Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community;
Having regard to the Staff Regulations of officials of the European Economic Community, especially Articles 5, 91, 102 and Annex I;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 69 and 70;

THE COURT (Second Chamber)

hereby:

1. **Dismisses Application 48/64 as inadmissible;**
2. **Dismisses Application 1/65 as unfounded;**
3. **Orders the applicant to bear the costs, with the exception of those incurred by the Commission.**

Donner Strauß Monaco

Delivered in open court in Luxembourg on 16 June 1965.

M. J. Eversen
Assistant Registrar
For the Registrar

A. M. Donner
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 19 MAY 1965[1]

Mr President,
Members of the Court,

Mr Claude Brus, previously an official with the Société nationale des chemins de fer français, was engaged at the end of 1958 by the Commission of the EEC in Grade B8, Step 4, and assigned to the Salaries and Mission Expenses Division of the Directorate of Personnel. He was subsequently reclassified in Grade B7, Step 3, with effect from 1 December 1959, and in Grade B6, Step 2, with effect from 1 March 1960. At the entry into force of the Staff Regulations, he was established by decision of 20 November 1962 in Grade B1, Step 3, as from 1 January 1962, retaining his previous position as Head of the Salaries Section of the Salaries and Mission Expenses Division.
Following the decision of the Commission defining the duties and powers attaching to each post, on 4 September 1963 he requested his reclassification as from 1 January 1962 in Grade A5, the career bracket of a Principal Administrator. On 18 September 1963 he received

1 — Translated from the French.

the reply that his claim was being given serious consideration. On 21 May 1964 he raised the matter again, enquiring whether the 'failure to reply' with which he had been met should be considered simply as a rejection of his request. Although a letter of 15 July 1964 raised his hopes of an early decision in his case, on 28 October he brought before you Application 48/64 for the annulment of the implied decision of the Commission in so far as it refused to integrate him as from 1 January 1962 in Grade A5, for the annulment so far as is necessary of the earlier decision establishing him in Grade B1 and for an order that the Commission should pay him arrears of salary and interest thereon.

Then, after the Commission had expressly rejected his complaint of 30 November 1964, on 7 January 1965 Mr Brus brought before you Application 1/65, a new appeal against that decision, which repeated his previous conclusions.

A — Admissibility

The administrative complaint was submitted on 4 September 1963; appeal 48/64—against the implied decision arising from the Commission's attitude—was only filed on 29 October 1964. The defendant consequently maintains that it is out of time despite two letters of acknowledgement addressed to the person concerned.

This appears correct if reference is made to Article 91 (2) of the Staff Regulations which reads thus: *'If no decision has been taken by the* competent authority of the institution *in response to a request or complaint* by one of the persons to whom these Staff Regulations apply, this shall be deemed on the expiry of a period of two months from the date when the request or complaint was submitted to constitute an implied decision of rejection; appeals against such decisions shall be filed within a period of two months from that date'. In other words, the implied decision has been taken and the period for bringing an appeal against it starts to run when, two months after the complaint, the implied decision has not resulted in an express decision by the Commission. In this case, two letters of acknowledgement, one written less than two months and the other written more than two months after the complaint, informed the person concerned that his request was receiving consideration. But no decision was involved and they therefore do not influence the period for filing appeals. They can neither cause the period of three months provided for in the first paragraph of Article 91 (2) for contesting an express decision to start to run, nor preclude the emergence of an implied decision if no decision is taken.

On the other hand, the Commission does not dispute the admissibility of Application 1/65 at least in so far as it is against the decision of 30 November 1964 expressly rejecting Mr Brus's complaint. It was lodged within three months following that decision and the complaint had itself been submitted within the period for filing an appeal, after the definition of the duties and powers attaching to each post, which, according to your judgments, constitutes a substantial new factor allowing a fresh consideration of the classification of integrated servants. On the other hand, as the representative of the Commission stressed in the oral procedure, I do not think it desirable in this case to extend the concept found in certain national legal systems which, viewing the express decision merely as the confirmation of the earlier implied decision, considers that its occurrence does not cause the period for lodging the appeal to start to run afresh. Although it is then no longer admissible for Mr Brus to dispute the decision of 12 November 1962

which established him in Grade B1, we must consider whether his appeal is well founded in so far as it is directed against the refusal of his request for reclassification.

B — The substance of the case

The applicant was classified in Grade B1, corresponding to the post of a Principal Administrative Assistant, that is to say, at the top of Category B which, according to Article 5 (1) of the Staff Regulations, comprises 'executive duties'. He maintains that, having regard to the duties carried out by him before the Staff Regulations came into force he must be classified in Category A, and more exactly, in career bracket A4-A5, which is that of Principal Administrator.

You know that, according to Article 5, career brackets in this category are for 'staff engaged in administrative and advisory-duties which require university education or equivalent professional experience'. You also know that pursuant to the definitions of duties adopted by the Commission on 29 July 1963, a 'Qualified Official engaged in planning, advisory or supervisory duties in one sector of activity', or the 'Head of one particular sector of activity in a Division' or the 'Head of a specialized Department' is to be classified as a Principal Administrator.

Mr Brus maintains that as the Head of the Salaries Section of the Salaries and Mission Expenses Division he could claim to fall within one or other of these definitions.

I. The essential task of the Section of which he was head was to fix the remuneration (basic salaries and allowances or various grants) of officials and servants; it does so from data supplied to it by the Directorate of Personnel and on the basis of the scale of salaries, without having to settle the disputes which might sometimes arise from the administrative position or family situation of servants. The Commission deduces from this that the Head of the Section is engaged in executive duties. Let us dismiss from the outset Mr Brus's objection in this connexion that this point of view would result in the elimination of all planning duties, since all the servants of the EEC, at whatever level, have as their sole duty the implementation of the Treaty of Rome. This is a piece of pure sophistry which is not worth discussing.

The applicant is on firmer ground when he is concerned to show that from the beginning he in fact performed planning and advisory duties far removed from mere routine application. In the file you will find certain documents lodged by him showing the work he performed in order to implement and apply the system of remunerations. Three of these documents have been fully commented on at the Bar and it is these which I shall discuss briefly. We are concerned first with a plan for computerizing the salaries department devised by him in October 1958, describing the system then prevailing, enumerating its faults, and putting forward specific solutions. This is a sound piece of work, but, contrary to what Mr Brus maintains, it seems to emerge from it that certain of the solutions put forward are only a repetition or adaptation of those already practised in other institutions, which is in any event quite normal.

We are next concerned with a note of 1959 on the use of the computer facilities by the salaries section, which ascertains the classification of staff from an accountancy point of view and shows the information which must appear in the punched cards. It is a correct but simple deduction from the rules unambiguously laid down in the Staff Regulations; I

refuse to see in it a task of planning, even in the 'instructions' of 8 May 1961, to which reference was made at the Bar, and which show for example that the servant's registered number on the computer card must always contain four figures. . . .

We are finally concerned with certain notes of December 1961 preparing for the implementation of the new Staff Regulations by computer techniques. On the basis of the provisions of these Regulations, Mr Brus asks the competent Division a certain number of questions of law or of the interpretation of the Staff Regulations, an answer to which is necessary for the implementation of the computerized system of salaries. But the applicant does not supply these answers, he asks for them, and although the work accomplished by him indicates his sense of responsibility and indeed initiative, it is not an original work, a work of planning, requiring, as Article 5 provides, 'university education or similar professional experience'.

That is where the basic criterion laid down by the Staff Regulations for classification in Category A lies, never let it be forgotten. Although Mr Brus carries out his duties as Head Clerk with competence and zeal, as the Commission recognizes, it does not follow either from his observations or from the documents produced by him that his were planning duties. Important though it is, both from the point of view of the institution and the staff, the system of salaries on the basis of the Staff Regulations is essentially an executive duty and it is not merely coincidence that, according to an undisputed statement furnished by the Commission, officials performing similar duties with the ECSC and with Euratom are classified in Category B.

To end this topic, I should like here to reply to an objection raised for the first time at the Bar by the applicant. He refers to Vacancy Notice No 2093 published on 3 March 1965 and relating to an A5 position as Principal Administrator; the duties of the person established in it are the performance of planning and advisory duties relating to various sectors of the Salaries Division especially in the fields of remuneration and travel expenses. Thus duties of the type performed by Mr Brus are considered as falling within Grade A5. The objection is invalid: first, because it does not follow from this notice that the Commission intended the new servant to carry out the same duties as those for which the applicant was responsible: it may certainly be admitted that in the Salaries Division there is room for a servant engaged in advisory duties distinct from the simple routine of salaries; and secondly because, if my information is correct, according to the Vacancy Notice the official in question was also required to assist the Head of Division; the position of Assistant to Head of Division is expressly recognized by the description of posts as corresponding to the basic post of Principal Administrator, A4-A5.

II. Mr Brus also maintains that he can claim the status of 'Head of one particular sector of activity in a Division', as the salaries department of which his is in charge is not only a sector of activity within the Salaries and Mission Expenses Division but is its principal sector. It is true that in your judgment in the Charles Müller case (109/63 and 13/64 of 16 December 1964) you refused this title to the Head of the Mission Expenses Section of the same Division, but this would form an additional reason for granting it to the Head of the Salaries Section, since without this the Division would not contain any subdivision constituting a sector of activity.

I think that you have already replied to this point both in your judgment in the Charles Müller case and in that in the Jullien Case (10/64 of 24 February 1965). You consider that all subdivisions coming directly under a Division are not

necessarily 'sectors of activity' within the meaning of the definition of posts, and that the terms 'sector of activity' (A4/A5) and 'administrative unit' (B1) do not correspond to clearly distinct concepts, but that their application to the different subdivisions of an institution to a certain extent discretionary and depends on the general distribution of administrative responsibilities.

Here, as in the Jullien case, no official document employed the term 'sector', only 'section', which is intentionally neutral. On the other hand, it must indeed be recognized that there is no difference in kind between the duties of the applicant and those of Mr Charles Müller. Both are in charge of a section whose name appeared in the title of the Division. They are both in charge of the same number of assistants, all in Categories B and C.

Finally, Mr Brus cannot deduce an argument—as he did in his application—from the fact that he is under the direct authority on the Head of the Division. This factor is not sufficient either to appraise the level of his post, or to make the administrative unit of which he is in charge a sector of activity within the meaning of the definition of posts. It is known in fact that there are divisions where only the Head of Division and his Assistant—when there is one, as does not seem to be the case here—belong to Category A, whilst the other assistants, including the Heads of the subdivisions which make up the Division, are officials in Category B.

In sum, there is nothing to establish decisively that the section of which Mr Brus was in charge must necessarily be classified as a sector of activity.

III. Was he then the head of a 'specialized department'? This is an argument which was sketched out in the reply, and developed at length at the Bar. The argument is based on the fact that Mr Brus was in charge of the study and implementation of the legal provisions governing social security until recruitment of the staff who now comprise the Social Security 'Section' of auxiliary and local staff placed under his supervision. In this connexion the applicant refers to the qualifications required by Vacancy Notice No 802 for the official under him who presently carries out this work. The official is of necessity a specialist from which it follows that Mr Brus, as his superior, is the Head of a specialized department.

Although the Head of the Section is charged with distributing duties amongst his assistants, it does not appear that the Commission, which alone is competent to create administrative units, specialized or otherwise, has recognized the existence of the Social Security 'Section'. I shall not repeat further the considerations developed at the Bar on the difficulties to which social security gives rise and which, as has been said, produce 'real brain-teasers'. It only remains to establish that the servant to whom the applicant refers was recruited in Grade B3 and that, although he was required to have 'a thorough knowledge of and practical experience in the field of social security' he was on the other hand only required to have an advanced level of secondary education or equivalent professional experience—which consequently corresponds to Category B. Contrary to what has been said, these two requirements are not necessarily contradictory. A thorough knowledge of a limited field does not necessarily presuppose university education or the equivalent; I am almost tempted to say, on the contrary. Although this agent is, then, a 'specialist', his duties remain those of Category B, and no conclusions may be drawn from this as to whether his superior, Mr Brus, was to be considered as the Head of a 'specialized department'. It seems to me that on this issue, too, the applicant's argument cannot be accepted.

But, in order to establish that his duties come within Category A, Mr Brus, as you know, employs another argument, that of the requests by the Commission to the Council in 1964 and 1965 to have four B posts in the Salaries and Mission Expenses Division transformed into A5 or A6 posts. The Commission thereby recognized that the Heads of the four Sections of that Division were officials engaged in planning, advisory or supervisory duties. As you considered in the Charles Müller case that such a document 'cannot *by itself* constitute legal recognition of the right of the applicant to the post referred to', Mr Brus maintains that his situation is not identical with that of Mr Müller and that moreover his appeal is not based solely on the budgetary claims of the Commission.

It seemes to me on the other hand that the situations are strictly identical. The very document invoked in the Müller case is invoked today by the present applicant. And Mr Müller did not merely limit himself to basing his case on the claims of the Commission; it was only after his principal line of argument in order to obtain classification in Category A had been dismissed that the judgment also refused to take into account the budgetary document.

One last point remains. Mr Brus has repeatedly asked you to require the Commission to produce certain documents, in particular the minutes of the meetings in March 1964 during which the Commission dealt with his request for reclassification together with the written procedure C—182. 64 and C—183. 64. It seems that he intends to establish with the aid of the documents that the Commission's position varied in the course of the enquiry into his complaint. This is possible, but I do not think that it is sufficient to justify producing internal documents of the institution. What matters is the decision taken by the competent authority which is contested before you. That in the course of a discussion conflicting opinions were expressed and an earlier attitude was altered as a result of a judgment given by you, are instances which can occur in any collegial institution, and no argument may be deduced from it one way or the other. Although it is an administrative body, the Commission is also entitled to expect that the secrecy of its 'deliberations' will be respected. Furthermore, although there are no grounds for ordering the production which has been required, I consider that nothing in the file allows it to be said that the decision of 30 November 1964 deciding the complaint of Mr Brus infringed Article 5 of the Staff Regulations Annex I, or the Commission's decision of 29 July 1963.

In conclusion I should like to add that the applicant also referred to the infringement of Article 102 (1) of the Staff Regulations, because Annex I was adopted by common accord by the Councils of the Communities and thus constitutes the standardization of practice provided for by the said Article 102. It plainly is not, and the submission should therefore be dismissed.

I am therefore of the opinion that:

— Application 48/64 should be dismissed as being inadmissible and Application 1/65 should be dismissed as being without foundation;

— the costs of the two applications should be borne by both parties, in accordance with Article 70 of the Rules of Procedure.