OPINION OF ADVOCATE GENERAL LA PERGOLA
delivered on 6 June 1996 *

1. In 1986 the companies Lisrestal Ld.ª, GTI Ld.ª, Rebocalis Ld.ª, Lisnico Ld.ª, Gaslimpo SA ('the companies'), and two other undertakings, Proex Ld.ª and Gelfiche, applied to the European Social Fund ('the Fund'), through the Departamento para os Assuntos do Fundo Social Europeu ('DAFSE'), for financial assistance to carry out in Portugal operations 'intended to improve employment opportunities ..., particularly by measures of vocational training after full-time compulsory schooling'. Those measures are provided for by Article 3(1) of Council Decision 83/516. [1]

2. On 31 March 1987 the proposal for the scheme was approved by Commission Decision C(87) 670. In accordance with Article 5(1) of Council Regulation (EEC) No 2950/83 [2] ('the regulation'), the Fund then made an advance payment of 50% of the assistance granted.

3. On 31 October 1988 the companies submitted a claim to the Commission, again through DAFSE, for payment of the balance, together with a detailed report on the content, results and financial aspects of the relevant operation, as required by Article 5(4) of the regulation.

4. Before paying the balance claimed, on a proposal by the 'audit' section, Fund inspectors carried out an investigation at the premises of the undertakings concerned. That revealed various irregularities in the management of the financial assistance by certain undertakings in that they did not possess the infrastructure and the staff necessary for carrying out the scheme, and certain expenses had been irregularly invoiced.

5. On 19 October 1990 DAFSE sent 'certificates' to the companies stating that there had been an investigation by the Commission in order to verify the legality of the operations carried out. However, no further information was given at that stage with regard to the results of the investigation.

* Original language: Italian.

1 — Council Decision 83/516/EEC of 17 October 1983 on the tasks of the European Social Fund (OJ 1983 L 289, p. 38).

2 — Council Regulation (EEC) No 2950/83 of 17 October 1983 on the implementation of Decision 83/516 (OJ 1983 L 289, p. 1).

6. On 14 June 1991 the Commission sent DAFSE the findings resulting from its investigation and indicated the amount of assistance used for expenditure that was ineligible because it was not for operations that had been approved. The Commission also stated the amount which would have to be repaid and allowed the Member State 30 days to submit its observations pursuant to Article 6(1) of the regulation.

7. By letter of 8 July 1991 DAFSE informed the Fund that it had no objections with regard to its findings and that it accepted the decision made. It was only after this communication from the authority of the Member State that on 3 March 1992 the Commission sent a repayment demand to DAFSE.

8. The Portuguese administrative authority sent letters to each of the companies informing them of the Commission's decision and specifying the amounts to be repaid to the Fund and to the Portuguese authority as joint financial backer.

9. On 19 June 1992 the companies brought an action before the Court of First Instance not only for the annulment of the Commission's decision, but also for an order requiring the Commission to pay the balance of the advance and the costs. [3]

10. By judgment of 6 December 1994 the Court of First Instance upheld the companies' pleas concerning infringement of the rights of the defence and inadequate statement of reasons and annulled the Commission's decision. [4] The Commission now seeks to have that judgment set aside.

11. In support of its appeal the Commission alleges two errors in law on the part of the Court of First Instance in finding that:

— the procedure followed by the Commission in adopting the decision in question infringed the companies' rights of the defence;

— the statement of the reasons for the decision does not satisfy the requirements of Article 190 of the Treaty.

3 — Four pleas were relied upon before the Court of First Instance: a) lack of competence, b) infringement of the rights of the defence, c) insufficient statement of reasons, and d) manifest error of assessment.

4 — Case T-450/93 *Lisrestal and Others* v *Commission* [1994] ECR II-1177.

12. Consequently the Commission asks the Court of Justice to refer the case back to the Court of First Instance for a ruling on the fourth plea raised by the companies at first instance, alleging a manifest error of assessment. [5] The respondent companies, on the other hand, ask the Court to dismiss the appeal and to uphold the judgment of the Court of First Instance.

13. I shall consider the defects alleged by the Commission in the order in which they are set out in the appeal.

I — Infringement of the rights of the defence

14. The assessment of this plea by the Court of First Instance concerns non-observance of the principle, which is also a fundamental principle of Community law, of 'respect for the rights of the defence in all proceedings which are initiated against a person and are liable to culminate in a measure adversely affecting that person' (paragraph 42 of the contested judgment). [6] The Court of First Instance found that the undertakings had the right to be heard before the Commission adopted the decision contested by them in so far as it concerned them directly and individually and that they were therefore justified in challenging it (paragraphs 44 to 47).

15. The Commission contends that the Court of First Instance has confused the capacity to bring an action with the right to be heard in administrative procedures. Although the companies had *locus standi* to challenge the Commission's decision, that did not mean, in the Commission's view, that they had to be heard before the adoption of the decision which was later complained of and, if they were not, that the decision would be void.

16. The Commission advances a number of arguments in support of that contention. The main argument, which is the basis of the entire reasoning in the present appeal, concerns the rules laid down by the regulation for the operation of the Fund. In its conduct, the Commission maintains, it respected the central role which those rules reserved for the State authorities by giving them, pursuant to Article 6(1) of the regulation, an opportunity to submit observations before it adopted the measure within its purview.

5 — The first plea in the originating application, concerning the non-existence of the ESF departments or their lack of competence to adopt the contested decision, was rejected at first instance (paragraphs 31 to 37 of the judgment appealed against).

6 — The Court of First Instance confirmed the operation of this principle in the Community legal system on the basis of the judgments of the Court of Justice in Joined Cases C-48/90 and C-66/90 *Netherlands and Others* v *Commission* [1992] ECR I-565, and Case C-135/92 *Fiskano* v *Commission* [1994] ECR I-2885.

17. As the Commission satisfied its obligations in full under the rules, there is no justification for complaining that it did not allow the undertakings concerned to make their views known before the decision was adopted, or that it did not ensure that the Member State gave them an opportunity to do so. In the Commission's view, this was the express conclusion of the Court of Justice in its assessment of the system in the *Oliveira* v *Commission* judgment. [7] The opposite approach taken by the Court of First Instance is clearly incompatible not only with the regulation, but also with the principle of subsidiarity, which requires relations with undertakings to remain within the purview of the Member State.

18. Hence it follows, in the Commission's view, precisely from the special nature of the cooperation between the Member State and the Commission in the present case that, for the purposes of this action, the case-law cited by the Court of First Instance cannot be used to support a finding that the rights of the defence were infringed.

19. In particular, according to the Commission, in *Netherlands and Others* v *Commission*, [8] the PTT (Post Office) and the Kingdom of the Netherlands were in a comparable position in relation to the decision to be taken by the Commission. However, in the Commission's view, that is not so here. The decision reflects directly or indirectly the Member State's assessment on account of its central role in the procedure and because the State authorities are responsible for monitoring the proper use of Community funds.

20. Furthermore, the factual context of the *Fiskano* judgment [9] is said to differ from that of the present case. The Commission contends that, unlike the former, there is no question of a fine or penalty in the present case. The companies' obligation to repay to the State the funds which were used incorrectly is no more than an 'administrative corollary' of non-compliance with the conditions set out in the decision granting assistance. Hence the principle applies that the recipient has the right to be heard only if and to the extent that this is provided for by the rules governing the procedure. [10]

21. That is the position taken by the Commission. Before examining its merits, I should mention that the present case unquestionably differs from others on which the Court has ruled in this connection in recent years. [11] The new element in the judgment of

7 — Case C-304/89 [1991] ECR I-2283.

8 — Judgment in Joined Cases C-48/90 and C-66/90, cited in footnote 6.

9 — Judgment in Case C-135/92, cited in footnote 6.

10 — In support of this argument, the Commission cites the judgment in Case 2/87 *Biedermann* v *Court of Auditors* [1988] ECR 143.

11 — I am referring, of course, to the judgments (cited in the following footnotes) relating to the European Social Fund, in which the Court was called upon to assess the legality of decisions refusing assistance or reducing assistance by reason of the infringement of essential procedural requirements when the decisions were taken.

the Court of First Instance concerns precisely the position of undertakings in the Fund's method of operation, in so far as they are given a right to be heard beforehand in the case under consideration. It is necessary to review the basis of the solution arrived at by the Court of First Instance. The question which arises therefore is whether or not the fact that the Commission fulfilled the obligation regarding communication under Article 6(1) of the regulation is sufficient to satisfy the requirements concerning the rights of the defence accorded to the addressee of the administrative measure.

22. In order to reply to this question, I shall first of all consider the Commission's main argument. It contends that requirements relating to the companies' rights of the defence must be compatible with the essential features of the system for the allocation of funds, which is characterized by the criteria laid down by the Court in the *EISS* v *Commission* judgment: the procedure in question 'creates a financial relationship between the Commission and the Member State on the one hand and between that Member State and the institution which is the recipient of the financial assistance on the other'. [12] In a word, the Member State is 'the sole interlocutor of the Fund'. [13]

23. I also agree that the system described above is, so to speak, the normal method of allocating funds. However, for the reasons indicated below, I do not believe that this gives rise to the consequences alleged by the Commission in the present case.

24. First, it is not disputed that the contested decision deprives the companies of the assistance initially granted, thereby affecting their financial position.

25. Second, they are directly and individually concerned by the contested decision. This was correctly established by the Court of First Instance in the light of settled case-law. [14]

26. The companies are directly concerned because the regulation does not confer upon the authorities of the Member State a discretion of their own with regard to the grant or possible reduction of assistance. The State is the interlocutor of the Commission, but it is the latter which takes the final decision. Even if the Member State were to refuse to implement the Commission's decision at national level, that would involve coordination with the Fund, following which a decision would be taken for which the Commission would bear legal responsibility. [15]

12 — Case 310/81 [1984] ECR 1341, paragraph 15.

13 — See the judgment in Case C-291/89 *Interhotel* v *Commission* [1991] ECR I-2257, paragraph 16.

14 — See most recently the judgment in Case T-85/94 *Branco* v *Commission* [1995] ECR II-45, paragraph 26.

15 — See the judgment in Case T-85/94 OP *Commission* v *Branco* [1995] ECR II-2993.

27. In addition, although the contested decision is addressed to the Portuguese authorities, it contains a clear, identifiable reference to the companies. The conditions laid down by the Court relating to cases where a measure taken by the administrative authorities is of direct concern to a person and may adversely affect him are therefore fulfilled. [16]

28. In view of that situation, it must be concluded that Community law safeguards the right of the person concerned to be heard before the competent authority adopts the measure concerning him. [17] The Commission's contentions are not such as to cast doubt on the existence of that right.

29. To begin with, the contention that the Commission had no direct relations with the undertakings concerned is untenable. First, Article 5(5) of the regulation provides that the Commission 'shall inform all parties concerned when a payment is made', including therefore the undertakings in receipt of assistance. Second, the separation between the different institutional levels involved in the procedure and the establishment of financial relations which ensues, as laid down in the *EISS* v *Commission* judgment cited above, is one thing, and the protection of the undertaking is another. The financing system does not compromise the latter because, in the final analysis, it is intended to provide traders with benefits which represent interests safeguarded by Community law. This explains why recipient undertakings are given the right to challenge decisions depriving them of all or part of the assistance granted to them. [18] Moreover, those undertakings may allege non-fulfilment of the obligation regarding communication to the Member State laid down by Article 6(1) of the regulation, which amounts to non-observance of an essential procedural requirement and therefore entails the annulment of the decision to reduce the assistance. [19] I fail to see how it can be denied that this right to take legal action underlies in turn the essential interest of the recipient undertaking in the proper conduct of the administrative procedure for arriving at a decision on the result or the amount of the assistance granted to it. [20]

30. Nor does the appellant's contention that the cases cited by the judgment given at first instance are irrelevant strike me as well

16 — See the *Oliveira* v *Commission* judgment, cited in footnote 7, paragraph 13.

17 — See the judgments in Case 121/76 *Moli* v *Commission* [1977] ECR 1971, paragraph 20; Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959, paragraph 46; also, for more general references, Case 85/76 *Hoffmann-La Roche* v *Commission* [1979] ECR 461, paragraph 14.

18 — See the *Interhotel* v *Commission* judgment, cited in footnote 13, paragraph 13; and the judgment in Case C-157/90 *Infortec* v *Commission* [1992] ECR I-3525, paragraph 17.

19 — See the *Interhotel* v *Commission* judgment, cited in footnote 13.

20 — The organizational factor may also be relevant here. The Member State certainly has the role of intermediary between the Commission and the undertakings and is, as the Court has acknowledged, the sole interlocutor of the Commission. This clearly satisfies the need for efficiency and the principles of good management which must guide administrative work. Nevertheless, from the organizational viewpoint, the national authority must still be regarded as fulfilling the role of 'agent' of the Community authority (see the Opinion of Advocate General Darmon in the *Infortec* v *Commission* case, cited above, paragraph 91). It seems reasonable to infer from this arrangement that any omissions on the part of the State in its capacity as intermediary must still be attributable to the Commission.

founded. [21] On this point, as I have already said, the Commission contends that the present case differs in several respects from the cases cited by the Court of First Instance. The financing system and the nature of the measures adopted are said to be different and in particular, unlike the other cases, here there is no express provision authorizing an individual to intervene in the procedure laid down for repayment or reduction of the assistance granted by the Fund.

31. Let us examine this argument to see what weight to attach to it. I shall begin with the *PTT* case cited above. It is true that it differs from the present case in that there was no partnership arrangement there between the Community authorities and the national authorities, whereas such an arrangement exists here. However, the factors common to both cases must be taken into account and, in my opinion, these fully justify the decision of the Court of First Instance. In this case, as in the other case, although the measure taken by the Commission was not formally addressed to the individuals concerned, it refers to them expressly and specifically. The companies therefore bear the consequences of the decision adopted, but those whose interests are affected have no opportunity to state their case in the course of the decision-making procedure, simply because the applicable regulation makes no express provision for such a safeguard. However, if the rights of the defence were disregarded in that case, the same conclusion must perforce be reached in this case as well. [22]

32. The Commission's observations concerning the fact that the contested decision is not in the nature of a penalty and that there are no procedural rules for the protection of the undertakings concerned seem to me equally unfounded. In that connection the Commission refers to the Court's judgment in *Fiskano*. In my view, however, there is no justification for relying on that precedent. In that case, the Court was called upon to assess a decision which was clearly in the nature of a penalty, that is to say, a refusal to grant a new fishing licence as a result of an infringement committed by the licence-holder in question. The dispute was settled in any event by applying the general principle that the person concerned should have the right to be heard by the competent authority before it takes a measure which concerns him and affects his interests. The fact that a measure has an *adverse effect* without necessarily constituting a *penalty* is the essential precondition for the person to whom the measure is addressed to have that right. This is the only condition which is relevant here and it is fulfilled in the present case.

21 — Judgment appealed against, paragraph 42.

22 — On this point it may be noted that, by allowing the PTT a right to be heard in the course of the preliminary procedure leading to the adoption of the contested decision, the Court did not follow Advocate General Van Gerven, who in his Opinion in Joined Cases C-48/90 and C-66/90, cited in footnote 6, argued that, as the decisions adopted by the Commission on the basis of Article 90 of the Treaty are taken in pursuance of its supervisory powers with regard to the Member States and are directed against national measures, it could not be concluded that 'a special hearing' for the undertakings was necessary because they may be assumed to be 'aware of any proceedings pending' (see paragraph 14 of the Opinion).

33. Finally, it should be observed that this right to be heard exists even where it is not expressly provided for in relation to the procedure in question. This was the reasoning followed by the Court of First Instance and it is correct. [23] To argue otherwise is to take a formalistic approach which is incompatible with the reasons for the existence of the essential safeguard in question here. The *audi alteram partem* principle is, as Advocate General Darmon observed in his Opinion in the *Fiskano* case, 'a minimum standard which cannot therefore be subdivided according to the specific nature of the procedure being followed', [24] and it applies, as the Court has made clear, 'even in the absence of specific rules' [25] which expressly refer to it. Consequently, the provisions of the regulation in question must be interpreted as meaning that they do not prejudice the rights of the defence in that they necessarily imply the existence of such rights as an integral part of those provisions. [26]

34. The reference to the *Nicolet* judgment [27] offers no support for the Commission's argument either. The individual's right to be heard in the course of the procedure in question was excluded in that case, not by the actual wording of the applicable legislation, which was silent in that respect, but because the decision in question had been 'adopted on the occasion of the importation of an apparatus into the United Kingdom, with which Nicolet was *not concerned*' [28] (emphasis added). There, it should perhaps be pointed out, the procedure was an inspection procedure carried out by experts, in which the applicant was not directly involved. In the present case, the measure in question has an adverse effect on certain interests and the contested decision which adopts it refers directly to the undertakings whose interests are affected. Therefore it was right in the earlier case to distinguish between the right to take action and the rights of the defence. However, such an approach cannot and should not be taken in the present case.

35. That said, allow me to conclude by stating my view of the procedure laid down by Article 6(1) of the regulation. In his Opinion in the *FUNOC* case, Advocate General Tesauro states that Article 6(1) does not lay down a 'formal consultation procedure'. [29] I agree. However, it is still a procedure which is laid down to enable the Commission to take the decision required of it in full knowledge of the facts by assessing the 'other dimension' [30] — to use the words of Advocate General Darmon in another case — of the interests at stake, that is to say, not only those of the Community, but also those of the Member State, in the manner and within

23 — It is also based on the Court's settled case-law: see the judgment in Case C-301/87 *France* v *Commission* [1990] ECR I-307, paragraph 29 and the judgments cited therein.

24 — Opinion in the *Fiskano* case, cited in footnote 6, paragraph 63.

25 — See the judgment in *Belgium* v *Commission*, cited in footnote 17, paragraph 46.

26 — This interpretation is not precluded by arguments as to the efficiency of administrative action. In this connection the same criteria must be applied as those laid down by the Court in relation to the different rules concerning the statement of reasons for decisions refusing an application for assistance and decisions reducing the assistance initially granted. Statistically there are far fewer decisions of the latter type than of the former. Therefore considerations of this kind do not appear to justify a formalistic interpretation of the Commission's obligations under the regulation.

27 — Case 203/85 *Nicolet* v *Hauptzollamt Frankfurt am Main Flughafen* [1986] ECR 2049.

28 — Ibid., paragraph 16.

29 — Opinion in Case C-200/89 [1990] ECR I-3669, at p. 3682, paragraph 6.

30 — Opinion in *Oliveira* v *Commission*, cited in footnote 7, paragraph 18.

the limits which I have specified above. The role of the national authorities in the course of the procedure can be explained by their co-financing functions and by their secondary liability. [31] The exchange of correspondence, as provided for, is part of the partnership arrangement between the Commission and the Member State and is aimed at placing the national authorities in a position, not to take decisions, but to take steps with regard to the financial assistance to be allocated. The State was deemed to be the authority which is presumably closest to the recipients and is therefore capable of assessing decisions which take effect not only in relation to them, but also in relation to the State itself. [32]

36. This calls for a further observation. Referring to the Court's case-law, I said that Article 6(1) of the regulation appeared to be an essential procedural requirement. Moreover, the mere fact that this provision is observed by the Commission renders its decision to suspend, reduce or withdraw the grant of funds lawful only in relation to the Member State itself, but not in relation to the individual recipient as well.

37. According to my understanding of the operation of the Fund, the recipient has two separate interests which both merit, and indeed enjoy, legal protection. The first is relied upon by individuals when they complain of a breach of the essential procedural requirement laid down by Article 6(1). This is the interest in the proper conduct of the decision-making procedure by means of which the competent authority arrives at a duly reasoned decision and which entails consultation between the Member State and the Commission in accordance with the rules laid down. The second interest, with which the present case is concerned, is safeguarded by virtue of the fundamental principle that an individual who bears the consequences of an administrative measure expressly addressed to him must be given an opportunity to make his point of view known beforehand. [33]

31 — Article 5(1) of Council Decision 83/516 provides that 'Fund assistance shall be granted at the rate of 50% of eligible expenditure without, however, exceeding the amount of the financial contribution of the public authorities of the Member State concerned'. In addition, under Article 6(2) of the regulation, 'the Member State concerned should have secondary liability for the repayment of the sums, unwarranted payment of which was made for operations to which the guarantee referred to in Article 2(2) of Decision 83/516/EEC applies'.

32 — See the judgment in *Oliveira* v *Commission*, cited in footnote 7, paragraph 21.

33 — I should like to make a few brief remarks on the Commission's statement that, in *Oliveira* v *Commission*, cited above, the Court, not having raised the question of its own motion, found in effect that the applicant had no right to be heard before the contested decision was adopted. That reasoning does not seem to me to be correct. That case concerned non-fulfilment of the Commission's obligation under Article 6(1) of the regulation to give the Portuguese Republic an opportunity to submit its comments on the decision to be taken at Community level. Nor had the applicants raised the question of the non-observance of their right to be heard which, instead, is the subject of the present case. The earlier case does not permit the slightest conclusion to be drawn on this point, nor is there any justification for inferring from the Court's silence any particular position in that connection. Moreover, I am not persuaded by the implications which the Commission claims to see, with regard to organization, in the findings of the Court of First Instance in *Branco* v *Commission*, cited above, which established the absolute legality of a mere confirmation by the Commission of a proposed reduction in assistance by the national authority, provided that the decision was properly reasoned. I believe the principle underlying that judgment — where only the statement of reasons was in issue — is to ensure effective action by the Commission and the national authorities in the management of the Fund, by avoiding the pointless duplication of their work. It does not seem right, therefore, having regard to the considerations set out in the text, to infer from that explanation of the functioning of the system a more general conclusion with regard to the absence of direct relations between the Commission and the undertakings in receipt of the assistance which would deprive them of the opportunity to exercise their right to be heard before the contested decision is taken.

38. The Member State's right to submit observations, as provided for by the regulation, and the individual's right to be heard before a decision which may adversely affect him is adopted, are therefore two separate safeguards. This distinction must be preserved when construing the regulation and, in the event of a dispute, it will be necessary to ascertain whether both safeguards were provided.

In the present case, although the rights reserved by the regulation to the authorities of the Member States were observed, the safeguard provided for the undertakings concerned was frustrated. Consequently the first ground of appeal must be rejected.

II — Insufficient statement of reasons

39. In the second ground of appeal, the appellant disputes the assessment made by the Court of First Instance concerning the inadequacy of the statement of reasons for the contested decision pursuant to Article 190 of the Treaty.

40. The Court of First Instance, proceeding on the basis of the principle that a decision to reduce the assistance initially granted must clearly show the grounds which justify such a reduction, found that the Commission did not comply with the minimum requirements regarding the statement of reasons, on which the legality of the decision adopted by it depends.

41. In the Commission's view, the Court of First Instance did not take proper account of the fact that, as a result of the certificates sent to them by DAFSE on 19 October 1990, the companies were already aware of the Commission's doubts or of the fact that, by letter of 14 June 1991, DAFSE had been informed of the reasons justifying the decision to demand repayment of the advance and non-payment of the balance. According to the Commission, in view of the Fund's method of operation and the line it draws between the Community sphere and that of the Member State, it is immaterial that DAFSE failed to forward the information to the undertakings concerned.

42. The obligation to state the reasons for administrative decisions flows, as we know, from a fundamental principle of law which is unquestionably enshrined in the Community legal order. As the Court has observed in other circumstances, 'a statement of reasons must show clearly and unambiguously the grounds on which the measure is based'. [34] In addition, the actual wording of the statement of reasons will of course vary according to the different types of decision, their purpose and the authorities' discretion with

34 — See the judgment in Case 1/69 *Italy* v *Commission* [1969] ECR 277, paragraph 9.

regard either to the adoption of the measure in question or to its content or context. [35]

43. The obligation to state reasons is particularly strict in the case of administrative measures concerning individuals, particularly those which, like the decision in the present case, have adverse legal consequences for individuals in so far as they require the reimbursement of sums previously paid.

44. The Court's case-law concerning assistance from the Fund gives a precise definition of the obligation to state reasons, set in context. In view of the different situations in which measures of the Fund may take effect, the Court has laid down two different rules concerning the statement of reasons. In particular, a certain conciseness was accepted in relation to a Commission decision refusing assistance from the Fund for a training scheme, precisely because of the large number of applications for funding received by the Commission and the method used by it (i. e. processing by computer) to reject them. [36] In other circumstances, the Court has applied stricter rules regarding the statement of reasons when assessing a decision demanding repayment. [37]

45. The logic behind these different rules is clear. In one case, there are so many applications that the administrative authorities cannot give a detailed statement of reasons for every decision, whereas the position is different in the other case. [38] Quite apart from that, as the Court has already had occasion to observe, the reduction or suspension of assistance already granted, or the repayment to the Member State of sums initially granted, are measures which are objectively more serious, in view of their consequences for the rights of the persons directly concerned, than the initial refusal to grant the assistance sought. Such measures run counter to the legitimate expectations of the person concerned with regard to the conduct of his business. [39]

46. The measure at issue in the present case obviously falls within the category of decisions of the type last mentioned and has a particularly serious effect on the recipients'

35 — See, more specifically, the observations of Advocate General Darmon in his Opinion in *Interhotel* v *Commission*, cited in footnote 13, concerning the purpose of the statement of reasons in the context of the Fund's method of operation. See also the judgments in Case 8/83 *Bertoli* v *Commission* [1984] ECR 1649; Case 185/83 *University of Groningen* v *Inspecteur der Invoerrechten en Accijnzen* [1984] ECR 3623, and Case 32/86 *SISMA* v *Commission* [1987] ECR 1645, paragraph 8.

36 — See the judgment in Case C-213/87 *Gemeente Amsterdam and VIA* v *Commission* [1990] ECR I-221, section 2 of the operative part.

37 — See the judgments in Case C-181/90 *Consorgan* v *Commission* [1992] ECR I-3557, paragraphs 15 to 18, and in Case C-189/90 *Cipeke* v *Commission* [1992] ECR I-3573, paragraphs 15 to 18.

38 — See the *Gemeente Amsterdam and VIA* v *Commission* judgment, cited in footnote 36.

39 — See the *Consorgan* v *Commission* judgment, cited in footnote 37, paragraph 16.

interests in that it requires a total refund of the assistance initially paid. It is therefore clear why the Court of First Instance decided to follow the case-law I have cited above and to apply the strict criterion that the decision 'must clearly show the grounds which justify a reduction of the amount of the assistance' (paragraph 52 of the contested judgment).

47. For the sake of clarity, allow me to point out that the Court of First Instance correctly applied that criterion in finding that, in the present case, the requirement in Article 190 of the Treaty had not been satisfied. The letter from DAFSE to the companies merely informed them of the inspection which had been carried out but gave no details of the outcome or of the decision, if any, of the Commission.

48. Furthermore, the Commission's letter to DAFSE of 14 June 1991 did not give a clear breakdown of the various amounts and items in question, that is to say, a prompt and detailed explanation of the reasons why the Commission reduced the assistance granted to each company. Nor should it be forgotten that the financing system also safeguards the individual recipients. Compliance with the procedure may not, without good reason, prevent this object of the rules from being pursued. Therefore the Commission is not justified in pleading that it informed DAFSE of the reasons for its decision, if DAFSE subsequently failed to notify them to the undertakings concerned.

49. On those grounds, I consider that the judgment of the Court of First Instance should be upheld also in regard to the inadequacy of the statement of reasons.

Conclusion

In the light of the foregoing considerations, I propose that the Court should:

— dismiss the Commission's appeal to it to set aside the judgment of the Court of First Instance of 6 December 1994 in Case T-450/93 *Lisrestal and Others* v *Commission* [1994] ECR II-1177 annulling the Commission's decision reducing the financial assistance granted by the European Social Fund for project No 870844 P1;

— order the Commission to pay the costs.