

In Joined Cases 81 to 88/74

GIULIANO MARENCO, ROSA-MARIA MARENCO, NÉE GUIDA, PIERO RAVAIOLI, DORANGELA VAN LOO, NÉE LUCIONI, BERNHARD VON WÜLLERSTORFF UND URBAIR, ROLF WERNER, PIETER ALBERTI and KONRAD BAUMANN, all represented by Marcel Grégoire, Advocate with the Cour d'appel, Brussels, with an address for service in Luxembourg at the Chambers of Tony Biever, Advocate, 83 boulevard Grande-Duchesse Charlotte,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES represented by its Legal Adviser, Raymond Baeyens, acting as Agent, with an address for service in Luxembourg at the Office of Pierre Lamoureux, Legal Adviser to the Commission, 4 boulevard Royal,

defendant,

Application for the annulment of the decisions of the Commission of 22 October 1973 appointing Messrs Piero Burigana, Francesco Conte, Eduardo Capuano, Raffaele de Santis, Claudio Guida, Francesco Pettini, Vito Saccomandi, Carlo Savoini and Dario Tosi, to posts of Principal Administrator which were the subject of Vacancy Notices COM/943/72, COM/396/72, COM/646/72, COM/938/72, COM/939/72, COM/931/72, COM/940/72, COM/947/72, and COM/948/72, and the annulment of all connected decisions and the decision rejecting the complaints made in that respect.

THE COURT (First Chamber)

composed of: R. Monaco, President of Chamber, J. Mertens de Wilmars and A. O'Keeffe (Rapporteur), Judges,

Advocate-General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts and the arguments put forward by the parties during the written procedure may be summarized as follows:

I — Facts and procedure

During the second half of 1972 the Commission posted up Vacancy Notices COM/943/72, COM/396/72, COM/646/72, COM/938/72, COM/939/72, COM/931/72, COM/940/72, COM/947/72, and COM/948/72 relating to posts of Principal Administrator in the category and career bracket A 5 - A 4 within the Directorates-General of Agriculture, Industrial, Technological and Scientific Affairs, Social Affairs and External Relations.

It decided on 22 October 1973 to fill these posts by application of Article 29 (2) of the Staff Regulations and to appoint to them respectively Messrs Piero Burigana, Francesco Conte, Eduardo Capuano, Raffaele de Santis, Claudio Guida, Francesco Pettini, Vito Saccomandi, Carlo Savoini and Dario Tosi, all of Italian nationality and who previously held the posts concerned as temporary staff.

Some officials in Grade A 6 holding posts in various Directorates-General or departments of the Commission then lodged a complaint under Article 90 of the Staff Regulations seeking mainly the withdrawal of the decisions of the Commission appointing the above officials. The complaints were made by the following on the dates indicated: Giuliano Marengo, 18 January 1974, Mrs Rosa-Maria Marengo, 18 January 1974,

Piero Ravaioli, 22 January 1974, Mrs Dorangela van Loo, 18 January 1974, Bernhard von Wüllerstorff und Urbair, 20 January 1974, Rolf Werner, 18 January 1974, Pieter Alberti, 21 January 1974 and Konrad Baumann, 30 January 1974.

By letters of 30 July 1974, the Commission rejected these complaints.

On 28 October 1974, each of the applicants lodged an application at the Court of Justice.

These applications were registered at the Court Registry on the same day.

By order of 5 December 1974 the Court (First Chamber) ordered that the various cases be joined.

The First Chamber, after hearing the report of the Judge-Rapporteur and the views of the Advocate-General, decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The applicants claim that the Court should:

1. Annul the decisions of the defendant of 22 October 1973 appointing Messrs P. Burigana, F. Conte, E. Capuano, R. de Santis, C. Guida, F. Pettini, V. Saccomandi, C. Savoini and D. Tosi, to the posts of Principal Administrator which were the subject of Vacancy Notices COM/943/72, COM/396/72, COM/646/72, COM/938/72, COM/939/72, COM/931/72, COM/940/72, COM/947/72 and COM/948/72;

2. Annul all decisions prior to and/or concurrent with the decisions of appointment mentioned under (1) and which are linked thereto, especially the decisions not to have recourse to the competition procedure in order to fill the vacancies in question and those to have recourse to the procedure laid down in Article 29 (2) of the Staff Regulations;
3. Annul the decisions rejecting the complaints lodged by the applicants which were notified to them by letters dated 30 July 1974;
4. Order the defendant to pay the costs.

The Commission contends that the Court should:

1. Dismiss the applications as inadmissible and in any case unfounded;
2. Order the applicants to pay the costs to the extent to which the institution does not bear them under Article 70 of the Rules of Procedure of the Court.

III — Submissions and arguments of the parties

(a) Admissibility

The *Commission* claims that two applicants, Messrs Pieter Alberti and Konrad Baumann, cannot claim to have any capacity or personal interest in bringing proceedings; they have in fact tendered their resignations which were accepted and made final before their applications were lodged.

On the other hand the applicants who did not apply for certain posts which were the subject of the Vacancy Notice COM/396/72, Bernhard von Wüllerstorff und Urbair, Rolf Werner and Mrs Rosa-Maria Marengo, COM/646/72 Pieter Alberti, Bernhard von Wüllerstorff und Urbair and Rolf

Werner; COM/938/72 Konrad Baumann, COM/939/72, Rolf Werner; COM/940/72, Rolf Werner; COM/943/72, Bernhard von Wüllerstorff und Urbair, and COM/947/72, Mrs Dorangela van Loo. No applicants came forward for the posts which were the subject of Vacancy Notices COM/931/72 and COM/948/72.

As for Messrs Marengo and Ravaioli, they did not apply for any of these posts.

Lastly, the Vacancy Notices ruled out consideration of the applications put forward by certain applicants because of the specific conditions laid down with regard to qualifications.

The *applicants* reply that the resignations tendered by Messrs. Alberti and Baumann do not deprive them of the capacity to lodge an application on the basis of Articles 90 and 91 of the Staff Regulations which apply equally to present officials and to former or 'potential' officials. These two applicants have an interest in bringing proceedings since they were officials on the date when the decisions in question were taken and when their preliminary complaints were lodged, and since they could have taken part in the competitions had the latter taken place.

It is of little moment to speculate whether the applicants, as a whole, applied for one of the posts in question (Messrs Marengo and Ravaioli could not legally have applied since they did not fulfil the condition of completion of a minimum period of service required by Article 45 (2)). Their interest lies in the fact that they would have been able to take part in competitions if these had been held and in their ability to benefit from the judgments annulling the decisions.

Lastly, only the selection board for the competition can decide on the list of candidates meeting the conditions laid down by the notice of competition. That, moreover is a question of substance and not of admissibility.

The *defendant* rejoins that, for an individual to be regarded as having an interest in bringing proceedings, the favourable outcome of his claim must ensure him immediate or future protection. This rule, generally accepted by national case-law, prevails over principles such as that whereby the interest which makes an application admissible is to be evaluated on the day when the application is lodged. The arguments to the contrary put forward by the applicants are irrelevant. In particular, the two applicants who resigned certainly do not wish to return to the service of the Commission. As for Messrs. Marengo and Ravaioli, they cannot in fact contest appointments to posts to which they could not normally aspire on the day when the application was lodged. Lastly, other applicants have no interest in bringing proceedings in so far as they do not possess the necessary qualifications as specified in the vacancy notice.

(b) *The first submission*

The *applicants* point out that Article 29 (2) of the Staff Regulations has been infringed in that, under the decisions in question, temporary staff were appointed. That provision, which authorizes a recruitment procedure other than the competition procedure for the recruitment of officials in Grades A1 and A2 and, in exceptional cases, also for recruitment to posts which require special qualifications, applies only to the recruitment of candidates who are not yet in the service of the Communities.

The *Commission* replies that in its judgment of 5 December 1974 (*Van Belle v Council of the European Communities*, Case 176/73, [1974] ECR 1361), the First Chamber of the Court rejected that argument in that the power thus granted to set aside the competition procedure would be limited in a way which is 'neither just nor in the interest of the service'.

In view of the abovementioned judgment the *applicants* leave the decision on the first submission to the Court.

(c) *The second submission*

The *applicants* claim that Article 29 (2) of the Staff Regulations has been infringed in that its application presupposes that the conditions as to form and substance have been fulfilled, which they are not in the present case.

In fact, the vacancy notices did not indicate that Article 29 (2) might be applied and that the posts concerned involved special qualifications. Moreover, they were not published in the Official Journal of the European Communities.

The decision to apply Article 29 (2) was not reasoned. The fact that recourse would not be had to the general competition procedure provided for at the end of Article 29 (1) was not even mentioned.

Lastly, the procedure followed can be adopted only in exceptional cases. However, it follows from the very wording of the vacancy notices that in the present case the posts did not require qualifications of such a special nature that they could be filled only by a special procedure, but required normal qualifications for posts of Principal Administrator. This was not an exceptional case either, since the officials appointed were capable of entering an internal competition.

The *Commission* replies that neither the second and third paragraph of Article 4 of the Staff Regulations nor any other provision of the Staff Regulations prescribes the information which a vacancy notice must contain. It is enough that possible candidates receive correct information concerning the post and the duties and qualifications required.

The proposals for decisions which were submitted for the approval of the

Commission and appear in the files of the officials appointed are broadly reasoned which enables the review of their legality to be carried out normally.

The specific character of each particular post, having regard especially to the description of the duties in the vacancy notices, was mentioned in the Commission's letter of 30 July 1974.

The *applicants* reply that compliance with the conditions of form in question results from the provisions of the Staff Regulations, perhaps impliedly but necessarily, and from general principles. Reference must be made in particular to Article 4 (2) and (3) and to Article 1 (2) and (3) of Annex III to the Staff Regulations. The principle is thus established, which moreover is self-evident, that only appropriate publicity can enable all those persons likely to put forward their candidature to be informed of the open procedure. Where recourse is had to Article 29 (2), that publicity takes the form of the publication in the Official Journal of the European Communities of the vacancy notice or of any later document giving notice that the procedure is applicable because of the special qualifications required for the post concerned. Comparison should therefore be made with the general competition procedure, the only other means by which persons coming from outside the Communities may be engaged as officials.

As regards the first paragraph of Article 27, the opinion of the Advocate-General prior to the judgment of 26 May 1971 (*Bode v Commission*, Joined Cases 45 and 49/70, [1971] ECR) is important as being based upon the same grounds. It is not permissible to disregard the way in which the departments of the defendant were able to learn that the persons appointed were candidates and whether other external candidates would not have come forward if they had been informed of their opportunity to make an application.

The above mentioned judgment established the duty to give reasons. But the defendant is confusing in the present case the formal duty to give reasons whereby the measure must disclose the reasons on which it is based, which alone is in question here in view of the exceptional nature of Article 29 (2), and the requirement that every administrative measure must have its reasons, which is a question of substance.

As to the conditions of substance, they must be regarded as being, according to the opinion of the Advocate-General in the case quoted above, the expression of one and the same condition, that is, that the vacant post requires special qualifications so that it can be filled only by using a special procedure.

If it were necessary to accept that the qualifications following from the vacancy notice in question come within those mentioned by Article 29 (2), that would amount to allowing its application in every case.

Furthermore, were the posts in question filled in the past by the normal procedures? The defendant has not replied to that question.

Only vacancy notices should give information concerning the qualifications required, and opinions (proposals for decisions submitted for the approval of the Commission) put forward after the decision to have recourse to Article 29 (2) has in fact been taken are of little importance. The Joint Committee has, in respect of each competition, expressed an unfavourable opinion regarding the recourse to that procedure which was unanimous except for one vote.

The reasons advanced in the written procedure that the posts in question require special qualifications can be repeated with regard to all posts of Principal Administrator, but they indicate above all that in order to be

appointed to a post it is necessary to be a specialist and to have had practical experience; consequently the special procedure laid down in Article 29 (2) would tend to become the normal recruitment procedure.

Lastly, why did the proposals for decisions consider the internal competition and general competition procedures inappropriate?

The *Commission* replies that a vacancy notice cannot give a detailed description of all the work in progress or future work in the departments concerned or of all the methods of recruitment, the later application of which may perhaps validly be envisaged. Publication in the Official Journal of the European Communities of the possible implementation of all recruitment procedures other than internal competition is not required by the Staff Regulations. Furthermore it is incompatible with the very object of the special procedure provided for in Article 29 (2) and is of no use, since the number of persons who are potentially candidates for these posts is by definition very small and the institution exercises its choice freely. Further, most of the posts in question were created in 1972 in anticipation of the 1973 budget and could not consequently, by definition, have been filled in the past by a recruitment procedure under Article 29 (1).

(d) *The third submission*

The *applicants* claim that there was an infringement of Article 7 and the third paragraph of Article 27 of the Staff Regulations, according to which no posts shall be reserved for nationals of any specific Member State and all appointments must be made without regard to nationality. The fact that each of the posts in question was reserved in advance for a person of Italian nationality amounts to a case of misuse of powers. In fact, in the reply given by the Commission on 30 July 1974, the following, in particular, appears:

'... The appointing authority, by choosing candidates who possess the special qualifications from among persons of Italian nationality ...'

The posts filled by the contested decisions form part of a total of more than twenty posts created by the Council at the end of 1972 in order to re-establish geographical equilibrium in favour of Italy within the departments of the defendant.

The *Commission* replies that although with regard to three posts the description of the duties and the qualifications required appearing in the vacancy notices, related *inter alia*, to problems existing in Italy, taken as a whole there was no question of reserving specific posts for a particular Member State, but rather of remedying a geographical disequilibrium known to all, by means of the choice made by the appointing authority of candidates from among persons of that nationality who fulfilled completely the special qualifications required for the posts to be filled. This procedure is in accordance with the first paragraph of Article 27 of the Staff Regulations in that it safeguards both the geographical equilibrium within the departments of the Commission which was acknowledged in the Judgments of the Court (First Chamber) of 15 December 1966 (*Serio v Commission of the EAEC*, Case 62/65, [1966] ECR 561), and of 6 May 1969, (*Reinarz v Commission*, Case 17/68, [1969] ECR 61), and the interests of the service.

The *applicants* reply that it appears from the defendant's documents that not only were the contested appointments made on account of nationality, but, further, the posts in question were certainly reserved for persons of Italian nationality. The method used shows this: first of all certain persons were recruited as temporary staff; then they were appointed to the posts in question by a procedure involving no competition, namely that laid down in Article 29 (2).

Nationality was the exclusive criterion, and this explains why no competition was organized and why no vacancy notice which would have allowed external applications to be put forward was published.

These considerations show clearly a case of misuse of powers. Not the interest of the service but factors extraneous thereto were taken into account: nationality and, within this, certain particular persons.

The Commission replies that in agreement with the Council, which was acting as budgetary authority, it was led to create twenty posts in career bracket A 5 - A 4 over and above the official complement. But in general it has as little recourse as possible to the procedure laid down in Article 29 (2). Before the Community increased from six to nine Member States it had to find a solution to a situation of geographical disequilibrium which appeared to be very striking since the merger of the executives and which appears from statistics which it provides.

Since the files of the officials appointed by the Decisions of 22 October 1972 show that the vacancy notices in question were posted in the other

institutions in application of Article 29 (1) (c) of the Staff Regulations, the Court requested the Commission to inform it of the dates on which that was done. The Commission in reply stated that:

- Vacancy Notice COM/943/72 was posted from 7 to 25. 5. 1973
- Vacancy Notice COM/396/72 was posted from 6 to 20. 6. 1973
- Vacancy Notice COM/646/72 was posted from 6 to 20. 6. 1973
- Vacancy Notice COM/938/72 was posted from 6 to 20. 6. 1973
- Vacancy Notice COM/939/72 was posted from 6 to 20. 6. 1973
- Vacancy Notice COM/931/72 was posted from 14. 4. to 3. 5. 1973
- Vacancy Notice COM/940/72 was posted from 6 to 20. 6. 1973
- Vacancy Notice COM/947/72 was posted from 13 to 27. 3. 1973.

The applicants, represented by Marcel Grégoire, Advocate at the Cour d'appel, Brussels, and the Commission, represented by its Legal Adviser Raymond Baeyens, acting as Agent, presented oral argument at the hearing on 25 September 1975.

The Advocate-General delivered his opinion at the hearing on 16 October 1975.

Law

- 1 The applications lodged on 28 October 1974 and received at the Court Registry on the same date are for the annulment of the decisions of the Commission of 22 October 1973 appointing Messrs P. Burigana, F. Conte, E. Capuano, R. de Santis, C. Guida, F. Pettini, V. Saccomandi, C. Savoini and D. Tosi to posts of Principal Administrator of category and career bracket A 5 - A 4, which were the subject of Vacancy Notices COM/943/72, COM/396/72, COM/646/72, COM/938/72, COM/939/72, COM/931/72, COM/940/72, COM/947/72 and COM/948/72.
- 2 These appointments were made in application of Article 29 (2) of the Staff Regulations of Officials, whereby a procedure other than the competition

procedure may be adopted in particular in exceptional cases for recruitment to posts which require special qualifications.

Admissibility

- 3 The defendant first of all claims that Applications 87/74 and 88/74 are inadmissible on the ground that on the date on which they were lodged the applicants no longer had the status of officials because their resignations took effect from 1 March and 1 October 1974 respectively.
- 4 According to these two applicants their interest in bringing proceedings follows from the fact that they were officials when the contested decisions were taken and also when proceedings were started by means of their previous complaint, and that they could at least, like the other applicants, have taken part in competitions had these been held.
- 5 Under Articles 90 and 91 of the Staff Regulations, 'Any person to whom these Staff Regulations apply' means not only officials who are at present serving but also those who were doing so previously and any candidates for a post.
- 6 Nevertheless, in order for a former official to be able to lodge an appeal under these provisions he must have in addition a personal interest in the annulment of the contested measure.
- 7 Such is not the case as regards an official who, through his resignation, has shown his desire to cease to belong to the institution within which the posts filled by the contested measure were vacant.
- 8 For these reasons Applications 87/74 and 88/74 are inadmissible.
- 9 The defendant also questions the personal and direct interest of the seven other applicants on the ground that none of them applied for all the posts which the contested measures filled, and some did not even apply for any of these posts.
- 10 The interest of these applicants in bringing proceedings lies in the fact that they could, if the defendant had organized a competition internal to the

institution under Article 29 (1) (b), have applied for the posts for which they did not apply at the procedural stage in view of possible promotions or transfers.

- 11 The objection must consequently be rejected.
- 12 The defendant points out finally that because of the specific conditions laid down with regard to qualifications, the vacancy notices relating to the posts in question prevent applications made by certain applicants from being taken into consideration.
- 13 This claim is not even supported in any way by evidence, which the Commission is under a duty to adduce.
- 14 Consequently Applications 81 to 86/74 must be regarded as admissible.

On the substance of the case

- 15 The applicants claim that the contested decisions could not have been taken in application of Article 29 (2) because that provision is concerned only with the recruitment of persons not yet in the service of the Communities and cannot be used where, for the purpose of filling a vacant post, servants already in office who could consequently have entered for a competition internal to the institution are to be considered.
- 16 The abilities required of the occupant of a post requiring special qualifications may be of such a kind that, in exceptional cases, the competition procedure is inappropriate for the purpose of establishing the existence of those abilities.
- 17 It may therefore be concluded that by applying Article 29 (2) in respect of servants already in office the defendant did not infringe this provision.
- 18 The applicants claim in the second place that the application of Article 29 (2) of the Staff Regulations presupposes that conditions of form and of substance are fulfilled which are not fulfilled in the present case.

- 19 They maintain first of all that neither the vacancy notices nor the subsequent measures provided for the possibility of recourse to Article 29 (2) and that these notices or these measures were not published in the Official Journal.
- 20 It appears from the files that the vacancy notices were properly brought to the knowledge of the staff of the Commission in application of Article 29 (1) (a) and then posted in the other institutions in application of paragraph (1) (c) of the same article.
- 21 A decision to have recourse to Article 29 (2) made during the course of a recruitment procedure which has been initiated need not necessarily be taken when the vacancy notices are published and need not be published in the Official Journal.
- 22 The contested decisions were adopted on the basis of proposals from the Directorates General concerned setting out the reasons why the posts in question could not be filled in accordance with the procedure laid down in Article 29 (1) (a).
- 23 Recourse to Article 29 (2) is not subject to any condition as to publication but only to the circumstance that the recruitment is of Grade A 1 or A 2 officials or to 'posts which require special qualifications'.
- 24 The applicants maintain next that no reasons were given for the decision to apply Article 29 (2), just as the decision not to resort to the general competition procedure provided for by the last sentence of Article 29 (1) was not justified.
- 25 However the proposal concerning appointment to the contested posts which was sent on 12 October 1973 to the appointing authority sets out in sufficient detail the respects in which the qualifications required were special.
- 26 The applicants contest that the posts required special qualifications and could only be filled by means of the special procedure used.
- 27 Nevertheless it is for the appointing authority to decide, subject to review by the Court, the special nature of the qualifications necessary to fill a post.

- 28 It follows from the vacancy notices that in the present case the special qualification required was described each time and it has not appeared that in so doing the said authority exceeded the limits of its discretion.
- 29 The applicants claim that Article 7 and the third paragraph of Article 27 of the Staff Regulations have been infringed in that the posts in question were reserved for persons of a particular nationality, in the present case Italian.
- 30 In so doing the defendant is said to have been guilty of a misuse of powers which explains why it did not organize either internal or general competitions and why it had recourse to the procedure laid down in Article 29 (2).
- 31 According to Article 7 and the third paragraph of Article 27 of the Staff Regulations, no posts may be reserved for nationals of any specific Member State and every appointment must be made without regard to nationality.
- 32 It appears from the procedure that in agreement with the Council which was acting as budgetary authority, the Commission, in anticipation of the 1973 budget, had created on 25 October 1972 20 posts in career bracket A 5 - A 4 over and above the official complement.
- 33 According to the actual statements of the defendant, it was a question of 'remedying a geographical disequilibrium known to all, and which was against the interests of a certain nationality, by means of the choice made by the appointing authority of candidates from among persons of that nationality who fulfilled completely the special qualifications required ...'.
- 34 The need for the Community administration to remedy a geographical disequilibrium in the posts within its departments when recruiting must give way to the requirements of the interests of the service and the consideration of the personal merits of the candidates.
- 35 In the case of Vacancy Notices COM/939/72, COM/940/72 and COM/943/72, however, where the requirements were respectively a 'thorough knowledge of the particular problems of the agricultural structures in Italy and of the policies for the improvement of the structures', a 'thorough

knowledge of the economic problems of Italian agriculture' and a 'thorough knowledge of Italian regulations in the wine sector', it may have been legitimate to favour candidates of Italian nationality who were obviously likely to be better equipped to fulfil the qualifications required.

36 Consequently the applications in respect of Vacancy Notices COM/939/72, COM/940/72 and COM/943/72 must be dismissed.

37 The third submission must be accepted as regards Vacancy Notices COM/396/72, COM/646/72, COM/931/72, COM/938/72, COM/947/72 and COM/948/72, and the corresponding decisions in question must be annulled.

Costs

38 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party must bear the costs.

39 The applicants in Cases 87/74 and 88/74 have failed in their applications.

40 The defendant has failed in its submissions as regards Posts COM/396/72, COM/646/72, COM/938/72, COM/931/72, COM/947/72 and COM/948/72.

41 Nevertheless, under Article 70 of the Rules of Procedure, in proceedings brought by servants of the Communities, institutions shall bear their own costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. Dismisses Applications 87/74 and 88/74;
2. Annuls the decisions of appointment to the posts which were the subject of Vacancy Notices COM/396/72, COM/646/72,

COM/938/72, COM/931/72, COM/947/72 and COM/948/72 and dismisses Applications 81 to 86/74 as regards the remainder of the conclusions therein;

- 3. Orders the applicants and the defendant in Cases 87/74 and 88/74 to bear their own costs;**
- 4. Orders the defendant to bear the costs as regards Applications 81 to 86/74.**

Monaco

Mertens de Wilmars

O'Keefe

Delivered in open court in Luxembourg on 29 October 1975.

A. Van Houtte

Registrar

R. Monaco

President of the First Chamber

**OPINION OF MR ADVOCATE-GENERAL WARNER
DELIVERED ON 16 OCTOBER 1975**

My Lords,

These eight actions were joined by an Order of the First Chamber of the Court dated 5 December 1974. In each action the applicant seeks, essentially, a declaration that nine appointments made by the Commission to its staff on 22 October 1973 were invalid.

The circumstances in which those appointments, and certain others, were made are stated by the Commission to have been as follows (Defence p. 6 and Rejoinder pp. 8 & 9). In 1972, the Commission became concerned to remedy what it describes as a 'situation of geographical imbalance' in the composition of its staff at A 4 - A 5 level. According to the Commission, that

imbalance had resulted from the implementation of the Merger Treaty and it consisted in there being, at that level, too few officials of Italian nationality. To illustrate the point the Commission has produced statistics showing, among other things, that, at 30 June 1972, there were on its staff a total of 735 officials in grades A 4 and A 5, of whom 239 were nationals of Benelux countries, 181 were German nationals, 167 were French, 142 were Italian and 6 were nationals of countries that were not, at all events then, Member States. The Commission considered that the need to remedy this 'imbalance' was rendered urgent by the imminent accession of the three new Member States. At some time in 1972, it decided, in agreement with the Council acting as budgetary authority, to create,