JUDGMENT OF THE COURT (FIRST CHAMBER)
15 MARCH 1984 [1]

Ente Italiano di Servizio Sociale (EISS) v Commission of the European Communities

(Intervention by the European Social Fund — Compensation for reduction of payment)

Case 310/81

Social policy — European Social Fund — Financing procedure — Implementation measures

Non-contractual liability — Liability of the Community towards an institution which is the recipient of financial assistance from the European Social Fund — Conditions
(EEC Treaty, Art. 215, second para.)

The financing procedure of the European Social Fund 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.

In order that, in such a situation, liability on the part of the Community towards the recipient institution may arise, it is incumbent on the latter to adduce evidence capable in fact and in law of sustaining a causal link between the damage alleged by it and specific wrongful acts which may be imputed to the Community.

In Case 310/81

ENTE ITALIANO DI SERVIZIO SOCIALE (EISS), in the person of its Commissario Governativo, Francesco Lattari, represented and assisted by Nicola Catalano of the Rome Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34 B Rue Philippe-II,

applicant,

1 — Language of the Case: Italian.

V

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Armando Toledano Laredo, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that the Commission of the European Communities has failed to act and for an order that it pay a pecuniary penalty for having failed to pay the total sum of LIT 371 649 981, together with interest to be determined,

THE COURT (First Chamber)

composed of: T. Koopmans, President of Chamber, A. O'Keeffe and G. Bosco, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

On 10 July 1973 the Italian Republic submitted a request to the Commission on behalf of the Ente Italiano di Servizio Sociale [Italian Social Services Board, hereinafter referred to as "the Board"] for intervention by the European Social Fund pursuant to Article 5 of Council Decision 71/66/EEC of 1 February 1971 on the reform of the European Social Fund (Official Journal, English Special Edition 1971 (I), p. 52), to support a project intended to promote the training of some 1 150 unemployed young persons from the Mezzogiorno [Southern Italy] as social workers or assistants to be re-employed in that

capacity in the Mezzogiorno itself or in areas with a high proportion of immigrant workers from the Mezzogiorno.

In a decision of 27 December 1973 addressed to the Italian Republic the Commission allowed the request, stating that the purpose was "to carry out a training project in the period from 1 January 1973 to 31 December 1974 for some 1 150 unemployed young persons from the Mezzogiorno to be re-employed as social workers or assistants in the Mezzogiorno or in areas with a high proportion of immigrant workers from the Mezzogiorno". The decision referred to the Board as the body responsible for the project. It set the total amount of assistance available from the Fund at LIT 1 726 207 592 (274 721 810 for 1973 and 1 451 485 782 for 1974), representing half the cost of the project as a whole, the balance being paid by the Italian Ministry of Labour and National Insurance, which informed the Board in a letter dated 15 March 1974 of the decision in question.

The Commission made its commitment subject to the requirement that the project must comply with Community rules and that such compliance must be established by documentation to be supplied by the Italian Republic and by checks on the spot to be effected jointly by Community officials and Italian officials.

The execution of the programme fell behind schedule, and the Commission by decisions of 30 December 1974 and 18 May 1976 allowed requests by the Italian Government to amend the apportionment of the contribution between financial years. The result in brief was that the payments provided for by the three decisions, the second of which reduced the total to LIT 1 451 485 782, were later sub-divided as follows: LIT 696 798 130 for 1974, LIT 385 875 145 for 1975 and LIT 455 812 507 for 1976. Over those three years, the grant of LIT 345 763 716 was finally refused, and, additionally, no request was submitted for a sum of LIT 65 149 763. The sums paid on account and the final balance paid therefore amounted to a total sum of LIT 1 040 572 303.

There remained the sum of LIT 274 721 810 which was allocated for 1973 and not granted, and this is the subject-matter of the proceedings now before the Court, together with the secondary issue of the non-payment of the final balance equal to 15% of the contributions already paid. A check was carried out in June and July 1974 by two Commission officials and two officials of the Italian Ministry of Labour, and it was found that the programme carried out by the Board in 1973 did not satisfy the criteria which, according to the Commission, had been laid down in its decision of 27 December 1973:

(a) a large number of the trainees were over 40;

(b) the requirement with regard to unemployment was not fulfilled in the majority of cases, since many trainees were performing regularly paid duties as assistant social workers in outlying offices of the Ministry of Labour itself, with Alitalia or with other bodies, under agreements which the latter had made with the Board;

(c) the geographical origin of the trainees did not satisfy the requirements laid down, since the

trainees did not come from the Mezzogiorno;

(d) moreover, the number, the content and the progress of the courses provided did not comply with the terms of the scheme.

A further check was carried out in April 1978, and subsequently the Board submitted a claim to the Commission for a capital sum of LIT 371 649 981 together with interest. When it did not obtain satisfaction through official channels, the Board took its case before the District Court, Rome. Meanwhile, on 5 December 1981, it decided to bring the present proceedings before the Court.

The written procedure followed the normal course.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. Finding that no Member State and no Community institution had requested that the case be decided in plenary session, it decided by order of 23 March 1983 to assign the case to the First Chamber.

II — Conclusions of the parties

The *applicant* claims that the Court should:

Order the Commission of the European Communities to pay compensation to the applicant for damage caused:

(a) by not having placed at its disposal, pursuant to Article 2 (2) of Commission Decision No 2203/def./27 of 27 December 1973, the full sum of LIT 371 649 981 which was the balance which the Board should have received in April 1978;

(b) by virtue of the fact that, as a result of not having had the use of that sum when it was required, the Board was made to incur a large overdraft at the bank and suffered consequential damage in the form of considerable charges for interest, particulars of which will be furnished in the course of the proceedings.

In addition, order the Commission to pay interest from the date on which the final balance should have been paid, together with costs.

The *Commission* contends that the Court should:

(a) declare that the action brought by the Board on 8 December 1981 is inadmissible;

(b) in any event, dismiss the application as unfounded;

(c) order the applicant to pay the costs.

In its reply the *applicant* claims that the Court should:

(a) order the Commission, after the examination of witnesses requested in the reply and any other measure of inquiry which it thinks appropriate, to pay damages to make up the total amount of LIT 719 909 560, together with the interest provided for until final discharge, an equal sum remaining charged to the Italian State;

(b) order the defendant to pay the costs.

III — Submissions and arguments of the parties

In its application, the *Board* argues that the Commission, by virtue of its decision of 27 December 1973, unconditionally accepted the request made on its behalf by the Italian Republic, in virtue of Article 5 of the Council's decision of 1 February 1971.

The detailed provisions of that decision have a decisive bearing on its interpretation. The Board requests that the Commission should be called upon to lay that document together with its annexes before the Court.

The Board observes that for practical purposes the dispute relates almost entirely — apart from the failure to pay the balance of 15% based on the contributions already paid — to the year 1973. The fact of the matter is that as far as that period is concerned, not only did the Commission not contribute its own share, but the Italian Government withdrew the contribution it had already paid by reducing its grant for 1976.

The Board requests in addition that the Commission should be called upon to supply all the documentation showing the reasons on which it relies, which conflict, according to the Board, with the results of the checks previously carried out, for the refusal of any assistance in 1973.

It reserves the right to submit its complaints in detail until it has been acquainted with the documentation referred to. In the meantime it observes that by Article 1 of the decision at issue, assistance had been agreed, not only for the training of social workers or assistants in the Mezzogiorno, but for those in areas with a high proportion of immigrant workers from the Mezzogiorno. Equally, according to the Board, the aid would not have been misused if the courses had been organized in another Member State in the Community.

The Board states that it brought an action against the Italian Government before the District Court, Rome, on 10 April 1981 reserving the right to request that court, in accordance with Article 177 of the Treaty, to make a reference to the Court of Justice for a preliminary ruling, both for an interpretation of Community measures relevant to the determination of its case, and for a ruling on the validity or invalidity of the Commission's measures and conduct.

The Board adds that since it has clearly been injured by the conduct of the Commission, albeit indirectly, as the Commission never addressed a measure to it, it considers it appropriate to apply to the Court for an award of damages and that this application may if necessary be regarded as formal notice pursuant to the second paragraph of Article 175 of the Treaty.

In connection with the foregoing arguments the Board submits copies of letters to and from the Italian Ministry of Labour in support of its claims.

In its defence, the *Commission* takes the view that under the relevant Community provisions which it cites, its decision giving its approval, which it addressed to the Italian Republic, creates a legal relationship between itself and the Italian Republic. In such a case the body appointed to carry out the project must organize the training scheme in strict conformity with the Commission's decision in order to obtain the reimbursement of its chargeable expenditure up to the amount of the assistance available from national and Community sources.

There is therefore, in the Commission's view, no contractual relationship between itself and the Board. An application under Article 175 of the Treaty necessarily presupposes the proven failure of the relevant institution to adopt a mandatory measure, which clearly is not the case here. Furthermore,

if the Board wishes to invoke Article 175, it must first specifically call upon the Commission to act, await the expiry of the period prescribed and make its application accordingly, which it has not done. Since this application cannot have the effect of formal notice under Article 175, it will be inadmissible if it is based on that provision of the Treaty.

In the case of an application under Article 215 of the Treaty, it is necessary to adduce proof of wrongful conduct on the part of the institution, which has not been claimed and still less proved by the Board. Hence this application is inadmissible under that heading and should be dismissed in point of substance.

Turning to the substance of the application, the Commission notes that the Italian Republic made the appropriate requests for payments by instalment and for the final balance, together with supporting documents, and that the requisite checks were carried out jointly by national and Community officials on the spot. The Commission made its payments in due time, and the difference between the aid originally projected and the sums actually paid was solely due to the fact that it appeared that in the execution of the project there was a failure to comply with the conditions laid down. The Board is perfectly aware of this state of affairs and has only itself to blame.

In its reply, the *Board* takes formal note that the statement of defence constitutes a negative reply to its invitation to act under Article 175.

Regarding the damage it has suffered, the Board argues that it had a legitimate expectation of receiving the sums allocated to it, and that the damage arises from the fact that an appreciable part of the sums was not paid, in addition to its heavy indebtedness to the bank. With regard to the Commission's liability, the reduction of the sum allocated and its failure to pay the final balance result from inaccurate and unfair appraisals by officials of the European Social Fund. In this connection, the burden of proof which lies upon the applicant should not be confused with the capacity to act, since it has always been the Board which was the recipient of the payments. The Board asks that specific questions should be put to the Commission on this point so that it may specify whether or not it was fully acquainted with the documentation laid before it.

The Board lays before the Court the programme which it drafted and delivered to the Ministry of Labour, as it was not supplied by the Commission, and requests that the latter should itself be called upon to supply the application of the Italian Republic with the relevant annexes. The proposals contained in that programme, which were adopted by the Italian Republic and agreed to unconditionally by the Commission, are an integral part of the decision at issue.

Turning to the checks carried out by officials of the Commission and the Italian Ministry of Labour, the applicant explains that of the 115 participants in the course, 64 were less than 30 years of age, 40 more were under 40, and of the remaining 11 only four were more than 45 years old. Again, it stresses that under its programme, the trainees were to have received a monthly allowance of LIT 250 000, which however was not paid to any of the 115 trainees mentioned above, who had no regular employment and

who were about to be released at the end of the course. Thus the fact that four trainees of the total of those mentioned took the course without being entitled is of negligible practical significance. However that may be, and though the Board considers that it made a mistake in not challenging the reductions for 1973 at the relevant time, the penalties imposed for any irregularities established were excessively severe and could only justify a reduction in the assistance for that year, and not its cancellation.

The Board points out that the Commission does not express a view on its claim to compensation for the damage arising from its failure to pay a final instalment of 15% based on all the contributions received.

The argument in law may be confined to the following: the Commission has completely failed to demonstrate that the claim for compensation is unfounded, since the Commission relies solely on facts which were obviously supplied to it by the departments responsible. If its statement of the facts were accurate, it would have appeared on the face of the record that the Board's claim for compensation was unfounded. However, the fact is that the full liability of the Commission is clear, on the contrary, on the face of the evidence as correctly explained and interpreted.

At all events, the Board specifies that its claim for compensation involves:

(a) an order that the Commission make over the sums, which it should have granted and wrongfully failed to grant, to the Italian Government, for immediate transmission to the Board; such sums include both the contributions for 1973, even reduced, and the outstanding balance of 15% of the contributions at issue; the whole amounting in all to LIT 743 299 382, half of which is to be charged to the European Social Fund and half to the Italian Republic;

(b) the other damage resulting from the substantial indebtedness of the Board, and arising from the unjustified withholding of payment, may be assessed at LIT 692 519 738 at 31 December 1981, which may be apportioned to the Commission for the share attributable to it and to the Italian authorities for the share attributable to the Italian Republic.

The amount of the claim for compensation is therefore LIT 1 435 819 120 in total, which should be increased by any interest chargeable until the final settlement of all the monies due which have not already been paid.

With regard to a possible joinder of this action with a reference from the District Court, Rome, the Board confirms that it has requested a reference to the Court of Justice.

With reference to the examination of witnesses, the Board names Alberto Ghergo, Salvatore Bianco, Wilma Posati and Messrs Barbacini and Zambelli as the witnesses called for questioning, and considers that they may be usefully heard on the following points:

(a) it is a fact that the decision of 27 December 1973, which showed assistance to the Board amounting to 439 554.90 units of account (equivalent to LIT 274 721 810) for 1973, was neither revoked nor

amended by the Commission's subsequent decision of 30 December 1974;

(b) it is a fact that the assistance which was allocated for 1974 in the decision of 27 December 1973, amounting to a total of 2 322 377.25 units of account (equivalent to LIT 1 451 485 782), was subsequently apportioned by the decision of 30 December 1974 as to LIT 609 798 130 for 1974 and LIT 841 678 652 for 1975;

(c) it is a fact that as a result of the findings made jointly by officials of the Commission and the Ministry of Labour the contributions for 1973 were reduced from the initial sum of LIT 274 721 810 provided in the decision of 27 December 1973 to LIT 134 912 640, but were not refused in their entirety;

(d) it is a fact that the reduction in the contribution to the running expenses for 1973, which followed joint findings made by Community and national officials, has not hitherto been the subject of a formal decision;

(e) it is a fact that, in accordance with the practice of the Commission, the decisions adopted at the end of the year allocating the funds relate only to the contributions for the current year and, in some cases, to the following year, but never entail the implied revocation or the amendment of allocations laid down for the preceding year;

(f) it is a fact that, despite the Commission's practice in all other cases of intervention by the European Social Fund, the Board has not received the expected payment either for 1973 or for subsequent years even though the sums were minimal;

(g) it is a fact that the Board has not yet received the final balance of the payments which are not in dispute, but has received only 85% of the contribution allocated to it, with the result that the remaining 15% is still owed to it.

Finally, the Board claims that the Court should call upon the Commission:

(a) to produce the request made by the Italian Republic for assistance to the Board with all the annexes to the original request; or, at least, to confirm that the copy of the programme laid before the Court by the Board is identical to that attached to the request which was later accepted;

(b) to specify whether the Commission's consistent practice is to give effect to the allocations ordered by the European Social Fund solely for each individual financial year, in which case the tacit or implied revocation of previous decisions relating to earlier financial years is inconceivable.

In its rejoinder, the *Commission* takes the view that the request for an examination of witnesses depends on a series of assertions which do not tally with the position in the Community pursuant to the rules in force. Requests made by the Member States to the European Social Fund are considered in the first place from the point of view of their admissibility and in the second place as to their eligibility for a favourable or unfavourable decision. In the case of a favourable decision, it is a matter of

established practice that the request may be allowed in whole or in part and that wherever necessary special rules or conditions may be laid down. The legal relationship between the Commission and the Member State arises from the decision adopted and is governed by the rules relating to the European Social Fund as well as by the content of the decision itself. The decision therefore creates a legal nexus between the Commission and the Member State to which it is addressed, and in such a context the body appointed to carry out the project must comply with what the Commission has decided, not with what it has requested through its national government, and must faithfully carry out the training programme in order to obtain reimbursement of its chargeable expenditure up to the amount of national and Community assistance. In the light of these explanations it would appear that no reference to what the Board applied for in this case is relevant, since the three decisions taken by the Commission, which it notified to the Italian Republic, and which the latter then brought to the notice of the applicant, are the only facts to be taken into consideration.

The arrangements for the payment of assistance by the Community were substantially altered as from 1 January 1978. Until that date, there was provision for payments to be made on account as the operation progressed on submission by the Member State of a detailed statement of the chargeable expenditure; the total of such payments could never exceed 85% of the assistance allocated, since the settlement of the final balance was held over to a date subsequent to the completion of the project. As from 1 January 1978 in the light of previous experience and in order to speed up and simplify procedures, payments on account were replaced by advances of 30% of the assistance as soon as the Member State certified that the project had begun, 30% when the Member State certified that the project was half way to completion and 40% when it delivered a report on the completed execution of the project. Consequently, the operations carried out by the Board in connection with the programme between 1973 and 1976 are governed by the provisions which were in force before 1 January 1978. It is therefore clear that the scheme applicable is not one of advances but of payments on account, which latter might be paid (as indeed they were) as a partial reimbursement of chargeable expenditure already incurred by the Board on presentation of the appropriate application by the Italian Republic and subject to such verifications and checks as might be made.

The total amount of the sums distributed by the Commission at the request of the Italian Republic, and after the necessary checks had been carried out jointly by national officials and Community officials, does not represent, as the Board believes, the 85% granted as the sum of the payments on account. Those amounts represent 84.4% of the credits allocated for 1974, 87.7% of those for 1975, 53.3% of those for 1976, and together they constitute payment in full including the final balance after the auditing of the accounts and after the appropriate checks had been carried out.

Credits which were allocated to the programme for 1973, which were not cleared, were not distributed when it was established that the execution of the project did not satisfy the conditions laid down in the decision.

IV — Questions put by the Court

The Court requested the Commission to submit to it a memorandum (together with supporting documents) relating to the requests for payment made by the Italian Government and the reductions imposed by the Commission following the checks which it carried out jointly with the Italian Government, and to state whether the amount determined on that basis was recognized by the Italian Government as constituting the financial assistance in question.

The Commission submitted the memorandum requested, and made the point that sums advanced by the Italian Government to the Board for 1973 were subsequently recovered by the Ministry of Labour, so that the sums paid by the Commission perfectly matched those finally paid by the Italian Government throughout the period of the project.

The Court also asked the Italian Government whether it agreed with the Commission on the amount of the assistance which fell to be paid in this case.

The Italian Government replied that in the circumstances it could not do otherwise than to state that it had accepted the Commission's decision refusing the requests of the Board.

V — Oral procedure

The Commission of the European Communities, represented by its Legal Adviser, A. Toledano Laredo, acting as Agent, submitted oral argument at the sitting on 9 June 1983.

The Advocate General delivered his opinion at the sitting on 29 September 1983.

Decision

1 By application lodged at the Court Registry on 8 December 1981 pursuant to Article 178 and the second paragraph of Article 215 of the EEC Treaty the Ente Italiano di Servizio Sociale [Italian Social Services Board, hereinafter referred to as "the Board"] claimed compensation for the damage caused by the Commission's not having placed at its disposal, under Article 2 (2) of the Commission's decision of 27 December 1973, the sum of LIT 371 649 981 which it should have received as a final balance by April 1978, and for the damage arising from the fact that, as a result of not having had the use of that sum when it was required, the Board was made to incur a large overdraft at the bank and suffered consequential damage in the form of considerable charges for interest.

2 In its application, the Board states that the application, which is to be served on the Commission, may be regarded as formal notice under the second paragraph of Article 175 of the EEC Treaty. In its reply the applicant has withdrawn that submission.

3 In its reply, the applicant has specified that its claim for compensation is based exclusively on the non-contractual liability of the Community under the second paragraph of Article 215 of the Treaty.

4 The application states that in 1972 the Directorate General for the vocational guidance and training of workers at the Italian Ministry of Labour and National Insurance instructed the Board to study, draft and submit a special programme for the training and requalification of Italian workers who were "unemployed or in precarious conditions of employment" for work in the social services.

5 In a letter dated 10 July 1973, the Directorate General announced that it had sent the applicant's programme to the Commission so that it might take the decisions falling within its competence to secure the intervention of the European Social Fund.

6 The applicant states further that it was requested to execute the training project which, for the initial phase of development in 1973, entailed intensive courses to requalify social workers attached to the Board whose precarious state of employment made them eligible for assistance by the European Social Fund in accordance with the Council Decision of 1 February 1971 (Official Journal, English Special Edition 1971 (I), p. 52).

7 In a decision of 27 December 1973 addressed to the Italian Republic, the Commission allowed the request for assistance submitted by the Italian Republic, "to carry out a training project in the period from 1 January 1973 to 31 December 1974 for some 1 150 unemployed young persons from the Mezzogiorno to be re-employed as social workers or assistants in the Mezzogiorno or in areas with a high proportion of immigrant workers from the Mezzogiorno". The decision put at the disposal of the Board LIT 1 726 207 592 designated as assistance by the European Social Fund in order to carry out the operations referred to in the decision. That sum was allocated as to LIT 274 721 810 for 1973 and as to LIT 1 451 485 782 for 1974.

8 It appears from the preamble to that decision that on 10 July 1973, the Italian Republic had submitted a request to the European Social Fund on behalf of the Board to support, in the period from 1 January 1973 to 31 December 1974, a project intended to promote the training of some 1 150 unemployed young persons from the Mezzogiorno as social workers or assistants to be re-employed in that capacity in the Mezzogiorno itself or in areas with a high proportion of immigrant workers from the Mezzogiorno. The Commission found that that request was in accordance with the provisions governing the operation of the European Social Fund, subject to checks being carried out in the course of the project's execution on its compliance with the rules in force.

9 It appears from the file that after a check was carried out in June and July 1974 by officials of the Commission and the Italian Ministry of Labour, the Commission took the view that the criteria which it had laid down in its decision were not satisfied by the Board's activities in 1973. The Commission accordingly refused the assistance which had been allocated by the European Social Fund for 1973.

10 By decision dated 30 December 1974, the Commission agreed to the request of the Italian Republic that since there had been delays in putting the programme into effect, the apportionment of the amount of assistance for this project, among others, as between financial years, should be modified, and it allocated the assistance to be granted as follows: LIT 609 798 130 for 1974 and LIT 841 687 652 for 1975.

11 It should be emphasized that that decision did not allow for any assistance for 1973, and that the total assistance approved by that decision was less than that provided for in the decision of 27 December 1973 by LIT 274 721 810. The difference is to be explained by the fact that that sum was the amount stated by the applicant as its expenditure for 1973. It may be observed in this connection that in its application, the Board admits to having accepted that only LIT 134 912 640 out of a total of LIT 274 721 810 were eligible for assistance for 1973.

12 In response to the Italian Republic's request for a modification of the apportionment of the amount of assistance as between financial years, the Commission by decision of 18 May 1976 again reallocated the assistance

agreed so as to provide LIT 385 875 145 for 1975 and LIT 455 812 507 for 1976.

13 For the years 1974, 1975 and 1976, a sum amounting to LIT 345 763 716 was refused on the ground that the activities performed did not comply with Community rules and in particular with the terms of the Commission's decision. In addition a sum of LIT 65 149 763 was not claimed. The final balance therefore represents a total sum of LIT 1 040 572 303.

14 It should be recalled that the financing procedure of the European Social Fund is as follows. Requests for assistance are submitted by Member States to the Commission. If the Commission considers that the request falls within the objectives of the European Social Fund and that it should be given priority, the Commission addresses a decision to the Member State concerned after receiving the opinion of the European Social Fund Committee. That decision places the applicant Member State under a number of obligations. In particular that State undertakes to assume a financial burden equal to the amount requested from the Commission as a reimbursement for the cost of the project, to obtain all documents regarding the project and to verify their accuracy, to request payments on account from the European Social Fund as the operation progresses and the payment of the final balance, and to facilitate the checks made by the Commission to establish whether the activities completed or in course of completion comply with the relevant provisions.

15 It follows that this procedure 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.

16 In order that, in such a situation, liability on the part of the Community towards the recipient institution may arise, it is not enough to state, as does the applicant, that it is entitled to a "balance" from the Commission on the ground that "acts" or "conduct" on the part of that institution — none of which is specified in the application or the reply — are invalid or illegal. For this purpose it is not sufficient merely to mention that the result of checks carried out by Commission officials did not show as many irregularities as

were referred to in the Commission's decision. It was, on the other hand, incumbent on the applicant to adduce evidence capable in fact and in law of sustaining a causal link between the damage alleged by it and specific wrongful acts which may be imputed to the Community.

17 In default of such details the application cannot be granted.

Costs

18 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs; as the applicant has been unsuccessful it must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the applicant to pay the costs.**

Koopmans O'Keeffe Bosco

Delivered in open court in Luxembourg on 15 March 1984.

For the Registrar

D. Louterman

Administrator

T. Koopmans

President of the First Chamber