JUDGMENT OF THE COURT (THIRD CHAMBER)
1 DECEMBER 1983 [1]

Charles H. V. Depoortere
v Commission of the European Communities

(Official — Convertible accounts)

Case 217/82

Non-contractual liability — Conditions — Illegality — Damage — Chain of causality (EEC Treaty, Art. 215, second paragraph)

In Case 217/82

CHARLES H. V. DEPOORTERE, an official of the Commission of the European Communities, residing at 5 Rue des Floralies, 1200 Brussels, represented by Guy Dieudonné of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Yves Prussen, Advocate, 15, Côte d'Eich,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Auke Haagsma, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION in the terms set out in the applicant's conclusions,

1 — Language of the Case: Dutch.

THE COURT (Third Chamber),

composed of: Y. Galmot, President of Chamber, U. Everling and C. Kakouris, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

1. Belgo-Luxembourg legislation relating to exchange transactions is characterized by the existence of two distinct exchange markets, namely, on the one hand, a regulated market on which the margins within which Belgian and Luxembourg francs fluctuate in relation to other currencies are maintained within certain limits, as a result of the intervention of the National Bank of Belgium, and, on the other hand, a free market on which the rate is subject to the effect of supply and demand, there being no intervention on the part of the National Bank of Belgium. In consequence, the exchange rates applicable on the two markets develop separately, and the rate of Belgian and Luxembourg francs on the regulated market is, as a general rule, higher than that on the free market. The relevant legislative provisions enumerate the transactions and the conditions in which the purchase or sale of the currency may or must be carried out, both on the regulated market and on the free exchange market.

However, the Belgian and Luxembourg authorities considered that it was not appropriate to apply such legislation to officials of the Communities who were not Belgian or Luxembourg nationals. They therefore devised a special system for the benefit of those officials. Initially, that system conferred upon those officials a general right to transfer assets abroad from a "normal" account, that is to say an account such as may be opened by Belgian residents ("régnicoles") or Luxembourg residents, and to buy currency on the regulated market, with

the sole proviso that the sums used to that end should not be larger than the amount of the salary paid by the Community.

With a view to facilitating control, it was decided in the course of the 1960s to introduce special foreign convertible accounts, through which all the exchange transactions on the regulated market could be effected. Only the salaries paid by the Communities and sums transferred from other convertible accounts could be deposited in such accounts. However, such accounts could only be opened by officials of the Communities who were not Belgian or Luxembourg nationals. Officials of Belgian or Luxembourg nationality were only permitted to open "normal" accounts, which gave them access to the regulated market only for specific transactions.

Many officials adopted the practice of using the special foreign convertible accounts in order to buy foreign currency on the regulated market which they immediately re-sold on the free market ("arbitrage"), thereby making a profit on the difference between the two rates ("exchange premium").

In order to put a stop to that practice, which was considered an improper use of the facilities, in December 1981 the Institut Belgo-Luxembourgeois des Changes [The Belgian and Luxembourg Exchange Institute] amended the existing system in such a way that, in the future, only 25% of the salary could be deposited in a special foreign convertible account, and the balance was to be paid into an account which was said to be assimilated to those held by "régnicoles".

However, that new legislation had the effect of depriving officials of their complete freedom in deciding whether to use their salary on the territory of the Benelux Economic Union or outside that territory and from benefiting, in the latter case, from the regulated market. Further, the Community institutions, in the person of the respective directors of administration, made representations to the Institut Belgo-Luxembourgeois des Changes, requesting that officials who were not of Belgian or Luxembourg nationality might once again be permitted to have their whole salary paid into a convertible account.

On 1 June 1982, the Institut Belgo-Luxembourgeois des Changes published a circular according to which officials who were not Belgian or Luxembourg nationals were once again authorized to have the whole of their salary credited to a special foreign convertible account, on condition however that the institution which employed them countersigned a declaration by which the holder of the account undertook to refrain, in particular, from:

"any transaction designed to abuse the above-mentioned provisions, such as arbitrage, that is to say the purchasing of foreign currency on the regulated market or the transfer of currency into foreign convertible accounts with the aim of obtaining means of payment intended to cover current expenses in the Benelux Economic Union".

2. The applicant, Mr Depoortere, who is of Belgian nationality, has been an official of the Commission of the European Communities since 1972 and is now in Grade A 4. His salary is paid by the Commission into a "normal" account, which is not convertible and which he designated for that purpose.

He took the view that the Commission had thereby failed to respect his legitimate interest in the matter of the payment of sums which were owed to

him, because it had not adopted within a reasonable period the measures required by the facts and by law. Therefore, on 17 November 1981, he lodged a complaint, in accordance with Article 90 (2) of the Staff Regulations of Officials of the European Communities. By letter of the Commission of 18 May 1982, that complaint was dismissed as unfounded.

By application lodged at the Court Registry on 12 August 1982, Mr Depoortere brought the present action.

II — Conclusions of the parties

The applicant claims that the Court should:

Declare the application admissible and well founded;

Consequently:

Annul the reply of the Commission of the European Communities dated 18 May 1982 to the complaint submitted by the applicant to the Commission on 17 November 1981;

Abolish the discrimination regarding remuneration and the mechanisms relating thereto, in particular by ordering the Commission to pay the remuneration into similar accounts which may be used for similar purposes by all officials;

Order that the infringement of Article 12 of the Protocol on the Privileges and Immunities of the Communities should cease;

Award the applicant payment of income of which he has been deprived since February 1981 amounting to BFR 125 500, which amount may be increased in the course of the proceedings;

Order the defendant to pay the costs.

The *Commission* claims that the Court should:

Declare the application unfounded;

Order the applicant to pay the costs.

III — Submissions and arguments of the parties

1. Infringement of Article 63 of the Staff Regulations and of Article 17 (1) of Annex VII thereto

(a) *Mr Depoortere* maintains that, pursuant to the above-mentioned provisions, officials must be paid "in the currency of the country in which the official performs his duties". That provision gives expression to the principle that officials must be treated equally as regards the payment of their remuneration. The word "paid" means in law the moment at which the official is in possession of the sums paid, either because he has received a cash payment or because the amount in question has been credited to his bank current account.

In consequence, the Commission should ensure that the net amount which is ultimately paid to the officials is identical and of the same value, whatever their nationality. As regards the salaries of Belgian officials working in Belgium, the Commission fails to comply with that requirement inasmuch as it neglects to take into consideration the events which occur between the stage at which it draws up the orders for the transfer of funds (orders for payment to financial institutions) and that at which the orders for payment are actually credited to the accounts of the payees.

The applicant explains, in that respect, that in Belgium, as a result of the existence of two exchange markets, there

are two sorts of Belgian franc, the value of which may differ considerably. On the one hand, there is the convertible franc, which corresponds to the rate of exchange on the regulated market and, on the other hand, there is the financial franc or free franc, which corresponds to the rate of exchange on the free market. The difference between the two, known as the "exchange premium", has at times reached between 5% and 12%.

The Staff Regulations do not stipulate in which franc officials in Belgium are to be paid. However, payment should normally be made in the currency which is used for internal payments. That interpretation would ensure that equal remuneration would have the same purchasing power.

(b) The *Commission* replies that the remuneration of officials employed in Belgium is paid in Belgian francs and that in that respect no distinction is made on the ground of the official's nationality.

In that context the Commission states that, in its view, there are not two different Belgian francs, but only two sorts of bank account, namely, on the one hand, the accounts of régnicoles or residents and persons treated as such, which gives access to the regulated market only for certain exchange transactions, and, on the other hand, the convertible accounts, which give access thereto for all exchange transactions. Further, the difference does not lie in the nature of the currency, but rather in that of the account to which that currency is credited. It follows that in paying the amounts owed into the account indicated by the official, the Commission has fulfilled its obligations. In no circumstances can it be held responsible for the existence of two distinct exchange markets in Belgium, or for Belgian legislation which provides for two sorts of bank account.

The Commission adds that, pursuant to Article 45 of Commission Regulation No 75/375 of 30 June 1975 on measures of implementation of certain provisions of the Financial Regulation of 25 April 1973 (Official Journal 1975, L 170, p. 1), the payment of the monthly remuneration must be made by cheque or by postal or bank transfer order. In accordance with that provision, the Commission opted for payment by bank transfer order.

2. *Breach of the principle that there should be no discrimination on the basis of nationality*

(a) *Mr Depoortere* submits in that respect that the rules introduced by the Institut Belgo-Luxembourgeois des Changes relating to exchange transactions are discriminatory inasmuch as they treat non-Belgian officials of the Communities as "foreigners" solely on the basis of their nationality. In the applicant's view, all the officials of the Communities, whatever their nationality, are "régnicoles" in view of the fact that they are all required, under Article 20 of the Staff Regulations, to reside at their place of employment.

The Commission failed to fulfil its obligation not to discriminate against its Belgian staff inasmuch as it did not oppose, from the outset, the measures taken by the Institut Belgo-Luxembourgeois des Changes. Moreover, the applicant maintains that the disputed national regulation does not compel the Commission to pay the remuneration of non-Belgian officials into special foreign convertible accounts. Under that legislation it would be equally possible for the Commission to pay their remuneration into accounts assimilated to the accounts of "régnicoles", as it does in the case of the salaries of Belgian officials.

Mr Depoortere adds that non-Belgian and non-Luxembourg officials receive an expatriation allowance and may rely on the provisions relating to transfers in Annex VII to the Staff Regulations for payments abroad which they are obliged to make and which they can substantiate. Thus the fact that they may have certain financial obligations in their country of origin may not be advanced as a reason for granting them, in addition, privileged status for the remaining part of their salary.

(b) The *Commission* considers that the principle of equality is respected. No distinction is made as regards the payment of salaries between Belgian or Luxembourg officials and other officials, since the two groups are paid in Belgian francs.

More specifically, Article 48 (2) of the Treaty and Article 7 (1) of Regulation No 1612/68 have not been infringed, inasmuch as those provisions concern only discrimination as regards employment, remuneration and other conditions of work and employment. In this case, the difference in salary relates to the nature of the bank accounts which officials may open and the opportunities which those accounts offer them in relation to the purchase of currency.

In any case, there is no unlawful discrimination. The Court has defined discrimination as the treating of similar situations differently or the treating of different situations identically (judgment of 17. 7. 1963, Case 13/63, *Italy* v *Commission,* [1963] ECR 167). In this instance, there is a difference between, on the one hand, non-Belgian and non-Luxembourg officials, who have had to establish themselves in Belgium as the result of taking up their duties in the Communities and who retain certain financial obligations in their countries of origin or who wish to keep money there for other reasons, and, on the other hand, Belgian and Luxembourg officials, whose obligations are similar to those of their compatriots who are not in the service of the Communities.

That assessment is confirmed by the fact that retired officials who are not of Belgian or Luxembourg nationality and who, of their own accord, continue to reside in Belgium or Luxembourg may retain a special convertible account for a period of three years only from the date on which they leave the service. If, after the expiry of that period, they decide to continue to reside there, they are treated, for the purposes of the exchange legislation, in the same way as other residents in Belgium or Luxembourg.

3. Infringement of the First Directive of 11 May 1960 for the implementation of Article 67 of the Treaty

(a) *Mr Depoortere* maintains that there is a breach of the general principles governing the application of Articles 1 and 2 of the directive, inasmuch as the Commission, in contravention of those provisions, tolerates "appreciable and lasting" differences between the rates on the official exchange market and those on the free market.

Pursuant to Article 1 (2) of the First Directive, the rates applied on an exchange market on which the fluctuations of exchange rates are not officially restricted "must not show any appreciable and lasting differences from those ruling for payments relating to

current transactions". The same paragraph provides, in addition, that the Monetary Committee should monitor the development of exchange rates and report on the matter to the Commission, which, if it finds that the rates show "appreciable and lasting differences", will initiate the procedure provided for in Article 169 of the Treaty.

The applicant maintains that, in this case, the matter should have been brought before the Monetary Committee, in view of the fact that Belgium clearly failed to comply with the obligation arising from the above-mentioned provision.

(b) The *Commission* replies that those provisions show that only differences which are "appreciable and lasting" are prohibited. In order to assess whether that is the case, the Commission relies on the assistance of the Monetary Committee. In this case, that Committee had submitted no report which might allow the Commission to conclude that an "appreciable and lasting" difference existed.

Moreover, the Commission has a margin of discretion both as regards the assessment of the existence of such a difference and the commencement of proceedings for failure of a State to fulfil its obligations under the Treaty. In that respect, the Court held in its judgment of 1 March 1966 (Case 48/65, *Lütticke* [1966] ECR 19) that a private individual could not require the Commission to commence proceedings for failure of a State to fulfil its obligations under the Treaty in a specific case.

4. Infringement of Article 12 (c) of the Protocol on the Privileges and Immunities of the European Communities

(a) *Mr Depoortere* states, in that connection, that in accordance with the above-mentioned provision, "in the territory of each Member State and whatever their nationality, officials and other servants of the Community shall ... in respect of currency or exchange regulations, be accorded the same facilities as are customarily accorded to officials of international organizations". That rule was implemented by Article 1 of Regulation No 549/69 of the Council of 25 March 1969 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply (Official Journal, English Special Edition 1969 (I), p. 119). That article expressly provides that Article 12 (c) of the Protocol applies to all officials.

The system introduced by the Institut Belgo-Luxembourgeois des Changes represents a facility "customarily accorded to officials of international organizations", within the meaning of Article 12 (c) of the Protocol. The applicant admits that, in that respect, the advantage in question is quite exceptional inasmuch as it derives from the existence of two exchange markets in Belgium, which is unique among the host countries of major international organizations. Nevertheless, that advantage, which was voluntarily accorded, has become in itself a facility customarily accorded, at least in the countries which have accorded it, as a result in particular of its long existence, of the legal recognition granted to it by the Commission and of the fact that the Belgian Minister for Foreign Affairs has recognized that it was accorded in pursuance of Article 12 (c) of the Protocol. It follows that Belgium has itself created an additional facility which it is bound by and which it cannot

withdraw without an amendment to the Protocol. The principle of non-discrimination requires that such a facility be applied equally to Belgian officials.

The complaint made against the Commission is that it has failed to make every effort, in accordance with its duty as custodian of the Treaties, to demand that the system instituted by the Institut Belgo-Luxembourgeois des Changes be applied for the benefit of the applicant. In addition, the Commission should have taken action pursuant to Article 19 of the Protocol on the Privileges and Immunities in order to remove the inequality in the treatment of officials, either by requiring that the facility be abolished, or by demanding that it be applied equally to its Belgian officials employed in Belgium.

(b) The *Commission* accepts that neither Article 12 of the Protocol on the Privileges and Immunities nor Article 1 of Regulation No 549/69 establishes a distinction between officials possessing the nationality of the country where they perform their duties and other officials.

However, the real significance of the privileges and immunities listed in Article 12 of the Protocol depends on the wording of each paragraph thereof. The advantages referred to under (c) apply only in so far as international practice is to accord such facilities to officials of international organizations. A comparative study of the situation of officials of a number of international organizations shows that it is international practice not to accord exchange facilities to officials who are nationals of the State in which they are employed.

In that respect, Section 18 of Article 5 of the Convention on the Privileges and Immunities of the United Nations and Article 6 of the Convention on the Privileges and Immunities of the Specialized Agencies, together with similar provisions of numerous Western European organizations such as the Council of Europe, the Organization for Economic Cooperation and Development, the Western European Union and the European Space Agency, provide that the officials of those organizations, as far as exchange facilities are concerned, enjoy the same privileges as officials of a comparable rank belonging to diplomatic missions accredited to the Government in question. Article 38 of the Vienna Convention on Diplomatic Relations establishes that the State to which such officials are accredited is not under an obligation to accord exchange facilities to diplomatic servants who are nationals of that State or who are permanently resident in that State.

It follows, in this case, that the applicant cannot infer from Article 12 (c) of the Protocol rights relating to exchange facilities for officials whose place of employment is in Belgium or in Luxembourg and who are nationals of one of those countries.

In addition the Commission states that the privileges which international officials enjoy are conferred exclusively in the interest of the organization in order to ensure their independence. Consequently, an official is not entitled to exploit them for his own benefit. In the context of the present case, it should be observed that it is in the interests of the Communities that officials not of Belgian or Luxembourg nationality who have come to Belgium or Luxembourg to fill a post in the Communities and who

receive their salary in Belgian francs have the guarantee of being able to repatriate money to their country of origin at the official rate of exchange prevailing on the regulated market. On the other hand, no such interest for the Communities exists as far as Belgian or Luxembourg officials are concerned, since, for them, no such monetary problem arises.

5. Infringement of Council Decision No 70/243 of 21 April 1970 on the Replacement of Financial Contributions from Member States by the Communities' own Resources

(a) *Mr Depoortere* submits that all the Communities' own resources are *ipso facto* foreign assets as far as Belgium is concerned and, consequently, if they are expressed in Belgian francs, are convertible Belgian francs. In practice, the Commission's accounts in Belgian francs are special foreign accounts.

By agreeing to pay into the accounts of "régnicoles" the sums which are payable to Belgian or Luxembourg officials, the Commission assists in converting convertible francs directly into free francs (financial francs). In other words, it assists in converting its own resources, which are freely convertible on the regulated market, into financial francs, which are no longer capable of being freely convertible.

This amounts to acceptance of the view that a part of the Communities' own resources obtained in Belgium is constituted specifically of financial francs and is to be used specifically for the payment of sums owed to Belgian or Luxembourg officials. That is contrary to the principle that budgetary revenue from a particular source should not be earmarked for specific purposes (Article 3 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities, Official Journal 1977, L 356, p. 1). That principle excludes the possibility of using contributions in the currency of Member States for specific purposes and particularly in relation to methods of payment which differ according to nationality.

(b) The *Commission* denies that the methods of payment vary according to the nationality of the officials. What may vary is the nature of the bank account into which the salaries are paid. That difference, which is in any event justified, derives from the Belgian provisions applicable and not from the methods of payment applied by the Commission.

6. Action to establish the liability of the Commission

(a) *Mr Depoortere* states that this head of claim is not based on an action arising from the salaried relationship between officials and the institution, but relates to the non-contractual liability of the Community (Article 215 of the EEC Treaty). The Commission has failed to defend the applicant's monetary interests and may, therefore, be held liable for negligence.

The loss for which the Commission is liable amounts to BFR 125 500, to be increased, if necessary, in the course of the proceedings. The loss is constituted by the loss of earnings calculated by applying to each monthly payment from 15 February 1981 the exchange premium, that is to say the difference, expressed as a percentage, between the selling rate offered by the banks for currency on the regulated market and the bank buying rate for the currency in question on the free market. A table containing the exchange premiums

applicable between February and November 1981 is annexed to the application (Annex 6).

According to the applicant, that loss was caused by the Commission, which, contrary to the principle of non-discrimination, deliberately opted to pay salaries into different accounts and failed to take the necessary measures to guarantee equal treatment for its officials in Belgium.

The *Commission* objects, in the first place, that direct arbitrage, in relation to which the applicant establishes the alleged loss, has always been considered an improper use of the facilities offered, even if it has never been declared illegal by the Belgian or the Community authorities.

Moreover, since arbitrage was possible by virtue of the Belgo-Luxembourg provisions, it was for the national authorities, and not the Commission, to adopt the necessary measures in the matter; this was in fact done by the publication of the circular of the Institut Belgo-Luxembourgeois des Changes of 1 June 1982.

Finally, the Commission contends that, since an individual may not demand that proceedings under Article 169 of the Treaty be commenced, he is equally not entitled to demand compensation for a loss arising from the fact that such proceedings were not commenced.

IV — Oral procedure

The parties presented oral argument at the sitting on 15 September 1983.

The Advocate General delivered his opinion at the sitting on 27 October 1983.

Decision

1 By application lodged at the Court Registry on 12 August 1982, Mr Depoortere, an official of the Commission of the European Communities in Grade A 4, lodged an application against the Commission in connection with the Belgo-Luxembourg rules relating to exchange transactions and, more especially, the rules on special foreign convertible accounts.

2 It should be recalled that there are two distinct exchange markets for the Belgian and Luxembourg franc, namely, on the one hand, a regulated market on which the margins of fluctuation in relation to other currencies are maintained within certain limits as a result of the intervention of the National Bank of Belgium, and, on the other hand, a free market on which the rate is subject to the effect of supply and demand and there is no intervention on the part of the National Bank of Belgium. The exchange rates applicable on the two markets therefore develop separately, and the rate of the Belgian and Luxembourg franc on the regulated market is, as a general rule, higher than

that on the free market. The relevant provisions enumerate the transactions and the conditions in which the purchase or sale of the currency may or must be carried out, both on the regulated market and on the free exchange market.

3 Considering that the automatic application of those provisions to officials of the Communities who were not Belgian or Luxembourg nationals would not be equitable, the Belgian and Luxembourg authorities in the course of the 1960s set up a special system for those officials in the form of special convertible foreign accounts. Those accounts are distinguished, on the one hand, by the fact that only the salaries paid by the Communities and sums transferred from other convertible accounts may be deposited in such accounts and, on the other hand, by the fact that they permit all exchange transactions to be effected on the regulated market. However, such accounts cannot be opened for officials of the Communities who are Belgian or Luxembourg nationals, who are permitted to open only non-convertible accounts which grant access to the regulated market for certain specific transactions only.

4 In accordance with the rules set out above, the salary of the applicant, who is of Belgian nationality, was paid by the Commission into a non-convertible account which he had designated for that purpose. Considering that the Commission had thereby "failed to respect his legitimate interest in the matter of the payment of sums owed to him, because it had not adopted at the proper time the measures required by the facts and by law", he submitted on 17 November 1981 a complaint in accordance with Article 90 (2) of the Staff Regulations of Officials.

5 That complaint was rejected by decision of the Commission of 18 May 1982, and the applicant then lodged this application by which he in substance seeks to obtain, on the one hand, the payment of his salary into a special foreign convertible account and, on the other hand, the payment of the sums of which he has been deprived since February 1981 as a result of the payment of his salary into a non-convertible account.

6 As regards the part of the application claiming payment of salary into a convertible account, it should be remembered that, according to Articles 90 (2) and 91 (1) of the Staff Regulations of Officials the Court has jurisdiction in disputes between the Communities and any person to whom the Staff

Regulations apply regarding the legality of an act adversely affecting such persons, either where the institution concerned has taken a decision or where it has failed to adopt a measure prescribed by the Staff Regulations. In addition, according to Article 91 (2) of the Staff Regulations, an appeal shall lie only if it is lodged following the express or implied rejection of a complaint, which, where it is directed against a failure to adopt a measure, must have been preceded by a request to the appointing authority that it take a decision, within the meaning of Article 90 (1).

7 Those conditions are not fulfilled in this case. In fact, the applicant has by no means indicated, either in his application or during the subsequent proceedings before the Court, what, in his contention, the act adversely affecting him consists in, nor has he first requested the appointing authority to take a decision relating to him.

8 That part of the application must therefore be dismissed as inadmissible.

9 In relation to the part of the application claiming payment to the applicant of the sums of which he claims he has been deprived, the applicant stated during the proceedings that that claim was to be regarded as a claim for damages under the second paragraph of Article 215 of the Treaty.

10 As the Court has repeatedly decided, in particular in the judgments of 2 July 1974 in Case 153/73, *Holtz & Willemsen* v *Council and Commission*, [1974] ECR 675, and of 4 March 1980 in Case 49/79, *Pool* v *Council* [1980] ECR 569, the Community's non-contractual liability depends upon the coincidence of a set of conditions as regards the unlawfulness of the acts alleged against the institutions, the fact of damage, and the existence of a direct link in the chain of causality between the wrongful act and the damage complained of.

11 The applicant has stated that the sums of which he has been deprived, which he quantifies at BFR 125 500, correspond to the sum resulting from the application to each monthly payment of remuneration from February 1981 of the exchange premium, that is to say the difference, expressed as a percentage, between the selling rate for currency on the regulated market and the buying rate for that currency on the free market. However, that loss, even if it were established, is the result of the fact that it is impossible for the

applicant to open a convertible account giving him access to the regulated market for all exchange transactions. However, that state of affairs arises from the Belgo-Luxembourg legislation on exchange transactions and does not originate in any specific measure or failure to adopt such a measure which may be attributed to the Commission.

12 In those circumstances, the applicant has not established the existence of a chain of causality between unlawful conduct on the part of the Commission and the damage complained of, so that this part of the application must also be dismissed.

Costs

13 Under Article 69 (2) of the Rules of Procedure, the unsuccesful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading.

14 However, under Article 70 of the Rules of Procedure, costs incurred by the institutions in applications by servants of the Communities are to be borne by the institutions themselves.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the parties to bear their own costs.**

Galmot Everling Kakouris

Delivered in open court in Luxembourg on 1 December 1983.

For the Registrar

H. A. Rühl

Principal Administrator

Y. Galmot

President of the Third Chamber