OPINION OF ADVOCATE GENERAL LA PERGOLA

delivered on 28 October 1999 *

I — Introduction

1. By this reference for a preliminary ruling, the Kingdom of Spain applied, pursuant to Article 173 of the EC Treaty (now, after amendment, Article 230 EC), for the annulment of an act adopted by the European Commission (hereinafter 'the Commission'), entitled 'Internal guidelines concerning net financial corrections in the context of the application of Article 24 of Council Regulation (EEC) No 4253/88' of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and other existing financial instruments (hereinafter, respectively, 'the internal guidelines' [1] and the 'coordination regulation' [2]).

2. According to the Spanish Government, the internal guidelines involve *new* financial sanctions for the Member States. They consist of net corrections (or reductions or cancellations) of Community assistance due to failure to fulfil the obligation, imposed on the Member States by Article 23 of the coordination regulation (see below, paragraph 5), to verify that the operations co-financed by the Structural Funds are properly carried out. The Commission indicated Article 24 of the said regulation as the legal basis for the adoption of the internal guidelines. The Spanish Government, with the Italian and Portuguese Governments intervening in support, maintains that the Commission is not competent to adopt this act, which is also without adequate grounds.

II — Legal framework of the act in question

3. The origins of this dispute can be found in the Community legislation concerning the Structural Funds. Firstly, I would refer to the provisions of the EC Treaty on economic and social cohesion (Articles 130a to 130e of the EC Treaty, now, after amendment in some cases, Articles 158 EC to 162 EC), which lay down the general principles relating to the action of the Funds and other financial instruments and give the Community institutions the task of implementing them. Council Regulation (EEC) No 2052/88 of 24 June

* Original language: Italian.

1 — C(97) 3151 final.

2 — OJ 1988 L 374, p. 1; the coordination regulation was amended by Council Regulation (EEC) No 2082/93 of 20 July 1993 (OJ 1993 L 193, p. 20) and by Council Regulation (EC) No 3193/94 of 19 December 1994 (OJ 1994 L 337, p. 11).

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 financial instruments (hereinafter 'the framework regulation'),[3] and the coordination regulation contain the essential regulations on this matter.

4. The Structural Funds provide assistance to reinforce economic and social cohesion, and, in particular, to reduce the discrepancy between the various regions and the backwardness of those which are less favoured. As this assistance takes the form of co-financing by the Community of individual projects chosen by the Member States, it is essential to check that the Funds contribute only to the financing of projects, initiatives or 'operations' which satisfy the 'conditions of eligibility' for the subsidies in accordance with the relevant Community provisions. According to Article 23(1) of the coordination regulation (see below, paragraph 5) the aforementioned controls — whose arrangements have been more closely regulated by Regulation No 2064/97 (see below, paragraph 6) — should be carried out by the Member States, who are responsible for managing 80% of the Community costs.

5. In particular, and so far as it relates to the present case, Article 23(1) of the coordination regulation, entitled 'Financial control', provides that:

'In order to guarantee completion of operations carried out by public or private promoters, Member States shall take the necessary measures in implementing the operations:

— to verify on a regular basis that operations financed by the Community have been properly carried out,

— to prevent and to take action against irregularities,

— to recover any amounts lost as a result of an irregularity or negligence... .

As soon as this regulation enters into force, the Commission shall draw up detailed arrangements for implementation of this paragraph...'.

Under Article 24 of the coordination regulation, which is the provision on which

3 — OJ 1988 L 185, p. 9; the framework regulation was amended by Council Regulation (EEC) No 2081/93 of 20 July 1993 (OJ 1993 L 193, p. 5) and Council Regulation (EC) No 3193/94 of 19 December 1994, already referred to.

the act challenged here is based, 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, [4] 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 ...'.

6. The Commission adopted two regulations for the application of Article 23 of the coordination regulation, one of which is Regulation (EC) No 2064/97 of 15 October 1997, establishing arrangements for the implementation of Council Regulation (EEC) No 4253/88 as regards the financial control by Member States of operations co-financed by the Structural Funds (hereinafter 'Regulation No 2064/97'), [5] in which the Commission, in order to ensure that the controls carried out by the Member States are sufficiently rigorous, specified some minimum requirements (see second recital). On the same date, the Commission adopted the internal guidelines referred to in this case, notified to the Member States on 23 October 1997.

III — The content of the contested measure

7. The internal guidelines, to be used by the Commission's various departments which are involved from time to time, specify the circumstances in which the Commission might carry out net financial corrections in applying Article 24 of the coordination regulation. Generally, a decision of this kind will be adopted if, in the implementation of the operations co-financed by the Community, the financial control operated in the Member States reveals significant failures or weaknesses.

8. In the internal guidelines, four categories of corrections are identified: net corrections (points 3 and 4), financial corrections greater than the sum relating specifically

4 — 'Partnership' is the consultation between the Commission, the Member State concerned and the competent authorities and bodies designated by that Member State. This partnership shall cover the preparation and financing, as well as the *ex ante* appraisal, monitoring and *ex post* evaluation, of the various initiatives which are the subject of the operations of the Structural Funds; the Community operations shall be such as to complement or contribute to corresponding national operations (see Article 4(1) of the framework regulation).

5 — OJ 1997 L 290, p. 1; Regulation No 2064/97 was amended by Commission Regulation (EC) No 2406/98 of 6 November 1998 (OJ 1998 L 298, p. 15).

to the irregularity or irregularities discovered (point 5; hereinafter 'greater corrections'), flat-rate corrections (points 6 and 7) and provisional net corrections (point 9). Normally, once an irregularity is found concerning a particular operation, the financial correction takes the form of the reallocation of the funds to another operation. However, according to the internal guidelines, depending on how serious the irregularity is for which the Member State concerned is responsible, this correction may take the form of a 'net correction', or purely and simply a reduction, thus excluding any possibility of reallocation.

9. In particular, a net correction could be applied in the case of 'significant' failure to meet the obligations of control stated in Article 23(1) of the coordination regulation, which consist of verifying on a regular basis that the operations financed by the Community have been properly carried out, preventing and taking action against irregularities, and recovering any amounts lost as a result of an irregularity or negligence. In order to establish the 'significant' nature of such a failure, the Commission shall examine whether the irregularity or irregularities can be attributable to a significant weakness affecting the competent authorities of the Member State concerned, relating in particular to the institution of prudent financial management and control procedures and systems.

10. A net correction relates exclusively to the irregularity or irregularities discovered by the Commission, unless the Commission has good reason to take the view that the irregularity is systemic, that is due to a systemic weakness of financial control and as such likely to be found in a series of similar cases (the example is given of a systematic failure to comply with a specific eligibility rule). Any such instance would suggest the existence of a more general risk of abuse of funds and could justify a greater financial correction. In considering such a measure the Commission would take into account the level of the national administrative system responsible for the weakness, in addition to the likely extent of abuse. In any case, it is stated that a net correction, whatever it is, cannot exceed the amount of the 'form of assistance' concerned[6] (for example, an operational programme, in itself including various 'operations'; see point 8 of the internal guidelines).

11. When it is not possible to determine in sufficient detail the extent of the irregularity or irregularities, despite the information provided by the Member State concerned, the Commission shall proceed with the application of flat-rate corrections, based on a reasoned judgment of the likelihood and extent of the misapplication. Flat-rate corrections would also be adopted if the irregularities discovered have no specific financial value, as in the case where a Member State persistently fails to ensure that proper publicity is given for the Community financial contributions to

6 — The financial assistance under the Structural Funds can take a variety of forms, including the part-financing of operational programmes, the part-financing of a national aid scheme, the provision of global grants or the part-financing of suitable projects (see Article 5(1) of the framework regulation).

operations in accordance with Commission Decision 94/342/EC of 31 May 1994, on information and publicity measures to be carried out by the Member States concerning assistance from the Structural Funds and the Financial Instrument for Fisheries Guidance (FIFG). [7]

12. Finally, in cases where a Member State's failure to meet its obligations is less significant, or where special circumstances could be argued, the Commission could make a provisional net correction, which would be withdrawn if the Member State could show that the weaknesses of management and control had been eliminated. According to the internal guidelines, such a correction would be justified in the absence of serious negligence within the Member State concerned, for weaknesses in control which, although significant, could be rapidly corrected.

IV — Objection of inadmissibility

13. First, the Commission raised an objection of inadmissibility with regard to the submission, in so far as it takes the view that as the act in question does not impose additional obligations on the Member States in respect of those already stated in Article 23 of the coordination regulation, it does not alter their pre-existing situation, nor does it produce legal effects.

7 — OJ 1994 L 152, p. 39.

14. However, the Spanish Government and those intervening in its support maintain that, whatever term is used to describe the act, and irrespective of the fact that it is exclusively intended for the Commission's departments in application of Article 24 of the coordination regulation, the internal guidelines are capable of being challenged under Article 173 of the EC Treaty. An analysis of their content shows that they produce binding effects which are *different* to those already applicable under the coordination regulation, thus altering the legal position of the Member States considerably.

15. In order to evaluate whether the internal guidelines constitute an act which can be challenged, and therefore to verify the basis of the objection raised by the Commission, it must be determined whether they aim to produce *additional* legal effects with respect to those in the coordination regulation. It is therefore necessary to examine the content of the act in question. [8]

V — Arguments of the parties

16. Concerning the Commission's alleged lack of competence, the Spanish Government and those intervening in its support

8 — See Case C-366/88 *France* v *Commission* [1990] ECR I-3571, paragraphs 11 and 12; Case C-303/90 *France* v *Commission* [1991] ECR I-5315, paragraphs 10 and 11; Case C-325/91 *France* v *Commission* [1993] ECR I-3283, paragraph 11; Case C-57/95 *France* v *Commission* [1997] ECR I-1627, paragraphs 9 and 10.

state that, with the internal guidelines, the Commission has introduced — solely on the basis of Article 24 of the coordination regulation — a series of monetary sanctions for infringements, by Member States, of their obligations under Article 23 of that regulation. In actual fact, according to Italy, Portugal and Spain, the possibility of operating reductions, suspensions or cancellations of Community assistance as stated in Article 24 is exclusively to sanction the irregularities in the case of '*an* operation or *a* measure' (see Article 24(1)) or 'irregularities which affect the *nature* or *conditions for the implementation*' of a particular operation or measure (see Article 24(2)) which obtained Community cofinancing (for example, when the assistance is intended for different purposes to those for which it had been approved). Therefore, the Commission could not use the power stated in Article 24 if the Member States do not fulfil the obligations stated in Article 23, mainly concerning efficient financial control.

17. The Commission, for its part, takes the view that, even if the regulations on the Structural Funds do not provide a definition of the concept of 'irregularity' as stated in Articles 23 and 24 of the coordination regulation, this cannot be understood restrictively, by which a failure to meet the obligations stated in Article 23 would constitute an irregularity under the terms of Article 24. To support this argument, the Commission claims: (i) its own responsibility, in accordance with Article 205 of the EC Treaty (now, after amendment, Article 274 EC), to ensure that the Community budget is implemented in accordance with the principle of sound financial management; (ii) the general principle of the correct implementation of Community cofinancing, sanctioned by Article 7(1) of the framework regulation, entitled 'Compatibility and checks';[9] (iii) the case-law in *WWF UK*, in which the Court gave a broad interpretation of the concept of irregularity in accordance with Article 24 of the coordination regulation, so that it could also include infringements of the obligations stated in Article 23(1) of the same regulation,[10] and (iv) after noting a parallel between the Structural Funds and the European Agricultural Guidance and Guarantee Fund (hereinafter 'the EAGGF-guarantee'),[11] the case-law of the Court on the clearance by the Commission of accounts presented by the Member States containing items of expenditure to be charged to the EAGGF-guarantee, in which the power of the Commission to proceed with net financial corrections when its assessments show infringements, attributable to the Member

9 — This provision states 'measures financed by the Structural Funds or receiving assistance from the EIB or from another existing financial instrument shall be in conformity with the provisions of the Treaties, with the instruments adopted pursuant thereto and with Community policies, including those concerning the rules on competition, the award of public contracts and environmental protection and the application of the principle of equal opportunities for men and women.'

10 — See order for reference in Case C-325/94 P *An Taisce and WWF UK* v *Commission* [1996] ECR I-3727, in which the appeal against the judgment of the Court of First Instance in Case T-461/93 *An Taisce and WWF UK* v *Commission* [1994] ECR II-733 is rejected as inadmissible and unfounded.

11 — By which the Community finances the refunds on exports to third countries and operations to regularise the agricultural markets.

State concerned, in the management and control system of the EAGGF Funds, was repeatedly sanctioned. [12]

VI — Legal analysis

18. I am not convinced by the arguments of the Commission. First of all, as all the governments present observe, there is a clear text to be taken into account: that of Article 24 of the coordination regulation. It is true that this provision allows the Commission to apply net financial corrections in the case of irregularities. However, these must refer to the 'nature' or 'conditions for implementation' of *a* (single) operation or *a* (single) measure benefiting from Community aid. On the other hand, irregularities which consist of general weaknesses or failures of the management and control systems of the Member States are quite different, as they constitute a failure to fulfil the obligations laid down in Article 23(1) of the coordination regulation. These irregularities are on a different level to those of 'implementation' or 'completion' of *an* operation or *a* measure, because they concern the overall management system of the Structural Funds; and even if the Commission finds an irregularity in the checks carried out by a Member State in relation to a specific operation or measure for which the Community aid is intended, it could not state that this failure concerned the 'nature' or 'conditions for implementation' of the operation or measure in question.

19. Secondly, I consider that the claim by the Commission concerning the *WWF UK* judgment (see footnote 11) is irrelevant; in that case the Court stated that Article 24 of the coordination regulation 'aims to allow the Commission to suspend or reduce the Community financial aid *in the event of any irregularity on the part of the Member State concerned, in particular* where, without seeking approval, the Member State makes a significant change to the nature of, or conditions for, implementation of the action or measure.' [13] It is true that, by stating the concept of 'irregularity', the Court intended to refer to failures to carry out Community law of various kinds. However, these failures (or 'irregularities') must always particularly concern the operation or measure in question. On the one hand, as stated above, the Court repeated Article 24(2) [14] almost verbatim, the significance of which I have just referred to. On the other hand, it gave a judgment in a case concerning a project for the construction of a tourist centre in a national park, concerning which the WWF and An Taisce (i.e. the National Trust for Ireland) claimed that the Member State

12 — See Case C-197/90 *Italy* v *Commission* [1992] ECR I-1, paragraph 39; Case C-197/91 *Frutticultori Associati Cuneesi, 'FAC'* [1993] ECR I-2639, paragraphs 16-18; Case C-50/94 *Greece* v *Commission* [1996] ECR I-3331, paragraphs 22-28.

13 — Paragraph 22, my italics.

14 — I should point out, however, that while this provision refers to '*an irregularity or... a change*... affecting the nature or conditions for the implementation of the operation or measure' in question, in the *WWF UK* order for reference the Court is inclined to include such a change amongst the irregularities legitimising a net reduction: '... in the event of any irregularities ..., *in particular* where the Member State makes a change ... to the nature of, or conditions for, implementation of the action or measure ...' (paragraph 22, my italics).

concerned failed to comply with directives to protect the environment; it is therefore clear that the irregularity which in that case was allegedly 'committed by the State concerned' — these are the words of the Court — concerned the nature or conditions for implementation *only of a specific measure*, and had nothing to do with failure to carry out controls of the type described in Article 23(1) of the coordination regulation. [15]

20. Thirdly, to avoid the difficulties of the text raised by the Spanish Government and the Italian and Portuguese Governments, the Commission refers to the case-law of the Court concerning the powers of the Commission under the terms of the EAGGF-guarantee. The Commission takes the view that, as both the Structural Funds and the EAGGF-guarantee are realised through the use of Community budget resources, the operation must in all cases adhere to the general principle of 'sound financial management' (see Article 205 of the Treaty) including the obligation to guarantee that Community resources are used in accordance with the provisions concerning the controls to be applied in the implementation of these Funds. The Commission adds that, because of the need for sound financial management for all cases where the Community budget is committed, there is a certain analogy between some provisions of the legal framework on the Structural Funds and others relating to the EAGGF-guarantee. [16] The regulations relating to these two types of Community aid which are assumed to be similar include, I believe, specific provisions concerning the obligations of control by Member States: Article 23(1) of the coordination regulation and, for the EAGGF-guarantee, Article 8(1) of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (hereinafter 'Regulation No 729/70'), [17] an act to which the Commission refers several times during the

15 — On the same point, the Court of First Instance has recently given a judgment. In *Conserve Italia* (Case T-216/95 *Conserve Italia ex Massolombarda Colombani* v *Commission* [1999] ECR II-3139) that Court considered that Article 24 of the coordination regulation allowed the Commission to cancel assistance from the EAGGF, guidance section (or a Structural Fund) in the case of irregularities, 'mainly in the case of a substantial change to the operation, which affects its nature or the conditions for its implementation' (paragraph 92). In this case, some acquisitions and work were carried out before the date the request for assistance was received, contrary to Article 15(1) of the coordination regulation which states 'expenditure may not be considered eligible for assistance from the Funds if incurred before the date on which the corresponding application reaches the Commission.' This point, along with the fact that a contract to purchase a machine had been falsified with the intention of disguising the fact that the machine had already been installed in the factory before the date the Commission received the application for assistance (paragraph 33), led the Commission to cancel the Community assistance because 'the irregularities affected the *conditions for implementation* of the project in question' (paragraph 33, my italics).

16 — The Commission refers to Article 7(1) of the framework regulation mentioned above (see footnote 3) to which Articles 2(1) and 3(1) of Regulation No 729/70 in the regulations on the EAGGF-guarantee correspond, concerning the essential requirement of correct implementation of Community aid (see immediately below in the text); in particular, in accordance with Article 2(1) of this last regulation, 'refunds on exports to third countries shall be financed [by the EAGGF-guarantee] *in accordance with Community rules...*' (my italics).

17 — OJ, English Special Edition 1970 (I), p. 218.

course of its defence. [18] Having found this parallel, the Commission considers that it is possible to apply to this case the case-law of the Court of Justice in which the latter considered net financial corrections legitimate in the clearance of the accounts of the EAGGF-guarantee, where the Member State concerned was responsible for weaknesses or failures in its own management and control systems. [19]

21. In my opinion, the arguments to which I have referred, far from corroborating the position of the Commission, undermine its very foundation. The intention of the Commission is, in fact, to show that its power to adopt net corrections for infringements of the obligations of control stated in Article 23(1) is *inherent* in the system of Articles 23 and 24 of the coordination regulation. If this were true, the act being challenged would not produce legal effects (and the submission would therefore be inadmissible) and the Commission, with the internal guidelines, would only have clarified the meaning of some provisions, by anticipating a series of types of net corrections. Such an argument, however, broadly rests upon an 'interpretative process' based on analogy, by transposing statements by the Court relating to the EAGGF-guarantee to the scope of the Structural Funds. The analogy in our case would not be interpretative, but would be a process of creating new rules based on the presumption that there is a weakness in the rule to be put right. In fact, it is not a broad interpretation by which the meaning of a provision is stretched to the limits of its *semantic range*, according to general linguistic use. In this case, it has been seen how the *literal wording* of Article 24 does not allow infringements of the obligations stated in Article 23(1) to be included in the concept of 'irregularity' so as to justify net reductions (and the *WWF UK* case appears to confirm this). Clearly, therefore, the Commission considers that here there is a weakness in the rules, which it wishes to deal with by analogy, by transposing the rules on the EAGGF-guarantee to this case, using the internal guidelines.

22. It is therefore clear from the above that with the internal guidelines the Commis-

18 — Under this last provision, which is close to the aforementioned Article 23(1), 'the Member States, in accordance with the national provisions laid down by law, regulation or administrative action, shall take the measures necessary to:
— satisfy themselves that transactions financed by the Fund are actually carried out and are executed correctly;
— prevent and deal with irregularities,
— recover sums lost as a result of irregularities or negligence ...'.

19 — That case-law, which belongs to a broadly consolidated line of that College (see also Case C-232/96 *France* v *Commission* [1998] ECR I-5699, paragraphs 43-45, 53 and 57; Case C-235/97 *France* v *Commission* [1998] ECR I-7555, in particular paragraphs 38-45, and paragraphs 20-41 of the Opinion of Advocate General Alber; Case C-54/95 *Germany* v *Commission* [1999] ECR I-35, paragraphs 4-18 and 94-100; Case C-240/97 *Spain* v *Commission* [1999] ECR I-6571, paragraphs 33-39) established that, by the application of Articles 2 and 3 of Regulation No 729/70, the EAGGF-guarantee would only finance the refunds granted and assistance provided in accordance with the Community regulations on the joint organisation of agricultural markets. The Court assumes from this that the Commission has the task of rejecting every claim to charge to the EAGGF-guarantee, and therefore to the Community budget, any expenditure affected by irregularities (see, for example, Case 11/76 *Netherlands* v *Commission* [1979] ECR 245, paragraph 8; Joined Cases 15/76 and 16/76 *France* v *Commission* [1979] ECR 321, paragraphs 10-17; Case C-197/90 *Italy* v *Commission*, paragraph 39; and Case C-50/94 *Greece* v *Commission*, paragraph 6). These irregularities include those relating to controls of various kinds which the Member States must make in accordance particularly with Article 8(1) of Regulation No 729/70 (for all these points, see FAC, paragraph 16; Case C-50/94 *Greece* v *Commission*, paragraph 22 et seq.; Case C-232/96 *France* v *Commission*; and Case C-235/97 *France* v *Commission*).

sion is not only giving its interpretation of Article 24 of the coordination regulation; that is, it has not anticipated the application of net corrections for irregularities as laid down by, or which the interpreter may deduce from, the aforementioned provision. On the contrary, using the EAGGF-guarantee system as inspiration, the Commission has adopted an act by which the possibility is introduced for the first time of charging net corrections to the Member States — a 'sanction' in itself and as stated in Article 24 — for *different* irregularities to those which concern 'the nature or conditions for implementation' of an operation or measure benefiting from aid from the Structural Funds, which are the only kinds indicated in the rule stating these sanctions.

23. Furthermore, this is confirmed by a recent development in legislation which the parties mentioned frequently during the hearing. The Council adopted Regulation (EC) No 1260/1999 on 21 June 1999, laying down general provisions on the Structural Funds (hereinafter 'Regulation No 1260/99'),[20] intended to replace the framework regulation and the coordination regulation for 2000-2006.[21] The Governments in this case stated that Article 39 of Regulation No 1260/99 (partly corresponding to Articles 23 and 24 of the coordination regulation), entitled 'Financial corrections', states specifically *for the first time* the power of the Commission to make these corrections if it concludes, after completing the necessary verifications, among other things, that 'a Member State has not complied with its obligations [of control as laid down]' or that 'there are serious failings in the management or control systems which could lead to systemic irregularities.' The Commission replied by stating that it is merely a codification or explanation of the present legal framework relating to the Structural Funds. In my opinion, however, the wording of Article 39 does not allow acceptance of the argument put forward by the Commission. It is in that provision that the weakness is dealt with which, with respect to the EAGGF-guarantee, characterises the legal framework of the Structural Funds.

24. In conclusion, there are good reasons for considering that the power of the Commission to proceed with net financial reductions — such as those described in the internal guidelines — as a result of infringements by the Member States of the obligations stated in Article 23(1) of the coordination regulation is not *inherent*[22] in Article 24 of that regulation. The act being

20 — OJ 1999 L 161, p. 1.

21 — However, by virtue of the transitional provisions of Regulation No 1260/99 (see in particular Article 52(5)), the regulations currently in force will continue to be applied to all sums committed for the programmes approved by the Commission between 1 January 1994 and 31 December 1999 and which have been the subject of an application for final payment presented to the Commission by 31 March 2003.

22 — See *France* v *Commission* (Case C-303/90, paragraph 21), *France* v *Commission* (Case C-325/91, paragraph 17), *France* v *Commission* (Case C-57/95, paragraph 19).

challenged — whilst it does not impose new *obligations* on the Member States [23] — *introduces* financial 'sanctions' for irregularities committed by the Member States in cases which are *different* to those stated in Article 24. The internal guidelines, therefore, by extending the scope of this provision, constitute an act intended to produce its own legal effects. This is sufficient to conclude that it can be the subject of an action for annulment.

25. The question of the Commission's alleged lack of competence to adopt the act in question remains to be settled. Apart from Articles 23 and 24 of the coordination regulation, the Commission has not indicated any specific provision giving it this power. [24] Furthermore, as the Spanish Government correctly observed, Article 7(2) of the framework regulation gives the Council, and not the Commission, the power to adopt the 'harmonised rules for strengthening checks on structural operations'. The aforementioned provision also refers to Article 3(5) of the same regulation, that is the legal basis of the coordination regulation, which states 'The Council ... shall adopt the provisions necessary for ensuring coordination between the different Structural Funds ...'. Therefore it was the Council — through Regulation No 1260/99 — which added to the framework of cases where the Commission has the power to apply financial corrections for irregularities committed by the Member States. The intervention of the Council confirms that it has the power to extend the application of the financial corrections to different situations from those stated in Article 24 of the coordination regulation. Finally, it should be added that, unlike the framework regulation and the coordination regulation, Regulation No 1260/99 finally provides for the power of the Commission to adopt the procedures for the application of Article 39 (see Article 53), which also covers financial corrections for irregularities in the management and control systems of Member States. Given the clear distribution of duties I have described, the Commission did not have the power to adopt the act being challenged. The internal guidelines should therefore be annulled.

26. In consideration of the admissibility of the submission and the fact that, in my opinion, the first reason for the challenge, which is convincing, proposed by the Spanish Government, should be accepted, it is not necessary to examine the second reason, relating to an alleged lack of grounds.

23 — The obligations of the Member States shall remain as stated in Article 23(1) of the coordination regulation.

24 — A specific legal basis, however, exists as regards the application of Article 23(1) of the coordination regulation: 'as soon as this Regulation enters into force, the commission shall draw up detailed arrangements for the implementation of this paragraph' (Article 23(1), last indent). Using the powers thus conferred, the Commission adopted Regulation No 2064/97 (see paragraph 5) on 15 October 1997, that is the same day as the internal guidelines were adopted.

VII — Conclusion

27. In view of the considerations above, I suggest that the Court annul the guidelines relating to the application of Article 24 of Regulation (EEC) No 4253/88 and order the Commission to pay the costs of the case.