# OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 12 NOVEMBER 1969[1]

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

In the proceedings on which I give my opinion today the Court of Justice is asked to decide whether an official in the Commission has been given a position in the hierarchy of the administrative organization which is consistent with the nature of his office, and whether his grading in the salaries' table seems correct. The facts are as follows:

The official making the complaint entered the service of the Commission of the European Atomic Energy Community on 8 October 1968. He was placed in charge of the Financial Services Division and received a salary corresponding to that of Grade A3. By a decision of 31 May 1961 the Commission appointed him accounting officer for the Operational Budget under the Financial Regulation then in force, and by a decision of 19 December 1961 made him also accounting officer for the Research and Investment Budget. In carrying out those duties the applicant was directly under the Director-General for Finance. On the entry into force of the Staff Regulations for the Community the applicant was established by a decision of 6 March 1963. His duties, title and grading were not changed.

Even at this time the applicant did not consider that his grade adequately reflected his duties. Accordingly he complained to the Commission on 7 September 1966, asking in a formal complaint to be established in Grade A2 with retroactive effect to 31 May 1961. His application was not successful. On 12 December 1966 the Directorate-General for Administration informed him that the Commission considered that the classification of his duties were wholly in accordance with the Staff Regulations. Shortly afterwards came the merger of the executives of the three Communities. As a result of the administrative re-organization necessitated by this the applicant was made Head of the Division of Finance, Treasury and Accounts in the Directorate-General for the Budget, within the Directorate for the Operational Budget and Finance, without alteration of his grade, by a decision of the Commission of 21 May 1968 which took effect from 4 June 1968. In addition to this and on the basis of a suggestion made by one of its members on 24 July 1968 the Commission adopted a decision in a written procedure on 30 July 1968 to appoint the applicant, who was Head of the Division of Finance, Treasury and Accounts, accounting officer for the Operational Budget and for the Research and Investment Budget. This was expressly recorded in a note from the Secretariat-General of the Commission of 1 August 1968 and in the minutes of the Commission's meeting of 18 December 1968. The decision was formally communicated to the applicant on 24 March 1969.

Even before this, on 14 October 1968 to be precise, the applicant made a formal complaint to the Commission on the basis of Article 90 of the Staff Regulations. In it he asked that the decision of 30 July 1968 be supplemented so as to provide for the raising of his grade to that of A1. He claimed that this grade corresponded to his duties as accounting officer of the Commission and that it was necessary in order to avoid his being placed in a subordinate position, under the administrative hierarchy, to officials from whom the accounting officer has to be completely

1 — Translated from the German.

independent. At the very least he was entitled to be classified in Grade A2 and to a declaration that his duties corresponded to those of Grade A1.

The applicant received no response to his complaint. Upon the expiry of the period mentioned in Article 91 of the Staff Regulations he therefore concluded that the Commission had rejected his complaint by implication. Consequently on 10 February 1969 he lodged with the Court of Justice an application containing the following conclusions:

1. For a declaration that in his capacity as accounting officer he is under direct and exclusive authority of the Commission and must be put on the same level as the Directors-General having the powers of an authorizing officer;
2. For a declaration that the decision of the Commission of 30 July 1968, appointing the applicant accounting officer, accordingly amended the decision of 21 May 1968 whereby the applicant was appointed Head of a Division forming part of the Directorate for the Operational Budget and Finance;
3. A declaration to the effect that the applicant must be classified in Grade A1 with effect from 30 July 1968.

In connexion with the lastmentioned point the applicant submits the *further* claim for a declaration at least to the effect that the Commission is bound to adjust his grade to correspond to his duties as accounting officer within two months from the date of the issue of the decision, and to annul the decision whereby the applicant's complaint was rejected by implication on 14 December 1968.

The Commission considers all these claims unfounded. It therefore asks that the application be dismissed accordingly.

I will now try to determine which of the claims is justified. In doing this a number of arguments are to be examined which the applicant considers capable of justifying his claim to have his grade altered and to have the administrative structure changed.

1. The least likely to succeed is the attempt to evaluate the applicant's duties solely on the basis of the Commission's definition of basic posts. As a standard of assessment this table, which we have already met in other proceedings, offers only very general criteria with consequently a large area of discretion in application precisely in relation to the higher grades. It justifies the general conclusion that, considered in the abstract, these criteria are scarcely adequate to justify a finding that the Commission misused its discretionary power.

In the present case it must be admitted that the powers of the accounting officer of the Commission in the implementation of the budget (that is, as regards the collection of revenue, payment of expenses and the management and preservation of the Commission's funds and assets) are very considerable. The same is true of his duties in maintaining the inventory of Community property, the establishment of a record of its assets and liabilities and the inventory for income and expenditure. I refer the Court here to Articles 22, 26, 27, 35, 41, 42, 43, 44 and 45 of the Financial Regulation of 30 July 1968 (OJ L 199). It is also made clear by the provisions in the Financial Regulation to the effect that the accounting officer is responsible for more than purely formal verification. He is expressly—in Article 26—enjoined to secure the safekeeping of the Community's rights, and Article 43 says that he is to suspend payment in the event of substantive errors, or of the validity of the discharge being contested. There is a corresponding special provision (Article 49) to the effect that the accounting officer shall render himself liable to disciplinary action and, where appropriate, to payment of compensation as regards payments made by him. He

may also insure himself against the risks arising under Article 49, at the cost, in part, of the Commission.

Nevertheless, and in spite of the fact that after the merger of the executives the extent of the duties of the accounting officer was considerably increased, the above considerations do not justify the conclusion that the Commission's appointment of the accounting officer to Grade A3 and his classification in the administrative hierarchy were wrong. The references in the Financial Regulation to the nature of the duties of the accounting officer are not sufficient for this, not least because the Commission's definition of basic posts mentions the existence of comparable powers of verification in lower grades.

2. In fact in all cases such as the present the most likely source of support for the applicant is to be found in a comparison with the grade given to officials who perform similar duties. The applicant has made such a comparison on several levels. The most important consideration in his opinion is the position in the hierarchy of the authorizing officers and the financial controllers, both concerned with the implementation of the Operational Budget. Since these are classified in Grade A1, the accounting officer should be graded likewise, since his duties are a complement to the powers of the authorizing officers and the financial controllers. Let us see, therefore, what the truth of this matter really is.

(a) As regards the authorizing officers, first, it seems to me—I may as well say this straight away—that even the description of their duties in the Financial Regulation is sufficient to raise considerable doubts as to the validity of the comparison put forward by the applicant. The Financial Regulation reveals that the authorizing officers are generally responsible for entry into commitments regarding expenditure, establishing entitlements to be collected and issuing proof of revenue and payments (Articles 22, 25 and 35 of the Financial Regulation). In order to do this they must undertake far-reaching and substantial investigations. According to Article 32 their clearance of expenditure verifies the existence of the rights of the creditor, the amount of the existing debts and the date on which payment falls due. According to Article 37 a payment order shall be accompanied by the original supporting documents, on which the correctness of the amounts to be paid, the receipt of supplies and the performance of the service are to be certified. A number of other functions complete the picture. Thus, it is the authorizing officer who gives approval for the final award of a contract under the adjudication procedure under Article 53. According to Article 61, in the event of any property in the inventory's being disposed of or missing, the authorizing officer shall draw up a statement accordingly which shall refer in particular to any obligation that may devolve on an official of the Communities or any other person to replace the item in question.

This sketch of the duties of the authorizing officer is already sufficient to justify the conclusion that they involve a higher degreee of responsibility than those of the accounting officer and that consequently one is not bound to treat them as equal.

But should one be reluctant to plunge into such delicate questions of assessment, there remains one conclusive argument provided by the Commission. The truth is simply that the authorizing officers are not *as such* classified in Grade A1. They are in Grade A1 because they are *Heads of Directorates-General,* that is, by reason of their duties as Directors-General which are of course much wider than their purely budgetary responsibilities. Later the powers of authorizing officer in budgetary matters were added precisely because the Commission took advantage of the opportunity of delegating the powers of authorization which were

originally vested in it. Moreover this delegation was accomplished in varying degrees, that is to say, the Directorates-General were by no means all given a *uniform* weight of responsibility for budgetary matters, and besides the powers were not delegated exclusively at the level of Director-General. So it is clear that a comparison of the applicant's duties with those of authorizing officers in no way helps to judge the applicant's claim.

(b) The same is true of his references to the position of the financial controllers. In reality it is much more true to say of these duties than of the duties of an accounting officer that they are the complement to the powers of the authorizing officer. It is the financial controller who approves the commitments of expenditure made by the authorizing officer and his payment orders, according to Articles 24, 30 and 39 of the Financial Regulation. Moreover his authentication is required by Article 61 for the statement by the authorizing officer to be made in the event of disposal of property listed in the inventory. Of *his* authenticating powers, too, it can be said that they have a very broad substantive scope, involving not only (according to Article 30) establishing the availability of appropriations, but also establishing that 'the expenditure is in order and is in accordance with the relevant provisions'. In this context the provision in Article 31 should not be forgotten. According to this in case of refusal to approve a proposal for a commitment a decision has to be obtained from the highest authority in the institution, and it is provided that the financial controller can refuse to approve even the confirmatory decision of that highest authority if the availability of appropriations is in doubt. The accounting officer, however, enjoys no such sweeping powers. The importance attached to the office of financial controller under the Financial Regulation is also evident from the fact that by virtue of Article 24 of the Financial Regulation all decisions in respect of the appointment, promotion and so on of financial controllers must be forwarded, for information, to the Council, whilst for accounting officers in this respect Article 68 requires only that the Audit Board be informed.

Without going further into the question whether it was right to give the financial controller the rank of a Director-General solely on the basis of the fact that the administrative unit headed by him should be regarded as a Directorate-General in the light of its scope and significance, I think I may safely conclude that a comparison of the applicant's duties with those of a financial controller does not provide any indication that his grading is faulty. Nor, lastly, is that conclusion in any way altered by the fact that the accounting officer, according to Article 49, is not only liable to disciplinary action in respect of payments made by him but is also liable to payment of compensation, where Article 47 provides that the financial controllers are liable only to disciplinary action if budgetary appropriations are exceeded or if they are guilty of gross negligence in the performance of their duties. However, this has nothing to do with the level of their respective duties, which is the only deciding factor, quite apart from the fact that the financial responsibility of the accounting officers is balanced by the opportunity provided for in Article 49(3) of taking up insurance the cost of which is partly to be borne by the Commission.

3. A third argument of the applicant relies on the separation of the functions of authorizing officers from those of accounting officers in the provision of the Financial Regulation and on the necessary independence of accounting officers in relation to authorizing officers and to the financial controller. Furthermore this is said to have been repeatedly emphasized by the Audit Board. Thus the accounting officer should be

subject to the direct authority of the Commission and be responsible to it. Since the applicant, however, was only entrusted with the tasks set out in the Financial Regulation, it would be incompatible with the abovementioned requirements to incorporate his administrative unit into a Directorate-General and a Directorate.

It can be said in support of this argument that it is certainly correct in its initial premise. This is borne out by Article 22 of the Financial Regulation and by the fact that on presenting his accounts the accounting officer obtains a discharge directly from the Commission. This does not necessarily mean, however, that the applicant should be classified in Grade A1. His independence can be secured even without such a grading so as to comply effectively with the requirements of the Financial Regulation. This was in fact done in the Commission's decision appointing the applicant as accounting officer. Article 2 of that decision states expressly: 'In the performance of their duties the accounting officer and the assistant accounting officers shall be responsible directly to the Commission'. Strictly speaking this can only be understood to mean that officials in the higher grades, and even those in the Directorate-General for the Budget, have no power to issue directions to the applicant as regards the performance of his duties as accounting officer. To this extent the present case bears a certain resemblance to Case 28/64[1], which concerned the assessment of the duties of the financial controller of the Council of Ministers. On that occasion the Court of Justice stressed that the independence of the applicant and the fact that even measures taken by very senior officials were subject to review by him was irrelevant to the classification of his duties, and, in addition, that the fact that the applicant is placed directly under the authority of a Director-General is of no significance. The same—*mutatis mutandis*—must apply in the present case.

Lastly it should be emphasized, as the Commission has done, that in relation to the administrative structure and the organization of posts within the Commission individual officials can enjoy only very limited opportunities for making complaints and for submitting them for review by the Court. In principle, the applicant could only plead on this point that according to the definition of posts in the Commission the only possibility for officials directly subordinate to the Commission is to be classified in Grade A1. But the very wording of the abovementioned definition shows this to be incorrect. According to this it is possible in individual cases for even Grade A2 officials to be directly subordinate to the Commission. In addition to this, however, it should be stressed that naturally the Commission in no way infringes the provisions of the Staff Regulations if it makes other departments and administrative units directly subject to itself. Accordingly, the applicant's references to the necessary independence of the accounting officer and his direct responsibility to the Commission in fact do not provide any arguments in support of his claim to be classified in Grade A1.

4. The same goes for the applicant's argument that, within the EEC Commission, the division of which he is in charge, together with the Financial, Treasury and Accounts Departments constituted an administrative unit subject to a Director-General.

This argument is convincingly refuted by the Commission with the statement that in fact the administrative unit in the EEC Commission referred to by the applicant embraced other services as well (to be precise: the Divisions for Budget and for Financial Control). And if the comparison fails at this point, it is clear that reference to the administrative struc-

1 — [1965] E.C.R. 137.

ture of the former EEC Commission serves no purpose with regard to judging the merits of the present case.

5. The last observation to be made on the applicant's claim it that none of the earlier executives appear to have accorded their accounting officer the rank of an A1 official. The highest grade was in fact only A3. In view of the varying range of the duties conferred on them, however, this remark can certainly not amount to a conclusive argument. But it does have at least some value as a general indication, in the same way as the classification of the corresponding duties by other institutions of the Communities.

6. It only remains for me to sum up. My opinion is that the applicant cannot successfully claim that the Commission has a duty, because it has appointed him as accounting officer, to raise his classification by two grades to Grade A1. The application must therefore be dismissed in its entirety as unfounded. According to the provisions of the Rules of Procedure the applicant must therefore bear his own costs.