JUDGMENT OF THE COURT (First Chamber)

10 September 2009*

In Joined Cases C-445/07 P and C-455/07 P,

APPEALS under Article 56 of the Statute of the Court of Justice, brought on 28 September 2007 and 5 October 2007,

Commission of the European Communities, represented by L. Flynn, acting as Agent, assisted by A. Dal Ferro, avvocato, with an address for service in Luxembourg,

appellant in Case C-445/07 P,

the other party to the proceedings being:

Ente per le Ville Vesuviane, established in Naples (Italy), represented by E. Soprano, avvocato,

defendant at first instance,

* Language of the case: Italian.

and

Ente per le Ville Vesuviane, established in Naples (Italy), represented by E. Soprano, avvocato,

appellant in Case C-455/07 P,

the other party to the proceedings being:

Commission of the European Communities, represented by L. Flynn, acting as Agent, assisted by A. Dal Ferro, avvocato, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, M. Ilešič, A. Tizzano, A. Borg Barthet and J.-J. Kasel (Rapporteur), Judges,

Advocate General: J. Kokott,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General at the sitting on 12 February 2009,

gives the following

Judgment

1 By its appeal, the Commission of the European Communities asks the Court of Justice to set aside the judgment of the Court of First Instance of the European Communities of 18 July 2007 in Case T-189/02 *Ente per le Ville Vesuviane* v *Commission* ('the judgment under appeal'), by which it rejected the plea of inadmissibility raised by the Commission.

2 By its appeal, Ente per le Ville Vesuviane ('Ente') asks the Court of Justice to set aside the judgment under appeal by which the Court of First Instance dismissed its action for the annulment of Commission Decision D(2002) 810111 of 13 March 2002 on the closure of the European Regional Development Fund (ERDF) financial assistance in the form of investment in infrastructure in Campania (Italy) relating to an integrated scheme for the development of three Vesuvian villas for the purposes of tourism ('the contested decision').

Legal context

3 The ERDF was established by Regulation (EEC) No 724/75 of the Council of 18 March 1975 (OJ 1975 L 73, p. 1 and corrigendum OJ 1975 110, p. 44), several times amended and then replaced, as from 1 January 1985, by Council Regulation (EEC) No 1787/84 of 19 June 1984 on the European Regional Development Fund (OJ 1984 L 169, p. 1). In 1988, that body of rules relating to the Structural Funds was reformed by 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).

4 On 19 December 1988, the Council adopted Regulation (EEC) No 4254/88 laying down provisions for implementing Regulation No 2052/88 as regards the European Regional Development Fund (OJ 1988 L 374, p. 15). Regulation No 4254/88 replaced Regulation No 1787/84. It was amended by Council Regulation (EEC) No 2083/93 of 20 July 1993 (OJ 1993 L 193, p. 34).

5 Article 12 of Regulation No 4254/88, headed 'Transitional provisions' provides:

'Those portions of the sums committed for the granting of assistance in respect of projects decided on by the Commission before 1 January 1989 under the ERDF which have not been the subject of a request for final payment to the Commission by 31 March 1995 shall be automatically released by the Commission by 30 September 1995 at the latest, without prejudice to those projects which are subject to suspension for judicial reasons.'

Facts

6 The facts which gave rise to the dispute are summarised as follows in paragraphs 4 to 16 of the judgment under appeal:

'4. Ente is a consortium comprising the Italian State, the Region of Campania, the Province of Naples and a number of municipalities. It has legal personality under

public law. It was set up by Italian Law No 578 of 29 July 1971 to protect and enhance an architectural complex consisting of Vesuvian villas, built in the 18th century, and their dependencies (parks, gardens and related buildings).

5 According to information provided by Ente and not contested by the Commission, in 1986 the Italian State, at Ente's request, applied to the Commission for the grant of financial assistance from the ERDF with a view to investing in infrastructure in order to create an integrated system for enhancing the lower park of Villa Favorita, the garden of Villa Ruggiero and the Villa Campolieto architectural complex. The first of those Vesuvian villas forms part of the state-owned property of the Italian State. The other two are owned by Ente.

6 By Decision C(86) 2029/120 of 18 December 1986, addressed to the Italian Republic, the Commission granted financial assistance from the ERDF (No 86/05/04/054) up to a maximum amount of 7.5 billion Italian lira (ITL) — up to 50% of eligible expenditure — for investing in infrastructure concerning the abovementioned scheme to enhance Villa Campolieto, Villa Favorita and Villa Ruggiero for the purpose of tourism ("the decision to grant").

7. In that decision, Ente was designated both as the beneficiary of the assistance (recital 3 and Article 3) and as the person responsible for the application and for the implementation of the project (Annex to the decision). According to the timetable in the annex to that decision, the eligibility period for costs relating to the implementation of that project started in January 1987 and ended in June 1990. Under Article 4 of that decision, the Commission was able to reduce or annul the ERDF financial assistance in the case of non-compliance with the conditions listed in that decision, including those concerning the timetable for implementing the project. It was provided that, in that case, the Commission could require full or partial repayment of the aid already paid to "the beneficiary of the decision". "Reductions, annulments or requests for recovery [could] be effected only after the beneficiary [had been] given an opportunity to submit his comments within the period laid down for that purpose by the Commission" (Article 4).

8 Pursuant to that decision, and at the request of the Italian authorities, two part-payments, each amounting to ITL 3 billion, were paid in 1988 and in 1990, respectively.

9 By letter of 29 March 1995, the Italian State applied for an extension of the period for presenting requests for final payment — fixed at 31 March 1995 by Article 12 of Regulation No 4254/88 — claiming that the works had been suspended due to "legal measures of various kinds" or "disputes with expropriated persons".

10 By letter of 15 February 2000, the Italian authorities referred to the fact that they had applied for an extension of the period concerned. In addition, they requested that a new part-payment be made as soon as possible, claiming that the amount of the expenditure set out to date was significantly greater than the part-payments already paid. In support of their claims, they sent the Commission a report dated 16 June 1999, drawn up following an inspection of the project which they had carried out. That report contained the following references: "date of the closure of payments" for the works to Villa Campolieto: 1994; "date of (actual) completion of the works" to Villa Ruggiero: 1994 and "date of (actual) completion of the works" in respect of the [first] tranche of the works to Villa Favorita: 1993. Under the heading "Legal reasons leading to the suspension", that report stated, with regard to Villa Campolieto, that "there [had been] no legal problems". With regard to the Villa Ruggiero, it claimed that there had been "procedures to clear the garden of its occupants". With regard to the completion of works relating to the Villa Favorita, the report referred to "obtaining the final licence in respect of public land and the removal of the illegal occupants and temporary shelters housing earthquake victims". In addition, that report indicated that any failure to pay the Community financial assistance "could lead to serious financial difficulties for Ente if it were unable to make up the shortfall with other external financing (for example, the possible inclusion of the project in the [Community support framework] Campania 94/99), given that Ente's own resources [were] insufficient to replace the resources concerned".

11 By letter of 8 March 2001, the Italian authorities submitted a request for payment of the balance.

12 By letter of 12 October 2001, the Commission communicated to the Italian authorities its proposal to close the ERDF financial assistance. After stating that it was not apparent from the file which it had been sent that the events mentioned in the report of 16 June 1999 (see paragraph 10 above) had led to legal proceedings, it indicated in that letter that, failing judicial reasons within the meaning of Article 12 of Regulation No 4254/88, the financial assistance was deemed to have been closed on the basis of the claim for payment of 9 April 1990, since that constituted the last claim for payment submitted before 31 March 1995. It stated that the expenditure declared had been found to be eligible in the amount of ITL 2.8 billion, so that the financial assistance owed by the ERDF amounted to ITL 1.4 billion. In consequence, it fixed the sum to recover at ITL 4.6 billion and provided for the release of the balance amounting to ITL 1.5 billion. In addition, it indicated that: "Since that closure could have a financial impact for the beneficiary or for the ultimate beneficiaries, I formally request that you ensure that they are duly informed so that they may know their position in respect of the factors taken into consideration in their regard, upon which the contested decision is based. I should be very grateful if you would send us the relevant information." In addition, the Commission invited the Italian authorities to send their comments within a period of two months, should they disagree with the proposal to close the financial assistance.

13 By letter of 21 November 2001, the Italian authorities replied that "[the] financial impact of [the recovery of a part of the two first tranches of the financial assistance in the amount of ITL 4.6 billion] on the budget of the ultimate beneficiary … [was] very onerous, given that that ultimate beneficiary [had] used the resources already paid by the Commission for the purposes of implementing in full, the works envisaged, and this in the conviction that the application … for the extension of the period [for presenting claims for final payment] would be favourably received". In that regard, they claimed that it was apparent from the report of 16 June 1999 that the implementation of the project was divided into three functional tranches only one of which, namely that concerning the completion of the works to the Villa Favorita, had suffered the delays in implementation in respect of which the Italian authorities had applied for the suspension of the period for presenting the claim for final payment. On the other hand, expenditure relating to the two first tranches of works,

concerning Villa Campolieto and Villa Ruggiero, which amounted to ITL 7 996 087 050, were incurred before 31 March 1995 and were not the subject of specific applications for extension.

14 By letter of 13 March 2002, the Commission communicated its final decision to the Italian authorities which was to order the closure of the financial assistance concerned on the basis of the last declaration of expenditure sent to it before 31 March 1995, in accordance with what was indicated in the closure proposal of 12 October 2001 (Decision D(2002) 810111, "the contested decision"). The Italian authorities sent that decision to Ente by fax of 9 April 2002.

15 In the contested decision, the Commission stated that it had "not received comments from the ultimate beneficiary". In addition, it stated that the Italian authorities had not contested its refusal to recognise that the events relied on in the report of 16 June 1999 (see paragraph 12 above) constituted "judicial reasons" within the meaning of Article 12 of Regulation No 4254/88. In addition, it justified its rejection of their application to have expenditure relating to two tranches of works (Villa Campolieto and Villa Ruggiero) — incurred before 31 March 1995 but declared after that date — allowed by claiming that the application for extension, submitted by those authorities by letter of 29 March 1995, related to the balance of the financial assistance (ITL 1.5 billion) in its entirety. It was not, in fact, stated in that application for extension that it referred exclusively to a specific tranche of works, as maintained by the Italian authorities in their letter of 21 November 2001.

16 In that same decision, the Commission indicated, lastly, that "neither the [contested] decision nor any provision of Community law prevent[ed] the Member State from deciding not to recover the sums already paid, on its own initiative". Moreover, the Commission "formally" [requested] the Italian authorities to inform the ultimate beneficiary of the contested decision, by sending them a registered letter with acknowledgement of receipt. It pointed out, in that regard, that "to the extent that the ultimate beneficiary [could] be directly and individually

concerned by [the contested] decision, it [could] bring an action before the Court of First Instance within [a] period of two months increased by [ten] days on account of distance".'

The procedure before the Court of First Instance and the judgment under appeal

7 By application lodged at the Registry of the Court of First Instance on 18 June 2002, Ente brought an action for annulment of the contested decision.

8 In support of its action, Ente relied on a number of pleas alleging, respectively, infringement of Article 12 of Regulation No 4254/88, an infringement of rights of the defence and a failure to state reasons, along with a failure, on the part of the Commission, to investigate adequately.

9 In its defence, the Commission pleaded the inadmissibility of the action, contending that Ente was not 'directly concerned' by the contested decision within the meaning of the fourth paragraph of Article 230 EC.

10 By the judgment under appeal, the Court of First Instance rejected the plea of admissibility raised by the Commission and declared the action to be admissible.

11 After recalling the conditions for a natural or legal person to be considered to be 'directly concerned by a decision' within the meaning of the fourth paragraph of Article 230 EC, the Court of First Instance found that Ente's legal situation differed significantly from that of the applicants at issue in the many judgments of the Court in

which those applicants were found not to be directly concerned (see Case C-417/04 P *Regione Siciliana* v *Commission* [2006] ECR I-3881, and Case C-15/06 P *Regione Siciliana* v *Commission* [2007] ECR I-2591).

12 First, the Court of First Instance stated, in paragraph 43 of the judgment under appeal that, unlike in the decisions to grant the Community financial assistance at issue in the two *Regione Siciliana* judgments cited above, where *Regione Siciliana* had only been mentioned as the authority responsible for the application or the authority responsible for the implementation of the project, the decision to grant at issue in the present case simultaneously designated Ente, in Article 3 as well as in recital 3, as the authority responsible for implementing the project and as the beneficiary of the Community financial assistance.

13 Second, it stated in paragraphs 44 and 48 of the judgment under appeal that the Italian authorities had, in the present case, clearly expressed their intention not to intervene in support of the beneficiary to mitigate the financial consequences of any reduction of Community financial assistance, so that the possibility that the Italian Republic would assume from its budget the financial cost corresponding to the amount of the Community financing cancelled was purely hypothetical.

14 In paragraphs 51 and 52 of the judgment under appeal, the Court of First Instance added that, contrary to the situation of the applicant in the order in Case T-105/01 *SLIM Sicilia* v *Commission* [2002] ECR II-2697, the applicant in the present case, Ente, was designated by name in the decision to grant as the beneficiary of the Community financial assistance and expressly authorised to submit comments to the Commission before any final decision was adopted. The need to ensure judicial protection of the procedural guarantees thus conferred confirms [Ente's] right to be recognised as having capacity to bring proceedings against the contested decision.

15 As regards the substance, the Court of First Instance rejected the three pleas in law put forward by Ente as unfounded, for the reasons set out in paragraphs 62 to 77 and 87 to 100, respectively, as well as paragraph 101 of the judgment under appeal.

Forms of order sought by the parties to the appeals

The appeal by the Commission (Case C-445/07 P)

16 The Commission claims that the Court should:

— set side the judgment of the Court of First Instance in so far as it declares Ente's action for annulment to be admissible;

— declare Ente's action for annulment of the contested decision to be inadmissible;

— order Ente to pay the costs.

17 Ente contends that the Court should:

— join Case C-445/07 P, in which the Commission is appellant, and Case C-455/07 P, in which Ente is appellant, those two cases being objectively and subjectively linked;

— declare unfounded and dismiss the Commission's appeal;

— grant Ente's appeal in Case C-455/07 P, in accordance with the forms of order sought in that appeal;

— order the Commission to pay the costs of the two cases on appeal and of Case T-189/02 at first instance.

The appeal by Ente (Case C-455/07 P)

18 Ente claims that the Court should:

— set aside in part, in accordance with the grounds of appeal set out above, the judgment under appeal and, consequently, annul the contested decision;

— in the alternative, set aside in part, in accordance with the grounds of appeal set out above, the judgment under appeal and refer the case back to the Court of First Instance for a ruling on the substance of the dispute in the light of the directions which the Court sees fit to give for that purpose;

— order the Commission to pay the costs both of the present proceedings and of the proceedings at first instance concerning Case T-189/02.

19 The Commission contends that the Court should:

— declare Ente's appeal against the judgment under appeal to be inadmissible and/or unfounded;

— order Ente to pay the costs of the present proceedings and of the proceedings at first instance.

20 By order of the President of the Court of 12 March 2008, Cases C-445/07 P, and C-455/07 P were joined for the purposes of the oral procedure and the judgment.

The appeals

Case C-445/07 P Commission v *Ente*

Arguments of the parties

21 As a preliminary point, the Commission states that, in accordance with the first paragraph of Article 56 of the Statute of the Court of Justice, it is entitled to bring an appeal seeking annulment of the judgment of the Court of First Instance in so far as that judgment disposed of a procedural issue concerning the admissibility of the action, despite the fact that it was successful, the judgment under appeal having rejected Ente's action as unfounded.

22 In that regard, the Commission claims that the judgments in Case C-23/00 P *Council* v *Boehringer* [2002] ECR I-1873 and Case C-141/02 P *Commission* v *max.mobil* [2005] ECR I-1283 are applicable to it, although it raised the plea of inadmissibility in the context of its defence and not by a separate document, as laid down in Article 114(1) of the Rules of Procedure of the Court of First Instance.

23 In support of its appeal, the Commission raises a single ground of appeal seeking a finding that the Court of First Instance erred in law in excluding, in the present case, the settled case-law of the Court concerning the definition of 'a person directly concerned' laid down in the fourth paragraph of Article 230 EC.

24 In the Commission's view, the Court of First Instance erred in relying on certain factors to distinguish Ente's situation from that of the appellants in the judgments in *Regione Siciliana* v *Commission*.

25 The Commission considers, first, that the fact that the decision to grant designated Ente by name as the ultimate beneficiary of the Community financial assistance, unlike the appellants in the judgments in *Regione Siciliana* v *Commission* who appeared there as the authority responsible for the application and the authority responsible for the implementation of the project, cannot be taken into account for the purpose of establishing 'direct' concern within the meaning of the fourth paragraph of Article 230 EC.

26 Furthermore, the distinction drawn by the Court of First Instance between the ultimate beneficiary and the person in charge of the project is contrary to the logic and terminology of the scheme of the Structural Funds, which is based on a close correlation between those two functions. In that regard, the Commission points out that the beneficiary of financial assistance granted to the Member State owes the right to receive that financial assistance not to the Community decision, but solely to the effect of the national provisions adopted following that decision.

27 Next, the fact that, in the present case, the Italian authorities expressed their intention of passing on the financial consequences of the contested decision to the ultimate beneficiary is irrelevant for the purposes of analysing whether the action pursuant to the fourth paragraph of Article 230 EC is admissible. According to the Commission, the mere existence of a discretion on the part of the Member States, addressees of the Commission decision, in respect of its implementation is sufficient to preclude that decision from having a direct impact on persons to whom it is not addressed (see, inter alia, the orders in Case T-105/01 *SLIM Sicilia* v *Commission*, cited above, and in Case T-341/02 *Regione Siciliana* v *Commission* [2004] ECR II-2877).

28 Lastly, the Commission claims that the Court of First Instance, in recognising, in paragraph 52 of its judgment, the capacity to bring proceedings because of the need to ensure effective judicial protection for the procedural guarantees conferred by the decision to grant, went against the settled case-law of the Court, according to which it is not possible to use the principle of effective judicial protection as a justification for recognising a natural or legal person not fulfilling the conditions laid down in the fourth paragraph of Article 230 EC as having a right to bring an action for annulment of a Community measure, where that measure is not addressed to him (see, Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, and Case C-263/02 P *Commission* v *Jégo-Quéré* [2004] ECR I-3425).

29 According to that case-law, it is for the Member States to establish a system of legal remedies and procedures which ensure respect for the right to effective judicial protection. Consequently, Ente should have claimed that the contested decision was invalid before the national courts, inviting them to make a reference for a preliminary ruling on validity pursuant to Article 234 EC.

30 Ente contends that, on the contrary, the Court of First Instance was right to find in its respect that it was a 'person directly concerned' within the meaning of the fourth paragraph of Article 230 EC.

31 With regard, first of all, to the classification as a beneficiary of Community financing, Ente considers that it follows clearly from an *a contrario* reading of paragraph 67 of the order in Case T-341/02 *Regione Siciliana* v *Commission* that the ultimate beneficiary of financial assistance is directly concerned by a decision prohibiting or reducing the assistance. That interpretation agrees with the case-law on State aid, according to which beneficiaries of aid prohibited or reduced by Commission decisions are directly concerned by those decisions and may bring proceedings for their annulment pursuant to the fourth paragraph of Article 230 EC (see, inter alia, Joined Cases C-15/98 and C-105/99 *Italian Republic and Sardegna Lines — Servizi Marittimi della Sardegna* v *Commission* [2000] ECR I-8855, paragraphs 34 to 36, and Case C-298/00 P *Italy* v *Commission* [2004] ECR I-4087, paragraph 39).

32 Ente claims that the logic of the Structural Fund system invoked by the Commission is not relevant to the examination of the present action because the rules fixing the principle of the merger of the functions of the responsible body and the ultimate beneficiary apply to programming periods subsequent to that at issue in the present case. In that context, it is not helpful to make reference to the national provisions adopted following the decision to grant the financial assistance, such provisions not being capable of having any effect on the right which the Commission conferred on Ente, the beneficiary of the financial assistance concerned.

33 Next, Ente challenges the Commission's argument as to the existence of a discretion on the part of the Italian authorities. In that regard, it claims, principally, that the reasoning of the Court of First Instance is well founded, in that the contested decision led, in addition to the obligation to repay the sums wrongly received, to the release of a sum granted initially but not paid. Such release produced direct effects as regards Ente, the beneficiary of the financing, without requiring the intervention of the Italian authorities or national law in that respect.

34 In any event, as is apparent both from the order in Case T-341/02 *Regione Siciliana* v *Commission* and from the Opinion of Advocate General Ruiz-Jarabo Colomer in Case C-417/04 P *Regione Siciliana* v *Commission*, where the discretion of the national authorities is theoretical in nature, since there is no doubt as to the intention of the national authorities entrusted with implementing the Community decision, the applicant is directly concerned. That is so in the present case, given that the Italian

authorities officially informed the Commission in their letter of 21 November 2001 of their intention of recovering from Ente the sums to be repaid to the Commission in the event of a decision closing the financial assistance. Consequently, no autonomous will existed on the part of the authorities capable of coming between the contested decision and its effects on the beneficiary of the financial assistance.

35 With regard, lastly, to the reasoning followed by the Court of First Instance concerning the principle of effective judicial protection, Ente points out that, by virtue of the decision to grant, it benefited from a right to be heard and that that right was infringed by the Commission by its adoption of the contested decision. The existence of that right contributes, moreover, to prove the existence of a direct legal link between the Commission decision and Ente's position.

36 Contrary to what the Commission contends, in finding, at first instance, that the action was admissible, the Court of First Instance in no way intended to create a special procedural remedy, and correctly applied Article 230 EC.

37 Ente contends that the remedy suggested by the Commission, seeking to establish the invalidity of the decision before the Italian courts and inviting them to make a reference for a preliminary ruling pursuant to Article 234 EC, actually leads to the inadmissibility of that proceeding. In accordance with the case-law of the Court of Justice (Joined Cases 16/62 and 17/62 *Confédération nationale des producteurs de fruits et légumes* v *Council* [1962] ECR 901, and *Unión de Pequeños Agricultores and Others*), the jurisdiction of the Court in the context of paragraph 1(b) of Article 234 EC is restricted solely to measures having normative or general scope. The contested decision, as a measure having individual scope, cannot therefore be the subject of a preliminary reference.

38 In addition, to admit that Ente may challenge the enforcement of the contested decision in the national courts by relying on the unlawfulness of that decision would be tantamount to recognising that it has the power to circumvent the status of that

decision as 'final' in its regard, after the expiry of the periods within which legal proceedings are to be brought appearing in the fifth paragraph of Article 230 EC.

Findings of the Court

39 It should be pointed out at the outset that under the second paragraph of Article 56 of the Statute of the Court of Justice, an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions.

40 In accordance with settled case-law, an appeal brought against a judgment of the Court of First Instance is admissible in so far as the latter has rejected a plea of admissibility raised by one party against an action, even though the Court of First Instance subsequently in the remainder of the same judgment dismissed that action as being unfounded (see *Council* v *Boehringer*, paragraph 50; *Commission* v *max.mobil*, paragraphs 50 and 51; and Case C-362/05 P *Wunenburger* v *Commission* [2007] ECR I-4333, paragraph 37).

41 In the present case, it is common ground that, as stated in paragraph 23 of the judgment under appeal, the Commission raised a plea of inadmissibility before the Court of First Instance, that that plea was rejected in paragraph 53 of the judgment under appeal and that, following the judgment, Ente's action was dismissed as unfounded.

42 For the purpose of ruling on whether the appeal brought by the Commission is well founded, it is necessary to state that, on the basis of the fourth paragraph of Article 230 EC, a local or regional entity may, to the extent that it has legal personality under national law, institute proceedings against a decision addressed to it or against a decision which, although in the form of a regulation or a decision addressed to another

person, is of direct and individual concern to it (see Case C-452/98 *Nederlandse Antillen* v *Council* [2001] ECR I-8973, paragraph 51 and Case C-142/00 P *Commission* v *Nederlandse Antillen* [2003] ECR I-3483, paragraph 59).

43 The contested decision having been notified by the Commission to the Italian Republic, it is necessary to verify whether Ente is entitled to bring an action for the annulment of the decision and, more particularly, whether it is directly and individually concerned by it.

44 Since it was not disputed that Ente was individually concerned by the contested decision, the Court of First Instance's examination was limited to the question of direct concern.

45 In that regard, it follows from settled case-law that in order to satisfy the requirement that the decision forming the subject-matter of the proceedings must be of direct concern to a natural or legal person, as laid down in the fourth paragraph of Article 230 EC, two cumulative criteria must be met, namely, first, the contested Community measure must directly affect the legal situation of the individual and, second, it must leave no discretion to its addressees, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from Community rules without the application of other intermediate rules (see Case C-404/96 P *Glencore Grain* v *Commission* [1998] ECR I-2435, paragraph 41; Case C-486/01 P *National Front* v *Parliament* [2004] ECR I-6289, paragraph 34; and Case C-417/04 P *Regione Siciliana* v *Commission*, paragraph 28; as well as Case C-15/06 P *Regione Siciliana* v *Commission*, paragraph 31).

46 The same applies where the possibility that addressees will not give effect to the measure concerned is purely theoretical and their intention to act in conformity with it is not in doubt (Case C-386/96 P *Dreyfus* v *Commission* [1998] ECR I-2309, paragraph 44; see also, to that effect, Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraphs 8 to 10).

47 With regard to the first criterion, the Court has already held that the designation of a regional or local entity in a decision to grant Community financial assistance as the authority responsible for the implementation of an ERDF project does not imply that that entity is itself entitled to the assistance (Case C-417/04 P *Regione Siciliana* v *Commission*, paragraphs 29 and 30, and Case C-15/06 P *Regione Siciliana* v *Commission*, paragraph 32).

48 In addition, neither does the fact that that entity is referred to as the authority responsible for the application for financial assistance have the effect of placing it in a direct relationship with the Community financial assistance, which the decision to grant states was applied for and granted to the Member State concerned (C-15/06 P *Regione Siciliana* v *Commission*, paragraph 36).

49 In the present case, paragraph 4 of the judgment under appeal shows that Ente was established by an Italian law for the purpose of ensuring the protection and enhancement of certain architectural complexes in the region of Campania, that it brings together various Italian public entities, including the Italian State, and that the Commission is not linked to it in any way.

50 In addition, paragraph 5 of the judgment shows that the Italian State submitted the application for the ERDF financial assistance concerning Ente's implementation of the envisaged infrastructure measures to the Commission and that the Commission granted the financial assistance to that Member State.

51 In those circumstances, as the Advocate General pointed out in point 50 of her Opinion, it is the Italian State, as the addressee of the contested decision, which must be considered to be entitled to the financial assistance in question.

52 Moreover, the judgment under appeal does not show that Ente was required, by virtue of the contested decision itself or any provision of Community law intended to govern the effect of that decision, to repay an amount corresponding to the balance of the Community financial assistance released.

53 On the contrary, it is apparent from paragraph 7 of the judgment under appeal that the Commission in the contested decision expressly provided for a power on the part of the Italian State not to recover the sums already paid on its own initiative to the beneficiary of the financial assistance.

54 It follows that, contrary to the Court of First Instance's finding, in paragraph 43 of the judgment under appeal, the mere fact that Ente was designated by name as beneficiary of the Community financial assistance in recital 3 and Article 3 of the decision to grant is not such as to distinguish Ente's legal situation from that of those entities concerned in the judgments in *Regione Siciliana* v *Commission* and does not, therefore, imply that Ente was itself entitled to the financial assistance.

55 With regard to the second criterion for direct concern, it is apparent from the case-law cited in paragraph 45 above that it is met where the Community measure is purely automatic and its implementation results solely from Community rules without the application of other intermediate rules.

56 In the present case, the very fact that the Italian authorities stated their intention to recover the sums wrongly received by Ente is, in the absence of obligations in that regard pursuant to Community law, an expression of an autonomous will on their part.

57 It follows that, contrary to the Court of First Instance's finding in paragraphs 46 to 48 of the judgment under appeal, the fact that, in a letter sent to the Commission, the Italian authorities expressed their intention of recovering from Ente the financial consequences of any Commission decision to withdraw the Community financial assistance is insufficient for the purpose of establishing the direct interest required by the fourth paragraph of Article 230 EC.

58 The Court has held, by way of exception, that, despite the absence of implementing measures adopted at the national level, the applicant may be 'directly concerned' within the meaning of the fourth paragraph of Article 230 EC where other factors, including the purely hypothetical power not to give effect to the contested decision, imply the existence of direct concern in its regard (see, to that effect, *Dreyfus* v *Commission*, paragraphs 47 and 52, and *Piraiki-Patraiki and Others* v *Commission*, paragraphs 7 and 9 to 10).

59 However, that case-law is not applicable to the present case.

60 As stated by the Advocate General in point 64 of her Opinion, the findings of the Court of First Instance are insufficient to draw inferences regarding the subsequent conduct of the addressee of the contested decision. It is not possible solely from the legally non-binding pronouncement by the Italian authorities of their intention to recover the assistance from Ente to arrive at the conclusion that Ente is directly concerned, since, amongst other things, it cannot be ruled out that special circumstances might lead the Italian State, as one of Ente's shareholders, to forebear from claiming the repayment from Ente.

61 The case-law on State aid cited by Ente in the context of its appeal is also irrelevant. Unlike the practice generally followed by the Commission with regard to State aid declared to be incompatible with the common market, the decisions of which contain provisions calling on Member States to recover the sums wrongly paid from the

beneficiaries, the contested decision did not place the Member State concerned, as pointed out already in paragraph 53 above, under an obligation to recover the sums from the ultimate beneficiaries.

62 In that regard, contrary to Ente's position, nor can the obligation to inform the ultimate beneficiary be treated as such an order.

63 It follows from all the foregoing that Ente was not 'directly concerned' within the meaning of the fourth paragraph of Article 230 EC by the contested decision and that its action before the Court of First Instance was therefore inadmissible.

64 That conclusion is not affected by the argument of the Court of First Instance in paragraph 52 of the judgment under appeal, according to which the need to ensure judicial protection for the procedural guarantees conferred on Ente, in particular, that of being expressly authorised to submit its observations to the Commission, confirms that Ente must be recognised as having the capacity to bring proceedings against the Commission's decision.

65 Whilst individuals are entitled to effective judicial protection of the rights they derive from the Community legal order (*Unión de Pequeños Agricultores* v *Council*, paragraph 39; *Commission* v *Jégo-Quéré*, paragraph 29; and C-15/06 P *Regione Siciliana* v *Commission*, paragraph 39), invoking the right to such protection cannot call into question the conditions laid down in Article 230 EC.

66 In accordance with settled case-law, the judicial protection of natural or legal persons who are unable, by reason of the conditions for admissibility laid down in the fourth paragraph of Article 230 EC, directly to challenge Community measures of the type of the contested decision, must be effectively guaranteed by a right of action before national courts. The latter are required, in accordance with the principle of cooperation

in good faith laid down by Article 10 EC, so far as possible, to interpret and apply national procedural rules governing the exercise of rights of action in a way that enables those persons to challenge before the courts the legality of any decision or other national measure relating to the application to them of a Community act such as that at issue, by pleading the invalidity of such an act and by asking them to make a reference to the Court of Justice for a preliminary ruling on validity (see *Unión de Pequeños Agricultores* v *Council*, paragraphs 40 to 42, and *Commission* v *Jégo-Quéré*, paragraphs 30 to 32; see also C-15/06 P *Regione Siciliana* v *Commission*, paragraph 39).

67 Consequently, the Court of First Instance erred in law in considering that Ente was directly concerned by the contested decision. Therefore, the judgment under appeal must be set aside.

Admissibility of Ente's appeal

68 Under the first paragraph of Article 61 of the Statute of the Court of Justice, the Court, where it quashes a decision of the Court of First Instance, may either itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for final judgment.

69 In the present case, the Court considers that it has all the elements necessary for it to rule on the admissibility of Ente's action before the Court of First Instance.

70 For the reasons set out in paragraphs 50 to 67 above, Ente cannot be regarded as directly concerned by the contested decision.

71 In those circumstances, Ente's action before the Court of First Instance must be dismissed as inadmissible.

The appeal in Case C-455/07 P Ente v *Commission*

72 In the light of the inadmissibility of Ente's action before the Court of First Instance, Ente's appeal against the judgment under appeal to the extent that it ruled on the substance of that action has become devoid of purpose, and therefore no longer needs to be considered.

Costs

73 Under Article 69(2) of the Rules of Procedure of the Court of Justice, which applies to appeal proceedings pursuant to Article 118 of those Rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the appellant Ente has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds, the Court (First Chamber) hereby:

1. **Sets aside the judgment of the Court of First Instance of the European Communities of 18 July 2007 in Case T-189/02 *Ente per le Ville Vesuviane* v *Commission*, inasmuch as it declared admissible *Ente per le Ville Vesuviane's* action for annulment of Commission Decision D(2002) 810111 of 13 March 2002, closing the financial assistance of the European Regional Development Fund (ERDF) in the form of investment in infrastructure in Campania (Italy) relating to an integrated scheme for the development of three Vesuvian villas for the purposes of tourism;**

2. **Dismisses *Ente per le Ville Vesuviane's* action for annulment of the said decision as inadmissible;**

3. **Declares that it is not necessary to rule on the appeal brought by *Ente per le Ville Vesuviane*;**

4. **Orders *Ente per le Ville Vesuviane* to pay the costs of the proceedings before the present Court and also those connected with the procedure at first instance.**

[Signatures]