JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)
6 March 2003 *

In Joined Cases T-61/00 and T-62/00,

Associazione Produttori Olivicoli Laziali (APOL),

Associazione Italiana Produttori Olivicoli (AIPO),

established in Rome, represented by E. Cappelli, P. de Caterini, F. Lepri and R. Vaccarella, lawyers, with an address for service in Luxembourg,

applicants,

v

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

defendant,

* Language of the case: Italian.

APPLICATION for

— in Case T-61/00, for annulment of Commission Decision C (1999) 4561 of 14 December 1999 discontinuing the financial aid from the European Agricultural Guidance and Guarantee Fund granted to the applicant by Commission Decision C (84) 1100/293 of 20 December 1984,

— in Case T-62/00, for annulment of Commission Decision C (1999) 4559 of 14 December 1999 discontinuing the financial aid from the European Agricultural Guidance and Guarantee Fund granted to the applicant by Commission Decision C (84) 500/213 of 29 June 1984,

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: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 11 September 2002,

gives the following

Judgment

Legal background

1 Articles 1 and 2 of Council Regulation (EEC) No 355/77 of 15 February 1977 on common measures to improve the conditions under which agricultural products are processed and marketed (OJ 1977 L 51, p. 1), as subsequently amended, provide that the Commission may grant aid for common measures by financing, through the Guidance Section of the European Agricultural Guidance and Guarantee Fund ('EAGGF'), projects which form part of specific programmes which have been drawn up beforehand by the Member States and approved by the Commission and which are designed to develop or rationalise the treatment, processing or marketing of agricultural products.

2 Article 3(1) of Regulation No 355/77 provides in particular that: 'Programmes shall include at least details concerning the initial situation and the trends which can be inferred from it, in particular as regards the situation as regards the processing and marketing of the agricultural products covered by the programme and especially the existing capacity of the undertakings concerned.'

3 Article 7(1) of Regulation No 355/77 provides:

'1. Projects shall relate to the marketing of the products set out in Annex II to the Treaty or to the production of the processed products set out in that annex.'

4 Article 9(1) of Regulation No 355/77 provides:

'1. Projects must contribute to improving the situation of the basic agricultural production sector in question; in particular they must guarantee the producers of the basic agricultural product an adequate and lasting share in the resulting economic benefits.'

5 Article 10 of Regulation No 355/77, in the original version in force at the time when the aid concerned was granted, reads as follows:

'Projects must:

...

(b) offer adequate guarantees that they will be profitable;

(c) contribute to the lasting economic effect of the structural improvement aimed at by the programmes.'

6 Article 17(2)(b) of Regulation No 355/77 provides that for each project, in relation to the investment made, the financial contribution of the Member State on the territory of which the project is to be carried out must be not less than 5%.

7 Article 19(2) of Regulation No 355/77 reads as follows:

'Throughout the period during which aid is granted from the [EAGGF], the authority or agency appointed for that purpose by the Member State concerned shall, at the request of the Commission, forward to it all supporting documents which are of relevance in proving that the financial or other conditions laid down for each project have been fulfilled. The Commission may, if necessary, carry out an on-the-spot check.

After it has consulted the [EAGGF] Committee on the financial aspects the Commission may decide, in accordance with the procedure laid down in Article 22, to suspend, reduce or discontinue aid from the [EAGGF]:

— if the project has not been carried out as planned, or

— if certain of the conditions laid down have not been fulfilled, or

....'

8 On 24 June 1988 the Council adopted Regulation (EEC) No 2052/88 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).

9 On the basis of that regulation the Council adopted Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1). Article 34 of that regulation provided that the regulation would enter into force on 1 January 1989. Regulation No 4253/88 was amended by Council Regulation (EEC) No 2082/93 of 20 July 1993 (OJ 1993, L 193, p. 20).

10 Article 24 of Regulation No 4253/88, as amended, is entitled 'Reduction, suspension and cancellation of assistance'. It provides:

'1. If an operation or measure appears to justify only part of the assistance allocated, the Commission shall conduct a suitable examination of the case...

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

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

11 Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1) *inter alia* repealed Regulation No 4253/88 and laid down transitional provisions. Article 52(1) of Regulation No 1260/1999 provides:

'This Regulation shall not affect the continuation or modification, including the total or partial cancellation, of assistance approved by the Council or by the Commission on the basis of Council Regulations (EEC) No 2052/88 and (EEC) No 4253/88 or any other legislation which applied to that assistance on 31 December 1999.'

12 Article 1 of Commission Regulation (EEC) No 219/78 of 13 January 1978 on applications for aid from the Guidance Section of the [EAGGF] for projects to improve the conditions under which agricultural products are processed and marketed (OJ 1978 L 35, p. 10) provides that '[a]pplications for aid from the EAGGF Guidance Section for projects to improve the conditions under which agricultural products are processed and marketed shall contain the information and documents specified in the annexes to this Regulation'. Those annexes contain *inter alia* model forms to be completed by applicants for aid. Point 4.6 of Annex B to Regulation No 219/78 asks applicants for aid to describe 'facilities of the same type not belonging to the beneficiary in the area of collection and in adjoining areas (with indication of capacity and location)'.

13 Article 2 of Commission Regulation (EEC) No 2515/85 of 23 July 1985 on applications for aid from the Guidance Section of the EAGGF for projects to

improve the conditions under which agricultural and fish products are processed and marketed (OJ 1985 L 243, p. 1) provides that 'Regulation (EEC) No 219/78 is... repealed with effect from 1 September 1985', but that 'applications for aid submitted to the competent national authorities before 15 October 1985 for presentation to the EAGGF will be accepted in the form prescribed by that Regulation'.

Facts

In Case T-61/00

14 By Decision C (84) 1100/293 of 20 December 1984 ('award decision I') the Commission, under Regulation No 355/77, granted APOL financial aid of ITL 2 064 070 000 in order to set up an establishment for the storage, packaging and marketing of olive oil in the town of Supino in the Latium Region. Under the terms of the award decision the Community contribution was not to exceed 50% of the total cost of the proposed investment of ITL 4 181 900 000, as the beneficiary was to provide the balance from its own funds or from specific loans. By decree of 17 September 1986 Latium Region granted APOL a contribution of ITL 986 660 000 towards the project in question.

15 After completion of the work in November 1988 and inspection by the Italian authorities of the way it had been carried out, the Commission and the Latium Region paid APOL the balance of their respective contributions.

16 According to APOL, difficulties were encountered in ensuring that the facilities at Supino would operate at an acceptable cost. However, it states that its facilities operated in a limited manner on and off from the 1991/92 olive marketing year onwards.

17 On 1 August 1994 APOL and the company Frantoio Oleario Umbro, which operated in the area of processing and marketing oil ('FOU'), set up a management company named Produttori Agricoli Associati ('PAA') under an agreement signed by APOL and FOU on 20 June 1994. Under that agreement the bottling plant on the Supino site was made available to PAA free of charge whilst the other facilities at Supino were let to PAA for a term of nine years for a token rent. In return, FOU allowed PAA to use an olive press free of charge.

18 In May 1995 APOL transferred 44% of its shares in PAA to the Associazione Italiana Produttori Olivicoli (AIPO).

19 During 1995 APOL brought several actions before the Italian courts against FOU and against PAA's administrator, in which APOL applied for PAA's administrator to be removed and replaced by one appointed by the court, on the ground that there had been serious administrative irregularities in the management of PAA. By order of 20 May 1996 the Tribunale di Frosinone dismissed PAA's administrator and appointed another in his place.

20 In April 1996 the Italian Ministry of Agriculture, Food and Forestry Resources ('MIRAAF') sent the Commission a copy of a report of 23 March 1996 on an inspection conducted in July 1994 by the competent regional officials, which stated that no activity, or at least not enough activity, took place at the Supino

establishment. After sending that report the Commission, by letter of 22 January 1997, informed APOL and the Italian authorities of its intention to initiate the procedure for the discontinuance of the aid under Article 24 of Regulation No 4253/88 and requested them to submit their observations.

21 In its reply of 11 February 1997 APOL justified the establishment's lack of activity by reference to the court proceedings concerning PAA and the placing of Supino's facilities under compulsory administration. By letter of 10 March 1997 the Latium Region asked the Commission to reconsider its decision to initiate the procedure for the discontinuance of the aid, on the ground that it considered that there was a possibility that APOL's activities co-financed by the aid could effectively and satisfactorily recommence. In a letter dated 11 April addressed to the Commission MIRAAF supported the opinion of the Latium Region. Following those observations the Commission decided not to pursue the procedure for discontinuing the aid.

22 PAA's administrator appointed by the court subsequently found that the bottling plant at the centre at Supino was no longer in existence. On 2 August 1997 the Tribunale di Frosinone, at the application of APOL, ordered that PAA should be wound up.

23 By letter of 27 February 1998 the Latium Region informed the Commission that, following an inspection carried out on 23 February that year it had been discovered that the establishment had not been in operation for nine years and that the equipment for the bottling line acquired by means of the aid was no longer on the site of the project. The Latium Region also stated that in view of the circumstances it intended to discontinue the national aid.

24 The national aid was discontinued by Decision No 4881 of the Assessorato Sviluppo del Sistema Agricolo e del Mondo Rurale — Settore decentrato dell'

agricoltura di Frosinone (Department for the Development of Agricultural Schemes and Rural Life, Devolved Section of Frosinone) of 13 March 1998, approved by Decision No 1205 of the Giunta Regionale del Lazio (Latium Regional Government) of 31 March 1998. APOL brought an action for annulment of those two measures, together with an application for their suspension. By judgment of 22 September 1998 the Consiglio di Stato (Supreme Administrative Court) dismissed the application for suspension. The main proceedings were still pending at the date on which the present action was brought.

25 Furthermore, in the context of the case concerning PAA, the Giudice per le indagini preliminari presso la Pretura circondariale di Frosinone (judge responsible for preliminary investigations at the Pretura circondriale de Frosinone) decided on 30 June 1998 to place the Supino facilities under compulsory administration.

26 By note of 23 March 1999 the Commission informed APOL and the Italian authorities of its intention to implement the procedure provided for in Article 24 of Regulation No 4253/88 and requested them to submit their observations in that regard. In the view of the Commission the project had been carried out only in respect of an almost non-existent quantity of oil. It considered that the project concerned had not been carried out as planned within the meaning of Article 19(2) of Regulation No 355/77, that it had not had a lasting economic effect within the meaning of Article 10(c) of that regulation, and lastly that, under Article 17(2)(b) of that regulation, the Community aid was subject to a financial contribution from the Member State of not less than 5%. The Commission stated that those facts were likely to constitute irregularities or significant changes within the meaning of Article 24(2) of Regulation No 4253/88.

27 By letters to the Commission of 22 April and 14 May 1999, the Latium Region and MIRAAF confirmed the principal facts set out in the Commission's note.

28 By letter of 7 May 1999 APOL submitted its observations on the Commission's contentions.

29 On 21 June 1999 the Tribunale di Frosinone ordered PAA to be wound up. The facilities were returned to APOL on 21 October 1999.

30 On 14 December 1999 the Commission adopted Decision C (1999) 4561 discontinuing the aid granted to APOL ('contested decision I').

31 Contested decision I states in essence that 'since its completion in 1988 the project has never involved any significant economic activity in connection with the Community aid and national aid granted' and so it has not contributed to a lasting economic effect within the meaning of Article 10(c) of Regulation No 355/77 and has therefore not been carried out as planned within the meaning of Article 19(2) of that regulation. The decision also states that the Latium Region discontinued the aid granted to APOL and so the condition laid down in Article 17(2)(b) of Regulation No 355/77 that Community aid is granted subject to a financial contribution from the Member State of not less than 5% is no longer met in this case. In those circumstances the decision discontinues the aid and, under Article 24(3) of Regulation No 4253/88, orders that sums granted to the project should be repaid.

In Case T-62/00

32 By Decision C (84) 500/213 of 29 June 1984 ('award decision II'), as amended by Decisions C (85) 2019/6 of 6 December 1985 and C (89) 197/14 of 6 February

1989, the Commission, under Regulation No 355/77, granted financial aid of ITL 6 369 260 000 to the Associazione Italiana Produttori Olivicoli (AIPO) for the building of three centres for the storage, packaging and marketing of olive oil in the towns of Castri (Lecce), Eboli (Salerno) and San Lorenzo (Reggio Calabria). The project was designed in particular to promote the rationalisation of the process of preparing olive oil products and improve the quality, presentation and packaging of the products concerned and their collective marketing.

33 By decrees of 28 July 1987, 30 December 1988 and 10 November 1989, MIRAAF granted additional aid to AIPO.

34 Following completion of the work on 26 October 1989 and verification by the Italian authorities of the way in which it had been carried out, the Commission and the competent national authorities paid AIPO the balance of their respective contributions.

35 By letter of 13 November 1993 MIRAAF informed the Commission that, following an investigation conducted by the judicial authorities of Reggio Calabria into possible fraud in respect of the use of Community aid intended for the building of the centre at San Lorenzo, AIPO acknowledged that the three centres had never become operational.

36 Following that investigation the Guidice per le indagini preliminari of the Tribunale di Reggio Calabria (judge responsible for preliminary investigations at the Pretura circondriale de Reggio Calabria) decided to commit for trial several persons who had infiltrated AIPO on charges of conspiracy, fraudulent breach of trust, forgery and misappropriation of public funds.

37 In those circumstances the Commission decided to carry out an on-the-spot inspection in order to determine what state the three centres were actually in. The report on that inspection, which took place between 24 and 28 January 1994, showed that the centres had never been operational and were badly maintained, and that some of the work had not been planned for in the project. In particular, the report states that in the case of all three centres neither the connection between the oil storage tanks and the bottling plants nor the nitrogen polyurenisation systems required for conservation of the product had been put in place, that the laboratory equipment had not been unpacked, that the buildings and the tanks were in a very poor state (damp and rusting) and that the access roads to the centres had not been asphalted. In addition, although the original project stated that the outside oil storage tanks would be made of steel and treated internally with carbon vitrification, at each of the three centres half the outside storage tanks were made of stainless steel and the other half of ordinary steel without any vitrification. The report also noted that some of the accounts for each of the three centres were missing. Lastly, the inspection revealed, according to the report, that the outside tanks at the centre at San Lorenzo were distorted and that the compressed air equipment planned for the centre at Castri was not on site.

38 On 23 March 1994 the Commission informed AIPO that it was initiating the procedure for discontinuing the aid. It subsequently requested the company and the competent national authorities to submit their observations.

39 By note of 18 May 1994, AIPO submitted its observations to the Commission on the various charges made against it. In that note it stated that the centres in question had not become operational due to unforeseeable events beyond its control, namely financial difficulties beyond its control and delays in the administrative procedures in connection with the provision of mains services for some of the sites. As regards maintenance of the buildings, it stated that there were invoices to prove that the necessary maintenance had been carried out and that the poor state of the facilities did not have any effect on their capacity to operate. It also stated that the connection between the tanks and the bottling plants was only missing at the centre at San Lorenzo and that the relevant

equipment had none the less been purchased. It also claimed that the laboratory equipment had not been installed at the various centres in order to protect them and that the water leaks, which had been mended, were only at the centre at Eboli and were due to the bad weather a few days before the Commission's inspection. It also provided photographs showing that the access routes were passable at the centres at Castri and Eboli. Lastly, it added that there was a nitrogen polyurenisation system and that vitrification of the tanks had been replaced by the use of stainless steel tanks, which meant they had been upgraded. It therefore applied for suspension of the procedure, giving assurances that the objectives of the project would be attained and that it was preparing the relevant plan.

40 Following various exchanges of correspondence which, according to the applicant, made clear that AIPO had ensured that the three centres would become operational from the 1995/96 olive marketing year and that the objectives of the project would be attained in accordance with the aims of Articles 9 and 10 of Regulation No 355/77, the Commission decided on 25 July 1996 to suspend the discontinuance procedure but asked to be informed of all the developments concerning the plan for the entry into service of the three establishments.

41 The Commission also made the Agenzia per i controlli e le azioni comunitarie nel quadro del regime di aiuto all'olio di oliva (Agency for supervision and Community measures under aid schemes in the olive oil sector, 'Agecontrol') responsible for obtaining more information on the situation in the olive oil sector in the regions concerned. By letters of 14 April 1997 and 25 November 1998 Agecontrol informed the Commission that there were packaging and storage facilities of the type proposed in AIPO's application for aid already in existence in the regions of Campania, Apulia and Calabria at the time when AIPO's application was submitted. The information provided by Agecontrol also stated that of the three centres concerned only the centres at Castri and Eboli had operated since 1996 in so far as presses had been installed for crushing the olives.

42 In those circumstances the Commission decided to reopen the procedure for discontinuing the aid. By letter of 15 April 1999 it informed the competent Italian authorities and AIPO of the reasons which had led it to reopen the procedure. The letter reiterated first of all the points made in the letter of 23 March 1994, namely that the facilities receiving aid were not operating and that the facilities which had been built were different from those planned. It stated that it had been established that the centre at San Lorenzo had remained idle and that since 1996 the two other centres had been carrying out pressing operations which had not been planned for in the project. It also mentioned that AIPO was accused of having supplied incorrect information in point 4.6 of the questionnaire annexed to the application for aid in so far as the number of existing oil packaging facilities given by AIPO was wrong. Lastly, it noted that no reports on the financial results of the project had been forwarded to it as required under Article 20(1) of Regulation No 355/77. The Italian authorities and AIPO were requested to submit their observations on the reopening of the procedure.

43 AIPO submitted its observations to the Commission on 1 June 1999. It challenged, first of all, the reopening of the procedure, contending that the Commission should have given it the time to implement the plan approved by the Commission on 25 July 1996 for the entry into service of the three centres. Secondly, with regard to the fact that the facilities had not been operational and were not in accordance with the original plan, it reiterated in essence its observations of 18 May 1994. It also explained that the reason why the centre at San Lorenzo had not been operational was the local authority's failure to build the access road linking the industrial area to the main road, and that the purpose of the crushing activities in the two other centres was to encourage farmers to use those centres. It considered that it had complied with the obligation to provide a financial report on operations by sending MIRAAF the balance sheets for 1997. Lastly, it stated that the information required in the application for aid related only to facilities of a cooperative nature, which differed from other facilities in the special role they performed for the benefit of member producers. The information provided in the application was therefore correct. Lastly it considered that it was for the Commission to inspect existing facilities and that at any rate it had, as the Commission requested, provided a full list of all the facilities belonging to other organisations in the regions concerned.

44 On 13 July 1999 MIRAAF sent its observations to the Commission. Attached to them was a report from the Comando dei Carabinieri Tutela Norme Comunitarie e Agroalimentari (the police authority responsible for compliance with Community agri-foodstuffs rules), dated 9 June 1999 and drawn up following an inspection conducted on 26 April 1999. Those documents confirmed, in the main, that no activity had taken place under the project at the centres concerned.

45 On 14 December 1999 the Commission adopted Decision C (99) 4559 ('contested decision II') discontinuing the aid granted to AIPO by award decision II.

46 Contested decision II provides, in particular, that the observations submitted by AIPO on 18 May 1994 and 1 June 1999 in connection with the administrative procedure for discontinuing the aid did not provide any counter-arguments to the main specific evidence supplied by the Commission. The decision points in essence to three irregularities. First, it states that the information provided by AIPO in its application for aid implied there was a shortage of facilities for the processing of olive oil in the regions concerned, which gave a false impression with regard to the economic basis of the project and the need to create additional oil processing and storage capacity in those regions. Second, it states that certain investments set out in the project as approved by the Commission had not been made. Third, it states that no significant economic activity under the project reasonably commensurate with the amount of Community and national aid has been observed at any of the three sites. On the grounds of those irregularities the decision discontinued the aid and ordered the repayment of the sums granted to the project.

47 By decree of 15 March 2000 the national aid granted to AIPO was also discontinued.

Procedure

48 By applications lodged at the Court Registry on 20 March 2000 APOL and AIPO brought the present actions against contested decision I and contested decision II, respectively.

49 By order of the President of the Second Chamber of the Court of First Instance of 11 July 2002, Cases T-61/00 and T-62/00 were joined for the purposes of the oral procedure.

50 By way of measures of organisation of procedure the Court of First Instance asked the parties to reply to a number of written questions and requested AIPO to produce certain documents. In particular the parties were asked to submit their observations on the relevance of Case C-500/99 P *Conserve Italia* v *Commission* [2002] ECR I-867. The parties replied to the written questions. AIPO produced certain documents.

51 On hearing the report of the Judge-Rapporteur, the Court of First Instance (Second Chamber) decided to open the oral procedure. The parties presented oral argument, answered questions put to them by the Court and made observations on the possible joining of Cases T-61/00 and T-62/00 for the purposes of the judgment at the hearing in open court on 11 September 2002.

52 The cases were joined for the purposes of the judgment under Article 50 of the Rules of Procedure of the Court of First Instance.

Forms of order sought

In Case T-61/00

53 APOL claims that the Court should:

— annul contested decision I,

— order the Commission to pay the costs.

54 The Commission contends that the Court should:

— dismiss the application in its entirety,

— order APOL to pay the costs.

In Case T-62/00

55 APIO claims that the Court should:

— annul contested decision II,

— order the Commission to pay the costs.

56 The Commission contends that the Court should:

— dismiss the application in its entirety,

— order APIO to pay the costs.

Law

57 In Case T-61/00 APOL submits in essence four pleas in order to demonstrate that contested decision I is unlawful. The first plea alleges breach of the principle of *force majeure*. The second plea alleges breach of the obligation to state the reasons on which the decision is based. The third plea alleges breach of the principle of proportionality. The fourth plea alleges an error of law in the application of Article 17(2)(b) of Regulation No 355/77.

58 In Case T-62/00 AIPO submits in essence five pleas in support of its claim for annulment. The plea first alleges breach of the obligation to state the reasons on which the decision is based. The second alleges errors of law and assessment. The third alleges breach of the principle of *force majeure*. The fourth alleges breach of the principle of proportionality. The fifth alleges infringement of the right to a fair hearing.

59 It is appropriate to consider the pleas common to both cases together, starting with the plea alleging breach of the principle of *force majeure*.

The pleas alleging breach of the principle of force majeure

Arguments of the parties

— In Case T-61/00

60 APOL claims that the Commission infringed the principle of *force majeure* by failing to take into account in contested decision I the existence of a case of *force majeure*, which prevented the facilities financed by the aid from becoming economically active to a significant extent.

61 In that regard, it claims that, from 20 May 1996 at least, the date on which the PAA administrator was dismissed and replace by an administrator appointed by the court, it was impossible for it to take any initiative concerning the operation

of the establishment at Supino. It contends that those events placed it in a situation of *force majeure*, which established case-law defines in the context of agriculture as referring to unusual and unforeseeable circumstances which were beyond the control of the party by whom it is pleaded and the consequences of which could not have been avoided even if all due care had been exercised (Case 145/85 *Denkavit* v *Belgium* [1987] ECR 565, paragraph 11). In that regard APOL argues that it has always exercised great care and has never failed to use the appropriate judicial procedures for restoring the availability of its facilities.

62 APOL also contends that since in the present case *force majeure* is not due to the conduct of the PAA administrator but to the fact that it was impossible to take initiatives as regards the activities of the facilities as a result of measures taken by the judicial authorities, the case-law according to which the conduct of a third party is an inherent part of the commercial risk and does not constitute a case of *force majeure* (Case 296/86 *McNicholl* [1988] ECR 1491 and Case 42/79 *Milch-, Fett- und Eierkontor* [1979] ECR 3703) bears no similarity to the present case and is therefore not relevant.

63 The Commission points out, first of all, that it is settled case-law (in particular *McNicholl*, cited above, paragraph 11) that the concept of *force majeure*, even if it does not assume absolute impossibility, requires none the less that the failure to complete the act in question must be due to unusual and unforeseeable circumstances beyond the control of the party by whom it is pleaded and the consequences of which could not have been avoided even if all due care had been exercised.

64 The Commission contends, next, that the events in question stem from problems within PAA, in particular irregularities attributable to its sole administrator. It also points out that APOL was one of PAA's members. It therefore considers that the events in question cannot be regarded as circumstances beyond APOL's control.

— In Case T-62/00

65 AIPO contends that the reason why the three establishments did not become operational is the consequence of events of *force majeure* which the Commission should have taken into account in contested decision II.

66 AIPO pleads the existence of three circumstances constituting *force majeure.*

67 First, it was the victim of the theft of goods it was storing for another party, which meant it had to reimburse the cost of the stolen goods to the value of ITL 3.5 thousand million. According to AIPO, the theft put it in a catastrophic financial situation. Second, AIPO pleads the negative consequences of the unforeseeable trends in the terms of production and trade in the olive oil sector which, it contends, led it to reappraise entirely the terms and conditions of its activities with regard to the storage and packaging of olive oil in relation to those planned in the project. Third, AIPO was the victim of a conspiracy, as is testified by the existence of criminal proceedings which has joined as civil party and which have been brought in particular against persons who had infiltrated it.

68 According to AIPO, the Commission implicitly accepted that there was a case of *force majeure* when it suspended the procedure for discontinuing the aid in July 1996.

69 As regards the inactivity of the facility at San Lorenzo in particular, AIPO contends that it was not operational was due to the absence of an access road between that facility and the main road as a result of conflicts of jurisdiction and

bureaucratic delays. In that regard, AIPO states that in Italy authorisation to build cannot be issued by a local authority unless it is certain that the related urbanisation work will be carried out. Since authorisation had been granted to build the facility the work to provide the access road should have been carried out. Moreover, it is clear from various documents and in particular a letter from the local authority of 16 February 1998 and photographs and plans attached to the reply that provision had been made for the access road and it had been applied for but it had not been built. The difficulties of gaining access to the centre at San Lorenzo were not foreseeable. In those circumstances, the fact that that centre could not operate was the direct consequence of a specific case of *force majeure* (Case C-50/92 *Molkerei-Zentrale Süd* [1993] ECR I-1035, paragraph 13).

70 The Commission contends that none of the circumstances described by AIPO constitutes a case of *force majeure*.

Findings of the Court

71 It is appropriate to point out first of all that none of the provisions of Regulation No 355/77, under which the Community aid was granted in both cases, provides that a beneficiary of aid may plead the existence of a case of *force majeure* to justify failure to comply with its obligations.

72 The Commission none the less stated at the hearing that in certain situations in which it is objectively impossible for an undertaking to operate it has allowed *force majeure* to be pleaded even though the relevant regulations did not provide for such a possibility. In that context, although the case-law of the Court of Justice or the Court of First Instance has not so far expressly acknowledged the existence of a general principle of Community law enabling *force majeure* to be

pleaded in the absence of such a possibility being expressly provided for in the relevant regulations, it is appropriate to consider whether the Commission was correct in rejecting the existence of a case of *force majeure* which justified the absence of significant economic activity at the facilities of APOL and AIPO. The existence of an administrative practice, even one that is not based on any legislation, under which the Commission considers whether there is a case of *force majeure* which should cause it to refrain from discontinuing aid may bind the Commission each time a case of *force majeure* is pleaded before it (see, by analogy, Case T-35/99 *Keller and Keller Meccanica* v *Commission* [2002] ECR II-261, paragraph 77).

73 It is therefore necessary to consider whether, according to the criteria laid down by judgments in cases where the relevant legislation provided for the possibility of pleading *force majeure*, the conditions for the existence of a case of *force majeure* were met in the present case.

74 In that regard, it should be borne in mind that the concept of *force majeure*, even if it does not assume absolute impossibility, requires none the less that the failure to complete the act in question must be due to unusual and unforeseeable circumstances beyond the control of the party by whom it is pleaded and the consequences of which could not have been avoided even if all due care had been exercised (see in particular Case C-136/93 *Transafrica* [1994] ECR I-5757, paragraph 14 and Case C-208/01 *Parras Medina* [2002] ECR I-8955, paragraph 19).

75 In Case T-61/00 it is common ground that the judicial problems which prevented APOL from engaging in any significant activity at its establishment result from conduct attributable to the administrator of PAA's management company, to whom APOL had entrusted the management of that activity. Such disturbance does not appear to be unusual or unforeseeable. By setting up the PAA management company in order to perform its obligations, APOL assumed all the risks which a diligent trader can and should reasonably foresee in the context of that agreement, including fraudulent or negligent conduct on the part of the administrator of that management company (see, to that effect, *McNicholl*, cited above, paragraphs 12 and 13).

76 It is also common ground that the intervention by the judicial authorities which gave rise to the dismissal of PAA's administrator and his replacement by an administrator appointed by the court was requested by APOL and cannot therefore be unconnected with it. In those circumstances, contrary to what APOL contends, the judicial consequences of the conduct of PAA's administration cannot provide evidence of the existence of a case of *force majeure* either.

77 In Case T-62/00 AIPO pleads, first, the theft of goods it was storing for another party; as a consequence of the theft, it had to reimburse the cost of the stolen goods to the value of ITL 3.5 thousand million, which left it in a catastrophic financial situation. As regards that theft, it is settled case-law that theft is a normal and foreseeable risk in the context of day-to-day trade and cannot constitute a case of *force majeure* (*McNicholl*, cited above, paragraphs 12 to 14).

78 AIPO does not demonstrate or suggest, moreover, how the theft and its alleged financial consequences made it impossible for it to engage in any economic activity at the centres concerned for over ten years following the theft. In those circumstances, neither the theft nor its alleged consequences can be regarded as constituting a case of *force majeure* exempting AIPO from engaging in any economic activity at the centres co-financed by the Community aid.

79 Second, as regards market trends, such trends must be regarded as being inherent in the normal commercial risks which any reasonably well-informed trader should have been able to foresee (see, to that effect, *Transafrica*, cited above, paragraph 16) and cannot therefore constitute a case of *force majeure*.

80 Third, as regards the fraudulent practices of which AIPO is said to have been the victim, it is common ground that they were perpetrated by criminal elements which had infiltrated it. This is not therefore a circumstance that is unconnected

with AIPO; it cannot therefore substantiate the existence of a case of *force majeure* (see, to that effect, *McNicholl*, cited above, paragraph 12).

81 Fourth, as regards the absence of activity of the establishment at San Lorenzo, it should be pointed out that, according to case-law, such absence cannot constitute a case of *force majeure* unless the conduct of the administration whose services the trader is required to use makes it impossible for the latter to perform his obligations under the Community rules (*Molkerei-Zentrale Süd*, cited above, paragraph 13). In the present case AIPO has not adduced any evidence to show that the failure of the local authority to carry out the work in question made it impossible for it to engage in any significant economic activity.

82 It was therefore right for the Commission not to accept that there was a case of *force majeure* which justified the absence of significant economic activity on the part of APOL and AIPO.

83 The pleas must therefore be rejected in each of the two cases.

The pleas alleging breach of the principle of proportionality and errors of law and assessment

Arguments of the parties

— In Case T-61/00

84 APOL maintains that the Commission infringed Article 17(2)(b) of Regulation No 355/77 in using the decision discontinuing the national aid as a basis for

adopting contested decision I. First, according to APOL, the decision discontinuing the national aid is not definitive, since APOL has challenged that decision in the administrative court. Secondly, it denies that discontinuance of the national aid necessarily leads to discontinuance of the Community aid.

85 It also maintains that contested decision I is in fact akin to a penalty and infringes the principle of proportionality in several respects. First, discontinuance of the aid is disproportionate in relation to APOL's actual financial capacity. Second, discontinuance of the aid is disproportionate in relation to the Community interest, since the contested decision makes it absolutely certain and irrevocable that public money will be wasted in view of the abandonment and deterioration of some of the facilities, whereas at the time when the contested decision was adopted APOL was in the process of making its facilities fully operational again.

86 The Commission disputes the validity of APOL's arguments.

— In Case T-62/00

87 AIPO maintains, first, that the Commission committed an error or law and of assessment by claiming that AIPO had supplied incorrect information regarding the number of storage and packaging facilities in existence when it submitted its application for aid. In that regard, AIPO maintains that the information supplied in response to point 4.6 of the questionnaire attached to its application for aid was not incorrect since it related solely to cooperative facilities similar to those referred to in the project it submitted. According to AIPO, since under Article 9 of Regulation No 355/77 only projects which guarantee producers of the basic agricultural product an adequate and lasting share in the economic benefits resulting from those projects are eligible for aid, the information supplied in

connection with an application for aid could relate only to storage and packaging facilities controlled by the agricultural producers. Hence, in finding that AIPO submitted incorrect information regarding the economic basis of the project, the Commission committed an error of law and/or assessment. AIPO also points out that, following a further request by the Commission, in 1995 it supplied the full list of oil-packaging undertakings in the region concerned.

88 AIPO maintains, secondly, that the Commission also committed an error of law by accusing it and not the Italian authorities of supplying incorrect information regarding the existing facilities. It observes in that connection that, under Articles 2 to 5 of Regulation No 355/77, projects to be financed on the basis of that regulation should come under specific programmes drawn up by the Member States and approved by the Commission. More particularly, Article 3 of that regulation states that specific programmes drawn up by the Member States must contain a description of the situation in the sector and in particular the existing capacity of the undertakings concerned.

89 Furthermore, according to AIPO, such projects must be the subject of an appropriate investigation on the part of the Member State concerned and obtain its favourable opinion. Thus, Part Two of Annex A to Regulation No 2515/85 requires the national authorities and not beneficiaries to prepare and supply the data in question.

90 In the present case, the data regarding the economic basis of the project and the need to create additional packaging and storage capacity within the regions concerned was supplied by the Italian authorities and was not subject to any criticism on the part of the Commission when the project was approved. In those circumstances, the Commission was in breach of Regulation No 355/77 and Regulation No 2515/85 in accusing AIPO and not the Italian authorities of sending false data which gave an incorrect impression of the economic need for the project.

91 AIPO maintains thirdly that the Commission committed an error of assessment by failing to take into account the observations it made in respect of the work that was carried out not complying with the facilities planned for in the project. More particularly, AIPO contends first of all that the connection of the bottling lines with the tanks was carried out at all three centres. It goes on to state that the photographs attached to the reply prove that the access routes to the centres at Eboli and Castri are passable for lorries. It also maintains that the nitrogen polyurenisation system was installed at the centre at Eboli but that the system was not installed at the two other centres because it was impossible to ensure that the gas would not escape from inside the tanks. Moreover, the absence of a polyurenisation system constituted a modification which did not need to be notified, according to point A(6) of document (EEC) 7125 of 2 April 1978, p. 2, which refers to 'modifications made to investments consisting of duly substantiated technical modifications that do not affect the structural and economic design of the project'. AIPO states, finally, that the vitrification of the storage tanks was replaced by the use of stainless steel tanks, which was also a modification which did not need to be notified under the abovementioned document 7125.

92 It also contends that the findings made by the Commission in the context of the administrative procedure conflict with the findings made by the technical experts on behalf of the Commission when the facilities were approved. Moreover, the subsequent findings made by or on behalf of the Commission were made by persons who did not possess all the necessary technical expertise. Finally, at the reply stage, AIPO applied to the Court of First Instance for measures of inquiry to have a technical inspection carried out in order to establish the facts as they stood at that time.

93 AIPO maintains, fourthly, that the penalty consisting in the repayment of the aid in question is disproportionate since, first, the Commission decided to impose total discontinuance in respect of irregularities which were only partial and, second, the Community penalty is compounded by a financial penalty of an administrative nature under Italian law equal to the amount wrongly paid.

Moreover, that decision will, following long judicial proceedings, result in the financial ruin of AIPO without the sums in question being repaid, since they are in the hands of the criminals who infiltrated that association. The decision is therefore not only excessive, it is also irrational.

94 The Commission disputes the validity of AIPO's arguments.

Findings of the Court

95 It should be pointed out first of all that the principle of proportionality requires that measures adopted by Community institutions must not exceed what is appropriate and necessary for attaining the objective pursued (Case 15/83 *Denkavit Nederland* [1984] ECR 2171, paragraph 25, and Case T-216/96 *Conserve Italia* v *Commission* [1999] ECR II-3139, paragraph 101).

96 Furthermore, it is settled case-law that the infringement of obligations whose observance is of fundamental importance to the proper functioning of a Community system may be penalised by forfeiture of a right conferred by Community legislation (Case C-104/94 *Cereol Italia* [1995] ECR I-2983, paragraph 24 and *Conserve Italia* v *Commission*, cited above, paragraph 102).

97 The Court of Justice has also held that where the evaluation of a complex situation is involved, which is the case with respect to the common agricultural policy, the Community institutions enjoy a wide measure of discretion (see, to this effect, in particular Case 29/77 *Roquette* [1977] ECR 1835, paragraph 19).

In reviewing the legality of the exercise of such discretion, the Court must confine itself to examining whether it discloses a manifest error or constitutes a misuse of powers or whether the institution has clearly exceeded the limits of its discretion (see, to this effect, Joined Cases C-296/93 and C-307/93 *France and Ireland* v *Commission* [1996] ECR I-795, paragraph 31).

98 It is clear therefore that discontinuance of EAGGF aid is not, in principle, disproportionate where it is established that the beneficiary of that aid has infringed an obligation that is fundamental for the proper operation of the EAGGF.

99 The contested decisions must be considered in the light of those principles.

— In Case T-61/00

100 It should be pointed out first of all that contested decision I is based in particular on infringement of Article 10(c) of Regulation No 355/77, which requires that projects should contribute to the lasting economic effect of the structural improvement aimed at by the programmes, the ground alleged for the infringement being the absence of significant economic activity in relation to the amount of the aid. It is also based on Article 17(2)(b) of Regulation No 355/77, which provides that Community aid is granted on condition that the Member State makes a financial contribution of not less than 5%. It should be added that the absence of any significant activity under the project is not disputed.

101 It must next be considered whether the evidence relied on in contested decision I demonstrates that APOL infringed one of its fundamental obligations in the context of the Community aid granted to it.

102 Article 10(c) of Regulation No 355/77 provides that projects must contribute to the lasting economic effect of the structural improvement aimed at by the programmes. In addition, Article 7 of that regulation states that projects must relate to the marketing or to the production of processed products. Furthermore, Article 9(1) of that regulation states that projects must contribute to improving the situation of the basic agricultural production sector in question. Lastly, the fourth recital in the preamble to that regulation states that to be eligible for Community financing, projects must permit in particular the achievement of improvement and rationalisation of processing and marketing structures in respect of agricultural products and of a lasting beneficial effect on agriculture. It is to be inferred from this that the implementation of the project in question and its contribution to a lasting beneficial effect on facilities for the processing and marketing of olive oil products constitute a fundamental obligation imposed by Regulation No 355/77.

103 Article 1 of award decision I states that the payment of aid to APOL is conditional upon compliance with the requirements laid down in point B of the annex to that decision. Point B expressly draws APOL's attention to Article 19(2) of Regulation No 355/77, which requires the project to be implemented in accordance with the conditions laid down in Regulation No 355/77, failing which the aid will be discontinued or reduced. APOL was therefore bound by the fundamental obligation laid down in Article 10(c) of Regulation No 355/77 to implement the project and contribute to its lasting economic effect on the facilities concerned.

104 It is appropriate at this point to ascertain whether APOL complied with that fundamental obligation. In that regard, it must be stated that from the end of the work on the establishment until the time when contested decision I was adopted, which was a period of over 11 years, no significant economic activity took place at that establishment.

105 A period of 11 years is sufficient for the purpose of assessing whether there is any lasting economic effect. It was therefore reasonable for the Commission not to take into account the fact that APOL was allegedly on the point of recovering the facilities at Supino at the time when contested decision I was adopted in order to assess whether the project had any lasting economic effect.

106 In the absence of any significant economic activity over 11 years, it is clear that APOL failed to comply with a fundamental obligation, which, according to the case-law cited in paragraph 96 above, is sufficient to justify discontinuance of the aid in its totality and does not constitute a breach of the principle of proportionality.

107 Lastly, it is necessary to consider whether the limited nature of APOL's resources affects the question whether discontinuance of the aid granted to it is a proportionate response. Suffice it to say in that regard that APOL's financial situation is a purely subjective situation totally divorced from the objective conditions for granting and discontinuing the aid, and that therefore it cannot influence the assessment of whether contested decision I is proportionate.

108 In those circumstances, the decision to discontinue the aid appears to be consistent with the principle of proportionality.

109 Since the absence of any significant economic activity is sufficient in this case to justify discontinuance of the aid, there is no need to examine whether the Commission committed an error of law in considering that withdrawal of the national aid meant that Community aid should also be discontinued under Article 17(2)(b) of Regulation No 355/77.

— In Case T-62/00

110 Contested decision II is based in essence on three points. First, it accuses AIPO of supplying incorrect information to the Commission regarding the number of oil-processing facilities in existence and thereby giving it a false impression with regard to the economic basis of the project. Second, AIPO is accused of infringing Article 10(c) of Regulation No 355/77 by failing to engage in any significant economic activity at any of the three centres co-financed by the Community aid. Third, the decision raises the complaint against AIPO that when the facilities were built they did not comply with those originally planned in the project.

111 It is appropriate to consider first whether, as AIPO maintains, the Commission committed errors of law in accusing AIPO of providing it with incorrect information on the number of facilities existing in the regions concerned when it submitted its application for aid.

112 In that regard, it should be pointed out first of all that Regulation No 2515/85 relied on by AIPO is not relevant for assessing the legality of contested decision II. That regulation entered into force on 14 September 1985. It is common ground that award decision II is dated 29 June 1984. The application for aid therefore predates that award decision and is therefore not governed by Regulation No 2515/85.

113 It is also appropriate to point out that the questionnaire completed by AIPO in order to obtain the aid asked AIPO to describe 'facilities of the same type not belonging to the beneficiary in the area of collection and in adjoining areas'. It is not disputed moreover that the information supplied by AIPO in the ques-

tionnaire it completed referred solely to facilities controlled and managed by the producers themselves and did not mention the other oil processing and marketing facilities in the regions concerned.

114 Contrary to what AIPO maintains, it cannot be inferred from Article 9(1) of Regulation No 355/77, which provides that projects 'must, in particular, guarantee the producers of the basic agricultural product an adequate and lasting share in the resulting economic benefits', that the only facilities to be mentioned in the application for aid are those controlled and managed by the producers themselves. Such an interpretation would be contrary both to the spirit and the letter of Regulation No 355/77. Article 10 of Regulation No 355/77 states that projects must not only have a lasting economic effect, they must also offer adequate guarantees that they will be profitable. In this case that dual requirement cannot be met unless there is demand for capacity for the storage and processing of olive oil in the regions concerned. That demand must be assessed in relation to the storage and processing capacity of existing facilities, which does not depend in any way on the legal structure of those facilities.

115 Therefore, the information supplied by AIPO in its application for aid should have covered all the oil storage and processing facilities which existed in the regions concerned at the time the application for aid was submitted, irrespective of the way in which they were controlled or managed. The Commission did not therefore commit an error of law or assessment in considering that the information submitted by AIPO did not reflect the true situation.

116 Contrary to what AIPO maintains, even if under Articles 2 to 5 of Regulation No 355/77 and particularly under Article 3(1)(b) of that regulation, the Italian

authorities had an obligation to supply information on the sectors covered by the programme under which the project was implemented, and especially the existing capacity of the undertakings concerned, the existence of that obligation did not release AIPO from its own obligation to supply the Commission with correct information in its application for aid.

117 It is clear therefore that the Commission did not commit an error of law or assessment in accusing AIPO and not the Italian authorities of providing it with incorrect information in the application for aid on the number of existing oil storage and processing facilities in the regions concerned.

118 It is appropriate to consider secondly whether supplying such incorrect information constitutes infringement of an essential obligation on AIPO in the context of the aid granted.

119 According to case-law, it is essential for the proper functioning of the system of controls set up to ensure proper use of Community funds that applicants for aid provide the Commission with information which is reliable and not liable to mislead it. Furthermore, the Court of Justice has also held that only the possibility that an irregularity may be penalised not by reduction of the aid by an amount corresponding to that irregularity, but by complete cancellation of the aid is likely to produce the deterrent effect required to ensure the proper management of the resources of the EAGGF (*Conserve Italia* v *Commission*, cited above, paragraphs 100 and 101).

120 Therefore, by supplying the Commission with incorrect information on the number of storage and packaging facilities in existence when it submitted its application for aid, which was liable to mislead the Commission regarding the economic basis of the project, AIPO infringed a fundamental obligation. In those circumstances, discontinuance of the aid is in accordance with the principle of proportionality.

121 It should be pointed out that neither AIPO's financial situation, nor the possibility of the Community aid being discontinued concurrently with any administrative fines being imposed by the national authorities, is such as to cast doubt on the proportionate nature of contested decision II. As regards AIPO's limited financial capacity, it should be pointed out that that is an eminently subjective matter and is therefore outside the objective conditions for granting and discontinuing the aid, and so it cannot influence the assessment of whether contested decision II is proportionate (see paragraph 107 above).

122 The possibility of the Community penalty being applied concurrently with national administrative fines is purely hypothetical and in any event is not sufficient in itself to justify a finding that the measure contested in this case is disproportionate. It will be for AIPO to seek relief before the national courts, should the need to do so arise, on the grounds that concurrent application of Community and national penalties constitutes a breach of the principle of proportionality (*Conserve Italia* v *Commission*, cited above, paragraph 108).

123 Contested decision II, based on the supply of incorrect information concerning the economic basis of the project, is therefore in conformity with the principle of proportionality. There is therefore no need to consider whether the absence of any significant economic activity at the co-financed facilities or the alleged discrepancy between the facilities built and those planned also constituted infringement by AIPO of one of its essential obligations, attesting, in its case too, to the proportionate nature of the decision.

124 Since supplying incorrect information in the application for aid, which is liable to mislead the Commission as regards the economic basis of the project, is sufficient to establish infringement of an essential obligation which, itself, fully justifies contested decision II, there is no need to consider whether the Commission committed an error of assessment in considering that the facilities built did not comply with those planned in the project. In those circumstances, it is also unnecessary to accede to AIPO's request to appoint an expert to determine the current state of the facilities in question.

125 The pleas alleging infringement of the principle of proportionality and errors of law or assessment, respectively, cannot therefore be accepted in either of the two cases.

The pleas alleging breach of the obligation to state reasons

Arguments of the parties

— In Case T-61/00

126 APOL contends that contested decision I does not comply with essential procedural requirements in that it contains an inadequate and contradictory statement of reasons. In that regard, it maintains that the Commission had originally agreed to stay the adoption of penalties against it in the light of the

legal proceedings concerning PAA. By adopting contested decision I without stating the reasons for its change in attitude although APOL's situation had allegedly not changed, the Commission infringed its obligation to state reasons.

127 The Commission disputes the validity of APOL's arguments in the context of this plea.

— In Case T-62/00

128 AIPO maintains, first, that contested decision II is vitiated by a defective statement of reasons in that the statement is inadequate. In that regard, it claims that in its correspondence with the Commission it supplied more explicit information, which the Commission did not dispute, even in the text of contested decision II. In those circumstances, the statement in the tenth recital in the preamble to that decision that 'the beneficiary did not submit any arguments to contradict the main specific evidence adduced by the Commission' does not constitute adequate reasons.

129 AIPO maintains, secondly, that the Commission committed an error with regard to its statement of reasons in that it accused AIPO of supplying incorrect information regarding existing facilities of the same type as those which the project was designed to build in the regions concerned. According to AIPO, the Commission did not realise that the data which AIPO had supplied to it related solely to storage and packaging facilities which were controlled by agricultural producers and made available to them on special terms in order to achieve the objectives of political action underlying Regulation No 355/77.

130 The Commission disputes the arguments put forward by AIPO in the context of this plea.

Findings of the Court

131 First of all, it is settled case-law that the statement of reasons required by Article 253 EC must show clearly and unequivocally the reasoning of the Community authority which adopted the contested measure, so as to inform the persons concerned of the justification for the measure adopted and thus enable them to defend their rights and the Community judicature to exercise its powers of review (see in particular Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraph 15). Furthermore, it is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (Case T-16/96 *Cityflyer Express* v *Commission* [1998] ECR II-757, paragraph 65).

— In Case T-61/00

132 Contested decision I mentions the irregularities found and states that they justify discontinuance of the aid under Article 24 of Regulation No 4253/88. That statement of reasons shows clearly and unequivocally the reasoning of the Commission, thus enabling the Court of First Instance to exercise its powers of review and APOL to defend its rights. It is clear, moreover, from the arguments put forward by APOL that it did understand the reasoning which led the Commission to adopt contested decision I.

133 In so far as the point needs to be made, it cannot be accepted that, contrary to what APOL contends, there was a lack of reasoning with respect to the Commission's alleged change of position. Contested decision I refers, in addition to the irregularities already set out in the letter initiating the procedure for the discontinuance of aid of 22 January 1997, to the disappearance of the bottling plant at the centre at Supino and the discontinuance of the national aid. The reference to those two events constitutes sufficient specific reasons for the alleged change of position.

134 The Commission did not therefore fail to fulfil its obligation to state the reasons for contested decision I. The plea must therefore be rejected in the context of Case T-61/00.

— In Case T-62/00

135 It should be observed, first, that, contrary to what AIPO maintains, the tenth recital in the preamble to contested decision II, which states that AIPO 'did not submit any arguments to contradict the main specific evidence adduced by the Commission' cannot be regarded as an inadequate statement of reasons. In application of the case-law cited in paragraph 131 above, that recital must be considered in the light of the remainder of contested decision II, and in particular the twelfth recital in the preamble to that decision, which refers to the irregularities which the Commission regards as having been established. In those circumstances, AIPO was in a position to assess whether and to what extent the arguments it put forward in the context of the administrative procedure were accepted by the Commission when it adopted contested decision II.

136 As regards, next, the argument alleging an error in the statement of reasons regarding the supply of incorrect information on the number of oil processing and storage facilities which existed in the regions concerned at the time when the application for aid was submitted must be considered to be the same as the argument concerning an error of law or assessment which was dealt with in the context of the analysis of the preceding pleas.

137 The plea alleging breach of the obligation to state reasons therefore cannot lead to annulment of contested decision II.

Plea alleging infringement of AIPO's right to a fair hearing

Arguments of the parties

138 AIPO contends in essence that the contested decision is in part based on the fact that it gave the Commission an incorrect impression of the economic basis of the project by stating in its application that in the regions to which the project related there were only three facilities of the same type as those to be built under the project. That criticism is based, as the Commission itself admits, on the observations contained in the letters from Agecontrol dated 18 April and 25 November 1998. However, AIPO is not aware of the content of those letters.

139 The Commission disputes the contentions and arguments put forward by AIPO in the context of this plea.

Finding of the Court

140 It is clear from the documents before the Court, and in particular contested decision II, that AIPO was informed of the content of the documents Agecontrol sent to the Commission. Moreover, AIPO does not suggest or demonstrate how it was unable to exercise its right to a fair hearing effectively.

141 In those circumstances this plea must be rejected.

142 It follows from the all the above considerations that the applications for annulment of the contested decisions must be dismissed.

Costs

143 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they are asked for in the successful party's pleadings. Since each of the applicants has been unsuccessful, it is appropriate to order them to pay the costs, as applied for by the Commission in each of the two cases.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. **Dismisses the applications;**

2. **Orders, in each case, the applicant concerned to pay all the costs.**

Moura Ramos Pirrung Meij

Delivered in open court in Luxembourg on 6 March 2003.

H. Jung
Registrar

R.M. Moura Ramos
President