JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)
28 January 2004 *

In Case T-180/01,

Euroagri Srl, established in Monet Vidon Combatte (Italy), represented by W. Massucci, lawyer,

applicants,

v

Commission of the European Communities, represented initially by L. Visaggio and subsequently by C. Cattabriga, acting as Agents, assisted by M. Moretto, lawyer, with an address for service in Luxembourg,

defendants,

APPLICATION for annulment of Commission Decision C(2001) 1274 of 6 June 2001 withdrawing the assistance granted to Euroagri Srl by Commission Decision C(92) 3214 of 3 December 1992 concerning grant of a contribution from the EAGGF, 'Guidance' Section, pursuant to Regulation (EEC) No 4256/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC)

* Language of the case: Italian.

No 2052/88 as regards the EAGGF Guidance Section (OJ 1988 L 374, p. 25), in connection with Project No 92.IT.06.069 entitled 'Pilot demonstration project for the use of new "Endovena" ("intravenous") technology on fruit trees',

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

composed of: N.J. Forwood, President, J. Pirrung and A.W.H. Meij, Judges,
Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 25 March 2003,

gives the following

Judgment

Legal background

1 In order to strengthen economic and social cohesion within the meaning of Article 158 EC, Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the structural funds and their effectiveness and on coordination of their

activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 185, p. 9) entrusted to the structural funds *inter alia* the tasks of promoting the development and structural adjustment of the regions whose development was lagging behind, and speeding up the adjustment of agricultural structures and promoting the development of rural areas, with a view to reform of the common agricultural policy (Article 1(1) and Article 1(5)(a) and (b)). That regulation was amended by Council Regulation (EEC) No 2081/93 of 20 July 1993 (OJ 1993 L 193, p. 5).

2 The original version of Article 5(2)(e) of Regulation No 2052/88 provided that financial assistance by the Structural funds could take the form of support for technical assistance and studies in preparation for operations. In the version amended by Regulation No 2081/93, it states that financial assistance from the Structural funds may be provided in the form of support for technical assistance, including the measures to prepare, appraise, monitor and evaluate operations, and pilot and demonstration projects.

3 On 19 December 1988 the Council adopted Regulation (EEC) No 4256/88 laying down provisions for implementing Regulation No 2052/88 as regards the EAGGF Guidance Section (OJ 1988 L 374, p. 25). That regulation was amended by Council Regulation (EEC) No 2085/93 of 20 July 1993 (OJ 1993 L 193, p. 44).

4 The original version of Article 8 of Regulation No 4256/88 stated that assistance from the European Agricultural Guidance and Guarantee Fund ('the Fund') for the measures provided for in Article 5(2)(e) of Regulation No 2052/88 could cover inter alia carrying out pilot projects for promoting the development of rural areas, including the development and exploitation of woodland (first indent) and carrying out demonstration projects to show farmers the real possibilities of systems, methods and techniques of production which were in accordance with the objectives of the reform of the common agricultural policy (fourth indent). In the version amended by Regulation No 2085/93 that article provides that in

carrying out its tasks the Fund may devote up to 1 % of its annual budget to financing *inter alia* pilot projects for adjusting agricultural and forestry structures and promoting rural development, and demonstration projects, including projects for developing and exploiting forests and projects for processing and marketing agricultural products, to show the real possibilities of systems, methods and techniques of production and management which are in accordance with the objectives of the common agricultural policy.

5 On 19 December 1988 the Council also adopted Regulation (EEC) No 4253/88 laying down provisions for implementing Regulation No 2052/88 as regards coordination of the activities of the different Structural funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1). That regulation was amended by Council Regulation (EEC) No 2082/93 of 20 July 1993 (OJ 1993 L 193, p. 20).

6 The original version of Article 24 of Regulation No 4253/88, entitled 'Reduction, suspension and cancellation of assistance', provided as follows:

'1. If an operation or measure appears to justify only part of the assistance allocated, the Commission shall conduct a suitable examination of the case in the framework of the partnership, in particular requesting that the Member State or other authorities designated by it to implement the operation submit their comments within a specified period of time.

2. Following this examination, the Commission may reduce or suspend assistance in respect of the operation or measure concerned if the examination reveals an irregularity and in particular a significant change affecting the nature or

conditions of the operation or measure for which the Commission's approval has not been sought.

3. Any sum received unduly and to be recovered shall be repaid to the Commission. Interest on account of late payment may be charged on sums not repaid in compliance with the provisions of the Financial Regulation and in accordance with the arrangements to be drawn up by the Commission pursuant to the procedures referred to in Title VIII hereof.'

7 Article 24, as amended by Regulation No 2082/93, reads:

'1. If an operation or measure appears to justify neither part nor the whole of the assistance allocated, the Commission shall conduct a suitable examination of the case in the framework of the partnership, in particular requesting that the Member State or authorities designated by it to implement the operation submit their comments within a specified period of time.

2. Following this examination, the Commission may reduce or suspend assistance in respect of the operation or a measure concerned if the examination reveals an irregularity or a significant change affecting the nature or conditions for the implementation of the operation or measure for which the Commission's approval has not been sought.

3. Any sum received unduly and to be recovered shall be repaid to the Commission. Interest on account of late payment shall be charged on sums not repaid in compliance with the provisions of the Financial Regulation and in accordance with the arrangements to be drawn up by the Commission pursuant to the procedures referred to in Title VIII.'

8 Article 25 of Regulation No 4253/88, as amended by Regulation No 2082/93, provides as follows with regard to monitoring the project:

'1. Within the framework of the partnership, the Commission and the Member States shall ensure effective monitoring of implementation of assistance from the Funds, geared to the Community support framework and specific operations (programmes, etc.). Such monitoring shall be carried out by way of jointly agreed reporting procedures, sample checks and the establishment of monitoring committees.

2. Monitoring shall be carried out by reference to physical and financial indicators specified in the Commission decision approving the operation concerned. The indicators shall relate to the specific character of the operation, its objectives and the form of assistance provided and to the socio-economic and structural situation of the Member State in which the assistance is to be utilised. They shall be arranged in such a way as to show, for the operations in question:

— the stage reached in the operation and the goals to be attained within a given timespan,

— the progress achieved on the management side and any related problems.

3. Monitoring committees shall be set up within the framework of the partnership, by agreement between the Member State concerned and the Commission. The Commission and, where appropriate, the EIB may delegate representatives to those committees.

4. For each multiannual operation, the authority designated for the purpose by the Member State shall submit progress reports to the Commission within six months of the end of each full year of implementation. A final report shall be submitted to the Commission within six months of completion of the operation. For each operation to be implemented over a period of less than two years, the authority designated for the purpose by the Member State shall submit a report to the Commission within six months of completion of the operation.

[...]'

Facts

I — *Application for Community assistance for the Endovena project*

9 On 12 October 1992 the applicant sent the Commission an application for Community assistance under Article 8 of Regulation No 4256/88 for a pilot and demonstration project for the use of new 'Endovena' technology on fruit trees (Project No 92.IT.06.069, 'the project' or 'the Endovena project'). The application states that the Endovena project was designed to demonstrate the possibility of reducing the costs of applying fertiliser for a number of fruit tree varieties and treating them against pests using a technique based on the 'intravenous' injection of nutrients and fungicides in a preprocessed form which can therefore be directly assimilated by the trunk.

10 According to the application, the project was to consist of three stages. During the first, so-called 'agronomic', stage the Endovena method was to be put into practice by applying it to various fruit trees, namely apple trees, pear trees, plum

trees, peach trees, apricot trees and actinidia trees (plants which bear kiwi fruit). The intention was to collect data on the progress of that stage and to monitor the results. During the second, so-called 'agro-industrial', stage the fruit produced using the Endovena system was to be compared with traditionally-produced fruit, using laboratory tests and also comparing their keeping quality. The third stage, publication of the results of the projects, was to include design and production of written and audiovisual materials. The application stated that implementation of the Endovena project would last 24 months and that its total cost would be ECU 2 084 000.

II — *Award of Community assistance and progress of the project*

11 By Decision C(92) 3124 of 3 December 1992 ('the award decision'), the Commission granted the applicant assistance from the EAGGF Guidance Section for the Endovena project (Article 1). Under Article 2 of the award decision the period for implementing the Endovena project was set at 24 months, from December 1992 to November 1994. Under Article 3 the eligible cost of the project was ECU 2 072 000 and the maximum Community contribution was ECU 1 036 000. Article 3 also stated that if the costs finally incurred showed that the eligible cost was less than that originally provided for the amount of assistance would be reduced proportionately.

12 Under the financial conditions laid down in Annex II to the decision the Commission was authorised, for the purposes of checking the financial statements of the various expenses, to ask to examine any original document, or a certified copy thereof, and to carry out that examination directly on site or to request the documents in question to be sent to it (paragraph 5). It was also stated that if any of the conditions set out in that annex was not complied with or if operations not provided for in Annex I were undertaken the Community could suspend, reduce or withdraw the assistance and require repayment of sums already paid (paragraph 10).

13 On 8 December 1992 the Commission paid the applicant an initial tranche of ECU 414 000, equal to 40 % of the Community assistance. On 7 July 1993 it ordered the payment of a second tranche amounting to ECU 310 800, equal to 30 % of the assistance, which the applicant received on 5 August 1993. The third tranche remained unpaid.

14 On 19 and 22 July 1993 the Commission conducted an on-the-spot inspection of the project. The report drawn up relating to that inspection visit does not reveal any irregularities.

15 By letters dated 29 March 1994 and 11 July 1994 the applicant gave reports on the state of progress of the work and asked that the date set for ending the project should be postponed due to the unfavourable weather conditions which had affected the 1994 harvest. By note of 15 September 1994 the Commission agreed to the requested postponement and set 3 December 1995 as the date for ending the project.

16 On completion of the project, however, it was clear that the Endovena technique did not meet in practice the objectives set for it.

17 By letter of 14 May 1996 the applicant informed the Commission that work on the project had been duly completed on 31 December 1995. It added that the reports were being drawn up and that 'the final report and the economic assessments of the results obtained giving a methodological description of the instruments used for publishing them' would be sent as soon as possible. That letter received no reply from the Commission. The final report on the project was sent to the Commission on 10 September 1997.

III — *On-the-spot inspections carried out in July 1997*

18 Following an audit of an Irish project conducted by the Court of Auditors of the European Communities in January 1997 the Commission decided to carry out a series of inspections of a certain number of projects receiving Community assistance under Article 8 of Regulation No 4256/88 because it suspected that a network had been set up in order to obtain Community subsidies by fraud. The Endovena project was subjected to such inspections.

19 On 17 and 18 July 1997, an on-the-spot inspection of the Endovena project was carried out under Article 23 of Regulation No 4253/88 at the applicant's premises. The inspection was carried out in the presence of officials from various Commission services, including the Unit for the Coordination of Fraud Prevention (UCLAF), officials of the Italian State and, for the applicant, its sole director at that time, Mr L. Biego, and its advisers. UCLAF drew up a report setting out the results of the inspection.

20 On the basis of the findings contained in the report referred to in the preceding paragraph, the Commission considered that it had sufficient evidence to initiate the examination procedure under Article 24 of Regulation No 4253/88 and point 10 of Annex II to the award decision.

IV — *Administrative procedure*

21 By letter of 3 April 1998 the Commission informed the applicant of the evidence of possible irregularities within the meaning of Article 24 of Regulation

No 4253/88 and requested it to submit within six weeks explanations, accounts and administrative documents showing that it had fully complied with its obligations under the award decision.

22 At the same time it sent the Italian Republic a request for comments. The Commission did not, however, receive any comments from the Italian authorities.

23 The time-limit allotted to the applicant was extended several times due to the seizure by the Procura della Repubblica (Public Prosecutor) of the administrative documents and accounts relating to the project in connection with criminal proceedings brought against Mr Biego for offences of fraud against the European Community and tax evasion. Being informed by the national court of the ruling lifting the seizure, the Commission again requested the beneficiary company, by letter of 26 April 2000, to submit its observations within six weeks. By letter of 12 June 2000 the applicant submitted its observations, to which it attached a technical expert's report prepared in connection with the abovementioned criminal proceedings, together with statements and reports.

24 The criminal proceedings against Mr Biego ended in a judgment of the Guidice per le indagini preliminari del Tribunale di Fermo (Judge for preliminary investigations at the court of Fermo) of 15 January 2001, ordering that the case be closed since the limitation period had expired with regard to the offence of fraud, which had been reclassed as an offence of wrongfully obtaining payments to the detriment of the State, and acquittal with regard to tax evasion.

V — *The contested decision*

25 By Decision C(2001) 1274 of 6 June 2001, the Commission, acting under Article 24(2) of Regulation No 4253/88, withdrew the financial assistance granted to Euroagri and demanded that it repay the sum of EUR 725 200 which it had already received by way of assistance ('the contested decision').

Procedure and forms of order sought

26 By application lodged at the Court Registry on 3 August 2001 the applicant instituted the present proceedings.

27 By separate document lodged at the Court Registry the same day the applicant also brought an application for an order suspending the operation of the contested decision. By order of 10 September 2001 the President of the Court of First Instance dismissed the application for interim relief as inadmissible and reserved costs.

28 As a measure of organisation of procedure the Court of First Instance requested the parties to reply to written questions and asked the Commission to produce certain documents. The parties sent their replies and the documents requested within the time-limit laid down.

29 The parties presented oral argument and their replies to the questions from the Court at the hearing on 25 March 2003.

30 At the hearing the Court requested the Commission to reply to a question in writing, which it did within the relevant time-limit. As the applicant had submitted its observations on the Commission's reply within the time-limit laid down, the President of the Second Chamber of the Court set 14 May 2003 as the date for the closure of the oral procedure.

31 The applicant claims that the Court should:

— annul the contested decision;

— in the alternative, annul in part the contested decision and reduce, in proportion to the actual investments made, the assistance allocated to it;

— order the Commission to produce all the reports the applicant had sent concerning the Endovena project, the hearing of certain witnesses and the personal appearance of the applicant, and an expert report or an on-the-spot inspection.

32 In the reply, it also asked that Annex 6 to the defence (inspection report by the Commission's Directorate-General for Financial Control), some parts of which were omitted, should be removed from the file, unless the full document was lodged at the Registry.

33 The Commission contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Law

I — *The main claim*

34 In the written pleadings the applicant relies on five pleas in support of its action for annulment. The first plea alleges an inadequate statement of reasons and infringement of the adversarial principle. The second and third pleas allege, respectively, infringement of Article 24 of Regulation No 4253/88 and infringement of Article 25 of that same regulation. In the fourth plea, entitled 'absence of logic, inadequate or wholly non-existent statement of reasons', the applicant disputes in essence the findings of the contested decision with regard to the irregularities which caused the assistance to be withdrawn. In the fifth plea the applicant accuses the Commission of infringing the principle of proportionality.

A — *The applicability of the various versions of Regulations Nos 2052/88, 4253/88 and 4256/88*

35 First of all, it is necessary to determine which of the successive versions of Regulations Nos 2052/88, 4253/88 and 4256/88 is applicable in the present case.

The Community assistance for the Endovena project was granted in December 1992, which was before the entry into force on 3 August 1993 of Regulations Nos 2081/93, 2082/93 and 2085/93. The transitional provisions contained in the latter regulations, namely Article 15 of Regulation No 2081/93, Article 33 of Regulation No 2082/93 and Articles 10, 11 and 11a of Regulation No 2085/93, do not refer expressly to the provisions concerning financial control, the withdrawal of assistance or the monitoring of projects, which are the provisions that are particularly relevant in the present case.

36 The Court of Justice and the Court of First Instance have held that the procedural rules are generally considered to apply to all proceedings pending at the time when they enter inter into force, although this is not the case with substantive rules. The latter are usually interpreted as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, objectives or general scheme that such an effect must be given to them (Joined Cases 212/80 to 217/80 *Salumi and Others* [1981] ECR 2735, paragraph 9, and Case T-42/96 *Eyckeler & Malt* v *Commission* [1998] ECR II-401, paragraph 54 et seq.). The conditions for granting assistance, the obligations incumbent on the beneficiary and the conditions under which assistance may be withdrawn constitute substantive rules. Those aspects of the present case are therefore, in principle, governed by Regulations Nos 2052/88, 4253/88 and 4256/88 in their original versions. However, as regards the inspections carried out by the Commission and the obligations incumbent on the Commission and the Member States in connection with the monitoring of projects, these are procedural provisions, applying in their new version, from the entry into force of the 1993 regulations, to assistance that was granted earlier.

37 It should be made clear that withdrawal of Community assistance due to the irregularities alleged against a beneficiary is by way of being a penalty when it goes beyond repayment of amounts that have been wrongly paid as a result of those irregularities and is imposed in order to serve as a deterrent (Case T-199/99 *Sgaravatti Mediterranea* v *Commission* [2002] ECR II-3731, paragraph 127). It is therefore only permissible if it is justified both under the old version and under

the new version of Article 24 of Regulation No 4253/88. As the Commission rightly stated in its replies to the questions from the Court, the amendments made to that provision by Regulation No 2082/93 are of a purely formal nature and have no effect on its scope.

B — *The first plea: inadequate statement of reasons and infringement of the adversarial principle*

1. Arguments of the parties

38 The applicant states that the Commission failed to comply with the obligation to state reasons contained in Article 253 EC because it did not reply to the observations set out in the applicant's letter of 12 June 2000 and because it failed to take into consideration the many documents produced on that occasion. According to the applicant, compliance with the adversarial principle requires the Commission to state the reasons for a decision not only with regard to the existence of the infringements and irregularities found but also with regard to the lack of substance or relevance of the arguments relied upon in defence. In the reply it also complains that the Commission gave detailed reasons for its view that certain points of the observations contained in its letter of 12 June 2000 were unfounded only in the defence. It pleads in that regard infringement of the rights of the defence.

39 At the hearing the applicant added that the Commission produced the final report lodged by the applicant on 10 December 1997 just before the oral procedure. It infers from this that that report was not taken into consideration when the Commission initiated the procedure for withdrawing the assistance. The applicant considers that that constitutes a serious infringement of the obligation to state reasons.

40 The Commission takes the view that the contested decision contains a proper statement of reasons.

2. Findings of the Court

41 It is settled case-law that under Article 253 EC the reasons stated for a measure must disclose clearly and unequivocally the reasoning of the Community authority which adopted it, so as to make the persons concerned aware of the reasons for the measure and thus enable them to defend their rights, and so as to enable the Courts to exercise its power of review. The extent of the obligation to state reasons depends on the nature of the measure in question and the context in which it was adopted, and on all the legal rules governing the matter in question (Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraphs 15 and 16, and Case T-340/00 *Comunità montana della Valnerina* v *Commission* [2003] ECR II-811, paragraph 82).

42 In particular, since a decision to withdraw Community financial assistance entails serious consequences for the beneficiary of that assistance, the statement of the reasons for that decision must clearly show the grounds justifying it (see by analogy Joined Cases T-46/98 and T-151/98 *CCRE* v *Commission* [2000] ECR II-167, paragraph 48).

43 In the present case, both the letter of 3 April 1998 in which the Commission informed the applicant of the evidence of possible irregularities within the meaning of Article 24 of Regulation No 4253/88 and the contested decision state clearly and unequivocally the reasons for withdrawal of the assistance. Moreover, the applicant had taken part in the inspection carried out in 1997, its director had

signed the report on it, and it was fully cognisant of the UCLAF report drawn up following that inspection. The applicant also showed, in the pleas made in its statements, that it had fully understood the Commission's reasoning.

44 In those circumstances, the applicant's theory that the Commission should have replied expressly to all the arguments put to it before adopting the contested decision cannot be accepted. Nor is there any such obligation under the adversarial principle.

45 As regards the complaint made at the hearing that when deciding to withdraw the assistance the Commission services failed to take into consideration the final report submitted by the applicant on 10 September 1997, it does not in essence concern the statement of reasons for the decision but rather the procedure prior to the adoption of that measure. It will be considered below in connection with the second plea (see paragraphs 64 to 67 below).

46 The applicant's first plea is therefore unfounded.

C — *The second plea: infringement of Article 24 of Regulation No 4253/88*

1. Arguments of the parties

47 By this plea, which is divided into three limbs, the applicant contends that the contested decision was not preceded by an appropriate examination of the case as provided for in Article 24(1) of Regulation No 4253/88.

48 In connection with the first limb of the plea, the applicant had accused the Commission, in the application, of having infringed the obligation contained in Article 24(1) of Regulation No 4253/88, to request that the Member State or authorities designated by it to implement the operation submit their comments within a specified period of time. Having learned from the Commission's defence that the Italian authorities had been notified that the administrative procedure was being initiated and that they had not submitted any comments, the applicant criticises the Commission because it was not informed of this fact.

49 In connection with the second limb of the plea, the applicant submits that the obligation to conduct a suitable examination of the case was also infringed by the fact that the Commission in essence adopted as its basis for the contested decision the results of the inspection conducted in 1997. On the one hand, it contends that the Commission, having conducted one inspection of the project in 1993, was not entitled to carry out another inspection in 1997. On the other hand, it criticises the procedure for that inspection, which in its view precludes taking the results of that inspection into consideration.

50 According to the applicant, the Commission cannot justify the second inspection on the ground that evidence that cast doubt on the regularity of the expenditure declared under the project had appeared after the first inspection in 1993. The audit carried out by the Court of Auditors in 1997 concerned facts that were unconnected with the Endovena project and the applicant, and it cannot be inferred from those facts that the financing in the present case was also of a fraudulent nature. The applicant criticises the Commission for having adopted the assumption that it was guilty and for having looked for evidence to support that assumption. Such an approach does not permit the Commission to make a correct assessment of the facts.

51 So far as the validity of the results of the 1997 inspection is concerned, the applicant contends that they contradict in substance those of the earlier inspection in 1993. Hence, it considers that the Commission infringed the rights

of the defence. It points out that the 1997 inspection, conducted a relatively long time after the conclusion of the project, only lasted two days. The applicant considers that it is impossible to consider properly such a complex issue in so short a time and with only three officials. The applicant disputes the content of the report drawn up after that inspection, arguing that the accusations made against it are not based on any evidence apart from the inspectors' statements. At the hearing it added that the report on that inspection, produced as Annex 6 to the defence, was not valid due to a large number of omissions and because it was not dated. It is of the opinion that removal of that document from the file, as it requested, would render the evidence of the infringements of which it is accused entirely invalid.

52 In connection with the third limb of the plea, explained further at the hearing, the applicant contends that the obligation to conduct a suitable examination of the case was also infringed because the final report it prepared was not taken into consideration. In response to a question from the Court, the applicant explained that it was not able to rely on the existence of the final report prior to the production of that report by the Commission because the documents in its possession relating to the Endovena project had been seized by the public prosecutor in connection with the criminal proceedings in Italy, and those documents had not all been duly returned to it when the proceedings had ended.

53 As regards the first limb of the plea, the Commission states that it had requested the Italian authorities to submit their comments in accordance with the obligation contained in Article 24(1) of Regulation No 4253/88. It considers that there is no obligation to inform the person concerned of such consultation.

54 As regards the second limb of the plea, the Commission contends that the inspection carried out in July 1997 was a detailed one, conducted by six officials over two days, and it included a physical inspection of the project concerned, with a visit to the relevant sites. The examination took place in several stages and

lasted longer than the applicant considers it did. The Commission is of the view that the applicant cannot argue that the inspection was conducted a long time after the project was completed because the project was not properly completed. According to the Commission, any discrepancies between the inspections conducted in 1993 and 1997 are not significant and the inspection conducted in 1997 was legitimate since new evidence had become available which raised doubts as to whether the expenses declared were in order. In the rejoinder the Commission states that, following the audit conducted by the Court of Auditors, it inspected all the 107 projects that were still being financed under Article 8 of Regulation No 4253/88, not only the applicant's project. It was not therefore particularly biased against the applicant.

2. Findings of the Court

55 By the present plea the applicant is in essence criticising the procedure which led to the adoption of the contested decision. The plea must therefore be considered in the light of Regulation No 4253/88, as amended.

56 The first limb of the plea is now limited to the complaint that the Commission did not inform the applicant of the fact that it had given the Italian authorities the opportunity to submit their comments on the possible withdrawal of the assistance and that they did not avail themselves of that opportunity. There is, however, no obligation to do so under the relevant rules. The first limb of the plea is therefore unfounded.

57 As regards the second limb of the plea, the last subparagraph of Article 23(2) of Regulation No 4253/88, as amended, provides that 'the Commission shall ensure that any checks that it carries out are performed in a coordinated manner so as to

avoid repeating checks in respect of the same subject-matter during the same period.' That provision is indeed intended to avoid repeated checks on the same project. It thus requires the Commission to organise its checks according to the principles of good administration. It does not, however, prohibit repeated checks as such (Joined Cases T-141/99, T-142/99, T-150/99 and T-151/99 *Tecnagrind* v *Commission* [2002] ECR II-4547, paragraphs 99 to 102).

58 It is in particular legitimate for the Commission to repeat its checks where fresh evidence reveals that more detailed checks are needed on certain projects. In the present case, such new evidence emerged from the audits by the Court of Auditors. The irregularities the Court of Auditors found in the implementation of certain projects constituted sufficient justification for checking other similar projects, either systematically or by sampling, even if those projects had already been checked previously.

59 The fact that the results of the second inspection differed from those of the inspection conducted in 1993 does not preclude them from being taken into consideration. As the Commission rightly pointed out, the 1993 report does not contain any express findings, based on the checks actually carried out by Commission officials, which contradict the results of the 1997 inspection. At any event, it is normal for an inspection instigated because of new evidence that has given rise to suspicion of fraud in connection with certain projects to be more detailed and to produce results that differ from those of a routine inspection undertaken in the absence of any suspicion.

60 As regards the complaint that the amount of time spent on the 1997 inspection was insufficient to produce reliable results, it is clear from the inspection report contained in Annex 5 to the application that three Commission officials and three officials of the Italian State took part in the inspection carried out on the applicant's premises on 17 and 18 July 1997. Six officials working for two days

must be regarded as adequate in order to gather the evidence on which the contested decision is based. The Commission also rightly points out that the 'suitable examination of the case' did not just consist of the inspection conducted in July 1997, but also included consideration of the results of the inspection by the Commission services, the invitation to the beneficiary and the Member State concerned to submit their comments and the analysis of those comments and of the accompanying documents by the Commission.

61 Nor is the complaint that the inspection took place too long after the completion of the project well founded. The period of approximately one year between the notification of completion of the project and the inspection cannot be classed as excessive, particularly in view of the fact that Article 23(3) of Regulation No 4253/88, both in the old version applying in the present case and in its amended version, provides that 'for a period of three years following the last payment in respect of any operation, the responsible body and authorities shall keep available for the Commission all the supporting documents regarding expenditure on the operation.' Moreover, point 6 of Annex II to the award decision requires the beneficiary to keep available for the Commission for a period of five years following the last payment of the assistance the originals of all the documents supporting the expenses incurred. That shows that a beneficiary of Community assistance must expect checks during the three, or even the five, years following payment of the last tranche of funding. Moreover, the inspection took place before the applicant submitted the final report on the project, on 10 September 1997.

62 As regards the complaints raised by the applicant in respect of the inspection report contained in Annex 6 to the defence, that document is not the only one confirming the results of the inspection conducted in 1997. In particular, the applicant itself produced, in Annex 5 to the application, an inspection report dated 19 August 1997 relating to the same inspection, to which are annexed minutes signed by, among others, Mr Biego, who was the applicant's director at the time. It should be added that the question whether the irregularities alleged against the applicant in the contested decision can be considered to have been established does not fall within the present plea and will be considered below in the context of the fourth plea.

63 The second limb of the plea is therefore unfounded.

64 As regards the third limb of the plea, alleging that the Commission failed to take the final report into consideration, under Article 48(2) of the Rules of Procedure of the Court of First Instance no new plea may be introduced in the course of proceedings unless it is based on matters of law or of fact which came to light in the course of the procedure.

65 It is therefore necessary to determine whether in the present case submission by the Commission of the final report on the Endovena project shortly before the hearing in the present case can be considered to be new evidence that would enable the applicant to submit new pleas. In that regard, it should be pointed out that the report is a document drawn up by the applicant itself which, together with its annexes, comprises some 300 pages.

66 The applicant has not explained convincingly why it did not rely on the existence of that report during the written procedure, in particular in order to dispute the Commission's statement that the final report on the Endovena project was never produced. The applicant did state that all the documents relating to the project had been seized by the Italian public prosecutor. However, that seizure had ended before the contested decision was adopted. The applicant also stated at the hearing that the public prosecutor had not returned to it all the documents seized. Even if that assertion were correct, and it is not supported by any evidence, that does not explain why the persons responsible for the management of the applicant, and in particular Mr Biego, who was its sole director during the period from 20 November 1996 to 14 December 2000, were not in a position to inform the applicant's counsel that that report had been drawn up and submitted to the

Commission. The fact that the applicant did not rely on the existence of the report during the written procedure can therefore only be due to a lack of care on the part of the persons responsible for its management. Therefore, the production of that report by the Commission after the closure of the written procedure, although that late disclosure is to be regretted, cannot be classed as new evidence that would justify the production of new pleas.

67 The third limb of this plea is therefore inadmissible.

68 The second plea, alleging that the Commission did not carry out a suitable examination of the applicant's case, must therefore be rejected.

D — *The third plea: infringement of Article 25 of Regulation No 4253/88*

1. Arguments of the parties

69 The applicant claims in the context of the first limb of this plea that the Commission and the Italian State failed to comply with the monitoring obligation contained in Article 25 of Regulation No 4253/88, and that in particular they did not draw up progress reports as provided for in Article 25(4).

70 In the context of the second limb of the plea the applicant claims that the fact that the officials responsible for monitoring the project kept silent convinced it that it could dispense with carrying out the disclosure and publication stage.

71 The Commission considers that Article 25 of Regulation No 4253/88 does not apply to pilot and demonstration projects receiving direct financing from the Commission under Article 8 of Regulation No 4256/88.

2. Findings of the Court

72 With regard to the first limb of this plea, suffice it to say that failure on the part of the Commission or the Italian authorities to fulfil any monitoring obligations cannot prevent the Commission from applying Articles 23 and 24 of Regulation No 4253/88 to an individual project. The complaint raised by the applicant is therefore irrelevant as regards assessing the legality of the contested decision.

73 The second of limb of that plea, in which the applicant claims that the Commission's conduct caused it to have legitimate expectations by creating the impression that the Commission had dispensed with the stage of publishing the results of the project, falls in essence within the fourth plea, in which the applicant denies that failure to carry out that stage of the project can be classed as an irregularity. It will therefore be considered in the context of that plea.

74 The third plea must therefore be rejected.

E — *The fourth plea: the irregularities noted in the contested decision do not exist*

75 By this plea, entitled 'absence of logic, inadequate or wholly non-existent statement of reasons', the applicant claims in essence that the conditions for the withdrawal of assistance set out in Article 24 of Regulation No 4253/88 are not met because the facts alleged against it in the contested decision are not established or cannot be classed as irregularities.

76 Before examining the arguments of the parties concerning the various irregularities mentioned in the contested decision, it is appropriate to consider some general points raised by the applicant.

1. General

(a) Arguments of the parties

77 The applicant criticises the Commission first of all for considering various circumstances as 'failures', 'irregularities' or other 'changes to the project' solely because they did not correspond to the content of the application for assistance. In its view, the content of the application is not relevant as regards monitoring to ascertain whether it had properly complied with its obligations. Its obligations as

a beneficiary of the assistance stem solely from the award decision, which requires it to take particular actions, and sets out specific objectives for it to attain and certain methods to adopt, whilst leaving it free to choose the means for achieving those objectives with regard to everything not expressly regulated by the decision.

78 The applicant next disputes the Commission's statement that Mr Biego admitted that he gave the Commission incorrect information in the application for assistance.

79 It also states that the Commission cannot, in support of the contested decision, rely on the results of checks carried out after 1997 which show that there were links between a number of projects financed on the basis of Article 8 of Regulation No 4253/88 and networks set up in order to fraudulently misuse the Community funds obtained, since that ground was not put forward in the stages preceding the initiation of the procedure for withdrawing assistance.

80 Lastly, it argued at the hearing that the Court ruled in *Sgaravatti Mediterranea* v *Commission*, cited in paragraph 37 above, that the results of checks carried out by national authorities in the context of criminal proceedings may be adduced as evidence to justify withdrawal of assistance. Such checks were also carried out in the present case and the public prosecutor found that the applicant had complied with all the essential obligations relating to the project.

81 The Commission points out that the application is of fundamental importance for the purposes of approving the project and granting assistance. Since this is a case of a public subsidy and not the award of a public works contract, the applicant does not have full autonomy in the choice of means it uses in order to achieve the aims of the project. At the hearing the Commission added that the applicant was not being accused of having failed to carry out the project.

(b) Findings of the Court

82 It should be noted first of all that the system of subsidies provided for by the Community legislation relies in particular on the beneficiary complying with a series of obligations which entitle it to obtain the proposed financial assistance. If the beneficiary does not comply with all those obligations Article 24(2) of Regulation No 4253/88, in both the original and the amended versions, authorises the Commission to reconsider the extent of the obligations it assumes under the decision awarding that assistance (see to that effect Joined Cases T-551/93 and T-231/94 to T-234/94 *Industrias Pesqueras Campos and Others* v *Commission* [1996] ECR II-247, paragraph 161, and Case T-216/96 *Conserve Italia* v *Commission* [1999] ECR II-3139, paragraphs 71 and 90 to 94).

83 Similarly, applicants for, and beneficiaries of, Community assistance are required to satisfy themselves that they are submitting to the Commission reliable information which is sufficiently accurate, since otherwise the system of controls and evidence set up to determine whether the conditions for granting assistance are fulfilled cannot function properly. In the absence of sufficiently accurate information projects which do not fulfil the conditions required could obtain assistance. It follows that the obligation on applicants for, and beneficiaries of, assistance to provide information and act in good faith is inherent in the EAGGF assistance system and essential for its effective functioning. Infringement of those obligations must therefore be regarded as an irregularity within the meaning of Article 24 of Regulation No 4253/88, as amended (see, to that effect, *Conserve Italia* v *Commission*, cited in paragraph 82 above, paragraph 71, *Vela and Tecnagrind* v *Commission*, cited in paragraph 57 above, paragraph 322, and *Comunità montana della Valnerina* v *Commission*, cited in paragraph 41 above, paragraph 97).

84 It must also be noted that the grant of financial assistance is subject not only to compliance with the conditions laid down by the Commission in the award decision but also to compliance with the terms of the application for assistance in

respect of which that decision was given (Case T-81/95 *Interhotel* v *Commission* [1997] ECR II-1265, paragraph 42, and *CCRE* v *Commission*, cited in paragraph 42 above, paragraph 68).

85 The applicant applied for Community assistance for a specific project, which it described in detail in its application. That description played a decisive part as regards the award decision. Therefore, the applicant's contention that the application for assistance is not relevant as regards evaluating whether the project was properly implemented cannot be accepted.

86 As regards the effect of the contents of the application for assistance on possible irregularities in the project, it is necessary to distinguish between two aspects.

87 On the one hand, the application contains factual information on the existing situation and the background to the proposed project. That information plays an important part in the evaluation of the validity of the project. If it proves subsequently that the information did not correspond to the facts, the award decision is vitiated by an error of fact and must therefore be considered to be unlawful. Such unlawfulness may, in certain circumstances, justify retroactive withdrawal of the award decision (Case C-500/99 P *Conserve Italia* v *Commission* [2002] ECR I-867, paragraph 90). Moreover, supplying incorrect information in an application for assistance, which could mislead the Commission with regard to facts likely to influence the award decision, constitutes infringement of an essential obligation incumbent on applicants for Community assistance and, hence, an irregularity within the meaning of Article 24(2) of Regulation No 4253/88, in both the original and the amended versions (see to that effect Joined Cases T-61/00 and T-62/00 *APOL and AIPO* v *Commission* [2003] ECR II-635, paragraphs 118 to 120).

88 On the other hand, the application contains information regarding the operations envisaged under the project. If those operations are not carried out as provided for in the application, this constitutes a change to the project which, if significant, needs to be approved by the Commission so that the project may continue to receive the assistance (see Article 24(2) of Regulation No 4253/88 in its original version, the meaning of which was not affected by the amendment in 1993).

89 The award decision may provide that certain aspects of the project should be changed from how they are set out in the application and, in that case, the decision is conclusive in any assessment of whether the project has been properly implemented. It may not be inferred from this, however, that the beneficiary is not bound by the terms of its own application for assistance where the application has been accepted without any express amendment.

90 It is therefore legitimate for the Commission to refer to the application for assistance in order to verify whether granting the assistance was justified and whether the project had been properly implemented.

91 It should also be noted that it is irrelevant as regards the outcome of the present case whether or not Mr Biego admitted giving the Commission incorrect information in the application for assistance. It is more important to check whether the application for assistance did in fact contain incorrect information.

92 In that regard, it is incumbent on the beneficiary to prove that the information contained in the application for assistance is correct. As the originator of that application, it is in the best position to do so and must establish that the receipt of resources from public funds is justified (see, by analogy, *Interhotel* v *Commission*, cited in paragraph 84 above, paragraph 47).

93 As regards the applicant's argument that the Commission cannot rely on the existence of an alleged network set up to obtain Community assistance by fraud in order to justify the contested decision, suffice it to say that that decision is not based on the existence of such a network but on the findings specifically in relation to the Endovena project, the validity of which will be considered in the context of the present plea. The fact that the Commission referred to such a network in the defence in order to describe the background to the present case is not therefore relevant as regards the validity of the contested decision.

94 Nor can the applicant dispute the contested decision on the ground that the Commission based its decision on the results of the inspections conducted by its officials and not on those of the checks carried out as part of the national criminal proceedings. Article 23(2) of Regulation No 4253/88, as amended, empowers the Commission to carry out on-the-spot checks, including sample checks, in respect of operations financed by the Structural funds, 'without prejudice to checks carried out by Member States in accordance with national laws'. The Court held in *Sgaravatti Mediterranea* v *Commission*, cited in paragraph 37 above (paragraphs 42 to 49), that the Commission may legitimately use the results of a check carried out by the national authorities as its basis for determining whether the existence of irregularities justifying a penalty under Article 24 of Regulation No 4253/88 has been established. That option does not mean, however, that the Commission is bound by the results of such national checks. The checks carried out in the context of national criminal proceedings have a different purpose and the fact that they reach the conclusion that there has been no conduct constituting an offence within the meaning of national criminal law does not justify the conclusion that there is no irregularity within the meaning of Article 24 of Regulation No 4253/88 which could give rise to measures at an administrative level under that provision.

95 Nor can the application of Article 24 of Regulation No 4253/88 be ruled out in the present case on the ground that the penalties laid down in that provision only apply where the operation being financed has not been carried out in whole or in part. It is not enough for the applicant to show that the project approved by the

Commission in the award decision has been carried out correctly in substance. The applicant must also be in a position to prove that every part of the Community contribution relates to a service actually provided which was essential for the implementation of the project (see to this effect *Vela and Tecnagrind* v *Commission*, cited in paragraph 57 above, paragraph 201).

2. The various irregularities established in the contested decision

96 The applicant disputes the findings of the contested decision with regard to each of the eleven irregularities established in that decision.

(a) The complaint that the Endovena technique had not been tested previously

97 The first indent of recital 8 in the contested decision states:

'... the application for a contribution states that tests on the "Endovena" technique were carried out on a number of fruit varieties, using various products, and the results of those tests are available. The Commission inspectors found that the "Endovena" technique had not been tested previously and that no results were available;

[...]'

— Arguments of the parties

98 The applicant considers that that complaint is unfounded. First, it points out that the Commission had the opportunity to assess the previous tests before granting the assistance and it considered them adequate for it to adopt and finance the Endovena project.

99 Second, the statements made on that subject during the 1997 inspection manifestly contradict the findings of the first inspection conducted in 1993, during which it was found that 'comparisons, analyses and reports were made in respect of the results [of the Endovena method and the traditional method] and the data obtained were filed on computer'.

100 Third, the applicant points out that it produced as an annex to its letter of 12 June 2000 technical reports concerning those experiments which, in its view, show that the contested decision is wrong in this regard.

101 The Commission argues that it cannot examine the veracity of all the information contained in an application before assistance is granted. At the hearing it added that the project was designed to promote the development of rural areas, which presupposes that it was based on methods that had been appropriately tested to ensure that those methods could be used in practice. Community assistance would not have been granted if the Commission had been in possession of correct information concerning previous tests. The Commission concludes that that irregularity undermined the basis of the award decision, and that that alone is sufficient to justify withdrawing assistance.

— Findings of the Court

102 According to the information relating to previous testing which is given on pages 4, 6 and 11 of the application for assistance, two professors, one from the Istituto Tecnico Agrario Statale (State Agricultural College) in the town of Ascoli Piceno, the other from the University of Perugia, helped to test the Endovena technique. The system was tried with various trees and the results of the experiments were 'exciting'. In the application the applicant stated that it also had a series of data, including:

— the results of the experimental use of the system on various fruit trees, three-year-long tests carried out on actinidia and on pear trees and apple trees,

— results of tests using various types of fertiliser,

— results of tests using particular fungicides,

— results of an Endovena system applied to several trees linked to one another.

103 It is also stated on page 11 of the application that one of the objectives of the project is to improve the information already available on the method of cultivation.

104 The application for assistance thus shows that there was quite extensive prior testing of the method concerned.

105 In order to have the complaint that that information was incorrect dismissed the applicant refers to its letter of 12 June 2000, in which it submitted its observations on the irregularities found by the Commission. That letter states, first, that three experiments took place, according to the applicant, within his own undertaking and, second, that it monitored carefully the experiments carried out by the Agriculture Department at the University of Perugia.

106 The applicant attached three documents to that letter. The first two refer to an experiment carried out by researchers at the University of Perugia on the applicant's farm in 1990. That experiment was on actinidia suffering from a specific problem of iron deficiency and consisted of injecting a substance directly into the stems of the plants in order to make up for the deficiency. The third document concerns a similar experiment carried out by the same researchers on vines suffering from the same problem.

107 However, the applicant did not provide any supporting documents either during the administrative procedure or before the Court to show that its statements that the Endovena system had been more generally tested before the application for assistance was submitted were correct.

108 In the light of that information, the statement in the contested decision that the Endovena technique had not been tested previously may appear to be exaggerated. However, the very specific and isolated experiments for which the applicant provided supporting documents cannot be compared with those listed in the application for assistance.

109 The applicant's argument that the Commission had the opportunity to assess the previous tests before granting the assistance and that it considered them adequate is irrelevant as regards dismissing the present complaint. First, the fact that the Commission had no doubts as to the veracity of the assertions contained in the application at the time the assistance was granted does not prove that they were indeed correct. Second, the applicant cannot rely on the fact that the Commission did not conduct a detailed examination of those statements before the assistance was granted in order to escape the consequences of its own incorrect information.

110 Nor do the findings of the inspection conducted in 1993 that 'comparisons, analyses and reports were made in respect of the results [of the Endovena method and the traditional method] and ... the data obtained were filed on computer' show that the information concerning previous testing contained in the application for assistance was genuine. Those findings make no reference to testing carried out before the application for assistance was submitted, only to the implementation of the project itself.

111 The arguments put forward by the applicant do not therefore invalidate the finding in the contested decision that the application for assistance contained untrue information regarding previous testing. This constitutes an infringement of the obligation to provide information and act in good faith incumbent on the applicant and, hence, an irregularity within the meaning of Article 24 of Regulation No 4253/88.

112 As a result of the incorrect information given in the application, the award decision also contains factual errors concerning facts important for the assessment of whether the project deserved the award of assistance. It is therefore unlawful. According to case-law of the Court of Justice, the administration may withdraw with retroactive effect a favourable administrative act vitiated by

illegality, provided that it does not infringe either the principle of legal certainty or that of the protection of legitimate expectations. That possibility, which is acknowledged where the beneficiary of the act did not contribute to its illegality, applies *a fortiori* where, as in this case, the illegality is attributable to him (*Conserve Italia* v *Commission*, cited in paragraph 87 above, paragraph 90).

113 The Commission was therefore right to accept the untrue information given in the application for assistance as the basis for its contested decision.

(b) The complaint that the human resources mentioned in the application for assistance did not exist

114 The second indent of recital 8 in the contested decision states:

'... the human resources mentioned in points 6.1.3 and 6.2.3 of the application for assistance do not exist;

...'.

— Arguments of the parties

115 The applicant claims that there is a clear contradiction between this complaint and the findings made by the inspectors in 1993 as regards the qualifications of the people assigned to the project. It points out that the annex to the report on that first inspection contained the names of the people in charge of the project. It stresses the fact that during the first inspection the people concerned had been considered to be adequately qualified. In its view, the fact that the project was actually carried out and that qualified people took part in it is also clear from an expert report ordered by the Procura della Repubblica de Fermo and annexed to its letter to the Commission of 12 June 2000.

116 The Commission contends that the people assigned to the project whom the applicant had previously stated it wanted to employ on the project were better qualified and more numerous than those whom it actually employed.

— Findings of the Court

117 As regards the 'human resources' which were to be employed on the project, the application for assistance referred, in respect of the first stage, to a 'team of directors and managers' composed of shareholders in the applicant company, and to the involvement of the 'chairperson of an environmental organisation' who was an expert in setting up and managing fruit-tree plantations, teaching staff and students from the Agricultural College in Ascoli Piceno, the Dean of the Arboricultural Institute within the Faculty of Agriculture in Perugia and a technical director, who was an agricultural expert and in the preceding years had been engaged in managing fruit-tree plantations and in cold storage. As regards

the second stage, the application referred to the involvement of a chemist from the University of Ancona specialising in the produce of fruit-trees, a university teacher specialising in cold storage and a person who would be in charge of the management and coordination of the project.

118 The applicant does not state that all the people mentioned in the application actually worked on the project. It does state, however, that the people who were involved in the project were appropriately qualified. The list annexed to the 1993 inspection report, to which the applicant refers, contains the names of 11 people. The list does not give their qualifications but it does describe their duties: three 'project coordinators', two 'scientists', two 'administrators', an agronomist, a computer expert, an accountant and a tax adviser. Even if all those people were considered to be 'in charge' of the Endovena project, there is no indication that they were as highly qualified as some of the people, such as the university teachers, mentioned in the application for assistance.

119 Nor does the actual implementation of the project — which the applicant itself admits did not produce the expected results — demonstrate that the qualifications of the people who contributed to it were equal to those stated in the application for assistance. Lastly, although the expert's report relied on by the applicant concluded that 'the experiment appears to comply fully with the programme originally submitted' to the Commission, the expert does not mention the qualifications of the people who worked on the project.

120 By replacing the exceptionally well qualified people mentioned in the application with other people whose qualifications have not been shown to be equally high in order to carry out the project the applicant made a significant change which affected the conditions for the implementation of the project. It is not clear from the file, however, that it sought the Commission's approval for that change.

121 The Commission was therefore right to rely on that fact as a reason for the contested decision.

(c) The complaint that the Ispettorato Provinciale dell'Agricoltura (Provincial Agricultural Inspectorate) did not take part in the project

122 The third indent of recital 8 in the contested decision states:

'... contrary to what was stated in the application for assistance, the Ispettorato Provinciale dell'Agricoltura has no connection with the project, no official contact was made with that authority and no provision was made for any financial contribution from that authority;

....'

— Arguments of the parties

123 The applicant maintains that no provision was made for any financial contribution from the Ispettorato Provinciale dell'Agricoltura towards the project at the application stage, nor indeed in the award decision, since that authority did not have the necessary financial resources. The application for assistance merely alluded to future initiatives by that body, without specifying what they were, and to the probability (which is not the same as certainty) of a financial contribution. It adds that it had informal contacts with that authority and that it was waiting for a positive outcome from the demonstration stage before becoming actively involved in the project.

124 The Commission states that the application for assistance clearly implied that the applicant was envisaging official contacts right from the initial stages of the project and that provision had actually been made for a financial contribution from the authority; only the size of its contribution was uncertain.

— Findings of the Court

125 The applicant had stated in the application for assistance:

'Euroagri will leave validation to the agricultural [inspectorate] and also the choice of the location which the authority considers most appropriate for leasing approximately 18 hectares of land for demonstrating the "Endovena" method of cultivating fruit trees.'

126 The application for assistance also contained the following:

'9. Funding programme

The agricultural [inspectorate] in Ascoli Piceno, which is involved in the project, with coordination by Dr Armellini, the Head of the Service, [is taking] the necessary steps to provide local funding for part of the project.

It is probable that the [above-mentioned funding] will meet about 5 % of the total cost.'

127 The applicant did not submit any documents to substantiate the involvement of the Ispettorato Provinciale dell'Agricoltura in the contested project. Although it states that it had informal contacts with that authority, it did not submit any documents to support that statement. The authority's involvement in the project as envisaged in the application was not merely informal. In particular, it was to have been involved in the choice of the land on which one of the stages of the project was due to take place. The applicant does not state however that that above-mentioned authority was involved in the choice of land.

128 As regards a financial contribution from the inspectorate, it is correct that the application does not describe it as definite. However, the statement that 'the agricultural inspectorate is taking the necessary steps to provide local funding for part of the project' implies that official steps were taken to obtain such funding. The applicant does not maintain that that was the case.

129 Consequently, the applicant's arguments do not invalidate the finding that the agricultural inspectorate was not associated with the project in the way that was envisaged in the application for assistance. It is thus clear that the applicant made a significant change to the project within the meaning of Article 24(2) of Regulation No 4253/88 without seeking approval from the Commission.

(d) The complaint that none of the people named on the list of technical and scientific referees was involved in carrying out the project

130 The fourth indent of recital 8 in the contested decision states:

'... none of the people named on the list of technical and scientific referees attached to the application for assistance was involved directly or indirectly in carrying out the project;

....'

— Arguments of the parties

131 The applicant states that it took the scientific publications written by the specialists as its basis and that it used its own technicians for implementing the project, which could be verified from the 1993 inspection. At any event, the award decision made no mention of this matter.

132 The Commission refutes those arguments.

— Findings of the Court

133 The applicant submitted as an annex to the application for assistance a list of ten people acting as 'technical and scientific referees'. The part that list played in the context of the application for assistance is not clear from that application. In particular, the application does not state that the people on the list were to be actively involved in the project.

134 In those circumstances, the fact that those people were not actively involved in the project cannot be classed as an irregularity committed during the implementation of the project or as a significant change to the project within the meaning of Article 24(2) of Regulation No 4253/88.

(e) The complaint concerning staff costs

135 The fifth indent of recital 8 in the contested decision states:

'... staff costs and related expenses were charged to the project at a flat-rate 50 % of the overall staff costs of Euroagri, the beneficiary of the project, but no detailed supporting documents concerning the people employed on the project and the work carried out were supplied to the Commission;

....'

— Arguments of the parties

136 The applicant considers that it acted correctly in charging a flat-rate 50 % of the overall staff costs to the project. It argues that the expenditure incurred corresponds exactly to the expenditure provided for in the financing decision adopted by the Commission. The Commission cannot therefore consider them a priori unjustified. It points out that, during the inspection in 1993, it was found that a considerable amount of work had been carried out and that the reports sent to the Commission contained a detailed explanation of the method for calculating staff costs, a detailed breakdown of hours spent on the project, a specific description of the systems and indicators used for calculating staff, and a statement of the technical reasons for which it was necessary for there to be a permanent staff presence in the project area. In the reply it points out that the 471 hours' work per hectare which it calculated for the project was less than the 800 hours per hectare given in a table showing the required number of hours' work on the fruit trees prepared by the Italian authorities. It considers that this shows that it did not overestimate the staff costs.

137 The Commission points out that the Fund is only financing a certain percentage of the costs actually incurred in carrying out the project and explains that the complaint made against the applicant in the contested decision is that it did not provide any detailed supporting documents or substantiate the number of people actually employed or their work on the sites allocated to the project.

— Findings of the Court

138 The applicant's contention that the staff costs it charged to the project were justified because they corresponded to the costs set out in the award decision cannot be accepted. Although both the application for assistance and the award decision play an important role in the assessment of whether the project has been

properly carried out, the figures they contain relating to the project costs are only an estimate *ex ante*. The beneficiary may apply for payment of assistance only for the expenses it has actually incurred and which may be regarded *ex post* as being justified by the project. The applicant does not claim that it submitted any supporting documents, such as the contracts of employment or pay slips of its employees, or a detailed description of the activities of each of the people involved in carrying out the project, which would have enabled the Commission to check what staff costs were actually incurred on the project. Such documents cannot be replaced by the applicant's calculations of the annual number of hours per hectare required for the project, since those calculations do not show that those hours were actually worked or that they were paid for by the applicant.

139 The applicant has therefore failed to put forward evidence to rebut the complaint that there is no detailed substantiation of the staff costs for the project.

140 As was stated in paragraph 83 above, beneficiaries of Community assistance are required to submit to the Commission information which is sufficiently accurate so that it may check whether the costs for which the Community assistance is being used are justified. By failing to supply such substantiated evidence in respect of staff costs the applicant infringed the obligation incumbent upon applicants for, and beneficiaries of, financial assistance to provide information and act in good faith, which must be regarded as an irregularity within the meaning of Article 24(2) of Regulation No 4253/88, in both the original and the amended versions (see, to that effect, *Comunità montana della Valnerina* v *Commission*, cited in paragraph 41 above, paragraph 97).

(f) The complaint that part of the depreciation cost of the shed and the refrigerated cells was charged to the project

141 The sixth indent of recital 8 in the contested decision states:

'... the project made provision for the leasing of a shed and cold rooms. Euroagri arranged for a shed to be built and cold rooms to be acquired in 1993 as part of project No 92. CT. IT. 05.016, under [Council] Regulation (EEC) No 866/90 [of 29 March 1990 on improving the processing and marketing conditions for agricultural products (OJ 1990 L 118, p. 46)], subsidised by the Commission and the regional authorities. 30 % of the depreciation cost of those items was charged to the Endovena project. This therefore amounts to double funding;

...'

— Arguments of the parties

142 The applicant is of the opinion that charging 30 % of the depreciation cost of the refrigerated cells and the shed was justified. It admits that in 1999 it had obtained Community assistance under Regulation No 866/90 in order to build and acquire them, but it stresses that that funding had been granted for building the structures whereas the costs charged to the project in the present case is for their temporary use.

143 By making its own infrastructure available to the project instead of leasing installations belonging to another person, the applicant in fact bore the cost of their temporary use. It relinquished the use for normal production purposes of an area representing approximately one third of that infrastructure. The tranche of 30 % of the depreciation cost charged to the project merely constitutes a reference basis for determining the value of the use of the asset and represents the normal rent which the applicant would have had to pay if it had been leasing.

144 The Commission refutes those arguments and maintains that the applicant calculated the share of the depreciation cost of the installations in relation to the total cost of their acquisition, including the part financed by the Fund, and not in relation to the cost of acquisition it actually bore.

— Findings of the Court

145 By allocating one third of the shed and the refrigerated cells to the Endovena project, the applicant partly relinquished the use of those installations for its own normal production and marketing purposes. The Commission does not contend that such reallocation of the structures was incompatible with the purpose of the assistance granted for their construction and acquisition under Regulation No 866/90. In those circumstances, it is appropriate to consider that the applicant was entitled to charge to the Endovena project the cost it actually bore as a result of reallocating those structures.

146 The applicant cannot, however, when calculating that cost, disregard the Community financing it obtained under Regulation No 866/90. By reducing the

costs of building and acquiring the installations that financing also reduces the applicant's costs of running them.

147 Therefore, by charging 30 % of the depreciation cost of those structures to the project without taking into account the Community financing it obtained for building them the applicant charged to the project costs greater than those it had actually incurred. The Commission's assessment that the applicant was thereby attempting to obtain double funding for the same assets is therefore well founded.

148 The charging of costs greater than those actually incurred must be regarded as a serious infringement of the conditions for granting the financial assistance in question and of the obligation to act in good faith, which is incumbent upon the beneficiary of such assistance. It is therefore an irregularity within the meaning of Article 24(2) of Regulation No 4253/88, in both the original and the amended versions (see, to that effect, *Comunità montana della Valnerina* v *Commission*, cited in paragraph 41 above, paragraph 81).

(g) The complaint concerning the charging of part of the depreciation cost of the agricultural equipment to the costs of the project

149 The seventh indent of recital 8 in the contested decision states:

'... the depreciation cost of the agricultural equipment used for implementing the project has been charged to the project on a flat-rate basis of 30 % of the total annual depreciation cost of the company's agricultural equipment. That

depreciation cost has also been charged to the project under the expenditure heading "agricultural diesel", and thus constitutes double charging;

...'

— Arguments of the parties

150 The applicant denies that there was double charging of the depreciation cost of the agricultural equipment. It states that the expenditure heading 'agricultural diesel' covers expenditure relating to the consumption of fuel for the use of vehicles in connection with the project, whereas the cost of the depreciation of the agricultural equipment represents the cost of using that equipment.

151 According to the Commission, the depreciation cost of the equipment was charged to the project twice, once as such and a second time because the applicant charged to the project for the years 1994 and 1995 the flat-rate cost of using the equipment per kilometre or per hour. Those flat-rate costs cover not only the cost of fuel but also the depreciation of the equipment, maintenance costs and taxes, insurance and other related expenses.

— Findings of the Court

152 It is clear from the documents produced by the Commission in response to the questions from the Court, and the applicant has not disputed the authenticity of those documents, that the applicant charged to the Endovena project 30 % of the depreciation cost of the agricultural machinery for the years 1993, 1994 and

1995. In addition, the applicant charged to the project, for 1993, 30 % of its costs in respect of fuel and oil. However, for the years 1994 and 1995, it calculated the number of kilometres covered by its vehicles, or the number of hours agricultural machinery was operating, and charged 30 % of that to the project. It calculated the cost per kilometre or per hour of operation on a flat-rate basis. As regards the cost per kilometre, it based its calculations on the figures of the Italian Automobile Club, but it did not indicate its source in respect of the flat-rate hourly cost of running agricultural machinery. The applicant did not put forward any arguments that rebutted the Commission's contention that both the flat-rate cost per kilometre for vehicles and the flat-rate hourly running cost for the agricultural machinery include the depreciation cost of that equipment. Consequently, it has not established that the complaint that, for the years 1994 and 1995, the depreciation cost of that equipment was charged to the project twice is unfounded.

153 As was stated in paragraph 148 above, charging costs greater than those actually incurred constitutes an irregularity within the meaning of Article 24(2) of Regulation No 4253/88, in both the original and the amended versions.

(h) The complaint concerning the charging of part of the depreciation cost of the traditional irrigation system

154 The eighth indent of recital 8 in the contested decision states:

'... the depreciation cost of the traditional irrigation system that existed on the property in question was charged to the project at a flat rate of 30 %. Since a new

system was installed and used specially for the "Endovena" project, and the costs were charged to the project, charging the depreciation cost of the traditional irrigation system is unjustified;

...'

— Arguments of the parties

155 The applicant contends that the traditional system was actually used for the purposes of the project, since the irrigation system intended for the Endovena project was not capable of functioning independently unless it was being fed by the traditional system.

156 In the reply, the applicant states that the Commission's plea in the defence that the applicant calculated the depreciation cost for the entire traditional system and not just for the part feeding the system for the project is inadmissible because it was not part of the earlier complaints. It contends that the depreciation cost should be considered in relation to the agricultural undertaking's entire irrigation system, since the land used for the project is located in different places within the undertaking and the undertaking is connected to a single system. It also contends that the use of the existing system led to a reduction in the total cost of the project.

157 The Commission states that the award decision made provision for the cost of a special, completely new system, and points out that the percentage of the depreciation cost charged in that connection to the project was calculated for the entire traditional system and not for the part used for the project.

— Findings of the Court

158 It should be observed first of all that in the defence the Commission specified and restricted the scope of the complaint contained in the contested decision with regard to charging the depreciation cost of the traditional irrigation system. The applicant's contention that the Commission made a new complaint in relation to the one made in the context of the administrative procedure cannot therefore be accepted.

159 As regards the substance of the complaint, in the description of the budget required for implementing the project given in the application for assistance the applicant gave the figure of ECU 97 000 for 'the entire fixed irrigation system'. However, no cost was included for using the traditional system.

160 The project, however, made provision for the results of the Endovena technique to be compared with the results of the traditional methods and for some plots assigned to the project to be cultivated in the traditional way. For those plots it was therefore necessary to use the traditional system under the project.

161 In those circumstances, it seems justified to charge to the project the depreciation cost of the traditional system for the plots being cultivated traditionally and used for comparison purposes under the project. However, that is not the case as regards the flat-rate charging of 30 % of the depreciation cost of that system. The area of the applicant's undertaking was 81 hectares, 24 of which were used for the project. Of those 24 hectares, 10.5 were to be cultivated using the Endovena technique. Therefore, the traditional irrigation system could only be justified in

respect of 13.5 hectares, that is to say, approximately 17 % of the area of the undertaking.

162 The applicant did not show that the distances between the various plots covered by the project would justify charging a larger share of the costs of the traditional irrigation system to the project. That system could also be used for the traditional crops which were growing on other plots intended for normal production.

163 The applicant has therefore failed to put forward any arguments to invalidate the complaint that the flat-rate charging of 30 % of the depreciation cost of the traditional irrigation system to the project was not justified.

164 In that regard, it therefore also charged to the project costs greater than those which it showed it had actually incurred, which constitutes an irregularity within the meaning of Article 24(2) of Regulation No 4253/88, in both the original and the amended versions.

(i) The complaint concerning the annual compensation paid to Mr Biego for loss of income

165 The ninth indent of recital 8 in the contested decision states:

'... the land on which the crops were grown is the property of Euroagri and was leased to Mr Biego. In return for making his land available, Euroagri paid

Mr Biego compensation for loss of income of some ITL 300 000 000 a year in respect of the years 1993 and 1994. No contract was submitted nor any detailed statement to substantiate the annual compensation paid to Mr Biego. Furthermore, the tenancy agreement expired in 1993;

...'

— Arguments of the parties

166 The applicant maintains that the compensation of ITL 300 million a year paid to Mr Biego in respect of the years 1993 and 1994 was justified. It produces a copy of the lease dated 31 December 1990 under which it let its farm to Mr Biego. The Commission's finding that that lease expired in 1993 fails to take into account the fact that under Italian rules such contracts have a minimum term of 15 years.

167 The amount of the compensation in question was considered to be appropriate by the technical expert appointed by the Procura della Repubblica de Fermo. As for the calculations made by the Commission in that connection, based on the rent agreed between Mr Biego and the applicant, the applicant contends that the compensation paid to Mr Biego took into account his loss of income and points to the huge quantity of fruit the 24 hectares of land concerned could produce.

168 The Commission points out that the lease was produced late, since it was not produced until after the contested decision had been adopted. It points out that

the lease stated that the rent for the entire farm belonging to the applicant was ITL 100 million a year. That amount corresponded in essence to the amount of ITL 110 887 000 a year mentioned in the expert's report relied on by the applicant. Given that the areas used for the project represented only part of the farm, the Commission considers that the annual compensation paid to Mr Biego should therefore not have amounted to more than ITL 32.8 million. Even if the compensation was calculated on the basis of the income recorded, according to the applicant, by Mr Biego's agricultural undertaking in 1991 and 1992 (approximately ITL 332 million each year), the annual compensation payable to Mr Biego should not have been more than ITL 98.4 million, since only 24 of the undertaking's 81 hectares were assigned to the project and only 10.5 hectares were cultivated using the Endovena technique. The applicant provided no plausible explanation for the amount of the compensation.

— Findings of the Court

169 As a preliminary remark, it may be observed that the amount of compensation paid to Mr Biego exceeds the amount of ECU 238 000, or ECU 119 000 a year, provided for in the award decision in respect of the compensation to be paid to farmers to make up for their loss of income for the duration of the project. Compensation of ITL 300 million a year represented, in 1993, approximately ECU 169 000 and, in 1994, approximately ECU 157 000. At any event, the figures contained in the award decision are by way of an estimate *ex ante* of the costs required in order to carry out the project and do not show that the amounts given are actually justified.

170 The main complaint made in the contested decision in this respect is that the applicant did not supply any documents to support the calculation of that compensation and, in particular, that no contract with Mr Biego was submitted

relating to his making part of the farm available and the corresponding compensation.

171 The applicant produced, annexed to its application, the agreement under which it leased its farm to Mr Biego for an annual rent of ITL 100 million. In addition, the Commission submitted, in Annex 7 to the defence, an invoice issued by Mr Biego on 12 January 1993 for ITL 600 million in respect of loss of income suffered as a result of making available to the applicant fruit harvested on the 24 hectares assigned to the project.

172 Neither of those documents makes it possible to evaluate whether the amount of that compensation was justified. The applicant did not submit any specific evidence from which it could be inferred that a profit of ITL 300 million a year represented the normal profit that a farmer could derive from the 24 hectares of land concerned, and failed to produce the contract with Mr Biego to show how that amount was calculated and to substantiate such compensation.

173 The invoice issued by Mr Biego may be taken to mean that he had agreed with the applicant flat-rate compensation of ITL 300 million a year. Even if that had been the case, such a clause would not, however, be sufficient to show that the amount thus agreed was justified as regards the profits Mr Biego might have actually lost by making the land available for the project. Such justification was all the more necessary in the present case because the links between Mr Biego and the applicant might give rise to doubts as to whether the content of the terms on which the compensation was paid corresponds to that which a comparable agreement entered into under normal market conditions would have had and also since the amount of the compensation was very high compared with the rent which, according to the technical expert's report relied on by the applicant and annexed to its application, could be considered to be appropriate for that land.

174 Lastly, that report merely evaluates the rent appropriate for the applicant's farm, and does not contain any indication which enables the appropriate compensation for loss of income to be assessed.

175 By charging to the project an amount of ITL 600 million by way of compensation for Mr Biego without providing any justification for that amount of compensation the applicant infringed the obligation incumbent on applicants for, and beneficiaries of, financial assistance to provide information and act in good faith, which must be regarded as an irregularity within the meaning of Article 24(2) of Regulation No 4253/88.

(j) Failure to carry out disclosure and publication measures

176 The 10th indent of recital 8 in the contested decision states:

'...the disclosure and publication measures provided for in the decision, in particular the design and production of "audiovisual aids for publishing all the know-how contained in the project" and of "written materials and audiovisual aids for the disclosure and publication strategy", were not carried out;

...'

— Arguments of the parties

177 The applicant does not deny that the last stage of the project, relating to publishing the results, was not fully implemented. It considers, however, that it cannot be criticised for that fact. The negative final results of the project, in its view, justify the fact that it did not proceed to the publication stage, which is only a potential subsequent objective following the objectives which strictly related to production. It points out that it did not request the funding for that stage of the operation and that the Commission did not try to find out why it had not applied for payment of the balance. In those circumstances, the Commission's conduct caused the applicant to believe that it did not have to proceed to the final stage. At any event, steps were taken to publish the method and the results of the experiment.

178 The Commission considers that the negative results of the project did not permit the applicant to change it significantly without any prior communication to the Commission. It states that its alleged passivity was due entirely to the fact that it was waiting for the applicant to send the final report, which did not reach the Commission until after the inspection carried out in 1997, and that consequently its conduct would not have created any expectations as regards its acceptance, even implicit, of the applicant's decision not to proceed to the final stage of the project.

— Findings of the Court

179 As regards the applicant's contention that it was not required to carry out the disclosure and publication stage, it must be said that it did not make much sense to carry out that stage, given that the 'demonstration' stage had failed. However, dispensing with one of the stages of the project constitutes a significant change in

the project. In that regard, it is clear from Article 24(2) of Regulation No 4253/88, in both its original and amended versions, that such changes may give rise to reduction or withdrawal of the assistance if the Commission's approval has not been sought.

180 It is not relevant in that regard that the applicant did not apply for payment of the last tranche of assistance. Indeed, approval of its application covered the project as a whole and the applicant could not decide unilaterally to carry out only part of it, even if it relinquished part of the funding.

181 Also, the applicant's contention that the Commission's conduct and the failure to monitor its project under Article 25 of Regulation No 4253/88 caused it to have legitimate expectations that it was no longer necessary to carry out the last stage of the project cannot be accepted. In that connection, it is appropriate to point out in particular that by letter of 14 May 1996 the applicant had informed the Commission that reports on the project were being sent, but gave no indication whatsoever that the project had failed and that the last stage would not be carried out. The reports mentioned in that letter were not sent to the Commission until after the inspection conducted in 1997. The applicant therefore had no reason to consider that the Commission had approved of the unilateral change in the project.

182 The applicant has therefore not invalidated the finding in the contested decision that it had made a significant change in the project without seeking the Commission's approval.

(k) The complaint concerning forgery of two signatures by Mr Biego

183 The last indent of recital 8 in the contested decision states:

'... the letters of 26 March 1994 and 11 July 1994 sent to the Commission are signed by Mrs Forlenza, a director of Euroagri. Mr Biego stated in writing that he imitated that signature;

...'

— Arguments of the parties

184 The applicant does not deny that on two letters sent to the Commission Mr Biego reproduced the signature of his wife, who was at that time the applicant's director. However, it denies that this was an irregularity, because Mr Biego had the power, under a general power of attorney, to sign any document relating to the applicant on behalf of his wife.

185 The Commission observes that the forging of signatures is reprehensible conduct. It is of the view that such conduct infringes the obligation incumbent upon beneficiaries of assistance to act in good faith.

— Findings of the Court

186 In the absence of any express provisions prohibiting it, a beneficiary of Community assistance may be represented by other persons in its relations with the Commission. In order to ensure the smooth running of a project, it is however important that any representation is made transparent and, in particular, that the identity of the agent should be properly indicated so that the institution can, if it considers it necessary, request that the agent demonstrate that he is duly empowered to carry out the act concerned on behalf of the beneficiary. If representation is not made transparent, doubts may subsequently arise regarding the validity of the acts carried out by the agent, which may jeopardise the proper implementation of the project concerned.

187 The reproduction of the signature of the lawful representative of a beneficiary by an agent conflicts with that need for transparency in relations between the beneficiary and the Commission, because it might mislead the Commission as to the need to ask the agent to provide evidence of his power. In that regard, it is hardly relevant whether the representative was or was not in possession of a power of attorney at the time when he carried out acts on behalf of the beneficiary since the representation as such had not been brought to the knowledge of the Commission. Since the Commission has no evidence of the power of attorney of the person who acted on behalf of the beneficiary, the latter may reserve the right either to ratify or to dispute subsequently the content of the acts carried out by its representative. Conduct that creates such legal uncertainty is not in principle compatible with the duty incumbent upon a beneficiary of assistance to inform and to act in good faith.

188 As for the consequences of such conduct, it is necessary however to take account of the fact that withdrawal of Community assistance due to an irregularity is a penalty in that it goes beyond repayment of amounts that have been wrongly paid

as a result of that irregularity (see paragraph 37 above). It cannot be imposed unless it rests on a clear and unequivocal legal basis (Case 117/83 *Könecke* [1984] ECR 3291, paragraph 11, and Case C-172/89 *Vandemoortele* v *Commission* [1990] ECR I-4677, paragraph 9).

189 Whilst it is clear that the production of information that might mislead the Commission with regard to the circumstances in which assistance is being granted, as to whether the project has been correctly implemented or with regard to the expenditure required in order to implement the project, constitutes an irregularity within the meaning of Article 24(2) of Regulation No 4253/88, it is not so clear that there is an infringement of the obligations incumbent upon the beneficiary in a case where a signature has been reproduced by its agent, where a power of attorney exists or where the act concerned is ratified, so that the conduct could not have affected the granting of the assistance, the progress of the project or the amount of funding paid.

190 In those circumstances, there is no sufficiently clear and unambiguous basis on which to class the signature of two letters by Mr Biego using the name of Mrs Forlenza as an irregularity. This fact cannot therefore properly be admitted in the present case as a ground for withdrawing assistance (see, for a similar result based on the principle of proportionality, *Comunità montana della Valnerina* v *Commission*, cited in paragraph 41 above, paragraphs 65 and 66).

3. Conclusion with regard to the fourth plea

191 It is clear from the above considerations that two of the facts alleged against the applicant in the contested decision cannot be admitted in order to rule that Article 24(2) of Regulation No 4253/88 applies. They are, first, the complaint in the fourth indent of recital 8 in the contested decision concerning the fact that the

people named on the list of technical and scientific referees were not involved in carrying out the project and, second, the complaint in the last indent of recital 8 in the contested decision concerning the reproduction by Mr Biego of Mrs Forlenza's signature on two letters sent to the Commission.

192 However, nine facts out of the eleven alleged against the applicant in the contested decision were rightly classed as irregularities or significant changes to the project. The contested decision thus pointed to serious infringements of the obligation to inform and to act in good faith which is incumbent upon a beneficiary of Community assistance, in particular the inclusion of untrue information in the application for assistance and the charging to the project of certain costs that were higher than those actually incurred. Those irregularities are quite sufficient for the Court to hold, subject to consideration of the plea alleging infringement of the principle of proportionality, that the conditions for withdrawal of assistance laid down in Article 24(2) of Regulation No 4253/88 are met in the present case and to conclude that it was only reasonable for the Commission to decide to withdraw the assistance in full. When compared with such irregularities, the two other complaints referred to in the preceding paragraph are of minor significance, and the fact that they cannot be accepted should not mitigate the assessment of the seriousness of the irregularities rightly established by the Commission.

193 Consequently, the fact that the fourth plea is well founded in part does not call for annulment of the contested decision.

F — *The fifth plea: infringement of the principle of proportionality*

1. Arguments of the parties

194 In support of this plea, the applicant stresses the fact that the infringements alleged against it do not constitute failure to comply with the conditions for the

granting of assistance, since the only stage that was not completed was that of disclosure and publication of the know-how. The fact that that stage was not the subject of an express request by the Commission caused it to believe that the stage was not essential. The applicant contends that the costs which it incurred proved to be much greater than, or at least proportionate to, the financial contribution granted. In its view, withdrawal of the assistance in full is disproportionate in relation to the objective of Article 24 of Regulation No 4253/88 in that it causes more serious damage to the beneficiary than is necessary.

195 The Commission considers that withdrawal of the assistance was fully justified in view of the number and seriousness of the irregularities.

2. Findings of the Court

196 The principle of proportionality requires that the measures adopted by Community institutions must not exceed what is appropriate and necessary for attaining the objective pursued (*Conserve Italia* v *Commission*, cited in paragraph 82 above, paragraph 101).

197 In particular, with regard to that principle the infringement of obligations whose observance is of fundamental importance to the proper functioning of a Community system may be penalised by forfeiture of a right conferred by Community legislation, such as entitlement to financial assistance (Case C-104/94 *Cereol Italia* [1995] ECR I-2983, paragraph 24 and the case-law cited; *Conserve Italia* v *Commission*, cited in paragraph 82 above, paragraph 103, and Case T-143/99 *Hortiplant* v *Commission* [2001] ECR II-1665, paragraph 118).

198 Consideration of the fourth plea reveals that the Commission was justified in finding in the contested decision that the applicant had submitted untrue information in its application for assistance, that it committed several serious irregularities and that it had made significant changes to the project without informing the Commission that it had done so. Those infringements by the applicant of its obligations as the beneficiary of the assistance misled the Commission in respect of facts important for the assessment of whether the project was suitable for assistance (see paragraph 112 above) and show that the project was not carried out as envisaged in the application. In those circumstances, and particularly since certain costs were charged to the project that were greater than those actually incurred, it was reasonable for the Commission to consider that any penalty apart from total withdrawal of the assistance and recovery of the sums paid from the EAGGF was liable to constitute an invitation to fraud (see to that effect *Industrias Pesqueras Campos and Others* v *Commission*, cited in paragraph 82 above, paragraph 163; *Vela and Tecnagrind* v *Commission,* cited in paragraph 57 above, paragraph 402, and *Comunità montana della Valnerina* v *Commission*, cited in paragraph 41 above, paragraph 149).

199 The fifth plea is therefore unfounded.

II — *The alternative claim*

200 The claim for the reduction of the assistance to be repaid is, in any event, inadmissible inasmuch as in an action seeking the annulment of a decision the Court of First Instance is not entitled to substitute another decision for the contested decision or to amend that decision (*Sgaravatti Mediterranea* v *Commission*, cited in paragraph 37 above, paragraph 141).

III — *The request for removal of a document*

201 The applicant is of the opinion that the document submitted by the Commission in Annex 6 to the defence should be removed from the file on the ground that the

omission of certain passages from the copy produced before the Court is contrary to Article 43(5) of the Rules of Procedure. Moreover, the document was undated. However, since the Court has not relied on the document in question for the purpose of deciding the action, it is unnecessary to rule on the applicant's request (see, to that effect, Case T-142/97 *Branco* v *Commission* [1998] ECR II-3567, paragraphs 116 and 117, and Joined Cases T-44/01, T-119/01 and T-126/01 *Vieira and Others* v *Commission* [2003] ECR II-1209, paragraph 223).

IV — *The measures of inquiry*

202 By way of measures of inquiry, the applicant requests that the Court should:

— order the Commission to lodge with the Court all the reports and attachments it sent concerning the Endovena project;

— order that Messrs Franco Passamonti and Paulo Manocchi and Ms Cinzia Mancini should be called as witnesses with regard to the contents of the statement of facts;

— order the personal appearance of the applicant in the person of Mr Biego;

— order a technical report and/or an on-the-spot inspection.

203 At the hearing the applicant stated that the results of the inspection conducted by UCLAF conflicted with those of the investigations carried out by the Italian public prosecutor. For that reason, it stressed its application for an inquiry, in particular by means of an inspection of the site and an expert's report.

204 The applicant did not identify in the context of the pleas considered above the specific facts which differed from those cited by the Commission in the contested decision and invalidated the findings on which that decision was based, and which it intended to prove by means of the measures of inquiry sought.

205 In those circumstances, it is unnecessary to proceed to such measures.

Costs

206 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 in the forms of order sought and, for the main part, in its submissions, it must be ordered to pay the costs, including those of the proceedings for interim measures, as applied for by the defendant.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the applicant to pay the costs, including those incurred during the proceedings for interim measures.**

Forwood Pirrung Meij

Delivered in open court in Luxembourg on 28 January 2004.

H. Jung

Registrar

J. Pirrung

President

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