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 DELIVERED ON 18 MARCH 1982 [1]

Mr President,
Members of the Court,

1. The cases on which I deliver my opinion today concern the conditions for the repayment of building loans made by the Commission to Community officials and, more particularly, the effects produced on the system of repayments by Council Regulations Nos 3085 and 3086/78 of 21 December 1978.

It should be recalled that, by decision of 2 March 1970 concerning the use of the available sums entered in the budget of the ECSC under the head "Pension Funds", the Council *inter alia* reserved 40% of those sums for making loans within the framework of a housing policy for the benefit of officials. On that basis the Commission adopted on 17 June 1971 implementing provisions which were published in Staff Courier No 170 A of 8 July 1971. The provision with which this case is principally concerned is Article 9 which deals with the currency aspects of the payment of the sums paid. In the original version of the provision it was stated that: "Loans covered by this provision shall be expressed in Belgian francs. The corresponding payments shall be made in the currency of the country where the property being financed is located, at the parity at the time of payment." By a decision of 25 July 1975 the Commission amended the first part of that provision, providing that the loans should not only

1 — Translated from the Italian.

be expressed but should also be "paid in Belgian francs" and substituted for the second part a provision that: "The deductions and payments referred to in Article 7 (2) shall be made in Belgian francs, as shall any repayment made by the borrower to the Commission." It must be borne in mind that Article 7 (2) provided *inter alia* that the loan agreements were required to confer upon the Commission power to deduct ... from the salary or other emoluments of the official ... the interest and repayments due.

The same decision of the Commission of 25 July 1975 also provided in Article 2 (a) that a borrower who had received the amount of the loan in the currency of the country in which the building was situated at a rate other than the average rate of exchange for such currency on the Brussels market on the day of payment might claim a reduction in the capital sum owing in so far as he had suffered financial loss through the fact that repayment was effected in Belgian francs. Paragraph (b) of the same article defined the criteria in accordance with which the new (reduced) amount of the capital debt was to be determined and paragraph (c) stated that, in accordance with the new version of Article 9, all repayments to be made after the decision reducing the debt were to be effected in Belgian francs.

The new arrangements regarding currency which were introduced through the amendment of Article 9 were not immediately put into force in their entirety. Initially the Commission merely made provision for cases of reduction for the loan capital without altering the amount of the deductions for the repayment. In 1977 the staff was informed (through a circular published in Administrative Notice No 134 of the Commission of 24 January 1977) that the calculation of deductions from salaries for the repayment of the debt would be "based on 'updated' exchange rates"; however, staff were still permitted to have the parities communicated to the International Monetary Fund applied "with reference to and within the scope of the provisions giving effect to Article 17 of Annex VII to the Staff Regulations". In this way it remained possible to enjoy the original rates up to 1 April 1979, that is until the date on which the said Regulations Nos 3085 and 3086/78 came into force.

With regard to the content of those regulations I have had occasion to deal with them fully in my opinion of 14 May 1981 in Case 153/79 *Bowden and Others* [1981] ECR 1512. Now I need only recall that Regulation No 3085/78 amended the provisions of the Staff Regulations of Officials with reference to the monetary parities to be used in the application of the Staff Regulations, terminating the application of the parities of the International Monetary Fund and introducing, as the basis for calculating remuneration paid in currencies other than Belgian francs, the exchange rates used for the implementation of the general budget of the Community on 1 July 1978. With regard to Regulation No 3086/78, it makes provision for the adjustment of the weightings applicable to the remuneration and pensions of Community officials in order to bring their level into line with the new monetary parities. In fact we know that the maintenance of the old parities of the International Monetary Fund was accompanied by an anomalous use of the weightings in order to counter the

imbalance between those parities, which went back to 1965, and the actual relationships which developed between the currencies following a more rapid rate of depreciation in certain European countries than in others. Accordingly, once a system of realistic parities had been reintroduced the weightings applicable to those countries had to be reduced in order that they might resume their original purpose of compensating for the differing levels in the cost of living.

Regulations Nos 3085 and 3086/78 have adversely affected officials with a place of employment in Member States with weak currency who receive payment in such currency and who have obtained building loans. I have already stated that until 1 April 1979 the repayments by instalments of such loans, which were effected by deductions from salary, were made on the basis of the 1965 rates of exchange. After 1 April 1979 the deductions in question were effected on the basis of the updated rates of exchange; the deductions have thus become much more burdensome.

In order to provide a clear picture of the change the example may be taken of an official who, like the applicants, was employed in Italy and had obtained in 1972 a building loan of BFR 500 000. At that time the equivalent sum in Italian lire was paid him at the International Monetary Fund rate of LIT 12.50 per Belgian franc (and he accordingly received LIT 6 250 000) and the monthly deductions for the repayment of the loan were initially calculated on the basis of the remuneration (expressed in Belgian francs) *increased* by the weighting for Italy which was more than 100 in order to compensate for the artificial rate of exchange; furthermore, each deduction removed from the salary in Italian lire a sum calculated at the rate of LIT 12.50. When Regulations Nos 3085 and 3086/78 came into force the deductions were made from remuneration in Belgian francs *reduced* through the application of the Italian weighting (which fell to a level below 100 after the re-establishment of genuine rates of exchange) and caused a considerable reduction in the level of remuneration expressed in Italian lire in view of the fact that the rate of exchange of the Belgian franc and the Italian lira is approximately double what it was.

2. The facts of the actions in question may be summarized as follows:

(a) *Cases 567/79 A and 618/79 A.* Jakob Flamm and Helmut Knoeppel, officials of the Commission employed at the Research Centre, Ispra, concluded contracts dated 23 December 1971 for two building loans with the institution employing them in order to build houses in Italy. In 1975 the Commission made an offer to the borrowers to reduce their capital debts, as was permitted by the decision of 25 July; Mr Flamm refused that offer whilst Mr Knoeppel accepted it, thereby obtaining a reduction of some BFR 150 000. When the repayment instalments of the loan became more burdensome for the reasons which I have endeavoured to explain the applicants both submitted on 27 March 1979 a complaint through official channels in which they challenged the application of Regulations Nos 3085 and 3086/78 to the repayment of the loans which they had obtained. In a second complaint, which was submitted on 11 July 1979, the applicants challenged the application of Regulation No 3085/78 to the calcu-

lation of the repayment for the month of April 1979. The Commission rejected the two complaints by letters dated 12 July and 28 September 1979 respectively. As a result Mr Flamm and Mr Knoeppel brought an action before the Court on 17 December 1979 in which they claimed.

(a) that the salary statements for April 1979 and the decisions rejecting the complaints in so far as they concerned the deductions for repayment of the building loans should be annulled;

(b) in the alternative that the salary statement for April 1979 and the decision rejecting the complaint should be annulled only in the case of Mr Knoeppel who had agreed in 1975 to the novation of the contract, since the deductions were higher than those fixed at the time of novation;

(c) a declaration that the rate of repayment of the loan must remain, with regard to the months after 1 April 1979 too, at the previous figure, regardless of whether the updating of the loan had been refused or accepted;

(d) in the alternative a finding that the applicants are entitled to repay their respective loans on the basis of the rates in force when the capital was paid, for a period of two years following the delivery of the judgment which is claimed from the Court;

(e) an order for the Commission to pay to the applicants in Italian lire the amount of the difference between the sums paid by them in repayment of their respective loans and the lesser sums which they should have paid instead;

(f) a further order for the Commission to compensate the applicants for the pecuniary loss suffered by them, with interest at the legal rate to run from the time when the individual instalments fell due.

It should be recalled that Mr Flamm and Mr Knoeppel instituted proceedings against the Council, as well as the Commission, and that the Court, in two orders dated 14 October 1981, declared that that part of the applications was inadmissible on the ground that the Council was not the appointing authority of the applicants or a party to the loan contracts.

(b) *Case 1205/79.* Robert Adam, who is also an official at the Research Centre at Ispra, concluded with the Commission in 1972 a loan agreement concerning a house in Italy. When in 1975 the creditor suggested to the borrower that the capital debt should be reduced Mr Adam accepted the offer and thus obtained a reduction of some BFR 35 000. After the entry into force of Regulations Nos 3085 and 3086/78 Mr Adam submitted (on 10 July 1979) a complaint through official channels against the application of the regulations to the conditions of repayment of the loan which he had received. Since the Commission failed to uphold his complaint Mr Adam brought court proceedings against it on 10 December 1979 claiming:

(a) annulment of the implied decision rejecting the complaint on the grounds of breach of the general principles of Community law and of secondary Community law and of misuse of powers;

(b) in the alternative annulment on the same grounds and in addition on the ground of infringement of essential procedural requirements of the decision rejecting the complaint contained in a circular of 28 September 1979 (the defendant contests the view that the circular constitutes a decision);

(c) a declaration that the Commission had unlawfully applied to the repayments of the building loan a monetary parity other than that laid down in the contract, which had always been observed in previous years;

(d) accordingly, a declaration that the Commission was under an obligation to permit the monthly repayments and any advance repayment of the debt to be effected on the original parity or by direct payments in lire and that in both cases the Commission should be required to adjust the payments made in advance from 1 April 1979 and to accept the repayment by the applicant of the sum paid to him in 1975 as a reduction of the capital debt.

(c) *Joined Cases 5 and 18/80.* Dino Battaglia and Antonietta Cocco Bevilacqua, officials of the Commission at the Research Centre, Ispra, concluded agreements on 23 December 1971 and 16 November 1972 respectively, for loans for the construction of houses. Neither of the two applicants accepted the Commission's offer of a reduction in the capital debt. On 29 May 1979 Mr Battaglia submitted a complaint through official channels against the application of the new conversion rates to the repayments but the Commission did not take an express decision with regard to it. Mrs Cocco Bevilacqua for her part did not submit any complaint through official channels. In view of the basically negative attitude of the Commission both officials brought an action before the Court dated 7 January 1980 claiming:

(a) a declaration that the Commission, by modifying unilaterally the methods of calculating the monthly instalments of the repayment, was in breach of the agreements granting the loans;

(b) accordingly an order to the defendant institution to pay the applicants the sums deducted in excess, shown on the salary statement for the month of April 1979;

(c) furthermore, with regard exclusively to the application submitted by Mr Battaglia, a declaration that the measures adopted by the institution concerning payments and the implied decision rejecting the complaint were void and an order to the Commission to refund the sums unlawfully deducted.

3. At this point the legal basis for the jurisdiction of the Court of Justice over the disputes which I have just described should be clarified. The loan agreements which gave rise to those cases and which were drawn up in advance by the lending organization on the basis of a standard form contain (Article 20) the following arbitration clause: "The parties undertake to submit to the Court of Justice of the European Communities any dispute which might arise between them over the validity, interpretation or performance of this agreement." Taking account of the existence of that clause and considering that the grant of loans to staff is unconnected with the relationship of service which binds officials to the institutions (although the loan agreements have regard at various points to that relationship: it is sufficient to think of the means of repayment) I consider that the jurisdiction of the Court of Justice is based on Article 181 of the EEC Treaty in accordance with which: "The Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of

the Community, whether that contract be governed by public or private law."

That has an important effect with regard to procedure. The reference to Article 181 of the Treaty means that the applicants do not need to follow the special procedure of a prior complaint through official channels laid down in Article 90 of the Staff Regulations of Officials. We have seen that Mrs Cocco Bevilacqua did not submit such a complaint: in view of the nature of the dispute in which she is involved this is completely irrelevant.

4. The criteria applied by the Commission from the month of April 1979 in retaining sums from salaries for the repayment of the loan are challenged first of all on the ground of breach of contract. In this connection the currency applicable to the contract should be settled as a preliminary matter. The principal argument of the applicants is that that currency was the Italian lira since the capital amount granted as a loan was paid in lire. Furthermore the applicants maintain that the borrowers did not take upon themselves the risks of fluctuations of the lira, with the consequence that, despite the gradual fall in the purchasing power of that currency, the nominal amounts of the monthly contributions for repayment calculated in lire should have remained unchanged. In the alternative, that is proceeding on the basis of the fact that the loan was expressed in Belgian francs, the applicants rely on Article 9 of the implementing provisions which I have already quoted and in accordance with which payments of loans must be made in the currency of the country where the property is located "at the parity at the time of payment". The same parity, according to the applicants, must continue to apply to sums deducted as repayments.

This preliminary point must thus be considered with reference to the terms of the agreements as well as the implementing provisions adopted by the Commission by the decision of 17 June 1971. Although on the one hand these provisions are in the nature of internal rules intended to govern the operations of the Commission in the field of building loans, on the other they were adopted in every agreement so that the parties were at one with regard to them. In fact the preamble to the standard-form begins with a reference to "... the implementing provisions adopted on 17 June 1971 by the Commission of the European Communities concerning the grant, under certain conditions, of loans to officials of the European Communities for the construction, purchase or conversion of property for their own use or for the use of their families".

Having made that clear, I should like to mention that many clauses in the agreement in question refer to the Belgian franc as the currency in which the pecuniary obligations of the contracting parties are expressed. In this connection the provisions concerned in Articles 1, 4, 5, 15, 16 and 17 appear to me to be of particular significance: in Article 1 (and indeed in the last sentence of the preamble) the amount of the loan is given exclusively in Belgian francs; Articles 4, 5 and 16 refer to the repayment table which in its turn gives the individual rates of repayment in Belgian francs; Article 15 lays down that transfers of money to the lender — for early repayment or in payment of monthly instalments — must be effected in Belgian francs or in the currency of the country in which the house to be

financed is situated but must be converted into Belgian francs; finally Article 17 provides that the risks of the death or permanent total invalidity of the borrower must be covered by an insurance policy in favour of the Commission, the capital amount of which is stated in Belgian francs. Within the framework of the implementing provisions, then, particular importance is to be attached to the first paragraph of the said Article 9 in the 1971 version which, as we have seen, provided that "Loans . . . shall be expressed in Belgian francs". It accordingly appears to me that there are sufficient grounds for holding that the parties intended to express their respective obligations in Belgian francs.

This interpretation is not belied by the second paragraph of the said Article 9 of the implementing provisions of 1971 which provides that "payments shall be made in the currency of the country where the property being financed is located". We have seen that, according to the applicants, the currency of the contract is the same as that in which the amount of the loan was actually paid and in which the deductions from the borrower's salary, corresponding to the repayment instalments, are made. That argument, however, deprives of all significance both the first paragraph of the same Article 9 and of the clauses of the agreement which I have listed above: purely inductive reasoning is made to prevail over the actual wording of the provisions in question. In my view the decisive point is that in the agreement the parties always quantified their respective pecuniary obligations in Belgian francs, referring to that currency in order to determine the amount of the loan and that of the instalments of the repayments. It appears to me that this reflects the mutual intention of the contracting parties to take the Belgian franc as the parameter for the relations concerning the loan.

5. With that first point of interpretation decided it remains to resolve the problem of the rate of exchange to be applied to the instalments of the repayment. In this connection two provisions which have already been cited fall to be considered: the second paragraph of Article 9 of the implementing provisions of 1971 (pursuant to which payment had to be made in the currency of the country where the property was located "at the parity at the time of payment") and Article 15 of the standard-form contract which lays down that: "Any transfers by the borrower to the lender by way of early repayment or in payment of monthly instalment shall be made in Belgian francs or in the currency of the country in which the property to be financed is situated" (the currency employed in paying over the amount of the loan in question). "The funds in question shall be converted into Belgian francs on the basis of the parity ruling as at the date of the transfer."

The expressions "at the parity at the time of payment" and "on the basis of the parity ruling as at the date of the transfer" must be interpreted primarily as establishing whether the parity to which

they refer is that prevailing on the currency market or the national parity previously fixed by the International Monetary Fund. The second alternative contains in its turn two possibilities: that the intention was to take account of the parity of the International Monetary Fund as such or of Article 63 of the Staff Regulations of Officials (which, as the Court knows, at the time when the agreements were concluded referred to the rates of exchange of the International Monetary Fund in 1965): in the one case it was intended that the variations in the rates fixed by the International Monetary Fund should directly affect the obligations of the contracting parties whilst in the other only the amendments to Article 63 of the Staff Regulations could have produced such an effect. Once that problem has been resolved it will be further necessary to establish whether the parties intended to refer to a fixed parity, to be applied to all subsequent pecuniary operations, or to a rate which was liable to be varied in the course of time.

6. As to the first point I am of the opinion that both in the context of the implementing provisions and in that of the standard-form agreement the expression "parity in force" must be understood as containing an implied reference to the system employed in the Staff Regulations (and thus to Article 63 thereof). The Commission has properly observed in this connection that in contracts concluded between it and its employees it was reasonable to employ the same rates of exchange as those employed in the context of the employer and employee relationship (that is, the rates stated in Article 63 for the payment of remuneration).

That argument appears to me valid, above all if the interpretation which the Commission itself has placed upon Article 9 of the implementing provisions is accepted and if it is borne in mind that the monthly repayments of the loan had to be made through deductions from remuneration. It is indeed the case that no reference is to be found in the terms of the standard-form agreement or of the implementing provisions to Article 63 of the Staff Regulations of Officials; nevertheless in the field of interpretation decisive importance is to be accorded, in my opinion, to the conduct of the parties after the conclusion of the agreement. The fact that the Commission paid the loan and then calculated the amount of the monthly repayment instalments by applying the International Monetary Fund exchange rate over a period of many years until 1 April 1979 even though the rate was far removed from the current rates confirms that the expression "parity in force" was clearly intended by the parties as entailing a reference to the parties laid down in the Staff Regulations for the payment of remuneration. Furthermore, the adoption of the International Monetary Fund exchange rates, which may be inferred from the conduct of the parties, cannot be understood unless regard is had to the implied reference to Article 63 of the Staff Regulations: for what other reason and on what basis would the parties have made their respective payments through rates of exchange which at the time of the conclusion of the contracts were already fictitious?

7. It remains to ascertain whether the contracting parties adopted the exchange rates provided for in the Staff Regulations of Officials as flexible limits (that is, limits which would be modified automatically if there were an amendment to Article 63 of the Staff Regulations or if

new parities were introduced) or as fixed parameters anchored to the parities which the Staff Regulations fixed at the time when the agreements were concluded and which could not be altered otherwise than by *ad hoc* agreement between the lender and the borrowers. In this connection the applicants emphasize that when Article 9 of the implementing provision refers to "time of payment" it means the date on which the loan capital was paid over; in their opinion that is in any case a fixed date, substantially the same as that of the conclusion of the contract, to which reference must always be made in order to determine the parity to be applied to the monthly instalments of the repayments. On the other hand the Commission maintains that the above-mentioned article, like Article 15 of the standard-form agreement, refers to the parity in force *at the time of each payment;* there would thus be as many possible rates of exchange as there are payments, varying with the passage of time, which the contracting parties must make.

In my view it is impossible to rely upon Article 9 of the implementing provisions (in the 1971 version) in support of the argument of the fixed parity. That article does indeed concern exclusively the payment of the amount of the loan by the creditor to the borrowers, as is to be inferred from its context and from its position between two other provisions concerning the payment of the capital (Article 8) and a subsequent formality (Article 10). Nevertheless it was possible for the sum lent to be paid in more than one instalment: that is shown by Article 4 (1), which provides that it is possible for a loan to be paid "in two instalments", by Article 8, 6 (4), which mentions the case of a loan to be paid in instalments, by Article 8, which provides that in the case of the construction and conversion of the building the loan must be paid in a number of instalments "as the work proceeds, on presentation of a statement on the progress of the work signed by the architect", and finally by Article 10, which requires the borrower to prove ownership of the property "within one year of receiving the final instalment of the loan". Accordingly, where the second paragraph of Article 9 provides that the corresponding payments shall be made at the parity at the time of payment it seems to me that that expression must be interpreted as meaning that the rate of exchange to be applied is that in force at the date of *each* payment.

Article 15 of the standard-form agreement provides even stronger arguments in support of the view that the rates of exchange adopted are variable. As I have previously recalled, the first paragraph of that article concerns "any transfers by the borrower to the lender by way of early repayment or in payment of monthly instalment". There is no doubt that these are periodic payments intended to take place on various dates and over a long period of time. However, when the second paragraph provides that "the funds in question shall be converted into Belgian francs" — clearly where a repayment is in the currency of the country where the building is situated — "on the basis of the parity ruling as at the date of the transfer" it is evident that the rate of exchange to be applied will be that of the day on which each payment is made. That clause thus shows, in my opinion, that the parties made provision for the possibility of a variation in the exchange rates and that the borrower took upon

himself the risk that the rate would be less favourable at the time of the conversion of the local currency into Belgian francs in order to fulfil his monthly obligation of repayment. The standard-form agreement therefore did not contain any exchange guarantee in favour of the recipient of the loan.

To recapitulate: my view is that the currency of the contract was the Belgian franc and that the exchange rate was that provided for by the Staff Regulations of Officials for the payment of remuneration. That rate was liable to be modified, as it was through the adoption of Regulations Nos 3085 and 3086/78. A realistic exchange rate was introduced and the borrowers suffered the unfavourable effects of the new situation. Nevertheless the increase in the deductions from salaries for the repayments effected by the Commission did not constitute a breach of the contracts; it was merely the application of the clause which, in providing that the rates of exchange might vary, exposed the borrower to the risk that the Italian lira might depreciate faster than the Belgian franc.

8. I have already recalled that the Commission in July 1975 amended Article 9 of the implementing provisions, laying down that payments of the loan must be made in Belgian francs, like repayments and deductions from salary, and abolished both the scheme for repayments in local currency and the corresponding arrangements concerning rates of exchange. With regard to agreements already entered into, the Commission, by the same decision, permitted borrowers to opt for a reduction in the capital debt corresponding to the difference between the amount of the loan at the official rate and that at the market rate on the day of payment. That offer was repeated by a note of June 1977 (Annex 9 to the defence of 27 May 1980 in Joined Cases 5 and 18/80) and it was explained at the same time, in paragraph 2, that borrowers who had not requested the reduction retained the right to pay the instalments in local currency but on the basis of the parity in force at the time of each transfer. In order to make matters clear the same note added in paragraph 4 that "no guarantee can be given regarding the maintenance of the rate of exchange at present adopted by the Commission for conversion into Belgian francs" of the deductions for the repayment of the loan.

In the context of the cases with which we are concerned two of the applicants, Mr Adam and Mr Knoeppel, accepted the reduction in their debt. Regard being had to the point of view which I adopted with regard to the rate of exchange applicable to the pecuniary obligations arising from the loan agreements that fact appears to me irrelevant. Matters take on a different aspect if it is considered that the parties adopted a fixed parity; that would in fact mean that when the borrowers agreed to the reduction in the debt they had consented to the amendment of the conditions of the agreement, that is, to alter the fixed parity to a flexible one (linked, that is, to possible amendments to Article 63 of the Staff Regulations).

In Mr Adam's submissions, which proceed on a similar basis, it appears to

be argued that the Commission deceived the borrowers in inducing them to accept the amendment of the agreement; that amendment must accordingly be considered void owing to lack of intent. That argument, however, seems to me unfounded. I have already explained that the offer of a reduction in the loan capital occurred at the same time as the amendment of Article 9 of the implementing provisions and was clearly connected with that amendment. We know that although Article 9 as amended provides that the repayment of the loan must be effected in Belgian francs it does not refer to any parity. I accordingly do not see how a clause of that nature could constitute a device for misleading the borrowers: the clause was perhaps incomplete but it does not appear to me that it may be described as fraudulent.

In any case the decisive feature is that acceptance of the reduction did not, in my view, entail any alteration in the system of exchange rates. It must accordingly be accepted that the Commission did not deceive the other contracting party since the terms of the agreement remained unaltered.

9. In his submission Mr Adam also criticizes the conduct of the Commission on the ground that it had led the borrowers to believe that the parities of the International Monetary Fund would be maintained for an indefinite period and on that basis induced them to accept a reduction in their capital debt whilst subsequently applying to the deductions from salaries from April 1979 the new rates of exchange introduced by Regulation No 3085/78.

It should be borne in mind that in the cases in hand the essential is to appraise the conduct of the parties within the framework of the relations established by the loan agreements. Accordingly the above-mentioned complaint really raises the problem of compliance with the requirement of good faith which must guide the conduct of the parties to any contract both in the course of operations before the contract is negotiated and when it is concluded and subsequently in the course of its implementation. That moreover corresponds to the specific content of the complaints levied by Mr Adam against the Commission, in reliance on the principle of trust: he maintains that the Commission applied the updated rates of exchange to the deductions for repayments after a series of operations begun previously in 1975 which are indicative of a plan intended to induce the borrowers to accept a revision of the conditions of the loan. In his submissions Mr Adam mentions in this connection the amendment of Article 9 of the implementing provisions, the offer of a reduction in the capital debt in the maintenance up to 1979 of the parities of the International Monetary Fund even in the case of borrowers who had accepted the new parities.

It is clear that this constitutes an endeavour, under a new aspect, to advance the argument of the fraudulent intention of the Commission in inducing the borrowers to accept the novation of the loan agreement. I shall therefore merely observe in the first place that I am quite unable to discern in those operations evidence of such an intention and, secondly, that the existence of the Commission's right under the agreement to adjust the rates of exchange in parallel

with any amendments to Article 63 of the Staff Regulations ruled out any need for consent to new conditions of the loan agreement.

10. The same applicant, Mr Adam, further complains that the Commission has modified the balance of the obligations to be fulfilled under the contract to its own advantage by the unilateral application, through Regulations Nos 3085 and 3086/78, of a different rate of exchange to the monthly instalments of the repayments of the loan. That, he states, includes the defect of misuse of powers in so far as the Commission has employed those two regulations in order to obtain an exchange guarantee and thus the repayment of a sum far in excess of the capital paid out.

If it is true, as I have tried to show, that the new exchange rates laid down in Regulation No 3085/78 were applied to the loan agreements in question on the basis of Article 15 of the same agreements this complaint, too, is unfounded, thereby rendering superfluous consideration of the question whether the conduct of the Commission in relation to the agreement may be challenged on the ground that it was *ultra vires.*

11. In their submissions Mr Battaglia and Mrs Cocco Bevilacqua stated, finally, that there had been an infringement of an essential procedural requirement and they claim that the Commission's decision to effect the deductions from remuneration for repayment of the loan on the basis of the updated rates of exchange does not state the reasons on which it is based, thereby infringing the second paragraph of Article 25 of the Staff Regulations of Officials in accordance with which any decision of the administration adversely affecting an official is required to state the grounds on which it is based.

In order to confute that argument I shall merely repeat that these disputes do not concern the employer and employee relationship between the officials and the administration but instead concern the implementation of the obligations under the loan agreements concluded by the Commission with certain of its officials. The fact that the loans at issue were granted by an institution to its employees for social purposes and that the repayment was effected through deductions from monthly salaries is not of such a nature as to bring the disputes arising from these agreements within the scope of the Staff Regulations. The second paragraph of Article 25 is expressly concerned with individual decisions *which are adopted under the Staff Regulations:* it is, however, certain that a decision concerning the procedures for the repayment of building loans falls outside that category. Accordingly the complaint in question cannot be upheld.

12. On the basis of all the foregoing considerations I am of the opinion that the actions brought against the Commission by Robert Adam by an application of 10 December 1979, by Jacob Flamm and Helmut Knoeppel by applications of 17 December 1979 and by Dino Battaglia and Antonietta Cocco Bevilacqua, by applications of 7 January 1980, should be dismissed.

With regard to the costs I consider that, having regard to the complexity of the dispute and to the novelty of the points at issue, the parties should bear their own costs.