JUDGMENT OF THE COURT (Second Chamber)

6 November 2008 *

In Case C-203/07 P,

APPEAL under Article 56 of the Statute of the Court of Justice, lodged on 16 April 2007,

Hellenic Republic, represented by P. Mylonopoulos, S. Trekli and Z. Stavridi, acting as Agents, with an address for service in Luxembourg,

applicant,

the other party to the proceedings being:

Commission of the European Communities, represented by I. Zervas and D. Triantafyllou, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: Greek.

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of Chamber, J.-C. Bonichot, J. Makarczyk (Rapporteur), P. Kūris and L. Bay Larsen, Judges,

Advocate General: J. Mazák,
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 5 March 2008,

after hearing the Opinion of the Advocate General at the sitting on 8 May 2008,

gives the following

Judgment

1 By its appeal, the Hellenic Republic asks the Court of Justice to set aside, in so far as it concerns its debt under the Abuja II project, the judgment of the Court of First Instance of the European Communities of 17 January 2007 in Case T-231/04 *Greece*

v *Commission* [2007] ECR II-63 ('the judgment under appeal'), by which the Court of First Instance dismissed the action for annulment of the act of 10 March 2004 by which the Commission of the European Communities proceeded to recovery, by offsetting, of sums owed by the Hellenic Republic following its participation in the building projects for the diplomatic representation of the Commission and several Member States of the European Union in Abuja (Nigeria) ('the contested act').

Legal context

International law

2 Article 18 of the Vienna Convention of 23 May 1969 on the Law of Treaties ('the Vienna Convention') states:

'Obligation not to defeat the object and purpose of a treaty prior to its entry into force

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or

(b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.'

3 Article 31 of the Vienna Convention states:

'General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.'

Community law

4 Article 71(1) and (2) 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, 'the Financial Regulation'), states:

'1. Establishment of an amount receivable is the act by which the authorising officer by delegation or subdelegation:

(a) verifies that the debt exists;

(b) determines or verifies the reality and the amount of the debt;

(c) verifies the conditions in which the debt is due.

2. The own resources made available to the Commission and any amount receivable that is identified as being certain, of a fixed amount and due must be established by a recovery order to the accounting officer followed by a debit note sent to the debtor, both drawn up by the authorising officer responsible.'

5 Article 72(1) of the Financial Regulation provides:

'The authorisation of recovery is the act whereby the authorising officer by delegation or subdelegation responsible instructs the accounting officer, by issuing a recovery order, to recover an amount receivable which he/she has established.'

6 Article 73(1) of the Financial Regulation provides:

'The accounting officer shall act on recovery orders for amounts receivable duly established by the authorising officer responsible. He/She shall exercise due diligence to ensure that the Communities receive their revenue and shall see that their rights are safeguarded.

The accounting officer shall recover amounts by offsetting them against equivalent claims that the Communities have on any debtor who himself/herself has a claim on the Communities that is certain, of a fixed amount and due.'

7 Under Article 78(1) and (2) of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Regulation No 1605/2002 (OJ 2002 L 357, p. 1; 'the Implementing Regulation'):

'1. The establishment by the authorising officer responsible of an amount receivable shall constitute recognition of the right of the Communities in respect of a debtor and establishment of entitlement to demand that the debtor pay the debt.

2. The recovery order shall be the operation by which the authorising officer responsible instructs the accounting officer to recover the amount established.'

8 Article 79 of the Implementing Regulation states:

'To establish an amount receivable the authorising officer responsible shall ensure that:

(a) the receivable is certain and not subject to any condition;

(b) the receivable is of fixed amount, expressed precisely in cash terms;

(c) the receivable is due and is not subject to any payment time;

(d) the particulars of the debtor are correct;

(e) the amount to be recovered is booked to the correct budget item;

(f) the supporting documents are in order; and

(g) the principle of sound financial management is complied with…'.

9 Article 83 of the Implementing Regulation states as follows:

'At any point in the procedure the accounting officer shall, after informing the authorising officer responsible and the debtor, recover established amounts receivable by offsetting in cases where the debtor also has a claim on the Communities that is certain, of a fixed amount and due relating to a sum established by a payment order.'

Background to the dispute

10 The background to the dispute was set out as follows in paragraphs 7 to 44 of the judgment under appeal:

'7. Following the transfer of the capital of Nigeria from Lagos to Abuja, the Commission has, since 1993, rented a building in Abuja to house its delegation as well as, temporarily, the representations of a number of Member States, including the Hellenic Republic. Under an arrangement with those Member States ("the Abuja I project"), the Commission was sub-letting a number of offices and provided a number of services to the representations in question. The Member States reached an agreement on the sharing of the costs relating to their representations. The contribution of the Hellenic Republic amounted to 5.5% of the total costs. Having decided that the Hellenic Republic had not paid its debts in that regard, the Commission, in 2004, proceeded to recovery by offsetting of the corresponding sums (see paragraph 44 below).

8. On 18 April 1994, the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Kingdom of the Netherlands, the Portuguese Republic and the Commission ("the partners"), on the basis of

Article J.6 of the Treaty on European Union (now, after amendment, Article 20 EU), concluded a Memorandum of Understanding ("the initial memorandum") concerning the construction, for their diplomatic missions in Abuja, of a joint complex of embassies using joint support services ("the Abuja II project"). The initial memorandum was supplemented, following the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, by an accession protocol.

9. Article 1 of the initial memorandum stipulates that the embassies of the participating Member States and the delegation of the Commission are to be distinct diplomatic missions which are subject to the Vienna Convention on Diplomatic Relations of 18 April 1961, and, with regard to the Member States, also subject to the Vienna Convention on Consular Relations of 24 April 1963.

10. Article 10 of the initial memorandum stated that the Commission would act, as coordinator of the Abuja II project, "on behalf of" the other partners.

11. Under Article 11 of the initial memorandum, the Commission is authorised to undertake architectural feasibility studies for the Abuja II project, as well as initial costings and design developments. That article also provides for the conclusion of an additional Memorandum of Understanding covering "detailed building design, sharing of costs and individual participating partners' legal interests in the premises on completion of the [Abuja II] project" ("the additional memorandum"). Finally, Article 11 provides for the setting-up of a permanent Steering Committee, comprising representatives of all the partners and chaired by the Commission, to coordinate and control the Abuja II project. The permanent Steering Committee is to give regular reports to the Working Party on Administrative Affairs, established in the Council in the framework of the Common Foreign and Security Policy (CFSP) ("the CFSP Working Party on Administrative Affairs").

12. Article 12 of the initial memorandum reads as follows:

> "The [Abuja II] project will be directly financed, upon approval of the [additional memorandum] referred to in Article 11, by contributions from participating partners, reflecting the share of the project allocated to each partner. The contribution by the Commission will be paid from the appropriate budget line.
>
> The costs of preparation of the project (phase 1) will be paid by the Commission from its administrative appropriations. These costs are estimated at ECU 140 000. If the [Abuja II] project is carried out, these costs will be reimbursed by contributions from all participating partners reflecting their individual share of the project."

13. Article 13 of the initial memorandum states:

> "All participating partners guarantee, upon approval of the [additional memorandum], the payment of their total costs. The total costs for each partner will consist of:
>
> (a) the full cost for each partner's individual part of the project,
>
> (b) each partner's share of the costs for the common and public areas, calculated in the same proportion as its share of the sum of individual areas."

14. Article 14 of the initial memorandum provides that the Commission, with the agreement and participation of the partner Member States, will make all payments to third parties (contractors).

15. Article 15(1) of the initial memorandum stipulates:

"If a partner decides to withdraw from the [Abuja II] project by not signing the [additional memorandum] referred to in Article 11, the terms of this Memorandum of Understanding, including the financial obligations referred to in Articles 12 and 13, will cease to apply to the withdrawing partner."

…

21. On 27 December 1995, the Commission concluded the principal contract. That contract concerned the outline and scheme design phases of the Abuja II project (Articles 4.4 and 4.5), as well as possible detailed design (Article 4.6).

22. On 19 September 1996, the CFSP Working Party on Administrative Affairs approved the scheme design.

23. On 21 November 1996, the CFSP Working Party on Administrative Affairs asked the Commission to make ad hoc arrangements in order to allow the architects to start work on the detailed design. The Working Party indicated that the formal contract for that phase would be concluded after the additional memorandum

had been finalised. At that meeting, the Commission informed the Working Party of the amount that it had advanced until 15 November 1996 for the preparation of the Abuja II project, namely approximately EUR 2.8 million.

24. On 24 February 1997, the CFSP Working Party on Administrative Affairs met again and decided not to wait for the additional memorandum to be finalised before proceeding to the drawing-up of the detailed design and contractual documents. The minute of that meeting contains the following resolutions:

"The Commission [is invited] to make the necessary arrangements with the architects for the elaboration of these documents and to advance the funds needed for these tasks according [to] modalities agreed for the project. Like on previous occasions, such advance payments by the Commission will later be reimbursed by other participants according to the procedures foreseen to this end in [the initial memorandum]."

25. In the months that followed, several Member States withdrew from the Abuja II project. On 28 April 1997, the CFSP Working Party on Administrative Affairs asked the Commission to "arrange bilaterally for the reimbursement of the Danish share of project-related costs incurred by the Commission on behalf of participating partners". A similar decision was taken following the withdrawal of Ireland in September 1997, and the withdrawals of the Portuguese Republic, the Republic of Finland and the Kingdom of Sweden.

…

27. On 18 June 1998, the CFSP Working Party on Administrative Affairs mentioned the possibility of a withdrawal of the Kingdom of Belgium from the Abuja II project. It is clear from the minute of that meeting that the permanent Steering Committee pointed out that the Kingdom of Belgium would pay its share of the costs as agreed after the approval of the scheme design.

28. On 10 June 1998, a payment order for …, corresponding to the share of the Hellenic Republic in the initial phase of the project, namely 5.06% of the total costs, was sent by the Commission to the Hellenic Republic. The deadline for payment was 31 December 1998.

29. On 9 December 1998, the additional memorandum was signed by the Federal Republic of Germany, the Hellenic Republic, the French Republic, the Italian Republic, the Kingdom of the Netherlands, the Republic of Austria and the Commission. Article 11 of the additional memorandum provides for the creation of a special fund to finance the project.

30. Under Article 14 thereof, the additional memorandum was to be provisionally applied from the first day of the second month after its signature and enter into force on the first day of the second month following the date on which the Member States and the Commission declared that it had been ratified.

31. On 28 April 1999, the Commission issued a call for tender for the construction of the embassies of the Member States concerned and of the Commission delegation (OJ 1999 S 82). It was stated therein that the embassy of the Hellenic Republic was to have an area of 677 m^2.

32. On 3 September 1999, the Commission "reiterated" its request of 1998 in the CFSP Working Party on Administrative Affairs that the Member States reimburse it for the sums paid to consultants for the scheme design phase. The Commission stated that some Member States had already paid the amounts due, but that others, including the Hellenic Republic, had not reimbursed it before the due date of 31 December 1998. The Commission added that a further invoice would be sent to all partners concerning, first, the costs of the detailed design (phase) and, second, the costs caused by the redesign of the complex after the withdrawal of the Kingdom of Belgium, the Kingdom of Spain and the Portuguese Republic.

33. On 20 September 1999, the permanent Steering Committee met to finalise the pre-qualification of construction companies. The representative of the Hellenic Republic signed the minute of the meeting. A call for tender was published in the Official Journal S 54 of 17 March 2000.

34. By payment order of 17 February 2000, the Commission requested payment from the Hellenic Republic of EUR 168 716.94 for the drawing-up of the call for tender for the detailed design.

35. On 22 June 2000, the permanent Steering Committee decided to adopt a new project approach ("Abuja Light"), which was made necessary by the withdrawal of the French Republic. The Abuja Light project provided in particular for the omission of common buildings and common technical installations, and a reduction of the construction area. The representative of the Hellenic Republic at that meeting indicated his agreement with the project, subject none the less to the approval of his superiors. On 29 June 2000, the Commission sent the minute of the meeting of 22 June 2000 to the Hellenic Republic and asked it for an official reply regarding the Abuja Light project.

36. On 5 September 2000, the Commission reiterated its request to the representatives of the Hellenic Republic. After another reminder dated 14 September 2000, the Commission sent a letter on 25 September 2000 to the Hellenic Republic by fax, giving a deadline for response of 30 September 2000 and stating that a failure to respond would be understood as a withdrawal from the project. On 2 October 2000, the Greek authorities informed the Commission that they were unable to give a formal answer regarding the Abuja Light project. Consequently the Commission responded, on the same day, that it had asked the architects to proceed with the redesign of the Abuja II project without including the Hellenic Republic.

37. By letter of 28 January 2002, the Commission sent a debit note for … to the Hellenic Republic for the construction costs of the Abuja II project. The Commission subsequently cancelled this debit note.

38. After setting up its own embassy in Abuja, the Hellenic Republic vacated the temporary buildings it was occupying as a partner of the Abuja I project on 13 July 2002.

39. By letter of 11 October 2002, the Commission formally notified the Hellenic Republic of the outstanding debit notes regarding the Abuja I and Abuja II projects ….

40. Following negotiations between the parties, the Commission reminded the Hellenic Republic, by letter of 31 January 2003, that the latter had not paid its debts relating to the Abuja I and Abuja II projects and requested that it pay a total amount of EUR 516 374.96 and USD 12 684.89 by the end of February 2003. The Commission added that, in the case of failure to pay by that deadline, it would enforce recovery of the amounts in question by all means available under the law.

41. During the months that followed, the Hellenic Republic and the Commission discussed the amounts of the sums due.

…

43. On 16 February 2004, the Commission sent a letter to the Hellenic Republic identifying the latter's outstanding debts for the Abuja I and Abuja II projects. …

44. On 10 March 2004, the Commission transferred funds to the Hellenic Republic under the Regional Operational Programme for mainland Greece. However, instead of paying an amount of EUR 4 774 562.67 …, the Commission only transferred EUR 3 121 243.03. It thus proceeded to recovery by offsetting the amount not yet paid by the Hellenic Republic, of which EUR 565 656.80 concerned the Abuja I and Abuja II projects …'

The action before the Court of First Instance and the judgment under appeal

11 By application lodged at the Registry of the Court of Justice on 22 April 2004, the Hellenic Republic brought an action for the annulment of the contested act.

12 By order of 8 June 2004, pursuant to Article 2 of Council Decision 2004/407/EC, Euratom of 26 April 2004 amending Articles 51 and 54 of the Protocol on the Statute of the Court of Justice (OJ 2004 L 132, p. 5), the Court of Justice referred the case to the Court of First Instance.

13 By the judgment under appeal, the Court of First Instance dismissed the action brought by the Hellenic Republic. It ruled that the Hellenic Republic was liable for the debts relating to the Abuja I and the Abuja II projects and that the conditions for recovery by offsetting were fulfilled on the date of the contested act.

14 After holding in paragraph 74 of the judgment under appeal that it had jurisdiction to hear the application for annulment of the act of offsetting, the Court of First Instance found in paragraph 84 of the judgment under appeal, as regards the Abuja II project, that the Hellenic Republic did not deny that it had acted as a full participant in that project for more than six years. In particular, the Court of First Instance found that the Hellenic Republic had taken part in the project for almost two years after the signature of the additional memorandum on 9 December 1998. Thus, according to the Court of First Instance, the Hellenic Republic had, by its conduct, given the other partners to understand that it would continue to participate in the Abuja II project.

15 The Court of First Instance proceeded in paragraph 84 to infer from this that the obligations of the Hellenic Republic could not be assessed solely on the basis of the initial and additional memoranda; account had also to be taken of the expectations which the conduct of that Member State had led its partners to entertain.

16 In that regard, the Court of First Instance stated in paragraphs 85 to 87 of the judgment under appeal that the principle of good faith is a rule of customary international law which is binding on the European Community and on the other participating partners, that it has been codified by Article 18 of the Vienna Convention and that it is the corollary, in public international law, of the principle of the protection of legitimate expectations.

17 Further, the Court of First Instance found, in paragraph 88 of the judgment under appeal, that, since the Hellenic Republic had signed and ratified the initial memorandum, it was one of the partners participating in the Abuja II project, a status which entailed certain enhanced obligations of cooperation and solidarity between participants.

18 In paragraph 92 of the judgment under appeal, the Court of First Instance went on to point out that after the initial phase of the project, the partners had decided to go ahead with the project and to bear the costs relating to the detailed design of the building, before the additional memorandum was finalised. In particular, at a meeting on 24 February 1997 which was attended by two representatives of the Hellenic Republic, the Commission was authorised to make the necessary arrangements with the architects to draw up detailed plans without awaiting the additional memorandum.

19 In that connection, the Court of First Instance found in paragraph 93 of the judgment under appeal that, in thus going further than the preliminary phases, the partners had necessarily concluded an implied agreement to carry out the project. In the same paragraph, the Court of First Instance stated that, by referring to the subsequent reimbursement of the advances provided for in the initial memorandum, the partners were in fact referring to Article 12 of that memorandum, according to which, if the project was carried out, the partners were to reimburse the costs of preparation of the project advanced by the Commission. The Court of First Instance added that since the partners decided at the meeting of 24 February 1997 to carry out the project, they were no longer free to withdraw from it without reimbursing their share of the preliminary and subsequent expenditure.

20 In paragraph 95 of the judgment under appeal, the Court of First Instance stated that the Hellenic Republic, together with the other partners which had not withdrawn from the project, had signed the additional memorandum on 9 December 1998 and that, in the subsequent months, the Hellenic Republic had acted as a full partner in the project, not showing any reticence with regard to its participation until the summer of 2000.

21 In paragraph 96 of the judgment under appeal, the Court of First Instance inferred from this that, even though the Hellenic Republic was entitled to withdraw from the project, it could not — particularly in the light of the evolution of the undertakings given after the initial phase, and notwithstanding the non-ratification of the additional memorandum — withdraw without being held liable for the expenditure linked to its participation in the Abuja II project.

22 In paragraph 97 of the judgment under appeal, the Court of First Instance stated that the obligation incumbent upon the Hellenic Republic to act in good faith was reinforced by the fact that it had signed and ratified the initial memorandum and that, from 18 April 1994 to 30 September 2000, it was a 'participating partner' in the project.

23 The Court of First Instance went on to state in paragraph 98 of the judgment under appeal that, if the Hellenic Republic had considered that it had no financial responsibility prior to ratification of the additional memorandum, it should have objected to the payment orders of 10 June 1998 and 17 February 2000 sent to it by the Commission in relation to the Abuja II project. The Court of First Instance added in the same paragraph that the Hellenic Republic had never showed any intention of withdrawing from the project or of not ratifying the additional memorandum, despite the withdrawal of several Member States and the consequent change in its share of the project.

24 In paragraph 99 of the judgment under appeal, the Court of First Instance inferred from this that the conduct of the Hellenic Republic had been that of a full participant in the project, and that it had thus given its partners to understand that it would fulfil its financial obligations in relation to the project.

25 In paragraph 100 of the judgment under appeal, the Court of First Instance added that the financial obligations of the Hellenic Republic also arose under the terms of the initial memorandum and, in particular, from Article 15(1) thereof.

26 The Court of First Instance pointed out in paragraph 101 of the judgment under appeal that, under Article 14 thereof, the additional memorandum was to apply provisionally to the Hellenic Republic from the first day of the second month after its signature — that is to say, from 1 February 1999 — and that that provisional application could not be affected by the fact that the Hellenic Republic did not ratify the memorandum.

27 For all those reasons, the Court of First Instance held, in paragraph 103 of the judgment under appeal, that the Hellenic Republic had to be held liable for all the costs relating to its participation in the Abuja II project.

28 Moreover, the Court of First Instance rejected as unfounded the plea that the amounts receivable were not certain and of fixed amount for the purposes of the applicable regulations and held that the conditions laid down for recovery by offsetting were fulfilled at the time of the contested act.

29 In the light of all those considerations, the Court of First Instance dismissed the action brought by the Hellenic Republic.

Forms of order sought by the parties before the Court of Justice

30 The appellant claims that the Court should:

— set aside the judgment under appeal;

— order the Commission to pay the costs.

31 The Commission contends that the Court should:

— declare the appeal inadmissible;

— in the alternative, dismiss the appeal as manifestly unfounded;

— order the appellant to pay the costs.

The appeal

32 In support of its appeal, the Hellenic Republic relies on two pleas in law ('the grounds of appeal' or 'the pleas on appeal').

33 According to the first plea on appeal, the Court of First Instance erred in law in its interpretation and application of Articles 12, 13 and 15 of the initial memorandum and of the principles of good faith and legitimate expectations.

34 By the second plea on appeal, the Hellenic Republic submits that the Court of First Instance was wrong to find that the partners had concluded an implied agreement on 24 February 1997 — that is, before the signature of the additional memorandum — by reason of which they were no longer free to withdraw from the project without reimbursing their share of the expenditure.

Admissibility of the appeal

35 According to the Commission, the appeal brought by the Hellenic Republic is inadmissible in so far as it is not based on any of the grounds listed in Article 58 of the Statute of the Court of Justice: the grounds on which it is based relate exclusively to the interpretation of the memoranda, which form no part of Community law.

36 In this respect, it should be borne in mind that the Court of First Instance has jurisdiction to hear and determine actions or proceedings referred to in Article 230 EC, with the exception of those reserved in the Statute for the Court of Justice. Decisions given by the Court of First Instance under that provision may be the subject of an appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.

37 In the present case, an action was brought before the Court of First Instance pursuant to Article 230 EC for the annulment of the contested act — adopted on the basis of Article 73(1) of the Financial Regulation, and the Implementing Regulation — by which the Commission had proceeded to recovery by offsetting of sums, owed by the

Hellenic Republic, which fell under the Community budget and which were related to the CFSP.

38 The Hellenic Republic criticises the judgment under appeal in so far as it dismissed its application for annulment of that act, the legal basis for which lies in Community regulations.

39 As regards the scope of the pleas themselves, it should be noted that the Hellenic Republic challenges the Court of First Instance's legal interpretation of the sole plea raised before it, which alleged in particular that the analysis of the Hellenic Republic's financial obligations in relation to the Abuja II project was unsound.

40 It is not contrary to Article 58 of the Statute of the Court of Justice — under which an appeal to the Court of Justice is to lie on the grounds of lack of competence of the Court of First Instance, or a breach of procedure before it which adversely affects the interests of the appellant, or the infringement of Community law by the Court of First Instance — for the pleas put forward in support of the application to have the judgment of the Court of First Instance set aside, which challenge the classification of the Hellenic Republic as a debtor within the meaning of Article 78 of the Implementing Regulation, to entail an analysis of the scope of legal acts which cannot themselves be contested before the Court of First Instance, such as the two memoranda referred to in paragraphs 33 and 34 of this judgment.

41 Further, it should be noted that, for the purposes of determining whether the contested act is well founded — in particular, as regards verification that the debt itself exists and that the conditions for offsetting are satisfied — it is necessary to interpret those legal acts, but such an analysis does not necessarily give rise to an action in respect of those legal acts.

42 Moreover, the Commission contends that the appeal is inadmissible because the pleas on appeal are ineffective. Therefore, the Commission submits that, even if those pleas had to be upheld, the fact that they were well founded could not, in any event, lead to the judgment under appeal being set aside, in so far as other grounds forming a sound basis for the operative part of that judgment are not challenged in the appeal.

43 Given that that argument does not relate to the admissibility of the appeal but to its merits, it could not — even if it were well founded — entail the inadmissibility of the appeal.

44 Accordingly, the appeal must be declared admissible.

Substance

Arguments of the parties

45 According to the Hellenic Republic, first, the Court of First Instance should have held that the obligations of the Member States participating in the Abuja II project were determined by the provisions of the initial and additional memoranda, not by the conduct of each Member State.

46 An obligation incumbent upon a Member State can be defined only on the basis of the relevant terms of the memoranda. The conduct of the Hellenic Republic, analysed in the light of the principle of good faith, cannot therefore be taken into consideration in order to determine, from the outset, its obligations in relation to the Abuja II project, since that principle cannot have the effect of imposing obligations to which that Member State did not contractually subscribe.

47 In this respect, the Hellenic Republic submits that the Court of First Instance should have looked only at the text of the initial memorandum and should have noted that it did not impose any financial obligations on the Hellenic Republic, so long as the additional memorandum had not been ratified.

48 According to the Hellenic Republic, pursuant to Articles 12 and 13 of the initial memorandum, the obligation on the participating Member States to contribute financially to the Abuja II project only arises after approval of the additional memorandum; such approval — which is one of the methods by which a State consents to be bound by an international treaty — is thus equivalent, pursuant to the Vienna Convention, in particular, to instruments of ratification, acceptance or accession. For that reason, the financial obligations referred to in the initial memorandum are conditional upon that approval.

49 Moreover, as is clear from Article 16 of the Vienna Convention, such legal instruments establish the consent of a State to be bound by a treaty upon, inter alia, the notification of those instruments to the other contracting States or to the depositary. Accordingly, the Hellenic Republic submits that Article 14 of the additional memorandum, which concerns the application of that act, clearly distinguishes signature of the memorandum, the sole effect of which is the act's provisional application, from its entry into force, which cannot take place until the parties declare that they have ratified it. As it is, even though the Hellenic Republic signed the additional memorandum and initially participated in the work for the implementation of the Abuja II project, it never ratified that memorandum.

50 According to the Hellenic Republic, it follows from the foregoing that the specific conditions defined in Articles 12 and 13 of the initial memorandum, read in conjunction with Article 15 of that memorandum, were not fulfilled in its case, since application of the principle of good faith cannot run counter to those contractual provisions.

51 Secondly, the Hellenic Republic submits that the Court of First Instance was wrong to find that the partners concluded an implied agreement on 24 February 1997, in so far as that agreement was not confirmed by a corresponding provision in the additional memorandum.

52 For its part, the Commission contends, first, that according to a well-established rule, a contracting State incurs financial liability if its conduct infringes the principle of good faith and causes its partners damage.

53 The Commission adds that a Member State cannot, in its relations with its international partners, ignore general principles of law which it recognises in its national legal system and stresses that the Greek legal system recognises the principle of good faith both in private and in public law.

54 It follows that the Court of First Instance was right, in order to assess the financial obligations of the Hellenic Republic, to take into account its relations with its partners and to find that, given the Hellenic Republic's consistent pattern of behaviour from 1994 to 2000, the application of the principle of good faith made it incumbent upon that Member State to reimburse the costs at issue.

55 Secondly, the Commission contends that an agreement exists from the moment the parties have expressed their formal consent. The Court of First Instance was therefore right to infer from the minutes of the meeting of 24 February 1997, in which the Hellenic Republic participated, that an agreement existed that gave rise to rights and obligations for the Member States that took part in the meeting.

Findings of the Court

56 The financial obligations of Member States in the context of the implementation of the Abuja II project must be determined, first, in the light of the content and the scope of the initial and additional memoranda.

57 It should be noted that, far from dismissing such an approach to the financial obligations, the Court of First Instance directly followed that approach in the judgment under appeal, in particular in the analysis it undertook in paragraphs 100 et seq. of that judgment, following its interpretation of the initial and additional memoranda.

58 In this respect, it is common ground — as the Court of First Instance stated in paragraph 88 of the judgment under appeal — that the Hellenic Republic signed the initial memorandum on 18 April 1994 and that it also ratified that memorandum, thus becoming, along with several other Member States, a partner in the Abuja II project for the construction in a 'spirit of mutual benefit' of a common complex accommodating embassies and the Commission delegation.

59 Moreover, it is also common ground — as the Court of First Instance stated in paragraph 95 of the judgment under appeal — that the Hellenic Republic signed the additional memorandum on 9 December 1998 even though, by that date, some Member

States had already withdrawn from the Abuja II project, after reimbursing their share of the costs incurred by that stage in the project, and that the conclusion of that additional memorandum of understanding had been envisaged by the initial memorandum, as Article 11 of the latter shows.

60 In addition, it was through the interpretation that it had to carry out of Article 15(1) of the initial memorandum that the Court of First Instance rightly found — as is clear from paragraph 100 of the judgment under appeal — that, where one of the participants decided to withdraw from the Abuja II project after signing the additional memorandum, the terms of the initial memorandum continued to apply to it, including the financial obligations envisaged in Articles 12 and 13.

61 Moreover, pursuant to Article 14 of the additional memorandum, even though that memorandum was to enter into force on the first day of the second month following the date on which the Member States and the Commission declared that it had been ratified, it was to be provisionally applied from the first day of the second month after its signature. As the Court of First Instance found, the Hellenic Republic, by signing the additional memorandum, necessarily consented to its provisional application, hence to the consequences attaching to withdrawal from the Abuja II project prior to expressing any approval.

62 As the Advocate General stated in paragraphs 67 and 73 of his Opinion, it is clear from Article 15(1) of the initial memorandum and Article 14 of the additional memorandum that the participating Member States and the Commission intended to attach special importance to the signature of the additional memorandum and to its provisional application, rather than to its ratification, particularly in the context of the withdrawal of participants from the Abuja II project.

63 Even though the Hellenic Republic thus remained free to withdraw from the project so long as it had not ratified the additional memorandum, it could not refuse to fulfil the financial obligations arising from its participation in the Abuja II project up until the date on which it withdrew, those obligations falling to be determined in the light of the evolution of the undertakings given by that Member State after the initial phase.

64 Moreover, the Court of First Instance was entitled to invoke, as an additional basis for the obligation thus incumbent on the Hellenic Republic under the memoranda, the customary principle of good faith, which forms part of general international law (C-308/06 *Intertanko and Others* [2008] ECR I-4057, paragraph 52).

65 In that respect, the Court of First Instance found — by way of an assessment of the facts that is not open to appeal — that, between 18 April 1994 and 30 September 2000, the Hellenic Republic had expressed no reservations with regard to its participation in the Abuja II project, even though its commitments had evolved substantially owing to the withdrawal from the project of a number of Member States, and that, in particular, it had not objected to the payment orders sent by the Commission, thus leading its partners confidently to expect that it would fulfil its financial obligations under the Abuja II project.

66 It follows from all the foregoing that the Court of First Instance was right to infer from the interpretation of the scope of the initial and additional memoranda that, even though it had not ratified the additional memorandum, the Hellenic Republic was under an obligation to reimburse the costs relating to its participation in the Abuja II project, having moreover led its partners confidently to expect that it would fulfil its financial obligations.

67 Finally, the submissions concerning the existence of an implied agreement concluded at the meeting of 24 February 1997 cannot call into question the operative part of the judgment under appeal in so far as they are directed at superfluous grounds,

the operative part being justified by the grounds set out above, which the Hellenic Republic has criticised in vain.

68 Consequently, and without it being necessary to reply to the argument of the Commission set out in paragraph 42 of the present judgment, the appeal must be dismissed.

Costs

69 Under Article 69(2) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 118 thereof, 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 applied for costs and the Hellenic Republic has been unsuccessful, the Hellenic Republic must be ordered to pay the costs.

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

1. Dismisses the appeal.

2. Orders the Hellenic Republic to pay the costs.

[Signatures]