JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)
9 October 2002 *

In Case T-134/01,

Hans Fuchs Versandschlachterei KG, established in Duisburg (Germany), represented by U. Schrömbges, L. Harings and C. Hütter, lawyers,

applicant,

v

Commission of the European Communities, represented by M. Niejahr, acting as Agent, with an address for service in Luxembourg,

defendant,

APPLICATION for an order that, primarily, the Commission or, alternatively, the Bundesanstalt für Landwirtschaft und Ernährung, pay a sum of

* Language of the case: German.

DEM 13 130.04 (EUR 6 713.28), plus interest at an annual rate of 8% from 1 March 2000,

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

composed of: R.M. Moura Ramos, President, J. Pirrung and A.W.H. Meij, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 23 April 2002,

gives the following

Judgment

Relevant provisions

1 Council Regulation (EC) No 2802/98 of 17 December 1998 on a programme to supply agricultural products to the Russian Federation (OJ 1998 L 349, p. 12) provides for agricultural products to be made available to the Russian Federation.

2 Under Article 2(3) of Regulation No 2802/98, supply costs, including transport to ports or frontier points, unloading excluded, and where appropriate, processing in the Community, are to be determined by public tendering procedure or, for reasons of urgency or routing difficulty, by restricted tendering procedure.

3 Under Article 4(1) of Regulation No 2802/98, the Commission is to be responsible for execution of the operation under the terms of the regulation.

4 The third recital in the preamble to Commission Regulation (EC) No 111/1999 of 18 January 1999 laying down general rules for the application of Council Regulation (EC) No 2802/98 (OJ 1999 L 14, p. 3), provides:

'... to ensure satisfactory competition between the various operators in the Community, in the case of the supply of processed products and of products not available in intervention that must be mobilised on the Community market, these supplies should be organised in two stages and contracts awarded separately for the manufacture of the processed product or the mobilisation of the product on the market, as appropriate, and then for delivery to the delivery stage laid down for supply to the recipient country'.

5 Article 2(3) of Regulation No 111/1999 reads as follows:

'The invitation to tender may cover the determination of the costs of the supply of products to be mobilised on the Community market. For such supplies, the costs shall cover in particular the price of the product and the costs of packaging and labelling the products to be delivered to the delivery stage laid down in the notice of invitation to tender, in accordance with the individual invitation to tender.'

6 Article 4(1) of Regulation No 111/1999 states that tenders are to be submitted in writing to the intervention agency, which, pursuant to Article 6(1) of that regulation, as amended by Commission Regulation (EC) No 1125/1999 of 28 May 1999 (OJ 1999 L 135, p. 41), is to forward to the Commission, for each lot, a complete copy of the two most favourable tenders received.

7 Under Article 6(3) of Regulation No 111/1999, as amended by Regulation No 1125/1999, the Commission must inform the successful tenderer of the award of the contract as soon as possible and must send a copy of that decision to the intervention agency which received the tenders.

8 Under Article 10(1) of Regulation No 111/1999, applications for payment for the supply must be submitted to the intervention agency.

9 Article 16 of Regulation No 111/1999 states:

'The Court of Justice of the European Communities shall be competent to resolve any dispute resulting from the implementation or the non-implementation or from the interpretation of the rules governing supply operations carried out in accordance with this Regulation.'

10 On 28 May 1999, the Commission adopted Regulation (EC) No 1135/1999 opening a second invitation to tender for the mobilisation of pigmeat on the Community market with a view to its subsequent delivery to Russia (OJ 1999 L 135, p. 85).

11 Under Article 1 of Regulation No 1135/1999, an invitation to tender was thereby opened to establish the costs of supplying 40 000 tonnes (carcase equivalent) of pigmeat, presenting the characteristics and qualities indicated in Annex I, for delivery as a supply operation covered by Article 2(3) of Regulation (EC) No 111/1999, in accordance with that regulation and Regulation No 1135/1989.

12 Article 2 of Regulation No 1135/1999 states:

'For a given lot, supply shall comprise:

(a) the purchase of the products listed in Annex I, to be mobilised on the Community market and, in the case of fresh products, their processing into frozen products;

(b) the packaging and labelling of the products in accordance with the instructions in Annex I;

(c) the supply of the products at the ex cold store stage in the Community, at the place indicated by the successful tenderer in his tender, loaded on a means of transport and within the time limit laid down in Annex II;

(d) keeping of the product available for the carrier, before loading commences, for a minimum of 10 working days from the dates laid down in Annex II. Beyond that period the successful tenderer shall be entitled to the amount laid down in Article 7a(1) of Regulation (EC) No 111/1999.

The tender shall contain the exact place of taking-over (cold store) where all the products making up a single lot must be held. This place must be easily accessible for take-over by the carrier and must guarantee a loading rate of 100 tonnes per working day.'

13 Article 6 of Regulation No 1135/1999 reads as follows:

'The successful tenderer shall take all necessary steps to ensure that the following certificates are sent to the successful tenderer for the supply operation at the time of removal:

— veterinary certificate,

— certificate of origin,

— quality certificate,

— health certificate.

The cost of obtaining such certificates shall be borne by the successful tenderer for mobilisation of the product.

The certificates shall be drawn up in accordance with the models sent to the operators by the Commission at the formers' request.'

14 Regulation No 1135/1999 was suspended by Commission Regulation (EC) No 1248/1999 of 16 June 1999 suspending the invitation to tender opened by Regulation (EC) No 1135/1999 (OJ 1999 L 150, p. 23). Regulation No 1248/1999 was repealed and, so far as concerns, in particular, the various dates laid down for the submission of tenders and for delivery, Regulation No 1135/1999 was amended, by Commission Regulation (EC) No 1773/1999 of 10 August 1999 (OJ 1999 L 211, p. 46).

15 By Commission Regulation (EC) No 1955/1999 of 13 September 1999 on the transport of pigmeat to Russia (OJ 1999 L 242, p. 13), an invitation to tender was opened to establish the costs of supplying the transport of pigmeat, mobilised on the basis of Regulation No 1135/1999, from the Community stores to Russia.

Facts giving rise to the dispute

16 On 1 September 1999, the applicant submitted to the Bundesanstalt für Landwirtschaft und Ernährung (hereinafter 'the BLE'), which is the German intervention agency, a tender for the mobilisation of pigmeat to Russia under Regulations Nos 111/1999 and 1135/1999.

17 By decision of 14 December 1999, the Commission awarded the contract for the mobilisation to the tenderers listed in Article 1 of that decision. Under that decision, lot 14, 1 000 tonnes of half-carcases, was awarded to the applicant.

18 By fax of 15 October 1999, the Commission informed the applicant of its decision to award the contract for the transport of the applicant's lot to the company Tour Trans Internationale Speditions GmbH (hereinafter 'Tour Trans').

19 When the lot was loaded at the cold store at Zerbst (Germany), the applicant delivered to Tour Trans 60 veterinary certificates, including health certificates, drawn up by the veterinary service at Duisburg for the quantities delivered at the cold store at Zerbst, a certificate of origin drawn up by the Chamber of Commerce and Industry of Duisburg for a total quantity of 1 013 331.2 kg, and a certificate of quality drawn up by the applicant for that quantity.

20 Since it did not agree with what the applicant had done, Tour Trans required it to make available the necessary documents for each means of transport used by Tour Trans and stated that, if the applicant refused, it would have them drawn up at the applicant's expense.

21 By letter of 20 October 1999, the applicant notified the Commission of the disagreement which had arisen between it and Tour Trans. The Commission replied, by letter of 25 October 1999, referring to Article 6 of Regulation No 1135/1999, that the successful tenderer for the mobilisation was required to provide the certificates mentioned in that provision for each means of transport used.

22 By letter of 10 November 1999, the Commission informed the applicant that Tour Trans would obtain the necessary certificates, but that, by virtue of Article 6 of Regulation No 1135/1999, the expenses thereof would be for the applicant's account and would be debited by the BLE.

23 On 26 November 1999, Tour Trans sent to the BLE its invoice for the expenses of obtaining certificates for each means of transport, in a sum of DEM 13 130.04. By letter of 1 March 2000, the BLE informed the applicant that the sum of DEM 13 130.04 had been charged to it, and deducted that sum from the amount to be received by it.

24 By letter 2 May 2000, the applicant informed the Commission of its disagreement with the BLE's action in charging it with those expenses and claimed payment of the amount deducted.

25 By letter of 4 August 2000, the Commission sent a copy of that letter to the BLE reminding it that the certificates had to be provided for each means of transport. It concluded that letter by asking the BLE to inform the applicant of that.

26 On 19 September 2000, the applicant, through its lawyers, sent a letter to the Commission, with an indication of the arguments in support of its case that the certificates did not have to be provided for each means of transport used, but for the complete lot.

27 By letter of 10 April 2001, the Commission replied to the applicant's letter, referring to the arguments which it had set out in its previous letters.

Procedure

28 By application registered at the Court Registry on 18 June 2001, the applicant brought this action.

29 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Second Chamber) decided to open the oral procedure and, as a measure of organisation of procedure under Article 64 of the Rules of Procedure of the Court of First Instance, requested the parties to reply to written questions and to produce certain documents. The parties complied with those requests.

30 The parties presented oral argument and answered questions put to them by the Court at the hearing which took place in open court on 23 April 2002.

31 In the course of the hearing, the Court requested the Commission to produce, within two weeks, the model certificate of origin mentioned in Article 6 of Regulation No 1135/1999, in German.

32 In response to that request, the Commission lodged a letter on 15 May 2002.

33 The applicant submitted no observations on that letter within the time allowed to it for that purpose.

Forms of order sought by the parties

34 The applicant claims that the Court should:

— order the Commission to pay it the sum of DEM 13 130.04, together with interest at an annual rate of 8% from 1 March 2000;

— alternatively, order the BLE to pay it the sum of DEM 13 130.04, together with interest at an annual rate of 8% from 1 March 2000;

— order the Commission to pay the costs.

35 The Commission contends that the Court should:

— dismiss the application as inadmissible;

— alternatively, dismiss the application as unfounded;

— order the applicant to pay the costs.

Admissibility

Arguments of the parties

36 The applicant, referring to Article 238 EC, argues that the Court has jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Community, whether that contract be governed by public or private law and that, by virtue of Article 3 of Council Decision No 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), that jurisdiction is to be exercised in this case by the Court of First Instance.

37 It submits that there is, between it and the Commission, a contractual relationship, of which the arbitration clause in Article 16 of Regulation No 111/1999 forms part, and which results from the Commission's acceptance of its tender. Such a relationship is inherent in the field of public contracts. In Case C-142/91 *Cebag* v *Commission* [1993] ECR I-553, the Court of Justice accepted the existence of a contractual relationship between the Commission and the tenderers based on the fact that an essential element of the supply operation, namely the price, depended on the offer by the tenderers and its acceptance by the Commission.

38 In that context, the applicant goes on to refer to Article 24(1)(b) of Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security (OJ 1996 L 166, p. 1), which enables the Commission to conclude contracts within the framework of food-aid programmes.

39 According to the applicant, although the Commission cooperates with the national intervention agencies, the binding decision awarding the contract is none the less reserved to the Commission by virtue of Article 6(2) of Regulation No 111/1999. According to the principles laid down in the judgment in *Cebag* v *Commission*, cited above, the power to decide upon an essential element of the supply operation, namely the price, thus gives rise to a contractual relationship between the tenderer and the Commission. The national intervention agencies participate in the carrying out of the mobilisation measures only as the Commission's auxiliaries, as also follows from Article 9(1) of Regulation No 111/1999.

40 So far as the claim for payment of interest is concerned, the applicant submits that it is not necessary to give specific reasons for that claim, given that the right to obtain interest flows from the existence of the primary claim and the general principles of law recognised by the Court.

41 The Commission submits that the application is inadmissible.

42 First, it argues that there is no contractual relationship between it and the tenderers because, on the one hand, the regulations which apply to this case contain no such indication to that effect, and, on the other hand, the mobilisation measures are carried out in large part by the intervention agencies of the Member States and, therefore, not directly by the Commission.

43 The judgment in *Cebag* v *Commission*, cited above, to which the applicant refers, cannot be invoked in this case, because the regulations upon which that judgment was based were of a different nature to Regulations Nos 2802/98 and 111/1999. The general rules relating to food-aid policy contained in Regulation No 1292/96

do not, contrary to what the applicant maintains, apply to the measures in issue in this case. Regulation No 2802/98 contains no provision authorising the Commission to conclude contracts. Unlike Regulation No 1292/96, Regulation No 2802/98 is drawn up on the basis of Article 37 EC, which implies that it is a measure adopted within the framework of the common agricultural policy.

44 According to Article 6 of Regulation No 2802/98, which refers to Article 3 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition, Series II 1970(I), p. 218), the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) bears the costs connected with the implementation of the measure. In that case, it is for the Member States to ensure the implementation in their territory of the Community legislation. The national authorities act therefore, in principle, in their own name and under their own responsibility.

45 Article 16 of Regulation No 111/1999 cannot be considered to be an arbitration clause within the meaning of Article 238 EC given that the relations in issue are not of a contractual nature.

46 The Commission adds that, even if the action were reclassified as an action for annulment, under Article 230 EC, of the Commission's decision contained in the letter of 29 March 2001, the action would still be inadmissible, since that decision only confirmed an earlier decision, which was not challenged in good time.

47 The Commission contends, further, that, in any event, the claim for payment of interest at 8% from 1 March 2000 is inadmissible, since the application contains no grounds in support of that claim, which is contrary to the requirements of Article 44(1) of the Rules of Procedure.

Findings of the Court

48 It is appropriate to consider, first, the question whether, in this case, there is a legal relationship between the Commission and the applicant and, if so, to determine whether that relationship is of a contractual nature.

49 Under Article 4(1) of Regulation No 2802/98, the Commission is to be responsible for the execution of the operation of making agricultural products available to Russia. Under the provisions of Article 6 of Regulation No 111/1999, the Commission is to decide on the award of the supply contract to a tenderer, whereas the role of the intervention bodies is confined, at that stage, to receiving the tenderers' offers and transmitting them to the Commission. The decision of 14 September 1999, by which lot 14 was awarded to the applicant, emanated from the Commission. Under the terms of Article 8(3) of the same regulation the Commission has the power to give instructions to facilitate completion of the supply. According to the provisions of Article 9 of the same regulation, the control of the supply is a matter for the Commission. Finally, according to the BLE's letter to the applicant of 1 March 2000, the BLE deducted the sum of DEM 13 130.04 in accordance with the Commission's instruction of 10 November 1999.

50 It follows from those provisions and circumstances that a legal relationship was created between the Commission, as the awarding authority, and the applicant in its capacity as a successful tenderer. The existence of a legal relationship between the Commission and the applicant is not undermined by the fact that the mobilisation measures were carried out in part by the intervention agencies of the Member States, particularly in relation to the payment of the successful tenderers in accordance with the procedure laid down in Article 10 of Regulation No 111/1999.

51 As to the characterisation of the legal relationship between the Commission and the applicant, it must be observed, in the first place, that the applicable regulations, namely Regulations Nos 2802/98, 111/1999 and 1135/1999, contain

no express indication. Those regulations differ therefore, on that point, from Council Regulation No 3972/86 of 22 December 1986 on food-aid policy and food-aid management (OJ 1986 L 370, p. 1), which applied in the case of *Cebag* v *Commission*, cited above, and from Regulation No 1292/96, which replaced Regulation No 3972/86, which expressly state that food-aid is provided on the basis of contractual undertakings.

52 However, the absence of any such express categorisation in the regulations which apply to this case does not in itself preclude the possibility that the relationship between the Commission and a successful tenderer, such as the applicant, may be regarded as contractual in nature.

53 In this case, the applicant's offer and its acceptance by the Commission created a legal relationship between the two parties which gave rise to reciprocal rights and obligations between them. The applicant undertook to deliver a quantity of pigmeat at a specified place and time. The Commission, for its part, undertook that the agreed price would be paid. Such a relationship satisfies the criteria of a bilateral contract (orders of the Court of First Instance in Case T-44/96 *Oleifici Italiani* v *Commission* [1997] ECR II-1331, paragraphs 33 to 35, and Case T-186/96 *Mutual Aid Administration Services* v *Commission* [1997] ECR II-1633, paragraphs 41 to 44).

54 The existence of a contractual relationship between the Commission and the applicant is confirmed by the existence of the clause, contained in Article 16 of Regulation No 111/1999, according to which the Court of Justice of the European Communities is to be competent to resolve any dispute resulting from the implementation or the non-implementation or from the interpretation of the rules governing supply operations carried out in accordance with that regulation. That clause has reasonable meaning only if a contractual relationship exists between the Commission and a successful tenderer such as the applicant.

55 It follows from the foregoing considerations that the applicant's claim based on Article 16 of Regulation No 111/1999 and Article 238 EC is admissible.

56 As regards the admissibility of the ancillary claim for payment of interest, it must be observed that it is generally accepted in the laws of the Member States that a delay in payment involves a loss for which the creditor must be compensated. Similarly, Article 78 of the United Nations Convention on Contracts for the International Sale of Goods provides that if a party does not pay the price or any other sum which is due, the other party is entitled to interest on that sum. Community law recognises an obligation to pay such compensation as a general principle of law (see, by way of example, Case 238/78 *Ireks-Arkady* v *Council and Commission* [1979] ECR 2955, paragraph 20, Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, paragraph 32, and Joined Cases T-202/96 and T-204/96 *Von Löwis and Alvarez-Cotera* v *Commission* [1998] ECR II-2829).

57 Since the ancillary claim is for payment of default interest as flat-rate and abstract compensation, it is not necessary for it to be supported by specific reasons and is, as such, admissible.

Substance

58 The applicant's claim is, primarily, for performance of the contract concluded between itself and the Commission. The sole plea in law put forward in the action

alleges misinterpretation of Regulations Nos 111/1999 and 1135/1999, and in particular of Article 6 of Regulation No 1135/1999.

59 The applicant's alternative claim is for damages. The sole plea in law put forward in that context alleges breach of the duty to provide pre-contract information.

Arguments of the parties

60 The applicant claims that Article 6 of Regulation No 1135/1999 requires the successful tenderer for the mobilisation of the product to provide certain certificates to the successful tenderer for the transport 'at the time of loading'. The reference to that time indicates that the documents mentioned in that provision are those of a nature such as to guarantee that the goods are, at that time, in conformity with the legislation. Article 6 is not concerned with the subsequent transport to Russia, but only with the award of the contract for the mobilisation. Since the successful tenderer for the transport was able to draw up the transport documents for each means of transport on the basis of the certificates which the applicant provided, the applicant considers itself to have fulfilled its obligations. Article 6, therefore, does not require it to provide the successful tenderer for the transport with certificates for each means of transport, or to pay the expenses relating to the obtaining of these certificates.

61 The interpretation put forward by the Commission is incompatible with the meaning and purpose of Article 6 of Regulation No 1135/1999. The division of the tendering process into two distinct parts is evidenced by two classes of equally distinct obligations. The successful tenderer for the mobilisation has only to bring the goods to a level of availability laid down by the regulation, which has to be attained 'at the time of loading', from which point the obligations of that tenderer

are terminated. The costs resulting from later steps cannot be the responsibility of the successful tenderer for the mobilisation, but they are the responsibility of the successful tenderer for the transport.

62 The applicant claims that it is legally and practically impossible for it to make available certificates for each means of transport used. It cannot obtain information concerning, for example, the type, the number and the characteristics of each means of transport. Only the successful tenderer for the transport is in a position to establish those parameters. The Commission's interpretation imposes an unjustified burden on the successful tenderer for the mobilisation, given that the successful tenderer for the transport can choose a means of transport without taking any account of the successful tenderer for the mobilisation. When it submitted its tender, the applicant was not in a position to know what documents the transport tenderer might need or the expenses that they would entail.

63 It follows also from Article 2(2) of Regulation No 1955/1999 that the obligations of the successful tenderer for the mobilisation come to an end with the delivery of the goods to the cold store.

64 Finally, Article 2(3) of Regulation No 111/1999 lists as costs at the point of delivery, in particular, the price of the product and the costs of packaging and labelling, and not the costs for the drawing-up of the documents for the subsequent transport of the goods.

65 The Commission refers to Article 5(1)(g) of Regulation No 111/1999, according to which the tender price must take account of the costs of transport and storage to the delivery stage specified in the invitation to tender. According to Article 2(c) of Regulation No 1135/1999, supply comprises making the products available, loaded on a means of transport. In that context, Article 6 of Regulation

No 1135/1999 must be interpreted as meaning that the certificates which it mentions have to be drawn up for each means of transport used and that the costs relating thereto must be paid by the successful tenderer for the mobilisation.

66 Furthermore, by virtue of the reference to the model certificates in the last paragraph of Article 6 of Regulation No 1135/1999, those certifications have indirectly become an integral part of Article 6. Those models leave no room for doubt that the certificates must be drawn up for each means of transport used.

67 The Commission admits that it was necessary for the successful mobilisation tenderer for the mobilisation to work with the successful tenderer for the transport. Accordingly, the Commission notified the applicant of the name and address of the tenderer for the transport by letter of 15 October 1999.

68 The Commission points out that Regulation No 1955/1999, which applies to the transport of pigmeat to Russia, contains no provision comparable to Article 6 of Regulation No 1135/1999 and there is therefore no legal basis by virtue of which the transport tenderer would have to bear the costs of obtaining the certificates in question.

69 The Commission disputes the applicant's argument that it was impossible for it to draw up the certificates, pointing out that, apart from the applicant, none of the successful tenderers in the relevant tendering process encountered any problems in drawing up the necessary certificates.

Findings of the Court

70 The question which divides the parties is, in essence, whether the applicant's obligations, as successful tenderer for the supply of the products, include an obligation to transmit, at its own expense, to Tour Trans, as successful tenderer for the supply of the transport, certificates for each means of transport.

71 First, it is important to note that it is agreed between the parties that the applicant delivered to Tour Trans, at the time of loading of the lot at the cold store, 60 veterinary certificates, including health certificates, a certificate of origin and a certificate of quality and that Tour Trans was able to obtain the necessary certificates for the transport of the products to the Russian Federation on the basis of the certificates which were sent to it by the applicant.

72 Second, it should be observed that, in the first paragraph of Article 6 of Regulation 1135/1999, what is involved is the transmission, at the time of loading of the products, of four types of certificates to be drawn up, according to the wording of that provision, in a single copy, and that that provision makes no express mention of an obligation on the part of the successful tenderer for the supply of the products to transmit certificates for each means of transport envisaged by the successful tenderer for the supply of the transport.

73 Nor can such an obligation result from Article 2 of that Regulation, or from Articles 2(3) and 5(1)(g) of Regulation No 111/1999, as amended by Regulation

No 1125/1999, which specify the elements of what is to be provided by the successful tenderer for the supply of the products.

74 In those circumstances, the mere reference, without previous indication, in the third paragraph of Article 6 of Regulation No 1135/1999 to the models to be sent by the Commission to operators at their request, is not sufficient to impose an additional obligation, over and above those set out in the applicable provisions, on the successful tenderers for the supply of the products. The latter could not reasonably expect that those models involve an extension of their obligations, the more so since the models, to which Article 6 of Regulation No 1135/1999 refers, were not available in German, as the Commission stated in its letter of 13 May 2002 to the Registrar of the Court. In other words, an obligation for the successful tenderer for the supply of the products to send certificates for each means of transport envisaged by the successful tenderer for the supply of the transport did not become part of the contractual consensus between the parties.

75 That finding is not disturbed by the Commission's argument that Regulation No 1955/1999, which applies to the transport of pigmeat to Russia, contains no provision comparable to Article 6 of Regulation No 1135/1999, and that there is thus no legal basis by virtue of which the tenderer for the transport must bear the costs of obtaining the certificates mentioned in that provision. It does not follow from the absence of such a provision in Regulation No 1955/1999 that it is for the tenderer for the mobilisation to send, at its own expense, the four types of certificates for each means of transport envisaged.

76 It follows that the applicant has not failed to perform its contractual obligations as defined by the applicable regulations, and that, therefore, the sum of DEM 13 130.04 could not be charged to it on any valid ground.

77 The applicant's primary claim is therefore upheld.

78 It is appropriate to order the payment of default interest on the sum due from the Commission from 2 May 2000, the date on which the applicant claimed the payment of that sum from the Commission, until full payment. As for the percentage of the annual rate of default interest to be applied, the Court considers that that rate must be calculated on the basis of the rate fixed by the European Central Bank for its main refinancing operations, in force from time to time during the period concerned, plus two percentage points.

79 Since the applicant's primary claim is upheld, there is no need to rule on its alternative claim.

Costs

80 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 other party's pleadings. Since the Commission has been unsuccessful, it must be ordered to bear its own costs and pay those incurred by the applicant, in accordance with the form of order sought by the latter.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. Orders the Commission to pay to the applicant the sum of EUR 6 713.28, together with default interest thereon from 2 May 2000 until full payment. The rate of default interest to be applied is to be calculated on the basis of the European Central Bank's rate for its main refinancing operations, in force during the period concerned, plus two percentage points;

2. For the rest, dismisses the application;

3. Orders the Commission to pay the costs.

Moura Ramos Pirrung Meij

Delivered in open court in Luxembourg on 9 October 2002.

H. Jung

Registrar

R.M. Moura Ramos

President