JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
30 September 2003 *

In Case T-196/01,

Aristoteleio Panepistimio Thessalonikis, established in Thessaloniki (Greece), represented by D. Nikopoulos, lawyer, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by M. Condou-Durande, acting as Agent, with an address for service in Luxembourg,

defendant,

APPLICATION for annulment of Commission Decision C (2001) 1284 of 8 June 2001 withdrawing the assistance granted to the Laboratory for Forest Genetics and Improvement of Ligneous Plant Species at Aristoteleio Panepistimio Thessalonikis (the Aristotle University of Thessaloniki) by Commission Decision

* Language of the case: Greek.

C (96) 2542 of 25 September 1996 on the granting of assistance from the Guidance Section of the European Agricultural Guidance and Guarantee Fund under Council Regulation (EEC) No 4256/88 in connection with programme No 93.EL.06.023, entitled 'Pilot project to accelerate the regeneration of forests devastated by fire in Greece',

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

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

Registrar: I. Natsinas, Administrator,

having regard to the written procedure and further to the hearing on 1 July 2003,

gives the following

Judgment

Legal background

1 In order to strengthen economic and social cohesion within the meaning of Article 158 EC, Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the structural funds and their effectiveness and on coordination of their

activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 185, p. 9) entrusted to the structural funds inter alia the tasks of promoting the development and structural adjustment of the regions whose development was lagging behind, and speeding up the adjustment of agricultural structures and promoting the development of rural areas, with a view to reform of the common agricultural policy (Article 1(1) and Article 1(5)(a) and (b)). That regulation was amended by Council Regulation (EEC) No 2081/93 of 20 July 1993 (OJ 1993 L 193, p. 5).

2 The original version of Article 5(2)(e) of Regulation No 2052/88 provided that financial assistance by the structural funds could take the form of support for technical assistance and studies in preparation for operations. In the version amended by Regulation No 2081/93 it states that financial assistance from the structural funds may be provided in the form of support for technical assistance, including the measures to prepare, appraise, monitor and evaluate operations, and pilot and demonstration projects.

3 On 19 December 1988 the Council adopted Regulation (EEC) No 4256/88 laying down provisions for implementing Regulation No 2052/88 as regards the EAGGF Guidance Section (OJ 1988 L 374, p. 25). That regulation was amended by Council Regulation (EEC) No 2085/93 of 20 July 1993 (OJ 1993 L 193, p. 44).

4 The original version of Article 8 of Regulation No 4256/88 stated that assistance from the European Agricultural Guidance and Guarantee Fund ('the Fund') for the measures provided for in Article 5(2)(e) of Regulation No 2052/88 could cover inter alia carrying out pilot projects for promoting the development of rural areas, including the development and exploitation of woodland (first indent) and carrying out demonstration projects to show farmers the real possibilities of systems, methods and techniques of production which were in accordance with the objectives of the reform of the common agricultural policy (fourth indent). In the version amended by Regulation No 2085/93 that article provides that in

carrying out its tasks the Fund may devote up to 1% of its annual budget to financing inter alia pilot projects for adjusting agricultural and forestry structures and promoting rural development, and demonstration projects, including projects for developing and exploiting forests and projects for processing and marketing agricultural products, to show the real possibilities of systems, methods and techniques of production and management which are in accordance with the objectives of the common agricultural policy.

5 On 19 December 1988 the Council also adopted Regulation (EEC) No 4253/88 laying down provisions for implementing Regulation 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). That regulation was amended by Council Regulation (EEC) No 2082/93 of 20 July 1993 (OJ 1993 L 193, p. 20).

6 Article 23(2) of Regulation No 4253/88, as amended, provides with regard to financial checks:

'Without prejudice to checks carried out by Member States, in accordance with national laws, regulations and administrative provisions and without prejudice to the provisions of Article 206 of the Treaty or to any inspection arranged on the basis of Article 209(c) of the Treaty, Commission officials or servants may carry out on-the-spot checks, including sample checks, in respect of operations financed by the structural funds and management and control of systems.

Before carrying out an on-the-spot check, the Commission shall give notice to the Member State concerned with a view to obtaining all the assistance necessary. If

the Commission carries out on-the-spot checks without giving notice, it shall be subject to agreements reached in accordance with the provisions of the Financial Regulation within the framework of the partnership. Officials of the Member State concerned may take part in such checks.

The Commission may require the Member State concerned to carry out an on-the-spot check to verify the regularity of payment requests. Commission officials or servants may take part in such checks and must do so if the Member State concerned so requests.

The Commission shall ensure that any checks that it carries out are performed in a coordinated manner so as to avoid repeating checks in respect of the same subject-matter during the same period. The Member State concerned and the Commission shall immediately exchange any relevant information concerning the results of the checks carried out.'

7 Article 24 of Regulation No 4253/88, as amended, provides with regard to reduction, suspension and cancellation of assistance:

'1. If an operation or measure 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. Interest on account of late payment may be charged on sums not repaid in compliance with the provisions of the Financial Regulation and in accordance with the arrangements to be drawn up by the Commission pursuant to the procedures referred to in Title VIII.'

Facts

8 On 8 November 1995 Aristoteleio Panepistimio Thessalonikis (the Aristotle University of Thessaloniki, 'the applicant') applied to the Commission for Community assistance for a pilot project entitled 'Pilot project to accelerate the regeneration of forests devastated by fire in Greece' (Project No 93.EL.06.023, 'the project').

9 The project stated that its overall objective was principally, as its title indicates, to accelerate the regeneration of forests devastated by fire in Greece.

10 By Decision C (96) 2542 of 25 September 1996, addressed to the applicant, the Commission granted the project assistance from the Guidance Section of the Fund ('the award decision').

11 Article 1 of the award decision stated that responsibility for implementing the project, details of which were set out in Annex 1 to that decision, lay with the Laboratory for Forest Genetics and the Improvement of Ligneous Plant Species, a research laboratory attached to the applicant ('the Laboratory' or 'the beneficiary'). Article 2 of the award decision stated that the project was to be carried out between 1 September 1996 and 28 February 2001.

12 The first paragraph of Article 3 of the award decision gave the total eligible cost of the project as ECU 717 532 and the maximum Community contribution was set at ECU 538 149. The third paragraph of that article stated:

'If the final cost shows that the eligible expenditure is lower than that originally estimated, the amount of assistance will be reduced accordingly at the time the final payment is made'.

13 Article 4 of the award decision stated that 'the conditions for applying this decision are laid down in Annex 2'.

14 Annex 1 to the award decision contained a description of all the various aspects of the project in question: title, overall and specific objectives, implementation schedule, details of each operation designed to achieve the set objectives, information regarding the beneficiary (in this case the bank account is in the name of the Research Committee of the Aristotle University of Thessaloniki, 'the Committee'), the significance of the expected results for the Commission, the cost of the project and its total budget, as divided up between the bodies financing it. The Community contribution was to be 75% of the total cost.

15 Annex 2 to the award decision laid down the financial conditions relating to the award of the assistance. In particular, it stated that staffing and travel costs should relate directly to the implementation of the operation and that the amount of such costs should be sufficient to cover the expenses for the operation (point 2); that the Commission was authorised, for the purpose of checking the financial information concerning the various expenses, to ask to examine any original supporting document or a certified copy thereof and to carry out that examination on the spot, or to request that the documents in question be sent to it (point 5); that the beneficiary should keep available for the Commission, for five years from the last payment by the Commission, all originals of documents substantiating expenditure (point 6). Last, in point 10 of Annex 2, it was stated in essence that if any of the conditions laid down in that annex was not met, or if operations not provided for in Annex 1 were undertaken, the Commission could suspend, reduce or withdraw the assistance and require repayment of assistance already paid, in which case the beneficiary would be entitled to submit observations beforehand within a time-limit set by the Commission.

16 The beneficiary received from the Community from 1 September 1996 onwards a total of ECU 215 260, which was 40% of the Community funding provided for.

17 Following a proposal from Mr Panetsos, the Director of the Laboratory, sent to the Committee by letter of 19 November 1996, the Committee decided to entrust the management of the project to him.

18 On 5 June 1998 Mr Panetsos sent the Commission, under point 3 of Annex 2 to the award decision, an interim technical report on the state of progress on the project and on the expenditure already incurred in respect of each of the operations provided for ('the interim technical report'). He applied at the same time for payment of the second advance.

19 On 9 July 1998 the Commission acknowledged receipt of the interim technical report and informed the applicant that it had initiated a general audit of all the projects financed under Article 8 of Regulation No 4256/88, including the applicant's project. It also requested the applicant to send it, under point 5 of Annex 2 to the award decision, a formal application for payment of the second advance, a list of all the supporting documents relating to the eligible expenditure incurred in connection with implementation of the project, grouped according to the type of cost, and a certified copy of each of those supporting documents.

20 On 29 July 1998 the applicant sent the Commission documents confirming that the expenditure had been incurred in accordance with the award decision. It also highlighted the particular features of the programme in question, namely that the lifecycle of the trees in the regions selected for reforestation required the programme to be conducted without a break and hence the Commission to pay the second advance without delay. According to the applicant it was not possible to obtain alternative financing for the project even temporarily.

21 By letters of 12 and 14 October 1998 the Commission informed the applicant of its intention to conduct an on-the-spot inspection to see how the project was being carried out before payment of the second advance.

22 The on-the-spot inspection took place at the applicant's premises from 9 to 12 November 1998.

23 On 27 January 1999 the Commission inspectors submitted an inspection report on the project to the Commission.

24 By letter of 2 March 1999 the applicant reminded the Commission of the special features of the project and repeated its request for payment of the second advance, stating that any delay 'would prevent it from carrying out the work in compliance with the terms of the contract and would jeopardise the impact of the project'.

25 By letter of 21 April 1999 the Commission asked the applicant to produce a list of all the documents relating to the project, and a detailed report on the activities of all the people involved in the project in order to justify the staffing costs charged to the project, a copy of the contracts of employment of all those people and documentary evidence of the sums paid to certain people.

26 On 4 May 1999 the applicant again applied to the Commission for payment of the second advance.

27 In a letter of 12 May 1999 the applicant stressed the difficulties being encountered due to the delay in the payment of the second advance. It also drew the Commission's attention to the fact that a system had been introduced by the Committee to check on expenses incurred in connection with the project, and to the fact that it was not possible to charge particular expenses to specific operations in connection with the project. In addition, the applicant sent the Commission tables showing wages, consumables, equipment, travel costs and the total expenditure on the project and also 'detailed activity reports' and contracts of employment for the people involved in the project.

28 By letter of 2 June 1999 the Commission replied to the applicant's letter of 4 May 1999 informing it that Commission officials were examining the documents sent with the letter of 12 May 1999.

29 On 13 October 1999 the applicant again drew the Commission's attention to the delay in paying the second advance and stated that in the circumstances it was not in a position to implement the project in the way the Commission had decided.

30 By letter of 25 October 1999 the Commission informed the applicant that, under Article 24 of Regulation No 4253/88, as amended, it had conducted an examination of the financial assistance for the project and that, as that examination had revealed evidence of possible irregularities, it had decided to initiate the procedure provided for in that article and in point 10 of Annex 2 to the award decision ('the letter initiating the procedure'). It asked the applicant to produce within six weeks certified copies of all the administrative documents and accounts relating to the project and, in respect of each item of evidence of a possible irregularity, proof that it had complied with its obligations under the award decision.

31 On 3 December 1999 the applicant submitted its observations in response to the Commission's claims and sent the Commission certain supporting documents ('the observations on the letter initiating the procedure').

32 On 7 July 2000 a firm of auditors submitted to the Commission, at its request, an audit report on the project.

33 By decision of 8 June 2001, addressed to the Hellenic Republic and to the applicant and notified to the latter on 19 June 2001, the Commission, acting under Article 24(2) of Regulation No 4253/88, as amended, withdrew the financial assistance granted for the project and requested the applicant to repay in full the assistance already paid ('the contested decision').

34 In recital 9 in the preamble to the contested decision the Commission listed ten irregularities within the meaning of Article 24(2) of Regulation No 4253/88, as amended.

Procedure and forms of order sought

35 By application lodged at the Court Registry on 20 August 2001 the applicant brought the present proceedings.

36 By separate document lodged at the Court Registry on 3 September 2001 the applicant also lodged, under Articles 242 EC and 243 EC, an application for the suspension of the contested decision. By order of 18 October 2001 in Case T-196/01 R *Aristoteleio Panepistimio Thessalonikis* v *Commission* [2001] ECR II-3107, the President of the Court of First Instance dismissed the application for interim relief.

37 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure and, as a measure of organisation of procedure under Article 64 of the Rules of Procedure of the Court of First Instance, requested the parties to reply to written questions and to produce certain documents. The parties complied with those requests.

38 The parties presented oral argument and their replies to the questions from the Court at the hearing on 1 July 2003.

39 The applicant claims that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

40 The defendant contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

Law

41 The applicant relies on three pleas. The first plea alleges infringement of Article 24(2) of Regulation No 4253/88, as amended, in that the Commission only complained that there were various irregularities in the way the project had been managed and failed to take into account the way the project had actually been carried out. The second plea, comprising two limbs, alleges both a further infringement of Article 24(2) of Regulation No 4253/88, as amended, and breach of the principle of proportionality. The third plea alleges errors of assessment by the Commission in respect of the ten irregularities it established in the contested decision. The applicant submits its complaints regarding those ten irregularities in eight limbs. The applicant also claims that there was a breach of the obligation to provide a statement of reasons in respect of the first and eighth irregularities. The Court considers it appropriate to deal first with the third plea.

I — *The third plea, alleging errors of assessment by the Commission in respect of the various irregularities it established and, in the case of certain parts of that plea, breach of the obligation to provide a statement of reasons*

A — *Preliminary considerations*

42 The applicant contends in essence that the Commission did not conduct an appropriate examination of the way the project was being carried out before adopting the contested decision and that it made errors of assessment in considering that that examination had confirmed the existence of irregularities within the meaning of Article 24(2) of Regulation No 4253/88, as amended, in the management of that project. Moreover, with regard to some of the irregularities raised by the Commission in the contested decision, the applicant considers that the Commission failed to provide an adequate statement of reasons.

43 Before considering the merits of the applicant's arguments with regard to each of the irregularities raised by the Commission in the contested decision, the Court considers it necessary to set out some preliminary considerations regarding the legal background to the contested decision.

44 First, it should be pointed out that under Article 24(2) of Regulation No 4253/88, as amended, the Commission may, following a suitable examination of the case, within the meaning of Article 24(1), decide to adopt measures for repayment of the financial assistance if that 'examination reveals an irregularity and in particular a significant change affecting the nature or conditions of the operation or measure for which the Commission's approval has not been sought'.

45 Article 24(2) of Regulation No 4253/88, as amended, thus makes express reference to irregularities concerning the conditions under which the project

being financed has been implemented. Such conditions include the way it has been managed, so that generally the Commission may, as in the present case, rely on irregularities in the way the project has been managed in order to take steps to withdraw the assistance granted.

46 Second, the validity of the contested decision should be assessed on the basis of the provisions contained in the award decision and, in particular, the annexes to that decision, which included both a detailed description of the approved project (Annex 1) and the financial conditions under which the assistance was awarded (Annex 2) (see paragraphs 14 and 15 above).

47 Third, regarding the burden of proof, it is important to note that whilst the Commission is required, as part of the procedure laid down in Article 24 of Regulation No 4253/88, as amended, to demonstrate, following a suitable examination of the project, that there are irregularities in the way the project has been carried out which justify withdrawal of the assistance, it is none the less up to the beneficiary to carry out the project as approved and to ensure full compliance with the conditions under which the assistance has been awarded, as set out in the award decision and in the annexes thereto. Consequently, if during its examination the Commission discovers evidence of such irregularities the beneficiary of the assistance must be capable of showing that the project has been carried out in full compliance with the relevant provisions and, in particular, with the award decision. In particular, it is up to the beneficiary to show that expenditure has actually been incurred, that it relates directly to the various operations provided for under the project and that that expenditure is appropriate in the light of the objectives of the project.

48 In that context, the letter initiating the procedure plays a vital role. At that stage of the administrative procedure the Commission must, following its investigation, set down the various complaints regarding the way in which the project has been carried out in a manner that is sufficiently precise to enable the beneficiary to adduce the evidence described above.

49 For that purpose, in accordance with its duty to act in good faith, which stems from the obligation to carry out the project in a spirit of partnership and mutual trust, the beneficiary must provide the Commission with all the supporting documents and explanations which, in view of the special features of the project and the financial conditions laid down in the annexes to the award decision, may appear to it to be required in order to dispel the doubts the Commission has expressed. As has already been held in this context (Case T-216/96 *Conserve Italia* v *Commission* [1999] ECR II-3139, paragraph 71, and Case T-180/00 *Astipesca* v *Commission* [2002] ECR II-3985, paragraph 93), it is essential for the effective functioning of the system of inspection and evidence introduced in order to verify whether the conditions for granting assistance are met that applicants for, and beneficiaries of, such assistance submit to the Commission reliable information which is not liable to mislead it.

50 It is also appropriate, therefore, in the context of an examination of the validity of the contested decision, to assess whether the beneficiary of the assistance has fulfilled its obligation to provide the Commission with all the supporting documents and explanations which, in view of the special features of the project and the financial conditions laid down in the annexes to the award decision, may appear to it to be required in order to ensure that the project has been carried out properly.

51 Fourth, although the project in question was co-financed by national resources and is therefore subject to national rules, the legal context of the contested decision is that determined by Community law, that is to say, in particular, Article 24(2) of Regulation No 4253/88, as amended, and the award decision. The beneficiary cannot therefore claim before the Commission merely that it carried out the approved project in accordance with the national rules.

52 Fifth, as regards the applicant's complaint that the Commission failed to provide adequate reasons in the contested decision concerning certain irregularities, it should be pointed out that under Article 253 EC the reasons stated for a measure must disclose clearly and unequivocally the reasoning of the Community authority which adopted it, so as to make the persons concerned aware of the

reasons for the measure and thus enable them to defend their rights, and so as to enable the Court to exercise its power of review. The extent of the obligation to state reasons depends on the nature of the measure in question and the context in which it was adopted, and on all the legal rules governing the matter in question (Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraphs 15 and 16, and Case T-126/97 *Sonasa* v *Commission* [1999] ECR II-2793, paragraph 64).

53 In particular, since a decision to reduce Community financial assistance entails serious consequences for the beneficiary of that assistance, the statement of the reasons for that decision must clearly show the grounds justifying a reduction in the amount of aid initially authorised (Case T-182/96 *Partex* v *Commission* [1999] ECR II-2673, paragraph 74, and *Sonasa* v *Commission*, cited above, paragraph 65).

B — *The first and second irregularities, concerning Mr Panetsos's additional remuneration and the expenses charged in respect of some of his activities*

1. The contested decision

54 In the first indent of recital 9 in the preamble to the contested decision the defendant noted the following:

'A monthly sum of GRD 450 000 was charged to the project for the services of Mr Panetsos, who was in charge of the project, for the period from September

1996 to August 1997, which represents a total of GRD 5 400 000. Since, Mr Panetsos continued to receive his salary of GRD 689 000/month throughout that period, the sum of GRD 450 000/month is a bonus and not an actual cost of the project. No supporting document or clarification has been submitted by the beneficiary to justify charging that additional salary paid to Mr Panetsos to the project, such as, in particular, a copy of Mr Panetsos's contract, documents substantiating the payment or documents showing why that expense was charged to the project.' (First irregularity.)

55 The second indent of recital 9 in the preamble to the contested decision reads as follows:

'During the first four months of the project, from September to December 1996, the only expenses submitted were the monthly payments of GRD 450 000 to Mr Panetsos. The operations scheduled for those four months in the award decision involved travel to the various project sites and the use of cars. However, no other expenses by way of duty travel, consumables, or salaries of other persons involved in the project were declared. Consequently, the sums charged during that period do not relate to any activity connected with the project. The beneficiary has not submitted any documents to prove that that expenditure was related to the objectives of the project.' (Second irregularity.)

2. Arguments of the parties

56 The applicant considers, on the one hand, that the defendant's claims in respect of those two irregularities are wrong in law and in fact.

57 It considers that Mr Panetsos's additional remuneration was paid in accordance with the award decision. It points out that Mr Panetsos was the principal expert and the scientist in charge of the project and that he performed his tasks accordingly. It draws attention to the fact that the Committee approved, by decision of 11 December 1996, the Commission's choice to grant financing for the project under Mr Panetsos's responsibility. The latter's role in the implementation of the project was also clear from the interim technical report and the detailed activity report sent to the Commission on 12 May 1999.

58 There was therefore no valid reason to request production of a special report on Mr Panetsos's activities before the first phase of the project. The only way in which doubt could have been cast on the propriety of the remuneration received by Mr Panetsos would have been to prove either that the project had not been carried out or that Mr Panetsos had not taken part in it, no evidence of which was revealed during the on-the-spot inspection.

59 The applicant states that it had no reason to dispute the amount of remuneration paid to Mr Panetsos. First, that remuneration had been approved in the award decision, second, it was in accordance with the national legislation governing the remuneration of university researchers in charge of research programmes and, third, it was appropriate, since it was for services provided by an expert of the quality of the person concerned who, moreover, was well known to Commission officials because he had already taken part in several projects in the area of agricultural policy. Moreover, the applicant seeks to draw attention to the fact that, under national legislation, there are significant institutional safeguards with regard to the management of expenditure incurred by universities.

60 The applicant also asserts that, since the on-the-spot inspection did not show that the project had not been carried out or that Mr Panetsos had not taken part in it, the defendant was required to state in detail in the contested decision the reasons why Mr Panetsos's remuneration was not paid in conformity with the award

decision. It should also have indicated the sum which it considered Mr Panetsos should have received.

61 The defendant rejects the applicant's arguments.

3. Findings of the Court

(a) First irregularity: Mr Panetsos's additional remuneration

The error of assessment

62 The project made provision in respect of each operation, on the one hand, for expenses relating to services to be provided by experts and, on the other hand, for expenses relating to administrative staff. The defendant does not deny that it is clear both from the project approved by the Commission and from the various reports and additional information that the applicant submitted to it during the administrative procedure that Mr Panetsos, in his capacity as the Director of the Laboratory, was both the person in charge of managing the project and the principal scientific expert responsible for carrying it out.

63 Contrary to what the applicant appears to assert, the complaint made by the Commission in the contested decision does not therefore, in principle, concern the charging to the project Mr Panetsos's remuneration as such — which, it is

agreed, was provided for in the project — or the amount of that remuneration. Moreover, the defendant has not denied before the Court that Mr Panetsos's remuneration was provided for in the budget for the project.

64 However, in the context of that first irregularity, the defendant is complaining that during the administrative procedure the applicant did not provide it with documents enabling it to establish that that remuneration corresponded to activities which Mr Panetsos engaged in specifically in connection with the implementation of the project and for which he was not already being paid through his salary as the Director of the Laboratory.

65 In that connection, it should be pointed out that the Commission stated in Annex 2, points 2 and 5, to the award decision, on the one hand, that staffing costs should be directly related to the implementation of the operation and, on the other hand, that it was entitled to ask to see any original, or a certified true copy, of any supporting documents in order to check the financial reports relating to the various payments.

66 On the basis of those provisions of the award decision and in view of the relevant provisions of the applicable legislation and the duty to act in good faith (see paragraph 49 above), the applicant should have known that it was required to be in a position to submit to the Commission documents that would show that the expenses incurred were genuine, that they were directly connected with implementation of the various operations provided for under the project, and that the amount of those expenses was appropriate.

67 It follows therefore that, contrary to what the applicant contends, the Commission was entitled to ask it to establish, on the basis of documents such as those mentioned in the first indent of recital 9 in the preamble to the contested decision, that Mr Panetsos's remuneration was paid in respect of activities

specifically connected with implementation of the project and for which he was not already being paid through his salary as the Director of the Laboratory.

68 The applicant does not deny that, as the Commission stated in the first indent of recital 9 in the preamble to the contested decision, it did not provide the Commission with either the contract of employment relating to the services which Mr Panetsos was to provide in connection with the project, or any other documents that could substantiate Mr Panetsos's remuneration, or documents proving that the additional remuneration had actually been paid.

69 Also, although it is true that in its letter of 12 May 1999 and in its observations on the letter initiating the procedure the applicant provided the Commission with details of Mr Panetsos's activities in connection with the project, it failed to provide any explanation, despite being asked to do so by the Commission in the letter initiating the procedure, of how it was possible to check that the remuneration charged to the project corresponded to activities Mr Panetsos had undertaken specifically in connection with implementation of the project and for which he was not already being paid through his salary as the Director of the Laboratory.

70 The Commission did not therefore make an error of assessment in concluding in the contested decision that the applicant had not submitted to it any valid supporting document or clarification in that regard.

71 That conclusion cannot be undermined by the applicant's argument that, in essence, in order to cast doubt on the propriety of Mr Panetsos's remuneration the Commission should have shown either that the project had not been carried out or that Mr Panetsos had not taken part in it. First of all, the applicant's argument fails to take into account the fact that it is for the beneficiary of the assistance to show that the project in question has been carried out in full compliance with the relevant provisions and, in particular, with the award

decision (see paragraph 47 above). Second, since the term 'irregularity' within the meaning of Article 24 of Regulation No 4253/88, as amended, includes irregularities affecting the management of the project (see paragraph 45 above), the applicant cannot validly contend that the sanctions provided for in that provision should only apply where the operation being financed has not been carried out in full or in part. It is not sufficient for the applicant to show that the project approved by the Commission in the award decision has actually been properly carried out. The applicant must also be in a position to prove that every item of the Community contribution corresponds to an actual service that was essential for the implementation of the project.

72 Nor can the applicant merely rely on the fact that it acted in accordance with national law and that the expenses incurred were subjected to a very strict system of verification at national level. First, save where there is a specific provision of Community law in that regard, it is only in relation to Community law, in particular in relation to Article 24 of Regulation No 4253/88, as amended, and the award decision together with its annexes, that the propriety of the applicant's conduct with regard to the award of Community assistance should be measured (see paragraph 51 above). Second, it should be remembered (see paragraph 65 above) that the financial provisions in the award decision make clear that in order for the financial reports relating to the various payments to be checked the applicant was required to be in a position to submit to the Commission documents that would show that the expenses incurred were genuine, that they were directly connected with implementation of the various operations provided for under the project, and that the amount of those expenses was appropriate. Although the Commission may consider it appropriate to take into account verification procedures at national level, the fact remains that, at the current stage of Community legislation and on the basis of the financial provisions in the award decision, the Commission was entitled to ask the applicant to produce supporting documents enabling it to conduct its own checks on the expenditure charged to the project.

73 In the light of the above, it must be concluded that the Commission did not make an error of assessment in respect of the first irregularity raised in the contested decision.

Breach of the obligation to state reasons

74 As regards the applicant's complaint that the defendant did not set out in detail the reasons for which it considered that Mr Panetsos's remuneration had not been paid in compliance with the award decision, it should be noted that in the first indent of recital 9 in the preamble to the contested decision the Commission stated that Mr Panetsos had received, in addition to his normal salary, remuneration for his duties as the person in charge of the project, which could not be regarded as a genuine cost of the project, since the applicant had not supplied any supporting document or clarification to justify charging that additional salary to the project. Therefore, in the light of the context of the administrative procedure that preceded the adoption of the contested decision, the Commission set out sufficiently clearly in that decision why it considered that Mr Panetsos's additional remuneration did not constitute a genuine cost of the project and could therefore not be charged to the project.

75 As regards the applicant's complaint that the defendant did not state the sum that Mr Panetsos should have received, it should be noted first of all (see paragraph 47 above) that it was for the applicant to prove that there was a direct link between Mr Panetsos's specific activities in connection with the project and the expenses charged in that regard. Contrary to what the applicant contends, it was not incumbent upon the Commission to provide such proof since, clearly, it did not have the information needed in order to make the calculations suggested by the applicant. It should also be observed that the Commission did not cast doubt on Mr Panetsos's participation in the project or the amount of his remuneration as such, but it complained that there was no evidence that that remuneration was for activities which Mr Panetsos engaged in that were directly connected to specific aspects of the project for which he was not already receiving remuneration through his salary as the Director of the Laboratory, a point which, in the light of the context of the administrative procedure, is adequately explained in the contested decision (see preceding paragraph). There cannot therefore be any complaint, as the applicant suggests, that the Commission did not mention the sum Mr Panetsos should have received.

76 Consequently, the Commission provided adequate reasons in the contested decision on that point.

(b) Second irregularity: expenses relating to some of Mr Panetsos's activities

77 As stated in points 4 and 7 of Annex 1 to the award decision, the project consisted of nine different operations. Implementation of five of those operations was to start during the first three months of the project. As part of the first operation areas of burnt forest were to be selected for the purposes of regeneration of forests devastated by fire. In order to carry out that operation, which was scheduled to take place during the first four months of the project, the award decision provided for the expenses of experts, administrative and technical staff, and travel expenses. As part of the second operation, which was scheduled to take place between the second and thirteenth months of the project and during which, in particular, work in preparation for carrying out the project of forest regeneration as such was due to take place, the project made provision for expenditure on the construction of fences and the creation of fire breaks and access routes, in addition to the costs of experts, administrative and technical staff and travel expenses. Lastly, as part of the third to the fifth operations, which were scheduled to take place during the third and fourteenth months of the project and during which the first part of the project as such was due to be carried out, in addition to the costs of experts, administrative and technical staff and travel expenses, the project provided for various expenses in connection with forestry work.

78 It is agreed between the parties that, contrary to what was thus provided in the award decision, during the first four months of implementation of the project, namely between September and December 1999, only Mr Panetsos's monthly remuneration of GRD 450 000 was charged to the project.

79 Faced with those facts in the letter initiating the procedure, the applicant explained in essence in its observations on that letter that it had not been possible to start the project until later than scheduled and that therefore Mr Panetsos had had to undertake additional work in preparation for implementation of the project. In that connection, it should be observed that, even if that argument were well founded, under paragraph 1 of Annex 2 to the award decision the Commission was to be informed in advance of any amendment to the project, including extension of the project's various operations, and that such amendments could be made only after the Commission had given its agreement. The applicant does not even argue that it informed the Commission of such an amendment to the implementation of the project.

80 The Commission was therefore entitled to conclude in the contested decision that the project had not been carried out during the first four months according to the conditions laid down in the award decision, and that the applicant had not shown that Mr Panetsos's remuneration in respect of those four months was for activities directly connected with the implementation of the project.

81 Consequently, the Commission did not make an error of assessment in respect of the second irregularity raised in the contested decision.

C — *The third and sixth irregularities: Mrs Babaliti's remuneration and travel expenses*

1. The contested decision

82 In the third indent of recital 9 in the preamble to the contested decision, the Commission noted the following:

'A sum of GRD 250 000 a month was charged to the project for the period from March 1997 to February 1998, plus extras for April and December 1997, totalling GRD 3 356 780, in respect of the services of Mrs Babaliti. No activity report substantiating Mrs Babaliti's services was submitted to the Commission's inspectors during the on-the-spot inspection. The additional information sent by the beneficiary does not substantiate the sum declared in relation to the objectives of the project.' (Third irregularity.)

83 In the sixth indent of recital 9 in the recital to the contested decision the Commission noted the following:

'The beneficiary declared a sum of GRD 437 578 in respect of Mrs Babaliti's duty travel expenses. Since her tasks as set out in her contract were to analyse data and produce graphics, the need for her to visit the project sites has not been substantiated. The beneficiary has not submitted any documents to justify such duty travel in relation to the objectives of the project.' (Sixth irregularity.)

2. Arguments of the parties

84 As regards the third irregularity, the applicant refers to Mrs Babaliti's contracts of employment dated 26 February, 22 May and 17 December 1997 and the detailed report on Mrs Babaliti's activities, attached to the letter of 12 May 1999, and to the explanations contained in its observations on the letter initiating the procedure, and contends that Mrs Babaliti's duty travel was described in detail in those documents. It states, in particular, that it is clear from the detailed report on Mrs Babaliti's activities that her work had been to help process data using statistical methods, to set up a database and to analyse data. During the on-the-spot inspection the Commission's inspectors found that all the data, analyses, plans and the text of the technical report had been computerised. That

shows that Mrs Babaliti did actually carry out those tasks and that the remuneration paid to her was justified. In addition, it is clear from the detailed report on Mrs Babaliti's activities that she had subsequently been entrusted with the tasks of drawing up and sending to the Committee all the documents to support the project expenditure.

85 As for the sixth irregularity, the applicant refers to the travel expenses forms and the detailed report on Mrs Babaliti's activities that were annexed to the letter of 12 May 1999, and to the explanations contained in its observations on the letter initiating the procedure. In its opinion, it is clear from these that Mrs Babaliti was required to travel to the project sites in connection with her activities as a forestry expert, in particular in order to view the pilot areas, to check data and to collect more data to be recorded and analysed.

86 The defendant contends, as regards the third irregularity concerning Mrs Babaliti's remuneration, that her contracts of employment did not stipulate sufficiently precisely the duties that she was to perform in connection with the project. The applicant's arguments cannot be accepted, in the Commission's opinion, since they would preclude checks on whether services were needed in order to carry out the project, on whether each member of the staff recruited actually provided any services and, hence, on whether the expenditure declared was directly related to the specific requirements of the project. In those circumstances the defendant considers that no report and no evidence of Mrs Babaliti's services were submitted.

87 As regards the sixth irregularity, concerning Mrs Babaliti's travel expenses, the defendant denies in its defence that it received any documentary evidence of these whatsoever. Following a written question from the Court, the defendant admitted, however, that it had been mistaken and that it did receive the travel expenses forms referred to by the applicant during the administrative procedure. It considers, however, that due to their brief nature and since they were not

accompanied by reports describing the precise nature of the tasks performed, the documents did not prove that Mrs Babaliti did actually travel for the purposes of the project. Lastly, the defendant points out that there are no supporting documents relating to hotel expenses and subsistence.

3. Findings of the Court

(a) Third irregularity: Mrs Babaliti's remuneration

Introduction

88 As already stated in paragraphs 65 and 66 above, on the basis of the provisions of the award decision the applicant should have known that it was required to be in a position to submit to the Commission supporting documents and explanations that would show that Mrs Babaliti's remuneration, as charged to the project, was directly connected with implementation of various operations provided for under the project, and that the amount of those expenses was appropriate in relation to the objectives of the project.

89 It is in that context that consideration should be given to whether the Commission made an error of assessment in stating in the third indent of recital 9 in the preamble to the contested decision that Mrs Babaliti's remuneration could not be charged to the project since 'no activity report substantiating Mrs Babaliti's services [had been] submitted to the Commission's inspectors during the on-the-spot inspection' and that 'the additional information sent by the beneficiary [did] not substantiate the sum declared in relation to the objectives of the project'.

90 In that connection, it is appropriate to summarise in detail the relevant facts as they appear from the file.

Detailed summary of the relevant facts

91 First of all, it is appropriate to note that in point 7 of Annex 1 to the award decision the project made provision, in respect of each operation, for staffing expenses for the recruitment of 'assistants' and 'administrative staff'.

92 On 9 July 1998, when the Commission informed the applicant that it had initiated a general audit, including an audit of the applicant's project, it requested the applicant to send it inter alia a 'list of all the supporting documents relating to the eligible expenditure [that had been] incurred in connection with [implementation of] the project, grouped according to the type of cost', together with a 'certified true copy of each supporting document relating to the project'. In reply to that letter, the applicant submitted to the Commission on 29 July 1998 various tables relating to the expenses charged to the project. The on-the-spot inspection took place from 9 to 12 November 1998.

93 Subsequently, by letter of 21 April 1999 the Commission requested the applicant to produce inter alia a 'list of all the supporting documents relating to [the] application for payment [of the second advance], classified according to each of the operations and sub-operations provided for in point 7 of Annex 1 to the contested decision, that list to be presented in such a way that direct links could be established with the statement of expenditure and the invoices... sent previously', 'a detailed report on the activities of all the people who had taken part in the project (duties, tasks completed, time taken...), in order to justify the staffing costs charged to the project (salaries and social security contributions, contracts of employment, travel and accommodation expenses)' and a 'copy of the contracts of employment of all the people who had taken part in the work at the different project sites'.

94 In reply, by letter of 12 May 1999 the applicant submitted to the Commission first of all, with regard to Mrs Babaliti's remuneration, a table giving for the period from 1 September 1996 to 31 October 1998, operation by operation, the number of months for which Mrs Babaliti had received remuneration, together with the monthly amount and total remuneration. The table also showed, under 'duties', that Mrs Babaliti was working as an 'assistant'.

95 Second, the applicant submitted to the Commission a 'detailed activity report' in which the duties and tasks performed by Mrs Babaliti were described as follows:

'Babaliti Konstantina. Forestry worker. She took part in planning the sampling and recording of data, and in setting up a database on the computer of the central office. She also carries out statistical analyses of all the data collected on site and helped to prepare the interim technical report. She visits pilot areas, providing assistance in determining the impact of the various tasks and in collecting data. She is engaged in the major task of preparing the supporting documents for each payment and expense, in accordance with the procedures and regulations [of the] Committee'.

96 Third, the applicant sent to the Commission copies of Mrs Babaliti's contracts of employment, which mentioned in particular the project and, except for one of the contracts, gave the following description of her duties: 'data processing and graphics'.

97 The Commission noted the following in the letter initiating the procedure:

'2.1 No activity report substantiating Mrs Babaliti's services was submitted to the Commission's inspectors during the on-the-spot inspection. It is clear from

her contract that she was recruited to carry out tasks relating to analysis of data and graphics work. No other activity is provided for in the contract.

2.2 The additional information sent by the beneficiary dated 12 [May] 1999 giving a brief description of the tasks carried out by Mrs Babaliti in connection with the project does not fully correspond to the description of the tasks set out in her contract and, moreover, does not substantiate the sum declared'.

98 In its observations on the letter initiating the procedure the applicant replied in essence that Mrs Babaliti had been recruited in accordance with the proper national legal procedure and that the relevant contracts had been made available to the inspectors at the time of the on-the-spot inspection. The applicant explained that duties were always described succinctly in such contracts but that the person in charge of the project had the right and the duty, as stated in the contract, to use the staff allocated to the project in the most rational way, depending on their qualifications and according to need.

99 The applicant also described in greater detail and more fully than in the letter of 12 May 1999 Mrs Babaliti's duties, her specialist training as a forestry engineer and her relevant professional experience, and the duties she had performed in connection with the project. The applicant stated in particular in that context that from March 1997 to February 1998 Mrs Babaliti '[had] participated in delimiting the pilot areas, devising sampling procedures, drawing up instructions in preparation for receiving material, and in setting up a database for all the information obtained from the six pilot areas, covering a total of 36 hectares'. The applicant also explained that 'Mrs Babaliti [had] processed all the data using statistical methods (measurements of thousands of plants for the six pilot areas), from which she [had] prepared the graphics shown in the interim report' and that, in addition, 'the data collected from the pilot areas [had been] analysed using

various statistical methods in order to present them in the form of publications in reputable periodicals or at conferences'. The applicant explained that, 'as she was the only assistant with training in forestry, Mrs Babaliti [had] taken part in checking various operations on the basis of samples, [and] in particular checking the results of the measurements recorded'.

100 Furthermore, also in its observations on the letter initiating the procedure, the applicant stated that Mrs Babaliti was responsible for 'preparing all the supporting documents required in respect of staff travel, the delivery of consumables, the employment of workers in the pilot areas and the employment of specialists', that she had 'taken part in the drawing up of contracts for work and other formal documents submitted to the Committee... for approval' and that she '[had] taken responsibility for providing documents supporting the way in which expenses approved by the Committee were incurred'. Lastly, the applicant stated that 'it would have been impossible to carry out the project without a full-time assistant'.

101 Finally, in the contested decision the Commission adopted the view already cited in paragraph 82 above.

Analysis of the facts

102 First of all, it is clear from the above account of the facts that even though, on the basis of the information in the file, it is correct that, as the Commission stated in the third indent of recital 9 in the preamble to the contested decision, no report on Mrs Babaliti's activities was submitted to the Commission's inspectors 'during the on-the-spot inspection', the applicant subsequently provided in its letter of 12 May 1999 a description of the duties which Mrs Babaliti had performed in

connection with the project. The fact that that report was not available during the on-the-spot inspection is not sufficient to prove that there was an irregularity, since later in the administrative procedure the applicant provided supporting documents and adequate explanations to substantiate those expenses.

103 Next, in the letter initiating the procedure the Commission criticised the detailed activity report attached to the letter of 12 May 1999. It stated, first, that the report contained only a 'brief description of the tasks carried out by Mrs Babaliti' and, second, that the tasks '[did] not fully correspond to the description of the tasks set out in her contract'. The Commission repeated those complaints in the contested decision, stating, in respect of the first, that the additional information sent by the applicant did not substantiate the sum declared in relation to the objectives of the project. The Commission did not deny, however, either that the services provided by Mrs Babaliti were genuine or the probative value as such of the documents provided by the applicant during the administrative procedure.

104 It is therefore necessary to consider whether those two complaints made by the Commission with regard to Mrs Babaliti's remuneration were well founded.

— The first complaint, alleging that the applicant did not submit a sufficiently detailed report to the Commission concerning Mrs Babaliti's activities

105 In response to the letter initiating the procedure, the applicant described the tasks performed by Mrs Babaliti in substantially greater detail in its observations on that letter.

106 In that regard, it is clear from point 4 of Annex 1 to the award decision that the first five operations in connection with the project — operations that were to be carried out during the first fourteen months of its implementation — related mainly to the selection of areas of forest, development of those areas in terms of infrastructure (constructing fences and access routes), preparation of an inventory of the vegetation found on those areas, work in preparation for the reforestation of those areas (felling, removal of vegetation) and collecting statistics.

107 It is apparent from the description of her tasks supplied to the Commission that Mrs Babaliti carried out a variety of work in direct relation to those objectives of the project. It is clear in essence that Mrs Babaliti supervised the delimitation of the pilot areas, prepared and collected data with regard to information relating to the six pilot areas, processed those data using statistical methods, participated in checking various operations on the basis of samples and carried out various administrative tasks in connection with the actual implementation of the various operations in connection with the project by other members of staff and by outside contractors. The applicant also stated that the tasks described related to the period between March 1997 and February 1998. Furthermore, annexed to its letter of 12 May 1999, the applicant submitted to the Commission with regard to Mrs Babaliti's remuneration a table giving, for the period from 1 September 1996 to 31 October 1998, operation by operation, the number of months for which Mrs Babaliti had received remuneration, together with the monthly amount and total of that remuneration.

108 It was not for the Court to substitute its assessment for that of the Commission as to whether, by supplying a more detailed description of the tasks in its observations on the letter initiating the procedure, the applicant provided adequate evidence, as it was required to do (see paragraph 88 above), that there was a direct link between, on the one hand, the expenses relating to Mrs Babaliti's remuneration and, on the other hand, the various operations provided for under the project, and whether the amount of those expenses was appropriate in relation to the objectives of the project.

109 It is clear, however, from the documents in the file, that the simple conclusion which the Commission drew from them in the contested decision, namely that the applicant had submitted 'no activity report substantiating Mrs Babaliti's services' and that the 'additional information sent by the beneficiary [did] not substantiate the sum declared in relation to the objectives of the project', a conclusion which was not accompanied by any analysis of the information sent, cannot be upheld.

110 By contrast, it is apparent from the above analysis that the applicant supplied detailed information to show, on the one hand, that there was a direct link between the expenses relating to Mrs Babaliti's remuneration and the various operations in connection with the project and, on the other hand, that the amount of those expenses was appropriate in relation to the objectives of the project.

111 In reply to the Court's written questions as to what additional information the applicant should have supplied in that regard, the defendant stated that the applicant should have submitted 'detailed reports showing on a monthly basis or for each period Mrs Babaliti's precise work and progress, in order for the remuneration paid to her to be checked and substantiated'.

112 The Commission is entitled to ask beneficiaries of Community assistance for such information if it considers that it is needed in order to establish that the project has been properly implemented. It may indeed be necessary, in order to check that there is a direct link between the staffing expenses charged to the project and the various operations provided for under the project and whether the amount of those expenses is appropriate in view of the objectives of the project, to have reports containing, for each month or for any other specific period, detailed information on the progress achieved in connection with the project, which is being financed by Community resources.

113 What is more, the beneficiary of the assistance, being responsible for the management of the project, is in the best position to know with what information it should supply the Commission in order to justify the expenses charged to the project (see to that effect Case T-81/95 *Interhotel* v *Commission* [1997] ECR II-1265, paragraph 47).

114 As regards the present case, however, it should be noted that in the only document in which the Commission did specify to some extent the content those reports should have, namely the letter of 21 April 1999 (see paragraph 93 above), it asked the applicant to supply a report stating the duties performed, tasks completed and time taken. In its letter of 12 May 1999 and in its observations on the letter initiating the procedure, the applicant plainly did provide detailed information on the duties being performed and the tasks completed by Mrs Babaliti, and the time taken.

115 The applicant thus responded, in accordance with its duty to act in good faith, which stems from the obligation to carry out the project in a spirit of partnership and mutual trust, to the requests for information made by the Commission regarding Mrs Babaliti's activities. Even though, as was stated in paragraph 112 above, the Commission was entitled to request more information, for example the information referred to in its replies to the Court's written questions, the applicant had already supplied detailed information in that respect and none of the documents in the file shows that the applicant was not in a position to meet such requests, or was not prepared to do so, had the requests been made to it at the appropriate time during the administrative procedure.

116 If, in that particular situation, the Commission considered that in order to carry out a suitable examination of the project it needed more detailed information than that already provided, it should have given the beneficiary sufficiently precise indications to enable the latter to give it that information before the procedure was closed and the assistance withdrawn (see paragraphs 47 and 48

above). It is for the beneficiary of the assistance to provide the Commission with evidence that the expenses incurred are justified in relation to the objectives of the project. Also, as it was responsible for the management of the project, the applicant was, in principle, in the best position to know what information it should supply to the Commission (see paragraph 113 above). However, as is apparent from paragraphs 105 to 107 above, in this particular case the applicant had replied in detail to the Commission's requests. If in such a case the Commission considered none the less that it needed to obtain further information to check whether the project was being properly implemented, it should, unless it was to make the burden of proof on the applicant impossible, have given it sufficiently precise indications as to what information it still required and should not merely have rejected the information submitted as being inadequate.

117 Consequently, because it had failed to give sufficiently precise indications, the Commission could not properly complain in the contested decision that the applicant had not submitted to it a report on Mrs Babaliti's activities which was sufficiently detailed to substantiate the charging of her remuneration to the project, nor could it complain that the additional information the applicant sent it during the administrative procedure did not substantiate the sum declared.

— The second complaint, alleging that the activities described in the letter of 12 May 1999 did not correspond to Mrs Babaliti's duties as set out in her contracts of employment

118 In its observations on the letter initiating the procedure the applicant gave inter alia the following two explanations: first, the applicant explained that as a rule contracts it concluded contained only a brief description of the duties of the employees concerned and that, under the contract, Mr Panetsos had the right and the obligation, on the basis of the contract, to specify those duties in greater detail so that the project would be carried out under optimum conditions; second, the

applicant described Mrs Babaliti's duties fully and in detail, explaining that, contrary to what might appear at first sight from the brief description given in the contract, the person concerned was responsible for a large range of tasks in connection with the project (see paragraph 99 above).

119 Consequently, during the administrative procedure the applicant did show the Commission that the contractual relationship with Mrs Babaliti was not limited to the duties set out in her contracts of employment.

120 In such circumstances, the Commission could not, without inspecting the information submitted by the applicant during the administrative procedure, dismiss as inadequate proof all the information supplied by the applicant, in addition to that contained in her contracts of employment, with regard to the tasks Mrs Babaliti had carried out, adhering solely to the reasoning contained in the letter initiating the procedure.

121 Consequently, the Commission was also wrong to hold against the applicant the fact that the activities described in the letter of 12 May 1999 did not correspond to Mrs Babaliti's duties as set out in her contracts of employment.

122 In the light of the above, the Commission made an error of assessment in respect of the third irregularity raised in the contested decision.

(b) Sixth irregularity: Mrs Babaliti's duty travel expenses

123 In point 2 of Annex 2 to the award decision the Commission stated that 'travel costs should relate directly to the implementation of the operation and the amount of such costs should be sufficient to cover the expenses for the operation'.

124 The applicant should therefore have known that it was required to be in a position to submit to the Commission documents that would show that there was a direct connection between Mrs Babaliti's duty travel expenses and the implementation of the various operations provided for under the project, and that the amount of those expenses was appropriate in relation to the objectives of the project.

125 It is in that context that consideration should therefore be given to whether the Commission made an error of assessment when it stated in the contested decision that Mrs Babaliti's duty travel expenses could not be charged to the project because, in view of the description of her tasks given in her contracts of employment, there was no need for her to travel to project sites in connection with her duties, and in view of the failure of the applicant to submit any documents justifying such travel in the light of the objectives of the project.

126 In that regard, it is apparent from the file that, in its letters of 9 July 1998 and 21 April 1999, the Commission asked the applicant to provide it inter alia with supporting documents relating to all the expenditure charged to the project (see paragraphs 92 and 93 above) and also Mrs Babaliti's contracts of employment. Attached to its letter of 12 May 1999, in connection with Mrs Babaliti's duty travel expenses, the applicant submitted to the Commission, in addition to the detailed activity report and the contracts of employment mentioned in paragraphs 95 and 96 above, a table headed 'Classification of travel expenses in respect of each operation'.

127 Subsequently, in the letter initiating the procedure the Commission noted the following with regard to Mrs Babaliti's duty travel expenses:

'Since [Mrs Babaliti's] tasks were to analyse data and produce graphics, the need for her to visit the project sites does not appear to be demonstrated.'

128 In its observations on the letter initiating the procedure, the applicant stated (see paragraph 99 above) that Mrs Babaliti's duties were those of a forestry engineer and set out the various tasks that had been entrusted to her in addition to those expressly mentioned in her contracts of employment. The applicant considered on that basis that Mrs Babaliti's journeys were necessary for the purposes of implementing the project. The applicant also sent the Commission by way of supporting documents the forms relating to Mrs Babaliti's travel, which were signed by Mr Panetsos and on which he had certified that the information supplied was correct.

129 First of all, it is clear from the above that on the basis of the job description contained in Mrs Babaliti's contracts of employment on its own it was reasonable for the Commission to have doubts as to the need for Mrs Babaliti to travel to the various project sites. As was stated in paragraph 96 above, those contracts merely stated that Mrs Babaliti was required to analyse data and produce graphics, tasks which at first sight do not require the person concerned to visit the various sites, and the applicant does not deny this.

130 However, as was stated in paragraphs 95 and 103 above, in its letter of 12 May 1999 and in its observations on the letter initiating the procedure, the applicant provided the Commission with a full and detailed description of Mrs Babaliti's duties. The applicant thus demonstrated during the administrative procedure that

the contractual relationship with Mrs Babaliti was not limited to the duties set out in the terms of her contracts of employment (see paragraph 119 above).

131 In the letter initiating the procedure and in the contested decision the Commission failed to take that information into account and merely reasserted that the duties set out in the contract did not correspond to the tasks carried out.

132 It is true that if the duties set out in the contract of a person working on a project financed by Community resources do not correspond to the tasks which that person has actually carried out and for which expenses are charged this may provide evidence of the existence of an irregularity within the meaning of Article 24 of Regulation No 4253/88, as amended, if that discrepancy makes it impossible to verify whether such expenses need to be incurred for the purposes of carrying out the project. The Commission was therefore correct in principle to raise that matter during the administrative procedure in order to enable the applicant to provide the relevant explanations. The Commission could also, for example, have stipulated in the conditions attached to award decisions, that a detailed description of the duties of the people working on the project — a description which beneficiaries are required to provide in any case (see paragraph 124 above) — must also appear in the contracts of employment themselves.

133 However, in the present case, first, the award decision did not contain any stipulation to that effect. Second, the applicant demonstrated during the administrative procedure that the contractual relationship with Mrs Babaliti was not limited to the duties set out in her contracts of employment. Consequently, by basing its reasoning simply on the fact that the duties stated in Mrs Babaliti's contracts of employment did not correspond to the activities described, the Commission did not conduct a suitable examination of the implementation of the project, within the meaning of Article 24 of Regulation No 4253/88, as amended, (see paragraph 47 above) before closing the procedure, since it failed to take into account the explanations supplied by the applicant during the administrative procedure.

134 In addition, as regards the forms relating to Mrs Babaliti's travel which, as the defendant acknowledged in response to a written question from the Court, the applicant did indeed send it during the administrative procedure, those supporting documents gave the names of the project and of Mrs Babaliti, the dates and the number of days of her journeys, the sites visited and, apart from two of those forms, a description of the purposes of the journeys concerned. Thus it was stated on those forms that at those sites Mrs Babaliti had undertaken the 'selection of plantations in the regions devastated by fire', the 'delimitation of the pilot areas', the 'supervision of felling' or the 'supervision of the construction of fences'.

135 In the defence and following oral questions from the Court at the hearing, the Commission asserted that those documents were not accompanied by reports describing the precise nature of the tasks Mrs Babaliti had performed in the course of her travel and could not therefore be accepted as supporting documents.

136 For the reasons already given in paragraph 112 above, the Commission is entitled to ask beneficiaries of Community assistance for more detailed information if it considers that such information is needed in order to establish that the project has been properly implemented. It may indeed, in specific circumstances, be necessary, in order to check that there is a direct link between the duty travel expenses charged to the project and the various operations provided for under the project and whether the amount of those expenses is appropriate in view of the objectives of the project, to have available special reports for each particular journey.

137 Although it is not for the Court to substitute its own assessment of those documents for that of the Commission, the fact remains that in the present case the supporting documents supplied by the applicant during the administrative procedure should not have been dismissed as lacking any probative value, so that the Commission should not, without asking the applicant to send more detailed information, have concluded from them that there were irregularities within the

meaning of Article 24 of Regulation No 4253/88, as amended, in the implementation of the project and decided to withdraw the assistance. By so doing the Commission deprived the applicant of the opportunity of providing information which, according to the Commission, was needed in order to prove whether the expenses incurred were justified in relation to the objectives of the project.

138 Therefore, because it did not give more precise indications as to what supporting documents and what additional explanations the applicant should have provided, the Commission could not validly complain in the contested decision that the applicant had not submitted to it the documents that would enable it to justify Mrs Babaliti's duty travel expenses in relation to the objectives of the project.

139 Although the defendant stated in the defence that the applicant had also failed to submit to it during the administrative procedure any supporting documents relating to hotel and subsistence expenses incurred in respect of Mrs Babalati's journeys, the Commission did not raise that complaint in the contested decision. There it merely complained that the applicant had failed to demonstrate that there was a direct link between the expenses charged and the operations carried out and that those expenses were limited to what was necessary in order to implement the project. Therefore, the absence of supporting documents relating to hotel and subsistence expenses incurred in respect of Mrs Babalati's journeys, even if it were established, cannot properly be relied on in the context of consideration of the validity of the contested decision.

140 Consequently, the Commission made an error of assessment as regards the sixth irregularity.

D — *The fourth irregularity: the daily allowance paid to Mr Panetsos*

1. The contested decision

141 The fourth indent of recital 9 in the preamble to the contested decision reads as follows:

'The daily allowance charged to the project, which was received by Mr Panetsos as a refund for his duty travel expenses, was GRD 33 000. The other people involved in the project received an allowance of GRD 12 000. Consequently, the amount charged in respect of Mr Panetsos's duty travel expenses is excessive and unjustified. The beneficiary did not submit any document to the Commission to justify that extra amount in the case of Mr Panetsos'.

2. Arguments of the parties

142 The applicant contends that in its observations on the letter initiating the procedure it had already stated that, apart from Mr Panetsos, all the other people involved in the project received their hotel expenses, which were paid by the Committee on submission of supporting documents, separately from the daily allowance of GRD 12 000. However, it points out that Mr Panetsos received a daily allowance of GRD 33 000, which was exactly the amount provided for in the budget for the project, as approved. That allowance included the expenses for his bed and board and in the end amounted to a figure that was almost identical to the amount received by the other people involved in the project. The applicant produces several travel schedules and invoices to show this.

143 The defendant rejects the applicant's arguments.

3. Findings of the Court

144 As was held in paragraphs 123 and 124 above, under the provisions of the award decision the applicant should have known that it was required to be in a position to submit to the Commission documents that would show that the duty travel expenses had actually been incurred and that they were directly connected with the implementation of the various operations provided for under the project, and that the amount of those expenses was appropriate in relation to the objectives of the project.

145 The breakdown of the budget estimate for the project, as given in point 7 of Annex 1 to the award decision, referred to 'travel and subsistence expenses' in respect of seven of the nine operations. In addition, details of how those expenses were to be calculated were given in connection with the budget for the first operation. The number of days' travel was to be multiplied by a flat-rate sum of ECU 109 (GRD 33 000). The same calculation, although not so clearly stated, was to be found also in the breakdown of the other operations concerned.

146 The applicant is therefore right to rely on the fact that the project provided for a flat-rate sum of GRD 33 000 in respect of certain travel expenses.

147 However, in the contested decision the Commission did not question those sums as such. On the contrary, it stated that it had discovered during the verification of the project that there was an inconsistency concerning travel expenses, in that

GRD 33 000 was charged to the project for journeys made by Mr Panetsos whilst the allowance in respect of journeys by other members of staff was only GRD 12 000. It therefore pointed out in the letter initiating the procedure the fact that duty travel expenses in respect of journeys by Mr Panetsos appeared to be excessive in relation to those of the other people working on the project, and that those expenses therefore seemed to be unjustified. In its observations on the letter initiating the procedure the applicant replied that the difference was due to the fact that the duty travel allowance for Mr Panetsos included bed and board, whereas a specific allowance was given to the other members of staff to cover hotel expenses.

148 It was therefore reasonable for the Commission to conclude from those explanations that the travel allowance paid to Mr Panetsos was not justified in comparison with the travel allowance paid to the other members of staff.

149 Since that allowance was paid to Mr Panetsos irrespective of whether he had actually incurred hotel and subsistence expenses during his travel, that method of calculating the travel allowance made it impossible for the Commission to check whether such expenses had actually been incurred and whether they were appropriate. The applicant did not submit any supporting documents to the Commission, such as hotel or restaurant bills, so that it could check in respect of each of those journeys whether the expenses represented the actual costs incurred and whether the amount of the flat-rate allowance was appropriate, although, according to the complaint made in the letter initiating the procedure, the applicant should have known that it was required to supply such supporting documents.

150 The Commission did not therefore make an error of assessment in respect of the fourth irregularity raised in the contested decision.

E — *The fifth irregularity, concerning Mr Panetsos's travel expenses*

1. The contested decision

151 The fifth indent of recital 9 in the preamble to the contested decision reads as follows:

'Travel expenses incurred by Mr Panetsos were charged on the basis of a mileage allowance. Since those journeys were made in a car financed by the project those expenses are not justified. Furthermore, no document justifying those journeys in relation to the objectives of the project has been submitted to the Commission'.

2. Arguments of the parties

152 The applicant maintains that it has already raised in its observations on the letter initiating the procedure the fact that the budget for the project (award decision, Annex 1, point 7.1.1, 'Equipment'), approved by the Commission, provided for a car to be made available to Mr Panetsos for the purposes of his activities in connection with the project. That vehicle was placed at his disposal under a leasing arrangement, which did not cover running and insurance costs. Therefore, according to the applicant, the mileage allowance, as provided for in the budget for the project, constituted a separate expense from that relating to the use of the car and was not made redundant by the leasing arrangement.

153 The defendant rejects the applicant's argument.

3. Findings of the Court

154 Bearing in mind what has already been held in paragraphs 123 and 124 above, it is necessary to consider whether the Commission made an error of assessment in considering that the mileage allowance for Mr Panetsos's journeys was not justified in relation to the objectives of the project.

155 The applicant does not deny that Mr Panetsos made the journeys concerned in a car that had been placed at his disposal, as a cost to the project, under a leasing arrangement and that therefore Mr Panetsos was not personally liable for the depreciation costs for that car. During the verification procedure the Commission established that the fuel costs for the number of miles Mr Panetsos had driven in order to carry out the project amounted to only half the mileage allowance charged to the project.

156 When the Court confronted him with this calculation the applicant explained that the mileage allowance also covered an insurance excess which Mr Panetsos would have had to pay in the event of an accident with that car. However, such expenses are clearly purely speculative and not genuine, and the Commission was therefore justified in refusing to allow them to be charged to the project.

157 The Commission did not therefore make an error of assessment in respect of the fifth irregularity raised in the contested decision.

F — *The seventh irregularity: the remuneration and travel costs of the people who were working on the project*

1. The contested decision

158 The seventh indent of recital 9 in the preamble to the contested decision reads as follows:

'The amount of GRD 3 098 317 was declared under the headings "travel and accommodation expenses" in respect of the work carried out by fourteen people on the various project sites. Also, an amount of GRD 10 650 000 was declared under the heading "contracts for service" in respect of the work carried out by eighteen people at three of the six project sites. No document was submitted in respect of those expenses to justify those costs in relation to the objectives of the project'.

2. Arguments of the parties

159 The applicant maintains that in connection with its observations on the letter initiating the procedure it has already sent the Commission all the supporting documents covering the expenses mentioned in the seventh indent of recital 9 in the preamble to the contested decision. Those documents, which were also annexed to the application, concern the remuneration and travel costs of the people who were working on the project and they provide adequate substantiation for each journey and the amount of the expenses incurred.

160 The defendant contends that the documents relied on by the applicant, which had already been sent to it during the administrative procedure, do not provide evidence that the services charged to the project were genuine. They are merely lists giving the date of the journey, the mode of transport, the beneficiary and the amount, and a brief description of the purpose of the duty travel. Those documents were not accompanied by supporting documents such as mission reports describing the services provided and the duration of the work. Moreover, only a few of them were accompanied by documents to support subsistence expenses such as hotel expenses.

161 As regards the contracts for services, the defendant states that those contracts provided for flat-rate remuneration and did not give a clear description of the tasks assigned or the work expected. Hence, in its view, they did not provide evidence showing to what extent those people had been recruited and employed for the purposes of the project. It also states that during the on-the-spot inspection the Commission's inspectors were not given any documents to substantiate the work carried out or the periods of time those people worked on the project.

3. Findings of the Court

162 Taking into account what was held in paragraphs 65, 123 and 124 above, on the basis of the conditions laid down in the award decision the applicant should have known that it was required to be in a position to submit to the Commission supporting documents and explanations that would show that there was a direct connection between, on the one hand, the remuneration of the people who worked on the project and the various travel expenses in connection with such work and, on the other hand, the expenses charged to the project and whether those expenses were appropriate in relation to the objective of the project.

163 It is in that context that it is appropriate to consider whether the Commission made an error of assessment in considering that as regards the remuneration and travel costs of the people who had worked on the project, 'no document [had been] submitted in respect of those expenses to justify those costs in relation to the objectives of the project'.

164 In response to the Commission's letter of 21 April 1999 (see paragraph 93 above), the applicant submitted to the Commission by letter of 12 May 1999 a table headed 'Duties of the various workers and time spent [by them on the project]'. In that table it gave the names of the people concerned, the period during which the work had been carried out by the various workers, the operations in connection with which the work had taken place and a brief description of one or more of the following tasks carried out during that work: 'creating fire breaks', 'felling', 'removing vegetation', 'assistance in mapping' and 'assistance in drawing maps'. It also submitted two other tables to the Commission, showing the amount of remuneration paid to each of the workers, specifying both the various operations in connection with the project and the sites on which the work took place.

165 The applicant also submitted to the Commission, in respect of each of the people concerned, a contract of employment indicating inter alia the name of the project and, except for one of the contracts, a brief description of the tasks corresponding in essence to those given in the table mentioned in the preceding paragraph. At the same time, it stated that in view of the nature of the work carried out it was not possible to specify more precisely what work had actually been done and by which workers.

166 In the letter initiating the procedure, despite the special significance that letter has in the context of such a procedure (see paragraph 48 above), the Commission merely observed with regard to those documents that 'the information supplied by the beneficiary dated 12 [May] 1999 was insufficient to substantiate the staffing costs declared under those headings', without however giving the

applicant any indication as to the information it should have supplied in order to substantiate those costs. Nor did it express any reservations regarding the probative value as such of the documents provided by the applicant.

167 In its observations on the letter initiating the procedure, the applicant also submitted to the Commission the travel expenses forms of the various workers, on which Mr Panetsos had certified that the information supplied was correct. Those supporting documents contained, in addition to the names of the project and of the various workers, the dates and the number of days of the journeys, the sites visited and a description of the tasks undertaken at the time of the journeys concerned, which corresponded essentially to the description given in the tables and contracts mentioned in paragraphs 164 and 165 above. Lastly, as regards the flat-rate amounts paid to those workers, the applicant explained that the workers had been recruited in accordance with the special national rules governing the employment of unemployed persons.

168 In the seventh indent of recital 9 in the preamble to the contested decision the Commission merely repeated the complaint already made in the letter initiating the procedure, noting simply that the applicant had failed to submit to it 'any document to justify those costs in relation to the objectives of the project'.

169 It is apparent from paragraphs 164 to 167 above that, on the basis of the documents supplied by the applicant during the administrative procedure, it was possible to check during what period which worker had carried out what type of work on which of the project sites and in connection with what operations provided for under the project.

170 In addition, despite the fact that the description of the tasks carried out was brief, it was clear from it that those workers had done work which was directly related

to the objectives of the project. The project, as stated in paragraph 106 above, made provision for work to develop selected areas in terms of infrastructure (constructing fences and access routes) and work in preparation for the reforestation of those areas (felling, removal of vegetation).

171 Moreover, even though, as the Commission pointed out for the first time in the statement in defence, the applicant did not produce supporting documents such as hotel expenses for all the journeys, the supporting documents which were supplied by the applicant should not have been dismissed so comprehensively as lacking in any probative value; on the contrary, they provided the information needed in order to prove whether the expenditure incurred was justified in relation to the objectives of the project.

172 Although it is not for the Court to substitute its own assessment of those documents for that of the Commission, the fact remains that on the basis of the documents in the file it cannot be argued, as the Commission did so comprehensively in the contested decision, that 'no document was submitted to justify those costs in relation to the objectives of the project'.

173 When questioned at the hearing as to what type of information the applicant could have supplied in addition in order to justify those expenses, the defendant stated in essence that the applicant should have supplied more detailed information about the activities of the various workers. In particular, it stated by way of example that the applicant should have indicated, with regard to felling work, the number of square metres of trees felled at the various sites by the various workers so that it would be possible to check whether the expenses charged to the project were appropriate in relation to the objective of the project.

174 For the reasons stated in paragraph 112 above, the Commission is entitled to ask beneficiaries of Community assistance for more detailed information if it considers that such information is needed in order to establish that the project has

been properly implemented. It may indeed, in specific circumstances, be needed in order to check that there is a direct link between the duty travel expenses charged to the project and the various operations provided for under the project, and whether the amount of those expenses is appropriate in view of the objectives of the project, to have reports describing in detail the work carried out at each of the project sites.

175 None the less, it is clear that, in the absence of any request from the Commission to supply more detailed information, it was reasonable for the applicant to consider that, in view of the nature of the work in question, the supporting documents and information it had supplied during the administrative procedure were sufficient to show that there was a direct connection between, on the one hand, the remuneration of the people who had worked on the project and the various travel expenses in respect of such work and, on the other hand, the expenses charged to the project and whether those expenses were appropriate in relation to the objective of the project. It might at first sight appear to be unnecessary to describe in greater detail in reports what precisely constituted the manual work, such as felling work or construction of fences, carried out by those workers.

176 The Commission could not therefore, without asking the applicant to send more detailed information, close the procedure and thereby deprive the applicant of the opportunity of providing information which, according to the Commission, was needed in order to prove whether the expenditure incurred was justified in relation to the objectives of the project.

177 The Commission therefore made an error of assessment with regard to the seventh irregularity in respect of the project.

G — *The eighth irregularity: the purchase of equipment*

1. The contested decision

178 In the eighth indent of recital 9 in the preamble to the contested decision the defendant noted the following:

'A sum of GRD 1 145 324 was charged under the heading "purchase of equipment" for the purchase of a laptop PC and a control unit with a printer. The Commission's inspectors found that the PC was being used for other projects. The price [should therefore have been] charged pro rata to its use for the present project. The reason why it was charged in full, and a relevant supporting document, were not submitted to the Commission'.

2. Arguments of the parties

179 The applicant has submitted to the Court the invoices relating to the purchase of the computer equipment concerned and contends that the defendant should not have taken into account the fact that one of those computers was used for other projects. At any event, the reasons put forward by the defendant with regard to that irregularity were too vague and only concerned one of the computers and hence only approximately half of the relevant expenditure.

180 The defendant's response is that the laptop computer was not shown to the Commission's inspectors during the on-the-spot inspection, nor did the applicant

supply any evidence of the purchase of that laptop or of its use for the project. The applicant acknowledged that the laptop computer had not been used during the first phase of the project but stated that it would provide evidence of its subsequent use.

181 As regards the other computer, the defendant contends that the applicant acknowledged that it had also used it for other projects. In such circumstances, the expenditure charged to the project should be reduced pro rata to the use of the computer for the contested project.

3. Findings of the Court

182 First of all, it should be noted that in the letter initiating the procedure the Commission expressed doubt as to whether the GRD 1 145 324 recorded under the heading 'purchase of equipment' for the purchase of a laptop computer and of a control unit with a printer could be charged to the project. As regards the laptop computer, the Commission has pointed out that the inspectors had not been able to establish that the computer concerned had actually been bought and used for the purposes of the project. As regards the control unit with a printer, the Commission raised the fact that its inspectors had found that that computer equipment had also been used for other projects and that therefore the purchase price of that equipment should be charged pro rata to its use for the present project.

183 In the contested decision the Commission's only complaint concerned the control unit with a printer, the complaint being that that equipment had also been used for other projects. Even though in the eighth indent of recital 9 in the preamble to the contested decision the Commission made a general reference in that regard to the 'PC', it is clear from the context described in the preceding paragraph that

that complaint did not concern the laptop computer but the control unit with a printer.

184 However, in the contested decision it did not make any complaint with regard to charging the cost of purchasing the laptop computer to the project. None the less, the Commission stated in the contested decision that it was improper to charge the sum of GRD 1 145 324 to the project, a sum which, as was shown above, included both the control unit with a printer and the laptop computer.

185 In reply to a written question from the Court, the Commission merely repeated the arguments already made in its statements and gave no explanation of why the total amount of the computer equipment was ineligible.

186 The Commission therefore made an error of assessment in respect of the eighth irregularity raised in the contested decision.

H — *The ninth irregularity: overheads*

1. The contested decision

187 The ninth indent in recital 9 in the preamble to the contested decision reads as follows:

'A sum of GRD 6 738 822 was charged under the budget heading "overheads"; the Commission's inspectors found that there were no documents to support

those expenses or, failing that, no rational criterion which had been applied in order to determine the amount of overheads arising from the project. When making its reply, the beneficiary failed to send any documents to support the charging of that sum in relation to the objectives of the project'.

2. Arguments of the parties

188 The applicant is of the opinion that the documents sent to the Commission with its observations on the letter initiating the procedure were sufficient to substantiate the overheads charged to the project, which were connected with research and the Committee's overhead costs. The applicant also submitted to the Court a note dated 14 August 2001, drafted by the head of the Committee's secretariat, concerning those overheads.

189 The defendant rejects the applicant's arguments.

3. Findings of the Court

190 First of all, the note of 14 August 2001 from the head of the Committee's secretariat concerning overheads was not written until after the contested decision had been adopted and cannot therefore be taken into account in assessing whether that decision is well founded.

191 Second, in order to justify the overheads, the applicant submitted to the Commission as an annex to its observations to the letter initiating the procedure a

list of its overheads for the years 1996 and 1997. The applicant's overheads were shown on that list as a total amount, without any indication of which of the expenses related specifically to implementation of the project at issue. Nor did the applicant state, in its observations on the letter initiating the procedure, which of those expenses were directly connected with the project, or explain what objective method could be used to calculate the expenses specifically connected with the project from the total given in that list.

192 The Commission therefore made no error of assessment in respect of the ninth irregularity raised in the contested decision.

I — *The tenth irregularity: costs connected with the use of office space*

1. The contested decision

193 In the tenth indent of recital 9 in the preamble to the contested decision the defendant noted the following:

'A sum of GRD 8 100 000 was charged in respect of the costs incurred by the beneficiary for the use of 100 m^2 of office space. No supporting document was submitted to substantiate that expense. The beneficiary did not send any document with its written reply to justify charging that expense to the project in accordance with the objectives of that project'.

2. Arguments of the parties

194 The applicant is of the opinion that the documents sent to the Commission with its observations on the letter initiating the procedure, which were also mentioned in paragraph 13 of that letter, were sufficient to substantiate the costs charged to the project connected with the use of the office space. The applicant also submits to the Court a note dated 16 August 2001 from the head of the Committee's secretariat concerning the costs connected with the use of office space.

195 The defendant rejects the applicant's arguments.

3. Findings of the Court

196 First of all, for the reasons already given in paragraph 190 above, the note of 16 August 2001 drafted by the head of the Committee's secretariat concerning the costs connected with the use of office space cannot be taken into account in assessing the merits of the contested decision.

197 Next, in order to substantiate those expenses the applicant produced a letter sent to Commission officials on 1 July 1998, accompanied by a table setting out its overheads. In that letter the applicant confirmed that the sum of GRD 8 100 000 in respect of the costs incurred by the beneficiary represented the cost of using 100 m^2 of office space.

198 Even assuming that those overheads could be charged to the project, it is clear that neither in that letter nor in the table annexed to it did the applicant set out

the objective criteria by which the amount of those costs relating specifically to the implementation of the project at issue was to be calculated.

199 The Commission did not therefore make an error of assessment in respect of the tenth irregularity raised in the contested decision.

J — *Result as regards the third plea, alleging various irregularities*

200 The outcome of the preceding analysis is that the contested decision contains errors of assessment with regard to the third, sixth, seventh and eighth irregularities. The plea relied upon by the applicant must therefore be accepted to that extent and rejected as to the remainder.

II — *The first plea, alleging infringement of Article 24(2) of Regulation No 4253/88, as amended, in that the Commission complained only that there were various irregularities in the way the project had been managed*

A — *Arguments of the parties*

201 The applicant observes that in the contested decision the Commission complained only that there were various irregularities in the way the project had been managed. It did not point to either irregularities in the way the project had

actually been carried out or a significant change in the substance of the project within the meaning of Article 24(2) of Regulation No 4253/88, as amended, which might be considered to affect the nature of the project or the conditions under which it had been carried out.

202 According to the applicant, Article 23(2) and Article 24(2) of Regulation No 4253/88, as amended, should be interpreted as meaning that before the Commission withdraws financial assistance it is required to conduct an assessment of the findings made in connection with the on-the-spot inspection, concerning not only the way the project has been managed but also how it has actually been carried out.

203 That interpretation of Article 23(2) and Article 24(2) of Regulation No 4253/88, as amended, was confirmed by the Court in Case T-143/99 *Hortiplant* v *Commission* [2001] ECR II-1665, paragraphs 65 to 67). The facts in the present case differ from those in *Hortiplant* and there is no connection between Joined Cases T-551/93 and T-231/94 to T-234/94 *Industrias Pesqueras Campos and Others* v *Commission* [1996] ECR II-247, cited in paragraph 65 of *Hortiplant*, and the present case.

204 The defendant points out that in *Hortiplant* and in *Conserve Italia* v *Commission*, cited in paragraph 49 above, the Court held that the administrative management of an operation financed by Community resources forms an integral part of the conditions for carrying out the operation and the conditions for awarding the assistance. It follows that when the Commission finds management irregularities in the implementation of an operation it is no longer required to consider whether that operation has actually been carried out or not but may withdraw assistance solely on the basis of the management irregularities established.

B — *Findings of the Court*

205 It is clear from Article 24 of Regulation No 4253/88, as amended, that the Commission may decide to adopt measures for repayment of the financial assistance if, according to Article 24(2), 'the examination reveals an irregularity and in particular a significant change affecting the nature or conditions of the operation or measure for which the Commission's approval has not been sought'.

206 That provision thus refers expressly to irregularities concerning the conditions under which the operation being financed has been implemented, which includes irregularities in the way it has been managed.

207 It cannot therefore be argued, as the applicant does in essence, that the penalties provided for in Article 24 of Regulation No 4253/88, as amended, are applicable only where the operation financed by the Community has not been carried out in full or in part (*Hortiplant*, cited in paragraph 203 above, paragraphs 63 and 64).

208 Therefore, contrary to what the applicant contends, Article 24 of Regulation No 4253/88, as amended, cannot be interpreted as meaning that when the Commission finds significant irregularities in the management of a project it is required, before it withdraws assistance, to consider in every case whether an operation has actually been carried out or not.

209 The applicant also errs in seeking to rely in this context on paragraphs 65 to 67 of *Hortiplant*. Those paragraphs do not relate to the point of law raised by the applicant in connection with the present plea but concern rather the various

obligations incumbent upon the beneficiary of financial assistance under the Community regulations.

210 Therefore, the first plea, alleging that the Commission complained only that there were various irregularities in the way the project has been managed, must be rejected.

III — *The second plea, alleging infringement of Article 24(2) of Regulation No 4253/88, as amended, and of the principle of proportionality*

A — *Arguments of the parties*

211 The applicant argues that the contested decision, withdrawing all of the financial assistance in question, infringes Article 24(2) of Regulation No 4253/88, as amended, and the principle of proportionality. The plea is in two parts.

212 In the first, the applicant contends that under Article 24(2) of Regulation No 4253/88, as amended, withdrawal or reduction of assistance is justified only where there are irregularities so serious that they affect the nature or conditions under which the project is implemented.

213 According to the applicant, those conditions were not met in the present case. Even if the various allegations of irregularity raised by the defendant were well founded, the irregularities would represent only about three sevenths of the Community financing already paid. In such circumstances, it considers that withdrawal of all the assistance is unreasonable.

214 In the second part, the applicant points out that the contested decision was adopted on 8 June 2001, which was more than three years after the applicant submitted the interim technical report to the defendant (5 June 1998) and about two and a half years after the on-the-spot inspection (from 9 to 12 November 1998). Taking into account the actual nature of the project, which according to the applicant required that the project be implemented without a break according to the fixed schedule, the project was in fact suspended during that period. The applicant considers that the Commission could not withdraw the assistance after such a long period, during which the financing was suspended, without infringing Article 24 of Regulation No 4253/88, as amended, and without infringing the principle of proportionality.

215 The defendant states, with regard to the first part of that plea, that the applicant charged to the project expenses which it had been unable to prove had any direct connection with the said project. It therefore committed a serious infringement of a requirement essential for the effective functioning of the Community system of financing. In such cases the assistance granted must be withdrawn.

216 With regard to the second part of that plea, the defendant points out that the length of the suspension, as regards continued financing of the assistance, shows on the contrary, on the one hand, that it entertained significant doubts regarding the propriety of the expenses declared, and on the other that it was carefully weighing up the consequences of the various possible outcomes.

B — *Findings of the Court*

1. The first part of the plea, alleging that withdrawal of the full amount of the assistance is disproportionate

217 The principle of proportionality requires that the measures adopted by Community institutions must not exceed what is appropriate and necessary for attaining the objective pursued (see in particular Case 15/83 *Denkavit Nederland* [1984] ECR 2171, paragraph 25, and Case T-260/94 *Air Inter* v *Commission* [1997] ECR II-997, paragraph 144).

218 According to settled case-law, the infringement of obligations whose observance is of fundamental importance to the proper functioning of a Community system may be penalised by forfeiture of a right conferred by Community legislation, such as entitlement to aid (Case C-104/94 *Cereol Italia* [1995] ECR I-2983, paragraph 24 and the case-law cited therein).

219 As regards the present case, it should be made clear that Regulation No 2052/88 and Regulations Nos 4253/88 and 4256/88 implementing Regulation No 2052/88 are intended to promote, through the EAGGF, as part of the support for economic and social cohesion and with a view to the reform of the common agricultural policy, the adaptation of agricultural structures and the development of rural areas. In that context, the legislature, as stated in the 20th recital in the preamble to Regulation No 4253/88 and Article 23 of that regulation, sought to introduce an effective control procedure to ensure that beneficiaries comply with the conditions laid down at the time assistance is awarded from the Fund in order to achieve the abovementioned objectives in an effective manner.

220 It is also necessary to observe that in *Hortiplant*, cited in paragraph 203 above, paragraph 65, and *Industrias Pesqueras Campos*, cited in paragraph 203 above (paragraph 160), the Court ruled that, in view of the very nature of the assistance granted by the Community, the obligation to comply with the financial obligations laid down in the award decision constitutes, as does the obligation actually to carry out the project concerned, one of the beneficiary's essential undertakings, and so the granting of Community assistance is dependent upon compliance with it.

221 Lastly, the provision of sufficiently detailed information by applicants for, and beneficiaries of, Community assistance is essential for the proper operation of the system of inspection and evidence introduced in order to verify whether the conditions for granting assistance are met.

222 In the present case, it is clear from what has been stated in connection with the third plea, alleging that the various irregularities raised by the Commission in the contested decision are unfounded, that with regard to some of those irregularities the applicant has not managed to show that the Commission made errors of assessment, or failed to provide adequate reasons, in the contested decision. In connection with those irregularities the Commission established in the contested decision that the applicant charged certain expenses to the project but failed to show that they were directly connected with the project or that they were appropriate.

223 In principle such failures to fulfil obligations allow the Commission to withdraw the assistance granted. Indeed, the Court has already ruled that in such circumstances it is reasonable for the Commission to consider that any penalty other than total withdrawal of the assistance and repayment of sums paid by the Fund might constitute an invitation to commit fraud, since potential beneficiaries would be tempted either to inflate artificially the amount of the expenses charged to the project in order to evade their obligation to provide co-financing and obtain the maximum contribution from the Fund provided for in the award decision, or to supply incorrect information or conceal certain information in order to obtain assistance or to increase the amount of assistance sought, with the

only deterrent that the assistance might be reduced to the level it should have been in the light of the actual expenses incurred by the beneficiary and/or the accuracy of the information supplied by it to the Commission (see to that effect Case C-500/99 P *Conserve Italia* v *Commission* [2002] ECR I-867, paragraph 101, and *Industrias Pesqueras Campos*, cited in paragraph 203 above, paragraph 163).

224 In the present case, however, the Court has held in paragraph 200 that the contested decision contains errors of assessment with regard to the third, sixth, seventh and eighth irregularities.

225 In such a situation it is necessary none the less to annul the decision in its entirety. Since the Commission based its decision to withdraw the assistance in full on a finding of ten irregularities, four of which have not been established to the requisite legal standard, it is not for the Court to substitute its own assessment for that of the Commission and to decide what conclusions the latter should draw as regards the financing of the project.

226 Under Article 233 EC, it is for the Commission, in the light of the ruling in respect of those irregularities, to decide, according to the principle of proportionality, whether the assistance should still be withdrawn or another measure be adopted with regard to the project.

2. The second part of the plea, alleging infringement of the principle of reasonable duration

227 In the context of the second part of the plea, the applicant contends in essence that in view of the excessive length of the administrative procedure before the Commission the latter could not withdraw the assistance granted without

infringing Article 24 of Regulation No 4253/88, as amended, and the principle of proportionality, and that therefore the contested decision should be annulled in its entirety.

228 In that regard, it should be observed first of all that the relevant legislation, in particular Article 24 of Regulation No 4253/88, as amended, does not lay down any specific time-limits with which the Commission should comply in the context of a procedure for the withdrawal of financial assistance.

229 However, according to a general principle of Community law the Commission is required to act within a reasonable time in the context of its administrative procedures (Joined Cases T-213/95 and T-18/96 *SCK and FNK* v *Commission* [1997] ECR II-1739, paragraph 56).

230 In that regard, it is settled case-law that the question whether the duration of an administrative proceeding is reasonable must be determined in relation to the particular circumstances of each case and, in particular, the background to the case, the various procedural stages followed, the complexity of the case and its importance for the various parties involved (*SCK and FNK*, cited in paragraph 229 above, paragraph 57, and *Partex*, cited in paragraph 53 above, paragraph 177).

231 In the present case the applicant sent the interim technical report provided for in point 3 of Annex 2 to the award decision to the Commission on 5 June 1998, and requested payment of the second tranche. On 9 July 1998 the Commission requested the applicant inter alia, in accordance with point 5 of that annex, to send a list of all the supporting documents relating to the expenditure incurred and certified true copies of those documents. On 29 July 1998 the applicant submitted to the Commission inter alia a list of the expenditure incurred and stressed the need for rapid payment of the second advance. Next, as provided for

in point 5 of Annex 2, the Commission conducted an on-the-spot inspection at the applicant's premises from 9 to 12 November 1998. Subsequently, the applicant repeated its request for payment of the second advance on several occasions, by letters of 2 March, 4 May, 12 May and 13 October 1999, and pointed out that implementation of the project required that it be carried out without a break. The Commission for its part requested by letter of 21 April 1999 that various documents should be sent, before initiating the procedure provided for in Article 24 of Regulation No 4253/88, as amended, by letter of 25 October 1999. After obtaining the applicant's observations on the letter initiating the procedure, which it received on 3 December 1999, the Commission requested an audit report from a firm of auditors, which analysed the answers the applicant supplied in its observations, and that firm submitted its report to the Commission on 7 July 2000. Lastly, on 8 June 2001 the Commission closed the procedure by adopting the contested decision.

232 It is clear from that series of events that the administrative procedure was unquestionably very long in the present case. This is all the more deplorable since the applicant repeatedly stressed to the Commission the need for the second advance to be paid quickly so that the project could be carried out as provided for in the award decision, and cited objective reasons linked to the specific nature of the project.

233 It should be pointed out, however, first of all, that failure to comply with the principle that the Commission must act within a reasonable time, assuming it is established, does not justify automatic annulment of the contested decision (Joined Cases T-305/94 to T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *Limburgse Vinyl Maatschappij and Others* v *Commission* [1999] ECR II-931, paragraph 122, and Case T-197/00 *Onidi* v *Commission* [2002] ECR-SC I-A-69 and II-325, paragraph 96).

234 Second, account should be taken of the fact that verification of the various documents and explanations submitted by the applicant during the administrative procedure required complex and thorough analysis. In view of the complexity of

the present case, the length of the various stages of the administrative procedure was not so unreasonable as to make the contested decision unlawful.

235 Third, it is clear from what has been stated in connection with the consideration of the third plea, alleging that various irregularities raised by the Commission in the contested decision are unfounded, that with regard to some of those irregularities the applicant did not fully comply with all the Commission's requests to produce documents at the beginning of the administrative procedure.

236 On 9 July 1998, in accordance with point 5 of Annex 2 to the award decision, the Commission requested the applicant to send it inter alia a list of all the supporting documents relating to the expenditure incurred, presented in such a way that it could establish a link between the various operations in connection with the project and the expenditure charged to it. As was stated in connection with that plea in respect of several irregularities raised by the Commission, it was not possible to establish such a link on the basis of the documents submitted by the applicant.

237 Moreover, even with regard to some of the irregularities in respect of which the Court did establish errors of assessment on the part of the defendant, the applicant supplied certain documents only in response to the letter initiating the procedure, which delayed the Commission's examination.

238 In such circumstances, the Commission's delay in dealing with the present case must be attributed partly to the applicant itself, since it did not cooperate fully with Commission officials at all stages of the administrative procedure.

239 The applicant cannot therefore rely on the principle of reasonable duration in order to show that the contested decision was adopted in breach of Article 24 of Regulation No 4253/88, as amended, and in breach of the principle of proportionality.

240 The second part of the plea is therefore also unfounded, and the second plea must be rejected.

Costs

241 Under Article 87(3) of the Rules of Procedure, where each party succeeds on some and fails on other heads, or where the circumstances are exceptional, the Court of First Instance may order that the costs be shared or that each party bear its own costs.

242 In the present case, it has been held with regard to the third plea that the contested decision did contain errors of assessment in respect of four of the ten irregularities, but that as regards the other six irregularities, the applicant has not demonstrated the existence of such errors or of an inadequate statement of reasons. However, for the reasons stated in paragraphs 222 to 226 above, the contested decision must be annulled in its entirety.

243 Even though the defendant has failed in its submission that the contested decision should be annulled, parts of the third plea have been rejected as unfounded. In those circumstances, each party must be ordered to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Annuls Commission Decision C (2001) 1284 of 8 June 2001 withdrawing the assistance granted to the Laboratory for Forest Genetics and Improvement of Ligneous Plant Species at Aristoteleio Panepistimio Thessalonikis (the Aristotle University of Thessaloniki) by Commission Decision C (96) 2542 of 25 September 1996 on the granting of assistance from the Guidance Section of the European Agricultural Guidance and Guarantee Fund under Council Regulation (EEC) No 4256/88 in the context of programme No 93.EL.06.023, entitled 'Pilot project to accelerate the regeneration of forests devastated by fire in Greece';

2. Orders each party to bear its own costs, including those relating to the proceedings on the application for interim measures.

Lenaerts Azizi Jaeger

Delivered in open court in Luxembourg on 30 September 2003.

H. Jung

Registrar

K. Lenaerts

President

Table of contents

Legal background II-3995

Facts II-3999

Procedure and forms of order sought II-4005

Law II-4006

I — The third plea, alleging errors of assessment by the Commission in respect of the various irregularities it established and, in the case of certain parts of that plea, breach of the obligation to provide a statement of reasons II-4007

A — Preliminary considerations II-4007

B — The first and second irregularities, concerning Mr Panetsos's additional remuneration and the expenses charged in respect of some of his activities II-4010

1. The contested decision II-4010

2. Arguments of the parties II-4011

3. Findings of the Court II-4013

(a) First irregularity: Mr Panetsos's additional remuneration II-4013

The error of assessment II-4013

Breach of the obligation to state reasons II-4017

(b) Second irregularity: expenses relating to some of Mr Panetsos's activities II-4018

C — The third and sixth irregularities: Mrs Babaliti's remuneration and travel expenses II-4019

1. The contested decision II-4019

2. Arguments of the parties II-4020

3. Findings of the Court II-4022

(a) Third irregularity: Mrs Babaliti's remuneration II-4022

Introduction II-4022

Detailed summary of the relevant facts II-4023

Analysis of the facts II-4026

— The first complaint, alleging that the applicant did not submit a sufficiently detailed report to the Commission concerning Mrs Babaliti's activities II-4027

— The second complaint, alleging that the activities described in the letter of 12 May 1999 did not correspond to Mrs Babaliti's duties as set out in her contracts of employment II-4031

b) Sixth irregularity: Mrs Babaliti's duty travel expenses II-4033

D — The fourth irregularity: the daily allowance paid to Mr Panetsos II-4038

1. The contested decision II-4038

2. Arguments of the parties II-4038

3. Findings of the Court II-4039

E — The fifth irregularity, concerning Mr Panetsos's travel expenses II-4041

1. The contested decision II-4041

2. Arguments of the parties II-4041

3. Findings of the Court II-4042

F — The seventh irregularity: the remuneration and travel costs of the people who were working on the project II-4043

1. The contested decision II-4043

2. Arguments of the parties II-4043

3. Findings of the Court II-4044

G — The eighth irregularity: the purchase of equipment II-4049

1. The contested decision II-4049

2. Arguments of the parties II-4049

3. Findings of the Court II-4050

H — The ninth irregularity: overheads II-4051

1. The contested decision II-4051

2. Arguments of the parties II-4052

3. Findings of the Court II-4052

I — The tenth irregularity: costs connected with the use of office space II-4053

1. The contested decision II-4053

2. Arguments of the parties II-4054

3. Findings of the Court II-4054

J — Result as regards the third plea, alleging various irregularities II-4055

II — The first plea, alleging infringement of Article 24(2) of Regulation No 4253/88, as amended, in that the Commission complained only that there were various irregularities in the way the project had been managed II-4055

A — Arguments of the parties II-4055

B — Findings of the Court II-4057

III — The second plea, alleging infringement of Article 24(2) of Regulation No 4253/88, as amended, and of the principle of proportionality II-4058

A — Arguments of the parties II-4058

B — Findings of the Court II-4060

1. The first part of the plea, alleging that withdrawal of the full amount of the assistance is disproportionate II-4060

2. The second part of the plea, alleging infringement of the principle of reasonable duration II-4062

Costs II-4066