ORDER OF THE PRESIDENT OF THE COURT
29 June 1999 *

In Case C-107/99 R,

Italian Republic, represented by Professor U. Leanza, Head of the Department for Contentious Diplomatic Affairs in the Ministry of Foreign Affairs, acting as Agent, assisted by I.M. Braguglia, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

applicant,

v

Commission of the European Communities, represented by E. de March, Legal Adviser, K. Simonsson and H. Speyart, of its Legal Service, acing as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

supported by

Ireland, represented by J. Payne, Legal Adviser, Office of the Attorney General, acting as Agent, assisted by D. McGuinness SC and E. Kent, Solicitor, with an address for service in Luxembourg at the Irish Embassy, 28 Route d'Arlon,

* Language of the case: Italian.

and

United Kingdom of Great Britain and Northern Ireland, represented by J.E. Collins, Assistant Treasury Solicitor, acing as Agent, assisted by D. Wyatt QC, with an address for service in Luxembourg at the United Kingdom Embassy, 14 Boulevard Roosevelt,

interveners,

APPLICATION for suspension of operation of the Commission's decision of 16 December 1998 approving amendments to the indicative allocation of Community initiatives, communicated to the Italian Republic by letter from the Secretary-General of the Commission of 19 January 1999, and of all measures on which it is based or with which it is connected, alternatively for the adoption of other interim measures,

THE PRESIDENT OF THE COURT

makes the following

Order

1 By application lodged at the Court Registry on 29 March 1999 the Italian Republic brought an action under Article 173 of the EC Treaty (now, after amendment, Article 230 EC) for annulment of the Commission's decision of 16 December 1998 approving amendments to the indicative allocation of Community initiatives, which was communicated to the applicant by letter from the Secretary-General of the Commission dated 19 January 1999 ('the contested decision'), and of all measures on which that decision is based or which are connected with it, in particular the opinion of the Management Committee of 22 September 1998 and the table annexed to that letter ('the contested measures').

2 By a separate document lodged at the Court Registry on 21 April 1999 the Italian Republic applied pursuant to Articles 185 and 186 of the EC Treaty (now Articles 242 EC and 243 EC) for suspension of operation of the contested decision and the contested measures and, in the alternative, for the adoption of other interim measures which would allow the applicant to avoid the serious and irreparable damage caused thereby.

3 The Commission submitted its written observations on the application for interim measures on 12 May 1999.

4 By applications lodged at the Court Registry on 17 and 27 May 1999 Ireland and the United Kingdom of Great Britain and Northern Ireland sought leave to intervene in the interlocutory proceedings in support of the form of order sought by the Commission. Those applications to intervene were granted pursuant to the first and fourth paragraphs of Article 37 of the EC Statute of the Court of Justice and Article 93(1) and (2) of the Rules of Procedure.

5 The parties presented oral argument at the hearing on 2 June 1999.

Facts and legal framework

6 Article 130a of the EC Treaty (now, after amendment, Article 158 EC) provides that the Community is to develop and pursue its actions leading to the strengthening of its economic and social cohesion. In particular, it is to aim at reducing disparities between the levels of development of the various regions and the backwardness of the least-favoured regions in order to promote its overall harmonious development. In accordance with Article 130b of the EC Treaty (now Article 159 EC) the Community is also to support the achievement of these objectives by the action it takes through the Structural Funds.

7 In order to achieve those aims and to regulate the tasks of the funds, the Council adopted 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), as amended in particular by Regulation (EEC) No 2081/93 of 20 July 1993 (OJ 1993 L 193, p. 5, hereinafter 'Regulation No 2052/88'), and Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) 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), as amended in particular by Regulation No 2082/93 of 20 July 1993 (OJ 1993 L 193, p. 20, hereinafter 'Regulation No 4253/88').

8 The first subparagraph of Article 4(1) of Regulation No 2052/88 provides:

'Community operations shall be such as to complement or contribute to corresponding national operations. They shall be established through close consultations between the Commission, the Member State concerned and the competent authorities and bodies... designated by the Member State at national, regional, local or other level, with all parties acting as partners in pursuit of a common goal. These consultations shall hereinafter be referred to as the "partnership". The partnership shall cover the preparation and financing, as well as the *ex ante* appraisal, monitoring and *ex post* evaluation of operations.'

9 According to the third subparagraph of Article 5(5) of that regulation:

'Assistance [under the Structural Funds] shall be undertaken on the initiative of the Member States or of the Commission in agreement with the Member State concerned.'

10 It is assistance provided on the initiative of the Commission that is known as 'Community initiatives'.

11 Article 12(4) and (5) of the regulation provides as follows:

'4. The Commission shall, using transparent procedures, make indicative allocations by Member State for each of the Objectives 1 to 4 and 5(b) of the Structural Fund commitment appropriations taking full account, as previously, of the following objective criteria: national prosperity, regional prosperity, population of the regions, and the relative severity of structural problems, including the level of unemployment and, for the appropriate Objectives, the needs of rural development....

...

5. For the period [1994-99], 9% of the commitment appropriations for the Structural Funds shall be devoted to funding assistance undertaken on the initiative of the Commission in accordance with Article 5(5).'

12 Last, according to Article 17(2) of Regulation No 2052/88:

'In implementing assistance undertaken on its own initiative in accordance with Article 5(5), last subparagraph, the Commission shall be assisted by a management committee composed of representatives of the Member States.'

13 Reference must also be made to a number of provisions of Regulation No 4253/88.

14 Article 11(1) of Regulation No 4253/88, which deals with Community initiatives, provides:

'In accordance with Article 5(5) of Regulation (EEC) No 2052/88, the Commission may, on its own initiative and in accordance with the procedures provided for in Title VIII, and after having informed the European Parliament accordingly, decide to propose to the Member States that they submit applications for assistance in respect of measures of significant interest to the Community....'

15 Article 20(1) of that regulation provides:

'Budgetary commitments shall be made on the basis of the Commission decisions approving the measures concerned....'

16 Moreover, according to Article 24 of that regulation, entitled '*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 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.

...'

17 Article 25 of Regulation No 4253/88 provides:

'1. Within the framework of the partnership, the Commission and the Member States shall ensure effective monitoring of implementation of assistance from the Funds, geared to the Community support framework and specific operations (programmes, etc.)....

...

3. Monitoring committees shall be set up within the framework of the partnership, by agreement between the Member State concerned and the Commission.

...

5. The monitoring committee shall, if necessary, without modifying the total amount of the Community contribution and within harmonised limits by Objective, adjust the procedure for granting assistance as initially approved, as

well as, in conformity with available resources and budgetary rules, the financing plan envisaged, including any transfers between Community sources of finance and the consequential adjustment of the rates of assistance. The harmonised limits by Objective referred to above shall be established by the Commission according to the procedure referred to in Title VIII and included in the Community support frameworks.

These amendments shall be notified immediately to the Commission and the Member State concerned. They shall become effective as soon as confirmation has been provided by the Commission and the Member State concerned; such confirmation shall be given within a period of 20 working days from receipt of this notification, the date of which will be confirmed by the Commission by acknowledgment of receipt.

Other amendments required shall be decided by the Commission, in collaboration with the Member State concerned, after the monitoring committee has delivered its opinion.

...'

18 By decisions of 13 July, 12 October and 21 December 1994 and 8 May 1996 the Commission adopted an indicative allocation for all Community initiatives for the programming period 1994-99.

19 Correspondence was subsequently exchanged on a regular basis between the Italian Republic and the Commission in connection with the monitoring of the implementation of the Community initiatives in that Member State.

20 For 1999 the Commission decided to amend the indicative allocation of Community initiatives in order to release the sum of ECU 100 million to finance a Community initiative consisting in a special aid programme for peace and

reconciliation in Northern Ireland and in the border counties of Ireland (hereinafter the 'PEACE initiative').

21 In taking account of the various criteria, in particular the state of implementation of the various Community initiatives in the Member States, the Commission drew up a proposal for the alteration of the allocation of Community initiatives, in the form of a working document which was approved by the management committee at its meeting of 22 September 1998.

22 That working document shows that the financial redistribution of ECU 100 million in favour of the PEACE initiative was to entail, for the Italian Republic, a reduction of ECU 44.7 million, while the other substantial reductions affected France (ECU 18.1 million), the United Kingdom (ECU 16.4 million), Portugal (ECU 6.8 million) and Germany (ECU 6 million).

23 As regards the Italian Republic, the initiatives affected by the reduction of ECU 44.7 million were as follows: Interreg (ECU 21 million), PME (ECU 17.8 million), Urban (ECU 3.2 million), Leader (ECU 2 million) and Konver (ECU 0.7 million).

24 That new allocation was subsequently adopted by the Commission on 16 December 1998 and communicated to the applicant by letter from the Secretary-General of the Commission dated 19 January 1999.

25 That letter is in the following terms:

'La Commissione europea ha approvato, nella riunione del 16 dicembre 1998, le modifiche alle ripartizioni indicative delle Iniziative Comunitarie, sulle quali il competente Comitato di Gestione aveva espresso parere favorevole il 22 settembre 1998. La decisione tiene conto del grado di avanzamento delle Iniziative e della necessità di reperire ulteriori risorse finanziare per il 1999 in favore dell'Iniziativa "Peace and Reconciliation in Ireland and Northern Ireland".

La nuova tabella allegata sostituisce le analoghe tabelle accluse alla lettera del 13 luglio 1994 e 13 guigno 1996 del signor Williamson.'

(At the meeting on 16 December 1998 the European Commission approved the alterations to the indicative allocation of the Community initiatives in respect of which the competent management committee had expressed a favourable opinion on 22 September 1998. The decision takes into account the state of advancement of the initiatives and the need to allocate further financial resources for 1999 to the 'Peace and Reconciliation in Ireland and Northern Ireland' initiative.

The new table enclosed herewith replaces the corresponding tables enclosed with the letters from Mr Williamson dated 13 July 1994 and 13 June 1996.)

26 The letter was accompanied by a table entitled 'Stanziamenti indicativi per iniziativa comunitaria e per Stato membro (in MECU, prezzi 1999)' (Indicative allocations per Community initiative and per Member State (in MECU, 1999 prices)), which set out for each Member State the total amount indicatively allocated to it and the allocation of that amount between the various Community initiatives. In the case of the Italian Republic an asterisk referred to a footnote stating that 'Tali stanziamenti potranno essere programmati nella loro totalità

solo qualora lo Stato membro confermi il suo accordo ad una riduzione delle risorse programmate all'interno dell'Iniziativa PMI' (These appropriations can only be programmed in full where the Member State confirms that it agrees to a reduction of the resources programmed within the framework of the PME initiative).

Arguments of the main parties

The existence of a prima facie case

27 As regards the question of a prima facie case, the applicant refers to the seven pleas in law which it advanced against the contested decision and contested measures in the application for annulment.

28 The first plea alleges an infringement of Article 190 of the EC Treaty (now Article 253 EC) owing to the failure to state the reasons on which the contested decision is based. The decision and the accompanying table are devoid of any explanation or reference, and the mere reference to the 'state of advancement of the initiatives' or to the new PEACE initiative does not satisfy the requirements of that provision. The reasoning underlying the contested decision should have been even more precise and complete since, first, the Italian Republic had previously expressed its disagreement with a reallocation of the appropriations and, second, the decision had the effect of reducing the assistance previously granted.

29 By its second plea the applicant alleges an infringement of Article 24 of Regulation No 4253/88. Contrary to what is provided for in that article, which governs the procedures for reducing, suspending and cancelling assistance, the Commission failed to conduct a proper examination of the case, did not request the national authorities to submit their comments and did not establish any

irregularities or significant changes affecting the nature or conditions for the implementation of the operation and the measure.

30 According to the third plea, the Commission also infringed Article 12 of Regulation No 2052/88. Whilst any financial allocation may initially be regarded as indicative, it can no longer be described as such subsequently, when the programmes are approved and implemented, since this would call in question the legitimate expectations of the recipients. In the absence of a specific provision, the applicant considers that the Commission should have followed the procedure applicable in the case of the reallocation of resources intended for assistance programmes, as provided for in Article 25 of Regulation No 4253/88.

31 The fourth plea alleges that in adopting the contested decision the Commission infringed the partnership principle provided for in Article 4 of Regulation No 2052/88. The Commission failed to consult the applicant and acted without the latter's consent. Such conduct constitutes a breach of the legitimate expectation which the applicant had acquired in relation to the funds allocated since 1994 and 1996.

32 By its fifth plea the applicant claims that, in so far as it affects Italy more than the other Member States, the contested decision was adopted in breach of the principles of economic and social cohesion and solidarity between Member States provided for in Article 2 of the EC Treaty (now, after amendment, Article 2 EC) and of the principle of non-discrimination.

33 According to the sixth plea, the Commission also acted *ultra vires* and in an inconsistent manner. In order to examine the state of implementation of the Community initiatives, the Commission initially sought information from the applicant concerning the 'legally binding commitments', whereas its final decision was based on the broader concept of 'commitments in place'. According to the applicant, other Member States may have provided information based on the

latter concept, so that the state of advancement of the initiatives was ascertained on the basis of heterogeneous data.

34 By its seventh and last plea the applicant alleges an infringement of Article 2 of Commission Regulation (EEC) No 1866/90 of 2 July 1990 on arrangements for using the ecu for the purposes of the budgetary management of the Structural Funds (OJ 1990 L 170, p. 36), as amended by Commission Regulation (EC) No 2745/94 of 10 November 1994 (OJ 1994 L 290, p. 4, hereinafter 'Regulation No 1866/90'), the second paragraph of which provides that, '... in decisions proposing Community initiatives to the Member States, the Community aid decided upon for the entire period and the annual breakdown thereof shall be set out in ecus at the rate for the year of each decision and shall be subject to indexation'. The applicant infers from that wording that indexation represents an inseparable element of the amount of financing, which can only be altered in accordance with the partnership principle and the rules governing the reduction of resources. The reductions decided upon for the Leader and Interreg initiatives in relation to the Italian Republic, which appear to have been arrived at without regard to indexation, were therefore adopted in breach of Article 2 of Regulation No 1866/90.

35 In its observations the Commission begins by referring to the legislative framework and the nature and scope of the contested decision, and then goes on to answer the various pleas put forward by the applicant.

36 The Commission points out that the contested decision has its origin in the PEACE initiative, for which an amount of ECU 100 million was to be released for 1999 within the amount earmarked for all Community initiatives. In order to determine the alterations which thus had to be made to the indicative allocations previously adopted, the Commission used a method which took account of specific criteria.

37 In accordance with that method, which was applied in two stages, it was decided, first of all, that the Italian Republic was to bear 44.7% of the amount to be

reallocated to the PEACE initiative. The purpose of the second stage was to allocate the amount of that reduction between the Community initiatives in that Member State by identifying those programmes the state of implementation of which had not yet reached a sufficiently advanced stage. In the working document submitted to the management committee the Commission provided, in the case of certain programmes, for a reduction in the funds allocated but not yet granted, and 'suggested' a reduction in respect of funds already granted within the framework of the PME, Urban and Konver initiatives.

38 The new indicative allocation was then adopted by means of the contested decision. The Commission points out that in the absence of positive contacts with the Italian Republic it applied to that Member State the indicative allocation suggested in the working document. The Commission observes that it did not, therefore, reduce assistance which had already been granted but suggested that such a reduction be effected, and that it was fully aware of the fact that the applicant's consent was required.

39 The Commission also makes the following observations in regard to each of the seven pleas invoked by the applicant.

40 As regards the first plea, alleging failure to state the reasons on which the contested decision is based, the Commission observes, first, that the applicant participated in the meeting of the management committee held on 22 September 1998, at which the proposed decision was discussed and approved and, second, that it received a working document and the letter of 20 November 1998 from the Chef de Cabinet of the competent Commissioner and could not fail, therefore, to be aware of the reasons on which the contested decision was based. The Commission maintains that the disagreement expressed by the applicant is irrelevant in that regard, since the decision in question consisted of an alteration of an indicative allocation, not the reduction of assistance previously granted.

41 As regards the second plea, the Commission contends that Article 24 of Regulation No 4253/88 applies only to the reduction, suspension or cancellation of assistance already granted, which is not the case here.

42 As regards the procedure to be followed when altering indicative allocations, to which the third plea refers, the Commission observes that the applicable rules provide no specific legal basis for that purpose. The Commission can therefore alter indicative allocations, at least in part, according to the same procedure as that by which they were adopted, in accordance with Article 12(4) of Regulation No 2052/88. Article 25 of Regulation No 4253/88 is therefore not applicable.

43 In response to the applicant's fourth plea, alleging a violation of the partnership principle, the Commission states that that principle does not extend to the exercise of the discretion conferred on it by Article 12(4) of Regulation No 2052/88. It points out that, furthermore, it ensured that all the Member States participated in preparing the indicative allocation by consulting the management committee and that it invited the Member States to attend bilateral discussions in connection with the second stage of determining that allocation, an invitation which the applicant did not accept. As regards the alleged infringement of the principle of the protection of legitimate expectations, the Commission considers that, inasmuch as they are purely indicative, the allocations cannot give rise to such expectations and that, in any event, its earlier correspondence with the applicant had prevented the latter from harbouring such expectations.

44 As regards the infringement of Article 2 of the Treaty and of the principle of non-discrimination, which is alleged in the fifth plea, the Commission points out, first of all, that that provision includes cohesion and solidarity in the list of the objectives of the Community but does not create any specific rights and obligations on the part of the Member States and the various institutions. The method followed in the present case did not entail any discrimination against the applicant but allowed differentiated treatment of the Member States according to objective and transparent criteria which were capable of being verified.

45 The Commission also refutes the sixth plea, whereby it is alleged to have acted *ultra vires* and in an inconsistent manner. It maintains that all the figures on which the working document and the contested decision were based were calculated in accordance with the same criteria, since the concept of 'commitment

of the necessary financial resources' corresponds to that of 'commitments in place'. It further claims that the applicant merely refers to the circumstances in which the indicative allocation was altered and fails to specify the particular elements susceptible of establishing a misuse of powers.

46 As regards, last, the seventh plea, the Commission observes that Article 4 of Regulation No 1866/90 provides that the amounts of assistance and the associated financing plans are not to give rise to indexation.

Urgency

47 The applicant claims that if suspension is not ordered it will definitively lose the amount of ECU 44.7 million in respect of the reduction provided for in the contested decision, even if the judgment subsequently delivered on the substance of the case is in its favour.

48 First, the reduction in question concerns Community initiative programmes which have already been approved, and in respect of which the Italian Republic is required to meet its legal obligations and financial commitments before 31 December 1999, failing which it will no longer be able to commit or spend the funds concerned. Second, the contested decision has blocked any examination of the proposals for the reallocation of the funds presented by the applicant, so that, if a judgment annulling the relevant measures is delivered after 31 December 1999, it will no longer be possible to launch and implement the programmes to which those reallocation proposals relate.

49 The applicant maintains that this situation is liable to give rise to serious and irreparable harm, since the reduction of ECU 44.7 million may have a significant impact on the level of employment, the standard of living and the creation of infrastructures in the areas concerned.

50 The Commission replies that even if the operation of the contested decision were suspended the applicant would not have any right as regards specific finance which has not yet been granted. For the rest, the alleged damage is the consequence not of the contested decision but of the applicant's inability to implement in good time the programmes provided for by the Community initiatives. Even if the contested decision were suspended, the applicant would not be capable of validly committing the amounts resulting from the new indicative allocation, not to mention the initial allocation, in the light of the limited extent to which the operations have to date been implemented in Italy.

Balancing the interests

51 The applicant claims that the serious and irreparable harm with which it is threatened must prevail in the context of the balancing of the interests involved. The operation of the contested decision would definitively deprive the applicant of the amount of the reduction, whereas, should the decision be suspended, the funds needed to finance the PEACE initiative could be obtained without infringing the principles of economic and social cohesion and non-discrimination between Member States.

52 The Commission, on the other hand, contends that the contested decision is not actually harmful to the applicant, whereas its suspension would harm the PEACE initiative. The appropriations relating to the PEACE initiative are already fully allocated and if it were suspended the Commission would find it impossible to commit the funds necessary to implement the projects which are at an advanced stage of programming. The balance of interests therefore tilts in favour of dismissing the application.

Arguments of the interveners

53 Ireland and the United Kingdom of Great Britain and Northern Ireland, which presented their observations at the hearing, essentially support the Commission's position.

54 They rely, in particular, on the political and economic importance of the PEACE initiative in the context of bringing peace to Northern Ireland, and emphasise the excellent degree of implementation of the projects financed within the framework of that initiative.

55 Ireland also maintains that the fact that the sum of ECU 100 million has been entered in the general budget of the European Union for 1999 in favour of the PEACE initiative establishes a binding legal commitment on the part of the Community institutions.

56 The United Kingdom claims, in particular, that if the Court were to suspend the operation of the contested decision it would prejudge the effects of the decision to be given in the main action.

Assessment

57 Pursuant to Articles 185 and 186 of the Treaty the Court may, if it considers that circumstances so require, order that application of the contested act be suspended or prescribe any necessary interim measures in actions brought before it.

58 Article 83(2) of the Rules of Procedure provides that an application for the adoption of such measures is to specify the subject-matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for.

59 It has consistently been held that the judge hearing an application for interim relief may order suspension of operation or other interim measures if it is established that such an order is justified, prima facie, in fact and in law and that it is urgent in so far as, in order to avoid serious and irreparable harm to the applicant's interests, it must be made and produce its effects before a decision is reached in the main action (order in Case C-110/97 R *Netherlands* v *Council* [1997] ECR I-1795, paragraph 24). Where appropriate, the judge hearing the application must also balance the interests involved.

Scope of the contested decision

60 It is appropriate to specify *in limine*, in the light of the explanations and clarification provided by the parties in the course of these proceedings, the effects of the contested decision on the amount of the Community initiatives allocated to the applicant and on the allocation of that amount between the various Community initiatives.

61 In that regard, it is common ground between the parties that the reductions envisaged in the new allocation, as shown in the table accompanying the contested decision, not only concern the amount previously allocated to the Italian Republic under the indicative allocation but also affect, to a considerable extent, funds which had already been granted.

62 At the hearing the Commission stated that, as regards the reduction of ECU 44.7 million which the new indicative allocation of Community initiatives

represented for the applicant, a sum of approximately ECU 19 million related to funds which had already been granted, essentially in connection with the PME initiative but also in connection with the Urban and Konver initiatives.

63 The Commission also acknowledged that it was not empowered unilaterally to reduce funds which had already been granted, and that, in order to do so, it must have the consent of the Member State concerned. That, incidentally, is the meaning of the footnote to the table referred to in paragraph 26 of this order, which, although it refers only to the PME initiative, is equally valid for all funds already granted, including those granted in connection with other initiatives.

64 In answer to a question put at the hearing, the Commission stated that even if the Italian Republic refused to consent to the reduction in respect of funds already granted there was nothing to prevent that Member State from proceeding to implement specific operations covered by the funds already granted.

65 At the same time, the Commission admittedly reiterated its considered view that, having regard to the present state of implementation of the operations in Italy, that Member State was not in a position to absorb within the prescribed period the amounts provided for in the initial indicative allocation or even those arising from the contested decision.

66 However, that view cannot have the consequence that the Commission is allowed to reduce the amount of the funds already granted to the Italian Republic without complying with the provisions of Regulation No 4253/88.

67 Having regard to those explanations, as provided by the parties at the stage of the application for interim measures, it is therefore appropriate, for the purposes of

the present proceedings, to interpret the contested decision as meaning that it effects a new indicative allocation of the Community initiatives only in so far as it makes alterations which do not affect funds which have already been granted. In the applicant's case the contested decision therefore effected a reduction of approximately ECU 26 million, the difference between that amount and the contemplated total reduction of ECU 44.7 million merely representing a proposal for a reduction addressed to that Member State.

The existence of a prima facie case

68 Having regard to the foregoing, there is no need in these proceedings to examine, even summarily, the pleas and arguments in the application which presuppose that the contested decision has a wider scope than that stated in the preceding paragraph.

69 That applies, first, to the argument expounded in the context of the first plea to the effect that the statement of reasons on which the contested decision is based should be even more precise and complete because the decision reduces funds which have already been granted.

70 The same also applies to the second plea, which turns on an alleged infringement of Article 24 of Regulation No 4523/88. That provision refers to cases in which assistance which has already been granted is reduced, suspended or cancelled.

71 As regards the remaining pleas advanced by the applicant in support of its application for annulment, it is appropriate to consider whether they are capable of founding a prima facie case sufficient to justify granting the application for suspension.

72 As regards, first, the plea relating to the failure to state reasons for the contested decision, it should be noted that the decision was adopted following a copious exchange of correspondence between the applicant and the Commission and after consultation of the competent committee. Taken as a whole, the explanations provided in those circumstances, which must be taken into consideration for the purpose of assessing the reasoning of the contested decision, tend, at first sight, to confirm that the applicant was adequately informed of the reasons on which the contested decision was based when it received notification of it.

73 As regards, second, the conditions on which the Commission is authorised to alter indicative allocations within the meaning of Article 12(4) of Regulation No 2052/88, it must be accepted, without prejudice to the assessment to be made in the main action, that the existing rules appear to confer on the Commission a certain discretion which is subject only to limited judicial review.

74 At the hearing the applicant itself acknowledged that the Commission was empowered to alter the initial indicative allocation, but maintained that it did not have absolute discretion to do so.

75 The arguments put forward by the applicant do not succeed in establishing, on an initial analysis, that the Commission exceeded the discretion which it enjoys in that regard. In particular, the allegations relating to the principles of economic and social cohesion and non-discrimination cannot justify immediately censuring the Commission, since the Commission was able to explain that its decision was adopted on the basis of a method which, without prejudice to final assessment of its validity, does not appear to be either manifestly arbitrary or prima facie unreasonable.

76 As regards, third, the applicant's allegations that the Commission determined the extent to which the Community initiatives had been implemented in the various

Member States on the basis of non-homogeneous data, in the light of the confusion between the concepts of 'legally binding commitments' and 'commitments in place', the Court finds that the applicant was not in a position, at that stage of the procedure, to establish with the requisite clarity the specific consequences which that confusion entailed. On the contrary, it is apparent from the applicant's written and oral submissions that the applicant relies solely, and very generally, on the argument that the situation in other Member States may have been evaluated on the basis of a different concept from that which the applicant used and that that fact may have placed it at a disadvantage. Those assertions are not supported, however, by any prima facie evidence.

77 As regards, fourth, the seventh plea advanced in support of the claim for annulment, concerning the indexation of the amount of assistance, it was not possible, on the basis of the hearing in the proceedings for interim measures, to discern clearly the relevance of that plea. Furthermore, although the applicant failed to specify the relative proportion of indexation in the total amount in issue, that aspect appears at first sight to be of only marginal importance.

78 As regards, last, the procedural rules according to which a Commission decision altering an initial indicative allocation should be taken, the Court finds that the applicant scarcely specified the defects vitiating the contested decision, whereas the Commission, without being contradicted on that point, explained that its proposal had first been submitted to and approved by the management committee.

79 In the absence of a specific provision in the Community rules, it is impossible to concur unreservedly with the applicant's argument that the procedure laid down in Article 25 of Regulation No 4253/88 is applicable.

80 Nor does the applicant's argument that the Commission should have fulfilled the commitment given by it in a letter to the Italian Republic dated 15 December

1997 — by which it undertook to examine with each Member State the possibility of diverting appropriations to other programmes in the process of implementation before making proposals for the reallocation of those appropriations between the various Community initiatives at the level of the European Union as a whole — suffice to call in question, on an initial analysis, the validity of the procedure which the Commission followed when adopting the contested decision.

81 It is clear from the correspondence exchanged between the applicant and the Commission prior to the adoption of the contested decision that the Commission had examined the proposals for diverting assistance submitted to it by the Italian Republic. The Italian Republic was also kept informed of the procedure relating to the adoption of the contested decision and had the opportunity to make its views known on numerous occasions, in particular at the meeting of the management committee at which the Commission's working document was considered.

82 It follows from the foregoing that, whilst the applicant's pleas do not appear to be entirely unfounded, they do not, on an initial examination, prevail over the justifications and explanations provided by the Commission, Ireland and the United Kingdom.

83 It should be pointed out, however, that, owing to the uncertainty which exists as to the scope of the contested decision, that assessment results solely from a provisional interpretation of the decision, largely based on the explanations provided at the stage of the proceedings for interim measures.

84 Consequently, the application for suspension of operation of the contested decision cannot be dismissed solely on the basis of a consideration of the question of the existence of a prima facie case; it is also necessary to examine whether the urgency alleged actually exists and to balance the interests involved.

Urgency and the balancing of interests

85 The urgency pleaded by the applicant must be assessed in the light of the scope of the contested decision as defined in paragraph 67 of this order. The question whether the urgency of the situation is such as to entitle the Italian Republic to an order suspending the operation of the contested decision must therefore be assessed on the basis that the contested decision reduced the amount allocated to the Italian Republic by approximately ECU 26 million.

86 As regards the seriousness of the alleged harm, it must be pointed out, first, that the applicant merely referred in very general terms to the disadvantages which the reduction in issue would entail for the areas concerned and, second, that the effect of the contested decision may be qualified by the finding in paragraph 67 of this order that the reduction concerns only an amount of approximately ECU 26 million, and not ECU 44.7 million as the applicant claims.

87 However, the precise scope of the potential harm requires a very thorough examination of the actual prospects which the Italian Republic has of using the amounts involved during the period to 31 December 1999, which goes beyond the ambit of the present proceedings for interim measures.

88 It is not a priori inconceivable that the contested decision may produce certain effects which could not easily be made good were the applicant to succeed in its action for annulment, and the Commission itself argued at the hearing in favour of a more restrictive approach to the actual consequences which it might be able to draw in favour of the applicant from annulment of the contested decision.

89 In order to determine whether the applicant has proved the need for the suspension sought, however, the alleged harm must be examined in the light of all the interests involved (orders in Case C-280/93 R *Germany* v *Council* [1993]

ECR I-3667, paragraph 29, and Joined Cases C-239/96 R and C-240/96 R *United Kingdom* v *Commission* [1996] ECR I-4475, paragraph 67).

90 In that regard, it must be noted that an order in the terms sought would entail an equivalent risk: it could give rise to certain effects which would be irreversible or difficult to remedy, particularly as regards the financing of the PEACE initiative, should judgment be given in the Commission's favour in the main action.

91 In those circumstances, the President of the Court cannot substitute his assessment for the Commission's as regards the respective merits of the Community initiatives the financing of which is at issue.

92 It follows from all the foregoing that the conditions necessary for the grant of the interim measures applied for are not fulfilled.

On those grounds,

THE PRESIDENT OF THE COURT

hereby orders:

1. **The application for interim measures is dismissed.**

2. **The costs are reserved.**

Luxembourg, 29 June 1999.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President