of administrative duties which are of a transitory nature, which fill an urgent need, or which are not clearly defined. Since the purpose of these conditions of employment is to arrange for occasional staff to perform duties which — by their nature or by virtue of the absence of a holder of the post — are precarious, it is clear that such conditions cannot be wrongfully used to assign such staff to permanent duties for long periods. It follows that those conditions cannot apply to engagements each of which is of short duration but which recur frequently from year to year.

2. A freelance interpreter who is engaged under the Commission's internal arrangements regarding freelance conference interpreters is not entitled either to the status of Community servant within the meaning of the Conditions of Employment of Other Servants or, consequently, to the remedies available under Article 179 of the EEC Treaty. An application by such a person on the basis of Article 179 must therefore be dismissed as inadmissible.

3. The Court has no jurisdiction in a dispute concerning the performance of contracts for the engagement of staff which are concluded by the Commission outside the scope of the Staff Regulations and the Conditions of Employment of Other Servants and which do not contain an arbitration clause. A person under contract to the Commission cannot circumvent the division of powers between the Court of Justice and the national courts by submitting a request to the Commission and describing the latter's rejection of that request as a decision within the meaning of Article 173 of the EEC Treaty.

OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 6 June 1985 *

Mr President,
Members of the Court,

1. The action brought before the Court by Heinrich Maag expressly challenges the decision whereby the Commission rejected his request for the payment of default interest which was based on the alleged delay on the part of the Commission in paying four instalments of arrears arising from retroactive adjustments of the daily remuneration paid to the applicant between 1 July 1980 and 31 December 1982.

The purpose of this application, despite its ordinary appearance, is in reality far wider in scope. The Court is being asked to determine whether or not the contractual

* Translated from the French.

relationship between 'freelance' interpreters, as they are known, including the applicant, is based on the Conditions of Employment of Other Servants of the European Communities (hereinafter referred to as 'the Conditions of Employment').

2. Having offered his services to the Commission, Mr Maag, a Swiss national, was engaged on many occasions from 1977 onwards as a 'self-employed freelance conference interpreter', to quote the description given by the Commission to that category of interpreters in Article 1 of its Decision of 8 October 1974 laying down the arrangements governing the conditions of work and remuneration of such interpreters, which entered into force on 28 October 1974. Mr Maag is one of the 2 060 self-employed interpreters listed by the Commission on 1 January 1985 whose services supplement those of the 305 interpreters — officials and temporary staff — within the language service of the Communities.

Freelance interpreters are called, according to requirements, either to Brussels by the Joint Interpreting and Conference Service (hereinafter referred to as 'the JICS') or to Luxembourg by the Administration Division (IX/D/2), which together share responsibility for providing interpretation at meetings organized by all the European institutions. As the Commission has pointed out, self-employed interpreters are generally engaged by telephone or by telegram, and their contract is formalized by written acceptance which confirms the engagement. As the Commission has stated in reply to a question from the Court, a freelance interpreter, like any other, is called upon to provide simultaneous or consecutive interpretation in the language of his listeners at a meeting. Whilst contracts are generally limited to a few days' duration they are renewable and freelance interpreters may subsequently be engaged again at any time.

During the period covered by the four contested instalments of arrears, contractual relations between freelance interpreters and the Commission were governed by the Réglementation concernant les Interprètes de Conférence Indépendants Freelance [Arrangements Regarding Free-Lance Conference Interpreters, hereinafter referred to as 'the Arrangements'] and by the 'Agreement between the International Association of Conference Interpreters and the Commission of the European Communities' (hereinafter referred to as 'the Agreement'), concluded on 26 April 1979 for the period from 1 January 1979 to 31 December 1983. In essence the Agreement incorporates and sets out in detail the rules laid down by the Arrangements. According to Article 14 of the Agreement, disputes arising from the performance of successive contracts under which freelance interpreters are engaged must be referred to the administrative authorities responsible for interpretation at the Commission.

Consequently, by bringing the matter before the Court primarily on the basis of Articles 46 and 73 of the Conditions of Employment, Mr Maag not only disregarded the administrative procedure provided for therein but, what is more, proceeded on the assumption that the contracts which he entered into with the Commission during the period under consideration were governed by the Conditions of Employment. It may be recalled that Article 179 of the EEC Treaty confers on the Court of Justice

'jurisdiction in any dispute beween the Community and its servants within the limits and under the conditions laid down in the Staff Regulations or the Conditions of Employment'.

Accordingly, the admissibility of the application in this case depends on a preliminary finding that the contracts under which Mr Maag was engaged are based on the provisions of the Conditions of Employment governing contractual relations between certain categories of staff and the Community. More precisely, by relying on Articles 46 and 73 of the Conditions of Employment the applicant has restricted the range of legislative sources available, because those articles extend to members of the temporary or auxiliary staff the provisions of the Staff Regulations which enable officials to bring an action before the Court of Justice.

In the alternative, the applicant relies on the second paragraph of Article 173 of the EEC Treaty in challenging the decision refusing to grant him default interest.

It is clearly apparent from the proceedings as a whole that the main issue in this case is whether Mr Maag, although never *formally* employed as a servant of the Communities, *in fact* falls within the provisions of the Conditions of Employment relating to auxiliary or temporary staff, whilst the problem of default interest is, by the applicant's own admission, merely subsidiary. Consequently, in accordance with the alternative claims put forward by the applicant, I propose to consider whether the application is admissible without proceeding to examine the substantive claim for default interest unless it proves necessary to do so.

3. For a proper understanding of this case a brief introduction is required to the legal provisions governing the contracts under which the Commission engages freelance conference interpreters.

As I said earlier, the provisions relating to the period under consideration are contained in the 1974 Arrangements and the 1979 Agreement.

I would observe in passing that new arrangements were adopted by the Commission on 16 May 1984 and supplemented by a new agreement laying down the conditions of work and remuneration of freelance interpreters which was concluded on 20 June 1984 between the International Association of Conference Interpreters (hereinafter referred to as 'the Association') on the one hand, and the European Parliament, the Commission and the Court of Justice on the other. Although those texts, which came into effect after the events which gave rise to these proceedings, incorporate in substance the provisions hitherto in force, they supplement the previous system in certain respects. I shall refer to subsequent those amendments and additions whenever it is necessary to do so.

The rules applicable to freelance interpreters include *inter alia* provisions on the classification of posts, the conditions of work, remuneration, social welfare and the settlement of disputes.

Classification of posts

According to Article 2 of the Arrangements in conjunction with Article 1 of the Agreement, newly-appointed freelance interpreters are initially classified in Category II (beginners), before moving 'automatically' into Category I (experienced interpreters) when 'they have completed 100 days' work for the European Communities'. It is further provided that account may be taken both of the days worked as a member of the temporary or auxiliary staff and of any particular experience or qualifications acquired in other inter-governmental organizations.

Conditions of work

The 1979 Agreement takes note of the Explanatory Memorandum concerning self-

employed interpreters posted to Brussels (document IX.E.123/78) which extends to freelance interpreters the conditions of work laid down by the Commission for its own interpreters. Moreover, freelance interpreters 'who work regularly for the Community institutions may participate in further professional training courses organized by the Commission for its officials and [other servants], where such participation is compatible with the smooth functioning' of its departments (Article 12 of the 1979 Agreement).

Remuneration (Articles 3 to 8 and 14 to 16 of the Arrangements)

In the case of freelance interpreters, this comprises remuneration for each day of work, a daily subsistence allowance equal to the standard allowance for officials in Grades L/A 4 to L/A 8 of the Language Service on mission, a supplementary daily subsistence allowance of a fixed amount for travel which freelance interpreters may be required to undertake from their business residence and, lastly, the reimbursement of travel expenses, in particular those incurred where in the interests of the service the interpreter is subjected to certain restrictions regarding travel (Articles 14 and 15).

On 1 January 1982 the daily remuneration was fixed at:

BFR 6 588 for Category I, and

BFR 4 743 for Category II.

Social security

As regards retirement and life assurance, Articles 9 to 12 of the Arrangements require freelance interpreters to join a national retirement and life assurance institution of their own choice, on condition that it is approved by the Commission. The Commission pays part of the social security contributions, whilst the contribution of the freelance interpreter is deducted from his daily remuneration. As regards sickness and accident insurance, the Commission has taken out a private insurance policy in favour of freelance interpreters against the risks in question in respect of the days worked for the Commission (Article 11 of the Agreement). The Commission points out that these social security provisions normally supplement the relevant national scheme.

Two important provisions relate to the amounts paid by way of remuneration or social security contributions. Article 10 of the Agreement stipulates that:

'Wherever possible, the Commission's administration shall settle

(a) within a month counting from the last day worked' all the freelance interpreter's remuneration; and

(b) within six weeks counting from the end of the month in which the working days were served . . . the payments under the head of retirement' and life assurance.

That article must be viewed in conjunction with Article 13 of the Arrangements which provides that all those amounts must be indexed 'on the basis of nine-tenths of the percentage evolution of the basic salary weighted by the corrective factor for Brussels of an established interpreter of Grade L/A 5/5'. Finally, by decision of 16 February 1983 which entered into force on 1 March 1983, the Bureau of the European Parliament decided to subject every freelance conference interpreter engaged by the Parliament on a temporary basis during its sessions, committee meetings or meetings of other parliamentary bodies, to a set of arrangements regarding freelance conference interpreters. The purpose of those arrangements is to make free-lance interpreters liable, as regards their daily remuneration, to the Community tax

imposed by Regulation (EEC, Euratom, ECSC) No 260/68 of the Council, which was adopted pursuant to Article 13 of the Protocol on the Privileges and Immunities of the European Communities (Article 4). In adopting its decision the Bureau of the Parliament referred to Article 78 of the Conditions of Employment which provides, by way of derogation from the provisions of the title dealing with auxiliary staff, that:

'auxiliary staff engaged by the European Parliament for the duration of the work of its sessions shall be subject to the conditions of recruitment and remuneration laid down in the agreement between the Parliament, the Council of Europe and the Assembly of the Western European Union in respect of engagement of such staff'.

Settlement of disputes

The Agreement provides for a three-tier procedure for settling disputes. Under Article 14 the head of the Conference Services Division within the Directorate for Interpreters and Conference Services, or the head of the Bureau for the organization and co-ordination of conferences, must — particularly at the request of a freelance interpreter — examine any difficulty arising from the contractual relationship between that person and the Commission. The second paragraph of Article 14 provides that, on completion of that examination, the freelance interpreter may refer the difficulty to the Director in charge of Interpreters and Conference Services in Brussels or to the Director of Personnel and Administration in Luxembourg. Finally, if the difficulty has still not been resolved, he may subsequently refer it to the Director-General for Personnel and Administration.

In the agreement concluded in 1984 that system was supplemented by a procedure enabling the matter to be brought before the Court of Justice under an arbitration clause. Article 23 provides that,

'if it has not been possible to settle the dispute by administrative means, the freelance interpreter may bring it before the Court of Justice, which has jurisdiction over individual contracts concluded with freelance interpreters, by virtue of Article 42 of the ECSC Treaty, Article 181 of the EEC Treaty and Article 153 of the EAEC Treaty'.

It is further laid down that, without prejudice to the provisions of the agreement or those of the individual contracts under which they are engaged, the contractual relationship between freelance interpreters and the Community institutions is to be governed by Belgian law.

Those are the main rules laid down by the Commission in order to define its contractual relationship with the freelance interpreters whom it engages. The applicant relies on those rules in support of his claim that he is entitled to the status of member of the auxiliary staff, after initially laying claim to the status of member of the temporary staff.

4. In support of his main contention concerning the admissibility of his action, the applicant reminds the Court that it has exclusive jurisdiction to determine the nature of the service relationship between an official or other servant and the Community (Case 65/74, *Porrini* [1975] ECR 319). Mr Maag takes the view that the rules laid down by the Arrangements enable freelance interpreters to be assimilated to members of the auxiliary staff for the purposes of the Conditions of Employment. In support of that proposition, he puts forward two submissions: one concerning the similarities between the rules applied to freelance interpreters and to members of the auxiliary staff and the argument that the Conditions of Employment are exhaustive; and the

other concerning the decision of the European Parliament, based on Article 78 of the Conditions of Employment, to treat as auxiliary staff the freelance interpreters whom it engages.

The first submission rests on the syllogistic argument that since the rules applicable to freelance interpreters are of a legislative character and the Conditions of Employment are exhaustive, the legal status of freelance interpreters should be sought in those provisions of the Conditions of Employment which come closest to regulating it, namely the provisions dealing with auxiliary staff.

I shall consider each of those three factors in turn.

According to the applicant it is clear from various indications gleaned from the Arrangements that the interpreters engaged thereunder cannot be described as self-employed persons. Thus, in his view, the Commission determines not only the classification of freelance interpreters but also the level and indexing of their remuneration, which moreover is comparable to that of auxiliary staff, without consulting the interpreters concerned. Similarly, certain forms of social security are imposed on them; they are obliged to join a retirement and life assurance scheme approved by the Commission, and are also compulsorily insured through the Commission against the risk of sickness and accidents. Finally, they are subject to the same conditions of work as the established interpreters of the Commission, with the result that, as far as both their posting and the duration and organization of their work is concerned, they are entirely dependent on instructions from Commission officials.

In conclusion, unlike self-employed workers, who are free to stipulate by contract the fees to be paid for their services, to choose an appropriate social security scheme and to determine the conditions in which they work, freelance interpreters are governed by a set of provisions adopted unilaterally which are both generally applicable and impersonal since they apply irrespective of actual membership of the Association.

The applicant maintains that the Commission cannot, without encroaching upon the exclusive powers of the Council of the European Communities which adopted both the Staff Regulations and the Conditions of Employment, unilaterally create a new set of rules in addition to those introduced by the Council. In other words, the Commission cannot establish an employment relationship with freelance interpreters otherwise than on the terms laid down by the Conditions of Employment.

Accordingly, it remains to be established in the applicant's view which rules in the Conditions of Employment are most appropriate for regulating the position of freelance interpreters. As is clear from a comparison between the arrangements applicable to freelance interpreters and the rules applicable to auxiliary staff, the situation of the former is covered by the rules governing the latter. In that connection, attention has been drawn to the similarities between the two sets of rules; in particular, members of the auxiliary staff may be employed on a daily or monthly basis, are classified in a manner corresponding to Categories I and II for freelance interpreters, and receive a comparable remuneration.

If regard is had to the actual duties carried out, and to the provision of services on a regular basis by the applicant, there are grounds, according to Mr Maag, consistent with the Court's judgment in Case 17/78 *(Deshormes,* [1978] ECR 189), for classifying contracts concluded with freelance interpreters as contracts for the employment of auxiliary staff.

In addition to those arguments, the applicant puts forward a second submission concerning the decision adopted by the

Bureau of the European Parliament on 16 September 1983. According to Mr Maag, that decision introduces an unjustified difference in treatment inasmuch as, by making freelance interpreters liable to Community tax, it thereby exempts them, unlike other self-employed interpreters, from all national taxation. In his view, the resultant discrimination is all the more unacceptable as, in accordance with a declaration of intent inserted in the 1984 agreement between the Association and certain Community institutions, the Commission was to extend the effects of that decision to all freelance interpreters.

5. The Commission, however, takes the view that the Court has no jurisdiction in disputes concerning the contractual relationship between itself and self-employed interpreters. In its view, they are not entitled to rely on the Conditions of Employment, which differ both in form and substance from the terms on which freelance interpreters are engaged.

In reply to the applicant's first submission, the Commission contends in particular that the Arrangements constitute an administrative measure with no legislative force, which defines, like certain rules laid down by other inter-governmental organizations, the general terms of a contract offered to freelance interpreters, who remain at liberty to refuse the Commission's offers to engage them. The similarities noted by the applicant between those terms and the rules applicable to auxiliary staff are misleading, according to the defendant, especially in view of the fact that contracts for the employment of auxiliary staff may not exceed one year in duration (Article 52 of the Conditions of Employment).

As for the second submission, the defendant contends that it is not relevant since the derogation contained in Article 78 of the Conditions of Employment is strictly limited in scope, and in any event expressly applies only to the auxiliary staff of the European Parliament.

In reality, the Commission's contractual relationship with freelance interpreters is governed by private law, and any disputes relating thereto can be brought only before the national courts unless there is an arbitration clause conferring exclusive jurisdiction on the Court of Justice of the European Communities, as has been the case since the agreement of 20 June 1984 entered into force.

6. Despite the brevity of the Commission's arguments in which it contests the applicability to freelance interpreters of the rules relating to auxiliary staff in the Conditions of Employment and, consequently, seeks to have Mr Maag's action declared inadmissible, I share its point of view. It is, however, appropriate to emphasize in support of the Commission's contentions that the needs which are met by freelance interpreters are of a special character, that the rules laid down by the Commission to take account of that factor are adequate and, in connection therewith, that the Conditions of Employment are inapplicable in that regard.

I shall consider each of those three points in turn.

(a) There is no provision either in the Arrangements or in the Agreement which expressly defines the conditions governing the status of freelance interpreters or the precise nature of the duties performed by them. However, some of the rules which apply to freelance interpreters, together with information drawn from practice, enable the special features of their services and the needs which they meet to be identified.

The number of self-employed interpreters is significant. In reply to a question from the Court, the Commission has explained that under the budget it has at its disposal 384 interpreters' posts, of which no more than 305 have been filled so far, usually by competition, as against 2 060 freelance interpreters listed on 1 January 1985. Those figures indicate the nature and extent of the different requirements which are met by officials or temporary servants of the Communities, and by freelance interpreters.

The former handle current business on a regular basis and thus meet the need for interpretation in the day-to-day running of the departments to which they are attached;

whereas the latter are called whenever necessary, that is, when the number of established interpreters is insufficient in certain circumstances to cover needs which outstrip the normal facilities for interpretation.

Freelance interpreters are therefore called upon to 'cover' needs which arise from time to time and which, although at times substantial, are sufficiently foreseeable to justify the creation of an appropriate reserve of interpreters. That brings to mind, of course, the European summit meetings, the agricultural 'marathons' and the meetings of the various bodies of the Council which require throughout the year constant interpretation, though on a short-term basis.

That is borne out by the statistics submitted by the Commission in reply to a question put to it by the Court concerning the total number of days worked by freelance interpreters in 1983:

Total number of days worked	Number of interpreters	
	JICS Division (Brussels)	IX/D/2 (Luxembourg)
from 1 to 5	142	221
from 6 to 10	54	79
from 11 to 20	70	58
from 21 to 50	130	132
from 51 to 100	99	171
from 101 to 150	57	129
from 151 to 175	9	9
from 176 to 189	2	1

On analysis, the above table reveals that more than 85% of the freelance interpreters called in 1983 worked on average between 1 and 100 days and, of those, more than three-quarters worked between 1 and 50 days. By contrast, the Commission has stated that a member of the auxiliary staff employed for one year would normally work 220 working days, if allowance is made for periods of leave and weekends.

Those findings taken together show that freelance interpreters may be described as *occasional assistants* of the Community's interpreters who provide a public service; they are engaged, for as long as is *strictly necessary*, to cover exceptional staff shortages which arise on a temporary or seasonal basis and are unrelated to the number of established interpreters available to the Commission under the budget. The special nature of the services required of freelance interpreters constitutes in objective terms the basis of the separate rules applied to them.

(b) It seems to me that the Commission has drawn the consequences resulting from the objective differences between the use of established interpreters and the use of their freelance counterparts, by creating a set of rules for the latter which is distinct from the Staff Regulations or the Conditions of

Employment. It is therefore futile to rely on the existence of similarities between the provisions governing those two particular categories of interpreters as an argument against the Commission. Instead, their existence redounds to the credit of the Commission, which was anxious to offer freelance interpreters, to the extent permitted by the nature of their services, a professional status which in some respects (such as indexing of remuneration and compulsory social security) resembles that of other interpreters.

However, to return to the comparison made by the applicant, Mr Maag has laid particular emphasis on the identical conditions in which both freelance and other interpreters must work. That situation merely reflects the fact that the tasks carried out are identical. Since interpreters are required to work as a team there is no reason why conditions of work should differ according to the rules under which interpreters are engaged. The position of subordination in which freelance interpreters necessarily find themselves when performing their services for one or other of the institutions merely reflects the fact that interpreters carry out the same duties. Moreover, a position of subordination cannot serve as a reliable criterion for classifying the nature of the relationship between the Community and all those who work for it. Both established officials and staff engaged under contract are in a position of subordination, which must therefore be seen as a relative concept. Ultimately the fact of their performing identical tasks and taking instructions from Commission officials is merely the logical consequence of the incorporation of freelance interpreters within the Community's interpretation service. It promotes cohesion and efficiency which are essential if a high standard of interpretation is to be maintained.

Besides those factors which are common to all interpreters, the special features of the rules applicable to freelance interpreters cannot be regarded as evidence of discriminatory treatment. On the contrary, those features reflect the position of self-employed interpreters, which must perforce be regulated by provisions different from those governing interpreters who are officials or servants of the Communities, particularly as regards exemption from Community tax.

In that connection a comparison of the daily scales of remuneration is instructive. In reply to a question from the Court, the Commission made a comparison between the gross remuneration per day of work, after 100 days of work, of a freelance interpreter in Category I and that of a member of the auxiliary staff in Category A, Group III, Class 1. Only the gross remuneration can be used because no precise figures are available for the social security benefits received or the national taxes paid by freelance interpreters, which would enable a comparison of net incomes to be made. It would appear from the evidence furnished by the Commission that the daily remuneration of a freelance interpreter is *more than twice as high* as that of a member of the auxiliary staff in Category A/III/1. If account is taken — as the applicant suggests — of the basic salary of a member of the auxiliary staff classified as 'experienced' under Article 53 of the Conditions of Employment, the basic gross daily remuneration of a freelance interpreter is still *almost twice as high* as the remuneration of a member of the auxiliary staff with comparable experience. That difference in remuneration seems to me to reflect the difference in status between the persons concerned, particularly in matters of social security and taxation.

Another special feature of the rules applicable to freelance interpreters is the absence of any restriction as regards the terms on which they are engaged. That

flexibility enables the Commission to call upon the services of self-employed interpreters who alone are capable of covering certain needs (such as interpreting from non-Community languages), or whom the Commission would be unable to recruit in accordance with Community legislation by reason *inter alia* of their nationality, their obligations with regard to military service, their place of residence, or the range of languages which established interpreters must actually possess (knowledge of three Community languages).

Freelance interpreters also include interpreters who have either been Community officials in the past or — as may be inferred from Article 2 of the Arrangements — have previously been employed as members of the temporary or auxiliary staff. The same flexibility enables such interpreters freely to choose their business residence which in more than 20% of cases lies outside the Community. The truth is that the essential criterion for engaging a freelance interpreter is the quality of his interpretation, which is soon revealed in the course of his work and which determines whether he is engaged again.

(c) The special nature of the services which freelance interpreters provide and the corresponding autonomy of the rules governing their professional status make it inappropriate to apply the Conditions of Employment to such interpreters.

The application of the provisions relating to temporary staff may be ruled out at once, as indeed the applicant himself has done. The services performed by freelance interpreters cannot, precisely because they are occasional, be described as 'permanent Community public service duties' (Joined Cases 225 and 241/81, *Toledano Laredo and Garilli* v *Commission*, [1983] ECR 347, paragraph 12 of the decision). That distinction finds expression in the budgetary provisions dictated by rational management of the public finances of the Community (see the Opinion of Mr Advocate General Lagrange in Case 18/63, *Wollast (née Schmitz)* v *EEC*, [1964] ECR 103 at pp. 107 and 108). The administrative authority's appraisal of its permanent requirements leads to the inclusion in the institutions' budget of specific posts which are permanent themselves, whilst occasional or exceptional requirements are met, wherever necessary, by recourse to specialists who are remunerated out of total appropriations according to the frequency and duration of their services.

A further question is whether the body of rules laid down by the Conditions of Employment in respect of members of the auxiliary staff who, like freelance interpreters, are paid out of total appropriations would have enabled the Commission to meet the needs which constitute the reason for the engagement of such interpreters.

The criteria elicited by the Court in its judgment in the *Deshormes* case for defining contracts for the employment of auxiliary staff, as distinct from contracts for the employment of temporary staff, may be applied to freelance interpreters. The Court has held that a contract for the employment of auxiliary staff is characterized by 'its precariousness in time', since its purpose is to allow, by the recruitment of 'occasional' staff, 'the performance of administrative duties which are of a transitory nature [or] which fill an urgent need . . .' (paragraphs 37 and 38 of the decision). The question therefore arises whether those rules are appropriate for regulating the position of freelance interpreters.

The answer must be in the negative. The precarious nature of contracts for the employment of auxiliary staff, as described in that judgment, stems from the provisions of Article 52 of the Conditions of Employment which provides that 'the actual period of employment of auxiliary staff, including any period under renewal' *may not exceed one year* in all cases. In that respect, the Court has held that a contract of that kind cannot be 'wrongfully used to assign . . . staff to permanent duties for long periods . . .' (Case 17/78, cited earlier, paragraph 38 of the decision).

That strict limitation makes it entirely impracticable to resort to auxiliary staff contracts for the purpose of engaging freelance interpreters for longer than one year, unless the Commission constantly renews by rotation the freelance interpreters at its disposal or disregards the time limit prescribed, which would mean resorting to a fictitious arrangement or a ploy to circumvent it. Since that is out of the question, recourse to the rules applicable to auxiliary staff is unsatisfactory because freelance interpreters are required to offer their services independently of any one-year limit to the duration of their contracts, as that would run counter to the nature of the services provided.

Furthermore, whilst making self-employed interpreters liable to the same Community tax as members of the auxiliary staff by decision of 16 February 1983, the European Parliament referred, as regards the other conditions applicable to such interpreters, not to the Conditions of Employment but to the Arrangements. This confirms that the Conditions of Employment are inappropriate in that regard on account of the special nature of the services performed by self-employed interpreters, which justifies the adoption of specific contractual rules. Moreover, it should be noted that Article 78 of the Conditions of Employment relates only to 'auxiliary staff engaged by the European Parliament for the duration of the work of its sessions' and provides 'by way of derogation' from the provisions of the title concerning auxiliary staff that such staff 'shall be subject to the conditions of recruitment and remuneration laid down in the agreement between the Parliament, the Council of Europe and the Assembly of the Western European Union in respect of engagement of such staff'.

Since that constitutes an exception, its wording and scope must be interpreted restrictively. In that regard it is sufficient to point out that Article 78 of the Conditions of Employment introduces a derogation exclusively for the benefit of the European Parliament, which the latter has relied upon in the circumstances referred to earlier in the exercise of its powers of internal organization. In other words, the Conditions of Employment would have to be amended before the European Parliament's decision based on Article 78 could be extended to all freelance interpreters.

7. In the light of all the foregoing considerations, it is clear that the Commission, in establishing a *sui generis* relationship with freelance interpreters, has merely taken account of the special nature of the services which such interpreters are required to provide and of the inapplicability in relation thereto of the Conditions of Employment, in particular the provisions governing auxiliary staff.

In that respect the Commission has, in my view, acted in accordance with the principle of sound administration, which constitutes one of the guiding criteria for the organization of its departments (see, in particular, paragraph 23 of the Court's judgment of 13 December 1984 in Joined Cases 20 and 21/83, *Vlachos* v *Court of Justice*, [1984] ECR 4149), and with the principle of the proper management of public funds which must be observed by every administration that is bound by the decisions of the

budgetary authority (see, in particular, Case 18/63, *Wollast (née Schmitz)*, cited earlier, at pp. 99 and 100, and the Opinion; and Case 140/77, *Verhaaf* v *Commission*, [1978] ECR 2117, paragraph 20 of the decision). In so doing, the Commission has not exceeded the limits of the discretionary powers which, according to the consistent case-law of this Court, must be conferred on every administrative authority for the organization of its departments (see, in particular, Case 14/79, *Loebisch* v *Council*, [1979] ECR 3679, and also Case 178/80, *Bellardi-Ricci* v *Commission*, [1981] ECR 3187, paragraph 19 of the decision). For that reason, I feel bound to reject the argument to the effect that the Conditions of Employment are exhaustive, which is not substantiated by any of the provisions of the EEC Treaty, the Staff Regulations or the Conditions of Employment themselves. Moreover, the right enjoyed by the institutions to enter into contracts which are outside the scope of the contractual relations envisaged by the Conditions of Employment, particularly in order to secure special or occasional services for which those conditions would be inappropriate on budgetary or technical grounds, may be inferred from Article 42 of the ECSC Treaty, Article 181 of the EEC Treaty and Article 153 of the EAEC Treaty, which confer on the Court jurisdiction to give judgment 'pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Community, whether that contract is governed by public or private law' (see Case 109/81, *Porta* v *Commission*, [1982] ECR 2469).

Consequently, freelance conference interpreters engaged by the Commission cannot be assimilated to Community servants within the meaning of the Conditions of Employment. The action brought by Mr Maag against the Commission of the European Communities must therefore, in so far as it is based on Articles 46 and 73 of the Conditions of Employment, be declared inadmissible in accordance with the provisions of Article 179 of the EEC Treaty.

8. In the alternative, the applicant relies on the general provisions of the second paragraph of Article 173 of the EEC Treaty.

Since this contention is concerned with the conditions governing the performance of the contract, and more particularly with the delay on the part of the Commission in making certain adjustments to the remuneration payable to freelance interpreters pursuant to the rules on indexing in Article 13 of the 1974 Arrangements, it must, like the applicant's previous submission, be rejected. The reason is that since the Court has no jurisdiction under the Conditions of Employment, it cannot claim jurisdiction except under an arbitration clause contained in the contract itself, in accordance with Article 42 of the ECSC Treaty, Article 181 of the EEC Treaty and Article 153 of the EAEC Treaty. That possibility, which is henceforth available under the agreement concluded on 20 June 1984, did not exist under the rules applicable in this case. Neither the contracts entered into nor the general conditions laid down by the 1974 Arrangements or the 1979 Agreement made provision for it.

Having regard to Article 183 of the EEC Treaty which provides that:

'Save where jurisdiction is conferred on the Court of Justice by this Treaty, disputes to which the Community is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States',

the conclusion must be drawn that the action brought by Mr Maag does not fall within the jurisdiction of the Court of Justice but within that of the national courts or tribunals.

Like the main submission on which he relies, Mr Maag's alternative submission concerning the admissibility of his action cannot be accepted either.

9. Therefore, without there being any need to consider the substance of the case, I conclude that the action brought by Mr Maag is inadmissible and that he must consequently be ordered to pay the costs.