

## Judgments of the Court of Justice, Adam v Commission and Battaglia v Commission, Cases 828/79 and 1253/79 (4 February 1982)

**Caption:** Judgments of the Court of Justice of the European Communities (First Chamber) of 4 February 1982: Case 828/79, Robert Adam v Commission and Case 1253/79, Dino Battaglia v Commission. For these two cases brought in 1979 by two officials of the Commission employed at the Ispra Joint Research Centre in Italy, the Court of Justice ruled on the legal statute of the Court of Auditors. In both judgments, the Court of Justice concluded that the Court of Auditors is not an institution within the meaning of Article 24 of the Merger Treaty, whereby consultation would be an essential condition for the adoption of a regulation amending the Staff Regulations.

**Source:** Reports of Cases before the Court. 1982. [s.l.].

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## Judgments of the Court of 4 February 1982 Adam v Commission and Battaglia v Commission

### Judgment of the Court (First Chamber) of 4 February 1982 1 Robert Adam v Commission of the European Communities

(Officials - Rate of exchange for calculating remuneration)

#### Case 828/79

#### Summary

*1. Officials - Staff Regulations - Regulation amending the Staff Regulations - Formulation procedure - Regular consultation with the Parliament - Essential procedural requirement - Scope (Merger Treaty, Art. 24)*

*2. Officials - Staff Regulations - Regulation amending the Staff Regulations - Formulation procedure - Consultation with the Economic and Social Committee and the Court of Auditors - Consultation not mandatory (Merger Treaty, Art. 24) (Staff Regulations of Officials, Art. 2, second paragraph)*

*3. Officials - Equality of treatment - Difference of treatment as between serving officials and pensioners - Absence of discrimination*

1. The consultation provided for by Article 24 of the Merger Treaty, which in particular enables the Parliament effectively to participate in the Community's legislative process, is an essential feature of the institutional balance which the Treaties seek to achieve. Regular consultation with the Parliament before the adoption of a regulation amending the Staff Regulations of Officials constitutes therefore an essential procedural requirement, the disregard of which renders the regulation in question void.

That requirement may be regarded as having been met when the regulation finally adopted conforms to the proposal submitted to the Parliament, so long as changes made are of method rather than of substance.

2. Since the Economic and Social Committee and the Court of Auditors are not shown in the Treaties as institutions of the three Communities it follows that consultation with the Economic and Social Committee and the Court of Auditors is not mandatory when a regulation amending the Staff Regulations of Officials is adopted. Although, according to the second paragraph of Article 1 of the Staff Regulations, the Economic and Social Committee and the Court of Auditors are treated as Community institutions for the purposes of the Staff Regulations that treatment, the object of which is to ensure that the Staff Regulations are applied to the officials and other servants of those two bodies and to identify the appointing authority for those employees, does not however extend to the application of the provisions of the Treaties, such as Article 24 of the Merger Treaty, relating to the adoption of Community regulations.

3. Discrimination consists of treating in an identical manner situations which are different or treating in a different manner situations which are identical. The situation of a serving official differs considerably from that of a pensioner, so that there is no discrimination in a case where the Community legislature accords to pensioners treatment which is not identical to that applied to serving officials.

In Case 828/79

ROBERT ADAM, an official of the Commission of the European Communities at the Ispra Joint Research Centre, Varese, Italy, represented by Cesare Ribolzi, of the Milan Bar, with an address for service in Luxembourg at the Chambers of Victor Biel of the Luxembourg Bar, 18a Rue des Glacis,

applicant,

v

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

defendant,

Application in the terms set out in the pleadings,

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, A. O’Keeffe and T. Koopmans, Judges,

Advocate General: F. Capotori

Registrar: J. A. Pompe, Deputy Registrar

gives the following

## JUDGMENT

[...]

### Decision

1 By an application lodged at the Court Registry on 21 December 1979, Robert Adam, an official of the Commission employed at the Ispra Joint Research Centre, Italy, brought an action pursuant to Article 91 of the Staff Regulations of Officials (hereinafter referred to as “the Staff Regulations”) for annulment of the Commission’s decision fixing the applicant’s remuneration for April 1979 and of the rejection of the complaint lodged by him against that decision.

[...]

12 The applicant relies in the first place on certain grounds based on an infringement of essential procedural requirements. He maintains that the contested regulations were adopted without prior consultation with the institutions concerned referred to in Article 24 of the Treaty of 8 April 1965 establishing a single Council and a single Commission of the European Communities (hereinafter referred to as “the Merger Treaty”). The Economic and Social Committee was not consulted, nor was the Court of Auditors which, according to the applicant, are the institutions concerned within the meaning of that article. Moreover, consultation with the European Parliament took place on the basis of a proposal from the Commission which was considerably different from the text of the regulation adopted by the Council.

[...]

Infringement of essential procedural requirements

15 It should be noted that, when changes are made to the Staff Regulations of Officials and the Conditions of Employment of Other Servants, Community law requires that the Parliament and the Court of Justice be consulted and that the opinion of the Staff Regulations Committee be obtained. Article 24 of the Merger Treaty provides that “The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the other institutions concerned, lay down the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of those Communities”. Article 10 of the Staff Regulations provides that the Staff Regulations Committee (consisting of representatives of the Staff Committees) is to be consulted by the Commission on any proposal for the revision of the Staff Regulations.

16 A distinction should however be made between the requirements of Community law applicable to Regulation No 3085/78, which involves amendment of the Staff Regulations, and those applicable to Regulation No 3086/78, which adjusts the weightings. A regulation such as Regulation No 3086/78, which determines the weightings, is adopted by the Council on a proposal from the Commission pursuant to Article 64 of the Staff Regulations, which imposes no obligation involving consultation.

17 As regards Regulation No 3085/78, it is true that Article 24 of the Merger Treaty provides for consultation with the other institutions concerned, one of those being the Parliament. That consultation, which in particular enables the Parliament effectively to participate in the Community's legislative process, is an essential feature of the institutional balance which the Treaties seek to achieve. Regular consultation with the Parliament constitutes therefore an essential procedural requirement, the disregard of which renders the regulation in question void. It is therefore appropriate to consider whether the required consultation in fact took place.

[...]

26 As regards the argument put forward by the applicant that the Economic and Social Committee and the Court of Auditors are institutions within the meaning of Article 24 of the Merger Treaty, and that consultation with them is an essential condition for the adoption of a regulation amending the Staff Regulations, it should be remembered that the Treaties establishing the Communities contain provisions specifying the institutions of the three Communities. The Economic and Social Committee and the Court of Auditors are not among those institutions. Accordingly, consultation with the Economic and Social Committee and the Court of Auditors was not mandatory.

27 It is true that, according to the second paragraph of Article 1 of the Staff Regulations, the Economic and Social Committee and the Court of Auditors are treated as Community institutions for the purposes of the Staff Regulations. That treatment, the object of which is to ensure that the Staff Regulations are applied to the officials and other servants of those two bodies and to identify the appointing authority for those employees, does not however extend to the application of the provisions of the Treaties, such as Article 24 of the Merger Treaty, relating to the adoption of Community regulations.

[...]

42 Consideration of the submissions of the applicant having shown that none of the grounds relied upon may be upheld, the action must be dismissed as unfounded.

[...]

On those grounds,

THE COURT (First Chamber)

hereby:

**1. Dismisses the application;**

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

Bosco  
O'Keeffe  
Koopmans

Delivered in open court in Luxembourg on 4 February 1982.

J. A. Pompe  
Deputy Registrar

G. Bosco  
President of the First Chamber

1- Language of the Case: Italian

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## **Judgment of the Court (First Chamber) of 4 February 1982 1 Dino Battaglia v Commission of the European Communities**

(Officials - Rate of exchange for calculating remuneration)

### **Case 1253/79**

#### **Summary**

*1. Officials - Staff Regulations - Regulation amending the Staff Regulations - Formulation procedure - Regular consultation with the Parliament - Essential procedural requirement - Scope (Merger Treaty, Art. 24)*

*2. Officials - Staff Regulations - Regulation amending the Staff Regulations - Consultation with the Economic and Social Committee and the Court of Auditors - Consultation not Mandatory (Merger Treaty, Art. 24; Staff Regulations of Officials, Art. 2, second paragraph)*

*3. Officials - Staff Regulations - Regulation amending the Staff Regulations - Formulation procedure - Consultation with the Staff Committee - Consultation not necessary (Staff Regulations, Art. 110)*

*4. Officials - Equality of treatment - Difference of treatment as between serving officials and pensioners - Absence of discrimination*

1. The consultation provided for by Article 24 of the Merger Treaty, which in particular enables the parliament effectively to participate in the Community's legislative process, is an essential feature of the institutional balance which the Treaties seek to achieve. Regular consultation with the Parliament before the adoption of a regulation amending the Staff Regulations of Officials constitutes therefore an essential procedural requirement, the disregard of which renders the regulation in question void.

That requirement may be regarded as having been met when the regulation finally adopted conforms to the proposal submitted to the Parliament, so long as changes made are of method rather than of substance.

2. Since the Economic and Social Committee and the Court of Auditors are not shown in the Treaties as institutions of the three Communities it follows that consultation with the Economic and Social Committee and the Court of Auditors is not mandatory when a regulation amending the Staff Regulations of Officials is adopted. Although, according to the second paragraph of Article 1 of the Staff Regulations, the Economic and Social Committee and the Court of Auditors are treated as Community institutions for the purposes of the Staff Regulations that treatment, the object of which is to ensure that the Staff Regulations are applied to the officials and other servants of those two bodies and to identify the appointing authority for those employees, does not however extend to the application of the provisions of the Treaties, such as Article 24 of the Merger Treaty, relating to the adoption of Community regulations.

3. Article 110 of the Staff Regulations of Officials which imposes the obligation to consult the Staff Committee applies only to the general provisions for giving effect to the Staff Regulations by each institution. Consultation with the Staff Committee is not therefore necessary for the adoption of a regulation amending the Staff Regulations.

4. Discrimination consists of treating in an identical manner situations which are different or treating in a different manner situations which are identical. The situation of a serving official differs considerably from that of a pensioner, so that there is no discrimination in a case where the Community legislature accords to pensioners treatment which is not identical to that applied to serving officials.

In Case 1253/79

DINO BATTAGLIA, Via Volta, Ispra, Varese, Italy, an official of the European Communities at the Ispra Joint Research Centre, represented and assisted by Marcel Slusny, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Victor Biel, of the Luxembourg bar, 18a Rue des Glacis,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Joseph Griesmar, acting as Agent, assisted by Daniel Jacob, of the Brussels Bar, with an address for service in Luxembourg in the office of Oreste Montalto, Jean Monnet building, Kirchberg,

defendant,

APPLICATION in the terms set out in the pleadings,

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, A. O’Keeffe and T. Koopmans, Judges,

Advocate General: F. Capotori

Registrar: J. A. Pompe, Deputy Registrar

gives the following

## JUDGMENT

[...]

### Decision

1 By an application lodged at the Court Registry on 21 December 1979, Mr Battaglia, an official of the Commission employed at the Ispra Joint Research Centre, Italy, brought an action pursuant to Article 91 of the Staff Regulations of Officials (hereinafter referred to as “the Staff Regulations”) for annulment of the Commission’s decision fixing the applicant’s remuneration for April 1979 and of the rejection of the complaint lodged by him against that decision.

[...]

12 The applicant relies in the first place on certain grounds based on an infringement of essential procedural requirements. He maintains that the contested regulations were adopted without the prior consultation with the institutions concerned referred to in Article 24 of the Treaty of 8 April 1965 establishing a single Council and a single Commission of the European Communities (hereinafter referred to as “the Merger Treaty”). The Economic and Social Committee was not consulted, nor was the Court of Auditors which, according to the applicant, are the institutions concerned within the meaning of that article. Moreover, consultation with the European Parliament took place on the basis of a proposal from the Commission which was considerably different from the text of the regulation adopted by the Council. He further maintains that in its proposal the Commission implemented Article 110 of the Staff Regulations because the proposal was made after the opinion of the Staff Regulations Committee was obtained. It follows that the Commission should likewise have consulted the Staff Committee.

[...]

Infringement of essential procedural requirements

15 It should be noted that, when changes are made to the Staff Regulations of Officials and the Conditions of Employment of Other Servants, Community law requires that the Parliament and the Court of Justice be consulted and that the opinion of the Staff Regulations Committee be obtained. Article 24 of the Merger Treaty provides that “The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the other institutions concerned, lay down the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of those Communities.” Article 10 of the Staff Regulations provides that the Staff Regulations Committee (consisting of representatives of the Staff Committees) is to be consulted by the Commission on any proposal for the revision of the Staff Regulations.

16 A distinction should however be made between the requirements of Community law applicable to Regulation No 3085/78, which involves amendment of the Staff Regulations, and those applicable to Regulation No 3086/78, which adjusts the weightings. A regulation such as Regulation No 3086/78, which determines the weightings, is adopted by the Council on a proposal from the Commission pursuant to Article 64 of the Staff Regulations, which imposes no obligation involving consultation.

17 As regards Regulation No 3085/78, it is true that Article 24 of the Merger Treaty provides for consultation with the other institutions concerned, one of those being the Parliament. That consultation, which in particular enables the Parliament effectively to participate in the Community’s legislative process, is an essential feature of the institutional balance which the Treaties seek to achieve. Regular consultation with the Parliament constitutes therefore an essential procedural requirement, the disregard of which renders the regulation in question void. It is therefore appropriate to consider whether the required consultation in fact took place.

[...]

26 As regards the argument put forward by the applicant that the Economic and Social Committee and the Court of Auditors are institutions within the meaning of Article 24 of the Merger Treaty, and that consultation with them is an essential condition for the adoption of a regulation amending the Staff Regulations, it should be remembered that the Treaties establishing the Communities contain provisions specifying the institutions of the three Communities. The Economic and Social Committee and the Court of Auditors are not among those institutions. Accordingly, consultation with the Economic and Social Committee and the Court of Auditors was not mandatory.

27 It is true that, according to the second paragraph of Article 1 of the Staff Regulations, the Economic and Social Committee and the Court of Auditors are treated as Community institutions for the purposes of the Staff Regulations. That treatment, the object of which is to ensure that the Staff Regulations are applied to the officials and other servants of those two bodies and to identify the appointing authority for those employees, does not however extend to the application of the provisions of the Treaties, such as Article 24 of the Merger Treaty, relating to the adoption of Community regulations.

[...]

40 Consideration of the submissions of the applicant having shown that none of the grounds relied upon may be upheld, the action must be dismissed as unfounded.

On those grounds,

THE COURT (First Chamber)

hereby:

**1. Dismisses the application;**

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

Bosco  
O'Keeffe  
Koopmans

Delivered in open court in Luxembourg on 4 February 1982.

J. A. Pompe  
Deputy Registrar

G. Bosco  
President of the First Chamber

1- Language of the Case: French