1. As a general rule, any action brought by an official against the institution which employs him must necessarily be preceded by an administrative complaint which has been rejected by express or implied decision. As a result of Article 91(2) of the Staff Regulations, an action brought before that preliminary procedure has been completed is premature and therefore inadmissible.

2. A trade union may not bring an action under Article 91 of the Staff Regulations because the remedy provided by Article 91 is available only to officials and other servants of the Communities and not to trade-union organizations.

3. An action concerning a dispute within the sphere of the civil service which is brought by a trade-union organization under the second paragraph of Article 173 of the Treaty does not fall within the jurisdiction attributed to the Court of First Instance by Article 3 of the Council Decision of 24 October 1988. When such an action is brought before the Court of First Instance, it must refer it to the Court of Justice.

## ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
4 December 1991 *

In Case T-78/91,

**Andrew Macrae Moat,** an official of the Commission of the European Communities, residing at Brussels, represented by Eric Moons, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Lucy Dupong, 14A Rue des Bains,

and

**The Association of Independent Officials for the Defence of the European Civil Service/Association des fonctionnaires indépendants pour la défense de la fonction publique européenne (TAO/AFI),** based in Brussels, represented by Eric Moons, of

* Language of the case: English.

the Brussels Bar, with an address for service in Luxembourg at the Chambers of Lucy Dupong, 14A Rue des Bains,

applicants,

v

**Commission of the European Communities,**

defendant,

APPLICATION, first, for the annulment of the referendum organized by the Commission on 18 October 1991 in which staff were asked to vote on the compromise reached by Coreper and staff representatives on the method of adapting the remuneration of officials and other servants of the European Communities; secondly, for a declaration recognizing TAO/AFI's right to continue the negotiations; and, thirdly, for an order that the Commission should pay exemplary damages,

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
(Fourth Chamber),

composed of: R. García-Valdecasas, President, D. A. O. Edward and C. Briët, Judges,

Registrar: H. Jung,

makes the following

## Order

1 By application received at the Registry of the Court of First Instance on 30 October 1991, Mr Andrew Macrae Moat, an official of the Commission of the European Communities, on the one hand, and the Association of Independent Officials for the Defence of the European Civil Service (TAO/AFI), on the other, brought an action, on the basis of Articles 90 and 91 of the Staff Regulations and Article 173 of the EEC Treaty, respectively, for the annulment of the referendum organized by the Commission on 18 October 1991 in which staff were asked to vote on the compromise reached by the Permanent Representatives Committee ('Coreper') and staff representatives on the method of adapting the remuneration of officials; for a declaration recognizing the right of TAO/AFI and other trade unions and professional associations to continue the negotiations pursuant to the Council Decision establishing a concertation procedure which was adopted at the 713th meeting of the Council, held on 22 and 23 June 1981 ('the Decision of 22/23 June 1981'); and for an order that the Commission should pay TAO/AFI exemplary damages, estimated at BFR 1 000 000.

2 The facts, as they are set out in the application, may be summarized as follows. Since May 1991, the trade unions and professional associations which have members among the Commission's staff have been conducting negotiations on the adaptation of the remuneration of officials and other servants of the Communities in the context of the Decision of 22/23 June 1981 establishing a concertation procedure as between the Council, on the one hand, and the staff, represented by the trade unions and professional associations, on the other, for use in the event of disputes about proposals relating to the amendment of the Staff Regulations or to the implementation of its provisions. The negotiations had not even reached the stages of discussions with members of the Council and arbitration provided for in sections II and III of the Decision of 22/23 June 1981, when, by a note dated 15 October 1991, the Secretary-General of the Commission, Mr Williamson, and the Director-General for Personnel and Administration, Mr De Koster, announced that a referendum by secret ballot would be held on 18 October 1991 for officials and other servants of the Community to vote on the compromise put forward by the President of Coreper with regard to the method for the adaption

of their remuneration. In another note, dated 15 October 1991 and signed by a member of the Commission, Mr Cardoso e Cunha, the Commission told the staff that in its opinion the negotiations should end, and invited the staff to approve the proposed compromise. On 17 October 1991 Mr Moat, in his capacity as President of the Brussels Section of TAO/AFI, submitted a complaint under Article 90(2) of the Staff Regulations in which he asked for the withdrawal of the aforementioned two notes of 15 October 1991. The referendum was held on 18 October 1991. The applicants claim that irregularities took place both before and during the referendum, and that the organization of the referendum was contrary to Article 24a of the Staff Regulations, which guarantees the right of association.

3 First, in so far as the action was brought by Mr Moat, it must be pointed out that the Court has consistently held that, as a general rule, any action, within the meaning of Article 179 of the EEC Treaty, brought by an official against the institution which employs him must necessarily be preceded by a complaint which has been rejected by express or implied decision. As a result of Article 91(2) of the Staff Regulations, an action brought before that preliminary procedure has been completed is premature and therefore inadmissible (see, for example, the order in Case 130/86 *Du Besset* v *Council* [1986] ECR 2619, at 2621, the judgment in Case 401/85 *Schina* v *Commission* [1987] ECR 3911, at 3929, and the judgment of the Court of First Instance in Joined Cases T-47/89 and T-82/89 Marcato v *Commission* [1990] II-231, at 241).

4 In this case, Mr Moat, in his capacity as President of the Brussels Section of TAO/AFI, submitted a complaint on 17 October 1991. He then brought this action without waiting for the Commission to take an express decision rejecting the complaint or for the expiry of the four-month period laid down in Article 90(2) of the Staff Regulations after which a complaint is deemed to have been rejected. Accordingly, it must be held that in so far as the action was brought by Mr Moat it is manifestly inadmissible, and it is unnecessary to consider whether the other admissibility requirements laid down in Article 91(2) of the Staff Regulations have been satisfied.

5 According to Article 111 of the Rules of Procedure of the Court of First Instance, where an action is manifestly inadmissible, the Court may, without taking further steps in the proceedings, give a decision on the action by reasoned order. Since, in so far as it was brought by Mr Moat, the action is manifestly inadmissible it is appropriate to dismiss it pursuant to Article 111 of the Rules of Procedure without its being necessary to notify the action to the Commission beforehand.

6 Secondly, in so far as the action was brought by TAO/AFI, the Court observes that, under Article 3(1)(a) of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities, it exercises at first instance the jurisdiction conferred on the Court of Justice in disputes between the Communities and their servants referred to in Article 179 of the EEC Treaty. In the case of actions brought against an institution of the Communities by a natural or legal person pursuant to the second paragraph of Article 173 of the EEC Treaty, the Court of First Instance has jurisdiction under Article 3(3)(c) of that Decision only where the action relates to the implementation of the competition rules applicable to undertakings.

7 As TAO/AFI itself states in the application, its action is based on Article 173 of the Treaty. In any event, it could not validly have been brought under Article 91 of the Staff Regulations because, as the Court has consistently held (judgments in Case 175/73 *Union syndicale and Others* v *Commission* [1974] ECR 917, at 926, in Case 18/74 *Syndicat général du personnel* v *Commission* [1974] ECR 933, at 945, and in Joined Cases 193 and 194/87 *Maurissen and European Public Service Union* v *Court of Auditors* [1989] ECR 1069, at 1075), the remedy provided by Article 91 is available only to officials and other servants and not to trade-union organizations. An action concerning a dispute within the sphere of the civil service which is brought by a trade-union organization under the second paragraph of Article 173 of the Treaty against an institution does not fall within the scope of Article 3 of the Council Decision of 24 October 1988. Consequently, the Court of First Instance manifestly lacks jurisdiction to entertain such an action. This is also true in so far as, in its other submissions, TAO/AFI seeks to obtain, as a consequence of the annulment of the contested measures, a declaration recognizing its right to continue the negotiations and an order that the Commission should pay exemplary damages.

8 According to the second paragraph of Article 47 of the Statute of the Court of Justice of the EEC, where the Court of First Instance finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice has jurisdiction, it is to refer that action to the Court of Justice. Article 112 of the Rules of Procedure of the Court of First Instance provides that such a decision to refer an action in the case of manifest lack of jurisdiction is to be made by reasoned order and without taking any further steps in the proceedings. Accordingly, in so far as the action was brought by TAO/AFI it is appropriate to refer the action to the Court of Justice without its being necessary to notify the action to the Commission beforehand.

## Costs

9 In so far as the action is declared inadmissible by this order, the decision on costs falls to be taken by the Court of First Instance. Since the order was made before the action was notified to the defendant, it is sufficient to decide that Mr Moat must pay his own costs in accordance with Article 87(2) of the Rules of Procedure of the Court of First Instance. In so far as the action was brought by TAO/AFI, it will fall to the Court of Justice to rule on the question of costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby orders as follows:

**1. In so far as the action was brought by Mr Moat, the action is dismissed as inadmissible;**

**2. In so far as the action was brought by TAO/AFI, the action is referred to the Court of Justice;**

**3. Mr Moat is to pay his own costs;**

**4. In so far as the action was brought by TAO/AFI, the costs are reserved.**

Luxembourg, 4 December 1991.

H. Jung
Registrar

R. García-Valdecasas
President