EUROPEAN CENTRE FOR MEDIUM-RANGE WEATHER FORECASTS

APPEALS BOARD

DECISION

15 March 2022

in Cases No 12 – 16

The Appeals Board
of the European Centre for Medium-Range Weather Forecasts

comprising

Michael Groepper, Chair,
Kieran Bradley, Vice Chair,
Spyridon Flogaitis, Member,
Eva-Maria Gröniger-Voss, Member,
Michael Wood, Member,

Assisted by Susan Madry, Secretary of the Appeals Board,

Having heard in public session in Reading

The Claimants:

A. (Case No. 12),
B. (Case No. 13),
C. (Case No. 14),
D. (Case No. 15),
E. (Case No. 16),

Assisted by Jean-Didier Sicault and Rémi Cèbe (Paris),

And

The Defendant:

The European Centre for Medium-Range Weather Forecasts (hereinafter 'ECMWF' or 'the Centre'),

Represented by Gregor Wettberg and Jens Alfs,

Assisted by Bertrand Wägenbaur (Brussels),

Has reached the following decision:

A. Facts:

I. The Issue of the Appeals

1 The Claimants' appeal is directed against the application to them by the Director-General of the amendment to the Pension Scheme Rules which provides that pensions are no longer adjusted in line with salaries but with inflation, and that pensioners will no longer be entitled to an education allowance.

II. General Outline

2 1. ECMWF is, together with the North Atlantic Treaty Organization (NATO), the Council of Europe (CoE), the Organisation for Economic Co-operation and Development (OECD), the European Space Agency (ESA) and the European Organisation for the Exploitation of Meteorological Satellites (EUMETSAT), one of the six so-called "Co-ordinated Organisations". The aim of the Co-ordination system is to provide recommendations on staff matters which have a high degree of technical complexity, such as salaries and allowances, as well as pensions, to the Governing bodies of the Co-ordinated Organisations. In accordance with Art. 1(a)(ii) of the Regulations concerning the Co-ordination system (which was adopted in 1991, and amended by the 154th CCR Report of 5 January 2004), one of the objects of the Co-ordination system is to provide recommendations concerning the Pension Scheme Rules.

3 These issues are discussed within three "colleges", namely the Co-ordinating Committee on Remuneration (uniting the representatives of the Member States of the Co-ordinated Organisations – CCR), the Committee of Representatives of the Secretaries/Directors General of the Co-ordinated Organisations (CRSG) and the 'Comité des représentants du personnel' (the Committee uniting the Representatives of the Staff Associations of the Co-ordinated Organisations and the Associations of their dependants or 'CRP'). The three Committees meet separately, as well as in bilateral and tripartite meetings. Article 6(a) of the Regulations concerning the Co-ordination system describes the roles of the different colleges:

> "Recommendations, in the form of reports, shall be made by the CCR by consensus and, to the extent possible, in conjunction with the CRSG. The CRP shall be consulted on the draft reports with a view to considering its position."

4 After consulting the other colleges, the CCR issues its reports which are transmitted to the Governing bodies of the Organisations. The Governing bodies take the corresponding decisions which are binding upon the executive organ of the respective Organisations.

5 The Co-ordinated Organisations receive technical support from the International Service for Remuneration and Pensions (ISRP) based in Paris at the OECD. ISRP is responsible for the management and review of all matters pertaining to the remuneration of staff and the pension scheme common to the Co-ordinated Organisations including through actuarial evaluations.

6 2. ECMWF has two pension schemes to which staff members are affiliated according to the date when they took up their duties: the Budgetised Pension Scheme (BPS[1]) created in 1974 for staff having taken up duty before 1 January 2003, and the Defined benefits Funded Pension Scheme (FPS) created in 2003 for staff who took up duty on or after that date. The BPS and FPS are defined in separate documents forming part of the Staff Regulations.

7 a) The **BPS Rules** apply to the 4 Claimants A., B., C. and E. (Appeals No. 12 to 14 and 16).

8 b) The **FPS Rules** apply to Claimant D. (Appeal No. 15).

9 3. The ECMWF Pension Schemes are not 'funded schemes' in a strict legal sense. Article 40 of the BPS Rules and FPS Rules respectively establish their budgetary basis and the legal liability of Member States to meet pension payments.

10 4. The ECMWF Pension Special Account was established by the ECMWF Council to create a "buffer fund" towards meeting future pension liabilities. In the event that the funds set aside are insufficient to pay future pensions, Member States jointly guarantee the payment of the benefits in accordance with Article 40 of the BPS and FPS Rules.

III. The Pension Adjustment Issue

11 1. In view of changes in the Organisations' staff policies, ever-growing pension expenditure, the general trend towards higher life expectancy, and major changes in the world's political and economic situation, the CCR recommended in its 105th Report of 20 October 1999 options for a reform of the Co-ordinated Pension Scheme to "*ease the long-term pension burden by proposing mechanisms for restoring financial equilibrium to the system*". However, the recommendations were rejected by the Governing bodies of all the Co-ordinated Organisations. Instead, the Organisations gradually introduced new pension schemes specific to each Organisation (ECMWF in 2003), thus closing the Co-ordinated Pension Scheme CPS (BPS for ECMWF) to new entrants after 1 January 2003.

12 2. In 2011, the CCR started examining the CPS (BPS) and, in 2017, decided to initiate an overall ("holistic") review of the scheme "*to bring the CPS more in line with best practice in other pension systems, both in international organisations and more widely, and to improve the financial stability of a system whose costs have been rising significantly*". The CCR announced that various measures were under consideration to reform the BPS, in particular

- Abolition/reduction of the tax adjustment;
- Reduction of the pension accrual rate (which is at 2% p.a. today);
- Calculation of pension benefits on career salary (instead of final salary);
- Introduction of a special levy on pensions;
- Increase in the retirement age from 60 to 63.

[1] In all other Co-ordinated Organisations except ECMWF, this Scheme is referred to as CPS, the 'Co-ordinated Pension Scheme'.

13 The reform of the BPS (CPS) was subsequently included on the agenda of a large number of meetings between the various Co-ordination committees, which took place between February 2017 and September 2019. During a bilateral meeting between the CCR and the CRS in December 2018, *inter alia* the possibility of adjusting pensions in line with inflation was discussed.

14 On the basis of these suggestions, the CCR requested concrete reform proposals from the Organisations. After lengthy and difficult discussions within the CRSG, the final proposal dated 27 February 2019 made by the CRSG to the CCR on behalf of five of the six Co-ordinated Organisations (OECD being opposed to the reform) "in order to contain the costs" of the BPS was to:

- Adjust pensions in line with inflation instead of following the Remuneration Adjustment Method (RAM), and
- Restrict the conditions of entitlement to education allowance for future pensioners.

15 During those meetings, the CRP consistently expressed its disagreement with the various proposals and reiterated "its unanimous opposition to any amendments to the (B)PS, a scheme which has been closed for many years in all the Co-ordinated Organisations", arguing that only the contribution rate could be reviewed.

16 3. During the trilateral CCR-CSRP-CRP meeting of 26 September 2019, the CCR agreed to recommend the two measures previously proposed by the CRSG and to end the discussion on increasing the normal retirement age. In addition, the CCR consented to remove the reform of the BPS from its programme of work. These recommendations included in the 263rd CCR Report of 26 September 2019 were adopted by the ECMWF Council on 10 – 11 December 2019. The Rules governing the BPS and the FPS were amended accordingly.

17 4. The Remuneration Adjustment Method (RAM) is composed of three elements: a reference index, a national Harmonised Index of Consumer Prices (HICP) and the Purchasing Power Parity (PPP). The figure resulting from this method is determined on a yearly basis. This method is applied to salaries and other elements of remuneration paid to staff and was applied to pensions paid under the BPS until 1 January 2020. The HICP is compiled by Eurostat (the statistical office of the European Union) and the national statistical institutes for almost every country for which the Co-ordinated Organisations establish salary scales. This is the reference used when available, while the national consumer price index NCPI is normally not taken into account. The HICP applied to pensioners is that of the country of the scale used to calculate their pensions. The figures resulting from this method are applied automatically.

IV. The Education Allowance issue

18 The other measure agreed upon in Co-ordination and accepted by the ECMWF Council on 11 – 12 December 2019 was the abolition of the Education Allowance regularly paid to pensioners. Until 30 December 2019, Article 28 of the BPS

and FPS Rules provided that Education Allowance (granted according to Article 17 of the Staff Regulations to active staff members) will also be paid to the recipients of a retirement pension as from the age of 60. With effect from 1 January 2020, an amendment to this provision has come into force: the Education Allowance will only be paid to recipients of pensions assessed before 1 January 2030. For recipients of pensions assessed from 1 January 2030, the Education Allowance will be paid only to the recipient of a survivor's pension (the provisions contain some more details which are not relevant in the present cases).

V. Claimants

19 The Claimants were all, at the time of lodging their appeal in 2020, active staff members of the Centre. While their appeal was pending, Claimant A. (case No. 12) retired on 1 April 2021 and Claimant E. (case No. 16) on 1 August 2020. These two Claimants are entitled to a pension from the Centre, while the other three Claimants should be so entitled to such a pension at different points of time in the future.

20 2. The differences between the legal situation of the five Claimants are as follows:

- Claimants A., B., C., E. (cases No. 12 to 14 and 16) do or will receive a pension under the “Budgetised Pension Scheme” (BPS),
- Claimant B. (case No. 13) will receive a pension under the BPS, and is currently entitled to an education allowance,
- Claimant C. (case No. 14) will receive a pension under the BPS, to which he transferred pension rights from a previous activity when joining the ECMWF,
- Claimant D. (case No. 15) will receive a pension under the FPS and has transferred pension rights from a previous activity when joining the ECMWF,
- Claimant E. (case No. 16) receives a pension under the BPS, and is currently entitled to an education allowance.
- The amounts of financial loss each Claimant alleges they will suffer differ accordingly.

VI. The Pre-Litigation Procedure and Appeals

21 On 27 January 2020, the Director-General informed all staff and pensioners including the five Claimants of her decision to implement the changes to the pension schemes. On 21 February 2020, all the Claimants lodged a request for review under Article 39 and Article 1.1 of Annex VII of the Staff Regulations against their respective salary slip for the month of January 2020. The requests for review were not answered, and were therefore tacitly rejected. On 10 June

2020, the Claimants lodged their appeals against the Director-General's decision implementing the changes to the pension adjustment method. The Appeals Board decided to consider the five Appeals jointly.

B. The Claimants' Position

I. General View

22 All the Claimants are in essence of the view that replacing the method of adjustment which applied hitherto to pensions (and salaries), i.e. the "Remuneration Adjustment Method" ("RAM"), by the "Harmonised Index of Consumer Prices" ("HICP"), would breach a number of general principles of law. The contested decisions should be rescinded on the grounds that the underlying general decision is illegal and thus cannot provide a valid legal basis for the contested decisions ("Exception d'illégalité").

23 In addition, the two Claimants B. (case No. 13) and E. (case No. 16) challenge the abolition of the education allowance for pensioners as of 1 January 2030. They claim that they will not be entitled to an education allowance when they reach the age of 60 in 2034 and 2020 respectively, while their children will not yet have reached the age of 26.

II. On Admissibility, the Claimants submit:

24 1. The Claimants contend that their request for review was implicitly rejected by the Director General who failed to reply to them within 20 days according to Article 1 paragraph 1 of the Annex VII to Article 39 of the Staff Regulations ("Conditions of appeal and rules of procedure for the Appeals Board").

25 2. With regard to the Claimants' cause of action, the contested decision is prejudicial to them as 1) it deprives them of their acquired right to the adjustment of their pension in accordance with the RAM, 2) in terms of injury it entails the substitution of a single NCPI to the RAM which will bring injury and will likely deprive the Claimants of a significant amount of money over a period of 20 years; 3) it deprives two of them of their acquired right to the education allowance which will bring injury and will likely deprive them of a significant amount of money.

26 There may be a cause of action even if there is no present injury. Time may go by before the impugned decision causes actual injury. The necessary yet sufficient condition of a cause of action is a reasonable presumption that the decision will bring injury. Staff members have an obvious interest in ascertaining the value of their pension rights as soon as possible even if they are still serving.

27 The impugned decisions are individual applications of the general decision implementing the amendments to the pension scheme and reflected in their salary slip by a reduced rate of contribution. The replacement of the RAM and its three pillars by one single index related to inflation only has for consequence that the contribution rate is lower, but at the same time the future pension benefits of the Claimants, i.e., the adjustment of their pension will also be lower,

and the loss significant. It cannot be said therefore that the individual impugned decisions do not implement the general decision at stake and have no adverse consequences for the Claimants, even if such adverse consequences will materialise in the future. It is more than probable that the ECMWF pensions, starting in 2021, will be adjusted by a smaller amount than the salaries.

28 When pensions are at stake, international administrative tribunals recognise the interest of staff members to be able to challenge adverse decisions, even if, by definition, the results of the adverse decisions taken now will produce their adverse consequences in many years. There must be therefore a cause of action of the Claimants in ascertaining the value of their pension rights as soon as possible even if they are still serving, since if they were to wait for the adverse consequences to come into play, the Defendant would consider that their actions are time-barred since they did not challenge the individual decisions implementing the general decision in due time.

29 Claimants B. (case No. 13) and E. (case No. 16) reject the Defendant's contention that the provisions of the Staff Rules related to the education allowance would deprive them of any cause of action as such education allowance would not be a right for pensioners. Contrary to this assertion, the fact that a staff member loses his entitlement to the expatriation allowance during his tenure has no consequences on his right to the education allowance. The contested decision has a direct effect on the Claimants who have or may have a right to education allowance when pensioners. The Claimants are therefore fully entitled to request the annulment of the contested decision.

II. On the Merits:

30 1. As to the **Legal Framework and the Procedure**, the Claimants submit:

31 The CCR recommendations are not binding upon ECMWF. The Defendant recognises that "the main role of the CCR is advisory and is to make recommendations", but it does not draw all the necessary conclusions from this recognition. It erroneously continues to consider that the Organisation had no other choice than to adopt the recommendation as all other Co-ordinated Organisations did, irrespective of the specific situation of the ECMWF. With the exception of the CCR recommendations on salary and pension adjustments themselves, i.e. the yearly annual adjustments to be implemented in accordance with the adjustment method, no recommendation of the CCR must be implemented by the Co-ordinated Organisations. The amendment to the adjustment method itself needs to be discussed among the three colleges (CCR, CRSG and CRP), but this does not mean that the recommendations formulated cannot be amended by each Co-ordinated Organisation. The Defendant is therefore wrong in believing that the Organisation had no choice but to follow the CCR recommendations.

32 There is no legal basis for the statement of the Defendant that CCR recommendations must be complied with by the Co-ordinated Organisations or that the system of remuneration and pensions is common to the Co-ordinated Organisations. The creation of the different new pension schemes shows that there is no such obligation to follow one single system.

2. Motivation of the contested decision; lack of Legitimate Reasons for the reform

33 The Claimants further argue that the contested decision is not properly motivated since its underlying actual reasons are invalid and unjustifiable.

34 a) The BPS and the FPS are separate defined benefits schemes, and are indeed very different when it comes to the funding question. The FPS was fully funded from its inception in 2003, with staff members' and Member States' contributions being fully paid into the fund. On the contrary, the BPS fund was only created in 2008 and staff members have been paying their full contributions into that fund, while Member States only paid a fixed amount, not corresponding to the actuarial costs of the pensions. There are two separate funds accounts, which are managed separately by a committee. Moreover, before 2008, not only did Member States not contribute to the BPS, but staff member contributions were used by Member States as income to fund the substantive programs of the Organisation, rather than being set aside in a fund for future pensions liabilities. This shows that the Member States did not take any account of the deficit they were creating or comply with their obligation jointly to guarantee the solvency of the pension funds. They are now relying on this deficit to reduce the Claimants' (future) benefits, and to generate savings at the expense of current and future pensioners.

35 With regard to the HICP, the principle was, from the inception of the FPS in 2003, that the pensions paid under the BPS and the FPS would be adjusted in the same way, i.e. in accordance with the RAM.

36 c) The contested decision is justified by the reasons submitted in the 263rd Report of the CCR. The primary reason justifying the amendments to the BPS is the desire to make economies. The main purpose is to reduce the burden of the pension schemes for Member States. The CCR also considered that savings would likely accrue to Co-ordinated Organisations. The real reason for suppressing the RAM and correlatively lowering the benefits of the Claimants in terms of pension adjustments is the obvious objective of the Member States to avoid bridging the financial gap they created and never filled in full in violation of their obligations. Reducing the financial burden for Member States is illegal when they fail to abide by the obligations under a binding legal provision they adopted and never amended.

37 It is obvious that the CCR and Co-ordinated Organisations Member States wish to move away from the original "defined benefits" schemes and reduce the pension benefits of staff members. The reason for reducing these benefits cannot be related to the actuarial financial position of other Co-ordinated Organisations or to the improvement of the ECMWF BPS financial stability. The financial sustainability of the ECMWF BPS is not endangered.

38 The CCR considerations were not reached on the basis of a survey of the financial or actuarial position of the BPS. The CCR finally justified the recommended amendments by the unsubstantiated fact that the pensions benefits

were simply not “publicly defensible”. The CCR did not review actuarial evaluations of the Co-ordinated Organisations’ separate pension schemes as the funding and performance of each pension scheme are separated. ECMWF cannot hide behind the general recommendations of the CCR without any reflection on the need to adopt those recommendations or not.

39 National pension schemes cannot be compared to those of International Organisations pension schemes. Reasons relating to the situation of national pension schemes or the Member States’ difficulties in defending publicly that their international agreements need to be respected, irrespective of the unequal treatment between national and international civil servants, are irrelevant.

40 The reasons brought forward by the ECMWF Council are pure political reasons disconnected from any technical or financial reality. Furthermore, ECMWF had the duty to check that the recommendations of the CCR are needed to ensure the sustainability of its BPS or, at a minimum, that such recommendations are in the interest of ECMWF, its staff and pensioners. Following mechanically the same regulations or rules as other Co-ordinated Organisations without any analysis of the value-added for ECMWF of the CCR recommendation is not in itself a valid legal reason.

41 d) The Claimants recall that the funding of the ECMWF BPS is not shared by other Co-ordinated Organisations. The amendments at stake as proposed by the CCR stem from the current financial and actuarial situation of one single Pension Scheme – the CPS of NATO. This is not a valid reason for adopting measures which are not valid for the other Co-ordinated Organisations and in particular ECMWF.

42 e) The explanations offered by the CCR, ECMWF Council and the Director-General are inadequate, unjustifiable and invalid. The contested decision is not properly motivated.

3. Breach of the Principle of Trust

43 The ECMWF Council approved the FPS in 2003 while it was understood, since the inception of the FPS, that the Co-ordinated Pension Scheme (CPS or, at ECMWF, BPS), as a closed scheme, would continue to evolve, but only in line with the existing rules, i.e the rules in force at the time of the creation of the FPS.

44 The ECMWF Council, when it adopted the contested amendments to the BPS, deprived the Claimants of defined pension benefits and their right to the adjustment of their pensions in accordance with the Remunerations Adjustment Method (RAM) and therefore refused to abide by the main principles agreed when adopting the NPS that the previous situation would be maintained for affiliates to the BPS. In 1994, when the “Noordwijk Agreement” was reached, it was clearly agreed with the CRP that the BPS could be modified if anomalies emerged with time, but there was no intent to align the BPS with the New Pension Schemes.

4. Violation of the Claimants’ Acquired Rights

45 a) It was recognized for decades by the CCR, the Co-ordinated Organisations and ECMWF that the existing pension schemes could not be amended to the detriment of staff members and pensioners in accordance with the acquired rights principle.

46 b) The contested decision alters a fundamental and essential term of the Claimants' employment with ECMWF, i.e. their entitlement to defined pension benefits which includes the adjustment of their pensions in accordance with the RAM which is a method considered sound by all stakeholders – the CCR, the CRSG and the CRP. The abandonment of the RAM will cause the Claimants, in addition to the loss of an important guarantee allowing them to check the accuracy of the data retained, an injury to a degree that violates a fundamental and essential term of their employment and therefore constitutes a breach of their acquired rights.

47 The BPS is a "defined benefits" pension scheme. This means that staff members must have the "visibility of what they will receive" as pensions payments once retired. In a "defined benefits" pension scheme staff contributions to the scheme may evolve, the defined pension benefits may not.

5. No Stable, Foreseeable and Transparent Results

48 The contested decision is in breach of the principle that any chosen remuneration adjustment method must ensure that the results are stable, foreseeable, and transparent. Abolition of the RAM entails the abolition of the most important procedural guarantees included therein. The NCPI is based on unstable and volatile indices used to calculate the cost of living. Concerning the absence of foreseeability, it is obvious that one single index is much less predictable than an adjustment based on the evolution of the three pillars which are part of the RAM. The method applied to calculate the NCPI and the metadata documentation database are not accessible to staff and, most importantly, to ECMWF and its Member States.

6. Unlawful Reference to National Consumer Price Index

49 The contested decision is tainted by ECMWF's failure to ensure that replacing the RAM by a National Consumer Price Index (NCPI) was lawful and did not deprive the Claimants of their rights. When an organisation bases its own decision on one taken by someone else – and this is the case of the NCPI which is imported from an authority external to the Centre – it is bound to check that this external decision or index is based on legitimate reasons, but most importantly, that it is lawful. There is no provision in the amended rules providing for a method of controls enabling ECMWF to abide by its duty to 1) analyze the NCPIs method and results, 2) give effect to it only if satisfied that it is lawful and 3) check that doing so would not impair the rights of its staff and pensioners.

7. Breach of the Duty of Care

50 The contested decision was taken and applied in breach of the duty of care owed to the Claimants. This duty implies in particular that when the Centre takes decisions concerning the situation of staff members, it must take into consideration all the factors which may affect its decisions, and when doing so it should take into account not only the interests of the Centre itself but also those of the staff members concerned. The amendments to the BPS decided by the ECMWF Council and applied to the Claimants through the contested decision have no added-value for ECMWF and are therefore neither in its general interest nor in the interest of the Claimants. The ECMWF Council took the general decision contested without knowing the effects that such decision would have on the staff members and pensioners concerned.

51 The Defendant tries to convince the Appeals Board that the Claimants should be happy that there were so few changes to the benefits owed to them. The truth is that the ECMWF representatives, during a bilateral meeting, *i.e.* between the CRSG and the CCR and not in presence of the CRP, agreed to implement an amendment which is clearly in contradiction with all general principles of law applicable to pension adjustments and never questioned the legality of the proposed amendments when addressing the Council.

52 As stated by the Defendant, the CCR consented to remove the reform of the BPS from its programme of work for the following year, but it never said that it would not pursue the reform of the BPS after 2020. If amendments such as those challenged in the present case are considered as legal by international administrative tribunals, the CCR, *i.e.* the Member States, will continue to reduce the benefits of pensioners of Co-ordinated Organisations.

8. Injuries brought about by the new method

53 With regard to the likely injury that the new method will cause, the Claimants submit that the replacement of the RAM and its three pillars by one single national index cannot ensure purchasing power parity between affiliates to the BPS wherever they live. NCPIs have a number of inherent weaknesses which have for consequence that the NCPIs cannot ensure that the method results are stable, foreseeable, and transparent. The new adjustment method will deprive the Claimants on the scale of 61,000 to 100,000 GBP[2] over a period of 20 years. The abandonment of the RAM will result over time in an erosion of the Claimants' purchasing power to a degree that violates fundamental and essential terms of their employment which cannot be modified without their express consent.

C. The Defendant's Position

I. On Admissibility:

54 The present appeals are inadmissible as a whole and subsidiarily parts of the orders sought are also inadmissible.

[2] The numbers differ in the different appeals.

55 1. The Claimants may not challenge the legality of a given legislative act directly but only by way of challenging an individual decision based thereon which individually and directly affects them. The Claimants are active staff members and their salary slip of January 2020 is evidently not a pension slip. Nor does the salary slip refer to or otherwise mention any future pension payment. The salary slip merely indicates the monthly amount of pension contribution to which the new pension adjustment method, by definition, does not apply. Article 30 of the Annex VI to the Staff Rules is not, at this stage, applied to the Claimants. While the Claimants may be considered as future pensioners, this does not mean that at the point of time of the present appeal they should be treated as pensioners.

56 2. As to the education allowance, concerning Claimants A. (case No. 12) and E. (case No. 16), the concerned Claimants' salary slip of January 2020 indicated an education allowance which they currently receive which was not based on Article 28 (8) of the BPS and FPS Rules but rather on Article 17 of the ECMWF Staff Regulations. As for the time when the amended provisions will apply (2030), the Claimants seem to assume that their children will be undertaking university studies and that they will do so until the age of 26 which is the maximum age for the allowance. Yet this is a mere hypothesis. The education allowance is a reimbursement of expenses actually incurred. A future and uncertain alleged injury cannot establish a cause of action.

II. On the Merits:

57 The Claimants do not contest the legislature's right to amend the law but argue that in doing so it disregarded a number of general principles of law and rules. The Claimants rely on five arguments that the reasons given are invalid and unjustifiable. These views are unfounded.

1. Reasons for the Reform:

58 a) The legislature is entitled to take into account the financial viability of a pension scheme. It is common and even advisable for international organisations wishing to reform their pension scheme to take into account the practice of other international organisations in this field. Pension schemes of many other organisations index pensions to price and inflation. Replacing the remuneration adjustment method by the national consumer price index does not reduce the pension benefits of staff members nor does it change the defined benefits nature of the scheme and does not in any way reduce the accrued rights to a pension, but is a means of ensuring that the spending power of pension beneficiaries remains stable.

59 b) The CCR and the legislature have no desire to make "savings", let alone to the detriment of staff. The CCR could objectively foresee that the cost of the scheme will increase significantly over the coming years. The purpose of the challenged change from the RAM to the HICP adjustment method is not to reduce the cost but to slow down the increase in the cost.

60 c) The Claimants state that the Member States first failed to fund the BPS and FPS for many years and then used their own omission as a reason for making

economies at the affiliates' expense "to avoid abiding by their financial obligations and face anticipated liabilities". Since 1994 the staff contribution rate has resulted from the compilation of actuarial studies run at the level of each Co-ordinated Organisation. The contribution rate is reviewed every five years. This exercise is completely independent from what happens in term of funding inside each Co-ordinated Organisation. Whether Member States have paid all of their contribution to the BPS and FPS in the past or not is objectively and indeed manifestly distinct from the question whether the pension schemes will be financially stable in the future.

61 The rise in the costs of the pension schemes has not been caused by the amount the Member States have paid into various pension schemes in the past. The rise in pension costs results from three objective factors: the continuing increase in life expectancy, the deterioration in the situation of the global financial markets, and the resulting fall in the discount rate. It is misleading to claim that the Member States have created the reasons for adopting the challenged legislative changes by failing to fund the schemes.

62 Anyway, the additional costs of the pensions are not determined by the question whether and when the Member States pay their contributions. The Council continues to be committed to paying an additional 2.1 million GBP in 2021 into the BPS to "provide a long-term solution to fund the Budgetised Pension Scheme".

63 d) The Claimants argue that the legislature breached the duty to provide sufficiently clear, precise and intelligible reasons. However, the steady increase of the contribution rate over the last exercises makes it obvious that increasing it further cannot be the only solution to contain the cost of the BPS and FPS. It is legitimate to envisage other measures, such as changing the annual adjustment method. In any event, it is the least far-reaching measure amongst all measures discussed in order to contribute to addressing the effects of the three factors impacting the financial health of the pension schemes.

2. Principle of Trust

64 With regard to the Claimants' argument that the contested decision is in breach of the principle of trust, the Defendant submits:

65 The Claimants cannot expect that after the adoption of the FPS the legislature may no longer legislate with respect to the "closed scheme" of the BPS. The BPS is "closed" to new members, not to the legislature. The legislature has the right to make changes to the BPS overtime, even if they are disadvantageous to the pensioners concerned. International organisations' staff members are not entitled to have all the conditions of employment or retirement which were laid down in the provisions of the staff rules and regulations in force at the time of their recruitment applied to them throughout their career and retirement. Most of those conditions can be altered during or after an employment relationship as a result of amendments to those provisions. Neither ECMWF, nor any other organisation or body, has ever given staff any precise unconditional and concordant assurance that the method for the annual adaptation of pensions

which hitherto applied, i.e., the RAM, would never be replaced by another method.

66 Regarding the Claimants who transferred pension rights they had acquired during a preceding employment into the BPS (case No. 14) or the FPS (case No. 15), ECMWF did not, at the time of transferral or afterwards, make any commitment other than integrating the transferred pension rights into the respective pension schemes. By doing so, ECMWF did not commit itself to freezing the method of adjustment, the RAM, applicable at the time to pensions.

3. Acquired Rights

67 The Claimants disregard the difference between the accrued pension rights, which are an acquired right, and the method of adjustment of the annual pension payments, which is not an acquired right.

68 The concept of a "defined benefits pension scheme" guarantees a pension payment calculated on the basis of last salary of the staff member and the number of accrued pension rights, but does include any specific adjustment method, be it the RAM, the HICP, or the NCPI. Nor does it guarantee that a given method of pension adjustment will apply when reaching the pension age. The method of adjustment, no matter which one, is a method of payment which is neither accrued nor acquired. The contributions of each staff member do not create for each of them an individual entitlement acquired now to a specific return in the form of a pension and to the reimbursement of any surplus. The Claimants believe that an adjustment method is part of their pension benefits, which is not the case.

4. Stable, Foreseeable and Transparent Results

69 As to the legal ground that the contested decision is in breach of the principle that any chosen remuneration adjustment method must ensure that the results are stable, foreseeable and transparent, and with regard to the Claimants' argument that the RAM is a sound method ensuring that the results are stable, foreseeable and transparent, by contrast to the HICP, the Defendant submits:

70 An international organisation is free to choose a methodology, system or standard of reference for determining salary adjustments for its staff. The Claimants' insistence that the RAM is a sound method does not mean, *a contrario,* that this was not also the case of the HIPC adjustment method. The contested adjustment method based on the HICP will lead to a stable, foreseeable and transparent result as well and is a methodology which is easy to understand.

71 The criteria that the method is stable, foreseeable and clearly understood do not imply that the methodology applied to pensions must be the same as the one applied to salaries. Pensioners and active staff members are in a different position: the former may freely choose the country where they retire while the latter must reside within a reasonable distance of their place of employment. Adapting pensions on the basis of the consumer price index is a fully valid method. The adjustment is based on the Harmonised Consumer Price Index (HICP) established by Eurostat which is publicly available. The same inflation

indexes are used for the salary adjustment. The Claimants fail to explain why the salary adjustment which takes into account several elements, in particular inflation and the evolution of salaries of civil servants in eight reference countries, provides more stable, foreseeable and clearly understood results than an adjustment which takes into account only one of these elements, namely the inflation indexes published by a renowned institution such as Eurostat.

72 As to the education allowance, the question of law is whether such a right acquired under a given contract of employment remains acquired upon retirement. The education allowance, paid to staff members who are not nationals of the host state and have dependent children regularly attending on a full-time basis an educational establishment, is ancillary to the expatriation allowance and may be paid to staff members who are entitled to the expatriation allowance. If during the contract of employment, the member of staff is no longer entitled to an expatriation allowance they can also not or no longer receive the education allowance. After retirement, the staff member is no longer entitled to an expatriation allowance either. The purpose of the education allowance grant is to provide for staff members serving in a country whose language is different from their own and who are obliged to pay tuition for the teaching of the mother tongue to a dependent child attending a local school in which the instruction is given in a language other than their own. Furthermore, the restriction of the education allowance for pensioners will only become effective in 2030, and the Claimants will have enough time to adapt their personal plans to the future situation bearing in mind the level of their net income.

5. Duty of Care

73 As to the alleged breach of the duty of care the Organisation owes to the Claimants, the Defendant submits:

74 Representatives from the ECMWF secretariat actively took part in every Co-ordination meeting over the past years during which the reform of the BPS and FPS was debated and negotiated, to ensure that the changes are lawful and that the interests of the organisations' staff and pensioners are upheld. The duty of care which an international organisation owes to its staff members does not imply that the organisation must, as a matter of principle, refrain from adopting rules which are less favourable to its staff than those previously in force. The CRSG had, through the whole discussion process in Co-ordination, made every effort to protect the interests of staff and pensioners. The CRSG excluded other more stringent measures discussed by the CCR such as a special levy on pensions and an abolition of the tax adjustment or an increase in the retirement age, to protect the interests of staff members and pensioners. Furthermore, the CRSG negotiated a compromise with the CCR allowing a transition period of between 5 and 10 years before restricting conditions of entitlement of the education allowance for pensioners, and the removal of the CPS from the programme of work of Co-ordination, thus ending the discussions on an increase of the retirement age. The Director-General not only successfully recommended to Council to adopt the longest possible transition period of 10 years, but ECMWF further added a hardship clause to the new provision on the education allowance to increase the protection afforded to retiring staff members.

6. Injury

75 As to the injury, the Claimants are wrong when using the term “injury” for what is inherent in an adjustment method on the basis of the HICP which is an adjustment of pensions to cost-of-living changes in the various countries of residence of the retired staff members. It is equally erroneous to deduce the existence of a financial prejudice merely by comparing the HICP to the RAM. It is not reasonable to presume that the extrapolation provided by the Claimants would prove injury. The past 20 years were generally characterised by low levels of inflation. But the trend over the past 20 years can hardly become a reliable yardstick for the 20 years to come. It cannot be excluded that the national civil service remuneration remains below the consumer price index. No one can predict how the RAM itself will evolve in the years to come.

76 The HICP is more advantages than the RAM in many ways. Contrary to the RAM, annual adjustment under the HICP is automatic without intervention from the Organisation's Council. Neither does the HICP comprise an affordability clause. Furthermore, in addition to the annual adjustment of pensions, Article 36 (1) second sentence of the BPS and FPS rules foresees an automatic adjustment in the course of the year for any given country when prices in that country show an increase of at least 6%. All these are additional safeguards for pensioners providing them with more stability and foreseeability. Against this background, there is no reasonable presumption that the decision will bring injury.

D. The Parties’ requests:

77 **I. The Claimants request the Appeals Board:**

1. To annul the contested implied decision of 20 March 2020, so that the Staff Regulations in force before the adoption of the Council Decision adopted on 10-11 December 2019 to amend the BPS and, accordingly, the applicable Staff Regulations, continue to apply to them;

2. To annul the Claimants’ January 2020 pay slips and all subsequent pay slips implementing the contested decision regarding the implementation of the ECMWF Decision of the Council of ECMWF adopted on 10-11 December 2019 to amend the Pension Scheme applicable to them and, accordingly, the applicable Staff Regulations;

3. To order ECMWF to provide the Claimants with new revised pay slips as from the January 2020 pension slips;

4. To order ECMWF to pay the Claimants’ costs.

78 **II. The Defendant requests the Appeals Board:**

1. To reject the Appeals;
2. To order the Claimants to bear their own costs.

E. Considerations

I. On Admissibility:

79 1. All the Claimants have fulfilled the formal conditions provided for in Article 1.1 of the Conditions of Appeal and Rules of Procedure for the Appeals Board. They have written to the Director-General and not received an answer. The condition in Article 1.1 providing that the Director-General have either rejected such request or failed to reply to the Claimant within 20 days gives the Director-General's failure to reply the same effect as an explicit rejection of the request. The Claimants are right in assuming that the time period of 60 days to lodge an appeal started on the last day of the time period of 20 days within which the Director-General was expected to answer. The Claimants have respected that deadline provided for in Article 1.5.

80 2. The Claimants were, at the date of filing their appeal, active staff members. The Appeals Board, therefore, has to decide whether active staff members have a cause of action to challenge decisions concerning the pension scheme which actually does not yet apply to them, because they do not yet draw a pension from the Defendant.

81 a) As explained by the Appeals Board in its decision concerning cases 7 – 11, also handed down today, pensioners have standing to challenge individual decisions adversely affecting their pension rights and incidentally to contest the legality of a general rule on which the individual decision is based. They have shown that the new pension adjustment method has already reduced the amount by which their pension was adjusted compared to the previous method and is likely to cause a further decrease as pension adjustments could lag behind the adjustment of salaries. Although the Defendant is right in saying that it is not certain that the application of the new pension adjustment scheme will always be less favourable to pensioners, since an adjustment following inflation may even be more advantageous compared to an adjustment following RAM, the allegation that there may be a certain gap between the two adjustment methods is not a matter of mere speculation. The new adjustment method was, moreover, introduced with the clear purpose of reducing the costs of the pension scheme. Thus, the pensioners have an arguable cause of action, even if they cannot prove that in every single year to come the adjustment of their pensions will lag behind the adjustment of salary. The Appeals Board is satisfied that there is a reasonable presumption that such a lag is likely to occur over the years which the Claimants will spend as pensioners.

82 b) However, Claimant A. (Case No. 12) retired on 1 April 2021, and Claimant E. (Case No. 16) on 1 August 2020. So, they are currently pensioners. Any appeal must fulfill the necessary requirements of admissibility at the latest at the date of the hearing (or, in case of a decision without a hearing, at the date of

the decision). Defects in the capacity of the Claimants which impair the admissibility of an appeal at the time this is lodged may be cured during the course of proceedings. At the time of the hearing (15 March 2022) Claimants A. and E. are in the same position as the Claimants in the cases 7 – 11.

83 It is true that, in their appeal, they challenged their pay slip which they received as active staff members, while in cases 7 – 11 the Claimants challenged their pension slip which reflected the implementation of the amendments to the Pension Scheme. However, the Claimants, in their appeal, have requested the Appeals Board "To annul the Claimants' January 2020 pay slips and all subsequent pay slips implementing the contested decision". This request includes the pension slips which they subsequently received as pensioners. It would amount to pure formalism to require the two Claimants to lodge a new complaint to the Director-General which would no doubt have no other outcome as the complaints of the Claimants in cases 7-11. Thus, the Appeals Board considers the appeals of the two Claimants A. (Case No. 12) and E. (Case No. 16) as admissible insofar as they challenge the implementation of the new adjustment method.

84 c) As to the other Claimants who filed their appeal as active staff members and who continue to be in active service, the Appeals Board does not consider that they have an actual interest to bring the contested measure before the Appeals Board. These Claimants ask the Appeals Board to review a decision and its underlying legal provision which do not in fact apply to them. Moreover, it is not certain that the new provisions will apply one day, since the entitlement to a pension depends on several conditions, notably reaching the pension age as an active staff member. Staff members who leave the service before or do not reach the pensionable age will not be subject to the challenged decision, and it is not certain that these conditions will be fulfilled.

85 According to Article 1 (2) of Annex VII to the Staff regulations, which lays down the Conditions of Appeal, the Appeals Board shall annul any decision against which there was an appeal, if the decision is directed against the Claimant and affects his or her personal rights, and if the decision is contrary to the Staff Regulations, a policy or instruction, or to the Claimant's terms of appointment. The Appeals Board notes that the Claimants currently have no personal rights that are directly affected by the challenged decision to implement the amendments to the Pension Rules.

86 The Claimants cannot argue that not admitting their appeal would cut off active staff members from any possibility to have an important feature of their future pension revised by the Appeals Board as the sole competent court. They may appeal against their first pension slip once they have retired. The Centre will not be allowed to plead that such an appeal would be time barred.

87 On the same issue, the Administrative Tribunal of the Council of Europe, in its decisions dated 15 April 2021 (No. 640/2020 et seq.), has held that

> (57) "unlike the payslips of the retired appellants the payslips of the serving appellants indicate the applicable contribution rate but do not reflect the adjustment method decided under Article 36 of the BPSR. In point of

> fact, based on the January 2020 payslips, the serving appellants are not affected by the amendment made to Article 36 of the BPSR. Accordingly, unlike the pensioners' payslips, these payslips do not constitute an application of the article in question in this case. (58) The tribunal can rule only on the legality of a provision of the BPSR when it has been applied in a particular way in a specific decision concerning a particular appellant. This is the case of the pensioners' payslips. On the other hand, the Tribunal cannot deal with potential and hypothetical cases relating to situations that may arise in the future. This is exactly the situation in the case of the payslips of serving staff, which do not in any way implement the change in the adjustment method provided for in Article 36 of the BPSR. (60) The tribunal therefore considers that, on the basis of their payslips, the serving appellants cannot be regarded as having an interest in challenging the amendment to the method of adjusting pensions under Article 36 of the BPSR. The adjustment method will be applied and calculated at the time they receive their respective pension. As a result, they do not have a definite and direct interest in being able to bring the contested measure before the Tribunal".

88 Likewise, the Administrative Tribunal of the OECD, in its decision No. 96 of 30 June 2021, with reference to this decision of the Administrative Tribunal of the Council of Europe, noted:

> (33) Or tous les moyens soulevés par les requérants portent sur l'illégalité de la décision du 19 novembre 2019 en tant qu'elle prévoit qu'à compter du 1er janvier 2020 les pensions seront indexées sur l'indice des prix du pays de résidence et non plus sur les salaires. (34) Quand bien même ces moyens seraient fondés, ils ne seraient pas de nature à conduire à l'annulation du bulletin de salaire de janvier 2020 lequel ne reflète en rien la modification de la méthode d'indexation des pensions. (35) Le lien entre l'augmentation du taux de cotisation des agents au RPC et le changement de la méthode d'indexation des pensions n'est pas un lien juridique qui permettrait de regarder comme opérants les moyens relatifs à l'illégalité du changement de méthode d'indexation des pensions dirigés contre un bulletin de salaire étranger à ce changement. (36) Le Tribunal considère donc que les requêtes ne peuvent prospérer par les moyens invoqués. Cela vaut aussi pour M. Cusse, quoiqu'il ait pris sa retraite au 30 juin 2020. Cette situation lui aurait permis de contester, par les moyens soulevés dans sa requête, son premier bulletin de pension, mais non son bulletin de paie de janvier 2020. (37) Le Tribunal rejoint ainsi le cheminement exposé ci-dessous dans la décision de rejet (pour défaut d'intérêt à agir des agents actifs) à laquelle est parvenu le Tribunal administratif du Conseil de l'Europe (TACE) dans un contexte quasiment identique à celui des présentes requêtes. Le Tribunal écrit …

89 Moreover, the Appeals Board of EUMETSAT, in its decision No. 9-11 of 19 October 2021, adopted the same position.

90 The ILOAT has confirmed the same approach in numerous judgments (see ILOAT Judgments No. 622, 1712 and 2822). For example, it ruled in Judgment

No. 3291 (referred to in Asian Development Bank Administrative Tribunal, Decision No. 109 paragraph 50):

> The Tribunal notes that allowing a complaint against a general decision which does not directly and immediately affect the complainant but which may have a direct negative effect on her/him in the future, would cause an unreasonable restriction of the right of defence, as staff members would then have to impugn immediately all general decisions which may have any connection with their future interests, on the basis that a general decision which is not challenged within the established time becomes immune from challenge. On this approach, once a general decision is considered immune, any complaint impugning the subsequent decision implementing it could not challenge the lawfulness of the underlying general decision. Considering this, the Tribunal is of the opinion that the approach illustrated by the recent case law (Judgments 2822 and 3146) is to be followed. According to that case law, a complainant can impugn a decision only if it directly affects her/him, and cannot impugn a general decision unless and until it is applied in a manner prejudicial to her/him, but she/he is not prevented from challenging the lawfulness of the general decision when impugning the implementing decision which has generated their cause of action.

91 Therefore, the Appeals Board considers that the appeals of Claimants B. (Case No. 13), C. (Case No. 14), and D. (Case No. 15) are inadmissible insofar, as they challenge the replacement of the old adjustment method (RAM) by the new adjustment method following inflation.

92 3. Claimants B. (case No. 13) and E. (case No. 16) have directed their appeals also against the amendment concerning the Education Allowance, alleging that this amendment will cause them injury once they reach the age of 60 as pensioners.

93 a) Claimant E. retired in 2020. The amended provision on education allowance for pensioners provides in Article 28 paragraph 8 BPS Rules:

> 8. The education allowance is granted according to the modalities and conditions of entitlement provided for under the Organisation’s Staff Rules and under the present Rules:
>
> i) for recipients of pensions assessed before 1 January 2030:
> 1. to the recipient of a retirement pension as from the age of 60;
> 2. …

94 This means that Claimant E. whose pension has been assessed before 1 January 2030, will not be affected by the amended rules applicable after 2030. The Appeals Board does not consider that his rights may be adversely affected.

95 b) As to Claimant B., he will reach the retirement age of 60 in 2034. Thus, he will continue to be entitled to the education allowance only as provided for in

Article 28 paragraph 8 (ii) of the BPS Rules according to which the education allowance will be granted

> ii) for recipients of pensions assessed from 1 January 2030:
>
> a. to the recipient of a survivor's pension, in respect of the sole beneficiaries who were or would have been recognised as a dependant of the staff member if he had not died;
> b. to the recipient of an orphan's pension where there is no recipient of a survivor's pension in the family group to which he belongs;
> c. to the recipient of an invalidity pension;
> d. upon exceptional decision of the Director-General to a pensioner who would otherwise incur special hardship in case of strict application of the rules.

96 The Appeals Board admits that it is not unlikely that under the new provisions Claimant B. will not be entitled to an education allowance as a pensioner, unless he fulfils one of the aforementioned conditions a. – d. But this will not happen before he reaches the age of 60 which will be the case in 2034. The Appeals Board considers this date to be too remote in terms of time to entitle the Claimant to legal protection at this point in time. In 2034, the children of Claimant B. will be aged 21 and 14. They would be even older than this if the Claimant were to retire after 60 years. It is unpredictable what will be the educational situation in 2034 and to what extent the Claimant will fulfil the regular conditions of the education allowance. Thus, the Appeals Board considers that Claimant B.'s appeal challenging the new Education Allowance provision is premature and thus inadmissible for lack of present interest. The Claimant may challenge the decision to implement the new rule once he is affected by it. The Defendant will not be allowed to plead that his appeal is time-barred.

97 4. On these grounds, the Appeals Board considers the appeals of Claimants B. (case No. 13) and E. (16) against the abolition of the education allowance are inadmissible as well.

98 5. The Appeals Board accepts as admissible the appeals of the (now) pensioners A. (case No. 12) and E. (case No. 16) insofar as they challenge the adjustment method.

II. On the Merits

1. The Legal Framework

99 In the version in force prior to 31 December 2019, Article 36 of the BPC (CPS) Rules – 'Adjustment of benefits' read as follows:

> 1. Should the Council of the Organisation responsible for the payment of benefits decide on an adjustment of salaries in relation to the cost of living, it shall grant at the same time an identical adjustment of the pensions currently being paid, and of pensions whose payment is deferred.

Should salary adjustments be made in relation to the standard of living, the Council shall consider whether an appropriate adjustment of pensions should be made*.

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*Footnote:

"Article 36 of the Pension Scheme Rules, relating to the arrangements for the adjustment of benefits, shall be interpreted, in all circumstances and whatever the current salary adjustment procedure, as follows:

Whenever the salaries of staff serving in the Co-ordinated Organisations are adjusted – whatever the basis for adjustment – an identical proportional adjustment will, as of the same date, be applied to both current and deferred pensions, by reference to the grades and steps and salary scales taken into consideration in the calculation of these pensions."

100 Paragraphs 1 and 2 of Article 36 as amended with effect from 1 January 2020 read:

1. Pensions shall be adjusted annually in accordance with the revaluation coefficients based on the consumer price index for the country of the scale used to calculate each pension.

Pensions shall also be adjusted in the course of the year, for any given country, when prices in that country show an increase of at least 6%.

2. At regular intervals, the Secretary General shall establish a comparison of the difference between increases in salary and increases in pensions, and may, where appropriate, propose to the Committee of Ministers measures to reduce it.

101 Thus, through the amendment of Article 36 the former parallelism between adjustment of salaries and pensions has been abandoned. Under the new system, pensions will be automatically adjusted annually in line with the consumer price index – in other words: following inflation – regardless of whether or not, and if so in what amount, salaries are adjusted.

2. The Competence of Co-ordination

102 Annex 1 to the Regulations concerning Co-ordination provides that "the object of the co-ordination system is to provide recommendations to the Governing bodies … concerning (i) basic salary scales, and the method of their adjustment, for all categories of staff and for all countries where there are active staff or recipients of a pension; (ii) Pension Scheme Rules". The Appeals Board considers that it cannot be inferred from this Rule that Co-ordination may only recommend methods of adjustment of salaries, but not that of pensions. The quoted Rule shows that both salaries and pensions are a matter of Co-ordination. It is true that the words "the method of their adjustment" are linked to "basic salary scales" only, while with respect to "Pension Scheme Rules", mentioned in (ii), there is no explicit mention of such a competence. But since Pension Scheme Rules necessarily need to include rules for pension adjustment,

the competence of Co-ordination to provide recommendations concerning Pension Scheme Rules extends to the competence to recommend the adjustment method, even if this is not expressly mentioned in (ii).

3. Motivation of the contested decision

103 a) The Claimants submit that the contested decision is not properly motivated since the real underlying reasons are invalid and unjustifiable. The desire to make economies and to reduce the burden of the pension schemes for Member States is not by itself a valid reason for departing from an established standard of reference. ECMWF has no obligation to comply with the CCR recommendations and cannot hide behind the CCR or the need to abide by its solidarity with the Co-ordinated Organisation. ECMWF had the duty to check that the recommendations of the CCR are needed to ensure the sustainability of its BPS or, at a minimum, that such recommendations are in the interest of ECMWF, its staff and pensioners.

104 b) The Appeals Board does not agree with these arguments.

105 aa) The Claimants' arguments raise the question of whether an Appeals Board has the power – and if so the duty – to investigate the details of the law-making process within the governing body of the ECMWF, which, according to the Claimants, was badly informed and acted without sufficient information and diligence when it decided on the new BPS.

106 bb) The Appeals Board notes that a body charged with legislative powers has a very broad discretion in assessing and determining the appropriateness and the modalities of general rules. No Administrative Tribunal has the right to substitute its discretion for that of the legislature. Generally speaking, the Appeals Board is not bound to look into the law-making process itself at the suit of individual Claimants. On the other hand, the Appeals Board has the power to control whether the result of the law-making process is in accordance with higher ranking law and generally accepted legal principles. Within these margins the Appeals Board may conclude that a legal provision was based on assumptions that were manifestly false or on factual elements that were manifestly wrong. In such a case, the Appeals Board has no power to declare the rule void, but it may hold that such rule must not be applied as a legal basis for individual decisions (cf. the German notion of "Inzidentkontrolle" and the French notion of "exception d'illegalité".)

107 cc) As to the obligation of the body entrusted with adopting legislation to base its decision on correct facts and assumptions, it is, in the first instance, the duty of its members to ask for sufficient and reliable information. Unless it can be proven that they had no information at all at their disposal, and that the body acted in complete ignorance of the facts, it is not up to the Appeals Board to establish what information was needed, what information was actually to hand, and whether the members of the body drew the right conclusions from this information.

108 dd) The reasons which induced the CCR to recommend the reform to the Councils of the Co-ordinated Organizations are clearly set out in the 263rd CCR

Report, which refers to other documents containing more details. The Appeals Board does not consider it to be its task to assess the correctness of the assumptions and reflections on which the recommendations were based; suffice it to say that these reasons are not obviously based on incorrect assumptions or abusive considerations, and there is nothing to indicate that they are not the true reasons behind the amendment of Article 36 BPS and FPS. That the Claimants do not accept these reasons does not change the fact that the contested amendment of the pension adjustment method was well reasoned by its authors and that these reasons cannot be considered to be arbitrary.

109 ee) In any case, the documentary evidence shows that the matter of the BPS had been discussed for years at the level of Co-ordination as well as at the level of the Councils of the six Co-ordinated Organisations. There is no evidence that any of the points mentioned by the Claimants was overlooked or not taken into account. In these circumstances, the Claimants cannot reasonably claim that the CCR was not sufficiently well informed on the issues, even without a specific impact study. It is true that the conclusions were different from those which the Claimants find appropriate. But it is not necessary that measures taken by law garner the approbation of those who are subject to them.

110 ff) In its decision Nos. 640/2020 et seq. of 15 April 2021 (on the identical Pension issue), the Administrative Tribunal of the Council of Europe points out that

> (127) “the statement of reasons for a decision of a technical nature such as the adjustment of the calculation method in line with the consumer price indices, does not require all the details to be explicitly set out in the contest decision. Indeed, an analytical description of the specific technical considerations relating to the adoption of an act, however useful and desirable it may be, is not in itself indispensable in order to consider that the obligation to state reasons has been met. It is sufficient that the persons concerned are able to understand the reasons for the adoption of the act which concerns them, the objective which is pursues and the method applied to establish the amounts to which they are entitled. (128) This is precisely the case here. The Tribunal observes that the 263rd report of the CCR on which the rejection of the claimants’ complaints are based contains element of reasoning …; (129) In particular it was clearly mentioned in the said report (part 3 of the conclusions) that since 2017 a decision had been taken to review the entire arrangements for this aspect of the BPS, in order to bring it more into line with best practices in other pension systems and to improve the financial stability of a system whose costs were rising substantially. The report even mentions that several reforms had been examined, based on the report requested by the CCR, and that two of the proposed reforms had been presented at the coordination meeting. In the same section, the 263rd report explains the reasons why it was now necessary to use a different method for adjusting pensions, one based on inflation, since this was deemed to be a more appropriate way of protecting pensioners’ incomes from the effects of increase in the cost of living. (130) The fact that, in the claimants’ view, the possible savings targeted by the amendment are “likely” or “probable” or that there are no grounds justifying the need for the amendment is a matter of the internal lawfulness of the contested

measures and not of the reasoning behind them. … (132) In any event, the Tribunal points out … that the proposed reform had been decided in 2017 and was one of several possible reforms for which opinions had been sought; the amendment that was eventually chosen was the only one corresponding to the objectives pursued … The appellants cannot claim that the failure to provide sufficient reasons in the contested decision prevented them from understanding the context of the amendment made. … (134) As regards the argument that there were no specific and technical studies to justify and explain the change made, the Tribunal notes that there is evidence … which clearly shows that certain studies were indeed carried out. Even if the appellants dispute the validity of the studies in question and argue that the organisations need to carry out other studies, all of this leads to the logical conclusion that the appellants were aware of the context in which the amendments was made … . (135) It follows from the foregoing that the arguments put forward by the appellants to establish the existence of a breach of the obligation to provide reasons on account of the lack of specific and detailed or technical information justifying the pension adjustment method adopted must be rejected".

111 The Appeals Board agrees with this reasoning.

4. The Principle of Trust and the "Noordwijk Agreement"

112 a) The Claimants submit that the ECMWF Council approved the FPS in 2003 while it was understood, since the inception of the FPS, that the Co-ordinated Pension Scheme, as a closed scheme, would continue to evolve, but only in line with the existing rules, i.e. the rules in force at the time of the creation of the BPS. This principle was already recalled by ECMWF in November 2009 when it considered that the New Pension Scheme shall only be applicable to staff recruited after the approval of the reform. The Director General, when she took the contested decision, disregarded the main principles deriving from the closure of the BPS and the adoption of the FPS that 1) the benefits of the existing staff and pensioners affiliated to the BPS would not be affected, 2) the rules applicable to the BPS in force at the time of the adoption of the FPS would be maintained, 3) the affiliates to the BPS would not be penalized and their acquired rights would therefore be safeguarded. In 1994 when the "Noordwijk Agreement" was reached it was clearly agreed that the BPS could be modified if anomalies emerged with time, but there was no intention to align the BPS on the new pension schemes. The only change that can be made to the CPS is the contribution rate. The letter of the CRP Chairman of 9 May 1994 in no way mentions a compromise which would be limited in time. The time limit of five years – contained in the 34th Report - must therefore be treated as a material error as it has no basis in fact or law.

113 b) The Appeals Board does not agree with these arguments.

114 aa) The fact that a pension scheme is closed means that from a certain date on no active staff joining the Centre are admitted as new members. In the following years, the number of pensioners may grow, but it will always be limited by the number of active staff members who were admitted as members at the

point in time when the scheme was closed and thus became aspirants to a pension.

115 That a pension scheme is closed in no way means that its legal structure is frozen and has to remain unchanged. Within any given system, changes are possible and common. One of the most common changes in practice is the increase in contribution rates, since every pension system has a natural tendency to become more and more expensive, as pensioners become more numerous and enjoy an increasing life expectancy, while the number of active staff contributing to its funding is constantly decreasing, tending to zero. The existence of Article 41 BPSR shows that contribution rates may be adjusted and that active staff members affiliated to the BPS cannot claim that their contribution rate – limited to 1/3 of the benefits provided – remains fixed as a percentage of their salary. This Article only applies to active staff members, not to pensioners. Therefore, nothing can be deduced from this provision with regard to pensioners. On the contrary, the provision regarding pensioners is Article 36 BPSR, which explicitly provides that pensions may be adjusted. Article 41 BPSR does not limit the power of the Council to amend Article 36 by introducing a new method for calculating the adjustment.

116 bb) The argument regarding the so-called “Noordwijk Agreement” is based on the 34th CCR-Report of 29 April 1994 and the letter dated 9 May 1994 which the President of the CRP (Mr Giovanni Palmieri) addressed to the President of the CCR (Mr Bernhard Schaefer).

117 While it is not excluded that official documents such as the 34th CCR-Report may contain information of legal importance, the Appeals Board considers that in the present case the CCR Report of 29 April 1994 contains a record of the facts and of the considerations which finally led the CCR to present to the Councils of the six Co-ordinated Organisations the recommendations which were later adopted by them; they concern the new wording of Article 41 of the Pension Scheme Rules, the rate of staff contribution to the Pension Scheme and the guarantee by Member States concerning the payment of pensions. The Report’s main function, thus, is to explain the motives underlying the recommendations.

118 The Report provides a rather comprehensive narrative of the discussions which had taken place since 1 July 1974 when the CPS came into effect. To a considerable extent, the Report is devoted to the actuarial studies which had been carried out during 1990, 1991 and 1992. Moreover, the Report clearly reflects the different positions of the CCR, the CRSG and the CRP. The pertinent reflections are set out in more detail in the “Compromise Proposal by the Chairman of the CCR to determine the level of staff contributions to the Pension Scheme” attached as Annex 3 to the Report and mentioned in its paragraphs 2.3, 3.8 and 4. It is, thus, an official document which established that the procedure provided for in the “Regulations concerning the Co-ordination System” (now laid down in the 154th CCR Report of 5th January 2004) had been duly followed. Article 6 provides, inter alia, that “recommendations, in the form of reports, shall be made by the CCR by consensus and, to the extent possible, in conjunction with the CRSG. The CRP shall be consulted on the draft reports with a view to considering its position”. By including the position of the CRP,

the Report establishes that the CRP was correctly consulted, and that its position was duly considered. Within this framework, a Report sets out divergences of opinion as well as a common understanding of the participants. However, as the participants of Co-ordination (CCR, CSRG, and CRP) have no competence to conclude legally binding agreements, the CCR Report can neither create, nor attest to the existence of, legally binding obligations between the participants, still less between the participants and the Councils of the Co-ordinated Organisations.

119 In his letter of 9 May 1994 addressed to the President of the CCR, the President of the CRP says, inter alia:

> *Je tiens tout d'abord à vous remercier pour votre concours à la solution de compromis intervenue en matière de réforme du règlement des pensions et d'ajustement du taux de contribution des agents.*
>
> *Par la présente je souhaite surtout fournir des indications quant à l'interprétation de la position du CRP. Il s'agit notamment de tenir compte des deux circonstances suivantes :*
>
> a. *le personnel demeure inquiet quant aux lacunes de la garantie juridique offerte par les États membres des Organisations en matière de paiement des pensions. Par ailleurs le CCR a demandé au CRP de lui soumettre une note faisant état desdites inquiétudes ;*
> b. *l'intangibilité du régime des prestations est le présupposé sur la base duquel les discussions ont reposé et notre accord au compromis a été donné. Constituant un présupposé, cet élément n'apparaît nulle part dans le rapport. Il est à mon avis opportun de vous le signifier dans cette lettre.*

120 The 34th Report of 29 April 1994 (in its paragraph 4.3 – Position of the CRP) does not contain any reference to the "intangibilité du régime des prestations" as a "présupposé" of the compromise. But even if it were mentioned, this would not be more than an explanation of the motivation underlying the acceptance of the recommendations by the CRP. Moreover, it would not be clear what was meant by the term "régime des prestations", and it would not establish that the adjustment system for pensions – which was not discussed in the 1994 meetings – was an integral part of this "régime".

121 Whatever the meaning of the letter, it was quoted and reconsidered in a trilateral Joint Meeting of the CCR, the CRSG, and the CRP held in Strasbourg on 23 and 24 June 1994. The result of the meeting is recorded in point 10.3.1.1 of the minutes as follows:

> The Joint meeting "*noted that the CRP had felt it useful to record in a letter to the Chairman that its acceptance of the recommendation in the 34th Report had been based on the presupposition that the system of benefits was inviolable for the five-year period until the next review of the level of the staff rate of contribution to the Scheme; …*" (emphasis added).

122 The Appeals Board notes that the minutes of the Strasbourg meeting of June 1994 mentions a ”five-year period” during which the system of benefits should be “inviolable”, while the letter of the CRP Chairman of 9 May 1994 does not mention such a period. The Appeals Board considers that the June 1994 minutes (which take up the wording of the CRP letter of 9 May 1994) must be deemed to relate the latest stage of discussions and prevail over the CRS letter of May 1994. It shows that the ideas and concerns set out in the CRP letter were taken up again and discussed in the tripartite meeting of June 1994 and assumed their final shape in the minutes of the June meeting. The Appeals Board finds it highly unlikely that the CCR and the CRSG would have accepted a proposal of the CRP that the whole CPS system should remain “inviolable” once and for all with the sole exception of the contribution rate. Mentioning the five-year period reflects the new wording of the rule (Article 41.5) providing for a five-year period before reviewing the staff contribution rate as an element of stability meant to protect the interests of staff and pensioners. The Claimants’ assumption that the wording of the June 1994 minutes reflects a “material error” has not been proven and is no more than speculation. The Appeals Board bases its assessment on the clear and unambiguous wording of the documents submitted by the parties, rather than on speculative suggestions. As the Defendant rightly submits, the minutes of meetings of Co-ordination meetings are reviewed by all three Committees before their final adoption. The Claimants have not provided any evidence that the content of the minutes was contested by the CRP at the time.

123 The Appeals Board thus considers that the so-called “Noordwijk Agreement” relates to discussions held between the three Co-ordination Committees in 1994 and the compromise proposals they agreed on: the staff contribution rate increase to 8%, in return for the inclusion of a complete actuarial method in an annex to the pension rules, a mandatory period of five years between two revisions of the contribution rate and the provision that the special contribution that had been paid by staff members since 1992 be reimbursed. It does not establish either that the CCR had no right to submit proposals concerning the method for adjusting pensions, or that the Council of ECMWF had no right to adopt them. The ECMWF Council was therefore not estopped by the “Noordwijk Agreement” from amending Article 36 of the CPS (BPS).

5. Violation of The Claimants’ Acquired Rights

124 a) The Claimants submit: The contested decision alters a fundamental and essential term of the Claimants’ employment with ECMWF, i.e. their entitlement to defined pension benefits which includes the adjustment of their pensions in accordance with the RAM which is a method considered sound by all stakeholders – the CCR, the CRSG and the CRP. While the CCR has several times challenged, on political grounds, the annual adjustment results of the RAM, it was recommended by the CCR and decided year after year to keep the basis features of the RAM as they are, even if some small changes were made. The abolition of the application of the RAM to pension adjustments will in addition cause the Claimants the loss of an important guarantee allowing them to check

the accuracy of the data retained, an injury to a degree that violates a fundamental and essential term of their employment and therefore constitutes a breach of their acquired rights.

125 The BPS is a defined benefits pension scheme which means that, while staff contributions may evolve, defined benefits may not. Staff members must have the "visibility of what they will receive" as pensions payments once they have retired. It contrasts with "defined contributions" schemes where the benefits to be received upon retirement depend on an individual member's contributions, charges and the performance of the pension fund over time. In "defined contribution" schemes pension benefits are unknown until retirement age is reached.

126 The concept of acquired rights relates not only to accrued rights acquired for the past, but also to rights acquired for the future in the sense that the staff member may expect to survive any amendment of the rule provided that it impairs a fundamental and essential term of appointment in consideration of which the staff member decided to sign in and to stay at the service of the Organisation he or she belongs to.

127 b) The Appeals Board does not share the Claimants' view that the application of the amended pension adjustment method violates their acquired rights.

128 According to established international administrative jurisprudence, the principle of "acquired rights" protects staff members of international organisations against unilateral amendments of employment conditions which are of a fundamental and essential nature. This principle concerns rights and conditions which are so substantial and important that they can be considered to have been decisive in influencing the staff member to accept the appointment and, later, inducing him to stay. An acquired right is "*one the staff member may expect to survive any amendments of the rules*" (see, e.g. the ESA Appeals Board's decisions No. 24–27 of 8 July 1986; No. 78 of 18 July 2003; ILOAT decisions No. 832 of 5 June 1987, consideration 13; No. 4028 of 26 June 2018, consideration 13, and No. 4380 of 18 February 2021, consideration 10).

129 The right to receive the contractually agreed remuneration during service is a right which the staff member acquires by taking up service and which he retains as long as he remains in service. Likewise, being entitled to pension benefits on retirement is such an acquired right. It is also common cause between the parties that staff members may claim an acquired right to a method providing for periodic adjustments of salaries and pensions to compensate the effect of inflation on their salaries and pensions. The right of pensioners of the Centre to an adjustment of their pension benefits which fully maintains their purchasing power has not been contested in the present proceedings, and the Board does not therefore take a position on this matter. The parties disagree on whether the specific method for calculating the adjustment is an essential part of the pensioner's rights or not. If it is, then the method shares the nature of the pension right and is an acquired right as well. If it is not, then the method may be changed without infringing the acquired rights of pensioners, provided that the application of the method leads to a satisfactory result with regard to the purchasing power of the pensioner.

130 The test whether or not a right is of a fundamental and essential nature and so substantial and important that it was decisive for the the staff member to accept the appointment with ECMWF and, later, induced him to stay, requires an assessment which must be done in a generalised manner, i.e. from the objective perspective of persons concerned, on whom the right at issue is conferred. It is not possible to assume that a certain right created by a general legal provision constitutes an acquired right for some of the persons concerned, and not for others. A right must constitute an acquired right for all concerned, or for none of them. The view of an individual may be decisive only if it is an individual right which is expressly stipulated in an employment contract and is thus conferred solely on that person (see ESA Administrative Tribunal, decision No. 132 of 26 July 2021, paragraph 85). Since the new adjustment method is incorporated into the Pension Rules and thus applies to all pensioners, the Appeals Board has to consider the matter from a general and objective point of view, taking account of the whole body of staff members employed in ECMWF.

131 Applying the test in this way leads to the conclusion that the adjustment method provided for in the old BPS (CPS) does not constitute an acquired right. The automatic alignment operated by the footnote to Article 36 cannot be considered to be of fundamental and essential importance such as to determine the staff member's decision to accept the appointment or to remain in the service of the Centre. While the amended adjustment method was only applied by ECMWF from 2020, it was applied to the pension schemes of all new recruits to a number of the other Co-ordinated Organisations much earlier (NATO from 2005, ESA and EUMETSAT from 2010). If the introduction of the new adjustment method in line with inflation in these Organisations had had the deterrent effect claimed by the Claimants, these Organisations would no longer have been able to recruit persons prepared to take employment with them. There is no evidence before the Board to lead it to consider that these Organisations have encountered difficulties in attracting or retaining staff despite the new pension adjustment method. Thus, it can be concluded that in the other Co-ordinated Organisations, the adjustment method is not – and never was – a point of decisive importance. There is no reason to assume, nor have the Claimants demonstrated, that staff members engaged in ECMWF had a generally different approach in this regard and took or remained in employment with the Centre on condition that their pension would be adjusted in line with staff salaries.

132 In addition, the Board notes that none of the international tribunals which have ruled on this question has considered the methods for adjusting pensions to be of such importance that they reach the level of unamendable acquired rights. Like the rate of staff contributions to the pension scheme and the retirement age which may be adapted according to needs, the method of adjustment belongs to the incidental matters lacking fundamental importance.

133 In its decision of 15 April 2021 (Nos. 640/2020 et seq.) on Pension Cases, the Administrative Tribunal of the Council of Europe rejected the claim that the amendment to Article 36 of the BPS Rules had violated the acquired rights of the pensioners, holding that the acquired right to receive a pension does not include the requirement that adjustments are to be made according to the

method applied in the past (see paragraphs 175 et seq. of the decision). Likewise, the Administrative Tribunal of NATO ruled in its decision of 1 June 2021 (affaire no. 2020/1303) that the introduction of a new adjustment method – designed to maintain the purchasing power of pensions – does not violate the acquired rights of pensioners (see paragraphs 74 et seq. of the decision). The Appeals Board of EUMETSAT, in its decision No. 9-14 of 19 October 2021, rejected the arguments of the claimants that the introduction of the new adjustment method was a breach of acquired rights. Earlier, in its decision No. 2089 of 30 January 2002 (consideration 16), the ILOAT addressed the same issue of principle holding:

> "The Tribunal does not have to decide whether the periodic adjustment of pensions should be viewed as an acquired right. Even assuming that it were, such a right would go no further than the maintenance of purchasing power of the pension paid at the time of entitlement […] To accept that pensions must always be adjusted to keep in line with post-retirement salary increases would be to expose pension funds to uncertain and unmeasurable future liability which might well in the end wipe out the funds themselves."

134 On these grounds, the Appeals Board rejects the argument that the introduction of the new adjustment method constituted a breach of the Claimants' acquired rights.

6. Stable, Foreseeable and Transparent Results

135 a) The Claimants contend that the contested decision is in breach of the principle that any chosen remuneration adjustment method must ensure that the results are stable, foreseeable, and transparent. Abolition of the RAM entails the abolition of the most important procedural guarantees included therein. The NCPI is based on unstable and volatile indices used to calculate the cost of living. Concerning the absence of foreseeability, it is obvious that one single index is much less predictable than an adjustment based on the evolution of the three pillars part of the RAM.

136 b) The Appeals Board notes that there is no evidence that the new method does not lead to stable, and foreseeable, and transparent results. Assessing a reliable inflation ratio is common in all Member States of the ECMWF and is, moreover, under the control of an independent Agency – Eurostat – for most of those Member States of the ECMWF which belong to the European Union. Moreover, annual adjustments under the HICP of the country of reference is automatic without intervention from the ECMWF Council. The Defendant is right in pointing out that Article 36 (1) second sentence of Annex VI-A to the Staff Rules foresees an automatic adjustment in the course of the year for any given country when prices in that country show an increase of at least 6%. All these are safeguards for pensioners, providing them with more stability and foreseeability.

137 As to the Claimants' assertion that the method applied to calculate the NCPI and the metadata documentation database are not accessible to staff and,

most importantly, to ECMWF and its Member States, the Appeals Board notes that such requirements are not mandatory for the adoption of a method applied in Co-ordination. It is the very essence of Co-ordination to outsource those highly technical questions which are extraneous to the core business of the Co-ordinated Organisations. Moreover, there is no evidence that the said data are not accessible to those who are interested in them.

7. Unlawful reference to National Consumer Price Index

138 a) The Claimants complain that the contested decision is tainted by ECMWF's failure to ensure that replacing the RAM by a National Consumer Price Index (NCPI) was lawful and did not deprive the Claimants of their rights. ECMWF, basing its own decision on one taken by someone else is bound to check that this external decision or index is based on legitimate reasons and is lawful. There is no provision in the amended rules providing for a method of controls enabling ECMWF to abide by its duty to 1) analyze the NCPIs method and results, 2) give effect to it only if satisfied that it is lawful and 3) check that doing so would not impair the rights of its staff and pensioners. ECMWF, by referring automatically to NCPI, does not maintain sovereignty over the procedure and is bound to accept the findings of the national bodies setting the NCPI.

139 b) The Appeals Board does not agree with these arguments.

140 The Co-ordination procedure is meant to "outsource" technical matters which are extraneous to the core business of the Co-ordinated Organisations. The Council of the ECMWF must make sure that recommendations made in Co-ordination are correct, reliable and lawful, but it fulfills that duty by ensuring that the CCR itself and reliable external bodies such as ISRP (the International Service for Remunerations and Pensions), Eurostat and National Statistical Offices are involved in the technique of elaborating the recommendations made in Co-ordination. It is not the duty of ECMWF to "analyze the NCPIs method and results" every year, since that would mean that ECMWF would have to reiterate the work done in Co-ordination. The ESA Appeals Board has repeatedly held that it "does not consider it an obligation of the Administration to control in detail the results given by the International Service for Remunerations and Pensions, thus somewhat reiterating its work. The meaning of outsourcing such matters to Co-ordination and entrusting a specialised agency to work out the details, is to release Organisations … from assuming such technical burdens which are extraneous to their core activities. … The … Administration was entitled to rely on the accuracy of the figures given by the International Service for Remunerations and Pensions as long as these figures fall within a reasonable margin …" (see e.g. ESA Appeals Board's decision of 23 September 2016 in cases No. 98, 99, 100, paragraph 76). Whether or not the ECMWF Council should give effect to the outcome of Co-ordination falls within the Council's responsibility. However, there is no evidence that the ECMWF Council adopted the new Scheme without being satisfied that it is lawful and would not impair the rights of its staff and pensioners.

8. Breach of the Duty of Care

141 a) The Claimants submit that the duty of care implies in particular that when organisations take decisions concerning the situation of staff members, they must take into consideration all the factors which may affect their decisions, and when doing so they should take into account not only the interests of the organisations themselves but also those of the staff members concerned. The amendments to the BPS decided by the ECMWF Council and applied to the Claimants through the contested decision have no added-value for ECMWF and are therefore neither in its general interest nor in the interest of the Claimants.

142 b) The Appeals Board does not agree with the Claimants' position.

143 The new adjustment method is meant to safeguard the pensioners' purchasing power. Savings which might arise from the new system will be limited and are meant to provide the BPS with sufficient funds to adjust pensions in line with inflation. The amendments were intensively discussed in Co-ordination; there is no evidence that the interests of staff and pensioners was not taken into consideration. The Claimants have not shown that the Centre violated its duty of care. The Claimants contention that "the contested decisions have no added-value for ECMWF and are therefore neither in its general interest nor in the interest of the Claimants", is a political statement rather than an argument of legal value.

9. Injuries

144 a) With regard to the likely injury that the new method will bring, the Claimants submit that as a basic economic data, the NCPIs are inherently flawed. The new method will deprive the Claimants on the scale ranging from £ 61,000 to more than £ 100,000 in pension benefits (the number differs in the different appeals) over a period of 20 years.

145 Moreover, they submit that the replacement of the RAM and its three pillars by one single national index cannot ensure purchasing power parity between affiliates to the BPS wherever they live.

146 b) The Appeals Board does not find these arguments convincing.

147 Adjusting pensions in line with inflation is a very effective means to keep the purchasing power of pensioners on the same level, wherever they take residence after their retirement. Moreover, Article 33 of the BPS Rules (providing that the pensioner who no longer resides in the country of his last posting may opt for the scale applicable in his country of residence) has not been amended. The right of pensioners to choose their place of residence and of having their purchasing power maintained with regard to the inflation prevailing in that country has not been affected by the new adjustment method. The new adjustment method ensures that pensions do not lose their purchasing power. The indexation of pensions in line with consumer price indices is precisely intended to guarantee that there will be no financial loss in terms of purchasing power, wherever the pensioner takes residence. Moreover, no longer adjusting pen-

sions in relation to salaries but revaluing them in relation to inflation may be favourable to pensioners in the event that there is no relevant revaluation of salaries.

148 Differences arising from the application of different adjustment methods cannot be considered as a loss, and even less as an injury which the Defendant would be liable to compensate.

F. Conclusions:

149 For these reasons, the Appeals Board decides:

1. The appeals of the Claimants are dismissed.

2. The Claimants shall bear their own legal costs.

3. The Centre shall reimburse the travel and subsistence expenses incurred by the Claimants.

Michael Groepper
Chairman

Susan Madry
Secretary