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

In Case T-254/99,

**Maja Srl,** formerly Ca'Pasta Srl, established in Padua (Italy), represented by P. Piva, R. Mastroianni and G. Arendt, lawyers, with an address for service in Luxembourg,

applicant,

v

**Commission of the European Communities,** represented by C. Cattabriga, acting as Agent, assisted by A. Dal Ferro, with an address for service in Luxembourg,

defendant,

APPLICATION for the annulment of Commission decision C (1999) 2183 of 5 August 1999, first, discontinuing the financial aid granted to the applicant by Commission decision C (91) 654/87 of 29 April 1991 in the framework of project

* Language of the case: Italian.

IT/0166/91/01, entitled 'Modernisation of an aquaculture production unit at Contarina (Veneto)' and for an order directing the applicant to repay to the Commission ITL 420 810 718 (EUR 217 330.59),

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 10 July 2002,

gives the following

## Judgment

### Legislative background

1 Article 1(1)(b) of Council Regulation (EEC) No 4028/86 of 18 December 1986 on Community measures to improve and adapt structures in the fisheries and

aquaculture sector (OJ 1986 L 376, p. 7) provides that the Commission may grant Community financial aid for the development of aquaculture and the establishment of protected marine areas with a view to improved management of inshore fishing grounds.

2 Under Article 12 of Regulation No 4028/86, which refers to Annex III to the same regulation, Community aid for aquaculture projects in the Italian region of the Veneto is to be 40% of the amount of the investment, and the contribution from the Italian Republic must be between 10% and 30%.

3 In addition, Article 44 of Regulation No 4028/86 provides:

'1. Throughout the period for which aid is granted by the Community, the authority or agency appointed for the purpose by the Member State shall send to the Commission on request all supporting documents and all documents showing that the financial or other conditions imposed for each project are satisfied. The Commission may decide to suspend, reduce or discontinue aid, in accordance with the procedure laid down in Article 47:

— if the project is not carried out as specified, or

— if certain conditions imposed are not satisfied, or

— ...

Decisions shall be notified to the Member State concerned and to the beneficiary.

The Commission shall take steps to recover any sums unduly paid.

2. Detailed rules for applying this Article shall be adopted by the Commission in accordance with the procedure laid down in Article 47.'

4 Under Article 47 of Regulation No 4028/86:

'1. Where the procedure laid down in this Article is to be followed, matters shall be referred to the Standing Committee for the Fishing Industry, by its chairman, either on his own initiative or at the request of the representative of a Member State.

2. The representative of the Commission shall submit a draft of the measures to be taken. The Committee shall deliver its opinion within a time-limit to be set by the chairman according to the urgency of the matter....

3. The Commission shall adopt the measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, the Commission shall forthwith communicate them to the Council. In that event the Commission may defer their application for not more than one month from the date of such communication. The Council, acting by a qualified majority, may adopt different measures within one month.'

5 In order, amongst other things, to establish the detailed rules for applying Article 44(2) of Regulation No 4028/86, the Commission adopted Regulation (EEC) No 1116/88 of 20 April 1988 laying down detailed rules for the application of decisions granting aid for projects concerning Community measures to improve and adapt structures in the fisheries and aquaculture sector and in structural works in coastal waters (OJ 1988 L 112, p. 1).

6 According to the sixth recital in the preamble to Regulation No 1116/88, 'the procedure for suspending, reducing or terminating aid should not be initiated without the Member State concerned first having been asked for its views and the beneficiaries having been given the opportunity to submit their comments'.

7 In that connection, Article 7 of Regulation No 1116/88 provides:

'Before initiating a procedure for suspending, reducing or terminating aid in accordance with Article 44(1) of Regulation (EEC) No 4028/86, the Commission shall:

— inform the Member State on whose territory the project was to be carried out, so that it may express its views on the matter,

— consult the competent authority responsible for forwarding supporting documents,

— ask the beneficiary to provide, through the authority or agency, an explanation for the failure to comply with the conditions laid down.'

## The facts

8 By Decision C (91) 654/87 of 29 April 1991 (hereinafter 'the approval decision'), the Commission, acting in pursuance of Regulation No 4028/86, granted the applicant financial aid of a maximum of ITL 942 300 004 (EUR 486 657.34) for a project for the modernisation of an aquaculture production unit in Contarina (Veneto). The Commission undertook to finance 40% of the cost of the project and the Italian Republic undertook to finance 30% of the cost.

9 It was specified in the conditions annexed to the approval decision that:

'... the proposed works may not be changed or altered without the prior consent of the national authorities and, where appropriate, the Commission. If they are significantly altered without the Commission's agreement, and the national authorities or the Commission finds the alterations unacceptable, the subsidy may be reduced or discontinued.'

10 The applicant presented an initial document reporting the state of progress of the works on 18 March 1992, after which the Commission paid it the first instalment of the Community aid, namely ITL 420 810 718 (EUR 217 330.59). The Italian State paid the first instalment of the State contribution.

11 Following an inspection in 1995 (in October, according to the applicant, in February, according to the Commission), the competent national authorities drew up a report on the second state of progress and the final state of the works. In that report, dated 27 October 1995, the national authorities stated, *inter alia*:

— that they did not agree to the payment of certain items of expenditure by the Commission,

— that the planned caretaker's house appeared to have been replaced by a small villa;

— that the facility did not appear to have the necessary authorisations;

— that the facility was still not in operation at the time of the inspection;

— that the facility had not been made the subject of a compliance declaration;

— that aid could not be granted in respect of various invoices submitted by Ca'Pasta.

12 On the conclusion of the inspection the competent national authorities suspended the national aid.

13 On 10 March 1997, during an inspection at the applicant's head office, the Italian State and the Commission learned that the business undertaking of Ca'Pasta had been sold during the spring of 1995 to Carpenfer Spa.

14 Subsequently, by letter dated 24 June 1997, the Commission informed the applicant that because the sale of the business fell within the class of fundamental changes requiring the prior consent of the national and Community authorities, the applicant had breached the conditions laid down in the approval decision. Accordingly, referring to Regulation No 4028/86, the Commission notified the applicant of its intention to initiate the procedure for the discontinuance of the subsidy and the recovery of the sum already paid, and invited the applicant to state, within 30 days, the reasons for which it had failed to comply with the conditions laid down.

15 By letter dated 21 July 1997 the applicant replied that neither Regulation No 4028/86 nor the approval decision required that the sale of a business which had obtained a subsidy under the said regulation should be made conditional upon obtaining the prior agreement of the national and Community authorities.

16 By letter dated 4 August 1997 the Commission disputed the applicant's contentions and informed it that:

'... the Commission confirms the continuation of the internal procedure with a view to discontinuing the contribution and recovering the amount already paid.'

17 Taking the view that the last letter amounted to an act adversely affecting it, on 16 October 1997 Ca'Pasta brought before the Court of First Instance an action for its annulment, alleging *inter alia* infringement of Article 44 of Regulation No 4028/86 and Article 7 of Regulation No 1116/88.

18 By order of 16 July 1998 in Case T-274/97 *Ca'Pasta* v *Commission* [1998] ECR II-2925, the Court of First Instance dismissed the application as inadmissible, on the ground that the letter at issue was not a measure capable of forming the subject-matter of an action under Article 173 of the EC Treaty (now Article 230 EC) and ordered Ca'Pasta to pay the costs.

19 Ca'Pasta appealed against the order. By judgment of 25 May 2000 in Case C-359/98 P *Ca'Pasta* v *Commission* [2000] ECR I-3984, the Court of Justice set aside the order of the Court of First Instance and annulled the implied decision to suspend aid contained in the Commission's letter of 4 August 1997 on the ground that the procedure laid down in Articles 44(1) and 47 of Regulation No 4028/86 and Article 7 of Regulation No 1116/88 had not been followed.

20 In the meantime, by letter of 30 September 1998, the Commission asked the applicant, essentially, to provide documents proving its activity. That letter reads as follows:

'We refer to letter no. 11423 of [4] August 1997 in which the Commission refuted the argument of Ca'Pasta's representatives, namely that the mere instrument of sale of the company's assets guarantees the purpose of the business in accordance with the objectives of the project and the more general objectives of the common fisheries policy.

In order to enable your company to furnish proof in support of the foregoing assertion, we would ask you to forward all the accounting documentation relating to the commercial activity of the business from the date of completion of the works to today's date...'.

21 Ca'Pasta wrote as follows in its reply of 24 November 1998:

'... For whatever purpose it may serve, our company remains open to dialogue — and is prepared to send all the documentation requested as further proof of the continuing purpose of the investments made in the business itself — if the Commission declares formally and unambiguously that its position is no longer justified and that it will indemnify the company for the legal costs incurred up to the present.'

22 On 5 August 1999 the Commission adopted decision C (1999) 2183 ('the contested decision') discontinuing the financial aid to Ca'Pasta and ordering it to repay to the Commission ITL 420 810 718 (EUR 217 330.59).

23 The decision reads as follows:

'Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EEC) No 4028/86... , last amended by Regulation No 3946/92, and in particular Article 44(1);

... ;

[3] On the occasion of the inspections carried out in 1995 and 1997 it was not possible to establish whether the investments in question were made in compliance with the Community legislation;

[4] It was only on the occasion of the inspection of 10 March 1997 at Ca'Pasta's head office that the Ministry for Agricultural Resources and the Commission were informed that the business had been sold in June 1995 without the production of the documentation relating to the activity pursued by means of the assets acquired with the public financial assistance;

[5] The sale of facilities and equipment purchased with financial aid constitutes a significant alteration of the financing conditions laid down by the decision; therefore such alteration requires the prior consent of the Community and the national authorities to order to verify that the public financial assistance has been used in accordance with the purposes of the legislation on structural intervention; such consent was not requested by the company beforehand;

[6] By letter of 28 March 1997 the Ministry for Agricultural Resources issued an opinion in favour of the discontinuance of the aid;

[7] Pursuant to Article 7 of Regulation (EEC) No 1116/88 of 20 April 1988, the Commission informed the competent national authority and the beneficiary, by letter of 24 June 1997, of its intention to discontinue the Community aid and to recover the amount already paid, and requested the beneficiary to submit its defence;

[8] In its letter of 24 July 1997 in reply to the Commission's letter, the beneficiary merely asserted that the assets transfer formed part of an agreement for the sale of a business and that, as such, it ought to have received consent;

[9] Although the documents produced in no way proved that there had been a genuine sale of a business or that the activity which was the reason for the Community financing had been taken up and actually carried on, the Commission again requested the beneficiary, by letter of 30 September 1998, to produce any appropriate documents in support of its statements. In its reply of 24 November 1998, Ca'Pasta produced no documentary evidence whatever;

[10] The national authorities did not change their opinion in favour of the discontinuance of the public financial assistance;

[11] Under Article 44(1) of Regulation (EEC) No 4028/86, Community aid may be suspended, reduced or discontinued aid if the project is not carried out as specified;

[12] In view of the circumstances, the aid previously granted must be discontinued;

[13] The measures provided for in this decision are in conformity with the opinion of the Standing Committee for the Fishing Industry;

Has adopted this decision:

*Article 1*

The Community aid totalling ITL 942 200 004 granted by the Commission decision of 29 April 1991 within the framework of the project described below, is discontinued:... .

*Article 2*

The beneficiary shall repay the Commission the sum of ITL 420 810 718 within three months of the date of this decision....

*Article 3*

This decision is addressed to the Italian Republic and the beneficiary referred to in Article 1.'

## Procedure

24 The applicant brought this action by application lodged at the Registry of the Court of First Instance on 24 October 1999. In the application it states that its name and business name have been changed and that it is now called Maja Srl.

25 By separate document, lodged at the Court Registry on the same date, the applicant made an application under Article 242 EC for suspension of the operation of the contested decision. That case was removed from the register by order of the President of the Court of First Instance of 5 June 2000, the costs being reserved.

26 By way of measures of organisation of procedure, on 5 July 2000 and 11 July 2001 the Court asked the parties to reply to written questions and to produce certain documents. The parties complied with those requests.

27 In addition, an informal meeting between the parties, their legal advisers and agents took place before the Judge-Rapporteur on 6 December 2001.

28 Following the informal meeting, the proceedings were stayed by order of 14 January 2002 until 15 April 2002.

29 On 15 April 2002 the parties submitted their observations on the further steps to be taken in the proceedings.

30 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Second Chamber) decided to open the oral procedure.

31 The parties presented oral argument and their replies to the Court's oral questions at the hearing on 10 July 2002.

**Forms of order ought by the parties**

32 The applicant claims that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

33 The Commission contends that the Court should:

— dismiss the application as unfounded;

— order the applicant to pay the costs.

## Law

34 The applicant raises four pleas in law to show that the contested decision is unlawful. The first part of the first plea alleges breach of the principle of collective responsibility; the second part relates to a breach of the internal procedure to be followed by the Commission in connection with a decision discontinuing aid, such as the contested decision. The second plea alleges, in substance, infringement of Article 44 of Regulation No 4028/86 and of the obligation to state reasons. The third plea alleges, in substance, misapplication of Articles 38 and 44 of the same regulation. Finally, the fourth plea alleges breach of the obligation to state reasons and of essential procedural requirements.

### *First plea in law: first part, breach of the principle of collective responsibility and, second part, breach of the internal procedure to be followed by the Commission in connection with a decision discontinuing aid*

#### Arguments of the parties

35 The applicant submits that the contested decision, which was signed on behalf of the Commission by one of its Members, Ms Wulf-Mathies, infringed the principle of collective responsibility. In that connection, the applicant refers to the judgment in Case C-137/92 P *Commission* v *BASF and Others* [1994] ECR I-2555. The applicant also submits that the Commission cannot plead the existence of a delegated power as there can only be an ordinary delegated power of signature.

36 In its reply, the applicant adds to that argument that, notwithstanding the alleged legality of the procedure for delegating a power, it does not appear that the internal procedure laid down by the provisions cited in this connection by the Commission was followed because neither the approval of the Directorate-General for Financial Control and of the Commission's Legal Service, nor the prior authorisation of the financial controller are mentioned in the contested decision.

37 With regard to the first part of this plea, the Commission contends that Article 11 of its Rules of Procedure in force at that time, which is an expression of the principle of collective responsibility, provides for the system of delegated authority for specific categories of managerial decisions, particularly in the context of the common fisheries policy, and that, in its judgment in Case 5/85 *AKZO Chemie* v *Commission* [1986] ECR 2585, paragraphs 35 to 37, the Court of Justice observed that this practice accorded with that principle. So far as the present case is concerned, the Commission notes that the Member of the Commission responsible for fisheries and, in the event of his being prevented from acting, any other Member of the Commission, was given authority, by Commission decision (COM (87) PV 899) of 9 December 1987, to adopt decisions relating to the discontinuance of aid granted under Article 44 of Regulation No 4028/86.

38 With regard to the argument added in the reply, which constitutes the second part of the present plea, the Commission contends, firstly, that it is a new plea introduced in the course of the proceedings and that it cannot be admitted under Article 48(2) of the Rules of Procedure of the Court of First Instance. The Commission observes that in any case — without prejudice to the fact that it doubts whether the alleged failure to follow an internal organisational procedure can constitute a ground for annulment of a measure where the alleged failure does not affect the origin and existence of that measure — the competent directorates or services duly issued their opinion. The Commission adds that, in its judgment in Case T-338/94 *Finnboard* v *Commission* [1998] ECR II-1617, paragraph 66, the Court of First Instance observed that it was for the applicant to plead any evidence or specific fact such as to displace the presumption of validity which applies to Community acts. In the present case, the applicant had not shown that the competent services had not been consulted.

Findings of the Court

— First part of the plea

39 Under Article 11 of the Commission's Rules of Procedure, in the version resulting from Commission Decision 93/492/ Euratom, ECSC, EEC of 17 February 1993 (OJ 1993 L 230, p. 15), in force at the time where the contested decision was adopted — the same provision appears in Article 13 of the Rules of Procedure at present in force, OJ 1999 L 252, p. 41 —, 'the Commission may, provided the principle of collective responsibility is fully respected, empower one or more of its Members to take, on its behalf and under its responsibility, clearly defined management or administrative measures'.

40 Under Articles 2.b and 5 of the Commission Decision of 9 December 1987 updating the delegated authority in the fisheries sector (COM(87) PV 899, 'the delegated authority decision'), the Commission empowered the Member responsible for the fisheries sector and, in the event of his being prevented from acting, any other Member of the Commission, to adopt decisions on the discontinuance of aid granted under, in particular, Article 44 of Regulation No 4028/86.

41 It has been consistently held (see, for example, *AKZO Chemie*, cited above, paragraphs 35 to 37) that the Commission may, within certain limits and subject to certain conditions, authorise its Members to adopt certain decisions in its name without the principle of collegiate responsibility which governs its functioning being impaired by such authorisation. According to that case-law, the system of delegated authority is limited to specific categories of measures of management or administration, which excludes by definition decisions of principle.

42 The question which arises therefore is whether the contested decision must be regarded as a measure of management or administration or rather as a decision 'of principle'.

43 In the present case, the contested decision, which was adopted in the context of the supervision of the implementation of a project for which the beneficiary had obtained aid, subject to certain conditions, must be deemed a measure of management or administration of the aid scheme established by Regulation No 4028/86. The fact that the decision in question, which discontinues aid previously granted, may entail serious consequences for the applicant (see Case C-10/98 P *Le Canne* v *Commission* [1999] ECR I-6831, paragraph 27) cannot cast doubt on this assessment.

44 It follows that the contested decision, which was adopted by a single Member of the Commission, is within the limits of the power of delegation, as indicated in Article 11 of the Rules of Procedure referred to above, and does not infringe the principle of the Commission's collective responsibility.

45 The first part of this plea must therefore be rejected.

— Second part of the plea

46 It must first be observed that the second part of the plea, which was introduced in the reply, is a new plea, but may be admitted pursuant to Article 48(2) of the

Rules of Procedure because it is based on matters of law and fact which have come to light in the course of the procedure, namely the text of the Commission's delegated authority decision which was produced as an annex to the defence.

47 Secondly, Article 3 of the said decision provides that the Directorate-General for Financial Control is designated as the associated department which has to give its prior consent to a draft decision such as the contested decision and, in the internal administrative rules, which form an integral part of the delegated authority decision, that draft decisions such as that in question are to be forwarded for consent to that Directorate-General and to the Legal Service of the Commission and that they require prior authorisation by the financial controller, in accordance with the financial regulation.

48 In its rejoinder the Commission stated that the competent directorates and services involved in the adoption of the contested decision had duly delivered their opinion, but has not supported its contention with documentary evidence.

49 However, a procedural irregularity will, as a rule, entail the annulment of a decision in whole or in part only if it is shown that, in the absence of such irregularity, the contested decision might have been substantively different (Case 150/84 *Bernardi* v *Parliament* [1986] ECR 1375, paragraph 28, citing Joined Cases 209/78 to 215/78 and 218/78 *Van Landewyck and Others* v *Commission* [1980] ECR 3125, paragraph 47). That does not appear to be the case here, nor has it even been alleged, and a breach, if any, of the rules in question, which in any case do not aim to protect the rights and interests of beneficiaries of aid such as the applicant, cannot be pleaded as a formal defect which may entail the annulment of the contested decision.

50 It follows that the second part of the first plea must also be rejected.

*The second and third pleas in law: infringement of Articles 38 and 44 of Regulation No 4028/86 and breach of the obligation to state reasons*

51 The Court considers it expedient to examine the second and third pleas in law together.

Arguments of the parties

52 The applicant submits that the facts were manifestly misrepresented as a result of defective and inadequate investigation. The Commission in effect refused to undertake any serious inquiry into the permanence of the investments in asserting that the applicant had not been able to furnish proof. In that connection, the applicant criticises the reasoning of the contested decision as illogical and misleading. It contends that the Commission infringed Article 44 of Regulation No 4028/86. Referring to the judgment in *Le Canne* v *Commission*, cited above, the applicant submits that Article 44 applies only in cases where a project has not been carried out as specified. According to the applicant, that is not the case where the beneficiary sells a business after the proper completion of the works in good time.

53 The applicant contends that the alleged breaches of the obligations laid down in Article 38 of Regulation No 4028/86 cannot be penalised by discontinuance of the aid on the basis of Article 44, but only by way of reversal, as provided for by Article 39 of the same regulation (total or partial reversal of the decision for breach of obligations after completion of the works).

54 The Commission contends that the inquiry was coherent and that it confirmed that the applicant had failed to comply with the conditions for the grant of aid, in breach of Regulation No 4028/86. According to the Commission, during the inspection visits in 1995 and 1997 numerous irregularities were discovered and the third recital in the preamble to the decision expressly mentions the result of the inspections. Among the many irregularities found, particular importance attaches to the absence of anything to show clearly that the activity of aquaculture had actually begun, and anything relating to the transfer of the aquaculture unit. According to the Commission, it had tried for the last time, by letter of 30 September 1998, to obtain information on this point from the applicant, and had pointed out that, failing such information, it would discontinue the aid.

55 The Commission contends that Article 44 of the regulation covers all cases of breach of the aid conditions. According to the Commission, in the present case it is clear that the applicant's behaviour in deliberately omitting to give notice of the then imminent sale of the aquaculture unit at the time of the first inspection and informing the Commission only when it was preparing for the second inspection is a breach of the obligation to provide information and to act in good faith incumbent upon beneficiaries of Community aid. In this connection, the Commission refers to Case T-216/96 *Conserve Italia* v *Commission* [1999] ECR II-3139, paragraph 71. At the same time, the Commission also found compelling evidence of failure to comply with the aid conditions in the execution of the works. The 1995 inspection revealed irregularities sufficient to justify discontinuance of the aid.

Findings of the Court

56 As a preliminary point, it must be observed that, in view of the recitals in the preamble to the contested decision, that decision is based, essentially, on the

argument that the applicant was unable to show, at the different stages of the inspection and the procedure for the discontinuance of the aid, that the project was carried out as specified. In that connection, the third recital in the preamble to the contested decision refers to the inspections of 1995 and 1997, the fourth and fifth recitals refer to the sale of the business and, finally, the ninth recital deals with the correspondence of 30 September and 24 November 1998.

57 With regard to the inspection visits, it must be observed that the first inspection, carried out by the Italian authorities in 1995, gave rise to a number of questions concerning the execution of the project, which were set out in the report of 27 October 1995 and are mentioned in paragraph 11 above. The second inspection visit, carried out jointly by the Italian authorities and the Commission in March 1997, came up against the fact that the applicant's business had been sold in spring 1995 to Carpenfer Spa, of which the Commission and the Italian authorities were notified a few days before the inspection.

58 The third recital of the decision therefore correctly states that on the occasion of the inspections it was not possible to establish whether the investments in question were made in compliance with the Community legislation.

59 With regard to the sale of the business, it must be observed that, under Article 38 of Regulation No 4028/86, 'investments which have received Community aid under this Regulation may not be sold outside the Community or assigned to purposes other than fishing for a period of ten years from the date of commissioning...'. That provision does not imply, however, that a sale within the Community of investments which have received Community aid, as in the present case, does not require the prior consent of the Commission.

60 A transfer of ownership is a fundamental change in the aid conditions in so far as the person carrying out the project is replaced. The Commission is therefore entitled to complain that the applicant did not inform it or the national authorities of the sale, which had taken place in spring 1995, until the time of the second inspection in March 1997. The failure to do so constitutes a breach of the obligation to provide information and to act in good faith, which is inherent in aid schemes and is essential for their effective functioning (see *Conserve Italia* v *Commission*, cited above, upheld by the judgment of the Court of Justice in Case C-500/99 P *Conserve Italia* v *Commission* [2002] ECR I-867).

61 Finally, as regards the correspondence of 30 September and 24 November 1998, it must be observed that the behaviour of the applicant, which did not comply in good time and unconditionally with the Commission's request for all the accounting documentation relating to the commercial activity of the company and which made the production of the supporting documents conditional upon a *quid pro quo* from the Commission, also constitutes a breach of the applicant's obligation to provide information and to act in good faith.

62 It must be therefore found that the applicant infringed its obligations to provide information and to act in good faith and that the Commission did not err in fact or in law in finding that the applicant was unable to prove that the project was carried out as specified.

63 More specifically, it must be held that, in the light of the foregoing, the applicant's assertion that the inquiry to establish whether the project conformed with the legislation was defective is irrelevant. The same applies to the applicant's argument that the reasoning of the contested decision is illogical and misleading. The recitals in the preamble to the decision set out the essential elements of the reasoning underlying the discontinuance of the aid.

64 It follows that the applicant's second plea cannot succeed.

65 Finally, the applicant's arguments in relation to its third plea in law must also be rejected. The contested decision was — correctly — adopted on the basis of Article 44 of Regulation No 4028/86, which applies, pursuant to Article 44(1), throughout the period for which aid is granted by the Community in relation to all decisions to suspend, reduce or discontinue aid, in the event of one of the four conditions laid down in that article being met (see *Le Canne* v *Commission*, cited above, paragraph 25). On the other hand, Article 39 of the same regulation deals with the complete or partial reversal of a decision to grant aid where the beneficiary fails to fulfil his specific obligation under Article 39(1) to forward to the Commission a report on the results of the project, in particular on the financial results, within two years after the last payment of aid (in the case of projects such as the present). The decision in this case is a decision to discontinue the aid before payment of the second and third instalments.

*Fourth plea in law: breach of obligation to state reasons and breach of essential procedural requirements*

Arguments of the parties

66 According to the applicant, the Commission's failure to send it the opinion of the Standing Committee for the Fishing Industry is a breach of the obligation to state reasons and also of essential procedural requirements.

67 The Commission contends that the applicant's argument disregards the rules of 'comitology' laid down in Article 47 of Regulation No 4028/86. According to the Commission, the Committee's opinion does not consist in a text which can be reproduced word for word, but only in a vote for or against draft measures to be taken. Therefore the contested decision could give no indication of the substance of the opinion because the opinion consists merely in a 'yes' or 'no'.

Findings of the Court

68 Whilst the Commission is not bound to exercise the power conferred on it by Article 44(1) of Regulation No 4028/86, that article explicitly requires that, should it do so, it must do so in accordance with the procedure laid down in Article 47 of the regulation, and it is clear from Article 7 of Regulation No 1116/88 that the procedures it mentions must also be followed before aid under Article 44 can be suspended, reduced or discontinued. Furthermore, the serious consequences of a decision to discontinue aid, such as that in the present case, highlight the importance of applying a procedure such as that laid down in Articles 44 and 47 of Regulation No 4028/86 and Article 7 of Regulation No 1116/88 (see *Le Canne* v *Commission*, cited above, paragraph 25 and 27, and *Ca'Pasta* v *Commission,* cited above, paragraphs 28 and 31).

69 It is therefore necessary to ascertain whether the procedure for obtaining the opinion of the Standing Committee for the Fishing Industry, laid down in Article 47 of Regulation No 4028/86, was followed in this case.

70 In reply to a written question from the Court, the Commission produced documents showing that on 17 May 1999 it requested the opinion of the Standing Committee, by way of written procedure in accordance with Article 6 of the Committee's Rules of Procedure, on the draft decision to discontinue the aid, by asking the national delegations on the Committee to state their position within a certain period, and that only the German and Flemish delegations submitted their opinion.

71 In those circumstances, it must be accepted that the procedure laid down in Article 47 of Regulation No 4028/86 was followed and that the contested decision correctly states that the measures provided for in that decision are in conformity with the opinion of the Standing Committee for the Fishing Industry. The documents produced by the Commission also show that, in the present case, the Committee's opinion does not consist in a text which can be reproduced.

72 It follows that the fourth plea in law must also be rejected.

## Costs

73 Pursuant to 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 applicant has been unsuccessful, it must be ordered to pay the costs, including those of the proceedings for interim measures, as applied for by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the applicant to pay the costs, including those of the proceedings for interim measures.**

Moura Ramos Pirrung Meij

Delivered in open court in Luxembourg on 12 March 2003.

H. Jung R.M. Moura Ramos

Registrar President