C — Costs

Since the applicant has succeeded in its request the Commission should under Article 69(2) of the Rules of Procedure bear the entire costs of the proceedings. However, since the applicant has not sought an order for costs against the Commission it must under the same provision bear its own costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 146, 153, 155, 191, 193 and 207 of the Treaty establishing the EAEC;
Having regard to the Protocol on the Privileges and Immunities of the European Communities, especially Article 1;
Having regard to the Protocol on the Statute of the Court of Justice of the EAEC;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

hereby orders:

1. **The applicant is authorized to carry out the inspection of building materials referred to in the 'Avviso di accertamento costruzioni edilizie' served on the Commission on 5 October 1965;**

2. **The parties shall bear their own costs.**

Luxembourg, 17 Decembre 1968.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 23 OCTOBER 1968[1]

Index

1 — Translated from the German

Mr President,
Members of the Court,

In the case in which I am giving my opinion today we are concerned with the definition of the privileges and immunities enjoyed by the Commission in respect of its Nuclear Research Centre at Ispra. The following facts are material in this connexion.

The Nuclear Research Centre at Ispra (an establishment of the Joint Nuclear Research Centre set up by the Commission under Article 8 of the Euratom Treaty) built on the premises used by it in the Commune of Ispra, with the Community funds for which provision is made in the research budget, a club house and sports centre (tennis courts, swimming baths) for its officials. The tax authority for the Commune of Ispra (the Ufficio Imposte di Consumo or Excise Duty Office) is of the opinion that the building materials used for this purpose must be subjected to a local excise duty under Article 30 of Italian Decree No 1175 of 14 December 1931. In order to be able to establish the assessment to duty (the *collection* of the duty being carried out under Article 76 of Decree No 1175 by an 'appaltatore', a private company entrusted with the responsibility), the Excise Office wished to instruct a technical expert authorized by the Commune under Article 47 of Decree No 1138 of 30 April 1936 to ascertain the value of the building materials used. It informed the administration of the research centre of its wishes by letter dated 5 October 1965 in which it specified 12 October as the date of the visit. The administration of the research centre however, was not in agreement with this. It replied to the Ufficio in a letter dated 8 October 1965 (of which a copy was sent to the Italian Ministry of Foreign Affairs) that the Italian authorities, by virtue of the Protocol on the Privileges and Immunities of the Community and of Annex F to the Agreement of 22 July 1959 concluded between the Italian Government and the European Atomic Energy Community for

the setting up of a research centre, were not entitled to carry out activities on the premises of the Centre without the consent of the Commission. The administration would therefore place the matter in the hands of the Commission and would communicate with the tax authority again at a later date. This it did in a letter dated 9 November 1965 (a copy of which again was sent to the Italian Ministry of Foreign Affairs) in which it stated that the matter had been referred to the Commission and that it appeared that the Community's view was that the building materials used in the construction of the premises in question were exempt from the duty. Consequently the request to be allowed to ascertain their value had no justification in law, so that it was impossible to grant permission to enter the premises. Furthermore, according to the relevant provisions the premises of the Community could not be subjected to any administrative measure of constraint without the authorization of the Court of Justice. The Excise Office was not prepared to accept this. It therefore instituted proceedings with an application lodged at the Court Registry on 25 January 1968, in which it first requested 'an order for the revocation of the prohibition preventing the expert instructed by the Commune of Ispra from ascertaining the materials used in the said buildings'. In the reply the request was revised and the Ufficio called for the annulment of the Commission's decision and for the granting of its own request for authorization to carry out a valuation.

On the other hand the Commission takes the view on several grounds that the 'action' (as it calls the request which has been lodged) is inadmissible. The principal head of its conclusions is expressed accordingly. Alternatively it submits that the request of the Ufficio must be dismissed as unfounded. It is on these facts, which I will explain in greater detail in the course of my arguments, that I will now give my *legal opinion*.

A — Questions of admissibility

In the first place it is necessary to reach a conclusion on the objections concerning admissibility raised by the Commission and on other objections which the Court must raise of its own motion. They relate to the following matters:

I — *Requirements for an application as to form*

Under Article 38 of our Rules of Procedure an application must comply with a number of formal requirements, in particular it must contain (so far as this case is concerned) the names of the applicant and of the defendant, a brief statement of the grounds on which the application is based, a statement of an address for service and proof that legal persons governed by private law are properly represented. With regard to these requirements the Registrar took the view in the present case that difficulties exist concerning the naming of a person authorized to accept service, while the Commission is of the opinion that the other formalities mentioned are not satisfied. It also argues that there is no proper authority granted to the applicant's lawyers for the purpose of the proceedings.

Dwelling for a moment on these difficult but nevertheless essential preliminary questions we should first of all leave aside the question whether we are in fact faced with an application or some other form of pleading which the Court can entertain because it is possible to take the view that in every case where the subject-matter of the dispute is the same as in the present one the provisions governing the institution of proceedings before the Court contained in Articles 37 and 38 of our Rules of Procedure can at least be applied by analogy. Let us consider the matter more closely.

1. Naming a person authorized to accept service

In the 'application' itself, if I may still call it such for the time being, the address for service is given as the seat of the Court. Since this is not possible in view of the unequivocal wording of Article 38(2) of the Rules of Procedure (as we know what is required is the name of a *person* and a declaration of 'his willingness to accept service) the Registrar, pursuant to Article 38(7) of the Rules of Procedure, prescribed a period, expiring on 9 February 1968, for the Ufficio

to give the name of a person authorized to accept service. As a result the Secretary of the Ordre des Avocats of Luxembourg was named, although only in a telegram which reached the Court of Justice on 22 February. The question therefore arises whether this fact compels us to reject the application by virtue of Article 38(7) of the Rules of Procedure. I cannot accept that this is so.

It is in fact possible to take the view that the belated naming of a person authorized to accept service does not render an application inadmissible at least when it does not cause the proceedings to be delayed. And so it was in the present case in which the statement of defence, for the service of which an address for that purpose is necessary, did not require to be lodged until 20 March. Furthermore it is right to take into consideration the fact that the period prescribed by the Registrar was extremely short and that the naming of a person authorized to accept service is not a current formality for applicants in all Member States.

2. Designation of the applicant

As regards the name of the party making the application the Commission is right in pointing out that its identity on the basis of the application could in fact raise certain difficulties. Although the application was signed by the Chief Excise Officer of the Ufficio Imposte di Consumo di Ispra, the signature was accompanied by a stamp bearing the legend 'Ufficio Imposte Consumo Ispra, srl. DORICA NOVARA' which could be taken to be a reference to the company to which the Commune of Ispra had assigned the collection of the excise duties imposed by the Commune.

However, it should still be possible to identify the applicant sufficiently from the *content* of the application *taken as a whole*. Thus it is that according to the application the *Ufficio* addressed itself to the administration of the Centre. Later on reference is made to a letter from the Research Centre dated 9 November 1965 to the *applicant*. That letter was addressed to the *Ufficio*. Finally in the grounds of the application it is also stated that the *Ufficio* is convinced, etc. Accordingly, it is clear (and this, moreover was expressly emphasized in the reply) that the excise authority of Ispra, that is to say, an agency of the commune, has instituted the proceedings. Furthermore there is no doubt that the Ufficio acted in its own name, and thus for example not for the legal person governed by private law entrusted with the collection of the duty, between which and the Chief Executive Officer of the tax authority there also appear to exist relationships under private law. Thus the observations by the Commission on Article 38(5) of the Rules of Procedure, that is to say, on the necessity of proof that a person governed by private law is properly represented, are shown to be of no significance. (As we know, this proof can be adduced by means of a company's documents of constitution, an extract from the commercial register and an authority *ad litem*, although indeed under our practice in procedural matters the production of such an authority is not essential in view of the silence of the Rules of Procedure.)

3. Designation of the party against whom the application was made

The application does not expressly state the name of the opposite party.

On the contrary, it begins by specifying the subject-matter of the dispute and in doing so speaks of the refusal by the *administration* of the Centre to allow a valuation to be made of the materials and it contains in addition in its grounds a reference to the fact that the *administration of the Centre* has wrongly relied on the privileges of the Community.

However in this case too the content of the application taken as a whole can leave no doubt that in fact the Commission, which was of course served with the application, must be regarded as the opposite party and not the Nuclear Research Centre which has no capacity to be a party to proceedings. Specifically, the application refers to a letter from the administration of the Centre of 8 October 1965 which speaks of the necessity of obtaining permission from the *Commission* to enter the premises of the Nuclear Research Centre, and to another letter from the administration of the Centre which makes it perfectly clear that, the matter having been placed in the hands of the Com-

mission, it was the Commission itself which regarded the applicant's request to have no justification.
It is clear, therefore (and not only since the reply, which expressly insists on this), that the request for revocation of the refusal was formulated with the *Commission's* refusal in mind. Accordingly this removes the necessity of interpreting the application in a different sense from the one originally intended, as was done in Cases 27/63 and 28/64.

4. Statement of the grounds on which the application is based

Finally, in the present context, it remains to say a word or two on the statement of the grounds of the application which the Commission considers also to be inadequate.
However I cannot share its view on this. It is apparent from the earlier procedure that the Commission itself was content to justify its point of view by merely referring to its immunity from taxation under the various provisions relating to the privileges of the Community. The applicant's legal arguments in its application are drafted accordingly, that is to say, it undertakes an interpretation of the relevant provisions having regard to the particular problems raised by its claims. However I think that it is possible to accept this as a sufficient statement of the grounds of its request.
Thus none of the matters dealt with so far affords any grounds for dismissing the application as inadmissible.

II — *Further preconditions for admissibility*

This does not, however, conclude the examination of the questions of admissibility. We have still to go into the objections of the Commission relating to the Ufficio's capacity to institute proceedings, the observance of the limitation period for that purpose and the amendment of the conclusions.

1. Has the Ufficio the capacity to institute proceedings?

With this question we first encounter the real problems in the present case. It may be sub-divided into several subsidiary questions the first of which to be examined is whether in fact, as the Commission thinks, the subject-matter of the dispute can only be discussed between it and the Italian Government and not between it and subordinate Italian authorities.

(a) *Has only the Italian Government the capacity to institute proceedings?*

Let us call to mind once more what is at issue: essentially, it is the inviolability of buildings and installations of the Nuclear Research Centre (that is to say, of an establishment of the Commission) as was guaranteed in the Protocol on the Privileges and Immunities of the European Atomic Energy Community and as is presently guaranteed (after the repeal thereof by Article 28 of the Treaty establishing a single Council and a single Commission of the European Communities) in a new Protocol annexed to this Treaty and also in Annex F to the Agreement between the Commission and the Italian Government of 22 July 1959. The general opinion (confirmed by the express provisions of Articles 2, 3 and 16 of Annex F) is that entry upon the protected premises for the purpose of taking administrative measures is only possible with the consent of the Commission.[1] As we know, this consent was *expressly* refused. This latter point may be of importance for the technical legal course of the proceedings (to which I shall return). In the present context this aspect of the question, however, is of no concern. On the other hand what does concern us is the reasoning of the Commission which goes as follows. It declares that its refusal of consent is based on the said Annex F to the Agreement with the Italian Government. In its view such a use of the provisions relating to privileges could in certain circumstances amount to an *abuse*. However, Annex F, contains special provisions for such a case. On the one hand Article 35 provides that, for the purpose of preventing the provisions of the Agreement from being abused, *at the request of the*

1 — Cf. Egger: Die Vorrechte und Befreiungen zugunsten internationaler Organisationen und ihrer Funktionäre, pp. 79, 108, 190; Cahier: Étude des accords de siège conclus entre les organisations internationales et les États où elles résident, pp. 249, 250.

Italian Government fact-finding visits ('visites de constatation') may be carried out. On the other hand Article 37 stipulates that the parties to the Agreement (that is to say, the Commission and the Italian Government) must consult together if the Italian Government is of the opinion that there has been an abuse in the application of the Agreement. Finally, Article 40 (referring by implication to Article 153 of the Euratom Treaty) provides that only the Court of Justice of the European Communities shall have jurisdiction to give judgment on any dispute which may arise between the Italian Government and the Commission relating to the implementation and to the interpretation of the Agreement. The Commission's view is that their provisions as a whole must lead to the conclusion that it was the intention of the parties to the Agreement that there should be applied to every dispute over the interpretation and application of the Agreement a preliminary consultative procedure, that is to say, a kind of conciliation procedure which might render judicial proceedings unnecessary. Furthermore, it was their intention that on the national level the consultative procedure *should be reserved to the Italian Government* (perhaps on the basis that, as a party to the Agreement, it was better aware of the intention of the parties thereto than subordinate authorities, and perhaps also with the object of ensuring uniformity of interpretation at the stage of the consultation and sparing the Commission a great number of discussions). Finally, still according to the Commission, the obvious intention of the contracting parties was that, after conciliation attempts had failed, in any judicial proceedings the dispute on the national side should be concentrated in the hands of the government.

It cannot be denied, in fact, that this represents a coherent and sensible interpretation of Annex F. But anyone who accepts it cannot help but find in the present case certain problems of admissibility in view of the lack of the necessary consultations and the institution of proceedings by a *communal* authority.

Nonetheless one would be jumping too quickly to a conclusion if one were to find the application inadmissible on this basis.

It is not immediately clear whether Annex F also applied to the facilities presently in dispute and it must be asked what relationship Annex F has to the Protocol on the Privileges and Immunities of the Community, which apparently contains no obligation to use consultative procedures and no express provisions for the reservation of disputes on the interpretation of the Protocol to governmental departments and institutions of the Community.

Let us see, therefore, what considerations emerge on an examination of these matters.

(aa) The field of application of Annex F

In Article 1 of Annex F (French version) it is expressly provided that inviolability ... applies to the Centre 'tel qu'il est défini, individualisé et clôturé, comme indiqué dans les tables, descriptions, plans et documents figurant à l'annexe I qui fait partie intégrante du présent accord'. It is true that the applicant has not sought to rely on this provision. However, a study of the file necessarily brings it to mind because it could create the impression that what was contemplated was a *geographical* delimitation of the field of application of Annex F, this being suggested in particular by the reference to plans and descriptions. For this reason the Court of Justice by order of 11 July 1968 asked the Commission what was the position with regard to the implementation of this provision, that is to say, to the drawing up of descriptions, plans, etc. We have subsequently learned that these descriptions and plans have never been drawn up. The question therefore arises what effects this has for the present case.

In my opinion there can certainly be no question of simply refusing to accept the applicability of Annex F for so long as the field of its application is not geographically defined. Approximately one year after the Agreement was made an Italian implementing statute (No 906 of 1 August 1960) was issued, converting the Agreement into Italian law, and since then the Agreement has been apparently properly applied. Again, following the Commission, it is necessary to refuse to regard as decisive, in the matter of interpretation, the geographical delimitation of the former *Italian*

national research centre since that delimitation was already in existence before the Agreement was made (and express reference could have been made to it in the Agreement had that been the intention of the signatories) and furthermore it appears to be clearly established that essential technical establishments of the Research Centre which were certainly intended to be covered by the Agreement are situated outside the boundary as originally drawn.

Thus it is that the only reasonable interpretation which remains is to accept that in the absence of geographical definitions *functional* criteria for the application of Annex F are decisive. In other words Annex F applies to all the buildings, equipment and facilities of the Research Centre which contribute to its 'functioning'. But this does not mean that its application to the premises now in dispute is to be excluded *a priori*.

Nothing more need be said on this subject for the moment. We shall return to it in detail when dealing with the substance of the case which is concerned with what is to be understood by the concept of 'functioning' for the purposes of interpreting the privileges relating to taxation.

(bb) What is the relationship of Annex F to the Protocol on the Privileges and Immunities of the Community?

Let us instead go into the further question of the relationship which Annex F has to the Protocol on the Privileges of the Community (in view of their identical content it does not matter whether reference is made to the former Euratom Protocol or to the common protocol which now applies).

I think there is an easy answer to this question. In my opinion this relationship can be described in the same way as for example the relationship existing between the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 and the Headquarters Agreement which was concluded by UNO and the USA on 26 June 1947, or as the relationship between the Agreement on the Privileges of the Special Organizations of the United Nations and the Agreement between the FAO and Italy in 1951, that is to say, the special agreements concluded with the states in which the organizations have their seat are to be regarded as *leges speciales* which take precedence in cases of doubt.[1] Weighty arguments in support of this point of view may be derived also from an examination of the Communities' Protocol. Not only is it immediately apparent that this Protocol is not very detailed, that is to say, it contains above all principles which require to be given more precise expression, but reference is also made in various places, in some more clearly than in others, to supplementary provisions as for example those in Article 3 which speaks of the Governments of the Member States taking 'appropriate measures', or—and this is more significant—those in Article 19 (formerly Article 18) where we read: 'The institutions of the Communities shall, for the purpose of applying this Protocol, *cooperate* with the responsible authorities of the Member States concerned.' Accordingly not only is the issue of substantive supplementary provisions justified but also the issue of provisions of a procedural nature, all the more so as nowhere in the Protocol on the Privileges is provision expressly made for the right of authorities or private persons to bring questions before the Court of Justice (leaving aside the request, mentioned in Article 1, for authorization of measures of constraint, which would not appear to come into consideration in the present case since here there can be no question of measures of constraint).

These considerations, therefore, would seem in fact to lead to the conclusion that the application of the Ufficio must be regarded as inadmissible in view of the provisions of Annex F (failure to observe the provisions with regard to consultation; the absence of intervention by the Italian Government).

Since, however, we are here dealing with difficult questions the answers to which certainly give rise to controversy, I shall not terminate my investigation at this point but shall go on to consider as a subsidiary matter what would happen if Annex F did not give rise to the obstacles to admissibility which have just been mentioned.

1 — Cf. Egger, op. cit., pp. 134, 146.

(b) *Does the Ufficio have the capacity to institute legal proceedings or only the Mayor of the Commune of Ispra or the undertaking entrusted with the collection of duties?*

The question then arises whether in fact the Ufficio, 'represented by its Chief Excise Officer, can bring the matter before the Court and institute proceedings on its own account. As we know, the Commission takes the view that the Ufficio does not have this capacity and that the right to bring an action belongs either to the Mayor as representative of the Commune, a legal person, and this only after a resolution of the Council of the Commune and with the authorization of the 'Giunta provinciale', or (where the collection of duties is carried out through an 'appaltatore') to the undertaking entrusted with this task (an eventuality which we can now certainly leave out of account since it was expressly stated in the reply that the Chief Excise Officer of the Ufficio does not act as the representative of the 'appaltatore').

This raises a difficult question of national law which anyone not familiar with Italian revenue and local government law will find far from easy to answer. However, when we endeavour to find the answer, we should, contrary to the suggestions of the Commission, take care not to become involved in the details of the controversies of national legal doctrine and instead ask ourselves the question (as does a national court when applying foreign law on the basis of private international law[1]), whether there exists a consistent Italian *case-law* so that we may look to *this* for support. If we proceed in this way the solution of the present problem does not appear to be excessively difficult.

Since a judgment of the Combined Chambers of the Corte di Cassazione in 1958 it has been consistently accepted in the case-law of this, the Supreme Italian Court, that the tax authority of the Commune, represented by its Chief Excise Officer (even though, optionally, in conjunction with the 'appaltatore') can be the defendant in proceedings instituted against a notice of assessment issued by it, that is to say, apparently even where the question at issue is the *existence* of the debt owed to the revenue or an exemption from taxation (Cf. the judgments of the Corte di Cassazione of 9 March 1957 and 6 May 1960). It follows from this that the capacity of the tax authority to be a party to legal proceedings must also be accepted when it appears as the *applicant*, that is to say, when it institutes proceedings in exercise of its statutory powers (Article 313 of Decree 1138 of 30 April 1936) for the purpose of establishing, calculating and collecting taxes. A judgment of the Corte di Cassazione of 8 March 1960 was also to this effect. Although in that judgment it was stated on the one hand that the 'appaltatore' had the capacity to bring proceedings against a tax payer when the question at issue was the assessment and imposition of taxes, it is on the other hand stated in the grounds of judgment that the Chief Excise Officer of the Ufficio also has the capacity to institute proceedings relating to the assessment and collection of taxes. In view of the unequivocal and consistent nature of this case-law there is clearly no occasion for us to go into the subtleties of the conflicting opinions in legal doctrine (as contained in two of the case analyses produced by the Commission). These opinions refer to the fact that the tax authority is only a local communal authority, that is to say, it is not a legal person and does not have the right to collect the taxes; moreover they make the definition of the capacity to institute legal proceedings turn on the question whether what is at issue is the *existence* of the right to charge the tax (which, as we shall see, cannot be exclused in the present case in view of the objections of the Commission). Nonetheless we should proceed on the basis of the proposition that the Ufficio, in the person of its Chief Excise Officer, has the capacity to institute legal proceedings.

Furthermore, it should be remarked that our procedural law does not call for special proof that the Ufficio can be represented by its Chief Excise Officer before the Court. Were such proof necessary it could still be regarded as having been produced since a certificate of the Mayor of Ispra and an authority issued by the Commune were sub-

1 — Cf. Palandt-Lauterbach: Kommentar zum BGB, 21st edition, Vorbemerkung 17 vom EGBGB 7.

mitted to us and it is apparent from these that the application was signed by an official of the excise authorities of Istra and that this official has the power to impose and collect taxes.

2. The observance of the time-limit for bringing actions

There still remains to be examined in the context of the subsidiary considerations with regard to the admissibility of the application whether the application is inadmissible on the ground that the time-limits for bringing the matter before the Court were not observed. This would appear to be the opinion of the Commission to the extent that it has in mind the applicant's request for annulment, the legal basis of which it considers to be Article 146 of the Euratom Treaty (that is to say, the general provisions relating to the bringing of applications for annulment).

However, this view gives rise to serious objections. I have already mentioned the subject-matter of the dispute in the present case: the inviolability of the premises of the Centre which can only be removed by the necessary consent of the Commission, that is to say, a 'measure' within the context of the provisions with regard to privileges and immunities. To equate this measure with a decision within the meaning of Article 146 and in the case of refusal to insist that proceedings be instituted within the period prescribed by that Article, I cannot regard as reasonable.

On the contrary, it would appear more appropriate in the present context to speak of a request for a declaration, to treat the proceedings before the Court as a dispute over the interpretation of the provisions relating to privileges and immunities and to describe the judgment to be issued in thsse proceedings as an interpretative or declaratory judgment. The fact that what is concerned is a question of status, and therefore a permanent relationship, lends weight to this proposition. So does the fact that the Protocol on Privileges and Immunities (as well as Annex F to the special Agreement with the Italian Government and also even the former ECSC Protocol with its interpretation clause in Article 16) does not prescribe any time-limits for the introduction of proceedings for a declaration by the Court. So, in particular, does the broad interpretation which the Court of Justice gave to a similar case concerning making of claims for damages under Article 42 of the EEC Statute. As we know, despite the wording of the said provision the Court rejected the proposition that where the claims are refused proceedings must be instituted within the period prescribed by Article 173 (which corresponds to Article 146 of the Euratom Treaty) and declared instead that prescription alone is decisive. If this applies to substantial claims a stricter line should not be taken in the case of requests for a declaration or interpretation under the provisions relating to privileges and immunities.

That is why I am not disposed to come to the conclusion that the application should be regarded as inadmissible by reason of the fact that it was only lodged approximately two years after the notification of the Commission's decision of refusal (always assuming that it is possible at all to accept that national authorities have a right to bring the matter before the Court of Justice; this is in fact defensible—apart from objections arising out of Annex F—if one applies by analogy the provisions of the Protocol on Privileges and Immunities under which anyone can request authorization of administrative measures of restraint against establishments of the Community).

3. The amendment of the applicant's conclusions

Finally, there remain to be made some brief remarks on the amendment of the conclusions in the course of the proceedings. I have already emphasized when setting out the facts that originally only the annulment of the decision of refusal was sought and that it is only in the reply that the claim for annulment of the Commission's decision is also accompanied by the request for authorization of administrative measures of constraint. The Commission wonders whether we are not concerned with the introduction of new conclusions which would be inadmissible under Article 42 of the Rules of

Procedure because it would be out of time and whether, assuming the new conclusions to be admissible, it must not at least be objected, on the basis of an analogy with Article 83 of the Rules of Procedure, that it was not formulated in a separate pleading since it is intended to introduce special proceedings which are quite distinct from the contentious proceedings.

It seems to me, however, that in these remarks the Commission is tending to be unduly formal. Properly understood, it has been perfectly clear from the outset what it is that concerns the applicant, namely the access to certain buildings and facilities of the Centre for the purpose of calculating excise duties. Moreover this is its *only* and hitherto unaltered concern and all that has changed is its technical legal form of expression. Moreover, there is nothing surprising in this since what is concerned is a matter which for us too is entirely new and which, therefore, so far as its strictly legal classification within the system of the Treaty is concerned, calls for a large degree of tolerance. Accordingly when the application speaks of the annulment of the Commission's refusal and expressly emphasizes that it is not requesting an authorization of administrative measures of constraint under Article 1 of the Protocol of Privileges and Immunities, while the reply speaks of the annulment of the Commission's decision and at the same time requests the authorization of administrative measures of constraint, all these factors should at the most prompt us to endeavour to seek a reasonable interpretation as the Court has sought to do so in the case of other conclusions, and should not operate to the applicant's disadvantage; in other words it would be wrong to find that the application has been extended inadmissibly or to proceed on the basis that two separate procedures are necessary, that is to say, we should in no event advocate a formalistic approach similar to that under Article 83 of the Rules of Procedure which many, moreover, consider to be unjustified.

III — *Summary*

At the end of this voluminous chapter on the admissibility of the application I will summarize my opinion as follows: the request of the Ufficio for a declaration that the Commission is not entitled to rely on the inviolability of the buildings and premises of the Centre must be regarded as inadmissible because according to Annex F to the special Agreement with the Italian Government, which is of decisive importance and applies to the present case, every dispute bearing on the application of the Agreement must be preceded by consultation between the Commission and the Italian Government and proceedings before the Court can only be instituted by the parties.

Should this opinion not be followed there can be no objection to the admissibility of the application since the other objection put forward by the Commission cannot succeed. In view of the latter alternative I shall continue my subsidiary examination of the facts and proceed to investigate the substance of the application.

B — The substance

The substance of the case gives rise to the question whether the Commission was right to refuse to a representative of the Commune of Ispra access to certain premises and buildings of the Centre. Since access was required to carry out a valuation of the said buildings and premises for tax purposes and since the only ground advanced for the Commission's attitude was the Centre's immunity from tax, we must examine whether the Community's tax privileges apply to establishments of the kind at issue in this case.

On a proper view of the matter consideration must especially be given to Annex F to the Agreement with the Italian Government Article 7(3) of which in the Franch translation reads as follows: 'Pour l'installation et le fonctionnement du Centre, la Communauté jouit de l'exonération des impôts communaux de consommation'. As it is not denied that it was sought to levy an excise duty on the part of the Commune, our task of interpretation consists in defining what 'installation' and 'fonctionnement' mean according to the said Article.

The applicant's opinion on the matter is clear. In its view there can only have been contemplated the *industrial* installations of the Centre which are intended for research

activity and constitute the *raison d'être* of the Centre. Only those parts of the Centre which are indispensable for its functioning can enjoy immunity from taxation.

However, like the Commission I am doubtful whether this narrow view is valid. A number of considerations arise in this connexion.

First of all it must be said that Article 7(3) of Annex F does not contain any expression which would require the interpretation advocated by the applicant, for example phrases speaking of installations which are indispensable for the aims and objects of the Research Centre or similar expressions. (In fact it might well be doubted whether installations for recreational purposes too fall under this definition). Instead, a reference is made purely and simply to 'installation' and 'fonctionnement du Centre' which, taking into account certain expressions in the preamble ('faciliter') and in Article 36 ('fonctionnement'), leads simply to the conclusion that these terms include everything which substantially contributes to the *improvement* of the functioning of the Centre. It is, moreover, remarkable that some of the provisions of Annex F at first speak quite generally of the 'Centre' as the beneficiary of the exemptions and then go on to make an exception solely in respect of *private* use ('usage privé') (cf. Articles 6, 8 and 10). This might lead to the conclusion that according to the general intention behind Annex F the 'Centre' includes all installations except purely private ones and that therefore the application of the provisions on privileges and immunities turns in the first place on the contrast and distinction between 'usage privé' and 'usage officiel', a conclusion which is also suggested by certain expressions in the Protocol on Privileges and Immunities, for example by Article 3 in which official use ('usage officiel') is made a criterion. In fact, however, this would be to give precedence to a criterion which is considerably more elastic than the one proposed by the applicant, namely the criterion of 'usage officiel', and it would of itself justify a broader interpretation than the one which the applicant considers to be correct (which, however, has nothing to do with an unacceptable analogy). It would appear to be accepted that the club house and the swimming facilities in dispute in fact constitute *official* installations. They are administered as part of the social services of a special department within the services of the Commission. The funds for their construction were provided in the research budget, Chapter IX 'Foyers et Cercles de Personnel', that is to say, in a chapter which does not require, as the applicant considers to be proper, expenditure to *exclude* the acquisition of movable and immovable property. Furthermore, the use of the funds came under the surveillance of the supervisory committee and the Council was kept informed of this matter. Nor can it be said that in authorizing such a policy the Council showed itself to be unusually progressive. The policy remained wholly within the limits which, given the present state of social development, must be considered as normal at least for large concerns; it has long been recognized that it is not possible to manage without social facilities for education, cultural activities, sport and recreation and that facilities of this kind make a considerable contribution to the improvement of the working atmosphere and to the results of the concern. As the Commission rightly stresses, this must especially apply to a research centre which lies a considerable distance from the large cultural centres and in which it is important to bring together officials from six different countries in order to achieve an effective working collaboration. It is precisely with these matters in mind that the Council described social facilities of the present kind as 'indispensable' in the explanatory notes to the budget.

However, if it should appear appropriate after what has just been said to lay the stress, when interpreting the provisions with regard to privileges and immunities, on the contrasting concepts of 'usage privé' and 'usage officiel' and concentrate on the question which facilities contribute to a substantial improvement in the 'functioning' that is to say, to give preference to the principle of 'functional purpose' ('Funktionalität'[1] then the recreational installations of the

1 — Cf. Schroer: Zur Gewährung von Befreiungen an internationale Einrichtungen, Jahrbuch für internationales Recht, 12, p. 218.

Nuclear Research Centre must be regarded as 'installations' within the meaning of Article 7(3) of Annex F with the result that immunity from the Commune's excise duty also applies to them.

That this conclusion is correct is moreover reinforced by certain additional considerations. I am reminded in the first place of the fact that other Member States accord generous treatment in the matter of tax exemptions to recreational installations and in other establishments of the Joint Nuclear Research Centre, a fact whose significance should not be underestimated having regard to the principle of uniformity within the Community. The Commission has given us evidence of this in the case of the Federal Republic where the Commission's subsidies to the 'Gesellschaft für Kernforschung' by way of compensation for the use of the restaurant by Euratom officials and the renting of tennis courts for Euratom staff were exempted from taxation. The same applies in the Netherlands in respect of the construction of a 'Guest House' and of sports centres and of course in Belgium where numerous transactions designed to favour recreational installations of the Community were exempted from taxation. Then it seems to me remarkable that the *Italian Government* has not expressed its views on the matters at issue in the present case although it was informed by the Centre and although according to Annex F it would be its business to object to any abuses of the provisions relating to privileges and immunities. Finally, account should be taken of a principle which also has an important place in the interpretation of agreements of this nature, namely the principle of equality of treatment in financial matters of the states which are members of an international organization. The application of this principle should prevent a state in whose territory an organization has its seat from recouping part of its contribution by subjecting to taxation common facilities, the question of which public funds into which the tax is paid being irrelevant.[1] Taking all these matters into account, it is apparent that the Commission was right to claim the immunity from taxation under Annex F for the recreational installations of the Nuclear Research Centre and that the request made by the Commune of Ispra to grant access to the said installations in order to carry out a valuation for tax purposes is unjustified.

We should be bound to reach the same conclusion if we were to base ourselves solely on Article 3 of the Protocol on Privileges and Immunities under which, as is known, the Communities' assets, revenues and other property are exempt from all direct taxes and under which the governments of the Member States shall take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property, where the Communities make, for their official use, substantial purchases. This at least is the view of other Member States which have signed no special agreements relating to the seat of an international organization, as I have indicated previously. However, it may still be asked, and I raise this question for the sake of completeness, whether the applicant's request might not succeed if it were based on other grounds. Certain indications to this effect are to be found in the reply where it is stated that the excise authority wished to investigate *whether* in fact the building material in question was used for the purpose of the recreational installations or whether, it seems proper to add, it was used for private purposes, that is to say, in a manner which would exclude any immunity from taxation and accordingly the right to rely on the provisions relating to inviolability. However, I am bound to regard these indications as having been inserted as an afterthought. If one has regard to the wording of the first letter to the administration of the Centre and also to the content of the application it is clearly apparent that from the beginning the excise authority had no doubt *that* the material in question was used by the Commission for the purpose indicated by it and that what was at issue was only the valuation of that material and not the verification of its use. Furthermore, there is no evidence whatever which would justify any suspicion on the part of the excise authority. Accord-

1 — Cf. Egger, op. cit., p. 109; Cahier, op. cit., pp. 222 et seq.; Schroer, op. cit., pp. 217, 219, 222.

ingly it is right that these lastmentioned and somewhat incidental observations in the reply should be left out of account.
As regards the substance of the case, therefore, from no point of view would it be possible for us to arrive at an affirmative conclusion.

C — Opinion

My opinion may be summarized as follows:

The application of the Ufficio Imposte di Consumo di Ispra for a declaration that the Commission is bound to grant access to a technical expert appointed by the Commune of Ispra to the recreational installations of the centre in order to calculate their value for the purposes of excise duty must be dismissed in view of the provisions of Annex F of the Agreement between the Community and the Italian Government.

In any event the claims of the applicant are unfounded.

Accordingly the costs of the proceedings must be borne by the applicant.