Article 5 of the EEC Treaty precludes a Member State from adopting any provisions affecting the application of the Staff Regulations and amending an earlier practice consistently followed by it, without consulting the Community institutions concerned.

REPORT FOR THE HEARING
delivered in Case 186/85 *

I — Facts

By an application lodged at the Court Registry on 18 June 1985 the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that the Kingdom of Belgium had failed to fulfil its obligations under several provisions of Community law by establishing a system involving the deduction of family allowances payable under the Staff Regulations of Officials of the European Communities ('the Staff Regulations') and the Conditions of Employment of Other Servants of the European Communities ('the Conditions of Employment') from those to be paid under Belgian legislation and by maintaining a system of family benefits which alters the supplementary effect of the family allowances paid by the Communities.

Article 67 (2) of the Staff Regulations provides that officials in receipt of the allowances referred to in that article, that is to say the household allowance, the allowance for dependent children or persons assimilated thereto and the education allowance 'shall declare allowances of like nature paid from other sources; such latter allowances shall be deducted from those paid under Articles 1, 2 and 3 of Annex VII'.

That provision is applicable by analogy to other Community servants, by virtue of Article 20 of the Conditions of Employment.

As from the date of the entry into force of the Staff Regulations and the Conditions of Employment, the Kingdom of Belgium, like the other Member States, agreed to grant the family allowances payable under national legislation in advance of the corresponding allowances payable under the Staff Regulations or the Conditions of Employment.

Moreover, that attitude reflects the approach taken by the Belgian Permanent Representative, His Excellency Ambassador Van der Meulen, in a letter of 2 February 1965 in which the Belgian Government agreed that, in the event of payment of family allowances under Belgian legislation to a person eligible for allowances of like nature payable under the Staff Regulations, the last-mentioned allowances would be reduced by the amount paid by the Belgian institutions.

However, the Kingdom of Belgium reverted to its previous attitude by adopting on 15 July 1982 Royal Decree No 54 (*Moniteur*

* Language of the Case: French.

belge of 20. 7. 1982, p. 8393) amending the earlier legislation on the matter (Article 60 of the laws consolidated by the Royal Decree of 19 December 1939 on family allowances for employed persons) with the result that henceforth 'the amount of the family benefits shall be reduced by the amount of the benefits of like nature which may be claimed in respect of a child who is eligible . . . by virtue of the rules applicable to the staff of an institution governed by public international law, even if the award of those benefits is described by the aforesaid provisions and rules as supplementary to the family benefits awarded pursuant to these laws'.

An amendment having the same effect was made by the Royal Decree of 19 November 1982 (*Moniteur belge* of 17. 12. 1982, p. 14773) to Article 29 of the Royal Decree of 8 April 1976 governing family benefits for self-employed persons.

The Commission took the view that the Royal Decrees of 15 July and 19 November 1982 were contrary to Articles 67 (2) and 68 of the Staff Regulations and Article 20 of the Conditions of Employment, and gave the Belgian Government formal notice to that effect by letter of 15 February 1983.

In its reply of 12 April 1983, which was not brought to the Commission's attention until April 1984, the Belgian Government contended that (1) the obligation to pay family allowances under Belgian legislation first was in no way apparent from the provisions of the Staff Regulations and the Conditions of Employment relied upon by the Commission; (2) the Belgian legislature had a sovereign right to regulate the overlapping of family benefits awarded under different legal systems; (3) the Belgian legislature could therefore legislate even in relation to the European Community, in its capacity as an international institution employing staff, without being required to discuss the matter with the Commission, as the latter contended, since Article 5 of the EEC Treaty and Article 15 of the Protocol on the Privileges and Immunities of the European Communities ('the Protocol') did not require such consultation.

As it was dissatisfied with the Belgian Government's reply, the Commission issued a reasoned opinion against that government under Article 169 of the EEC Treaty on 29 November 1984.

By a letter of 15 March 1985, the Belgian Government stated that it adhered to the terms of its letter of 12 April 1983.

Taking the view that the Belgian Government had failed to comply with the terms of the reasoned opinion, the Commission brought this action.

II — Written procedure and conclusions of the parties

The written procedure followed the normal course.

The *Commission* claims that the Court should:

(a) Declare that the Kingdom of Belgium has failed to fulfil its obligations under Article 67 (2) and the second paragraph of Article 68 of the Staff Regulations of Officials of the European Communities, Article 20 of the Conditions of Employment of Other Servants of the European Communities, Article 5 of the EEC Treaty and Articles 15 and 19 of the Protocol on the Privileges and Immunities of the European Communities:

(i) by altering the supplementary effect of family allowances granted under the Staff Regulations by Royal

Decree No 54 of 15 July 1982 amending Article 60 of the laws consolidated by the Royal Decree of 19 December 1939 on family allowances for employed persons and the Royal Decree of 19 November 1982 amending Article 29 of the Royal Decree of 8 April 1976 governing family benefits for self-employed persons. The decrees provide that Belgian family benefits are to be reduced by the amount of the benefits of the same kind which may be claimed for a child under the rules applicable to the staff of an institution governed by public international law; moreover, they were adopted without prior consultation of the Commission of the European Communities; and

(ii) by failing to exempt the abovementioned employees or their employers from payment of contributions to the family allowance scheme, thus treating differently beneficiaries of the Belgian social security scheme whose situations are comparable.

(b) Order the Kingdom of Belgium to pay the costs.

In its reply, however, the Commission amended the second indent of point (a) (ii) of its conclusions to read as follows:

'(ii) by treating differently beneficiaries of the Belgian social security scheme whose situations are comparable.'

The *Belgian Government* contended that the Court should:

'Declare the Commission's application:

(i) unfounded as regards the first two complaints;

(ii) inadmissible, or alternatively unfounded, as regards the third complaint.'

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

III — Submissions and arguments of the parties

First submission

In its first submission, the *Commission* relies on the principle of the primacy of Community law and on the legislative nature of the provisions set out in the Staff Regulations and the Conditions of Employment (see the judgment of 20 October 1981 in Case 137/80 *Commission* v *Belgium* [1981] ECR 2393 at p. 2406) in support of its contention that the Belgian Government should have refrained from adopting any measure which had the effect of reversing the situation established by the Community legislature in the Staff Regulations.

The Commission contends that by inserting in Article 67 (2) of the Staff Regulations a provision against the overlapping of family allowances and by requiring officials to declare allowances of like nature paid from other sources, in order to be able to deduct them from the allowances paid under the Staff Regulations, the Community legislature established that those benefits were to be supplementary to national benefits, in particular those payable under Belgian law, in order to restrict the Community's financial burden.

According to the Commission, the Belgian Government adopted by means of the royal decrees at issue a provision against the overlapping of benefits comparable to Article 67 (2) but having the opposite effect, since

it makes family allowances payable under Belgian law supplementary to those payable under Community law.

The Commission emphasizes the fact that until the adoption of the royal decrees the Belgian Government refrained from encroaching upon the scope of the relevant Community provisions, as is clear from the letter of 2 February 1965 from the Belgian Permanent Representative.

Furthermore, the Commission contends that a Member State may not, on its own authority, decide to increase to its own advantage the Community's financial burden in the sphere of family allowances.

The *Belgian Government* takes the view that Article 67 (2) does not have the scope attributed to it by the Commission. In its view, the purpose of that article is solely to prevent the overlapping of family allowances. The Community is to pay such allowances only in so far as allowances of equivalent value are not 'paid from other sources'. Accordingly, if no allowances are paid by a Member State, by a third party or by another international organization, they will be paid by the Community.

The reduction in the Community's financial burden as a result of the rule against the overlapping of benefits is, according to the Belgian Government, an indirect effect of Article 67 (2) and not its true purpose. If, on the other hand, the Community legislature had had that purpose and had wished to impose on the Member States an obligation to adopt a rule to the effect that family allowances were to be paid by the Member States first, an obligation of that kind should have been provided for in the Staff Regulations.

With regard to the fact that the Belgian Government took the view, until the adoption of the contested royal decrees, that family allowances provided for by Belgian law were to be paid in advance of those payable by the Community, that government contends that the choice it made depended not on an obligation imposed by Article 67 (2) of the Staff Regulations but on the provisions of Belgian legislation in force at the time, which left open the question whether the family allowances payable under Belgian law were to be considered as taking precedence over those payable by the Community.

Now that the question has been resolved by the decrees at issue, it is no longer possible for the Belgian authorities to continue to regard the family allowances paid by the Community as supplementary to those paid by Belgium.

Second complaint

The *Commission* contends, in the second place, that the Belgian Government was under a duty to consult it before adopting the contested royal decrees.

In that regard, it refers to Article 19 of the Protocol which provides that 'the institutions of the Communities shall, for the purpose of applying this Protocol, cooperate with the responsible authorities of the Member States concerned'.

It also refers to Article 15 of the Protocol, which provides that 'the Council shall, acting unanimously on a proposal from the Commission, lay down the scheme of social security benefits for officials and other servants of the Communities'.

The Commission also refers to Article 5 of the EEC Treaty.

According to the Commission, that duty of consultation is particularly relevant in this case since the Belgian Government had previously interpreted Article 67 (2) of the Staff Regulations as making family

allowances payable under Community law supplementary to others and since the adoption of the royal decrees at issue has the effect of increasing the Community's financial burden in this sphere.

The *Belgian Government* points out that in its view the adoption of rules governing the award of family allowances under Belgian national law is unconnected with the implementation of the Treaty or the application of the Protocol. Accordingly, no duty of cooperation can be inferred from Article 5 of the Treaty or Articles 15 and 19 of the Protocol with regard to the subject-matter of the two contested royal decrees.

Third complaint

Thirdly, the *Commission* contends that the royal decrees at issue are discriminatory in some cases in so far as they deprive certain persons working in Belgium of the right to family allowances, either because their spouse is an official or other servant of the European Communities or because they themselves acquire that status.

That discrimination is aggravated, according to the Commission, by the fact that no national measure has been adopted exempting the workers affected by those provisions or their employers from the obligation to pay social security contributions to the family allowance scheme for employed or self-employed persons.

The Commission points to another factor which may further aggravate the discrimination referred to earlier. Royal Decrees No 129 of 30 December 1982 (*Moniteur belge* of 12. 1. 1983) and No 227 of 9 December 1983 (*Moniteur belge* of 16. 12. 1983) introduced a special contribution payable by single persons and childless families. If the spouses of officials and other servants of the Communities are deprived of the right to family allowances in respect of their children, they are treated, according to the Commission, as a childless family for the purposes of the application of the aforesaid royal decrees and are therefore subjected to the special contribution provided for by those decrees.

Finally, in its reply, the Commission emphasizes that, owing to the effect of the royal decrees at issue in this case, the Belgian authorities no longer pay workers whose children qualify for family allowances under Community law any special family allowances such as the holiday allowance.

That difference in treatment which, as is clear from the Court's judgment of 13 July 1983 in Case 152/82 *Forcheri* [1983] ECR 2323, falls within the scope of the Treaty, constitutes a breach of the principle of equal treatment since the treatment which the Belgian legislation reserves to officials and their spouses is less favourable than that guaranteed to employed or self-employed persons established in Belgium.

The *Belgian Government* raises an objection of inadmissibility against that complaint on the ground that it was put forward for the first time in the application, without being referred to either in the letter constituting formal notice or in the reasoned opinion.

In its reply, the *Commission* acknowledges that the complaint in question was not referred to in the letter constituting formal notice, but states that the Belgian Government agreed, in its defence, to state its views on it.

The *Belgian Government* points out that the royal decrees at issue do not entail forfeiture of the right to family allowances

for certain workers but merely introduce a rule against the overlapping with Belgian allowances of any allowances payable under foreign legislation or by institutions governed by public international law.

As regards the fact that persons who are affected by that rule are not exempt from the payment of contributions to the family allowance scheme, the Belgian Government refers to the principle of solidarity on which the Belgian social security scheme is based and which requires all workers and employers to pay contributions, whether or not the workers themselves qualify for the allowances funded by those contributions.

With regard to family holiday allowances, the Belgian Government points out that they were abolished in 1983 and that, had they not been abolished, they would be paid to Community servants independently of family allowances, in view of the fact that the holiday allowance, as the Court explained in its judgments of 13 October 1977 in Case 106/76 *Gelders-Deboeck* [1977] ECR 1623 and in Case 14/77 *Emer Van den Branden* [1977] ECR 1683, has a specific purpose by comparison with normal family allowances.

IV — Answers to questions put to the parties by the Court

By a letter of 13 February 1986 the Court requested the Commission to inform it in writing, before 15 March 1986, of the practice adopted by Member States other than Belgium with regard to the application of Article 67 (2) of the Staff Regulations.

By a letter of 12 March 1986, which was received at the Court on 14 March 1986, the Commission replied that all the Member States, with the exception of the Federal Republic of Germany — against which an action for failure to fulfil its obligations is also pending before the Court (Case 189/85) — adhere to the interpretation of Article 67 (2) advocated by the Commission in this case. Italy too had raised certain objections in that regard, but every difficulty was overcome following bilateral discussions with the Commission.

By a letter of 13 February 1986 the Court requested the Belgian Government to explain in writing, before 15 March 1986, whether persons who as a result of the application of the rule against the overlapping of benefits provided for by Royal Decree No 54 of 15 July 1982 and the Royal Decree of 19 November 1982 are not in receipt of family allowances under Belgian legislation are obliged for that reason to pay the special contributions provided for by Royal Decrees No 129 of 30 December 1982 and No 227 of 9 December 1983, even if they are not single persons or a childless family.

By a letter of 11 March 1986, which was received at the Court on 13 March 1986, the Belgian Government answered the question in the affirmative. In that regard, it explained that the special contributions referred to by the Court in its question were introduced to ensure that the monthly deduction from the family allowances paid under Belgian legislation did not affect exclusively families with children. A worker or his spouse who did not qualify for family allowances under Belgian law as a result of the application of the rule against the overlapping of benefits laid down by Royal Decree No 54 of 15 July 1982 and by the Royal Decree of 19 November 1982 was thus automatically required to pay special contributions.

G. Bosco
Judge-Rapporteur