In Joined Cases 5 and 18/80

1. DINO BATTAGLIA,

2. ANTONIETTA COCCO BEVILACQUA,

Officials of the European Communities at the Ispra Research Centre, Italy, represented by Marcel Slusny, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of V. Biel, Advocate, 18a Rue des Glacis,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser Joseph Griesmar, acting as Agent, assisted by Robert Andersen, of the Brussels Bar, with an address for service in Luxembourg at the office of O. Montalto, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION in the terms set out in the applicant's conclusions,

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, A. O'Keeffe and T. Koopmans, Judges,

Advocate General: F. Capotorti
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case and the conclusions and arguments of the parties put forward during the written procedure may be summarized as follows:

I — Facts and written procedure

By decision of 2 March 1970 concerning the use of the sums available under the European Coal and Steel Community budget item "Pension Funds" the Council authorized the Commission to set aside 40 % of the said sums for the grant of building loans to officials of the Communities.

By decision of 17 June 1971, published in Staff Courier No 170 A of 8 July 1971, the Commission issued the necessary implementing provisions, in particular:

"Article 9

Loans covered by this provision shall be expressed in Belgian francs. The payments in respect thereof shall be made in the currency of the country in which the property to be financed is situated, on the basis of the parity ruling at the time of the payment."

Article 7 (2) (a) provides that the interest and repayments due from the official under the loan are to be retained from his remuneration pursuant to instructions given for that purpose to the Commission. Article 11 (2) provides that no amendment to the implementing provisions may jeopardize the rights conferred upon officials who have already been granted loans.

Accordingly, the loan agreements entered into between borrowers and the Commission include *inter alia* the following provisions:

Article 15

"Any transfers by the borrower to the lender by way of early repayment or in payment of monthly instalments shall be made in Belgian francs or in the currency of the country in which the property to be financed is situated in which the funds arising from this loan were advanced. The funds in question shall be converted into Belgian francs on the basis of the parity ruling as at the date of the transfer."

Until 31 March 1979, the monetary parity applied for conversion between the Belgian franc and other currencies was the parity notified by the Member States to the International Monetary Fund in 1965 (BFR 1 = 1 LIT 12.50 in the present case). The sums lent were repaid (likewise on the basis of the exchange rate indicated above) by means of deductions made by the Commission, in its capacity as lender, from the monthly remuneration of officials.

The system operated as follows: the official's monthly salary, to which the weighting was applied (for example BFR 100 000 × Italian weighting of 157.8 in March 1979) was reduced by the amount of the building loan instalment (for example BFR 5 000), the net remuneration then becoming, in the example given, BFR 152 800, which was converted into Italian lire at the rate of BFR 1 = LIT 12.50.

By decision of 25 July 1975, published in the Staff Courier of 15 September 1975 (special inter-institutional issue), the Commission amended Article 9 of the implementing provisions of 17 June 1971 as follows:

"Loans covered by this provision shall be expressed and paid in Belgian francs. The deductions and payments referred to in Article 7 (2) shall be made in Belgian francs, as shall any repayment made by the borrower to the Commission."

The Staff Courier further stated:

"In the case of contracts already signed, borrowers will receive a personal communication regularizing their position from the Directorate-General for Personnel and Administration."

That decision of the Commission was notified to the applicants by letter of 21 August 1975 from the head of the Building Loans Division, offering them a reduction of their principal debt and concomitantly the adoption of the Belgian franc as the only currency in which subsequent repayments might be made. The applicants did not ask for their debt to be reduced.

In Staff Courier No 136 of 7 February 1977, the Commission published the following notice:

"On 25 July 1975 the Commission decided that the Commission building loans would in future be paid — and deductions from salaries to repay the loans would be made — in Belgian francs rather than in the currency of the country where the property covered by the loan in question is situated. Hitherto, all deductions have been calculated, where necessary, on the basis of parities at 1 January 1965. Henceforth, by decision of the Director-General for Personnel and Administration, conversion will be based on 'updated' exchange rates. However, staff may reguest that the deductions be made at the parities communicated to the International Monetary Fund, with reference to and within the scope of the provisions giving effect to Article 17 of Annex VII to the Staff Regulations (transfer of part of emoluments through the Commission)."

Confirmation of that notice was given to the persons concerned by letter from the Director-General for Personnel and Administration in June 1977.

On 23 December 1971 Mr Battaglia had entered into an agreement with the Commission for a loan of BFR 750 000, the exchange value of which in Italian lire, namely LIT 9 375 000, was paid to him pursuant to Article 9 of the implementing provisions adopted on 17 June 1971.

For her part, Mrs Cocco had entered into an agreement with the defendant on 16 November 1972 for a loan of BFR 640 000 the exchange value of which in lire, namely LIT 8 000 000, was paid to her pursuant to the above-mentioned provision.

Mr Battaglia's salary statement for March 1979 showed a sum of BFR 4 281 appropriated to repayment of the loan, converted into LIT 53 512. The same amount in Belgian francs was converted in April 1979 into LIT 78 590. During the same period, Mrs Cocco's monthly repayment instalment (BFR 3 483), expressed in lire, rose from LIT 43 537 to LIT 63 943.

In fact on 21 December 1978 the Council had adopted Regulation No 3085/78 amending, with particular reference to the monetary parities to be used, Regulation No 259/68 laying down the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other

Servants of the Communities, Regulation No 2530/72 and Regulation No 1543/73 concerning certain special measures (Official Journal 1978, L 369, p. 6) and Regulation No 3086/78 adjusting the weightings applicable to the remuneration and pensions of officials and other servants of the European Communities following the amendment of the provisions of the Staff Regulations concerning the monetary parities to be used in implementing the Staff Regulations (Official Journal 1978, L 369, p. 8). By means of those regulations the Council amended in particular Article 63 of the Staff Regulations of Officials and updated the exchange rates. The reference to the IMF parity was abandoned and for transfers in a currency other than that in which remuneration was paid the exchange rate used for implementation of the general budget of the European Communities on 1 July 1978 (reviewable) was imposed (that is to say, LIT 26.11 = BFR 1), a coefficient being applied pursuant to Article 17 of Annex VII to the Staff Regulations "representing the difference between the weighting for the country in whose currency the transfer is made and the weighting for the country in which the official is employed". The object of the application of that coefficient was to ensure, as regards the part of the salary transferred to a country other than the official's place of employment, that every official should, as a result of the adjustment of that portion by means of the weighting applied in the other country, enjoy exactly the same purchasing power, for the corresponding portion of his salary, as an official employed in that country. For the IMF rate of BFR 1 = LIT 12.50 the rate of BFR 1 = LIT 18.35 was therefore substituted, remaining in force until 31 January 1980. As from 1 February that rate was changed to BFR 1 = LIT 19.80.

The persons concerned were informed of the new provisions by Circular No 19/C-2/79 of 1 March 1979 and by Administrative Notice No 230 of 9 April 1979 (which gave details of the new rates applicable to repayments in Belgian francs for Commission building loans).

On 29 May 1979 Mr Battaglia lodged a complaint in accordance with Article 90 of the Staff Regulations against the conversion, in accordance with the new procedure, of the monthly instalments payable by him, considering conversion on that basis to be improper. Mrs Cocco did not, for her part, lodge a complaint.

The Commission did not reply to Mr Battaglia's complaint.

In order to establish breach of the agreement, the applicants, together with 15 other officials (Cases 5 to 21/80), brought an action on 7 January 1980 by application received at the Court Registry on 14 January 1980, pursuant to Article 20 of the agreement, which confers jurisdiction on the Court for any dispute between the parties regarding the "validity, interpretation or performance" of the agreement.

It was decided by order of the Court of 7 May 1980 that the cases should be joined for the purpose of procedure and judgment.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

By order of 21 January 1981 the Court decided to assign the two cases to the First Chamber.

II — Conclusions of the parties

The *applicants* claim that the Court should:

Declare that the decision adopted unilaterally by the other party to alter the method of calculating the monthly payments due from the applicants constitutes a breach of the agreements between the parties;

Consequently, order the other party to repay to the applicants the amounts deducted in excess since the salary statement for April 1979;

Order the other party to pay the costs;

And additionally, in Case 5/80,

In so far as necessary, declare that the measure adopted by the other party is null and void;

Consequently, order that party to repay the sums which were wrongly deducted, under the conditions referred to above;

In so far as necessary, declare that the implied rejection of the applicant's complaint is null and void.

The *Commission* contends that the Court should:

Dismiss the applications as unfounded;

Order the applicants to pay the costs.

III — Submissions and arguments of the parties

A — Admissibility

Mr Battaglia emphasizes that his complaint through official channels was not indispensable. In fact, the action might have been — and indeed was — brought before the Court pursuant to Article 42 of the ECSC Treaty, Article 38 (6) of the Rules of Procedure and Article 20 of the Loan Agreement, the wording of which is as follows:

"The parties undertake to submit to the Court ... any dispute which might arise between them over the validity, interpretation or performance of this agreement."

It was, moreover, for that reason that Mrs Cocco did not lodge a complaint.

Mr Battaglia regrets that the Commission did not, however, consider it necessary to enter into discussions which might have avoided recourse to legal proceedings.

The *Commission* agreed with the applicants that this dispute is in fact totally unconnected with the exercise of the powers vested in it by the Staff Regulations and manifestly is concerned purely with contractual relations. The question is not, therefore, one of contesting the lawfulness of a measure in the light of the grounds for annulment contained in Article 173 of the EEC Treaty, but one of ascertaining whether or not the defendant is causing the contractual obligations which are incumbent upon the applicants and are unconnected with the Staff Regulations to be carried out in a manner which conforms to the agreement.

The *applicants* note the defendant's statement to the effect that this dispute falls outside the scope of the Staff Regulations. They find it surprising therefore that the defendant should rely upon the Council's amendment of Article 17 of Annex VII to the Staff Regulations in order unilaterally to impose a new rate for the conversion of Belgian francs into lire and that it should take action in the manner of an authority vested with powers under the Staff Regulations against an official with regard to whom it is in a privileged position in any case

and not as a lender who, under a contract governed by private law, may not unilaterally alter the deductions but must obtain the consent of the borrower or take the initiative to make an application to the Court, upon which in this case jurisdiction is conferred in the agreement, for a ruling regarding the proposed measure.

B — Substance

The *applicants* state that by using the new conversion procedures to calculate the monthly instalments in Italian lire payable by the applicant, the Commission has failed to observe the general tenet *pacta sunt servanda.* For his part, Mr Battaglia puts forward a second submission alleging infringement of Article 25 of the Staff Regulations in so far as the Commission's decision to adopt a new method of conversion for calculation of the monthly instalments was not notified to the applicants and no written statement of the grounds on which it was based was furnished.

The applicants became aware that the Commission had unilaterally proceeded to convert into lire, by a new method which was unfavourable to them, the monthly instalment expressed in Belgian francs indicated in their salary statement of 15 April 1979. No explanation was given to them.

The method of conversion of Italian lire applied by the Commission fundamentally changes the balance of the agreement in so far as the contractually agreed rate of interest of 4% was thereafter greatly exceeded. Moreover, even if the unilateral amendment were lawful, no amendment, by virtue of Article 11 (2) of the implementing provisions published in issue No 170 A of the Staff Courier of 8 July 1971, can jeopardize the rights conferred upon officials who have already been granted loans.

The *Commission* replies that, far from breaching the agreement, it in fact applied it. In reality, the monthly instalments payable by the applicants in order to redeem the loan consisted of an amount in Belgian francs and not of a constant amount in Italian lire. It is incontestable that the Commission is entitled by virtue of Article 5 of the agreement to withhold from the borrower's remuneration "the monthly instalment shown in the repayment table", that is to say to deduct from his remuneration, paid in this case in lire, an amount in lire intended to provide the exchange value of the monthly instalment payable in Belgian francs.

The argument relied on by the applicants lacks substance since they are unable to specify the clause of the agreement whereby the lender undertook to provide an exchange guarantee for the transaction in question. On the contrary, Article 9 of the provisions of 17 June 1971 states in respect of the loans "expressed in Belgian francs" on the one hand that they are to be advanced in the currency of the country in which the financed property is situated and, on the other hand, that they are to be paid "on the basis of the parity ruling at the time of the payment". The monthly repayment instalments are therefore subject to the same rule. At the same time, Article 15 of the agreement provides that repayments are to be made "in the currency of the country where the financed property is situated and in which the amount of the loan was advanced", the conversion into Belgian francs being carried out "on the basis of the parity ruling on the date of the transfer".

The "parity ruling at the time of the payment" was, until March 1979, taken as the IMF parity, namely BFR 1 = LIT 12.50. That indeed was the parity used as between the institutions and staff for the transfers provided for in Article 17 of Annex VII to the Staff Regulations. Since April 1979, pursuant to Regulation No 3085/78, the IMF parity no longer applies for the purposes of the Staff Regulations. To apply it would therefore be contrary to the agreement.

No assurance was ever given by the defendant to the borrowers that maintenance of the IMF parity would be guaranteed until the expiry of the agreement. The letter addressed on 21 March 1977 by the Director-General for Administration to the Vice-Chairman of the Staff Committee at Ispra stating that, for the borrowers who, like the applicants, had not accepted the Commission's offer in 1975 of a "reduction of the debt", repayments of the loans would be made at the same rate as that used for the grant of the loan itself, namely LIT 100 = BFR 8, related to the circumstances prevailing at that time and did not refer to a case where those circumstances had changed and led to the application of new parities for the purposes of the Staff Regulations.

On the contrary, shortly afterwards, that is to say during June 1977, the same Director-General informed the same borrowers by letter that "... no guarantee can be given regarding maintenance of the exchange rate used at present by the Commission for the conversion into Belgian francs ... of deductions from remuneration".

As regards the letter from the defendant following its decision of 25 July 1975, the amendment to Article 9 of the decision of June 1971 made no innovation with respect to the previous conditions since the reference in Article 9 to monthly instalments ("deductions ... shall be made in Belgian francs") was already contained in Articles 4 and 5 of the agreement.

Since the rate of interest of 4% stipulated in the agreement relates to the determination of a monthly instalment payable in Belgian francs and not in lire, it cannot involve the consequences which the applicants seem bent on attributing to it with regard to the amount in lire the purpose of which is to provide the exchange value each month of the monthly instalment due. To require of one party a guaranteed, fixed and immutable exchange rate, in circumstances contrary to their reciprocal commitments, would upset the balance of the agreement. And, in those circumstances, it is difficult to see how application of the new parity could adversely affect the rights of borrowers within the meaning of Article 11 (2) of the decision of June 1971.

As regards the second argument put forward by Mr Battaglia, the Commission is surprised that, having pleaded for "total independence of the agreement from the Staff Regulations" he should attempt to perceive in the Staff Regulations requirements which, although not provided for in the agreement, are however necessary in the field of contractual relations. In any case, the argument falls down since the requirements of Article 25 of the Staff Regulations have been observed. In fact, the applicant had had notice before April 1979 on several occasions and in specific terms (see above) that the new parity applicable to transfers and also to calculation of the deduction in lire to be applied to his remuneration for the

purposes of repayment of his loan was to become BFR 1 = LIT 18.35. The circulars which had been sent to him had included "all the essential factors which guided the administration in its decision and are therefore sufficient to facilitate judicial review" (cf. Case 61/76 *Geist* v *Commission* [1977] ECR 1419).

The Commission, aware of the difference of circumstances as between borrowers who obtained the advantage of a reduction in the amount of their principal debt as from 1 February 1976 and those who, like the applicants, did not wish to avail themselves of that advantage, proposes granting the reduction in question to the latter, resulting in a decrease as from April 1979 of the nominal amount of the monthly instalment in Belgian francs payable by them. That reduction would be meaningless otherwise than in the context of the view put forward by the Commission and should be subject to an abatement proportional to the amount of the principal already repaid by March 1979, at the old IMF rate, in relation to the total principal debt to be repaid.

The *applicants* state in reply that the parties to the agreement intended *ab initio* that the parity accepted by the IMF in 1965 (BFR 1 = LIT 12.50) should be and continue to be applied in dealings between them. They did not refer to Article 63 of the Staff Regulations or to the rate of exchange applied by banks which, even at the time when the agreements were entered into and the loans were advanced, did not coincide with the official rate; the fluctuations of currencies have, moreover, never had any impact on the conduct of the parties.

The Commission ascribes to the parties a view which they do not hold. They do not claim that the agreement refers explicitly to an immutable parity of the Belgian franc against the lira and do not seek to rely upon an alleged exchange guarantee. In fact, it is the Commission which seeks to impose the Belgian franc as the currency of the repayment, converted into lire at the rate of exchange ruling at the time of the transfer.

The applicants have received the impression that the Commission, without saying so, seeks to rely upon the principle that measures may lawfully be taken to avoid the effects of unforeseeable disturbances in the economy. Thus, it decided at a specific point that it would no longer suffer the consequences of the *de facto* devaluation of the lira and that accordingly for repayment it would substitute a rate for that currency which in no way corresponded to what was agreed between the parties.

The parties never considered themselves under any obligation to refer to the "real" parity of the lire against the Belgian franc. Nor did they ever refer specifically to the parities indicated in the Staff Regulations. On the other hand, they referred from the outset to the rate notified by Italy and accepted by the IMF, a parity which was considered to be constant regardless of *de facto* changes, even after the system set up by the treaty establishing the IMF collapsed. Indeed, one of the most effective methods of determining the true meaning of an agreement is to examine the manner in which the parties have performed it.

Mr Baichère's memorandum of June 1977 is perfectly clear. It drew a

distinction between the deductions made in consequence of the transfers authorized in accordance with Article 17 of Annex VII to the Staff Regulations and the amounts to be withheld for monthly repayment of the loans in question. That note added, however, that no guarantee was given regarding maintenance of the exchange rate.

The fact that the decision of 25 July 1975, amending Article 9 of the decision of June 1971, was not accepted by the applicants, disturbs the Commission. In fact, if it had assented to their refusal, it would have acknowledged that the relations between the parties were exclusively contractual, which would have implied that it could not change them unilaterally. However, that is what it did in 1979. Therefore, it is endeavouring to show that the "proposed" change referred essentially to early repayments. The wording of Article 9 does not contain any such restriction, nor does the letter sent to the persons concerned in June 1977.

As regards the question of the *de facto* increase in the rate of interest by the introduction of a new parity which was less favourable to officials, the Commission concentrates only on the formal aspect in so far as it continually placed emphasis on the fact that the monthly instalments were expressed in Belgian francs. For their part, the applicants draw a comparison between the principal amount they received in lire and the monthly instalments deducted from their remuneration since 1979, which leads them to the conclusion that the interest rate greatly exceeds 4%.

Mr Battaglia abandoned his second argument since the Commission has not alleged in any way that the rules contained in the Staff Regulations regarding disputes are applicable (even though it purports to apply the new text of Article 17 of Annex VII to the facts of the case).

As regards the Commission's proposal for an arrangement, the applicants consider that it would be more appropriate to restore matters to the initial position and bring to an end its unlawful action — and the consequences thereof — which might open the way to peaceful negotiation.

The *Commission* rejoins that the expression "parity ruling on the date of the transfer" appearing in the wording of Article 15 of the agreement in question does not protect the parties against exchange risks. It clearly constitutes an unknown factor. By contrast with the "parity ruling at the time of the conclusion of the agreement" which is known to the parties and remains the same throughout the currency of the agreement, the parity ruling on the date of the transfer is unknown to the parties and is essentially variable since, by definition, it is tied to the dates on which the transfers are to be made. By adopting that parity, the parties to the agreement therefore deliberately agreed to expose themselves to an exchange risk.

The interpretation given by the defendant, to the effect that the parity referred to in the agreement is the parity applicable for the purposes of the Staff Regulations to the calculation of remuneration paid in a currency other than Belgian francs and to transfers, conforms with the general scheme of the agreement. The agreement allows officials to obtain building loans on particularly advantageous conditions. The identity of the borrower is an essential factor. The grant of a loan of that kind constitutes a pecuniary advantage granted to officials in their capacity as such. Thus it is normal for transfers of

funds in connection therewith to be subject to the provisions of the Staff Regulations applicable to the staff of the Communities with regard to matters of exchange. On the other hand, the applicants' interpretation, according to which the parity referred to in the Staff Regulations is that officially notified by Italy to the IMF, finds no support either in the agreement or in the manner in which it was performed by the parties. In any case, the fact remains that the date to be taken into consideration is always the date of the transfer.

Since the entry into force of the second amendment to the Statutes of the IMF ("Jamaica Agreement" of 7 and 8 January 1976), the idea of parity as understood by the applicants, namely the parity expressed in terms of a quantity of fine gold declared to the IMF and accepted by it, no longer exists, with the result that "parity ruling on the date of the transfer" must now, according to the view to which they subscribe, be taken to be the rate actually applied on the market on that date.

The continued application, until the entry into force of Council Regulations Nos 3085//78 and 3086/78 of 21 December 1978 of a conversion rate of LIT 12.5 = BFR 1 is merely the consequence of the application, within the framework of the old Article 17 of Annex VII to the Staff Regulations, of the parity for the Italian lira declared to the IMF. When it became apparent that monetary "accidents" and in particular the floating of currencies called in question for the foreseeable future the validity of the "fixed" parity system, the Community authorities amended the provisions of the Staff Regulations relating to exchange which referred to the old IMF parities which no longer existed. The Commission, which is not the author of the above-mentioned regulations, did not unilaterally change the conditions of the loan agreement. It merely ascertained that the IMF parity no longer corresponded to the "parity ruling on the date of the transfer" and, rather than thenceforth applying the rate actually applied on the market on that date, chose to continue to apply the conversion rate in force under the Staff Regulations, by reference to the new Article 63 of the Staff Regulations and the new Article 17 of Annex VII thereto. The conversion rate applicable to transfers of funds made pursuant to the said Article 17, the so-called 'transfer rate', which is more advantageous than the exchange rate provided for in the new Article 63 of the Staff Regulations and even more advantageous than the exchange rate applied by banks, is applied to the repayments in question.

The Commission does not contest that the first paragraph of Article 15 of the agreement entitles the borrower to repay the loan expressed in Belgian francs and advanced in Italian lire on the basis of the parity existing between those two currencies at the time of payment, either in Belgian francs or in Italian lire. But that same article also provides that, in the latter case, the lire must be converted into Belgian francs and the conversion must be on the basis of the parity ruling on the date of the transfer.

The latter provision should be considered in the context of Articles 4 and 5 of the agreement which entitle the Commission to deduct from the borrower's remuneration expressed in Belgian francs the amount of the monthly repayment shown in the repayment table which is an integral part of the agreement and is also expressed in Belgian francs. Contrary to the view expressed by the applicants, the defendant is not "imposing" the Belgian franc upon them as the currency of payment. It is merely implementing the agreement which, on the one hand,

ensures monthly repayment to it of a sum expressed in Belgian francs and, on the other hand, authorizes it, where it is appropriate to deduct for that purpose a part of the borrower's remuneration paid in a currency other than Belgian francs, to use the rate for the conversion of that currency into Belgian francs ruling at that time.

The applicants' reference to the principle that measures may lawfully be taken to avoid the effects of unforeseeable disturbances in the economy is totally irrelevant. Had the Italian lire moved in the opposite direction the applicants would have been the first to recognize that the conversion rate stipulated in Article 15 of the agreement is, by its very definition, capable of having different values during the performance of the agreement.

IV — Oral procedure

The parties presented oral argument at the sitting on 17 December 1981.

The Advocate General delivered his opinion at the sitting on 18 March 1982.

Decision

1 By applications lodged at the Court Registry on 14 January 1980, Mr Battaglia and Mrs Cocco, officials of the Commission of the European Communities employed at Ispra (Italy), brought actions primarily for the annulment of the Commission's decision altering the method of calculating the monthly amounts payable by them in reimbursement of building loans the subject of agreements between the applicants and the defendant.

2 By decision of 2 March 1970 concerning the use of sums available under the ECSC budget item "Pension Funds", the Council authorized the Commission to set aside 40 % of the sums in question for the grant of building loans to officials of the Communities.

3 By decision of 17 June 1971, the Commission adopted the necessary implementing provisions, Article 9 of which in particular provided that "loans covered by this provision shall be expressed in Belgian francs. The payments in respect thereof shall be made in the currency of the country in which the property to be financed is situated, on the basis of the parity ruling at the time of the payment".

4 On 23 December 1971 and 16 November 1972, the applicants entered into agreements with the Commission under which they received from the Commission loans of BFR 750 000 and BFR 640 000 respectively intended to finance the construction of their dwelling houses.

5 By virtue of Article 4 of the agreement, the borrower undertakes to repay the amount of the loan in monthly instalments due on the 15th day of each month in accordance with the table attached to the agreement. The table, drawn up in duplicate and signed by both parties, constitutes an integral part of the agreement.

6 By virtue of Article 5 of the agreement the borrower irrevocably instructs the Commission to deduct or cause to be deducted for transfer to the Commission by the Community institution by which he is or may be employed in the future, on the 15th day of each month, from his monthly salary or any other emolument, the monthly instalment shown in the repayment table referred to in Article 4.

7 Article 15 of the agreement provides that any transfer made by the borrower to the lender by way of early repayment or in payment of monthly instalments is to be made in Belgian francs or in the currency of the country in which the property to be financed is situated and in which the loan was advanced. The currency of the loan is to be converted into Belgian francs on the basis of the parity ruling on the date of transfer.

8 In the table referred to in Article 4 of the agreement the amount of the loan, the monthly instalment, the monthly interest, the monthly repayment of principal and the principal outstanding are expressed in Belgian francs.

9 The amount of the loan was converted into Italian lire on the basis of BFR 1 = LIT 12.50, the parity notified to the International Monetary Fund on 1 January 1965 which at that time was used as the basis for calculation of the remuneration of officials in accordance with Article 63 of the Staff Regulations. Correspondingly, the sums lent were repaid (likewise on the basis of the above-mentioned exchange rate) by means of deductions made by the Commission as lender from the monthly remuneration of the official.

10 The system operated as follows: the official's basic salary, to which the weighting was applied (for example BFR 100 000 × Italian weighting 157.8 in March 1979) was reduced by the amount of the monthly repayment instalment in respect of the building loan (for example BFR 5 000) and, in this example, the net remuneration became BFR 152 800, which was converted into Italian lire at the rate of BFR 1 = LIT 12.50.

11 On 25 July 1975 the Commission decided "in order to resolve the difficulties arising from the fluctuation of exchange rates" to amend Article 9 of the implementing provisions of 17 June 1971; as a result, for loan agreements entered into after that date both the loans and repayments were to be made exclusively in Belgian francs.

12 Article 2 (1) of the decision provides as follows:

"(a) A borrower who received a loan in the currency of the country in which the property is situated at a rate other than the average rate for that currency in the Brussels foreign exchange market on the day of payment may — within a period of two months from the date of notification of this decision — apply for a reduction of his principal debt to the extent to which he has suffered financial loss as a result of the fact that repayment is to be made in Belgian francs.

(b) To determine the new principal debt, the amounts paid to the borrower in foreign currency shall be converted into Belgian francs at the rate specified in subparagraph (a). From the amount thus obtained there shall be deducted the repayments made up to the date of the decision to reduce the debt. If those repayments were made in the currency of the country in which the property is situated, they shall also be converted into Belgian francs at the rate specified in subparagraph (a).

(c) All repayments to be made after the decision to reduce the debt shall be made in Belgian francs."

13 That decision was notified to the applicants who did not, however, apply for a reduction of their principal debt.

14 Following the entry into force of Council Regulations Nos 3085/78 and 3086/78 of 21 December 1978 (Official Journal L 369, pp. 6 and 8) which amended *inter alia* the provisions of Article 63 of the Staff Regulations concerning monetary parities and of Article 17 of Annex VII concerning transfers, the Commission applied, for conversion into Belgian francs of the Italian lire deducted in respect of the monthly repayment, the rate resulting from application of the "updated parities" and from the new version of Article 17 of Annex VII. Mr Battaglia's salary statement for March 1979 showed a repayment of BFR 4 281, converted into LIT 53 512. In respect of April, the same amount in Belgian francs was converted into LIT 78 590. During the same period, Mrs Cocco's monthly repayment, namely BFR 3 483, after conversion into lire, changed from LIT 43 537 to LIT 63 943.

15 Mr Battaglia lodged a complaint pursuant to Article 90 of the Staff Regulations against the conversion of lire into Belgian francs in accordance with the new procedure. His complaint drew no response. Mrs Cocco for her part did not lodge a complaint.

16 These actions are brought pursuant to Article 20 of the agreement by virtue of which the parties undertake to submit to the Court any dispute which might arise between them regarding the validity, interpretation or performance of the agreement.

17 The applicants maintain that the parity employed for conversion of the amount of the loan into Italian lire and for the conversion of lire into Belgian francs for the monthly repayments should be that notified to the International Monetary Fund and used for the advance of the loan and that the Commission was not entitled unilaterally to adopt another parity.

18 The applicants seek to corroborate their view by reference to a letter dated 21 March 1977 addressed by the Director-General of Personnel and Administration of the Commission to Mr R. Lubek, Vice-Chairman of the Ispra Staff Committee, in which he states:

"Finally, I would inform you that the repayments of loans in respect of which the borrowers have not applied for the benefit of the reduction of debt

provided for in the decision of 25 July 1975 are to be made at the same rate as that used for the grant of the loan itself, namely LIT 100 = BFR 8. In such cases, these transactions do not fall within the heading of partial transfers of remuneration."

19 It appears from the file on the case that the exchange rate used for the conversion of the amount of the loan into Italian lire was the parity notified to the International Monetary Fund in 1965 which, at the time of the loan, was the reference parity determined in Article 63 of the Staff Regulations. In essence the applicants' view is that the same rate must be used throughout the duration of the agreement for the conversion into Belgian francs of the funds transferred to the Commission to repay the loan by means of the monthly instalments provided for in the agreement.

20 The Commission contends on the other hand that the exchange rate to be used for that conversion must be the one fixed as a reference parity in Article 63 of the Staff Regulations and that the monthly transfers may be made pursuant to the provisions of Article 17 of Annex VII to the Staff Regulations, which enables officials regularly to transfer part of their emoluments through the institution by which they are employed in the currency of certain other Member States.

21 In pursuance of that interpretation of the agreement, the Commission converted the amounts in lire transferred to repay the loan in question into Belgian francs according to the parity referred to in Article 63 of the Staff Regulations until the entry into force of Regulations Nos 3085/78 and 3086/78. As from 1 April 1979 it also based its calculations for conversion of the monthly payments on the rates laid down in the Staff Regulations, as amended by Regulations Nos 3085/78 and 3086/78, and applied the provisions of Article 17 of Annex VII to the Staff Regulations in its amended version. It claims that that method of making the transfers conforms wholly with the agreement.

22 The applicants' view is untenable. It disregards the fact that, according to the provisions of the agreement itself, the funds transferred in order to pay the monthly instalments were to be converted on the basis of the parity in force on the date of the transfer, that is to say on the date of each transfer. The agreement did not provide for a fixed parity to apply throughout its duration but rather for various parities which might apply successively during the term of the agreement.

23 It should be recalled that all the recipients of loans were officials of the European Communities and that the agreement provided that repayments were to be made to the Commission by the institution in which they were employed. It was consonant with that situation that the parity to which the agreement referred should be the parity adopted for calculation of the borrower's remuneration, that is to say the parity provided for in Article 63 of the Staff Regulations.

24 In consequence of the events in the money markets which occurred in and after 1971, the parity notified to the International Monetary Fund for the lira ceased to be valid. For a time, the lira floated freely. Finally, with the introduction of the European Monetary System, a new exchange rate, which might fluctuate within certain limits, was determined for the currencies of the Member States which participated in the system.

25 The practice adopted by the Commission, namely the application to the transfers made to repay the loans in question of the provisions of Article 17 of Annex VII to the Staff Regulations as newly worded, entails the result that the conversion rate is more favourable to the applicants than mere application of the parity for the lira within the European Monetary System.

26 As regards the letter of 21 March 1977 from the Director-General of Personnel and Administration, it should be pointed out that it was written in reply to a question from Mr Lubek concerning conduct on the part of the Commission which he regarded as constituting a unilateral change of the agreement. In any case, several months later, the same Director-General sent the applicants a communication in the following terms, which left no room for any error as to maintenance of the exchange rate in force at that time:

"Borrowers whose agreement was signed before 25 July 1975 have had an opportunity to choose between two courses of action:

(1) Reduction of their principal debt by an amount corresponding to the difference between the amount of the loan at the official rate and that amount at the market rate on the day of payment. As a result, any early repayment under Article 8 of the loan agreement and every monthly payment (see the last sentence of the first paragraph and the third paragraph of Article 6 of the agreement) must henceforth be made exclusively in Belgian francs, contrary to what is stipulated in Article 15 of the loan agreement;

(2) Maintenance of their principal debt, which is the position in your case. As a result, you are entitled, as stated in Article 15 of your loan agreement, to choose the currency (Belgian francs or the currency used for the advance of the loan) to be used in the case of:

Early repayment under Article 8 of the agreement;

Monthly payments pursuant to Article 6 of the agreement (first and third paragraphs).

It should however be noted that any conversion into Belgian francs will be made on each occasion on the basis of the parity ruling on the date of each transfer, which at the present time is as follows:

BFR 1 = LIT 12.50,
FF 1 = BFR 9.00,
UKL 1 = BFR 120.00.

As regards repayment by deductions from salary (see Article 5 of the agreement) it is in all cases made in Belgian francs, the salary also being expressed in Belgian francs.

(3)For borrowers who did not take the benefit of the reduction in 1975 (as in your case), those deductions are not to be regarded as transfers of a part of your remuneration.

However, the exchange rate adopted is the same as that used for the advance of the loan (see paragraph (2) above);

(4) No guarantee can be given regarding maintenance of the exchange rate at present adopted by the Commission for the conversion into Belgian francs of the payments referred to in paragraph (2) above or of the deductions from remuneration referred to in paragraph (3)."

27 It should in addition be emphasized that the applicants do not in any way maintain that they have deduced from those letters any consquences which might change their situation.

28 Finally it should be noted that the Commission stated in its defence that it was prepared in the case of the applicants to reduce the debt in question in 1975, which would have resulted in a reduction as from April 1979 of the nominal amount of the monthly payment in Belgian francs payable by them. In view of the principles underlying that statement, the Court (First Chamber) takes note of that fact.

29 It appears from all the foregoing considerations that the view put forward by the applicants in support of their claims cannot be upheld and that accordingly the applications must be dismissed.

30 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs.

31 However, under Article 70 of the Rules of Procedure costs incurred by the institutions in proceedings by servants of the Communities are to be borne by those institutions. In this case that provision should be applied by analogy.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the parties to bear their own costs.**

Bosco O'Keeffe Koopmans

Delivered in open court in Luxembourg on 1 July 1982.

J. A. Pompe
Deputy Registrar

G. Bosco
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI

(see Case 567/79 A, p. 2394)