JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)

30 June 2009 *

In Case T-444/07,

Centre de promotion de l'emploi par la micro-entreprise (CPEM), established in Marseilles (France), represented by C. Bonnefoi, lawyer,

applicant,

v

Commission of the European Communities, represented by L. Flynn and A. Steiblytė, acting as Agents,

defendant,

APPLICATION for annulment of Commission Decision C(2007) 4645 of 4 October 2007 cancelling the assistance granted by the European Social Fund (ESF) by means of Decision C(1999) 2645 of 17 August 1999 and for the payment of damages,

* Language of the case: French.

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

composed of I. Pelikánová (Rapporteur), President, K. Jürimäe and S. Soldevila Fragoso, Judges,

Registrar: E. Coulon,

having regard to the written procedure and further to the hearing on 16 December 2008,

gives the following

Judgment

Legal context

1 The first paragraph of Article 147 EC confers on the Commission the task of administering the European Social Fund (ESF) established under Article 146 EC. In accordance with the first paragraph of Article 159 EC, the ESF is one of the Structural Funds.

2 The legal framework governing the Structural Funds for the 1994 to 1999 programming period relevant to the present case consists primarily of Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of

the European Investment Bank and the other existing financial instruments (OJ 1988 L 185, p. 9), as amended by Council Regulation (EEC) No 2081/93 of 20 July 1993 (OJ 1993 L 193, p. 5) ('Regulation No 2052/88').

3 In implementation of that regulation, the Council adopted Regulation (EEC) No 4255/88 of 19 December 1988 laying down provisions for implementing Regulation No 2052/88 as regards the ESF (OJ 1988 L 374, p. 21), as amended by Council Regulation (EEC) No 2084/93 of 20 July 1993 (OJ 1993 L 193, p. 39) ('Regulation No 4255/88'). It also adopted Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1), as amended by Council Regulation (EEC) No 2082/93 of 20 July 1993 (OJ 1993 L 193, p. 20) ('Regulation No 4253/88').

4 Regulations No 2052/88 and No 4253/88 were repealed, with effect from 1 January 2000, by means of the first paragraph of Article 54 of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1), without prejudice to Article 52(1) of that regulation.

5 Regulation No 4255/88 was repealed, with effect from 1 January 2000, by Article 11 of Regulation (EC) No 1784/1999 of the European Parliament and of the Council of 12 July 1999 on the ESF (OJ 1999 L 213, p. 5), Article 9 of which refers to the transitional provisions set out in Article 52 of Regulation No 1260/1999.

6 Paragraph 1 of the latter provision lays down, inter alia, that 'this Regulation shall not affect the continuation or modification, including the total or partial cancellation, of assistance approved by the Council or by the Commission on the basis of… Regulations… No 2052/88 and… No 4253/88 or any other legislation which applied to that assistance on 31 December 1999'.

7 It follows from the combination of all of these provisions that, even though Regulation No 4255/88 was repealed by Regulation No 1784/1999, the latter provides, by referring to the transitional provisions set out in Article 52 of Regulation No 1260/1999, that Regulation No 4255/88 and Regulation No 4253/88 were to continue to apply to assistance approved on the basis of Regulation No 4255/88.

8 Under Article 6(1)(a) of Regulation No 4255/88, entitled 'Technical assistance and pilot and demonstration projects':

'Outside the Community support frameworks the [ESF] may finance, up to a limit of 0.5% of its annual allocation, preparatory, appraisal, monitoring and evaluation operations in Member States or at Community level which are necessary for the implementation of the operations referred to in Article 1 of this Regulation and carried out at the Commission's initiative or on the account of the Community. They shall include:

(a) operations of an innovatory nature which are intended to test new approaches to the content, methods and organisation of vocational training, including integration of the Community dimension of vocational training and, more generally, the development of employment including the promotion of equal opportunities for men and women on the labour market and the vocational integration of persons exposed to exclusion from the labour market, with a view to establishing a basis for subsequent [ESF] assistance in a number of Member States …'

9 Under Article 24 of Regulation No 4253/88, entitled 'Reduction, suspension and cancellation of assistance':

'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 a 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.'

Background to the dispute

10 On 21 July 1998 the Commission published a call for proposals for the implementation of the 'Local Social Capital' pilot project (OJ 1998 C 228, p. 15). In that call the Commission laid down the guidelines for the award of global grants to intermediary organisations capable of providing back-up for people carrying out micro-level projects which promote employment and social cohesion. As is clear from paragraph 2, the call for proposals was 'open only to non-profit-making organisations and consortia already in existence set up by the said organisations'. According to that same paragraph, '[t]he intermediary organisations… will be required to provide joint funding which may not be less than 15% of the grant applied for'.

11 By way of Decision C(1999) 2645 of 17 August 1999 (the 'award decision'), the Commission awarded ESF assistance in the form of a global grant to finance a pilot

project submitted by the Centre de promotion de l'emploi par la micro-entreprise ('CPEM' or the 'applicant'). The ESF allocated a maximum total amount of EUR 1 000 000 for this pilot project.

12 Article 1 of the award decision laid down the procedures for the awarding and use of the Commission's grant to CPEM. Article 2 states that the specific conditions attaching to the grant are described in Annex III to the award decision. Article 3(2) and (3) of the award decision set 31 August 2001 as the closing date for the commitment of expenditure for the pilot project and 28 February 2002 as the closing date of the implementation period. Article 7 of the award decision provided that CPEM was required to comply with the conditions for the execution of the project set out in the 'Guide relating to Article 6 of the ESF — "Local social capital"'('the Promoter's Guide').

13 By Decision C(2001) 2144 of 18 September 2001, in response to a request from the applicant for an extension, the Commission extended the period for the commitment of expenditure for the pilot project to 31 December 2001 and the implementation period to 30 June 2002.

14 After the global grant had been awarded, and as had been announced in its application file, on 20 September 2000 CPEM entered into an agreement to implement the pilot project with the Centre de formation professionnelle et de promotion sociale (CFPPS), a non-profit-making association that later became Marseille Service Développement (MSD).

15 On 7 October 2002 the Commission received from MSD the final report and the request for final payment relating to the measures taken within the framework of the pilot project.

16 The Commission made interim payments and a final payment for this project totalling EUR 1 000 000.

17 In August 2004 the Commission's Directorate-General for Employment, Social Affairs and Equal Opportunities ('DG Employment') carried out an audit at MSD that found no major irregularities and led to the recovery of EUR 4 472.30.

18 In May 2004 a complainant contacted DG Employment and the European Anti-Fraud Office (OLAF) to report poor financial and administrative management by CPEM or its contractors in respect of the implementation of its individual project. OLAF initiated an external enquiry on 2 May 2005 and carried out on-site inspections in Marseilles between 27 June and 1 July 2005 at the premises of CPEM and those of other economic operators linked to the pilot project.

19 On 8 September 2005 OLAF sent its mission report to the applicant, which replied by letter of 13 October 2005. OLAF replied to that letter by correspondence dated 11 April 2006. The applicant sent its reply on 21 April 2006. Subsequently, on 25 April 2006, at the request of the applicant, a meeting, attended by DG Employment, was held at the offices of OLAF in Brussels.

20 By letter of 24 May 2006 OLAF informed the applicant that the enquiry stage had been completed and that the final report was to be drawn up. OLAF adopted its final report on 4 October 2006. That report was sent to the applicant by letter of 20 October 2006. The final report of OLAF identified several serious irregularities, in the light of which it proposed withdrawal of the Community assistance amounting to EUR 1 000 000 and the recovery of EUR 995 527.70.

21 By letter of 18 January 2007 the Commission notified the applicant of its intention to open the procedure provided for in Article 24 of Regulation No 4253/88.

22 By letter of 19 March 2007, in reply to the letter of 18 January 2007, the applicant contested the final report of OLAF.

23 The Commission, taking the view that in its reply of 19 March 2007 the applicant had not produced legal or factual evidence capable of contradicting the findings made in the final report of OLAF, found that the applicant had not implemented the project as described in the award decision and had set up a management system that contravened the applicable rules. By Decision C(2007) 4645 of 4 October 2007 (the 'contested decision'), the Commission withdrew the assistance granted by means of the award decision. Under Article 2 of the contested decision, the beneficiary is required to pay to the Commission the capital sum of EUR 995 527.70.

Procedure and forms of order sought by the parties

24 By application lodged at the Registry of the Court of First Instance on 5 December 2007, the applicant brought the present action.

25 By a separate document lodged at the Registry of the Court of First Instance on 16 January 2008, the applicant submitted an application for interim measures. By an order of 19 February 2008 in Case T-444/07 R *CPEM* v *Commission* (not published in the ECR), the President of the Court dismissed that application for interim measures.

26 The written procedure was concluded on 29 April 2008.

27 On 23 October 2008, by way of measures of organisation of procedure under Article 64 of its Rules of Procedure, the Court requested CPEM to comment on the pleas of inadmissibility raised by the Commission in its defence and requested the Commission to produce certain documents. At the same time, the parties were requested to answer in writing, before the hearing, a number of questions put by the Court. The parties complied with those requests within the periods prescribed.

28 The applicant claims that the Court should:

— annul the contested decision;

— acknowledge its right to damages for public detriment to its reputation, estimated at EUR 100 000;

— acknowledge the right of its staff to individual symbolic damages of Euro 1 for serious interference with their peace of mind at work;

— order the Commission to pay the costs.

29 The Commission contends that the Court should:

— declare the application inadmissible or, if appropriate, unfounded;

— order the applicant to pay the costs.

Admissibility

1. *Arguments of the parties*

30 The Commission disputes the admissibility of the applicant's second and third heads of claim on the ground that they do not indicate with sufficient precision the manner in which the various conditions for reparation of the alleged damage are satisfied. In the Commission's view, the application does not make it possible to identify the reasons why the position adopted by the Commission in the contested decision is the cause of the damage alleged by the applicant, and the latter has failed to produce any proof whatsoever that the damage alleged actually occurred.

31 In its observations of 17 November 2008 on the pleas of inadmissibility raised by the Commission, CPEM stated that the subject-matter of the proceedings in this regard was not the payment of compensation but merely the acknowledgement of a right to such compensation. Furthermore, it explained what, in its view, was the conduct alleged against the Commission, the damage suffered and the causal link between these two elements. Lastly, it provided an explanation as to why the staff of CPEM had applied for symbolic damages of Euro 1.

2. *Findings of the Court*

Admissibility of the second head of claim, seeking acknowledgement of CPEM's right to damages

32 Under the first paragraph of Article 21 of the Statute of the Court of Justice, which is applicable to proceedings before the Court of First Instance by virtue of the first paragraph of Article 53 of that Statute, and under Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, all applications must state the subject-matter of the proceedings and include a summary of the pleas raised. That statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, if necessary, without any further information. In order to guarantee legal certainty and the sound administration of justice it is necessary, in order for an action to be admissible, that the essential matters of law and fact relied on should be stated, at least in summary form, coherently and intelligibly in the application itself (order in Case T-85/92 *De Hoe* v *Commission* [1993] ECR II-523, paragraph 20, and judgment in Case T-113/96 *Dubois et Fils* v *Council and Commission* [1998] ECR II-125, paragraph 29).

33 In order to satisfy those requirements, an application seeking compensation for damage allegedly caused by a Community institution must state the evidence from which the conduct alleged against the institution can be identified, the reasons for which the applicant considers that there is a causal link between that conduct, the damage which it claims to have suffered, and the nature and extent of that damage (Case T-387/94 *Asia Motor France and Others* v *Commission* [1996] ECR II-961, paragraph 107; Case T-195/95 *Guérin automobiles* v *Commission* [1997] ECR II-679, paragraph 21; Case T-38/96 *Guérin automobiles* v *Commission* [1997] ECR II-1223, paragraph 42; and *Dubois et Fils* v *Council and Commission*, paragraph 30).

34 In the present case it must be stated that the only material submitted by CPEM to support its claim for damages under the second head of claim is precisely that head of claim itself, which is worded as follows:

'CPEM requests that the Court… acknowledge a right to compensation for detriment to the public reputation of a body acting in the context of a task of general interest (estimated at EUR 100 000).'

35 It may be deduced from this formulation that the alleged damage consists in an adverse effect on the reputation of CPEM, but without the latter explaining how the figure of EUR 100 000 is justified. As regards the conduct of which it complains, it appears from the application as a whole and from CPEM's observations of 17 November 2008 that this consists of alleged procedural irregularities attributable to OLAF and to the Commission, which form the subject-matter of the complaints made by CPEM in its first plea. However, it must be noted that the application does not contain any indication whatsoever as to the causal link between the conduct complained of and the damage alleged.

36 In the absence of any indication from the applicant, it is not for the Court to make assumptions and ascertain whether there is a causal link between the conduct complained of and the injury alleged (see, to that effect, Case T-228/02 *Organisation des Modjahedines du peuple d'Iran* v *Council* [2006] ECR II-4665, paragraph 179).

37 It is true that CPEM stated, in its observations of 17 November 2008, that a 'direct causal link of adverse effect on reputation' exists if a body with a financial mandate is accused and found guilty of poor financial management although there was neither embezzlement nor fraud but, at most, 'errors of administrative presentation' in complex procedures. However, it must in this regard be recalled that, in accordance with the case-law cited in paragraph 32 above, the essential matters of law and fact relied on must be set out, at least summarily, in a coherent and intelligible form in the application itself. In the present case, however, the Court has previously established that the

application contains no indication, even in summary form, of the causal link between the conduct alleged against the Commission and the harm suffered by CPEM. Hence, any further indication regarding this link must be dismissed as out of time (see, to that effect, the order in *De Hoe* v *Commission*, paragraph 25).

38 It follows that CPEM's second head of claim must be rejected as being inadmissible.

Admissibility of the third head of claim, seeking recognition of the right of CPEM's staff to damages

39 As regards the third head of claim, the subject of which is the application for damages on behalf of CPEM's staff, it must be noted that the applicant has neither indicated nor proved that it was authorised by its staff to bring an action for damages in their name.

40 It is therefore necessary to reject this head of claim as inadmissible on the ground of absence of any interest in bringing proceedings.

Substance

41 The applicant raises two pleas relating, first, to the procedure followed by OLAF and the Commission and, secondly, to the substance of the contested decision.

1. *The first plea, calling into question the procedure followed by OLAF and the Commission*

Arguments of the parties

42 In its first plea CPEM alleges that the Commission failed to comply, in the procedure that led to the adoption of the contested decision, with general principles of law, in particular with the principle of observance of the rights of the defence. This plea is divided into five limbs.

43 In the first limb CPEM claims, on the basis of the testimony of its staff, that OLAF carried out an investigation which, in its form, was accusatorial.

44 In the second limb CPEM criticises the procedure followed by OLAF by reason of the confusion between the procedures laid down in Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ 1996 L 292, p. 2) and those laid down in Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 1). CPEM submits, in particular, that OLAF officials mentioned the possibility of criminal penalties being applied and that their conduct created an atmosphere of confusion and intimidation among the staff present at the time of the investigation, in particular because of the continual use of the term 'fraud' and the fact that the words 'enquiry' and 'investigation' were allegedly used indiscriminately throughout the same procedure. Likewise, the fact that the case had been referred to the public prosecutor before the administrative check was carried out and the presence of an officer of the police criminal investigation department during the on-the-spot checks demonstrated, it is argued, that the investigation was not solely administrative in nature.

45 In the third limb CPEM disputes the reliability of the enquiry carried out by OLAF. It claims in this connection that the enquiry gathered inoperative, vexatious or abusive procedural information, which was inadmissible in the context of observance of the general principles of Community law and a calm investigation. In particular, according to the applicant, OLAF investigators made a poor choice of the persons interviewed and made inappropriate remarks concerning State officials and CPEM's lawyer. Moreover, some minutes of interviews and the report on the bilateral meeting of 25 April 2006 between CPEM and OLAF were, according to the applicant, inaccurate and/or not signed by the persons involved, and the OLAF reports that the Commission used as the basis for adopting the contested decision contained errors of fact.

46 The fourth limb alleges infringement of the rights of the defence during the enquiry. In that connection, CPEM makes several allegations concerning OLAF's treatment of the complaints that triggered its enquiry. In particular, the content of those complaints was allegedly not disclosed to the applicant, which did not have an opportunity to submit its observations in that regard. Moreover, if the complaint of May 2004 related to the practice of 'valorisation', in the opinion of CPEM it is unfounded. In addition, OLAF made contradictory statements concerning the role that the complaints received in May 2005 played in triggering the audit procedure. Lastly, according to the applicant, OLAF informed the press about the case even before the Commission had adopted the contested decision.

47 Lastly, in the fifth limb of the plea CPEM takes issue with OLAF's use, in its enquiry, of the various editions of the Promoter's Guide. According to the applicant, this guide went through several versions, including a provisional one which the applicant did not regard as binding and of which it took no account.

48 The Commission rejects CPEM's arguments.

Findings of the Court

49 First, it must be stated, with regard to the fifth limb, that the question whether the Promoter's Guide could be relied on against CPEM, despite its evolving nature, does not relate to the form of the administrative procedure but to the substance of the contested decision. Since CPEM also raises, in the third limb of the second plea, the question whether that Guide may be relied on against it, all of the arguments relating to this issue will be examined in that context.

50 Next, it must be noted that the wording of the application does not specify the principles which were allegedly infringed, other than the principle of observance of the rights of the defence. That being the case, the examination of the first plea must be confined to the principle of observance of the rights of the defence alone, since, in the absence of indications on the applicant's part, it is not for the Court to seek and identify the principles in respect of which an infringement might be claimed.

51 According to settled case-law, the principle of observance of the rights of the defence 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 (Case T-217/01 *Forum des migrants* v *Commission* [2003] ECR II-1563, paragraph 56, and Case T-306/00 *Conserve Italia* v *Commission* [2003] ECR II-5705, paragraph 107; see also, to that effect, Case 234/84 *Belgium* v *Commission* [1986] ECR 2263, paragraph 27).

52 In the present case, as regards the complaint raised in the fourth limb that OLAF informed the press about the case even before the Commission had adopted the contested decision, it must be stated that such a complaint, assuming it is substantiated, cannot constitute an infringement of CPEM's right to a fair hearing as defined in the preceding paragraph. It must therefore be rejected as inoperative, without it being necessary to examine whether, as CPEM claims, the press article of 7 October 2007 to which reference has been made was indeed based on information obtained from OLAF.

53 Furthermore, it also follows from the case-law that the rights of the defence are infringed by reason of a procedural irregularity only in so far as the irregularity has a concrete effect on the ability of the undertakings concerned to defend themselves. Consequently, non-compliance with rules in force the purpose of which is to protect the rights of the defence can vitiate the administrative procedure only if it is shown that the latter could have had a different outcome if the rules had been observed (see Case T-210/01 *General Electric* v *Commission* [2005] ECR II-5575, paragraph 632 and the case-law cited).

54 It is therefore necessary to examine, for each of the other complaints raised by CPEM in the context of the first plea, first, whether, before the contested decision was adopted, the applicant was in a position effectively to make known its views, and, secondly, whether, if that was not the case, the procedure could have had a different outcome if CPEM had been able effectively to make known its views.

55 On the first question, in which it is necessary to determine whether CPEM was in a position effectively to present its views on the matters mentioned in the context of the first plea other than that referred to in paragraph 52 above, its allegation that its right to a fair hearing was infringed must be rejected. In the light of the exchange of correspondence between CPEM and OLAF, namely the letter from CPEM dated 13 October 2005 containing observations on OLAF's mission report of 8 September 2005, the letter from OLAF of 11 April 2006 and the letter from CPEM of 21 April 2006 (see paragraph 19 above), it must be held that CPEM had the opportunity to submit any observation which it considered relevant concerning the conduct of OLAF which it criticises in the first plea, an opportunity of which it in fact made extensive use with regard to a number of its complaints. In particular, it set out in detail its views on the procedure applied by OLAF. The applicant thus had the opportunity to present its observations on any issue concerning the matters mentioned in the first plea, which predated the exchange of correspondence in question, with the result that its right to a fair hearing was respected in full in that regard.

56 It follows that the first plea must be dismissed as being unfounded, without it being necessary to establish whether the allegations of fact made by CPEM in that context are accurate.

2. *The second plea, challenging the contested decision as to the substance*

57 By its second plea, CPEM alleges that the Commission committed a variety of errors of law which vitiated the lawfulness of the contested decision.

58 This plea is divided into five limbs. By the first limb the applicant claims that OLAF and the Commission failed to take proper account of the French concept of a non-profit-making organisation ('organisme à but non lucratif'). The second limb is based on an alleged misconstruction of the legal relationship between the applicant and the municipal authorities of the City of Marseilles. The third limb argues that the Promoter's Guide cannot be relied on against the applicant. The fourth limb relates to the irregularities alleged against the applicant. Lastly, in the fifth limb the applicant contests the applicability of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1) in so far as it allegedly served as the basis for the contested decision.

The first limb, alleging failure to take proper account of the French concept of a non-profit-making organisation

Arguments of the parties

59 CPEM claims that OLAF and the Commission failed to take proper account of its status as an association under the French Law of 1 July 1901, as amended, by classifying it as a non-profit-making association (association sans but lucratif — ASBL), which is an institution under Belgian law. According to the applicant, it is impermissible that the report of OLAF should dispute that CPEM and MSD are non-profit-making organisations, even though these two associations fulfil all the criteria of the 'non-profit-making' concept and are recognised as such by the French authorities. The applicant also alleges that OLAF confused the status of 'non-profit-making organisation', on the one hand, and that of 'organisation under public law','organisation performing activities under public law' and 'quasi-public organisation', on the other.

60 The Commission refutes the applicant's arguments.

Findings of the Court

61 It must be noted that OLAF described the applicant, both in its mission report of 8 September 2005 and in the final report of 4 October 2006, as an 'associative body under the 1901 Law' or as an 'association under the 1901 Law'. It is only in the heading of those two reports and in that of the documents concerning the on-the-spot check and inspection of 27 and 29 June 2005 that CPEM was referred to as an ASBL. However, the use of that abbreviation, which the Commission claims was used only in the sense of 'non-profit-making organisation' and without reference to the legal status of CPEM, had no effect on the assessment of the facts alleged against CPEM in those reports and in the contested decision. Indeed, the legal status of CPEM is not discussed at any point in those documents.

62 Furthermore, CPEM described itself, in its application file, under the heading '[I]dentity of applicant', as a '[n]on-profit-making association', which may have given rise to confusion in this regard within the departments of the Commission.

63 It follows that the fact that OLAF wrongly described CPEM and MSD in some documents as ASBLs cannot vitiate the contested decision. The first limb of the second plea must therefore be rejected.

The second limb, alleging misconstruction of the relationship between the applicant and the City of Marseilles

Arguments of the parties

64 CPEM criticises the analysis of the links between the City of Marseilles and itself made by OLAF in its final report and by the Commission in the contested decision. It puts forward four arguments in this regard.

65 The Commission refutes the applicant's arguments.

Findings of the Court

66 In this limb of the second plea CPEM calls into question paragraph 11 of the final report of OLAF, in which the latter analyses the relationship between the City of Marseilles, CPEM and MSD. The report finds, inter alia, that:

— the City of Marseilles itself had not been able to apply for a grant from the ESF as one of the two main features of the pilot project was the use of private non-profit-making organisations for its implementation (paragraph 11-1);

— in view of its statutes, MSD is clearly an association closely linked to the City of Marseilles (paragraph 11-2);

— the 'demunicipalisation' of MSD as a result of the amendment of its statutes on 11 May 2000, in the sense that members with an elected municipal mandate would henceforth attend only in a consultative capacity, must be seriously set in perspective, as the other parameters indicate that the close link with the City of Marseilles remains unchanged (paragraph 11-3);

— CPEM and MSD depend on the City of Marseilles for their premises, staff and operation and implement certain aspects of municipal policy (paragraph 11-4);

— the City of Marseilles paid only a portion of its intended contribution to the financing of the pilot project without either CPEM or MSD requiring it to meet its financial commitments, a fact which points to their dependence on the city and the relative extent of their actual decision-making power (paragraphs 11-7 and 11-8);

— OLAF takes the view that the consequence, and indeed even the objective, of CPEM's decision to entrust execution of the project, and its implementation, to MSD was to circumvent the requirement for the pilot project to have recourse to private non-profit-making organisations for its implementation (paragraph 11-12).

67 Nevertheless, it must be stated that the documents before the Court contain nothing which calls into question these assessments by OLAF or indicates that the contested decision could be vitiated by reason of those assessments. In particular, no such indications emerge from the arguments put forward by CPEM before the Court.

68 First, it is necessary to reject CPEM's argument that the final report suggested that the City of Marseilles had sought to submit an application for the pilot project or had used front associations and had intended to circumvent the requirement that private bodies

be used. In fact, the report merely points out that the City of Marseilles was not able to apply, without indicating whether that was its intention. As to the use of the association MSD for carrying out the project, which would have had the effect of circumventing certain requirements of the pilot project, that remark was not made with regard to the City of Marseilles but with regard to the applicant itself, contrary to the latter's assertions. For those reasons, CPEM's first argument cannot be accepted.

69 Secondly, CPEM's allegation that OLAF, by its remarks in paragraph 11-3 of the final report, had interfered in French domestic law and in the issue of 'demunicipalisation' must be rejected as unfounded and irrelevant to the resolution of the present dispute. In that paragraph, OLAF merely noted that, notwithstanding the reduction in the decision-making role of the elected municipal officials within MSD, that association still has close ties with the City of Marseilles by virtue of other factual circumstances. It follows that CPEM's second argument must be rejected.

70 Thirdly, with regard to the criticism of OLAF's assessment that CPEM and MSD are dependent on the City of Marseilles for their premises, staff and operation, the Court finds that CPEM does not dispute the facts underlying that assessment but merely states that the provision of premises and staff by the City of Marseilles does not mean that CPEM and MSD were subject to instructions issued by that municipality. Neither OLAF nor the Commission alleged that that was the case. OLAF simply considered such provision as indicators that those two associations were in a position of dependency vis-à-vis the City of Marseilles, which was an appropriate deduction in the light of the facts. In that regard, leaving aside MSD's dependence on the City of Marseilles for its premises, staff and operation, it is necessary to take account of MSD's statutes, among other things. In particular, Article 2 thereof, entitled 'Objects', states that the association is required to implement its training activities 'within the framework of the occupational training policy defined by the [m]unicipal [c]ouncil' and that assistance to the occupational training bodies of Marseilles, in particular through the provision of premises, is granted 'after approval by the [m]unicipal [c]ouncil'. Hence, CPEM's third argument cannot call into question the soundness of the contested decision.

71 Fourthly, CPEM takes issue with paragraphs 11-7 and 11-8 of the final report of OLAF, in which the latter finds that the City of Marseilles did not fulfil its joint funding obligations and that neither CPEM nor MSD required it to do so, thereby indicating their dependence on the city and the relative nature of their actual decision-making power.

72 In the first place, the influence of these two paragraphs of the report on the content of the contested decision must be set in context. The figures mentioned in paragraph 11-7 of the final report of OLAF, which indicate that the City of Marseilles had not fulfilled its commitments, were not put forward by OLAF with the object of lodging a complaint against the applicant on that count; it simply referred to that circumstance, in conjunction with the fact that CPEM and MSD had not required the city to carry out those commitments, in order to corroborate its conclusion that those two associations were dependent on the City of Marseilles.

73 In the second place, the applicant's argument that the City of Marseilles had fulfilled all of its financial commitments, and even more, has to be rejected.

74 The project approved by the award decision provided that the City of Marseilles would contribute EUR 274 231. It is common ground between the parties that that sum was divided into a portion relating to 'Operations' (or 'practical development expenditure', according to the term used by CPEM) and a portion relating to 'Grants to micro-level projects'. According to CPEM, the contribution of the City of Marseilles amounted to EUR 129 581.66 for 'Operations' and to EUR 21 769 for 'Grants to micro-level projects', bringing its contribution to EUR 151 350.66 in total. The Commission, for its part, indicates that the total contribution from the City of Marseilles amounted to EUR 141 860.29.

75 The Court considers that it is not necessary, for the purpose of resolving the present dispute, to determine the origin of the difference between those two figures since, even using the calculation method proposed by the applicant, the actual contribution from the City of Marseilles remained EUR 122 880.34 less than that provided for in the

project approved by the award decision. With regard to the applicant's assertion that, as far as financial aid to the micro-level projects is concerned, the obligations laid down in the project approved by the Commission contravened French law, it is sufficient to note that, apart from the fact that this allegation is not substantiated, it does not contradict the finding in paragraph 11-8 of the final report of OLAF that neither CPEM nor MSD exerted pressure on the City of Marseilles to meet its joint funding obligations. Moreover, it must be emphasised that CPEM cannot, in any event, rely on the fact that the financing plan, which it had itself presented, included receipts which it was legally impossible for it to obtain.

76 It follows that the applicant's fourth argument must be rejected, as must also the second limb of the second plea.

The third limb, arguing that the Promoter's Guide could not be relied on against the applicant

Arguments of the parties

77 CPEM claims that the Promoter's Guide which OLAF relied on against it was not annexed to the award decision and that it was not until September 1999 that it received a provisional version containing sheets to which OLAF referred in its reports. It did not consider the provisional version to be binding and hence had not taken it into account. Moreover, the version on which OLAF bases its allegations against the applicant was never, according to the latter, clearly identified and there was nothing to prove that it had been notified to the applicant. Lastly, according to the applicant, the final version of the Promoter's Guide did not contain the sheets in question. In the applicant's view, all of the remarks relating to the sheets are therefore inoperative.

78 CPEM also submits that, even it is assumed that the Promoter's Guide can be invoked against it, in accordance with respect for the hierarchy of rules that guide cannot be

interpreted in a manner contrary to the regulations reforming the Structural Funds and to the Financial Regulation as applicable at the time of the facts in the case, as OLAF allegedly did, followed in that regard by the Commission.

79 The Commission refutes the applicant's arguments.

Findings of the Court

80 It must be noted, first, that on 10 November 1999 CPEM had undertaken, by the signature of Mr R., its chairperson at that date, to comply with the conditions laid down in the Promoter's Guide.

81 In addition, it appears from the documents before the Court that the participants at the meeting held in Belfast from 16 to 19 September 1999 — at which the CPEM/MSD consortium was represented by Mr G., a director of MSD — were requested to read carefully the draft guide that had been distributed at that meeting and to forward their questions and comments as quickly as possible so that it could be completed. In order to take account of the needs and interests of the various beneficiaries of the pilot project, the Commission thus undertook to collate their observations and to produce the final version of the guide with their cooperation. Hence, CPEM must have been aware that the provisional version of the Promoter's Guide was not an entirely irrelevant document and that the guide set out specific provisions for the execution of the pilot project, which were, admittedly, liable to be amended in the final version but with which it nevertheless had to comply, something which it undertook to do by the signature of Mr R. on 10 November 1999, after receipt of the version distributed at the Belfast meeting and hence in full knowledge thereof.

82 Considered in that light, it is necessary to reject CPEM's argument that it did not take account of the version of the guide distributed in Belfast because that version had been

classified as provisional. In the circumstances that have just been described, such a formalistic attitude would contravene the obligation on applicants for, and beneficiaries of, assistance to act in good faith that is inherent in the assistance system of the Community funds and essential for their effective functioning (see, by way of analogy, Joined Cases T-141/99, T-142/99, T-150/99 and T-151/99 *Vela and Tecnagrind* v *Commission* [2002] ECR II-4547, paragraph 322, and Case T-180/01 *Euroagri* v *Commission* [2004] ECR II-369, paragraph 83).

83 Secondly, it must be held that, contrary to CPEM's allegations, CPEM was indeed notified of the final version of the Promoter's Guide, as is evident from the acknowledgement of receipt by e-mail of 5 January 2000 from Mr B, head of mission at MSD, produced by the Commission.

84 Thirdly, as the Commission rightly observes, CPEM does not claim in its application that the conduct alleged against it in the contested decision was lawful under any one of the successive versions of the Promoter's Guide. It is therefore not apparent how any differences which may have existed between the various versions of the guide could have given rise to confusion in the minds of CPEM's staff of CPEM as to its obligations with regard to implementation of the pilot project.

85 Fourthly, and lastly, in support of its argument that OLAF did not respect the hierarchy of rules by giving priority to the Promoter's Guide over the applicable Community regulations, CPEM refers to paragraph 71 of OLAF's letter of 11 April 2006, in which OLAF replied to CPEM's objections to its mission report. That paragraph reads as follows:

'As to the hierarchy of applicable legal texts, the 1999 Promoter's Guide laid down, in Sheet B — point 1, second arrow, last paragraph of the box — (page 8) that the hierarchy of the legal texts applicable to the programme is as follows:

— The decision of the European Commission granting assistance to the intermediate body and its annexes.

— The regulations defining eligible activities under the ESF (the list of eligible expenditure was adopted by the Commission and appeared in the *Official Journal* of the Communities).

— The general regulation on the Structural Funds.'

86 In this regard, it must be held, first, that it is not apparent that the rules are listed in descending order from the superior rule to the inferior rule rather than in the opposite order. Secondly, even in the first hypothesis such an abstract indication by OLAF of an erroneous hierarchical order among the applicable statutory provisions would not, of itself, be such as to vitiate the contested decision. It must be noted, in the first place, that the Promoter's Guide itself does not appear in the hierarchy of rules cited by OLAF. In the second place, CPEM has failed to point to any specific provision of the Promoter's Guide that would be incompatible with any superior rule, merely asserting that 'no element [in the Promoter's Guide] can exist or be interpreted in a sense contrary to the [applicable] regulations and in the logic of the strict application of the hierarchy of measures'. In those conditions, CPEM's fourth argument must be rejected.

87 It follows that the third limb of the second plea and the fifth limb of the first plea must be rejected.

The fourth limb, relating to alleged irregularities

88 In the six arguments which it raises in this limb of the second plea, CPEM claims essentially that the Commission authorised some of the irregularities alleged against it in the contested decision, or at least was aware of them, or that the irregularities were not such as to justify the withdrawal of Community assistance.

The first argument, based on the Commission's practice in the context of the ESF and on the Commission's alleged authorisation of the technique know as 'valorisation'

— Arguments of the parties

89 CPEM claims in essence that the Commission authorised the practice known as 'valorisation' for ESF projects in France. In this connection, it refers, first, to the practice adopted in the context of ESF projects in France, secondly, to the involvement of certain national authorities in 'valorisation' as practised by CPEM, and, thirdly, to an e-mail of 28 June 2001 from the Commission to CPEM in which that practice was allegedly authorised. Consequently, in the view of the applicant, that practice cannot be considered irregular in the contested decision.

90 The Commission asserts that, as regards 'valorisation', a distinction should be made between projects within the 'classical framework' of the ESF and pilot projects under Article 6(1)(a) of Regulation No 4255/88, such as the project at issue in the present case. According to the Commission, in the 'classical framework' of the ESF the financial involvement of the ESF takes the form of the joint funding of a national programme or a

global grant managed by the Member State or by other national authorities, whereas under Article 6(1) of Regulation No 4255/88 the financial involvement of the ESF is managed directly by the Commission, which means that the Commission itself chooses the recipients by means of a specific award decision accompanied by a set of rules. According to the Commission, 'valorisation' is accepted within the 'classical framework' of the ESF, whereas that technique has never been accepted under Article 6(1) of Regulation No 4255/88.

— Findings of the Court

91 It must be stated, first, that it appears from the documents in the case and from the explanations provided by the parties at the hearing that the technique known as 'valorisation' consists in the charging of expenditure incurred by public authorities in the context of their respective mandates against the financial contributions they are expected to make to a project. In the present case, 'valorisation' was practised, in particular, with regard to the financial contribution of the Conseil Général des Bouches-du-Rhône to the budget of the pilot project, to which was charged expenditure incurred by the Direction départmentale du travail, de l'emploi et de la formation professionelle des Bouches-du-Rhône (DDTEFP) in connection with its policy on employment and the re-integration of unemployed workers. As is evident from the award decision, the contribution of the Conseil Général, which was entered under the budget item 'Contribution in cash', should have been EUR 200 000. CPEM does not dispute that at least part of this contribution was not paid but was made in the form of 'valorisation', with the result that it did not give rise to any direct payment between the Conseil Général and CPEM and/or MSD.

92 In the 'classical framework' of the ESF, as defined by the Commission, the public expenditure that is 'valorised' as own contributions in the context of Community assistance is expenditure made by the recipient of the assistance itself, that is to say, the Member State or the national authority which it designates. By contrast, if in the present case CPEM understood 'valorisation' in the same sense as expenditure by local authorities, it must be held that this does not constitute own expenditure by the recipient of the Community assistance but expenditure by third-party contributors. In

the form practised by CPEM, 'valorisation' therefore did not enable it to meet its own obligations to contribute to the project but to fulfil those of third-party contributors. However, in accordance with the budget proposed by CPEM and approved in the award decision, these were to be contributions in cash, which precluded taking into account expenditure incurred in another context and not actually received by the CPEM/MSD consortium. It must be recalled in this context that, according to settled case-law, given the very nature of financial aid granted by the Community, the obligation to comply with the financial conditions indicated in the decision granting the aid constitutes one of the essential duties of the beneficiary, in the same way as the obligation actually to carry out the project, and is therefore a precondition for the award of Community aid (Case C-240/03 P *Comunità montana della Valnerina* v *Commission* [2006] ECR I-731, paragraph 86; Case T-199/99 *Sgaravatti Mediterranea* v *Commission* [2002] ECR II-3731, paragraph 130; and *Vela and Tecnagrind* v *Commission*, paragraph 399).

93 It follows that 'valorisation', as practised by CPEM, did not accord with the current practice of the Commission in the framework of the ESF and was even prohibited by the award decision.

94 The arguments put forward by CPEM are not such as to invalidate that finding.

95 First, the national practice in the context of the ESF is to be seen in the framework of the taking into account, by way of 'valorisation', of expenditure by the national authorities as recipients of Community aid and not the taking into account of expenditure by third parties. That argument is therefore invalid, with the result that there is no reason to question the persons and institutions which CPEM requests be examined in this connection.

96 Secondly, the fact that the national authorities at departmental and local level were aware of the 'valorisation' practised by CPEM and even took part in it is irrelevant for the purposes of assessing the lawfulness of the contested decision in so far as it finds that CPEM infringed its obligations under the award decision.

97 Thirdly, the e-mail of 28 June 2001 from Mrs G., an official of DG Employment, on which CPEM relies, cannot be interpreted as constituting authorisation from the Commission for 'valorisation' as practised by CPEM. This was a reply to an e-mail in which an employee of CPEM asked a question making clear and exclusive reference to the provision of information on a form in the context of the preparation of an interim financial report, and not to the lawfulness of a practice for financing the project. The concept of 'valorisation' did not appear in that e-mail and the context did not indicate that 'the grants and aid allocated… to the micro-level projects' by CPEM's partners, mentioned in the e-mail from the CPEM employee, in fact consisted of expenditure incurred by the public authorities and taken into account under the pilot project without an actual contribution being paid by those authorities. Lastly, it is abundantly clear from the wording of Mrs G.'s reply that she intended to comment solely on a problem concerning the provision of information on a form and not on 'valorisation' as practised by CPEM.

98 CPEM's argument that the Commission had authorised the practice known as 'valorisation' must consequently be rejected.

The second argument, to the effect that there was no serious irregularity in the entry in the accounts of loans on trust

— Arguments of the parties

99 The second argument relates to the fact that, as part of its own financial contribution to the project, CPEM recorded loans on trust that it granted to various promoters of micro-level projects. According to the definition given by CPEM and not disputed by the Commission, these are non-interest-bearing, unsecured personal loans of amounts ranging from EUR 1 500 to EUR 15 000. CPEM claims, first, that its intention to use such loans on trust was indicated clearly in its application file. Moreover, it states that an analysis of its financial statements at 31 December 1997 and of its budget forecast for 1998, appended to its application file, shows that it had no operating resources other than those obtained from public grants and comprising its loan fund. Secondly, CPEM claims that the Commission was notified of the use of loans on trust in August 2001 at the latest when the interim report was submitted.

100 The Commission takes issue with CPEM's arguments.

— Findings of the Court

101 With regard to the existence of a serious irregularity as a result of entering loans on trust in the accounts, it must be pointed out that the obligation to comply with the financial

conditions indicated in the decision granting the aid constitutes one of the essential duties of the beneficiary (see paragraph 92 above). In that context, Article 24(1) and (2) of Regulation No 4253/88 must be interpreted as authorising the Commission to withdraw the financial assistance allocated in the event of infringement of the financial conditions set out in the award decision (see, to that effect, *Sgaravatti Mediterranea* v *Commission*, paragraphs 130 and 131).

102 In the present case, the budget contained in Annex II to the award decision provided, under the heading 'Contribution in cash', for a financial contribution of EUR 184 615 from CPEM.

103 However, as the Commission rightly points out, the repayment of the loans on trust granted by CPEM constitute receipts which must be deducted from the amounts paid by CPEM in order to determine the amount which it actually disbursed. Since these repayments could amount to up to 100% of the sums granted in the form of loans, CPEM's contribution will thus tend to decline and then disappear entirely as repayments are received. Hence, the granting of loans by CPEM to the promoters of micro-level projects cannot by definition be taken into account at nominal value as part of its own financial contribution to the project. Indeed, this fact is not disputed by CPEM. It follows that CPEM did not comply with the obligation, stemming from the budget appended to the award decision, to make a financial contribution of EUR 184 615.

104 Consequently, the Commission was correct in law to make a finding in this regard, in recital 8(c) of the contested decision, that a serious irregularity had occurred.

105 CPEM's arguments are not such as to invalidate that finding.

106 First, the application file provides no indication whatsoever of CPEM's intention to make systematic use of loans to pay its financial contribution to the project. The concept of 'loans on trust' appears only once, in the following sentence: 'The involvement of the European Union in this call for projects will make it possible to speed up and facilitate the mobilisation of the various aids, guarantee funds and possible loans on trust that will be combined and will help prolong these activities as a permanent local financial instrument.' This isolated mention of loans on trust, which, moreover, is qualified by the adjective 'possible', could not be understood to mean that this instrument would be applied systematically in the project. Furthermore, that mention is made in the context of a list of instruments of which it is said that their mobilisation will be facilitated by the pilot project, with the result that it is not even clear whether this is an internal instrument of the project or an external instrument that could be mobilised by virtue of the project.

107 With regard to the assertion that loans on trust had been mentioned when the financing plan was presented — at an unspecified date, but probably in the course of the examination of the applications — and during a public presentation at a seminar organised on 8 and 11 July 2000, CPEM has produced no evidence to support this claim. It must therefore be rejected as being unsubstantiated.

108 Secondly, the fact that the interim report submitted in August 2001 mentioned loans on trust cannot persuade the Court that the Commission was late in informing CPEM that such loans could not be entered in the accounts as part of its contribution. Article 3(3) of the award decision specified that 'only expenditure committed before 30 August 2001 and incurred before 28 February 2002 [could] be considered eligible and taken into account for calculating the total amounts due to the recipient under this decision'. These time-limits were extended, by a decision of 18 September 2001, to 31 December 2001 and 30 June 2002 respectively. The unavoidable conclusion is therefore that the 'interim' report was submitted at almost the end of the period initially laid down for committing expenditure and approximately four months before the end of the period as subsequently extended. Information given at that stage in the project cannot in any event be considered to have been provided in good time.

109 Thirdly, with regard to CPEM's allegation that no effective response was made to an e-mail of 5 February 2002 from MSD to Mrs G. relating to loans on trust, it must be noted, first, that Mrs G.'s reply by e-mail of 6 February 2002 indicated clearly that the application file did not mention loans on trust, that they could not be taken into account since their repayment would reduce the total cost of the project, with a consequential reduction in ESF assistance, and that the problem had to be resolved by making a 'firm' contribution. Secondly, MSD's e-mail was sent after the end of the period for committing expenditure, as extended. Hence, CPEM's questions could relate only to the method of accounting and the reply that could be given to those questions could have no bearing on the compliance of the expenditure actually committed with the conditions specified in the award decision. This allegation must therefore be dismissed as unfounded and irrelevant.

110 It follows that CPEM's second argument must be rejected.

The third argument, based on an alleged contradiction between the contested decision and the award decision

111 In this third argument CPEM raises four points relating to matters of which the Commission allegedly accused it in the contested decision but which, according to the applicant, had already been mentioned in the proposal file and had therefore been accepted by the Commission in the award decision. The applicant asserts that the Commission was therefore at least jointly responsible for the matters of which it complained.

112 First, CPEM states that, from the time of examining its application file onwards, the Commission was aware that CPEM would have recourse to public financing. Hence the Commission could not invoke that fact against it.

113 In that regard the Court notes, first, that in the contested decision the Commission did not take issue with CPEM on account of the joint funding of the pilot project by public authorities. On the contrary, in recital 8(d) of the contested decision the Commission expressly criticised the inadequacy of public joint funding in relation to the approved budget. On the other hand, in recital 8(b) of the contested decision it complained that CPEM had taken into account local authority expenditure that had not been incurred for the pilot project but for activities falling within their own remit ('valorisation' technique).

114 As has already been held in paragraphs 93 and 98 above, the Commission had not in any way authorised this practice of 'valorisation' and, contrary to CPEM's claims, the application file contained no indication of its intention to have recourse to 'valorisation'. On the contrary, the contributions from public authorities had been entered in the project financing plan under the heading 'Contributions in cash'. The Commission could therefore not deduce from the application file that these contributions would consist in a simple entry, in the accounts of the pilot project, of sums that had not actually been paid to CPEM or MSD.

115 Next, as regards the letter from the DDTEFP of 14 October 1998, which was reproduced in Annex 7 to the application file and which, according to CPEM, proves that the Commission was informed of the matters of which it complains, there is no mention whatsoever of 'valorisation' in that letter. In the letter in question the DDTEFP merely assures the chairperson of CPEM, in general terms, that it 'will be able to support the project… by mobilising the resources of the State in order potentially to supplement this aid and participate in the financing of complementary measures essential to the project's success'. By contrast, there is nothing in that letter to indicate that the financial contributions from public authorities, entered under the heading 'Contributions in cash' in the financing plan, were to be made in the form of 'valorisation'.

116 Secondly, CPEM claims that, from the time at which it examined CPEM's application file onwards, the Commission was aware of the institutional partnership linking CPEM to the various public authorities involved.

117 Suffice it to note in this regard that this complaint is of no relevance for the purpose of assessing the lawfulness of the contested decision. The complaint against CPEM in the contested decision is not that it cooperated with public authorities but that it gave effect to that cooperation in a manner which ran counter to the conditions of the award decision.

118 Thirdly, CPEM claims that, from the time of examining its application file onwards, the Commission was aware of CPEM's close relationship with MSD.

119 In that regard, it is also sufficient to hold that this complaint is of no relevance for the purpose of assessing the lawfulness of the contested decision. As is evident from recital 8(e) of the contested decision, the Commission did not take issue with CPEM's relationship with MSD but, at most, with certain aspects of the relationship which these two associations had with the City of Marseilles.

120 Fourthly, CPEM claims that 'in its report OLAF criticises' its method of managing the micro-level projects, whereas at certain meetings held during the implementation of the pilot project the Commission had allegedly made no comment in this regard.

121 In this connection, it must be observed that CPEM does not indicate in which report of OLAF and at which precise place in that report CPEM was allegedly criticised for its method of managing the micro-level projects. This complaint must therefore be rejected as inadmissible, on the ground that it does not meet the requirements of Article 44(1)(c) of the Court's Rules of Procedure. CPEM's statement neither enables the Commission to prepare its defence nor the Court to exercise its power of judicial review (see, to that effect, Case T-5/97 *Industrie des poudres sphériques* v *Commission* [2000] ECR II-3755, paragraph 192).

122 CPEM's third argument must accordingly be rejected.

The fourth argument, alleging that the Commission had knowledge of certain facts of which it complained in the contested decision

— Arguments of the parties

123 CPEM claims, in essence, that the Commission staff were aware of its difficulties in complying with the financing plan. In particular, Mr C., at the time head of the unit in DG Employment in charge of the pilot project, allegedly advised CPEM, probably in September 1999, not to make an official request for amendment of the award decision but to replace the loans on trust by public financing and then to request a simple budgetary amendment. Furthermore, following a letter sent by CPEM on 9 April 2002 containing a request to release part of the bank guarantee and to amend the budget to record the elimination of CPEM's financial contribution, the Commission allegedly not only made no comment on the amended plan but also released the guarantee. According to the applicant, the Commission therefore bore joint responsibility.

124 The Commission refutes CPEM's arguments.

— Findings of the Court

125 By means of this argument, CPEM essentially invokes an infringement of the principle of the protection of its legitimate expectation that the failure to make the requisite financial contribution would not lead to withdrawal of the Community aid that had been granted, based on the fact that the Commission staff allegedly knew of its difficulty in complying with the financing plan and on the advice supposedly given by Mr C.

126 In that regard, it has to be borne in mind that three conditions must be satisfied in order for a claim to entitlement to the protection of legitimate expectations to be well founded. First, precise, unconditional and consistent assurances originating from authorised and reliable sources must have been given to the person concerned by the Community authorities. Second, those assurances must be such as to give rise to a legitimate expectation on the part of the person to whom they are addressed. Third, the assurances given must comply with the applicable rules (see Case T-347/03 *Branco* v *Commission* [2005] ECR II-2555, paragraph 102 and the case-law cited, and Case T-282/02 *Cementbouw Handel & Industrie* v *Commission* [2006] ECR II-319, paragraph 77).

127 The second of these conditions is manifestly not fulfilled in the present case. Article 119(1) of Regulation No 1605/2002 lays down that 'the amount of the grant shall not become final until after the institution has accepted the final reports and accounts, without prejudice to subsequent checks by the institution'. Furthermore, Article 2(1) of the 'Specific conditions' in Annex III to the award decision expressly provided that any amendments to the provisions of Annexes I (Details of the 'Local social capital' operation) and II (Details of the budget of the 'Local social capital' operation) to that decision '[had to be] set down in writing and appended to the decision' and that 'a verbal agreement [did] not bind the parties'. CPEM was therefore aware, or ought to have been aware, that oral assurances or advice from members of the Commission staff could not release it from compliance with its obligations under the award decision, and in particular under the financing plan contained in Annex II thereto. Consequently, oral assurances given by members of the Commission staff, even supposing that they were in fact given, were not such as to create a legitimate expectation on the part of CPEM that the lack of any financing on its part would be tacitly accepted by the Commission or endorsed by means of a simple amendment to the budget. A fortiori, CPEM cannot

invoke the Commission's silence after its officials had received information concerning the loans on trust or the difficulties which CPEM was experiencing in complying with the financing plan or the fact that the Commission had released part of the bank guarantee as the basis for an argument to establish legitimate expectations on its part.

128 The third condition laid down in the case-law cited in paragraph 126 above is also not satisfied. The call for proposals stipulated, in the second subparagraph of paragraph II.2, that the recipients 'will be required to provide joint funding which may not be less than 15% of the grant applied for'. Annex II to the award decision containing the financial plan provided for a 'contribution in cash' of EUR 184 615 from CPEM. Pursuant to the fourth paragraph of Article 2 of the award decision, the annexes constituted an integral part of that decision. Consequently, any assurances from Commission officials indicating that the Commission would not require actual payment of CPEM's financial contribution and that it would accept its replacement by contributions from public authorities would have infringed the provisions of the call for proposals and those of the award decision.

129 It follows that CPEM's fourth argument must be rejected.

The fifth argument, based on the Commission's failure to take account of the evaluation reports drawn up at national level before taking action on the complaints

130 CPEM claims, in essence, that, before taking action on the complaints received by its departments, the Commission ought to have taken account of a report drawn up at national level expressing the satisfaction of the promoters of micro-level projects with CPEM's management of the pilot project.

131 Suffice it in this regard to state that the allegations against CPEM in the contested decision rest exclusively on the results of OLAF's enquiry and not on the complaints received by the departments of the Commission, which simply triggered the enquiry in question.

132 Moreover, the fact that the promoters of micro-level projects may have been satisfied with CPEM's management of the pilot project does not prevent that management from having been irregular in the light of the applicable regulations.

133 That argument of CPEM must therefore be rejected.

The sixth argument, based on the results of the audit carried out in August 2003 by DG Employment

134 CPEM claims, in essence, that, since an audit carried out in August 2003 by DG Employment did not uncover any major irregularities and led only to the recovery of EUR 4 472.30 out of the EUR 1 million of Community assistance, a demand for total repayment served in the same case demonstrates a lack of consistency and joint responsibility on the part of the Commission. CPEM requests that four Commission officials, who at the time were responsible for the audit in question within DG Employment, be examined as witnesses.

135 In that regard, according to case-law it is normal for an inspection instigated because of new evidence that has given rise to suspicion of irregularities in connection with certain projects to be more detailed and to produce results that differ from those of a previous

routine inspection undertaken in the absence of any suspicion (see, by way of analogy, *Euroagri* v *Commission*, paragraph 59). Consequently, the fact that the enquiry by OLAF uncovered irregularities which had not been detected in the audit carried out by DG Employment does not in any way constitute inconsistency and cannot affect the lawfulness of the contested decision.

136 It follows that this argument advanced by CPEM, and its request for witnesses to be examined, must be rejected.

The fifth limb, alleging that Regulation No 1605/2002 is inapplicable

Arguments of the parties

137 CPEM criticises the reference made in the contested decision to the version of the Financial Regulation resulting from Regulation No 1605/2002. According to the applicant, that regulation has been applicable only since 1 January 2003, whereas, at the time of the facts in the case, the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities (OJ 1977 L 356, p. 1), in the version resulting from Council Regulation (EC, ECSC, Euratom) No 2779/98 of 17 December 1998 amending the Financial Regulation of 21 December 1977 (OJ 1998 L 347, p. 3), was in force.

138 The Commission refutes CPEM's arguments.

Findings of the Court

139 In accordance with Articles 186 and 187 of Regulation No 1605/2002, the Financial Regulation of 21 December 1977 was repealed with effect from 1 January 2003 and references to the repealed regulation were to be construed as references to Regulation No 1605/2002 in accordance with the correlation table set out in the annex thereto.

140 It follows that, as from 1 January 2003, the provisions of Regulation No 1605/2002 replaced those of the Financial Regulation of 21 December 1977 in all cases in which the latter was applicable, including those relating to Community aid granted under the old regulation.

141 In the present case, suffice it to state that CPEM does not demonstrate, nor does it even claim, that the matters alleged against it by the Commission and which led to withdrawal of the Community aid were lawful under the Financial Regulation of 21 December 1977, but merely disputes the applicability of Regulation No 1605/2002 to the circumstances of the present case. In the light of the documents before the Court, it therefore does not appear that the replacement of the version of the Financial Regulation of 21 December 1977 resulting from Regulation No 2779/98 by Regulation No 1605/2002 had any impact whatsoever in the present case.

142 In these conditions, the fifth limb of the second plea must be rejected as unfounded.

143 As the two pleas raised by CPEM fall to be rejected, the action must be dismissed in its entirety.

Costs

144 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since CPEM has been unsuccessful, it must be ordered to pay the costs, including those relating to the interlocutory proceedings, in accordance with the form of order sought by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders the Centre de promotion de l'emploi par la micro-entreprise (CPEM) to bear the costs, including those relating to the interlocutory proceedings.**

Pelikánová Jürimäe Soldevila Fragoso

Delivered in open court in Luxembourg on 30 June 2009.

[Signatures]

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