JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)

14 September 2004 *

In Case T-290/02,

Associazione Consorzi Tessili (Ascontex), represented by P. Mbaya Kapita and L. Denis, lawyers, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by C. Giolito and L. Flynn, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: French.

APPLICATION for annulment of Commission Decision C(2002) 1702 of 12 July 2002 cancelling FEDER subsidy No 97.05.10.001 granted to the applicant by Decision SG(98)D/2251 of 18 March 1998 and ordering repayment of the sum advanced by the Commission in the context of a project relating to the organisation of an international exhibition in the textile and clothing sector on Capri (Eurespirit project),

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

composed of: J. Pirrung, President, A.W.H. Meij and N.J. Forwood, Judges,

Registrar: I. Natsinas, Administrator,

having regard to the written procedure and further to the hearing on 4 May 2004,

gives the following

Judgment

Legal background

1 In its resolution of 22 November 1993 on strengthening the competitiveness of enterprises in particular of small and medium-sized enterprises and craft enterprises, and developing employment (OJ 1993 C 326, p. 1), the Council invited the Commission to test the formula of meetings organised by main contractors wishing to contact small and medium-sized enterprises (SMEs) with a view to cooperation.

2 On the basis of that resolution, the Commission, in the context of the regional policy and the SMEs Community Initiative (SMECI), launched a project relating to the technical and financial support of 'IBEXs' (International Buyers' Exhibitions) during the period 1996 to 1999. Those exhibitions are intended to help major firms in their search for SME partners and to provide SMEs with opportunities to make direct contact with major firms interested in their products and services. They are organised in particular sectors (cars, electronics, textiles, etc.) or for a precise range of firms (high-technology SMEs, craft industry SMEs, etc.).

3 The operating rules of IBEXs and the conditions for the grant of financial support for such exhibitions are set out in the Commission's 'IBEX-SMECI Vade Mecum' ('the Vade Mecum'). According to that document, the organiser of a reverse exhibition must satisfy, in particular, the following substantive and formal conditions: the exhibition must be held in one of the regions eligible for Structural Funds, with the participation of SMEs eligible for such funds, it must follow a precise timetable and it must observe a number of phases. As the choice of partners is considered crucial to the success of the exhibition, the working methods of each partner must be detailed. The organiser must submit a dossier and a number of reports.

4 In particular, an interim report showing that the first three phases of the project have been completed must be sent to the Commission at least four months before the event and after the commencement of the phase of approaching the SMEs. The report must include, inter alia, a list of the firms already committed to attend. Acceptance of this report is a precondition of payment of the second of the four instalments of financial assistance.

5 The Vade Mecum states that, in return for the Commission's undertaking to provide financial support, the organiser undertakes to comply with the obligations in the

'statement by the beneficiary of a financial contribution' ('the statement by the beneficiary') annexed to the Vade Mecum. By virtue of those obligations, the organiser must, inter alia, carry out the work defined in the proposal on the basis of which the project was selected and give an account of the financial activities in terms of the budget accepted. Any amendment of the project must be notified to and accepted by the Commission. If the organiser fails to provide the services (including observing the deadlines for undertaking the various phases), the Commission reserves the right to halt payments and, if appropriate, request reimbursement of the amounts already paid.

6 The declaration by the beneficiary sets out the eight phases of the subsidised operation, states that the assistance granted will be paid in instalments and requires, inter alia, that the beneficiary will waive payment of the second instalment of the assistance if the deadline set for the third phase — which consists in approaching the SMEs likely to meet the requirements expressed by the large firms which have already been identified and have expressed such requirements — is not complied with. The organiser must also note that the Commission reserves the right to reduce the balance of the grant if it considers that the declared objectives have not been achieved.

7 At the material time for the purposes of the present case, namely the period 1997 to 2002, the legislative framework applicable to IBEXs consisted, essentially, of Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1), as amended by Council Regulation (EEC) No 2082/93 of 20 July 1993 (OJ 1993 L 193, p. 20; 'Regulation No 4253/88') and of Council Regulation (EEC) No 4254/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the European Regional Development Fund (OJ 1988 L 374, p. 15), as amended by Council Regulation (EEC) No 2083/93 of 20 July 1993 (OJ 1993 L 193, p. 34).

8 Article 52(1) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1) and repealing Regulation No 4253/88 with effect from 1 January 2000, provides that that regulation is not to affect the continuation or modification, including the total or partial cancellation, of assistance approved by the Commission on the basis of Regulation No 4253/88 or any other legislation which applied to that assistance on 31 December 1999.

9 The first sentence of Article 14 of Regulation No 4253/88, entitled 'Processing of applications', provides:

'Applications for assistance ... shall be prepared by the Member States or by the competent national, regional, local or other authorities designated by it and shall be submitted to the Commission by the Member State or by any body it may designate to do so.'

10 The first sentence of Article 21(1) of that regulation provides that '[p]ayments of financial assistance shall be made in accordance with the corresponding budgetary commitments to the national, regional or local authority or body designated for the purpose in the application submitted through the Member State concerned'.

11 Article 24 of Regulation No 4253/88, entitled 'Reduction, suspension and cancellation of assistance', provides:

'1. If an operation ... appears to justify neither part nor the whole of the assistance allocated, the Commission shall conduct a suitable examination of the case in the framework of the partnership, in particular requesting that the Member State or authorities designated by it to implement the operation submit their comments within a specified period of time.

2. Following this examination, the Commission may reduce or suspend assistance in respect of the operation or a measure concerned if the examination reveals an irregularity or a significant change affecting the nature or conditions for the implementation of the operation or measure for which the Commission's approval has not been sought.

3. Any sum received unduly and to be recovered shall be repaid to the Commission ...'.

Facts

12 On 29 September 1997, the applicant, a non-profit-making association representing the interests of the Italian textile sector, submitted an application to the Commission for financial assistance for the organisation of an IBEX reverse exhibition in the textile and clothing sector, entitled 'Eurespirit', initially envisaged for 19, 20 and 21 October 1998, and then for 22, 23 and 24 March 1999, to take place on Capri (Italy).

13 By decision of 18 March 1998, the Commission granted the applicant a subsidy of 50% of the eligible costs of the project and set the maximum amount of its contribution at ECU 500 000. That decision was accompanied by a form for the statement by the beneficiary. The applicant was also sent a copy of the Vade Mecum.

14 On the basis of the Vade Mecum and the decision of 18 March 1998, the applicant signed and returned to the Commission, on 28 April 1998, the statement by the beneficiary. In that statement, it undertook, in particular, to use the financial

assistance solely for the purposes of the objective described in its application of 29 September 1997 concerning the Euresprit project. That project envisaged, in essence, that the proposed IBEX would bring together 60 to 70 large internationally-known undertakings as prospective principals (ARMANI, VERSACE, MARKS & SPENCER, etc.) and 300 to 350 SMEs as prospective contractors and establish an economic partnership network in the textile and clothing sector.

15 After receiving the statement by the beneficiary, the Commission made an advance payment of EUR 200 000 (40% of the maximum amount allocated) to the applicant. It subsequently became evident that the Euresprit project would not take place as envisaged, the main problem, according to the applicant, being the lack of response from undertakings in the sector.

16 With a view to discussing the problems facing the project, the applicant and the Commission exchanged numerous letters and held several meetings between November 1998 and January 2002. In that context, the applicant at the outset, by letter of 22 December 1998, drew the Commission's attention to the 'reluctance to take part' shown by the principals, i.e. the large textile and clothing enterprises, and proposed that the date on which the Capri exhibition was to be held should be postponed by two months.

17 By letter of 21 January 1999, the Commission requested the applicant to submit to it the list of principals and 'contractor' SMEs (classified by Member State and by region eligible for Structural Funds) which had definitively committed themselves and also the total number of interviews already arranged. In a letter of 22 March 1999, the applicant merely referred to its request for permission to postpone the exhibition and proposed 25, 26 and 27 October 1999 as the new dates.

18 In reply to that request to modify the arrangements, the Commission contacted the applicant by fax of 6 May 1999 with a view to a possible modification of the grant decision of 18 March 1998 and drew its attention to the project for another IBEX in the textile sector to be held in London (United Kingdom) on 22 and 23 November 1999, which was also subsidised by Community funds, and invited the applicant to approach the organisers of that exhibition in order to avoid duplication between the two exhibitions. It requested the applicant to communicate to it the coordination measures adopted with a view to being able to finalise the procedure for amending the date of the Euresprit project. The Commission sent the applicant a reminder on 4 June 1999 and, by letter of 19 July 1999, reiterated its request for particulars of the measures taken by the applicant in order to ensure that its project would be coordinated with the project envisaged in London. In that letter, the Commission stated for the first time that as it had not received the information enabling it to approve the change of the date of the Euresprit exhibition, it might contemplate recovering the subsidy already paid.

19 The applicant responded by lodging, on 21 July 1999, a progress report on the project. However, that report did not contain all the information requested by the Commission, namely the list of principals and SMEs definitively committed to taking part, the total number of interviews arranged and clarification concerning the coordination between the exhibition proposed by the applicant and the one proposed in London. By letter of 11 August 1999, the Commission drew attention to those lacunae and requested the applicant to provide the information requested before 5 September 1999 if it wished to prevent the Commission from recovering the subsidy.

20 By letter of 16 September 1999, the applicant stated that it had been informed by the organiser of the London exhibition that that exhibition would be held not on 22 and 23 November 1999 but in spring 2000. Attached to that letter was a list setting out the names, addresses and sector of activity of 16 principals and 28 contractors. It is apparent from the list that no interview had yet been arranged between those two categories of operators.

21 On 18 October 1999, the applicant sent the Commission a report containing a new programme for the exhibition and additions compared with the initial project and proposed that the event be postponed until 6, 7 and 8 April 2000.

22 The Commission took the view that the exhibition had not taken place as envisaged and that none of the information received could guarantee that it would be held on a new date and, by letter of 14 December 1999, it informed the applicant that it would initiate the procedure for cancelling the financial assistance granted, unless the applicant submitted before 15 January 2000 a list of principals and contractors in accordance with the approved project (300 to 350 SMEs and 60 to 70 principals), together with details of those undertakings which would allow the Commission to contact them. A copy of the letter was sent to the competent Italian ministry.

23 In its reply of 10 January 2000, the applicant informed the Commission that the preparations for the Euresprit reverse exhibition had revealed 'a number of specific obstacles in the textile and clothing sector, which remains very traditional in its relations between customers and suppliers', but that the proposed new arrangements could ensure that it would be a success, as the large European brands had expressed their support. It stated that 160 contractors were already committed to taking part and that the lists of participants would be brought up to date from the end of January 2000. In its letter of 10 April 2000, it further stated that the rearrangement of its initiative had been successful, as 50 internationally-known brands had stated that they were prepared to participate in the exhibition. The applicant attached to that letter a list containing the names of 22 undertakings (AEFFE, HILTON VESTIMENTA, MOSCHILLO, ASPESI, LEVI'S, NIKE, etc.) and the names of 50 brands represented by those undertakings. It appears that that list does not in any way correspond with the list annexed to the letter of 16 September 1999 (see paragraph 20 above).

24 By letter of 14 August 2000, the Commission annulled the decision granting the applicant a subsidy of EUR 500 000 and ordered reimbursement of the advance paid.

25 In its reply of 18 September 2000, the applicant criticised the Commission for not having reacted to its proposals to modify the project. It claimed that even though the exhibition had not taken place, intense preparations had proceeded until summer

2000 and had entailed expenditure. In three successive letters of 19 March and 5 July 2001, the applicant contended that the final account should take account of the work which it had actually carried out and the expenditure which it had incurred.

26 On 9 January 2002 the applicant lodged a complaint with the European Ombudsman and at the same time requested the Commission to suspend the recovery proceedings. In that complaint, the applicant stated that it understood the need to cancel its project but urged that the work already carried out and the associated expenditure be taken into account. It requested that the case be reopened and that the amount of the advance to be reimbursed be reconsidered. In its decision of 18 September 2002, the European Ombudsman concluded that the Commission had done nothing amounting to maladministration within the meaning of Article 195 EC.

27 On 12 July 2002, the Commission adopted Decision C(2002) 1702 cancelling FEDER subsidy No 97.05.10.001 granted to the applicant by Decision SG(98)D/2251 of 18 March 1998 and ordering repayment of the sum advanced by the Commission in the context of the project relating to the organisation of an international exhibition in the textile and clothing sector on Capri (Euresprit project) ('the contested decision'), which, according to Article 4, is addressed to the applicant.

28 Article 1 of the contested decision cancels the subsidy granted, while Article 2 orders repayment of the advance of EUR 200 000. Those two articles are based on Article 24 of Regulation No 4253/88. In its assessment, the Commission considers, in essence, that the applicant's inability to provide the list of principals and SMEs participating in the exhibition constitutes a lacuna affecting the very existence of the action. Consequently, the failure of the Euresprit IBEX project entails the cancellation of the subsidy and recovery of the incorrectly-paid advance.

29 Article 3 of the contested decision provides that the decision replaces the letter of 14 August 2000 (see paragraph 24 above).

30 The contested decision was notified to the applicant on 15 July 2002 and received by it on 16 July 2002.

Procedure and forms of order sought by the parties

31 By application lodged at the Registry of the Court of First Instance on 24 September 2002, the applicant brought the present action.

32 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Second Chamber) decided to open the oral procedure and to invite the Italian Government, pursuant to the second paragraph of Article 24 of the Statute of the Court of Justice, to answer a written question.

33 At the hearing on 4 May 2004, the parties presented oral argument and their answers to the questions put by the Court. On that occasion, the Italian Government's answer to the question put by the Court was issued to the parties. The parties lodged their written observations on that answer on 28 May 2004 and the President of the Second Chamber closed the procedure.

34 The applicant claims that the Court should:

— principally, annul the contested decision and declare that the advance of EUR 200 000 is not to be repaid;

— in the alternative, annul the contested decision in part and declare that the advance of EUR 200 000 is to be repaid to the Commission only after the Commission has delivered a decision on the eligibility of the expenditure submitted and in proportion to what has not been used by the applicant for the Eurespirit project;

— order the Commission to pay the costs.

35 The Commission contends that the Court should:

— dismiss the action as inadmissible in part;

— dismiss the action as unfounded in that it seeks annulment of the contested decision;

— order the applicant to pay the costs.

Law

36 In support of its action, the applicant puts forward, in essence, five pleas in law. The first plea, raised in the form of an allegation of failure to state reasons, alleges breach of Article 24 of Regulation No 4253/88. The other pleas allege breach of the principles of protection of legitimate expectations, legal certainty and proportionality and also breach of the obligation to state reasons.

First plea: breach of Article 24 of Regulation No 4253/88

37 The applicant criticises the Commission for having breached Article 24(1) of Regulation No 4253/88 by not requesting the Member State concerned, namely the Italian Republic, to submit its comments on the proposed cancellation of the financial assistance in question. The Commission has thus acted in breach of its partnership obligation.

38 At the hearing, the applicant stated that the Italian Government was required to be expressly informed by the Commission of its intention to cancel the financial assistance in question because, under Article 23(1) of Regulation No 4253/88, the Member State concerned is liable in the alternative for any sum unduly paid in the event of irregularity or negligence.

39 In that regard, the Court observes that in its judgment of 12 February 2004 in Case C-330/01 P *Hortiplant* v *Commission* [2004] ECR I-763, the Court of Justice confirmed that Article 24 of Regulation No 4253/88 obliges the Commission to request the Member State concerned or the authorities designated by it to implement the operation to submit their comments within a specified period of time.

40 The circumstances of the present case are such that the status of designated authority and that of beneficiary of the Community financial assistance may be recognised as residing in the same person.

41 First, the Commission fully accepted that that was so in the course of the IBEX project in question. At the hearing, the Commission emphasised the unusual nature of that practice, which it justified on the ground that the IBEX project in question had been financed directly by the Commission and exclusively from Community resources as a 'pilot scheme' having a marked Community interest within the meaning of Article 10(1)(b) of Regulation No 4254/88. It is clear that in such a relational and financial context, the interests of the Italian Republic could not be substantially affected.

42 Second, Article 14(1) of Regulation No 4253/88 provides that applications for assistance from the Structural Funds are to be prepared by the Member State 'or by the competent national, regional, local or other authorities designated by it' and are to be submitted to the Commission by the Member State 'or by any body it may designate to do so'. According to Article 21(1) of that regulation, moreover, payment of financial assistance is to be made 'to the national, regional or local authority designated for the purpose'.

43 It is common ground that the Italian Government, by letter from the Ministry of Industry, Trade and Craft Industries to the Commission dated 26 November 1997, expressly authorised the applicant, under Article 14(1) and Article 21(1) of Regulation No 4253/88, to ensure the implementation and the financial management of the exhibition in question.

44 As the Italian Government stated in answer to a question put by the Court, it intended, in drafting that letter, to confer on the applicant the status of 'authority' and 'body' within the meaning of those provisions. The Italian Government further

stated that it had thus intended to confer on the applicant full responsibility for carrying out the project in question, with the consequence that the applicant should also be regarded as a 'designated authority' for the purposes of Article 24(1) of Regulation No 4253/88.

45 Third, it is appropriate to add that when carrying out the IBEX project in question, the applicant was fully informed of the fact that the role of 'designated authority' had been entrusted to it and that it had agreed to take on that role.

46 It follows that, as the applicant had thus been ascribed with the status of 'designated authority' for the purposes of Article 24(1) of Regulation No 4253/88, the Commission was under no obligation to consult the Italian Government before adopting the contested decision, since under that provision it had the choice, when it proposed to cancel the assistance in question, of requesting the Italian Republic or the authorities designated by it to submit their comments.

47 That conclusion is not contradicted by the applicant's status as a private-law association. There is nothing in Regulation No 4253/88 to prevent Member States from entrusting a person governed by private law, notably the person who proposes to carry out the project submitted to the Commission with a view to securing Community financing, with tasks consisting in processing applications for assistance and receiving payments within the meaning of Article 14(1) and Article 21(1) of that regulation. That is a fortiori so where, as in the present case, the financial project concerned only marginally affects the public interests of the State of the beneficiary of the Community funds.

48 Furthermore, Regulation No 1260/1999 — which, in order to ensure better transparency of Community legislation, brought the provisions on the Structural Funds together in a single regulation and repealed, inter alia, Regulation No 4253/88 — clarified the matter in Article 9(n), where it defines 'managing authority' as 'any

public or private authority or body at national, regional or local level designated by the Member States ... to manage assistance for the purposes of this Regulation' and further states that 'the managing authority may be the same body as the paying authority for the assistance concerned'.

49 In so far as the applicant refers to Article 23(1) of Regulation No 4253/88, it is sufficient to observe that the present dispute does not concern the conditions on which the Italian Republic might be held liable in the alternative for repayment of a sum unduly paid by the Commission following irregularity or negligence in the context of the project in question. There is no need, therefore, to decide in this context — which is that of the recovery from the applicant of assistance paid —, whether such financial responsibility presupposes that the Commission has first informed the Italian Government, in due and proper form, of its intention to cancel the assistance in question.

50 In any event, the Commission sent a copy of the letter of 14 December 1999 to the competent Italian ministry (see paragraph 22 above) and thereby informed the Italian Government that a procedure for cancellation of the assistance granted to the applicant might be initiated. Regard being had to the specific factual circumstances of the present case, that information must be regarded as sufficient to allow the Italian Government to submit its comments to the Commission, in addition to those of the authority which it had designated, in order to protect its interests.

51 It follows that in adopting the contested decision the Commission did not breach Article 24(1) of Regulation No 4253/88.

52 The first plea cannot therefore be upheld.

Pleas alleging breach of the principles of protection of legitimate expectations, legal certainty and proportionality

53 It should be borne in mind, first of all, that the Euresprit project submitted by the applicant was never carried out and that the present action does not seek annulment of the contested decision in order to put the applicant in a position to complete the project or to secure payment of the full subsidy granted by decision of the Commission of 18 March 1998. During the pre-litigation procedure the applicant declared that 'the exhibition ha[d] not actually taken place' (letter of 18 September 2000) and noted 'the need to terminate this project' (complaint lodged with the European Ombudsman on 9 January 2002).

54 Consequently, the three pleas in question seek to denounce the unlawfulness of the contested decision only in so far as the decision seeks repayment of the entire advance of EUR 200 000 without taking account of the expenditure incurred by the applicant in commencing the project and attempting to complete it. In that context, the applicant states that that expenditure would in any event have been eligible if the Euresprit exhibition could have taken place. It further states that, in light of its numerous letters and its various requests to modify the project, the Commission was informed of the difficulties inherent in organising the type of exhibition presented in the initial project.

55 Last, the applicant criticises the Commission for having wrongly refused to recognise during the pre-litigation procedure the eligibility of the expenditure which the applicant had already incurred in the initial phases of its project, on the ground that the expenditure had not been duly certified. In the applicant's submission, certification of the expenditure should have been presented only with the final report, i.e. after completion of the operation.

56 In that regard, it should be noted that under Article 24(1) and (2) of Regulation No 4253/88 the Commission may cancel the entire financial assistance allocated if an operation 'appears to justify neither part nor the whole' of that assistance (see, to that effect, judgment in Case C-500/99 P *Conserve Italia* v *Commission* [2002] ECR I-867, paragraphs 88 to 90).

57 In the present case, the operation financed was an IBEX reverse exhibition in the textile and clothing sector, the details of which were described in the dossier submitted by the applicant and the essential elements of which were determined in the Vade Mecum and the statement by the beneficiary duly signed by the applicant.

58 It follows from those documents that the very substance of such an exhibition consists in allowing large undertakings and the eligible SMEs in a specific sector to arrange pre-scheduled meetings in order to establish a technological commercial partnership. Consequently, the choice of partners is regarded as fundamental to the success of the project. The organiser must follow a precise timetable consisting of eight phases and submit, at least four months before the date of the exhibition, an interim report together with a list of the undertakings already committed to taking part.

59 The exhibition proposed by the applicant — which was to be held on Capri and was to bring together 60 to 70 large undertakings and 300 to 350 SMEs over a period of three days — was never achieved, even in part.

60 It follows that the applicant lost any right to the financial assistance in question. The obligation actually to carry out the project constituted the essential duty for the applicant and its fulfilment was therefore a condition for the award of Community assistance (see, to that effect, Joined Cases T-551/93 and T-231/94 to T-234/94 *Industrias Pesqueras Campos and Others* v *Commission* [1996] ECR II-247, paragraph 160). Partial financing by the Commission would strictly speaking have been possible only if the project had been carried out in part, for example if the exhibition had been organised for a period less than three days or for a smaller number of participants than that envisaged by the applicant. The fact remains that the exhibition should actually have taken place.

61 Since the financial assistance in question was awarded specifically and exclusively for an IBEX reverse exhibition, and not for work which the applicant regards as

generally useful because, in its words, it 'taught valuable lessons about the sector' (letter of 18 September 2000), the expenditure incurred by the applicant in respect of that work cannot be imputed to the Community budget.

62 It follows that the complaint that the Commission wrongly refused to recognise the eligibility of the expenditure allegedly incurred in preparing for the exhibition in question must be rejected as inoperative. Even if that expenditure had been recognised and the Commission had paid the second instalment of the subsidy to the applicant, the applicant, owing to the failure of its entire project, would have been required to reimburse in full the advances received.

63 In any event, the Commission was correct to refuse to pay the second instalment of the financial assistance and to recognise the eligibility of the expenditure which the applicant claims to have incurred in order to carry out the project in question. Although the statement by the beneficiary signed by the applicant expressly states at point 3 that payment of the instalment depended, in particular, on submission of an interim budgetary statement 'attesting that at least 50 % of the first instalment of this subsidy has already been spent', the applicant merely sent to the Commission a simple list of costs allegedly incurred in connection with the project, without 'attesting' — by producing invoices and statements of accounts — that the costs had actually been borne and borne specifically for the purpose of carrying out the project in question.

64 Furthermore, by letter dated 12 January 1999 — i.e. at a time when the applicant still intended to carry out the project, although at a later date than that initially envisaged —, the Commission drew the applicant's attention to the fact that it must produce a financial report specifying the state of the expenditure in relation to the budget which had been approved. For that purpose, it sent the applicant a form to be

completed, from which it appears that payment of the second instalment, the third instalment and the balance of the aid allocated depended on the certification of the expenditure relied on. The applicant failed to complete that form and return it to the Commission in order to obtain payment of the second instalment.

65 According to a well-established line of decisions, applicants for, and beneficiaries of, aid are required to satisfy themselves that they are submitting to the Commission reliable information which is not liable to mislead it, without which the system of controls and evidence set up to determine whether the conditions for granting aid are fulfilled cannot function properly (Case T-180/00 *Astipesca* v *Commission* [2002] ECR II-3985, paragraph 93, and the case-law cited there).

66 The Commission cannot therefore be said to have caused the delays in carrying out the project and to have finally caused it to fail by refusing to extend the financing beyond the first instalment of the aid granted. While it is true that the applicant, at a very early stage, requested permission from the Commission to postpone the date of the proposed exhibition, it is clear from the correspondence between the parties referred to (see paragraphs 16 to 24 above) that the Commission always reacted constructively to the requests to modify the arrangements and to the revised versions of the project which the applicant submitted. Consequently, it was not the Commission's approach that prevented the applicant from finding a suitable date for the proposed exhibition, from coordinating that date, where necessary, with the dates of other exhibitions of the same kind and from meeting one of the fundamental preliminary criteria of the proposed exhibition, namely communication of a list of the 60 to 70 principals and the 300 to 350 SMEs committed to taking part in the exhibition. Furthermore, the applicant itself explained that the difficulties encountered by its project were caused by the obstacles specific to the textile sector (letter of 10 January 2000, see paragraph 23 above) and by the lack of reaction on the part of the undertakings in the sector, and stated that the sector was going through a period of a mainly structural crisis (third interim report of October 1999). Those are events which fall exclusively within the responsibility of the applicant, an association active in the textile sector.

67 In those circumstances, after finding that the reverse exhibition proposed by the applicant had not been carried out on the dates envisaged, the Commission had every reason to cancel the whole of the financial assistance granted and to recover the advance paid. In any event, in the absence of a reliable attestation of the expenditure allegedly incurred by the applicant in connection with the project, the Commission was not required to recognise that expenditure, even in part, as eligible and to recover only a part of the advance already paid.

68 It follows from the foregoing that the contested decision must be held to be proportionate to the entire failure of the project.

69 It also follows that that applicant, aware that its project had failed, could not legitimately hope that the Commission would not recover the advance already paid, particularly as the Commission had repeatedly informed the applicant in the course of their correspondence (see paragraphs 17 to 19 and 27 above) that the applicant had failed to fulfil essential obligations in carrying out the project and that, in particular, it had not attested to the eligibility of the costs allegedly incurred for that purpose. The applicant could not therefore form any legitimate expectation in that regard.

70 Last, on reading Article 24 of Regulation No 4253/88, the Vade Mecum and the statement by the beneficiary, the applicant was bound to expect that it would be required to repay the subsidy received in the event that the conditions for its award were not satisfied. Regard being had to those rules, the contested decision is therefore consistent with the principle of legal certainty.

71 Consequently, the pleas alleging breach of the principles of proportionality, protection of legitimate expectations and legal certainty must be rejected as unfounded.

Plea alleging failure to state reasons

72 The applicant claims, in essence, that the contested decision does not enable it to understand why the documents which it had supplied during the pre-litigation procedure, in particular the third version of the interim report of 18 October 1999, and also the requests to modify the project and the statement of the expenditure incurred, were not regarded as sufficient for it to obtain the subsidy in question.

73 In that regard, it should be recalled that, according to a consistent line of decisions, the reasons for an individual decision must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the decision in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community court to exercise its power of review. Whether or not the reasons are adequate must be assessed by reference to the circumstances of the case. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to the context in which the act was adopted (Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63, and the case-law cited there).

74 In this case, the reasons stated for the contested decision were the failure of the Euresprit project, the applicant's inability to provide the list of principals and SMEs participating in the exhibition in question and the absence of a financial report accompanying the interim report. The decision referred, moreover, to the correspondence between the Commission and the applicant concerning the missing items needed to proceed with the project (recitals 7 to 14, 21 and 22 to the contested decision). In the light of those elements, the applicant was fully capable of ascertaining the Commission's reasons for adopting the contested decision and, if necessary, of challenging them and the Court of First Instance was validly able to exercise its power of review.

75 The plea alleging lack of reasoning cannot therefore be upheld.

76 As none of the pleas in law raised in support of the forms of order sought principally or in the alternative has been upheld, the application must be dismissed in its entirety as unfounded, without there being any need to examine the objections of inadmissibility raised by the Commission against the second head of the principal form of order sought and against the form of order sought in the alternative.

Costs

77 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for. As the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the applicant to bear its own costs and to pay those incurred by the Commission.**

Pirrung Meij Forwood

Delivered in open court in Luxembourg on 14 September 2004.

R. Grass J. Pirrung

Registrar President