candidate who has obtained the minimum number of points required of the possibility of being included and restricted the discretionary power of the appointing authority by reducing the choice available to it, the appointing authority is entitled to annul the competition procedure, contrary to the judgment of the Court of First Instance.

2. The first paragraph of Article 54 of the Statute of the Court of Justice of the EEC enables it to give judgment on the substance of the dispute when the decision which it reaches after considering the appeal renders ineffective the pleas relied on by the applicant before the Court of First Instance.

That is the case when the Court holds that, contrary to the applicant's claims and the judgment of the Court of First Instance, a decision has been lawfully made.

REPORT FOR THE HEARING
in Joined Cases C-345/90 P*

I — Facts and procedure before the Court of Justice and the Court of First Instance

It is apparent from the judgment of the Court of First Instance in Case T-37/89 *Hanning* v *Parliament* [1990] ECR II-463 that:

'...

1. On 5 December 1986, the European Parliament (hereinafter referred to as "the Parliament") published a notice of Open Competition No PE/41/A (Official Journal, English Edition C 311, p. 13) based on qualifications and tests intended to fill a post of English-language Head of Division in Grade A 3 to manage the London Information Office. Under the heading "Competition — Procedure and Conditions of Eligibility", the competition notice stated that to support the statements made on the application form in regard to qualifications, diplomas and professional experience, candidates were to submit documentary evidence in the form of photocopies with their application form. It also stated that "for the purpose of this application, candidates may not, under any circumstances, refer back to documents, application forms or other information submitted for previous applications". Under the heading "Applications", it was stated that "this application form, together with the supporting documents concerning both education and professional experience, must be sent ... not later than ... 19 January 1987 ... N. B. (in italics): Candidates,

* Language of the case: French.

including officials and other servants of the European Communities, who fail to forward application forms and all supporting documents within the prescribed time-limit will not be admitted to the Competition". Finally, it was stated on the application form that "candidates who do not send copies of educational or other qualifications required by the closing date for the competition will be rejected. You may not make reference to any previous application. ... Reminder: if you have not already forwarded the documents in question, you are reminded that documentary evidence of academic qualifications and professional experience should reach us not later than 19 January 1987 ...".

2. A notice issued by the Parliament under number 86/C 311/05 was published in the same number of the Official Journal. According to Point II. 1 of that notice, candidates could be asked, if necessary, to furnish additional documents or information.

3. After the applications had been submitted, the Selection Board for the competition admitted the applicant to the tests. It rejected, *inter alia*, the applications submitted by Mr Spence and Mr Waters, both officials of the Parliament, and by Mr Elphic and Mr Morris, for failure to submit supporting documents or because the supporting documents submitted were inadequate. Seven candidates, including Mr Spence, Mr Waters, Mr Elphic and Mr Morris, contested the Selection Board's decision not to admit them to the competition. After deliberation, the Selection Board admitted Mr Spence and Mr Waters to the competition on the ground that the required supporting documents were on the personal files held in respect of them by the appointing authority.

4. On two occasions, the applicant was called to London to sit tests. On both occasions, they were postponed. Finally, the applicant sat the tests on 6 October 1987. On 29 October 1987, he was informed that his name had been placed on the list of four candidates considered suitable to occupy the post in question.

5. The list of suitable candidates in Competition No PE/41/A contained the following four candidates: the applicant with 72 points, Mrs Beck with 69 points and Mr Spence and Mr Waters with 63 points. According to the table of marks, a fifth candidate, Mr Tate, obtained 58 points, the minimum necessary to be included in the list. Since that list was to include at most four candidates, his name was not placed on the list.

6. On 19 November 1987, the Head of the Recruitment Service, Mr Katgerman, contacted the applicant and during their telephone conversation told him that he would have to undergo a medical examination before being taken on. The details of that telephone conversation are in dispute. By letter of 23 November 1987, Mr Katgerman confirmed the invitation to undergo a medical examination and gave him all the necessary information for that purpose.

7. On 30 November 1987, the applicant underwent the medical examination. At that time, he was received by Mrs Laurenti, of the Directorate-General for Personnel, who gave him information concerning the conditions under which he was to be taken on and showed him the draft letter containing his appointment.

8. In the meantime, Mr Elphic and Mr Morris both submitted complaints to the Parliament against the rejection of their applications. A third complaint was submitted by Mr Trowbridge, a candidate who, after being admitted to the competition, was not included in the list of suitable candidates.

9. On 8 December 1987, the Director of the private office of the President of the Parliament asked the Jurisconsult to advise on the question whether a decision to appoint made on the basis of the results of that competition was likely to be annulled on the basis of an application brought by an unsuccessful candidate. On 9 February 1988, the Parliament's Legal Department issued that legal opinion. After considering the three complaints mentioned above, the Legal Department came to the conclusion that the appointing authority was entitled to disregard the results of the competition and to initiate a new one. On 19 February 1988, the Director of the private office of the President informed the Secretary-General of the Parliament that the President had decided, on the basis of the opinion and having regard to the case-law on the matter, to disregard the results of the competition and to begin the entire competition procedure again.

10. By letter of 6 April 1988, signed by the Head of the Personnel Division, the Parliament informed the applicant that since the President had "noted irregularities in the competition procedure", he "deemed it appropriate not to make an appointment and instead to open a fresh recruitment procedure based on qualifications and tests".

11. On 17 June 1988, the applicant submitted to the President of the Parliament a complaint under Article 90 (2) of the Staff Regulations of Officials of the European Communities (hereinafter referred to as "the Staff Regulations") against that decision. He claimed, first, that he was the "successful candidate" within the meaning of the first paragraph of Article 33 of the Staff Regulations and that by annulling the competition procedure, the Parliament had infringed the provisions of that article; in the second place, that the Parliament had infringed the principle of the protection of legitimate expectations; thirdly, that it did not comply with the conditions for the withdrawal of an administrative measure and fourthly, that it had misused its powers. He applied for the annulment of the contested decision and a declaration that he was entitled to be appointed to the post in question. He reserved the right to apply to the Court of Justice for compensation for the damage he had suffered.

12. On 30 March 1988, the Parliament published a notice of a new open competition (No PE/41a/A) intended to fill the same post (Official Journal, English Edition C 82, p. 17). The applicant took part in that competition. The list of suitable candidates drawn up following that competition was composed of the following four candidates: Mr Bond, with 80.5 points, the applicant, with 73 points, Mr Holdsworth, with 72 points, and Mr Wood, with 70.5 points. With 66 points, Mr Tate was once again in fifth position. Mr Bond was appointed as a result of the competition.

13. On 24 May 1989, the applicant submitted a second complaint, challenging the appointment of Mr Bond.'

It is in those circumstances that, by application lodged at the Registry of the Court of Justice on 29 June 1988, Mr Hanning commenced an action in which he claimed that the Court should:

(i) declare the application admissible and well-founded;

(ii) in consequence, annul the decision of the President of the European Parliament contained in his letter of 6 April 1988 and declare that the applicant was entitled to be appointed following Competition No PE/41/A in which he was a successful candidate for recruitment;

(iii) award him BFR 1 as compensation for non-material damage and order the reimbursement of the whole of his material loss;

(iv) in any event, order the defendant to pay the whole of the costs.

The Parliament contended that the Court should:

(i) take note of the fact that it relied on the wisdom of the Court in regard to the admissibility of the application;

(ii) with regard to the substance, dismiss the application;

(iii) make an order as to costs in accordance with the applicable provisions.

An application by Mr Hanning, made on the same day as the principal application, for an interim order suspending the implementation of the contested decision in so far as it commenced a new recruitment procedure for Competition No PE/41/A, was dismissed by an Order of the President of the Third Chamber of the Court of Justice on 11 July 1988 (Case 176/88 R *Hanning* v *Parliament* [1988] ECR 3915).

The written procedure took place entirely before the Court of Justice. In accordance with Article 91(4) of the Staff Regulations, it was suspended until such time as, upon the expiry of the time-limit laid down in Article 90(2) of the Staff Regulations, an implied decision rejecting the applicant's first complaint had been taken.

By order of the Court of Justice of 15 November 1989, the case was referred to the Court of First Instance under Article 14 of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities.

With regard to the first head of the application, the claim for annulment of the decision of the President of the Parliament, the admissibility of which had initially been questioned by the Parliament, the Court of First Instance stated in the contested judgment that:

'21. The applicant is seeking the annulment of the decision of the President of the Parliament which he alleges is contained in the letter addressed to him on 6 April 1988. The nature of that decision should first of all be determined. In its rejoinder, the Parliament submitted the file concerning the decision. It can be seen from that file that

on 9 February 1988 the Legal Department of the Parliament drew up an opinion for the President in which it expressed the view that as a result of the three complaints submitted, the appointing authority was entitled to disregard the results of Competition No PE/41/A and to hold a new competition. The Director of the President's private office informed the Secretary-General of the Parliament by note of 19 February 1988 that the President had decided, on the basis of the advice in the said opinion, to disregard the results of the competition and to start an entirely new competition procedure for the post in question. In accordance with that note, the applicant was informed by letter of 6 April 1988 that as the President had noted that irregularities had occurred during the procedure, he deemed it appropriate not to make an appointment and to initiate a new competition. It follows that this action is directed against the decision of the President to disregard the results of Competition No PE/41/A and to hold a new competition.

22. The Parliament raised the question whether the contested measure was not a general measure which could not be contested by an individual. However, the defendant institution admits that, after the list of suitable candidates had been drawn up, the decision not to proceed with the recruitment procedure deprived that list of its useful effect and with it the chances of the candidates whose names were on it. The Parliament itself has expressed the view that such a measure may therefore be regarded as adversely affecting the persons whose names appear on the list of suitable candidates. That consideration ultimately caused the Parliament not to contest the admissibility of the application.

23. According to the settled case-law of the Court of Justice, the fact that a candidate has taken part in a competition with the result that he has achieved a favourable position is evidence of an interest which he has in the outcome of that competition as determined by the appointing authority. Since those conditions are fulfilled in this case, the contested decision is capable of adversely affecting the applicant (see the judgment in Case 26/68 *Fux* v *Commission* [1969] ECR 145, at p. 153).

24. Moreover, the applicant submitted a complaint on 17 June 1988, that is to say, within the time-limit laid down in Article 90 (2) of the Staff Regulations, in terms corresponding to the various claims made in the application. The President of the Third Chamber of the Court of Justice, in his interim order of 11 July 1988, considered that if the applicant succeeded, any appointment of another candidate at the end of the procedure in Competition PE/41a/A would be void and the first recruitment procedure would resume its normal course as if the contested decision had not been adopted. The applicant's second complaint, dated 24 May 1989, challenging the appointment of another candidate to the post in question, was thus in any event unnecessary. Consequently, the first head of claim is admissible.'

With regard to the substance, Mr Hanning relied on five submissions in support of his application: first, the Parliament had infringed Article 33 of the Staff Regulations; secondly, it had infringed the principle of the protection of legitimate expectations; thirdly, it had infringed the conditions for revoking administrative measures and, fourthly, it had misused its powers. Finally, the applicant claimed that the statement of the reasons on which the decision had been based was insufficient and incorrect.

As stated at paragraph 37 of the contested judgment, the Court of First Instance considered that it ought first to examine the submission concerning the statement of the reasons on which the contested decision was based.

The Court of First Instance then stated in the judgment that:

'38. In that regard, it should be pointed out that Article 42 of the Rules of Procedure of the Court of Justice, which apply *mutatis mutandis* to proceedings before the Court of First Instance by virtue of the third paragraph of Article 11 of the Council Decision of 24 October 1988, cited above, prohibits the raising of fresh issues in the course of proceedings unless they are based on matters of law or fact which come to light in the course of the written procedure. However, the Court of Justice pointed out in its judgment in Case 306/81 *Verros* v *Parliament* [1983] ECR 1755, at p. 1764, that a submission which may be regarded as amplifying a submission made previously, directly or by implication, in the original application, and which is closely connected with that previous submission, must be considered admissible. That is so in this case in regard to the submission alleging that the contested decision does not contain a sufficient statement of the reasons on which it is based since it was raised by implication in the application and is closely linked to the submission alleging a misuse of powers. Moreover, it should be pointed out that the Court of First Instance must of its own motion consider whether the Parliament has fulfilled its obligation to provide an adequate statement of the reasons for its decision (see the judgments of the Court of Justice in Case 185/85 *Usinor* v *Commission* [1986] ECR 2079, at p. 2098, and in Case 18/57 *Nold* v *High Authority* [1959] ECR 41, at p. 52).

39. According to the settled case-law of the Court of Justice, the purpose of the duty to state the reasons on which a decision is based is both to permit the person concerned to determine whether or not the decision is well-founded and to enable it to be reviewed by the courts (see, for example, the judgments in Case 69/83 *Lux* v *Court of Auditors* [1984] ECR 2447, at p. 2467, and in Case 108/88 *Jaenicke Cendoya* v *Commission* [1989] ECR 2711, paragraph 10).

40. The letter of 6 April 1988, which informed the applicant of the contested decision, referred merely to "irregularities during the procedure" in the competition. It contained no indication of the character or nature of those irregularities and, therefore, of the reasons for which the President of the Parliament decided not to make an appointment and commence a new competition. However, if the applicant is to be permitted to determine whether the decision contained a defect allowing its legality to be challenged, the Parliament should have given him details of the character and nature of the irregularities in question. Moreover, the Court of First Instance would be unable, solely on the basis of that letter, to exercise its powers of review in regard to the contested decision. The fact that it was accompanied by a more detailed statement of reasons for the internal use of the institution is therefore of no effect. Under those circumstances, it must be held that the contested decision is void on the ground that it does not contain an adequate statement of the reasons on which it is based.

41. Although the lack of a statement of reasons cannot be remedied by the fact that the applicant learned the reasons for the decision during the proceedings before the Court (see the judgment of the Court of

Justice in Case 195/80 *Michel* v *Parliament* [1981] ECR 2861, at p. 2876 et seq.), the position is different where the statement of reasons is inadequate.

42. The Court of Justice has accepted that explanations provided during the proceedings could, in exceptional cases, deprive of its purpose a submission alleging that the statement of reasons is inadequate. Thus, in its judgment of 8 March 1988, the Court of Justice considered that the documents submitted in the course of the proceedings, which allowed the applicants to acquaint themselves with the reason for their exclusion from the competition, also enabled the Court to review the procedure and its results to an extent consistent with the broad discretion enjoyed by any selection board when making value judgments and to reject all the submissions as unfounded (Joined Cases 64, 71 to 73 and 78/86 *Sergio and Others* v *Commission* [1988] ECR 1399, at p. 1440). Similarly, in its judgment of 30 May 1984, the Court of Justice considered that the details given by the Parliament in reply to the questions put by the Court enabled it to exercise its power of judicial review and to check the correctness of the reasons stated. In those circumstances, the Court of Justice considered that the conciseness of the reasons was not sufficient to justify the annulment of the measure in question (Case 111/83 *Picciolo* v *Parliament* [1984] ECR 2323, at p. 2339).

43. In this case, the Parliament relied successively on two reasons which it regarded as justifying the decision of its president. In *Kohler* v *Court of Auditors*, the defendant institution had also put forward, one after another, various statements of the reasons on which its decision was based, the latest one being put forward at the hearing. The Court, after finding that none of the statements of reasons was capable of justifying the decision adopted in law, decided that that decision should be annulled (judgment in Joined Cases 316/82 and 40/83 *Kohler* v *Court of Auditors* [1984] ECR 641, at p. 657 et seq.).

44. It follows from those decisions that where the statement of reasons and any additional information on that subject provided at the hearing is inadequate, it is for the Court to verify whether the statements of reasons relied on by the defendant institution are of such a nature as to justify in law the contested decision.

45. In its defence, the Parliament contended, as the first ground for its decision, that it was free to terminate the recruitment procedure, just as it was entirely free to decide whether or not to initiate such a procedure (see the judgment of the Court of Justice in Case 135/87 *Vlachou*, cited above). In its view, the decision not to pursue the procedure is at the sole discretion of the appointing authority. It should be observed *in limine* that that argument was not among the reasons put forward initially to justify the contested decision, which referred only to alleged irregularities in the competition procedure.

46. Although the Court of Justice has decided in its judgment in Case 135/87 *Vlachou*, cited above, that the appointing authority has a wide discretion in choosing, in accordance with the order of preference set out in Article 29 of the Staff Regulations, the most appropriate method of filling a vacant post, it should be pointed out that the facts of that case were different

to those which arose here. In *Vlachou*, the Court of Justice had, in a previous decision (judgment in Case 143/84 *Vlachou* v *Court of Auditors* [1986] ECR 459), annulled the appointment of the candidate who had come first in an earlier competition on the ground that the Selection Board had, by virtue of the system of awarding marks which it adopted, acted in breach of the principle of equal treatment of the candidates in the competition. Similarly, in its judgment in Case 26/68 *Fux* [1969] ECR 145, cited above, the Court of Justice also accepted that the appointing authority has a wide discretion by stating that it is not required to pursue a recruitment procedure which it has initiated by filling the post which has become vacant, but it should be pointed out that in that case the dispute concerned the decision to abolish the post which had been the subject of the competition, that is to say, a decision concerning the organization of the service. The Court of Justice dismissed the action brought against that decision by the candidate who had come first in the competition. In this case, however, the Parliament did not abolish the post in question. On the contrary, it initiated a second competition to fill it.

47. The Court of Justice has had occasion to set out the scope and limits of the appointing authority's discretion in regard to a decision not to pursue the recruitment procedure by appointing the candidate who came first in the competition held for that purpose, which is the subject of these proceedings, in its judgment in Joined Cases 316/82 and 40/83 *Kohler* [1984] ECR 641, at p. 658.

48. In that case, the Court of Justice considered that the Staff Regulations do not place the appointing authority under an obligation to pursue a recruitment procedure once it has begun by filling the vacancy concerned. The rule is none the less that, in filling a post declared vacant, the appointing authority must proceed with the appointment of successful candidates in accordance with the competition results. It can deviate from that rule only for sound reasons, justifying its decision clearly and fully. It follows that the Parliament was not free to terminate the competition procedure without considering whether there were sound reasons for not appointing the candidate who had come first in Competition No PE/41/A. Consequently, the arguments which the defendant institution puts forward on the basis of the appointing authority's discretion in regard to recruitment are not consistent with the limits of that power and do not justify the contested decision.

49. By way of a second statement of reasons, the Parliament produced a file concerning the contested decision. That file contained the opinion of its Legal Department of 9 February 1988 concerning the complaints submitted concerning the procedure in Competition No PE/41/A. On that occasion, the Parliament drew attention to the fact that the President adopted his decision solely on the basis of that opinion and in the light of the case-law on the matter.

50. It must therefore be considered whether this second statement of reasons contains sound reasons justifying the decision not to take account of the results of the competition. That statement of reasons, as it appears from the opinion of the Legal Department, is in two parts. First, the President of the Parliament came to the conclusion that there had been irregularities in the procedure in Competition No PE/41/A. He then concluded that those irregularities justified his decision to disregard the results of the competition and to initiate a new competition since several complaints had been submitted to the

appointing authority concerning the course of the procedure in the first competition and since the Selection Board had excluded from the list of suitable candidates a candidate who, if the abovementioned irregularities had not occurred, should have been included in it.

51. It must first be verified whether the irregularities alleged by the Parliament actually occurred. According to the Parliament, those irregularities consisted of the fact that the Selection Board wrongly admitted two candidates to the competition who, since they did not produce the necessary supporting documents within the time-limit laid down in the competition notice, had to be excluded.

52. It is apparent from the documents which the Parliament has submitted to the Court that the Selection Board received 78 applications following the publication of the competition notice for Competition No PE/41/A. It rejected 50, of which 42 were on the ground, although not necessarily solely on the ground, that the candidate had failed to submit supporting documents, or that those submitted were insufficient. The applications of Mr Spence and Mr Waters, officials of the Parliament, and of Mr Elphic and Mr Morris, among others, were rejected on that ground. With regard to Mr Waters and Mr Morris, there were two other grounds; in the case of Mr Waters, it was the fact that he did not meet the age requirement and in the case of Mr Morris, the fact that he did not have sufficient professional experience.

53. Seven candidates, including Mr Spence, Mr Waters, Mr Elphic and Mr Morris, contested the Selection Board's decision not to admit them to the competition. At its meeting of 21 May 1987, the Selection Board considered those complaints and noted a "discrepancy" between the notice of the general conditions governing open competitions, published in the same number of the Official Journal as the competition notice, and the notice itself. As has been indicated above, the notice provided that candidates might be asked, if necessary, to furnish additional documents or information. It is apparent from a note of 22 January 1988 from the President to the Parliament's Jurisconsult that the Selection Board considered that that provision did not concur with the provision in the competition notice to the effect that supporting documents were to be submitted in the form of photocopies within the time-limit indicated. The Selection Board considered that that discrepancy could have misled Mr Spence and Mr Waters. They were officials of the Parliament whose personal files were held by the very division which was responsible for organizing the competition. The Selection Board considered that the documents contained in the two candidates' applications were sufficiently explicit to meet the requirements of the competition notice, and for that reason decided to admit them. Two members of the board voted to admit the candidates, one member voted against and two abstained. The other objections were rejected and the candidates were informed of that fact in writing. Following the tests, Mr Spence and Mr Waters were placed in the third and fourth positions on the list of suitable candidates. The fifth candidate to obtain the minimum number of points to be included on the list, namely Mr Tate, was excluded since the list was to include only four names.

54. In its opinion of 9 February 1988, the Parliament's Legal Department starts by pointing out that the obligation to submit all the required documents within the prescribed time-limit was set out twice in the competition notice and twice on the application form. It concludes that it was sufficiently clear. It notes that none of the candidates excluded claimed to have been

confused by any divergent statement in the General Provisions. It was the Selection Board itself which took that factor into consideration. Consequently, no valid explanation has been given of the reasons which led the Selection Board to treat Mr Spence and Mr Waters more favourably than other candidates who had been excluded. The Legal Department concludes that the Selection Board infringed the competition procedure, first, by not applying the rules laid down in the competition notice, and subsequently by infringing the principle of equal treatment and the prohibition of discrimination.

55. That the opinion of the Parliament's Legal Department is well-founded in that regard must be confirmed. The two candidates, who were officials of the Parliament, had been warned several times, including by way of a note in italics intended to attract their attention, not to forget to submit all the supporting documents. The sentence in the General Provisions on the basis of which the Selection Board decided to admit them is not at all in contradiction with the terms of the competition notice. According to the settled case-law of the Court of Justice, it is incumbent on the candidates to provide the selection board with all the information they consider pertinent to the appraisal of their applications (judgment in Case 225/87 *Bellardinelli* v *Court of Justice* [1989] ECR 2353, paragraph 24). Consequently, the applications submitted by Mr Spence and Mr Waters were properly rejected at the start of the competition procedure. By admitting them later, the Selection Board committed an error of law. It must therefore be held that the Selection Board was wrong to admit Mr Spence and Mr Waters to the competition and to include their names on the list of suitable candidates. Consequently, it must be decided that the competition procedure was indeed vitiated by irregularities.

56. It must be considered, secondly, whether the reasons for which the President of the Parliament, having noted the irregularities mentioned above, decided to disregard the results of the competition justify that decision.

57. The opinion of the Legal Department and the decision of the President of the Parliament based on that opinion are founded upon the consideration of the complaints submitted concerning the course of the procedure in Competition No PE/41/A.

58. At the hearing, the Parliament explained that it regarded it as appropriate to disregard the results of the first competition because of the complaints submitted by candidates who had not been admitted to the competition. If those candidates had been admitted to the tests, they might have obtained a better result than those on the list of suitable candidates. They could therefore have brought actions which might have led to the annulment of an appointment based on Competition PE/41/A. By adopting the contested decision, the President of the Parliament was seeking, according to the defendant, to avoid that risk. It must therefore be considered whether the Legal Department's assessment of the complaints involved was of such a nature as to justify in law the contested decision.

59. It appears from the opinion of the Legal Department that three complaints were submitted concerning the procedure in Competition No PE/41/A. In the first complaint, dated 21 October 1987, Mr Elphic claimed that his application had been rejected on the ground that he had not supplied supporting documents, even though two other candidates in the same position had been admitted to the competition.

60. The second complaint was submitted on 6 November 1987 by Mr Trowbridge. Admitted to the tests, he had not been placed on the list of suitable candidates because he had obtained only 55 points, whereas the required minimum was 57 points. Mr Trowbridge opposed the admission of the two candidates who were officials of the Parliament and claimed that he had been asked no question concerning his career and experience, whereas, according to the Guide to Candidates, they should have constituted the subject-matter of the oral tests.

61. The third complaint was submitted on 24 November 1987 by Mr Morris. He contested the reasons for which his application had been rejected. He claimed that he had submitted the supporting documents required in regard to his qualifications and provided details concerning his professional experience.

62. The Parliament's Legal Department asked the Selection Board, in two memoranda of 3 and 10 December 1987, to inform it of its views on those complaints. By memorandum of 22 January 1988, the Chairman of the Selection Board replied that the Board had completed its work and had therefore ceased to exist. However, the former members of the Selection Board had discussed the complaints at an informal meeting. The conclusion at which they arrived was that the three complaints were inadmissible. It was thus for the appointing authority itself to verify whether the complaints were well-founded, as it was in any event required to do.

63. With regard to Mr Morris's complaint, the Legal Department noted in its opinion of 9 February 1988 that the complaint contained no details of the alleged irregular admission of two officials of the Parliament and had in any event been submitted outside the time-limit laid down in Article 90 (2) of the Staff Regulations. The Legal Department concluded by saying that even if the complaint had not been out of time, the appointing authority could not have allowed it by reason of the principle that the selection board is independent.

64. Mr Trowbridge relied in his complaint on procedural irregularities in regard to the admission of the two candidates who were officials of the Parliament. However, the Legal Department considered that he could not show in that regard that he had an interest in bringing proceedings since the fact that he was not on the list of suitable candidates was due exclusively to the fact that he had not obtained the minimum number of points necessary to be on it. For the rest, the complaint was unfounded since the selection board is unrestricted in its choice of the questions to be put to candidates.

65. The Legal Department concluded, in sum, that Mr Morris's complaint was inadmissible and Mr Trowbridge's was partly inadmissible and partly unfounded. It added that "on the other hand, Mr Elphic's claim is admissible and the appointing authority is entitled to examine the lawfulness of the procedure followed".

66. Consequently, it should be noted that only Mr Elphic's complaint is covered by the statement of the reasons on which the contested decision is based. It must therefore be considered whether the said decision could be justified by the fear that an action brought by Mr Elphic might lead to the annulment of a decision making an appointment on the basis of the results of Competition No PE/41/A.

67. Mr Elphic complained that his application had been rejected whereas two other candidates in the same position were admitted to the competition. Although it is true that that complaint draws attention to the irregularity in the procedure, the Legal Department ought to have concluded that it was unfounded. No candidate has the right to be admitted unlawfully to a competition on the ground that other candidates have also been accepted unlawfully by the selection board (see the judgment of the Court of Justice in Case 34/80 *Authié* v *Commission* [1981] ECR 665, at p. 680). Consequently, an action brought by Mr Elphic for the annulment of a decision making an appointment on the basis of Competition No PE/41/A on the ground that he had not been admitted to the competition would have been rejected. It follows that Mr Elphic's complaint, as a factor in the statement of reasons relied on by the Parliament, is not of such a nature as to justify in law the contested decision.

68. The opinion of the Legal Department and the decision of the President are also based on the settled case-law of the Court of Justice regarding the requirement that the independence of selection boards be preserved. According to that case-law, the institution concerned has no power to annul or amend decisions of a selection board. However, in exercising its own powers, the appointing authority is required to take decisions which are free of irregularities. It cannot therefore be bound by decisions of a selection board where the illegality of those decisions is liable to vitiate its own decisions. It is for that reason that, where the appointing authority considers that one or more of the selection board's decisions refusing to admit candidates to the competition are illegal and that as a result the whole competition is invalidated, it cannot make an appointment. It is then under the duty to take formal note of that situation by means of a reasoned decision and recommence the whole competition procedure following publication of a new notice (see the judgments of the Court of Justice in Case 321/85 *Schwiering* v *Court of Auditors* [1986] ECR 3199, at p. 3211 et seq. and in Joined Cases 322 and 323/85 *Hoyer* v *Court of Auditors*, cited above, at p. 3227 et seq.).

69. In the light of those decisions of the Court of Justice, the Parliament's Legal Department considered the effect of the fact that a fifth candidate who had obtained the required minimum number of points was not included in the list of suitable candidates drawn up by the Selection Board. In the Legal Department's view, the appointing authority could not envisage the appointment of that candidate, who had been successful in the competition but had none the less been excluded from the list of suitable candidates by the inclusion of two candidates who should not have been included in it. The Legal Department concludes that the appointing authority was entitled to disregard the results of the competition and to initiate a new one.

70. It should be noted that the facts of this case are different from those in *Schwiering* and *Hoyer*, cited above. In those two cases, the competition procedure was irregular because the Selection Board had wrongly refused to admit candidates to the competition whereas in this case, the irregularity in the procedure in Competition No PE/41/A stems from the wrongful admission of two candidates who should have been excluded. Although it is true that, in principle, all steps in a competition are necessarily vitiated by an unlawful refusal to admit a candidate, the position is not the same where one or more candidates have been wrongly admitted. In those circumstances, the appointing authority is faced with a competition procedure and a list of suitable candidates of which the parts which are

irregular may be severed from those which are not. In this case, only the participation of Mr Spence and Mr Waters in the competition and their inclusion in the list of suitable candidates were illegal. The other candidates validly took part in the competition and their placing at the end of it was not influenced by the unlawful participation of two candidates wrongfully admitted.

71. If the approach adopted by the Court of Justice in its judgments in Case 321/85 *Schwiering*, and in Joined Cases 322 and 323/85 *Hoyer*, cited above, is applied to this case, in which the competition procedure is partly vitiated, it must be concluded that the appointing authority is not bound by the Board's decisions to the extent that they are illegal. However, that does not mean that, for that reason, it was impossible to appoint a candidate on the basis of the competition. Its duty not to adopt illegal decisions merely prohibits it from appointing Mr Spence or Mr Waters who, because of the irregularities in the competition, should not have been on the list of suitable candidates. On the other hand, the appointing authority had to take account of the possibility of appointing the applicant, who had been validly included in the list. It should be added that the appointing authority had also to envisage the possible appointment of Mrs Beck, whose inclusion in the list was also not vitiated by any illegality.

72. Faced with such a situation, the appointing authority was required to comply with the decision of the Court of Justice in Joined Cases 316/82 and 40/83 *Kohler*, cited above. According to that decision, before deciding to disregard the results of a competition, the appointing authority must consider the possibility of filling the vacant post by appointing one of the persons properly included in the list of suitable candidates. In the first place, it had therefore to consider the possibility of appointing the applicant, who had been placed first on the list of suitable candidates (see the judgments in Case 62/65 *Serio* v *Commission of the EAEC* [1966] ECR 561, at p. 571, and in Case 246/84 *Kotsonis* v *Council* [1986] ECR 3989, at p. 4005 et seq.). Although those judgments accept that the appointing authority is entitled to ignore the precise order of merit resulting from the competition for reasons which it is incumbent on it to evaluate and justify before the Court, it should be pointed out that it must have reasons connected with the interest of the service for appointing a candidate other than the one placed first. Even if the appointing authority was aware that there were reasons connected with the interest of the service other than the irregularities in the competition which suggested that the applicant should not be appointed, it should then, according to the same case-law, have considered the possibility of appointing Mrs Beck.

73. The Parliament should have included in its consideration of the possibility of appointing the applicant or Mrs Beck a consideration of the merits of Mr Tate, who had been wrongly excluded from the list of suitable candidates solely because of the irregularities in the competition. Article 30 of the Staff Regulations, which permits the appointment only of candidates whose names appear on the list of suitable candidates, does not prevent the appointment of Mr Tate after such a consideration. The appointing authority could thus validly compare Mr Tate, the fifth candidate having obtained the minimum number of points, to the applicant and Mrs Beck in the context of the consideration of the reasons connected with the interest of the service which might lead to the two candidates at the top of the list not being appointed. Since the appointing authority did not carry out such a consideration, it did not exercise its discretion in accordance with law.

74. It is only if the Parliament had validly decided that reasons connected with the interest of the service justified the appointment of Mr Tate that Article 30 would have prevented such a decision. If the Parliament, after adopting a decision not to appoint the applicant or Mrs Beck, the reasons for which were duly stated, had wanted to appoint Mr Tate, the irregularities in the competition procedure would have prevented it. In those circumstances, a decision not to take account of the results of the competition would have been justified by sound reasons. Since no consideration was given to the appointment of the applicant or Mrs Beck, the contested decision is vitiated by an error of law.

75. It follows from the foregoing that the reasons relied on by the Parliament in its rejoinder to justify the contested decision are without foundation, since the reasons put forward by the Legal Department were not sufficient to permit the appointing authority to disregard any part of the results of the competition and to commence a new competition. That being so, the appointing authority has failed to comply with the case-law of the Court of Justice according to which, in the absence of sound reasons to the contrary, it should have considered the possibility of appointing the applicant (see the judgment in Joined Cases 316/82 and 40/83 *Kohler*, cited above).

76. It should be pointed out that the submission concerning the statement of the reasons on which the contested decision is based does not rely exclusively on the insufficient nature of those reasons. The documents submitted by the Parliament as an annex to its rejoinder and the file in Competition No PE/41/A, submitted at the Court's request, permitted the applicant to discover the reasons for the contested decision. It is apparent from the applicant's statements at the hearing that after becoming aware of the reasons, he enlarged his plea by alleging that the decision was not well founded.

77. Under those circumstances, the Court can decide only that the reasons put forward by the Parliament during the procedure are not of such a nature as to justify in law the decision of the President of the Parliament. Consequently, the contested decision was not based on grounds valid in law, and the submission that the reasons on which the decision is based are without foundation must be accepted.

78. It is therefore not necessary to rule on the question whether or not the submission that the statement of reasons is insufficient has lost its purpose. The decision of the President of the Parliament to disregard the results of Competition No PE/41/A and to commence Competition No PE/41a/A should be annulled, as should the implied decision rejecting the applicant's complaint of 17 June 1988.'

On those grounds, the Court of First Instance decided, at paragraph 1 of the operative part of its judgment, to annul 'the decision of the European Parliament to disregard the results of Competition No PE/41/A and to initiate Competition No PE/41a/A as well as its implied decision rejecting the applicant's complaint of 17 June 1988'.

It dismissed the remainder of the application and ordered the Parliament to pay the costs.

II — Subject-matter of and forms of order sought in the appeal

By an application lodged at the Registry of the Court of Justice on 23 November 1990, the European Parliament appealed against paragraph 1 of the operative part of the above judgment of the Court of First Instance, notified to the appellant on 25 September 1990, on the ground that the judgment was contrary to Community law.

The *European Parliament* claims that the Court should:

— set aside the judgment of the Court of First Instance in Case T-37/89 *Hanning* v *Parliament*;

— grant the European Parliament the forms of order sought at first instance, namely:

— to dismiss Mr Hanning's application;

— to make an order as to costs in accordance with the applicable provisions;

— and to decide as it deems appropriate regarding the costs of the proceedings before the Court of Justice.

Mr *Hanning* contends that the Court should:

— dismiss as unfounded the European Parliament's appeal against the judgment of the Court of First Instance in Case T-37/89 *Hanning* v *Parliament*;

— in consequence, confirm the contested judgment in all respects;

— order the appellant to pay the whole of the costs.

By order dated 31 January 1991 (C-345/90 P-R [1991] ECR I-231) the President of the Court of Justice ordered, at the request of the European Parliament, that implementation of the contested judgment be suspended.

III — Summary of the pleas in law and arguments relied upon

A — In support of its appeal, the *Parliament* relies on a *single plea* based on the infringement by the Court of First Instance of the principles to be observed by the appointing authority regarding the recruitment of officials following a competition, as provided in Article 30 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') and the fifth paragraph of Article 5 of Annex III

to the Staff Regulations, entitled 'Competitions'.

The plea has two limbs: the first relates to the duty of the appointing authority to check the correctness of the selection board's proceedings, the second to the discretion given to that authority when choosing from the list of suitable candidates.

(1) The European Parliament makes a preliminary review of the rights and duties of the appointing authority laid down by the Staff Regulations and the case-law of the Court of Justice.

With regard to the recruitment and appointment of officials, it first stresses the priority given by Articles 7 and 27 of the Staff Regulations to the interests of the service.

It then describes the various steps in the competition procedure, the details of which are laid down in Annex III to the Staff Regulations.

It is the appointing authority that decides to commence the procedure and it enjoys a wide discretion in determining the rules and conditions which will apply (judgment in Case 39/83 *Fabius* v *Commission* [1984] ECR 627); it must give candidates a sufficiently detailed description of the relevant duties (see, in particular, the judgment in Case 67/81 *Ruske* v *Commission* [1982] ECR 661). The appointing authority is free to decide whether the competition procedure should lead to the vacant post being filled (judgment in Case 18/83 *Morina* v *Parliament* [1983] ECR 4051), provided that it gives sound reasons justifying its decisions not to do so (judgment in Joined Cases 316/82 and 40/83 *Kohler* v *Court of Auditors* [1984] ECR 641).

The notice of competition is drawn up by the appointing authority and binds the selection board (see, in particular, the judgment in *Ruske* v *Commission*, cited above).

The selection board assesses the tests in its absolute discretion (see, in particular, the judgment in Case 143/84 *Vlachou* v *Court of Auditors* [1986] ECR 459).

The list of suitable candidates is drawn up by the selection board after the tests. It is forwarded to the appointing authority together with a reasoned report (last paragraph of Article 5 of Annex III to the Staff Regulations) giving details of the comparison made between the candidates' qualifications and merits and those required by the notice of competition (see, in particular, the judgment in Case 31/75 *Costacurta* v *Commission* [1975] ECR 1563). The European Parliament stresses the importance, at this stage, of the rule laid down by Article 5 of Annex III to the Staff Regulations, pursuant to which the list of suitable candidates is to contain at least twice as many names as the number of posts to be filled, in order to facilitate the appointing authority's choice in the light of the circumstances and nature of the competition, the number of candidates and their qualifications (judgment in Case 122/77 *Claes (née Agneessens)* v *Commission* [1978] ECR 2085).

It is then for the appointing authority to consider the selection board's report and to decide whether to accept it and the list of suitable candidates (see, in particular, the

judgments in *Morina* v *Parliament*, cited above, and in Joined Cases 322 and 323/85 *Hoyer* v *Court of Auditors* [1986] ECR 3215).

The appointing authority must first satisfy itself that the list of suitable candidates has been properly drawn up. If it considers itself unable to appoint a candidate because it considers that the Selection Board has unlawfully refused to admit one or more candidates to the competition and that the whole of the competition is vitiated, it is under a duty to record that by means of a reasoned decision and to recommence the whole competition procedure following publication of a new notice (judgment in *Hoyer* v *Court of Auditors*, cited above).

If the list of suitable candidates is considered to be correct, the appointing authority has a 'limited' discretion with regard to the order determined by the list of suitable candidates (judgments in Case 62/65 *Serio* v *Commission* [1966] ECR 561; Case 26/68 *Fux* v *Commission* [1969] ECR 145; Case 88/71 *Brasseur* v *Parliament* [1972] ECR 499; Case 246/84 *Kotsonis* v *Council* [1986] ECR 3989; *Vlachou* v *Court of Auditors*, cited above). On the other hand, candidates have no right to an appointment based on their position on the list (judgments in *Fux* v *Commission*, cited above, and Case 157/77 *Gilbeau* v *Commission* [1979] ECR 1909).

(2) With regard to the *first limb*, concerning the appointing authority's duty to establish the correctness and, thus, the lawfulness of the Selection Board's proceedings, the Parliament claims that as the Selection Board did not observe the requirements stipulated in the notice of competition and, as the Court of First Instance held in its judgment, the list of suitable candidates drawn up by the Selection Board following its proceedings was seriously defective. There were two candidates on the list (Mr Spence and Mr Waters) who had been admitted to the competition but another candidate (Mr Tate) who had obtained the minimum number of points necessary and ought to have appeared on it was not mentioned. In those circumstances, the appointing authority was prevented by the Staff Regulations from making an appointment on the basis of that irregular list and, consequently, having halted the competition, had no alternative but to decide to commence a new competition without choosing a candidate from the list of suitable candidates.

The Parliament states that the Court of First Instance failed to take account of the rules with which the appointing authority is required to comply when using the list of suitable candidates. In holding that the illegality that vitiated the list of suitable candidates was only an obstacle to the appointment of Mr Spence and Mr Waters, the last two candidates on the list, who had been unlawfully included, and not to that of the first two candidates on the list, the Court of First Instance has failed to take into account the nature and role of the list which, pursuant to Article 30 of the Staff Regulations, are to enable the appointing authority to choose the candidate which appears to it to be the most appropriate.

A list containing only two names out of the four which ought to have been included in accordance with the notice of competition fails to take account of the selection board's proceedings which must be commenced anew and prejudices the appointing authority's recognized power of selection. It cannot therefore validly be used to determine the outcome of a competition.

Contrary to the opinion of the Court of First Instance, the Parliament considers that the principle laid down by the Court of Justice in its judgment in *Kohler* v *Court of Auditors*, cited above, cannot be applied to this case because the irregularities affected the competition procedure as well as the list of suitable candidates.

According to the Parliament, the Court of First Instance has confused the question of the correctness of the list of suitable candidates with that of the selection carried out by the appointing authority based on that list; those questions ought to be clearly distinguished. The appointing authority ought first to decide whether that list is valid, and it is only where the appointing authority considers it to be valid that it may proceed with its selection. If, as the Court of First Instance decided, the appointing authority had to reconstitute the list of suitable candidates, this would fail to take into account the respective powers of the selection board, which must determine those candidates to be included on the list, and those of the appointing authority which chooses from the candidates on that list. Moreover, in the judgment in *Hoyer* v *Court of Auditors*, cited above, with which this case is to be compared, the Court of Justice held that where candidates have been improperly excluded from a competition the appointing authority is obliged to disregard the results of the competition, which are defective.

(3) With regard to the *second limb*, concerning the appointing authority's discretion when choosing candidates from the list, the Parliament claims that the Court has consistently recognized the appointing authority's right to depart from the selection board's order of classification of the candidates. The appointing authority has full discretion, which cannot be limited by the selection board's decisions unless it affects the interests of the service.

In the case in point, the discretion enjoyed by the appointing authority was particularly significant because in choosing the person to be appointed to an important and very special post, the appointing authority had to take account not only of the candidate's qualifications, but also his experience of operating in a demanding job and a new environment. The appointing authority could not and, moreover, did not wish to be obliged to appoint for that post the candidate placed first by the Selection Board.

By requiring the appointing authority to nominate that candidate, the Court of First Instance has deprived the appointing authority of its discretionary power. Exceeding its own powers, it has simply substituted its own appreciation for that of the administrative authority.

B — *Mr Hanning*, who is surprised at the lack of diligence shown by the Parliament throughout the competition, contends, first of all, that having regard to his previous duties and his work experience, he satisfies the requirements of the notice of competition perfectly, as has been demonstrated, moreover, by the results obtained by him in the two competitions organized to fill the post for which he applied.

The respondent then states that, as the Court of First Instance has held, the Parliament cannot successfully rely on the complaints made by certain candidates following the competition to justify its annulment because it had admitted that two of them were not admissible and that the third complaint was manifestly unfounded.

He also contends that, following the competition, the Head of the Parliament's Recruitment Service telephoned him on 19 November 1987 and asked him to make arrangements to be available as soon as possible, thus giving him to understand that he had been appointed to the post or that he was soon to be appointed, and that he had to undergo a medical examination before taking up the post. On 23 November 1987, a letter headed 'Annex to letter of recruitment — Medical examination prior to recruitment' gave him information regarding the medical examination and made an appointment for him with an employee of the Parliament's Directorate-General of Personnel. Mr Hanning states that on 30 November 1987 he underwent the medical examination prior to recruitment and was informed of the conditions of his appointment at a meeting in the Directorate-General of Personnel during which he was shown his letter of appointment. Mr Hanning also states that he was informed subsequently of the successful result of his medical examination and also the impending dispatch of his letter of appointment and that, having heard nothing further from the Parliament, he was informed only on 6 April 1988 that it had been decided to annul the competition and to organize a new competition in which he had no other option but to take part.

Mr Hanning argues that by organizing a new competition at a time when it could correct the errors in the first competition without annulling it and at a time when the appointment procedure was to a large extent under way, the Parliament sought to deprive him of an appointment which he thought he had already secured.

Mr Hanning adds that the reservations hinted at by the Parliament concerning his abilities reveal what he had always felt during the competition procedure, namely the Parliament's hostility to his appointment. In this respect he states that from July 1987 the Parliament sought to stop the procedure by drawing the attention of the Selection Board to the defects which — it claimed — vitiated it; that it was well after the list of suitable candidates had been drawn up, at the end of October 1987, months after the appointment procedure had been commenced, that in February 1988 the Parliament relied on the defects in the procedure in order to annul the competition and to commence a second competition, following which it hastened to appoint the candidate placed first, Mr Bond, despite the interim order of the Court of 11 July 1988 stating that if Mr Hanning's action before the Court were successful, Mr Bond's appointment would be invalid and the first appointment procedure would have to continue its normal course again. Mr Hanning states that if the Parliament was really not hostile to him and did not consider itself bound by the ranking on the list of suitable candidates, nothing prevented it from appointing him following the second competition where he was ranked second.

According to the respondent, the judgment of the Court of First Instance indirectly accepted the argument that there had been a misuse of powers which was demonstrated by a set of precise, corroborating facts, because in annulling the decision in question, the Court of First Instance relied on a sixth ground, raised by implication in the application, very narrowly linked with that based on the misuse of power and which was developed at the hearing.

Mr Hanning adds that although the Court of First Instance found there had been a quasi-abuse of powers, nothing points to the other pleas made before it being unfounded.

Finally, Mr Hanning states that in the contested judgment the Court of First Instance examined the Parliament's pleas justifying the annulment of the competition and dismissed them. He states in particular that the Court of First Instance, having considered in considerable detail the case-law of the Court of Justice, held that the Parliament 'was not free to terminate the recruitment procedure without considering whether there were sound reasons for not appointing the candidate who had come first in Competition No PE/41/A'; that the inadmissible and unfounded complaints addressed to the appointing authority did not affect the competition; that the defects in the competition only partially affected the lawfulness of the list of suitable candidates and did not prevent the Parliament from contemplating the appointment of Mr Hanning, who had been lawfully admitted to the competition, unless by departing from the order of merit for sound reasons. The Parliament should therefore resume the appointment procedure and annul the second competition.

(1) With regard to the *first limb of the plea* put forward by the Parliament based on the misappreciation by the Court of First Instance of the appointing authority's powers, Mr Hanning contends, first, that far from disregarding the powers conferred on the appointing authority by the Staff Regulations in matters of recruitment, the Court of First Instance has scrupulously observed Article 30 and Annex III to the Staff Regulations and the case-law of the Court, copiously cited in the judgment.

He contends, secondly, that the question is not the conflict between the interests of the service and the interests of candidates, but that of the conclusions to be drawn from a completed competition procedure. In the case in point it was in any case in the interests of the service to appoint him, since his abilities were not in dispute.

He states, thirdly, that the appointing authority's freedom to decide whether the vacant post should be filled following the competition allows the appointing authority either not to fill the post, temporarily or definitively, if it considers that it is not necessary, which is not the case here, or not to appoint the candidates appearing on the list of suitable candidates for reasons which must be well explained and well-founded. In the case in point, the Court of First Instance has stated that none of the reasons given was well-founded.

Mr Hanning contends, fourthly, that although selection boards are independent of the appointing authority, in the case in point, the President of the Parliament pressurized the Selection Board with a view to stopping the competition procedure, and that following a letter, enclosing the opinion of a jurisconsult, informing the Chairman of the Selection Board of the President of the Parliament's 'feelings' regarding the lawfulness of the procedure, the Chairman of the Selection Board replied in his letter of 2 July 1987 that 'by virtue of the rules of procedure and the case-law of the Court, selection boards must conduct their deliberations absolutely independently and retain their discretionary powers'.

Mr Hanning contends, fifthly, that the case differs from *Hoyer* v *Court of Auditors*, cited above, because the defect in this case relates to the admission to a competition of candidates who ought not to have been included and whose names ought, accordingly, merely to have been removed from the list of suitable candidates, but not to the refusal to admit candidates who ought to have been included and were thus unable to take part in the tests of the competition which requires those tests to be re-held.

The respondent states, sixthly, that contrary to the Parliament's contention, the list of suitable candidates, even when reduced to the first two candidates properly included on the list, complied with the fifth paragraph of Article 5 of Annex III to the Staff Regulations because the number of candidates it contained was twice the number of posts to which the competition related, the notice of competition merely laying down a maximum of four candidates. Moreover, the Court of First Instance held that the appointing authority was bound to take into account the first candidate not included on the list, who obtained the minimum number of points required. By doing so the appointing authority was not disregarding the proceedings of the Selection Board because it was merely taking the names of candidates included by the Selection Board and in the order laid down by the latter.

Mr Hanning states, in particular, that the Parliament has admitted in its observations with regard to the first application for interim measures (page 4, point 1(a] that the appointing authority 'is not required to follow the order (of names in the list of suitable candidates). It may even appoint persons not included on that list', a contention which it now rejects.

The list of suitable candidates was therefore not vitiated by any serious defect of a kind which must lead to the annulment of the competition. The appointing authority ought, accordingly, to continue the competition procedure to its conclusion and then make an appointment as it had done initially, particularly since, on its own admission, that appointment was 'urgent'.

(2) With regard to the *second limb of the plea*, based on the disregard by the Court of First Instance of the appointing authority's discretion in choosing candidates from the list of suitable candidates, Mr Hanning contends that the list, once adjusted by removing the candidates improperly included, did not prevent the appointing authority from choosing an appropriate candidate because, in the absence of reasons affecting the interests of the service, the appointing authority must follow the order of merit laid down by the Selection Board. In his view, the Parliament has failed entirely to show that the interests of the service prevented the appointment of the candidate placed first on the list.

Mr Hanning states that, far from substituting its view for that of the appointing authority, the Court of First Instance limited itself in its judgment to censuring the insufficient reasoning of the appointing authority and indicating to it the necessary measures to be taken to comply with that judgment.

F. Grévisse
Judge-Rapporteur