JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)

27 June 2000 *

In Case T-72/99,

Karl L. Meyer, farmer, residing at Utoroa, Isle of Raiatea, French Polynesia, represented by J.-D. des Arcis, of the Papeete Bar, and C.A. Kupferberg, of the Paris Bar, with an address for service in Luxembourg at the office of H. Pakowski, Ambassador of the Federal Republic of Germany, 20-22 Avenue Emile Reuter,

applicant,

v

Commission of the European Communities, represented by Xavier Lewis, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: French.

APPLICATION for damages for losses allegedly incurred by the applicant as a result of the failure by the European Development Fund to pay a subsidy which the latter is said to have undertaken to grant in the context of a programme for planting trees and tropical fruit plants on the Isle of Raiatea,

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

composed of: K. Lenaerts, President, J. Azizi and M. Jaeger, Judges,

Registrar: G. Herzig, Administrator,

having regard to the written procedure and further to the hearing on 30 March 2000,

gives the following

Judgment

Programme of microprojects

1 Council Decision 80/1186/EEC of 16 December 1980 on the association of the overseas countries and territories with the European Economic Community (OJ 1980 L 361, p. 1) provides in Article 125 thereof that the European

Development Fund (EDF) may participate in the financing of microprojects in the overseas countries and territories (OCT). Decision 80/1186 is no longer in force. Currently, relations between the European Union and the OCT are governed by Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community (OJ 1991 L 263, p. 1), as amended by Council Decision 97/803/EC of 24 November 1997 amending at mid-term Decision 91/482/EEC (OJ 1997 L 329, p. 50).

2 On 25 September 1987 a finance agreement for a programme of microprojects (hereinafter 'the Agreement') to be carried out on the Isle of Raiatea was entered into by the European Economic Community and French Polynesia. The agreement is founded on Decision 80/1186.

3 Under Article 3 of the special clauses of the Agreement:

'The programme shall comprise the establishment of 40 plantations, each of 1.5 to 2.5 hectares of pineapple and other fruits.

The EDF shall finance 50% of the costs of establishing the plantations, together with the purchase of two vehicles [...].'

4 Pursuant to the Agreement (special clauses, Article 2 and Annex IB), the EDF's commitment was set at ECU 300 000. The Agreement also provided for intervention by the Polynesian authorities in the amount of ECU 380 000 and a contribution of ECU 810 000 by the growers taking part in the scheme (Annex IB and special clauses).

5 As regards implementation of the programme, the Agreement provided in Article 4(c) of the special clauses that 'overall charge of the works was to be entrusted to the territory's department for the rural economy.'

6 Under Article VIII of the general clauses of the Agreement:

'The territory may, with the Commission's agreement, wholly or in part decline implementation of a programme.

The detailed arrangements concerning renunciation shall be provided for by an exchange of letters.

Unutilised credits relating to an abandoned programme may be allocated to other projects financed by the EDF in the territory.'

Facts

7 The applicant runs a tropical-fruit plantation on the Isle of Raiatea.

8 In October 1991 he took part in a meeting organised on the Isle of Tahaa which was attended by Commission representatives, including Mr Alexandrakis, Head of Delegation, and by five ministers of the French Polynesian Government. At that meeting Mr Alexandrakis is said to have presented the programme of

microprojects for the pineapple and tropical-fruit plantations on the Isle of Raiatea, which formed the subject-matter of the Agreement (hereinafter the 'plantations programme').

9 The applicant produced the following statement by Mr Tetuanui, territorial adviser and mayor of Tahaa, concerning the October 1991 meeting:

'[...] In October 1991, in my capacity of territorial adviser and mayor of Tahaa I invited the applicant to attend a meeting with three officials of the Office of the European Commission, who were based in Suva, Fiji.

The Head of Delegation, Mr Alexandrakis, was accompanied by five ministers of the territorial government of the time. He proposed a subsidy of 35 million Pacific francs [FCP] to farmers in Raiatea in order to set up a small fruit-growing project, under the direct supervision of Mr Avaearii Colomes, technical officer of the department for the rural economy in Uturoa, Raiatea [...]'.

10 According to the applicant, 'the department for the rural economy in Raiatea was mandated to implement and monitor the realisation of the project. The applicant who is the owner of a 44 hectare plantation agreed to participate in it. In 1992 he planted his quota of additional fruit trees and the Raiatea department for the rural economy recorded him as being in receipt of FCP 3.3 million (= 181 518 French francs) of the FCP 35 million earmarked by the EDF for the farmers of Raiatea.'

11 He also states that 'the agriculture department of the territorial government not only indicated to him the trees and fruits to be planted but also supplied and sold those plants to him, granting to him the sum of FCP 3.3 million of the EDF

subsidy.' Thus, pursuant to the planting programme, the applicant planted 380 guavas, 65 soursops, 280 mangoes, 65 000 pineapple trees and 1 000 papayas.

12 The applicant goes on to state that 'after carrying out his part of the bargain, he naturally claimed payment of the amount of the EDF subsidy granted to him.'

13 Even though, as the applicant states, he 'honoured his undertakings under the agreement, he has never received payment'. Several explanations were put forward to justify the failure to pay him the subsidy, including that the funds had been used by the local authorities for a different purpose.

14 In September 1997, after making contact with representatives of the Court of Auditors of the European Communities, the applicant learned that the funds made available to the local authorities by the EDF had been used to buy vehicles and that the EDF had obtained reimbursement of those funds.

15 The applicant never received any subsidy for the trees and tropical-fruit plants which he planted in 1992.

Procedure and forms of order sought by the parties

16 By application lodged at the Registry of the Court of First Instance on 10 March 1999 the applicant brought the present action.

17 In a document of 4 June 1999, which was lodged at the Registry on 7 June 1999, the Commission raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance.

18 By order dated 17 September 1999 the Court of First Instance (Third Chamber) decided to reserve judgment on the objection of inadmissibility until it had examined the substance of the case.

19 The applicant claims that the Court of First Instance should:

— declare all his claims admissible and well founded;

— declare that the limitation period began to run only with effect from September 1997, the date on which the facts were established by the Court of Auditors;

— declare that the Commission/EDF failed by its inaction correctly to perform an obligation and was also guilty of an infringement of the principle of the protection of legitimate expectations;

— declare that the Commission/EDF failed to fulfil its obligation under Article 155 of the EC Treaty (now Article 211 EC) to ensure that the measures taken by it are applied;

— declare that he incurred losses amounting to FRF 181 518 and order payment of that amount which has been outstanding since 1992, together with interest thereon for late payment;

— order the Commission also to pay him the sum of FRF 20 000 in respect of the irrecoverable costs which he has had to incur in order to defend his interests.

20 The Commission contends that the Court should:

— dismiss the action as inadmissible;

— in the alternative, dismiss it as unfounded;

— order the applicant to pay the costs.

21 On hearing the report of the Judge-Rapporteur, the Court (Third Chamber) decided to open the oral procedure. The parties were requested to reply in writing to several questions and to produce certain documents.

22 At the hearing in open court on 30 March 2000 the Court heard oral argument from the parties, together with their replies to questions put to them by the Court.

Admissibility

Arguments of the parties

23 In its objection of inadmissibility the Commission contends that the application does not satisfy the conditions laid down in Article 19 of the EC Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance. The action for damages does not identify either the wrongful act or the wrongful omission alleged against the Commission, or the damage suffered by the applicant or the causal link between tortious conduct and injury. In that connection the Commission recalls the preconditions necessary for the Community to incur non-contractual liability (judgments in Case C-87/89 *Sonito and Others* v *Commission* [1990] ECR I-1981, paragraph 16, Case T-7/96 *Perillo* v *Commission* [1997] ECR II-1061, paragraph 41 and Case T-13/96 *TEAM* v *Commission* [1998] ECR II-4073, paragraph 68).

24 First, in regard to the alleged tort, the Commission puts forward two arguments.

25 First, it points out that the application gives no indication as to involvement by the Commission in the procedure for financing the applicant's project. It stresses that the choice of project for financing by the EDF and actual management and methods of payment to the recipient are within the sole competence of the OCT authorities. In fact the applicant is complaining of a breach of contractual obligations by the OCT authorities which are the contracting authority for the project. That being the case, the applicant's claim must be deemed inadmissible since the Commission's conduct is not established as having occasioned him non-contractual injury as distinct from injury arising out of contract in respect of which it is for him to seek compensation from the contracting authority (*Perillo* v *Commission*, cited at paragraph 23 above, paragraph 45).

26 On the other hand, the Commission stresses that the application does not state in what way the alteration in the purpose to which the funds were put, of which the applicant complains, constitutes an unlawful act, just as it does not state on what ground the Commission ought to have monitored or even prevented such an alteration. The cause of the injury alleged by the applicant cannot therefore but be attributable to an act of the local authorities adopted in the context of their own competencies (judgments in Case T-93/95 *Laga* v *Commission* [1998] ECR II-195 and Case T-94/95 *Landuyt* v *Commission* [1998] ECR II-213, paragraph 47).

27 Secondly, the Commission submits that the application adduces no evidence as to the existence of any kind of causal link between a lack of supervision on the part of the Commission and the injury alleged. Nor has the applicant demonstrated that the alleged injury could have been avoided if the Commission had exercised the supervisory role which the applicant claimed it ought to have done.

28 Thirdly, as regards injury, the Commission explains that, as the amount of damages claimed corresponds precisely to the amount of financing which the applicant did not receive owing to the conduct of the national authorities, his claim must be declared inadmissible since, if an action for annulment had been brought against the Commission in the circumstances of the present case, it would have been inadmissible, which similarly would have entailed the inadmissibility of the action for damages (judgments in *Laga* v *Commission*, cited at paragraph 26 above, paragraph 48 and *Landuyt* v *Commission*, cited at paragraph 26 above, paragraph 48).

29 The applicant challenges the Commission's arguments and claims that his action is admissible.

Findings of the Court

30 According to Article 19 of the EC Statute of the Court of Justice, which is applicable to proceedings before the Court of First Instance by virtue of the first paragraph of Article 46 of that Statute and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, an application must, *inter alia*, specify the subject-matter of the dispute and contain a brief statement of the grounds on which the application is based. In order to fulfil those requirements, an application seeking compensation for damage allegedly caused by a Community institution must state the evidence from which the conduct alleged by the applicant against the institution may be identified, the reasons for which the applicant considers there to be a causal link between the conduct and the damage which he claims to have suffered and the nature and extent of that damage (*TEAM* v *Commission*, cited at paragraph 23 above, paragraph 27).

31 In the present case the application contains the matters from which the conduct alleged against the Commission may be identified, the causal link between that conduct and the alleged damage and its extent.

32 Thus, the applicant alleges first that the Commission infringed the principle of the protection of the protection of legitimate expectations, inasmuch as he never received any subsidy from the EDF for his involvement in the planting programme, in spite of assurances given by the Commission. He also alleges that the Commission declined to monitor the final destination of the funds paid by the EDF.

33 The applicant maintains that the loss he has suffered corresponds to the amount of subsidy which he did not receive, namely FRF 181 518.

34 He also claims that the intervention of a Commission official at the meeting in October 1991 and the Commission's inactivity are the cause of the loss incurred by him.

35 It follows that the requirements laid down in Article 19 of the EC Statute of the Court and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance are satisfied in the present case.

36 The Commission's argument that inadmissibility of the action for annulment entails the inadmissibility of the present action for damages must likewise be rejected. The right to claim damages under Article 178 of the EC Treaty (now Article 235 EC) and the second paragraph of Article 215 of the EC Treaty (now the second paragraph of Article 288 EC) was introduced as a self-standing right of action having a specific function within the system of rights of action so that, as a matter of principle, inadmissibility of an action for annulment does not entail inadmissibility of an action for damages for injury allegedly suffered as a result of the act whose annulment is sought. It is otherwise where the action for damages is actually aimed at securing withdrawal of an individual decision which has become definitive or where it amounts to a misuse of procedure (judgment in Case T-485/93 *Dreyfus* v *Commission* [1996] ECR II-1101, paragraphs 67 and 68). However, the present action cannot be regarded as seeking to nullify the legal effects of a Commission decision which has become definitive.

37 It follows that the present action is admissible.

Substance

Arguments of the parties

38 First, the applicant claims that the fact that in October 1991 Mr Alexandrakis proposed the planting programme gave him a legitimate expectation of receipt of a subsidy in the amount of FRF 181 518 (judgments in Case 169/73 *Compagnie Continentale France* v *Council* [1975] ECR 117, Case 74/74 *CNTA* v

Commission [1975] ECR 533, Case 281/82 *Unifrex* v *Commission and Council* [1984] ECR 1969, Case 81/86 *De Boer Buizen* v *Council and Commission* [1987] ECR 3677 and Case 120/86 *Mulder* [1988] ECR 2321). The defendant did not honour the undertaking given to the farmers of Raiatea to grant them a subsidy, though they for their part kept their part of the bargain. Moreover, the defendant was guilty of a culpable omission. The Commission failed to fulfil its obligation under Article 155 of the Treaty to monitor the correct use of the funds granted (judgment in Joined Cases 14/60, 16/60, 17/60, 20/60, 24/60, 26/60, 27/60 and 1/61 *Meroni and Others* v *High Authority* [1961] ECR 321).

39 In his reply the applicant maintains that Decision 91/482 is based on partnership between the Commission and the OCT. In particular, he refers to Article 145(3) of that decision which mentions joint responsibility as between the competent authorities of the OCT and the Community. Under Articles 221 and 223 of Decision 91/482 the Commission's delegate even has specific powers of implementation and supervision. The Commission's argument that it does not involve itself in the relationship between local authorities and individual recipients must therefore be rejected. Moreover, the applicant stresses that the head of delegation of the Commission, in that capacity, made a personal presentation of the planting programme to the individual recipients in the presence of five ministers of the territorial government. The Community is liable for the damage flowing from that action (judgment in Case 9/69 *Sayag and Others* [1969] ECR 329). Article 145(3)(f) and Article 223 of Decision 91/482 establish the Community's liability beyond any doubt (judgments in Case 4/69 *Lütticke* v *Commission* [1971] ECR 325 and in Case C-55/90 *Cato* v *Commission* [1992] ECR I-2533). Even after reimbursement of the funds by the local authorities to the Commission, the Community continues to be liable under Article 225(8) of Decision 91/482.

40 As regards breach by the Community of its supervisory duty, the applicant goes on to refer to an article in the *Nouvelles de Tahiti* of 30 September 1999.

41 Secondly, the applicant maintains that there is a causal link between non-observance of the undertaking by the EDF and the loss which corresponds to the amount of the subsidy promised, namely FRF 181 518. He adds that the project in question was, under the terms of Decision 91/482, the joint responsibility of the Commission and the local authorities. Referring to the judgment in Case 175/84 *Krohn* v *Commission* [1986] ECR 753, he does not consider there to have been a break in the causal link with the conduct of the Community authorities.

42 In response, the Commission states, first, that neither by act nor omission has it adopted conduct capable of giving rise to liability towards the applicant. The choice of a microproject for EDF financing is a matter solely for the OCT authorities. They are solely responsible not only for concluding agreements with the beneficiaries under the project but also for management and implementation of the project at issue. There is no legal link between the EDF and the beneficiaries; nor does the Commission intervene in relations between the local authorities of the OCT concerned and individual beneficiaries.

43 By their presence in October 1991 at the presentation of the planting programme, the Commission representatives lent assistance to the local authorities of the OCT concerned which however remained in charge of and responsible for the individual projects.

44 As the applicant acknowledges, the subsidy in question was granted by the agriculture department of the French Polynesian Government. The applicant is thus invoking in the present action an infringement of the contractual obligations binding him to the OCT authorities. However, it is settled case-law (judgments in Case 33/82 *Murri Frères* v *Commission* [1985] ECR 2759, paragraph 38 and in *Perillo* v *Commission*, cited at paragraph 23 above, paragraph 45) that the Commission is not liable for any breach of the contractual obligations binding the beneficiary of a selected project and the local authority.

45 The Commission goes on to observe that the applicant adduces no formal proof of any undertaking by the French Polynesian authorities to pay him the sum of FRF 181 518 in respect of a project financed by the EDF.

46 Secondly, the Commission maintains that the applicant has adduced no proof of a direct causal link between an act or omission on the part of the Commission and non-payment of the subsidy by the French Polynesian authorities.

Findings of the Court

47 It is common ground between the parties that there is no contractual link between the applicant and the Commission with regard to the latter's participation in the planting programme. Under Article 4(c) of the special clauses of the Agreement, implementation of the programme was entrusted to the French Polynesian authorities (see paragraph 5 above).

48 Although there is no contractual relationship between the Commission and the applicant, it is clear from the case-law that the Community may be liable under the second paragraph of Article 215 of the EC Treaty to make good damage suffered by third parties as a result of acts committed by it in the performance of its duties (judgment in Case 118/83 *CMC and Others* v *Commission* [1985] ECR 2325, paragraph 31, and Case T-451/93 *San Marco* v *Commission* [1994] ECR II-1061, paragraph 43).

49 However, for the Community to incur liability the applicant must prove not only the illegality of the conduct of which the institution concerned is accused and the fact of the damage but also the existence of a causal link between that conduct and the damage complained of (see Joined Cases 197/80, 198/80, 199/80, 200/80,

243/80, 245/80 and 247/80 *Ludwigshafener Walzmühle and Others* v *Council and Commission* [1981] ECR 3211, paragraph 18; Case C-257/90 *Italsolar* v *Commission* [1993] ECR I-9, paragraph 33; and judgment in *Perillo* v *Commission*, cited at paragraph 23 above, paragraph 41). Moreover, it is settled case-law that the damage must be a sufficiently direct consequence of the conduct complained of (Joined Cases 64/76, 113/76, 167/78, 239/78, 27/79, 28/79 and 45/79 *Dumortier Frères and Others* v *Council* [1979] ECR 3091, paragraph 21; Case T-175/94 *International Procurement Services* v *Commission* [1996] ECR II-729, paragraph 55, and *Perillo* v *Commission*, cited at paragraph 23 above, paragraph 41).

The alleged misconduct

50 The applicant alleges that the Commission's conduct was culpable in two respects. First, it infringed the principle of the protection of legitimate expectations in the context of the planting programme and, secondly, it exercised an insufficient degree of supervision over the correct utilisation of the funds granted by the EDF for implementation of the programme.

51 The applicant maintains, first, that the Commission, represented by Mr Alexandrakis, infringed the principle of the protection of legitimate expectations by leading him to believe at the October 1991 meeting that he was to receive a subsidy from the EDF if he participated in the planting programme. However, the Commission did not 'honour its undertaking to grant the subsidy'.

52 The Commission acknowledges that 'it is doubtless true that employees or representatives of the EDF participated in the presentation of a microproject for the planting of tropical fruit trees in October 1991.' Moreover, that those representatives, particularly Mr Alexandrakis, a Commission official at that time, were present, is clear from Mr Tetuanui's statement (see paragraph 9 above).

53 It should be pointed out that any trader in whom an institution has aroused justified expectations may rely on the principle of the protection of legitimate expectations (judgment in Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 148). However, a person may not plead a breach of that principle unless the administration has given him precise assurances (judgment of the Court of First Instance in Case T-571/93 *Lefebvre and Others* v *Commission* [1995] ECR II-2379, paragraph 72).

54 It is therefore necessary to examine whether it is apparent from the file that Mr Alexandrakis gave the applicant precise assurances at the October 1991 meeting such as to arouse in him justified expectations of the grant of an EDF subsidy for his participation in the planting programme.

55 On the basis of the only evidence adduced by the applicant concerning the October 1991 meeting, namely the statement by Mr Tetuanui, it is to be noted that at that meeting Mr Alexandrakis mentioned a global subsidy of FCP 35 million for the planting programme (see paragraph 9 above).

56 However, that evidence contains no indication that precise assurances were given to the applicant by the Commission official that he was to receive a subsidy in the context of the planting programme.

57 On the contrary, it is apparent from several elements in the file that the Commission could not have aroused expectations of that kind at the October 1991 meeting.

58 First, it must be noted that Mr Tetuanui's statement (see paragraph 9 above) shows that Mr Alexandrakis stated at the October 1991 meeting that 'the fruit microproject was under the direct supervision of Mr Avaearii Colomes, technical officer of the department of the rural economy in Uturoa, Raiatea.' That statement must be viewed in relation to Article 4(c) of the special clauses of the Agreement which, in accordance with Article 90(2) of Decision 80/1186 (now Article 145(2) of Decision 91/482), provides that implementation of the project was entrusted to the French Polynesian authorities responsible for the rural economy of the territory (see paragraph 5 above).

59 Next, the applicant states that after the October 1991 meeting he applied to the local authorities. Thus, the department for the rural economy of Raiatea registered him as the recipient of FCP 3.3 million (FRF 181 518) of the FCP 35 million made available to the farmers of Raiatea by the EDF (see paragraph 10 above). The applicant goes on to submit that 'the agricultural department of the territorial government not only indicated the trees and fruits to be planted but also supplied and sold to him those plants, granting to him the sum of FCP 3.3 million of the EDF subsidy' (see paragraph 11 above).

60 Questioned on this point at the hearing, counsel for the applicant stated that, though there was no written contract between his client and the French Polynesian authorities, those authorities had given his client an oral assurance that, in accordance with local customs, he was to receive an EDF subsidy.

61 It follows that, although the applicant received at a certain moment in time precise assurances that he satisfied the eligibility conditions for an EDF subsidy in respect of his participation in the planting programme, those assurances were given by the French Polynesian authorities and not by the Commission.

62 Secondly, it is clear from Mr Tetuanui's statement that the presentation made by Mr Alexandrakis was not followed up as regards 47 of the 50 farmers present. The statement mentions that 'around 50 farmers showed an interest in participating in the implementation of the project proposed by Mr Alexandrakis but only three persons planted the plants and trees, according to Mr Colomes, without waiting for their subsidy, amongst whom the applicant'.

63 That finding is an additional indication of the fact that Mr Alexandrakis gave no precise assurance to the participants at the October 1991 meeting as to the subsidy which they were to receive for participating in the planting programme.

64 At the hearing counsel for the applicant emphasised the latter's distrust of the local authorities. It was precisely owing to participation by the EDF in the programme and the presence of Mr Alexandrakis, a Commission official, at the meeting in October 1991, that the applicant was led to believe that he would receive the subsidy to which he claims to be entitled.

65 However, the applicant in no way demonstrates that his expectation was based on specific assurances given to him by the defendant. The co-financing by the EDF of a planting programme and the presentation of that programme by a Commission official at a meeting are not in themselves sufficient to give rise to a legitimate expectation on the part of a prudent and informed trader attending the meeting as to his entitlement to an EDF subsidy. As is borne out by the conduct of the 47 other farmers concerned, such a person would not have started the works pending a formal decision by the competent authorities granting him a subsidy under the programme (see, in that connection, judgment in Case T-336/94 *Efisol* v *Commission* [1996] ECR II-1343, paragraph 34).

66 Thirdly, if Mr Alexandrakis had given to the applicant precise assurances concerning the EDF subsidy, the applicant ought normally to have claimed payment thereof from the Commission after completing his contribution to the programme. However, it is to be noted that there is nothing in the file to show that there was any correspondence between the applicant and the Commission.

67 Fourthly and lastly, the fact that the statements made by the applicant as to the amount of the subsidy promised to him varied during the course of the proceedings before the Court of First Instance constitutes further evidence of the fact that the Commission never gave him precise assurances as to that possible subsidy.

68 It must be observed that the applicant first confirmed, without producing any evidence in support of his assertion, that he had been 'recorded as the recipient of FCP 3.3 million (= FRF 181 518) of the FCP 35 million made available to the farmers of Raiatea by the EDF.' Then, in reply to a written question by the Court of First Instance on this point, the applicant explained in a letter of 10 March 2000 that 'the indication of a grant of FCP 3.3 million [in the application] was approximate and that the precise calculation was to be found in the internal notes taken of the meeting of 26 November 1990'.

69 Those notes show that the French Polynesian authorities calculated that on average the 40 farmers who would be participating in the planting programme would receive a subsidy of FCP 750 000. As that average was calculated on the basis of 2 hectares of subsidised plantations, the applicant calculated in his letter of 10 March 2000 that his actual loss amounted to FCP 5 325 000, or FRF 292 743, since he had planted a total surface area of 14.2 hectares.

70 However, at the hearing counsel for the applicant stated that the applicant had received an undertaking that his participation in the planting programme would

entitle him to a subsidy of FRF 181 518, which conflicts with the calculation of the amount of loss as stated by the applicant in his letter of 10 March 2000.

71 Moreover, with regard to the content of the internal note referred to at paragraph 69 above, it should be stressed that, under Article 3 of the Agreement, the planting programme related to plantations over a maximum surface area of 2.5 hectares. Contrary to the applicant's assertions, the list appended to his letter of 10 March 2000 showing the surface areas planted against 30 names does not indicate that the 2.5 hectare ceiling was removed. It is in no way proven that the document in question bears any relation to the planting programme. In the absence of evidence to show that the ceiling in Article 3 of the Agreement was amended, the applicant's assertions, which are, moreover, unsubstantiated, that he planted an area of 14.2 hectares are not such as to show that any authority promised him a subsidy of FRF 181 518 or possibly of FRF 292 743 in the context of implementation of the planting programme.

72 It must therefore be concluded that the applicant has not demonstrated that the Commission led him to have a well-founded belief that he would be granted a subsidy by the EDF in respect of his participation in the planting programme.

73 Secondly, the applicant is invoking an infringement by the Commission of its supervisory duty. In that connection, he refers to Article 155 of the Treaty and to Articles 145(3)(f), 221 and 223 of Decision 91/482 which highlight the Community's responsibility in implementing projects financed by the EDF.

74 It should, however, be pointed out that the Agreement is founded on Decision 80/1186. Article 90(2)(e) of that decision provides that the authorities of the OCT in question are responsible for 'implementing projects and programmes

financed by the Community.' In full conformity with that provision, Article 4(c) of the special clauses of the Agreement provides that: '[R]esponsibility for the works shall be entrusted to the department for the rural economy of the territory'.

75 Since French Polynesia is responsible for implementation of the planting programme, it was for it to enter into contractual relations with the farmers concerned by the programme in question.

76 Next, it is apparent from several documents supplied by the Commission in reply to the written questions put by the Court that the Commission monitored the state of progress of the implementation of the planting programme. Thus, the report of a mission by the Commission to French Polynesia from 2 to 7 April 1990 stated: 'Apart from the purchase of the vehicles provided for, this project has not yet got underway'.

77 On 14 November 1990 Mr Alexandrakis wrote to the President of the French Polynesian Government in the following terms: '[I]n my letter no 134 of 27 July 1990 I asked for a report on the [planting] programme. I reminded the relevant government departments of this during my mission last month. Although the project has barely got underway we must at least have a report which explains what has been carried out, why there are so many difficulties in the way of getting it started and, finally, whether the project can continue or should be abandoned'.

78 It is apparent from the report by the French Polynesian Government dated 26 February 1991, submitted in compliance with the request made in the letter of 14 November 1990, that under the planting programme the French Polynesian authorities bought three vehicles, instead of the two initially provided for in the Agreement, and that that amendment of the terms of the Agreement was accepted by the Commission representative. The report goes on to explain the reasons for which the planting programme had by then not been implemented.

79 In a letter dated 7 May 1991 Mr Alexandrakis made proposals for 'resolving the situation.'

80 In a report dated 16 September 1991, which refers to the letter of 7 May 1991, the French Polynesian authorities informed the Commission as follows: '[C]urrently 51 farmers (of whom 25 in the Faaroa area) are ready to become involved in the [planting] programme. There is still provision, as in the file previously submitted, for 86 hectares of fruit plantations.'

81 Subsequently, by letter dated 11 September 1992, the French Polynesian authorities requested the Commission, in accordance with Article VIII of the general clauses of the Agreement, 'definitively to close the [planting] programme' and to allocate the non-utilised credits to another project.

82 In a letter dated 4 December 1992 the Commission declared itself in favour of closure of the project and re-allocation of the credits provided that the French Polynesian authorities repay the subsidy which they had received for financing the purchase of the three vehicles. It is also clear from that letter that the financing of the purchase of the three vehicles constituted 'the only expense by the EDF in the context of a project which never got underway.' It is common ground between the parties that the subsidy received by the French Polynesian authorities for the purchase of the vehicles in question was in fact repaid.

83 It follows from the foregoing that the applicant cannot criticise the Commission for a lack of supervision concerning the utilisation of the EDF funds. The Commission was informed about the state of progress of the planting programme and found that, apart from the purchase of three vehicles, the programme had never got underway and had incurred no expenditure.

84 In that context it is not surprising that the applicant, in response to a written question from the Court of First Instance, was unable to produce any evidence to show that he had entered into a contract with the French Polynesian authorities concerning participation in implementation of the planting programme.

85 However, the applicant confirms that he received a verbal commitment from the local authorities that his involvement in the planting programme would entitle him to a subsidy of FRF 181 518. Thus there was an oral contract between the applicant and the French Polynesian authorities and it was for the Commission to monitor the correct performance of that contract.

86 On the supposition that an oral contract of that kind had come into existence between the applicant and the French Polynesian authorities, it falls to examine whether the relevant provisions, corresponding to those wrongly relied on by the applicant, namely Article 155 of the Treaty and Articles 145(3)(f), 221 and 223 of Decision 91/482, impose on the Commission a supervisory duty in regard to performance of the individual contracts entered into by the OCT concerned under a programme financed by the EDF and, if so, whether the Commission failed to perform that duty.

87 It is to be noted that the provisions relied on by the applicant merely provide for supervision by the Commission of the correct utilisation of Community funds by the authorities of the relevant OCT. Thus, Article 90(4)(d) of Decision 80/1186, which is the provision corresponding to Article 145(3)(f) of Decision 91/482 currently in force, states that 'the competent authorities of the countries and territories and the Community shall bear joint responsibility for ensuring that the projects and programmes financed by the Community are executed in accordance with the arrangements decided upon and with the provisions of this decision.' Articles 103 and 104 of Decision 80/1186 — matters which are now dealt with in Articles 221 and 223 of Decision 91/482, to which the applicant refers — concern respectively the roles of the territorial authorising officer and the Commission delegate who, within the framework of the programmes financed by

the EDF, exercise only the competencies of the OCT and the Commission respectively. As regards Article 155 of the Treaty, that provision is intended merely to lay down in general terms the competencies of the Commission (see, in that connection, judgment in Joined Cases T-371/94 and T-394/94 British Airways and Others and *British Midland Airways* v *Commission* [1998] ECR II-2405, paragraph 453). In the present case Article 155 of the Treaty lays down, as regards relations between the Union and the OCT, no obligation additional to the supervisory obligations provided for under Decision 80/1186.

88 It follows that, even if the applicant had shown, which is not the case, that he had entered into a contract with the French Polynesian authorities concerning his involvement in the planting programme, he has not demonstrated the existence of any culpable conduct on the part of the Commission. On the one hand, it adequately supervised the proper utilisation by the French Polynesian authorities of the Community funds granted within the framework of the planting programme (see above paragraphs 76 to 83) and, on the other, it is under no obligation to ensure that each project which may be selected and approved by the local authorities of an OCT is implemented in accordance with the stipulations negotiated between those authorities and the legal or private persons involved in carrying through the programme financed by the EDF.

89 It follows from all the foregoing that the applicant has not established the existence of culpable conduct on the part of the Commission.

90 There being no need to examine whether the applicant has demonstrated that the loss alleged was actually incurred and whether there could be a causal link between the alleged loss and culpable conduct, the present action must be dismissed.

Costs

91 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the other party's pleadings. Since the applicant has been unsuccessful, and the Commission has applied for costs, he must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. **Dismisses the application;**

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

Lenaerts Azizi Jaeger

Delivered in open court in Luxembourg on 27 June 2000.

H. Jung
Registrar

K. Lenaerts
President