OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 12 April 1989 *

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Mr President,
Members of the Court,

1. The proceedings brought by Mr Maurissen and the European Public Service Union ('the Union') against the Court of Auditors are essentially concerned with the arrangements for distributing trade-union communications and the granting of time off for the purpose of trade-union activities. However, we are not concerned today with the substance of those questions since the Court has decided first to consider whether the action brought by the applicants is admissible — the Court of Auditors says it is not.

2. It will be recalled that the actions brought separately by Mr Maurissen and the European Public Service Union are directed against two letters from the Court of Auditors:

(i) the first dated 17 March 1987, addressed to Mr Maurissen, suspending the distribution of trade-union communications by the internal messenger service;

(ii) the second dated 31 March 1987, addressed to the Union, refusing to

* Original language: French

accede to its request of 11 March 1987 for the grant of time off for its representatives to take part in meetings between the Commission and the trade unions on salaries, the crisis levy and the Staff Regulations. [1]

3. It should also be noted that, by order of 10 July 1987, the President of the Third Chamber dismissed Mr Maurissen's application for an order suspending the operation of those measures.

4. I shall consider the admissibility of the two applications separately.

I — The admissibility of Mr Maurissen's application

5. Let me first point out that the applicant inappropriately places reliance on the order given in response to his application for interim relief. He attaches importance to the fact that that decision did not determine that his application was inadmissible. However, although it is true that 'an application for the adoption of interim measures is inadmissible if the main application is manifestly inadmissible', [2] it must be remembered that 'the judge charged with the task of adjudicating on an application for interim relief cannot prejudge . . . whether the main application is admissible'. [3]

6. That having been made clear, a distinction must be drawn between the objections of inadmissibility relating to the letter of 17 March 1987 and those relating to the letter of 31 March 1987.

(1) *The admissibility of the application against the letter of 17 March 1987*

7. With respect to the letter of 17 March, the Court of Auditors contends that it is not an act having an adverse effect in so far as 'it in no way affects the position of the applicant under the Staff Regulations and he, for his part, has no interest in insisting that trade-union leaflets should be distributed by the messenger service'. Moreover, it is undisputed that trade-union publications continue to be distributed in the Court of Auditors but this is now done by trade-union officials; accordingly, the applicant cannot assert that it is impossible for him and the employees of the Court of Auditors to keep themselves informed of action undertaken by the trade-union.

8. I should emphasize straight away that the concept of a measure having an adverse effect constitutes a precondition for admissibility and no assessment of legality is involved. At this stage, there is no question of determining whether the Court of Auditors is legally obliged to provide for the distribution of trade-union communications by its messenger service: that is a matter of substance.

9. In that connection I will quote from Mr Advocate General Trabucchi's Opinion to the effect that:

'Article 91 of the Staff Regulations . . . sets up a procedure which serves not only to

1 — More specifically, the meetings concerned were known as 'policy consultation' meetings relating to the consultation procedure introduced by the Council decision of 22 and 23 June 1981.

2 — Order of the President of the Third Chamber of 11 June 1985 in Case 146/85 R [1985] ECR 1805.

3 — *Ibidem*; see Article 86(4) of the Rules of Procedure: 'The order shall have only an interim effect, and shall be without prejudice to the decision of the Court on the substance of the case'.

protect the officials' subjective rights . . . but is intended rather to allow objective examination of the legality of the conduct of the Community administrative authority'. [4]

Like Mr Trabucchi, [5] I consider that

'while it is true that the question of the admissibility of an act can sometimes be closely linked with the merits of the dispute, it would be wrong to confuse the procedural concept of an act adversely affecting an official, which merely imposes the requirement of a preliminary examination of his interest in bringing the action, and the concept of an act infringing a substantive right, which can arise only at the stage of a decision on the merits of the dispute'.

10. We thus have a very clear description of the function of the requirement of an 'act adversely effecting an official'. The parties have referred abundantly — but in support of opposing conclusions — to the previous decisions of the Court defining that concept as a measure liable to affect 'the position of officials and servants of the Community under the Staff Regulations' [6] or again, an act which is 'capable of directly affecting a given legal situation'. [7]

11. In order to derive useful guidance from those statements, it is of course appropriate to describe specific situations in which the Court has considered whether or not there was an act having adverse effects.

12. Thus, the Court declared inadmissible an action brought in respect of an observation addressed to an official by her superior following a mission away from her place of employment carried out without a travel order for that purpose. The Court stated that the dispute related

'exclusively [to] internal relationships within the service and, more particularly, questions of administrative and working organization in the offices of the Commission'. [8]

13. But it is not sufficient for the administration to allege that the contested measure is a matter of internal organization for the application *ipso facto* to be declared inadmissible. The Court stated in its judgment in *Labeyrie* that:

'the higher authority alone is responsible for the organization of departments which it must be able to determine and modify according to the exigencies of the service, *subject however to the necessity to respect the rights which servants enjoy under their Staff Regulations and which they can ask the Court to enforce*', [9]

and declared the action admissible on the view that a decision withdrawing from an official some of the departments over which

4 — Opinion in Case 35/72 *Kley*, judgment of 27 June 1973 [1973] ECR 679, in particular p. 697

5 — Whose view was wholly endorsed by Mr Advocate General Reischl in his Opinion in Case 60/80 *Kindermann*, judgment of 21 May 1981 [1981] ECR 1329.

6 — Judgment of 14 July 1976 in Case 129/75 *Hirschberg* v *Commission* [1976] ECR 1259.

7 — Judgments of 1 July 1964 in Case 26/63 *Pistoj* v *Commission* [1964] ECR 341, and in Case 78/63 *Huber* v *Commission* [1964] ECR 367, of 10 December 1969 in Case 32/68 *Grasselli* v *Commission* [1969] ECR 505, of 11 July 1974 in Joined Cases 177/73 and 5/74 *Reinarz* v *Commission* [1974] ECR 819, particularly at p 828, and of 21 October 1986 in Joined Cases 269 and 292/84 *Fabbro* v *Commission* [1986] ECR 2983.

8 — Case 129/75, *supra*, paragraph 18

9 — Judgment of 11 July 1968 in Case 16/67 *Labeyrie* v *Commission* [1968] ECR 293, paragraph I. B.1, point 3 (emphasis added).

he previously exercised his authority was of such a nature as to detract from his rights under Articles 5, 6 and 7 of the Staff Regulations.

14. Moreover, the Court has conceded that:

'it cannot be considered *a priori* that [a transfer decision] is not capable of adversely affecting the person concerned'

since

'even if a decision such as that does not affect the material interests or the rank of an official it may . . . adversely affect the *non-material interests* and future prospects of the officer concerned'. [10]

15. Finally, it should be recalled that in *de Dapper*[11] in which a number of officials alleged irregularities in the election of the European Parliament Staff Committee, Mr Advocate General Mayras stated that:

'however, whilst the rights of the applicants "*under the Staff Regulations*" *are not strictly speaking affected* by the manner in which the elections to the Staff Committee are held, the officials and servants of an institution, like the institution itself, have an *interest* in the proper appointment and composition of administrative bodies. The decision whereby the Committee of Tellers dismissed the applicants' complaint *adversely affected* them'. [12]

And the Court held that:

'it cannot be doubted that the applicants, who were at the same time voters and candidates in the contested elections, are qualified to bring their action and have a legal interest in doing so'. [13]

16. The Court's decisions thus display a degree of flexibility in appraising applicants' interest in bringing proceedings and the existence of acts adversely affecting them.

17. In the light of those observations, let us consider Mr Maurissen's circumstances in relation to the contested measure. In doing so, I shall consider two questions successively: first, is the distribution of trade-union communications of such a nature as to have any bearing on the applicant's position under the Staff Regulations? If so, does the measure in question objectively affect his position in that respect and, accordingly, does he have an interest in contesting it?

18. Article 24a of the Staff Regulations provides: 'officials shall be entitled to exercise the right of association; they may in particular be members of trade unions or staff associations of European officials'.

An individual right of trade-union membership is thus assured. And of course, the right is not to merely formal, passive membership. It is not merely the right to pay a subscription, it is also the right of the trade-union member to participate in collective action, a fundamental aspect of trade-union activity.

10 — Case 35/72, *supra*, paragraphs 4 and 5 (emphasis added), and Case 60/80, *supra*, paragraph 8.

11 — Judgment of 29 September 1976 in Case 54/75 [1976] ECR 1381.

12 — At p. 1394, emphasis added.

13 — Paragraph 27.

19. No kind of trade unionism is conceivable without information being given to members and to staff. If the distribution of trade-union information were not recognized as associated with the individual rights of officials who are members of trade unions, Article 24a would in that respect be reduced to a theoretical statement of a right shuttered within arcane limits depriving it of real scope. The output of trade-union views must therefore be regarded as an essential corollary of the individual right of trade-union membership vested in officials.

20. Can it be considered that the contested measure is liable to affect the applicant's position in that respect?

21. It seems to me undeniable that the distribution of trade-union communications by the internal messenger service considerably eased the task of trade-union officers, including the applicant. The delivery of trade-union leaflets to all officials, in all offices, following a single delivery to the messenger service clearly made matters simpler. Moreover, it helped to ensure efficient distribution to all employees of the institution, whether or not trade-union members. Recourse to traditional distribution of leaflets by members of the trade union constitutes an objectively much less favourable situation: the members necessarily have to use their free time — in the lunch hour or after work — for that purpose.

22. The Court of Auditors observed that the distribution of trade-union information still takes place, but now by different means. That fact, if correct, might support the defendant's contentions as to the legality of the contested measure. But it is not sufficient, for the purposes of considering admissibility, to rule out the possibility that discontinuance of the distribution of trade-union communications by the internal messenger service has an adverse effect.

23. As we have seen, the previous decisions of the Court bear out the possibility of an action against a measure which may adversely affect in particular the non-material interests of the employee concerned. The measure at issue here is one which already affects the specific conditions for the exercise of the trade-union rights of the applicant who will have to devote his own time to the task of distribution. Moreover, it seems that the trade-union member's own non-material interests are affected by a measure which renders the distribution of trade-union information considerably less easy.

24. The contested measure consequently appears liable significantly to affect the applicant's position as regards the exercise of his trade-union rights. In that respect I would particularly emphasize the not inconsiderable impact of the contested measure. Let me recall the views of Mr Advocate General Roemer regarding the exclusion of applications against measures of an internal nature:

'The principle arises from the desire to avoid outside jurisdiction encroaching too far on *the details of the business of an administration*, for such interference might affect the productivity of public bodies and is *difficult to reconcile with the dignity of judicial decisions*'. [14]

14 — Case 16/67, *supra*, Opinion, p. 449, paragraph I.1, emphasis added.

25. And, moreover, it has been written with regard to the approach adopted by French law to measures of an internal nature:

'The basis of this case-law is eminently *practical*: the aim is to protect administrative courts from the burden of actions brought against decisions of scant importance'. [15]

26. Without going so far as to assert that this in fact merely represents the application of the principle *praetor de minimis non curat*, I would invite the Court in any event to:

'accept a concept of "act adversely effecting" clearly distinguished from, and in any case wider than, that of an act infringing the official's subjective right' [16]

and, applying that concept in the present case, declare Mr Maurissen's application admissible in that respect.

(2) *The admissibility of the application against the letter of 31 March 1987*

27. In response to the action brought against the letter of 31 March 1987, the Court of Auditors denies that the contested measure constitutes a decision adversely affecting the applicant which he has a personal interest in having annulled, and contends, moreover, that it is a confirmatory decision.

28. As regards the latter submission, the defendant contends first that the contested measure confirmed a refusal addressed to the applicant on 25 March 1987. On that date, Mr Maurissen was informed, in response to an application made by him on 23 March, that he was not to be released from his duties for the day of 27 March. He did not appeal against that decision.

29. It should be noted that the statement of the reasons contained in the letters of 25 and 31 March is absolutely identical. However, the letter addressed to the trade union actually rejected the very principle of any time off work whereas the reply of 25 March concerns time off for one day only. However, the reasons on which the latter decision was based were such that, logically, no time off work would be granted at all.

30. However, it does not seem to me to be necessary to go into this matter in any greater detail since previous decisions of the Court support the view that the application is admissible, even though the letter of 31 March confirms, as far as Mr Maurissen is concerned, the decision of 25 March. In dealing with a similar difficulty in the *Morbelli* case, the Court held the application to be admissible.

31. The Commission had there raised an objection of inadmissibility against an action against an express decision confirming an implied decision of rejection, which was in fact brought within the period allowed for proceedings against the latter decision. The Court held that:

'since the decision of 30 May 1980 and the earlier implied decision to reject the complaint were the same in substance, it is irrelevant to establish which of those decisions the application formally contests

15 — Vedel et Delvolvé: 'Droit administratif', PUF, 1982, p. 246, emphasis added.

16 — Opinion of Mr Advocate General Trabucchi in Case 35/72, *supra*, at p. 697.

in view of the fact that *the adoption of the confirmatory measure and the lodging of the application occurred within the limitation period* which started to run from the date of the implied decision rejecting the complaint'. [17]

In the present case, it is undeniable that both the letter of 31 March 1987 and the action by Mr Maurissen fell within the period whose commencement was marked by the decision of 25 March 1987.

32. Finally, the Court of Auditors contends that the letter of 31 March 1987 confirms its position that it is unable to grant special leave without a legal basis for it. Apart from the decision of 25 March which I have just mentioned, it did not refer to any specific measure in that connection. The procedural concept of a confirmatory measure presupposes the existence of a previous measure which it merely repeats: the measure 'confirmed'. The Court will therefore dismiss that submission.

33. It is now necessary to consider whether the letter of 31 March 1987 constitutes a measure adversely effecting Mr Maurissen, which he has an interest in having annulled. My observations will be fairly brief in view of what I have said previously concerning the decision of 17 March 1987.

34. As we have seen, membership of a trade union includes for the official concerned the right to take an active part in trade-union activity. It seems to me to be obvious that the meetings in question, concerning 'political consultation' regarding the Staff Regulations and salaries are particularly characteristic of trade-union activity. The refusal to grant time off work seems clearly liable to affect Mr Maurissen's personal situation. Unless he takes annual leave for that purpose, he is unable to engage in his trade-union activities.

35. In other words, the contested measure does adversely affect the applicant. His interest in seeking its annulment, a personal and well defined interest, cannot therefore be contested.

II — The admissibility of the application by the European Public Service Union

36. In the first place, it is appropriate to consider the formal objection of inadmissibility based on Article 38(5) and (7) of the Rules of Procedure: subheading (1) *infra*. I shall then briefly consider the possibility of the applicant relying on the remedy provided by Article 91 of the Staff Regulations: subheading (2) *infra*. Finally, I shall assess the admissibility of the application in so far as it is based on Article 173 of the Treaty: subheading (3) *infra*.

(1) *The formal admissibility of the application*

37. According to the Court of Auditors, the application is inadmissible [18] because there is no proof that the instructions given to the lawyer to bring the action were properly drawn up by a representative with authority to do so.

17 — Judgment of 21 May 1981 in Case 156/80 *Morbelli* v *Commission* [1981] ECR 1357, paragraph 14, emphasis added

18 — In view of the observations in the defendant's rejoinder, it should be noted that a complete copy of the applicant's statutes has been lodged at the Court Registry In this respect, therefore, the application has been put in order.

38. It will be remembered that the European Public Service Union produced a power of attorney granted on 18 June 1987 to Maître Louis by Mr Adam Buick, the General Secretary, 'pursuant to the decision adopted on 23 March 1987 by its Executive Committee'. The Court asked the applicant to furnish documents proving that Mr Buick was validly empowered to give such instructions, such as decisions of the Executive Committee, minutes of a meeting or an extract from the Register of Resolutions.

39. The Union did not produce any such documents. However, it stated that its Executive Committee decided at a meeting of 19 December 1988 to give the following answer to the Court's request: 'The General Secretary in fact had general authority to bring any action before the Court of Justice on behalf of the Union. The power of attorney given on 18 June 1987 was, so far as necessary, ratified at the meeting of the Executive Committee on Thursday, 25 June 1987. The Executive Committee confirms that Mr A. Buick was therefore validly empowered to give a power of attorney to Maître Louis to institute proceedings against each of the contested decisions'.

40. In any event, there is no escaping the fact that it has not been proven that at the date on which the action was brought Mr Buick was 'authorized' to give instructions to the lawyer. What impact will this situation have on the admissibility of the action?

41. Article 38(7) of the Rules of Procedure provides that the Court will decide whether failure to comply with the requirements of paragraphs 2 to 6 of that article — that is to say, the formal requirement at issue — must give rise to rejection of the application on the ground of want of form. The Court thus has a discretion in that regard. It should also be noted that Article 38(7) allows matters to be rectified after the application has been lodged.

42. In my opinion, it would be excessively formalistic to reserve the benefit of that provision exclusively for cases where, after the lodging of the application, an instrument of an earlier date is produced. In the present case, the reply addressed to the Court at least indicates the incontestable wish of the Executive Committee of the Union to regularize the situation by 'confirming' the power of its General Secretary to bring the action. I therefore invite the Court to take the view that the Resolution of 19 December 1988 constituted *ex post facto* regularization of the application, within the scope of Article 38(7) of the Rules of Procedure.

(2) *Article 91 of the Staff Regulations*

43. In view of previous decisions of the Court, the arguments advanced by the European Public Service Union, which moreover were raised for the first time at the hearing, must be categorically rejected. The Court has held that:

'a staff association which fulfils those conditions is entitled, by virtue of the second paragraph of Article 173 of the EEC Treaty, to institute proceedings for annulment against a decision addressed to it within the meaning of that provision',

but,

'on the other hand, the bringing of a direct action is inadmissible under the arrangements provided under Articles 90 and 91 of the Staff Regulations'. [19]

44. Admittedly, the Court held that:

'Article 179 is available as a basis on which arrangements may be made for settlement by the Court of *collective* as well as individual disputes', [20]

but it immediately went on to say:

'this does not alter the fact that the procedure for complaint and appeal established by Articles 90 and 91 of the Staff Regulations is designed *to deal exclusively with individual disputes*'. [20]

45. And the Court ruled out the possibility of a trade union, even if it invokes interests appertaining to it, relying on the remedy in question, since, even though the Advocate General had not ruled out such an entitlement, the Court held that:

'the channel of appeal provided for in Article 91 *is available only to officials or servants*'. [21]

19 — Judgments of 8 October 1974 in Case 175/73 *Union syndicale* v *Council* [1974] ECR 917, paragraphs 17 and 18, and in Case 18/74 *Syndicat général du personnel* v *Commission* [1974] ECR 933, paragraphs 13 and 14.

20 — Case 175/73, *supra*, paragraph 19, and Case 18/74, *supra*, paragraph 15, emphasis added.

21 — Case 175/73, *supra*, paragraph 20, and Case 18/74, *supra*, paragraph 16, emphasis added.

46. Accordingly, I conclude that it is impossible for a trade union to rely on the provision mentioned above.

(3) *Article 173 of the Treaty*

47. The admissibility of the European Public Service Union's action, on the basis of Article 173 of the Treaty, calls for more detailed observations.

48. The first question which must be resolved is whether, in so far as the first paragraph of Article 173 is silent in that regard, measures adopted by the Court of Auditors may be the subject of an action for annulment: subheading (a) *infra*. I shall then analyse the admissibility of the application against, successively, the letter of 17 March 1987: subheading (b) *infra*, and the letter of 31 March 1987: subheading (c) *infra*.

(a) *The admissibility of the application in so far as it is directed against an act of the Court of Auditors*

49. The parties' observations do not make our task any easier since they contain very little information: the Court of Auditors merely states that it is for the Court to resolve the difficulty and, at the hearing, the European Public Service Union merely referred to the possible transposition of the solution adopted with respect to the European Parliament in the judgment in *Les Verts*. [22] Since the parties did not feel themselves constrained to enter into a discussion

22 — Judgment of 23 April 1986 in Case 294/83 *Parti écologiste 'Les Verts'* v *European Parliament* [1986] ECR 1339.

on the matter, I shall make the following remarks.

50. The first paragraph of Article 173 provides for an action for annulment to be brought only against acts of the Commission and the Council. That article does not therefore refer to the Court of Auditors. Moreover, the Treaty contains no provision relating to the Court of Auditors analogous to Article 180 giving the Court jurisdiction to review certain acts of the European Investment Bank under the conditions laid down in Article 173.

51. However, the letter of that provision cannot constitute an insuperable impediment since the Court has held that acts of the European Parliament, although not covered by that provision, may be the subject of an action for annulment if they produce legal effects *vis-à-vis* third parties.

52. In adopting that course, the Court affirmed the need for complete judicial protection in the following terms:

'It must first be emphasized in that regard that the European Economic Community is a Community based on the rule of law, inasmuch as neither the Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty.

. . .

An interpretation of Article 173 of the Treaty which excluded measures adopted by the European Parliament from those which could be contested would lead to a result contrary both to the spirit of the Treaty as expressed in Article 164 and to its system'. [23]

53. Expressed so unreservedly, that analysis can be applied without limitation to review of measures adopted by the Court of Auditors.

54. The *ratio decidendi* of the Court's judgment in that case in my opinion renders otiose any discussion whether the Court of Auditors is an institution in the strict sense. [24] The need to review the legality of measures can be no less pressing in the case of a measure adopted by a 'quasi-institution' [25] or 'an auxiliary body vested with specific powers of an administrative nature'. [26]

55. I should also point out that in its judgment in *Les Verts* the Court considered that the Parliament had not been expressly included in the first paragraph of Article 173 as a body whose acts could be the subject of an action for annulment because of the extremely limited nature of the powers initially conferred on it.

23 — *Ibidem*, paragraphs 23 and 25.

24 — It should be noted that the second paragraph of Article 1 of the Staff Regulations provides that: 'Save as otherwise provided for, the Economic and Social Committee and the Court of Auditors shall, for the purpose of these Staff Regulations, be treated as institutions of the Community'; moreover, the Council decision of 22 and 23 June 1981 setting up a consultation procedure states that 'for the purposes of the present provisions, the Court of Auditors and the Economic and Social Committee shall have the standing of institutions'.

25 — G. Isaac: *Les finances communautaires*, RTDE No 2, 1980, p. 347.

26 — Megret, Waelbroek, Louis, Vignes, Dewost: *Le droit de la Communauté économique européenne*, Vol. 11, *Dispositions financières*, p. 84, by A. Sacchettini, who notes the absence of the Court of Auditors from Article 4(1) of the Treaty.

56. *A fortiori*, the non-inclusion of the Court of Auditors may be accounted for in the same way: it was created by virtue of the Treaty of 22 July 1975, which entered into force on 1 June 1977.[27] It did not therefore exist when the Community came into being.

57. But in particular it should be noted that the task entrusted to it consists in the preparation of reports, observations and opinions,[28] which are not acts against which proceedings can be brought. The supervisory function entrusted by the Treaty to the Court of Auditors is not exercised by means of decisions. Accordingly, the absence of provisions concerning the susceptibility of its acts to litigation follows logically from their very nature. On the other hand, if the Court of Auditors feels it necessary to take measures which produce definitive legal effects, the judicial review available in the Community would be incomplete if the Court declined to examine them.

(b) *The application against the letter of 17 March 1987*

58. Let it be said at the outset: in so far as it is directed against the letter of 17 March 1987 the European Public Service Union's action seems to be inadmissible as being out of time.

59. The application was lodged on 22 June 1987. A letter dated 26 March 1987 from the President of the Union states: 'We consider this refusal (to allow the leaflet to be distributed by the internal messenger service) to be an attack on the exercise of trade-union rights in the Court of Auditors. The European Public Service Union will take such further action as may be called for'.

27 — OJ L 359, 31.12.1977.

28 — Articles 78f of the ECSC Treaty, 206a of the EEC Treaty and 180a of the EAEC Treaty.

60. The Union contends that it was unable to commence proceedings until its Executive Committee had properly had an opportunity to consider it on 4 May 1987. Such considerations can have no impact on the calculation of time-limits, the starting date for which cannot be altered on the basis of factors relating solely to the applicant's internal procedures.

61. Consequently, it must be concluded that on 26 March 1987 the Union had certain knowledge of the contested measure. The period for bringing proceedings thus expired two months later and the applicant's action was in any event time-barred since the application was lodged on 22 June 1987. It having been established beyond doubt that the application was out of time, it is unnecessary to consider whether the contested measure was of direct and individual concern to the applicant.

(c) *The admissibility of the application against the letter of 31 March 1987*

62. The admissibility of the application in so far as it is directed against the letter of 31 March 1987 remains to be considered.

63. In the first place, the Court of Auditors claims that the Union's application was out of time.

64. It contends that it sent the contested letter on 31 March and in that regard has produced a copy of its register of outgoing mail. Having regard to the efficiency of the Luxembourg postal service, it is claimed that it necessarily came to the applicant's cognizance on the following day. The

action, brought on 22 June, is therefore out of time.

65. That argument calls for two observations. The first is brief, but it is not any the less incisive. I must express the most serious reservations about evidence from a person's own sources. No document purporting to support a party's allegations which emanates from that party should be taken into account by the Court. In any case, I should point out that the document produced by the Court of Auditors does not in any case establish the date on which the communication was received.

66. The second observation relates to the burden of proof as to the date on which a document was definitely received. The Court has adopted two solutions in previous decisions. In *Belfiore*, the Court stated:

'However, it is necessary to point out that the Commission despatched the letter of 12 February 1979 without taking the precaution of having it registered or arranging to have it accompanied by a form for acknowledgment of receipt, even though it had taken both those steps when it sent previous messages to the applicant. In those circumstances and taking into account the fact that the onus of proving notification and the date thereof lies on the Commission, it must be declared that the latter has placed itself in a position in which it cannot adduce conclusive evidence on this point and that, in the case of notification of such an important decision as compulsory resignation, the applicant is entitled to the benefit of the *slight doubt* as to the date when the period prescribed for bringing the action began to run'. [29]

29 — Judgment of 5 June 1980 in Case 108/79 *Belfiore* v *Commission* [1980] ECR 1769, paragraph 7, emphasis added.

67. In the case of *Michel*, in which the European Parliament contended that an action brought against a decision contained in an ordinary letter was out of time, the Court stated that:

'the addressee of an unregistered letter is not required to show the reasons for any delay in its delivery'. [30]

68. But it is true that in those two cases the applicants formally claimed that they had received their letters on dates such that their actions had been brought within the period prescribed for bringing proceedings if those dates were taken as the *dies a quo*. In the present case the Union has never claimed that it received the letter dated 31 March at a later date than 22 April 1987. In fact, in its written reply it states essentially that it was impossible for its Executive Committee meetings of 13 and 27 April 1987 validly to consider the letter in question owing to the lack of a quorum. Nor was it contended at the hearing that there had been an exceptional delay in the delivery of the letter.

69. Moreover, by claiming that the Executive Committee could not validly consider the letter of 31 March at its meeting of 13 April, the Public Service Union appears to concede by implication that the letter had arrived by that date. If that was not the case, why should the Union seek to rely on its rules of procedure when it would have been sufficient to state that the letter had not yet reached it?

30 — Judgment of 26 November 1981 in Case 195/80 *Michel* v *Parliament* [1981] ECR 2861, paragraph 11.

70. However, the Union also states that the minutes of the Executive Committee meetings of 13 and 27 April show that its members had no knowledge of the letter of 31 March 1987. It is obvious that there remains a degree of uncertainty as to whether the actual receipt of the letter by those dates is contested.

71. No proof of a conclusive date of receipt has therefore been produced; at least a 'slight doubt' remains. However slight it might be, if the Court reaffirms the principle that it is incumbent upon the sender to furnish proof of the notification and the date thereof — a course which combines the virtues of simplicity and legal certainty — it will dismiss the submission that the action was brought out of time. That is what I propose that the Court should do.

72. The next question is whether the contested measure confirms the refusal addressed to Mr Maurissen on 25 March 1987, as the defendant contended at the hearing.

73. That contention appears to me to be irrelevant. The letter of 25 March constitutes an individual response to an individual request made by Mr Maurissen on 23 March. At the most it is with respect to the latter, but only with respect to him, that the contested measure might be seen as confirming an earlier refusal. [31] By contrast, the letter of 31 March 1987, addressed to the European Public Service Union and constituting a reply to the latter's request dated 11 March, relates to the grant of time off work for all the members of the trade-union delegation at the Court of Auditors. At the very least, its subject-matter is much wider than that of the refusal addressed to Mr Maurissen. In other words, the letter of 31 March addressed to the Union in reply to a request made by that union refusing to grant time off work for all the officials named by the European Public Service Union cannot be deemed to be confirmatory with respect to the union of a previous refusal in respect of a separate individual request made by one of the persons concerned.

74. My observations will also be succinct regarding the submission that the letter of 31 March 1987 did not adversely affect the European Public Service Union, since it confirmed the position adopted by the appointing authority which has never granted, in the absence of any legal basis for doing so, special leave for attending trade-union meetings. I have in fact already considered that submission levelled against Mr Maurissen's action and concluded that it was irrelevant in view of the absence of any 'confirmed measure'.

75. I would then point out that the Union's interest in bringing an action does not merge with Mr Maurissen's interest. As we have seen, the latter seeks the annulment of a measure likely to affect his personal right to carry on a trade-union activity. By contrast, in challenging the refusal, as a matter of principle, to grant time off work, the Union is seeking to defend its own interest. The annulment of the decision at issue would involve recognition of its right to be represented at consultation meetings which is denied it by virtue of the position adopted by the Court of Auditors. It thus seeks to ensure 'observance of . . . its own legal rights existing independently of the rights and interests, which the Court exists to protect, of individuals in a service relationship'. [32]

31 — Case 195/80, *supra*, paragraph 28 *et seq.*

32 — Opinion of Mr Advocate General Trabucchi in Case 18/74, *supra*, especially at p. 955.

76. Finally, I shall without the slightest hesitation dispose of the submission that the contested measure is not of direct and individual concern to the applicant. The applicant is the addressee of the measure. It is therefore in the situation envisaged in the first of the alternatives contained in the second paragraph of Article 173. It is therefore wholly incorrect in this instance to invoke the requirement laid down in that provision for cases where the measure is addressed to a third party.

77. I therefore propose that the Court:

(i) declare admissible the action brought by Mr Maurissen, and also that brought by the European Public Service Union in so far as it is directed against the letter from the Court of Auditors dated 31 March 1987,

(ii) declare the European Public Service Union's action inadmissible in all other respects,

(iii) reserve the costs until judgment is delivered on the substance of the case.