JUDGMENT OF THE COURT (Sixth Chamber)
24 October 1996 *

In Case C-76/95,

Commission of the European Communities, represented by Julian Currall, of its Legal Service, acting as Agent, assisted by Jean-Luc Fagnart, of the Brussels Bar, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Royale Belge SA, acting on its own behalf and as agent and nominee for Assurances Générales de France SA, Caisse Nationale de Prévoyance, Les Mutuelles du Mans, Assurantie van de Belgische Boerenbond SA, Hannover SA, Securitas AG and Condor, it being represented by François van der Mensbrugghe, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Albert Wildgen, 6 Rue Zithe,

defendant,

APPLICATION for an order that the insurers pay the Commission the lump sum allegedly due from the Commission to one of its officials on the ground of occupational illness by virtue of Article 73 of the Staff Regulations of officials of the European Communities,

* Language of the case: French.

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, C. N. Kakouris and P. J. G. Kapteyn (Rapporteur), Judges,

Advocate General: A. La Pergola,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 14 March 1996,

gives the following

Judgment

1 By application lodged at the Court Registry on 13 March 1995, the Commission of the European Communities brought an action pursuant to an arbitration clause within the meaning of Article 181 of the EC Treaty for an order that Royal Belge SA, acting on its own behalf and as agent for seven other insurers, namely Assurances Générales de France SA, Caisse Nationale de Prévoyance, Les Mutuelles du Mans, Assurantie van de Belgische Boerenbond SA, Hannover SA, Securitas AG and Condor, all party to a collective insurance agreement concluded with the institutions of the European Communities (hereinafter 'the insurers'), pay it a lump sum allegedly due from the Commission to one of its officials on the ground of occupational illness by virtue of Article 73 of the Staff Regulations of officials of the European Communities ('the Staff Regulations'). The Commission also claims default interest from 6 May 1994, the date on which the insurers were put on notice.

The relevant provisions

2 Under Article 73(1) of the Staff Regulations, an official is insured against the risk of occupational disease and of accident subject to rules drawn up by common agreement of the institutions of the Communities. Under the terms of Article 73(2)(b), the benefit guaranteed in the event of total permanent invalidity consists in payment to the official of a lump sum equal to eight times his annual basic salary calculated on the basis of the monthly amounts of salary received during the 12 months before the accident.

3 Article 12(1) of the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease ('the Rules') referred to in Article 73 of the Staff Regulations provides that where an official sustains total permanent invalidity as a result of an accident or an occupational disease, he is to be paid a lump sum provided for in Article 73(2)(b) of the Staff Regulations.

4 Article 14 of the Rules provides for the grant of an allowance to the official in respect of any injury or permanent disfigurement which, although not affecting his capacity for work, constitutes a physical defect and has an adverse effect on his social relations. That allowance is to be determined by analogy with the rates laid down in the invalidity scale referred to in Article 12.

5 That invalidity scale is set out in the annex to the Rules entitled 'Scale of the rates of permanent partial invalidity referred to in Article 12(2) of the Rules ...'. The last paragraph of that annex provides that 'The total allowance for invalidity on several counts arising out of the same accident shall be obtained through addition but such total shall not exceed either the total lump sum of the insurance for permanent or total invalidity or the partial sum insured for the total loss or the complete loss of use of the limb or organ injured'.

6 According to Article 17(1) of the Rules, an official who requests application of the Rules on grounds of an occupational disease must submit a statement to the administration of the institution to which he belongs. Under Article 17(2), the administration must then hold an inquiry in order to obtain all the particulars necessary to determine the nature of the disease, whether it resulted from the official's occupation and the circumstances in which it arose. After seeing the report drawn up following the inquiry, the doctor or doctors appointed by the institutions are to state his or their findings as provided for in Article 19.

7 Article 19 of the Rules provides that decisions recognizing the occupational nature of a disease and assessing the degree of permanent invalidity are to be taken by the appointing authority in accordance with the procedure laid down in Article 21 on the basis of the findings of the doctor or doctors appointed by the institutions and, where the official so requests, after consulting the Medical Committee referred to in Article 23.

8 Article 21 of the Rules places the appointing authority under an obligation to notify the official of the draft decision and of the findings of the doctor or doctors appointed by the institution before it takes a decision pursuant to Article 19. Within a period of 60 days the official may request that the Medical Committee provided for in Article 23 deliver its opinion. Where, on expiry of this period, no request has been made for consultation of the Medical Committee, the appointing authority is to take a decision in accordance with the draft previously supplied.

The collective insurance agreement

9 By concluding with the European Communities the 'Agreement for collective insurance against accidents and occupational diseases' of 28 January 1977 ('the Agreement'), the insurers undertook to cover, under the terms of the Agreement, the financial consequences of the obligations assumed by the Communities under

the Staff Regulations in respect of accidents and occupational diseases suffered by persons to whom Article 73 of the Staff Regulations and the Rules adopted pursuant thereto apply. It is the Communities, which are the sole beneficiaries of the Agreement, that are covered and it is to them that the insurers are to pay the allowances — in terms both of lump sums and default interest — arising under those provisions (Article 1 of the Agreement).

10 According to Article 3(1) of the Agreement, the competent administrative authorities of the Communities are to agree with the insurers on practical provisions relating to information about the occurrence of accidents and occupational diseases and the administration of files so as to enable the insurers to monitor the progress of cases and to facilitate their exercise of the right of recourse against liable third parties and the constitution of reserves as required by legislation on the supervision of insurance. Under Article 3(3) of the Agreement, draft decisions likely to give rise to the award of one of the benefits underwritten (medical expenses — invalidity — death) are to be notified to the insurers for their prior opinion in accordance with the practical provisions referred to in Article 3(1) before they are notified to the interested persons by the competent authority of the Communities.

11 Article 5 of the Agreement provides as follows:

'Failing a settlement out of court, any dispute relating to the performance of this contract and the annexes thereto may be brought before the Court of Justice of the European Communities.

However, the insurers shall forgo recourse to such legal proceedings in the case of medical disputes where the appointing authority's decision determining the pecuniary rights of the victim or those entitled under him is consistent with the prior opinion given by the insurers' expert or with the opinion delivered by the Medical Committee provided for in Article 23 of the rules referred to in Article 1(1) where the insurers' expert was a doctor member of the Medical Committee; in such case,

the insurers shall reimburse to the Communities the whole amount of the sums paid out to the victim or those entitled under him, pursuant to the aforementioned decision of the appointing authority ...'.

12 Under the terms of Article 10(2) of the Agreement, the public limited company J. Van Breda & Co. International (hereinafter 'Van Breda') was appointed as intermediary.

13 A letter dated 27 January 1989 from Van Breda to the European Communities (hereinafter 'the letter of 27 January 1989') confirmed an agreement concluded between the insurers and the European Communities, pursuant to the Agreement, on the procedure applicable to accidents and occupational diseases occurring as from 1 February 1989.

14 Point I of that letter, entitled 'Appointment of doctors', states that it is agreed that the doctor appointed by the appointing authority and approved by the insurers is to act as an expert within the meaning of Article 5 of the Agreement in force at the time and that that doctor may not be the institution's medical officer. Point I goes on to state that decisions of the appointing authority taken in conformity with the opinion given by the doctor appointed by it and approved by the insurers may not be challenged by the insurers, pursuant to Article 5 of the Agreement, provided that the decisions in question have been accepted by the insurers in accordance with the procedural rules laid down in point II of the letter.

15 According to point II of the letter of 27 January 1989, entitled 'Draft decisions — Prior notification to the insurers — Time-limit for responding thereto', the draft decision, which is to be the subject of prior notification to the insurers for their opinion pursuant to Article 3(3) of the Agreement, must be accepted or rejected by the insurers within the shortest possible period of its notification.

16 In addition, the following is agreed in point II of the letter:

'(a) — The insurers shall use their best endeavours to confirm their agreement or disagreement with the draft decision within no more than one month of the transmission of the draft decision to the broker for their opinion.

— If, on the expiry of the one-month period, the insurers have not confirmed their agreement or disagreement, they shall notify the reason to the appointing authority (for example: request for additional information made by the insurers to the doctor, awaiting the criminal file requested by them, etc.) and the period shall be extended by one month.

— If the insurers find that they will not be in a position to confirm their agreement or disagreement before the expiry of the extended period, they shall propose to the appointing authority and the broker that a consultation procedure be initiated in order to determine how matters should proceed and to fix a new period; that period may not exceed four months.

(b) The doctor appointed by the appointing authority and approved by the insurers shall forward his opinion simultaneously to the institution and to the insurers.'

Facts

17 On 26 November 1990 Mr X, an official of the Commission of the European Communities, requested that two illnesses contracted by him whilst he was working for the European Communities be recognized as being occupational diseases. The two diseases were lung cancer and chronic asthmatoid bronchitis. He main-

tained that the diseases resulted from the fact that he had been exposed to asbestos at the Berlaymont building in Brussels.

18 The administration decided to carry out an inquiry and, on 21 May 1991, sent the request and other documents relating thereto to Van Breda. On 6 June 1991 the institution asked Van Breda to give it the name of the doctor whom the assurers wished to conduct the examination of Mr X. On 3 July 1991 Van Breda forwarded the name of Dr Dalem. On the request of Dr Dalem, as the doctor appointed by the institution, the Commission instructed Professor Bartsch to draw up an expert opinion.

19 In his report of 3 February 1992, Professor Bartsch came to the conclusion that Mr X was not suffering from an occupational disease. In view of that expert opinion, Dr Dalem submitted a report on 14 February 1992 stating that an occupational disease was not present.

20 On the basis of the findings of the appointed doctor, the appointing authority notified to Mr X on 17 February 1992 a draft decision rejecting his request for recognition that he was suffering from an occupational disease. On 23 February 1992 Mr X sought the opinion of the Medical Committee and appointed Dr Cognigni to represent him on it. For its part, the appointing authority appointed Professor Brochard at the insurers' proposal. Those two doctors appointed Professor Maltoni by agreement between themselves.

21 On 25 February 1994 the Medical Committee drew up and adopted its report by a majority (Dr Cognigni and Professor Maltoni against Professor Brochard). The report concluded that the bronchopulmonary cancer from which Mr X was suffering was an occupational disease. In addition, the rate of permanent invalidity was assessed at 100%, and, having regard to Article 14 of the Rules, Mr X was granted an allowance of 30% on account of permanent symptoms and severe psychological disturbances. Professor Brochard expressed his disagreement in a minority report dated 25 February 1994. In his view, although a diagnosis of bronchial cancer could not be ruled out, the fibrosis found was not a form of asbestosis. Moreover,

according to the minority report, Mr X's occupation could not have been the chief or preponderant cause of his disease.

22 On 1 March 1994 Professor Maltoni sent the report to the institution's Medical Committee. In his covering letter he stated that the appraisal had been carried out exclusively on a clinical and scientific basis. He asked the institution to contact him if it needed additional particulars concerning the report. Professor Brochard sent his minority report to the institution on 3 March 1994. The institution sent the two reports on 10 March and 18 March 1994 respectively to Van Breda, which forwarded them to the insurers.

23 By letter of 23 March 1994 Van Breda informed the institution that the insurers were studying the documents primarily from the medical point of view. By letter dated 29 March 1994, Van Breda subsequently stated that the insurers wished to put supplementary questions to the doctors on the Medical Committee. Lastly, in a letter of 8 April 1994 it indicated the various points on which the insurers wished to put further questions to the Medical Committee. According to that letter, the insurers wished to seek the opinion of a colleague of Dr Dalem with a view to obtaining a very precise formulation of the supplementary questions to be used as the basis for a possible further consultation of the Medical Committee. In the latter two letters, Van Breda also stated that the extended one-month time-limit referred to in the letter of 27 January 1989 had started to run on 29 March 1994 and would expire on 29 April 1994.

24 By letter of 15 April 1994 the appointing authority informed Mr X of the Medical Committee's findings. The letter stated that the appointing authority was in a position to 'recognize that he was suffering from a rate of total permanent invalidity of 130% and it was a question at this stage of finally settling the medical questions raised by the recognition of his occupational disease'. On 22 April 1994 Mr X was paid the sum of BFR 25 794 194.

25 By letter of 6 May 1994 the Commission informed Van Breda that, in accordance with the majority decision of the Medical Committee, it had paid the aforesaid sum to Mr X. In the Commission's view, the insurers' refusal to accept the Medical Committee's decision and their persistence in putting supplementary questions to the Committee appeared to be an attempt on the part of the insurers to avoid their liability to make reimbursement incumbent upon them under the terms of the Agreement. In its letter the Commission also took the view that the insurers owed it interest from 6 May 1994 on the lump sum paid to Mr X.

26 In a letter dated 28 July 1994 to Van Breda, the Commission, while stressing that it had never expressly refused the insurers' request to put further questions to the members of the Medical Committee, observed that, since the insurers had not notified their supplementary questions, they had renounced their intention to consult the Medical Committee and had therefore accepted its findings.

27 Van Breda replied by letter of 12 August 1994 in which it stated that, since early June 1994, the insurers had been in possession of a number of technical questions which they considered essential to put to the Medical Committee. The Commission's decision to recognize Mr X as suffering from a rate of total permanent invalidity of 130% and to pay him the lump sum corresponding thereto had, however, made it pointless to send the questions to the Medical Committee.

28 By letter dated 16 September 1994 the Commission replied that the appointing authority's decision of 15 April 1994 and the payment of the lump sum to Mr X did not prevent the insurers from putting all such supplementary questions as they thought fit to the Medical Committee before taking a decision on the reimbursement of the lump sum.

29 By letter of 13 October 1994 Van Breda stated that the insurers were not in a position to accept the request for reimbursement. The Commission then decided to bring the present proceedings.

Forms of order sought

30 The Commission claims that the Court should order the insurers to:

— pay the lump sum which is due or allegedly due to Mr X from the Commission under Article 73 of the Staff Regulations;

— pay default interest from 6 May 1994, the date on which the Commission put the insurers on notice;

— pay the costs.

31 The insurers claim that the Court should

principally,

— declare the Commission's claim inadmissible or at the very least unfounded;

— order the Commission to pay the whole of the costs;

in the alternative,

— declare the Commission's claim inadmissible or, at the very least, unfounded in so far as it seeks an order that the insurers reimburse it a lump sum in excess of the lump sum subject to a ceiling of 100% of the amount due in the event of total permanent incapacity;

— make the appropriate order as to costs.

Admissibility

32 The plea raised by the insurers to the effect that the application is inadmissible must be rejected for lack of reasoning and facts in the case-file capable of justifying it.

Substance

33 The Commission bases its claim for reimbursement on the second paragraph of Article 5 of the Agreement, according to which, in the event that the appointing authority's decision determining the pecuniary rights of the victim or those entitled under him is consistent with the opinion given by the Medical Committee and the insurers' expert was a doctor member of that committee, the insurers are obliged to reimburse to the Communities the whole amount of the sums paid out by the latter to the victim or those entitled under him, pursuant to the appointing authority's decision.

34 According to the Commission, it appears from the clear wording of that clause that the insurers are not entitled to raise any plea in order to justify their refusal to reimburse the sum paid to Mr X where the conditions set out therein are satisfied.

That is the case here: the lump sum was paid pursuant to a decision of the appointing authority which was consistent with the opinion of the Medical Committee, one of whose members was the insurers' expert. Given that they themselves had not brought an action before the Court, they were not entitled to base themselves on the distinction between 'medical disputes' and 'legal disputes' allegedly made in that clause and thus rely on legal pleas in order to oppose the claim for reimbursement.

35 For their part, the insurers take the view that the second paragraph of Article 5 of the Agreement has nothing whatsoever to do with the present dispute, which is a purely legal one. They put forward three pleas in law to justify their refusal to make reimbursement. First, when it adopted the decision of 15 April 1994 to pay an allowance to Mr X, the Commission was in breach of contract in so far as it did not comply with the procedure laid down by the Agreement and the letter of 27 January 1989. Secondly, the Medical Committee's report was irregular, thus making the Commission's decision, based on that report, to pay an allowance to Mr X irregular also. Thirdly and alternatively, the total allowance granted to Mr X could in no case have exceeded the ceiling of 100%.

36 It must be observed in the first place that the decision contained in the appointing authority's letter of 15 April 1994 is consistent with the opinion given by the Medical Committee and that the insurer's expert was a doctor member of that committee.

37 Nevertheless, contrary to the Commission's claim, the insurers are still entitled to raise legal pleas in justification of their refusal to reimburse the sum of BFR 25 794 194 which the Commission paid to Mr X pursuant to the decision of 15 April 1994 recognizing Mr X's occupational invalidity.

38 The second paragraph of Article 5 of the Agreement, on medical disputes, constitutes an exception to the general rule, set out in the first paragraph of that article, to the effect that any dispute on the performance of the Agreement and the annexes thereto may, in the absence of a settlement out of court, be submitted to the Court of Justice.

39 It follows that, since the insurers have renounced recourse to judicial proceedings only in the case of medical disputes, they may still contest the obligation to make reimbursement by raising pleas other than ones of a medical nature even where, as in this case, the conditions described in paragraph 36 of this judgment are satisfied.

40 Contrary to the Commission's claim, the distinction between 'medical disputes' and 'legal disputes' is therefore relevant to this case, no matter which contracting party brings the dispute before the Court. It is inconceivable that the contracting parties had the intention to allow the insurers to raise medical pleas as defendants in proceedings before the Court while precluding them from doing so as applicants.

41 Consequently, it is necessary to consider the three pleas raised by the insurers to justify their refusal to make reimbursement.

42 It should first be recalled that, under Article 1 of the Agreement, its purpose is to cover, under the terms set out therein, the pecuniary consequences of the obligations assumed by the Communities vis-à-vis their officials in respect of accidents and occupational diseases as they are laid down by Article 73 of the Staff Regulations and the Rules (hereinafter the 'obligations under the Staff Regulations').

43 In this regard, it should be observed in the first place that the stipulations of the Agreement can have no effect on an institution's obligations under the Staff Regulations vis-à-vis its officials.

44 Admittedly, the insurers undertook to cover the pecuniary consequences of the obligations under the Staff Regulations only on the terms set out in the Agreement and the possibility of such terms limiting an institution's ability to obtain reimbursement from the insurers of sums which are due from it by virtue of its obligations under the Staff Regulations is therefore not precluded.

45 It appears from the Court's case-law, however, that the obligations of the insurers may not be substituted for the obligations under the Staff Regulations, thus depriving officials of the particular guarantees secured for them by the Staff Regulations (see to this effect Case 18/70 *Duraffour* v *Council* [1971] ECR 515, paragraph 15, and Case 115/76 *Leonardini* v *Commission* [1978] ECR 735, paragraph 11).

46 It should next be observed that the Agreement, which refers to the Communities' obligations under the Staff Regulations as far as the financial risks which the insurers have undertaken to underwrite are concerned, must be interpreted in the light of Article 73 of the Staff Regulations and the Rules, which lay down those obligations, in so far as the stipulations of the Agreement do not exclude such an interpretation.

47 It is in the light of those considerations that the three pleas raised by the insurers must be considered.

The alleged breach of the contractually stipulated procedure

48 The insurers accuse the Commission in the first place of having adopted the decision of 15 April 1994 as appointing authority without complying with the contractual rules laid down by the Agreement, in particular Article 3(1) and (3) thereof, or with the procedures and practical provisions set out in the letter of 27 January 1989.

49 They maintain that, contrary to those rules and procedures, the Commission failed to send the draft decision in question to the insurers beforehand. In addition, they claim that it notified the decision to Mr X on 15 April 1994 and then proceeded to implement it without even first informing the insurers.

50 That argument raises the question whether, and to what extent, Article 3(1) and (3) of the Agreement and the procedure referred to in the letter of 27 January 1989 apply in this case.

51 It is uncontested that the Commission discharged the obligation laid down in Article 3(1) to communicate to the insurers the information enabling them to monitor the progress of the case in question.

52 On the other hand, the insurers assert that the Commission failed to fulfil its obligation under Article 3(3) of the Agreement to notify a draft decision based on the Medical Committee's report of 25 February 1994 in accordance with the procedure agreed in the letter of 27 January 1989.

53 That argument of the insurers is based on a misinterpretation of the provisions of the Agreement and of the letter of 27 January 1989.

54 It appears from the wording of point I, the second indent of point II(a), and point II(b) of the letter in question that the draft decision referred to therein is that drawn up by the appointing authority on the basis of the findings of the doctor appointed by it and approved by the insurers.

55 That interpretation is borne out by the structure of the procedure provided for in Articles 19 and 21 of the Rules.

56 It appears from Article 19 that decisions on the recognition of the occupational origin of the disease are taken by the appointing authority either on the basis of the findings of the doctor or doctors appointed by the institutions or, if the official so requests, after consulting a medical committee.

57 It is only in the first case that reference is made in Article 21 to a draft decision which, before taking a decision under Article 19, the appointing authority has to notify to the official in order to enable him to request within 60 days, if he thinks fit, that a medical committee be consulted and which may be notified to the insurers for their opinion and constitute, in the event that they disagree, the subject of the consultation provided for in point II of the letter of 27 January 1989.

58 In contrast, in the event of consultation of the Medical Committee, whose medical appraisals properly so called, where given in lawful circumstances, must moreover be regarded as definitive and may not be disputed in the absence of any new matter of fact arising (see, in particular, Case 107/79 *Schuerer* v *Commission* [1980] ECR 1845, paragraph 10, Case 2/87 *Biedermann* v *Court of Auditors* [1988] ECR 143, paragraph 8, and Case T-1/92 *Tallarico* v *Parliament* [1993] ECR II-107, paragraph 67), the Rules do not provide for the notification by the appointing authority of a draft decision which has to be taken on the basis of the Medical Committee's findings.

59 It follows from the foregoing considerations that the draft decision referred to in Article 3(3) of the Agreement and in the letter of 27 January 1989 is the one prepared by the appointing authority on the basis of the findings of the doctor or doctors whom it appoints and that therefore the contractual procedure provided for therein does not apply in the instant case where the decision of 15 April 1994 was taken on the basis of the Medical Committee's opinion.

60 No more can the Commission be reproached with having notified the decision to the person concerned on 15 April 1994 before it received the questions which the insurers wished to put to the Medical Committee.

61 On 15 April 1994, the Commission, which had forwarded the Medical Committee's findings to the insurers on 18 March 1994, only had the letter of 8 April 1994 in which Van Breda mentioned the various points on which the insurers wished to question the Medical Committee and stated that a questionnaire would be submitted to that end by 29 April 1994.

62 In those circumstances and having regard to the time which the handling of the case had already taken and to the state of health of the person concerned, the Commission would have failed to fulfil its obligations under the Staff Regulations vis-à-vis that person had it postponed its decision pending such a questionnaire and the answers, if any, from the Medical Committee.

63 Moreover, the adoption of the decision of 15 April 1994 and the payment of the lump sum to Mr X do not preclude the case being examined further in the context of the contractual relationship between the insurers and the Communities or, in particular, the insurers contesting whether any obligation to make reimbursement on their part exists.

64 In view of the foregoing, the first plea raised by the insurers must be rejected.

Irregularity of the Medical Committee's report

65 Secondly, the insurers contest whether the Medical Committee's findings were regular. They maintain that the decision of 15 April 1994, which was based on those irregular findings, is also irregular. As a result, the Commission stepped outside the scope of the Agreement and is deprived of the right to reimbursement pursuant thereto.

66 It should be recalled in the first place that the insurers have renounced recourse to judicial proceedings on medical disputes, as appears from the second paragraph of Article 5 of the Agreement. Since the Agreement refers to the Communities' obligations under the Staff Regulations vis-à-vis officials who are victims of accidents or occupational diseases, the scope of that renunciation should be interpreted in the light of the case-law on judicial review of the regularity of opinions delivered by medical committees.

67 According to that case-law, the review by the Court may not extend to medical appraisals properly so called, which must be considered definitive provided that the conditions in which they are made are regular. The Court may review only the regularity of the constitution and functioning of such committees and the regularity of the opinions which they issue. From that point of view, the Court has jurisdiction to examine whether the opinion contains reasons enabling the reader to assess the considerations on which the conclusions which it contains were based (Case 257/81 *K.* v *Council* [1983] ECR 1, paragraph 17) and whether it has established a comprehensible link between the medical findings which it contains and the conclusions reached by the Medical Committee (Case 277/84 *Jänsch* v *Commission* [1987] ECR 4923, paragraph 15, and Case T-165/89 *Plug* v *Commission* [1992] ECR II-367, paragraph 75).

68 It follows that the complaints relating to the regularity of the Medical Committee's report of 25 February 1994 may be examined in a dispute brought before the Court pursuant to Article 5 of the Agreement.

69 However, in this instance it appears from the case-file that the insurers had the opportunity to put further questions to the members of the Medical Committee on certain aspects of the considerations and reasoning of its opinion which they deemed to be open to criticism. Yet they confined themselves to stating an intention to put such questions without acting on it, thus missing an opportunity to obtain more precise details and explanations of those points of the opinion which they considered dubious or irregular.

70 In those circumstances, the Commission must be entitled to claim reimbursement of the lump sum paid to Mr X further to its decision based on the Medical Committee's report in so far as that report was not vitiated by manifest irregularities.

71 It is in the light of those considerations that the three complaints made by the insurers against the Medical Committee's report must be considered.

72 In their first complaint, the insurers assert that, since the earlier reports of both Dr Dalem and Professor Bartsch and the minority report of Professor Brochard are not refuted in the Medical Committee's opinion, that opinion contains no explanation of the manifest contradiction between its own findings and those contained in those two reports, even though those reports were based on scientifically substantiated and argued considerations. Consequently, the Medical Committee's findings are vitiated by an insufficient statement of reasons, rendering them irregular.

73 In this connection, it should first be recalled that it has been consistently held that the Medical Committee's task, which consists in considering medical questions entirely objectively and independently, requires that it be allowed complete freedom of appraisal. Consequently, it is for the Medical Committee to decide to what extent account should be taken of medical reports previously drawn up (*Biedermann* v *Court of Auditors*, paragraph 19).

74 In this case, it does not appear from the Medical Committee's opinion that it did not take the opinions of the three experts into consideration. On the contrary, apart from the fact that it expressly refers to the Commission's file containing Dr Dalem's and Professor Bartsch's opinions, the fact that Professor Brochard himself was on the Medical Committee bears out — as the Advocate General stresses in point 28 of his Opinion — the Commission's claim that the Medical Committee took account of that doctor's opinion and of the earlier reports of the other two experts. Besides, it appears from the case-file that Professor Brochard's minority report is based in part on considerations similar to those of those other two experts.

75 In addition, given that the medical report states, while referring to laboratory analyses, that Mr X is suffering from a bronchopulmonary cancer and that examination of his pleuro-pulmonary tissue revealed the presence of forms of asbestos in certain concentrations, the report cannot be criticized for not containing any explanation of the divergence of its findings from those of the other experts involved.

76 Consequently, that complaint cannot be upheld.

77 In their second complaint, the insurers argue that the Medical Committee has not provided sufficient reasons for its conclusion that Mr X had an asbestos-related disease in so far as it based that conclusion simply on the fact that he had been exposed to asbestos fibres and that there were fibres in his lung, whereas, in the present state of medical science, such findings do not warrant such an inference.

78 That complaint cannot be upheld either.

79 It should be observed that in its opinion the Medical Committee considered that Mr X was suffering from a bronchopulmonary cancer, linked with a fibrosis, also affecting the septum, which, on the basis of detailed facts, had to be regarded as being an occupational disease.

80 In so far as it made its diagnosis of bronchopulmonary cancer on the basis of the results of an earlier examination and its own re-examination of the slides and, amongst other considerations of detailed facts, basing itself on the presence of various forms of asbestos in the pleuro-pulmonary tissue and exposure to asbestos and concluding from this that the disease from which Mr X was suffering was occupational in origin, the Medical Committee provided sufficient reasons for its conclusions.

81 The insurers maintain that, as medical science stands at present, that conclusion of the Medical Committee cannot be based on the findings which it made.

82 However, questions concerning the origin of a disease are by their nature medical questions (Case C-185/90 P *Commission* v *Gill* [1991] ECR I-4779, paragraph 25).

83 It follows that it is not for the Court to extend its review to cover such appraisals of the Medical Committee, which must be regarded as definitive, since they were made under regular circumstances.

84 By their third complaint the insurers criticize the Medical Committee's opinion in so far as it assessed the degree of permanent invalidity at 100% without stating whether it was based on the scale annexed to the Rules or mentioning the bases for the calculation which prompted it to adopt that rate.

85 In this regard, it should be observed that permanent total invalidity had already been established by the Invalidity Committee under the procedure laid down by Article 78 of the Staff Regulations and that the purpose of having recourse to the procedure laid down in Article 73 was to determine whether Mr X was suffering from an occupational disease.

86 Whilst it is true that, under the terms of Article 25 of the Rules, recognition of total or partial permanent invalidity pursuant to Article 73 of the Staff Regulations and to the Rules is in no way to prejudice application of Article 78 of the Staff Regulations and vice versa, the independence of those two procedures does not preclude the Medical Committee — as the Advocate General emphasized in point 29 of his Opinion — from taking account, in the context of the procedure provided for by Article 73, of the conclusions arrived at in the procedure provided for in Article 78.

87 That complaint must therefore also be rejected.

The grant of an allowance of 130%

88 Thirdly and in the alternative, the assurers assert, on the basis of the last paragraph of the scale annexed to the Rules, that the total allowance granted to Mr X could in no event exceed the ceiling of 100% and that consequently the Commission's decision is unlawful in so far as it grants an allowance of 130%.

89 That plea is based on a misinterpretation of the last paragraph of the scale in question.

90 That paragraph expressly refers to the overlapping of invalidity on several counts arising out of the same accident, that is to say to the allowance referred to in Article 12(2) of the Rules, and therefore is not concerned with the allowance which, under Article 14 of the Rules, may be granted to an official in respect of any injury or permanent disfigurement which, although not affecting his capacity for work, constitutes a physical defect and has an adverse effect on his social relations. It is only by analogy that the second paragraph of Article 14 refers to the rates laid down in the invalidity scale and referred to in Article 12(2).

91 In view of the whole of the aforementioned considerations, it must be held that the insurers are not justified in refusing to indemnify the Commission for the amount which the latter paid to Mr X pursuant to Article 73 of the Staff Regulations.

92 Consequently, the insurers must be ordered to pay the Commission the sum of BFR 25 794 194, plus interest at the rate of 8% from 6 May 1994, the date on which they were put on notice by that institution.

Costs

93 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the defendants have been unsuccessful, they must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Orders Royal Belge SA, Assurances Générales de France SA, Caisse Nationale de Prévoyance, Les Mutuelles du Mans, Assurantie van de Belgische Boerenbond SA, Hannover SA, Securitas AG and Condor to pay the Commission the sum of BFR 25 794 194, plus interest at the rate of 8% from 6 May 1994;**

2. **Orders Royal Belge SA, Assurances Générales de France SA, Caisse Nationale de Prévoyance, Les Mutuelles du Mans, Assurantie van de Belgische Boerenbond SA, Hannover SA, Securitas AG and Condor to pay the costs.**

Mancini Kakouris Kapteyn

Delivered in open court in Luxembourg on 24 October 1996.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber