JUDGMENT OF THE COURT (Third Chamber)

19 January 2006 *

In Case C-240/03 P,

APPEAL under Article 56 of the Statute of the Court of Justice, brought on 28 May 2003,

Comunità Montana della Valnerina, represented by P. De Caterini, E. Cappelli and A. Bandini, avvocati, with an address for service in Luxembourg,

applicant,

the other parties to the proceedings being:

Commission of the European Communities, represented by C. Cattabriga and L. Visaggio, acting as Agents, assisted by A. Dal Ferro, avvocato, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: Italian.

Italian Republic, represented by I. M. Braguglia, acting as Agent, assisted by G. Aiello, avvocato dello Stato, with an address for service in Luxembourg,

intervener at first instance,

THE COURT (Third Chamber),

composed of A. Rosas, President of Chamber, J. Malenovský, S. von Bahr, A. Borg Barthet and A. Ó Caoimh (Rapporteur), Judges,

Advocate General: J. Kokott,
Registrar: R. Grass,

having regard to the written procedure,

after hearing the Opinion of the Advocate General delivered at the sitting on 3 March 2005,

gives the following

Judgment

1 By its appeal the Comunità Montana della Valnerina ('CMV') seeks annulment of the judgment of the Court of First Instance of the European Communities of 13 March 2003 in Case T-340/00 *Comunità Montana della Valnerina* v *Commission* [2003] ECR II-811 ('the judgment under appeal'), in so far as it partially dismissed its application for the annulment of Commission Decision C (2000) 2388 of 14 August

2000 withdrawing the financial assistance from the European Agricultural Guidance and Guarantee Fund (EAGGF), Guidance Section, which it had been granted by Commission Decision C (93) 3182 of 10 November 1993 ('the withdrawal decision' and 'the award decision' respectively) in connection with a pilot demonstration project for forestry, agricultural and food programmes in marginal hill areas ('the project').

I — Legal background

2 On 24 June 1988 the Council of the European Communities adopted Regulation (EEC) No 2052/88 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 185, p. 9).

3 Articles 14 to 16 of Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1), as amended by Council Regulation (EEC) No 2082/93 of 20 July 1993 (OJ 1993 L 193, p. 20, hereinafter 'Regulation No 4253/88'), lay down provisions on the processing of applications for financial assistance from the Structural Funds, the conditions for eligibility for financial assistance and certain specific provisions.

4 Regulation No 4253/88 also contains, in Articles 21, 23 and 24 respectively, provisions on the payment of financial assistance, financial control and the reduction, suspension and cancellation of assistance.

5 In that regard, Article 24 of the regulation 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.'

II — Facts

6 The facts of the dispute, as they appear from paragraphs 7 to 30 of the judgment under appeal, may be summarised as follows.

7 In June 1993 CMV sent the Commission an application for Community assistance for the project.

8 The overall objective of the project was to set up and carry out a pilot demonstration of two forestry, agricultural and food programmes, one by CMV in Valnerina (Italy), the other by the Route des Senteurs association ('RDS') in the Drôme Provençale region (France), in order to introduce and develop alternative activities such as rural tourism in parallel with the usual agricultural activities.

9 Under the second paragraph of Article 1 of the award decision, CMV and RDS were 'the bodies responsible' for the project. Article 2 of that decision stated that the period for the completion of the project was to be 30 months, that is to say, from 1 October 1993 to 31 March 1996. According to the first paragraph of Article 3 of that decision, the total eligible cost of the project was ECU 1 817 117 and the maximum financial contribution from the European Community was set at ECU 908 558. Pursuant to Article 5 of the decision, both CMV and RDS were 'beneficiaries [thereof]'.

10 Annex I to the award decision contained a description of the project. In point 5 of that annex, CMV was described as the 'beneficiary' of the financial assistance in question and RDS as the 'other body responsible for the project'. Point 8 of the same annex contained a financial scheme for the project with a breakdown of the costs allocated to the various measures under the project. The measures and the corresponding costs were set out in four sections, with CMV and RDS each carrying out measures coming under two of those four sections.

11 Annex II to the award decision laid down the financial conditions relating to the award of the financial assistance. In particular, it stated in point 1 that if the beneficiary of the assistance intended to make any significant changes to the operations described in Annex I it was to inform the Commission beforehand and obtain the latter's agreement. Pursuant to point 2 of Annex II, award of the assistance was conditional upon completion of all of the operations described in Annex I to the award decision. In addition, point 4 of Annex II provided that the financial assistance was to be paid direct to CMV as the beneficiary of the assistance and that CMV was responsible for paying RDS the sums due to it. Under point 5 of that annex, the Commission was authorised, for the purposes of verifying the financial information concerning the various expenditure, to ask to examine any original, or a certified copy, of a supporting document and to carry out that inspection directly on the spot or request the documents in question to be sent to it. According to point 6 of Annex II of the award decision, the beneficiary was to keep for the Commission, for a period of five years from the last payment by the latter, all originals of the documents supporting the expenditure. Under point 7 of that annex, the Commission could at any time ask the beneficiary of the assistance to send reports on the state of progress of the work and/or the technical results obtained, and according to point 8 of that annex the beneficiary was to keep for the Community the results obtained through implementation of the project, although that would not give rise to any additional payments. Lastly, point 10 of Annex II stated in essence that if any of the conditions laid down in that annex was not complied with, or if any measures not provided for in Annex I were undertaken, the Commission could suspend, reduce or withdraw the assistance and require repayment of sums that had already been paid, in which case the beneficiary would be entitled to send its observations beforehand within a time-limit fixed by the Commission.

12 In 1993 and 1995 the Commission paid the applicant two advances amounting to approximately 40% and 30% respectively of the Community contribution to the project. CMV in turn paid RDS the sums corresponding to the cost of the measures under the project which the latter was to carry out.

13 In December 1994 CMV sent the Commission an initial report on the state of progress of the project and on the expenditure already incurred in respect of each of the proposed measures and in June 1997 a final report on the implementation of the project. In these reports CMV stated in particular that it had evidence of payment in respect of the expenditure incurred, and also that the measures that had already been carried out were in accordance with those described in Annex I to the award decision.

14 On 12 August 1997 the Commission informed CMV that it had instigated a general technical and accounting check for all the projects financed under Article 8 of Council Regulation (EEC) No 4256/88 of 19 December 1988, laying down provisions for implementing Regulation No 2052/88 as regards the European Agricultural Guidance and Guarantee Fund (EAGGF) Guidance Section (OJ 1988 L 374, p. 25), as amended by Council Regulation (EEC) No 2085/93 of 20 July 1993 (OJ 1993 L 193, p. 44), including the project concerned. It requested CMV, under point 5 of Annex II to the award decision, to produce a list of all the supporting documents relating to the eligible expenditure incurred in connection with implementing the project, together with a certified true copy of each of those documents.

15 After having received certain documents from CMV, the Commission informed it by letter of 6 March 1998 that it intended to carry out an on-the-spot inspection in respect of the implementation of the project. That inspection took place on CMV's premises from 23 to 25 March 1998 and on those of RDS from 4 to 6 May 1998.

16 By letter of 22 March 1999 the Commission informed CMV that under Article 24 of Regulation No 4253/88 it had carried out an examination of the financial assistance for the project, and that, as that examination had uncovered evidence that pointed to irregularities, it had decided to initiate the procedure provided for in the abovementioned Article 24 and in point 10 of Annex II to the award decision. In that letter, a copy of which the Commission sent to RDS, the Commission set out that evidence, specifically as regards the measures for which CMV and RDS respectively were responsible.

17 In the withdrawal decision addressed to the Italian Republic and CMV and notified to the latter on 21 August 2000 the Commission, under Article 24(2) of Regulation No 4253/88, withdrew the financial assistance granted for the project and requested CMV to repay in full the grant already paid.

18 In recital 9 to the withdrawal decision the Commission listed a series of irregularities within the meaning of Article 24(2) of Regulation No 4253/88, some of which concerned measures carried out by RDS and others related to measures carried out by CMV.

19 By letters of 14 September and 2 October 2000 CMV requested RDS to repay the sums which it had paid it for the purposes of implementing the project. In its reply of 20 October 2000 RDS indicated, in essence, that in its view the withdrawal decision was unjustified.

III — Procedure before the Court of First Instance and the judgment under appeal

20 By application lodged at the Registry of the Court of First Instance on 7 November 2000, CMV brought an action for annulment.

21 It relied on four pleas in support of that action. The first alleged infringement of the principles of non-discrimination and proportionality in that the Commission had not limited its request for repayment of the financial assistance to the sums relating to the part of the project which, under the award decision, was to be carried out by CMV. The second plea alleged that the Commission had committed errors in finding various irregularities in the implementation of the part of the project for which CMV itself was responsible, and infringements of the obligation to state reasons and of the right to be heard. The third plea related to an infringement of the principle of proportionality and of Article 24(2) of Regulation No 4253/88, in that the Commission had requested repayment of the full amount of the assistance granted for the implementation of measures by CMV. Lastly, the fourth plea was based on misuse of powers. CMV requested that the Court of First Instance annul the withdrawal decision and order the Commission to pay the costs.

22 The Italian Republic intervened in the proceedings before the Court of First Instance in support of CMV.

23 The documents before the Court show that RDS was the subject of liquidation proceedings during the action before the Court of First Instance.

24 In the judgment under appeal, the Court of First Instance annulled the withdrawal decision in so far as the Commission had not limited its request for repayment of the financial assistance to the sums corresponding to the part of the project which, under the award decision, was to be carried out by CMV itself.

25 The Court of First Instance found in this regard that although the Commission had the power to designate a principal body responsible which had the duty, in the event of irregularities, to repay in full the sums paid, it was appropriate to take into account the fact that any obligation to repay financial assistance might entail serious consequences for the parties concerned. Therefore, the principle of legal certainty required that the law applicable to performance of the contract should be sufficiently clear and specific to make the parties concerned aware unequivocally of their rights and obligations and take the necessary steps — that is, in the present context, to agree before the assistance is awarded on appropriate private law instruments which would protect their financial interests in relation to each other. In the present case, however, the terms of the award decision had not been sufficiently clear for CMV to consider itself to be the only body responsible for repayment of the advances. For that reason, the request for CMV to repay in full the sums paid constituted an infringement of the principle of proportionality.

26 The Court of First Instance dismissed the remainder of the application and ordered the parties to bear their own costs. It considered that the Commission had been right to dispute the evidence of costs produced by CMV and that it had therefore been entitled to request repayment of the part of the advances for which CMV was responsible.

IV — Procedure before the Court of Justice

27 CMV lodged an appeal before the Court of Justice on 28 May 2003.

28 On 22 August 2003 the Commission lodged a cross-appeal in its response.

29 The Italian Republic did not submit any observations in the context of the appeal proceedings.

V — The pleas in law in the main appeal and in the cross-appeal

30 CMV claims that the Court should:

— set aside the judgment under appeal in so far as it confirms the withdrawal decision, giving final judgment on the dispute and annulling that decision in its entirety, and

— order the Commission to pay the costs.

31 The Commission claims that the Court should:

— dismiss the appeal by CMV;

— by means of the cross-appeal, set aside the judgment under appeal in that it annuls the withdrawal decision 'in so far as the Commission did not limit its request for repayment of the assistance to the sums corresponding to the part of the project which, under the award decision, was to be carried out by [CMV] itself', and

— order CMV to pay the costs.

VI — The appeal

32 It is appropriate to examine the cross-appeal before the main appeal.

A — *The cross-appeal*

33 The Commission puts forward two pleas in law in support of its cross-appeal.

1. The first plea of the cross-appeal

(a) Arguments of the parties

34 The Commission maintains that the Court of First Instance misapplied the principle of proportionality in a context in which, if the award decision were interpreted

correctly, the Commission had no discretionary power. The Commission considers that, under that decision, the 'beneficiary' of the assistance in question was CMV, RDS being simply the other body responsible for implementing the project. In the view of the Commission, that decision required it, in certain circumstances, to recover the assistance in full from CMV alone. An attempt to recover it from RDS would therefore have been unlawful. The Commission asserts that the Court of First Instance erred in its analysis of the award decision because, although it examined certain provisions of that decision, it analysed each of them in isolation, whereas according to the Commission it was also necessary to undertake an overall examination of those provisions together.

35 CMV considers that the wording of the provisions of Annex II to the award decision, whether considered separately or together, does not offer the parties concerned an unambiguous and sufficiently clear picture of their respective obligations and responsibilities. Moreover, according to CMV, it is entirely implausible that on the basis of the award decision the Commission was obliged to take action solely against CMV.

(b) Findings of the Court

36 As the Court of First Instance rightly stated in paragraph 52 of the judgment under appeal, where financial assistance is granted for a project which several parties are responsible for carrying out, the relevant legislation does not state from which of those parties the Commission may or should request repayment of the assistance in the event of irregularities being committed in the implementation of the project by one or more of those parties.

37 In those circumstances, the Court of First Instance examined, in paragraphs 54 to 64 of the judgment under appeal, whether, given the serious consequences that any obligation to repay financial assistance might entail for the parties concerned, the terms of the award decision and its annexes were sufficiently clear and specific, so that CMV, as a prudent and experienced agent, would necessarily know that in the event of irregularities in the implementation of the project, irrespective of whether RDS or CMV itself was answerable for them, CMV would be the only party that would be financially liable to the Community in respect of all the assistance granted.

38 Since, in assessing the rights and obligations of each party stemming from the award decision, the Court of First Instance examined in detail whether the Commission could request on that basis that CMV alone repay the financial assistance that had been granted for measures carried out by itself and by RDS, the arguments by means of which the Commission seeks to establish that one or other provision of the award decision had been taken into account only insufficiently or in isolation by the Court of First Instance are inadmissible.

39 Indeed, as the Advocate General has pointed out in points 48 and 49 of her Opinion, the Court of First Instance states convincingly in paragraphs 58 to 64 of the judgment under appeal that the award decision was not, as a whole, sufficiently clear and precise for CMV alone to assume financial responsibility to the Community in the event of irregularities in the implementation of the project. These paragraphs in the judgment under appeal show, first, that the Court of First Instance examined to the requisite legal standard all of the Commission's arguments on the interpretation of the award decision and, secondly, contrary to the Commission's assertions, that it examined the relevant provisions of Annex II to the award decision in the context of an overall examination of that decision, including its annexes.

40 In the light of the foregoing, the first plea of the cross-appeal must therefore be dismissed.

2. The second plea of the cross-appeal

(a) Arguments of the parties

41 The Commission maintains that the Court of First Instance, by penalising a claimed infringement of the principle of proportionality, was in reality censuring an alleged breach of the principle of legal certainty committed when the award decision was adopted. According to the Commission, it therefore went beyond the objective limits of the dispute pending before that court.

42 CMV states that the Court of First Instance had no intention of censuring the award decision.

(b) Findings of the Court

43 It must be recalled first that since it would be ultra vires for the Community judicature to rule *ultra petita* (see Joined Cases 46/59 and 47/59 *Meroni* v *High Authority* [1962] ECR 411, at page 419, and Case 37/71 *Jamet* v *Commission* [1972] ECR 483, paragraph 12), the scope of the annulment which it pronounces may not go further than that sought by the applicant (Case C-310/97 P *Commission* v *AssiDomän Kraft Products and Others* [1999] ECR I-5363, paragraph 52).

44 It is evident from paragraphs 55 to 65 of the judgment under appeal that the Court of First Instance confined itself to ascertaining whether the award decision was sufficiently clear and precise, such that CMV would necessarily know that in the event of irregularities in the implementation of the project, whether attributable to RDS or CMV itself, CMV would be the only party financially liable to the Community in respect of all the assistance granted.

45 For example, in paragraph 65 of the judgment under appeal, the Court of First Instance concludes that the withdrawal decision, in so far as it requests full repayment of the assistance from CMV alone without seeking to ascertain which of the parties was actually and substantively responsible for committing the irregularities in question in the implementation of the project, constitutes a measure which is disproportionate in relation to the difficulties caused to CMV by the request for repayment of the full amount of the assistance already granted.

46 It follows that the Court of First Instance did not examine the lawfulness of the award decision but assessed that decision in order to determine whether the Commission was entitled to request the full repayment of the assistance in question from CMV alone. In so doing, the Court of First Instance did not, contrary to the Commission's claim, exceed the objective limits of the dispute before it.

47 Given the foregoing, the second plea of the cross-appeal must therefore be rejected.

48 Accordingly, in the light of all the considerations above, the Commission's cross appeal must be dismissed.

B — *The main appeal*

49 CMV relies upon five pleas in support of its appeal. According to the wording of the appeal, the first plea alleges failure to make a finding in respect of one of the pleas of the action before the Court of First Instance. The second is based on infringement and misapplication of the principle of proportionality and on the inherent illogicality

of the judgment under appeal. The third plea alleges infringement and misapplication of Article 24 of Regulation No 4253/88 and of the award decision, failure to state reasons and the inherent illogicality of that judgment. The fourth plea is based on procedural irregularities in the checks carried out by the Commission and on breach of the rights of the defence in this regard. Lastly, the fifth plea alleges infringement and misapplication of Article 24(2) of Regulation No 4253/88 and breach of the principle of proportionality.

50 For the purposes of the main appeal, CMV's third plea should be examined first. The Court considers it appropriate then to examine the first and second pleas together. Subsequently, the fourth and fifth pleas will be examined separately.

1. The third plea of the main appeal

51 In its third plea CMV maintains that the Court of First Instance based its examination of the Commission's complaints against CMV in the withdrawal decision on an erroneous and excessive interpretation of Article 24(2) of Regulation No 4253/88, by ignoring the criterion of 'graduality of the penalty'. In regard to each of these objections, CMV alleges that the Court of First Instance erred in the statement of reasons for the judgment under appeal.

52 The Commission considers that CMV's arguments in support of this plea relate to the assessment of matters of fact and are therefore inadmissible. To the extent that CMV alleges a lack of proportion between the penalty and the seriousness of the alleged irregularities, the Commission considers that this claim forms part of the fifth plea of the main appeal.

53 For the purposes of examining CMV's arguments relating to the specific complaints set out by the Commission in the withdrawal decision, it must first be noted that the Court has already ruled, in response to an argument based on the principle of gradation of measures, that Article 24(2) of Regulation No 4253/88 authorises the Commission to request the complete cancellation of Community financial assistance and that limiting the possibilities open to the Commission to reduce the assistance in proportion exclusively to the amount to which the irregularities found to exist relate would have the effect of encouraging fraud on the part of the applicants for financial assistance, since they would then risk only the loss of the benefit of the sums unduly paid (see, to that effect Case C-500/99 P *Conserve Italia* v *Commission* [2002] ECR I-867, paragraphs 74, 88 and 89).

(a) The arguments concerning the making of a film by Romana Video

54 The sixth indent of the ninth recital of the withdrawal decision reads as follows:

'[CMV] charged "Romana Video", and declared paid, ITL 98 255 000 (ECU 50 672) for making a video as part of the project. At the time of the inspection (25 and 26 March 1998) there was still ITL 49 000 000 outstanding. [CMV] stated that that sum would not be paid because it was the cost of selling the rights in the video to the company which made it. [CMV] submitted expenditure ITL 49 000 000 higher than the expenditure actually incurred'.

55 In paragraph 77 of the judgment under appeal, the Court of First Instance found that the assistance granted was intended to finance a certain percentage of the costs actually incurred by the parties concerned in carrying out the project.

56 In the next paragraph, the Court of First Instance stated that it was agreed between the parties that CMV had entered into a contract with Romana Video under which it had commissioned that company to make a film about the Valnerina in return for the sum allocated for the project, some ITL 98 million. However, it had only paid that company ITL 49 million since, under the same contract, it had sold the marketing rights in the product back to the company for ITL 49 million.

57 In paragraph 79 of the judgment under appeal, the Court of First Instance found that in carrying out that specific measure provided for in the project CMV had only actually incurred a real cost of around half the expenditure allocated for the project. Indeed, according to the judgment, in view of the simultaneity of the transactions and the set-off arrangement between CMV and Romana Video whilst the project was being carried out, the Commission was justified in considering that, rather than having profited from the result obtained due to the assistance, in carrying out that measure CMV had only in fact incurred the cost resulting from that set-off arrangement.

58 The Court of First Instance considered, in paragraphs 80 and 81 of the judgment under appeal, that the charging to the project of expenditure which CMV had not in fact incurred in carrying it out could be regarded as an irregularity within the meaning of Article 24 of Regulation No 4253/88.

59 CMV nevertheless considers that it was entitled to deduct the full amount of the costs at issue and subsequently to resell the rights in the film in question.

60 The Commission, in contrast, maintains that any beneficiary of a Community grant must justify recoverable costs. It contends that CMV had failed to do so as regards the production of the film.

61 It must be observed first that, as the Court of First Instance also found in paragraph 79 of the judgment under appeal, CMV rightly considers that neither Regulation No 4253/88 nor the award decision expressly prohibits the beneficiary of financial assistance from profiting from results obtained due to that assistance.

62 However, as the Advocate General has pointed out in paragraph 70 of her Opinion, a profit can be considered ineligible for offsetting against the expenses incurred only if it is the result of a sale carried out at arm's length, and not simply a fictitious transaction whose only purpose is to inflate costs.

63 It must be stated that the question of whether the sale of the marketing rights in the film in question to Romana Video constituted a genuine sale or a fictitious transaction constitutes an appraisal of the facts. It is settled law that the Court of First Instance alone has jurisdiction to find the facts, save where a substantive inaccuracy in its findings is attributable to the documents submitted to it, and also to appraise those facts. The appraisal of the facts therefore does not, save where the clear sense of the evidence has been distorted, constitute a point of law which is subject, as such, to review by the Court of Justice (see in particular Case C-390/95 P *Antillean Rice Mills and Others* v *Commission* [1999] ECR I-769, paragraph 29, and Case C-237/98 P *Dorsch Consult* v *Council and Commission* [2000] ECR I-4549, paragraph 35).

64 It must be pointed out in this regard that CMV does not rely on distortion of the facts. Consequently, that question cannot be the subject of review by the Court in the context of this appeal.

65 On the other hand, as the Advocate General has stated in paragraph 72 of her Opinion, the Court may assess whether the Court of First Instance failed in its obligation to state reasons. The line of argument followed by CMV appears to be aimed at showing that the statement of reasons of the Court of First Instance is contradictory in that it accepts the possibility of profiting from the results obtained due to the assistance in question while acceding to the Commission's view that the sale of rights in the film should be deducted from the costs incurred.

66 In that regard, it must be noted that the Court of First Instance explains in paragraph 79 of the judgment under appeal that, in view of the simultaneity of the transactions and the set-off arrangement between CMV and Romana Video whilst the project was being carried out, the Commission was justified in considering that CMV only actually incurred, for the production of the film by that company, a real cost of around half the expenses charged for the project.

67 Sufficient reasons are therefore stated for this clear and unambiguous finding by the Court of First Instance. Contrary to CMV's assertions, it does not follow from the possibility of entering into a legitimate commercial transaction that the one carried out by CMV actually constituted such a transaction.

68 CMV also claims that the Court of First Instance erred in considering, in paragraph 81 of the judgment under appeal, that the charging of costs which are not genuine must be regarded as constituting a serious infringement of the conditions for granting the financial assistance in question and of the obligation to act in good faith, which is incumbent upon the beneficiary of such assistance and may consequently be regarded as an irregularity within the meaning of Article 24 of Regulation No 4253/88. In this regard CMV points out that the second paragraph of Article 3 of the award decision, cited in paragraph 76 of the judgment under appeal, provides that '[w]here the amount of the costs actually incurred leads to a reduction in the eligible expenditure in relation to the original estimates, the assistance will be

reduced proportionally at the time the balance is paid'. According to CMV, even if the cost of the film was less than the initial estimate, Article 24 of Regulation No 4253/88 would not be applicable, as this situation was governed entirely by the abovementioned provisions of the award decision.

69 In this respect, it must be stated that, contrary to CMV's assertions, the mere fact that the second paragraph of Article 3 of the award decision provides for situations where the costs actually incurred are less than the original estimates does not mean that a fictitious transaction, the purpose of which is to increase the costs of a project, does not constitute an irregularity within the meaning of Article 24 of Regulation No 4253/88. Indeed, in accordance with a fundamental principle governing Community aid, as stated by the Advocate General in paragraph 77 of her Opinion, the Community can subsidise only expenditure actually incurred (see to that effect, with regard to the clearing of accounts, Cases C-55/91 *Italy* v *Commission* [1993] ECR I-4813, paragraph 67; C-253/97 *Italy* v *Commission* [1999] ECR I-7529, paragraph 6; C-153/01 *Spain* v *Commission* [2004] ECR I-9009, paragraph 66; and C-199/03 *Ireland* v *Commission* [2005] ECR I-8027, paragraph 26). The charging to a project of expenditure which in fact has not been incurred in carrying out the project seriously undermines that principle and can therefore be regarded as an irregularity within the meaning of Article 24 of Regulation No 4253/88. The second paragraph of Article 3 of the award decision creates a mechanism for determining the amount of eligible expenditure where it proves to be less than the original estimates, but it does not cater for situations in which costs have been charged that have not been shown to be genuine.

70 CMV's arguments relating to the production of a film by Romana Video must therefore be dismissed.

(b) The arguments concerning staff costs

71 The seventh indent of the ninth recital of the withdrawal decision reads as follows:

'[CMV] charged ITL 202 540 668 (ECU 104 455) to the project, representing the costs of employing five persons on the "tourist information" part of the project. [It] failed to submit supporting documents (contracts of employment, details of activities performed) in respect of that expenditure.'

72 Furthermore, according to the ninth indent of the ninth recital of the withdrawal decision:

'[CMV] declared ITL 152 340 512 (ECU 78 566) in respect of staff costs in connection with "activities other than tourist information". [It] did not submit documents to show that the services were actually provided or that [they] were directly linked to the project.'

73 In that regard the Court of First Instance stated, in paragraph 89 of the judgment under appeal, that point 3 of Annex II to the award decision lays down that '[s]taff costs ... must relate directly to, and be appropriate to, the implementation of the measure'. In paragraph 95 of that judgment, the Court of First Instance concluded that the Commission had not committed an error in considering that CMV had not submitted supporting documents to it which would establish that the staff costs charged to the project related directly to its implementation and were appropriate.

74 CMV considers that it provided sufficient supporting documents in the form of tables stating the names of the persons concerned, an estimate of the time they had spent on the project, their wages and the resulting expenditure in respect of the implementation of the project. Moreover, in the view of CMV, the very fact that the project was carried out proves the costs in question.

75 In that regard, the Commission relies on paragraph 94 of the judgment under appeal, according to which CMV must show not only that the project approved by the Commission in the award decision has been carried out correctly in substance but also that every part of the Community contribution relates to a service actually provided which was essential for the implementation of the project.

76 First, as stated in paragraph 69 of this judgment, the Community can finance only expenditure actually incurred. Hence, in order that the Commission may perform a monitoring function, the beneficiaries of Community financial assistance must be able to demonstrate that the costs charged to the projects for which such assistance has been granted are genuine. Consequently, as the Court of Justice has already ruled, for the proper working of the system for carrying out checks and acquiring evidence to verify that the conditions for the grant of the assistance are being fulfilled, it is essential that applicants for, and beneficiaries of, such assistance provide reliable information (see the order in Case C-18/03 P *Vela and Tecnagrind* v *Commission*[2004] not published in the ECR, paragraph 135).

77 Secondly, CMV's argument that the mere fact that the project was implemented justifies the costs in question cannot be accepted. The Court of Justice has already ruled that measures set out in Article 24 of Regulation No 4253/88 for withdrawing financial assistance and recovering sums unduly paid are not reserved for breaches that compromise the implementation of the project concerned or entail a significant change affecting the nature and very existence of the project (see, to that effect, the order in *Vela and Tecnagrind* v *Commission*, paragraphs 129 to 134). Consequently,

the Court of First Instance was right to rule, in paragraph 94 of the judgment under appeal, that it cannot be argued that the penalties provided for by that provision apply only where the operation being financed has not been carried out in whole or in part.

78 It follows from the foregoing that it is not sufficient to show that a project was implemented to justify the award of a specific grant. On the contrary, the beneficiary of the aid must prove that it has incurred staff costs, in accordance with the terms and conditions laid down for the award of the assistance in question.

79 However, the question whether the supporting documents relating to staff costs are sufficient to meet these requirements falls within the scope of the appraisal of the facts, which, for the reasons explained in paragraph 63 of this judgment, cannot be subject to review by the Court of Justice in an appeal.

80 As regards compliance with the obligation to state reasons, it is sufficient to point out that in paragraphs 91 to 93 of the judgment under appeal the Court of First Instance stated that the documents provided by CMV were not sufficient to establish that the staff costs related to the project nor to assess whether they were appropriate. Such a finding explains to the requisite legal standard the reasons why the Court of First Instance considered that adequate documentation on staff costs had not been furnished.

81 CMV's arguments relating to staff costs must therefore be dismissed.

(c) The arguments concerning overheads

82 The 10th indent of the ninth recital of the withdrawal decision reads as follows:

'[CMV] charged ITL 31 500 000 (ECU 26 302) to the project, representing overheads (rental of two offices, heating, electricity, water and cleaning). That allocation was not supported by any type of document.'

83 In paragraph 105 of the judgment under appeal, the Court of First Instance stated in this regard that the irregularity established by the Commission with regard to the overheads related only to the use for the project of premises which CMV had already occupied before the assistance was awarded. In paragraph 106 of that judgment the Court of First Instance, after having pointed out that the assistance granted was intended to finance a certain percentage of the costs actually incurred by the parties concerned in carrying out the project, held that, in order to prevent fraudulent practices, the Commission could quite properly consider that overheads such as those charged by CMV in the present case were not actually connected with implementation of the project but constituted expenditure which the beneficiary would have borne in any case, as a result of its normal activity, irrespective of the implementation of the project. Consequently, in paragraph 107 of the judgment in question, the Court of First Instance ruled that the Commission had not committed an error in considering that charging those overheads constituted an irregularity within the meaning of Article 24 of Regulation No 4253/88.

84 CMV claims with regard to this point that the Court of First Instance merely endorsed a supposition from the Commission, whereas it should have required

proof that this expenditure had not been incurred. According to CMV, paragraphs 106 and 107 of the judgment under appeal amount to saying that irregularities within the meaning of Article 24 of Regulation No 4253/88 can be established on the basis of mere suspicions on the part of the Commission.

85 It must be stated, however, that in so arguing CMV overlooks the fact that it was required, for the reasons set out in paragraph 76 of this judgment, to demonstrate that the costs charged related to, and were appropriate to, the implementation of the project.

86 The obligation to comply with the financial conditions set out in an award decision constitutes, in the same way as the substantive obligation to carry out the project concerned, one of the beneficiary's essential commitments and is therefore a precondition for the grant of Community financial assistance (see, to that effect, the order in *Vela and Tecnagrind* v *Commission*, paragraph 135).

87 It follows that once the Court of First Instance had established that the Commission could consider that the overheads in question were not genuinely linked to implementation of the project — a finding of fact that cannot be subject to review by the Court of Justice in the present appeal — it was right to rule that the charging of these costs constituted an irregularity within the meaning of Article 24 of Regulation No 4253/88.

88 Consequently, CMV's arguments relating to overheads must be dismissed.

(d) The arguments concerning consultancy costs

89 In the eighth indent of the ninth recital of the withdrawal decision the Commission noted that:

'[CMV] charged ITL 85 000 000 (ECU 43 837) to the project, representing the costs for consulting [the consultancy] Mauro Brozzi e Associati S.A.S. That expenditure was not supported by any documents which made it possible to establish the existence and the precise nature of the services provided.'

90 In paragraph 117 of the judgment under appeal, the Court of First Instance found that CMV had failed to show that the Commission had committed an error in considering that the consultancy costs in question had not been proved by supporting documents which made it possible to establish the existence and the precise nature of the services provided. The Court of First Instance held that the Commission had rightly concluded, on those grounds, that there had been an irregularity within the meaning of Article 24 of Regulation No 4253/88.

91 CMV alleges that the judgment under appeal fails to state reasons in respect of this point. In its opinion, it is apparent from a contract signed between CMV and the consultancy of Mauro Brozzi e Associati S.A.S. that four-fifths of the services stipulated under that contract were undeniably provided.

92 In this regard, it has to be stated that CMV has furnished the Court of Justice with no evidence to demonstrate a breach of the obligation to state reasons. Indeed, under cover of an argument based on an alleged breach of that obligation, it seeks in

essence a re-appraisal of the facts, whereas the Court of Justice, for the reasons set out in paragraph 63 of this judgment, does not have jurisdiction to do so in an appeal.

93 Consequently, CMV's arguments regarding the consultancy costs must be dismissed.

(e) The arguments concerning the irrigation system

94 In the 11th indent of the ninth recital of the withdrawal decision the Commission indicated that:

'[A]s part of the "cultivation of spelt wheat and truffles" operation, the [award decision] provided for making investment in order to improve irrigation systems for the cultivation of truffles, amounting to ECU 41 258. That investment was not made and no explanation in that regard was provided to the Commission.'

95 In paragraphs 126 to 129 of the judgment under appeal, the Court of First Instance found that CMV had not provided the Commission with any supporting documents regarding expenditure on such investment, before concluding that the Commission had not committed any error in considering that CMV had not shown that the investment had actually been made.

96 CMV maintains that the Court of First Instance did not take into account an expert opinion produced in support of its action. In addition, it considers that the Court of First Instance could not hold against it the fact that, several years later, it was unable to justify the costs incurred for emergency irrigation carried out by third parties during summers of severe drought.

97 It is clear from paragraph 129 of the judgment under appeal that the Court of First Instance based its assessment in this regard on the conclusion that 'the Commission [had] not commit[ted] any error in considering that [CMV] had not shown that the investment planned in respect of the irrigation system had actually been made'. As is clear from paragraph 76 of this judgment, only duly proven expenditure is eligible. It is common ground that CMV did not produce supporting documents for this investment. With regard to the alleged difficulty of producing such documents, it is necessary to refer to point 6 of Annex II to the award decision, which requires the beneficiary of the financial assistance concerned to keep all the supporting documents and to make them available to the Commission. As the Advocate General has rightly stated in paragraph 91 of her Opinion, if CMV did not have the necessary supporting documents, it should not have charged these costs.

98 As regards the expert report submitted to the Court of First Instance, it is clear from paragraph 121 of the judgment under appeal that the report relates only to whether the term 'back-up irrigation systems' used in the context of that specific project should be understood in the sense indicated by CMV before the Court of First Instance and whether the related costs were adjusted in the light of the prices usually applying in respect of EAGGF operations. As the Advocate General has stated in paragraph 90 of her Opinion, the Court of First Instance did not, in paragraph 129 of the judgment, settle the question of which measures were to be implemented under the award decision.

99 Hence, CMV's arguments regarding the irrigation system must be rejected.

100 In the light of the foregoing, the third plea of the main appeal must therefore be dismissed.

2. The first and second pleas of the main appeal

(a) Arguments of the parties

101 In its first plea CMV appears to claim that, by examining only whether the Commission was entitled to request it to make full repayment of the financial assistance in question, the Court of First Instance failed to assess the risk of a disproportion and of discrimination stemming, according to CMV, from the 'attribution' to CMV of irregularities that may have been committed by RDS, whereas CMV was not in a position to reply to the complaints made against RDS and the irregularities of which CMV was accused represented barely 29% of the cost of the project.

102 In its second plea CMV maintains that, as the Court of First Instance had acknowledged that the request for full repayment of the said assistance by CMV alone was disproportionate, it should have annulled the withdrawal decision in its entirety and not only in part and should have considered its position afresh in the light of only those irregularities of which CMW itself was accused.

103 The Commission considers that the first plea should be declared inadmissible, either for lack of clarity or for lack of interest on the part of CMV in raising it. In the alternative, if the Court considers the first plea to be admissible and well-founded, the Commission asks the Court to rule on the substance and to reject the arguments put forward by CMV.

104 With regard to the second plea, the Commission points out that the Court of First Instance explicitly ruled that the complete withdrawal of the financial assistance was lawful and confined itself to setting a different distribution of the obligation to pay from that laid down in the withdrawal decision. It relies in this regard on the general principles of procedural and administrative economy in maintaining that this plea is without legal foundation because, if the withdrawal decision had been annulled in its entirety, it would have been necessary to adopt a new decision essentially repeating the contents of that decision.

(b) Findings of the Court

(i) Admissibility of the first plea of the main appeal

105 To begin with, it must be recalled that, according to settled case-law, it follows from Article 225 EC, the first paragraph of Article 58 of the Statute of the Court of Justice and Article 112(1)(c) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal (see, inter alia, Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraph 34, Case C-248/99 P *France* v *Monsanto and Commission* [2002] ECR I-1, paragraph 68, and Case C-41/00 P *Interporc* v *Commission* [2003] ECR I-2125, paragraph 15).

106 An appeal which merely repeats or reproduces verbatim the pleas in law and arguments previously submitted to the Court of First Instance, including those based on facts expressly rejected by that Court, does not satisfy the requirements to state reasons under those provisions (see, in particular, the order in Case C-174/97 P *FFSA and Others* v *Commission* [1998] ECR I-1303, paragraph 24, and the judgment

in *Interporc* v *Commission*, cited above, paragraph 16). In reality, such an appeal amounts to no more than a request for a reexamination of the application submitted to the Court of First Instance, a matter which falls outside the jurisdiction of the Court of Justice (see the order in Case C-26/94 P *X* v *Commission* [1994] ECR I-4379, paragraph 13, and the judgment in *Bergaderm and Goupil* v *Commission*, cited above, paragraph 35).

107 However, provided that the appellant challenges the interpretation or application of Community law by the Court of First Instance, the points of law examined at first instance may be discussed again in the course of an appeal (see Case C-210/98 P *Salzgitter* v *Commission* [2000] ECR I-5843, paragraph 43). Indeed, if an appellant could not thus base his appeal on pleas in law and arguments already relied on before the Court of First Instance, an appeal would be deprived of part of its purpose (see, in particular, the order in Case C-345/00 P *FNAB and Others* v *Council* [2001] ECR I-3811, paragraphs 30 and 31, and the judgments in Case C-321/99 P *ARAP and Others* v *Commission* [2002] ECR I-4287, paragraph 49, and in *Interporc* v *Commission*, cited above, paragraph 17).

108 In the present case, the Commission maintains that the first plea in law of the appeal is manifestly inadmissible because it does not comply with the minimum requirements of clarity and precision. In the opinion of the Commission, the first plea may be interpreted in at least two different ways.

109 In this regard, it must be stated first that the aim of the first plea, taken as a whole, is to challenge the assessment by the Court of First Instance of the questions of law submitted to it in the context of the first plea at first instance, and secondly that CMV indicates precisely certain contested elements of the judgment under appeal.

110 It is true that the arguments put forward by CMV in support of its first plea before this court are not without ambiguity when taken individually. However, read in

conjunction with the second plea of the main appeal, the arguments supporting the first plea are sufficiently clear to meet the requirements laid down in Article 225 EC, the first paragraph of Article 58 of the Statute of the Court of Justice and Article 112(1)(c) of the Rules of Procedure of the Court of Justice.

111 It is apparent that, by its first two pleas CMV maintains in essence that the severe penalty imposed on it, consisting in the complete withdrawal of the financial assistance in question, was imposed because of irregularities ascribable to RDS and that therefore, first, the withdrawal decision should have been annulled in its entirety since responsibility for the parts of the project to be implemented by RDS had been incorrectly attributed to CMV and, secondly, the position of CMV should be considered afresh in the light of only the irregularities of which it was specifically accused.

112 Thus, CMV relies on a two-stage line of argument: the first plea aims to show that the Court of First Instance did not assess the possibility that the severity of the penalty imposed on it was based partly on irregularities ascribed to RDS, while the second plea aims to demonstrate a lack of proportion between the irregularities of which it is accused and the severity of the penalty represented by the complete withdrawal of the financial assistance, based largely on the irregularities attributed to RDS, which related to around 70% of the costs in question and about which CMV was not placed in a position to reply.

113 Consequently, the first plea of the main appeal is not inadmissible on grounds of lack of clarity and precision.

114 The Commission also relies, in defence, on lack of interest on the part of CMV in alleging a supposed failure to rule on a plea relied upon at first instance, the Court of First Instance having, in the judgment under appeal, in large part accepted that plea and, for that reason, considerably reduced the amount of the financial penalty imposed on CMV.

115 On this point it suffices to observe that, in accordance with the interpretation that should be given to the first plea of the appeal, as set out in paragraphs 111 and 112 of this judgment, the first plea in effect is intended to achieve the complete annulment of the withdrawal decision, and not the partial annulment thereof. It follows that, contrary to the claims of the Commission, CMV demonstrates an interest in raising this plea.

116 The objection of inadmissibility alleging that CMV has no interest to raise the first plea in the main appeal is therefore unfounded.

117 In these circumstances, it must be found that, as none of the objections of inadmissibility alleged against the first plea of the main appeal is well-founded, this plea is admissible.

(ii) The substance of the first and second pleas of the main appeal

118 It is apparent from CMV's submissions that its first and second pleas, set out in paragraphs 111 and 112 of this judgment, are based on the premiss that the decision in which CMV was asked to repay the financial assistance in full was influenced by the irregularities ascribed to RDS alone, so that in the judgment under appeal, by not annulling the withdrawal decision in its entirety, the Court of First Instance allowed irregularities for which RDS alone was responsible to continue to be attributed unjustifiably to CMV.

119 However, it has to be stated that in this respect CMV misconstrues the reasoning of the Court of First Instance and the consequences of the judgment under appeal.

120 It must first be recalled that when the Court of First Instance examined the first plea raised before that court it ruled that, taking into account the serious consequences for CMV of a request to repay the assistance in question in full and the lack of clarity and precision in the award decision, the Commission had infringed the principle of proportionality by requiring CMV alone to repay the full amount of the assistance at issue. It did not, however, in any way suggest, in its assessment of that plea or elsewhere in the judgment under appeal, that such a request had been influenced by the conduct of RDS.

121 On the contrary, in connection with the second plea raised before it, in particular in paragraphs 80 to 81, 95 to 97, 107, 117 and 129 to 130 of the judgment under appeal, the Court of First Instance found specifically that each of the complaints made against CMV in the withdrawal decision constituted an irregularity within the meaning of Article 24 of Regulation No 4253/88. CMV itself has never maintained that RDS was implicated in any one of these irregularities.

122 Furthermore, in paragraphs 142 to 149 of the judgment under appeal, the Court of First Instance rightly stated, as is evident from paragraphs 53 and 77 of this judgment, that, in the light of such irregularities, the Commission was entitled to withdraw the financial assistance in question to the extent that it related to the parts of the project for which CMV was responsible.

123 In these circumstances, and taking into account the principle of economy of procedure, it was permissible for the Court of First Instance to annul the withdrawal decision solely to the extent that the Commission had not confined its request for repayment of the assistance to the amounts corresponding to the part of the project attributed to CMV. Indeed, if it had annulled the withdrawal decision in its entirety, the Commission would have had to adopt a new decision with regard to CMV essentially repeating the content of the withdrawal decision relating to the parts of the project for which CMV was responsible.

124 There is therefore no need to rule on the question whether CMV was placed in a position to reply to the complaints against RDS, as that question in any event has no effect on the assessment of the present pleas. Moreover, it entails an appraisal of the facts, which for the reasons explained in paragraph 63 of this judgment does not lie within the jurisdiction of the Court of Justice in an appeal.

125 CMV's arguments can therefore only be rejected.

126 In the light of the foregoing, the first and second pleas of the main appeal must accordingly be dismissed.

3. The fourth plea of the main appeal

(a) Arguments of the parties

127 In its fourth plea CMV maintains that, when examining the third part of the second plea raised before it, the Court of First Instance incorrectly interpreted the arguments alleging infringement of the right to be heard. It states that that line of argument did not relate to the general possibility of justifying its actions but more specifically to the way in which the Commission performed an on-the-spot inspection. In particular, it alleges a wrongful failure to prepare a report on the inspection and to draw up a list of the documents photocopied at the time of the inspection. CMV states in this regard that, for the rights of persons subject to an inspection to be respected, such an operation must be conducted on an *inter partes* basis and be documented in a precise report.

128 The Commission observes that its inspectors were not required to draw up minutes at the location of the inspection and that in the present case the inspection was conducted on an *inter partes* basis. According to the Commission, it is in the light of these circumstances that the Court of First Instance found, in paragraph 138 of the judgment under appeal, that the rights of the defence had been observed.

— Findings of the Court

129 As the Court of First Instance pointed out in paragraph 136 of the judgment under appeal, it is apparent from the case-law of the Court of Justice that respect for the rights of the defence is, in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person, a fundamental principle of Community law which must be guaranteed even in the absence of any rules governing the proceedings in question. That principle requires that the addressees of decisions which significantly affect their interests should be placed in a position in which they may effectively make known their views (see, for example, Case C-32/95 P *Commission* v *Lisrestal and Others* [1996] ECR I-5373, paragraph 21, Case C-462/98 P *Mediocurso* v *Commission* [2000] ECR I-7183, paragraph 36, and Case C-287/02 *Spain* v *Commission* [2005] ECR I-5093, paragraph 37).

130 It has to be stated that neither the principle of respect for the rights of the defence nor Regulation No 4253/88 required CMV to be presented, at the time of the on-the-spot inspection, with a report or a list of the documents photocopied at the time of that visit, provided that CMV was placed in a position to contest the allegations made by the Commission following that inspection, where appropriate by refuting them.

131 Hence, in paragraphs 134 to 138 of the judgment under appeal, the Court of First Instance was right to examine, without dwelling on the means whereby that inspection was performed, whether the opportunity given to CMV to put forward its view before the adoption of the contested decision satisfied the requirements of the principle that the rights of the defence must be observed.

132 In paragraph 134 of the judgment under appeal the Court of First Instance noted that CMV had referred to the absence of a report on the activities and discussions of the Commission officials and, in particular, the failure to prepare a list of the documents photocopied on those occasions.

133 Nevertheless, the Court of First Instance considered, in paragraphs 137 and 138 of the judgment under appeal, that the Commission had given CMV sufficient opportunity to show that it had properly carried out the measures under the project for which it was responsible by producing the supporting documents which it was required to make available to the Commission under the award decision.

134 That conclusion constitutes an appraisal of the facts which, for the reasons explained in paragraph 63 of this judgment, cannot be subject to review by the Court of Justice in an appeal.

135 In the light of the foregoing, the fourth plea of the main appeal must therefore be rejected.

4. The fifth plea of the main appeal

(a) Arguments of the parties

136 In its fifth plea CMV claims that the Court of First Instance disregarded the principle of proportionality by rejecting its plea alleging a contradiction between, on the one hand, the nature of the alleged irregularities and the fact that the purpose of the financing was achieved and, on the other, the seriousness of the penalty, consisting in the complete withdrawal of the financial assistance in question.

137 In support of this plea, CMV states that it has not been established that it charged unjustified expenditure to the project. In addition, it points out that it had no fraudulent intent and supplied no erroneous information. Lastly, it maintains that it can only be accused of not having proved in detail the employment of its own technicians for the project.

138 The Commission contends that this plea is inadmissible, as CMV has added nothing to the arguments already relied upon before the Court of First Instance. On the substance, the Commission states in the alternative that, given the factual background revealed by the judgment under appeal, the conclusion of the Court of First Instance is consistent with applicable case-law on this point.

(b) Findings of the Court

139 In this plea CMV challenges the interpretation and application of the principle of proportionality by the Court of First Instance. Hence, for the reasons set out in paragraph 107 of this judgment, and contrary to the claim of the Commission, the plea is admissible in an appeal.

140 As the Advocate General has stated in paragraph 97 of her Opinion, it is clear from Article 24 of Regulation No 4253/88 — the provision on which the withdrawal decision is based — that the Commission is not required to request repayment of the financial assistance in full, but at its discretion may or may not decide to request such repayment and, where appropriate, to set the proportion to be repaid (see also, to that effect, the judgment in *Ireland* v *Commission*, paragraphs 27 and 30). In the

light of the principle of proportionality, the Commission must exercise this discretion in such a way that repayments which it orders are not disproportionate to the irregularities committed.

141 However, the Commission is not required to confine itself to requesting the repayment of only the grants that have proved unjustified because of those irregularities.

142 On the contrary, with the aim of ensuring effective management of Community aid and deterring fraud, a request for repayment of grants which are only partly affected by irregularities may be justified.

143 It should be recalled in this regard that the infringement of obligations whose observance is of fundamental importance to the proper functioning of a Community system may be penalised by forfeiture of a right conferred by Community legislation, such as entitlement to aid (Case C-104/94 *Cereol Italia* [1995] ECR I-2983, paragraph 24).

144 The Court of Justice has also ruled that it is essential for the proper functioning of the system of controls set up to ensure proper use of Community funds that applicants for aid provide the Commission with information which is reliable and not liable to mislead it. Only the possibility that an irregularity may be penalised not by reduction of the aid by an amount corresponding to that irregularity but by

complete cancellation of the aid can produce the deterrent effect required to ensure the proper management of the resources of the EAGGF (judgment in *Conserve Italia* v *Commission*, paragraphs 100 and 101).

145 Moreover, it is clear from the considerations set out in paragraph 77 of this judgment that the fact that the objective of the financing was achieved does not of itself mean that the sanction consisting in the complete withdrawal of financial assistance is disproportionate.

146 It follows that the Court of First Instance could rule, without committing an error in law, that the implementation of the policy on Community aid justifies that the charging of expenses be subject to strict formal conditions and that irregularities discovered in this regard justify the request for repayment of the sums paid for the part of the project under the responsibility of CMV.

147 It is true that, as summarised in paragraph 137 of this judgment, CMV maintains that the existence of unproven expenses has not been proven, that it had no fraudulent intent and that all it may be accused of is not having provided sufficient supporting documents.

148 However, these arguments relate to matters of fact. Since the Court of First Instance took the appropriate factors fully into consideration in assessing the proportionality of the complete withdrawal of the assistance in question, the arguments adduced by CMV to demonstrate that one factor or another was not taken sufficiently into account by the Court of First Instance are inadmissible in the present appeal.

149 Even supposing that, in pointing out that it did not provide inaccurate or misleading information, CMV can be regarded as claiming that, in the light of the principle of proportionality, Regulation No 4253/88 implies an obligation for the Commission to demonstrate some fraudulent intent on the part of CMV, or that the principle requires that the possibility of complete withdrawal of financial assistance be reserved solely for cases of fraudulent breach of the financial conditions, such arguments cannot be accepted.

150 According to the case-law of the Court that the concept of irregularity, within the meaning of Article 24(2) of Regulation No 4253/88, does not imply an obligation for the Commission to demonstrate any fraudulent intent on the part of the beneficiary (see the order in Case C-222/03 P *APOL and AIPO* v *Commission*, not published in the ECR, paragraph 58). Nor does the principle of proportionality require that the possibility of withdrawing financial assistance be reserved for cases of fraudulent breach of the financial conditions. Moreover, confining this possibility solely to cases of proven fraudulent breach would risk creating an invitation to commit irregularities (see, to that effect, the orders in Case C-455/02 P *Sgaravatti Mediterranea* v *Commission*, not published in the ECR, paragraphs 39 to 42, and in *APOL and AIPO* v *Commission*, paragraph 59).

151 In view of the foregoing, the fifth plea of the main appeal must be rejected.

152 In these circumstances the main appeal, as well as the cross-appeal, must be dismissed.

VII — Costs

153 Under the first paragraph of Article 122 of the Rules of Procedure, where the appeal is unfounded or where the appeal is well-founded and the Court of Justice itself gives final judgment in the case, the Court is to make a decision as to costs. Under Article 69(2) of those Rules, which apply to appeal proceedings by virtue of Article 118, 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 asked for CMV to be ordered to pay the costs and the latter has been unsuccessful in its grounds of appeal, CMV must be ordered to pay the costs relating to the main appeal. Since CMV has asked for the Commission to be ordered to pay the costs of the cross-appeal and the latter has been unsuccessful in its grounds of appeal, the Commission must be ordered to pay the costs relating to the cross-appeal.

On those grounds, the Court (Third Chamber) hereby:

1. **Dismisses the main appeal and the cross-appeal;**

2. **Orders the Comunità Montana della Valnerina to pay the costs relating to the main appeal;**

3. **Orders the Commission of the European Communities to pay the costs relating to the cross-appeal.**

[Signatures]