

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF ADMINISTRATIVE TRIBUNAL

Appeal No. 537/2013 (Staff Committee (XIII) v. Secretary General)

The Administrative Tribunal, composed of:

Mr Christos ROZAKIS, Chair,
Mr Jean WALINE,
Mr Rocco Antonio CANGELOSI, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar,
Ms Eva HUBALKOVA, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The Staff Committee of the Council of Europe lodged its appeal on 19 February 2013. It was registered on the same day under number 537/2013.
2. On 22 April 2013 the appellant filed a supplementary memorial, after requesting a one-month extension of the time-limit.
3. On 22 May 2013 the Secretary General submitted his observations concerning the appeal.
4. The Chair having set a time-limit of 24 June 2013 for the appellant's observations in reply and fixed the date of 27 June 2013 for the opening of the oral proceedings, on 7 June 2013 the Director of Legal Advice and Public International Law *ad interim* wrote to request that the hearing be postponed on account of the short period between the time-limit for the appellant's observations in reply and the opening of the hearing. On 14 June 2013 the Chair refused this request.
5. The appellant filed observations in reply on 19 June 2013.
6. The public hearing on this appeal was held in Strasbourg on 27 June 2013. The appellant was represented by Maître Carine Cohen-Solal, a barrister in Strasbourg, and the

Secretary General by Ms Christina Olsen of the Legal Advice Department within the Directorate of Legal Advice and Public International Law, assisted by Ms Maija Junker-Schreckenbergh and Ms Sania Ivedi, administrative officers in the same department. The Chair had previously verified with the parties that there was no problem regarding the Secretary General's knowledge of the substance of the observations in reply that would justify postponing the hearing.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

7. This appeal concerns events relating to the use of a balance account existing in the context of the medical and social insurance scheme. At the material time, the account was in surplus.

8. In a report drawn up in 2012 the Organisation's external auditor made a number of observations on the operation of this account.

9. On 16 October 2012 the Staff Committee requested the Chairman of the Supervisory Board (COS) to convene a meeting of the Board to discuss two matters, one of which concerned "the external auditor's recommendations on the balance account". The Committee considered that the COS could usefully hold an initial exchange of views on both these matters.

10. In a document dated 19 October 2012 (reference DD (2012)975E), prepared for the meeting of the GR-PBA (the Committee of Ministers' Rapporteur Group on Programme, Budget and Administration) on 22 October 2012, the issue was set out as follows:

3) Proposal for the use of the balance on the account in respect of health cover, so-called "Vanbreda" account

"Following the recommendation of the External Auditor, concerning this account, the Secretariat is currently examining the measures to be taken in this respect. It is recalled that the purpose of this account is to balance the variations in the annual real costs of health insurance for staff and pensioners of the Organisation.

The balance of the account amounts to €3.152M at 31 December 2011.

These resources could be used to limit the possible increase in contribution rates, which are paid by the Organisation for health cover, or alternatively apportioned to the employer and to the employees.

The current insurance contract will end 31 December 2013 and a call for tenders has been launched for a new contract. According to the preliminary information received contribution rates are likely to increase.

The Secretary General proposes to use the resources in the account to limit the possible increase in contribution rates both for the employer and for the employees (€800K per annum in the next two biennia 2014/2015 and 2016/2017) while

maintaining the minimum required to address possible gaps in coverage and balancing requirements (€400K).

This proposal will bring about a reduction of some €535K per annum in the contribution of the employer thus maintaining the contribution at their current levels despite possible increases in the contribution rates.

This proposal makes it possible to reduce significantly the balance of the account and to address the budgetary needs for subsequent biennia. It also has the advantage of avoiding the material and legal complexities, as well as the legal risks resulting from apportionment; both at the employer level (for example, apportionment between the various budgets since 1999) and at the employee level (for example, basis for apportionment, current and former staff members, affiliation status, inheritors, etc.).

The Secretary General will submit a formal proposal to the Committee of Ministers in the coming weeks. The proposal will aim on the one hand at formalising the existence of the account and, on the other hand at reducing the balance on it and ensuring that in the future that this balance does not exceed what is required for the account's correct management."

11. On 23 October 2012 the appellant sent the Secretary General an administrative request (Article 59, paragraph 1, of the Staff Regulations), worded as follows:

"The [appellant] was surprised to learn that a document, DD(2012)975, inter alia concerning the use of the 'Vanbreda account' balance, has been submitted to the GR-PBA.

We have noted that the [Directorate General of Administration] informed the Deputies of the legal obligation to consult the [appellant] and to obtain an opinion from the COS before any tangible proposal could be addressed to the Deputies.

For this reason the [appellant] requests that you proceed with these consultations as soon as possible, failing which they would be devoid of all substance and you would be at risk of breaching essential procedural requirements.

I am confident that you will understand the reasons for my request, which I am copying to the Chairman of the COS."

12. On Wednesday 7 November 2012 at 6.35 pm, the Director General of Administration sent the appellant the following note (original version):

"I refer to the discussions that took place at the GR-PBA (Rapporteur Group on Programme, Budget and Administration of Committee of Ministers) meeting on 22 October 2012, on the use of the medical insurance balance account ("Vanbreda" account). You will find enclosed the proposals the Secretary General will present to the deputies at the GR-PBA meeting on 13 November 2012. I would like to note that there is no legal obligation to consult Staff Committee on this matter under the Staff Regulations.

Nevertheless, I would appreciate your opinion on these proposals before the final document is issued to the Committee of Ministers.

Therefore, I should be grateful to receive your comments by 12 o'clock on [Friday] 9 November 2012.

Thanking you in advance for your co-operation.”

13. By a note dated 8 November 2012 the appellant replied in the following terms (original version):

“I refer to your memorandum DGA 454 of 7 November concerning consultation of the Staff Committee on the account in respect of health cover (the so-called “Vanbreda account”) and the use of its balance.

You stress that there is no legal obligation to consult the Staff Committee on this matter under the Staff Regulations.

Nevertheless, I would draw your attention to Article 6 of the Staff Regulations which specifies that:

“Staff members shall be entitled to express their views ... on any other measures relating to the conditions of employment of staff members.”

Am I to understand that you think that the Vanbreda account and the use of its balance do not form part of the “conditions of employment of staff members”? The Staff Committee would find this hard to believe.

I shall be submitting your request to the Staff Committee at its 1488th plenary meeting next Monday [12 November] and will inform you in due course of the Committee’s response.”

14. On 12 November 2012 the Director of Human Resources replied to the administrative request as follows (original version):

“ ...

I note that the COS has dealt with this item at its meeting of 7 November 2012. I regret that this body could not formulate an opinion because the members appointed by the Staff Committee refused to take a position on the substance of the question submitted to the COS.

In addition the Director General of Administration has asked the Staff Committee for its opinion, although there is no legal obligation to do so, on the elements the Secretary General intends to propose to the Committee of Ministers concerning the use of the account (memorandum DGA 454 of 6 November 2012).

It is foreseen that a quantified proposal on the use of the account will be made at the end of January 2013 when the results of the current call for tenders for the health insurance contract are known.

I consider that the aforementioned elements adequately reply and satisfy your administrative request.”

15. On 27 November 2012 the appellant lodged an administrative complaint with the Secretary General, in accordance with Article 59, paragraph 2, of the Staff Regulations. It sought the annulment of the administrative act mentioned in the reply of 12 November 2012, namely “the consultation of the [appellant] in the substantive and procedural circumstances in which it took place.”

16. On 20 December 2012 the Secretary General rejected the administrative complaint as inadmissible and/or unfounded.

After arguing that the complaint was inadmissible for lack of a legal interest in bringing proceedings, since the administrative request had met with a favourable outcome, the Secretary General considered, inter alia, with regard to the merits of the administrative complaint, that he had been under no obligation to consult the appellant, but at the very most was free to do so.

He contended that the proposals for utilising the balance account involved no provision implementing the Staff Regulations.

In addition, the fifteen-day time-limit specified in Article 11 of the Regulations on Staff Participation applied only in cases where consultation of the appellant was obligatory.

17. On 19 February 2013 the Staff Committee lodged the present appeal.

II. THE RELEVANT LAW

1. Provisions on social and medical protection (Staff Regulations and other instruments)

18. Pensions and medical and social insurance are governed by Article 43 of the Staff Regulations.

19. Appendix XII to the Staff Regulations sets out the regulations on the medical and social insurance scheme. The relevant provisions are as follows:

PART I: Affiliation of serving permanent staff

Article 4 – Definition of benefits and risks covered – Interpretation

“1. The Secretary General shall determine by rule the nature of the expenses covered by the Organisation’s Medical and Social Insurance Scheme, and also the rates of cover, exceptions and restrictions which apply, depending on the nature or the cause of the benefits.

2. If doubts or disputes arise concerning application of the Regulations on the Organisation’s Medical and Social Insurance Scheme, reference shall be made to

the French social security legislation in force at the time when the event giving rise to a claim for benefits occurs.

3. The text of insurance policies taken out by the Organisation relating to cover for health care expenses or provident cover shall be made available to staff members.”

PART II: Affiliation of pensioners and former staff

Article 19 – Definition of benefits and risks covered

“The Secretary General shall determine by rule the nature of the expenses covered by the Organisation’s Medical and Social Insurance Scheme, and also the rates of cover, exceptions and restrictions which apply, depending on the nature or the cause of the benefits.

If doubts or disputes arise concerning application of the Regulations on the Organisation’s Medical and Social Insurance Scheme, reference shall be made to the French social security legislation in force at the time when the event giving rise to a claim for benefits occurs.

The text of insurance policies taken out by the Organisation relating to cover for health care expenses or provident cover shall be made available to affiliated persons.”

20. Under Instruction No. 38 of 19 May 1998, the Secretary General established a Supervisory Board. This Board is required to submit opinions concerning the medical and social protection of staff to the Secretary General.

21. The Secretary General’s Rule No. 1325 of 14 December 2010 concerns staff contributions to the payment of the collective insurance premiums.

2. Staff rights and the Staff Committee’s prerogatives

22. Article 6 of the Staff Regulations deals with staff participation and is worded as follows:

“Staff members shall be entitled to express their views, in particular in the bodies provided for in these Regulations, on any measures in application of these Regulations or amendments to them and on any other measures relating to the conditions of employment of staff members. They shall co-operate through their representatives in the running of the committees set up by these Regulations and the appended regulations and rules.”

23. Article 8 of the Staff Regulations concerns the Staff Committee and is worded as follows:

“1. The Staff Committee shall represent the general interests of staff.

2. It shall be elected by the members of staff in accordance with the provisions of Appendix I to these Regulations which also determines its membership and attributions.”

24. Article 59, paragraphs 2 and 8 c), of the Staff Regulations govern the Staff Committee’s entitlement to lodge administrative complaints and read as follows:

“2. Staff members who have a direct and existing interest in so doing may submit to the Secretary General a complaint against an administrative act adversely affecting them, other than a matter relating to an external recruitment procedure. The expression “administrative act” shall mean any individual or general decision or measure taken by the Secretary General or any official acting by delegation from the Secretary General.

...

8. The complaints procedure set up by this article shall be open on the same conditions *mutatis mutandis*

...

c. to the Staff Committee, where the complaint relates to an act of which it is subject or to an act directly affecting its powers under the Staff Regulations;”

25. Appendix I to the Staff Regulations establishes the Regulations on Staff Participation.

26. Part II relates to the Staff Committee. The relevant provisions are Articles 4 and 5, which read:

Article 4 – General attributions

“1. The Staff Committee shall represent the general interests of the staff and contribute to the smooth running of the Council by providing the staff with a channel for the expression of their opinions. It may also defend the interests of retired staff and other beneficiaries of the Pension Scheme.

2. The committee shall be responsible for organising elections of staff representatives to those bodies of the Council where provision is made for such representation, unless it is expressly provided that the said representatives shall be appointed directly by the committee.

3. The committee shall participate in the management and supervision of social welfare bodies set up by the Council in the interests of its staff. It may, with the consent of the Secretary General, set up such welfare services.”

Article 5 – Matters within the competence of the Secretary General

“1. The Staff Committee shall bring to the notice of the Secretary General any difficulty having general implications that concerns the interpretation and application of the Staff Regulations. It may be consulted on any difficulties of this kind.

2. The Staff Committee may propose to the Secretary General any draft implementing provisions relating to the Staff Regulations, as well as any measures of a general nature to be taken by him or her concerning the staff.

3. The Secretary General shall consult the Staff Committee on any draft provision for the implementation of the Staff Regulations. He or she may consult it on any other measure of a general kind concerning the staff.”

27. Part IV concerns time-limits, and Article 11 is worded as follows:

“The Secretary General or the Committee of Ministers, as the case may be, shall lay down the time-limits within which the Staff Committee or the Joint Committee must deliver opinions requested of them, which shall be not less than fifteen working days. The time-limit may, however, be shortened by mutual agreement. If no opinion has been delivered within the period laid down, the Secretary General or the Committee of Ministers, as the case may be, shall proceed.”

THE LAW

28. The appellant lodged the present appeal in order to request the Tribunal to set aside the decision of 7 November 2012 on use of the balance account. In the appeal form, under object of the appeal, the appellant also requested a replacement consultation respecting general principles of law and the statutory and regulatory provisions.

The appellant is also seeking the award of a sum of 5 000 euros to cover all the costs it incurred for this appeal.

29. For his part, the Secretary General asks the Tribunal to declare the appeal inadmissible in whole or in part and/or ill-founded and to dismiss it.

I. ADMISSIBILITY

A) Submissions of the parties

30. The Secretary General maintains that the appeal is inadmissible. He contends that the appellant has failed to establish its interest in bringing proceedings in the present case. He also alleges that the appeal is not directed against an administrative act adversely affecting the appellant.

31. The Secretary General argues that this appeal aims to challenge the conditions in which the consultation of the appellant took place. However, the appellant merely requests the annulment of the consultation, without demonstrating in what way it was adversely affected by it. Consequently, the appellant has not established its interest in bringing proceedings.

32. The Secretary General then points out that, by its administrative request of 23 October 2012, the appellant asked to be consulted regarding the Secretary General’s proposals on utilisation of the balance account.

33. Although such a consultation is not obligatory, the Secretary General consented to it. The conditions of consultation were justified by the specific circumstances, as set out above.

The proposals which the Secretary General intended to bring before the GR-PBA at its meeting of 13 November 2012 were submitted to the appellant once they had been finalised, namely on 7 November 2012. The time-limit allowed was justified by the situation's urgency, since the proposals in question had to be submitted to the Committee of Ministers as quickly as possible, so as to permit the prompt adoption of the budget. The final document intended for distribution to the GR-PBA had to be submitted before mid-day on 9 November 2012, and this was therefore the time-limit granted to the appellant in the context of this non-obligatory consultation. In other words, there was no alternative to consultation under these conditions, especially since the consultation was not mandatory.

34. The Administration was faced with the following choice: either the appellant was consulted in these circumstances and within the timespan of 7 to 9 November, or there was no consultation. Although this was a question for which consultation was not obligatory under the Staff Regulations, the Administration nonetheless wished to grant the appellant's request to be consulted. The consultation therefore finally took place as a gesture of openness and goodwill.

35. Since the consultation was optional, the conditions in which it took place, as challenged by the appellant, were not such as to affect the appellant's prerogatives under the Staff Regulations regarding obligatory consultations.

36. The Secretary General adds that the appellant chose not to give a written opinion on the proposals within the assigned time-limit. It should, however, be noted that it nonetheless made known its opinion and proposals concerning use of the balance account directly to the Ministers' Deputies at the meeting of the GR-PBA of 13 November 2012. Accordingly, the appellant's complaint that the consultation was rendered void of all practical significance, on account of the conditions in which it took place, is belied by the facts, since the appellant was able to convey its opinion on use of the balance account to the Committee of Ministers.

37. By requesting the annulment of a consultation it had itself called for, even though it was not possible for the Administration to proceed otherwise, the appellant failed to direct its administrative complaint, and hence the appeal, against an administrative act adversely affecting it within the meaning of Article 59 of the Staff Regulations. Since the appellant was in fact consulted and its request was satisfied, the appellant has no proven interest in bringing proceedings.

38. The Secretary General infers from this that the appeal is inadmissible for lack of an interest in bringing proceedings.

39. For its part, the appellant considers that its appeal is admissible.

40. The appellant maintains that it is indeed challenging an administrative act, namely the decision of 7 November 2012. Contrary to the Secretary General's allegations, it is not merely calling into question the conditions in which it was consulted, but also the administrative act whereby the consultation took place; its challenge of the conditions of the consultation formalised by the note of 7 November 2012 is accordingly admissible.

41. As to the harm it suffered, the appellant states that it was automatically adversely affected due to the very illegality of the consultation, without it having to justify that this was

the case. According to the appellant, the failure to comply with the consultation procedure necessarily adversely affected its prerogatives under the Staff Regulations.

42. The appellant concludes that it did in fact have an interest in bringing proceedings, given the illegalities of the consultation of 7 November 2012, and this in the light of its prerogatives under Articles 59, paragraph 8 c, and 6 and Articles 5 and 11 of the Appendix.

B) The Tribunal's assessment

43. The Tribunal notes that it is clear from the wording of the administrative complaint that the appellant complained about the conditions of the consultation, which it considered posed a problem of both procedure and substance. The administrative complaint was accordingly directed against an administrative act adversely affecting the appellant, who indeed had an interest in bringing proceedings. Moreover, the Secretary General acknowledged this to the appellant by noting, in his reply to the administrative complaint, that through this complaint the appellant was seeking to secure compliance not only with the consultation procedure but also with the time-limits laid down in Article 11 of the Regulations on Staff Participation. No importance can be attached to the fact that the Secretary General considered that the consultation was not obligatory and hence logically – but this is a conclusion drawn by the Tribunal – no problem was posed.

44. In conclusion, the objections raised by the Secretary General are unfounded and must be dismissed.

II. THE MERITS OF THE APPEAL

A) The appellant

45. The appellant alleges a violation of its statutory rights of consultation. It bases its arguments on three points: the obligatory nature of the consultation, failure to comply with the fifteen-day time-limit laid down in Article 11 of Appendix I or, in the alternative, failure to comply with a reasonable time-limit, and lastly the inadequacy of the information provided to it.

46. On the first point, the appellant asserts that it was obligatory to consult it in the case under consideration. Based on Article 6 (Staff participation) of the Staff Regulations and Article 5 (Matters within the competence of the Secretary General) of Appendix I (Regulations on Staff Participation) to the Staff Regulations (paragraphs 22 and 26 above), the appellant maintains that the Secretary General is obliged to seek its opinion concerning any measure of a general nature relating to the conditions of employment of staff members. For the appellant, there can be no doubt that the use of the amount in the balance account is indeed a measure of a general nature affecting the conditions of employment of staff members, as referred to in the above-mentioned Article 6.

47. The appellant points out that Rule No. 1325 (paragraph 21 above) was adopted pursuant to Article 43 of the Staff Regulations concerning the social protection of staff. This rule clearly concerns the distribution of the cost of the insurance premiums, one third of which is borne by the staff, and, consequently, the staff indeed have a right to be consulted.

48. Concerning the failure to respect the time-limit of fifteen working days, the appellant contends that this time-limit applies to any type of consultation, whether obligatory or optional. As proof of this it points out that no distinction is drawn between the two types of consultation in the relevant provision. The appellant cites the Latin adage “*Ubi lex non distinguit, nec nos distinguere debemus*” (where the law makes no distinction, we must not distinguish). The appellant considers that the article’s inclusion in a section dealing with time-limits constitutes further proof.

49. Concerning the alternative argument regarding the unreasonableness of the time-limit which was finally set, the appellant maintains that a time-limit of thirty-six hours was manifestly not reasonable.

50. Lastly, the appellant contends that it was not given sufficient information, as it was sent the Secretary General’s proposal without having access to any kind of accounting or legal information relating to the account in question. Consultation constitutes a significant safeguard for the staff, who are entitled to request the fullest possible information on a proposal concerning which they are consulted, failing which no informed opinion can be given.

51. In conclusion, the appellant requests the annulment of the decision of 7 November 2012 on the ground that the consultation was unlawful.

B) The Secretary General

52. The Secretary General first refers to the appellant’s allegation that the consultation on the balance account violated its statutory rights in such matters.

53. He adds that the appellant further maintains that this consultation was obligatory under Article 6 of the Staff Regulations read in conjunction with Article 5, paragraph 3, of the Regulations on Staff Participation (paragraphs 22 and 26 above). He notes that, as a consequence of the appellant’s reasoning regarding the link between these two articles, the Secretary General would be obliged to consult it on any measure of a general nature relating to the conditions of employment of staff, that is to say all measures that closely or more distantly affect the employment of staff.

The Secretary General underlines from the outset that it is common ground within the Organisation that Article 5, paragraph 3, of the Regulations on Staff Participation is the sole provision governing the obligatory or optional nature of consultations of the appellant on matters within the competence of the Secretary General. In the case of a “provision for the implementation of the Staff Regulations”, consultation of the Staff Committee is mandatory; in the case of a “measure of a general kind concerning the staff”, consultation of the Staff Committee is merely a possibility.

Until very recently the appellant moreover never questioned this axiom.

According to the Secretary General it is only very recently that the appellant has sought to argue that a general, extremely extensive obligation of consultation stems from Article 6 of the Staff Regulations. However, the applicable provisions are clear. They have been applied in a consistent manner and the appellant always accepted them as they stand, without alleging that they were ambiguous in scope. It is not reasonable on the part of the

appellant that it now seeks to base a general consultation obligation on Article 6 of the Staff Regulations.

It must be reiterated that, in the case under consideration here, under the terms of Article 5, paragraph 3, of the Regulations on Staff Participation there was no obligation to consult the appellant.

The proposals concerning use of the balance account in no way relate to a provision for the implementation of the Staff Regulations.

Concerning the category “any other measure of a general kind concerning the staff”, even assuming that this concept covers use of the balance account, the Secretary General has the mere option of consulting the appellant. However, he is no way obliged to do so, since the above-mentioned article provides that this type of measure may, but not must, give rise to a consultation of the appellant.

The appellant’s reasoning based on Article 6 of the Staff Regulations, from which it infers the obligatory nature of consultation on use of the balance account, amounts to extending the Staff Committee’s prerogatives well beyond the clear terms of the applicable statutory provisions, since it consists in suggesting that the latter should be consulted on all measures relating to the conditions of employment of staff. That is not at all the case.

The staff right enshrined in Article 6 of the Staff Regulations is not “self-executing” and applies only under the conditions set out in the relevant implementing regulations. Article 5, paragraph 3, of the Regulations on Staff Participation therefore does not exclude the right for the staff to give an opinion on conditions of employment other than provisions for the implementation or amendment of the Staff Regulations.

In the case under consideration the Secretary General’s proposals on use of the balance account did not concern a provision implementing the Staff Regulations, and consultation on the subject was therefore entirely optional.

54. The Secretary General adds that, in any case, the proposals he made in November 2012 were merely a preliminary step in a process that is still ongoing, since no official decision on use of the account has been taken so far. Depending on the decisions taken, it could be necessary to consult the appellant under the obligatory procedure. For example, should the proposals concerning use of the account lead to a decision to modify the staff contribution rate, and hence to amend Rule 1325 of 14 December 2010 on contributions towards collective insurance premiums, consultation of the appellant would be obligatory under Article 5, paragraph 3, of the Regulations on Staff Participation.

55. In reply to the appellant’s argument that the consultation on use of the balance account should have been subject to the fifteen-day time-limit laid down in Article 11 of the Regulations on Staff Participation, the Secretary General contends that the time-limit provided for in Article 11 applies only to obligatory consultations.

56. In this case the appellant was consulted, although consultation was optional. It did not wish to give a written opinion within the specified time-limit, a circumstance for which it is responsible. It could indeed have made known its position on the Secretary General’s proposals, and moreover did so orally before the Committee of Ministers.

57. Furthermore, one might expect the appellant to show some flexibility where circumstances so require. Since consultation was optional, the Secretary General for his part sought to be flexible by accepting, despite the situation's urgency, the appellant's request to be consulted. As already mentioned, urgent action was needed so as to permit the adoption of the budget for 2013, especially as the 1 November deadline for adopting the budget provided for in the Financial Regulations had expired.

58. It was due to the situation's urgency and the imperative need for rapid action that the consultation took place within such a short time. As soon as the proposals had been finalised, they were referred to the appellant for consultation.

59. In reply to the alternative complaint of failure to comply with a reasonable time-limit, the Secretary General maintains that 9 November was the final deadline for submitting the documents to the Committee of Ministers, a deadline which could not be postponed further on account of the delay in adopting the budget, as the question would in that case have had to be examined at the GR-PBA's following meeting, one week later.

60. Concerning the appellant's complaint of inadequacy of the information provided to it at the time of the consultation, it can be asked what kind of documents the appellant is referring to. There were no accounting or legal documents as such relating to the balance account. In any case, the appellant had kept itself informed of the progress of the discussions on the account, as is attested by the terms of its administrative request of 23 October 2012 asking that it be consulted and by its various exchanges with the Administration. In particular, it was perfectly acquainted with the external auditor's recommendations. It accordingly cannot claim not to have been aware of the context in which the consultation on the proposals concerning use of the account took place, nor that it had insufficient information on this matter.

61. For the Secretary General it follows from these considerations that the appellant has no basis for alleging any form of violation of its statutory prerogatives.

62. In conclusion, the Secretary General asks the Tribunal to declare the appeal unfounded and to dismiss it.

C) The Tribunal's assessment

63. The Tribunal notes that, under the statutory provisions, the Secretary General is obliged to consult the appellant in the case of a draft "provision for the implementation of the Staff Regulations" (Article 5, paragraph 3, first sentence, of the Regulations on Staff Participation), whereas in the case of "any other measure of a general kind concerning the staff" consultation is not obligatory but merely possible. Consequently, it is important to determine whether the proposal at issue was covered by the first or the second sentence.

64. The Tribunal notes that there was firstly a difference between the parties as to whether the consultation in question was obligatory or optional and they then went on to address the need to comply with the fifteen-day time-limit provided for in Article 11 of the Regulations on Staff Participation, arriving at a conclusion – affirmative or negative – depending on the way they answered the first question.

65. However, the Tribunal does not concur with this approach. It considers that the scope of Article 11 of the Regulations on Staff Participation must be determined first, that is to say

whether the fifteen-day time-limit applies only to obligatory consultations or also to optional ones.

66. The Tribunal considers that the provision is sufficiently clear for it to retain the second hypothesis.

67. It is true that the provision's wording (paragraph 27 above) draws no distinction between the two types of consultation provided for in paragraph 3 of Article 5 of the same regulations.

68. Furthermore, the question of time-limits is dealt with in a separate part of those regulations, and therefore, since no specific reference is made to obligatory consultations, the provision's wording cannot possibly be relied on to endorse the Secretary General's argument that this obligation applies solely to the specific case provided for in the first sentence of the above-mentioned paragraph 3 of Article 5, rather than to the different kinds of consultation taken into account. Moreover, under the same article this time-limit also applies in cases where the Committee of Ministers itself consults the Staff Committee and where there is no mutual agreement on shortening it.

69. The Secretary General also confines himself to asserting that this time-limit applies solely to obligatory consultations, without indicating his reasons for reaching this conclusion.

70. The Tribunal concludes from this that, once the Secretary General had decided to consult the appellant, he was required to comply with the statutory fifteen-day time-limit; otherwise, this would not have been a genuine consultation, but rather a sham consultation. The Tribunal notes further that the second sentence of Article 11 provides "[t]he time-limit may, however, be shortened by mutual agreement." It would nonetheless seem that there was no attempt to reach such an agreement between the parties, instead there was opposition from the outset.

71. The Secretary General has advanced arguments relating to the time constraints inherent in the handling of this matter and the need to comply with the time-limits imposed by the procedure before the Committee of Ministers. However, the Tribunal must point out that, as stated above, under the above-mentioned Article 11 compliance with the time-limit is obligatory even in cases where the consultation is initiated by the Committee of Ministers itself and no agreement to shorten the time-limit is reached (paragraph 27 above).

72. It is accordingly clear that there was disregard for the appellant's statutory entitlement to be allowed a time-limit of fifteen days in cases where it does not agree to a shorter time-limit.

73. Having reached this conclusion, the Tribunal need not rule on the appellant's first submission, namely the question whether the consultation was obligatory or not, since the answer to this question would in any case be of no importance to the outcome of this appeal.

74. Nor does the Tribunal have to address the question of the reasonableness of the time-limit allowed or the inadequacy of the information provided (the appellant's third and fourth submissions).

75. The Tribunal cannot, however, refrain from making three observations.

76. Firstly, it is clear that at the time of the events in question the parties were not faced with a need for consultation on a question that had to be settled immediately and once and for all. As proof of this the Tribunal refers to the following statement made by the Director of Human Resources on 12 November 2012 (paragraph 14 above):

“It is foreseen that a quantified proposal on the use of the account will be made at the end of January 2013 when the results of the current call for tenders for the health insurance contract are known.”

In addition, and above all, in paragraph 42 of his submissions to the Tribunal of 23 May 2013 (paragraph 3 above) the Secretary General indicated:

“42. In any case, the proposals made by the Secretary General in November 2012 were merely a preliminary step in a process that is still ongoing, since no official decision on use of the account has been taken so far. Depending on the decisions taken, it could be necessary to consult the appellant under the obligatory procedure. For example, should the proposals concerning use of the account lead to a decision to modify the staff contribution rate, and hence to amend Rule 1325 of 14 December 2010 on contributions towards collective insurance premiums, consultation of the appellant would be obligatory under Article 5, paragraph 3, of the Regulations on Staff Participation.”

The Tribunal accordingly has difficulty understanding that a dispute could arise over what was in the end an intermediate stage in the procedure to determine a new use for the resources in the balance account.

77. The Tribunal then notes that the task of the relevant rapporteur group of the Committee of Ministers – whose role the Tribunal interprets on the basis of the information in its possession, as no information was provided by the parties on this point – is not to take final decisions but to submit analyses and proposed decisions to the Committee of Ministers. The Organisation would therefore benefit from a tightening of the rules on consultation in cases where a question can give rise to a number of consultations. The Secretary General himself also emphasised that the consultation in question did not relate to a final proposal and the appellant could subsequently have been consulted anew.

78. Lastly, the Tribunal cannot help but note that the time-limit allowed by the Secretary General expired at 12 noon on Friday 9 November 2012, whereas the appellant was ready to give its opinion by Monday 12 November 2012. The Secretary General in point of fact asserted (paragraph 21 of the memorial) that this time-limit was unavoidable, expressing himself as follows:

“The conditions of consultation were justified by the specific circumstances, as set out above. The proposals which the Secretary General intended to bring before the GR-PBA at its meeting of 13 November 2012 were submitted to the appellant once they had been finalised, namely on 7 November 2012. The time-limit allowed was justified by the situation’s urgency, since the proposals in question had to be submitted to the Committee of Ministers as quickly as possible, so as to permit the prompt adoption of the budget. The final document intended for distribution to the GR-PBA had to be submitted before mid-day on 9 November 2012, and this was therefore the time-limit granted to the appellant in the context of this non-obligatory consultation. In other words, there was no alternative to consultation under these conditions, especially since the consultation was not mandatory.”

79. However, it has to be said that, on 13 November 2012, the aim was not to arrive at a final decision by the Committee of Ministers, but for its working party (the Rapporteur Group on Programme, Budget and Administration) to make known its position. Without wishing to enter into the Committee of Ministers' internal organisation, the Tribunal cannot help thinking that, given the circumstances, an adaptation of the time-limit could not be ruled out as a matter of course.

80. The Tribunal can only conclude that, in the collaborative spirit necessitated by the consultation system in place, the parties should both have demonstrated a greater willingness to co-operate with each other and to find a swift solution to a dispute which, since the Organisation might also use the balance of the staff members' contributions for purposes other than regulating the level of future contributions, could only jeopardise the aim of the consultation.

81. In conclusion, the appeal is founded and the contested decision must be set aside.

82. The appellant requested 5 000 euros in respect of "all the costs and expenses incurred for this appeal".

83. Under Article 11, paragraph 2, of the Statute of the Administrative Tribunal,

"In cases where it has allowed an appeal, the Tribunal may decide that the Council shall reimburse at a reasonable rate properly vouched expenses incurred by the appellant, taking the nature and importance of the dispute into account."

84. The Tribunal notes that the appellant requested the sum in question in respect of "all the costs and expenses incurred for this appeal" without stipulating whether these are solely legal fees or whether they include other expenses. Whatever the case may be, the Tribunal considers that the legal fees alone must be taken into consideration for refunding purposes, as the appellant is a statutory representative body of the Organisation.

85. Taking the nature and importance of the dispute into account, the Tribunal considers that it must order the Organisation to refund a sum of 2 500 euros.

III. CONCLUSION

86. The appeal is founded and the contested decision must be set aside. The appellant is also entitled to be refunded 2 500 euros in respect of costs and expenses.

On these grounds, the Administrative Tribunal:

Dismisses the objections of inadmissibility raised by the Secretary General;

Declares the appeal founded;

Sets aside the decision of 7 November 2012;

Rules that the Secretary General must refund to the appellant the sum of 2 500 euros for costs and expenses.

Adopted by the Tribunal in Strasbourg on 24 September 2013 and delivered in writing in accordance with Article 35, paragraph 1, of the Tribunal's Rules of Procedure on 25 September 2013, the French text being authentic.

The Registrar of the
Administrative Tribunal

The Chair of the
Administrative Tribunal

S. SANSOTTA

C. ROZAKIS