examination of the comparative merits of the various candidates, in accordance with the conditions specified in the vacancy notice and the principles laid down by Article 27 of the Staff Regulations.

3. The combined provisions of Articles 7 and 27 of the Staff Regulations provide that when any Community institution recruits, promotes or assigns its officials to posts, it must be guided on the one hand by the interests of the service without regard to nationality and on the other hand must ensure that they are recruited on the widest possible geographical basis from among nationals of the Member States of the Communities.

The institution reconciles those requirements when, in those cases where the qualifications of the various candidates are clearly the same, it makes nationality the overriding criterion in order to maintain or re-establish a geographical balance among its staff. However, in any other circumstances, the need to redress a geographical imbalance must be subordinated to the requirements of the interest of the service and the consideration of the personal merits of the candidates.

The appointing authority is thus empowered to make nationality the decisive criterion provided, however, that it first establishes on the basis of a comparative examination that the qualifications of the candidates are clearly the same.

In Case 85/82

BERNHARD SCHLOH, an official of the Council of the European Communities, assisted and represented by Edmond Lebrun, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Toni Biever, 83 Boulevard Grande-Duchesse-Charlotte,

applicant,

v

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by its Counsel, R. O. Dalcq, of the Brussels Bar, with an address for service at the office of H. J. Pabbruwe, Head of the Legal Affairs Department of the European Investment Bank, 100 Boulevard Konrad-Adenauer,

defendant,

APPLICATION for the annulment of the decision rejecting the applicant's candidature for the post of Director in Directorate General A, Directorate III (Budget and Staff Regulations), of the decision appointing J. J. Kasel to

the above-mentioned post, and the decision rejecting the complaint submitted in respect of the same matter by the applicant under Article 90 (2) of the Staff Regulations,

THE COURT (First Chamber)

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

Advocate General: G. Reischl
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

By Notice No 83/81 F of 17 June 1981 of the General Secretariat, the officials of the Council were informed of the vacancy of the newly-created post of Director of the Budget and the Staff Regulations (Category A, Grade 2), whose duties were described as follows:

"To manage, under the direct authority of the Director General, an administrative unit with responsibility for:

The budget and financial regulations/ accounts; Staff Regulations;

To assist the Director General and, under his supervision, maintain the appropriate contacts necessary in order to evaluate the importance of factors enabling work to progress;

To carry out specialized high-level research in the above-mentioned fields, based on an extensive knowledge of the general policy of the European Communities."

The qualifications required were the following:

"To be in Category A, Grade A 2;

Full university education evidenced by a degree or equivalent experience;

Thorough knowledge of one of the official languages of the Communities and satisfactory knowledge of another official language of the Communities."

The closing date for the submission of application was 8 July 1981.

By Notice No 86/81 F of the General Secretariat of 2 July 1981, the first of the above-mentioned qualifications was amended as follows:

"To be in Category A, *Grade A 2 or A 3*".

By notice of the General Secretariat No 94/81 F of 6 July 1981, the closing date for the submission of applications was postponed until 22 July 1981.

Bernhard Schloh and 14 other officials submitted applications within the prescribed period.

By letters of 31 July 1981, the Secretary General, in his capacity as appointing authority, rejected all the applications. The 14 candidates who were not of Luxembourg nationality received an identical letter worded as follows:

"With reference to your request for transfer in connexion with the post of Director in Directorate General A, Directorate III, and after considering your application, I regret to inform you that I have been unable to accept it. In order to fill the post, I am obliged to take into account not only the knowledge and experience required for this management post but also the need to maintain an appropriate geographical balance."

On the other hand, in the letter sent to the only candidate of Luxembourg nationality, the second sentence was altered to read as follows:

"In addition to the need to provide for appropriate geographical balance, the choice of candidate for this post is determined by the requirement of possessing the specific knowledge and experience necessary to perform these management duties. I am familiar with the details of your career and I consider that your specific knowledge and experience do not correspond to the duties of the abovementioned management post."

Three days before those letters were dispatched, the Agence Europe information sheet of 27 to 28 July 1981 included the following announcement:

"The assistant Chef de Cabinet, J. J. Kasel, is moreover leaving the service of the Commission in September to become director in the Secretariat of the Council."

By Decision No 817/81 of 11 September 1981, adopted under Article 29 (2) of the Staff Regulations of Officials, the appointing authority appointed to the vacant post J. J. Kasel, a Luxembourg national, 35 years of age, who had been in the service of the Commission since 1 January 1981, as a temporary servant, in Grade A 3 with the duties of assistant Chef de Cabinet to Gaston Thorn. Previously, according to the information contained in the communication NOVA 11/81 of 10 September 1981, Mr Kasel, in his capacity as an official of the Ministry of Foreign Affairs of the Grand Duchy of Luxembourg, performed the duties of Chef de Cabinet to the Vice-President of the Luxembourg Government (November 1979), of First Secretary in the Luxembourg Embassy in

Paris (November 1976) and of First Secretary in the Luxembourg Permanent Representation to the European Communities (January 1976).

Twelve of the fifteen officials who had submitted applications, including Mr Schloh, lodged individual complaints under Article 90 (2) of the Staff Regulations with the Secretary General of the Council. Those complaints were rejected by identical decisions of 18 December 1981 of the appointing authority, worded as follows:

"Your complaint of 15 October 1981 has been fully considered. After a thorough investigation, I can see no reason for reversing my previous decision, which falls within the wide discretionary power and freedom of decision vested in the appointing authority in this matter. Moreover, the procedure adopted in this instance is precisely that adopted for the large majority of appointments in Grades A 1 and A 2 within the Council."

A memorandum of 15 February 1982, also issued by the Secretary General of the Council, referred to those decisions in the following terms:

"With further reference to my memorandum of 18 December 1981 and to the interview of 5 February last, I should like to make it clear that the last sentence in my memorandum was merely a commentary on the decision contained in the first sentence and in consequence it cannot strictly be said to form part of that decision. You may therefore disregard it.

As far as the future is concerned, I can assure you, as I did in my address of 5 February last, that for the period of my term of office as Secretary General, I in no way intend to depart from the normal procedure for the appointment of officials to posts in grade A 2.

I decided to send this memorandum, which supplements my memorandum of 18 December 1981, when I realized that the last part of my memorandum had given rise to misunderstandings. Although I can only confirm the contents of my decision of 18 December, I wished nevertheless to give you this clarification of my postition."

It was in those circumstances that Mr Schloh brought an action before the Court, which was lodged at the Court Registry on 10 March 1982.

Upon hearing the Report of the Judge-Repporteur and the views of the Advocate General, the Court (First Chamber) decided to open the oral procedure without any preliminary inquiry. However, it requested the Council to furnish, before the sitting, the minutes of the meeting of 15 and 16 September 1980 and to give written replies to certain questions. The Council complied with those requests within the period prescribed.

II — Conclusions of the parties

The *applicant* claims that the Court should:

A. Primarly

1. Declare the application to be admissible and well founded;

2. In consequence:

2.1. Annul the decision, notified to the applicant by the letter of 31 July 1981, rejecting his application for the post of Director of the Budget and Staff Regulations (Directorate General A, Directorate III);

2.2. Annul the decision, communicated to him by the memorandum of 18 December 1981, supplemented by the memorandum of 15 February 1982, rejecting his complaint of 12 October 1981;

2.3. Annul the decision of 11 September 1981 appointing Mr Kasel to the post of Director of the Budget and Staff Regulations (Directorate General A, Directorate III);

3. Order the defendant to pay the costs;

B. In the alternative

Before deciding on the substance of the case,

1. Order the defendant to produce the application forms for promotion to the post in question;

2. Order the Secretary General of the Council to explain the precise reasons which, as appointing authority, led him to:

Reject the applications for promotion to the post in question of 14 Grade A 3 officials who were not of Luxembourg nationality, and in particular that of the applicant;

Decide to employ the procedure of Article 29 (2) of the Staff Regulations;

Appoint Mr Kasel to the post in question, under the said procedure of Article 29 (2).

The *Council of the European Communities* contends that the Court should:

Declare the action admissible but unfounded;

Order the applicant to pay the costs.

III — Submissions and arguments of the parties

First submission

The *applicant* relies on the infringement of Article 29 (1) (c) in conjunction with the third paragraph of Article 4 of the Staff Regulations inasmuch as the appointing authority proceeded to make the disputed appointment without first bringing the vacancy of the post in question to the notice of the staff of other Community institutions, although the above-mentioned provisions of the Staff Regulations require it to consider any requests for transfer from officials in other institutions before applying Article 29 (2).

The *Council* does not dispute the facts as set out by the applicant; indeed, without considering the substance of the submission, it contends that, in support of an action for the annulment of an appointment, the applicant may raise only objections which relate to him personally and not the personal objections of other confirmed or potential candidates (judgment of the Court of 29 October 1975, in Joined Cases 81 to 88/74, *Marenco and Others*, [1975] ECR 1247, at p. 1255). Since the applicant in this case has no personal interest in raising the objection, the submission is inadmissible.

The *applicant* leaves to the Court the question of the admissibility of the submission. However, he observes that the duty of institutions to respect the provisions relating to recruitment corresponds to a public interest. In any event, he considers that, even if the alleged infringement could not in theory be relied on as such, it may be taken into account as one of the factors establishing misuse of power (relied on in the third submission).

The *Council* replies that the mere fact that the protection conferred on officials by the Staff Regulations was introduced in the public interest does not in itself empower the applicant to act in the interest of the law or of the institutions and it therefore repeats its contention that the submission is inadmissible.

Second submission

The *applicant* claims that the appointing authority infringed Article 29 (2) of the Staff Regulations inasmuch as it appointed a person from outside the Communities, who has not been shown to possess the special qualifications required for the vacant post or indeed, according to the *curriculum vitae* published by the Council administration, entirely lacked such qualifications.

The *Council* first states, that, as a temporary servant of the Commission in Grade A 3 since 6 January 1981, Mr Kasel was not, at the time of the appointment, a person from outside the Communities. On the contrary, he was entrusted with duties which were of particular value for the acquisition of experience in matters concerning 'the general policy of the Communities". In any event, in specific terms Mr Kasel was particularly well-qualified to fill the post in question, by reason of his academic qualifications (he had a special degree in administrative law and was a graduate in economics and finance of the Institut d'Études Politiques de Paris [Institute of Political Studies, Paris]) and his experience gained in former posts (as legal adviser to a bank and subsequently an official in the Luxembourg Ministry of Foreign Affairs, with duties requiring a knowledge of both economics and of the general policy of the Communities).

Secondly, the Council considers that an appointment to Grade A 2 under Article 29 (2) of the Staff Regulations does not require special qualifications. Such qualifications are necessary only for the recruitment under the above-mentioned provisions of technical staff in grades lower than A 2. In respect of higher-level posts, in other words the "staff officer" posts, the institution enjoys a wide discretion and considerable freedom in the assessment of the interests of the service, since the posts concerned demand qualities and abilities which are essentially human, such as the ability to lead, to maintain contacts of an extremely high level and to co-ordinate, rather than technical skills. Therefore there is nothing to prohibit an institution from appointing persons to Grade A 2 whose technical expertise is inferior to that of A 3 officials already employed, since officials of the highest level normally depend on specialized assistants for technical knowledge.

In this case the appointing authority studied the applications which it had received and then proceeded to write to the candidates to inform them that their applications could not be accepted because their experience and qualifications did not correspond to the specific duties of the vacant post, a newly-created management post. It was entirely reasonable to resort to a procedure other than that of competition in order to appoint a person possessing special abilities at management level. In the letters, the appointing authority also emphasized the need to maintain an

appropriate geographical balance. The appointing authority could not be said to have acted unlawfully in view of the considerable freedom of assessment vested in it in matters relating to the needs of the service and the individual qualities of the officials to be appointed.

According to the Council, the applicant's view amounts to maintaining that higher-level posts may only be filled by promotion on grounds of seniority, a proposition which is not supported by the provisions of the Staff Regulations.

The *applicant* observes that although Mr Kasel was not a person completely "from outside the Communities" on his appointment to the post in question he did not have the status of an official. That is sufficient to provide grounds for the applicant's complaint.

As regards the special technical knowledge, which in any case Mr Kasel lacks, the applicant concedes that it is not generally a necessary condition for the recruitment of officials in grades A 1 and A 2. He considers however that, in this case, such knowledge is indispensable. That conclusion is based on the description of the duties of the post and in particular on the fact that its holder must be capable of carrying out " specialized high-level research" in matters relating to the budget and the Staff Regulations. In addition, the appointing authority itself stated that such technical qualifications were necessary in the letter rejecting the application of the Luxembourg official, a rejection which was justified precisely by reference to the candidate's lack of "specific knowledge and experience".

The applicant claims moreover that the application of the procedure under Article 29 (2) of the Staff Regulations implies that, at the very least, the person appointed should not have qualifications which are inferior to those of officials already employed who are eligible for promotion to the post in question. The Staff Regulations do not in any way provide that Grades A 1 and A 2 are to be considered as "staff officer" posts, requiring exclusively the ability to lead, to maintain high-level contacts" and to co-ordinate; the supposed "ability to maintain high-level contacts" is meaningless, whilst the ability to lead is required for any management post and the ability to co-ordinate is necessary for all posts in Category A. There is no impassable barrier between, on the one hand, Grades A 7 to A 3 and on the other hand, Grades A 2 and A 1. Many officials now in Grade A 2 within the Council were, at some stage in their career, officials in Grade A 5. Further, two of the fourteen officials who applied for the post in question were, on 27 July 1981, promoted to Grade A 2. Despite that fact, on 31 July 1981, they too received a letter of rejection which was identical to that of the other candidates. Thus the same appointing authority within the space of four days, considered them to be suitable and then unsuitable to carry out the duties of a director.

The applicant further considers that the defendant is attempting to attribute to the letter of 31 July 1981 a meaning

which is completely different from that which its wording would suggest, and to distort the arguments put forward in the application, in which the proposition that posts in the senior grades should be filled solely by promotion on grounds of senitority was never advanced.

In its rejoinder, the *Council* denies that the applicant's views are supported by the provisions of the Staff Regulations or in the vacancy notice for the post in question. Article 29 2) of the Staff Regulations refers to two clearly distinct possibilities; the recruitment of officials in Grades A 1 and A 2 (first part), and recruitment to posts in Grades below A 2 which require special qualifications, in exceptional circumstances (second part). It is solely in respect of the second possibility that it may be argued that the institution ought to have ascertained whether it was possible to fill the vacant post by the normal procedure — namely promotion, internal competition or transfer of officials from other institutions — before applying the exceptional provision. On the other hand where an official in A 2 was to be appointed, in the interests of the service the appointing authority was perfectly entitled to appoint a person who was a temporary servant in Grade A 3, since the vacancy notice required solely that the candidate be in Grade A 2 or A 3.

On the question of special qualifications, the provisions of the Staff Regulations do not provide the slightest support for the applicant's view that the person appointed under the first part of Article 29 (2) of the Staff Regulations should have, at least, technical qualifications which are not inferior to those of A 3 officials already employed and eligible for promotion. The above-mentioned provision does not require any specific qualification, except the ability to lead, to maintain contacts at a very high level and to co-ordinate.

The Council does not deny that the technical element is also an important factor in the qualification for the post in question. However, it considers that it is necessary to see that element in the particular context of a management post. The duties performed by officials in Category A are distinguished as follows:

(a) *advisory* duties, corresponding to the lower grades, involving the analysis of specific problems which must be integrated into a wider scheme;

(b) *planning* duties corresponding to the intermediate grades, involving the analysis of a group of problems and study of solutions thereto;

(c) duties of *co-ordination* and *supervision,* corresponding to the two senior grades, involving the co-ordination of special studies and of the totality of the work carried out by their subordinates, together with the taking of decisions on the options to be adopted in the light of the general policy of the Communities and the

resulting guidance of the work of the administrative unit.

If the advisory and planning duties undoubtedly require a degree of co-ordination and vice versa, it may not nevertheless be denied that for posts at the highest level, the ability to lead, to maintain contacts at a very high level and to co-ordinate with a view to the realization of the general policy of the Communities are decisive requirements, which clearly prevail over the technical element.

In any event, the Council continues to assert that Mr Kasel possesses both the above-mentioned abilities to lead, to maintain contacts and to co-ordinate, and outstanding technical knowledge, as may be seen from his academic qualifications and his experience. It does not appear, on the other hand, that the applicant possesses special expertise in matters concerning the budget or the Community civil service. The appointing authority may therefore scarcely be said to have exceeded the limits of its discretion.

Third submission

The *applicant* maintains that the appointing authority infringed Article 27 of the Staff Regulations inasmuch as it reserved a post for a national of a specific Member State or, alternatively, that it acted in compliance with an illegal decision adopted by the Council before the selection procedure was commenced. He also claims that the appointing authority's action constituted a misuse of power inasmuch as it reserved a vacant post for a specific person even before the procedure had been commenced and subsequently appointed the said person to that post.

The *Council* objects that, at the time of the disputed appointment, Luxembourg nationals were not sufficiently represented in Category A within the Council, and contends that nationality may override other factors in order to maintain the geographical balance, where the candidates' qualifications are equal, as the Court has repeatedly declared. In any event, as in this case the qualifications of the candidates are equal, the defendant relies on the appointing authority's freedom to assess the needs of the service and the individual qualities of officials.

As regards the misuse of power, the defendant considers that the applicant's view is not supported by objective, relevant and consistent facts, capable of showing that the decision was taken so as to achieve ends other than that of the interest of the service, as is required by the established case-law of the Court.

The *applicant* replies, on the first point, that nationality could not have been the overriding factor in favour of a candidate whose qualifications were allegedly equal to those of the other candidates, since, in this case, Mr Kasel was not a candidate, and could not have been one, inasmuch as he was not an official, at the stage of the contested selection procedure under Article 29 (1) of the Staff Regulations. In any event, in this instance, the qualifications were not equal, since Mr Kasel did not possess any specific qualification in matters relating to the Budget and the Staff Regulations. In reality, at the stage of the promotion procedure, nationality did

not represent an overriding factor in favour of one candidate, but rather a ground for excluding all the other candidates, as is confirmed by the letters rejecting the applications of the officials who were not Luxembourg nationals.

On the question of the misuse of power, the applicant submits that it results from the fact that the post in question was reserved not only for a national of a specific Member State, but also for a specific person, even before the above-mentioned procedure was commenced. He then lists the facts supporting that view, which, in his opinion, are all consistent and relevant:

The applications of fourteen Grade A 3 officials who were not Luxembourg nationals were rejected, without any assessment of their qualifications, solely on grounds of nationality.

The application of the only Luxembourg candidate was, on the other hand, rejected on the basis of considerations relating to his specific knowledge and experience, although it is now maintained that specific knowledge and experience are of no importance for the post in question.

Two of the officials whose applications were rejected were, in the same period, promoted in Grade A 2, which shows that, in reality, they possessed all the qualifications necessary to fill a post in that grade; nevertheless, they received the same "standard" letter rejecting their applications as the others. It may therefore be seen that no genuine examination of the applications was conducted.

The appointing authority failed to bring the vacancy to the notice of staff in other institutions.

Mr Kasel lacked the qualifications required in the vacancy notice, and that is implicitly recognized by the defendant itself.

By declaring, in its defence, that the applications of A 3 officials were examined "as far as was necessary", the Council has admitted that the examination was completed solely *pro forma.*

The Agence Europe information sheet published the news of Mr Kasel's appointment even before the promotion procedure was concluded and at a time when Mr Kasel was not yet entitled to put himself forward as a candidate.

In his memorandum of 15 February 1982, the Secretary General of the Council wrote, in terms which are extremely indicative, that "as far as the future is concerned" he gave an assurance that he would not depart from the normal procedure for the appointment of A 2 officials.

The minutes of the meeting of the Council of 15 and 16 September 1980 show that following the appointment of the new Secretary General of the Council (a Dane, in the position previously occupied by a Luxembourg national), "compensation . . . in the near future" was promised to the Luxembourg representative.

It appears from an interview given to a newspaper by the Luxembourg Permanent Representative to the European Communities, Mr Dondelinger, that Mr Kasel's appointment was decided

precisely in the context of the above-mentioned "compensation".

A request for a meeting with the Secretary General of the Council, submitted on 8 July by the representatives of 20 A 3 officials of the General Secretariat with a view to urging the appointment of an official from within the institution, was not granted until 10 September, the very day on which the appointment of Mr Kasel was announced.

In its rejoinder, the *Council* objects that if nationality had really been the sole criterion in making the appointment to the post in question, the Luxembourg national included among the 15 candidates would have been appointed. That did not happen, because his application was rejected on the ground that his qualifications were inadequate. Indeed, the fourteen other applications were rejected not only on grounds of their nationality, but also on the basis of the assessment of their abilities and qualifications. In that context, the applicant's interpretation of the letters of 31 July 1981 is unjustified and arbitrary.

The defendant re-affirms, in addition, that Mr Kasel possesses the technical knowledge required for the post; the applicant, on the other hand, does not. The Council again relies on the wide discretion vested in the appointing authority for questions concerning the individual qualities of the officials whom it appoints, a power which is subject only to the interest of the service and manifest error of appraisal. It contends that it is sufficient to compare the qualifications and experience of Mr Kasel and the applicant to conclude that there was no manifest error of appraisal.

As regards the complaint of misuse of power, the Council objects that the evidence advanced by the applicant is irrelevant and insufficient. In particular, the Council cannot be accused of partiality on the basis of the deliberations which took place on 15 and 16 September 1980. The notice published by the Agence Europe reveals either an indiscretion or wishful thinking on the part of certain persons, but in no way establishes that there was a misuse of power. Mr Dondelinger's declarations to the Luxembourg press are entirely his own responsibility; in any event, they should be understood in the context of internal policy in which they were made. Further, they do not prove that the re-establishment of the geographical balance was achieved at the expense of respecting the requirement that the person appointed to the post be "qualified". Finally, the Secretary General's memorandum of 15 February 1982 may scarcely be said to acknowledge implicitly that the appointment of Mr Kasel represented a departure from the normal rules.

Fourth submission

The *applicant* claims that the decision rejecting his complaint constitutes an infringement of the second paragraph of Article 25 of the Staff Regulations, which provides that any decision adversely affecting an official must state the grounds on which it is based. In this case, to reply to a complaint, carefully researched in matters of both fact and law, and covering 15 pages, by a mere few lines of affirmation, and to describe

the investigation by the word "thorough", is completely insufficient. Such a statement of grounds does not make possible any review by the Court, although, according to the established case-law, the purpose of the duty to state grounds is both to allow the person concerned to ascertain whether there is any irregularity in the decision, on the basis of which its legality may be contested and to enable the Court to review the said decision.

The *Council* objects that the appointing authority does not have a duty to refute analytically all the arguments contained in complaints, and that to fulfil the duty to state the grounds it is sufficient to recall the discretionary character of the decision and the wide freedom of assessment which the authority enjoys in that sphere. In any event, the brevity of the statement of grounds did not mean that there was no "thorough" consideration of the applicant's complaint.

Moreover, the defendant adds that, according to the case-law of the Court, the appointing authority is not obliged to give reasons for promotion decisions in so far as they affect candidates who have not been promoted, since a statement of those reasons might be prejudicial to some if not to all the unsuccessful candidates. The same principle should apply equally to the decisions rejecting complaints submitted against an appointment.

The *applicant* replies that, in merely declaring that the decision taken falls within the wide discretion and the considerable freedom of decision which the authority enjoys in that sphere, the Council has simply restated a general principle which is, in reality, entirely unconnected with the present case. It, therefore, failed to furnish a statement of the grounds on which the decision was based, inasmuch as a reply of that nature does not enable the person concerned to determine whether the rejection of the complaint is well founded or whether there is some irregularity which would make it possible to contest the legality of the decision. Moreover, a statement of grounds is mandatory for any decision concerning a complaint. That may be seen from the provision in Article 91 (3) of the Staff Regulations, according to which, where a complaint is rejected by express decision which is adopted after the implied decision but before the period for bringing an action has expired, that period starts to run afresh. The reasoning behind that provision is that, since the express decision must in any event be accompanied by a statement of grounds, a fresh period is accorded to the person concerned, so that he may consider the grounds stated and decide, on the basis thereof, whether or not to bring an action before the Court.

In reply the *Council* states that, in this case, the statement of the grounds, although brief, clearly shows that the appointing authority used its discretion to appraise the interests of the service and concluded that Mr Kasel's appointment corresponded the most closely to the needs of the service, in view of the fact that he was qualified to perform the duties in question and, at the same time, his appointment would enable the geographical balance, which had been temporarily disturbed, to be re-established.

IV — Replies to the questions put by the Court

The Council replied to the questions put to it by the Court as follows:

(a) Staff Notice No 83/81, together with the corrigenda thereto, was communicated to the heads of

administration in the other institutions, as, indeed, are all other staff notices concerning posts available within the Council. On the assumption that the heads of administration regarded that communication as an implied request to display the notice and, in consequence, did so display it, it might be said that the vacancy was brought to the attention of officials in other institutions. However, in this instance, a notice of inter-institutional transfer was not published. In that respect, it should be noted that when notices of inter-institutional transfer are published, they generally result in no applications at all, or very few, from among the officials in other institutions.

(b) The first notice of available posts was addressed exclusively to officials in Grade A 2. The appointing authority published a corrigendum which authorized officials in Grade A 3 to express their interest in the post in question, because it wished to be able also to consider the possibilities of filling the post by means of promotion. It should be noted moreover that no official in Grade A 2 expressed interest, whilst 17 officials in Grade A 3 submitted applications as a result of the corrigendum. It was following the publication of the corrigendum that the period for the submission of applications had to be extended.

(c) There is no documentation referring to the comparative examination of the candidates' qualifications. The authority acted in accordance with the principles defined by the Court, in particular in its judgment of 11 May 1978, in Case 34/77, [1978] ECR 1099, at p. 1112, according to which

the authority enjoys wide discretionary powers as regards the recruitment and retirement of officials in Grades A 1 and A 2, which implies a considerable freedom to take decisions, as regards both the objective requirements of the service and the assessment of the specific qualities of the officials concerned and at the same time a scrupulous examination of the relevant factors.

(d) In the face of the feelings aroused in certain quarters by the appointment of Mr Kasel, the Secretary General, by his letter of 15 February 1982, simply wished, in order to soothe and reassure everyone, to confirm his general approach and to give an assurance that he would not depart from the rules applicable to such matters.

V — Oral procedure

At the sitting on 20 January 1983, the applicant, represented by E. Lebrun, and the Council, represented by Mr Dalcq and Mr. Grossman, acting as Agents, presented oral argument. In the course of the sitting, Counsel for the applicant lodged a new document and the Court requested the Council to produce as quickly as possible other documents and to submit a written statement as to the precise nature of the procedure adopted for the appointment in question.

The Council complied with those requests on 1 February 1983, and produced a file of documents containing, *inter alia*, a memorandum from the Secretary General and the application forms sent to the Secretary General by the Director of Personnel and Administration. That file was also communicated to the applicant, who, on 17 February 1983, submitted a brief

commentary on those new factors in the case.

The Advocate General delivered his opinion at the sitting on 10 March 1983.

Decision

1 By application lodged at the Court Registry on 10 March 1982, Bernhard Schloh, an official of the Council of the European Communities in Grade A 3, brought an action for the annulment of: (a) the decision rejecting his application for the post of Director of the Budget and the Staff Regulations (Directorate General A, Directorate III), which was notified to him on 31 July 1981; (b) the decision of 11 September 1981 appointing J. J. Kasel to the abovementioned post; and (c) the decision rejecting his complaint of 12 October 1981 which was notified to him by memoranda of 18 December 1981 and 15 February 1982.

2 The vacant post in question, which was newly created, was brought to the attention of Council officials by Notice No 83/81 F of 17 June 1981 of the Director General of Administration. That notice was amended by two corrigenda: No 86/81 F of 2 July 1981, which extended the scope of the notice to include staff in Grade A 3, and No 94/81 F of 6 July 1981, which postponed the final date for the submission of applications from 8 to 22 July 1981.

3 The Council stated in the course of the proceedings that the abovementioned notices were communicated to the heads of administration of other Community institutions but that no request was made that they be brought to the attention of officials interested. In any event, it is common ground that there was no formal publication of a notice of inter-institutional transfer.

4 The applicant, 16 other officials of the Council in Grade A 3, including an official of Luxembourg nationality, Mr Feipel, and Mr Kasel, a temporary servant of the Commission in Grade A 3, submitted applications within the

prescribed period. An application was submitted after the period had expired by another Council official. The Secretary General of the Council, in his capacity as appointing authority, rejected all the applications of the Council officials by letters of 31 July 1981.

5 The letters sent to candidates who were not of Luxembourg nationality are identical and contain the following statements of reasons for the rejection of the applications:

". . . In order to fill the post, I am obliged to take into account not only the knowledge and experience required for this management post but also the need to maintain an appropriate geographical balance."

On the other hand, in the letter sent to the official of Luxembourg nationality, Mr. Feipel, the following reasons are given for the rejection:

"In addition to the need to provide for appropriate geographical balance, the choice of candidate for this post is determined by the requirement of possessing the specific knowledge and experience necessary to perform these management duties. I am familiar with the details of your career and I consider that your specific knowledge and experience do not correspond to the duties of the above-mentioned management post."

6 Mr Feipel's application was accompanied by an "explanatory note" which accused the Council of reserving the newly-created post for a Luxembourg official whose name was already known. That criticism was worded as follows:

"In common with my A 3 colleagues, in submitting my candidature, I am under no illusion and I do so solely so that I cannot be told at a later stage that owing to the absence of candidatures within the General Secretariat, the administration has been obliged to recruit someone from outside.

I am very well aware, as indeed are all my A 3 colleagues, that the A 2 post declared vacant by the above-mentioned notice is to be filled by a Luxembourg official by application of the so-called 'parachute' procedure. That official's name, *curriculum vitae* and present post are known. I do not wish to argue about his age or his general qualities but I would nevertheless make one observation: in the course of his short career he has never dealt with problems relating to the Budget!"

7 Three days before the letters rejecting the officials' applications were dispatched, the Agence Europe news-sheet of 27 to 28 July published the following information:

"... the Assistent Chef de Cabinet, J. J. Kasel, is, moreover leaving the service of the Commission in September to become a director in the Council secretariat."

8 By Decision No 817/81 of 11 September 1981, adopted in pursuance of Article 29 (2) of the Staff Regulations of Officials, the appointing authority appointed to the vacant post J. J. Kasel, a Luxembourg national, aged 35, who since 6 January 1981 had been in the service of the Commission as a temporary servant in Grade A 3 with the duties of Assistant Chef de Cabinet to the President of the Commission. It was revealed in the course of the oral procedure that Mr Kasel had submitted his application, dated 9 July, on 13 July 1981. The application was presented in the form of a letter, addressed directly to the Secretary General.

9 Following the rejection of their applications and the appointment of Mr Kasel, the applicant and 11 other officials submitted, on 15 October 1981, individual complaints under Article 90 (2) of the Staff Regulations. In particular, in his complaint, the applicant alleges that the appointment of Mr Kasel was simply the consequence of political agreements "on compensation" which were concluded in the course of the 655th Meeting of the Council on 15 and 16 September 1980, following the retirement of the Secretary General who was a Luxembourg national. The complaints were dismissed by identical decisions of the appointing authority of 18 December 1981, worded as follows:

"Your complaint of 15 October 1981 has been fully considered. After a thorough investigation, I can see no reason for reversing my previous decision, which falls within the wide discretionary power and freedom of decision vested in the appointing authority in this matter. Moreover the procedure adopted in this instance is precisely that adopted for the large majority of appointments in Grades A 1 and A 2 within the Council."

10 According to the applicant, those letters provoked strong protests, in particular in relation to the last sentence, which he claims does not correspond to the real facts, since A 2 posts in the General Secretariat of the Council are, as a rule, filled by promotion or internal recruitment. In those circumstances a meeting took place between the appointing authority and the officials concerned on 5 February 1982. On 15 February, the Secretary General sent to the officials concerned a memorandum which contained, *inter alia*, the following statements:

"... I should like to make it clear that the last sentence in my memorandum was merely a commentary on the decision contained in the first sentence and in consequence it cannot strictly be said to form part of that decision. You may therefore disregard it.

As far as the future is concerned, I can assure you, as I did in my address of 5 February last, that for the period of my term of office as Secretary General, I in no way intend to depart from the normal procedure for the appointment of officials to posts in Grade A 2."

11 Finally, in relation to the recruitment procedure based on the above-mentioned vacancy notice, it should be recalled that, by memorandum of 31 January 1983, at the request of the Court of Justice, the Council provided the file of applications with a memorandum of the Secretary General of the same date which is worded as follows:

"The candidatures of the 17 internal candidates who had applied within the fixed time-limit were examined at a meeting on 15 July 1981 in which participated — besides me — the Director General for Administration, the Director responsible for staff matters and the Head of the Private Office.

A similar examination of an internal candidate who had applied after the fixed time-limit took place on 24 July 1981.

On the basis of the above-mentioned comparative examinations I decided that none of the candidates should be appointed.

After this date no further candidature for the post in question was received.

My decision was communicated in writing to the Director General for Administration on 24 July 1981."

12 It was in the circumstances described above that Mr Schloh brought his action, in support of which he makes the following submissions:

1. Inasmuch as it failed to bring the vacancy in question to the notice of the staff of other Community institutions, the Council infringed Article 29 (1) (c) and the third paragraph of Article 4 of the Staff Regulations.

2. The Council also infringed Article 29 (2) of the Staff Regulations inasmuch as it appointed a person from outside the Community institutions, although he lacked the qualifications required for the vacant post or, at least, his qualifications were inferior to those of the "internal" candidates.

3. In addition, the Council infringed Article 27 of the Staff Regulations inasmuch as it reserved the post in question for a national of a specific Member State; further, the appointing authority's action constituted a misuse of power inasmuch as it reserved the post for a specific person even before the procedure for filling the post was initiated.

4. Finally, the Council infringed the second paragraph of Article 25 of the Staff Regulations, inasmuch as it failed to state adequate grounds in its decision to reject the applicant's complaint.

The admissibility of the first submission

13 The Council has raised an objection of inadmissibility in respect of the first submission. It maintains that the applicant does not have an interest in complaining that the vacancy in question was not brought to the notice of the staff of Community institutions other than the Council, since that omission does not adversely affect him.

14 The objection is well founded. Even though, as the applicant notes, the duty of the institutions to comply with the provisions relating to recruitment corresponds to a public interest, the applicant is not entitled to act in the interests of the law or of the institutions and may put forward, in support of an action for the annulment of an appointment, only such claims as relate to him personally. The submission must therefore be declared inadmissible.

The remaining submissions

15 In his second submission, the applicant maintains that recourse to the exceptional procedure provided for in Article 29 (2) of the Staff Regulations for appointments to grades A 2 and A 1 implies that the person appointed following a procedure other than that of a competition and from outside the Community institutions should have qualifications which are at least equal to those officials who are already in the service and eligible for promotion to the post in question. The Council failed to observe those rules, inasmuch as the person appointed was from "outside" since he was not an official. Moreover he lacked the required qualifications set out in the vacancy notice, as was acknowledged by the appointing authority by implication in its letters rejecting the "internal" applications. Mr Kasel's lack of qualifications may be seen from his *curriculum vitae* published by the Council administration.

16 In his third submission, which is closely linked to the second, the applicant alleges in the first place an infringement of Article 27 of the Staff Regulations, in particular the last paragraph, inasmuch as the appointing authority reserved the vacant post in advance for a national of a specific Member State, namely Luxembourg. In fact, the newly-created post was reserved for Mr Kasel in the context of the "compensation" promised to the Representative of the Grand Duchy in the course of the meeting of the Council of 15 and 16 September 1980. Whilst, the applicant states, it is indeed true that pursuant to the first paragraph of Article 27 of the Staff Regulations the recruitment of officials must be directed to securing the broadest possible geographical distribution among the nationals of Member States and in that sense, the desire to "compensate" Luxembourg for the loss of a management post within the Secretariat of the Council might be justified, it is none the less true that the last paragraph of Article 27 provides that no post may be reserved for nationals of a specific Member State. In this case, the appointing authority reserved the newly-created post for a Luxembourg national and did so even before the procedure for filling the post had been initiated. In addition, the applicant claims, as regards the first paragraph of Article 27 of the Staff Regulations, according to the established case-law of the Court, the geographical criterion may be a decisive factor only where candidates'

qualifications are clearly equal. That is not the case in this instance. On the one hand, Mr Kasel's qualifications are inferior to those of the "internal" candidates and, on the other, as the procedure for filling the post in question was instituted under Article 29 (1) of the Staff Regulations, Mr Kasel could not yet, at that stage, have been a candidate, since he was not an official.

17 In the second place, the applicant claims that not only did the appointing authority reserve the vacant post for a Luxembourg national but, even before the procedure for filling the post was initiated, it set the post aside for a specific person, namely Mr Kasel, without taking into consideration his abilities and qualifications. The appointing authority's action therefore constitutes a misuse of power. In support of his view, the applicant lists a number of details, which in his view are all consistent and relevant and which establish the proof of the illegality of which he complains.

18 The Council, in the first place, maintains that Mr Kasel, far from lacking the qualifications required for the post, on the contrary is particularly well qualified to fill it, by reason of his academic degrees and the experience acquired in his former posts. Moreover, it asserts that, at the time of his appointment, he had been a temporary servant of the Commission in Grade A 3 for several months and could not therefore be regarded as a candidate from "outside the Community institutions".

19 The Council contends, in the second place, that an appointment to Grade A 2 made, as in this case, under Article 29 (2) of the Staff Regulations, does not require particular technical qualifications but "the ability to lead, to co-ordinate and to maintain contacts at a very high level". Further, the Council relies on the appointing authority's wide discretion to appraise the requirements of the service and the capacities and abilities of the officials to be appointed, in particular for the recruitment of officials in Grades A 1 and A 2.

20 As regards the alleged infringement of the last paragraph of Article 27 of the Staff Regulations, the Council maintains that, at the time of the disputed

appointment, Luxembourg nationals were not sufficiently represented within the Council in Category A, and that, therefore, no complaint may be levelled at it inasmuch as its decision to appoint Mr Kasel took account of the resolutions adopted on 15 and 16 September 1980 at the 655th Meeting of the Council. In that respect, the Council cites the case-law of the Court on the extent to which nationality may play a decisive part in ensuring a geographical balance where the candidates' qualifications are equal. It re-affirms that Mr Kasel possessed all the necessary qualifications and claims that it is for the appointing authority and for it alone to assess whether qualifications are equal. In that context the Council contends that the above-mentioned letters rejecting the applications of the officials within the institution did not refer only to the factor of geographical balance but also to the knowledge and experience of the candidates. Furthermore, less importance was attached to the first factor than to the second. Finally, the Council observes that the fact that the application of an A 3 official of the Council of Luxembourg nationality was also rejected shows that the applicant's view is unfounded. In reality, according to the Council, all the "internal" applications were rejected because the candidates' qualifications were inadequate.

21 As regards the complaint of misuse of power, the Council, having examined in detail the evidence relied on by the applicant, contends that it is neither relevant nor sufficient and cites the wide discretion vested in the appointing authority in this matter.

22 Before the arguments put forward by the parties are considered it is appropriate, initially, to establish the legal nature of the recruitment procedure adopted in this instance by the Council for the purpose of filling the vacancy of Director of the Budget and Staff Regulations (Grade A 2).

23 Article 29 (1) of the Staff Regulations provides that in order to fill vacancies in an institution, the appointing authority must first consider: (a) whether the post can be filled by promotion or transfer within the institutions; (b) whether to hold competitions internal to the institution; (c) what applications for transfer have been made by officials of other institutions of

the three European Communities; and then follow a procedure for competitions on the basis either of qualifications or of tests, or of both qualifications and tests. Article 29 (2) provides that a procedure other than the competition procedure may be adopted by the appointing authority for the recruitment of Grade A 1 or A 2 officials and, in exceptional cases, also for recruitment to posts which require special qualifications.

24 The applicant has claimed that in this case the recruitment procedure, in its first phase, is that of the promotion of officials within the institution, under Article 29 (1) (a) and, in its second phase, is that of recruitment without competition under Article 29 (2). The Council, on the other hand, maintains that the procedure adopted, being based on Article 29 (2) of the Staff Regulations, is different from that provided for in Article 29 (1), inasmuch as the Council, for the post in question, "wished to explore the possibilities in other institutions".

25 In order to appraise the recruitment procedure adopted by the appointing authority for the post in question, it is necessary to consider the vacancy notice of 18 June 1981. That notice, the validity of which is not contested by the applicant, and, to which all the candidates referred in their applications, represents the document which, being based on Article 29 (2) of the Staff Regulations, governs the entire recruitment procedure without making a distinction between candidates from within the institution and those from other institutions. That procedure is open to a considerable number of candidates and therefore requires a preliminary examination of the comparative merits of the various candidates, in accordance with the conditions specified in the vacancy notice and the principles laid down by Article 27 of the Staff Regulations.

26 That article, taken together with Article 7 of the Staff Regulations, provides that when any Community institution recruits, promotes or assigns its officials to posts, it must be guided on the one hand by the interests of the service without regard to nationality and on the other hand must ensure that they are recruited on the widest possible geographical basis from among nationals of the Member States of the Communities. The institution reconciles those requirements, as the Court declared in particular in its judgment of 6 May 1969 (Case 17/68, *Reinarz*, [1969] ECR 61), when, in those cases where the qualifications of the various candidates are sub-

stantially the same, it makes nationality the overriding criterion in order to maintain or re-establish a geographical balance among its staff. However, in any other circumstances, the need to redress a geographical imbalance must be subordinated to the requirements of the interest of the service and the consideration of the personal merits of the candidates. In this instance, the appointing authority was thus empowered to make nationality the decisive criterion provided, however, that it first established on the basis of a comparative examination that the qualifications of the candidates were clearly the same.

27 In order to ascertain whether that condition was fulfilled, the Court requested the Council to furnish the documents relating to the comparative examinatin of the qualifications of the candidates., The Council replied that such documents did not exist and the Court then requested the Council to state the date of the comparative examination of the candidates and any other factor which might be of use in establishing the circumstances in which the recruitment procedure was conducted. On 31 January 1983, the Council transmitted to the Court its replies and the documents requested, which included the memorandum of the Secretary General of the Council of 31 January 1983, mentioned above.

28 In the light of the foregoing considerations, it is first necessary to consider the submission as to the infringement of the last paragraph of Article 27 of the Staff Regulations according to which no posts may be reserved for nationals of any specific Member State.

29 The connection existing between the Council's decision of 15 and 16 September 1980 and the appointment of Mr Kasel to the post in question is the most important factor to be taken into account in order to assess the force of that submission.

30 That connection is derived from the debates which took place within the Council, in the course of its 655th Meeting, concerning the appointment of the new Danish Secretary General of the Council following the retirement of the previous Secretary General, who was a Luxembourg national. It may be seen from the minutes of that meeting that the Council first declared that the nationality of the new Secretary General must not have a detrimental effect

on Luxembourg's representation in the General Secretariat of the Council. It then acknowledged that the appointment of the new Secretary General entailed an additional regional imbalance in the distribution of posts for senior officials of the General Secretariat which, regard being had to the need to maintain the standard of qualifications, ought, in so far as is possible, to be redressed in the immediate future. The concurrence of certain circumstances, such as the creation of a new post in Grade A 2, the haste displayed by the appointing authority in seeking to fill the vacancy as soon as possible and the link, admitted by the Council itself, between the decisions adopted in the course of the 655th Meeting and the appointment of Mr Kasel, constitutes evidence to be taken into consideration with a view to assessing the validity of the applicant's submission.

31 Further evidence of the importance of the part played by the Council's decision in the appointment of Mr Kasel may be seen in the letter of the Secretary General of 31 July 1981 addressed to Mr Feipel rejecting the latter's candidature. That letter contained no reply to the specific complaint set out in the memorandum annexed to Mr Feipel's application form, which accused the Council of having given an undertaking that the A 2 post declared vacant was to be "filled by a Luxembourg official by application of the so-called parachute procedure" and that that official's name, his *curriculum vitae* and his post at that time were known.

32 In his complaint of 15 October 1981 to the Secretary General of the Council, which is annexed to his application to the Court, the applicant maintained that, in the course of the 655th Meeting of the Council, the Luxembourg Minister for Foreign Affairs requested and obtained approval for the proposition that there should be a "Luxembourg official in Grade A 2" and "clearly expressed the view that it was not sufficient to promote a Luxembourg official in Grade A 3, already employed in the General Secretariat of the Council; a Luxembourg national from "outside the institution" would be presented (the so-called "parachute" procedure) In consequence, the applicant claims to be entitled to suppose that the Government of the Member State concerned and the appointing authority reached agreement in advance on the appointment of a specific person to a post, even before the appointing authority initiated the recruitment procedure, which must, in consequence, be regarded as unlawful. That complaint was dismissed by the appointing authority which made no response to the specific accusations

relating to the reservation of the newly-created A 2 post for a national of a specific State.

33 Evidence of the exceptional treatment accorded to Mr Kasel's candidature is confirmed by the irregularities vitiating the recruitment procedure adopted by the Secretary General as it is described in his above-mentioned memorandum of 31 January 1983.

34 It appears from that memorandum that the applications of 17 internal candidates who had submitted their applications within the period prescribed by the vacancy notice were considered in the course of a meeting which took place on 15 July 1981 and at which, in addition to the Secretary General, the Director General of Administration, the Director of Personnel and the Head of the Private Office were present. In addition, the Secretary General states that "a similar examination" was carried out on 24 July 1981 for the candidate from within the institution (Mr Sacchettini) who had submitted his application after the closing date and that, "on the basis of the above-mentioned comparative examinations" he decided that "none of the candidates should be appointed." On 24 July 1981 the Secretary General examined Mr Kasel's application and, on the same day, he notified the Director General for Administration in writing of his decision to select that candidate for the post.

35 It must be stated that the procedure as described above points to the absence of a comparative examination of the various applications validly submitted. Indeed, the Secretary General himself states that his decision to reject the applications from within the institution was taken on the basis of "comparative examinations" which he conducted exclusively in respect of the Council officials. In particular, of the two "comparative examinations" mentioned in the memorandum, the first, on 15 July 1981, related to the applications submitted within the period prescribed by the vacancy notice, and the second, on 24 July 1981, related to the application of Mr Sacchettini, also a Council official, who, however, submitted his application after the closing date. In accordance with the vacancy notice and the rules applicable to competitions, the appointing authority is required to disregard applications submitted after the expiry of the prescribed period, so that the examination of Mr Sacchettini's application could not, as indeed was the case, have any practical effect on the examination of the applications from

within the institution, validly submitted, which had already been conducted on 15 July. It follows that the sole basis on which the decision to reject the applications from within the institution was founded was the examination conducted before the expiry of the closing date for applications, namely 15 July 1981. That examination was carried out by the Secretary General in the presence of the Director General for Administration, the Director of Personnel and the Head of the Private Office. Since Mr Kasel's application was examined separately, on 24 July 1981, it follows that there was no comparative examination of all the candidates for the post in question.

36 Finally, it should be noted that the recruitment procedure described above does not correspond to that referred to in the statement of grounds in the letter of 31 July 1981 rejecting the applicant's candidature. The fact that those grounds were based essentially on the criterion of geographical balance implies that the appointing authority must have considered the qualifications of the internal candidates as essentially equivalent to those of the external candidate whom it selected. However, the Secretary General has been unable to establish the existence of such equivalence because, in this instance, the comparative examination of all the applications did not take place. The Secretary General's reference to the criterion of geographical balance in his letter rejecting the applicant's candidature therefore constitutes an additional factor which establishes that the submission in question is well founded.

37 In view of all the circumstances and considerations set out above, it must be concluded that the treatment accorded to Mr Kasel's application, by reason of his Luxembourg nationality, exceeds the limits within which the application of the criterion of geographical balance is justified under Article 27 of the Staff Regulations. In reality, the newly-created post was reserved for a national of a specific State in order to satisfy the requirements of the compensation which was due to be accorded to that State "in the immediate future", as envisaged by the decisions of the Council of 15 and 16 September 1981, which moreover, at the same time, emphasized the need to have regard to the necessary qualifications.

38 It must therefore be concluded that, by reserving the post in question for a national of a specific Member State, the appointing authority of the Council infringed the third paragraph of Article 27 of the Staff Regulations.

39 It is therefore unnecessary to consider the other submissions advanced by the applicant against the decisions contested by him.

40 The decision of the Secretary General of the Council appointing J. J. Kasel to the post of Director of the Budget and Staff Regulations (Directorate General A, Directorate III), notified to the person concerned on 11 September 1981 must therefore be annulled; in consequence, the Secretary General's decisions rejecting the applicant's candidature and his complaint of 12 October 1981 which were notified to him on 31 July 1981 and 18 December 1981 respectively must also be annulled.

Costs

41 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. As the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber),

hereby:

1. **Annuls the decision of the Secretary General of the Council appointing J. J. Kasel to the post of Director of the Budget and Staff Regulations (Directorate General A, Directorate III), notified to the person concerned on 11 September 1981;**

2. **Annuls the Secretary General's decisions rejecting respectively the applicant's candidature and his complaint, which were notified to him on 31 July and 18 December 1981;**

3. **Orders the Council to pay the costs.**

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 30 June 1983.

J. A. Pompe
Deputy Registrar

A. O'Keeffe
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 10 MARCH 1983 [1]

Mr President,
Members of the Court,

In 1981 two new posts of director were added to the list of posts of the Council of Ministers. The Council allotted one of the posts to its Directorate General A for the newly created post of Director of the Budget and Staff Regulations.

The staff of the Council were informed of the existence of that post by a notice of 17 June 1981. The conditions for applying and the closing date for applications which appeared in that notice were subsequently altered on 24 June and 6 July 1981.

Before the expiry of the closing date on 22 July 1981 17 Grade A 3 officials of the Council, including the applicant in the present proceedings, submitted applications for the vacant post. They were all unsuccessful, as was another candidate who had submitted his application after the closing date. 17 of the candidates were notified of their failure in identical letters of 31 July 1981, which included the following conclusive sentence: "en effet, pour l'occupation de ce poste, je suis tenu de prendre en considération non seulement les connaissances et expériences professionnelles requises pour ce poste de direction mais aussi le maintien d'un équlibre géographique approprié" [in order to fill this post, I am obliged to take into account not only the knowledge and experience required for this management post but also the need to maintain an appropriate geographical balance]. On the same date a Luxembourg applicant employed by the Council

1 — Translated from the German.