JUDGMENT OF THE COURT (Third Chamber)
14 May 1998 *

In Case C-48/96 P,

Windpark Groothusen GmbH&Co. Betriebs KG, a company governed by German law, established at Groothusen-Krummhörn (Germany), represented by Professor Detlef Schumacher, Bremen, and Benno Grunewald, Rechtsanwalt, Bremen,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (First Chamber) of 13 December 1995 in Case T-109/94 *Windpark Groothusen* v *Commission* [1995] ECR II-3007, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by Jürgen Grunwald, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

THE COURT (Third Chamber),

composed of: C. Gulmann, President of the Chamber, J. C. Moitinho de Almeida (Rapporteur) and J.-P. Puissochet, Judges,

* Language of the case: German.

Advocate General: G. Cosmas,
Registrar: H. A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 2 October 1997, at which Windpark Groothusen GmbH&Co. Betriebs KG was represented by Professor Detlef Schumacher and Wilhelm Wiltfang, Rechtsanwalt, Bremen, and the Commission by Jürgen Grunwald,

after hearing the Opinion of the Advocate General at the sitting on 13 November 1997,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 19 February 1996, Windpark Groothusen GmbH&Co. Betriebs KG (hereinafter 'Windpark') brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the judgment of 13 December 1995 in Case T-109/94 *Windpark Groothusen* v *Commission* [1995] ECR II-3007 (hereinafter 'the judgment under appeal'), in which the Court of First Instance rejected its application for annulment of the Commission's decision of 13 January 1994 refusing to grant it funding under the Thermie programme for 1993 and for an order directing the Commission to adopt a new decision.

2 The Court of First Instance made the following findings of fact:

'1. On 26 June 1990 the Council adopted Regulation (EEC) No 2008/90 concerning the promotion of energy technology in Europe (Thermie programme) (OJ 1990 L 185, p. 1: "the Thermie Regulation"). The Thermie programme covers a total of 17 sectors of application, including wind energy.

2. In accordance with Article 8 of the Thermie Regulation, the procedure for the selection of eligible projects is initiated by the Commission, which must publish an invitation to submit projects in the *Official Journal of the European Communities*. For the selection of projects with a total cost exceeding ECU 500 000, the Commission is assisted by a committee composed of the representatives of the Member States ("the Thermie Committee"), which delivers an opinion on the draft of the measures to be taken which is submitted to it by the Commission. If the measures adopted by the Commission are not in accordance with the Thermie Committee's opinion, the Commission must communicate them to the Council. Pursuant to Article 10(1) of the Thermie Regulation, the Council may then take a different decision from the Commission.

3. For 1993, the Commission published in the Official Journal of 16 July 1992 (OJ 1992 C 179, p. 14) a communication of the provision of financial support to projects for the promotion of energy technology (Thermie programme). It invited interested parties to submit, before 1 December 1992, projects for possible selection to receive financial support in 1993. It also specified, in accordance with Article 8(2) of the Thermie Regulation, the sectors to be given priority, that is to say, "low energy, low CO_2 buildings" and "integrated urban traffic management systems". In addition, the Commission stated that a document giving details of the procedure for the submission of proposals and information on the eligibility conditions, selection criteria and other relevant information could be obtained from it.

4. The applicant is a company whose object is to construct and operate a wind park in the Groothusen area, near Emden in Germany.

5. On 27 November 1992 the applicant submitted to the Commission an application for aid of ECU 1 933 495 for the construction of a wind park.

6. The Commission received approximately 700 proposals. In March 1993 the Directorate-General for Energy drew up a document appraising those projects. On 5 April 1993 they were examined by the technical committee for wind energy and

on 3 and 4 June 1993 by the Thermie Committee. The Commission thus established, pursuant to Article 9(2) in conjunction with Article 10(1) of the Thermie Regulation, the priorities for invitations to submit projects in accordance with the so-called "committee" procedure.

7. On 19 July 1993 the Commission decided to grant financial support to a total of 137 projects. By the same decision, it also drew up a "reserve list" of 49 replacement projects. Of the 52 projects in the field of wind energy, eleven were granted financial support and eight were entered on the reserve list. A brief communication concerning that decision was published in the Official Journal of 24 July 1993 (OJ 1993 C 200, p. 4).

8. On 5 August 1993 the Commission informed the applicant that its project had been placed on "a supplementary list of projects which may be granted financial support before 31 December 1993 if sufficient budgetary credits become available, particularly if some of the projects which have already been granted financial support have not been carried out". According to an annex to that letter, the maximum amount of financial support for the project had been fixed at ECU 918 028. The Commission emphasised that it was in no way bound by the fact that the project had been placed on the supplementary list and disclaimed all responsibility for any consequences which might ensue from a definitive decision not to grant the applicant financial support.

9. By fax of 9 August 1993, addressed to the Commission, the applicant requested further information and authorisation to commence work. The European Communities Liaison Office of the *Land* of Lower Saxony thereupon informed the applicant that its project was on the reserve list and that a decision concerning possible financial support would be taken some time after the beginning of September 1993.

10. By letter of 13 January 1994, addressed to the applicant, the Commission stated that the applicant's project could not be granted financial support in 1993, owing to the lack of appropriate budgetary credits.

11. The applicant responded by letters of 9 and 23 February 1994, expressing its disappointment and asking the Commission to "review carefully [your] notice of January 13, 1994 and the selection procedure which preceded it". On 16 March 1994 the Commission replied, confirming the content of its letters of 5 August 1993 and 13 January 1994.'

3 By application lodged at the Registry of the Court of First Instance on 17 March 1994, Windpark brought an action claiming that the Court should annul the Commission's decision of 13 January 1994 and direct the Commission to take a new decision in accordance with the legal principles laid down by the Court of Justice.

4 Since the Commission decision of 13 January 1994 was the only measure whose annulment was specifically sought in that application, Windpark indicated in its reply that, in so far as its complaints related to earlier decisions taken by the Commission, its action should also be regarded as contesting those decisions, particularly that of 19 July 1993.

5 In support of its action, Windpark put forward three pleas in law: (1) failure to comply with an essential procedural requirement in that the decision was not accompanied by an adequate statement of reasons; (2) breach of the fundamental rules of law governing the application of the Treaty in that the applicant's right to a hearing was infringed; and (3) a misuse of power in that its application was refused for no apparent reason.

6 By the judgment under appeal, the Court of First Instance dismissed Windpark's action.

7 With regard to the admissibility of the action, the Court of First Instance first pointed out (paragraph 22) that a distinction had to be made between, on the one hand, the Commission's decision of 19 July 1993 granting funding worth ECU 129 182 448 to 137 projects for the promotion of energy technology and

drawing up a reserve list of 49 replacement projects and, on the other hand, the act contained in the letter of 13 January 1994, addressed to Windpark by the Commission. The Court regarded the decision of 19 July 1993 as definitive in that it excluded Windpark's project from the list of those selected (paragraph 23).

8 The Court of First Instance went on to state that neither the publication in the Official Journal of the Commission's communication concerning the decision of 19 July 1993 nor the Commission's letter of 5 August 1993 informing Windpark that its project had been placed on the supplementary list enabled interested parties to gain precise knowledge of the content and grounds of the act in dispute so that they could exercise their right of action (paragraphs 24 and 25).

9 However, referring to the case-law, the Court of First Instance then pointed out (paragraph 26) that, where the act in dispute has been neither published nor notified, the period within which proceedings are to be instituted cannot start to run until the third party concerned has precise knowledge of the content and grounds of the act in question, always provided however that he asks, within a reasonable period, for the full text of the act in question (see Case T-465/93 *Murgia Messapica* v *Commission* [1994] ECR II-361, paragraph 29, and the order of 5 March 1993 in Case C-102/92 *Ferriere Acciaierie Sarde* v *Commission* [1993] ECR I-801, paragraph 18). The Court of First Instance noted that Windpark had been informed, by the Commission's letter of 5 August 1993, of the decision selecting the projects to be awarded funding for 1993 but that, erroneously considering its situation to be promising, it sought neither the full text of the decision nor an individual explanation concerning the decision to exclude its project from the 137 projects selected (paragraph 27). In so far as Windpark's action was directed against the decision of 19 July 1993, the Court of First Instance held that, since it had been brought on 17 March 1994 — more than seven months after Windpark learned of the contested decision, in August 1993 — it was no longer admissible (paragraph 28).

10 However, the Court of First Instance held that, in so far as the action was directed against the decision contained in the letter of 13 January 1994 (received on 19 January 1994), by which the Commission notified Windpark that its project could not receive financial support under the 1993 budget since the necessary budgetary credits were not available, the action was admissible (paragraph 29).

11 With respect to the merits, the Court of First Instance found, on considering Windpark's plea alleging an inadequate statement of reasons, that the grounds for the decision given in the letter of 13 January 1994 — exhaustion of the funds available at that time — were sufficient and proper, since, although funds were still available under the budget for the Thermie programme in July 1993 after the decision had been taken to finance certain projects, according to the Commission the money in question had been allocated during the last months of 1993 to certain 'targeted' projects, so that, at the end of 1993 there were no longer any funds available (paragraphs 44 and 45).

12 Secondly, in relation to the plea alleging infringement of the right to a hearing, the Court of First Instance found that the procedure whereby candidates for funding are not given a hearing during the selection procedure, which is conducted on the basis of the documentation submitted by them, is consistent with the procedure in financial support programmes and appropriate in situations where hundreds of applications must be evaluated (paragraph 48). The Court of First Instance also held that the Commission was not under a duty, before sending the letter of 13 January 1994, to give Windpark an opportunity to make known its views since Windpark had not requested further information following publication of the communication concerning the decision granting funding to 137 projects or following the Commission's letter of 5 August 1993 (paragraph 49). Lastly, the Court of First Instance stated that the facts in the case before it were quite different from those underlying its judgment in Case T-450/93 *Lisrestal and Others* v *Commission* [1994] ECR II-1177 in that, by contrast, Windpark had not been granted any funding at all (paragraph 50).

13 Thirdly, regarding the plea of misuse of powers, the Court of First Instance concluded that Windpark had failed to adduce any matter of fact or law showing that the assessment of its project by the Commission in conjunction with the Thermie Committee was vitiated by manifest error or misuse of power (paragraph 58).

14 In support of its appeal, Windpark puts forwards six pleas in law: (1) infringement of the right to full legal protection; (2) misapplication of Article 173, fifth para-

graph, of the EC Treaty; (3) breach of the duty to state reasons, laid down by Article 190 of the Treaty; (4) infringement of the right to a hearing; (5) misuse of powers; and (6) infringement of Article 175, third paragraph, Article 173, fourth paragraph, and Article 176 of the EC Treaty.

The plea alleging infringement of the right to full legal protection

15 Windpark pleads infringement of its fundamental right to full legal protection, laid down by Article F(2) of the Treaty on European Union, in conjunction with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 173, fourth paragraph, of the Treaty. It maintains that the Court of First Instance infringed that right by wrongly drawing a distinction (paragraph 22 of the judgment under appeal) between the Commission's decision of 19 July 1993 and the act contained in the letter of 13 January 1994 and by not considering the merits of the action, therefore, except in so far as it contested the decision of 13 January 1994, dismissing the action as being out of time in so far as it was directed against the decision of 19 July 1993. Windpark also pleads infringement of its right to judicial review in that the Court of First Instance held the decision of 19 July 1993 not to include Windpark's project among the 137 projects selected to be definitive. Windpark maintains that, since its project had been placed on a 'reserve list', no definitive decision in that regard had yet been taken.

16 It should be noted that the Court of First Instance was correct in regarding the decisions of 19 July 1993 and 13 January 1994 as two separate decisions and in finding that the former had definitively refused to include Windpark's project among the 137 projects selected.

17 By its decision of 19 July 1993, the Commission granted funding to 137 energy technology projects; Windpark's project was not one of those selected.

18 However, by its letter of 13 January 1994 — following upon the letter of 5 August 1993 in which the Commission reserved the right, in the event that sufficient budgetary credits became available, particularly if some of the projects which had already been granted funding were not carried out, to grant funding to projects on a supplementary list on which Windpark's project had been placed — the Commission informed Windpark that the budgetary credits had been exhausted and that, consequently, Windpark's project could not be awarded funding under the 1993 budget.

19 The Court of First Instance was correct in holding that, even though, in its letter of 5 August 1993, the Commission reserved the right to depart from its decision of 19 July 1993 depending on the availability of budgetary credits, that decision was definitive with regard to the list of 137 projects selected for funding and the exclusion of Windpark's project, which did not appear on that list.

20 Accordingly, the Court of First Instance was right in holding, in conformity with the case-law, that since Windpark had sought neither the full text of the decision of 5 August 1993 nor an individual explanation concerning that decision, the action brought on 17 March 1994 was no longer admissible in so far as it was directed against the decision of 19 July 1993.

21 The first plea in law must therefore be rejected.

The plea alleging misapplication of Article 173, fifth paragraph, of the Treaty

22 Windpark submits that even assuming that, by its decision of 19 July 1993, the Commission rejected without qualification the application for funding, the two-month time-limit for bringing proceedings was complied with by the lodging of

the application on 17 March 1994. Windpark maintains that there is a contradiction in this regard between the statements of the Court of First Instance in paragraphs 9 and 28, respectively, of the judgment under appeal: whereas the Court states at paragraph 28 that, on receiving the letter of 5 August 1993, Windpark did not request either the full text or an individual explanation of the decision to exclude its project, it states at paragraph 9 that, by fax of 9 August 1993, Windpark requested further information after receiving the letter of 5 August 1993 and that the Commission had not responded. Moreover, Windpark maintains that the Commission should have inferred from its request by fax of 9 August 1993 for further explanations that Windpark had not understood the implications of the communication of 5 August 1993, and should have informed it of the precise content of the Commission's decision of 19 July 1993. Since the Commission's first response was the letter of 13 January 1994, that letter alone was capable of causing time to start running.

23 Windpark also argues that the Court of First Instance errs in adopting the position that, in situations where the measure at issue has been neither published nor notified, the period for bringing an action begins to run only from the moment at which the third party concerned acquires precise knowledge of the content of the decision in question and of the reasons on which it is based, provided, however, that, as soon as he learns of the existence of that measure, he requests the full text thereof within a reasonable period. Windpark maintains that Article 173, fifth paragraph, of the Treaty must be interpreted as meaning that, in the case of a decision which has been neither published nor notified, the factor which determines whether time has started to run for the purposes of bringing proceedings is whether a person individually concerned by such a decision has actual knowledge of it. It is not in conformity with the rule of law for the person concerned to be required to make efforts to explore the decision and the accompanying statement of reasons.

24 The first point to note here is that there is no contradiction between paragraphs 9 and 28 of the judgment under appeal. By fax of 9 August 1993, addressed to the Commission, Windpark requested further information, not a copy of the full text of the decision of 19 July 1993; similarly, it did not react to the communication in the Official Journal or seek an individual explanation of the reasons for which its project had been placed on a supplementary list and could only be granted funding if sufficient credits became available.

25 Secondly, it is settled law (see *inter alia* the order in Case C-102/92, cited above, paragraph 18, and Case C-309/95 *Commission* v *Council* [1998] ECR I-655, paragraph 18) that in the absence of publication or notification, it is for the party which learns of a decision concerning it to request the whole text thereof within a reasonable period and the period for bringing an action can begin to run only from the moment at which the third party concerned acquires precise knowledge of the content of the decision in question and of the reasons on which it is based. Thus the Court of First Instance was correct in holding that, since Windpark had brought proceedings more than seven months after learning in August 1993 that its project had been excluded from the 137 projects to be awarded funding, it could not escape being time-barred for the purposes of contesting that act.

26 That case-law is based on requirements related to the principle of legal certainty, to the effect that, where the addressees of an act have no knowledge of the precise content of that act, they must seek sufficient information with due diligence.

27 The second plea in law must therefore be rejected.

The plea alleging breach of the duty to state reasons

28 Windpark maintains that the Court of First Instance wrongly concluded, in paragraph 45 of the judgment under appeal, that the reasons given — exhaustion of funds — for the measure contained in the letter of 13 January 1994 was sufficient and proper. According to Windpark, that statement of reasons is inaccurate because, as came to light in the course of the procedure, the Commission continued until 31 December 1993 to award funding (to a value of ECU 10 817 552) to a number of targeted projects under the Thermie programme, action which Windpark challenges (paragraph 44 of the judgment under appeal); the statement of reasons is also insufficient because, even if funds were no longer available, the Commission should have compared the targeted projects with Windpark's project and given reasons for preferring the former. In taking account solely of the fact that the remaining funds had been granted to targeted projects, the Court of First Instance therefore failed to give the question due consideration.

29 Furthermore, Windpark points out that the 1993 budget granted appropriations of ECU 174 000 000 to the Thermie programme. In the introduction to the Thermie Report, the Commission states — without drawing any distinction between dissemination projects under Article 2 of the Thermie Regulation and targeted projects under Article 4 thereof — that in 1993 financial support worth ECU 140 000 000 was granted to 139 projects, while the sum of ECU 34 000 000 was set aside for associated measures. Since the decision of 19 July 1993 awarded ECU 129 182 448 to 137 projects, Windpark maintains that ECU 10 817 552 have been distributed, but not allocated to projects under Article 4 of the Thermie Regulation. This is clear from the answer given by Mr Papoutsis on behalf of the Commission on 29 April 1996 to written question E-0627/96 (OJ 1990 C 217, p. 81), according to which the Commission's decision of 13 December 1993 indicates that ECU 12.89 million was provided for the execution of projects, and three projects from the reserve list and three other projects were selected for the award of financial support to replace projects from the original list which had been abandoned. Similarly, as is apparent from the Thermie Report and contrary to the decision of 19 July 1993, the Commission granted financial support worth ECU 2 189 356 in the wind energy sector, independently of the Thermie Committee, to four projects on the reserve list which were not targeted projects. Furthermore, the distinction between dissemination projects under Article 2 of the Thermie Regulation and targeted projects under Article 4 thereof is not made in either the proceedings before the Court of First Instance or the budgetary programme.

30 Windpark also argues that the budgetary appropriations made available in 1993 for funding projects using wind energy were only partially exhausted since a number of projects were either not completed or only partly completed.

31 As regards, first, the decision of 13 December 1993 which concerned targeted projects, the Commission states that that decision allocated ECU 12 653 339 for the execution of targeted projects and that it also concerned three other projects in the field of solar energy which had already been mentioned in the decision of 19 July 1993 but required ECU 240 097 by way of additional funds for rectification.

32 Secondly, as regards the financing of the four projects on the reserve list in the field of wind energy which the Court of First Instance treated as the financing of targeted projects, the Commission contends that those projects, placed on the reserve list with the approval of the Thermie Committee, by decision of 19 July 1993, had to be given priority over Windpark's project, pursuant to Article 6(3)(a) of the Thermie Regulation, since they all involved 'an association of at least two independent undertakings established in different Member States'.

33 Lastly, as regards the funds available as a result of the non-implementation or partial implementation of certain projects, the Commission contends that a number of projects had been carried out and that, where projects had been cancelled, this had been done in October 1994 and in 1996, well after the adoption of the decision of 13 January 1994.

34 It is settled law that the statement of reasons required by Article 190 of the Treaty must be appropriate to the nature of the measure in question. It must show clearly and unequivocally the reasoning of the Community authority which adopted the measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review. It is also apparent from the case-law that the statement of reasons on which a measure is based is not required to specify the various matters of fact and law dealt with in the measure, provided that the measure falls within the general scheme of the body of measures of which it forms part (Joined Cases C-63/90 and C-67/90 *Portugal and Spain* v *Council* [1992] ECR I-5073, paragraph 16; Case C-353/92 *Greece* v *Council* [1994] ECR I-3411, paragraph 19; and Case C-466/93 *Atlanta Fruchthandelsgesellschaft and Others II* v *Bundesamt für Ernährung und Forstwirtschaft* [1995] ECR I-3799, paragraph 16).

35 Furthermore, the requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the need for information of those to whom the measure is addressed or of other parties to whom it is of direct and individual concern within the meaning of the fourth paragraph of Article 173 of the Treaty (Joined Cases 296/82 and 318/82 *Netherlands and Leeuwarder Papierwarenfabriek* v *Commission* [1985] ECR 809, paragraph 19).

36 As the Advocate General pointed out in paragraph 49 of his Opinion, participation in a financial support programme does not give rise to any right on the part of an applicant for funding, whose legal position remains unchanged in the event of rejection, and whose sole entitlement is to the objective examination of the application in the course of the selection procedure.

37 The statement of reasons in the letter of 13 January 1994 must be examined in the context of the Thermie Regulation, which lays down the essential criteria on the basis of which the various projects are assessed, thus enabling candidates to gauge to what extent their projects meet those criteria.

38 Furthermore, in view of the special features of the selection procedure in question — namely, publication of the criteria for eligibility and the participation of committees in the selection of projects — there is no need for an individual, detailed statement of reasons (Case 16/64 *Rauch* v *Commission* [1965] ECR 135 and Case C-213/87 *Gemeente Amsterdam and VIA* v *Commission* [1990] ECR I-221).

39 It follows that, in a procedure such as that in the present case — where the number of participants is high, the parties concerned are aware in advance of the criteria laid down by the regulation for selecting the various projects, provision is made for the participation of committees and the results are published — there can be no duty to provide a detailed statement of the reasons for a decision rejecting an application for financial support, including comparative information on the projects selected.

40 The Court of First Instance was therefore correct in holding that the statement of reasons accompanying the decision of 13 January 1994 was sufficient and proper, namely exhaustion of the funds available at that time, so that Windpark's project could not be awarded financial support.

41 That conclusion is not invalidated by Windpark's argument that the available funds were only partially allocated to targeted projects.

42 The third plea in law must therefore be rejected.

The plea alleging infringement of the right to a hearing

43 Windpark maintains that when the Commission decided to grant the sum of ECU 10 817 552 to other projects, it should have given Windpark an opportunity to make its views known. The Court of First Instance was wrong to hold that in the case of a procedure for financial support, the conditions governing which have been previously published, the Commission need not hear the views of the persons concerned.

44 Windpark submits that the Court of First Instance also erred, at paragraph 49 of the judgment under appeal, in holding the plea alleging infringement of the right to a hearing unfounded on the ground that Windpark had failed to seek further explanations whereas, at paragraph 9 of that judgment, it found that such explanations had been requested by fax of 9 August 1993.

45 That line of argument cannot be accepted.

46 As the Court of First Instance pointed out, the procedure for the submission of projects made it clear that 'once the proposal has been submitted, proposers are invited not to submit any supplementary information to the Commission unless specifically requested by the Commission services'. Thus, as a general rule, candidates are not given a further opportunity to express their views during the selection procedure, a fact which is explained by the work entailed in evaluating a large number of projects.

47 According to established case-law (see, to that effect, Case C-135/92 *Fiskano* v *Commission* [1994] ECR I-2885, paragraphs 39 and 40), a person's right to a hear-

ing before adoption of an act concerning that person arises only where the Commission contemplates the imposition of a penalty or the adoption of a measure likely to have an adverse effect on that person's legal position.

48 Windpark's argument concerning paragraph 49 of the judgment under appeal, which is based on a comparison of the statements made therein with those made in paragraph 9, must be rejected on the grounds set out in paragraph 24 above.

49 The fourth plea in law must therefore be rejected.

The plea alleging misuse of powers

50 Windpark argues, first, that it has not been established that the Commission exercised its discretion correctly. The fact that it acted in accordance with the opinion of the Thermie Committee is not conclusive, since it has not been established that the latter exercised its own discretion correctly.

51 Secondly, Windpark maintains that the Court of First Instance based its findings on the decision of the Commission's independent technical experts to place Windpark's project only on the reserve list. However, several members of the Thermie Committee are civil servants of the Member States, and that body may therefore be influenced by national economic considerations.

52 It is sufficient to note on this point that the Court has consistently held that misuse of powers is the adoption by a Community institution of a measure with the exclusive or main purpose of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (see *inter alia* Case C-84/94 *United Kingdom* v *Council* [1996] ECR I-5755, paragraph 69).

53 However, Windpark has not adduced any matter of fact or of law to substantiate the allegation of misuse of powers.

54 The fifth plea in law must therefore be rejected.

The plea alleging infringement of Article 175, third paragraph, Article 173, fourth paragraph, and Article 176 of the Treaty

55 Windpark maintains that the Commission failed to adopt a proper position in respect of its application for ECU 918 028 in funding. According to Windpark, its project satisfies the requirements for such financial support and the requisite funds are available.

56 It is sufficient to note in this regard that this plea is inadmissible in so far as it is based on Article 175 of the Treaty. The action before the Court of First Instance was not based on that provision. In so far as it questions the propriety of the decision of 13 January 1994, the action is confined to repeating the pleas in law which this Court has already rejected. However, pursuant to Article 51, first paragraph, of the EC Statute of the Court of Justice and Article 112(1)(c) of its Rules of Procedure, an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside, and also the legal arguments specifically advanced in support of the appeal. That requirement is not satisfied by an appeal which confines itself to repeating or reproducing word for word the pleas in law and arguments previously submitted to the Court of First Instance, including those based on facts expressly rejected by that court (see *inter alia* the order of 16 September 1997 in Case C-59/96 P *Koelman* v *Commission* [1997] ECR I-4809, paragraph 52).

57 In the light of the foregoing, the sixth plea in law and, consequently, the appeal in its entirety, must be dismissed.

Costs

58 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for. Since the appellant has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. Dismisses the appeal;

2. Orders the appellant to pay the costs.

Gulmann Moitinho de Almeida Puissochet

Delivered in open court in Luxembourg on 14 May 1998.

R. Grass C. Gulmann

Registrar President of the Third Chamber