

## **Decision of the European Ombudsman on complaint 863/99/ME against the European Investment Bank**

Decision

**Case 863/99/ME - Opened on 20/07/1999 - Decision on 18/05/2001**

Strasbourg, 18 May 2001

Dear Mr L.,

On 25 June 1999, you made a complaint to the European Ombudsman concerning the abolition of the special conversion rates foreseen for pensioners from the European Investment Bank.

On 20 July 1999, I forwarded the complaint to the President of the Bank. The Bank sent its opinion on 28 October 1999. I forwarded it to you with an invitation to make observations, which you sent on 31 December 1999 and 9 January 2000. On 5 August, 10 and 14 October, 24 November and 2 December 1999, and on 29 February and 7 March 2000, you sent me further letters and e-mails.

On 22 May 2000, I decided to suspend my inquiries into your complaint until a related case pending before the Court of First Instance had been resolved (case T-192/99, *Dunnett and others v. European Investment Bank* ). You were informed of my decision on the same day.

On 6 March 2001, the Court of First Instance passed its judgement in case T-192/99.

On 13 March 2001, I wrote to the Bank again. The Bank sent its further opinion on 3 April 2001. I forwarded it to you with an invitation to make observations, which you sent on 9 May 2001.

I am writing now to let you know the results of the inquiries that have been made.

### **THE COMPLAINT**

The complainant, since 1986 a pensioner of the European Investment Bank, lodged a complaint with the European Ombudsman in June 1999 concerning the Bank's decision to abolish the special conversion rates and to pay his pension in Euro instead of in pound sterling.

The Bank had since 1982, applied a special conversion rate to allow for differences in living costs in different Member States. According to the complainant, the Bank had decided to



abandon this system and to introduce a new system allowing for payments in Euro only. For pensioners, a transitional period of three years starting on 1 January 1999 was foreseen. The complainant stated that already in the first year, the system had resulted in a loss of 14% for UK pensioners. By 1 January 2001, the loss could be as much as 35%.

The complainant put forward that a similar living bonus based on location are paid to pensioners from other Community institutions. There were no proposals from any other institution to abolish the system, thus only pensioners from the Bank were affected. The complainant referred to the so called "Vademecum for EIB Pensionholders" which stated that:

*"If you have chosen the currency of your country of residence, your pension will automatically be calculated on the basis of the special conversion rate decided by the Council of the European Communities whenever this is more favourable than the average in Brussels"*

The complainant therefore believed that the Bank was obliged to continue indemnifying its pensioners in accordance with its undertaking mentioned in the Vademecum. The complainant had tried for six months to convince the Bank of this without success.

In summary, the complainant thus alleged that the Bank decided to abolish the old pension system unilaterally, although all the other institutions continued their system of compensation. According to the complainant, this resulted in a loss for pensioners resident in the UK. The complainant also referred to the provisions in the so called "Vademecum for EIB Pensionholders".

The complainant claimed that the decision resulting in the cut of pensions paid by the Bank should be reversed or at least suspended until an agreed solution had been found.

## THE INQUIRY

### **The European Investment Bank's opinion**

In its opinion, the Bank explained the abolition of the social conversion rates. Initially, the Bank pointed out that its staff are not civil servants but has an employment relationship with the Bank on a contractual basis. This has been recognised by the Court of Justice. The employment relationship between the Bank and its staff is thus subject to a different legal framework than that laid down by the Staff Regulations for Community officials. The Bank's Staff Regulations provides for a pension scheme for its staff. This system is governed by the staff pension scheme Regulation adopted by the Bank's Board of Directors. According to the Regulation, the pension scheme benefits are payable at the seat of the Bank and may be paid either in Euro or in a currency of one of the Member States at the beneficiary's choice. Where the benefits are paid in a currency other than that in which the Bank's salary scale is expressed, conversion shall be at the same rate as that applicable to the transfer of staff salaries.

In 1982, the Bank introduced a system under which active staff members were permitted to receive part of their salary in a currency other than BEF/LUF at a conversion rate more favourable than the market exchange rate. The special conversion rates were also applied to



payments of benefits under the Bank's pension scheme when the beneficiary chose payment in the currency of his place of residence rather than in BEF/LUF.

The special conversion rates were calculated on the "weightings" established by the Community institutions for the conversion of the remuneration paid to Community officials assigned to serve in countries other than Belgium and Luxembourg. In 1982, members of the staff were permitted to receive up to 35% of their salary in a currency other than BEF/LUF. In 1996, the amount was reduced to 16% of the salary for transfers to the Member State of origin and up to 35% upon providing supporting documentation of eligible personal expenditure in another Member State.

Pensioners could benefit from the special conversion rates for the entire amount of their pensions and each month the more favourable of either the market rate or the special conversion rate was applied. The Bank underlined that both for active staff and for pensioners, the benefit of the special conversion rates was introduced and maintained by the Bank as a unilateral measure and was never incorporated in the Bank's Staff Regulations or in the individual employment contracts. The existence of the special conversion rates was mentioned in the "Vademecum for EIB Pensionholders", a purely informative and legally non-binding leaflet distributed to members of staff upon departure from the Bank.

In June 1998, after consultation with the College of Staff Representatives and with the Pensioners' Association, the Bank announced that the system of special conversion rates would be terminated as of 1 January 1999 following the introduction of the Euro, which would also be the currency in which the Bank would pay its staff. The decision to introduce the Euro as the currency of denomination and payment of staff salaries and pensions was taken by the Bank's Board of Directors in June 1998. At the same time, the Bank's Management Committee took the decision to terminate the system of special conversion rates since the conversion rates for the Member States participating in the Monetary Union were to be fixed by the Council on 31 December 1998 (Council Regulation 2866/98). The system could therefore not be applied to these currencies from 1 January 1999. On grounds of equal treatment and fairness towards all staff, the special conversion rates were also terminated in relation to the currencies of the Member States which were not part of the Monetary Union. This decision was endorsed by the Bank's Board of Directors in February 1999. The abolition of the special conversion rates was communicated to both active staff and pensioners through an information bulletin delivered individually to staff members and pensioners in June 1998. Each pensioner received a personal letter explaining the impact of the decision on his or her personal situation.

As regards the pensioners, the Bank's Management Committee decided to phase out the benefit of the special conversion rates gradually over three years. Thus, the special conversion rate was to be applied to a maximum of 75% during 1999, 50% during 2000 and 25% during 2001.

The Bank underlined that in its view the contested decision did not abolish the old pension scheme unilaterally as claimed by the complainant but only changed an additional benefit granted by the Bank. The pension scheme and the legal framework governing it remained in place and unchanged.



The Bank then informed the Ombudsman that regarding the abolition of the special conversion rates for remuneration paid to active members of the Bank's staff -following a conciliation procedure as foreseen by the Bank's Staff Regulations- a group of three members of the Bank's staff had filed an action before the Court of First Instance on 31 August 1999. The members thereby challenged the legality of the Bank's decision. According to the Bank, since the special conversion rates for active staff and for pensioners are interlinked, the outcome of the pending court case may also have implications for the Bank's pensioners.

As regards the situation of the pensioners in particular, the Bank also informed the Ombudsman that a conciliation procedure was initiated by the complainant and some other pensioners from the United Kingdom. A Conciliation Board as foreseen by Article 41 (2) of the bank's Staff Regulations was formed and gave its recommendations on 30 July 1999. The Bank's Management Committee decided not to adopt the measures suggested by the Conciliation Board but instead offered two supplementary benefits to the pensionholders, namely to compensate to a certain limit for the impact of the unexpected sharp rise of certain currencies outside the Euro such as the British pound sterling against the Euro and, secondly, to offer a one-off lump sum of social contribution. The group of British pensioners did subsequently express their disappointment with the Management Committee's proposal. However, discussions were still ongoing in view of defining the additional benefits to be offered to the pensionholders.

#### **The complainant's observations**

In his observations, the complainant put forward in summary the following:

For some pensioners, but not for all, the Bank had offered a one-off flat-rate "social" payment. A form of compensation which was however insufficient even to balance the losses incurred during the three-year transitional period. According to the complainant, the President of the Bank had stated on several occasions that the abolition of the special conversion rates was not intended to reduce pensioners' incomes and that these consequences were accidental.

The complainant further underlined that the Bank had presented the abolition of the special conversion rates as an inevitable change, compelled by force majeure following the introduction of the Euro. The complainant believed that they were misinformed, as other institutions presumably under the same pressure, reacted quite differently and are continuing to pay their pensioners with weightings according to their country of residence and therefore ensuring that pensioners maintain the same purchasing power as before the Euro. At least the Bank should ensure an alternative to the special conversion rates matching as far as possible the pension regime adopted by other institutions. Moreover, the rates were introduced to take into account the differences in the cost of living. There was no change in the cost of living on 1 January 1999.

The pension Regulation of the Bank was changed on 1 January 1999. Article 33 of the Regulation now stated that benefits shall be paid in Euro and Article 81 states that the "new" Regulation enters into force on 1 January 1999 however the entitlements of insured having left the Bank before the entry into force, shall be determined on the basis of the Regulation



applicable at the time of their departure. The Bank has thus incorrectly treated the amendment as affecting all pensioners. The complainant also claimed that when the Board took the decision to change the Regulation in June 1998, the Bank's administration did not reveal to the Board that the essential consequence of the proposed decision was not the currency of denomination of pensions but the abolition of the special conversion rates.

When the Bank amended the system of special conversion rates in 1995 and 1996, the purpose was to bring them in line with the rules applicable to the other institutions. The Bank thus explicitly exercised its autonomy to align itself with the other Community institutions. In 1998, by abolishing the special conversion rates, the Bank departed from that policy of alignment.

It is a principle common to the laws of the Member States that unilateral staff benefits may become an acquired right. In order to withdraw such a right the withdrawal must be fair and just, i.e. there should be appropriate reasons, consultations, compensations and a period of transition.

As regards the admissibility of the complaint, the complainant claimed that the Statute of the Ombudsman does not preclude the Ombudsman from dealing with the case.

The complainant concluded that the causes of the complaint were the following: discontinuation on 1 January 1999 (after 16 years) of pension payments by the Bank in pound sterling; derogation after 16 years of a purchasing power formula using EU weightings; breach of promises made in the "Vademecum for EIB Pensionholders"; refusal by the Bank to recognise the decision of the Conciliation Board of 30 July 1999; and discrimination against the Bank's pensioners compared to retired staff from all the other Community institutions.

#### **Suspension of the inquiry**

From the information available to the Ombudsman, it appeared that on 31 August 1999, three members of the Bank's staff lodged an appeal with the Court of First Instance against the Bank concerning the Bank's decision to abolish the special conversion rates, case T-192/99, *Dunnett and others v. European Investment Bank*.

The Statute of the European Ombudsman (1) excludes from the Ombudsman's mandate the consideration of complaints related to cases before courts, or to court's rulings (Article 1 (3)), or those activities of the Court of Justice and the Court of First Instance acting in their judicial role (Article 2 (2)). In the event that the facts of a complaint is the subject of legal proceedings in progress, the Ombudsman shall declare a complaint inadmissible or terminate consideration of it, having to file the outcome of any inquiries carried out in relation to the case up to that point (Article 2 (7)).

Taking into account that the merits of the complaint was closely related to those of the complaint pending before the Court of First Instance, the Ombudsman did not find it possible to continue the inquiries into the case without taking a stand on matters which are currently before the Court of First Instance. In order to avert any such possibility, and to respect the letter and spirit of the above provisions of the Statute of the European Ombudsman, the Ombudsman decided on 22 May 2000 to suspend the inquiries into the complaint until the related case



pending before the Court of First Instance had been resolved.

#### **Judgement of the Court of First Instance**

On 6 March 2001, the Court of First Instance passed its judgement in case T-192/99 (2) . The Court of First Instance found the appeal admissible as far as the claim for annulment of the applicants' salary statements for January 1999 was concerned. It concluded that the Bank had breached a general principle of employment law in that it did not hold bona fide consultations with staff representatives before adopting the decision on 11 June 1998. The Court therefore declared the decision of 11 June 1998 to abolish the system of special conversion rates unlawful.

#### **Further inquiries**

After careful consideration of the file of the complaint and the judgement of the Court of First Instance in case T-192/99, it appeared that further inquiries were necessary. The Ombudsman therefore asked the Bank to inform him of any measures the Bank would take in the matter following the Court's judgement.

#### **The Bank's second opinion**

In its reply to the Ombudsman's further inquiries, the Bank explained that the Court's ruling annulled the relevant payslips of the three applicants. Thus, they would be treated as if the decision of June 1998 to abolish the special conversion rates had never been taken.

The Bank's understanding of the ruling was not that it obliged it to extend the application to all other staff members or pensioners affected, nevertheless, to ensure equal treatment, the Bank had decided that all staff members entitled to the special conversion rates should be treated on the same basis and that the same principle be applied to pensioners from January 1999. The practical arrangements arising from this decision were presently being put in place.

The Bank also informed the Ombudsman that extensive consultations with pensioners were already ongoing before the case was lodged with the Court of First Instance. With a view to taking better account of the pensioners situation, further consultations were ongoing with the Pensioners' Association which progressed satisfactorily. The Bank ensured the Ombudsman that the forthcoming decision on the matter would of course be taken with full regard to the Court's ruling and in a manner resulting in equal treatment of all concerned.

#### **The complainant's second observations**

The complainant found it most satisfactory that the Court's ruling on the special conversion rates would be applied by the Bank to all staff including pensioners and welcomed the Bank's undertaking. The complainant was thus satisfied as regards the past pension payments but felt that the Bank's assurances with regard to future pension payments lacked in precision. The complainant admitted that there were ongoing consultations with the Pensioners' Association but put forward that not all pensioners were members. The complainant therefore required that any future decision of the Bank should be applied to all pensioners. Finally, the complainant asked for a clarification as to whether the Bank admitted the validity of its undertaking in its so called "Vademecum for EIB Pensionholders" and further that the Bank circulated the Court's judgement to all staff and pensioners.

## **THE DECISION**



## **1 The abolition of the special conversion rates**

1.1 The complainant alleged that the Bank decided to abolish the old pension system unilaterally, although all the other institutions continued their system of compensation. According to the complainant, this resulted in a loss for pensioners resident in the UK. The complainant also referred to the provisions in the so called "Vademecum for EIB Pensionholders". The complainant claimed that the decision resulting in the cut of pensions paid by the Bank should be reversed or at least suspended until an agreed solution had been found.

1.2 Since the Court of First Instance was dealing with a case which raised this legal issue, the Ombudsman decided on 22 May 2000 to suspend the inquiries into the complaint until judgement had been passed on the matter.

1.3 On 6 March 2001, the Court of First Instance passed its judgement in case T-192/99 (3) . The Court of First Instance found the appeal admissible as far as the claim for annulment of the applicants' salary statements for January 1999 was concerned. It concluded that the Bank had breached a general principle of employment law in that it did not hold bona fide consultations with staff representatives before adopting the decision on 11 June 1998. The Court therefore declared the decision of 11 June 1998 to abolish the system of special conversion rates unlawful.

1.4 Following the judgement of the Court, the Bank stated that the judgement annulled the relevant payslips of the three applicants and they would be treated as if the decision of June 1998 to abolish the special conversion rates had never been taken. In order to ensure equal treatment, the Bank had decided that all staff members and pensioners entitled to the special conversion rates should be treated on the same basis and the practical arrangements arising from the Court's decision were being put in place. Further, consultations were ongoing with the Pensioners' Association. The Bank ensured the Ombudsman that the forthcoming decision on the matter would be taken with full regard to the Court's ruling and in a manner resulting in equal treatment of all concerned.

1.5 The complainant expressed his satisfaction that the Court's ruling on the special conversion rates would be applied by the Bank to all staff including pensioners and welcomed the Bank's undertaking. Although, he expressed some concern in relation to the Bank's assurances and concerning the fact of whether the Bank would apply its decision to all pensioners.

1.6 The Ombudsman notes that the Court of First Instance dealt with the question of the legality of the Bank's decision of 11 June 1998 to abolish the system of special conversion rates and that the Court declared the decision unlawful. The Ombudsman also notes that the Bank has undertaken to take full account of the Court's judgement. The Ombudsman's understanding is therefore that the Bank will take a new decision in accordance with the Court's judgement. The Ombudsman has also been informed by both the Bank and the complainant that consultations are ongoing between the Bank and the Pensioners' Association. The Ombudsman therefore finds that the Bank has met the complainant's claim.

1.7 As regards the complainant's concern in relation to the Bank's assurances and concerning





the fact of whether the Bank would apply its decision to all pensioners, the Ombudsman notes that the Bank stated that it would ensure equal treatment of all concerned.

1.8 As regards the complainant's request for a clarification as to whether the Bank admitted the validity of its undertaking in its so called "Vademecum for EIB Pensionholders" and further that the Bank circulate the Court's judgement to all staff and pensioners, the Ombudsman does not find it justified under these circumstances to pursue inquiries into these points that were raised by the complainant in his observations to the Bank's second opinion.

## **2 Conclusion**

It appears from the Bank's second opinion and the complainant's observations that the Bank has taken steps to settle the matter and has thereby satisfied the complainant. The Ombudsman therefore closes the case.

The President of the European Investment Bank will also be informed of this decision.

Yours sincerely,

Jacob Söderman

(1) Decision 94/262 of 9 March 1994 of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, OJ 1994 L 113/15.

(2) Judgement in case T-192/99, *Dunnett and others v. European Investment Bank*, of 6 March 2001. Not yet reported in the ECR.

(3) Judgement in case T-192/99, *Dunnett and others v. European Investment Bank*, of 6 March 2001. Not yet reported in the ECR.