the annulment of a regulation of general application which cannot be deemed to be a decision of the administration which, although adopted in the form of a regulation, is of direct and individual concern to the applicant is inadmissible.

3. Where an official brings an action seeking both the annulment of an act of the administration and compensation for the damage which he considers himself to have suffered as a result of that act, the claims are closely linked with each other and, consequently, the inadmissibility of the claim for annulment entails the inadmissibility of the claim for compensation.

ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
24 March 1993 *

In Case T-72/92,

Hartwig Benzler, an official of the Commission of the European Communities, residing at La Hulpe, Belgium, represented by Marcel Slusny, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

applicant,

v

Commission of the European Communities, represented by Joseph Griesmar, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Roberto Hayder, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: French.

APPLICATION for annulment of decisions taken by the defendant and for an order that the defendant pay compensation for the material damage allegedly suffered by the applicant,

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

composed of: C. W. Bellamy, President, H. Kirschner and C. P. Briët, Judges,

Registrar: H. Jung,

makes the following

Order

Facts

1 The applicant, Hartwig Benzler, is an official of the Commission. He is employed in Brussels and is paid in Belgian francs. In accordance with a request that part of his salary be transferred direct to the German financial institution Beamtenheimstättenwerk-BHW (hereinafter 'BHW'), which grants loans for the construction or purchase of real property, the Commission has for some years transferred sums in German marks every month to BHW on behalf of the applicant. A monthly insurance premium has also been transferred for several years on the applicant's behalf to an insurance company which guarantees, in the event of the borrower's death, payment of the balance of the loan to BHW.

2 By letter of 24 February 1992, headed 'Complaint', the applicant claimed that he had suffered pecuniary damage through application of an incorrect weighting. He asked that he be compensated for the loss suffered and that a higher weighting be applied.

3 On 21 May 1992, the applicant asked the wages department to transfer part of his salary — DM 20 per month — to his account with Postgiroamt, Essen, with immediate effect.

4 By memorandum of 25 May 1992, the Director of the Directorate 'Rights and obligations, discipline and complaints', forming part of the Commission's Directorate General for Personnel and Administration, informed the applicant that the Commission did not intend replying formally to his 'complaint' and would file that document, with the result that his complaint would be rejected by implied decision on 26 June 1992.

5 On 22 July 1992 the applicant lodged a 'complaint' against 'the deduction of an excessive amount for transfers of German marks to Germany' in connection with the implementation of his request of 21 May 1992.

6 By memorandum of 20 August 1992, a head of unit in the Commission Directorate General for Personnel and Administration informed the applicant that the Commission considered that the complaint of 22 July 1992 was the same as that of 24 February 1992 and reminded him that he had the right to bring an action on or before 26 September 1992.

Procedure and forms of order sought

7 The applicant brought the present action by application lodged at the Registry of the Court of First Instance on 21 September 1992. The applicant claims that the Court should:

(1) declare the defendant's decisions null and void;

(2) order the defendant to pay the applicant the sum of BFR 200 000 in respect of material damage;

(3) order the defendant to pay interest at the rate of 8% on the above amount claimed as damages;

(4) order the defendant to pay the costs.

8 By a document lodged at the Registry of the Court of First Instance on 23 October 1992, the Commission raised an objection of inadmissibility under the first indent of Article 114(1) of the Rules of Procedure claiming, first, that the application did not satisfy the requirements of Article 44 of the Rules of Procedure and, secondly, that there had been no proper pre-litigation procedure. In the case of the claim for compensation, the applicant, according to the Commission, included amounts paid on the basis of calculations which have become unchallengeable. The Commission asks that the Court give judgment on its objection of inadmissibility without considering the substance of the case.

9 The Commission contends that the Court should:

— dismiss the application as inadmissible;

— make an appropriate order as to costs.

10 By a document lodged at the Registry of the Court of First Instance on 21 January 1993, the applicant claimed that the Court should reject the objection of inadmissibility raised by the Commission.

Admissibility

11 The Court must rule on objections of inadmissibility in accordance with Article 114(3) and (4) of the Rules of Procedure. In this case, the Court considers, first,

that sufficient information is available to it from the documents before it, so that it is unnecessary to open the oral procedure, and, secondly, that it is appropriate to consider first the objection alleging infringement of Article 44 of the Rules of Procedure.

Arguments of the parties

12 The Commission maintains first that, contrary to the requirements of Article 44(1) of the Rules of Procedure, the applicant did not identify in his application the decisions against which his action is directed. It is uncertain whether the applicant's salary statement for July 1992, annexed to the application, or the statement for January 1992 or indeed that for February 1992 is at issue.

13 Secondly, the Commission considers the claim for compensation inadmissible because, in breach of the same article, the application does not contain a summary of the pleas in law relied upon. The applicant makes no mention of any maladministration on the part of the Commission.

14 In response to the Commission's first criticism, the applicant states that the complaint of 24 February 1992, which was rejected by implied decision of 26 June 1992, was directed against the fact that the Commission used, for the accounting transactions at issue, an exchange rate which was not based on the Staff Regulations of Officials of the European Communities and was less favourable than a rate adopted on that basis would have been. The complaint sought annulment of a decision already taken, namely that part of Council Regulation (ECSC, EEC, Euratom) No 3834/91 of 19 December 1991 adjusting, with effect from 1 July 1991, the remuneration and pensions of officials and other servants of the European Communities and the weightings applied thereto (OJ 1991 L 361, p. 13), which gave rise to the application of an incorrect weighting. He considers that the application thus properly identifies the subject-matter of the dispute, namely Regulation No 3834/91.

15 In response to the Commission's second criticism, the applicant maintains that he has duly established that the administration committed a wrongful act by applying an incorrect weighting. Consequently, the claim for compensation should also be declared admissible, having regard to the amounts indicated on page 2 of the application.

Findings of the Court

16 Article 44 of the Rules of Procedure sets out the conditions to be satisfied by an application submitted to the Court of First Instance. Article 44(6) provides for the possibility of an adjustment only if the application does not meet the requirements of Article 44(3) to (5). Consequently, failure to observe Article 44(1)(c), pursuant to which the application referred to in Article 19 of the Statute of the Court of Justice of the European Economic Community must set out the subject-matter of the dispute and summarize the pleas in law relied upon, renders the application formally inadmissible.

17 In the present case, the application reads as follows:

'1. Summary of the facts

(1) The applicant refers to the publications contained in Official Journal L 361-15 of 31.12.1991 (Regulations Nos 3830/91 and 3834/91); which were brought to the notice of officials by the Commission and of which the applicant was informed on 24.2.1992 (Annex 1).

(2) The applicant has indicated his reasons for his complaint of 22.7.1992 (Annex 2).

(3) Moreover, by his complaint of 22.7.1992, the applicant asked that part of his salary, amounting to DM 20, be deducted monthly (Annex 2 *bis*).

(4) The applicant also refers to a document of July 1992 specifying the amount of DM 20, further details being given in the attached document (Annex 3).

(5) The administration, in a communication signed by H. Richardson and dated 25.5.1992, maintains that the document will be filed and not acted upon (Annex 4).

That text embodies an unjustified refusal by the administration, which conflicts with Official Journal L 361/14 of 31.12.1992, Article 2(2).

2. Matters of law

(1) The applicant refers to the matters expounded in Annex 1, (1) to (4).

On those grounds and on the basis of such other matters as may be put forward, produced or added, even of the Court's own motion, the applicant, who names the Commission of the European Communities as defendant and claims that the Court of First Instance of the European Communities ...' (See above, paragraph 7).

18 It is apparent from the foregoing text, with regard to the claim for annulment, that the application merely refers to Commission decisions, without going into detail and using confused and imprecise terms, so that it is not clear against which decision or decisions taken by the appointing authority *vis-à-vis* the applicant the application is directed.

19 Consequently, the application does not, as regards the claim for annulment, meet the conditions laid down in Article 44(1)(c) of the Rules of Procedure.

20 Even if the Court were able to take account of the clarification given by the applicant in his observations in response to the defendant's objection of inadmissibility, to the effect that the measure against which the application is directed is Regulation No 3834/91, it is settled law that an action for annulment cannot be brought against a regulation of general application which cannot be regarded as a decision which, although adopted in the form of a regulation, is of direct and individual concern to the applicant (see, in particular, Joined Cases 532/79, 534/79, 567/79, 600/79, 618/79 and 660/79 *Amesz* v *Commission and Council* [1981] ECR 2569).

21 As regards the claims for compensation for the material damage allegedly suffered by the applicant, it is settled law that, where claims for compensation are closely linked with claims for annulment which have themselves been declared inadmissible, the claims for compensation are also inadmissible, particularly where the sole purpose of the claim for compensation is to cover 'losses of remuneration' which would not have occurred if the action for annulment had in fact been successful (see, in particular, Case T-27/90 *Latham* v *Commission* [1991] ECR II-35, paragraph 38, and the decisions of the Court of Justice cited therein).

22 In this case the applicant seeks compensation for the damage which he considers that he suffered as a result of allegedly unlawful measures adopted by the defendant institution, of which he also seeks the annulment but which are not sufficiently identified in his application. In those circumstances, the Court considers that, in so far as the claim for compensation relates to the same conduct of the defendant as that called in question in the claim for annulment, it is closely linked with the latter and must therefore likewise be declared inadmissible.

23 Furthermore, regardless of whether or not the claim for compensation is linked with the action for annulment, the text of the application does not make it possible to identify such conduct or fault as might have caused the Commission to incur liability and might have given rise to the material damage which the applicant claims to have suffered, in an amount of BFR 200 000, without putting forward any

calculation in support of that claim. In that respect, therefore, the application does not meet the requirements of Article 44(1)(c) of the Rules of Procedure.

24 It follows that the application must be dismissed as inadmissible in its entirety and that the other ground of inadmissibility raised by the Commission need not be considered.

Costs

25 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, Article 88 of those rules provides that in proceedings brought by servants of the Communities the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby orders:

1. The application is dismissed as inadmissible.

2. The parties shall bear their own costs.

Luxembourg, 24 March 1993.

H. Jung

Registrar

C. W. Bellamy

President