# JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
27 February 2003 *

In Case T-61/01,

**Vendedurías de Armadores Reunidos, SA,** established in Huelva (Spain), represented by J.-R. García-Gallardo Gil-Fournier and D. Domínguez Pérez, lawyers,

applicant,

v

**Commission of the European Communities,** represented by S. Pardo Quintillán, acting as Agent, assisted by J. Guerra Fernández, lawyer,

defendant,

* Language of the case: Spanish.

APPLICATION for compensation for damage caused by the unlawful suspension of the aid allocated to the joint enterprise fisheries project SM/ESP/18/93,

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

composed of: K. Lenaerts, President, J. Azizi and M. Jaeger, Judges,
Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 7 November 2002,

gives the following

## Judgment

### Legislative framework

1 On 18 December 1986 the Council adopted Regulation (EEC) No 4028/86 on Community measures to improve and adapt structures in the fisheries and aquaculture sector (OJ 1986 L 376, p. 7). That regulation, as amended in turn by Council Regulation (EEC) No 3944/90 of 20 December 1990 (OJ 1990 L 380, p. 1), by Council Regulation (EEC) No 2794/92 of 21 September 1992 (OJ 1992 L 282, p. 3) and by Council Regulation (EEC) No 3946/92 of 19 December 1992

(OJ 1992 L 401, p. 1), provides in Title VIa (Articles 21a to 21d) that the Commission may grant various kinds of financial aid to joint enterprise fisheries projects, in amounts differing according to the tonnage and age of the vessels in question, in so far as those projects satisfy the conditions set by the regulation.

2 'Joint enterprise' is defined, in Article 21a of Regulation No 4028/86, as follows:

'For the purposes of this Title, "joint enterprise" means a company incorporated under private law comprising one or more Community shipowners and one or more partners from a third country with which the Community maintains relations, associated under a joint enterprise agreement set up for the purpose of exploiting and, where appropriate, using the fishery resources of waters falling within the sovereignty and/or jurisdiction of such third country, primary consideration being given to the supply of the Community market.'

3 Article 21d(1) and (2) of Regulation No 4028/86 lays down the detailed rules governing the submission of a request for financial aid and the procedure for granting it. Article 21d(3) states that, for projects qualifying for financial aid, the beneficiary is to forward to the Commission and to the Member State a periodic report on the activities of the joint enterprise.

4 Article 44 of Regulation No 4028/86 provides:

'1. Throughout the period for which aid is granted by the Community, the authority or agency appointed for the purpose by the Member State shall send to

the Commission on request all supporting documents and all documents showing that the financial or other conditions imposed for each project are satisfied. The Commission may decide to suspend, reduce or discontinue aid, in accordance with the procedure laid down in Article 47:

— if the project is not carried out as specified, or

— if certain conditions imposed are not satisfied, or

— ...

Decisions shall be notified to the Member State concerned and to the beneficiary.

The Commission shall take steps to recover any sums unduly paid.

2. Detailed rules for applying this article shall be adopted by the Commission in accordance with the procedure laid down in Article 47.'

5 Article 47 of Regulation No 4028/86 provides:

'1. Where the procedure laid down in this article is to be followed, matters shall be referred to the Standing Committee for the Fishing Industry, by its chairman, either on his own initiative or at the request of the representative of the Member State.

2. The representative of the Commission shall submit a draft of the measures to be taken. The Committee shall deliver its opinion within a time-limit to be set by the chairman according to the urgency of the matter...

3. The Commission shall adopt the measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, the Commission shall forthwith communicate them to the Council. In that event the Commission may defer their application for not more than one month from the date of such communication. The Council, acting by a qualified majority, may adopt different measures within one month.'

6 On 20 April 1988, the Commission adopted Regulation (EEC) No 1116/88 laying down detailed rules for the application of decisions granting aid for projects concerning Community measures to improve and adapt structures in the fisheries and aquaculture sector and in structural works in coastal waters (OJ 1988 L 112, p. 1).

7 Article 7 of Regulation No 1116/88 provides:

'Before initiating a procedure for suspending, reducing or terminating aid in accordance with Article 44(1) of Regulation... No 4028/86, the Commission shall:

— inform the Member State on whose territory the project was to be carried out, so that it may express its views on the matter,

— consult the competent authority responsible for forwarding supporting documents,

— ask the beneficiary to provide, through the authority or agency, an explanation for the failure to comply with the conditions laid down.'

8 On 21 June 1991 the Commission adopted Regulation (EEC) No 1956/91 laying down detailed rules for the application of Council Regulation (EEC) No 4028/86 as regards measures to encourage the creation of joint enterprises (OJ 1991 L 181, p. 1).

9 Article 5 of Regulation No 1956/91 provides that Community aid is not to be paid until the joint enterprise has been created in the third country concerned and the transferred vessels have been definitively removed from the Community register of fishing vessels and registered at a port in the third country in which the joint enterprise is based. It adds that, without prejudice to those conditions, where Community aid consists partly or fully of a capital subsidy, an initial

payment of not more than 80% of the total amount of the subsidy may be made. The application for payment of the balance of the subsidy is to be accompanied by the first periodic progress report on the activity of the joint enterprise. The payment application is to be submitted not earlier than 12 months after the date of the first payment.

10 Article 6 of Regulation No 1956/91 provides that the periodic report referred to in Article 21d(3) of Regulation No 4028/86 must be sent to the Commission every 12 months for three consecutive years and must contain the particulars specified in Annex III to Regulation No 1956/91, presented in the form shown in that annex.

11 Part B of Annex I to Regulation No 1956/91 includes a note, headed 'important', which reads as follows:

'The applicant/applicants is/are reminded that, for a joint enterprise to benefit from a premium within the meaning of Regulation (EEC) No 4028/86 as amended by Regulation... No 3944/90, the enterprise must, in particular:

— concern vessel(s) measuring more than 12 metres between perpendiculars, which are technically suited to the fishing operations planned, have been in operation for more than five years, fly the flag of a Member State, are registered in a Community port and are to be transferred definitively to the third country concerned under the joint enterprise...;

— be intended to engage in the exploitation and, where applicable, value-added processing of fishery resources falling within the control or sovereignty of the third country concerned;

— envisage supplying the Community market by priority;

— be based on a contractual agreement to found a joint enterprise.'

12 Upon the adoption of Council Regulation (EEC) No 2080/93 of 20 July 1993 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the financial instrument of fisheries guidance (OJ 1993 L 193, p. 1) and of Council Regulation (EC) No 3699/93 of 21 December 1993 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products (OJ 1993 L 346, p. 1), the management and financing of joint enterprises have been integrated into the financial instrument for fisheries guidance (FIFG).

13 As summarised in Special Report No 18/98 by the Court of Auditors of the European Communities concerning Community measures to encourage the creation of joint enterprises in the fisheries sector accompanied by the replies of the Commission (OJ 1998 C 393, p. 1, point 16), the main consequences for integrating the policy concerning aid to joint enterprises into the FIFG are as follows:

'Member States are now responsible for the selection of projects to be financed within the limits of their global allocations set out in their corresponding

Operational Programmes. Member States are also responsible for the administration and control of projects, including making payments to the beneficiaries and the follow-up of approved projects. The Commission's role, once Operational Programmes have been approved, [is] limited to participation in the Monitoring Committees and to the payment of global advances to the Member States, on the basis of approved financial plans and declarations of Member States.'

14 From 1 January 1994, Regulation No 2080/93 repealed Regulations No 4028/86 and No 1116/88. Under the first indent of the second subparagraph of Article 9(1) of Regulation No 2080/93, Regulation No 4028/86 and its implementing provisions nevertheless continued to remain valid for aid applications introduced before 1 January 1994.

15 On 22 December 1994, the Commission, on the basis of Regulation No 3699/93, adopted Decision 94/930/EC on the adoption of the Community programme for structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products in Spain (Objective 5a outside Objective 1 regions — the period 1994 to 1999) (OJ 1994 L 364, p. 54). Article 5 of that decision states that all actions approved in 1994 under Regulation No 4028/86 are covered by FIFG financing.

## Background to the proceedings

16 On 13 August 1993 the company Vendedurías de Armadores Reunidos, SA (hereinafter 'the applicant') submitted to the Commission, through the Spanish authorities, an application for Community financial aid under Regulation

No 4028/86 for a project to create a Spanish-Mauritanian fisheries enterprise. That project provided for the transfer, with a view to fishing activities, of the vessels *Ydalsan* and *Yolanda de la Cinta* to the joint enterprise Leminepeche, set up by the applicant and a Mauritanian partner, Mohamed Lemine Ould Cheigue.

17 By decision of 7 September 1994 (hereinafter 'the aid decision'), the Commission granted the project referred to in the preceding paragraph (project SM/ESP/18/93, hereinafter 'the project') Community aid for a maximum amount of ECU 1 698 440. That decision provided that the Kingdom of Spain would supplement the Community aid by an aid payment of ECU 339 688.

18 In October 1996 the applicant received 80% of the aid allocated to the project.

19 On 8 January 1997 an extraordinary general meeting of Leminepeche was held at which, in the light of the commercial and financial difficulties experienced by the undertaking, it was decided to transfer the vessels *Leminepeche 6* and *Leminepeche 7* — formerly the *Ydalsan* and the *Yolanda de la Cinta* — to the Republic of Cameroon and to transfer them to the undertaking Peix Camerún SA.

20 In a note of 22 September 1997 addressed to the Spanish authorities the applicant set out the changes made to the project and asked those authorities to notify them to the Commission, so that it could authorise the change of destination for the two vessels concerned.

21 On 16 February 1998 the Spanish authorities sent the Commission the note referred to in the previous paragraph.

22 On 11 September 1998 the applicant sent the Spanish authorities an application for payment of the balance of the aid. It attached to that application an activity report for the period from 4 August 1997 to 24 August 1998.

23 On 2 December 1998 the Commission carried out an inspection of the project at the applicant's head office in Huelva. That inspection showed that the vessels belonging to the joint enterprise held fishery licences issued by the authorities of the Ivory Coast for the period from 20 May 1998 to 19 May 1999.

24 On 13 January 1999 the applicant sent the Commission, via the Spanish authorities, additional information concerning, *inter alia*, the company Peix Camerún SA.

Pre-litigation phase

25 In a letter of 4 June 1999 addressed to the applicant and forwarded to it on 28 July 1999, Mr Cavaco, Director-General of the 'Fisheries' Directorate of the Commission (DG XIV), informed it that, according to the information available to him, the balance of the aid relating to the project, financed by FIFG, had been paid on 15 October 1998 following the presentation of the first activity report, covering the period from 4 August 1997 to 24 August 1998. After recalling the terms of the grant decision and the contents of the applicant's note of

22 September 1997, he stated that the on-site inspection carried out on 2 December 1998 had made clear that the transfer of the project's vessels from Mauritania to Cameroon was justified, but that the inspection had also made clear that those vessels were carrying out their activities in Ivory Coast waters, on the basis of a fishery licence issued for the period from 20 May 1998 to 19 May 1999, which according to the Commission constituted an infringement of Regulations No 4028/86 and No 1956/91, since under those regulations the purpose of the joint enterprise was to be the exploitation of the fisheries resources of the third country mentioned in the decision to grant assistance. He announced that, in accordance with Article 44(1) of Regulation No 4028/86, the Commission had therefore decided to reduce the aid initially granted to the project, taking into account the actual period of activity of those vessels in Mauritanian and Cameroonian waters. For that purpose, he asked the applicant to provide him with information relating to that period and warned it that, if he did not receive the information within 30 days, he would be obliged to order his services to continue the procedure for reducing the aid, based on the assumption that the vessels never fished in Mauritania and Cameroon.

26 A copy of the letter of 4 June 1999 was sent on the same day to Mr Almécija Cantón, Director-General of fishery structures and markets in the general secretariat for marine fisheries in the Spanish Ministry of Agriculture, Fisheries and Food.

27 In a letter of 3 June 1999 sent to the Commission by fax on 7 June 1999, the Spanish authorities stated that the document sent to the Commission following the inspection of December 1998 had sufficiently established that the project had been carried out as prescribed. They pointed out that it was urgent that the balance of the aid be paid and asked the Commission to tell them what was preventing payment in the present case, so that they could inform the parties concerned of those reasons and clarify any remaining points of doubt.

28 By fax of 26 August 1999 the applicant's lawyers applied to the Commission for a prolongation until 10 September 1999 of the time-limit for submitting observations concerning the letter of 4 June 1999.

29 Through a letter from its advisers of 5 October 1999 the applicant sent the Commission its comments on the letter of 4 June 1999. In essence, it stated that the fishery licences issued by the Ivory Coast authorities had never been used. It also requested a meeting with the Commission services in order to provide them with details which would make it possible to settle the case. That meeting took place on 22 October 1999.

30 On 21 December 1999 the applicant's advisers sent the Commission copies of the fishing logbooks for the period between May 1998 and April 1999, which showed that the vessels of the joint enterprise had, during that period, carried out their activities in the fishing zone of Cameroon, and not that of the Ivory Coast.

31 By decision of 15 June 2000, the Commission amended the aid decision by substituting, in the title of the project, the term 'Spanish-Cameroonian joint enterprise' for the term 'Spanish-Mauritanian joint enterprise' and by replacing, as regards the third-country partner, Mohamed Lemine Ould Cheigue by the undertaking Peix Camerún SA.

32 By letter of 17 July 2000, Mr Bruyninckx, Head of Unit in DG Fisheries, told Mr Angel Barrios of the Spanish general secretariat for marine fisheries that, in the light of their inspections and their examination of the documents provided by the applicant, his services were of the opinion that the balance of the aid could be paid. He also informed him of the Commission's adoption of the decision of 15 June 2000.

33 A copy of the letter referred to in the preceding paragraph was sent to the applicant and its advisers.

34 On 25 September 2000 the Directorate-General of the Spanish Treasury paid the applicant the balance of the aid.

## Procedure

35 By application lodged at the Registry of the Court of First Instance on 15 March 2001 the applicant brought the present action.

36 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure. By way of measures of organisation of procedure, it requested the parties to produce certain documents and to reply to certain questions. The parties complied with those requests within the time allowed.

37 At the hearing on 7 November 2002 the parties presented oral argument and replied to the questions put to them orally by the Court.

## Forms of order sought

38 The applicant claims that the Court should:

— declare the application admissible;

— in the exercise of its unlimited jurisdiction and in the terms sought in the application, order the Commission to pay it compensation for the damage sustained by it as the result of the delay in paying the balance of the aid;

— order the Commission to pay the costs.

39 The Commission contends that the Court should:

— declare the application clearly unfounded;

— order the applicant to pay the costs.

## Substance

40 It is settled case-law that, in order for the Community to incur non-contractual liability, the applicant must prove the unlawfulness of the alleged conduct of the Community institution concerned, actual damage and the existence of a causal link between that conduct and the alleged damage (see, *inter alia*, Case 26/81 *Oleifici Mediterranei* v *EEC* [1982] ECR 3057, paragraph 16; Case T-175/94 *International Procurement Services* v *Commission* [1996] ECR II-729, paragraph 44; Case T-113/96 *Dubois et Fils* v *Council and Commission* [1998] ECR II-125, paragraph 54).

41 The applicant claims that those conditions have been met in the present case.

42 The Court considers it appropriate first to examine the applicant's submission that there has been unlawful conduct on the part of the Commission.

43 Having rehearsed the provisions of Articles 44 and 47 of Regulation No 4028/86 and of Article 7 of Regulation No 1116/88 and stressed the importance, according to case-law (Case C-10/98 P *Le Canne* v *Commission* [1999] ECR I-6831, paragraph 25), attaching to compliance with those provisions, the applicant claims that in the present case the Commission infringed those provisions in two respects.

44 First, the applicant states that it submitted its application for payment of the balance of the aid on 11 September 1998 and that that application was supplemented by the additional information requested by the Commission during its on-site inspection in December 1998. The Commission then did not react until 4 June 1999, when it sent the applicant a letter in which it stated its intention to take further steps in the reduction procedure in progress. It did not, however, give prior notice to the Spanish authorities and the applicant of its intention to initiate a procedure to suspend or reduce aid, in breach of Article 7 of Regulation No 1116/88.

45 Second, the applicant claims that the Commission's letters informing it of further steps in the procedure to reduce aid must be regarded as containing an implied decision to suspend aid, within the meaning of Article 44(1) of Regulation No 4028/86. According to the applicant, the decision to suspend aid should have been taken in accordance with Articles 44 and 47 of Regulation No 4028/86 and Article 7 of Regulation No 1116/88 (Case C-359/98 P *Ca'Pasta* v *Commission* [2000] ECR I-3977, paragraphs 26 to 35).

46 The applicant does not deny that the Commission must suspend and reduce aid where there is doubt concerning compliance with the objectives of the project. Nor does it contest the fact that inspections called for by the emergence of suspicions of irregularities can delay payment of the balance of the aid. None the less, it claims that if the Commission, following its inspections from September to December 1998, intended to take time to examine in detail the additional information provided to it in December 1998 and January 1999 as regards the activity of the joint enterprise's vessels, it should have adopted a decision to suspend aid, in compliance with the rules of procedure and the formal rules laid down for that purpose in the financial interest of both the Community and the undertaking receiving the aid, and not had immediate recourse to a reduction procedure.

47 The applicant claims that the Commission unlawfully suspended aid between December 1998, when a decision to suspend aid should have been adopted, and 25 September 2000, when the balance of that aid was paid.

48 The Court observes, by way of a preliminary point, that the assertions put forward by the applicant during the written procedure relate to two very precise complaints, namely that the Commission initiated the procedure to reduce aid in breach of Article 7 of Regulation No 1116/88 and that the Commission decided to suspend the balance of the aid without complying with the procedure prescribed in Articles 44 and 47 of Regulation No 4028/86 and Article 7 of Regulation No 1116/88.

49 At the hearing the applicant criticised the slowness of the administrative procedure conducted by the Commission and its generally poor management of the matter. It also criticised the Commission for having failed in the present case to apply the rules of conduct which it set for itself as regards the times within which payment should be made. Those assertions, which constitute a new plea in law in relation to the arguments set out in the application, must be rejected as inadmissible, in accordance with Article 48(2) of the Rules of Procedure of the Court of First Instance.

50 That being made clear, it is appropriate to consider the merits of the two complaints formulated by the applicant in its pleadings to support its assertion of unlawful conduct on the part of the Commission in the present case.

51 The first complaint relates to the fact that, by letter of 4 June 1999, the Commission informed the applicant and the Spanish authorities that a reduction procedure was in progress, although it had not informed them beforehand of its

intention to initiate such a procedure or a procedure to suspend aid. The Commission thereby infringed Article 7 of Regulation No 1116/88.

52 In that regard, it should be recalled that under Article 7 of Regulation No 1116/88, before initiating the procedure for reducing aid 'in accordance with Article 44(1) of Regulation... No 4028/86', the Commission must 'inform the Member State on whose territory the project was to be carried out, so that it may express its views on the matter', 'consult the competent authority responsible for forwarding supporting documents' and 'ask the beneficiary to provide, through the authority or agency, an explanation for the failure to comply with the conditions laid down' (see above, paragraph 7). Article 44(1) of Regulation No 4028/86 refers to 'the procedure laid down in Article 47' (see above, paragraph 4). Under Article 47(1) of that regulation, '[w]here the procedure laid down in this article is to be followed, matters shall be referred to the Standing Committee for the Fishing Industry, by its chairman, either on his own initiative or at the request of the representative of a Member State' (see above, paragraph 5). Article 47(2) provides that '[t]he representative of the Commission shall submit a draft of the measures to be taken', on which 'the Committee shall deliver its opinion within a time-limit to be set by the chairman according to the urgency of the matter' (see above, paragraph 5).

53 The passages cited in the preceding paragraph make clear that the procedure referred to in Article 7 of Regulation No 1116/88 corresponds to that which takes place when the chairman of the Standing Committee for the Fishing Industry refers a matter to the Committee for its opinion on the measures proposed by the Commission. Compliance with that article therefore implies compliance by the Commission with the obligations which it lays down before any referral to the Standing Committee.

54 The applicant's pleadings make clear that its criticisms relate to the fact that in the present case, according to the applicants, the Commission, contrary to the requirements laid down in the first and third indents of Article 7 of Regulation No 1116/88, failed to inform the Member State concerned — in the present case,

the Kingdom of Spain — of its intention to initiate the reduction procedure and to ask the applicant, prior to the commencement of that procedure, to explain, through the Spanish authorities, its alleged failure to comply with the conditions laid down in the decision to grant assistance. On the other hand, the applicant does not deny that the Commission complied with the obligation laid down in the second indent in Article 7 of Regulation No 1116/88 by consulting the competent authority responsible for sending the supporting documents.

55 It is therefore appropriate to rule on the merits of the applicant's complaints alleging that the Commission failed to comply with the requirements laid down in the first and third indents of Article 7 of Regulation No 1116/88.

56 In that respect, the Court finds, in the light of the letter of 4 June 1999 (see above, paragraph 25), that the Commission, on the basis of information gleaned from its on-site inspection on 2 December 1998 which indicated that the joint enterprise's vessels fished in Ivory Coast waters, in breach of the applicable legislation, informed the applicant that it had decided to reduce the aid initially granted to the project, in accordance with Article 44(1) of Regulation No 4028/86. It asked the applicant to send it, within 30 days, information relating to the period of activity of the abovementioned vessels in the Mauritanian and Cameroonian fishery zones, for the purpose of calculating the planned reduction, failing which the Commission would have to continue the reduction procedure. A copy of that letter was sent to Mr Almécija Cantón, an official in the Spanish Ministry of Agriculture, Fisheries and Food, in charge of fisheries structures and markets, recognised by the applicant as embodying the authority of 'the Member State on whose territory the project was to be carried out' in the present case, within the meaning of the first indent in Article 7 of Regulation No 1116/88.

57 After requesting an additional prolongation, the applicant, through a letter of 5 October 1999 from its advisers, sent the Commission its observations on the letter of 4 June 1999, which essentially stated that the fishing licences issued by the Ivory Coast authorities had never been used (paragraph 29 above). In

addition, at its request, a meeting was held between itself and the Commission services (see paragraph 29 above) on 22 October 1999. Following that meeting, on 21 December 1999 the applicant, through its advisers, sent the Commission documents relating to the activities of the joint enterprise's vessels, which showed that they had never fished in Ivory Coast waters (see paragraph 30).

58 Given the matters mentioned in the two preceding paragraphs, it should be pointed out that while it is true, as the applicant notes in its pleadings, that the Commission referred in its letter of 4 June 1999 to the 'reduction procedure in progress', the applicant does not deny that a draft of measures proposed by the Commission was not referred to the Standing Committee for the Fishing Industry at the time of the letter of 4 June 1999 to Mr Almécija Cantón and the applicant, the communication to the Commission of the applicant's comments to that letter, the meeting of 22 October 1999 between the applicant and the Commission services and the provision on 21 December 1999 of additional information to the Commission concerning the activities of the joint enterprise's vessels.

59 It must therefore be found that the Spanish authorities had been informed in good time of the Commission's intention to reduce the aid, in accordance with Article 44(1) of Regulation No 4028/86. The applicant was also in a position to convey in good time its views on the matters mentioned in the letter of 4 June 1999 which led the Commission to think that the activities by the vessels of the joint enterprise were not in compliance with the applicable legislation. That is, moreover, confirmed by the fact that no referral was made to the Standing Committee for the Fishing Industry in the present case and that the aid was not reduced, since the Commission considered, as shown by its letter of 17 July 2000 to the Spanish authorities, the applicant and its advisers, that in the light of, *inter alia*, 'the documents sent by the beneficiary' the balance of the aid should be paid.

60 Following the preceding analysis (paragraphs 52 to 59), the applicant's complaint that the Commission infringed Article 7 of Regulation No 1116/88 by not

informing the Spanish authorities and the applicant before its letter of 4 June 1999 of its intention to initiate a procedure to reduce aid must be rejected.

61 The question whether the Commission infringed Article 7 of Regulation No 1116/88 on the ground that no information was provided as regards the initiation of a procedure to suspend aid before the letter of 4 June 1999 was sent must be considered in conjunction with the applicant's argument under the second complaint put forward in support of its claim that the Commission acted unlawfully, that the Commission in the present case failed to comply with the correct procedure when it suspended the aid.

62 Under the second complaint, the applicant claims that, through the various letters informing it of the procedure to reduce the aid, the Commission took an implied decision to suspend the aid. However, a decision to suspend aid which has been granted can be adopted only in accordance with Articles 44 and 47 of Regulation No 4028/86 and Article 7 of Regulation No 1116/88, with which the Commission did not comply in the present case.

63 In that regard, it must be pointed out that, although the aid was granted on the basis of Regulation No 4028/86, the project financing, approved in 1994, was covered by the FIFG, in accordance with Article 5 of the Commission decision of 22 December 1994 (see paragraph 15 above), as is confirmed by the statement in the Commission's letter of 4 June 1999 (see paragraph 25) that the project was 'financed by the FIFG'.

64 As made clear in paragraph 13 above, the integration of the management and financing of the project into the FIFG means that the payment of the aid was the responsibility of the Spanish authorities under the global allocation to the

Member State concerned under Community structural assistance to the fisheries sector. The document, produced to the Court by the applicant attesting to the payment of the balance of the aid on 25 September 2000 mentions, moreover, the Directorate-General of the Spanish Treasury as the authorising office.

65 The points mentioned in the two preceding paragraphs therefore distinguish the present case from the one which gave rise to the judgment of 17 October 2002 in Case T-180/00 *Antipesca* v *Commission* [2002] ECR I-3985, and to which the applicant referred at the hearing, where the, aid which had been approved in 1993 and therefore did not come under the FIFG, had been directly administered by the Commission, in that the Commission was responsible for paying it to the beneficiary undertaking (see, to that effect, paragraph 9 of the Report by the Court of Auditors, cited in paragraph 13 above).

66 In the context of the present case, as is made clear in paragraphs 63 and 64 above, a finding of an unlawful decision by the Commission to suspend the aid implies, first, that the applicant has demonstrated that the Commission either decided to suspend the FIFG aid corresponding to the project or ordered the Spanish authorities to suspend payment of the balance of the aid granted to that project. Depending on the case, the Court will then have to determine whether that suspension or order to suspend was carried out in breach of the procedural rules laid down for that purpose.

67 In its pleadings the applicant states that 'the letters in which the Commission informed [it]... that the procedure to reduce aid was in progress must... be interpreted to mean that they contained an implied decision to suspend the Community financial aid'.

68 The Court observes, however, that among the documents annexed to the applicant's pleadings only the letter of 4 June 1999 refers to the reduction procedure. However, that same letter also includes the following passage:

'According to the information in our possession, [the] project, which is financed by the FIFG, received payment of the balance on 15 October 1998, following the presentation of a first activity report for the period 4.8.97 to 24.8.98.'

69 As the Commission points out in its defence, the extract from the letter of 4 June 1999 set out in the preceding paragraph shows that the Commission thought at that time that the balance of the aid had been paid. That extract accordingly makes it impossible to think that the Commission had previously decided to suspend the aid. It also excludes interpreting the letter of 4 June 1999 as containing an implied decision to suspend that aid. Contrary to the applicant's contention at the hearing, the abovementioned letter differs in that respect from the letter of the same day which was sent by the Commission to the applicant undertaking in *Antipesca* v *Commission*, cited in paragraph 65 above, and which the Court interpreted as implying a decision to suspend aid, on the ground that it was clear that, having announced its intention to reduce the initial aid, the Commission, which was directly responsible for the payment of aid in that case, had decided to freeze the payment of the balance of the aid while waiting for the applicant to accept the proposal to reduce the aid contained in that letter.

70 As a measure of organisation of procedure, the Court asked the Commission to produce a copy of the full correspondence between the applicant, the Spanish authorities and itself after 4 June 1999, in order to verify whether the applicant's contention as regards the existence in the administrative file of letters such as those referred to in the passage in its pleadings reproduced in paragraph 67 above is well founded.

71 Questioned on that point during the hearing, the applicant admitted that the documents produced by the Commission under that measure of organisation of procedure did not include any letter from the Commission containing a decision to suspend the FIFG aid relating to the project or an order to that effect addressed to the Spanish authorities.

72 The applicant nevertheless claims that the letter of 17 July 2000 sent by the Commission to the Spanish authorities, in which it stated that in the light of its inspections and of the examination of the documents provided by the applicant it was of the opinion that payment of the balance of the aid could be made, demonstrates the existence of an earlier Commission decision to suspend the aid.

73 It should be pointed out in that regard that, according to the supporting documents produced by the Commission under the measure of organisation of procedure referred to in paragraph 70 above, the letter of 17 July 2000 constitutes the Commission's response to a letter of 10 July 2000 from the Spanish authorities in which they asked the Commission, in the light of the fact that its decision of 15 June 2000 (see paragraph 31 above) had modified the decision to grant assistance without reducing the aid, to confirm that the aid could therefore be paid in total, in order to allow them, as appropriate, to pay the balance of the aid.

74 In those circumstances, and taking account of the context described in paragraphs 63 and 64 above, the statement reproduced in paragraph 72 above is explained by the fact that, having been informed by the Commission by the letter of 4 June 1999 that it was considering a reduction of the aid, the Spanish authorities, which were responsible for paying the aid, considered it preferable to suspend payment of the balance of the aid while waiting for the result of the

inspections carried out by the Commission. Following the request for clarification made by the Spanish authorities in their letter of 10 July 2000, the Commission therefore meant to inform them that, since the examination by its services had shown that the project had been carried out correctly, nothing precluded payment of the balance of the aid.

75 The statement referred to in paragraph 72 above, in the Commission's letter of 17 July 2000, cannot therefore be regarded as proof that the Commission had previously decided to suspend the aid for the project or ordered the Spanish authorities to do so.

76 At the hearing, the applicant also referred to the letter of 3 June 1999 sent by the Spanish authorities to the Commission (see paragraph 27 above).

77 However, in so far as the reference by the applicant to the letter mentioned in the preceding paragraph must be understood as seeking to prove that the Spanish authorities were under an obligation to obtain prior approval from the Commission before payment of the instalments of the aid granted to the project and to infer from the absence of any response by the Commission to that letter that there was an implied decision to suspend the aid, it should be pointed out that there is nothing in any legal provision or in the file to show that, under the FIFG, the payment of instalments of aid by the national authorities concerned is subject to authorisation by the Community authorities. In those circumstances, the letter mentioned above must be understood as a step taken by the Spanish authorities and intended to obtain, for the purposes of the decision they were required to take as regards payment of the balance of the aid, clarification of the Commission's position on the proper execution of the project in the light of the documents sent following the on-site inspection in December 1998, and not as a request for prior approval with a view to such payment. Accordingly, the absence of an explicit reply from the Commission to that letter cannot be regarded as constituting an implied decision to suspend the aid or an implied order to that effect.

78 Following the analysis set out in paragraphs 63 to 77 above, it must be concluded that the applicant has not established that the Commission suspended the aid in the present case. The applicant's claim that the Commission adopted an unlawful decision to suspend the aid must accordingly be held to fail on the facts. It must therefore be rejected as unfounded.

79 It follows from all the foregoing considerations that the applicant has not established the existence of unlawful conduct on the part of the Commission in the present case.

80 Given the cumulative nature of the conditions to be satisfied in order for the Community to incur non-contractual liability, the application must be dismissed without there being any need to examine the applicant's arguments relating to damage and causal link.

## Costs

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

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

**1. Dismisses the application;**

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

Lenaerts Azizi Jaeger

Delivered in open court in Luxembourg on 27 February 2003.

H. Jung K. Lenaerts

Registrar President