In the performance of a loan agreement concluded before the entry into force of Regulations Nos 3085/78 and 3086/78 amending *inter alia* the provisions of Article 63 of the Staff Regulations and of Article 17 of Annex VII thereto, the Commission is therefore correct to apply to the monthly repayments falling due after the entry into force of the regulations in question the exchange rate resulting from application of the updated parities and of the new version of Article 17.

In Case 1205/79

ROBERT ADAM, an official of the Commission of the European Communities at the Ispra Joint Research Centre, Varese, Italy, represented by Cesare Ribolzi, of the Milan Bar, with an address for service in Luxembourg at the Chambers of Victor Biel of the Luxembourg Bar, 18a Rue des Glacis,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Oreste Montalto, a member of its Legal Department, acting as Agent, assisted by Luigi Biamonti, of the Rome Bar, with an address for service in Luxembourg at the Jean Monnet Building, Kirchberg,

defendant,

APPLICATION in the terms set out in the applicant's conclusions,

THE COURT (First Chamber)

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

Advocate General: F. Capotorti
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case and the conclusions and arguments of the parties put forward during the written procedure may be summarized as follows:

I — Facts and written procedure

By decision of 2 March 1970 concerning the use of the sums available under the European Coal and Steel Community budget item "Pension Funds" the Council authorized the Commission to set aside 40% of the said sums for the grant of building loans to officials of the Communities.

By decision of 17 June 1971, published in Staff Courier No 170 A of 8 July 1971, the Commission issued the necessary implementing provisions, in particular:

"Article 9.

Loans covered by this provision shall be expressed in Belgian francs. The payment in respect thereof shall be made in the currency of the country in which the property to be financed is situated, on the basis of the parity ruling at the time of the payment."

Until 31 March 1979, the monetary parity applied for conversion between the Belgian franc and other currencies was the parity notified by the member States to the International Monetary Fund (hereinafter referred to as "the IMF") in 1965 (BFR 1 = LIT 12.50 in the present case). The sums lent were repaid (likewise on the basis of the exchange rate indicated above) by means of deductions made by the Commission, in its capacity as lender, from the monthly remuneration of officials.

The system operated as follows: the official's monthly salary, to which the weighting was applied (for example BFR 100 000 Italian weighting of 157.8 in March 1979) was reduced by the amount of the building instalment (for example BFR 5 000), the net remuneration then becoming, in the example given, BFR 152 800, which was converted into Italian Lire at the rate of BFR 1 = LIT 12.50.

By decision of 25 July 1975, the Commission decided that "in order to resolve the difficulties arising from the fluctuation of exchange rates" all sums lent would be paid in Belgian francs at an "updated" rate and no longer according to the IMF parity and that the corresponding repayments would also be made in Belgian francs. The Commission gave officials the opportunity to apply a "reduction" of the amount to be repaid by way of the principal debt.

In Administrative Notices No 136 of 7 February 1977, the Commission published the following notice:

On 25 July 1975 the Commission decided that Commission building loans would in future be paid — and deductions from salaries to repay the loans would be made — in Belgian

francs rather than in the currency of the country where the property covered by the loan in question is situated. Hitherto, all deductions have been calculated, where necessary, on the basis of parities at 1 January 1965.

Henceforth, by decision of the Director-General for Personnel and Administration, conversion will be based on "updated" exchange rates. However, staff may request that the deductions be made at the parities communicated to the International Monetary Fund, with reference to and within the scope of the provisions giving effect to Article 17 of Annex VII to the Staff Regulations.

The parity of BFR 1 = LIT 12.50 continued to be applied to the applicant until 31 March 1979, no request having been made by him.

On 22 December 1972 the applicant had entered into agreement with the Commission under which he received from the Commission a loan of BFR 392 000 intended to finance in part the construction of a dwelling house in the Municipality of Barza (Province of Varese). Article 15 of the standard agreement provided that:

"Any transfers by the borrower to the lender by way of early repayment or in payment of monthly instalments shall be made in Belgian francs or in the currency of the country in which the property to be financed is situated and in which the funds arising from this loan were advanced. The funds in question shall be converted into Belgian francs on the basis of the parity ruling as at the date of the transfer."

On 26 December 1975, Mr Adam had the amount of the principal debt shown in the loan agreement entered into on 22 December 1972 changed from BFR 392 000 to BFR 357 040, representing a "reduction" in his favour of BFR 34 960.

On 21 December 1978 the Council adopted Regulation No 3085/78 amending, with particular reference to the monetary parities to be used, Regulation No 259/68 laying down the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the Communities, Regulation No 2530/72 and Regulation No 1543/73 concerning certain special measures (Official Journal 1978, L 369, p. 6) and Regulation No 3086/78 adjusting the weightings applicable to the remuneration and pensions of officials and other servants of the European Communities following the amendment of the provisions of Staff Regulations concerning the monetary parities to be used in implementing the Staff Regulations (Official Journal 1978, L 369, p. 8). By means of those regulations the Council amended in particular Article 63 of the Staff Regulations of Officials and updated the exchange rates. The IMF parity was abandoned and for transfers in a currency other than that in which remuneration was paid the exchange rate used for implementation of the general budget of the European Communities on 1 July 1978 (reviewable) was imposed by the application of weightings which varied according to the country of destination.

At the same time as other officials, Mr Adam lodged a complaint in July 1979 against the application of the above-mentioned regulations, referring specifically to his position as the recipient of a building loan. That complaint was met with an implied

decision on the part of the Commission rejecting it.

The Commission rejected the complaint on 28 September 1979.

This application, dated 10 December 1979, was received at the Court Registry on 21 December 1979, at the same time as some 40 other applications of a similar nature (Cases 1206 to 1248/79).

It was subsequently decided that this case should be treated as a test case.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (First Chamber) decided to open the oral procedure without any preparatory inquiry.

II — Conclusion of the parties

The applicant claims that the Court should:

(a) annul the implied decision of rejection of the complaint submitted in good time by the applicant on the grounds of breach of general principles of law, infringement of legal rules adopted in implementation of the Treaty and misuse of powers;

(b) in the alternative, annul the individual decision of rejection dated 28 September 1979 on all the above grounds and in addition on the ground of infringement of essential prodecural requirements;

(c) declare that the Commission has acted unlawfully in applying from April 1979 to repayments of the building loan granted to the applicant a monetary parity other than that agreed on by the parties and invariably employed in the mutual payments throughout the entire previous period when the contract was in force;

(d) declare in exercise if its unlimited jurisdiction in this case that the Commission is responsible for all the consequences arising from the above-mentioned annulment and the above-mentioned declaration, namely

The obligation to agree to the monthly repayments and early completion of the repayment of the loan at the original parity; or

The obligation to agree to the direct payment in Italian lire of the monthly repayment instalments and any early completion of repayment of the loan by means of direct payment in lire;

Proceeding in both cases to an amendment of the payments made in the meantime from 1 April 1979 and to the recovery on the part of the borrowers of the amounts of the so-called "reduction" of the principal debt which occurred in 1975;

(e) order the defendant to pay the costs.

The *Commission* contends that the Court should:

Dismiss the action brought by Robert Adam as unfounded;

Order the applicant to pay the costs.

In his reply, the *applicant* states that if his claims are upheld he will waive the amount which the Commission credited to him when the so-called "reduction" of the principal amount of the loan took place and is willing also to waive it if, in the alternative, he is authorized to repay

in advance — on the basis of the official IMF parity which he claims should be applied — the principal of the loan still outstanding within a reasonable period to be fixed by the Court.

III — Submissions and arguments of the parties

The *applicant* considers that there has been a clear breach of the principle of the protection of legitimate expectation. In view of the methodical nature of the transaction progressively carried out by the Commission — which took care not to arouse the slightest concern and took pains not to draw the attention of the persons concerned to the objectives which it was intending to pursue indirectly — the applicant cannot be accused of not paying "normal" attention. Indeed, the adverse effects of the only factor likely to provoke any reflexion about the transaction — namely the reduction offered to the borrowers in 1975 — did not become apparent until later.

The transaction is unlawful since it is in breach of the contractual conditions, in veiw of the interpretation which the Commission itself attributed to the concept of "official parity" referred to in the contract and because it breaches the principle, which the institutions are bound to observe, that contracts must be interpreted and implemented in good faith. That situation is also contrary to the implementing provisions which the Commission itself adopted on 17 June 1971, according to which "any amendment to these provisions shall not jeopardize the rights conferred upon officials who have already been granted loans".

The Commission has also misused its powers in so far as it pursued an objective (to ensure for itself an exchange guarantee and thereby a repayment in lire considerably in excess of the principal advanced in lire) different from that which it ought to seek to achieve in the field in question (social purpose of building loans). The applicant acknowledges that he undertook in the agreement that the payments would be made by means of automatic deductions from his monthly remuneration but regards that merely as an implementing procedure which cannot justify the unlawful application to the repayments in question of the "ceiling" and the "transfer" machinery created by Regulations Nos 3085 and 3086/78.

The misuse of powers is also evident in relation to the difference in treatment which has arisen as between officials who concluded the loan contract on different dates. Those who contracted the loan a considerable time ago received a loan expressed in lire in a modest amount based on the rate of BFR 1 = LIT 12.50. Now those officials are obliged to repay the loan on more onerous terms by reason of the system introduced by Regulation Nos 3085 and 3086/78, repaying the Commission, by way of reduction of the principal, a sum considerably greater than that which they received. On the other hand, officials who contracted loans after 1977 received a considerably higher principal amount in lire as a result of the application of the exchange rate ruling on the money market between the Belgian franc and the Italian lira.

Until April 1979 they were able to make monthly repayments based on the rate of exchange of LIT 12.50 = BFR 1 and therefore, by reason of the system introduced by Regulations No 3085 and 3086/78, on the basis of a ratio which

was still as advantageous for a borrower who received the principal in lire at the rate of exchange ruling in the ordinary market between the Belgian franc and the Italian lira.

The applicant considers that if the note of 28 September 1979 were to be regarded as an individual decision rejecting his complaint, it would clearly be vitiated by flagrant non-compliance with formal requirements. In particular, there is no statement of the reasons on which the measure was based and the measure was notified by internal mail *in incertam personam*. Particularly as regards the obligation to state the reasons on which a measure is based, the case-law of the Court has long been well established.

The *Commission* replies that, by requiring only as from April 1979 — thus affording an advantage to the borrower — repayment in Belgian francs of the sums paid at the rate of exchange existing at the time of the "transfer" (as provided for in Article 15 of the loan agreement and not on the basis of the IMF fixed parities), it has not breached any clause of the agreement, neither has it acted in bad faith and still less has it contravened the principle of the protection of legitimate expectation.

The Commission gives the following hypothetical example: if the applicant had obtained in 1972 a loan of BFR 100 000 at the rate of BFR 1 = LIT 12.50 and thereby received LIT 1 250 000, he would have paid for BFR 100 000, at the rate of exchange ruling in 1975, namely BFR 1 = LIT 15, the sum of LIT 1 500 000. Consequently, LIT 1 250 000 would have cost not BFR 100 000 but BFR 83 400, that is to say a "reduction" of BFR 16 600. From 1972 to 1975, the borrower would have paid, on the basis of BFR 1 000 per month, BFR 36 000 in three years, converted at the rate of BFR 1 = LIT 12.50, calculated after the Commission decision at the rate ruling on the day of payment (BFR 1 = LIT 15). The gain obtained by the borrower as a result of the "reduction" might be slightly lower than that which he expected but nevertheless undeniably and effectively exists, if only because the rate (BFR 1 = LIT 15) remained fixed from 1972 to 1975 (the time of the "reduction"). Once the "reduction" took place, the rate applied ought to have been the "updated" rate. However, it was not so applied; on the contrary, the IMF parities were again applied (BFR 1 = LIT 12.50) which afforded the borrower a double advantage, since he secured a considerable decrease of the principal debt and continued to make his repayments on the basis of the rate of exchange of BFR 1 = LIT 12.50. It is only with effect from 1977 that the loans were actually paid in Belgian francs but even then they were repaid on the basis of the IMF rate, namely BFR 1 = LIT 12.50, until March 1979. As from April 1979 the new "transfer" machinery is applicable and is much more favourable for borrowers than the system whereby merely the "updated" parities are applied.

In fact, if for the sake of argument the basic monthly remuneration of the applicant is taken as BFR 100 000, converted into Italian lire after application of the Italian weighting (for example, BFR 1 = LIT 26.13) = BFR 100 000 : 100 (Belgian weighting) × 70.3 (Italian weighting) × 26.13 = LIT 1 836 939; from that sum should be deducted BFR 2 660 as reimbursement to

the Commission for the building loan, to which amount however the Italian and Belgian weightings apply, giving the following result: BFR 2 660 (monthly repayment instalment) : 100 (Belgian weighting) × 70.3 (Italian weighting) = BFR 1 870 × 26.13 (exchange rate) = LIT 48 863 (to be repaid to the Commission). That sum (LIT 48 863) is considerably lower than the figure that would be obtained by direct application of the "updated" parities; the result would in fact be BFR 2 660 (monthly repayment instalment) × 26.13 (exchange rate) = LIT 69 505. Even with the new system of weightings provided for in Regulations Nos 3085 and 3086/78 ("transfers"), the borrowers thus continued to enjoy extremely advantageous terms. It is sufficient to bear in mind that the said amount of LIT 48 863 corresponds to a parity of about LIT 18 = BFR 1.

The Commission summarizes the case-law of the Court regarding the principle of the protection of legitimate expectation as follows.

According to a generally recognized principle, new rules are, except in the case of a derogation therefrom, applicable to the future effects of situations which arose under the previous law;

A legitimate expectation exists where a particular legal situation is "protected", that is to say where the persons concerned were entitled to take the view that an existing legal situation would not be unforeseeably amended to their disadvantage during the course of transactions which they had irrevocably undertaken to carry out under the provisions of the previous law;

The principle of the protection of legitimate expectation is breached where, in the absence of an overriding public interest, the Community legislature amends a provision, without notice and with immediate effect, in a manner unfavourable to traders without adopting transitional measures intended to safeguard the legitimate hopes of those traders.

In the present case, the alteration of the exchange rates was perfectly foreseeable since it was not reasonably conceivable that the official IMF parity (BFR 1 = LIT 12.50) could be maintained, in view of the well-known problems of the international money market, which moreover preceded the conclusion of the contract and, as already stated, the contract provided that reimbursement was to take place on the basis of the parities existing at the time of the transfer. There was no "silence" on the part of the Commission "regarding an exchange rate which might be different" at the time when the "reduction" of the principal debt was offered, and freely accepted by the applicant. The "alteration" was so foreseeable that the applicant himself had foreseen it, by agreeing to the reduction of the principal amount of his debt. The "alteration" was not adopted with immediate effect and without notice, or without the implementation of transitional measures in order to enable the loss to be mitigated. In fact, until 1979 the applicant and the other borrowers continued to enjoy the benefit of extremely favourable terms since the principal amount outstanding was

considerably reduced by the option proposed by the Commission and freely accepted by the borrowers and maintenance of the IMF exchange rate since April 1979 enabled them to repay the principal of the loan on the basis of an extremely favourable conversion rate.

In reply the *applicant* states that by paying the principal of the loan in lire on the basis of the rate of BFR 1 = LIT 12.50 at a time when that rate differed from the rate ruling in the money market and, at the same time, by accepting for a still longer period reimbursement of loans on the basis of LIT 12.50 = BFR 1, the Commission showed conclusively that the parity in force as at the date of the transfer was to be taken to mean the consolidated parity on the basis of which the principal of the loan had been advanced. Someone who in 1974 was paid the exchange value in lire of a principal amount borrowed of BFR 100 000 received the sum of LIT 1 250 000 which is less than the sum which he would have obtained by converting that amount of Belgian francs into lire at a bank (about LIT 2 000 000). The consolidated parity therefore was advantageous to the Commission which had disbursed an amount in lire less than that which would have been arrived at if the real exchange rate had been applied. In those circumstances, it would be natural and lawful for repayment to be accepted at the same rate (IMF parity) so that for every amount of LIT 12.50 repaid by the borrower his debt would be reduced by BFR 1. No exceptional or unjust advantage — which as such would have to be eliminated — was obtained by officials called upon to reimburse neither more nor less than they had received in lire. Nor may any reliance be placed on the argument to the effect that the institutions were induced to abandon the system of fixed exchange rates in favour of a system of exchange rates updated periodically within the more general framework of staff administration — in fact these proceedings relate to the interpretation of contractual provisions governed by private law as entered into and applied *inter partes*.

Since the rate of exchange ruling as between the Belgian franc and the Italian lira evolved in and after 1973 in a manner wholly unfavourable for the lira, the Commission decided to avoid exchange risks by altering the conditions for the grant and reimbursement of future loans and of those already contracted. It secured acceptance of the above-mentioned alteration by the other parties to contracts by means of a "reduction of the principal debt", in reality by the application *ex post facto* to the payment made by it (advance of the principal amount of the loan) of a real exchange rate instead of the official IMF parity. In that way, the Commission believed it could circumvent the argument to the effect that as the principal sum had been paid in lire on the basis of the official IMF parity (which was already at that time different from the real parity), the repayments had also to be made on the basis of the same parity. If the Commission had explained its intentions clearly ("the borrowers will be credited with the difference resulting from calculation of the principal amount according to a parity lower than that actually in force when the loan was advanced, provided that the borrower

repays the loan on the basis of the parities to be determined in accordance with the evolution of the money market") nobody would have agreed thereto.

In the present case, the objectives of the system were intentionally kept secret and were attained only by stages. The Commission's delay in updating the exchange rates does not render the situation lawful and indeed was no more than a skilful manoeuvre designed not to alert borrowers to the actual price to be paid for the so-called reduction. The same applies to the so-called advantages accruing to borrowers as a result of the Commission's assimilating the repayments in question to "transfers" thus giving officials the benefit of the changes in the exchange rates provided for by the rules applicable thereto.

As regards the breach of the principle of legitimate expectation, the applicant considers that if it was foreseeable and even desirable that the weightings should again be given the function for which they were created, repayment would not be conceivable — at least in the case of loans calculated on the basis of the IMF parity — on the basis of a parity other than that which had been applied to the advance made by the Commission. The case-law regarding foreseeable events refers to external events and not to those deriving from action taken by one of the contracting parties. Moreover, the applicant emphasizes that officials who entered into a loan contract did so on the basis not only of the incontestably advantageous conditions offered by the Commission but also of the IMF exchange rate which was applied *inter partes* in respect of repayments. Otherwise they would have expressed the most serious reservations about bearing the burden of repayments in a strong currency. Accordingly, if the borrowers were induced to sign the contract on the basis of the parity actually applied, their situation is protected under all legal systems.

The applicant draws attention to the discrimination deriving from the fact that for certain officials the monthly repayments of the loan are not treated as part of the maximum amount (35% of net remuneration) laid down for transfers made through the Commission, whilst in the amounts repaid by the applicant in respect of the principal of his loan and interest thereon are deducted from that maximum authorized amount.

If the applicant's claims are upheld, he will waive the sum with which the Commission credited him in respect of the so-called "reduction" of the principal amount lent and similarly in the event of his being authorized, in the alternative, to repay in advance — on the basis of the official IMF parity which he claims should be applied — the principal amount of the loan still outstanding within such reasonable period as may be prescribed by the Court.

In its rejoinder, the *Commission* rectifies the example given in its defence in which it is stated that the exchange rate remained unchanged from 1972 to 1975 at BFR 1 = LIT 15. For officials who, like the applicant, applied for and obtained a "reduction", the exchange rate of BFR 1 = LIT 12.50 also remained unchanged for repayments

made from the date on which the contract was concluded until the day of the "reduction" and subsequently until March 1979.

The Commission emphasizes that it was not to a fixed and unchangeable parity, determined by contract on the basis of BFR 1 = LIT 12.50, that the parties referred for the performance of their obligation but rather to the parity in force at the time of the transaction. That confirms the view that no exchange guarantee was given by the lender. It repeats that in 1975 it offered a "reduction" of the principal amount of the debt, to cover any loss which might be suffered by the borrowers in consequence of the introduction of the new monetary parities provided for in the Staff Regulations, a situation which arose four years later and involved a clear and appreciable advantage for officials. To offset the voluntary acceptance of the "reduction" which — under the contract — the Commission was under no obligation to offer, the borrowers, if they had wished to repay the entire debt in advance, would be able to do so not on the basis of the rate of BFR 1 = LIT 12.50 lire but only according to the market parity. Naturally, repayments not made in advance continued to be on the basis of the IMF rate, namely BFR 1 = LIT 12.50. The Commission does not understand how the applicant can maintain that the borrowers were never informed of the effects of the "reduction" (which, moreover, was to their advantage) or that that "reduction" involved "an aggravation of the terms of repayment" of the monthly instalments due in respect of the loan when in fact the so-called aggravation derived directly from implementation of the contractual provisions.

It may be deduced from the foregoing that the Commission was right — in pursuance of the provisions of the contract — to apply the new parities, that is to say those used for implementation of the general budget of the Communities on 1 July 1978 (BFR 1 = LIT 12.50), to the monthly repayments made by the applicants as from April 1979. But in the interests of its officials, it applied the parities designated as "transfer rates" which were manifestly more advantageous for those concerned. In fact, by assimilating the deductions at source made for the purpose of repaying the building loans to the transfers referred to in Article 17 of Annex VII to the Staff Regulations, the Commission applied the parity of BFR 1 = LIT 12.50 (LIT 100 = 3.83 × 100 (Belgian weighting): 70.3 (Italian weighting), that is to say LIT 100 = BFR 5 448 or BFR 1 = LIT 18.35) and not the one that it should have applied (BFR 1 = LIT 26.11). Nor does the Commission understand how the applicant can complain that the Commission, which generously accorded him such an advantage, included the monthly loan repayments within the 35% of the net remuneration constituting the ceiling for transfers.

IV — Oral procedure

The parties presented oral argument at the sitting on 20 February 1982.

The Advocate General delivered his opinion at the sitting on 18 March 1982.

Decision

1 By application lodged at the Court Registry on 21 December 1979, Mr Adam, an official of the Commission of the European Communities, employed at Ispra, Italy, brought an action pursuant to Article 91 of the Staff Regulations of Officials primarily for annulment of the Commission's decision altering the method of calculating the monthly amounts payable by him in reimbursement of a building loan, the subject of an agreement between the defendant and the applicant.

2 By a decision of 2 March 1970 concerning the use of sums available under the ECSC budget item "Pension Funds", the Council authorized the Commission to set aside 40% of the sums in question for the grant of building loans to officials of the Communities.

3 By a decision of 17 June 1971, the Commission adopted the necessary implementing provisions. Article 9 of which in particular provided that "loans covered by this provision shall be expressed in Belgian francs. The payments in respect thereof shall be made in the currency of the country in which the property to be financed is situated, on the basis of the parity ruling at the time of the payment".

4 On 22 December 1972 the applicant entered into an agreement with the Commission under which he received from the Commission a loan of BFR 392 000 intended to finance the construction of a dwelling house.

5 By virtue of Article 4 of the agreement, the borrower undertakes to repay the amount of the loan in monthly instalments due on the 15th day of each month in accordance with the table attached to the agreement. The table, drawn up in duplicate and signed by both parties, constitutes an integral part of the agreement.

6 By virtue of Article 5 of the agreement the borrower irrevocably instructs the Commission to deduct or cause to be deducted for transfer to the Commission by the Community institution by which he is or may be employed in the future, on the 15th day of each month, from his monthly

salary or other emolument, the monthly instalment shown in the repayment table referred to in Article 4.

7 Article 15 of the agreement provides that any transfer made by the borrower to the lender by way of early repayment or in payment of monthly instalments is to be made in Belgian francs or in the currency of the country in which the property to be financed is situated and in which the loan was advanced. The currency of the loan is to be converted into Belgian francs on the basis of the parity ruling on the date of the transfer.

8 In the table referred to in Article 4 of the agreement the amount of the loan, the monthly instalment, the monthly interest, the monthly repayment of principal and the principal outstanding are expressed in Belgian francs.

9 The amount of the loan was converted into Italian lire on the basis of BFR 1 = LIT 12.50, the parity notified to the International Monetary Fund on 1 January 1965 which at that time was used as the basis for calculation of the remuneration of officials in accordance with Article 63 of the Staff Regulations. Correspondingly, the sums lent were repaid (likewise on the basis of the above-mentioned exchange rate) by means of deductions made by the Commission as lender from the monthly remuneration of the official.

10 The system operated as follows: the official's basic salary, to which the weighting was applied (for example BFR 100 000 × Italian weighting 157.8 in March 1979) was reduced by the amount of the monthly repayment instalment in respect of the building loan (for example BFR 5 000) and, in this example, the net remuneration became BFR 152 800, which was converted into Italian lire at the rate of BFR 1 = LIT 12.50.

11 On 25 July 1975 the Commission decided "in order to resolve the difficulties arising from the fluctuation of exchange rates" to amend Article 9 of the implementing provisions of 17 June 1971; as a result, for loan agreements entered into after that date both the loans and the repayments were to be made exclusively in Belgian francs.

12 Article 2 (1) of the decision provides as follows:

"(a) A borrower who received a loan in the currency of the country in which the property is situated at a rate other than the average rate for that currency in the Brussels foreign exchange market on the day of payment may — within a period of two months from the date of notification of this decision — apply for a reduction of his principal debt to the extent to which he has suffered financial loss as a result of the fact that repayment is to be made in Belgian francs.

(b) To determine the new principal debt, the amounts paid to the borrower in foreign currency shall be converted into Belgian francs at the rate specified in subparagraph (a). From the amount thus obtained there shall be deducted the repayments made up to the date of the decision to reduce the debt. If those repayments were made in the currency of the country in which the property is situated, they shall also be converted into Belgian francs at the rate specified in subparagraph (a).

(c) All repayments to be made after the decision to reduce the debt shall be made in Belgian francs."

13 By letter of 21 August 1975 that decision was notified to the applicant. The letter contained the statement: "In the event of reduction of the debt, all repayments made subsequently are to be made in Belgian francs. You may therefore no longer make any advance repayment in the currency in which the loan was made."

14 By declaration of 26 September 1975 the applicant sought a reduction of BFR 34 960 in his principal debt (the amount specified in the letter of 21 August 1975). The reduction was granted by the Commission, with a consequent reduction in the monthly repayments expressed in Belgian francs.

15 After that reduction was made, the Commission continued until 31 March 1979 to make transfers in respect of the monthly instalments payable by the applicant by converting into Belgian francs the amount transferred in lire, adopting the parity referred to in Article 63 of the Staff Regulations.

16 Following the entry into force of Council Regulations Nos 3085/78 and 3086/78 of 21 December 1978 (Official Journal L 369, pp. 6 and 8) which amended *inter alia* the provisions of Article 63 of the Staff Regulations concerning monetary parities and of Article 17 of Annex VII concerning transfers, the Commission applied, for conversion into Belgian francs of the Italian lire deducted in respect of the monthly repayment, the rate resulting from application of the "updated parities" and from the new version of Article 17 of Annex VII.

17 On 10 July 1979 Mr Adam lodged a complaint pursuant to Article 90 of the Staff Regulations against the conversion of lire into Belgian francs in accordance with the new procedure. His complaint drew no response, other than a mimeographed memorandum dated 28 September 1979.

18 The applicant alleges a breach of the principle of the protection of legitimate expectation. In his view, the offer to reduce the debt should have been presented as an offer to reduce the principal debt subject only to the obligation to make future repayments in Belgian francs. Since such repayments had always been made in Belgian francs, on the basis of the official parity notified to the International Monetary Fund, the applicant was not in a position to understand the results which the Commission sought to achieve.

19 He also maintains that the Commission misused its powers by unilaterally imposing a different parity by means of Regulations Nos 3085/78 and 3086/78, making the borrower's commitment particularly onerous.

20 In the third place, he states that there is discrimination between officials who received their loan on the basis of BFR 1 = LIT 12.50 on the one hand and officials who entered into their loan agreements after 1977 on the other. The former are obliged to repay their loans on more onerous terms as a result of the system introduced by Regulations Nos 3085/78 and 3086/78, whereas the latter received a considerably higher principal amount in lire, specifically as a result of application of the exchange rate for the Belgian franc and the Italian lire existing in the money market, whilst the Commission continued to apply the parity of the International Monetary Fund to their repayments until April 1979.

21 The applicant's first two complaints are based on the view that the parity used for conversion of the amount of the loan into Italian lire and for the conversion of lire into Belgian francs for the monthly repayment instalments ought to be the parity notified to the International Monetary Fund and that the Commission was not entitled unilaterally to adopt any other parity.

22 It appears from the file on the case that the exchange rate used for the conversion of the amount of the loan into Italian lire was the parity notified to the International Monetary Fund in 1965 which, at the time of the loan, was the reference parity determined in Article 63 of the Staff Regulations. In essence the applicant's view is that that same rate must be used throughout the duration of the agreement for the conversion into Belgian francs of the funds transferred to the Commission to repay the loan by means of the monthly instalments provided for in the agreement.

23 The Commission contends on the other hand that the exchange rate to be used for that conversion must be the one fixed as a reference parity in Article 63 of the Staff Regulations and that the monthly transfers may be made pursuant to the provisions of Article 17 of Annex VII to the Staff Regulations, which enables officials regularly to transfer part of their emoluments through the institution by which they are employed in the currency of certain other Member States.

24 In pursuance of that interpretation of the agreement, the Commission converted the amounts in lire transferred to repay the loan in question into Belgian francs according to the parity referred to in Article 63 of the Staff Regulations until the entry into force of Regulations Nos 3085/78 and 3086/78. As from 1 April 1979 it also based its calculations for conversion of the monthly payments on the rates laid down in the Staff Regulations, as amended by Regulations Nos 3085/78 and 3086/78 and applied the provisions of Article 17 of Annex VII to the Staff Regulations in its amended version. It claims that that method of making the transfers conforms wholly with the agreement.

25 The applicant's view is untenable. It disregards the fact that, according to the provisions of the agreement itself, the funds transferred in order to pay the monthly instalments were to be converted on the basis of the parity in force on the date of the transfer, that is to say on the date of each transfer. The agreement did not provide for a fixed parity to apply throughout its duration but rather for various parities which might apply successively during the term of the agreement.

26 It should be recalled that all the recipients of loans were officials of the European Communities and that the agreement provided that repayments were to be made to the Commission by the institution in which they were employed. It was consonant with that situation that the parity to which the agreement referred should be the parity adopted for calculation of the borrower's remuneration, that is to say the parity provided for in Article 63 of the Staff Regulations.

27 In consequence of the events in the money markets which occurred in and after 1971, the parity notified to the International Monetary Fund for the lira ceased to be valid. For a time, the lira floated freely. Finally, with the introduction of the European Monetary System a new exchange rate, which might fluctuate within certain limits, was determined for the currencies of the Member States which participated in the system.

28 The practice adopted by the Commission, namely the application to the transfers made to repay the loans in question of the provisions of Article 17 of Annex VII to the Staff Regulations as newly worded, entails the result that the conversion rate is more favourable to the applicant than mere application of the parity for the lira within the European Monetary System.

29 It is clear from the foregoing considerations that the Commission has not changed the parity in contravention of the terms of the agreement and that the alleged breach of the principle of the protection of legitimate expectation and the alleged misuse of power are without foundation.

30 As regards the alleged discrimination between the applicant and borrowers who received their loans after 1977, it should be noted that the reduction of the debt which the applicant was allowed in 1975 had the effect of placing him in the position in which he would have been if he had received the amount of the loan at the market rate. Moreover, the applicant had the benefit, until April 1979, of the parity initially provided for in the agreement. He could not therefore maintain that he was treated in a manner less favourable than the other borrowers. The allegation of discrimination cannot therefore be upheld.

31 It appears from the foregoing considerations that the applicant's complaints are without foundation and that the application must be dismissed.

Costs

32 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs.

33 However, under Article 70 of the Rules of Procedure costs incurred by the institutions in proceedings by servants of the Communities are to be borne by those institutions.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the parties to bear their own costs.**

Bosco O'Keeffe Koopmans

Delivered in open court in Luxembourg on 1 July 1982.

J. A. Pompe
Deputy Registrar

G. Bosco
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI

(see Case 567/79 A, p. 2394)