ORDER OF THE COURT (First Chamber)
5 December 1997 *

In Case C-218/97 P,

Council of the European Union, represented by Amadeu Lopes Sabino, Diego Canga Fano and Thérèse Blanchet, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Alessandro Morbilli, Director-General of the Directorate for Legal Affairs of the European Investment Bank, 100 Boulevard Konrad Adenauer,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (First Chamber) of 16 April 1997 in Case T-80/96 *Leite Mateus* v *Council* [1997] ECR-SC II-259, seeking to have that judgment set aside,

the other party to the proceedings being:

Ana Maria Fernandes Leite Mateus, residing in Zaventem (Belgium), represented by Jean-Noël Louis, Thierry Demaseure, Ariane Tornel and Françoise Parmentier, of the Brussels Bar, with an address for service in Luxembourg at Fiduciaire Myson SARL, 30 Rue de Cessange,

* Language of the case: French.

THE COURT (First Chamber),

composed of: M. Wathelet, President of the Chamber, D. A. O. Edward and L. Sevón (Rapporteur), Judges,

Advocate General: S. Alber,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

1 By application lodged at the Registry of the Court of Justice on 9 June 1997, the Council of the European Union brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice and the corresponding provisions of the ECSC and Euratom Statutes against the judgment of 16 April 1997 in Case T-80/96 *Leite Mateus* v *Council* [1997] ECR-SC II-259 (hereinafter 'the contested judgment') in which the Court of First Instance annulled the decision of the Selection Board in Open Competition Conseil/C/360 of 3 October 1995 not to admit Mrs Leite Mateus to the tests in that competition.

2 It is apparent from the facts as stated by the Court of First Instance that Mrs Leite Mateus submitted her candidature for Open Competition Conseil/C/360, which was organized by the Council to constitute a reserve list of French-language secretaries, within the time-limit stated in the notice of competition (OJ 1994 C 345A, French Edition only, p. 3) and using the official application form (paragraph 1 of the contested judgment).

3 Together with the application form, she sent a certificate drafted in Portuguese by the company DSM Resinas de Portugal, Ld[a] (hereinafter 'DSM Resinas'), confirming that she had been employed by that company from 1 July 1973 to 7 June 1989

and, since 1 November 1982, had held the grade '1ª. escriturária'. She also sent a certificate and two statements confirming that she had worked at the Commission as an auxiliary secretary from 1 February to 15 September 1992 and from 16 September 1992 to 31 January 1993 and that that work had required knowledge of a word processing package (paragraph 2).

4 According to the notice of competition, the duties of the secretaries recruited would consist of secretarial tasks, in particular typing in French on a word processing package. The notice of competition (point III B) laid down, *inter alia*, the following conditions:

'...

(b) have, on the date of publication of the notice of competition, two years' professional experience as a secretary and/or typist. Candidates are required to prove, by producing supporting documents, that they fulfil that condition for admission to the competition by providing, for example, pay slips indicating the dates on which the professional activity commenced and, if appropriate, terminated, certificates of employment indicating the precise nature and duration of the activity together with a contract or letter of recruitment, etc.;

...

(d) have a thorough command of French and provide proof thereof in the event that it is not obvious having regard to the education completed, and a satisfactory command of another official language of the European Community ...'.

5 Furthermore, the notice of competition stated that candidates who had not submitted the necessary supporting documents for admission to the competition within the time-limit would be eliminated by the Selection Board (paragraph 3).

6 By letter of 3 October 1995 Mrs Leite Mateus was informed of the Selection Board's decision not to admit her to the competition, on the ground that she had failed to prove, by producing supporting documents, that on the date of publication of the notice of competition she had two years' professional experience as a secretary and/or typist (paragraph 4).

7 By letter of 27 December 1995 Mrs Leite Mateus submitted a complaint to the appointing authority pursuant to Article 90(2) of the Staff Regulations of Officials of the European Communities (hereinafter 'the Staff Regulations'). She pointed out that she had worked as a typist at DSM Resinas and explained that, in Portugal, in the sector concerned, typists are graded in the following categories depending on their length of service: 'troisième commis' (third clerical officer), 'deuxième commis' (second clerical officer) and 'premier commis' (first clerical officer), according to the French translation used by her for the Portuguese term 'escriturária'. She therefore considered that she had the necessary experience and asked to be admitted to the tests in the competition (paragraph 5).

8 On 21 February 1996 the Secretary General of the Council rejected the complaint. He found that neither the certificate from DSM Resinas nor the statements from the Commission provided conclusive evidence of the fact that Mrs Leite Mateus had actually carried out secretarial and/or typing duties. Furthermore, he pointed out that the competition had been organized in order to recruit French-speaking secretaries and that '[if] in that respect, [her] activity at the Commission could possibly be considered as valid experience for the competition that activity [had] ... in any event, lasted little more than one year' (paragraph 6).

9 In those circumstances, by application dated 24 May 1996, Mrs Leite Mateus brought an action before the Court of First Instance for annulment of the decision of the Selection Board not to admit her to the tests in the competition. Mrs Leite Mateus raised a single plea alleging infringement of the notice of competition and manifest error of assessment.

The judgment of the Court of First Instance

10 At paragraph 26 of the contested judgment the Court of First Instance recalled the terms of Article 1 of Annex III to the Staff Regulations and, at paragraph 27, the case-law according to which the basic function of a notice of competition, as intended by the Staff Regulations, is to give those interested the most accurate information possible about the conditions of eligibility for the post, in order to enable them to judge, first, whether they should apply for it and, second, what supporting documents are important for the proceedings of the Selection Board and must therefore be enclosed with the application (Case T-54/91 *Almeida Antunes* v *Parliament* [1992] ECR II-1739, paragraph 39, and Case T-158/89 *Van Hecken* v *ECS* [1991] ECR II-1341, paragraph 23). In the same paragraph, the Court of First Instance pointed out that the notice of competition forms both the legal basis and the basis of assessment for the Selection Board.

11 The Court of First Instance noted, at paragraph 31, that the professional experience gained by Mrs Leite Mateus with DSM Resinas was referred to in her application, which stated that she had worked for DSM Resinas from 1 July 1973 to 7 June 1989, that the exact title of her duties had been '1ª. escriturária' and that her work had involved 'responsibility for the company's information technology department'. At paragraph 34, the Court of First Instance also noted that, in her complaint, Mrs Leite Mateus had translated the Portuguese term 'escriturária' by the French word 'commis' (clerical officer) and that DSM Resinas' certificate simply used the same term to describe the tasks which she had carried out.

12 At paragraph 35, the Court of First Instance set out various possible meanings of the Portuguese term 'escriturária' such as 'commis aux écritures', 'expéditionnaire', 'copiste' and 'clerc', taken by the Council from a Portuguese-French dictionary the quality of which was unanimously recognized. At paragraph 36, the Court held that the work corresponding to the first of those translations necessarily included typing.

13 At paragraph 37 the Court of First Instance held that it is reasonably to be expected, if the Selection Board in a competition is not familiar with a specific term, that it should check the meaning of that term, for example by consulting a dictionary.

14 The Court of First Instance held, at paragraph 38 of the contested judgment, that the fact that Mrs Leite Mateus had, in her application, described her employment as an 'escriturária' as involving 'responsibility for the company's information technology department' should not have prevented the Selection Board and, subsequently, the appointing authority, from considering that Mrs Leite Mateus' professional experience had been acquired as a secretary and/or typist. Although it is not clear from that description that the work involved secretarial duties, in the light of DSM Resinas' certificate concerning her experience, the Council should have understood that Mrs Leite Mateus had simply intended to emphasize her knowledge of computing.

15 In those circumstances, in the light, first, of Mrs Leite Mateus' professional experience at the Commission, the duration of which was one year, and, second, of her experience with DSM Resinas, the duration of which was almost 16 years (from 1 July 1973 to 7 June 1989) and at least a significant part of which should have been understood to involve secretarial and/or typing duties, the Court of First Instance held, at paragraph 39, that the Council had been wrong to consider that Mrs Leite Mateus had failed to provide proof of at least two years' professional experience as a secretary and/or typist.

16 The Court of First Instance thus concluded, at paragraph 40, that there was no justification for holding that Mrs Leite Mateus had not satisfied the requirements of the notice of competition as regards professional experience and the Selection Board had consequently committed a manifest error of assessment in not admitting her to the competition on the ground that she had failed to provide proof of the requisite professional experience, and annulled the decision not to admit her.

The appeal

17 The appeal is based on a single plea alleging that the contested judgment infringed the legal framework laid down by the notice of competition. That plea can be divided into four parts: infringement of the special conditions for admission to the competition, error in law concerning the meaning of the term '1ª. escriturária', error in law in interpreting the application and, finally, the absence of a manifest error of assessment by the Council.

18 Mrs Leite Mateus asks the Court primarily to hold that the appeal is clearly inadmissible on the basis of Article 119 of the Rules of Procedure, in the alternative to hold that it is unfounded and, as a subsidiary point, to request the Council to submit a translation in the language of the case of Annexes V to VII of the appeal and to grant Mrs Leite Mateus a period of time within which to make her observations.

Findings of the Court

19 According to Article 119 of the Rules of Procedure, when the appeal is clearly inadmissible or clearly unfounded, the Court may, at any time, dismiss the appeal by reasoned order.

20 Furthermore, according to the first paragraph of Article 51 of the EC Statute of the Court of Justice, appeals are limited to points of law and must lie on the grounds of lack of competence of the Court of First Instance, a breach of procedure before it which adversely affects the interests of the appellant or the infringement of Community law by the Court of First Instance.

The first part

21 By the first part of its plea, the Council claims that the contested judgment infringes the special conditions for admission to the competition in so far as the Court of First Instance held that, by producing a certificate of employment issued by DSM Resinas, Mrs Leite Mateus had provided proof of her professional experience, even though point III B(b) of the notice of competition stated that any document must be 'accompanied by a contract or a letter of recruitment, etc. ...'. According to the Council that argument, which was put forward in the written stage and repeated even more explicitly during the hearing, was not mentioned in the contested judgment.

22 Mrs Leite Mateus considers, first, that the Council wrongly interpreted the notice of competition in which the expressions 'for example' and 'etc.' demonstrated that production of a contract or a letter of recruitment was not essential in order to prove the professional experience. Next, in holding that Mrs Leite Mateus had produced sufficient legal proof that she satisfied the condition concerning professional experience, the Court of First Instance made a finding of pure fact, which is not subject to review by the Court. Finally, by this argument, the Council is attempting to obtain a simple re-examination of the pleas already presented in its defence before the Court of First Instance.

23 It is clear from a careful reading of the defence and rejoinder lodged by the Council before the Court of First Instance on 18 July 1996 and 23 October 1996, and from the transcript of the hearing which took place on 5 February 1997, that the argument based on interpretation of the notice of competition as regards the

requirement that proof of professional experience be provided by production of a contract of employment or letter of recruitment was not raised before the Court of First Instance.

24 The first part of the plea is therefore clearly inadmissible.

The second part

25 By the second part of its plea, the Council claims that, in the contested judgment, the Court of First Instance committed an error in law concerning the meaning of the term '1ª. escriturária' by taking into account, at paragraph 36, only one of the possible translations of the Portuguese term 'escriturária', even though the other translations demonstrated that the work of an 'escriturária' does not always amount exclusively to that of a secretary and/or typist and that it is for a candidate in a competition to prove clearly that he satisfies the conditions for admission to that competition. The Council also considers that the Court of First Instance disregarded Portuguese law and, in particular, the manner in which occupational categories are defined in the collective employment agreements.

26 Mrs Leite Mateus points out, first, that the interpretation given to the term 'escriturária' by the Court of First Instance is consistent with the definition produced by the Council itself which was taken from a Portuguese-French dictionary. The terms 'commis aux écritures', 'expéditionnaire', 'commis chargé de faire des expéditions ou des copies', 'copiste', 'plumitif' or 'clerc' today necessarily involve secretarial and/or typing duties. Furthermore, the interpretation taken up by the Court of First Instance is consistent with Annex I A of the Staff Regulations which provides that category C 5, the category to which recruitment is to be made according to the notice of competition, corresponds to a post of 'commis adjoint' ('clerical assistant'), whilst category C 4 corresponds to a post of 'dactylographe' (typist). In any event, the translation of the term 'escriturária' is a question of fact which is not subject to review by the Court. Finally, the Council's arguments based on Portuguese employment law constitute a separate plea which was presented for the first time in the context of the appeal and is therefore inadmissible.

27 In that respect, it does not appear from the pleadings lodged by the Council before the Court of First Instance that the argument based on the Selection Board's obligation to comply with Portuguese law was raised before that Court. In any event, when the Court of First Instance found that the duties carried out by an '1ª. escriturária' did indeed correspond to secretarial and/or typing duties, it carried out semantic research which does not amount to a legal characterization but must be regarded as an assessment of the facts, which is not subject to review by the Court.

28 The second part of the plea is therefore clearly inadmissible.

The third part

29 By the third part of its plea, the Council claims that the Court of First Instance committed an error in law in interpreting the application in so far as it maintained, at paragraph 38, that Mrs Leite Mateus' description of her work as 'responsibility for the company's information technology department' should have been understood as intended only to demonstrate her knowledge of computing. According to the Council, the Court of First Instance should have adhered to a literal interpretation of what Mrs Leite Mateus had written in her application.

30 Mrs Leite Mateus notes that the Council does not allege that there was any infringement of Community law and that the Court of First Instance's interpretation of the application is an assessment of the facts which is not subject to review by the Court.

31 In that respect, it must be held that, as Mrs Leite Mateus claims, by interpreting her application in the manner in which it did at paragraph 38 of the contested judgment, the Court of First Instance made an assessment of the facts which is not subject to review by the Court.

32 The third part of the plea is therefore clearly inadmissible.

The fourth part

33 By the fourth part of its plea, the Council claims that the Court of First Instance wrongly and inconsistently considered, at paragraph 41, that it had committed a manifest error of assessment in so far as, according to paragraph 39, it had failed to take into account the period of almost 16 years of professional experience acquired by Mrs Leite Mateus with DSM Resinas and of which 'at least a significant part' should be understood to involve secretarial and/or typing duties, even though the wording used by the Court of First Instance itself demonstrates that it was not at all obvious that a person in category '1ª. escriturária' is a secretary and/or typist.

34 Mrs Leite Mateus challenges the Council's interpretation of the findings of the Court of First Instance, which referred only to the duration of the professional experience of almost 16 years acquired with DSM Resinas as '1ª. escriturária'. Furthermore, it is an assessment of the facts, which is not subject to review by the Court.

35 Whatever interpretation is given to the Court of First Instance's findings by the Council, it must be held that they constitute an assessment of the facts which is not subject to review by the Court.

36 The fourth part of the plea is therefore clearly inadmissible.

37 In those circumstances, the appeal must be held to be clearly inadmissible pursuant to Article 119 of the Rules of Procedure.

Costs

38 Under Article 69(2) of the Rules of Procedure, which apply to the appeal procedure pursuant to Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the defendant applied for the appellant to be ordered to pay the costs, and the appellant has been unsuccessful, it must be ordered to pay the costs of the appeal.

On those grounds,

THE COURT (First Chamber)

hereby orders:

1. The appeal is clearly inadmissible.

2. The appellant is to bear the costs.

Luxembourg, 5 December 1997.

R. Grass

Registrar

M. Wathelet

President of the First Chamber