2. **Orders the Commission to report to the Court before 15 July 1983 on the measures taken to comply with this judgment;**

3. **Defers examination of the claim for compensation for the pecuniary damage suffered by the applicant to a date to be fixed at a later date if necessary;**

4. **Reserves the costs.**

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 15 December 1982.

J. A. Pompe
Deputy Registrar

A. O'Keeffe
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 30 SEPTEMBER 1982 [1]

Mr President,
Members of the Court,

1. The cases to which this Opinion refers are primarily concerned with the consequences of Council Regulation No 3087 of 21 December 1978 on the remuneration of officials employed in the small town of Ispra, in the Province of Varese, Northern Italy. There are essentially two points at issue: the adequacy of the new weighting laid down by the above-mentioned regulation in relation to the cost of living and the date as from which the weighting should have been applied. A number of the cases

1 — Translated from the Italian.

also raise the problem of the adverse effects of Council Regulations Nos 3085 and 3086/78 on the cost for officials of transferring part of their remuneration abroad. In that respect the Court has already dismissed the officials' claims in Cases 817, 828 and 1253/79 by its three judgments of 4 February 1982 ([1982] ECR 245, 269 and 297).

I shall now give a brief summary of the course of events in the cases in which the Court is called upon to give judgment.

Case 158/79

A — By a complaint addressed to the Commission on 11 April 1979 Monique Roumengous, née Carpentier, an official employed by the Commission at the Ispra Joint Research Centre, objected to the payment of her remuneration in accordance with the above-mentioned Council Regulation No 3087/78 in so far as the adjustment of the weighting had been made effective only as from 1 January 1978 and therefore did not extend to the years 1976 and 1977. The Commission rejected that complaint by means of a circular letter of 12 July 1979. Mrs Roumengous subsequently brought a legal action on 11 October 1979, claiming that both Regulation No 3087/78 and the measures adopted by the Commission to implement it were unlawful. She therefore sought a declaration that the regulation in question was inapplicable to her, annulment of the calculation of the arrears due to her and recognition of her entitlement to a sum resulting from the application of the 6.4% increase of the weighting with effect from 1 January 1976, a sum which should be paid "in order to take into account the Varese price levels" which were "higher than those of Rome", together with interest thereon.

In lodging its reference the Commission raised a formal objection of inadmissibility. Initially therefore only that aspect of the dispute was dealt with and after the oral procedure (sittings on 19 and 20 February 1981) the Advocate General delivered his Opinion on 14 May 1981 ([1981] ECR 1512). By order of 30 June 1981 the Court decided to reserve its decision on the objection for the final judgment. The procedure was therefore resumed and the case was heard on 14 July of this year.

Case 737/79

B — On 26 March and 6 April 1979 Dino Battaglia, an official employed at the Ispra Centre, addressed two complaints to the Commission regarding the fact that the arrears paid to him, together with his remuneration for January 1979, as a result of the adjustment of the weighting for Italy prescribed by the above-mentioned Regulation No 3087/78 were calculated with effect from 1 January 1978 rather than from 1 January 1976. The complainant asked the Commission to take "the appropriate measures to compensate for the loss of purchasing power" which had occurred in the years 1976 and 1977. The Commission replied in the negative by means of the circular letter of 12 July 1979 to which I have already referred. Subsequently, by a document lodged on 17 October 1979, Mr Battaglia brought an action against the Commission, claiming that the decision rejecting his complaint and the application to him of Regulation No 3087/78 were unlawful. Accordingly he sought:

(a) annulment of the decision adopted by the defendant institution which, in addition to paying the arrears resulting from the increase in the weighting with effect only from 1 January 1978, had calculated the arrears without taking into account the cost of living in the Province of Varese;

(b) a declaration that Regulation No 3087/78 was inapplicable to him in so far as it entered into force with effect only from 1 January 1978; and

(c) a declaration by the Court that the applicant was entitled, for the years 1976 and 1977, to supplementary remuneration, to be determined on the basis of the cost of living in the Province of Varese, plus interest thereon;

(d) in the alternative, an order that the defendant should pay him damages;

(e) in the further alternative, a finding that the conditions which necessitated an adjustment of remuneration already existed in 1976 and that therefore the Council should have adopted the appropriate measures to ensure that officials' remuneration was calculated, without discrimination, in accordance with Articles 64 and 65 of the Staff Regulations.

The Commission objected that the application was inadmissible and in consequence the Court set down a hearing in order to consider only that objection. On 14 May 1981 the Advocate General delivered his Opinion, again relating only to the objection of inadmissibility. By order of 30 June 1981, as in the *Roumengous* case, the Court directed that a decision on the objection should be reserved for the final judgment. Finally, at the sitting on 14 July 1982, the second phase of the oral procedure was completed.

Case 543/79

C — Anton Birke, an official of the European Communities, also employed at the Ispra Centre, addressed two complaints to the Commission on 27 March and 11 April 1979, stating in the first place that as a result of the application of Regulations Nos 3085 and 3086 his real salary had been considerably reduced and, in the second place, that Regulation No 3087 did not render the increase in the weighting applicable to the years 1976 and 1977. By a further complaint of 21 June 1979 (lodged, on a coordinated basis, at the same time as those of many other officials at the same place of employment), Mr Birke objected to the application of Regulations Nos 3085 and 3086 to his salary, regard being had in particular to the effects of those regulations regarding the conditions for the transfer of part of his remuneration abroad.

The Commission made its position clear by means of two circular letters of 12 July and 28 September, rejecting the claims. Mr Birke then brought an action before this Court against the Commission and the Council, by an application lodged on 11 October 1979, in which he sought:

(a) annulment of his salary statements for the months of January to April 1979 and of the Commission's decisions of 12 July and 28 September 1969 in reply to his complaints;

(b) a declaration that he is entitled to remuneration commensurate with the cost of living in the Province of Varese or, in the alternative, in the Province of Rome, calculated with effect from 1976;

(c) a declaration that he is also entitled, for the period after 1 April 1979, to remuneration in Italian lire at least equal to the remuneration received by him in that currency in March of the same year, account being taken of the effect on his total remuneration of the payments made abroad in accordance with Article 17 of

Annex VII to the Staff Regulations and of the adjustment of the level of remuneration as from 1 April 1979;

(d) in the alternative, a declaration that the adjustment of his remuneration in accordance with the new criteria for calculation laid down in Regulations Nos 3085 and 3086 should be carried out by means of appropriate transitional measures, in relation to future (real) increases of salary;

(e) in the further alternative, a declaration that he is entitled to the application of the new régime to his remuneration in accordance with the conditions laid down regarding pensions in Article 4 of Regulation No 3085 (that is to say, with effect from 1 October rather than 1 April 1979, the reduction to be carried out in stages over a period of 10 months);

(f) in any event, rectification by the Commission of the amount of the remuneration payable to him in accordance with heads of claim set out in the foregoing paragraphs and an order that, together with the Council, it should pay the applicant the difference between what was paid and what was due, plus interest.

Both the Council and the Commission objected that the application was inadmissible. The Court adopted the same approach as in the *Roumengous* and *Battaglia* cases, that is to say it set down a hearing to deal only with the matter of admissibility. On 14 May 1981 the Advocate General delivered his Opinion on that matter. The Court, by judgment of 12 November 1981, declared the action brought against the Council to be inadmissible; as regards the objection of inadmissibility raised by the Commission, it decided not to rule on that question before the parties had submitted their arguments on the substance and the documents relating thereto ([1981] ECR 2669, paragraph 30 of the decision). Finally, at the sitting on 10 December 1981 the second stage of the oral procedure took place, in which of course the Commission was the only defendant.

Case 799/79

D — Günter Bruckner, an official of the European Communities employed at the Ispra Centre, addressed a complaint to the Commission on 21 June 1979, together with numerous other officials, opposing the application to their remuneration of Council Regulations Nos 3085 and 3086 of 1978, in particular because of the effect of such regulations on the conditions for the transfer abroad of part of their remuneration. That complaint was similar to that lodged by Mr Birke on 21 June 1979, to which I referred earlier.

The Commission made its position clear by means of the circular letters of 12 July and 28 September 1979, which I have already mentioned, rejecting Mr Bruckner's requests. He then brought an action against the Commission and the Council by a document lodged on 12 November 1979, in which he made claims which to a considerable extent coincided with those made by Mr Birke; but he did not challenge the salary statement for January 1979 and consequently he did non seek recognition of entitlement to remuneration commensurate with the cost of living in the Province of Varese or, in the alternative, in the Province of Rome, calculated as from 1 January 1976. The

Council objected that the application was inadmissible. On 27 December 1979 the applicant extended the scope of his application and also contested the salary statement for January 1979, which marked the first occasion on which Regulation No 3087 was applied. By a document lodged on 11 February 1980 the Commission objected that the additional claim was inadmissible. The Court decided to confine the oral procedure to consideration of the matter of admissibility and subsequently the Advocate General delivered his Opinion at the sitting on 14 May 1981. By judgment of 12 November 1981 ([1981] ECR 2697) the Court declared that the action brought against the Council was inadmissible. On 10 December 1981 the second stage of the oral procedure was completed, the Commission being the only defendant.

Joined Cases 532, 534, 567, 600, 618 and 660/79

E — By a number of complaints having the same subject-matter, lodged on 27 March and 11 April 1979, Jan Amesz, Rolf Bauch, Jakob Flamm, Hans Hoffmann, Helmut Knoeppel and Henricus Nijman, all officials of the European Communities employed at the Ispra Joint Research Centre, stated that, as a result of the application of Regulations Nos 3085/78 and 3086/78, their real salary had been considerably reduced and further that Regulation No 3087/78 had not extended the increase of the weighting to the years 1976 and 1977. By further complaints lodged on 21 June 1979 the same officials opposed the application of Regulations Nos 3085 and 3086 to their salary, referring in particular to the effects of those regulations on the conditions for transfer abroad of part of their remuneration. These complaints are the same as those submitted by Mr Birke, to which I referred earlier.

The Commission stated its position by means of circular letters of 12 July and 28 September 1979, rejecting the officials' complaints. The officials then brought actions against the Council and the Commission by applications lodged on 11 October 1979 containing claims fairly similar to those in Mr Birke's application. The Council objected that the action against it was inadmissible. By order of 10 November 1981 the Court directed that the six cases be joined for the purposes of the oral procedure and judgment, in view of their related subject-matter. By a separate order of the same date the Court then declared that the six applications were inadmissible in so far as they were directed against the Council. Finally, the cases were heard on 10 December 1981, with the participation of the applicants and the Commission.

2. The first question which must once again be considered is that of admissibility.

As regards the applications lodged by Mrs Roumengous and Mr Battaglia (Cases 158/79 and 737/79), I confirm the view already put forward in my Opinion of 14 May 1981, namely that they are admissible only with respect to the claim that the weighting for 1978 should be adjusted, and to the resulting claims. As regards the claim that the weighting should be weighting should be readjusted for 1976 and 1977, I still consider it to be inadmissible by virtue of the fact that no complaint was made

within the prescribed period against the relevant salary statements (see paragraphs 16 and 18 of that Opinion).

On the same occasion, examining the problem of the admissibility of Mr Birke's application (Case 543/79), I reached the conclusion that the claim relating to the date of first application of the weighting laid down by Regulation No 3087/78 was inadmissible, as in the *Roumengous* and *Battaglia* cases, because no claim was made within the prescribed period against the calculation of salaries for the years 1976 and 1977 and because the claim that the weighting should be reviewed was also inadmissible inasmuch as the content of the complaint — which was limited to the date as from which the weighting was applied — did not correspond to the content of the application. In that regard I refer to the considerations set forth in paragraph 17 of my Opinion of 14 May 1981. In fact, Mr Birke's application is admissible only in respect of the head of claim regarding the problem of the transfer abroad of part of his remuneration. I confirm that view and merely amend the final suggestion contained in that Opinion of 14 May 1981, to the effect that the *Birke* application should be declared admissible only as regards the request for annulment of the salary statement for April 1979.

It has been seen that the *Amesz, Bausch, Flamm, Hoffmann, Knoeppel and Nijman* applications (Joined Cases 532, 534, 567, 600, 618 and 660/79) have subject-matter very similar to that of Mr Birke's application and have followed the same procedural course. I would add that in its defence the Commission adhered to the view that the applications were inadmissible, referring to the grounds upon which it relied in the *Birke* case. In this regard also, I shall merely refer to the arguments put forward on 14 May 1981 regarding the admissibility of Mr Birke's application. On the basis of those arguments, I consider that the applications by Mr Amesz and Others may be considered admissible only as regards the heads of claim relating to the problem of the transfer abroad of part of their remuneration.

Mr Bruckner's application (Case 799/79) remains to be considered. In my Opinion of 14 May 1981 I did not express a specific view on this matter. I would point out that the procedure in the Bruckner case is different, in some aspects, from the procedure followed in the cases of Birke and Amesz and Others. In fact,

(a) Mr Bruckner submitted only one complaint through official channels (in June 1979) regarding the application of Regulations Nos 3085 and 3086 to his remuneration, in view of the effects of those regulations on the transfer abroad of part of his salary;

(b) correspondingly, his application relates only to the calculation of his remuneration for April 1979, whilst his claims do not include (because they are crossed out in ink) the heads relating to adjustment and backdating of the weighting.

It should however be noted that Mr Bruckner extended the scope of his application by a letter of 27 December 1979 in which he contested in addition the calculation of his remuneration for January 1979 (which was based on Regulation No 3087) and that the Commission, by a letter of 11 February 1980, objected that his supplementary application was inadmissible.

In view of those circumstances, it seems to me that the *Bruckner* application is

inadmissible as regards the heads of claim relating to the weighting applied in January 1979, above all because his complaint did not refer to that grievance. Moreover, even if the complaint had extended to the calculation of his remuneration for January 1979, it would in any case have been out of time because in June 1979 more than three months had already elapsed since the date of the measure adversely affecting him (cf. first paragraph of Article 90 (2) of the Staff Regulations) and in particular from the date of calculation of the applicant's remuneration for the previous January.

The objection of inadmissibility raised by the Commission regarding the new application of 27 December 1979 is also well founded. That application was also out of time with reference to the date of the decision on the previous complaint. In fact, under Article 91 (3) of the Staff Regulations, the application must be lodged within a period of three months from that date, whereas in this case a period of more than five months elapsed between the decision on his complaint of 12 July 1979 and the supplementary application of 27 December 1979.

3. Turning now to the substance of the case, I propose to examine in the first place the question of the weighting applied to officials employed at the Ispra Joint Research Centre, a question with which I shall deal in general terms, without reference to the views which I have put forward regarding the admissibility of the various applications on this matter.

The applicants' claims are directed towards two distinct objectives. In the first place, they are intended to secure as from 1 January 1976 the application of Council Regulation No 3087/78, which fixed the new weighting for Italy at 146.4 and rendered it applicable from 1 January 1979, that is to say with retroactive effect of one year. In the second place, the applicants seek an adjustment of the weighting and claim that it should be determined as a function of the cost of living in the region in which the officials are employed — in this case, the Province of Varese — rather than in the capital city. In that regard, it is asserted that in the years 1976 to 1978 the price levels recorded in the Varese area were considerably higher than those in Rome.

The applicants complain that the Commission calculated the remuneration due to them on the basis of Council Regulation No 3087/78 and assert that that regulation is vitiated by a number of defects. They allege in particular infringement of Articles 64 and 65 of the Staff Regulations of Officials relating to the geographical weighting; of Article 24 of the Staff Regulations relating to the duty of assistance; and breach of the principle of non-discrimination and of the rules requiring observance of essential procedural requirements.

4. According to the first paragraph of Article 64 of the Staff Regulations of Officials "An official's remuneration expressed in Belgian francs shall ... be weighted at a rate above, below or equal to 100%, depending on living conditions in the various places of employment." Article 65 (2) of the Staff Regulations goes on to provide that "In the event of a substantial change in the cost of living, the Council shall decide, within two months, what adjustments should be made to the weightings and as appropriate to apply them retrospectively."

In the view of the applicants, Regulation No 3087/78 is contrary to Article 64

because the statistical records intended to establish changes in living conditions for the purpose of determining the weighting were prepared with reference to the living conditions in the capital (Rome) rather than with reference to those in the Province of Varese, the place where they are actually employed. Moreover, contrary to Article 65, the weighting was not increased at the appropriate time to reflect considerable rises in the cost of living, in particular, because the new weighting for Italy was applied as from 1 January 1978, Regulation No 3087/78 failed to take into account the fact that, before that date, the cost of living had risen considerably in Italy, particularly in the Province of Varese.

The criticism based on Article 64 of the Staff Regulations raises the question of the meaning of the expression "places of employment" contained in the first paragraph of that provision. The question to be determined is whether it means the State in which is situated the office at which the Community official is employed or the specific locality of that office. The first alternative leaves open the possibility of reference to the cost of living in the capital of the State in question, as being the centre whose cost of living is very likely to indicate the national cost of living, or else reference to the average cost of living of the country as a whole. The Council had previously interpreted the provision in question as referring to the locality of the place of employment. I would mention in that regard that Regulation No 1/67/ECSC, 988/67/EEC and 9/67 Euratom of the Council of 12 December 1967 gave two weightings for both France (130.5% for Paris and for certain departments and 122.5% for the rest of the country) and Italy (114% for Ispra and 114.5% for the rest of the country). Subsequently, Regulation No 1748/68 of the Council of 29 October 1968 maintained the distinction for France, raising the weighting for Paris and certain departments to 137.5% and to 128.5% for the rest of the country. It was only with effect from October 1968 for Italy and from October 1969 for France (see Regulation No 95/70 of the Council of 19 January 1970) that that system was abandoned and the use of a single weighting for each Member State was decided upon, disregarding any difference (sometimes a marked difference) in the cost of living as between the various regions of one country.

That change of policy, according to the Commission, was intended to avoid disparities in remuneration within the same country. It is true that the new system is often advantageous to officials since in general the cost of living is higher in the capital city than in the rest of the country; this may explain why the system functioned for years without any widespread complaints on the part of officials. However, the Italian situation is special in so far as the cost of living is higher than in other regions of the country not only in the capital city and in the major cities but also in a number of small and medium-sized towns and cities, particularly in the north where there has been rapid and concentrated industrial development, especially since the end of the 1960s. This state of affairs has continued and as a result of the economic crisis there has been a high

rate of inflation and a considerable loss in the value of the lira against other currencies. Thus, the cost of living has remained higher in certain northern areas than in Rome.

Returning to the problem of the interpretation of Article 64 of the Staff Regulations of Officials, I am of the opinion that the expression "places of employment" used in that provision indicates the localities where the offices of the Community institutions are situated and not the countries in which they are located. This view is based on a number of arguments. From the textual point of view, importance must be attached to the fact that the expression "places of employment" is more precise and restrictive than a general reference to the Member State in which the official is employed. From the logical point of view, it must be acknowledged that it is wholly justified to take specific account of the city where the official is to work, for the purpose of establishing the cost of living, since it is irrational to disregard the differences of economic development between one region and another, which occur in many countries, particularly the larger countries. In those circumstances, equality of treatment of employees might be sacrificed by adherence to the view that the place of employment is the country in which the office is located. Only if the conditions of the specific locality in which the office is situated are used as a basis is there any likelihood of a determination of the amount of remuneration in such a way as to ensure that all officials have the same purchasing power, all other things being equal, regardless of the country in which they are employed.

Furthermore, I think it is arbitrary to interpret the provision as meaning that the cost of living must be determined on the basis of the date for capital cities. If such an interpretation has prevailed it is probably due to the fact that the majority of Community offices are located in the capital cities of the Member States but it is clear, in the case of offices so located, that the reference to the cost of living in the capital cities is specific in character, because it is in fact based on the cost of living in the precise place where the official is employed. On the other hand to use the expression contained in Article 64 ("places of employment") to mean in all cases the capital cities of the Member States is manifestly to go beyond the letter and the spirit of the provision.

It might be objected that it is impossible to guarantee to all officials in every place and at every time exactly the same purchasing power, in view of the inevitably approximate nature of the statistical investigations and the technical difficulties related to the collection and assessment of information. However, it should be remembered that pursuant to Article 65 (2) of the Staff Regulations, to which I have already referred, adjustment of the weightings is compulsory only in the event of a *substantial* increase in the cost of living. From this it may be inferred that the aim of the Community legislature is not to ensure absolutely identical treatment *(identical* purchasing power regardless of the place of employment), but substantial

and reasonable equivalence of treatment, allowing for possible minor differences.

It is hardly necessary to point out that Regulation No 3087/78 could not change the Staff Regulations of Officials. That regulation is intended to implement the Staff Regulations and was in fact adopted in accordance with the procedure provided for in the second paragraph of Article 64 and in Article 65 (3). Therefore, by virtue of the principle that the order of precedence of the sources of law must be respected, the regulation could not alter the provisions contained in the measure to which it gave effect.

5. The method used to calculate the weighting for Italy indicated in Regulation No 3087/78 is apparent from the Commission's statements and from the documents produced by it in the course of the proceedings. The bases adopted for the calculation were a survey carried out in 1975, which referred only to the cost of living in capital cities, and an inquiry carried out in 1965 to 1967 on family budgets, the results of which for Italy were brought up to date by means of statistical calculations based on the changes in the cost of living in Rome. Also, the Statistical Office of the Commission carried out a survey in Varese in May 1976, covering 230 items (excluding rent, heating and electricity with were the subject of a later survey). It ascertained that the cost of living in Varese was higher than the level reflected by the weighting for Italy then in force — the latter was 112.04 % whilst the cost of living in Varese had jumped to 126.4 %. In order to make those data fully comparable, it was necessary to add 6.7 % to the value for Rome in order to reflect the different evolution of the cost of living as between Italy and Belgium between December 1975 and June 1976. The difference between Rome and Varese was thus found to be 7.66 % (112.04 + 6.07 = 118.74; 126.4 — 118.74 = 7.66). Moreover, as a result of the survey of rents carried out in Varese the figure for the cost of living in Varese was reduced from 126.5 to 121.5 (see note from the Statistical Office of the Commission dated 17. 8. 1976, attached to the Commission's observations of 12. 1. 1982). The difference between Rome and Varese was therefore reduced further, becoming 2.76 % (121.5 — 118.74). It was nevertheless a substantial difference. But it was not taken into account by Regulation No 3087/78, which adopted a weighting calculated solely by reference to the cost of living in the capital.

The inquiries made by the Statistical Office were confirmed by the results of the surveys carried out by the Istituto Italiano di Statistica (ISTAT) [Italian Institute of Statistics], according to which the differences between Rome and Varese in the years 1976 to 1978 were as follows: taking 100 as the basis in 1970, in 1976 the index for Rome was 195.1 and for Varese 199.4; taking 100 as the basis in 1976, the index for Rome was 115.8 in 1977 and 127.4 in 1978 and for Varese the index was 119.7 in 1977 and 132.5 in 1978 (see the telex message from the Director General of ISTAT attached to the Commission's observations of 12. 1. 1982).

The state of confusion in which the Commission found itself when it became necessary to propose a readjustment of the weighting for Italy at the end of 1978 is eloquently expressed in a passage from the statement of reasons accompanying the proposal submitted by the Commission to the Council on 10 November 1978, which was intended to become Regulation No 3087. In the sixth paragraph of that document it is stated: "The Commission would also point out that the use of a single weighting for each country of employment, worked out for the capital, places staff working in Ispra at a slight disadvantage. The statistics available show that the cost of living in Rome has risen less rapidly than in the Varese area, from which it may reasonably be assumed that prices in Rome are now lower than in Varese. This existence of lower prices in the capital than elsewhere is the exception rather than the rule in the Nine. In view of the number of staff employed in Ispra a special local price survey would appear justified. However, the Commission feels that it would be wiser not to innovate in this direction and to abide by the Council Decision of 1968, which provides specifically for the use of the price indexes relating to the capital."

This passage confirms two important facts: the weighting for Italy was determined on the basis of the information for the Rome price indexes and, according to the data collected by the Statistical Office of the Commission in the Province of Varese, the price level in that locality during the period in question (1976 to 1978) was higher than that in Rome. Of particular significance, it seems to me, is the embarrassment felt by the Commission which on the one hand established that the officials employed at Ispra were in a disadvantageous position as a result of the application of a weighting calculated on data relating to Rome — and, albeit in a covert manner, considered the possibility of calculating a separate weighting for Varese — whilst on the other hand it finally proposed general application of the weighting for the capital city merely in order not to depart from the Council's previous approach.

That approach is in my opinion contrary to the first paragraph of Article 64 of the Staff Regulations of Officials. I think I have given a full enough explanation of the reasons for that view. I should merely like to add that Article 65 (2) of those regulations, which imposes the obligation to update the weighting in the event of substantial increases in the cost of living, provides a useful basis for the interpretation of Article 64. The obligation of the Community institutions to determine different weightings for the various places of employment in a Member State must be more strictly interpreted, in accordance with Article 65, in cases where the cost of living undergoes greater variations at one of those places than in that country's capital city, whose economic situation was taken into account for calculation of the weighting.

6. The applicants' second complaint concerns the date on which Regulation No 3087/78 entered into force. It has been seen that the new weighting laid down in that regulation was applied as from 1 January 1978, whilst according to the applicants the date of application should have been 1 January 1976

because by that year considerable increases in the cost of living had already occurred and thus the obligation to update the weighting has arisen. By failing to act in that manner, the Council is alleged to have infringed Article 65 (2) of the Staff Regulations.

This complaint seems to me also to be well founded. The statistical surveys carried out by the Commission show that in 1976 the cost of living had already increased, by comparison with Brussels, both in Rome and, to a greater extent, in Varese. This is apparent from the Statistical Office reports of 17 and 29 June 1976 and from the memorandum from that same Office of 17 August 1976. I would add that the variations in question exceeded 2 % and it is therefore incontestable that the Council was obliged to adjust the weighting. For their part, the price index records published by the Istituto Italiano di Statistica show that in the years from 1976 to 1981 the cost of living increased more in Varese than in Rome (by 0.9 % more in Varese), with the result that the divergence between the two places has become greater, although not to a very significant extent (see the memorandum of 28. 6. 1972 from the Statistical Office of the Commission concerning "analysis of the five-yearly (1980) examination of the weighting for Italy" produced at the hearing on 14. 7. 1982).

Article 65 (2) provides that in the event of a substantial increase in the cost of living the Council is to decide, within two months, what adjustments should be made to the weightings and "if appropriate to apply them retrospectively".

The Commission appears to think that the last sentence implies that the Council has an entirely discretionary power to apply or refrain from applying retrospectively the adjustments to the weightings, even if there are substantial variations in the cost of living, which have occurred over a period of years and have been ascertained after some delay. But such an interpretation is incompatible with the mandatory nature of the adjustments to the weightings and with the imposition upon the Council of a time-limit of two months (reckoned from the occurrence of any substantial variation in the cost of living) for the adoption of the decision referred to in the provision. In other words, whilst it is true that the administration is obliged to amend the weightings promptly whenever the cost of living changes substantially, the phrase "if appropriate" used in relation to the retroactive nature of the decision to make an adjustment is to be understood to the effect that the Council *must* make the adjustment retroactive in cases where it has been slow to take action, that is to say when it has done so after the expiry of the period laid down in Article 65 (2). Only if the provision under consideration is interpreted in that way does it achieve its aim of guaranteeing to all officials, regardless of their place of employment, the same purchasing power. It should not be forgotten that the adjustments to the geographical weightings do not constitute increases in remuneration but serve merely to maintain real equivalence between the remuneration of officials employed in Brussels and that of their colleagues assigned to other places.

7. All the applicants, with the exception of Mrs Roumengous, also maintain that the Commission has failed in the duty to assist officials imposed on it by Article 24 of the Staff Regulations, both because it submitted to the Council a proposal for a regulation — which was adopted without

amendment as Regulation No 3087/78 — which did not take account of the difference between the cost of living in Rome and that in Varese and which applied the new weighting only as from 1 January 1978, and because it complied with the regulation in question.

That criticism is without foundation in both respects. Article 24 of the Staff Regulations, having stated that "the Communities shall assist the official" goes on to say in the first paragraph, by way of example, (as is apparent from the use of the words "in particular" which introduce this part of the article) assistance in proceedings against any person perpetrating any attack on person or property, to which an official or a member of his family is subjected; the second paragraph then provides, as a collorary to the obligation laid down in the previous paragraph, the duty to compensate an official for damage suffered in consequence of any such attack in the event of his having been unable to obtain compensation from the person responsible, whilst the third paragraph deals with further training and instruction which the Communities are obliged to facilitate. The rule therefore is one of a very general character and is specific only to the extent which I have mentioned. The Council's duty promptly to adjust the geographical weightings is on the other hand of a well-defined nature in so far as it is the subject of a specific rule (Article 65 (2) of the Staff Regulations, referred to earlier). It does not therefore appear justified to rely upon Article 24 of the Staff Regulations to establish the obligation to adjust the weightings promptly (or at least retroactively to an appropriate degree) on the basis of the cost of living at the place of employment.

I would add that in its judgment of 17 December 1981 in Case 178/80 *Bellardi-Ricci and Others* v *Commission* [1981] ECR 3187 the Court interpreted Article 24 to the effect that the obligation to provide assistance "is concerned with the defence of officials by the institution against the acts of third parties and not against the acts of the institution itself, the review of which is governed by other provisions of the Staff Regulations" (paragraph 23 of the decision). This confirms the opinion which I favour in this case.

8. Finally, all the applicants complain that Regulation No 3087/78, by laying down a single weighting for Italy and applying it only as from 1 January 1978, is contrary to the principle of equality, since the remuneration paid to officials at the Ispra Centre is lower, in terms of purchasing power, than that of officials assigned to other places of employment. In my opinion, this complaint is well founded but I have already dealt with the problems of equality of treatment when considering the infringement of Article 64 of the Staff Regulations of Officials, when I stated that the latter provision is to be interpreted in the light of the principle of equality. It follows that the infringement of Article 64, which I consider to have occurred in this case, at the same time constitutes a breach of that principle.

9. According to the applicant Roumengous, the statement of the reasons on which Regulation No 3087/78 is based is insufficient and therefore vitiated by an infringement of essential procedural requirements. But this complaint seems to me to be groundless. It is not in doubt that, pursuant to Article 190 of the EEC Treaty, the reasons on which regulations are based must be stated. However, the

regulation in question is preceded by an adequate, albeit brief, statement of reasons. The sole recital in the preamble states that the need to correct the weighting for Italy is a result of the findings of the statistical surveys carried out by the Communities. Thus a reference — admittedly not a detailed reference — was made to the factors on which the Council based its decision. I would add that the statistical surveys were probably well known to the officials employed in Varese, whose staff representatives spent about three years negotiating the adjustment of the weighting which was then decided upon by means of the regulation in question. Moreover, the preamble to the regulation mentioned the Commission's proposal (the text of which is the same as that subsequently adopted by the Council) and that proposal was accompanied by a report illustrating in detail the reasons underlying the measure. I am of the opinion that, since the measure is a legislative one, a statement of reasons of that kind is adequate, in the light of Article 190 of the EEC Treaty to which I referred earlier.

The same applicant, Roumengous, also objects that the decision whereby the Commission rejected her complaint through official channels was notified to her by means of a circular letter (the letter of 12 July 1979 already referred to) and not individually. This complaint also falls within the scope of the alleged infringement of essential procedural requirements, but it does not deserve to be upheld. It need only be recalled that the Commission is under no obligation whatsoever to reply explicitly to complaints and that the Staff Regulations do not prescribe any particular form of notification. I do not deny that it is appropriate for the administration in most cases to give individual notice of measures affecting officials because that undoubtedly facilitates relations with employees; but that does not mean that the notification of a decision on a complaint by means of a circular letter is unlawful. In any case, the applicant suffered no damage by reason of the method adopted by the Commission to inform her of its decision. The only damage which the applicant alleges, in her complaint and subsequently in her application to the Court, derives from the implementation of Regulation No 3087.

10. The applicants Birke, Bruckner, Amesz, Bauch, Flamm, Hoffmann, Knoeppel and Nijman also contested the calculation of their remuneration for April 1979, alleging that it was unlawfully reduced as a result of the greater cost of the partial transfers of their remuneration to other countries, in consequence of the provisions of Regulations Nos 3085 and 3086/78.

In my Opinion of 14 May 1981, I examined the various problems arising from Regulations Nos 3085 and 3086. I should like to refer to that analysis as regards the legislative framework within which, *inter alia*, the present disputes fall. At this stage I shall deal only with the rules on the transfer abroad of part of an official's remuneration.

It should be remembered that Regulation No 3085/78 amended two provisions of the Staff Regulations of Officials, namely Article 63 on monetary parities and Article 17 of Annex VII relating to transfers abroad of part of an official's remuneration.

The third paragraph of the old text of Article 63 provided that remuneration paid in a currency other than the Belgian franc was to be calculated on the basis of the International Monetary Fund par values in force on 1 January 1965. The second paragraph of the new text of Article 63, as amended by Regulation No 3085, provided on the other hand that: "Remuneration paid in a currency other than Belgian francs shall be calculated on the basis of the exchange rates used for the implementation of the General Budget of the European Communities on 1 July 1978." This amendment — which in essence represents an updating of the exchange rates — was accompanied by an adjustment of the weighting provided for in Regulation No 3086/78.

In order to understand the connection between monetary parities and weightings it is necessary to bear in mind Article 64 of the Staff Regulations, referred to earlier, according to which remuneration expressed in Belgian francs is to be weighted at a rate *depending on living conditions at the various places of employment.* The existence of a fixed element (the International Monetary Fund parities, which differed considerably from those for the time being in force) in the payment systems prior to 1978, induced the Council to use weightings as a variable factor which could be manipulated so as to guarantee to officials employed in countries whose currency had been devalued by inflation remuneration which was equivalent, in terms of purchasing power, to that received by officials employed in Belgium. By adopting Regulation No 3086, the Council intended to regularize that situation, prescribing higher weightings for countries in which the cost of living is higher and lower weightings for countries where, on the other hand, the cost of living is lower, thus once more giving the weighting the function originally attributed to it by the Staff Regulations.

As regards Article 17 of Annex VII to the Staff Regulations, the previous version provided, in paragraph (2), that an official might transfer part of his remuneration each month, converting it into the currency of the State of which he was a national or into that of the Member State in which either his own domicile or the place of residence of a dependent relative was located. Paragraph (4) of that provision added that such transfers were to be "made at the official exchange rate ruling on the date of transfer", a rate which, before the entry into force of Regulation No 3085, coincided with the International Monetary Fund parity. The new text of Article 17 (3) provides on the other hand — and this is the innovation which is relevant to the present cases — that the transfers are to be "made at the exchange rates specified in the second paragraph of Article 63 of the Staff Regulations" — that is to say at the new exchange rates arrived at by the application of Article 63 as amended by Regulation No 3085 — and that the amounts are to be "multiplied by a coefficient representing the difference between [the weighting of the country in whose currency the transfer is made and] the weighting for the country for which the official is employed". As I pointed

out in my Opinion on 14 May 1981: "For the currencies of countries with a high rate of inflation such as Italy and the United Kingdom this relationship leads to exchange rates which lie approximately half-way between the parities of the International Monetary Fund dating back to 1965 and the current parities." In the same Opinion, I also observed that: "The new rules on transfers entailed an appreciable increase in the cost of such operations inasmuch as an official must spend larger sums of the currency of the place where he performs his duties in order to obtain the same quantities of foreign currency as he was previously having sent abroad."

11. According to the applicants in Cases 543/79 and 799/79 and Joined Cases 532, 534, 567, 600, 618 and 660/79, the rules on the basis of which the cost of the transfers abroad of part of their remuneration was determined as from April 1979 are vitiated

(a) by infringement of essential procedural requirements, consisting principally in the failure to consult the European Parliament as part of the procedure prior to the adoption of Regulation No 3085;

(b) by breach of general principles of Community law, in particular the principles of equality and of the inviolability of vested rights; and

(c) by failure to discharge the duty of assistance referred to in Article 24 of the Staff Regulations of Officials.

I dealt at length with the first of those defects in my Opinion of 14 May 1981 (cited earlier) and in my Opinion of 14 January 1982 in Cases 127/80, 164/80 and 167/80, [1982] ECR 886. The arguments put forward by the applicants in the cases now before the Court substantially coincide with those considered in those opinions. I believe therefore that I may refer to what I said on those occasions, in particular in my Opinion of 14 May 1981, regarding the conditions for transfers abroad of part of officials' remuneration.

Moreover, the Court recently expressed its views on this problem in three judgments, having the same subject-matter, delivered on 4 February 1982 in Case 817/79 *Buyl* v *Commission*, Case 828/79 *Adam* v *Commission* and Case 1253/79 *Battaglia* v *Commission* ([1982] ECR 245, 269 and 297). Those cases related exclusively to the problem of the transfer abroad of part of officials' remuneration and the impact of the new conditions for such transfers on the level of their remuneration. The Court declared that there had been proper consultation with the Parliament before the adoption of Regulation No 3085, that on the other hand prior consultation with the Economic and Social Committee and the Court of Auditors was not compulsory and that therefore the alleged infringement of essential procedural requirements had not taken place. In the course of the proceedings now pending before the Court, no new facts have emerged of such a kind as to persuade me that I should change the view which I previously formed and depart from the approach adopted by the Court.

12. The applicants seek to rely upon the principle of equality and maintain that the institutions, in regulating the levels of remuneration and, in particular, the procedures for transfers abroad of part of that remuneration, should take into account the fact that officials do not spend all their income in the country in

which they are employed but also spend some in other States. That applies in particular in the case of officials employed in a country other than that of their origin and the institutions should allow officials freely to choose whether to bring their families with them or have them reside elsewhere, whether to have their children study in their country of origin or in the country where the official is employed or possibly in another country, and so on. By ensuring those conditions, the Communities would discharge their obligation to guarantee equality of treatment as between employees assigned to a country other than their national State and those employed in their country of origin.

The applicants also state that the advantages deriving from the system of transfers abroad of part of their remuneration, as in force before April 1979, allowed them to meet, albeit not completely, the needs to which I have referred. Conversely, the new system of transfers introduced by Regulations Nos 3085 and 3086 was more onerous for officials and placed them in a less favourable position in that respect and aggravated the discrimination between officials whose country of origin is the country in which they are employed and those who originate in another country. Since the two regulations breach the principle of equality in that way, they must be regarded as unlawful.

In my opinion, the alleged defect does not exist. There is no provision or principle to be found in the regulations governing the staff of the Communities which confers upon officials the right to have their family reside, have their children study, purchase a house and defray the costs of management thereof, and so on, outside the country in which they are employed without bearing greater burdens than those affecting officials who meet the same needs in the country in which they are employed. It is true that a number of provisions of the Staff Regulations enable officials more easily to meet the needs to which I have referred. Mention need only be made, by way of example, of the system of transfers abroad of part of officials' remuneration at rates more favourable than those for the time being in force (Article 17 (2) and (3) of Annex VII to the Staff Regulations), the expatriation allowance (Article 4 of Annex VII to the Staff Regulations) and the resettlement allowance upon termination of service (Article 6 of Annex VII to the Staff Regulations). However, it is not possible to infer from those special rules a presumptive right on the part of an official to receive remuneration of such an amount as to enable him to cover all the needs in question. And if no such right exists, the argument that Regulations Nos 3085 and 3086 have given rise to discriminatory treatment in that respect merely because they have changed the system of transfers is untenable. Moreover, it must not be forgotten that the present system of transfers still adopts exchange rates which are more advantageous than those prevailing in the market (even if they are less advantageous than those provided under the previous system), as I had occasion to explain in my Opinion of 14 May 1981.

13. I shall not dwell upon the alleged infringement of vested rights and of the principle of protection of legitimate expectation, two matters of which I spoke at length in my Opinion of 14 May 1981, in which I concluded that neither allegation was well founded.

I have also stated that according to some of the applicants there was also an infringement of Article 24 of the Staff Regulations which, as is well known, provides that the administration has a duty to assist officials. The Council, by changing the system of transfers and making it more onerous for officials, is said to have failed in that duty and that infringement renders Regulations Nos 3085 and 3086/78 inoperative. But the remarks I made earlier, when examining a similar complaint regarding Regulation No 3087/78, show that it is inappropriate to rely upon Article 24 in order to establish alleged defects in the regulations in question. I shall merely add that the duty of assistance can in no case give rise to an obligation on the part of the administration to preserve a situation which is anomalous and distorted, as was the situation brought about by the earlier system of transfers — in my Opinion of 14 May 1981 I drew attention to the fact that the former system gave rise to serious distortion and I again refer to that Opinion.

14. A number of applicants also complain, in the alternative, of the absence of transitional provisions in Regulation No 3085/78 for the entry into force of the new transfer rules, which would, by setting them off to some extent against future real increases in salary, mitigate the adverse effects of those rules. In the further alternative they claim that the transitional provisions contained in Article 4 of Regulation No 3085 for the new pension system should be extended to the legal system for transfers. I would point out that, according to that provision, the new system applied only as from 1 October 1979 to pensions and allowances with underwent a reduction by comparison with the former system and also that after 1 October 1979 the difference between the amounts resulting from application of the new rules and the amounts received for September 1979 was reduced at the rate of one-tenth per month.

Both these heads of claim seem to me to be unfounded. In support of the first, the applicants invoke the principle of the inviolability of vested rights, but the true scope of that principle does not allow reliance upon it in the present cases, as I made clear in my Opinion of 14 May 1981. It should be remembered that the Court, in its judgments of 4 February 1982, to which I referred earlier, regarded transfers abroad of part of officials' remuneration, dismissed the actions without attaching any importance to that argument, which the parties had put forward.

With regard also to the claim that the transitional provisons relating to pensions contained in the same Regulation, No 3085/78, should be extended to the system of transfers, I refer to my Opinion of 14 May 1981, in which I explained why such a claim cannot in my opinion be upheld. I would add that the Court, in its aforementioned judgments of 4 February 1982, stated in that regard that: "The situation of a serving official differs considerably from that of a pensioner, so that there is no discrimination in a case where the Community legislature accords to pensioners treatment which is not identical to that applied to serving officials" (paragraph 29 of the decision).

15. If it is acknowledged that Regulation No 3085/78 is not vitiated by the

defects alleged by the applicants, there is no foundation for any of the claims for payment or for the claims in the alternative for damages, which are based on the view that the regulation in question is unlawful.

Having so stated, I put my proposals to the Court. And I would point out in the first place that in my Opinion of 14 May 1981 I have already expressed my views on the admissibility of the actions brought against the Commission by Monique Roumengous, née Carpentier, by a document lodged on 11 October 1979 (Case 158/79); by Dino Battaglia, by a document lodged on 17 October 1979 (Case 737/79) and by Anton Birke, by a document lodged on 11 October 1979 (Case 543/79).

I therefore confirm in that regard the view expressed in paragraphs 16 to 18 of that Opinion, and propose that the Court:

(a) Declare admissible the actions brought against the Commission by Mrs Roumengous (Case 158/79), as regards only the claim that the weighting should be adjusted for 1978; by Dino Battaglia (Case 737/79) as regards the claim that the weighting should be adjusted for 1978, and also the related claim that the difference of remuneration should be paid and the claim (submitted as an alternative to the latter) for compensation for the damage arising from the incorrect determination of the weighting for 1978; by Anton Birke (Case 543/79), as regards the claim that the salary statement for April 1979, based on Regulations Nos 3085 and 3086/78, should be annulled, and the resulting claims;

(b) Declare inadmissible the actions brought against the Commission by Mrs Roumengous (Case 158/79), by Dino Battaglia (Case 737/79) and by Anton Birke (Case 543/79) as regards all the claims other than those which I have stated in paragraph (a) to be, in my opinion, admissible and in particular, in the case of the first two, as regards the claim that the effects of Regulation No 3087/78 should be extended to the years 1976 and 1977, and in the case of the third action, as regards the claim for adjustment of the weighting fixed by Regulation No 3087/78 and application thereof with effect from an earlier date;

(c) With respect to the *Bruckner* case (799/79) — as to the admissibility of which, in so far as it is directed against the Commission, I did not express any specific view in my Opinion of 14 May 1981 — I propose that the Court declare the action admissible as regards only the claims for annulment (on the ground that Regulations Nos 3085 and 3086/78

on which it was based are unlawful), of the salary statement for April 1979 and the resulting claims;

(d) Finally, with respect to the joined cases, *Amesz and Others* (532, 534, 567, 600, 618 and 660/79), I propose that the Court declare the applications to be admissible only as regards the claims for annulment of the salary statement for April 1979, based on Regulations Nos 3085 and 3086/78, and the resulting claims.

As regards the substance of the case, I propose:

(a) That Council Regulation No 3087/78 be declared inapplicable, as regards the part determining the weighting for Italy, to Mrs Roumengous (Case 158/79) and to Dino Battaglia (Case 737/79); that, likewise in the case of those applicants, the salary statements relating to their remuneration for January 1979 be annulled; finally that the said applicants be declared entitled to receive from the Commission the difference between the amount found to be due to them by virtue of the new calculation of the weighting — which must relate to the cost of living in the Province of Varese and be applied as from 1 January 1978 — and the amount which they have already received in respect thereof; the legally prescribed rate of interest of 6 % per annum should be paid on all those sums;

(b) That the actions brought by Messrs Birke (Case 543/79), Bruckner (Case 799/79), Amesz, Bauch, Flamm, Hoffmann, Knoeppel and Nijman (Joined Cases 532, 534, 567, 600, 618 and 660/79) be dismissed only as regards the head of claim in respect of which I considered those actions to be admissible, which concerns the adverse effect on remuneration of the new system of transfers abroad of part of officials' remuneration, introduced by Regulation No 3085/78 in conjunction with Regulation No 3086/78.

Finally, I propose with regard to costs:

(a) That in the *Roumengous* (158/79) and *Battaglia* (737/79) cases, two-thirds of the costs be paid by the Commission, in view of the fact that the actions ought to be upheld in part;

(b) That in the cases of *Bruckner* (799/79), *Birke* (543/79) and *Amesz and Others* (532, 534, 567, 600, 618 and 660/79), the parties should bear their own costs, in view of the nature of the dispute (Article 70 of the Rules of Procedure).

In the alternative — and specifically in the event of the objections of inadmissibility being dismissed in their entirety the Court should, with regard to the substance:

(a) Declare to be inapplicable to all the applicants Council Regulation No 3087/78 in so far as it determines the weighting for Italy and causes it to take effect from 1 January 1978; also annul the salary statement for January 1979, likewise with respect to all the applicants; and finally declare that all the applicants are entitled to receive from the Commission the difference between the amounts found to be due to them by virtue of the new calculation of the weighting — relating to the cost of living in the Province of Varese and applied as from 1 January 1976 — and the amounts they have already received in respect thereof, plus interest on all those sums at the legally prescribed rate of 6 % per annum;

(b) Dismiss the actions brought by Messrs Birke (Case 543/79), Bruckner (Case 799/79), Amesz and Others (Joined Cases 532, 534, 567, 600, 618 and 660/79) as regards the head of claim relating to the adverse effect on remuneration of the new system of transfers abroad of part of officials' remuneration.

Likewise in the alternative, in the event of all the objections of inadmissibility being dismissed, the Court should, in the *Roumengous* (158/79) and *Battaglia* (737/79) cases award the entirety of the costs against the defendant institution, inasmuch as it is the unsuccessful party, whilst in the *Birke* (543/79), *Bruckner* (799/79) and *Amesz and Others* (532, 534, 567, 600, 618 and 660/79) cases, two-thirds of the costs should be paid by the defendant, which has been partially unsuccessful.