OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 17 JUNE 1971[1]

Mr President,
Members of the Court,

The case on which I am giving my opinion today relates to the problems arising from the European Social Fund. The establishment of this Fund is described in Part 3, Title III Chapter 2 of the EEC Treaty and the Commission is responsible for its administration. According to Article 123 of the Treaty the Fund has the task 'of rendering the employment of workers easier and of increasing their geographical and occupational mobility within the Community', in order to 'improve employment opportunities for workers in the common market'. To this end Article 125 of the Treaty provides that on application by a Member State the Fund shall meet 50% of the expenditure incurred by that State or by a body governed by public law for the purposes of *inter alia* ensuring productive re-employment of workers by means of vocational retraining and resettlement allowances. According to Article 200 of the Treaty the sums necessary for the attainment of the prescribed objectives shall be covered by the financial contributions of Member States determined on a specific scale. The detailed rules relating to the operation of the Fund and to its other special aspects are laid down by regulations adopted by the Council in accordance with Article 127 of the Treaty. Thus Regulation No 9 (OJ No 56, p. 1189) of the Council of 25 August 1960 on the European Social Fund (in the version contained in Regulations Nos 47/63 (OJ No 86, p. 1605) and 37/67 (OJ No 33, p. 525)) provides the necessary definitions and indicates the conditions for the grant of assistance the amount of which shall be calculated by the Commission in accordance with the rules laid down by Regulation No 113/63 (OJ No 153, p. 2563). With regard to the rules and the procedure 'of the financial operations and for making available the contributions of the Member States intended to cover the expenditure of the Fund', Article 26 of Regulation No 9 refers to the Financial Regulation adopted under Article 207 of the Treaty and which entered into force on 1 April 1961. In this Financial Regulation 'on the methods and procedure for making available to the Commission the Member States' contributions, referred to in Article 200 (1) and (2) of the Treaty establishing the European Economic Community, and in the technical conditions under which the financial operations relating to the European Social Fund shall be carried out' for the purposes of this case we are concerned with Chapter 3, namely that which relates to the 'contributions referred to in Article 200 (2) of the Treaty and which relates to the European Social Fund'. Article 16 of the Regulation provides that at the end of each quarter the Commission shall determine 'with regard to each Member State the amount to be reimbursed of the 50% of the expenditure during the foregoing quarter approved by the Commission pursuant to the provisions of the regulations relating to the European Social Fund'. Article 16 continues: 'these amounts shall be placed at the credit of each Member State in the accounts kept by the Commission in the name of the former'. Furthermore, according to Article 16, the Commission shall fix 'the aggregate amount of the contributions made available to the European Social Fund for the quarter in question' and the Commission shall 'divide this amount amongst the Member States in accordance with the scale laid down in Article 200 (2) of the Treaty'. 'The account of each Member State which shall be kept by the Commission

1 — Translated from the French version.

shall be debited with the amount of its share so calculated'. At the end of each quarter the Commission notifies the Member States of the sums with which their accounts have been debited and credited pursuant to the provisions of Article 16 (a) and (c) of the Financial Regulation and from the second quarter it shall also notify the Member States of the overall accounting position for the foregoing part of the year. On 31 December of each year the Commission, pursuant to Article 17 of the Financial Regulation closes off 'the balance of the accounts referred to in Article 16 of the regulation' and it notifies the Member States with a credit balance (in the present case we are only concerned with this) not later than the following 31 January, of the amount to be paid to them (Article 18 of the Financial Regulation). Within a period of two months from such notification (Article 19 of the Financial Regulation) the Commission shall pay the amount referred to in Article 18 (b) of the regulation 'by depositing a corresponding sum to the debit of the account opened in the name of the Commission in favour of the European Social Fund with the Treasury or other institution approved by the Member State'. Article 21 of the Financial Regulation also plays an important part in the present case. It provides that 'the amounts to be repaid by the European Social Fund to the Member State shall be determined in the national currency of the latter on the basis of the sums which they have actually expended'. 'In determining the contributions and the balances of the Member States the amounts of the reimbursements determined shall be converted into units of account in accordance with the provisions of Article 2 of this regulation' (that is to say 'on the basis of the relationship between the weight in fine gold of the unit of account referred to above and the weight in fine gold corresponding to the par value of each of those currencies as it has been declared to the International Monetary Fund'). 'The payments intended to reconcile the balances of the accounts expressed in units of account shall also be effected in the national currency of each Member State . . .' Finally, I wish to cite once more Article 23 of the Financial Regulation in accordance with which the Member States shall receive from the Commission a payment expressed in their national currency on the basis of the parity prevailing on the day of the closure of the accounts laid down in Article 17 of the regulation.

At the request of the Federal Republic of Germany the Commission adopted in the second half of 1969 a number of decisions granting financial assistance (no decision had been adopted in the course of the first half of this year). In accordance with Article 16 of the Financial Regulation the Federal Republic of Germany received at the end of each quarter a notification of the state of its account. This was done by letters of the Commission of 10 October 1969 and of 2 March 1970. In the second letter the Commission also notified the Federal Republic of Germany of the state of its account at 31 December 1969 and at the same time notified it of the overall accounting situation of the activities of the European Social Fund for the year 1969. With regard to the statement of accounts, the communication from the Commission indicated both in German marks and in units of account the credit balance (for the aid) and the debit balance (for the contributions) for the third and fourth quarters respectively together with the credit balance for the year as a whole given in units of account. The application of the monetary parities is of particular interest in this context since the German mark was revalued on 27 October 1969. In this way the account for the fourth quarter was calculated in accordance with the parity (for the aids decided after 27 October) whilst the account for the third quarter was calculated in accordance with the former parity. This is clear from the footnotes to the accounting documents in ques-

tion. The Commission adopted a similar course in its letter of 6 March 1970 to the Federal Minister of Finance in which it notified the statement of the accounts of the Federal Republic of Germany as at 31 December 1969. This communication indicates in units of account the aggregate amount of the reimbursement to be made in favour of the Federal Republic together with its financial contribution and states that the credit balance, also given in units of account, will be paid to it to the extent of a specified amount expressed in German marks (this sum was converted in accordance with the parity applicable on 31 December 1969).

The Government of the Federal Republic of Germany was however unable to agree on the method of calculating which I have just described. According to it, the Commission was wrong in basing its calculation on the different parities of the German mark; it ought to have applied the parity in force at the date of closing off the accounts (namely, 31 December 1969) for the entire reference period. The Federal Government communicated its complaints to the Commission in a letter of 25 March 1970 wherein it requested that the statement of accounts should be corrected in accordance with the detailed amounts indicated in this letter. Initially the Commission did not react to this communication. After two reminders from the Federal Government dated respectively 4 August 1970 and of 18 December 1970, on 24 September 1970 the Commission authorized the 'Bundeshauptkasse' to pay out of its account an amount corresponding to the credit balance the amount of which it had already notified to the Federal Republic. It notified the Federal Republic of this in a letter of 19 October 1970 declaring that this was done 'without prejudice to measures to be taken in pursuance of the letter from the Federal Minister of Finance of 25 March 1970'. Finally, by a letter of 6 November 1970 which reached the Federal Ministry of Finances on 9 November 1970 the Commission expressly rejected the complaints made by the Federal Government on 25 March 1970. In this letter it maintained that under the Financial Regulation the parities applicable were those in force at the date of drawing up the accounts in accordance with the procedure of Article 16 (thus those applicable at the end of each quarter); it further maintained that the data in the account notified quarterly to the Member States were final and, lastly, that the statement of accounts drawn up at the end of each year merely constituted an operation of addition. It declared that in consequence it was impossible to carry out the amendment requested by the Federal Government and it considered 'as final the closure of the balances of the European Social Fund for the financial year 1969'.

As a result of this decision the German Government brought an action on 14 January 1971 before the Court of Justice. In this it repeats the argument which it expounded to the Commission in March 1970 and asks the Court as a consequence 'to annul the Commission's decision of rejection of 6 November 1970 together with the statement of the accounts for the European Social Fund for the financial year 1969 on which it is founded'.

Legal consideration

(1) The objections formulated by the Commission with regard to the admissibility of the application of the Federal Government requires me to consider first of all this problem which occupies a relatively important position in the parties' arguments.

There is no difficulty with regard to the question whether the application was lodged in sufficient time reckoning from the date of receipt of the decision of the Commission of 6 November 1970. In this connexion it is in fact sufficient to consider the dates (9 November, notification of the decision of the Commission; 14 January 1971, lodging of the application), taking into account the exten-

sion of six days on account of distance applicable to the Federal Republic of Germany in accordance with the provisions of Article 81 (2) of read together with Annex 2 to the Rules of Procedure, to realize that there is no difficulty in this respect.

The objections raised by the Commission on admissibility tend rather to imply that the Federal Government is actually endeavouring to call in question the legality of the statement of the aggregate accounts drawn up for the year 1969. As the Commission emphasizes, however, this statement of accounts was notified to the Federal Government by a letter of 6 March 1970 and it would thus have been necessary to contest it within the two months following such notification. On the other hand it observes that the decision adopted on 6 November as a result of the complaint of the Federal Government only amounts to a confirmatory measure. As such, this decision cannot confer a right to make an application against the statement of accounts for the financial year.

With regard to the Commission's line of argument, I must say from the outset it is relevant to maintain that a statement of the annual accounts constitutes a *decision* within the meaning of the Financial Regulation since it gives rise to rights and obligations for the Member States and the Commission, as is clear from Article 19 of this regulation. It was therefore quite possible to contest this statement of accounts and, if this were not done, it seems natural to preclude any subsequent objection.

If the Court were unable to agree with this conclusion, it might first consider treating the complaint of the Federal Government (lodged within the period of time which began to run from 6 March 1970) as equivalent to the complaints for which provision is made in the system of protection by the Court established by the law on the European public service. In this matter the case-law of the Court has laid down (cf. for example ECR 1965, pp. 248, 249 and 497) that an application to the Court against a measure having an adverse effect should not be lodged immediately but it is in fact possible and even desirable to make an initial complaint to the administration within the period prescribed for an appeal and only to make an application to the Court against the decision taken by the administration within a period of two months from the date when the complaint was submitted to the administration, or if the latter remains silent, against the decision of rejection which it is held to have taken after the expiry of a period of two months. Careful consideration of the problem will however indicate to the Court that this procedure is impracticable in this case. In my opinion transposition of this procedure from the law of the European public service to the general system of the Treaty, and thus its extension to all decisions taken by the Commission (also with regard to Member States) in fact meets with serious objections of principle. Since the administrative complaint is expressly laid down by the law of the European public service, it was natural for the Court to accord it a certain importance under the system of the Court's protection of the public service. On the other hand I cannot find anything similar in the general legal system of the Treaty which does not contain the procedure for complaint (Widerspruchsverfahren) and only provides for a direct application to the Court of Justice. Furthermore, since the decisions of the Commission frequently affect the interest of third parties (in this case, the interests of the other Member States which were also notified in March 1970 of the accounts for the year 1969), it is necessary to avoid allowing the legality of such measures to be called in question over too long a period of time. To those objections of principle which arise *a priori*, there must be further appended in the present case the fact that the Commission remained silent after receiv-

ing the complaint from the Federal Government and that, on this view, that State was required to lodge its application within two months of the date on which the Commission was held to have rejected its complaint by implication. There is no doubt that the Federal Republic of Germany failed to comply with this rule and consequently the complaint which it lodged with the Commission cannot affect the solution of the problem arising from the admissibility of the application.

The Federal Government expounds further arguments in order to escape this conclusion. It maintains that it may indeed be conceded that the statement of accounts of 6 March 1970 was originally definitive in nature. It states, however, that the Commission afterwards clearly withdrew from its position; according to the Federal Government it may in fact be deduced in all good faith from its subsequent behaviour that the Commission only accorded provisional status to the document of 6 March 1970, since it only issued the order to pay the debt due to the Federal Republic on 24 September 1970 whereas Article 19 (2) of the Financial Regulation required it to make this payment within two months of notification of the statement of the annual accounts. The Federal Government considers that its argument is further corroborated by the words 'without prejudice to measures to be taken in pursuance of the letter from the Federal Minister of Finance of 25 March 1970' appearing in the letter of the Commission of 19 October 1970 and, even more strongly, by the fact that the Commission expressly stated at point 4 of its decision of 6 November 1970 that 'in those circumstances it considers that the closure of the balances of the European Social Fund for the financial year 1969 is final'. It further maintains that the notifications of March 1970 do not make it possible to establish whether the Commission had taken sufficient account of the particular problem of the alteration in monetary parity. This problem is only broached in the footnotes to the documents in question and detailed reasons were not given. From this the Federal Republic concludes that it is consequently impossible to concede that the period of time for the application had begun to run.

What weight should the Court attach to those arguments? The Court will note first of all, with regard to the last point, that it is certainly irrelevant to the question of the limitation period for bringing the application. Furthermore it is undeniably clear from the account of March 1970 and its footnotes that the Commission had considered the problem of the modification in the parity of the German mark and it is consequently beyond dispute that the measure in question leaves no doubt in this connexion. In fact the Federal Republic of Germany had no difficulty in setting out arguments against the Commission in its letter of 25 March 1970 or in providing a detailed defence. Furthermore that a decision does not have a statement of reasons may conceivably give grounds for a *complaint* which may form the basis of an application under Article 173 of the EEC Treaty but it provides no grounds for concluding that a measure is provisional or for maintaining that it is not open to an application.

Still with regard to the provisional or final nature of the accounts of 6 March 1970, the Court will find above all that this document contains nothing to warrant describing it as provisional. In my view this is of prime importance. It also follows that a subsequent modification of the original nature of the measure must appear clearly. In this connexion I have discovered nothing which could corroborate the argument of the Federal Government. In fact it is neither sufficient that the Commission should have reconsidered the problem so raised. This conduct in no way indicates that the legal status of the account was called in question. As for the passage already quoted, of the Commission's letter of 19 October 1970, it must be regarded as irrelevant,

in particular owing to its lack of specific detail (apart from the fact that it was drawn up more than four months after receipt of the Federal Government's complaint). The same is true of the final words of the Commission's letter of 6 November according to which the balances of the European Social Fund for the financial year 1969 were to be considered finally closed off. In fact the Commission merely means that it abides by the method of calculation which it originally employed and that the complaint of the Federal Government must be rejected; this wording cannot retroactively confer provisional status on the account of March 1970. Nor, finally, is it conclusive that it was only in September 1970 that the Commission ordered payment of the debt due to the Federal Government. As the Commission has explained to the Court this delay was caused neither by the objections raised by the Federal Government nor by their consideration by the Commission, but simply by the delay on the part of the debtor States in paying their contributions which in turn affected payment of the accounts.

From a correct consideration of the facts it follows therefore that the Commission did indeed reconsider the procedure regarding the statement of accounts following the complaint of the Federal Government but that in its decision of 6 December 1970 it merely *confirmed* the statement of accounts of 6 March. Nevertheless, as the Court has long since laid down in its decisions (in particular with regard to staff cases) that purely confirmatory measures cannot revive a defunct right of action, the main objection of the Commission must be upheld and the application of the Federal Government dismissed as inadmissible.

(2) As in other cases I shall not stop short at this conclusion. I must, in the alternative at least, consider the substance of the case (that is the question whether the applicant's complaints appear justified or whether the method of calculation selected by the Commission is compatible with the Treaty and with secondary Community law).

In describing the facts in the present case I have already shown how the Commission arrived at its statement of accounts and solved the monetary problems with which it was confronted; it is consequently pointless to repeat that description here. Let us then consider first of all what are the principles governing the drawing up of statements of accounts under the Financial Regulation, the secondary law governing the present case, and consider whether the Commission has observed them.

The important factor here is the relationship between the quarterly credit and debit notes on the one hand and the statement of accounts to be drawn up at the end of the financial year on the other; I must therefore consider whether the purpose of the former is *finally* to establish certain factors in the calculation or whether they merely constitute provisional information and, if so, whether the reimbursements and contributions must be recalculated at the end of the year in accordance with the rules of parity applicable for drawing up the statement of accounts at the end of the financial year, in particular when changes in parity have occurred. I should like to state from the outset that when the Commission declares itself unwilling to review the figures notified in the course of the financial year it may cite in its support both the wording of the Financial Regulation of 1961 and the system which it established. This regulation in fact unconditionally provides, without stating that these accounts are not final, that the Commission shall *draw up* both quarterly and annual accounts. This finding by itself is of great importance for the present problem. As the Court is aware, Article 16 of the Financial Regulation entrusts various tasks to the Commission. First of all it must credit each Member State with 50% of the expenses incurred and approved by the Commission in the foregoing quarter pursuant to the regulation on the

European Social Fund. This is a simple operation since the necessary figures may be taken from the decisions granting the aid of the Social Fund and it is unnecessary to convert the currency as the credits may be inserted in the national currency. Furthermore the Commission must also draw up the aggregate amount of the contributions made available to the European Social Fund for each quarter; these are the sum of the contributions credited to the various Member States given in the national currencies of those States. Since only amounts given in the same currency can be added, this operation requires the initial conversion of each of the currencies in question into units of account, the basic currency of the Financial Regulation (as is moreover laid down in Article 21 (2) of the Financial Regulation with regard to fixing the contributions of Member States). In the absence of provisions to the contrary, however, the parity to be taken into account for this purpose is that prevailing at the moment of conversion, namely that applicable at the end of each quarter. The amount thus obtained expressed in units of account must furthermore be divided amongst the Member States in accordance with Article 16 (c), in accordance with the scale given in Article 200 of the EEC Treaty; that is to say, the contribution of each Member State shall be calculated by dividing the amount obtained in units of account and then reconverting those sums into national currency on the basis of the parities prevailing at the end of each quarter.

On the other hand the annual statement of accounts, drawn up in accordance with Article 17 of the Financial Regulation, only constitutes a statement of the *balances* of the accounts referred to in Article 16 of the Financial Regulation and thus is a simple bookkeeping operation. It follows from this that the figures for each of the quarterly accounts must be for fixed values given in units of account since the balances are expressed in units of account pursuant to Article 21 (3). In fact the Community legislature has nowhere provided that the amount of the aids and of the contributions must be recalculated in fixing the balances of the accounts of the Member States. When they have been drawn up those accounts are converted into national currency in order that the payments necessary for their discharge may be made. Article 23 of the Financial Regulation provides that for this operation the parity to be applied to Member States with a credit balance is that prevailing on the day when the accounts are drawn up as provided in Article 17 of this regulation; the Commission was thus required to make a conversion in accordance with the parity prevailing on 31 December. As the Commission has rightly emphasized, Article 23 consequently refers only to the procedure for operations to be effected *after* the closure of the accounts; it determines the parity applicable to the *making up* of the balances but does not relate to the statement of accounts properly so-called, that is to say, to the fixing of the sums pertaining to the aids and contributions. It could only have been otherwise if the Community legislature had expressly laid down in the Financial Regulation that the parity prevailing at the end of the financial year should be applied to all accounting operations. This method of calculation advocated by the Federal Government cannot be deduced by reading in conjunction Articles 17 and 23 of the Financial Regulation and as the Commission has converted the balances of the accounts in accordance with the parity prevailing on 31 December 1969 the complaints related by the Federal Government in fact appear to be unfounded.

This is the only proper solution in the light of the provisions of the Financial Regulation. In fact, as Articles 22 to 24 of this regulation show, the Community legislature did not lose sight of the problem of the alteration in mone-

tary parities. Article 24 which contains the rules applicable in cases of modification of the parity of the currency of a creditor State after the accounts are drawn up is particularly revealing in this respect. The Court is not unaware that in this sphere it is provided that the risks inherent in modifications of parity shall be shared. As the Commission has shown, the argument of the Federal Government would result in extending this principle since, according to it, the Member States as a whole should bear the consequences of any alteration in parity even if it occurs before the closing of the accounts. This is in fact the solution following from the calculations effected by the Federal Government which takes the view that the contributions of other Member States ought to be increased if its argument were admitted to be relevant. Nevertheless on several grounds I am doubtful whether this view may be reconciled with the principles of the Financial Regulation. As it is certain that the Community legislature did not lose sight of the problem occasioned by the alteration in the parity of a currency when it adopted the Financial Regulation, it may be supposed from the outset that it would not have limited the solution provided in Article 24 to this particular case if it had intended a general application but would rather have extended it expressly to other situations, for example, to restrict ourselves to the present case, by inserting in Article 21 a requirement that the Commission should in any event effect the conversion necessary to fix the respective contributions of the Member States on the basis of the parity prevailing at the end of the financial year. The Financial Regulation contains no such provision. On the other hand the principle established by Article 24 of the Financial Regulation would only have to be regarded as generally applicable if in Community law or even in international law there is a general principle to this effect (the sharing of risks on an alteration of monetary parities). The Commission has clearly shown, however, that Community law only allows the sharing of monetary risks in certain specific cases such as that referred to in Article 24 of the Financial Regulation and within certain limits (making up balances). I might further quote Article 12 of Regulation No 64/127 of the Commission, the Financial Regulation on the Agricultural Guidance and Guarantee Fund, the context of which is the same as that of Article 24 of the Financial Regulation of 1961. On the other hand many other rules show that the risk inherent in an alteration of monetary parities must on any view be borne by the Member State responsible for such alteration. Thus, whilst Article 7 of the Financial Regulation provides that the financial contributions made available to the Commission by the Member States in their national currency indeed retain the value corresponding to the parity in force on the day on which they were deposited in favour of the Community with the debtor State, it requires the Member State which has modified its monetary parity during this period or the Commission to make a supplementary payment or a reimbursement depending on whether the alteration in parity corresponded to a devaluation or a revaluation. I should also like to point to Article 7 of the Protocol on the Statute of the European Investment Bank under which increases or reductions in the bank's capital arising from an alteration in the monetary parity of a Member State shall be adjusted between the Bank and the Member State concerned. In conclusion I wish to cite Article 22 of the Financial Regulation of 1961 under which the debtor State alone bears any financial risk arising from an alteration in monetary parity occurring between 31 December and settlement of the balances closed off (this system was also applied in the agricultural sphere under Article 11 (1) of Regulation No 127/64). The points which I have just described carry weight in the present context even although they relate only to bilateral re-

lationships, since, despite the clearing procedure, the relationships within the framework of the European Social Fund ultimately constitute bilateral relationships between the Commission and each of the Member States. These additional references which I have just provided thus indicate to the Court that the method of calculation followed by the Commission is in complete conformity with the provisions and principles of the Financial Regulation.

Nevertheless this does not conclude my consideration of the present proceedings. The Federal Government goes on to claim, and indeed this is a principal point in its argument, that the solution to the dispute must essentially be sought in the light of the principles contained in Article 125 of the EEC Treaty, that is to say, having regard to the fact that the Fund must meet 50% of the expenditure approved by it in national currency. It thus considers that it is from the outset entitled to receive the contributions in German marks up to a specific amount and that the book-keeping technicalities of the Financial Regulation cannot reduce this amount. According to the applicant, since the Financial Regulation constitutes secondary Community law it must be construed in this fashion, especially as Article 21 (1) prescribes that the amounts to be reimbursed by the European Social Fund to the Member States shall be calculated in the national currency of those States on the basis of the sums which they have actually expended.

With regard to this line of argument it must indeed be recognized that the amounts in German marks appearing in decisions relating to the sums to be reimbursed to the Federal Government and the figures for the Federal Government's contribution to the Social Fund force me to admit that the method of calculation employed by the Commission has in fact reduced to a certain extent Germany's right to obtain a reimbursement in German marks. Nevertheless closer consideration of the question leads me to find that this argument is also unfounded. In fact it will be observed first of all that the rule in Article 21 (1) of the Financial Regulation merely lays down that the amounts to be covered shall be calculated '*on the basis*' of the sums which the Member States have actually expended. Thus the Court cannot draw clear conclusions from this in favour of the applicant's argument. Further, with regard to Article 125 of the EEC Treaty the Court will be led to find that it too is worded so loosely that it cannot provide a ground for a direct action in the present case. In fact, the words 'within the framework of the rules provided for in Article 127' refer to the provisions of Regulation No 9, and also to the Financial Regulation which gives particulars of the right to payment through accounting provisions. The regulations thus also determine the effects of the alteration in monetary parities since the Treaty in no way guarantees a change. Since it is equally certain, as I have shown, that the principle of sharing the risks arising from alterations in parity is foreign to the Treaty (a principle which in the present case involves increasing the contributions from other Member States and thereby a substantial modification of the scale inserted in Article 200 of the Treaty), it only remains for me to find that neither the Treaty itself nor the principles which characterize it contain anything which could provide grounds for the application made by the Federal Government.

Finally, for the sake of completeness, I should like to state further that the judgment in Case 111/63, in which the Court gave a ruling on the problem of the alteration in monetary parities within the framework of the system of the equalization of ferrous scrap, scarcely provides any assistance in the present case. In fact this judgment merely settles the question whether the parity to be adopted is that in force *during* a period of calculation or the parity applicable in the drawing up of the account for this

period; it is thus irrelevant to the problem of the application of several different parities during a specific period. If I nevertheless endeavour to infer from this a certain trend in the case-law of the Court, that could at most constitute support for the view propounded by the Commission as it is clear that the Court has adopted the parities applicable during the *period* of calculation in question and not that in force when the accounts were drawn up.

I consequently consider that the Commission's view is also the proper one with regard to the substance of the case and that the procedure which it followed in drawing up the statement of accounts cannot be disputed.

3. My conclusions are thus as follows:

The application made by the Federal Government must be dismissed as inadmissible owing to the expiry of the period prescribed for lodging an application. In any event its application must be dismissed as unfounded. The costs must thus be borne by the Federal Government.