ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

ORGANISATION DE COOPÉRATION ET DE DÉVELOPPEMENT ÉCONOMIQUES

ADMINISTRATIVE TRIBUNAL

Judgment of the Administrative Tribunal

handed down on 23 April 2018

JUDGEMENT IN CASES No. 85 and No. 88

Ms. AA
Applicant

v.

Secretary-General

Translation (the French version constitutes the authentic text).

JUDGMENT IN CASES No. 85 and No. 88 OF THE ADMINISTRATIVE TRIBUNAL

Sitting on 19 March 2018
At 10 a.m. in Château de la Muette,
2 rue André-Pascal in Paris

The Administrative Tribunal consisted of **:**

Mrs. Louise OTIS, Chair

Mr. Luigi CONDORELLI

And Mr. Pierre-François RACINE

with Mr. Nicolas FERRE and Mr. David DRYSDALE providing Registry services.

The Tribunal heard:

Mr. Giovanni M. PALMIERI, counsel of the Applicant ;

Mr. Nicola BONUCCI, Head of the Organisation's Directorate for Legal Affairs, on behalf of the Secretary-General ;

Mr. Rémi CEBE, Senior Legal Advisor of the Organisation's Directorate for Legal Affairs, on behalf of the Secretary-General;

Mr. BB, witness called by the Applicant;

Mr. CC, witness called by the Applicant;

Mr. DD, Head of Human Resources Operations, witness called by the Secretary-General

INTRODUCTION

[1] On 12 December 2016, the Applicant, Ms. AA, made a preliminary application for the withdrawal of the Organisation's decision dated 10 November 2016.

[2] On 23 March 2017, the Applicant filed a first application for annulment and compensation lodged with the Registry, in which she requested that the decision taken by the Secretary-General of the Organisation for Economic Co-operation and Development (hereinafter referred to as "the Organisation") on 10 November 2016 to consider her failure to reply to a questionnaire as an application to maintain her membership in the global medical and social system subject to the payment of a fee provided for in Instruction 117/1.4.2(d)(ii) of the *Staff Regulations, Rules and Instructions Applicable to Officials of the Organisation* (hereinafter referred to as "the Regulations") be annulled, and that a monetary order be granted to her to reimburse the costs incurred as a result of the proceedings. This is case number 85.

[3] On 21 April 2017, the application was countered by a claim of inadmissibility under Article 6 (d) of the Tribunal's Regulations on the ground of prematurity since, according to the Organisation, the final decision had not yet been notified.

[4] On 25 April 2017, as part of the procedural management of the matter, the President of the Tribunal decided to suspend any new procedural act for a period of three (3) months so that the Organisation's final decision could be notified to both the Applicant and the group of 70 former officials. This measure was intended to allow a joint hearing if new applications were to be added.

[5] On 12 May 2017, the Organisation announced its response.

[6] On 28 June 2017, the Applicant filed a memorandum in case no. 85 and also notified a second preliminary application for withdrawal *de bene esse* in order to protect her right to be heard on the merits of the case. This is case number 88.

[7] The Organisation also dismissed this second application for withdrawal in terms of both form and content.

[8] On 11 August 2017, the President of the Administrative Tribunal issued a third decision on the management of the proceedings and the investigation schedule. The Applicant was permitted to amend her additional written statement in the light of the Organisation's final reply so that only one case would be submitted to the Tribunal in cases 85 and 88, which dealt essentially with the same question of law.

[9] The Applicant submitted an additional amended written statement on 13 September 2017.

[10] The Organisation's Secretary-General submitted his comments on 30 October 2017.

[11] The Applicant submitted a reply on 27 November 2017.

[12] The Organisation's Secretary-General submitted his comments in rejoinder on 8 January 2018.

[13] It should be stressed that six (6) interventions from former officials have been received by the Registry.

[14] The staff association made no written submissions and did not appear in the proceedings.

[15] The former officials EE, FF, GG, HH, II and JJ each filed a statement in intervention with 16 appendices supporting the applications of Ms. AA. The procedural path of the interveners' files and arguments are essentially similar to those of the Applicant. The determinations and conclusions of the judgment are also applicable to the interventions.

THE DISPUTE

[16] The Applicant disputes the validity of the 4.86% increase provided for in instruction 117/1.4.2(d) of the Regulations to maintain her membership of the global medical and social system known by the acronym OMESYS (**O**ECD **ME**DICAL and SOCIAL **SYS**TEM).

[17] The Applicant argues that this increase, which raised her contribution rate from 2.50% to 7.36%, infringes the principle of legality and constitutes an abuse of rights. More specifically, the Applicant argues that:

1. The 4.86% increase should be determined by a regulation submitted to the Council for approval and not by an instruction
2. She does not have "actual rights " to the French social security scheme.
3. Instruction 117/1.4.2 (d) (ii). is incompatible with Article 17 of the Regulations, which limits the financial contribution to the cost of covering benefits to one-third for former officials and two-thirds for the Organisation

4. The written application was required in order to be "*enrolled in the Global OMESYS scheme* ".
5. Violation of the principle of vested rights.
6. Violation of the principle of non-retroactivity.
7. Violation of general principles of law: violation of the duty of loyalty, good faith, legitimate expectations, diligence and information.

[18] Consequently, the Applicant requests that the Secretary-General's decision be annulled, that she not be subject to the increase in the contribution rate provided for in instruction 117/1.4.2d) ii) and that she be awarded the reimbursement of the "amounts withheld since 1 June 2017" as well as legal costs of €6,000 for application 85 and €4,000 for application 88.

[19] For its part, the Organisation argues that the Applicant suffers no prejudice because membership of the French scheme enables the Applicant to benefit from a lower contribution rate (*Global OMESYS with a reduced contribution rate)* while enjoying the same rights of reimbursement for medical expenses.

[20] On the merits, the Organisation argues that the determination of the terms and conditions set out in 117/1.4.2 d) is lawful and respects the terms of the Regulations and Rules.

[21] The Organisation's financial contribution to the costs of covering the benefits is, it argues, in accordance with the Rules. According to the Organisation, interpreting the Rules as proposed by the Applicant deprives Article 17/1.4 of the Rules of any useful effect.

[22] The argument based on the absence of a written application is, according to the Organisation, dilatory and devoid of purpose.

[23] Nor has the principle of non-retroactivity been violated.

[24] The principle of vested rights is not applicable in this case. Officials do not have vested rights to the terms and conditions of a particular medical cover system since it is recognised that these terms and conditions are linked to evolving factors based on unstable elements.

[25] Finally, the Organisation has not violated the general principles of international civil service law.

THE FACTS

[26] The Applicant, residing in France, is a former official of the Organisation and a member of the Organisation's medical and social protection system called OMESYS. The dispute concerns specifically the membership arrangements of the Organisation's former officials, some of whom contest the application of Instruction 117/1.4.2 (d) (ii) and the requirement for an increased contribution to maintain reimbursement of medical expenses.

[27] The Applicant worked for the Organisation in various positions from 17 September 1990 to 1 February 2009, when she retired. She joined the Organisation before the OMESYS autonomous scheme came into force.[1]

[28] As a beneficiary of a French retirement pension, the Applicant has opted not to join the French health insurance scheme and has also decided not to make a written request to remain a member of the Global OMESYS basic scheme. Instead, the Applicant is asking to continue to benefit from the Global basic scheme as before without paying the 4.86% increase.

[29] Prior to 1 January 1993, officials working for the Organisation were covered by the French health insurance scheme to which staff and the Organisation contributed. Officials also benefited from complementary cover financed entirely by the Organisation.[2]

OMESYS system

[30] OMESYS was created on 1 January 1993 when the Organisation decided to leave the French social security scheme in order to establish its own medical protection[3] scheme in order to maintain the quality of cover but at a lower cost.

[31] The regulatory framework concerning this arrangement was put in place by the "Agreement between the Government of the French Republic and the OECD on the social protection of members of staff employed by the said Organisation on French territory"[4].

[1] Application N° 85, 28 February 2017, paragraph 1
[2] Document P-9, BC(2013)6.
[3] Staff Regulations, Rules and Instructions Applicable to Officials of the Organisation (hereinafter referred to as "the Regulations").
[4] Regulations, Annex XIV, appendices 1 and 2.

[32] Former officials were members of OMESYS as long as they met the membership requirements. Former officials' contributions were deducted from their pensions.

[33] Since the introduction of the OMESYS system in 1993, Article 17/1.4, most recently revised in January 1996, has granted the Secretary-General the authority to determine by instructions the categories of beneficiaries of medical and social benefits as well as the conditions for the payment of claims by beneficiaries who are entitled to benefits under another scheme.

[34] OMESYS offers three (3) types of cover to former officials for reimbursement of medical expenses related to consultations, prescriptions, treatments and surgery. The repayment rate is 92.5%.

[35] The first type of cover is the "Global" OMESYS basic cover, financed at a rate of 7.5% of the reference remuneration, 5% of which is covered by the Organisation and 2.5% by the former officials. This constitutes full cover up to the maximum limited provided for in the OMESYS scheme. Since November 2015, Instruction 117/1.4.2 (d) has made access by former officials with actual rights to an external primary scheme subject to the payment of an increased contribution.

[36] The other two types of cover are intended for former officials who may benefit from other basic medical cover such as the French social security scheme.

[37] The second type of cover, called the "*complementary system*", complements the benefits of a primary scheme outside the Organisation's scheme. Such cover is usually for former officials who have retained their membership of the French social security scheme. In this case, the basic benefit under the outside scheme must first be partially paid so that only medical expenses are reimbursed on a complementary basis. This is a type of cover that cannot be chosen unless certain specific conditions are met.

[38] Finally, the third type of cover is "*Global OMESYS with a reduced contribution rate*" cover for former officials who are eligible for membership of an external basic scheme. They must first request reimbursement of their expenses from their basic scheme before claiming the residual reimbursement from OMESYS. In this case, if the medical expense is not reimbursable through the basic scheme but is eligible under the OMESYS scheme, it may be fully reimbursed by

"Reduced Contribution Global" OMESYS. So the same cover as with the "Global" OMESYS system but at a lower cost. The former officials' contribution to this cover is an amount equivalent to 1.51%[5] of their pension instead of 2.5% under the OMESYS "Global" scheme, with the Organisation contributing double (3.02%) the officials' rate in accordance with the allocation rule laid down in Article 17 of the Regulations.

[39] It is vital to know something about the background to the OMESYS system in order to put the parties' arguments in a meaningful context and make an analysis of the dispute.

Background to the OMESYS system

[40] On 10 October 1992, the Secretary-General presented the OMESYS system project to the Council, specifying the aims pursued[6]. OMESYS' objective was to "*formally enable former officials, in particular pensioners, to enjoy social security cover after they leave the Organisation; moreover, it merely institutionalises current practice, which is to admit retired former officials to the complementary health care benefits provided by the Organisation*"[7]. The standard-setting instruments were intended to reflect the intention: "*to impose on beneficiaries [the obligation] to exhaust their rights to benefits under other schemes before applying to the Organisation, which would deduct such external benefits from those paid by the medical and social system*[8]. Membership of Reduced Contribution Global OMESYS is also an original part of the system.

[41] On 1 January 1993, Articles 17 et seq. of the Regulations and Rules, adopted by the Council of the Organisation, entered into force, creating OMESYS. Article 17/1.4 of the Rules was also adopted by the Council in 1993.

[42] The Supervisory Board has been an integral part of OMESYS' governance structure since its inception. It was established to periodically review OMESYS operations, benefit cost trends and results. The Board reports to the Secretary-General any changes it considers necessary. The

[5] Article117/1.15.1 and Annex XV of the Regulations.
[6] Comments of the Secretary-General, Document N° 7, p.192; Document C (92)177 (Note by the Secretary-General to the OECD Council on the social protection of staff, draft amendments to the Regulations and Rules applicable to staff and entry into force of the agreement with France).
[7] *Ibid*. in para 11, p.196 .
[8] *Ibid*. in para 13, p.197.

Board consists of six (6) members and six (6) deputies, including three (3) members and three deputies appointed by the staff association. Former officials are also represented[9].

OMESYS financial developments

[43] The financial situation of the OMESYS system remained stable until the end of the decade 2000-2010. In 2009, the Organisation's actuaries made actuarial projections that produced disturbing results for OMESYS' financial viability. Their report conclusions suggested it would become increasingly difficult to finance the system, given the pressure of inflation on health expenditure and the higher life expectancy of international civil servants and former officials. As a result, the Organisation's ability to maintain service quality at the same level of benefits was under threat.

[44] The research findings were presented to the Budget Committee in 2009[10].

[45] In 2010, the external auditor presented a report to the Board recommending an assessment of the potential impact of reforms aimed at reducing the costs of health cover for the Organisation's former officials[11].

[46] An informal working group composed of member countries was also set up by the Board in 2010[12]. This working group was given the task of assessing "*current measures to limit costs, conditions of health cover, eligibility criteria and contributions*"[13] with a view to presenting to the Organisation's Board a statement of "*outstanding problems relating to the financing of commitments for post-employment health cover*"[14]. This work resulted in recommendations to the Board.

[9] Regulations, Article 17/1.16.
[10] Comments of the Secretary-General, enclosure N° 9, p. 219: documents submitted to the Budget Committee and the Council (Documents relating to post-employment medical cover submitted to the Budget Committee and the OECD Council): C(2008)111 (paragraph 27) ; BC(2009)36; IWG/PEHL(2011)1/CORR1; IWH/PEHL, Second Progress Report; C(2011)170 ; BC(2012)32 ; BC(2013)6 ; C(2013)76 ; C(2013)104 ; BC(2014)16 ; BC(2015)12 ; BC(2016)22 ; BC(2017)10).
[11] Comments of the Secretary-General, enclosure N° 10, p.406: document C (2010)96/PART 2 (Report of the External Auditor to the Council, document C (2010)96/PART2, on 29 September 2010).
[12] Comments of the Secretary-General, enclosure N° 11, p. 418: document C(2010)50 (Note by the Secretary-General on post-employment health insurance liabilities establishment of a working group, document C(2010)50, on 18 March 2010).
[13] I*bid*, p 422.
[14] *Ibid.*

[47] In December 2011, the Board, drawing on the recommendations of the Secretariat and the working group, adopted Resolution (C(2011)174/FINAL) which creates a reserve for the financing of costs related to post-employment health cover[15]. The Board instructed the Secretary-General to study the working group's recommendations to reduce the financial costs of health care programmes, which included considerations such as increasing former officials' contribution rates and their use of other basic medical cover schemes, comparable to the Reduced Contribution Global OMESYS formula described above[16].

[48] The trend in OMESYS health cover costs between 2002 and 2011 is described in Annex III of document BC (2013)6. This document provides actuarial analyses of cost trends for post-employment health cover. These show that the financial commitments for post-employment health cover amounted to €127,573,000 in 2002 but jumped to €299,668,000 in 2011. The table in this annex shows that this represents a gross increase of almost 146% in the space of 9 years[17].

[49] Until then, OMESYS' contribution rate had remained relatively stable.

[50] The reports show that the financial sustainability of the OMESYS system cannot be guaranteed, in the medium and long term, simply on the basis of the stability of the OMESYS contribution rate. They present a review of trends in expenditure and its nature, health care costs, and the number of members. The cost and volume of medical services are on the rise, particularly as a result of the combined pressure of an increase in the number of former officials and their life expectancies.

[51] In 2012, the Secretary-General implemented Article 17/1.4 of the Rules after having considered the proposed measures, the need to preserve OMESYS' financial balance and the principle of solidarity between active and former officials. The implementation of Article 17/1.4 of the Rules reflects the intention of the Organisation's administration to require former officials to exercise their actual rights to basic medical cover other than OMESYS.

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[15] Comments of the Secretary-General, enclosure N° 12, p.423: document C (2011)174/FINAL (Council Resolution on the allocation to a reserve for commitments in respect of post-employment health cover, document C (2011/174/FINAL, as of 30 January 2012).

[16] *Ibid*., p.424.

[17] Comments of the Secretary-General, enclosure N°9, p. 311: documents submitted to the Budget Committee and the Council (Documents relating to post-employment medical cover submitted to the Budget Committee and the OECD Council): BC(2013)6.

[52] Starting in 2012, the Organisation adopted detailed measures to inform those concerned of the changes in OMESYS' financial situation and the consequences for their post-employment medical cover.

[53] Accordingly, between October 2012 and November 2016, the Organisation contacted former officials to inform them of the challenges it faced in its firm intention to ensure the sustainability of the OMESYS system. The Organisation stressed the need to maintain solidarity between active and former officials and presented the Reduced Contribution Global OMESYS system as a less costly medical cover option for both former officials and the Organisation, without changing either the nature of the benefits or the quality of cover.

[54] On 19 December 2012, the International Association of Former OEEC and OECD Staff (AIA): "*realise[s] that times have changed and [is] well aware of the economic climate in which this proposal, among several others, was made in connection with the financial viability of OMESYS*"[18]. It nevertheless called on the Organisation to consider the vested rights of former officials and to respect them.

[55] On 6 December 2013, 12 November 2015 and 26 November 2015, the Organisation met the AIA, through its Executive Director and Secretary-General, to inform it of the financial situation concerning OMESYS[19]. Numerous e-mail messages were exchanged between the Organisation and the AIA between 2013 and 2017.

[56] For its part, as of 29 November 2011, the OMESYS Supervisory Board was informed by the Organisation about the problems with the Organisation's medical and social system and the measures considered to remedy them. Following the review of OMESYS' actuarial debt data, the Supervisory Board endorsed the measures presented by the Secretary-General[20]. More specifically, the Supervisory Board supported the measures recommending that, as far as

[18] *Ibid*, on p. 110.
[19] Comments of the Secretary-General, enclosure N° 13, p. 425: (a. Correspondence with employees on 1 October 2012, 29 March 2013, May 2013, 9 September 2013, 2 April 2014, 27 November 2015, 4 December 2015, 14 December 2015 and 7 March 2016.; b. Communications between the Secretariat and the Association of Retired Staff of the OEEC and OECD and the OECD Staff Association, dated 18 January 2013, 25 February 2013, 29 March 2013, 7 April 2013, 15 April 2013, 16 April 2013, 28 June 2013, 23 July 2013, 27 January 2014, 10 March 2014, 27 October 2015, 5 November 2015, 27 January 2016, 14 April 2016, 22 April 2016, 1 June 2016, 4 September 2017).
[20] Comments of the Secretary-General, enclosure N° 14, p.568, statements of the Supervisory Board's opinions of 29 November 2011.

possible, former officials use a different basic cover than OMESYS when they are entitled to it and join Reduced Contribution Global OMESYS.

[57] During the first meeting on 29 November 2011, the Supervisory Board discussed the importance of not placing an undue burden on officials who would only remain in the Organisation for a few years and also on the principle of solidarity between active and former officials. The members of the Supervisory Board "*are in favour of a better system of communication with pensioners who leave after 1 January 2012*". The Supervisory Board's position remained essentially the same until 2015.

[58] The Supervisory Board was subsequently regularly kept up to date about OMESYS' situation and the action taken to resolve the various financial problems [21]. During each consultation, the Board was able to express its opinion and question the Secretary-General about OMESYS' financial issues. The Supervisory Board had the opportunity to make suggestions, and did so, regarding the application of the Rules concerning the obligation of former officials to have recourse to basic medical cover.

[59] On 8 January 2018, 471 former officials joined their basic protection scheme and supplemented it with Reduced Contribution Global OMESYS. The evidence reveals that since their membership, no complaints have been made by these former officials regarding the quality of the social protection system. Only 2% of former officials remained in Increased Contribution Global OMESYS.

Membership of Reduced Contribution Global OMESYS and Instruction 117/1.4.2 d)

[60] Instruction 117/1.4.2 (d) was revised in 2015. This instruction supplements Article 17/1.4 of the Rules by offering former officials a choice: to exercise their right to basic medical cover other than OMESYS, if such cover is available to them with Reduced Contribution Global OMESYS cover or to remain affiliated to Global OMESYS cover by paying an additional premium of 4.86%.

[61] The 4.86% increase was calculated by the Organisation's actuaries and confirmed by Ernst & Young's actuaries. This rate was established on the basis of data from OMESYS' manager, the Henner company.

[21] *Ibid,* Document N° 14: statements of the opinions of the Supervisory Board of 26 November 2012, 16 April, 26 June and 9 December 2013, 27 June and 27 November 2013.

[62] On 12 October 2015, the OMESYS Supervisory Board issued an opinion in favour of Instruction 117/1.4.2(d)[22].

[63] Consulted on 26 October 2015 about the changes to OMESYS, the staff association gave a favourable opinion on the revision of instruction 117/4.2[23]. In its letter to the Organisation, the association stated that it "*attaches great importance to intergenerational solidarity, particularly as regards medical cover, and could therefore not accept any stigmatisation of pensioners*. *It notes that you have taken this consideration into account and thanks you for it*" and adds that it is:

> *"firmly opposed to any questioning of the current allocation criteria for the Organisation's contribution to medical and social cover. This is not the case here. The proposed draft revision does not aim to create a new contribution entirely at the cost of the members but aims at offering, on an optional basis, to a particular category of former officials, the possibility to keep the Global OMESYS system, although having actual rights to first-rate medical cover in another health insurance system. Former officials who wish to benefit from this option would then have to pay an additional premium (fixed at 4.86% of the base defined by instruction 117/1.15.1a), in addition to their basic contribution of 2.5%"*[24].

ANALYSIS

Application N°85

[64] Application No. 85 seeks the annulment of an implicit decision which is alleged to have been taken on 12 January 2017 as a result of the Secretary-General's silence, which was tantamount to the latter's refusal to withdraw the decision of 10 November 2016, which equated the refusal to reply to the Organisation's health insurance management questionnaire with an application for membership of Global OMESYS.

[65] On 12 May 2017, the Applicant was notified of a decision by the cHead of human resources management that her membership of the Global OMESYS system would be

[22] Comments of the Secretary-General, enclosure N° 15, p. 597: opinion of the Supervisory Board of 12 October 2015 (summary of the opinions of the Supervisory Board dated 12 October 2015 (extract concerning post-employment health cover)).
[23] Comments of the Secretary-General, enclosure N° 16, p. 599: staff association opinion of 26 October 2015.
[24] *Ibid*.

maintained subject to payment of an additional 4.86%. In response to a letter dated 30 June 2017 from the Applicant to the Secretary-General, the latter confirmed by letter dated 31 July 2017, signed by the Head of human resources management, the decision taken on 12 May 2017, whose cancellation the Applicant is seeking through application No. 88.

[66] This decision of 12 May as well as the confirmation decision of 31 July 2017 replaced the implicit decision covered by application No. 85, which became devoid of purpose, except as regards the claim for reimbursement of costs incurred in connection with that application.

Application N°88

[67] The Tribunal will examine each of the arguments presented by the Applicant with reference to the factual context, the Regulations and the applicable principles of law.

[68] The main articles of the Regulations relevant to the resolution of disputes are as follows:

> **SECTION III: BENEFICIARIES UNDER THE ORGANISATION'S MEDICAL AND SOCIAL SYSTEM**
>
> **Rule**
>
> **17/1.4**
>
> *a) The Secretary-General shall determine by Instructions the categories of persons entitled to benefits under the Organisation's medical and social system for each category of benefits.*
>
> b) *Where a beneficiary can claim benefits under some other social protection scheme, applications for benefits under the Organisation's system shall be considered, in accordance with Instructions of the Secretary-General, subject to deduction of all benefits due under the other scheme.*
>
> **Instructions**
>
> **117/1.4.2**
>
> **……**
>
> *d) Former officials and their beneficiaries mentioned in Instruction 117/1.4 a) i) above who are effectively entitled to medical cover under another social protection scheme:*

i) must in all cases obtain the benefits which are due under this other scheme before making any request for cover under the Organisation's medical and social system, such benefits being then deducted in their totality from those provided under the latter system;

ii) may nonetheless receive the benefits provided under the Organisation's medical and social system, under the "Global System", without having to obtain the benefits due under this other scheme beforehand, provided that they submit a written request to that effect and pay a further 4.86% in addition to the mandatory contribution of 2.5%, that is to say a total contribution of 7.36% of the basis as defined in Instruction 117/1.15.1 a).

Rule

17/1.15

Officials affiliated under Rule 17/1.1 a) and former officials, or duly qualified claimants to their rights, affiliated to the medical and social system under Rule 17/1.2 shall contribute one-third of the cost of providing benefits under this system, except for benefits in respect of work accidents or occupational diseases, or for maintenance of salary in the event of sickness or maternity, or for benefits on birth or adoption of a child, as determined by Instructions of the Secretary-General..

….

17/1.16

A Supervisory Board shall be established to advise the Secretary-General on matters relating to medical and social protection. The composition and rules of procedure of the Supervisory Board shall be determined by Instructions of the Secretary-General..

Instruction

117/1.16.1

a) The Supervisory Board shall consist of six members:

-- three members and three deputies appointed by the Secretary-General;

-- three members and three deputies representing persons affiliated to the Organisation's medical and social system as well as the recipients of complementary benefits under Rules 17/1.17 to 17/1.22; the members and deputies are appointed by the Staff Association taking into account the need to ensure the representation of all persons

affiliated and recipients of complementary benefits; they include at least one member and one deputy who are former officials or duly qualified claimants to the rights of deceased officials or former officials.

…

b) The Supervisory Board shall be consulted on any amendment of the Staff Regulations, Rules or Instructions affecting benefits under Staff Regulation 17 a) (…)

1. The conditions set out in Article 117/1.4.2 should be derived from a rule and not an instruction.

[69] This legal argument refers to the legislative instruments that determine the essential rights of the Organisation's staff.

[70] The **Preamble** to the Regulations provides that the broad lines of staff policy are set out in the Regulations while: " *The means for implementing the Regulations shall be determined by Rules and Instructions of the Secretary- General, which will require approval by the Council in the cases specified in the Regulations.* ".

[71] It should be noted, for example, that the instructions determine the composition of the Review Board for the staff selection procedure (107/19), the percentage of emoluments and allowances payable at the age limit (113/1), paid parental leave including maternity leave (directly via the enabling power of the Regulations) (120/6), the calculation of reckonable years of service (12.1 of Annex X and calculation table),...

[72] Thus the hierarchy of norms does not follow a hard-and-fast method. Of course, the Regulations set out the basic principle but all the conditions attached thereto, whether monetary or prescriptive, are derived from the rules and instructions. Sometimes the instructions explain the regulatory provisions, sometimes they directly specify the articles of the Regulations without being preceded by a rule. This is the case for sick leave and parental leave, which are nevertheless decisive conditions of service. It should be noted that this approach has never been contested before the Tribunal.

[73] According to Article 17/1.4 of the Regulations, beneficiaries who have actual rights to medical cover under another protection scheme must obtain the benefits before submitting

their application for cover by OMESYS. Former officials are recognised as beneficiaries according to 117/1.4.1a).

[74] Should former officials choose not to refer to their basic national scheme and opt to claim their benefits directly from OMESYS, they will have to pay a 4.86% increase. This is the cost of the opt-out.

[75] On examination, it appears that Instruction 117/1.4.2 of the Regulations was adopted in accordance with the enabling regulatory provision, Article 17/1.4, which has existed since 1996 and which requires former officials to apply first to their basic social protection scheme where they are entitled to it. The 4.86% increase is one of the possible "conditions" mentioned in Article 17/1.4 of the Regulations where a beneficiary is entitled to benefits under another social protection scheme but chooses to disregard them. There was no provision in the Regulations that the revision of Instruction 117/1.4.2 should be submitted to the Council for approval.

[76] Consequently, the first argument based on the need for a rule rather than an instruction to determine the 4.85% increase is not valid in law.

2. The non-existence of actual rights to another social protection scheme

[77] The Applicant claims, in her reply, that *"she has no actual right to social security because she has not taken the necessary administrative steps to effectively join the social security system. These steps are registration, compliance and membership."*

[78] The Applicant admits that she is receiving a French retirement pension based on the employment positions she fulfilled in France before she was hired by the Organisation. As such, she is entitled to coverage by the French health insurance scheme and this entitlement must be deemed to be effective. Moreover, the Applicant is already registered in the scheme (submission N° 5 p.153).

[79] The concept of "Actual rights " in Instruction 117/1.4.2d) of the Regulations should be interpreted together with the words "can claim" used in Article 17/1.4 of the Regulations

[80] These are not rights that have already been realised or exercised, but rather rights that a party holds and is fully entitled to exercise. There is no disputing that the Applicant is a French

citizen receiving a French retirement pension. As such, she is entitled to membership of the French social security scheme by carrying out the required administrative procedures.

[81] The words "can claim" cover the same legal reality as the "actual rights" provided for in Instruction 117/1.4.2d) of the Regulations insofar as they constitute their enabling power.

[82] The beneficiary first has to exercise her actual rights to another social protection scheme before applying for OMESYS cover.

[83] To summarise, the instruction should be interpreted in the light of the article of the Rules to which it applies. Article 17/1.4 refers to serving or former officials who "can claim" benefits under another social protection scheme: such is the case of a former official receiving a French retirement pension.

[84] Consequently, the reference to "actual rights" in Instruction 117/1.4.2 d) does not mean that membership of the French scheme is effective but rather that the official retains the right to join it subject to a simple administrative request, which would be the case here. Consequently, this argument is dismissed.

3. The 4.86% increase is contrary to Article 17/1.15 of the Regulations

[85] The Applicant claims that the 4.86% increase represents an increase in the contribution rate contrary to the allocation of one-third (1/3) for officials and two-thirds (2/3) for the Organisation as set out in Article 17/1.15 and Annex XV of the Regulations.

[86] First, the texts on which this increase is based need to be examined.

[87] Article 17/1.4 of the Rules creates a provision whereby benefits under the OMESYS scheme are paid after deduction of benefits due under another scheme for former officials who "can claim" under another scheme, without it being necessary for these officials to have already exercised their right to benefits under that other scheme. Former officials are the beneficiaries referred to in the Rules (Article 117/1.4.1).

[88] Article 17/1.4 has existed since the OMESYS scheme was established. It is even based on the Secretary-General's first note drafted before the introduction of the scheme, a note which is the explanatory memorandum to this new article from which it cannot be separated. On 15 October 1992, draft Article 17/1.4 was already drawn up in order "*to require beneficiaries to*

exhaust their rights to benefits under other schemes before applying to the Organisation, which would deduct such external benefits from those paid by the medical and social system"[25].

[89] To ensure that beneficiaries would not suffer any cut in their medical cover, the Reduced Contribution Global OMESYS system" cover was already available; membership of the Reduced Contribution Global OMESYS" is an original part of the system.

[90] Consequently, the obligation of members to use social protection schemes other than OMESYS when they are entitled to them has always existed in the Organisation's Regulations and in the constitutional texts.

[91] Instruction 117/1.4.2d) reiterates the obligation to exercise actual rights to another social protection scheme. The 2015 revision uses the words "must in all cases", which leave no doubt as to the firm requirement expressed by the Organisation. Former officials who can claim rights under other schemes must exercise them. If the medical expense is not reimbursable under the basic scheme but is eligible under the OMESYS scheme, it may be fully reimbursed under the Reduced Contribution Global OMESYS system.

[92] Instruction 117/1.4.2d)ii) provides an option for former officials who refuse to exercise their actual rights under their basic scheme. It allows them to remain under Global OMESYS cover by assuming an additional premium that constitutes a direct exception to the obligation set for former officials in Instruction 117/1.4.2 d) i. Former officials are thus allowed to remain under OMESYS' complete protection by an exceptional measure that differs from the general requirements for setting the contribution rate. This additional premium of 4.86% is a special derogation not covered by Article 17/1.15 and Annex XV.

[93] This increase does not represent an increase in the contribution rate that would depart from the allocation of one-third (1/3) for officials and two-thirds (2/3) for the Organisation set out in Article 17/1.15 and also in Annex XV which sets the percentages of the emoluments for funding the medical system. This is an additional cost which is part of the measures aimed at reacting to the exceptional situation observed since 2009, not only by actuaries but also by the working group made up of member countries. This is one of the measures designed to ensure the financial sustainability of the OMESYS scheme.

[25] Above, note 8.

[94] The 4.86% increase was established to compensate for the financial loss resulting from the decision by former officials not to opt for membership of basic medical cover other than OMESYS, when this is available to them. The percentage of 4.86% established by Instruction 117/1.4.2 (d) reflects actuarial calculations performed by the Organisation's actuaries and confirmed by Ernst & Young's actuaries on the basis of data provided by Henner, the OMESYS manager. It is intended to reflect the higher average cost of the failure of another scheme to cover the expenses.

[95] Neither the Supervisory Board, a joint body, nor the staff association contested the requirement to exercise actual rights or, where applicable, to be charged an additional premium of 4.86%.

[96] The OECD Council concluded in 2013 that the Secretariat was tasked with establishing complementary measures to restore the sustainability of the funding for the medical and social system without further increases in member countries' contributions. Instruction 117/1.4.2 d), which calls on former officials to exercise their actual rights, and the additional premium which goes with their refusal to do so, are part of the discretionary power of the administration in the face of the difficulties raised by the financial sustainability of the scheme and the sharing of risks. Instruction 117/1.4.2 d) ii) is intended to reduce the excess burden of medical expenses that should be borne by another scheme.

[97] This argument should therefore be dismissed.

4. The 4.86% increase had to be preceded by a written request

[98] Since 1 June 2017, the Applicant has been charged a 4.86% increase, raising her contribution rate to 7.36%. Let us examine the sequence of events that preceded this increase.

[99] In November 2016, the Applicant chose not to meet the Organisation's request to complete the questionnaire and to opt for one of the two options provided for in Instruction 117/1.4.2 d). By choosing not to exercise her actual rights under the French social security scheme, the Applicant, by necessary implication, opted for the increased contribution. There were only two options: membership of the Reduced Contribution Global OMESYS system subsequent to membership of the French medical security scheme or the status quo, which necessarily implies an increase to take account of excess expenditure.

[100] The Applicant can no longer claim that her own failure to act amounts to misconduct by the Organisation. Faced with the Applicant's deliberate failure to act, the Organisation had no choice but to maintain medical protection cover by applying the increase. To remove the Applicant from any scheme of protection would certainly have amounted to misconduct by the Organisation and not to impose any increase on her would have nullified any practical effect of Instruction 117/1.4.2 d). The Applicant cannot argue that she deliberately chose neither of the two measures available. Moreover, the Applicant is still at liberty to exercise her actual rights under the French scheme.

[101] Finally, it should be mentioned that in her letter of 30 June 2017, constituting file 88, the Applicant expressed her decision to remain in the Global OMESYS system, and this was the only point for which a written request was required. It is true that the Applicant also called for the 2.5% contribution rate that was applied to her until 1 June 2017 to be maintained. But this option is not open to her.

[102] This argument is therefore dismissed.

5. Violation of the principle of non-retroactivity

[103] The Applicant claims that the requirement to enforce her actual rights under another social protection scheme was first introduced in 2015 by Instruction 117/1.4.2. This claim is inaccurate.

[104] It has always been clear, since the inception of OMESYS, that there was a need "*to impose on beneficiaries [the obligation] to exhaust their rights to benefits under other schemes before turning to the Organisation, which would deduct these external benefits from those paid by the medical and social system*"[26]. Moreover, Article 17/1.4 (b) of the Regulations has made this clear since 1996.

[105] During the hearing, Mr BB and Mr CC testified to explain the context surrounding the creation of the OMESYS system in 1993. Mr BB, former Executive Director, submitted the information note of 10 December 1992 which he sent to all officials. But this note by Mr BB, whose purpose was to explain the consequences of introducing OMESYS for serving officials on 1

[26] *Above*, note 8.

January 1993 and to highlight its new features, stated: "*this is therefore an information note and not a legal document, since your rights are defined in the statutory texts mentioned above*", i.e. the Regulations and Rules[27]. However, the Regulations clearly defined the rights and obligations of officials who from the start of the new scheme had to obtain benefits from another scheme when they were entitled to them.

[106] The fact that the Organisation has, in the past, covered medical expenses without deducting the benefits of another scheme does not give rise to a right which is enforceable against the Organisation.

[107] As the sustainability of the OMESYS system was at stake and as the Budget Committee, the working group formed by the member countries, the experts consulted and the Supervisory Board expressed the opinion that former officials should assert their rights to their national scheme, the Organisation was justified in requiring the application of the texts of the Regulations.

6. Violation of the principle of vested rights

[108] The Applicant claims that the 12 May 2017 decision to increase her contribution by 4.86% on the grounds that she does not exercise her actual rights under another scheme infringes er vested rights as a result of the practice which has been constantly followed by the Organisation since the entry into force of the OMESYS system. Under this practice, there was no formal requirement for serving or former officials who could claim actual rights under another scheme to first apply for benefits under that scheme before applying for the OMESYS scheme. The Organisation does not dispute the existence of this practice, nor the fact that it has lasted for a long time.

[109] Article 24 provides that the Regulations may be amended by the Council taking into account vested rights at the time of the amendment. Annex II of the Regulations provides that: "*The expression 'vested rights' in Regulation 22 c) and 24 b) means that amendments to the staff Regulations or Rules cannot deprive officials of any financial or other benefit which has accrued under these texts before their amendment* ".

[27] Comments of the Secretary-General, Document N° 8, p. 205.

[110] It follows from the foregoing that the amendment of Instruction 117/1.4 in 2015 does not call into question the pecuniary benefits that have resulted in the past for certain serving or former officials from the practice followed by the Organisation since 1993. The measure adopted in 2015 had no retroactive effect and moreover the decision of 12 May 2017 contested by the Applicant made it clear that the 4.86% increase in the contribution would only be applied to the Applicant as from 1 June 2017. In addition, membership of the French medical and social system and of Reduced Contribution Global OMESYS system would offer the Applicant similar cover and would lead to a reduction in the contribution rate equal to 1.51%.

[111] The Applicant cannot therefore claim that her vested rights are being violated.

[112] However, there is more to it than that. In order to ensure the continuity of the OMESYS scheme, which was established in the general interest of all officials, the rule of necessity called for an end to past practice and an increase in the contribution of former officials who did not want to exercise their actual rights to a pre-existing scheme.

[113] The evidence provided by the Organisation shows that since 2009 all the relevant studies and reports have demonstrated that measures urgently needed to be taken to ensure OMESYS' financial stability. The Supervisory Board has lent its support to the proposed measures.

[114] The vested rights whose observance the Applicant seeks are not of contractual or statutory origin. Article 17/1.4 had already laid down the rule for recourse to be had to the pre-existing scheme when the OMESYS system was introduced. Nor had any valid and indisputable provision in an employment contract guaranteed the inviolable retention of Global OMESYS without the need to exercise the actual rights. The only basis for the Applicant's claim is the Organisation's past practice of not systematically requiring membership of another social protection scheme.

[115] It is accepted within the regulatory framework that the administration may unilaterally amend its Regulations in order to: " *maintain the scope for adapting the Regulations to political, financial and economic realities...*"[28] provided that the amendments are not invalidated by abuse and arbitrariness. In the present case, the addition of Instruction 117/1.4.2d) laid down the conditions for the request for cover in the above-mentioned economic and financial context.

[28] Fonction publique Internationale, Plantey et Loriot, Paris, CNRS Éditions, 2005 aux p.83ss.

[116] In this case, past practice relates only to not having required membership in another scheme despite the existence of an express rule in the Regulations and without any implicit or explicit undertaking that this practice could continue. This is more of a tolerance than a practice that would support the existence of vested rights.

[117] In a landmark judgment, which dismisses the argument that there had been a violation of the vested rights to the maintenance of free health insurance that retired officials had long enjoyed, the International Labour Organisation Administrative Tribunal (ILOAT) decided:

> "The urgent need for reform to keep the scheme going was shown up by two actuarial studies which the Organisation commissioned. They were of unimpeachable objectivity and authority and led the Organisation to set up a joint working party comprising representatives of management and former and serving staff to look into the matter of after-service medical insurance. The working party recommended that it should cease to be free of charge. The Organisation's endorsement was therefore the upshot of lengthy consultation and there was nothing one-sided about it.[29]"

[118] In the *Agoncillo* and others case, the ILOAT [30]wrote:

> "The precedents have it that a right is 'acquired' when someone who has it may, because of its fundamental importance to the balance of rights and duties that define the relationship of employment, demand that it be respected notwithstanding any amendment to the rules…."

[119] In the *Raths* case, the ILOAT decided the following:

> "… it should be said that while the pension, in itself, undoubtedly constitutes an inviolable right, the same is not true of the contribution, which is a variable quantity by nature, as the Organisation rightly points out. Far from constituting a violation of an acquired right, an increase in the contribution justified by valid actuarial considerations (a question which the Tribunal will address below), constitutes in reality the best defence against a possible future erosion of pensions due a lack of foresight"[31].

[120] In the *Dekker* case (No. 3), in concluding that the Applicant could not claim the absolute right to a particular system of health insurance, the ILOAT states:

[29] ILOAT, judgement N° 1226, 10 February 1993, Georgiadis and others.
[30] ILOAT, 6-7-1995 judgement 1446, Agoncillo and others.
[31] ILOAT, 1-2-1995, judgement 1392, Raths and others.

"With regard to vested rights, the Tribunal has applied a constant case law since Judgment 986 (in re Ayoub No. 2 and others), namely that: 'international officials may allege breach of an acquired right when there is impairment of an essential and fundamental term of conditions of employment; and that is so even where impairment is gradual and due to an accretion of final decisions which are no longer open to challenge and each of which, taken singly, would not itself have been deemed unlawful' (see Judgment 1514 in re Aymon No. 2 and others, at 12)[32]."

[121] In 2008, the Administrative Tribunal of the Asian Development Bank also concluded that the secondary elements of medical cover plans are variable and subject to change:

"That reservation of the right to amend from time to time the terms of insurance for Bank employees is consistent with rulings of other tribunals in other international agencies. The ILOAT in *Dekker (No.3)* ILOAT Judgment No. 1917 (3 February 2000) in para. 7 decided that 'the complainant has no specific claim to a specific system of health insurance' noting that changes made did not violate any acquired right. Thus we find that the details of cover, charges and fees of the healthcare benefit under GMIP and PRGMIP in effect at any particular time are elements of a benefit which themselves are subject to change, and that employees were advised of that prospect when the economics of the program so justified. We must conclude that the ADB did not breach any obligation incurred by the Bank to Mr. Suzuki at the time of his hire when it later extended that healthcare program to pensioners with the potential for subsequent adjustment to retired employees and their dependents.[33] "

[122] In 2017, in the *Brannan and others versus the Secretary-General case*, the Administrative Tribunal of the Council of Europe drew this conclusion about the violation of vested rights:

"However, the Tribunal notes that, as in the Hedman appeal, in the present case, contrary to what the Applicants claim, the introduction of a percentile contribution of the sum actually paid to the recipient did not affect either the staff regulations or the medical and social cover from which they may benefit. Moreover, the Applicants do not submit any arguments which could justify their right to maintain a benefit throughout their career…[34]."

[123] In the present case, it can in no way be concluded that the contractual relationship formed between the Applicant and the Organisation was based on the inviolability of the pension contribution in so far as it would have constituted a decisive and fundamental condition of employment[35].

[32] ILOAT, judgement N° 1917, 3 February 2000.
[33] ADB, judgement N° 82, 25 January 2008, Suzuki and others versus the ADB.
[34] ATCE, Appeal N° 571-576 and 578/2017 –James Brannan and others versus the CE.
[35] See ATCE, Appeal N° 447-484/2011, Prévost versus the Secretary-General.

[124] This argument cannot therefore be accepted.

7. Violation of the principles of legitimate expectations, good faith, diligence and information

[125] The principle of legitimate expectations, which is the corollary of the principle of legal certainty, is intended to protect natural and legal persons against changes without prior notice and with immediate effect to existing regulations, provided that the person claiming the benefit can establish that person had found in the conduct of the administration expectations founded in the stability of the rules.

[126] As noted above, no promise, assurance or expectation was given to former officials that the administration's tolerance would constitute a rule of law if the financial situation of the pension scheme were to deteriorate to the point of requiring a review of practices.

[127] It should be remembered that the dispute concerns an essentially pecuniary matter concerning the conditions under which former officials could benefit from cover of their health expenses.

[128] This type of benefit, whose amount or form depends on complex long-term factors such as changes in the number of former officials, the financial situation of the contributing States, and the changing cost of care, does not lend itself well to indefinite compliance with a practice initiated at a time when the number of retired officials, life expectancy and the cost of care were lower than they are today.

[129] Moreover, the Applicant cannot complain about a sudden change without prior notice. In 2012, the Organisation started informing officials of a forthcoming return to the literal application of Article 17/1.4. and the reasons for this requirement given the need to cover commitments related to retirements already made or to be made. A lengthy correspondence was entered into between former officials, the International Association of Former OEEC and OECD Staff, the staff association and the Organisation as from 2013[36].

[130] Furthermore, the measure was not implemented with respect to him until 1 July 2017.

[36]Comments of the Secretary-General (N° 85 and 88), Document N° 13.

[131] During the hearing of the two applications, the Applicant's counsel requested the submission of a document to support her claim that a reserve had been set up specifically to be earmarked for OMESYS funding but that it had been used for other purposes and had not been replenished, which constituted a violation of the principle of good faith and legitimate expectations. This document had not been submitted before.

[132] The Tribunal permitted the submission of document C (2000) 48/REV4 from the Organisation's Council while allowing the Secretary-General to submit brief written observations which were received at the Registry on 28 March 2018 and forwarded to all parties. The Applicant's counsel was also able to address these observations.

[133] The burden of proof lies with the Applicant. It is not possible to infer from this document alone, without the presentation of conclusive testimonial or documentary evidence, the allocation of the sums from the OMESYS financial reserve funds for purposes other than those for which they were intended. These operations originate with the member countries' Council. According to the Secretary-General, the reserve was established from the outset to finance a pension fund created in 2000 for former officials who had served the Organisation for more than ten (10) years and was fully replenished.

[134] Furthermore, the member countries' Council clearly set up the PEHL Reserve Fund to which, in 2011, approximately €17 million was transferred from various reserves and provisions specifically earmarked for post-employment health cover. This reserve would be regularly replenished.

[135] Neither the Supervisory Board (a joint body), nor the staff association has ever commented on the procedure followed by the Organisation.

[136] The Tribunal considers that document C (2000) 48/REV4 and its accompanying argument do not provide reliable and convincing evidence and the argument cannot be accepted.

[137] The Applicant did not identify a violation of the principle of legitimate expectations or of the other principles of loyalty, good faith and diligent information.

8. The potential harm that could result from membership of the French social security scheme.

[138] The Applicant maintains that her membership of the French social security scheme could have serious economic consequences owing to the deduction of the general social security contribution (CSG) and the contribution for the repayment of the social security debt (CRDS). She estimates that these potential contributions amount to 7% of her pension (tax-deductible).

[139] This argument is merely hypothetical to date, since the Applicant is still a member of the Global OMESYS system.

[140] Moreover, with regard to the retirement pension paid by the Organisation, in the absence of such a stipulation in the establishment-level agreement concluded between the Organisation and France requiring it to do so, the Organisation refrains from deducting these two (2) contributions from the pensions of its former officials. Consequently since 1991 in the case of the CSG, and since 1996 in the case of the CRDS, none of these contributions have been deducted from the pensions paid by the Organisation.

[141] In the case of the Applicant's French retirement pension, the documents in the file do not allow the Tribunal to know whether the CSG and the CRDS are actually deducted from that pension or, if so, what portion of it. In this regard, the Secretary-General states that full membership of former officials in OMESYS does not allow them to avoid the payment of the CSG and the CRDS from their pensions from France. In this case, membership of the French scheme or OMESYS has no effect on the taxation of the French pension.

[142] However, if the Applicant ultimately chose to assert her rights under the French social security scheme and to join the Reduced Contribution Global OMESYS system and that choice resulted, for the first time, in a deduction of CSG and CRDS from her French pension, the Organisation would necessarily have to re-examine the Applicant's situation in the light of the principles of proportionality and equity.

[143] According to the evidence before the Tribunal, one fact stands out: the Reduced Contribution Global OMESYS system combined with membership of the French social protection scheme offers the same cover as Global OMESYS and often greater facilities by granting the "carte Vitale" (the national health insurance card that certifies the holder's entitlement to health

insurance benefits), which reduces the administrative management of claims for reimbursement. In addition, the Reduced Contribution Global OMESYS system costs former officials less (1.51%) than the contribution of serving officials.

[144] In concluding this judgment, however, the Tribunal considers that there is a principle which must be respected by the Organisation in order to ensure a smooth and harmonious transition for former officials who opt for another social protection scheme together with membership of the Reduced Contribution Global OMESYS: this is the principle of assistance. Most of these former officials are over 70 years old, some are ill and no longer have the ability to fill out forms, search for appropriate documentation or attend interviews. In his argumentation, the Secretary-General took great care to mention that the transition would be accomplished with due consideration by offering all the necessary assistance to former officials which could mean a face-to-face meeting involving travel if necessary and personalised assistance of each and everyone who so requests.

CONCLUSION

[145] As a result of the foregoing, the Tribunal:

[146] DISMISSES the two applications for annulment and compensation No. 85 and No. 88, without costs.

[147] DISMISSES the interventions.

[148] The special nature of the two matters, which are contiguous to the examination of several similar matters concerning other former officials, the complexity and the interconnectedness of the procedures between the various Applicants and the extension of the time limits to enable the Organisation to analyse the situation of all former officials (70) and to submit a general file to the Tribunal certainly generated higher than normal legal costs for the Applicant. Having regard to these circumstances, the Tribunal:

[149] ORDERS the Organisation to pay the Applicant €4,000 as legal costs.