Reports of Cases

ORDER OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL (Full Court)

27 September 2011 *

(Civil service — Procedure — Taxation of costs — Recoverable costs — Essential costs — Fees paid by an institution to its lawyer — Obligation for an unsuccessful applicant to pay those fees — Principle of equal treatment — Effective judicial protection — Conditions)

In Case F-55/08 DEP,

Carlo De Nicola, a member of the staff of the European Investment Bank, residing in Strassen (Luxembourg), represented by L. Isola, lawyer,

applicant,

v

European Investment Bank (EIB), represented by F. Martin, acting as Agent, with A. Dal Ferro, lawyer,

defendant,

THE CIVL SERVICE TRIBUNAL (Full Court),

composed of P. Mahoney, President, H. Tagaras, S. Gervasoni, Presidents of Chambers, H. Kreppel (Rapporteur), I. Boruta, S. Van Raepenbusch and M.I. Rofes i Pujol, Judges,

Registrar: W. Hakenberg,

makes the following

Order

1 By document received at the Registry of the Tribunal on 29 March 2010 by fax (the original having been lodged on the same date), the European Investment Bank (EIB) lodged an application with the Tribunal for taxation of costs following the judgment of the Tribunal of 30 November 2009 in Case F-55/08 *De Nicola* v *EIB*, now on appeal before the General Court of the European Union (Case T-37/10 P).

* Language of the case: Italian.

Background to the dispute

2 By application lodged at the Registry of the Tribunal on 5 June 2008 Mr De Nicola sought, in particular, first, annulment of the decision of 14 December 2007 by which the appeals committee of the EIB rejected his application for reassessment of the mark awarded to him for 2006 and also for annulment of the decisions of the EIB of 13 July 2007 relating to the promotions adopted for 2006, in that he had not been promoted to function D; second, annulment of his 2006 assessment report and the decisions of 13 July 2007 in that he had not been promoted to that function: third, a declaration that he had been the victim of psychological harassment; fourth, an order that the EIB should make good the damage which the applicant considered he had suffered as a result of that harassment; and, last, annulment of the decision refusing the reimbursement of certain costs of medical treatment by laser.

3 By judgment of 30 November 2009 in *De Nicola* v *EIB* the Tribunal dismissed the action and ordered Mr De Nicola to pay the costs incurred by the EIB.

4 By letter of 14 January 2010 the EIB requested Mr De Nicola to pay it the sum of EUR 18 232.25, that is to say, EUR 17 000 for the fees paid to its lawyer, EUR 364.05 for the travel expenses incurred by its lawyer and EUR 868.20 for 'general administrative costs'. Enclosed with that letter were two fee notes submitted to the EIB by its lawyer.

5 By email of 15 February 2010 Mr De Nicola informed the EIB that the amount requested of him was neither proportionate nor justified, but stated that he was prepared to pay the sum of EUR 4 800.

6 By letter of 1 March 2010 to Mr De Nicola, the EIB stated that, 'with a view to arriving at a compromise and in order to avoid proceedings for taxation of costs', it was prepared to fix the amount of recoverable costs at EUR 16 000, but pointed out that such an offer must be understood as being made 'without prejudice to [the EIB's claims] in any proceedings for taxation of costs'.

7 In response to that letter, Mr De Nicola, by email of 8 March 2010, also indicated that he was prepared to avoid new judicial proceedings and proposed to pay the EIB the sum of EUR 6 000, that is to say, a higher sum than he had stated he was prepared to pay in the email of 15 February 2010.

8 By document received at the Registry of the Tribunal on 29 March 2010, the EIB submitted the present application for taxation of costs to the Tribunal.

9 The case was assigned to the First Chamber of the Tribunal.

10 By document received at the Registry of the Tribunal on 19 May 2010 Mr De Nicola submitted his observations on the application for taxation of costs.

Forms of order sought by the parties and procedure

11 The EIB claims that the Tribunal should fix the amount of costs payable by Mr De Nicola in respect of Case F-55/08 at EUR 18 214.50.

12 Mr De Nicola contends that the Tribunal should dismiss the application as inadmissible or, in the alternative, as unfounded.

13 The case was referred to the Full Court.

14 By way of measures of organisation of procedure, the Tribunal requested the parties to answer the following main questions:

— Where an institution instructs a lawyer, must the fees payable to its lawyer be regarded, in view of the singular nature of civil service proceedings and the principle of equal access to a court, as 'essential for the purpose of the proceedings' within the meaning of Article 91(b) of the Rules of Procedure, when the assistance of a lawyer is merely an option available to the institution and not an obligation imposed on it?

— Is not the fact of considering that the fees paid by an institution to a lawyer are 'essential for the purpose of the proceedings' likely to give rise to discrimination between unsuccessful applicants, depending on whether the defendant institution did or did not instruct a lawyer, when the applicants had no influence on the grounds on which an institution decides to instruct a lawyer (the institution's choice not to have a legal service capable of dealing with civil service cases, the organisation and size of the legal service, the workload of the staff, their inability to work in the language of the case, etc.)?

— In any event, in the present case, was it strictly necessary for the EIB to instruct a lawyer, in view, in particular, of the work previously carried out by its internal departments in connection with the dispute between the EIB and Mr De Nicola?

— What impact should the order of the President of the Court of Justice of 26 November 2004 in Case C-198/02 P(R)-DEP *EIB* v *De Nicola* have on the outcome of the present dispute?

15 The parties complied with those measures of organisation of procedure.

Arguments of the parties

16 The EIB contends that the sum of EUR 18 214.50 claimed by way of recoverable costs – that is to say, EUR 17 000 corresponding to its lawyer's fees, EUR 364.50 corresponding to the travel expenses incurred by its lawyer in attending the Tribunal and EUR 850 corresponding to its 'general costs' – is reasonable and consistent with the guidance provided in the case-law.

17 As regards, more particularly, the lawyer's fees in the amount of EUR 17 000, the EIB observes first of all that, according to the case-law, those fees come within the concept of essential costs incurred for the purpose of the proceedings. The EIB then observes that, while the legal problems raised by the main proceedings were not novel, the large number of pages of the application, which was accompanied by a considerable number of annexes, and the formulation of numerous requests by Mr De Nicola required a significant number of hours of work on the part of its lawyer. The length of the judgment itself, moreover, at 276 paragraphs, demonstrates the complexity of the main proceedings. Last, the EIB submits that the sum of EUR 17 000 for lawyer's fees, which includes EUR 1 000 for preparing the present application for taxation of costs, corresponds, having regard to an average hourly rate of EUR 220, to around 77 hours' work, which is appropriate in the light of the services provided.

18 In his defence, Mr De Nicola claims, first of all, that the application for taxation of costs is inadmissible, on the ground that it ought to have been preceded, pursuant to Article 41 of the Staff Regulations of the EIB, by a conciliation procedure.

19 For the sake of completeness, Mr De Nicola claims that the application should be dismissed.

20 As regards the lawyer's fees, Mr De Nicola disputes the assertion that those fees were essential for the purpose of the proceedings. He emphasises that it is for the EIB, since it had the option of being represented before the Tribunal solely by its agents, to establish that in the present case it found it necessary to instruct an outside lawyer, owing, in particular, to the complexity of the questions dealt with. In Mr De Nicola's submission, the EIB, which merely fixed its lawyer's fees ex ante and as a lump sum, has adduced no such evidence and does not mention any particular document the preparation of which was sufficiently difficult to require the assistance of an outside lawyer. Last, Mr De Nicola observes that the EIB itself acknowledged in its application that the questions raised in the main proceedings were not novel and adds that the numerous documents attached to his application in the main proceedings originated in the EIB itself and had already been lodged in previous cases.

21 As regards the travel expenses incurred by the EIB's lawyer in order to attend the Tribunal, Mr De Nicola disputes the reality of those expenses and further observes that the sum claimed under that head, namely EUR 364.50, corresponds precisely to the sum which the same lawyer had charged the EIB for travelling to a meeting on 17 September 2008.

22 As for the general administrative costs, reimbursement of which is sought in the amount of EUR 850, Mr De Nicola claims that the EIB does not establish that it incurred such costs either.

23 In response to Mr De Nicola's observations, the EIB contests the assertion that the fees paid to its lawyer were not essential. It explains that the resources of its legal service are devoted primarily to the tasks for which the EIB was established, namely granting loans and providing guarantees in order to contribute to the development of the internal market, and do not allow it to prepare and pursue contentious matters between the EIB and members of its staff. The EIB infers that its systematic practice of instructing a lawyer, before all the courts of the Union and whatever the language of the case, should be considered essential to its defence.

Findings of the Tribunal

The admissibility of the application for taxation of costs

24 It should be observed that the application for taxation of costs submitted by the EIB is based on the right to costs conferred on the EIB by the judgment in *De Nicola* v *EIB* delivered in the main proceedings and, consequently, is not a matter covered by Mr De Nicola's rights and obligations under the Staff Regulations in his capacity as a member of the staff of the EIB (see, to that effect, order of 4 August 1998 in Case T-77/98 *Eppe* v *Commission*, paragraph 11). In those circumstances, Mr De Nicola is not correct to claim that, in order to be admissible, the application for taxation of costs ought to have been preceded by the conciliation procedure provided for in Article 41 of the Staff Regulations of the EIB, a procedure the optional nature of which has also been noted in the case-law (judgment of 17 June 2003 in Case T-385/00 *Seiller* v *EIB*, paragraph 73).

25 It follows that the application for taxation of costs is admissible.

The substance of the application for taxation of costs

The lawyer's fees in respect of the main proceedings

26 It should be borne in mind at the outset that, under Article 19 of the Statute of the Court of Justice of the European Union, the institutions of the Union are to be represented before the Courts of the European Union by an agent appointed for each case and that such agent may be assisted by an adviser or by a lawyer. It follows from the case-law that the word 'institution' used in that article must

not be understood as referring exclusively to the institutions listed in Article 13(1) TEU but as also referring to the other organs and bodies of the Union such as the EIB (see, to that effect, judgment of 8 March 2011 in Case F-59/09 *De Nicola* v *EIB*, paragraph 116, on appeal before the General Court of the European Union (Case T-264/11 P)).

27 Under Article 91(b) of the Rules of Procedure, 'expenses incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of the representative, if they are essential' are to be regarded as recoverable costs. It follows from that provision that recoverable costs are limited, first, to those incurred for the purpose of the proceedings before the Tribunal and, second, to those which are necessary for that purpose (order of 26 April 2010 in Case F-7/08 DEP *Schönberger* v *Parliament*, paragraph 23).

28 The question arises as to whether and in what circumstances, where an institution within the meaning of the third paragraph of Article 19 of the Statute of the Court of Justice has instructed a lawyer, the fees paid to that lawyer constitute 'recoverable costs' within the meaning of Article 91(b) of the Rules of Procedure.

29 In that regard, the argument that the fees paid by an institution to the lawyer whom it has instructed in a case before a court can never be regarded as recoverable costs, on the ground that the institution is not required to instruct a lawyer, cannot be upheld. While it is true that instructing a lawyer is merely an option for an institution, which it is free to exercise or not, instructing such a lawyer is none the less a prerogative inherent in the exercise of the rights of the defence. In those circumstances, the fees which an institution pays to the lawyer whom it has instructed must always be regarded as costs.

30 However, the recoverability of the fees which an institution pays to the lawyer whom it has instructed is subject, as expressly provided in Article 91(b) of the Rules of Procedure, to proof by the institution that the fees were 'essential' for the purpose of the proceedings.

31 It is true that it has been held that where an institution is assisted by a lawyer the latter's remuneration comes within the concept of essential costs incurred for the purpose of the proceedings (see, to that effect, orders of 21 June 1976 in Case 126/76 DEP *Dietz* v *Commission*, paragraphs 5 and 6; of 7 September 1999 in Case C-409/96 P-DEP *Commission* v *Sveriges Betodlares and Henrikson*, paragraph 12; of 26 November 2004 in Case C-198/02 P-DEP *EIB* v *De Nicola*, paragraph 18; of 6 February 1995 in Case T-460/993 DEP *Tête and Others* v *EIB*; and of 24 March 1998 in Case T-175/94 DEP *International Procurement Services* v *Commission*, paragraph 9).

32 However, it cannot be inferred from the orders cited in the preceding paragraph that, for the Courts of the European Union, the fees paid by an institution to its lawyer constitute in all situations recoverable costs which the institution is not required to prove were essential, in accordance with Article 91(b) of the Rules of Procedure. In stating in a number of those orders that lawyers' remuneration comes within 'the concept of expenses necessarily incurred for the purpose of the proceedings', the Courts of the European Union merely indicated that, unlike other costs precluded, by their nature, from being recoverable costs, such as the remuneration of the agents instructed to represent the institutions in legal proceedings, the lawyers' fees were capable of being reimbursed to the institutions, provided that they were shown to be essential. While it is true that, after the orders referred to in the preceding paragraph were made, the Council of the European Union, by the Decision of 2 November 2004 establishing the Tribunal (OJ 2004 L 333, p. 7), inserted into the Statute of the Court of Justice of the European Union Annex I, the second sentence of Article 7(5) of which now provides that, subject to the specific provisions of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings, that constitutes only an amendment of the rules governing the burden of recoverable costs and not the definition of such costs.

33 If Article 91(b) of the Rules of Procedure were to be interpreted as meaning that the fees paid by an institution to its lawyer must be regarded, in all situations, without any particular objective justification, as 'essential costs' for the purposes of that article, such an interpretation might well lead to a breach of the principle of equal treatment in the particular case where two officials from the same institution each brought an action against that institution and the institution decided, for the first of those actions, to be assisted by a lawyer and, for the second, not to instruct a lawyer. If each of those actions were dismissed and the applicant officials were ordered to pay the defendant institution's costs, the amount of those costs would be appreciably higher for the first of those officials than for the second: yet it follows from the case-law that, in a matter which involves the exercise of a discretion, the principle of equal treatment is infringed where an institution makes a differentiation which is arbitrary or manifestly inappropriate in relation to the objective pursued (judgment of 13 December 2004 in Case T-251/02 *E* v *Commission*, paragraph 124).

34 The fact that, as in the present case, an institution systematically instructs a lawyer in disputes with its officials is not sufficient to remove the risk of a breach of the principle of equal treatment, in so far as the staff of that institution would then be treated differently from the officials or other servants of institutions which are not, or are very rarely, in the habit of being assisted by a lawyer in disputes relating to the civil service. It is true that the Union Courts have underlined the importance of the autonomy of each institution within the meaning of the first paragraph of Article 19 of the Statute of the Court of Justice of the European Union and rejected arguments based on the unity of the civil service (see judgment of 16 December 1997 in Case T-220/95 *Gimenez* v *Committee of the Regions*, paragraph 72). However, the benefit of that principle of autonomy has been granted to the institutions only in their capacity as employers, in the management of their respective staff. Thus such a principle cannot constitute justification for servants of the Union, irrespective of the institution to which they belong, not being placed in the same situation as regards access to justice for the resolution of disputes between them and their employer. Consequently, although each institution has a wide discretion in the organisation of its services and the performance of the tasks entrusted to it, all the servants of the Union must be able to have access to justice in equivalent conditions and the degree of effectiveness of their right to bring actions cannot vary according to the choice of their employer as regards the organisation of its services.

35 Furthermore, the difference in treatment referred to in the preceding paragraphs could, if the choice of instructing a lawyer or not doing so were based on the choice of the language of the case, also entail indirect discrimination according to nationality, since it would penalise the nationals of Member States whose language is not among those most commonly used within the legal services of the institutions.

36 Last, it should be borne in mind that before the entry into force of the Rules of Procedure on 1 November 2007 the costs incurred by the institutions in civil service disputes before the Court of First Instance of the European Communities were in principle borne by the institutions, pursuant to Article 88 of the Rules of Procedure of the Court of First Instance. By the decision of 2 November 2004 establishing the Tribunal, the Council decided, as recalled above, that the unsuccessful party would be ordered to pay the costs if they had been applied for in the successful party's pleadings. If Article 91(b) of the Rules of Procedure had to be interpreted as meaning that all or part of the lawyer's fees paid by an institution should in all cases be regarded as essential costs, that new rule would, where the applicant is unsuccessful and the institution which has instructed a lawyer claims that the applicant should be ordered to pay the costs, be likely to increase significantly the cost of the proceedings for the applicant. Indeed, an unsuccessful applicant would be required to pay, in addition to the fees paid to his own lawyer, a part, or indeed all, of the fees paid by the institution to its own lawyer; the cost of the proceedings could then reach an amount equal to or greater than 10 times the monthly salary of an official in grade AST 1, bearing no relationship to the possible economic interest of his action. Having regard to such a risk in litigation, the official or servant concerned might be deterred from bringing an action, especially in cases where the financial stakes were small or even non-existent. Such a consequence would, owing to the disproportion between what is at stake in the

proceedings and the costs involved, be likely to prejudice the effectiveness of the right of action of officials and servants of the Union and would thus constitute a breach of the principle of effective judicial protection established in the case-law and enshrined in Article 47 of the Charter of Fundamental Rights of the European Union.

37 It follows from the foregoing considerations that in a case where an applicant is ordered to pay all or part of the costs incurred by an institution, it is for that institution, where it proposes to recover the fees paid to its lawyer, to prove that those fees were 'essential costs' for the purpose of the proceedings.

38 In that regard, an institution might adduce evidence of the necessity to instruct a lawyer by establishing, in particular, that for economic and temporary reasons connected, inter alia, with a specific increase in workload or unforeseen absences of the members of its legal service, which would normally be able to represent the institution in legal proceedings, it was forced to obtain the assistance of a lawyer. The same would apply to an institution which, where an applicant has brought actions which are substantial in volume or in number, establishes that if it had not instructed a lawyer it would have been obliged to devote a disproportionate part of the resources of its services to dealing with those actions.

39 On the other hand, an institution cannot claim reimbursement of all or part of the fees paid to its lawyer where it merely explains that it has chosen, for budgetary or organisational reasons, to relieve its legal service of the burden of dealing with civil service litigation. While an institution is free to make such a choice, the consequences of its doing so cannot be borne by its staff, where they are ordered to pay the costs, without the risk that, as stated above, there will be a breach of the principle of equal access to justice between the staff of the institutions whose legal service represents those institutions before the Union Courts and the staff of institutions which systematically instruct lawyers.

40 Once the institution has adduced evidence of the necessity of instructing a lawyer, it is for the Tribunal to determine the amount up to which the lawyer's fees can be recovered from the party ordered to pay the costs.

41 In that regard, the Tribunal does not have to take into consideration a national scale fixing lawyers' fees or any agreement concluded in that respect between the party concerned and its agents or counsel (see, for example, order of 9 September 2002 in Case T-182/00 DEP *Pannella* v *Parliament*, paragraph 28). In the absence of any provision of Union law relating to scales of fees, it is for the Tribunal to assess freely the facts of the case, taking into account the subject-matter and the nature of the dispute, its importance from the aspect of Union law and also the difficulty of the case, the amount of work which the contentious proceedings may have required on the part of the agents or counsel involved and the economic interests which the dispute represented for the parties (order in *Pannella* v *Parliament*, paragraph 29). When determining the amount of the recoverable fees, the Tribunal must also have regard to the ability to pay of the party ordered to pay the costs, in order to ensure that that party's right to an effective remedy, enshrined in Article 47 of the Charter of Fundamental Rights, is not disproportionately affected.

42 Finally, the amount of the institution's lawyer's fees that are recoverable cannot be evaluated without taking into consideration the work carried out, even before the matter was brought before the Tribunal, by the legal services of the institution. Since the admissibility of an action is subject to the prior introduction of a complaint and its rejection by the appointing authority, the legal services of the institution are in principle involved in dealing with disputes even before such disputes are brought before the Tribunal. It follows that in cases where, for one of the reasons set out at paragraph 38 of the present order, an institution has instructed a lawyer, the total number of hours of work on the part of that lawyer that can be deemed to be objectively essential for the purpose of the proceedings must be evaluated, in principle, at one third of the hours that that lawyer would have needed to spend had he not been able to rely on the work previously done by the legal services of the institution.

43 That proportion might none the less be fixed at a higher level, in particular where an institution, when confronted with an applicant who has brought a large number of actions of a manifestly abusive nature, was placed in the situation of having to entrust to a lawyer all or part of the management of those disputes, including during the pre-litigation stage, in order to avoid a disproportionate use of the resources of its legal service.

44 It is in the light of the foregoing considerations that the Tribunal must adjudicate on the present application for taxation of costs in so far as it concerns the lawyer's fees incurred by the EIB in the main proceedings.

45 In the present case, the EIB claims that civil service litigation does not form part of the normal activity of its legal service, which is primarily devoted to the tasks for which the EIB was established, namely granting loans and providing guarantees in order to contribute to the development of the internal market. However, as stated above, such a circumstance cannot suffice to establish that the fees paid to a lawyer instructed by the EIB should be regarded as essential costs for the purpose of the proceedings.

46 None the less, having regard to the particular circumstances of the present case, the Tribunal considers that it was necessary for the EIB to instruct a lawyer. Although the main proceedings did not raise any particular difficulties and although the legal questions which arose, concerning, essentially, the lawfulness of an assessment report and a decision not to promote the applicant, and also the alleged existence of psychological harassment, were not novel in Union law, it must be noted that the application, at 42 pages, was longer than the applications normally submitted to the Tribunal, that the annexes exceeded 700 pages, that the pleas put forward were very numerous and that at least some of them were frivolous. Furthermore, before bringing this action, Mr De Nicola had already lodged a significant number of applications with the Court of Justice and the Court of First Instance, each of them having required, owing to the length of the written pleadings, a particularly significant amount of work on the part of the EIB's legal service (Joined Cases T-7/98, T-208/98 and T-109/99; Joined Cases T-120/01 and T-300/01; Joined Cases T-7/98 DEP, T-208/98 DEP and T-109/99 DEP; and Case C-198/02 P-DEP).

47 Thus, since the main proceedings brought by Mr De Nicola cannot be regarded as manifestly abusive, on a fair assessment of the work objectively essential for the purpose of the main proceedings the number of hours' work is fixed at 25, or one third of what the lawyer would have had to carry out had he not been able to rely on the earlier work carried out by the EIB's legal service (75 hours).

48 It follows, regard being had to the fact that the hourly rate of EUR 220 reflects the reasonable remuneration payable to an experienced lawyer in a case of this type, that the essential lawyer's fees incurred by the EIB in the main proceedings must be evaluated at the sum of EUR 5 500 (25 hours x EUR 220).

The other costs associated with the main proceedings

49 The EIB claims, first of all, reimbursement of the sum of EUR 364.50, corresponding to the travel expenses allegedly incurred by its lawyer in attending the hearing. However, such a claim cannot be upheld. While it is true that the lawyer instructed by the EIB did indeed submit an invoice to the EIB for professional travel to Luxembourg (Luxembourg) in the amount of EUR 364.50, it is not established by the documents submitted by the EIB in support of its application for taxation of costs that that journey, which related to a meeting held at the seat of the EIB on 17 September 2008 and not to the hearing, which took place on 24 March 2009, was necessary for the preparation of the hearing.

50 Furthermore, as regards the other costs sought by the EIB, amounting to EUR 850 and corresponding to 'general expenditure' incurred by it, those costs, which cannot be separated from the EIB's internal activity, cannot give rise to any reimbursement, even in the form of a lump sum (see, to that effect, order in *EIB* v *De Nicola*, paragraph 19).

The costs incurred in the taxation of costs procedure

51 Unlike Article 86 of the Rules of Procedure, Article 92 of the Rules of Procedure, on disputes as to costs, does not provide that a decision as to costs is to be given in the final judgment or in the order which closes the proceedings. Indeed, if the Tribunal, adjudicating in proceedings based on Article 92 of the Rules of Procedure on a dispute concerning the costs of main proceedings, were to adjudicate on the costs in dispute and, separately, on the new costs incurred in the action disputing the costs, it might perhaps subsequently be required to adjudicate on a new dispute concerning the new costs.

52 It follows that there is no need to adjudicate separately on the costs and fees incurred for the purposes of the present procedure (order of 10 November 2009 in Case F-14/08 DEP *X* v *Parliament*, paragraph 40).

53 None the less, it is for the Tribunal, when it sets the amount of the recoverable costs, to take account of all the circumstances of the case up to the time of the adoption of the order on taxation of costs. In that regard, the Tribunal may determine the amount of the costs associated with the costs procedure which were essential within the meaning of Article 91 of the Rules of Procedure (see order in *Schönberger* v *Parliament*, paragraph 48).

54 In the present case, the Tribunal cannot but find that the amount of the claim for taxation of costs is manifestly disproportionate, since the EIB, which had claimed that the recoverable fees incurred in the main proceedings should be evaluated at EUR 16 000, was awarded under that head a sum of only EUR 5 500, that is to say, an amount less than the sum of EUR 6 000 which Mr De Nicola had offered to pay in his email of 8 March 2010. Furthermore, the EIB's lawyer necessarily took advantage, in the context of the present claim for taxation of costs too, of the assistance provided by the EIB's services.

55 However, it is necessary to take into account the fact that the rules on the evaluation of the recoverable amount of the fees paid by an institution to its lawyer have been clarified in the present order. It follows from the documents in the file, moreover, that the EIB's lawyer not only drafted the application for taxation of costs but also provided detailed written replies to a number of questions put to the parties by the Tribunal.

56 In those circumstances, the Tribunal considers that, of the sum of EUR 1 000 claimed by the EIB by way of costs for the proceedings for taxation of costs, only an amount of EUR 500 can be regarded as essential costs within the meaning of Article 91 of the Rules of Procedure.

57 It follows from all of the foregoing that the amount of the costs to be paid to the EIB by Mr De Nicola must be fixed at the sum of EUR 6 000.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (Full Court)

hereby orders:

The amount of the costs recoverable by the European Investment Bank in Case F-55/08 *De Nicola* v *EIB* is fixed at EUR 6 000.

Luxembourg, 27 September 2011.

W. Hakenberg
Registrar

P. Mahoney
President