JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
18 September 2003 *

In Case T-321/01,

Internationaler Hilfsfonds eV, established in Rosbach (Germany), represented by H. Kaltenecker, lawyer,

applicant,

v

Commission of the European Communities, represented by M.-J. Jonczy and S. Fries, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: French.

APPLICATION for annulment of the Commission's decision of 16 October 2001 refusing applications for the co-financing of two projects submitted by the applicant in December 1996 and September 1997,

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

composed of: K. Lenaerts, President, J. Azizi and M. Jaeger, Judges,

Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 7 May 2003,

gives the following

Judgment

Legal framework

1 The European Union budget provides a budget line (B7-6000) for the Community contribution towards schemes concerning developing countries and carried out by non-governmental organisations (hereinafter 'NGOs'). That budget line was

introduced in 1976 as the result of a communication from the Commission to the Council of 6 October 1975 putting forward guidelines on relations with non-governmental organisations in the field of development cooperation (COM(75) 504 final).

2 At the time of the facts of the case, the Commission was responsible for managing the funds booked to that budget line, in compliance with its obligations under the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities (OJ 1977 L 356, p. 1), replaced as from 1 January 2003 by Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).

3 Under that budget line, NGOs can obtain Community subsidies for development assistance projects by submitting applications for co-financing to the Commission. Until 2000, applications for co-financing could be submitted at any time and without waiting for a call for proposals. Since then, the Commission has put out calls for proposals.

4 At the material time, the conditions for co-financing were laid down in a document adopted by the Commission in 1988, entitled 'General Conditions for the co-financing of projects undertaken in developing countries by... (NGOs)' (hereinafter 'the General Conditions'). That document sets out criteria for the eligibility of NGOs and of projects, provides specific instructions as to how to present applications and furnishes detailed explanations of financing procedures. A new version of the General Conditions was adopted in 2000, at the time the first call for proposals was launched. The General Conditions are not published in the *Official Journal of the European Communities*.

5 Chapter I of the General Conditions defines the criteria for the eligibility of NGOs as follows:

'§1 In order to be eligible for co-financing under the General Conditions, the NGO must satisfy the following conditions:

1.1 it must be established as an autonomous, non-profit-making NGO in a Member State of the European Community, in accordance with the legislation in force in that State;

1.2 it must have its head office in one of the Member States of the European Community;

1.3 its head office must be the effective decision-making centre for all co-financed projects;

1.4 the bulk of its human and financial resources must be of European (Community) origin.

§2 In order to determine whether an NGO may be eligible for co-financing, the following factors shall be taken into account:

2.1 its ability to mobilise solidarity and private resources within the European Community for its development activities in developing countries;

2.2 the priority which it attaches to development aid in developing countries;

2.3 its experience with regard to aid for developing countries;

2.4 its ability to support development projects proposed by partners in the developing countries;

2.5 the nature and extent of its links with similar organisations in the developing countries;

2.6 the nature and extent of its links with other NGOs both inside and outside the European Community;

2.7 its administrative management capacity and, where appropriate, its past performance in meeting its obligations under previous co-financing contracts with the Commission.

§3 An eligible NGO which satisfies the above conditions but is acting on behalf of a non-eligible NGO and has no influence on the execution of the projects and is not contributing towards the co-financing of such projects, cannot obtain co-financing.'

Facts

6 Internationaler Hilfsfonds eV (hereinafter 'IH') is an NGO governed by German law which provides support to refugees and to victims of war and catastrophe. Between 1993 and 1997 it submitted six applications for the co-financing of projects to the Commission.

7 When the Commission services assessed the first applications, they concluded that the applicant was not eligible as an NGO according to the criteria laid down in the General Conditions. The Commission informed the applicant of its ineligibility by letter of 12 October 1993.

8 The applicant challenged that decision in many conversations with the Commission and in numerous letters.

9 By letter of 29 July 1996, the Commission set out the principal reasons which had led it in 1993 to determine that IH was ineligibile as an NGO.

10 These arose from the fact that the applicant failed to satisfy some of the conditions laid down in the General Conditions. This was the case, *inter alia*, with regard to the following conditions: all decisions concerning co-financing projects had to be taken at the applicant's head office; the bulk of its financial resources had to be of European origin; the applicant had to have the ability to mobilise private funds for its projects and the administrative capacity to manage its projects. In its letter of 29 July 1996, the Commission stated that it was unable

clearly to distinguish the applicant's fields of activity, financing sources, expenses, competencies or decision-making structures from those of InterAid International (United States), an NGO related to the applicant.

11 On 5 December 1996, the applicant submitted a fifth project to the Commission. The Commission proposed that the applicant carry out an audit, but they were not able to reach agreement in that regard. An amended version of that 1996 project was submitted to the Commission under a new application in September 1997. The Commission did not take a decision on the new application for co-financing, since it considered that the decision of 12 October 1993 in respect of the applicant's ineligibility as an NGO remained valid.

12 The applicant then lodged three successive complaints with the European Ombudsman, one in 1998 and the other two in 2000. Those complaints essentially related to two questions, namely access to the file and whether the Commission had handled the applicant's requests fairly and objectively.

13 As regards access to the file, the Ombudsman found that the list of documents which the Commission had provided to the applicant was incomplete, that the Commission had held back certain documents without cause and that, consequently, the Commission's conduct could constitute maladministration. He proposed that the Commission authorise suitable access to the file. That access to the file was provided in the Commission's offices on 26 October 2001. The Ombudsman also found an instance of maladministration in the fact that the applicant was not given a formal hearing on the information received by the Commission from third parties — information which had been used in taking a decision against the applicant.

14 As regards fair and objective consideration of the applications, the Ombudsman first criticised the fact that the Commission had allowed a long period of time to

elapse before providing in writing (by the letter of 1996) the reasons which had led it in 1993 to find that IH was ineligible as an NGO. As regards consideration of the information provided by third parties, the Ombudsman found in his draft recommendation of 19 July 2001 that there had been no maladministration. Finally, as regards the fact that the Commission had not taken a formal decision on the applications submitted by the applicant in December 1996 and September 1997, the Ombudsman recommended that the Commission should reply before 31 October 2001.

15 In order to comply with the Ombudsman's recommendation, on 16 October 2001 the Commission sent the applicant a letter rejecting the two applications (hereinafter 'the contested decision'). In that letter, the Commission notes that the Ombudsman recommended that it take a decision on the projects submitted in December 1996 and September 1997. It apologises for the amount of time which had elapsed since the applications at issue had been submitted and explains its silence by the fact that, once its services decide that an organisation is not eligible for Community co-financing as an NGO, that decision automatically results in the rejection of subsequent project proposals by that organisation, until such time as the organisation satisfies the criteria for the eligibility of NGOs. It states that its services waited for the Ombudsman's decision before responding expressly to the last two applications for co-financing. The Commission then states: 'The Ombudsman was of the opinion that the decision taken by the Commission as regards the ineligibility of... [IH] did not constitute an instance of maladministration. The Commission services therefore regret to inform you expressly that the two projects submitted in December 1996 and September 1997 respectively have been rejected because your NGO is not eligible for co-financing'. The Commission also invites the applicant to submit a further application for co-financing under the new rules in force, in order to allow its services to re-examine the current eligibility both of the applicant as an NGO and of the projects which the applicant wishes to set up.

16 The applicant reacted to the Ombudsman's draft recommendation of 19 July 2001 as regards the consideration of information received from third parties. The

Commission did not reconsider that question in the opinion it sent the Ombudsman on 5 November 2001. In his decision of 30 November 2001, the Ombudsman concluded that the Commission had failed to handle the applications for co-financing fairly and objectively.

Forms of order sought

17 By application lodged on 15 December 2001, the applicant brought the present action against the letter of 16 October 2001. It states that the application implicitly refers to the grounds put forward by the Commission in its opinion of 5 November 2001.

18 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance decided to open the oral procedure. The parties responded to written questions posed by the Court.

19 At the hearing on 7 May 2003 the parties presented oral argument and replied to the questions put by the Court.

20 The applicant claims that the Court of First Instance should:

— annul the Commission's decision of 16 October 2001 rejecting the applications for co-financing of December 1996 and September 1997;

— rule on the principle of reimbursement by the Commission of the costs of the proceedings, including those resulting from the proceedings before the Ombudsman.

21 The Commission contends that the Court of First Instance should:

— dismiss the action as inadmissible and, in the alternative, as unfounded;

— order the applicant to bear the costs; in the alternative, the Commission disputes the claim that costs relating to the proceedings before the Ombudsman can be reimbursed.

Law

Admissibility

Arguments of the parties

22 The Commission contends that the action is inadmissible because it is out of time. It also contends that the applicant has no legal interest in bringing proceedings.

— The action is out of time

23 The Commission recalls that according to settled case-law, an action for annulment brought against a decision which merely confirms an earlier decision which has not been challenged in good time is inadmissible. According to that case-law, a decision is a mere confirmation of an earlier decision where it contains no new factors as compared with the earlier measure and is not preceded by any re-examination of the situation of the addressee of the earlier measure (Joined Cases T-83/99 to T-85/99 *Ripa di Meana and Others* v *Parliament* [2000] ECR II-3493, paragraph 33, and case-law cited).

24 The Commission maintains that the contested measure merely confirms an earlier decision, namely the decision taken in 1993 as to the ineligibility of IH as an NGO. The applicant is challenging the latter decision. However, at the time the decision was adopted in 1993, the applicant chose not to avail itself of its right to bring an action. Nor did the applicant challenge the letter of 29 July 1996 which it subsequently made central to its argument.

25 The applicant asks what earlier decision is being referred to by the Commission: the letter of 29 July 1996, which contains only bogus justification for the criteria used, or the letter of 12 November 1993, which contains no justification whatsoever. Moreover, the case-law cited relates to completely different cases. In addition, the applicant points out that its argument revolved around the contested decision.

— Legal interest in bringing proceedings

26 The Commission denies that the applicant has a legal interest in bringing proceedings. As is clear from the contested measure, the Commission invited the

applicant to submit a new file in the framework of the call for proposals. The Commission is therefore ready to reconsider IH's eligibility on the basis of its present situation and in the light of the new General Conditions set out in 2000. It follows that the applicant has no legal interest in obtaining the annulment of the contested decision, which was taken under the earlier system for determining eligibility.

27 The applicant asks whether its legal interest in bringing proceedings can be challenged after the numerous efforts it has made. As regards the defendant's argument that it is prepared to reconsider the question of eligibility on the basis of the applicant's present situation, the applicant asks why the Commission did not reconsider its position when it invited the applicant to submit a new project on the basis of new documentation. The legal situation of the applicant has not changed between 1996/1997 and today. Finally, since the Commission did not accept an amicable agreement, the applicant had no recourse other than to bring the present action before the Court of First Instance.

Findings of the Court

28 The Commission contends, first of all, that the application is out of time. It maintains that the contested measure merely confirms an earlier decision of ineligibility, which was taken in 1993 and was not challenged within the prescribed period. Nor did the applicant challenge the letter of 29 July 1996.

29 First, it must be pointed out that in the contested decision the Commission explains its silence as regards the 1996 and 1997 projects by the fact that, once its services decide that an organisation is not eligible for Community co-financing as an NGO, that decision of ineligibility automatically results in the rejection of subsequent project proposals by the same organisation, until such time as the

organisation meets the criteria for eligibility as an NGO. The Commission then expressly informs the applicant that the two projects submitted in December 1996 and September 1997 respectively have been rejected because of the 1993 decision that IH was not eligible for Community co-financing.

30 It should also be pointed out that the applicant did not challenge either the decision of 1993 or the letter of 1996. The applicant did not lodge its first complaint with the Ombudsman until 1998 and did not bring the present action until 2001.

31 It is settled case-law that an action for annulment of a decision which merely confirms an earlier decision which has not been challenged in good time is inadmissible. According to that case-law, a decision is a mere confirmation of an earlier decision where it contains no new factors as compared with the earlier measure and is not preceded by any re-examination of the situation of the addressee of the earlier measure (*Ripa di Meana and Others* v *Parliament*, cited in paragraph 23 above, paragraph 33, and case-law cited).

32 Nevertheless, each application for co-financing is autonomous and must be judged in its entirety on its own merits. Therefore, before deciding whether to provide financial support for a project proposed in an application for co-financing, the Commission must, for each application submitted, consider whether the NGO in question satisfies the conditions for eligibility.

33 It is true that the Commission may refer to other, earlier decisions in the contested decision. In the present case, in refusing co-financing for two projects submitted in December 1996 and September 1997, the Commission referred to

the decision on ineligibility taken in 1993 and explained in 1996. The grounds for the Commission's decision that the applicant was ineligible as an NGO were in that way incorporated in the contested decision. It remains the case, however, that the latter constitutes an autonomous and self-sufficient decision which may therefore be challenged in court.

34 It follows that the plea of inadmissibility to the effect that the application is out of time must be dismissed.

35 The Commission denies, secondly, that the applicant has a legal interest in bringing proceedings.

36 It must be recalled that an action for annulment brought by a natural or legal person is admissible only in so far as that person has an interest in the contested measure being annulled (Case T-46/92 *Scottish Football Association* v *Commission* [1994] ECR II-1039, paragraph 14). Such an interest exists only if the annulment of the measure is of itself capable of having legal consequences (Case 53/85 *Akzo Chemie* v *Commission* [1986] ECR 1965, paragraph 21).

37 Suffice it to point out that if the contested decision were annulled, that might provide grounds for an action for damages against the Community. The Commission's arguments must therefore be rejected.

38 It is clear from the foregoing that the action is admissible.

Substance

39 The applicant relies on two pleas in law. First, it challenges the fact that a decision by the Commission services that an organisation is not eligible as an NGO for Community co-financing automatically results in the rejection of subsequent project proposals, until such time as the organisation satisfies the criteria for the eligibility of NGOs. Secondly, the applicant challenges the grounds which led the Commission to adopt the decision of 12 October 1993 on its ineligibility and which were set out in the letter of 29 July 1996.

40 The Commission considers, first of all, that the application does not comply with Article 44(1)(c) of the Rules of Procedure of the Court of First Instance and that, in any event, it is unfounded.

First plea in law

Arguments of the parties

41 The applicant challenges the validity of the practice by which, when the competent Commission services find that an NGO is not eligible for Community co-financing, that decision automatically results in the rejection of subsequent project proposals until such time as the NGO satisfies the criteria for eligibility.

42 The applicant claims, first, that such a procedure results in an anticipatory finding against the NGO. That procedure does not conform to either the legal rules of the European Union or the principles of good administration. The applicant adds that it is not its task to establish what rules of law and what principles of good administration are infringed by such automatic decision-making. It is for the Commission to justify such a practice and to state which rules authorise it to take automatic decisions of that kind.

43 Second, the applicant points out that the letter of 12 October 1993 from the Commission tersely informed it that it did not satisfy the criteria for eligibility as an NGO. However, no information was provided as to the substance of those criteria. The applicant claims that such conduct amounts to an instance of maladministration.

44 The applicant observes that the Commission acknowledges that the decision of 12 October 1993 gave no statement of reasons. The applicant states that it could have challenged the decision on the grounds of that failure but that it preferred not to do so and to understand why and on what basis the decision had been taken. The applicant denies that the failure was rectified by the letter of 29 July 1996. It concludes that the Commission took as its basis a decision, namely that of 12 October 1993, which was null and void. The decision of 16 October 2001 is therefore unlawful as well.

45 Third, the applicant claims that the Commission fails to mention that the same Directorate-General had responded to other applications for project financing made by the applicant: the Commission contributed to a project to assist victims of Chernobyl; it found three other proposals admissible without the question of ineligibility arising. The applicant claims that determination of the applicable budget line is irrelevant. The conditions for financing can vary from one programme to another, but the question of the eligibility of an organisation as an NGO for Community co-financing is always set out in the same terms.

46 Fourth, the applicant maintains that the Commission displayed bad faith in the present case, as evidenced by the invitation to submit a new file under the call for proposals, since the Commission could have assessed the applicant's situation on its own initiative before taking the contested decision.

47 The applicant adds that it sent further information which the Commission claims not to have received or did not find sufficiently convincing. It maintains that it never received a request to complete its documentation and, even today, it does not know what additional information the Commission seeks to obtain.

48 The Commission asks the applicant, first, to establish which rules of Community law and which principles of good administration are infringed by the practice under which the finding that an NGO is ineligible automatically results in the projects it proposes being considered inadmissible. For the Commission, it is clear that the eligibility of an NGO is an indispensable condition for assessing whether any particular project is eligible for co-financing. The eligibility of the NGO can be considered a prerequisite condition. Moreover, that practice in no way constitutes an anticipatory finding against the NGO, since the decision relating to that prerequisite condition can be reviewed if and in so far as new financial or technical information is submitted.

49 Second, as regards the plea alleging that there was no statement of reasons for the decision of 12 October 1993, the Commission states that it does not intend to defend the practice which existed at that time of sending summary letters and only subsequently providing the reasons for the decision by telephone. It nevertheless asks the applicant to explain how the failure to state reasons for the decision of 12 October 1993 can affect the validity of the letter of 16 October 2001 which is the subject of the dispute. The Commission observes in that regard not only that the applicant did not challenge the letter of 12 October 1993 on account of a failure to state reasons but, in addition, that failure was rectified by the letter of 29 July 1996.

50 Third, the Commission maintains that the applicant never received funding under the co-financing budget line in respect of which the contested decision was adopted. It nevertheless acknowledges that the applicant received Community funding under another budget line in 1991, in the context of emergency humanitarian aid and, in 1998, in the context of the programme for technical assistance to the New Independent States of the former Soviet Union and Mongolia (TACIS).

51 The Commission observes that financing conditions vary from one programme to another. Therefore, it is not in principle excluded that the applicant could have satisfied the conditions of eligibility for one programme and not for another. Moreover, since it was in 1991 that the applicant obtained funding in the context of emergency assistance, it cannot be ruled out that the Commission service responsible for managing that budget line did not have the same information available to it as that which the service in charge of the budget line for NGO co-financing was able to obtain two years later. As regards the TACIS project, the Commission points out that its services encountered considerable difficulties in implementing the applicant's project. Following termination of the contract by the Commission in October 1999, a letter seeking recovery was issued against the applicant on 22 June 2000. The defendant also points out that the applicant lodged a complaint with the Ombudsman against another of the Commission services, namely the European Community Humanitarian Office (ECHO), which had refused to sign a partnership agreement with the applicant following its refusal to submit to an eligibility audit. The Commission accordingly concludes that the experience of some of its services other than the one involved in the present case confirms that the contested decision is well founded.

52 The Commission also maintains that it is not accurate to claim that there is inconsistency in the fact that the service responsible for the NGO co-financing budget line continued to communicate with the applicant concerning projects which it submitted, since the purpose of that dialogue was to make it possible to find a solution at some point to the problem of the applicant's eligibility.

53 Fourth, as regards the bad faith supposedly demonstrated by the Commission's invitation to the applicant to submit a new file, the Commission states that the arguments and information submitted by the applicant following the decision of 16 October 2001 were not sufficient to convince it to reverse that decision. However, as soon as the applicant submits new information which warrants a different assessment as regards the criteria for eligibility, the Commission will reverse its decision to consider the applicant ineligible.

Findings of the Court

54 The General Conditions for the co-financing of projects set out the conditions governing the eligibility of applicant NGOs and the eligibility of projects. Those cumulative requirements must be met in order for a project proposed by an organisation to receive Community co-financing.

55 It should be recalled that every application for co-financing is in principle autonomous and self-sufficient and must be judged in its entirety and on its own merits. Therefore, for each application submitted, the Commission must consider whether the NGO in question satisfies the conditions for eligibility and subsequently decide whether the project being proposed in the application for co-financing will be granted financial support.

56 It is worth pointing out in this connection that, in its letter of 29 July 1996, the Commission states:

'This clearly does not prevent [your agent] from submitting new applications to the Commission relating to the co-financing of development projects. In that case, it will be necessary to verify again whether the NGO satisfies our criteria.'

57 It follows that the Commission was bound to examine the eligibility of the applicant before taking a decision on the co-financing of the 1996 and 1997 projects.

58 However, the Commission did not do so. First of all it will be noted that, in the contested decision, the Commission, after informing the applicant that co-financing was refused, states:

'Nevertheless, the Commission is of the view that the characteristics of your NGO may have changed sufficiently so that the reasons which justified the decision of ineligibility no longer apply'.

59 It must also be noted that in its pleadings the Commission several times confirmed that it did not carry out an assessment of the applicant's eligibility. In particular, in response to the written question put by the Court of First Instance in that regard, it stated:

'The Commission, as it explained in its defence and in its reply, did not at the time the contested letter was drafted in October 2001 review the applicant's eligibility...'.

60 It is true that at the hearing the Commission showed some hesitation and made some contradictory statements on the subject. In addition, it asserts, in its defence, that the applicant cannot have provided new information which would have led to a different assessment of its eligibility. Nevertheless, when it was questioned to that effect during the hearing, the Commission did not provide the slightest evidence or indication that it assessed the eligibility of the applicant before it adopted the contested decision.

61 It must therefore be found that at the time it adopted the contested decision the Commission did not examine the eligibility of the applicant as an NGO, following the submission of the 1996 and 1997 projects for co-financing.

62 The Commission explains the failure to examine the applicant's eligibility by stating that when its services find that an NGO is not eligible for Community co-financing, that decision automatically results in the rejection of subsequent project proposals by that NGO, until such time as the NGO satisfies the eligibility criteria. It adds that the decision on eligibility may be reviewed if and in so far as new financial or technical information is submitted by the NGO.

63 The applicant challenges the validity of that automatic rejection procedure. It maintains, *inter alia*, that such a practice leads to an anticipatory finding against the NGO.

64 Although it is not necessary to rule on the validity of automatic rejection, it must be stated that that practice may in any event be used only in cases where, after the Commission has found that an NGO is not eligible for Community co-financing, the NGO has not presented new arguments in support of its eligibility. If an NGO, when it submits a new application for co-financing, also submits new arguments to establish its eligibility, the Commission must reconsider the eligibility of the NGO in the light of those new arguments and thus cannot have recourse to an automatic rejection procedure. Moreover, the Commission confirms that conclusion by stating, in its pleadings, that the decision concerning eligibility can be reviewed if and in so far as new financial or technical information is submitted.

65 Accordingly, it must be considered whether, in particular after the letter of 29 July 1996, the applicant has presented new arguments which demonstrate that it satisfies the required conditions for eligibility.

66 Questioned on this point at the hearing, the applicant at first stated that it had sent the Commission new arguments in support of its eligibility but that those documents were not part of the file.

67 However, it must be noted that on 5 December 1996, the applicant sent the Commission, in the context of its application for co-financing, a report which set out *inter alia* the personnel of IH and the financial accounts of its activities during the preceding years. It also referred to audit reports for 1994, 1995 and 1996.

68 Moreover, the applicant sent a letter to the Commission on 20 August 1997 to which it appended the annual financial management report up to 31 December 1996 drawn up by the auditing firm KPMG.

69 Although hardly necessary, it should be noted that on 14 July 1997 the chairman of IH sent the Commission a letter indicating that the NGO had been admitted into VENRO (Verband Entwicklungspolitik deutscher Nichtregierungsorganisationen) and that a detailed check had been carried out by the association on the development policy of German NGOs. That letter also refers to the audit documents drawn up by KPMG.

70 Accordingly, in the light of the new arguments put forward by the applicant for the purpose of establishing its potential eligibility for Community co-financing, the Commission could not apply an automatic rejection procedure but had, on the contrary, to examine the applicant's eligibility on the basis of that new information.

71 As noted in paragraphs 58 to 61 above, the Commission did not examine the applicant's eligibility. Consequently, there is no need to examine the other claims put forward by the applicant since, in the light of the foregoing considerations, the first plea must be upheld and the contested decision annulled as a result.

Second plea in law

72 Since the first plea has been upheld, there is no need to examine the second plea.

73 It follows from all the foregoing that the contested decision must be annulled.

Costs

74 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.

75 Since the Commission has been unsuccessful, it must be ordered to pay the costs.

76 The applicant also claims that the Commission should reimburse the costs of the proceedings before the Ombudsman.

77 The Commission disputes the fact that costs relating to the proceedings before the Ombudsman can be recovered, since they are not considered to be expenses necessarily incurred by the parties for the purposes of these proceedings.

78 Under Article 91(b) of the Rules of Procedure, 'the following shall be regarded as recoverable costs:... expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers'.

79 It follows from that provision that recoverable costs are confined to expenses which are both incurred for the purpose of the proceedings before the Court and indispensable for such purposes (order of the Court of Justice of 9 November 1995 in Case C-89/85 DEP *Ahlström Osakeyhtiö and Others* v *Commission*, not published in the ECR, paragraph 14, and order of the Court of First Instance of 25 June 1998 in Joined Cases T-177/94 DEP, T-377/94 DEP, and T-99/95 DEP *Altmann and Others* v *Commission* [1998] ECR-SC I-A-299 and II-883, paragraph 18).

80 Moreover, the Court has held that even though substantial legal work is carried out in the course of the proceedings preceding the judicial phase, by 'proceedings' Article 91 of the Rules of Procedure refers only to proceedings before the Court of First Instance, to the exclusion of any prior stage. That follows in particular from Article 90 of the Rules of Procedure, which refers to 'proceedings before the Court of First Instance' (order of 24 January 2002, T-38/95 DEP *Groupe Origny* v *Commission* [2002] ECR II-217, paragraph 29, and the case-law there cited).

81 As it therefore appears from the case-law, the costs relating to proceedings before the Ombudsman cannot be considered necessary costs within the meaning of Article 91(b) of the Rules of Procedure.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber),

hereby:

1. **Annuls the Commission's decision of 16 October 2001 refusing the applications for co-financing made by the applicant in December 1996 and September 1997;**

2. **Orders the Commission to pay the costs of the applicant in addition to its own costs.**

Lenaerts Azizi Jaeger

Delivered in open court in Luxembourg on 18 September 2003.

H. Jung

Registrar

K. Lenaerts

President