JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)

7 November 1997 *

In Case T-218/95,

Azienda Agricola 'Le Canne' Srl, a company incorporated under Italian law, established in Porto Viro, Italy, represented by Giulio Schiller, Giuseppe Carraro and Francesca Mazzonetto, of the Padua Bar, and by Guy Arendt, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 62 Avenue Guillaume,

applicant,

v

Commission of the European Communities, represented by Eugenio de March, Legal Adviser, and Hubertus Van Vliet, of the Legal Service, acting as Agents, assisted by Alberto Dal Ferro, of the Vicenza Bar, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: Italian.

APPLICATION, first, for annulment of the decision by the Commission to reduce Community financial aid originally granted and, secondly, for compensation for the damage suffered by the applicant as a result of that reduction,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: B. Vesterdorf, President, C. P. Briët and A. Potocki, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 5 June 1997,

gives the following

Judgment

Legal framework

1 Article 1(1)(b) of Council Regulation (EEC) No 4028/86 of 18 December 1986 on Community measures to improve and adapt structures in the fisheries and aquaculture sector (OJ 1986 L 376, p. 7, hereinafter 'Regulation No 4028/86') provides

that the Commission may grant Community financial aid for the development of aquaculture and the establishment of protected marine areas with a view to improved management of inshore fishing grounds.

2 Under Article 12 of Regulation No 4028/86 and Annex III thereto, Community financial aid provided for aquaculture amounts for the region of Veneto to 40% of eligible expenditure, Italy's contribution representing a percentage of between 10 and 30%.

3 Article 44 of Regulation No 4028/86 provides:

'1. Throughout the period for which aid is granted by the Community, the authority or agency appointed for the purpose by the Member State shall send to the Commission on request all supporting documents and all documents showing that the financial or other conditions imposed for each project are satisfied. The Commission may decide to suspend, reduce or discontinue aid, in accordance with the procedure laid down in Article 47:

— if the project is not carried out as specified, or

(...)

Decisions shall be notified to the Member State concerned and to the beneficiary.

The Commission shall take steps to recover any sums unduly paid.

2. Detailed rules for applying this article shall be adopted by the Commission in accordance with the procedure laid down in Article 47.'

4 Article 47 provides:

'1. Where the procedure laid down in this article is to be followed, matters shall be referred to the Standing Committee for the Fishing Industry, by its chairman, either on his own initiative or at the request of the representative of the Member State.

2. The representative of the Commission shall submit a draft of the measures to be taken. The Committee shall deliver its opinion within a time-limit to be set by the chairman according to the urgency of the matter. Opinions shall be adopted by a majority of 54 votes, the votes of the Member States being weighted as laid down in Article 148(2) of the Treaty. The chairman shall not vote.

3. The Commission shall adopt the measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, the Commission shall forthwith communicate them to the Council. In that event the Commission may defer their application for not more than one month from the date of such communication. The Council, acting by a qualified majority, may adopt different measures within one month.'

5 By Commission Regulation (EEC) No 1116/88 of 20 April 1988 (OJ 1988 L 112, p. 1, hereinafter 'Regulation No 1116/88'), the Commission adopted detailed rules for the application of decisions granting aid for projects concerning Community measures to improve and adapt structures in the fisheries and aquaculture sector and in structural works in coastal waters.

6 According to the sixth recital in the preamble to Regulation No 1116/88 'the procedure for suspending, reducing or terminating aid should not be initiated without the Member State concerned first having been asked for its views and the beneficiaries having been given the opportunity to submit their comments.'

7 In that connection Article 7 of Regulation No 1116/88 provides:

'Before initiating a procedure for suspending, reducing or terminating aid in accordance with Article 44(1) of Regulation (EEC) No 4028/86, the Commission shall:

— inform the Member State on whose territory the project was to be carried out, so that it may express its views on the matter,

— consult the competent authority responsible for forwarding supporting documents,

— ask the beneficiary to provide, through the authority or agency, an explanation for the failure to comply with the conditions laid down.'

Facts of the dispute

8 By Decision C (90) 1923/99 of 30 October 1990 the Commission granted the applicant financial aid of LIT 1 103 646 181, that is to say 40% of the eligible expenditure of LIT 2 759 115 453, in respect of modernization works and the establishment of fish-farming installations (project I/16/90). Financial aid of 30% of the eligible expenditure, namely LIT 827 734 635, was to be borne by the Italian State.

9 That decision stated that 'the amount of aid that the Commission will actually apply to a completed project depends on the nature of the works carried out in relation to those provided for in the project'. The decision also stipulated that 'in conformity with the statement appearing in Part B of the application for assistance submitted by the recipient, the works provided for may not be altered or changed without the prior agreement of the national administration and of the Commission. Important changes made without the Commission's agreement may lead to a reduction or withdrawal of the assistance if they are deemed unacceptable by the national administration or the Commission. If appropriate, the national administration shall indicate to each beneficiary the procedure to be followed.'

10 On 23 June 1993 the Commission paid to the applicant a first instalment of LIT 343 117 600.

11 Following an on-the-spot verification of the project as finally completed, the Public Works Department, in a letter dated 7 April 1994, advised the applicant that, subject to certain modifications to the project in the extent of masonry work and similar items, as well as excavation works, it was of the opinion that the works completed could be regarded as being in conformity with the approved project from a technical and financial point of view.

12 By Decision C (94) 1531/99 of 27 July 1994 the Commission acceded to a second request by the applicant for the grant of aid in connection with the completion of modernization works and installations (project I/100/94).

13 By letter dated 12 December 1994 addressed to the Italian Ministry of Agriculture (hereinafter 'the Ministry') and to the Commission, the applicant pointed out that, owing to circumstances beyond its control which had arisen since the project was sent to the Ministry, certain modifications to the works provided for in the context of project I/16/90 had become essential. The applicant stated that its belief that it had complied with the proposed objectives and chosen the correct options,

together with its desire speedily to achieve the results envisaged, had unfortunately led it to overlook the obligation to give prior notification to the Ministry of the modifications made, and this presented a major obstacle to finalizing the matter. However, the applicant did not consider that project I/16/90 had, overall, undergone any substantial changes, apart from a difference in the location and configuration of the intensive rearing ponds.

14 Thus, whilst stating that it had become aware, but only since completion of the works, that it had not observed the formality of prior notification of the modifications, the applicant requested the Ministry and, if appropriate, the Commission itself, to conduct a technical examination of the changes made in order to establish that they were well founded, and that the choices made were necessary and opportune. In that connection the applicant pointed out that all the modifications referred to had been disclosed and approved in the course of approval of the supplementary structural works project (I/100/94) accepted for Community financial aid by Decision C (94) 1531/99.

15 After verification of the completed works the Ministry forwarded to the applicant on 3 June 1995 the certificate of verification of completion of works (hereinafter 'the certificate') drawn up on 24 May 1995. In the Ministry's view, the applicant had made changes additional to those already noted by the Public Works Department:

(a) failure to build 16 ponds, a hydraulic installation and a heating station, all replaced by projected rearing ponds to be built in the context of the completion project approved by the Commission in Decision C (94) 1531/99;

(b) failure to acquire a series of machines;

(c) failure to build new store and rearing ponds external to the hangar.

The Ministry concluded that the applicant should have requested prior authorization under the applicable Community provisions to carry out those modifications.

16 The Ministry reduced to LIT 1 049 556 101 the amount of eligible expenditure on the final stage of the project. The Ministry concluded that, regard being had to the expenditure already recognized as eligible at the stage of the first phase of the works in the amount of LIT 857 794 000, the total amount of expenditure deemed eligible was LIT 1 907 350 101, about 69.13% of the eligible expenditure of the project originally approved by the Commission.

17 By final payment order issued on 5 July 1995, the Commission paid the applicant a balance of LIT 419 822 440, thus reducing from LIT 1 103 646 181 to LIT 762 940 040 the total amount of Community aid payable in respect of the works deemed by the Commission, on the basis of the certificate, to be in conformity with the project originally approved.

18 On 28 July and 3 August respectively, the Ministry and the Commission received a series of written observations from the applicant claiming that there was no basis for the certificate and asking for it to be re-examined.

19 In reply to a request by the national authorities, the Commission sent them its observations by telex No 12 497 of 27 October 1995. The Commission considered that on the information available it was not necessary to review the procedure followed by the Ministry in finalizing project I/16/90 on the ground that:

(1) major changes had been made to the project without prior notification to the national administration;

the grant of assistance in connection with the second project I/100/94 did not imply acceptance by the Commission of the previous changes;

(2) works provided for under the following project I/100/94 had been carried out under project I/16/90 and were thus not eligible for assistance granted under project I/16/90.

(3) Article 7 of Regulation No 1116/88, to which counsel for the applicant referred, was not applicable to the situation adumbrated by him.

(4) From information provided by the Ministry the observations formulated at page 18 of the statement submitted by counsel for the applicant appeared to be erroneous, in so far as they referred to deductions of expenditure occurring on account of their being imputed to heads of expenditure not provided for.

20 By letter of 14 November 1995 the Ministry rejected the request for re-examination made by the applicant on the same grounds as those set out in telex No 12 497 from the Commission of 27 October 1995.

Contentious procedure

21 It was in those circumstances that, by application lodged at the Registry of the Court of First instance on 1 December 1995, the applicant brought, on the one hand, an action for the annulment of telex No 12 497 from the Commission of 27 October 1995 and, on the other, a claim for compensation for the loss which it alleged it had suffered as a result of the adoption of that measure.

22 Upon hearing the views of the Judge Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure and requested the parties to reply to certain written questions before the hearing. The parties complied with that request.

23 At the hearing on 5 June 1997 the parties presented oral argument and replied to questions put by the Court.

Forms of order sought by the parties

24 The applicant claims that the Court should:

— declare Commission document No 12 497 of 27 October 1995, against which these proceedings are brought, null and void;

— order the Commission to pay restitution for damage suffered in the amount set out in the application;

— order the Commission to pay the costs.

25 The Commission contends that the Court should:

— dismiss the action under Article 173 of the EC Treaty as inadmissible and, in the alternative, as unfounded;

— dismiss the claims under Articles 178 and 215 of the Treaty;

— in any event, order the applicant to pay the costs.

The claim for annulment

1. *Admissibility*

Arguments of the parties

26 In the Commission's view, the contested document of 27 October 1995 is not capable of producing mandatory effects in regard to the applicant and, in any event, does not concern him directly. In that document, the Commission in fact merely assessed the conduct of the national authorities in the context of the procedure for co-financing of the project laid down in Regulation No 4028/86.

27 The applicant objects, on the one hand, that the Member State concerned merely functions as an 'agent' of the Community, acting on behalf of the Commission which retains full decision-making power, and on the other hand, that the mere formal existence of the national measure adopted in implementation of the Community measure is not sufficient to negate the fact that the Community measure concerns the applicant directly.

Findings of the Court

28 It is sufficient to note that telex No 12 497 of 27 October 1995, read in conjunction with the order for payment of the balance of the Community financial aid issued by the Commission on 5 July 1995, had the effect of reducing the amount of Community financial aid originally granted by Commission Decision C (90) 1923/99.

29 Inasmuch as the contested telex thus deprives the applicant of the full amount of the assistance originally granted to it, without the Member State concerned having any margin of discretion of its own in the matter, the contested telex constitutes, in regard to the applicant, an individual decision which produces binding legal effects such as to affect its interests by bringing about a distinct change in its legal position (Case 60/81 *IBM* v *Commission* [1981] ECR 2639, paragraph 9, Case C-291/89 *Interhotel* v *Commission* [1991] ECR I-2257, paragraphs 12 and 13, Case C-304/89 *Oliveira* v *Commission* [1991] ECR I-2283, paragraphs 12 and 13, and Case C-189/90 *Cipeke* v *Commission* [1992] ECR I-3573, paragraphs 11 and 12).

30 The objection of inadmissibility raised by the Commission must therefore be rejected.

2. *Substance*

31 In support of its action for annulment the applicant raises five pleas in law, namely failure to notify the contested decision, infringements of the principle of collegiality, of the rules of procedure, of the obligation to provide a statement of reasons and, finally, misuse of powers.

The first plea: failure to notify the contested decision

32 The applicant points out that the contested decision was never notified to it and was brought to its notice only accidentally, in the form of a copy which it obtained at its request.

33 The Commission makes no observations on this point.

34 The Court finds that the applicant was in fact able to apprise itself properly of the content of the contested decision and to initiate these proceedings within the appropriate time-limit for legal actions. In those circumstances there is no need to rule on the question whether that measure was formally notified to it.

The second plea: infringement of the principle of collegiality

35 The applicant alleges that the Commission did not observe the principle of collegiality. It is, it says, impossible to deduce from the contested decision, which merely appears to emanate from the 'acting head of unit', whether and, if so, when the members of the Commission, who are subject to collective responsibility for it, deliberated on it together.

36 The Commission replies in the first place that delegation of signature is the normal way in which the Commission exercises its powers and in the second that the contested decision was adopted in the context of the management of the European Agricultural Guidance and Guarantee Fund (EAGGF), Guidance Section, which comes under the Directorate General for Fisheries (DG XIV).

37 The Court notes that, as is clear from the Commission's Rules of Procedure, the institution's officials may be empowered to take, in the name of the Commission and subject to its control, clearly defined measures of management or administration, such as the measure at issue, and delegation of signature is the normal means whereby the Commission exercises its powers (Case C-200/89 *Funoc* v *Commission* [1990] ECR I-3669, paragraphs 13 and 14).

38 In the present case the applicant has not adduced any evidence to show that the Community administration failed to comply with the relevant rules in this case. On the contrary, it is to be noted that the acting head of unit who signed the contested decision is a member of staff of the directorate general responsible for fisheries (DG XIV), which is the economic sector in receipt of the Community financial aid under Regulation No 4028/86.

39 The second plea must therefore be rejected.

The third plea: infringement of the Rules of Procedure

Arguments of the parties

40 The applicant first criticizes the Commission for reducing the Community financial aid originally granted without first implementing the procedure for reduction provided for in Article 44(1) of Regulation No 4028/86 and, above all, without observing the obligations imposed on the Commission by Article 7 of Regulation No 1116/88, in particular the obligation to request the recipient to provide, through the authority or agency of the Member State concerned, an explanation for the failure to comply with the conditions laid down.

41 Secondly, the applicant points out that where it is decided to reduce aid, the first indent of Article 44(1) of Regulation No 4028/86 provides that the procedure laid down in Article 47 thereof is to apply.

42 The Commission contends that the contested decision cannot be regarded as requiring recourse to be had to the procedure provided for in Article 44 of Regulation No 4028/86. That provision concerns situations in which Community aid is reduced where, following fresh appraisal entailing modifications, the project no longer corresponds to the original project.

43 Such a situation, it maintains, does not cover the case where, as in the present case, Community aid remains unchanged but only the eligible expenditure is reduced because the project is not carried out as specified. It is no longer a case of a reduction in aid within the meaning of Article 44 of Regulation No 4028/86, but merely a refusal to allow certain expenditure, entailing an adjustment in absolute terms of

the amount paid by the Community. That is merely a determination of the eligible expenditure, which involves no fresh legal and economic assessment, but solely considerations of a technical nature.

44 In the present case, it argues, the applicant never sought revision of the project submitted and approved in Decision C (90) 1923/99. In the absence of any communication from the applicant concerning a modification of the project, the Ministry stated in the certificate, first, that certain expenditure did not accord with the project approved and was thus not eligible and, secondly, that the other expenditure was eligible. The Commission thus paid the expenses deemed eligible, which did not necessitate any subsequent re-appraisal of the project.

45 In such a situation, to convene the Standing Committee on the Fishing Industry in accordance with the procedure laid down in Article 47 of Regulation No 4028/86 would only distort the purpose of the committee, by requiring it to deliver an opinion, not on projects, but on the ineligibility of the various items of expenditure committed.

46 The Commission notes that, in any event, the applicant was able to submit its observations in its correspondence with the national authorities which forwarded them to the Commission. The Commission expressed its opinion in the contested measure, which expressly mentions the letter from the applicant's counsel received in DG XIV on 3 August 1995. It is clear from the exchange of documentation that it was specifically as a result of certain observations made by the applicant that the contested measure was adopted.

Findings of the Court

47 The reasoning adopted by the applicant indicates that its plea in fact consists of two limbs, the first alleging an infringement of the principle of the right to be heard, the second, the failure to consult the committee. In fact, since Article 47 of Regulation No 4028/86 lays down the detailed rules for consultation of that body,

the Court infers that by arguing that the first indent of Article 44(1) of Regulation No 4028/86 requires the Article 47 procedure to be applied, the applicant sought at the same time to plead, in addition to the alleged infringement of the principle of the right to be heard, an alleged failure to consult the committee.

— The first limb of the third plea

48 The Court recalls that observance of the right to be heard is, in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person, a fundamental principle of Community law which must be guaranteed even in the absence of any rules governing the proceedings in question. That principle requires that addressees of decisions which significantly affect their interests should be placed in a position in which they may effectively make known their views (Case C-32/95 P *Commission* v *Lisrestal* [1996] ECR I-5373, paragraph 21).

49 None the less, it is clear from point 5 of the application that the applicant challenged the basis on which the certificate was founded and requested its re-examination in the written observations which reached the Ministry on 28 July 1995 and the Commission on 3 August 1995, that is to say before the Commission definitively adopted its decision by telex No 12 497 of 27 October 1995.

50 The Court notes that the applicant itself states, also at point 5 of its application, that the Commission decided, by telegram dated 7 August 1995, to initiate the procedure for payment of the Community aid, determined on the basis of the estimates given in the certificate.

51 It follows that the applicant was in a position to explain, prior to adoption of the contested measure, the reasons for the failure to comply with the conditions laid down, and that the requirements stipulated in that regard in Article 7 of Regulation No 1116/88 were essentially observed by the Commission.

52 In those circumstances the first limb of the third plea must be rejected.

— The second limb of the third plea

53 It is common ground that the applicant, as it itself acknowledged, carried out modifications to the project without observing the requirement of prior notification to the Community and national authorities which, on the applicant's own admission, constituted a major obstacle to finalizing the matter (see paragraph 13, above).

54 However, the decision to grant aid expressly stipulated in that connection that 'the works provided for (could) not undergo any alteration or change without the prior agreement of the national administration and possibly of the Commission'.

55 Under those conditions, the Commission was entitled, after an examination, to limit itself to finding that, in light of the certificate drawn up by the national administration, the expenditure deemed ineligible could not be taken into consideration, since it did not come within the terms of the project as approved.

56 The Court therefore considers that the contested measure does not constitute a decision to reduce, for the purposes of Article 44(1) of Regulation No 4028/86, the aid originally granted to the applicant, but in actual fact merely notes that a part of the expenditure for which the applicant claims payment does not relate to the project as originally accepted.

57 The second limb of the third plea must therefore be rejected.

58 It follows that the third plea must be dismissed in its entirety.

The fourth plea: infringement of the obligation to provide a statement of reasons

Arguments of the parties

59 The applicant divides this plea in law into two limbs. First, it observes that, with the exception of an entirely general reference to Regulation No 4028/86, the contested measure omits to state the legal basis on which it is founded.

60 The Commission replies that the subject-matter of the contested measure is expressly based on Regulation No 4028/86 and that the document itself mentions that regulation and Regulation No 1116/88.

61 Secondly, the applicant maintains that the statement of the reasons on which the measure is based does not enable it to know the reasons for the refusal to grant a

part of the aid originally granted, or the Court to exercise its judicial review. In particular, the Commission does not explain, in its observations on the imputation of expenses arising under headings not provided for, what error the applicant is supposed to have committed, or the correct reading to be made of that technical and accounting information.

62 The Commission replies that it can be ascertained by reading the contested document that the reasons for its adoption are to be found in the documents to which that measure refers and which were supplied by the national authorities to the Commission, in particular the certificate.

Findings by the Court

— The first limb of the fourth plea

63 The Court finds that the contested decision expressly mentions Regulations Nos 4028/86 and 1116/88, which are applicable in this case. In light of the context of the case and, in particular, of the arguments put forward by it in support of its third plea in law, the applicant could not have mistaken the scope of those two references and cannot therefore be regarded as having been left uncertain as to the legal basis of the contested decision (Case 45/86 *Commission* v *Council* [1987] ECR 1493, paragraph 9).

64 The first limb of this plea must therefore be rejected.

— The second limb of the fourth plea

65 The Court has consistently held that the statement of reasons required by Article 190 of the Treaty must be appropriate to the legal nature of the measure in question, and the reasoning of the institution which adopted the measure must be

stated clearly and unequivocally, so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its power of review. However, the statement of reasons for a measure is not required to detail every relevant point of fact and law, since the question whether the statement of reasons is sufficient must be considered with reference not only to its wording but also to its context and the whole body of legal rules governing the matter in question (Case C-466/93 *Atlanta Fruchthandelsgesellschaft (II)* v *Bundesamt für Ernährung und Forstwirtschaft* [1995] ECR I-3799, paragraph 16).

66 In the present case it is apparent from the background to the case, from the correspondence exchanged by the applicant with the national administration and the Commission, as well as from the contested decision, that the grounds relied on by the Commission in support of that decision appear with sufficient clarity to enable the applicant to assert its rights before the Community judicature and for the latter to review the lawfulness of that decision.

67 In the first place, in the letter of 12 December 1994 which it addressed to the Ministry and the Commission the applicant acknowledged, on the one hand, that after submission of the project, certain conditions underwent substantial modifications which necessitated adjustments and, on the other, stated that it was aware that it had complied with the requirement of prior notification of the modifications which, on the applicant's own admission, constituted a major obstacle to finalizing the matter (see paragraph 13, above).

68 Secondly, the detailed explanations given in the certificate in support of the declaration of ineligibility of expenditure under the various items in question disclose with sufficient clarity the grounds justifying the contested decision, as required by the relevant case-law (*Cipeke* v *Commission*, cited above, paragraphs 18 to 22).

69 Thirdly, the contested decision sets out, succinctly but clearly, the grounds relied on by the Commission, on the one hand, in replying to certain of the arguments

put forward by the applicant in its observations which reached the Commission on 3 August 1995 and, on the other, in referring to the explanations given by the Ministry in its certificate. In view of the system of close collaboration between the Commission and the Member States on which the grant of financial aid rests (Case T-85/94 *Branco* v *Commission* [1995] ECR II-45, paragraph 36), it was correct for the contested decision to refer also to those explanations.

70 In such circumstances, it appears that the statement of reasons for the contested decision gave the applicant sufficient indication of the principal points of fact and law on which the reasoning was based, irrespective of the substantive accuracy of those reasons and of the amount of expenditure declared ineligible, which was not raised by the applicant before the Court and which goes to the substantive merits of the decision (Case 2/56 *Geitling* v *High Authority* [1957 and 1958] ECR 3, at p. 16, Case 8/65 *Acciaierie e Ferriere Pugliesi* v *High Authority* [1966] ECR 1, at p. 7, and Case T-356/94 *Vecchi* v *Commission* [1996] ECR-SC II-1251, paragraph 82).

71 The second limb of the plea must therefore be rejected.

72 It follows that the fourth plea must be dismissed in its entirety.

The fifth plea: misuse of powers

73 The applicant maintains that the Commission, which has exclusive competence in the matter of the grant and reduction of aid, circumvented the procedure for reduction provided for in Article 44 of Regulation No 4028/86 and Article 7 of Regulation No 1116/88 by issuing a document which was formally presented as an opinion. By asserting that to reduce aid by means of a decision adopted after prior

consultation of the Standing Committee for the Fishing Industry would overburden the committee, the Commission revealed that the real purpose of the contested measure was to achieve the practical effect of a reduction in the assistance without having to resort to the appropriate procedure.

74 The Commission contends that the applicant is wrong to attribute to the contested measure mandatory effect as regards the national authorities.

75 The Court finds that the applicant has adduced no objective, relevant and coherent evidence to show that the contested decision was adopted with the exclusive or, at least, the main purpose of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (Case C-156/93 *Parliament* v *Commission* [1995] ECR I-2019, paragraph 31).

76 On the contrary, it is apparent from the foregoing that the Commission's action was prompted by the modifications made by the applicant to project I/16/90.

77 The fifth plea must therefore be rejected.

78 It follows that the action for annulment must be dismissed in its entirety.

The claim for compensation

Substance

79 The applicant claims that the Commission is liable to compensate it for the damage which it alleges it suffered as a result of the reduction of a substantial part of the financial aid granted by both the Community and the national authorities.

80 The applicant relies on the Court to make an equitable assessment of the damage, but the amount to be awarded should not be less than compensatory interest or, at the very least, interest for late payment of the contested amount, to run as from the formal notice of action received by the Commission on 3 August 1995.

81 The Commission contends that there is no direct causal link between the contested measure and the applicant's alleged loss; at the same time, it takes the view that the two other requirements to be met in order for the Community to incur non-contractual liability are certainly not met, namely that the conduct criticized is unlawful and that the alleged damage has actually occurred.

82 The Court recalls that the Community incurs non-contractual liability only if a series of conditions are met as regards the unlawfulness of the acts alleged against the Community institution, the actual fact of damage and the existence of a causal link between the wrongful act and the damage complained of (Joined Cases 197/80 to 200/80, 243/80, 245/80 and 247/80 *Ludwigshafener Walzmühle and Others* v *Council and Commission* [1981] ECR 3211, paragraph 18, Case T-575/93 *Koelman* v *Commission* [1996] ECR II-1, paragraph 89, and Case T-108/94 *Candiotte* v *Council* [1996] ECR II-87, paragraph 54).

83 Examination of the pleas in annulment reveals that the applicant has adduced no evidence of any defect affecting the legality of the contested decision. Accordingly, it has not been established that the Commission's conduct was unlawful and the claim for compensation for the alleged damage must therefore be rejected.

84 It follows that the claim for compensation must be dismissed.

85 It follows from all the foregoing that the action must be dismissed in its entirety.

Costs

86 Under Article 87(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 applicant has been unsuccessful and the Commission asked for an order as to costs against the applicant, it must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Dismisses the action;

2. Orders the applicant to pay the costs.

Vesterdorf Briët Potocki

Delivered in open court in Luxembourg on 7 November 1997.

H. Jung B. Vesterdorf

Registrar President