JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
13 March 2003 *

In Case T-340/00,

Comunità montana della Valnerina, represented by E. Cappelli and P. De Caterini, lawyers, with an address for service in Luxembourg,

applicant,

supported by

Italian Republic, represented by U. Leanza and G. Aiello, acting as Agents, with an address for service in Luxembourg,

intervener,

* Language of the case: Italian.

Commission of the European Communities, represented by C. Cattabriga, acting as Agent, assisted by M. Moretto, lawyer, with an address for service in Luxembourg,

defendant,

APPLICATION for the annulment of Commission Decision C (2000) 2388 of 14 August 2000 withdrawing the financial assistance granted to the Comunità Montana della Valnerina by Commission Decision C (93) 3182 of 10 November 1993 concerning grant of a contribution from the EAGGF, Guidance Section, pursuant to Council Regulation (EEC) No 4256/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the EAGGF Guidance Section (OJ 1988 L 374, p. 25), in connection with Project No 93.IT.06.016 entitled 'Pilot demonstration project for forestry, agricultural and food programmes in marginal hill areas (France, Italy)',

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

composed of: K. Lenaerts, President, J. Azizi and M. Jaeger, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 November 2002,

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 the Structural Funds with the tasks, in particular, of promoting the development and structural adjustment of regions whose development was lagging behind, 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 (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 Article 5(2)(e) of Regulation No 2052/88 originally provided that financial assistance could be given by the Structural Funds in the form of support for technical assistance and studies in preparation for operations. As amended by Regulation No 2081/93, it provides that financial assistance may be given by the Structural Funds 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 (EEC) 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 Article 8 of Regulation No 4256/88 stated originally that EAGGF assistance for the measures provided for in Article 5(2)(e) of Regulation (EEC) No 2052/88 might cover in particular 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 are in accordance with the objectives of the reform of the common agricultural policy (fourth indent). As amended by Regulation No 2085/93, that article provides that, in achieving its tasks, the EAGGF 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 Article 24 of Regulation No 4253/88, as amended, provides with regard to the reduction, suspension and cancellation of assistance:

'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.'

Facts

7 The Comunità montana della Valnerina ('the applicant') is an Italian regional local authority, set up by the region of Umbria (Italy).

8 In June 1993 the applicant sent the Commission an application for Community assistance for a pilot demonstration project for forestry, agricultural and food programmes in marginal hill areas (Project No 93.IT.06.016; 'the project').

9 It is clear from the project that its overall objective was to set up and carry out a pilot demonstration of two forestry, agricultural and food programmes, one by the applicant in Valnerina (Italy), the other by the 'Route des Senteurs' association in the Drôme Provençale region (France) (hereinafter 'Route des Senteurs'), in order to introduce and develop alternative activities such as rural tourism in parallel with the usual agricultural activities. The project provided in particular for setting up two tourist promotion and coordination centres, developing production of typical local food products such as truffles, spelt wheat and aromatic plants, better integration of the various producers operating in the regions concerned, and the improvement and environmental rehabilitation of those regions.

10 By Decision C (93) 3182 of 10 November 1993 addressed to the applicant and to Route des Senteurs, the Commission awarded the project a grant from the EAGGF Guidance Section ('the award decision').

11 The second paragraph of Article 1 of the award decision stated that the applicant and Route des Senteurs were 'the bodies responsible' for the project. Article 2 of the award decision stated that the period for the completion of the project was to be 30 months, that is to say, from 1 October 1993 to 31 March 1996.

12 The first paragraph of Article 3 of the award decision stated that the total eligible cost of the project was ECU 1 817 117 and the maximum financial contribution from the Community was set at ECU 908 558.

13 Annex I to the award decision contained a description of the project. Point 5 of that annex described the applicant as the 'beneficiary' of the financial assistance and Route des Senteurs as being the 'other body responsible for the project'. Point 8 of the same annex contained a financial scheme for the project with a breakdown of the costs allocated to the various measures under the project. The measures under the project and the corresponding costs were set out in four sections, with the applicant and Route des Senteurs each carrying out measures coming under two of those four sections.

14 Annex II to the award decision laid down the financial conditions relating to the award of the assistance. In particular, it stated that if the beneficiary of the financial assistance intended to make any significant changes to the operations described in Annex I it was to inform the Commission beforehand and obtain the latter's agreement (point 1). Point 2 of that annex stated that award of the assistance was conditional upon completion of all of the operations described in Annex I to the award decision. Annex II also provided as follows: the financial assistance was to be paid direct to the applicant as the beneficiary of the assistance and the applicant was responsible for paying Route des Senteurs (point 4); the Commission was authorised, for the purposes of verifying the financial information concerning the various expenditure, to ask to examine any original, or a certified copy, of a supporting document and to carry out that inspection directly on the spot or request the documents in question to be sent to it (point 5); the beneficiary was to keep for the Commission, for a period of five years from the last payment by the Commission, all originals of the documents supporting the expenditure (point 6); the Commission could at any time ask the beneficiary to send reports on the state of progress of the work and/or the technical results obtained (point 7); and the beneficiary was to keep for the Community the results obtained through implementation of the project, although that should not give rise to any additional payments (point 8). Lastly, point 10 of Annex II stated in essence that if any of the conditions laid down in that annex was not complied with, or if any measures not provided for in Annex I were undertaken, the Commission could suspend, reduce or withdraw the assistance and require repayment of what had already been paid, in which case the beneficiary would be entitled to send its observations beforehand within a time-limit fixed by the Commission.

15 On 2 December 1993 the Commission paid the applicant an initial advance of approximately 40% of the proposed Community contribution and the applicant, in turn, paid Route des Senteurs the sums corresponding to the cost of the measures under the project which the latter was to carry out.

16 On 27 December 1994 the applicant sent the Commission an initial report on the state of progress of the project and on the expenditure already incurred in respect of each of the proposed measures. At the same time it applied for payment of a second advance, confirming in particular that it had evidence of payment in respect of the expenditure incurred, and also that the measures that had already been carried out were in accordance with those described in Annex I to the award decision.

17 On 18 August 1995 the Commission paid the applicant a second advance of approximately 30% of the Community contribution and the applicant in turn paid Route des Senteurs the sum corresponding to the cost of the measures under the project which the latter was to carry out.

18 In June 1997 the applicant sent the Commission the final report on the implementation of the project. At the same time the applicant applied for payment of the balance of the Community contribution and again attached confirmation corresponding in essence to that described in paragraph 16 above.

19 On 12 August 1997 the Commission informed the applicant that it had instigated a general technical and accounting check for all the projects financed under Article 8 of Regulation No 4256/88, including the project concerned in this case, and it requested the applicant, under point 5 of Annex II to the award decision, to

produce a list of all the supporting documents relating to the eligible expenditure incurred in connection with implementing the project, together with a certified true copy of each of those documents.

20 On 25 August 1997 the applicant sent the Commission certain documents and a summary of the final report on implementation of the project.

21 By letter of 6 March 1998 the Commission informed the applicant of its intention to carry out an on-the-spot inspection in respect of the implementation of the project.

22 The on-the-spot inspection took place, on the applicant's premises, from 23 to 25 March 1998 and on the premises of Route des Senteurs from 4 to 6 May 1998.

23 On 6 April 1998 the applicant sent the Commission certain documents it had requested during the on-the-spot inspection.

24 On 5 November 1998 the applicant and Route des Senteurs applied to the Commission for final approval for the project and payment of the balance of the Community contribution.

25 By letter of 22 March 1999 the Commission informed the applicant that under Article 24 of Regulation No 4253/88, as amended, it had carried out an examination of the financial assistance for the project, and that as that examination had uncovered evidence that pointed to irregularities, it had decided

to initiate the procedure provided for in the abovementioned article of Regulation No 4253/88, as amended, and in point 10 of Annex II to the award decision ('the letter initiating the procedure'). In that letter, a copy of which the Commission sent to Route des Senteurs, the Commission set out that evidence, specifically as regards the measures for which the applicant and Route des Senteurs respectively were responsible.

26 On 17 May 1999 the applicant submitted its observations in response to the Commission's allegations and gave the Commission certain other documents ('the observations on the letter initiating the procedure').

27 By decision of 14 August 2000 addressed to the Italian Republic and the applicant and notified to the applicant on 21 August 2000 the Commission, under Article 24(2) of Regulation No 4253/88, as amended, withdrew the financial assistance granted for the project and demanded that the applicant repay in full the grant already paid ('the contested decision').

28 In recital 9 in the preamble to the contested decision the Commission listed 11 irregularities within the meaning of Article 24(2) of Regulation No 4253/88, as amended, five of which concerned measures carried out by Route des Senteurs and six of which related to measures carried out by the applicant.

29 By letters of 14 September and 2 October 2000 the applicant requested Route des Senteurs to repay the sums which it had paid it for the purposes of implementing the project and for which Route des Senteurs was liable. At the same time, the applicant requested Route des Senteurs to send it information that would establish the incorrect and unlawful nature of the contested decision in order to prepare a joint line of defence.

30 On 20 October 2000 Route des Senteurs replied, in essence, that in its view the contested decision was unjustified.

Procedure and forms of order sought

31 By application lodged at the Registry of the Court of First Instance on 7 November 2000 the applicant brought the present action.

32 By a document lodged at the Registry of the Court of First Instance on 12 April 2001 the Italian Republic applied for leave to intervene in the present proceedings in support of the applicant. By order of 1 June 2001 the President of the Third Chamber of the Court of First Instance granted the leave sought. The intervener lodged its statement and the other parties lodged their observations on it within the time-limit.

33 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure and, as measures of organisation of procedure pursuant to Article 64 of its Rules of Procedure, put questions to the parties in writing. The parties complied with those requests.

34 The applicant claims that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

35 The Commission contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

36 The Italian Republic supports the forms of order sought by the applicant.

Law

37 The applicant relies on four pleas. The first plea alleges infringement of the principles of non-discrimination and proportionality in that the Commission did not limit its demand for repayment of the assistance to the sums corresponding to the part of the project which, under the award decision, was to be carried out by the applicant. The second plea alleges that the Commission committed errors with regard to the various irregularities in the implementation of the part of the project for which the applicant itself was responsible, and infringements of the obligation to state reasons and of the right to be heard. The third plea relates to an infringement of the principle of proportionality and of Article 24(2) of Regulation No 4253/88, as amended, in that the Commission demanded repayment of the full amount of the assistance in so far as it had been granted for the implementation of measures by the applicant. The fourth plea is based on misuse of powers.

1. *First plea: infringement of the principles of non-discrimination and proportionality in that the Commission did not limit its demand for repayment of the assistance to that part of the project which was to be carried out by the applicant*

Arguments of the parties

38 The applicant maintains that the contested decision is vitiated by infringement of the principles of non-discrimination and proportionality in that the Commission did not limit its demand for repayment of the assistance to the sums relating to the part of the project which, under the award decision, was to be carried out by the applicant, but required the latter to repay the assistance in full.

39 The applicant considers that although technically this was a single project with single financing, and although technically the applicant was the sole beneficiary of the financial assistance, the measures proposed in the project were to be carried out in two separate parts, which were to be managed independently by itself and by Route des Senteurs. In addition, it points out that in the contested decision the Commission set out 11 complaints relating to irregularities in the implementation of the project, five of which concerned measures that were to be carried out by Route des Senteurs, whilst six related to measures which it was to carry out itself.

40 The Italian Republic considers that the Commission should, in its assessment of the contested irregularities, have taken into account the respective responsibilities of each of the two bodies responsible for the proposed measures since those measures were separate and autonomous. The Commission should therefore have taken a balanced decision and not have penalised the applicant more than was due by also attributing to it responsibility for the irregularities committed by Route des Senteurs.

41 The Italian Republic considers that the Commission's arguments concerning the indivisible nature of the project and the role of the applicant as the sole beneficiary of the project are unconvincing since they are based on confusion between the administrative obligations imposed on the beneficiary and the actual responsibility of both partners in the project for the various measures proposed under the project. Therefore, according to the Italian Republic, if the Commission wished to penalise the applicant by withdrawing the assistance in full rather than by reducing it, it should have proved that there had been a breach of the administrative obligations incumbent upon the applicant as the beneficiary of the assistance.

42 The Italian Republic is also of the view that the Commission's arguments are based on a purely formal and incorrect interpretation of the award decision. It points out that, in the second paragraph of Article 1 of that decision, both the applicant and Route des Senteurs were described as 'the bodies responsible for the project'. If the concept of 'responsibility' is to have any meaning, it can only be that the bodies responsible for the measures financed under the project should each be answerable for the alleged irregularities.

43 The Commission considers that it was entitled to demand that the applicant refund in full the sums paid to implement the project without having to see whether the applicant was totally or only partially answerable for the irregularities which had been found.

44 In the first place, it was a single project which had a single purpose, namely to set up two forestry, agricultural and food programmes in two different territorial areas of the Community. It points out that the project was approved by a single decision on the basis of single financing for a sole beneficiary, namely the applicant.

45 Second, the Commission considers that it is clear from the award decision that, as the applicant was the beneficiary of the Community assistance, it alone was regarded as being financially liable to the Community.

46 According to the Commission, the wording of the annexes to the award decision shows clearly that the applicant was the sole operator financially liable to the Community and that Route des Senteurs was merely responsible for carrying out part of the project: both point 5 of Annex I and point 4 of Annex II to that decision described the applicant as the 'beneficiary' of the assistance and Route des Senteurs as merely 'the other body responsible for the project'. Contrary to the contention of the Italian Republic, the Commission is of the view that the concept of 'the body responsible for the project' does not mean that the party which committed irregularities in the implementation of the project must be answerable for them. That interpretation would fail to take into account not only the fact that the project is a single project but also the fact that financial liability for the project to the Communities lies entirely with the beneficiary, which in this case is the applicant.

47 The Commission goes on to state that, under the award decision, only the beneficiary of the assistance is entitled to apply to the Commission for payment of sums granted by way of the assistance. It is also the beneficiary which must make the relevant payments to the other party responsible for implementing the project, as was done in this case.

48 Furthermore, the Commission considers that point 10 of Annex II to the award decision also makes clear that, as the applicant was the beneficiary of the assistance, it was to be held financially liable to the Community for any irregularities which might be found in connection with the implementation of the project, irrespective of which of the parties was responsible for those irregularities. Under that provision, only the beneficiary and no other body responsible for implementation of the project is entitled to submit observations to the Commission before the adoption of a decision to withdraw assistance.

49 The Commission adds that the fact that Route des Senteurs and not the applicant was responsible for certain irregularities mentioned in the contested decision is relevant only in relations between those two parties. In that connection, it was for the applicant, as the beneficiary of the assistance, to ensure that it had adequate protection with regard to its partner by means of appropriate private law instruments such as bank guarantees.

50 Thirdly, the Commission maintains that it is clear from the documents in the case that the applicant was fully aware of its financial liabilities to the Community, which stemmed from its capacity as sole beneficiary of the assistance. On the one hand, the applicant expressly stated, in connection with the applications for payment of the second advance and the balance of the assistance (see paragraphs 16 and 18 above), that the data contained in the tables annexed to those applications accurately reflected the expenditure incurred not only by itself but also by Route des Senteurs and that the measures carried out corresponded to all those described in the award decision. On the other hand, the Commission draws attention to the fact that, following notification of the contested decision, the applicant requested Route des Senteurs by letter of 14 September 2000 to refund the share of the advances paid to it in respect of implementation of the measures for which it was responsible.

Findings of the Court

51 It is appropriate to consider whether, in the particular circumstances of the present case, the Commission was entitled to ask the applicant to repay in full the assistance granted for implementation of the whole project or whether, on the contrary, under the general principles of law relied on by the applicant, the Commission should in any event have restricted its demand for repayment to the sums relating to that part of the project which, under the award decision, was to be carried out by the applicant itself.

52 It must be pointed out first of all that where assistance is granted for a project which several parties are responsible for carrying out the relevant legislation does not state from which of those parties the Commission should demand repayment of the assistance in the event of irregularities being committed in the implementation of the project by one or more of those parties.

53 It should also be pointed out that, contrary to what the applicant, supported by the Italian Republic, appears to be stating, it is not wrong generally in such a situation for the Commission to designate, in the decision awarding the assistance, one of the parties responsible for carrying out the project as being not only its sole interlocutor but also the only party which, in the event of irregularities committed by one of the parties concerned, is to be financially liable to the Community for the project as a whole. Even in a situation where the project is designed in such a way that implementation of the various measures proposed under the project is clearly attributed to each of the various parties concerned, such an arrangement is justified in the interests of the effectiveness of Community action as regards both the principle of sound administration and the need for sound financial management of the Community budget. That arrangement, as such, cannot therefore be regarded as being contrary to the principles of proportionality and non-discrimination.

54 None the less, it is appropriate to take into account the fact that any obligation to repay assistance may entail serious consequences for the parties concerned. Therefore, the principle of legal certainty requires that the law applicable to performance of the contract should be sufficiently clear and specific to make the parties concerned aware unequivocally of their rights and obligations and take the necessary steps — that is, in the present context, to agree before the assistance is awarded on appropriate private law instruments which will protect their financial interests in relation to each other.

55 Consequently, as regards the present case, it must be considered that the Commission could not, without infringing the principle of proportionality,

validly demand the applicant alone to repay the assistance granted in order for the applicant and Route des Senteurs to carry out measures unless the terms of the award decision and its annexes were sufficiently clear and specific, so that the applicant, as a prudent and experienced agent, would necessarily know that in the event of irregularities in the implementation of the project, irrespective of whether Route des Senteurs or the applicant itself was answerable for them, the applicant would be the only party that would be financially liable to the Community in respect of all the assistance granted.

56 It is clear, first of all, that the award decision and its annexes do not expressly provide that in the event of irregularities being found in the implementation of the project the applicant would be financially liable to the Community for the project as a whole.

57 Next, it is necessary to consider whether, in the particular circumstances of the present case, the applicant should, despite the absence of an express provision to that effect in the award decision, have understood the extent of its financial liabilities to the Community in the way advocated by the Commission.

58 First, the Commission points out that the award decision and Annex II thereto describe the applicant as the 'beneficiary of the assistance' whilst they describe both the applicant and Route des Senteurs as being 'the bodies responsible' for the project. The Commission also states that points 1, 4, 6 to 8 and 10 of Annex II to the award decision (see paragraph 14 above) state that the award decision has conferred certain rights and obligations to the Community only on the 'beneficiary of the assistance'.

59 In that regard, it should be noted that point 1 of Annex II to the award decision states that in the event of amendments to the operations described in Annex I the 'beneficiary of the assistance' is required to inform the Commission beforehand

and obtain the latter's agreement. Points 6 to 8 of Annex II to that decision state that the 'beneficiary of the assistance' is obliged in essence to take the necessary measures so that the Commission may, if it considers appropriate, check that the project has been properly implemented and have available the results obtained from the project. However, contrary to what the Commission maintains, those provisions do not concern the financial relationship as such between the Community and the parties responsible for carrying out the project. They concern instead the various detailed rules governing implementation of the project. Under those rules the applicant may be described as the Commission's sole interlocutor as regards implementation of the project.

60 It is of course true however that point 4 of Annex II to the award decision concerns a specific aspect of the financial relationship between the Community and those responsible for carrying out the project. Under that provision the assistance was to be paid directly to the applicant, as the 'principal beneficiary', and it was then required to pay Route des Senteurs the sums relating to the measures for which the latter was responsible. It should be pointed out, however, that that provision states only how the assistance granted should be paid to the parties; it does not state how such assistance should be refunded to the Commission in the event of irregularities being found in connection with the implementation of the project.

61 Point 10 of Annex II to the award decision dealt with another specific aspect of the financial relationship between the Community and the bodies responsible for implementation of the project: it states in essence that before any suspension, reduction or withdrawal of the assistance the 'beneficiary of the assistance' could, within a time-limit set by the Commission, send its observations on the complaints made by the latter. Contrary to what the Commission maintains, it need not necessarily be inferred from the fact that under that provision the right to be heard in respect of the complaints raised by the Commission was limited solely to the 'beneficiary of the assistance' that it was also the latter which, in the event of irregularities committed by either party in the implementation of the project, was the only body that was financially liable to the Community in respect of all the assistance granted.

62 Second, with regard to the Commission's argument that in the present case this was a single project, approved by a single decision for a sole beneficiary and having both a single objective and single financing, it is necessary to point out first of all that the award decision, although it was a single legal act, was addressed both to the applicant and to Route des Senteurs. That is, in principle, sufficient to create a direct legal relationship between the Community, for the one part, and each of the persons to whom the award decision was addressed, for the other part.

63 Moreover, although the project was designed to meet a single objective and was based on single financing, it still consisted of several measures which were clearly defined both from the financial point of view and from the point of view of the objectives to be achieved. In such a situation it must be considered that by addressing the award decision not only to the applicant but also to Route des Senteurs the Commission created a direct legal relationship not only with the applicant but also with Route des Senteurs, so that the applicant could, at least at first sight, legitimately assume that in the event of irregularities committed by Route des Senteurs in the implementation of the project, the Commission would address its demand for repayment of the assistance relating to measures that were due to be carried out by Route des Senteurs to the latter.

64 Third, as the Italian Republic rightly pointed out, the lack of clarity in the terms of the award decision and its annexes as to the financial liability of the parties to the Community in the implementation of the project is increased still further by the use of the terms 'beneficiary of the assistance' and 'bodies responsible for the project': under the various provisions of Annex II to the award decision (see paragraph 14 above) the Commission attributed to those words a meaning different from the one normally attributed to them. Taking into account the applicant's rights and obligations under those various provisions of Annex II to the award decision and according to the Commission's intentions, the applicant was in fact the body with sole responsibility for the proper implementation of the project. Route des Senteurs, on the other hand, was a beneficiary of the assistance

in the same way as the applicant. Point 4 of Annex II to the award decision stated that the financial assistance was to be paid by the Commission into the applicant's bank account and it in turn was required to transfer to Route des Senteurs the sums relating to the measures for which the latter was responsible. Therefore, rather than clarifying the scope of the responsibilities incumbent upon the parties concerned, the use of those terms in the award decision helped to sow doubt on that matter.

65 That analysis leads to the conclusion that, as regards the question of the financial liability of the parties concerned in respect of implementation of the project, the award decision is not sufficiently clear and specific to meet the requirement of legal certainty, which is essential in view of the serious consequences that repayment of the assistance has for those parties. Moreover, the vagueness and apparent contradictions detected in the text of the award decision and its annexes should be regarded as being so important that the objective sought by the Commission of having only one party financially liable for the proper implementation of the project, although justified in principle (see paragraph 53 above), cannot legitimately be relied upon in the present case. Therefore it must be concluded that in the present case the achievement of that objective through the contested decision, demanding full repayment of the assistance from the applicant alone, without seeking to ascertain which of the parties was actually and substantively responsible for committing the irregularities in question in the implementation of the project, appears to be a measure which is disproportionate in relation to the difficulties caused to the applicant by the demand for repayment of the full amount of the assistance already granted. It is settled case-law that 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 (see, for example, Case 15/83 *Denkavit Nederland* [1984] ECR 2171, paragraph 25, and Case T-260/94 *Air Inter* v *Commission* [1997] ECR II-997, paragraph 144).

66 So, by requiring the applicant to repay in full the assistance already paid to it and not limiting that demand to the part of the project that was to be carried out by the applicant, the Commission infringed the principle of proportionality.

67 That conclusion cannot be overturned by the Commission's argument that the applicant was fully aware of its financial liabilities to the Community as a result of being the sole 'beneficiary of the assistance'. As is clear from what was held in paragraphs 54 and 55 above, since it is the award decision that lays down the rights and obligations of the parties resulting from the award of the assistance, the Commission is required to inform the parties, clearly and specifically, by the time the assistance is awarded at the latest, of the financial obligations incumbent upon them as a result of this. In any event, the Commission cannot rely on the fact that the applicant expressly stated, in connection with the applications for payment of the second advance and the balance of the assistance (see paragraphs 17 and 19 above), that the data contained in the tables annexed to those statements accurately reflected the expenditure incurred not only by itself but also by Route des Senteurs and that the measures carried out corresponded to those already described in the award decision. Those statements, however significant they may be, did not concern the financial relationship between the bodies responsible for carrying out the project and the Community and therefore did not preclude a possible demand for repayment being made directly to Route des Senteurs in respect of the part of the project for which it was responsible. Nor can the Commission rely on the fact that, following notification of the contested decision, the applicant sought repayment from Route des Senteurs of the share of the advances paid to the latter for implementating the measures. As the applicant states, that conduct may also be explained by a spontaneous demonstration of prudence, permissible in order for it to protect its own financial interests by all means possible.

68 In the light of the above considerations, the contested decision should be annulled in so far as the Commission did not limit its demand for repayment to the sums relating to the part of the project which, under the award decision, was to be carried out by the applicant itself.

69 In the context of the other pleas put forward by the applicant it will be necessary to consider whether the Commission committed errors in establishing the various irregularities alleged against the applicant in respect of the part of the project which it was to carry out.

2. *Second plea: errors committed by the Commission with regard to the various irregularities alleged against the applicant, infringement of the obligation to state reasons and infringement of the right to be heard*

70 The second plea is in three parts. In the first, the applicant denies the irregularities established by the Commission in the contested decision. In the second, it submits that that decision is vitiated, in respect of the establishment of each of those irregularities, by a failure to state reasons. In the third, it maintains that the contested decision was adopted in breach of its right to be heard. The Court considers it appropriate to consider the first and second parts of this plea together.

First and second parts of the plea

The making of a film by the company 'Romana Video'

— Contested decision

71 The sixth indent of the ninth recital in the preamble to the contested decision reads as follows:

'[The applicant] charged "Romana Video", and declared paid, ITL 98 255 000 (ECU 50 672) for making a video as part of the project. At the time of the

inspection (25 and 26 March 1998) there was still ITL 49 000 000 outstanding. [The applicant] stated that that sum would not be paid because it was the cost of selling the rights in the video to the company which made it. [The applicant] submitted expenditure ITL 49 000 000 higher than the expenditure actually incurred'.

— Arguments of the parties

72 The applicant considers that this claim is based on an incorrect assessment of the facts. It points out that the contract it entered into with Romana Video provided that the latter would, on the one hand, make on its behalf a film on the Valnerina region for approximately ITL 98 million and, on the other hand, acquire the marketing rights in that film for the sum of ITL 49 million. The applicant states that both aspects of that contract concerned separate legal relationships and that it was only due to an error on the part of the bank that the debit and credit relating to those two operations were offset, which aroused the suspicions of the Commission inspectors.

73 The applicant does not deny that it made a profit from the sale of the marketing rights in the film to Romana Video. However, that fact does not in its view constitute an irregularity within the meaning of Article 24 of Regulation No 4253/88, as amended, since neither that regulation nor the annexes to the award decision prohibit the beneficiary of the assistance from making a profit from the results obtained due to the assistance.

74 Furthermore, the applicant considers that in order to establish the existence of an irregularity within the meaning of Article 24 of Regulation No 4253/88, as amended, the Commission should have shown that the sum of ITL 98 million manifestly exceeded the value of the service provided by Romana Video. The

applicant points out, however, that not only was the price particularly advantageous in comparison with the market price, but also neither that price nor the result of the public invitation to tender which led to Romana Video producing the film were challenged by the Commission.

75 The Commission maintains that, by failing to deduct from the sale of the marketing rights in the film the profit on the cost of making the film as part of the set-off arrangement agreed with Romana Video, the applicant unlawfully charged costs to the project that were higher than those actually incurred.

— Findings of the Court

76 The second paragraph of Article 3 of the award decision provides that '[w]here the amount of the costs actually incurred leads to a reduction in the eligible expenditure in relation to the original estimates, the assistance will be reduced proportionally at the time the balance is paid'.

77 The assistance granted was therefore intended to finance a certain percentage of the costs actually incurred by the parties concerned in carrying out the project.

78 It is agreed between the parties that in the present case the applicant entered into a contract with Romana Video under which it commissioned that company to make a film about the Valnerina in return for the sum allocated for the project, some ITL 98 million. However, it only paid that company ITL 49 million since, under the same contract, it sold the marketing rights in the product back to the company for ITL 49 million.

79 Therefore, as the Commission rightly pointed out, in carrying out that measure the applicant only actually incurred a real cost of around half the expenditure allocated for the project. It is indeed the case that, as the applicant states, neither Regulation No 4253/88 nor the award decision expressly prohibits the beneficiary of the assistance from profiting from results obtained due to that assistance. However, in view of the simultaneity of the transactions and the set-off arrangement between the applicant and Romana Video whilst the project was being carried out, the Commission was justified in considering that, rather than having profited from the result obtained due to the assistance, the applicant only in fact incurred in carrying out that part of the project the cost resulting from that set-off arrangement.

80 The Commission was therefore entitled to consider, without committing any errors, that the applicant charged to the project expenditure which it did not in fact incur in carrying out the project.

81 The charging of costs which are not genuine must be regarded as constituting 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 and may consequently be regarded as an irregularity within the meaning of Article 24 of Regulation No 4253/88, as amended.

82 Furthermore, as regards the statement of reasons for this paragraph of the contested decision (see in this regard Joined Cases T-141/99, T-142/99, T-150/99 and T-151/99 *Vela and Tecnagrind* v *Commission* [2002] ECR II-4547, paragraphs 168 to 170), in the ninth recital in the preamble to the contested decision the Commission stated that, due to the set-off arrangement made with Romana Video, the applicant submitted expenditure higher than that actually

incurred. The Commission therefore showed sufficiently clearly and unequivocally its reasoning, so as to inform the applicant of the justification for the measure adopted so that it might defend its rights, and so as to enable the Community Courts to exercise their power of review. It did not, therefore, in that regard, infringe the obligation to state reasons.

83 The complaints concerning the making of a film by Romana Video, alleging an error of assessment and infringement of the obligation to state reasons, must therefore be rejected.

Staff costs

— The contested decision

84 The seventh indent of the ninth recital in the preamble to the contested decision reads as follows:

'[The applicant] charged ITL 202 540 668 (ECU 104 455) to the project, representing the costs of employing five persons on the "tourist information" part of the project. [The applicant] failed to submit supporting documents (contracts of employment, details of activities performed) in respect of that expenditure.'

85 Furthermore, the ninth indent of the ninth recital in the preamble to the contested decision reads as follows:

'[The applicant] declared ITL 152 340 512 (ECU 78 566) in respect of staff costs in connection with "activities other than tourist information". [The applicant] did not submit documents to show that the services were actually provided or that [they] were directly linked to the project'.

— Arguments of the parties

86 The applicant considers that it has adequately shown that the staff costs charged to the project were actually incurred. It points out that in the context of its observations on the letter initiating the procedure it submitted to the Commission a list of the names of all the employees who were directly assigned to the 'tourist information' measure and 'activities other than tourist information', indicating in respect of each employee both the period of employment and the costs borne by the applicant in that connection, together with copies of pay-slips. It also states that it produced, at the time of the on-the-spot inspection, two decisions dated 17 November 1995 by which it assigned those employees to the project and also two notes of 29 March 1996 containing an estimate of the staff costs for those two measures under the project.

87 The applicant maintains that, being a public body, it does not have individual employment contracts for its staff. The fact that those people were actually employed by it could only be confirmed by a certificate which it would draw up. Lastly, according to the applicant, the fact, which is not disputed by the Commission, that the measures which the applicant was due to carry out under the project were actually carried out shows to the requisite legal standard that the persons employed did actually provide the services stated.

88 The Commission maintains that, despite the fact that it had already stated in its letter initiating the procedure that the supporting documents produced by the applicant were inadequate, the applicant did not submit any documents to establish that the staff costs charged related directly to the implementation of the project and were appropriate.

— Findings of the Court

89 The Commission stated in point 3 of Annex II to the award decision that '[s]taff costs... must relate directly to, and be appropriate to, the implementation of the measure'.

90 It is therefore necessary to consider whether the Commission committed an error by considering in the contested decision that the applicant did not submit documents to it showing that the staff costs charged to the project were directly related to the implementation of the project and were appropriate to it.

91 In that regard, it must be stated first of all that the tables which the applicant submitted to the Commission gave only the names of the persons concerned, an assessment of the time spent by those persons on the project, their wages and the resulting expenditure in respect of the implementation of the project. The tables did not, however, give a detailed description of the activities of each of those

persons in order to enable the Commission to check that the work they carried out related directly to the project and, especially, whether it was appropriate.

92 In addition, the decisions of 17 November 1995 and the notes of 29 March 1996 which the applicant states it submitted to the Commission, although the latter disputes this, do not at any event contain any additional information confirming that the staff costs related directly to the project or that they were appropriate. That applies all the more as regards the pay-slips, which only establish that the relevant persons worked for the applicant during the period in question, and manifestly contain no indication as to the nature of their work.

93 Moreover, as regards the applicant's argument that as it was a public body the Commission could not properly ask it to produce employment contracts, it should be noted that the Commission did not require the production of such contracts as the only admissible form of evidence. That being so, it should be noted that point 3 of Annex II to the award decision states that the applicant should be aware that it should be in a position to submit to the Commission documents which show by some means or other the direct link between the staff costs charged to the project and the implementation of the various measures provided for under the project, and whether the amount of those costs was appropriate. However, as the Commission rightly stated in the letter initiating the procedure, it had already informed the applicant that it was not possible to establish from the documents submitted whether the expenditure was genuine and whether it related directly to the project. However, in its observations on the letter initiating the procedure, the applicant in essence merely reproduced information which it had already submitted to it and added that it seemed to it pointless and unnecessary to detail the activities of its staff since those activities were sufficiently well illustrated by the achievement of the proposed objectives.

94 Since the applicant maintains in essence that the fact that the project was actually carried out shows that the staff costs were genuine, it should be pointed out that Article 24 of Regulation No 4253/88, as amended, refers expressly to irregularities concerning the conditions under which the operation being financed is carried out, which includes irregularities in the management of that operation. It cannot therefore be argued that the penalties provided for by 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 82 above, paragraph 201). Furthermore, point 7 of Annex II to the award decision provides that the Commission may at any time require the beneficiary to submit information concerning the progress of the operations listed in Annex I to that decision or the technical results obtained. Those passages show that a beneficiary of Community aid who is required, as in the present case, to provide part-financing for a subsidised project, must fulfil that obligation as the project progresses, as is stipulated in the case of Community funding (*Vela and Tecnagrind* v *Commission*, cited above, paragraph 249).

95 In view of the above, the Commission did not commit an error in considering that the applicant did not submit supporting documents to it which would establish that the staff costs charged to the project related directly to its implementation and were appropriate.

96 The system of subsidies provided for under 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, as amended, 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).

97 Also, 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 become the subject of 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 96 above, paragraph 71, and *Vela and Tecnagrind* v *Commission*, cited in paragraph 82 above, paragraph 322).

98 Lastly, as regards the statement of reasons for that part of the contested decision, the Commission showed, succinctly but none the less sufficiently clearly and unequivocally, that in its view the documents submitted by the applicant during the administrative procedure did not enable it to satisfy itself that the staff costs charged to the project related directly to its implementation and were appropriate. The contested decision therefore also contains an adequate statement of reasons in respect of this point.

99 The complaints concerning the staff costs, alleging an error of assessment and infringement of the obligation to state reasons, must therefore be rejected.

Overheads

— The contested decision

100 The tenth indent of the ninth recital in the preamble to the contested decision reads as follows:

'[The applicant] charged ITL 31 500 000 (ECU 26 302) to the project, representing overheads (rental of two offices, heating, electricity, water and cleaning). That allocation was not supported by any type of document'.

— Arguments of the parties

101 The applicant points out that in its observations on the letter initiating the procedure it stated that two rooms had been allocated and equipped at its head office for the purpose of implementing the project. It explains that it had charged to the project a proportion of the overheads commensurate with the size of the project in relation to its other activities, that is to say, 28% of the rent on the whole building it occupies and expenditure on water, electricity, cleaning and heating.

102 Supporting documents for all that expenditure was made available to the two Commission inspectors, who did not express any reservations with regard to their probative value or to the accuracy of the applicant's calculations.

103 The applicant disputes the statement that it was expenditure which it would have had to have borne anyway and was therefore not chargeable to the project. In its view, first, if it had not accommodated the staff responsible for implementation of the project on its own premises they would have had to find some other arrangement elsewhere, which would have entailed additional costs. Second, it could have used those premises for other purposes and derived benefit from them.

104 The Commission argues in essence that that expenditure should not have been charged to the project since it had no direct link with the project and the applicant did not submit any documents from which it could be concluded otherwise.

— Findings of the Court

105 It is clear from the documents in the case, and in particular from the letter initiating the procedure, that the irregularity established by the Commission with regard to the overheads only related to some of the costs which the applicant had charged to the project under that heading. The costs concerned were only those relating to the use for the project of premises which the applicant had already occupied before the assistance was awarded.

106 In that regard, it should be pointed out that the second paragraph of Article 3 of the award decision states that the assistance granted was intended to finance only a certain percentage of the costs actually incurred by the parties concerned in carrying out the project (see paragraph 77 above). Therefore, in order to prevent fraudulent practices, the Commission could quite properly consider that overheads such as those charged by the applicant in the present case were not actually connected with implementation of the project but constituted expenditure which the beneficiary would have borne in any case, as a result of its normal activity, irrespective of the implementation of the project.

107 In such a situation it must be concluded, for the same reasons as those set out in paragraph 81 above, that the Commission did not commit an error in considering that charging those overheads constituted an irregularity within the meaning of Article 24 of Regulation No 4253/88, as amended.

108 As regards the reasons stated in the contested decision in this connection, it should be pointed out that it is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63, and *Vela and Tecnagrind* v *Commission*, cited in paragraph 82 above, paragraph 170).

109 Although, contrary to what the contested decision appears at first sight to imply (see paragraph 100 above), the applicant submitted supporting documents to the Commission in order to establish the nature and existence of the services provided, as a result of the statement of reasons provided in the letter initiating the procedure, the applicant was aware of the reasons why the Commission considered that that particular expenditure could not properly be charged to the project. In the letter initiating the procedure the Commission stated that those costs were of a 'permanent nature' and therefore did not have any 'direct link with the project'. It must therefore be considered that the contested decision states adequate reasons in respect of this point.

110 The complaints concerning the overheads, alleging an error of assessment and infringement of the obligation to state reasons, must therefore be rejected.

Consultancy costs

— The contested decision

111 In the eighth indent of the ninth recital in the preamble to the contested decision the Commission notes as follows:

'[The applicant] charged ITL 85 000 000 (ECU 43 837) to the project, representing the costs for consulting Mauro Brozzi Associati S.A.S. That expenditure was not supported by any documents which made it possible to establish the existence and the precise nature of the services provided'.

— Arguments of the parties

112 The applicant submitted to the Court a contract which it signed on 21 December 1992 with the Mauro Brozzi Associati S.A.S. consultancy ('the Brozzi consultancy'). It points out that that contract had five specific parts: first, a description of the socio-economic situation of the zones to which the project related; second, details of the persons taking part in the project; third, the drafting of the project and ensuring its approval; fourth, the technical and administrative scrutiny of the final report on the project and, fifth, contact with the individuals involved in the project in order to achieve better marketing of it. For those services the Brozzi consultancy was to receive an amount corresponding to 50% of the expenditure appearing under the heading 'secretarial and managerial staff' in the financial plan for the project.

113 According to the applicant, the existence of the expenditure on the first four parts of the contract was clear and, at any event, was established by the documents kept by the applicant and duly examined by the two Commission inspectors. As for the fifth part, the applicant considers that that expenditure is largely established by documents which it had kept such as reports, letters, minutes of meetings, assignments and meetings, documents which were examined by the Commission inspectors during the on-the-spot inspection.

114 The Commission considers that the applicant did not provide it with documents which enabled it to establish the existence and the precise nature of the services actually provided. At any event, in its view, the expenditure on the first four parts of the contract concluded with the Brozzi consultancy was not eligible for the assistance.

— Findings of the Court

115 The Commission alleges that the applicant failed to submit any supporting documents to establish not only the contractual link with the Brozzi consultancy, shown by the contract concluded with the latter, but also the existence and precise nature of the various services actually provided by that consultancy in the course of implementation of the project.

116 In that regard, it should be observed that, in response to the letter initiating the procedure in which the Commission had already raised that complaint, among others, the applicant merely described in brief the various services which the

Brozzi consultancy was to provide under that contract. However, despite the Commission's express request, it did not attach any supporting documents to its observations. Before the Court it merely stated that it presented such documents to the Commission inspectors during the on-the-spot inspection, without however producing any documents to support that assertion.

117 In such a situation, it must be concluded that the applicant did not show that the Commission committed an error in considering that the consultancy costs were not proved by supporting documents which made it possible to establish the existence and the precise nature of the services provided. As point 5 of Annex II to the award decision states, the applicant was under an obligation to provide information and act in good faith towards the Community. Breach of that obligation must therefore be regarded as an irregularity within the meaning of Article 24 of Regulation No 4253/88, as amended.

118 Lastly, it should be observed that the contested decision contains an adequate statement of reasons in respect of this point. Contrary to what the applicant maintains, the Commission did not state in the ninth recital in the preamble to the contested decision that the applicant did not submit any document relating to the consultancy costs, but rather set out the reasons for adopting its measure, namely that the documents submitted by the applicant did not make it possible to establish the existence and precise nature of the services provided.

119 Consequently, without it being necessary to consider whether the expenditure provided for in connection with the five parts of the contract concluded with the Brozzi consultancy could have been regarded as being eligible for the assistance, it must be concluded that the complaints concerning the consultancy costs, alleging an error of assessment and breach of the obligation to state reasons, must therefore be rejected.

The irrigation system

— The contested decision

120 In the eleventh indent of the ninth recital in the preamble to the contested decision the Commission notes as follows:

'[A]s part of the "cultivation of spelt wheat and truffles" operation, the [award decision] provided for making investment in order to improve irrigation systems for the cultivation of truffles, amounting to ECU 41 258. That investment was not made and no explanation in that regard was provided to the Commission.'

— Arguments of the parties

121 The applicant points out that the award decision provided for the creation of 'back-up irrigation systems'. Contrary to what the Commission maintains, that term did not mean that the applicant was to construct a fixed irrigation system but rather referred to emergency irrigation for periods of drought by means of mobile tanks drawn by a tractor. The applicant relies in this regard on an expert report drawn up on 27 October 2000, from which it is clear, first, that the term 'back-up irrigation systems' used in the context of that specific project should be understood in the sense indicated by the applicant and, second, that the costs incurred by the applicant were adjusted in the light of the prices usually applying in respect of EAGGF operations.

122 Furthermore, the applicant rejects the Commission's argument that it did not in any event adduce evidence of the existence of the expenditure in connection with the mobile irrigation. It refers in that regard to a contract which it concluded with a firm for carrying out arboricultural work, which listed in detail the operations to be conducted, including those concerning irrigation. It also maintains that the technicians' inspection reports confirmed compliance with all the requirements and that this was established by the Commission inspectors during the on-the-spot inspection. Moreover, according to the applicant, the fact that the crops were successful shows that the irrigation was in fact carried out.

123 The Commission maintains that it found during the on-the-spot inspections that the applicant did not make the investment proposed in the project with regard to the 'back-up irrigation systems'. According to the Commission, that investment could have been properly made only by putting in place fixed irrigation systems and not a 'watering' system using 'barrels drawn by a tractor'. It stresses, moreover, that even if the term 'back-up irrigation system' was to be interpreted as stated by the applicant the applicant has not produced the slightest evidence during the administrative procedure, such as invoices relating to the acquisition of mobile tanks or the use of a tractor.

124 According to the Commission, the applicant could not properly rely in that regard on a contract it concluded with a firm to carry out arboricultural work to which it referred in its observations on the letter initiating the procedure. That reference was much too general to enable the Commission inspectors to determine which contract the applicant was referring to. Moreover, the Commission points out that during the on-the-spot checks the inspectors found that no irrigation had been carried out since a large number of the young plants had died.

— Findings of the Court

125 First of all it should be observed that, although the award decision provides for the financing of a 'back-up irrigation system' (also called 'emergency irrigation'), neither the application the applicant made to the Commission nor the award decision stated what type of irrigation system was to be created under the project.

126 Second, it is clear from the applicant's answers to a written question from the Court that during the on-the-spot inspection the Commission inspectors had stated that watering plants using mobile tanks drawn by a tractor could not be regarded as creating a 'back-up irrigation system' and that in the absence of a fixed irrigation system it had to be concluded that in that regard the project had not been carried out as planned. In the letter initiating the procedure the Commission stated that the investment in order to improve the irrigation system '[had] not been made' and invited the applicant to provide evidence to the contrary.

127 In its observations on the letter initiating the procedure the applicant reiterated the explanation it had already given to the Commission inspectors, namely that in its opinion 'in the project [the irrigation system] was not designed as a fixed equipment but as irrigation to be carried out using vehicles (tankers)'. The applicant does not deny that apart from that explanation regarding its interpretation of the terms of the project concerning the irrigation system it did not provide the Commission with any supporting documents, such as invoices relating to the acquisition of mobile tanks or the use of a tractor, which would have made it possible both to dispel the doubts expressed by the Commission with regard to the way in which the irrigation system was to be created and to show that the system which the applicant had designed had actually been created.

128 Moreover, before the Court the applicant did not even attempt to establish that the contract, to which it referred in that context without producing it before the Court, made it possible to show that that irrigation system had actually been created.

129 In such circumstances, without the need to rule on whether the watering of plants using mobile tanks drawn by a tractor could be regarded as creating a 'back-up irrigation system' within the meaning of the award decision, it must be concluded that the Commission did not commit any error in considering that the applicant had not shown that the investment planned in respect of the irrigation system had actually been made.

130 The charging of costs which are not supported by documents or other means must be regarded as constituting 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 and may consequently be regarded as an irregularity within the meaning of Article 24 of Regulation No 4253/88, as amended.

131 As regards compliance with the obligation to state reasons, it should be observed that of course it is true that neither in the letter initiating the procedure nor in the contested decision did the Commission expressly state the reasons why it considered that the irrigation system allegedly planned by the applicant did not correspond to the one set out in the project. However, as was mentioned in paragraph 126 above, the applicant confirmed that that complaint had been explained to it by the Commission inspectors. This is corroborated, moreover, by the fact that when it made its application the applicant not only put forward arguments concerning the allegedly erroneous nature of the interpretation by the Commission of the terms of the award decision, but also produced an expert's report in support of its position. Consequently, it must be considered that, in the light of the background to the contested decision, the latter contains adequate reasons in that regard.

132 The complaints concerning the irrigation system, alleging an error of assessment and infringement of the obligation to state reasons, must therefore be rejected.

Conclusion

133 On the basis of the above analysis, the first and second parts of the second plea must be rejected.

Third part of the plea

134 The applicant maintains that the Commission did not draw up a report on the activities and discussions carried out by its inspectors and, in particular, it did not prepare a list of the documents photocopied on those occasions. In those circumstances, it is not possible for it to reply to the complaints made by the Commission that the applicant did not produce certain documents during the administrative procedure.

135 The Commission points out that it did draw up a report on the activities and discussions of its inspectors and a list of the documents photocopied but that those documents were intended only for internal use. At any event, it considers that the fact that it did not send those documents to the applicant did not affect the latter's position since in the letter initiating the procedure it informed the applicant of all the complaints made against it and that it could produce all the documents and put forward any arguments likely to prove that it had complied with its obligations under the award decision.

136 The Court points out that observance of the right to be heard is, in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person, a fundamental principle of Community law which must be guaranteed even in the absence of any rules governing the procedure. That principle requires that the addressees of decisions which significantly affect their interests should be placed in a position in which they may effectively make known their views (see Case C-32/95 P *Commission* v *Lisrestal and Others* [1996] ECR I-5373, paragraph 21, and Case T-199/99 *Sgaravatti Mediterranea* v *Commission* [2002] ECR II-3731, paragraph 55).

137 In the present case, the Commission informed the applicant by letter of 12 August 1997 that it was going to verify the implementation of the project. In addition, by the letter initiating the procedure the Commission indicated all the complaints it held against it and asked it in essence to submit all the supporting documents relating to the expenditure charged to the project. Following that request, the applicant submitted documents and its observations on them to the Commission on three occasions, by letters of 25 August 1997, 6 April 1998 and 17 May 1999. In addition, by letter of 6 March 1998 the Commission specified the dates of the on-the-spot inspection and asked the applicant to have available for the inspectors all the accounts and administrative and financial documents concerning the project.

138 In those circumstances, it must be concluded that the Commission gave the applicant sufficient opportunity to show that it had properly carried out the measures under the project for which it was responsible by producing the supporting documents which it was required to make available to the Commission under the award decision.

139 The third part of the second plea must therefore be rejected and the second plea must be rejected in its entirety.

3. *The third plea: infringement of the principle of proportionality and of Article 24(2) of Regulation No 4253/88, as amended*

140 The applicant considers that the contested decision is vitiated by infringement of the principle of proportionality and of Article 24(2) of Regulation No 4253/88, as amended, in that the various irregularities established in that decision are insufficient to justify a penalty as serious as the total cancellation of the assistance which had been granted to the applicant to carry out operations under the project. The applicant stresses that all the operations planned for in the project were carried out and so the objective of the financial assistance was thus achieved. In those circumstances, the conditions for applying Article 24(2) of Regulation No 4253/88, as amended, were not met.

141 The Commission considers that the charges made against the applicant constitute 'irregularities or significant changes' within the meaning of Article 24(2) of Regulation No 4253/88, which were so serious that any measure apart from withdrawal was liable to constitute incitement to fraud.

142 The Court points out that the principle of proportionality requires, as confirmed by the consistent case-law, that the measures adopted by Community institutions must not exceed what is appropriate and necessary for attaining the objective pursued (see paragraph 65 above).

143 The Court has also held that 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 assistance (Case C-104/94 *Cereol Italia* [1995] ECR I-2983, paragraph 24, and the case-law cited therein).

144 As regards the present case, it should be made clear that the purpose of Regulation No 2052/88 and Regulations Nos 4253/88 and 4256/88 which implement it is to promote, through the EAGGF, within the context of support for economic and social cohesion, the adjustment of agricultural structures and the development of rural areas with a view to reform of the common agricultural policy. Against that background, as can be seen from the 20th recital in the preamble to Regulation No 4253/88 and Article 23 of that regulation, the legislature sought to introduce an effective inspection procedure to ensure that beneficiaries comply with the conditions laid down when the EAGGF assistance was granted, in order to achieve the abovementioned objectives in a proper manner.

145 It is also important to point out that in *Industrias Pesqueras Campos and Others* v *Commission*, cited in paragraph 96 above (paragraph 160), the Court held that in view of the very nature of the assistance awarded by the Community, the obligation to comply with the financial conditions set out in the award decision constitutes, in the same way as the substantive obligation to carry out the project concerned, one of the beneficiary's essential commitments and is therefore a precondition for the grant of Community assistance.

146 Lastly, as has already been stated (see paragraph 97 above), the provision of sufficiently specific information by applicants for, and beneficiaries of, Community assistance is essential for the proper operation of the system of inspection and evidence introduced in order to verify whether the conditions for granting such assistance are met.

147 In the present case, it is clear from the analysis made in connection with consideration of the second plea that the applicant committed irregularities for

the purposes of co-financing of the project and charged unjustified expenditure to the project. Such conduct constitutes a serious infringement of essential obligations incumbent upon the beneficiaries which may justify withdrawal of the assistance in question.

148 As regards the argument alleging that all the operations under the project were carried out, it should be pointed out that it cannot be maintained, as the applicant did in essence, that the penalties provided for in Article 24 of Regulation No 4253/88, as amended, would only apply if the operation being financed had not been carried out in whole or in part (see paragraph 94 above).

149 Given such infringements, it was reasonable for the Commission to consider that the only 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 in that potential beneficiaries would be tempted either to inflate artificially the amount of expenditure charged to the project in order to escape their obligation to provide co-financing and obtain the maximum EAGGF intervention provided for in the award decision, or to supply false information or conceal certain data in order to obtain assistance or to increase the amount of assistance being sought, with the prospect of the sole penalty being that the assistance would be reduced to the level it would have been if the expenditure actually incurred by the beneficiary and/or the correctness of the information provided by the beneficiary to the Commission had been taken into account (see to that effect *Industrias Pesqueras Campos and Others* v *Commission*, cited in paragraph 96 above, paragraph 163, and *Vela and Tecnagrind* v *Commission*, cited in paragraph 82 above, paragraph 402).

150 Consequently, the alleged infringement of the principle of proportionality is unfounded. The third plea must therefore be rejected.

4. *Fourth plea: misuse of powers*

151 The applicant considers that, in view of the questionable nature of the complaints made against it and the way in which the on-the-spot checks were carried out by the Commission inspectors, withdrawal must be regarded as being based on a vexatious and punitive intention and is therefore vitiated by a misuse of powers. The applicant is of the view that the Commission's wish to inflict on it an exemplary punishment is clear from the last sentence of the letter initiating the procedure, in which the Director-General in charge of the case stated that '[i]f [the] explanations and documents [referred to in that letter] were sufficient to dispel all reasonable doubt, [he] reserv[ed] the right to look into other points, in the context of a possible decision, again on the basis of Article 24 of Regulation No 4253/88, as amended, to reduce or withdraw the assistance'.

152 The Commission considers that withdrawal of financial assistance in the event of particularly serious infringements, like those established in the present case, is not the expression of a vexatious intention but rather the only measure that will ensure that financial assistance from the EAGGF is used effectively and properly. As regards the extract from the letter initiating the procedure referred to by the applicant, the Commission points out that, by using those words, it was seeking to offer the applicant a safeguard. The Commission observes that it was only informing the applicant of the possibility that a fresh procedure might be initiated if the charges made proved to be unfounded but new evidence appeared which cast doubt on the lawfulness of the project.

153 The Court points out that the concept of misuse of powers has a precisely defined scope in Community law and refers to cases where an administrative authority has used its powers for a purpose other than that for which they were conferred on it. A decision may amount to a misuse of powers only if it appears, on the

basis of objective, relevant and consistent evidence, to have been taken for purposes other than those stated (*Industrias Pesqueras Campos and Others* v *Commission*, cited in paragraph 96 above, paragraph 168).

154 In the present case, as the Court held in the context of its consideration of the second plea, the applicant failed to demonstrate the existence of errors as regards the finding of irregularities in the implementation of the project. In addition, the applicant did not adduce any evidence to establish that the Commission was pursuing any aim apart from that of penalising irregularities found in the implementation of the project. The applicant's statement that the Commission sought to 'make an example' of it is not confirmed by any evidence on the file.

155 Similarly, it cannot be inferred from the extract from the letter initiating the procedure relied on by the applicant that the Commission sought to punish the applicant by adopting the contested decision. As the Commission states in essence, the sole purpose of those words was to inform the applicant of the possibility that the procedure which had been initiated might be limited or extended if the charges made proved to be unfounded but new evidence appeared which subsequently cast doubt on the lawfulness of the project.

156 The fourth plea must therefore be rejected.

5. *Overall conclusion*

157 In the light of all the above considerations, the contested decision must be annulled in so far as the Commission did not limit its demand for repayment to

the sums relating to the part of the project which, under the award decision, was to be carried out by the applicant itself. However, the remainder of the application should be dismissed.

Costs

158 Under Article 87(3) of the Rules of Procedure, the Court may rule that costs are to be shared or that each party is to bear its own costs where each party succeeds on some and fails on other heads. In the circumstances of the present case it is appropriate to order the parties to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Annuls Commission Decision C (2000) 2388 of 14 August 2000 withdrawing the financial assistance of the European Agricultural Guidance and Guarantee Fund granted to the Comunità Montana della Valnerina by

Commission Decision C (93) 3182 of 10 November 1993 on the granting of assistance from the EAGGF Guidance Section, under Regulation (EEC) No 4256/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the EAGGF Guidance Section, in connection with Project No 93.IT.06.016 entitled 'Pilot demonstration project relating to forestry, agriculture and food production in marginal hill areas (France, Italy)', in so far as the Commission did not limit its demand for repayment of the assistance to the sums corresponding to the part of the project which, under the award decision, was to be carried out by the applicant itself;

2. Dismisses the remainder of the application;

3. Orders each party to bear its own costs.

Lenaerts Azizi Jaeger

Delivered in open court in Luxembourg on 13 March 2003.

H. Jung

Registrar

K. Lenaerts

President