JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)

22 June 2005 *

In Case T-102/03,

Centro informativo per la collaborazione tra le imprese e la promozione degli investimenti in Sicilia SpA (CIS), established in Catania (Italy), represented by A. Scuderi and G. Motta, lawyers,

applicant,

v

Commission of the European Communities, represented by E. de March and L. Flynn, acting as Agents, assisted by A. Dal Ferro, lawyer, with an address for service in Luxembourg,

defendant,

* Language of the case: Italian.

ACTION for annulment of Commission Decision C (2002) 4155 of 15 November 2002, relative to the withdrawal of assistance from the European Regional Development Fund (ERDF) granted by Commission Decision C (93) 256/4 of 16 February 1993 in the form of a global grant in respect of the activities of an information centre for collaboration between undertakings and the promotion of investment and recovery of the advance paid by the Commission as part of that assistance,

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

composed of J.D. Cooke, President, R. García-Valdecasas and I. Labucka, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 1 February 2005,

gives the following

Judgment

Law

1 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 to reduce 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 159 EC, the Community is also to support the achievement of these objectives by the action it takes through structural funds, in particular the European Regional Development Fund (ERDF).

2 With a view to achieving 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, inter alia, by Council Regulation (EEC) No 2081/93 of 20 July 1993 (OJ 1993 L 193, p. 5).

3 On 19 December 1988 the Council adopted Regulation (EEC) No 4253/88 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). That regulation entered into force on 1 January 1989 and was amended several times before being repealed on 31 December 1999 by Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the structural funds (OJ 1999 L 161, p. 1).

4 Pursuant to the transitional provisions laid down by Article 52(1) of Regulation No 1260/1999, Article 24 of Regulation No 4253/88, entitled 'Reduction, suspension and cancellation of assistance', as amended by Council Regulation (EEC) No 2082/93 of 20 July 1993 (OJ 1993 L 193, p. 20) and applicable on 15 November 2002,

the date on which the Commission decided to discontinue the aid in question (hereinafter 'Article 24 of Regulation No 4253/88'), provides:

'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.

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

Facts and proceedings

Decision authorising the assistance

5 By Decision C (93) 256/4 of 16 February 1993, the Commission approved the grant to the Italian Republic of assistance from the European Regional Development Fund in the form of a global grant for the activities of an information centre for collaboration between undertakings and the promotion of investment as part of the

Community support framework for Community structural operations in Sicily — Objective No 1 (hereinafter 'the authorisation decision').

6 The second paragraph of Article 1 of the authorisation decision specified that the ERDF assistance was granted to the information centre for collaboration between undertakings and the promotion of investment, the responsible intermediary body, in the amount of ECU 6 760 000. Pursuant to that provision, the rules governing the utilisation of the subsidy were to be laid down in an agreement concluded, together with the Member State concerned, between the Commission and the intermediary bodies.

7 In accordance with Article 2 of the financial table annexed to the authorisation decision, the ERDF assistance represented approximately 60% of the expected total cost of the project in question and was to be made up by a contribution from the Regione Siciliana of ECU 3 758 000 and a contribution from the private sector of ECU 540 000.

8 The first paragraph of Article 3 of the authorisation decision set as 31 December 1993 the time-limit by which all legally binding commitments permitting the expenditure were to be made and as 31 December 1995 that by which that expenditure was to be made:

'The Community assistance may be used for expenditure in connection with the operations provided for by the global grant which, in the Member State, will have given rise — before 31 December 1993 — to legally binding commitments and the acceptance of liability for the corresponding financial commitments. The time-limit by which that expenditure must be made is set as 31 December 1995.'

9 However, the second paragraph of Article 3 of the authorisation decision allowed the Commission to extend those time-limits:

'The Commission may, however, extend those time-limits at the request of the Member State made before expiry of the last time-limit set, if the information supplied justifies such an extension. If the time-limits have not been extended by the Commission, expenditure made after the time-limit set for it can no longer receive Community assistance.'

10 On 22 March 1993, the Commission paid an advance of ECU 3 380 000 to the Italian Finance Ministry as part of the ERDF assistance. That advance was not paid to the CIS, the intermediary body responsible for that assistance and the applicant in this case.

Agreement between the CIS and the Commission

11 On 2 September 1993, in accordance with the second paragraph of Article 1 of the authorisation decision, the CIS and the Commission signed an agreement in order to define the rules governing the utilisation of the global grant granted by the authorisation decision ('the agreement between the CIS and the Commission').

12 Pursuant to the second paragraph of Article 1 of the agreement between the CIS and the Commission, the Community assistance 'is intended for the creation of a centre supplying to undertakings, in particular to small and medium-sized undertakings, ... both value-added information services and services intended to develop entrepreneurial initiatives with Milanese undertakings or those linked thereto'.

13 Article 5 of that agreement describes the seven measures which were to be implemented by the CIS as part of the Community assistance, namely:

— Measure No 1: creation of the information centre;

— Measure No 2: completion of a system of information on Sicilian undertakings;

— Measure No 3: offer of an advanced information service for undertakings;

— Measure No 4: creation of investment and collaboration packages;

— Measure No 5: use of external offices;

— Measure No 6: promotion of collaboration;

— Measure No 7: marketing and communications.

In particular, Measure No 1 was intended to 'constitute and create a service centre with access to national and international service networks in order to encourage the integration of Sicilian undertakings in the market'.

14 Article 14 of the agreement between the CIS and the Commission specifies the following:

'The Commission, in agreement with the Member State, may — if the intermediary accepts liability for serious failures to fulfil its obligations — annul at any time the commitments made under the present agreement by acknowledging the amounts due to the intermediary for commitments made and activities carried out to implement the global grant until the date of notification of termination of the contract.'

Negotiation of the agreement between the CIS and the Regione Siciliana

15 By letter of 12 November 1993 to the Commission, the Italian authorities and the Regione Siciliana, the CIS asked the Commission to extend by one year the time-limits set in Article 3 of the authorisation decision (namely 31 December 1993 to make the legally binding financial commitments and 31 December 1995 to effect the expenditure).

16 That letter explained that the delay which had occurred in signing the agreement between the CIS and the Regione Siciliana, which was to allow the CIS to receive the contribution from the Regione Siciliana, was due to the late communication of the opinion of the Consiglio di giustizia amministrativa (Council of Justice) and in consequence the delivery of the bank guarantees necessary for the entry into force of the agreement between the CIS and the Commission was delayed.

17 The Commission agreed to extend until 31 December 1994 the time-limit for making financial commitments.

18 On 13 December 1994, the CIS and the Regione Siciliana signed an agreement to define the rules governing the utilisation of the assistance granted by the Regione Siciliana as a supplement to that of ERDF ('the agreement between the CIS and the Regione Siciliana').

19 Article 15 of the agreement between the CIS and the Regione Siciliana specified, however, that that agreement also required, in order to enter into force, a decree from the president of the region and intervention by the Court of Auditors. Those formalities were to be satisfied on 29 March 1995, on which date the agreement entered into force.

20 Article 11 of the agreement between the CIS and the Regione Siciliana states that the Regione Siciliana may at any time annul the commitments made under the agreement if the intermediary has failed in an extremely serious manner to fulfil its obligations, whilst 'acknowledging the amounts due to the intermediary for commitments made and activities carried out to implement the global grant until the date of notification of termination of the contract'.

21 In 1994, the CIS implemented, by means of advances from its own registered capital, the first measure which was to be effected with the Community assistance, namely 'to constitute and create a service centre to access national and international service networks in order to facilitate the integration of Sicilian undertakings in the market'. Those operations consisted of employing staff and obtaining specific financial resources in order to ensure concrete assistance to regional and Community bodies and to create contacts with undertakings and associations. According to the CIS, such work had to be undertaken because if it was not the delays which would ensue would have been irreversible. The CIS notified the Commission of these operations via the Italian State and regional administrations.

22 On 15 December 1994, a meeting of the project management committee took place in Palermo in the presence of representatives of the CIS and an official from the Regional Policy Directorate-General (DG) of the Commission. At the meeting, the official indicated that the deliberations of the board of the CIS on the plans for implementing the project and on its undertaking to implement it could come within the concept of 'commitments to be made by 31 December 1994' pursuant to Article 3 of the authorisation decision.

From the second request for an extension of the time-limits laid down in Article 3 of the authorisation decision to the contested decision

23 During the month of December 1994, the Regione Siciliana sent the Commission a second request for an extension of the time-limits for granting the ERDF assistance, which was refused by the Commission.

24 By letter of 21 September 1995, the Commission informed the CIS of its refusal to grant the extension requested by the Regione Siciliana and asked it to communicate the amount of expenditure effected so that it could establish the ERDF share thereof:

'... We advise you that the Commission has not been able to accept your request for an extension of the time-limits for the financial commitments because of the absence of valid decisions to enter into commitments with beneficiary undertakings, despite the timely grant of a decision extending by one year (which expired on 31 December 1994). We also need to know as soon as possible the amount of your financial commitments in order to determine the amount of our own.'

25 On 20 October 1995, following the Commission's refusal to extend the time-limits for the implementation of the global grant, the CIS gave formal notice that it was impossible for it to continue the project which constituted its corporate purpose and had decided on the early dissolution of the company, which had the effect of putting it into liquidation.

26 In order to obtain reimbursement of the costs incurred in the implementation of the project in the amount of the share borne by the Regione Siciliana, the CIS submitted to that region's authorities a list of the expenditure effected thereunder in the total amount of ITL 711 587 000. The CIS also asked the Regione Siciliana to forward an analogous request for reimbursement relating to the sums lodged with the Italian Ministry of Finance in respect of the ERDF assistance.

27 By letter of 9 March 2001, the Italian authorities sent the Commission the final statement of the expenditure effected by the CIS in connection with the assistance and the documentation relating thereto, giving the sum of ITL 688 505 743 as expenditure declared admissible by the regional authorities.

28 By letter of 27 December 2001, the Commission decided to open the procedure laid down in Article 24 of Regulation No 4253/88 by inviting the Italian authorities and the beneficiary of the assistance to submit their comments. The letter stated that the Commission was considering withdrawing the ERDF assistance and seeking reimbursement of the advance made on the ground that the documents submitted 'manifestly showed that the expenditure declared related only to the creation of the CIS's activities', whilst the activities of information, assistance and promotion did not appear in the expenditure declared, although those activities should have been carried out by the CIS in accordance with the agreement made between it and the Commission, which led the Commission to take the view that 'the [CIS], which ceased all its activities on 6 December 1995, had never been operational'.

29 By letter of 11 March 2002, the Regione Siciliana submitted to the Commission the observations of the liquidator of the CIS on the decision to open the procedure laid down in Article 24 of Regulation No 4253/88. The letter pointed out that the Italian authorities had informed the Commission that the expenditure declared admissible following the certification procedure carried out by the Regione Siciliana was ITL 688 505 743, that that expenditure was effected by the CIS as part of the activities inherent in the completion of Measure No 1, 'Creation of the information centre', and that the Board of the CIS had adopted a number of decisions relating to the other measures in respect of which the assistance was granted, such as Measure No 3, 'Offer of an advanced information service for undertakings', for which the databases and necessary staff resources had been identified, and Measure No 5, 'Use of external offices', the feasibility projects for which had been adopted. The letter also indicated that the failure to complete the project was not the result of the activity or inactivity of the CIS, but of the delayed conclusion of the agreement between the CIS and the Regione Siciliana and consequently of the delayed co-financing from that region.

30 By Decision C (2002) 4155 of 15 November 2002, addressed to the Italian Republic, the Commission withdrew the ERDF assistance of ECU 6 760 000 granted by the authorisation decision and requested the Italian authorities to refund the advance paid under that assistance (the 'contested decision').

Procedure and forms of order sought

31 By application lodged at the Registry of the Court of First Instance on 14 March 2003, the applicant brought the present proceedings.

32 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance decided to open the oral procedure and, by way of measures of organisation of procedure, the applicant and the Commission were asked to produce certain documents and reply in writing to various questions.

33 By letters from the applicant of 31 December 2004 and from the Commission of 6 January 2005, the parties complied with the measures of organisation of procedure taken by the Court.

34 The parties presented oral argument and replied to the questions put to them by the Court at the hearing on 1 February 2005. On that occasion, the applicant confirmed that it did not dispute the contested decision in that it withdrew the assistance, but merely in that it did not provide for reimbursement of the share for which the ERDF was liable with regard to the expenditure effected by the CIS in the framework of the assistance in the certified amount of ITL 688 505 743.

35 The applicant claims that the Court should:

— annul the contested decision in so far as it does not provide for reimbursement of the share of the ERDF with regard to the expenditure effected by the CIS in the framework of the assistance in the certified amount of ITL 688 505 743;

— order the Commission to pay the costs.

36 The Commission contended that the Court of First Instance should:

— dismiss the application;

— order the applicant to pay the costs.

Law

Arguments of the parties

37 The applicant puts forward eight pleas in its application: the first plea alleges infringement of Article 24 of Regulation No 4253/88; the second plea alleges an abuse of power on the part of the Commission; the third plea alleges infringement of Article 14 of the agreement concluded between the CIS and the Commission; the fourth plea alleges infringement of the 'principle of *force majeure*'; the fifth plea alleges infringement of the principle of proportionality; the sixth plea alleges infringement of the principle of legal certainty; the seventh plea alleges infringement of the principle of protection of legitimate expectations and the eighth plea alleges misuse of powers.

38 More particularly, under the second plea, the applicant submits incidentally that the Commission could not be unaware that its refusal to extend the time-limits laid down for the operation would inevitably entail the ceasing of the activities which were to lead to the full implementation of the global grant.

39 In the same way, in the context of the third plea, the applicant submits that the Commission has infringed Article 14 of the agreement concluded between the CIS and the Commission, to the extent that that provision permits the Commission to annul the commitments made under the agreement if the intermediary has failed in a serious manner to fulfil its obligations, whilst acknowledging that the intermediary is entitled to reimbursement of the expenditure for the commitments made and the activities carried out to that end. In the present case, a fortiori, the Commission should therefore have granted the reimbursement of expenditure effected by the CIS in implementing the assistance, since the failure to achieve that is not the result of inactivity on the part of the CIS but of facts outside its control and the CIS did everything possible to carry out the activities required.

40 According to the Commission, Article 14 of the agreement between the CIS and the Commission does not apply to the present case inasmuch as it covers the situation where the Commission unilaterally terminates the agreement. This case concerns the withdrawal of Community assistance by the Commission because of irregularities or significant changes affecting the conditions for the implementation of the operation and Article 24 of Regulation No 4253/88 is the only provision applicable.

41 Furthermore, in the context of the fifth plea, the applicant claims infringement of the principle of proportionality in that the Commission, by rejecting the request for reimbursement of the expenditure already effected by the CIS, exceeded what was 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). Thus, the Commission should have taken account of the circumstances of the case in order to avoid adopting a decision which penalises the CIS by requiring it to bear the responsibility for the delays for which the Regione Siciliana was responsible. In that regard, the applicant points out that, because of the contested decision, it has lost the right to all of the assistance provided for by the authorisation decision, which it does not dispute. What it considers to be disproportionate, however, is the refusal by the Commission to repay it the amount of the expenditure effected by the CIS in relation to the implementation of the operation, expenditure which has been found and certified to be true and justified by the Italian authorities and which was initially even accepted by the Commission.

42 According to the Commission, the withdrawal of the entire assistance does not constitute an infringement of the principle of proportionality if the conditions which justify it are satisfied. In the present case, the Commission took the view, in the light of the documents submitted by the national authorities and in accordance with its discretionary power held by virtue of Article 24 of Regulation No 4253/88, that it had to withdraw the Community assistance. In particular, it points out that only one of the seven measures provided for under the project had been carried out, that that measure was limited to the creation of the body enabling the other measures to be carried out and that that body could not possibly operate because it had been put

into liquidation in October 1995, even before the time-limit for payment had expired and in any event before it could become operational.

43 Finally, with regard to the seventh plea, the applicant alleges infringement of the principle of protection of legitimate expectations in that the contested decision withdraws the entire assistance without taking account of the consequences of such a step for the CIS, which, complying with the provisions governing the case and convinced that its actions were correct, had, in good faith, within the limits of its powers and capabilities, carried out all the activities necessary with a view to the implementation of the global grant. Consequently, the Commission should have taken account of the expenditure effected as part of the implementation of the assistance, correctly certified and submitted, rather than deciding to withdraw the assistance without reimbursing that expenditure.

44 According to the Commission, the protection of legitimate expectations requires three conditions in Community law: firstly, precise, unconditional and corroborating assurances must have been given to the party involved by the Community authorities; secondly, those assurances must be such as to give rise to a legitimate expectation on the part of the recipients and, thirdly, the assurances given must comply with the applicable rules (Case T-203/97 *Forvass* v *Commission* [1999] ECR-SC I-A-129 and II-705, paragraphs 70 and 71). In the present case, none of those three conditions is met. Thus, it was on its own initiative that the CIS effected expenditure corresponding to the amount of the assistance. The Commission recognises that it did not oppose that initiative taken by the CIS, but it submits that it did not require the CIS to do so, either, and could not, therefore, have caused the applicant to have any legitimate expectation that such expenditure would be reimbursed. Furthermore, the Commission notes that the authorisation decision and the agreement between the CIS and the Commission indicated that the global grant was granted for the opening and operation of the information centre within the time-limits set. No provision therefore leads to the conclusion that the expenditure incurred in connection with the implementation of the project would be reimbursed if the project were not completed.

Findings of the Court

45 The facts and the arguments submitted by the applicant in the administrative proceedings and repeated in its pleadings may be summarised as follows:

— the CIS has committed no irregularity nor made any amendments to the implementation of the assistance, but was merely the victim of the actions of the Regione Siciliana;

— the CIS implemented Measure No 1 and indicated to the Commission that it had made several commitments relating, inter alia, to Measures No 3 and No 5;

— the Commission has not taken into consideration the assurances given at the meeting of the project management committee on 15 December 1994, during which its representative indicated which measures could be taken to satisfy the condition relating to the commitments to be made before 31 December 1994;

— the Commission has failed to recognise the fact that it was as a result of its refusal to extend the time-limit which would have permitted the making of binding legal and financial commitments that the activities relating to the assistance could not be carried out;

— the liquidation of the CIS is thus merely the direct consequence of the refusal to extend that time-limit, which of necessity meant that it was impossible to carry out the assistance;

— the Commission has also altered its position from that adopted in its letter of 21 September 1995, in which it asked the CIS to indicate the amount of the expenditure effected in order to establish the share of the EDRF.

46 It should be noted that the insufficiency or lack of reasoning constitutes an infringement of essential procedural requirements within the meaning of Article 230 EC and is a matter of public policy which the Community judicature must raise of its own motion (Case C-166/95 P *Commission* v *Daffix* [1997] ECR I-983, paragraph 24; Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 67; Case T-206/99 *Métropole télévision* v *Commission* [2001] ECR II-1057, paragraph 43).

47 It should also be recalled that, according to consistent case-law, the statement of reasons for an individual decision adversely affecting a person must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review (*Commission* v *Sytraval and Brink's France*, cited above, paragraph 63 and *Métropole télévision* v *Commission*, cited above, paragraph 44).

48 In the present case, the contested decision does not comment on the various facts and arguments cited above, in particular with regard to the question whether or not those factors could justify reimbursement of the expenditure effected by the CIS before the withdrawal of the assistance, even though a response to those points is essential in order to enable the Court of First Instance to determine whether the contested decision is well founded.

49 With regard to the part relating to the 'implementation of the project', the contested decision merely states that 'the beneficiary was put into liquidation on 20 October 1995' (sixth recital), that the final statement of expenditure and the documentation

relating thereto were submitted to the Commission and that the expenditure declared by the beneficiary amounted to ITL 711 584 000, of which ITL 688 505 743 was declared admissible following the check carried out by the Regione Siciliana authorities (seventh recital).

50 With regard to the part relating to the 'reaction of the Member State concerned', the contested decision specifies as follows (10th recital):

'By letter of 11 March 2002 ... , the Italian authorities sent the additional information requested, prepared by the liquidator [of the CIS]. That information confirmed that:

— the expenditure reported amounts to ITL 711 584 000 and that which was declared admissible following the certification carried out by the Regione Siciliana authorities amounted to ITL 688 505 743;

— the activities relating to the global grant related solely to Measure No 1 'creation of the information centre';

— the right to payment was based on the prior condition that a failure to achieve the aim given was not the result of the activity (or inactivity) of the CIS, but of the late conclusion of the agreement between the Regione Siciliana and the beneficiary, and consequently of the delayed co-financing from the Regione Siciliana.'

51 With regard to the part relating to the 'Commission's assessment', the contested decision merely states as follows (12th recital):

'...

— the aim of the global grant consisting in carrying out the activities described in Article 5 of the agreement [between the CIS and the Commission] has not been achieved, given that, of the seven measures laid down in that article, only Measure No 1, "creation of the CIS information centre", has been carried out;

— nor do the arguments put forward by the CIS justify taking into consideration the reported expenditure relating to the measure "creation of the CIS information centre". The reasons submitted for the failure of the global grant, based on the late co-financing on the part of the Italian authorities, do not justify the request for a Community contribution inasmuch as the subsidy was granted for the implementation of the activities set out in the agreement [between the CIS and the Commission]. The aim of the grant of the global grant was the activity of an information centre. That centre was never operational and was put into liquidation after having implemented only one of the seven measures laid down by the agreement [between the CIS and the Commission]. Consequently, the [non-]performance of the agreement [between the CIS and the Commission] justifies the withdrawal of the assistance granted in the form of a global grant and the recovery of the advance paid.'

52 It should be noted that the contested decision does not mention the events which took place between 2 September 1993, when the agreement between the CIS and the Commission was signed, and 20 October 1995, when the CIS was put into liquidation.

53 Firstly, the contested decision makes no reference to the first request for an extension of the time-limits submitted by the CIS to the Commission on 12 November 1993 or to the Commission's decision to extend to 31 December 1994 the time-limit set for making the financial commitments provided for under the first paragraph of Article 3 of the authorisation decision.

54 Secondly, the Commission's refusal to grant the second request, made by the Regione Siciliana, for an extension of the time-limits, which had the automatic effect of preventing the CIS from implementing the assistance, is not mentioned in the contested decision. The Commission has found no trace of these two documents, as it indicated to the Court in reply to the request to produce those documents. However, it should be noted, as an incidental point, that the second paragraph of Article 3 of the authorisation decision allowed the Commission to extend those time-limits if the information supplied justified it.

55 Thirdly, the letter from the Commission to the CIS dated 21 September 1995 is ignored in the contested decision, even though that letter informs the CIS that 'the Commission has not been able to accept [the second] request for an extension of the time-limits for the financial commitments because of the absence of valid decisions to enter into commitments with beneficiary undertakings'. It should be noted that the reason referred to in this letter is contrary to the position expressed at the meeting of the project management committee held on 15 December 1994 in Palermo in the presence of representatives of the CIS, an official from the Regional Policy DG of the Commission and officials from the Regione Siciliana, during which the question of the commitments to be made before 31 December 1994 was raised. At that meeting, the Commission official noted, according to the report contained in the observations of the CIS on the decision to open the procedure laid down in Article 24 of Regulation No 4253/88 sent on 11 March 2002 to the Commission, which has not been disputed by the latter: 'In the CIS's exact situation, it could be considered that the decision by which the Board of the CIS approves the projects for implementation of the measures and the overall commitment to carry out the project as envisaged is covered by the concept of "commitments to be made before 31 December 1994".' It was therefore in order to comply with that interpretation that the Board of the CIS adopted, on 20 December 1994, several decisions relating

to the implementation of the project, inter alia in respect of Measure No 3 (offer of an advanced information service for undertakings), for which the databases and necessary staff resources had been identified, and Measure No 5 (use of external offices), the feasibility projects for which had been adopted.

56 On that point, the contested decision confirms that only Measure No 1 (creation of the information centre) had been implemented, without commenting on the arguments submitted by the CIS in the letter of 11 March 2002, cited above, with regard to the implementation of Measures No 3 and No 5, even before the Commission refused to grant the second extension of the time-limits.

57 Fourthly, the contested decision also overlooks the content of the Commission's letter to the CIS of 21 September 1995, which asked the CIS 'to communicate, as soon as possible, the amount of [its] commitments so that it could establish the amount [of the Commission's commitments]'. It may reasonably be inferred from that request that the Commission had thus agreed to reimburse part of the expenditure effected by the CIS for the implementation of the assistance.

58 Furthermore, the contested decision, which does, however, justify the withdrawal of the assistance and the refusal to grant reimbursement on the basis of the non-performance of all the measures provided for in Article 5 of the agreement between the CIS and the Commission, does not take account of the possibility offered by Article 14 of that agreement, which specifies that, if the intermediary accepts liability for serious failures to fulfil its obligations, the Commission may annul at any time the commitments made under that agreement 'by acknowledging [however] the amounts due to the intermediary for commitments made and activities carried out to implement the global grant up to the date of notification of termination of the contract'. If the expenditure effected to implement the global grant can be reimbursed in the case of serious failures on the part of the intermediary to fulfil its obligations, it is difficult to understand why such expenditure cannot be reimbursed

in the absence of such serious failures on the part of the applicant to fulfil its obligations.

59 Consequently, it follows from all the foregoing that the contested decision is vitiated by defects in reasoning such that the Court is not in a position to review it. In particular, the Court cannot assess the legality of the contested decision with regard to the principles of proportionality and protection of legitimate expectations.

60 As a result, it is appropriate to annul the contested decision inasmuch as the Commission has infringed the duty to give reasons imposed on it by Article 253 EC. The contested decision does not give sufficient reasons as to reimbursement of the share of the ERDF with regard to the expenditure effected by the CIS in the framework of the assistance in the certified amount of ITL 688 505 743.

Costs

61 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been unsuccessful and the applicant applied for costs against the Commission, the Commission must be ordered to bear its own costs and to pay those incurred by the applicant.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. **Annuls Commission Decision C (2002) 4155 of 15 November 2002 on the withdrawal of assistance from the European Regional Development Fund granted by Commission Decision C (93) 256/4 of 16 February 1993 in so far as it withdraws assistance concerning the expenditure effected by the Centro informativo per la collaborazione tra le imprese e la promozione degli investimenti in Sicilia SpA in the certified amount of ITL 688 505 743;**

2. **Orders the Commission to bear its own costs and to pay those incurred by the applicant.**

Cooke García-Valdecasas Labucka

Delivered in open court in Luxembourg on 22 June 2005.

H. Jung J.D. Cooke

Registrar President