3. Where pension rights acquired under a national scheme are transferred to the Community scheme, the establishment of the actuarial equivalent by the original social security institution and its re-assessment on the basis of the rules applicable under the Community's pension scheme are based on different particulars and considerations regarding the history of those concerned, their future prospects, the amount of contributions and the nature and amount of benefits, with the result that it does not seem abnormal that the determination of the years of pensionable service to be taken into account for the Community pension leads to a different figure from the years of pensionable service taken into account by the national institution.

# OPINION OF MR ADVOCATE GENERAL LENZ
## delivered on 24 October 1985 *

*Mr President,*
*Members of the Court,*

A — The proceedings in which I am to deliver an Opinion today are concerned with the pension rights of employees of the European Communities who entered the service of the European Atomic Energy Commission as establishment staff or local staff at the Joint Nuclear Research Centre, Ispra (Italy). As such, they were affiliated not to the Community retirement pension scheme but to the Istituto nazionale della previdenza sociale (INPS) [National Social Welfare Institution, hereinafter referred to as 'the INPS'].

On 21 October 1976 Regulation (EEC) No 2615/76 amending the conditions of employment of other servants of the European Communities (Official Journal 1976, L 299, p. 1) was adopted; the regulation entered into force on 30 October 1976.

According to that regulation, temporary staff within the meaning of those Conditions of Employment includes staff who are engaged to fill 'a permanent post paid from research and investment appropriations'. The regulation extended the Community pension scheme to such staff by amending Article 39 (2) of the Conditions of Employment accordingly. Article 2 of the regulation further provided that a member of the establishment or local staff paid from the research and investment appropriations who was in service on the date on which the regulation came into force was to be offered a contract in accordance with Title II of the Conditions of Employment (which concernstemporary staff) and that such contracts were to take effect on the date of the regulation's entry into force. Moreover, Article 2 (4) provided as follows:

'In the case of establishment and local staff who are in service on the date on which this regulation comes into force, calculation of the length of service referred to in the first paragraph of Article 77 of the Staff Regulations shall take account of the number of

* Translated from the German.

years of service that staff engaged pursuant to paragraph 1 above have completed as establishment or local staff.

However, only the number of years of service completed by staff as temporary staff within the meaning of Article 2 (d) shall be taken into account for the purpose of calculating the years of pensionable service within the meaning of Article 2 of Annex VIII to the Staff Regulations.'

The provisions of that regulation were applied to the applicants with effect from 30 October 1976.

With regard to the Community retirement pension scheme, Article 11 of Annex VIII to the Staff Regulations provides that an official who enters the service of the Communities after leaving the service of a government administration or of a national or international organization or of an undertaking is to have the right, on becoming established with the Community, 'to pay to it either:

the actuarial equivalent of retirement pension rights acquired by him in the government administration, national or international organization or undertaking;

or

the sums repaid to him from the pension fund of the government administration, organization or undertaking at the date of his leaving its service.'

Article 11 (2) goes on to provide that in such a case 'the institution in which the official serves shall, taking into account his grade on establishment, determine the number of years of pensionable service with which he shall be credited under its own pension scheme in respect of the former period of service, on the basis of the amount of the actuarial equivalent or sums repaid as aforesaid'.

The Commission, after obtaining the applicants' agreement in principle, applied those rules to them *by analogy* (a practice which was endorsed by the Court in its judgment in Joined Cases 118 to 123/82). [1] This had become possible after the Commission had concluded an agreement with the INPS on 2 March 1978 (set out in Annex I to the defence). The agreement provides with regard to Article 11 (2) of Annex VIII to the Staff Regulations that the INPS is to calculate the actuarial equivalent of the pension rights acquired by the person concerned under its scheme beforeentering the service of the Communities by reference to the date on which the request to transfer the rights was submitted; the capital sum is to be transferred where the person concerned gives his assent within 90 days from the date of notification of the capital sum by the INPS.

It is also important, for the application of the said rules, to consider the general implementing provisions adopted on 16 March 1977 (set out in Annex II to the defence). Those provisions contain *inter alia* details concerning the calculation of the years of pensionable service to be taken into account on the basis of the transfer of the actuarial equivalent or the sums repaid.

In October 1983 the applicants were notified, in pursuance of those provisions, of the number of years completed under the Italian social security scheme prior to their

1 — Judgment of 6 October 1983 in Joined Cases 118 to 123/82 (*Maria Grazia Celant and Others* v *Commission* [1983] ECR 2995, paragraph 26 of the decision).

appointment as members of the temporary staff which would be taken into account as years of pensionable service. They were also informed that the transfer was to take place on 30 October 1983.

The applicants considered those decisions and the calculations on which they were based to be unacceptable and accordingly lodged formal complaints in December 1983. In their complaints they claimed, *inter alia*, that Article 11 (2) of Annex VIII to the Staff Regulations was not applicable to them and that instead they were covered by Article 3 (c) of Annex VIII (which provides that for the purpose of calculating the years of pensionable service account is to be taken of periods of service completed in any other capacity in accordance with the Conditions of Employment). The applicants also reproached the Commission for disregarding the prohibition of discrimination and the principle of continuity of employment. Moreover, they objected to certain aspects of the calculation and, on all those grounds, asked for the measures adopted to be annulled.

Those complaints were expressly rejected in March 1984, on the ground that identical complaints had already been submitted in Joined Cases 118 to 123/82 [1] and had been rejected (I shall consider this in detail presently).

On 23 July 1984 the applicants brought an action in which they claimed that the Court should:

(1) Declare void the measure whereby the Commission calculated — for the purposes of the Community retirement pension — the pension rights acquired by the applicants prior to their appointment as members of the temporary staff;

(2) Hold that the applicants are entitled to be credited with a longer period of pensionable service, on the basis of the submissions and arguments put forward in the application, in the event of transfer of the actuarial equivalent;

and

(3) Declare that the Commission is under an obligation to guarantee the applicants' right to choose between the transfer of the actuarial equivalent and the transfer of the sums repaid to them, by calculating the amounts involved in each case.

B — My Opinion on this matter is as follows:

1. In their *first submission*, the applicants rely on two arguments in support of their claims.

In the first place, the applicants contend that in the calculation of their pension rights under Community law the period of service which they completed in the employ of the Commission prior to their appointment as members of the temporary staff was only *partially* taken into account (that is to say approximately one-third of the period in question). Therefore they evidently take the view that the entire period of service should have been taken into account. Secondly, they maintain that, before they were able to exercise their rights under Article 11 (2) of Annex VIII to the Staff Regulations, they were *insufficiently informed* of all the relevant details. Article 11 offers a choice between two methods, namely transfer of the actuarial equivalent and transfer of the sums repaid. However, they contend that the Commission wrongly failed to inform them of the period of pensionable service with which they would be credited under the second method and that, consequently, they were not given an opportunity to exercise their rights in full.

(a) With regard to the first point, the Commission has stated that the applicants'

1 — Judgment of 6 October 1983 in Joined Cases 118 to 123/82 (*Maria Grazia Celant and Others* v *Commission* [1983] ECR 2995, paragraph 26 of the decision).

argument is based on a fundamental error. In its view, the purpose of the rules embodied in Regulation No 2615/76 was not to reconstruct retroactively the careers of the employees concerned, that is to say to treat them as if they had always been members of the temporary staff. Instead, the purpose of those rules was merely to change their legal position for the future. With regard to their pension rights, therefore, the only possibility was to transfer pursuant to Article 11 of Annex VIII to the Staff Regulations the rights previously acquired under the Italian insurance scheme to the Community scheme in accordance with the Community's assessment criteria. However, in view of the specific features of the less favourable national scheme and having regard to the individual particulars of those concerned, it is not in any way surprising that only a part of the length of service completed under the national insurance scheme could be taken into account for the purposes of the Community pension scheme.

In that respect the Commission is clearly justified in relying on the Court's judgment in Joined Cases 118 to 123/82.[1] In that case, which was concerned with similar facts, the problem to be resolved was whether previous years of service, although completed in Community employment, could be reduced to a shorter period pursuant to Article 11 (2) of Annex VIII to the Staff Regulations for the purpose of calculating the Community pension (paragraph 16 of the decision). In that regard, the Court expressly stated that it followed from Regulation No 2615/76 that the previous period of service (that is to say prior to the appointment of the persons concerned as members of the temporary staff) was not to be taken into account in calculating the years of pensionable service (paragraph 25 of the decision). Accordingly, the applicants could not claim full enjoyment of the Community pension scheme retroactively without any consideration on their part; the only means by which pension rights could be acquired retroactively was by the application of Article 11 of Annex VIII to the Staff Regulations (paragraph 27 of the decision). The Court went on to state that, since the establishment of the actuarial equivalent by the original social security institution and its reassessment on the basis of the rules applicable under the Community's pension scheme were based on different particulars and considerations regarding the history of those concerned, their future prospects, the amount of contributions and the nature and amount of benefits, it did not seem abnormal that the determination of the years of pensionable service to be taken into account for the Community pension led to a different figure from the years of pensionable service taken into account by the national institution.

On that basis, therefore, the fact that the application of Article 11 of Annex VIII to the Staff Regulations does not result in *all* the periods of service previously completed by the applicants being taken into account under the Community pension scheme cannot be treated as an infringement of legal rules. Moreover, no arguments have been advanced in this case which suggest that a different view should be taken (in view of the judgment given by the Second Chamber in *Celant*, this would in any event have to be sanctioned by the full Court). In particular, no such argument can be deduced from the judgment of the Court in Joined Cases 225 and 241/81,[2] which was referred to by the applicants in the oral

1 — Judgment of 6 October 1983 in Joined Cases 118 to 123/82 (*Maria Grazia Celant and Others* v *Commission* [1983] ECR 2995, paragraph 26 of the decision).

2 — Judgment of 23 February 1983 in Joined Cases 225 and 241/81 (*Armando Toledano Laredo and Mario Garilli* v *Commission* [1983] ECR 347).

procedure and in which the Court held that the period of service completed by an official as a *member of the auxiliary staff* prior to his appointment must be treated as a period of service completed as a member of the temporary staff for the purposes of the Community pension scheme (for a similar decision see Case 17/78).[3] That situation does not arise in this case. It is significant that, throughout their period of service as local staff (extending as far back as the 1960s), the applicants never argued that the status conferred upon them at the time was contrary to Community staff law or that there were compelling reasons for which they should have been employed as members of the temporary staff from the outset. Moreover, in my opinion they have not put forward any grounds to support that view in these proceedings. It is in any event insufficient for them to point out that they always occupied established posts.

Accordingly, I consider that the contested decisions cannot be declared void on the basis of the first part of the first submission.

(b) With regard to the second part of the first submission, there is no reason to consider in detail the preliminary matters raised by the Commission, namely whether the applicants' objection should not be disregarded on account of the fact that, in assenting to the transfer of the actuarial equivalent of their pension rights under the Italian scheme, they expressed no reservation concerning the method of transfer, and secondly, whether they have clearly established that they have an interest in the examination of that point (since, according to the Commission, in the written procedure they failed to show that transfer of sums repaid would be more favourable to them and in the oral procedure made only unsupported statements of a general nature in that regard).

The applicants' view is in fact unconvincing even with regard to the interpretation of Annex VIII to the Staff Regulations.

Although Article 11 confers certain options — or, to put it another way, certain rights — on officials and, consequently, imposes on the Member States an obligation to adopt appropriate measures for the implementation of the rules laid down (as was made clear by the Court in its judgment in Case 137/80),[4] it is clear from the wording of Article 11 that it is solely the *transition* from the national pension scheme to the Community scheme which must *in principle* be guaranteed, namely by transfer of the actuarial equivalent of the pension rights acquired *or* by transfer of the sums repaid by the national pension fund. However, there is no obligation to provide for *both* methods, whether or not they exist under national law. Moreover, the Commission pointed out that the second method merely involves the repayment of sums *owed*, that is to say the amount which can be claimed under the existing national rules.

No other solution can be inferred from the case-law referred to in the proceedings. That certainly applies to the ruling given by

3 — Judgment of 1 February 1979 in Case 17/78 (*Deshormes* v *Commission*, [1979] ECR 189).

4 — Judgment of 20 October 1981 in Case 137/80 (*Commission* v *Belgium* [1981] ECR 2393)

the Court in Case 212/81, [5] in which the Court confined itself to clarifying the two concepts (the Court held that the purpose of calculating the *actuarial equivalent* is to capitalize the value of future benefits, taking into account the anticipated nature of the payment as well as the risk of the insured dying before the date on which the benefit becomes payable, whilst *sums repaid* are calculated by adding up the contributions paid, to which interest may be added). The same holds true for the judgment in Case 137/80, [4] referred to earlier; in that case, which concerned proceedings instituted under Article 169 of the EEC Treaty in respect of Belgium's failure to implement Article 11 (2) of Annex VIII to the Staff Regulations, the Court merely held as a matter of principle that the rules enacted must be such as to allow officials to transfer acquired rights to the Community pension scheme. Although reference is made to the *choice* conferred by the Staff Regulations, it is quite clear from the facts and circumstances of the case and from the general context of the relevant passage of the judgment (paragraph 13) that only a choice between continued affiliation to the national insurance scheme and transfer of acquired rights to the Community pension scheme was meant. On the other hand, there are no grounds for the assumption that the Court meant to say that the Member States were required in all cases to offer both of the possibilities referred to in Article 11 of Annex VIII to the Staff Regulations.

Accordingly, the Commission cannot be reproached for the fact that the agreement which it entered into with the INPS mentions only the calculation of the actuarial equivalent of acquired pension rights and that only that calculation was notified to the applicants. As the Commission has made clear, that was evidently in keeping with the legal position at the time of the conclusion of the agreement; at that time the transfer of sums repaid as defined by the Court in its judgment in Case 212/81 [5] was impossible both where rights had arisen following completion of a specified minimum period of employment and where the insurance cover had come to an end prior to the expiry of that period. For that reason there is no need to consider further whether Italian Law No 29 of 7 February *1979*, to which reference was made during the oral procedure, made provision for the transfer of sums repaid or whether its provisions were in fact not relevant to the application of Article 11 of Annex VIII to the Staff Regulations because they only contemplated the transfer of contributions paid (plus interest thereon) from one Italian insurance institution to another, that is to say the coordination of national insurance schemes.

Accordingly, the contested decisions cannot be annulled on the ground that they were adopted under an incomplete procedure, that is to say one which did not allow for the transfer of contributions repaid.

2. In their *second submission* the applicants allege a breach of the prohibition of discrimination. They compare the contributions which were paid by them and on their behalf to the INPS and which led to the accumulation of a capital sum under

4 — Judgment of 20 October 1981 in Case 137/80 (*Commission v Belgium* [1981] ECR 2393).

5 — Judgment of 18 March 1982 in Case 212/81 (*Caisse de Pension des Employés Privés v Bodson* [1982] ECR 1019).

that scheme with the contributions which, had they been members of the temporary staff, would have been paid to the Communities in respect of a similar period pursuant to the Conditions of Employment. They maintain that, if account is taken of the level of contributions payable during that period (the applicants have specified in detail both the rates applicable in Italy and those applicable for the Community) and of the interest paid on the accumulated capital and if allowance is made for the fact that the applicants received an extra month's salary each year as establishment staff or local staff, it is clear that a larger capital sum accrued to them under the Italian social insurance scheme than would have been possible under the Community scheme, or at the very least, that the capital sum accumulated under the national scheme is not much smaller than the corresponding sum under the Community scheme. The applicants therefore maintain that there can be no justification for crediting them, as a result of the transfer of the actuarial equivalent of their acquired pension rights, with only approximately one-third of the period of service completed for the purposes of the acquisition of pension rights under Community law, and for leaving the remaining period of service out of account.

In its reply to the applicants' charges, the Commission demonstrates that their approach is based on a fundamental misconception. The transition from the Italian social insurance scheme to the Community scheme does not involve the aggregation of insurance contributions or the payment of interest on the capital thus calculated (which could be regarded as a form of transfer of the sums repaid) but is concerned with the capitalization of pension rights acquired under the Italian scheme (in respect of which — as was emphasized by the Court in its judgment in Case 212/81 [5] — the anticipated nature of the payment and the risk of the death of the recipient are to be taken into account). If the pension rights thus capitalized are converted into years of service for the purposes of Community law by means of actuarial formulae (to which the Second Chamber of the Court raised no objection in its judgment in Joined Cases 118 to 123/82 [1] (paragraph 28 of the decision)), the result ma be a reduction in the number of relevant years of service on account of the difference between the schemes (for instance as regards the risks covered, the form of the contributions, the calculation of the pension and the age of retirement). Accordingly, the payment of equivalent contributions (under the Italian scheme and under the — apparently considerably more favourable — Community scheme) does not necessarily mean that, following the transition from the national to the Community scheme, the pension will be calculated on the basis of an equivalent number of years of pensionable service.

However, although — on the assumption that approximately the same contributions are paid over a given period under the Italian social insurance scheme and under the Community scheme — the fact that the full number of years of service completed by members of the temporary staff is taken into account in the calculation of their pension means that the latter receive more favourable treatment than local staff who did not acquire the status of temporary servants until later, it is inappropriate to treat that as discrimination since the legal status of local staff and the legal status of temporary staff are not comparable. That was expressly stated by the Second Chamber of the Court in its judgment in Joined Cases 118 to 123/82 [1] (see paragraph 22 of the decision). Moreover, the Court clearly emphasized, as I said earlier, that the Community legislature cannot be reproached for failing to confer in 1976 the

1 — Judgment of 6 October 1983 in Joined Cases 118 to 123/82 (*Maria Grazia Celant and Others* v *Commission* [1983] ECR 2995, paragraph 26 of the decision).

5 — Judgment of 18 March 1982 in Case 212/81 (*Caisse de Pension des Employés Privés* v *Bodson* [1982] ECR 1019).

status of temporary staff on establishment staff retroactively or for failing to bring their careers fully into line, at least for pension purposes, with the careers of members of staff who have enjoyed the status of temporary servants from the outset (paragraph 27 of the decision).

Hence the decisions determining the number of years of pensionable service with which the applicants should be credited cannot be challenged on grounds of discrimination either.

3. The standard conversion formula for calculating the years of pensionable service, which is set out in the implementing provisions referred to earlier, takes into account the *annual basic salary* applicable at the date of the person's appointment as a temporary servant by including it in the denominator of the fraction referred to in Article 3. In that regard, the applicants complain that not only was the basic salary applicable in October 1976 (according to the table set out in Article 20 of the Conditions of Employment) brought into account, but also the *weighting*, which at the time stood at 157.8%; that had the effect of significantly reducing the number of years of service taken into account. In that respect too the applicants claim that they were placed at a disadvantage in relation to those members of staff who had already been accorded the status of temporary servants, since their contributions to the pension scheme were calculated solely by reference to the basic salary applicable at the material time.

I can deal relatively briefly with this point, which the applicants did not pursue in their reply but to which they subsequently returned during the oral procedure, taking a somewhat different approach.

The Commission has explained that the weighting in question was that referred to in *Article 65* of the Staff Regulations, that is to say the weighting to be applied for the adjustment of the level of remuneration, which was not incorporated in the table of salaries until after the period under consideration. Consequently, where during that period reference had to be made to a person's salary, as for instance in the case of the conversion of pension rights acquired under the national social insurance scheme into the years of pensionable service, it was necessary in order to avoid distorted results to take into account the salary as adjusted by the weighting applicable at the time. That approach has, moreover, been endorsed by the Court, as may be inferred from the judgment in Case 194/80 [6] (which is also concerned with Article 11 (2) of Annex VIII to the Staff Regulations). In that judgment the Court, after explaining that the weighting in Article 65 of the Staff Regulations was a means of adjusting the remuneration of all officials and servants of the Communities (whereas the function of the weighting mentioned in Article 64 of the Staff Regulations was to ensure that the remuneration of all officials had the same purchasing power, whatever their place of employment), went on to state that the first-mentioned weighting was intended to be merged with the basic salary. For the purpose of calculating the number of years of pensionable service on the basis of the actuarial equivalent, the basic salary was therefore to be taken to include the weighting provided for in Article 65 of the Staff Regulations.

If, however, an advantage is conferred in that respect on members of staff who have enjoyed the status of temporary servants from the outset, it is once again sufficient to refer to the difference in status between temporary servants and the applicants in

6 — Judgment of 19 November 1981 in Case 194/80 (*Benassi* v *Commission* [1981] ECR 2824).

these proceedings. As the Court made clear in its judgment in Joined Cases 118 to 123/82, [1] no comparison is possible between persons who have always been members of the temporary staff and those who only acquired that status in 1976, and consequently there is no discrimination if the years of pensionable service in the case of the latter category are calculated on the basis of their annual basic salary including the weighting.

4. Under the heading '*breach of the Commission's duty to protect and to inform its employees*' the applicants further contend in their application that they were given *no explanation* concerning the fact that the aforesaid weighting of 157.8% had been taken into account in its entirety; the applicants could assume that its function was partly to ensure that members of staff enjoyed the same purchasing power in different places of employment. Moreover, the applicants maintain that it is *still unclear* why interest at the rate of 3.5% per annum was deducted from the capital sum transferred by the INPS. As a result, they argue, they were not able to take a decision under Article 11 of Annex VIII to the Staff Regulations in full knowledge of all the relevant facts.

Moreover, in their reply they amplify their original submission by contending that the deduction of interest at the rate of 3.5% from their capitalized pension rights in respect of the period between their appointment as members of the temporary staff and the actual transfer of the capital sum was inequitable. In their view, the Commission could and should have ensured that the said transfer took place immediately after the conclusion of the agreement with the INPS in 1978. That would have prevented the deduction of interest over several years, which reduced the capital sum available for the calculation of their years of pensionable service.

(a) That argument does not give rise to any particular difficulties in the form in which it was originally put forward.

To begin with, the position regarding the first of the two matters to which I have referred has been clear at least since the date on which the applicants' complaints were answered. It was expressly pointed out that the weighting that had been applied was that established by *Article 65* of the Staff Regulations and that, since its function was to adjust remuneration, the fact that it had been taken into account in connection with the application of Article 11 of Annex VIII to the Staff Regulations was not open to criticism according to the case-law of the Court. With regard to the deduction of interest at the rate of 3.5% per annum from the capital sum to be transferred, it is apparent from Article 3 (2) of the provisions implementing Article 11 that interest is deducted in respect of the period between the date of appointment as a temporary servant (from which date the Community pension scheme applies) and the date on which the capital sums are actually transferred to the Community; those sums should be at the Community's disposal from the date of appointment but are frequently not paid until some years later.

Moreover, it has been established that the Commission sent to Ispra a number of experts who were available in order to provide information when the time came to apply Article 11. Accordingly, as the applicants had an opportunity to seek clarification on any matters which were unclear to them, they cannot, after unreservedly taking as the basis for their decision the calculations carried out by the Commission,

1 — Judgment of 6 October 1983 in Joined Cases 118 to 123/82 (*Maria Grazia Celant and Others* v *Commission* [1983] ECR 2995, paragraph 26 of the decision).

now assert that they did not take that decision in full knowledge of all the relevant facts.

Moreover, it is also relevant in that connection that the applicants have failed to show that if they had been fully aware of all the relevant details and of their significance at the material time they would have taken a different decision, that is to say they would have decided not to transfer their capitalized pension rights to the Community's pension scheme. That being so — the applicants in fact do not contest the application of Article 11 but are endeavouring merely to obtain a better result — it is difficult to comprehend how they hope to secure the annulment of the Commission's decisions by contending that the information concerning the scope of those decisions was inadequate.

(b) With regard to the further submission set out in the reply (which may perhaps be considered because it is closely connected with the submission originally formulated in the application), it is possible, in the light of everything which the Court has heard, to make the following remarks:

It is true that the aforesaid implementing provisions require the deduction of interest at the rate of 3.5% per annum from the capital sum to be transferred (in respect of the period between the date of the person's appointment as a temporary servant — resulting in affiliation to the Community pension scheme — and the *proposed* date of the transfer, which, as the Court has learnt, normally precedes the date of actual payment). However, it follows from the agreement concluded with the INPS — inasmuch as under that agreement the material date is that on which the request to transfer the capital is submitted to the INPS — that interest (apparently at the rate of 4.5% per annum) is to be paid on the capital sum (calculated by reference to the date of the person's appointment as a temporary servant) until the date on which the request is submitted. Accordingly, those concerned actually have to pay interest only in respect of the 90-day period which follows the date of notification by the Italian insurance institution (and within which those persons must give their assent) and until the proposed date of the transfer, which no doubt immediately follows the expiry of that period.

Consequently, the applicants cannot in any way have been placed at a disadvantage by the delay in the initiation of the procedure for transferring their capitalized pension rights. It is even possible to state that, particularly over long periods, a certain advantage is to be gained from the difference between the two interest rates (with the result that the question whether the delay complained of by the applicants is justified by the complexity of the operations involved and the number of documents to be scrutinized can be left in abeyance). If, moreover, it is borne in mind in the first place that the few months' interest actually deducted is scarcely significant for the purposes of the calculation of the number of years of pensionable service and can therefore essentially be disregarded and, secondly, that according to the provisions implementing Article 11 of Annex VIII to the Staff Regulations (the second sentence of Article 3 (2)) those concerned may, by paying the requisite amounts themselves, make up the difference, the only possible conclusion is that the aforesaid rules on the payment of interest provide no grounds for the annulment of the Commission's decisions calculating the years of pensionable service to be credited to the applicants.

5. To summarize, therefore, the applicants cannot be successful in their claims on the basis of the complaints which they have relied upon during the *written procedure.*

Moreover, as regards the additional and in some cases completely separate arguments put forward during the *oral procedure* (such as, for instance, the observations concerning the salary figures used in the conversion formulae, the true function of weightings until 1979 or the impact of age — at the time when the requests to transfer the sums in question were dealt with — on the calculation of the capitalized pension rights), they must under the Court's Rules of Procedure be disregarded inasmuch as they were put forward too late. In so far as the applicants maintain that the calculations carried out by the INPS are not sufficiently transparent or may be challenged on technical grounds, the objection may be raised that they should have made those allegations in national proceedings since such proceedings can undoubtedly be instituted against decisions taken by social insurance institutions to implement Article 11 of Annex VIII to the Staff Regulations.

C — In the light of those considerations I suggest that the Court should dismiss the applications submitted by Mr Soma and his colleagues and order the parties, pursuant to Article 70 of the Rules of Procedure, to bear their own costs.