3. There is no basis for the view that, for the purpose of introducing a new tax such as the exceptional crisis levy, recourse to the procedure provided for in Article 24 (2) of the Merger Treaty for laying down and amending the Staff Regulations instead of the procedure prescribed by Article 13 of the Protocol on the Privileges and Immunities of the European Communities, which provides that the remuneration of officials is to be subject to a tax for the benefit of the Communities, constitutes a misuse of procedure, in so far as the former procedure, which provides for consultation of the institutions concerned, in particular the European Parliament, offers more guarantees to officials than the latter.

OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 6 March 1985 *

Mr President,
Members of the Court,

1. The present action, brought by Roland Abrias and Others, who are officials or other servants of the Commission of the European Communities, seeks the annulment of salary statements for February 1982 and the subsequent months, a period which marks the first application both of the new method of adjusting remuneration laid down by Council Decision No 81/1061 of 15 December 1981 (Official Journal 1981, L 386, p. 6) and of an exceptional levy introduced by Council Regulation No 3821/81 of the same date (Official Journal 1981, L 386, p. 1). Both measures are alleged by the applicants to be illegal.

The importance of those measures and of the circumstances surrounding them accounts for the fact that the Council of the European Communities and the European Public Service Unions of Brussels and Luxembourg have intervened in support of the Commission.

2. It should be noted here that, pursuant to Article 65 of the Staff Regulations, the Council must consider:

'. . . whether, as part of economic and social policy of the Communities, remuneration should be adjusted. Particular account shall be taken of any increases in salaries in the public service and the needs of recruitment.'

The decision of 15 December 1981 (which I shall refer to as 'the Decision') changes the *method* of adjusting the remuneration of officials and other servants of the Communities. It is the third measure of that kind and the two previous ones, adopted in 1972 and 1976, are well known to the Court since it has already considered them, in particular in two *Commission* v *Council* cases (Case 81/72, [1973] ECR 575, and Case 59/81, [1982] ECR 3329).

* Translated from the French.

The Decision provides that the adjustment of remuneration is, for a period of ten years commencing on 1 July 1981, to be carried out on the basis of four factors indicated in the text annexed to the decision. Three of those factors — changes in the cost of living, changes in the real income of national civil servants and recruitment needs — were already incorporated in the 1976 method, whereas the fourth — 'the economic and social situation' — replaces the 'general factors of an economic and social nature' taken into account until then.

That innovation is at the origin of the present dispute. Paragraph II (2) of the Annex to the Decision provides that:

'During the first five years the economic and social situation, assessed in the light of objective data supplied by the Commission in this regard, shall be taken into consideration by the setting up of a levy, details of which shall be laid down in new provisions of the Staff Regulations and the Conditions of Employment of Other Servants.'

That is the purpose of Council Regulation No 3821/81 (which I shall refer to as the 'Regulation') amending, for the same ten-year period, the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of those Communities.

Article 1 thereof provides for the insertion in the Staff Regulations of an Article 66a. Paragraph (1) of that new article provides as follows:

'(1) By way of derogation from Article 3 (1) of Regulation (EEC, Euratom, ECSC) No 260/68, a special temporary levy shall be applied for a period expiring on 1 July 1991 to net salaries, pensions and termination-of-service allowances.'

As envisaged in Article 3 of the Regulation and in the fifth recital in the preamble to the Decision, those provisions were to take effect at the same time.

3. To assess the scope of the measures at issue, it is necessary to view them in their context.

They reflect a decisive reorientation of economic and social policy in the Community and came into being after a long period of gestation.

A. As is evident from the annual reports on the economic situation of the Community, there has since 1980 been a change in the economic and social policy both of the Community and of the Member States.

Thus, it is stated in the 1980 report that:

'A pronounced slowdown of inflation is a major condition for an improvement of the propensity to invest and a strengthening of the confidence of households, which in turn is required to prevent a precautionary rise in the rate of saving and decline in consumption'.

and that as a result:

'... in the Community as a whole real wages cannot be allowed to rise fully in line with productivity over the coming years.'

(Official Journal 1980, L 375, p. 21).

In the same vein, the 1981 report states, in the part devoted to 'an outline of economic policy for the Community', that:

'in several countries [it is necessary to accept] real pay increases for a period below the growth of productivity so that the economy is returned to a radically higher investment and growth performance.'

(Official Journal 1981, L 385, p. 7).

Thus a policy has been embarked upon which is intended to contain the increase in public spending. This preoccupation is to a considerable extent shared by the Member States, which are dealing with the problem in various ways, as is apparent from the replies from the Commission, the Council and the European Public Service Union to the questions put to them by the Court. This general policy, as stated by the Commission in the 'Additional Commission Communication to the Council' of 6 May 1981 'on rules for the implementation of the single exceptional measure concerning officials' salaries', is based on the finding that

'One of the determining factors in the deterioration of the Community's economic and social situation . . . seems indeed to be inadequate adjustment of real salaries throughout the economy in relation to available resources.'

That explains why the special temporary levy should, according to the first recital in the preamble to the Regulation, be assessed:

'. . . on the basis of the economic data reflecting the average gaps recorded in the Member States between the trend in real *per capita* wages and salaries and the trend in:

Total productivity . . . ,

Productivity available for distribution . . . ,

Productivity per member of the active population . . . '.

The consultation procedure which led to the adoption of both the Decision and the Regulation gives effect to, and must be seen against the background of, that new approach.

B. I shall not describe in detail the sucessive stages of the consultation procedure. It is sufficient to note that it derived from the desire to rectify the unsuitability of the 1976 method, in view of the need to take account of the deterioration of the economic and social situation.

On 31 January 1981 a 'round table' comprising representatives of the Commission and the representative trade-union organizations agreed on a package of measures involving essentially adherence to the principle of parallelism and acceptance by officials of a voluntary contribution from their salaries designed to respond to the circumstances brought about by the special difficulties of the economic and social situation.

This twofold objective constitutes the basis of the consultation then undertaken by the Community institutions and trade-union organizations during 1981. It appears again in particular in the Council resolution of 23 June 1981 which followed the Commission's initial proposals and also in the Commission's consultation report of 4 December 1981. The latter records the agreement of the majority of the trade-union organizations on the draft documents which led to the adoption of the contested measures, after consultation of the authorities designated for that purpose: namely, the European Parliament and the Court of Justice.

Those are the essential features of the economic and social context and the main aspects of the procedure which led to the adoption of the disputed measures. This background facilitates the task of examining their legality.

4. In support of their action, the applicants plead one submission based on the

infringement of an essential procedural requirement and various submissions relating to the internal legality of the Decision and of the Regulation.

The essential procedural requirement in question is the obligation imposed on the Council by Article 190 of the Treaty to state the reasons on which its measures are based. The applicants consider that the reasons for the introduction of an *exceptional* crisis levy should have been clearly stated. However, in the measures attacked, the Council referred only to 'specific difficulties of the economic and social situation'.

That argument cannot be upheld. The mere reference to the essential stages preceding the entry into force of the Decision and the Regulation, as I have indicated earlier, shows that, from the outset, the preparations for them involved consultation between the institutions and the representative trade-union organizations, so that the reasons for their adoption were perfectly well known to the principal parties concerned. Therefore, a succinct statement of reasons was sufficient, the more so since the measures were of a general rather than of an individual character.

Moreover, it is to be noted that, whilst the Regulation, like the Decision, refers to 'the specific difficulties of the economic and social situation', it specifies the factors on the basis of which the rate of the levy is to be assessed. The very fact that they are listed is illuminating, because it reveals that the levy is based on the gap recorded between real salaries and productivity, which, as has been seen, is the decisive factor shaping the policy designed to control the increase in public expenditure.

5. The applicants rely upon two further submissions to dispute the legality of the contested measures.

In the first place, they allege a breach of the principle of the protection of legitimate expectation in so far as officials were entitled to expect that the Council would observe the principle whereby the salaries of national and Community civil servants should develop in parallel. They consider that, specifically by reason of that parallelism, national policies moderating public expenditure have repercussions on the remuneration of Community employees. The levy, added to those repercussions, is said to impose a double penalty on Community employees, thus departing from the principle of parallelism. But, it is maintained, that principle is mandatory and therefore, whilst it may be improved upon, it must not detracted from. That fact is apparent not only from the second paragraph of Artice 65 (1) of the Staff Regulations, which requires the Council to take account of 'any increases in salaries in the public service', but also from the manner in which it has consistently been applied by the Council under the controlling authority of the Court. It cannot therefore be claimed, on the basis of Article 65, that the principle of parallelism is being observed if, at the same time, a levy is introduced which is in breach of that principle. In that regard, the introduction of the new indicator — the economic and social *situation* — is said to constitute a breach of the Council's obligation to adjust remuneration as part of economic and social *policy*.

By departing from the principle to which it had itself adhered since 1972 the Council is said to have committed a serious breach of the legitimate expectations of European officials.

Secondly, the applicants consider that the Council has misused the powers entrusted to it in two ways.

The first alleged misuse of powers consists in the imposition of a 'solidarity' tax on the basis of Article 65, the purpose of which is to adjust remuneration.

The second is a misuse of procedure inasmuch as a new tax was introduced by means of an amendment to the Staff Regulations rather than an amendment to the *ad hoc* regulation, Regulation No 260/68 of the Council of 29 February 1968 (Official Journal, English Special Edition 1968 (I), p. 37).

6. The latter complaint is to be dismissed at the very outset. It is sufficient to note, in company with the Commission, which refers in particular to the specificity — the temporary nature and basis — of the levy, that Article 66a:

was adopted by the Council in conformity with the formalities and procedures laid down in Article 24 of the Merger Treaty for revision of the Staff Regulations and by Article 13 on the Protocol on the Priviliges and Immunities of the European Communities, according to which 'officials and other servants of the Communities shall be liable to a tax for the benefit of the Communities on salaries, wages and emoluments paid to them by the Communities',

and expressly provides that the special temporary levy is introduced 'by way of derogation from Article 3 (1) of Regulation (EEC, Euratom, ECSC) No 260/68'.

The other complaint based on misuse of powers does not, likewise, need to be dwelt upon. In fact, as correctly pointed out by the Commission, it was on the basis of Article 66a, and not Article 65, that the levy was introduced, in conformity, as I have just stated, with the powers conferred upon the Council by the combined provisions of Article 24 of the Merger Treaty and Article 13 of the Protocol.

The submission cannot therefore be upheld. I consider it superfluous, in that connection, to examine the applicants' allegation that the amendment to the Staff Regulations was made under pressure from certain Member States.

7. The other submissions put forward by the applicants are, in reality, directly or indirectly based on the alleged infringement of Article 65, in so far as it is intended to ensure that the principle of parallelism is applied.

It is not sufficient, to justify the lawfulness of the levy, to point to the formal validity — as demonstrated earlier — of the amendment to the Staff Regulations which led to the adoption of Article 66a.

In fact, the applicants contest the legality of the measure as a whole, as it appears from the combination of the Regulation and the Decision and, more specifically, the legality of the new indicator — the economic and social situation — and of the levy which it created. It is from the combined effect of those factors that the breach of the principle of parallelism, and therefore the breach of the principle of the protection of legitimate expectation, is said to derive.

The Court has declared that the Council enjoys a wide margin of discretion when taking action under Article 65. In particular, the Court has held that:

'This provision . . . leaves to the Council the choice of the means and forms best suited to carry out an emoluments policy in conformity with the criteria laid down by Article 65' (Case 81/72, cited earlier, paragraph 7).

Thus, the Court recognized that the Council was empowered to define the method according to which its policy of adjustment was to be implemented, whilst at the same time stating that it was bound by the procedures which it had adopted (Case 81/72, paragraphs 8 and 9).

The Court reaffirmed this rule both in Case 70/74, *(Commission* v *Council,* [1975] ECR 795) regarding the 1972 method and in Case 59/81, (cited earlier), regarding the 1976 method.

Since the Council may therefore define a method, it must necessarily be empowered to change that method. That is, in fact, 'a legal method of the exercise by the Council of the discretion which Article 65 gives it ...' (Case 70/74, paragraph 21). The Court recognized that power of adjustment, by implication, in Case 59/81, regarding the application by the Council of the 1976 method.

It is nevertheless apparent from that judgment that the exercise of that discretionary power is subject to a double limitation based on the second paragraph of Article 65 (1). The Council:

Is required 'to pursue its policy in adjusting remuneration "as part of the economic and social policy of the Communities"' (Case 59/81, paragraph 20), and

'Cannot, by reason of the fact that it takes other criteria into consideration, omit to take account of one of the two criteria expressly referred to in the second sentence of the second subparagraph of Article 65 (1)' (Case 59/81, paragraph 22 of the Decision), that is to say any increase of salaries in the public service and the recruitment needs.

8. It is apparent from the general context in which the measures introduced by the Decision and the Regulation were adopted that the Council acted within the limits thus placed upon it by the Court.

In fact, those measures are merely a reflection, at Community level, of the decisive change in the trend of economic and social policy in the Communities since the beginning of 1980, as I stated earlier. They thus reflect the decision on the part of the Community institutions and the representative trade-union organizations which approved them to arrange for European officials to take part, by means of a special, temporary and limited payment of tax, in the gesture of solidarity requested of the Member States.

The incorporation of a new indicator in the adjustment method laid down by the Decision is merely the logical consequence of that choice. It cannot be validly criticized since, as the Court has recognized, the Council is always empowered to take into consideration criteria other than those expressly enumerated in the last sentence of the second paragraph of Article 65 (1), provided that, as a minimum, it takes the latter criteria into account (Case 59/81, cited above, paragraph 22).

9. Moreover, the so-called principle of parallelism invoked by the applicants likewise cannot be relied upon to contest the legality of the measures at issue.

The fact that, at least for the first five years, the levy operates to create, by fiscal means, a moderating effect over and above that resulting from the repercussions at Community level of the austerity policies followed by the Member States is not sufficient to render the new procedure unlawful.

In fact, the parallelism upon which the applicants seek to rely is merely one element, admittedly one which has always been adhered to, of the methods to which the Council has adhered since 1972. It is therefore nothing more than one criterion

which has been progressively refined and not a superior principle of law. This is confirmed by the finding made earlier that the increase in national public salaries is merely one of the criteria which the Council takes into consideration in its annual adjustment of remuneration.

Moreover, the applicants take an over-restrictive view of the notion of parallelism. It may indeed require account to be taken of the trend in national public service salaries, but it also covers the contribution requested, as a gesture of solidarity, from those who receive them. In other words, parallelism does not relate exclusively to salaries. It relates also to the greater efforts of various kinds requested of all the working population in the Member States.

It should be remembered in addition that that temporary contribution is based on objective criteria of assessment which will take full effect at the end of the first five-year period, that is to say on 30 June 1986. By this I mean that, if the national policies for controlling public expenditure have achieved their objective, that should reduce correspondingly the gap between productivity and salaries upon which the rate of the levy to be applied depends. In that connection, it is stated in paragraph III (2) of the Annex to the Decision that:

'Six months before the end of the fifth year . . . the Commission shall present a report to the Council on the operation of the method, together with an appropriate proposal, notably as regards the manner in which the economic and social situation is to be taken into consideration from the sixth year onwards'.

In view of all these considerations, the complaint based on failure to observe the principle of parallelism is to be rejected. By the same token, the submission of breach of the principle of the protection of legitimate expectation must be rejected, it being noted in addition that the contested measures were adopted, as I have pointed out, following long negotiations with all the representative trade-union organizations.

10. I therefore propose that:

the application should be dismissed; and

the parties should bear their own costs in accordance with Article 70 of the Rules of Procedure.