JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
17 February 2000 *

In Case T-183/97,

Carla Micheli, Andrea Peirano, Carlo Nike Bianchi and Marinella Abbate, researchers with the Ente per le Tecnologie, l'Energia e l'Ambiente (ENEA, Centre for Research into New Technologies, Energy and the Environment), a public institution governed by Italian law having its headquarters in Rome, represented by Wilma Viscardini Donà, Mariano Paolin and Simonetta Donà, of the Padua Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 39 Rue Mathias Hardt,

applicants,

v

Commission of the European Communities, represented by Eugenio de March, of its Legal Service, acting as Agent, assisted by Alberto Dal Ferro, of the Vicenza Bar, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: Italian.

APPLICATION for the annulment of the Commission's decision establishing the list of project proposals eligible for a Community contribution under the specific programme of research and technological development, including demonstration, in the field of marine science and technology (1994 to 1998), in so far as it excludes the Posible project coordinated by Carla Micheli, which decision was notified by the Commission's letter of 26 March 1997, received by fax on 17 April 1997 and by post on 20 May 1997,

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

composed of: R.M. Moura Ramos, President, V. Tiili and P. Mengozzi, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 9 September 1999,

gives the following

Judgment

Legal and factual background of the dispute

1 By Decision 94/804/EC of 23 November 1994, the Council adopted a specific programme of research and technological development including demonstration (hereinafter 'RTD') in the field of marine science and technology (1994 to 1998) (OJ 1994 L 334, p. 59) also designated under the acronym 'MAST III'. That programme forms part of the fourth framework programme of the European Community for RTD activities for the period 1994 to 1998 adopted by Decision 1110/94/EC of the European Parliament and the Council of 26 April 1994 (OJ 1994 L 126, p. 1), as amended by Decision 616/96/EC of the European Parliament and the Council of 25 March 1996 following the accession of new Member States to the European Union (OJ 1996 L 86, p. 69). Pursuant to Annex III to Decision 94/804, the programme is to be executed through indirect action, whereby RTD activities are primarily proposed and led by third parties, to which the Commission makes a financial contribution.

2 Article 2 of Decision 94/804 determines the 'amount deemed necessary' for carrying out the specific programme for 1994 to 1998 as ECU 228 million. That amount was increased to ECU 243 million by Decision 616/96. Annex II to Decision 94/804 sets out an 'indicative breakdown' of that amount between four areas of research. Area A covers marine science, Area B strategic marine research, Area C marine technology and Area D supporting initiatives.

3 According to Articles 4 to 6 of Decision 94/804, the Commission is responsible for the implementation of the MAST III Programme, within the limit of the credits determined for each year by the budgetary authority. In 1994, pursuant to Article 5 of Decision 94/804, the Commission adopted a work programme, in accordance with the objectives set out in Annex I and the indicative financial breakdown set out in Annex II to that decision. That programme set out in detail, *inter alia*, the scientific and technological objectives and research tasks to be carried out, and the implementation schedule. The latter provided for the issue of a first call for proposals for 1995 and 1996 and a second for 1997 and 1998. A third call for proposals, concerning operational forecasting of the seas and oceans was published subsequently (OJ 1997 C 183, p. 26).

4 Following the second call for proposals under the MAST III Programme, 214 project proposals were submitted. They included, in Area A (marine science), the proposal entitled 'Stability and recovery of W. Mediterranean *Posidonia oceanica* beds: a large scale assessment', also called 'Posible', submitted by the Ente per le Nuove Tecnologie, l'Energia e l'Ambiente (ENEA, Centre for Research into New Technologies, Energy and the Environment), as coordinating body, with the participation of three other European bodies.

5 A general survey of the method of handling and evaluating project proposals submitted in the context of Community research and development programmes is contained in two documents known as the *Blue Guide* and the *White Booklet*, the latter of which was sent to the participants for information purposes.

6 The procedure for assessing proposals is regulated as follows. Article 7 of Decision 94/804 provides that the assessment of the proposed activities and any adjustment to the indicative breakdown of the amount deemed necessary — in the case of activities where the estimated amount of the Community contribution is ECU 0.35 million or more, or which include participation by legal entities from non-member countries or international organisations — is to be subject to the

committee procedure set out in Article 6 of that decision. It is apparent from the *White Booklet* and the *Blue Guide* that the procedure for selecting project proposals to be funded consists, in practice, of two main stages. In the first stage, each proposal is examined in two phases by independent experts. The proposals are then classified by the Commission in four categories, on the basis of the points awarded by the external assessors. In the second stage, the Commission makes a selection on the basis of that classification and draws up a draft list of proposals to be funded by the Community. The draft list is then submitted to the Programme Committee, established by Article 6 of Decision 94/804, which is composed of representatives of the Member States and chaired by the representative of the Commission (hereinafter 'the MAST Committee'), for its opinion. Finally, the Commission adopts the list of proposals to be funded, where it has been approved by the committee.

7 In the first stage, the *White Booklet* and the *Blue Guide* state that the examination of the project proposals by independent assessors is divided into two phases. In the first, each proposal is examined by a panel of experts responsible for assessing its scientific and technical quality. That phase eliminates proposals obtaining less than 70 points. In the second phase, a larger panel of assessors, including specialists in scientific policy, industry and management, or persons with experience relevant to the economic, social or environmental aspects of the proposal, assesses its strategic, economic and policy aspects. Those two phases begin with an individual examination of the proposals by each expert, followed by group discussions aimed at reaching agreement on a common assessment. After each of those phases, the assessors draw up an assessment report, or 'consensus report', on the proposal examined.

8 The consensus report relating to the Posible proposal states that it obtained 73 points in the first phase and 26 points in the second, thus totalling 99 points. Another proposal, entitled 'The Arctic Ocean System in the Global Environment' (hereinafter 'the AOSGE proposal'), obtained only 63 points in the first phase

and was therefore not recommended in the consensus report signed on 20 November 1996 for admission to the second phase.

9 It is common ground, however, that, in the first phase, 18 of the 214 project proposals submitted to the Commission were assessed twice as to their scientific and technical quality, by separate panels of experts, on the basis of a statement in the *Blue Guide* that '[t]o verify the standards and the soundness of the evaluation, the Commission staff may request that between five and ten per cent of proposals are re-evaluated by a second panel of experts. In cases where this second evaluation highlights a large difference of opinion, a third evaluation is possible'. The Commission states that, in this case, before the examination of the proposals commenced, it selected those which were to be assessed twice by picking each 15th proposal in alphabetical order. At the hearing on the application for interim measures, the Commission stated, in answer to a question from the President of the Court of First Instance, that two proposals, including the AOSGE proposal, were also assessed twice because of their scope and complexity.

10 In the present case, the panel of experts responsible for the control assessment of the AOSGE proposal awarded it 82 points in the first phase and recommended in the consensus report signed on 14 November 1996 that it be admitted to the second.

11 Because of the significant difference between the assessments in the consensus reports of 14 and 20 November 1996 relating to the AOSGE proposal, the Commission decided that it should undergo a third assessment under the first phase. That third assessment was entrusted to the panel of experts responsible for assessing the strategic, economic and political aspects of the AOSGE proposal at the second phase of the examination. The documents before the Court show that that panel of experts carried out the third assessment by examining the first two

consensus reports relating to the AOSGE proposal. It took the average of the marks in the first two reports relating to the first phase and awarded 23 points to the AOSGE proposal in the second phase. The AOSGE proposal thus obtained 73 points in the first phase and therefore received a total of 96 points in the first stage of the assessment.

12 In the second stage of the assessment, the Commission selected the proposals for action to be funded and drew up a draft decision containing a principal list and a reserve list. The selection of the proposals and the organisation of the two lists were based on the scores awarded to the proposals by the independent experts at the conclusion of the first stage. In that respect, the only exception concerned the AOSGE proposal, which, in view of its strategic importance in an area where no other proposal had been financed, had been placed on the reserve list higher than other proposals in the same area, even though the latter proposals had obtained a higher number of marks.

13 The MAST Committee approved the draft principal list submitted by the Commission. As to the draft reserve list, the documents before the Court show that it was approved after it had been amended by the Commission, which, taking into consideration the committee's desire to strike a better balance in the project proposals on the reserve list between the principal areas A, B, C and D of the MAST III Programme, struck out the last five proposals in Area A (including the Posible proposal) and added one proposal in Area C.

14 Subsequently, the Commission adopted its decision drawing up the list of project proposals eligible for a Community contribution under the specific RTD programme in the field of marine science and technology (1994 to 1998) ('the contested decision'). Amongst those proposals, 58 were included in the principal list of proposals accepted for Community assistance and 15 others were placed on a reserve list.

15 According to Article 2 of the contested decision, the project proposals on the reserve list will receive Community funding 'in so far as budget appropriations would remain available after the exhaustion of the commitment appropriations used for the actions appearing in the principal lists, in particular in the event of withdrawal of actions appearing in this list, in the event of negotiation of contracts to amounts lower than those provided for in this decision, in the event of non-observation of their obligations by contract participants if additional funds would be allocated by the budgetary authority or in the event of adjustments of the budgetary appropriations within the same post. Recourse to the [reserve] list... will be made according to the priorities fixed therein and according to the aims of the specific programme, as well as according to the progress made in contract negotiations, and to the amounts made available'.

16 In a letter dated 26 March 1997 to Dr Micheli, which she received on 20 May 1997, the Director of Directorate D 'RTD actions: marine science and technology' in the Commission's Directorate-General for Science, Research and Development (DG XII) informed ENEA that, following an assessment by independent experts and consultation with the MAST Committee, the Posible proposal had not been selected for financial contribution under that programme. The Commission explained that it had been obliged to select a small number of project proposals to be funded owing to the limited budget appropriations available.

Procedure and forms of order sought by the parties

17 By application lodged at the Registry of the Court of First Instance on 19 June 1997, C. Micheli, A. Peirano, C.N. Bianchi and M. Abbate, all researchers with ENEA, brought the present action.

18 By a separate document lodged at the Registry on the same date, the applicants also sought suspension, pursuant to Article 185 of the EC Treaty (now Article 242 EC), of the application of the contested decision adopting the principal list and the reserve list of project proposals to be funded under the MAST III Programme and, accordingly, of the measure excluding the Posible proposal from such funding. In the alternative, they sought partial suspension of the contested decision in so far as it adopted the reserve list. By order of 26 September 1997, the President of the Court of First Instance dismissed the application for interim measures.

19 By a separate document lodged at the Registry on 4 August 1997, the Commission raised an objection of inadmissibility pursuant to Article 114(1) of the Rules of Procedure of the Court of First Instance. The applicants submitted their written observations by a document lodged at the Registry on 6 October 1997. By order of 13 January 1998, the First Chamber of the Court of First Instance decided to join examination of the objection of inadmissibility to the substance of the case and asked the Commission to submit its defence.

20 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber) decided to open the oral procedure. In the context of measures of organisation of procedure, the parties were asked to reply in writing to certain questions before the hearing.

21 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 9 September 1999.

22 The applicants claim that the Court should:

— hold the action admissible;

— annul the decision concerning the approval of the proposals eligible for Community funding or held admissible under the MAST III Programme, and therefore annul the decision excluding the Posible proposal;

— order the Commission to pay the costs.

23 The Commission contends that the Court should:

— dismiss the action as inadmissible and unfounded;

— order the applicants to pay the costs.

Law

Arguments of the parties

24 The Commission challenges the admissibility of the action, maintaining that the applicants are not the addressees of the contested decision and that it does not concern them directly. It recalls that the Posible proposal was submitted by ENEA, in its capacity as coordinator, and by three other participants. In the event of the proposal being approved and entered on the principal list, those bodies

would have been the recipients of the sums paid by the Commission. The applicants could not, as such, be regarded as direct addressees of the decision to exclude the Posible proposal from possible Community financing.

25 In the Commission's view, the applicants' position is essentially identical to that of an employee of an undertaking, or of any other person who works with an undertaking, who claims to have an interest of his own distinct from that of the undertaking in question. To hold this action admissible would amount to recognition that all persons who, in varying degrees, depend upon or cooperate with a body that has submitted a proposal with a view to obtaining Community financing are directly concerned by the decision to refuse such financing.

26 The applicants argue that the contested decision is of direct and individual concern to them even though they are not its addressees. The Posible proposal was conceived and developed by Carla Micheli in collaboration with other Italian and foreign researchers. The applicants were all mentioned expressly and by name in the proposal, and the qualifications and professional experience of each of the researchers who worked together in drawing up the proposal had a direct impact on the assessment of its scientific value. They therefore had an interest distinct from that of ENEA in the implementation of the proposal.

27 The applicants' position was not identical to that of an employee of an undertaking, since salaried researchers of ENEA had a direct and immediate interest in the Community financing of the proposals in which they were involved. The development of their career, the allocation of productivity premiums and other advantages, together with the acquisition of professional prestige and of fame in the scientific field, were directly affected by the grant of financing for the proposals promoted by them.

28 On the substance of the case, the applicants raise four pleas in law in support of their claims. First, they maintain that the procedure followed by the Commission is vitiated by a misuse of powers and an infringement of the principle of non-discrimination in that the AOSGE proposal, having obtained 96 points, was entered on the reserve list, whereas the Posible proposal was excluded from it, even though it had obtained a higher number of points (99) on the experts' assessment.

29 In their second plea, they argue that there has been an infringement of the duty to state reasons and of the principle of transparency. They claim that the Commission has not explained the reasons justifying the re-examination of the AOSGE proposal in the first phase of the first stage, and that it should have specifically given reasons as to why that proposal was entered on the reserve list.

30 In the third plea, the applicants challenge the assertion that no funds were available to finance the proposals on the reserve list, arguing that the Commission made a transfer of funds from Area A to other areas of the programme. They argue that there has been an infringement of the principle of transparency and of Article 7 of Council Decision 94/804, which provides that any adjustment to the indicative breakdown of the amount deemed necessary as set out in Annex II to that decision is to be adopted in accordance with the management committee procedure established by Article 6 of the decision.

31 The fourth plea alleges infringement of the principle of objectivity and independence, on the ground that two representatives of the Member States were admitted to the MAST Committee, and that those persons were, moreover, researchers with research institutes which had submitted project proposals under the MAST III Programme.

32 The Commission contends that the applicants' pleas are unfounded, and that the action should be dismissed.

Findings of the Court

33 As a preliminary matter, it is necessary to define the subject-matter of this action. In that respect, the applicants limit themselves to challenging the outcome of the Posible proposal and the special treatment which they claim was accorded to the AOSGE proposal. They do not challenge the assessment procedure as a whole and its effect on the other proposals, particularly in regard to the drawing up of the principal list. Nor do they challenge the consensus reports on the Posible proposal or, in particular, the final mark of 99 points attained by that project. In this case, therefore, the applicants challenge the contested decision only in so far as it entails the exclusion of the Posible proposal from the reserve list.

34 The Court considers that the first point to be examined is whether the applicants have an interest in bringing an action, since, if they have no such interest, it is not necessary to examine whether the contested decision is of direct and individual concern to them within the meaning of Article 173 of the EC Treaty (now Article 230 EC).

35 The applicants claim to have two types of interest in bringing an action in this case: the interest in the implementation of the Posible proposal — arising from the fact that the Community contribution is essential for its implementation — and the interest in defending their scientific prestige — arising from the entry of that proposal on the reserve list, as the list of projects deemed by the Community to be worthy of financial support.

36 As regards the applicants' interest in defending their scientific prestige, it should be borne in mind that the selection of projects to be financed is made in accordance with a two-stage procedure (see paragraphs 6 and 7 above).

37 In the first stage, the *White Booklet* and the *Blue Guide* state that each proposal is to be examined in two phases by independent experts. In the first phase, which is eliminatory, the experts examine the scientific and technical quality of each proposal. In the second phase, a wider group of examiners assesses its strategic, economic and political aspects.

38 In the second stage, the Commission makes a selection among the proposals and draws up a draft list of the proposals eligible for financing, which is submitted to the MAST Committee for its opinion. That selection is made, in particular, on the basis of the marks awarded by the experts at the first stage. However, that selection is also made by applying other criteria, such as those concerning the division of budgetary funds between the areas of the programme, the balance between the various objectives of the RTD programme, and the need to avoid duplication. Those criteria are mentioned on page 10 of the *White Booklet*, which was provided to all persons concerned, including the applicants.

39 It follows that the choice of the proposals eligible for financing is not made exclusively on the basis of criteria relating to their scientific value. Moreover, since this is a call for proposals that forms part of a programme approved by an institution, which pursues specific Community interests and not the award of an academic prize, it is normal for the scientific standing of the persons submitting a proposal to be unquestioned inasmuch as the selection of proposals must necessarily take account of the extent to which the proposals correspond to the aims of the programme, in addition to their scientific quality.

40 In this case, therefore, it must be held that the applicants do not have an interest in bringing an action concerning the defence of their scientific prestige, given that, in the context of the procedure for choosing the projects eligible for financing, their own scientific ability was not taken into consideration either directly or indirectly when their proposal was excluded from the reserve list (see paragraph

13 above). Moreover, in the first phase of the first stage, concerning the examination of the scientific and technical aspects of the proposals, the Posible proposal itself received a positive assessment, having scored more marks than necessary in order to move on to the following phase. To that extent, therefore, the scientific value of the Posible proposal was not in question.

41 As regards the applicants' interest in the implementation of the Posible proposal, it should be borne in mind that, in their first plea, they challenge the validity of the contested decision in so far as it entails the exclusion of the Posible proposal. They also challenge the favourable treatment accorded to the AOSGE proposal, which was entered on that list despite having received a lower mark than the Posible proposal.

42 It therefore needs to be determined, as a preliminary issue, to what extent entry of the Posible proposal on the reserve list would have allowed it to be financed under the MAST III Programme and thus implemented.

43 It should be emphasised in that regard that, even if the applicants were not aware of it at the time they brought the action, the information provided by the Commission in reply to a question from the Court shows that all the proposals on the principal list adopted following the second call for proposals were financed, and that it was not possible to consider the financing of any proposal on the reserve list. Financing of proposals on the reserve list was, in principle, provided for only in cases where proposals on the principal list were not implemented and funds allocated pursuant to the second call for proposals accordingly became available (see paragraph 15 above).

44 The argument underlying the applicants' first plea is therefore inoperative in so far as it envisages the implementation of the Posible proposal, since, even if the

applicants' arguments were accepted, and that proposal were entered on the reserve list and placed higher than the AOSGE proposal, the funds allocated to the second call were in any event exhausted. To that extent, the applicants have no further interest in seeking the annulment of the contested decision in so far as it excludes the Posible proposal, since the possibility of obtaining financing for that proposal no longer exists.

45 Since, however, the applicants have argued that the exhaustion of the funds available under the second call to finance the reserve list is the result of an infringement of the rules applicable, it is still necessary to ascertain whether the applicants have an interest in bringing an action.

46 It is true that the implementation of the proposals approved for Community financing in the context of the second call for proposals did not exhaust all the funds of the MAST III Programme and that, subsequent to that call, the Commission published a third call (see paragraph 3 above). In those circumstances, if it were accepted that the Posible proposal should have been entered on the reserve list, as the applicants argue, they could claim to have an interest in bringing an action provided sufficient funds remain available after the allocation made pursuant to the first and second calls.

47 It therefore needs to be determined whether or not the absence of funds to finance the reserve list of the second call (after the implementation of the proposals included in the principal list) was the result of an infringement of the relevant rules by the Commission.

48 In that respect, in their third plea, the applicants essentially argue that the Commission misdirected the funds available to finance valid proposals submitted

in response to the second call and assigned them to projects submitted following the third call, which should not have been published.

49 In that respect, they claim that there has been an infringement of Article 7 of Decision 94/804 establishing the MAST III Programme. That article provides that any adjustment to the distribution of funds between the various areas, set out by way of indication in Annex II to that decision, should be adopted in accordance with the MAST Committee procedure, established by Article 6 of the decision. They also challenge the validity of the third call for proposals and hence the use of available funds for that call.

50 The applicants' arguments on this point cannot be accepted either. It is sufficient to note that the Commission's decisions which lie at the root of the lack of funds to finance the reserve list of the second call, and in particular the decision opening the third call (see paragraph 3 above), are well founded in law.

51 In the first place, the third call for proposals concerned operational forecasting for the seas and oceans, an area regarded as a priority in the work programme. In that area, there were not yet sufficient proposals which had obtained financing under the first and second calls. Moreover, the Commission decided to make the third call for proposals at the request of the MAST Committee, in accordance with a procedure identical to that necessary for adjusting the indicative breakdown of funds.

52 Since the third call for proposals therefore fell within the priority objectives of the work programme and its approval was decided upon in accordance with the

appropriate procedure, it must be held that the resulting allocation of funds was made in compliance with the rules applicable, and that the corresponding lack of funds to finance the reserve list of the second call is not invalid.

53 In those circumstances, as regards the applicants' interest in the implementation of the Posible proposal, given that there are no more funds available to finance the reserve list of the second call and that that lack of funds is not the result of an infringement of the rules applicable, it must be concluded that the applicants do not have any further interest in the annulment of the contested decision in so far as it entails the exclusion of that proposal from the reserve list.

54 It follows from all the foregoing considerations that, without there being any need for the Court to rule on the other pleas raised by the parties, there is no further need for it, in the absence of an interest on the part of the applicants in bringing proceedings against the contested decision, to adjudicate on this action.

Costs

55 Under Article 87(6) of the Rules of Procedure, where a case does not proceed to judgment, the costs shall be in the discretion of the Court of First Instance. In this case, the Court considers that an order that the parties should bear their own costs would constitute a fair reflection of the circumstances involved.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber),

hereby rules:

1. There is no further need to adjudicate on this case.

2. The parties are ordered to bear their own costs.

Moura Ramos Tiili Mengozzi

Delivered in open court in Luxembourg on 17 February 2000.

H. Jung
Registrar

V. Tiili
President