application for annulment, which is closely associated with that claim, must also be dismissed.
- 100 In that regard, suffice it to note that claims for compensation for material or non-material damage must be rejected where they are closely associated, as in the present case, with claims for annulment which have themselves been dismissed as unfounded (judgment of 24 April 2017, *HF v Parliament*, T-570/16, EU:T:2017:283, paragraph 69; see also, to that effect, judgments of 6 March 2001, *Connolly v Commission*, C-274/99 P, EU:C:2001:127, paragraph 129, and of 14 September 2006, *Commission v Fernández Gómez*, C-417/05 P, EU:C:2006:582, paragraph 51).
- 101 Since the application for annulment of the contested decision must be dismissed, the claim for damages must be dismissed as unfounded and, accordingly, the action must be dismissed in its entirety.

Costs

- 102 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, he must be ordered to pay the costs, in accordance with the form of order sought by the ECB.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders Mr Raivo Teeäär to pay the costs.**

Nihoul

Svenningsen

Öberg

Delivered in open court in Luxembourg on 26 March 2020.

E. Coulon
Registrar

M. van der Woude
President