JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
19 May 1994 *

In Case T-465/93,

Consorzio Gruppo di Azione Locale 'Murgia Messapica', represented by Mario Ettore Verino and Roberto Giuffrida, of the Rome Bar, with an address for service in Luxembourg at the Chambers of Pierre Jaeger, 8 Rue Zithe,

applicant,

v

Commission of the European Communities, represented by Eugenio de March, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of the Commission's Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the decisions by which the Commission refused to allocate a grant to the project submitted by the applicant under the Leader Programme,

* Language of the case: Italian.

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

composed of: R. Schintgen, President, R. García-Valdecasas, H. Kirschner, B. Vesterdorf and C. W. Bellamy, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 3 February 1994,

gives the following

Judgment

Legal background

The rules governing the Structural Funds

1 The rules governing action to achieve the economic and social cohesion referred to in Article 130a of the EEC Treaty are laid down in 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 institutions (Official Journal 1988 L 185, p. 9, hereinafter referred to as 'the basic regulation') and Council Regulation (EEC) No 4253/88 of 19 December 1988 laying

down provisions for implementing Regulation No 2052/88 (Official Journal 1988 L 374, p. 1, hereinafter referred to as 'the implementing regulation').

2 Article 4 of the basic regulation provides that Community operations in the field of structural development are to be such as to complement corresponding national operations. They are to be established through close consultations between the Commission, the Member State concerned and the competent authorities designated by the latter, with each party acting as a partner pursuing a common goal. Those consultations — referred to as 'the partnership' — cover the preparation, financing, monitoring and assessment of operations. Article 5 gives details of the various possible forms of assistance; Article 5(5) provides that operational programmes, that is to say series of consistent multiannual measures, may be undertaken on the initiative of the Commission in agreement with the Member State concerned.

3 Article 11 of the implementing regulation provides, with regard to Community initiatives under Article 5(5) of the basic regulation, that the Commission may, on its own initiative, decide to propose to the Member States that they apply for assistance in respect of measures of significant interest to the Community. Under Article 14 of the implementing regulation, applications for assistance from the Structural Funds are to be prepared by the competent authorities designated by the Member States and submitted to the Commission by the Member State or any body it may designate to do so. Article 14(3) provides that the Commission will decide on assistance from the Funds, provided that the requisite conditions are fulfilled.

The Leader Programme

4 On 19 March 1991, the Commission published in the *Official Journal of the European Communities* (C 73, p. 33) a notice inviting the Member States to submit proposals for assistance in the framework of a Community initiative for rural development. That initiative, 'the Leader Initiative' (Links between actions for the development of the rural economy), which is based on Article 11 of the implementing regulation, was organized on the basis of local action groups. Its aim was

to provide Community assistance which could be made available in order to enable those groups to implement measures in accordance with the guidelines laid down in the notice (paragraphs 2, 3, 11 and 16 of the notice).

5 The essential features of the Leader Programme, set out in the abovementioned notice (the 'Leader notice'), are as follows:

The public, private or mixed bodies which will act as local action groups are to be selected by the Member States and the Commission in 'collaboration', taking account *inter alia* of their local presence, the participation of leading figures in the local economy and society in their operation and the quality of the local development programme chosen (paragraphs 5 and 6).

The eligible measures include those which are of direct benefit to the inhabitants and economic operators in each of the rural areas concerned, those concerning rural development groups and those facilitating the transnational operation of the groups (paragraphs 12 to 15).

The Commission decision on the amount of Community assistance is to be taken in the light of the quality of the programmes prepared by the groups under the proposals submitted by the Member States, the extent of the rural part of those areas and the numbers of farmworkers and farms. In assessing the quality of programmes the Commission is to pay particular attention to the multiplier effect of the proposed measures and the extent to which the local population and economic operators are involved in the planning and management of the measures (paragraphs 17 and 18).

Paragraph 22 of the notice provides for implementation of the initiative in the following terms: 'The Member States may submit detailed proposals for ... grants ... within six months from the date of publication of this notice. The Commission will only take proposals received after that date into consideration in exceptional and duly justified cases'.

Factual background

6 The Consorzio Gruppo di Azione Locale 'Murgia Messapica' (hereinafter referred to as 'the Consorzio') is a group of entrepreneurs set up to develop economic activities, in particular rural activities, in the Italian Murgia Messapica region, and specifically to implement the Leader Programme launched by the Commission. To that end, in summer 1991 the applicant submitted a project which was among the first group selected by the Italian Ministry for Agriculture and Forests ('MAF'). In response to requests from the MAF for clarifications and amendments, the applicant made changes to its initial project.

7 By letter of 18 September 1991, the MAF notified the Commission, pursuant to paragraph 22 of the Leader notice, of the Italian national proposal to implement the Leader Initiative. That proposal contained 42 projects preselected by the MAF, which included 30 first-priority projects and 12 second-priority projects, including the applicant's.

8 At a 'partnership' meeting on 24 October 1991, the Commission and the Italian authorities carried out a first joint examination of the Italian projects.

The Commission then organized trilateral meetings, in cooperation with the MAF, with the various local action groups in order to discuss the projects and then, by a first decision dated 6 December 1991 addressed to the Italian Republic, approved a first series of 12 projects.

A meeting was held on 16 December 1991 concerning the applicant's project at which that project was analysed by the Commission and suggestions were made for adjustments to it. Following that meeting, the applicant sent a modified project to the Commission.

10 Then, by letter from the Deputy Director-General of DG VI (Agriculture) of 31 January 1992, the Commission asked the MAF to reconvene four groups, including the applicant, to meet on 3 and 4 February 1992. The letter stated that, in those groups' projects, no account had been taken of the observations made at the December 1991 meeting and that it was therefore necessary to expand and clarify them further. The final documents, amended so as to reflect the observations made at Community level, were to be submitted to the Commission by 2 February 1992 at the latest. Community assistance would be available only for projects which, by that date, conformed with the Leader Programme.

11 Following meetings of 3 and 4 February 1992, the MAF sent to the Commission, by letter dated 14 February 1992, the text of the projects under review, revised on the basis of the observations that had been made; they included the applicant's project.

12 Considering that the applicant's project, in its latest version, was still unsatisfactory, the Commission did not include it in the second series of projects which it approved by a second decision, dated 5 March 1992, which, like the previous one, was addressed to the Italian Republic.

13 The two Commission decisions of 6 December 1991 and 5 March 1992 covered Community aid of less than the indicative allocation adopted for Italy (ECU 81 million). The Deputy Director-General of DG IV therefore invited the Italian authorities, by letter of 15 July 1992, to indicate possible uses to which the balance might be put. In that letter, the Commission, referring to paragraph 22 of the Leader notice, informed the MAF that if it wished to submit new projects for review by the Community authorities they would have to relate to fresh initiatives. There would be no re-examination of projects already considered and rejected by the Community authorities. Moreover, the new proposals would have to be submitted to the Commission by 30 July 1992 at the latest.

14 On 10 August 1992, the MAF submitted a new Italian proposal covering four new projects, which did not include the applicant's project.

15 By a third decision, dated 30 September 1992, addressed to the Italian Republic, those four new projects were approved.

16 On 20 October 1992, the chairman of the Consorzio sent a letter to the MAF and the Commission in which, referring to the fact that the project submitted by the Consorzio under the Leader Programme had not finally been accepted, he claimed that his efforts to secure further information as to the reasons for that exclusion had been unsuccessful and asked for a formal statement of the reasons on which the refusal had been based.

17 In reply to that letter, the Deputy Director-General of DG VI sent the applicant a letter dated 26 November 1992, setting out the reasons for which the project submitted by the applicant had been excluded from the financing available under the Leader Programme. He stated that the examination of both the first and final versions of that project had disclosed considerable weaknesses and a lack of cohesion in numerous respects, in relation to the measures proposed and the actual characteristics of the local action group. In that regard, the letter mentioned the lack of operational proposals and the limited and uncertain nature of the technical content of certain measures, in particular those relating to rural development and the marketing of agricultural products. The project did not give clear details of how, within a short period, the programme could be converted into a set of actions which were precise and 'cantierabili' (an Italian term whose meaning is a matter of dispute between the parties). In general, the project at issue had been regarded as insufficiently developed; in particular, the geographical extent of the reference area had for a long time remained uncertain. Furthermore, the Consorzio still appeared not to be very representative of the diversity of activities carried on by the inhabitants of the region, in the field of agriculture or otherwise. In addition, no public

authorities had yet been included. For all those reasons, the Commission had taken the view that not all the conditions laid down for eligibility for Community aid had been fulfilled.

18 Following that letter, the chairman of the Consorzio sent a letter to the Commission on 7 January 1993 in which he stated, *inter alia*, that the letter of 26 November 1992 'enabled us to determine the shortcomings of our proposal'.

Procedure and forms of order sought by the parties

19 In those circumstances, the applicant brought the present action, which was received at the Registry of the Court of Justice on 29 January 1993. The written procedure followed the normal course. It was conducted before the Court of Justice in its entirety. By order of 27 September 1993, the Court of Justice referred the case to the Court of First Instance under Article 4 of Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 amending Decision 88/591/Euratom, ECSC, EEC establishing the Court of First Instance of the European Communities (Official Journal 1993 L 144, p. 21).

20 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (First Chamber) decided to open the oral procedure without any preparatory inquiries. The hearing was held on 3 February 1994. The parties' representatives presented oral argument and answered the questions put to them by the Court.

21 The applicant claims that the Court should:

(i) annul the decision notified by letter (VI/036901) from the Commission of 26 November 1992 in which the Commission decided not to allocate to the

project submitted by the applicant the grants provided for in the Leader Programme.

The Commission contends that the Court should:

(i) dismiss the application;

(ii) order the applicant to pay the costs.

22 Since, according to its terms, the application is directed against the 'decision notified by letter (VI/036901) from the Commission of 26 November 1992', the Court asked a question at the hearing concerning the precise subject-matter of the application. In reply, the applicant stated that its application sought the annulment of each of the three decisions adopted by the Commission on the matter. Accordingly, this Court must examine the claims concerning the decision of 6 December 1991, then those concerning the decision of 5 March 1992 and finally those concerning the decision of 30 September 1992.

The claims concerning the Commission decision of 6 December 1991

23 By this decision, the Commission approved a first set of projects, which did not include the first version of the applicant's project. However, at no time in the written or oral procedure did the applicant claim that the first version of its project should have been approved by the Commission in its decision of 6 December 1991. Moreover, it is undisputed that the applicant subsequently amended its project on several occasions with a view to obtaining Community

assistance for it. Thus, the applicant itself considered that the first version of its project did not yet meet the conditions laid down by the Leader Programme. Consequently, the claims concerning the decision of 6 December 1991 must be rejected as unfounded and it is unnecessary to rule as to their admissibility.

The claims concerning the Commission decision of 5 March 1992

Admissibility

24 Although the parties made observations on this subject only at the hearing, in response to questions put to them by the Court, since the conditions for the admissibility of an application are mandatory this Court must examine them of its own motion (judgment of the Court of Justice in Case 6/60 *Humblet* v *Belgium* [1960] ECR 559 and judgment of the Court of First Instance in Case T-130/89 *B* v *Commission* [1990] ECR II-761, paragraph 13). This Court considers that it must be determined whether the contested decision, which was addressed solely to the Italian Republic, was of direct and individual concern to the applicant, and whether the action was brought within the prescribed period.

1. Whether the decision was open to challenge

25 It has been consistently held that persons other than the addressees may claim that a decision is of direct concern to them within the meaning of the fourth paragraph of Article 173 of the Treaty only if that decision affects them by reason of certain attributes which are peculiar to them, or by reason of circumstances in which they are differentiated from all other persons, and by virtue of those factors distinguishes them individually just as in the case of the person addressed (see, for example, the judgment of the Court of Justice in Case 169/84 *Cofaz* v *Commission* [1986] ECR 391, paragraph 22).

26 This Court finds, in the light of its examination of the project submitted by the applicant, that it was by its decision of 5 March 1992 that the Commission definitively excluded that project from any Community assistance under the Leader Programme, as is confirmed by the subsequent examination which led to the decision of 30 September 1992, which in fact did not concern that project. The applicant was not entitled to any financial assistance from the Community. The provisional acceptance of its project by the MAF and the inclusion of the project among those accorded secondary priority and the applicant's repeated participation in the meetings organized by the Commission and the MAF, and thus in the procedure on conclusion of which the contested decision was adopted, may nevertheless have given rise to interests of which the loss was of individual concern to the applicant. Moreover, the contested decision produced direct legal effects *vis-à-vis* the applicant, without any involvement on the part of other Community or national authorities. In those circumstances, the decision of 5 March 1992 was of concern to the applicant within the meaning of the case-law cited above, even though it was not addressed to the applicant.

2. The time-limit within which proceedings must be brought

27 The fifth paragraph of Article 173 of the Treaty provides that the proceedings provided for in that article must be instituted within two months of the publication of the measure or of its notification to the plaintiff, or in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be. Since the decision of 5 March 1992 was not published and the sole addressee was the Italian Republic, the period of two months cannot start to run in this case until the date on which the applicant had knowledge of the decision.

28 As regards the precise date on which it had such knowledge, in its letter of 20 October 1992 to the MAF and the Commission the applicant states that Mrs C., a Commission official with responsibility for the Leader Programme, disclosed 'by telephone last February' that the 'project had been regarded as still being deficient'. It is therefore necessary to consider whether, despite the information in possession of the applicant in February 1992 concerning the eligibility of its project,

the proceedings commenced on 29 January 1993 were brought within the prescribed period.

29 It has been consistently held that, if a measure is not published or notified, the period within which proceedings are to be instituted cannot start to run until the third party concerned has precise knowledge of the content and grounds of the measure in question in such a way as to enable him to exercise his right to institute proceedings, provided however that he asks, within a reasonable period, for the full text of the measure in question (see the order of the Court of Justice in Case C-102/92 *Ferriere Acciaierie Sarde* v *Commission* [1993] ECR I-801, paragraph 18, and the judgments of the Court of Justice in Case 76/79 *Könecke* v *Commission* [1980] ECR 665, paragraph 7, and Case 59/84 *Tezi Textiel* v *Commission* [1986] ECR 887, paragraph 10, and the order of the Court of First Instance of 10 February 1994 in Case T-468/93 *Frinil* v *Commission* [1994] ECR II-33, paragraph 33). In paragraph 19 of its order in *Ferriere Acciaierie Sarde*, cited above, the Court considered that proceedings commenced two months after the applicant had knowledge of the contested measure were out of time.

30 This Court finds that the information given to the applicant by a Commission official in February 1992 could only have concerned the probable content of a future Commission decision, the formal decision not having been adopted by the members of the Commission until 5 March 1992. For the purposes of admissibility, the decisive date of the applicant's knowledge of the formal decision must fall after its adoption. Moreover, the decision, which was addressed only to the Italian Republic and was not published, essentially confines itself to indicating the amount of Community assistance granted to the Italian Republic and does not give any reasons for the exclusion of individual projects submitted by Italian local action groups such as the applicant. Mere knowledge of the existence of that decision, without any information as to the specific reasons for which its project was excluded, cannot therefore be sufficient to enable the applicant duly to exercise its right to institute proceedings. Finally, the applicant stated at the hearing that it had

hoped, through its informal contacts with the Commission, to 'rescue' its project even after the decision of 5 March 1992 and had therefore hoped, until August 1992, that its project would be admitted at the last moment after renewal of the time-limit.

31 Moreover, the Commission maintained at the hearing that it was the responsibility of the Member States concerned to inform the interested parties of the relevant decisions adopted by it. In the present case, that information had nevertheless not been passed on by the Italian authorities.

32 In those circumstances, the Court of First Instance considers that the applicant was entitled to await the adoption of the decision of 30 September 1992, by which the amount of the Community aid allocated to the Italian Republic was finally exhausted, before seeking official confirmation of the final rejection of its project and disclosure of the official reasons for that rejection. Consequently, the applicant's request for further particulars, by letter of 20 October 1992, was made within a reasonable period. Since the requested further particulars were provided by letter of 26 November 1992, this Court considers, having regard to the extensions of time allowed on account of distance, that the action brought on 29 January 1993 cannot be regarded as out of time.

33 It follows that the claims concerning the decision of 5 March 1992 must be declared admissible.

Substance

34 In support of the forms of order sought by it, the applicant puts forward four pleas in law: it alleges manifest errors of fact, infringement of essential procedural requirements, misuse of powers and breach of the principle of the protection of legitimate expectations.

1. The plea concerning errors of fact

— The parties' arguments

35 The applicant described the final version of its project, the February 1992 version, as follows: the local action group would, on the basis of its statutes, take the form of an open organization, of which 177 economic agents and social agencies had become members, nine of them being associations. Furthermore, two municipalities in the area had expressed their support for the project. The total area of land available to the agricultural members of the group exceeded 3 000 hectares. The development programme drawn up by the group provided for general action designed to produce results in the medium and long term, together with specific action promoting special initiatives consistent with that approach.

36 The applicant considers that the Commission's negative decision on that project is manifestly based on incorrect information. It draws attention in particular to the incorrect statement in the Commission's letter of 26 November 1992 that the project at issue would not be easily 'cantierabile', that is to say capable of implementation by means of building works or factories. Indeed, that aspect was irrelevant since the purpose of the project was to provide services, which cannot be provided by means of construction sites.

37 The applicant also regards as misconceived the Commission's conclusion that the Consorzio's project was inadequately representative, in view of the number of members involved in it and the fact that the Commission did accept as representative other groups with a small number of members, as can easily be shown by a comparison of the various projects considered, including those which were approved. At the hearing, the applicant stated that the fact that the members of its

project did not include any municipality was attributable to the Italian legislation which did not allow any public body of that kind formally to become a member of a consortium. Consequently, it was sufficient that, when the project was submitted, two municipalities had indicated their readiness to support the project.

38 The Commission contends that the criticism of its assessment of the project and its use in that connection of the word 'cantierabile' is unjustified. If the applicant claims that that word relates to building works, that claim reflects a linguistic misconception: the Italian word 'cantierabile' is intended to convey in Italian the idea of 'feasibility', to the effect that a project can be completed within the prescribed time-limit. Moreover, even if that term were construed in the sense contended for by the applicant, the result would be that, in the final version of the project (pp. 52, 53 and 57), the applicant had in fact envisaged, *inter alia*, the carrying out, in a manner still regarded as insufficient by the Commission, of works and/or installations.

39 In order to explain the meaning of 'representative' for the purposes of the Leader notice, the Commission goes on to state that the local action groups are situated, from the institutional point of view, at an intermediate level between the body with responsibility at national level and the individuals that ultimately benefit from the financing. The applicant proved to be the only group comprising only individual interests. Instead of setting itself up in association with collective bodies and then approaching operators for information as to their individual interests and projects, the applicant's group approached the operators directly in order to bring them into the group. In reality, its composition had been worked out at the outset in order to promote above all the interests of the promoters of the Consorzio and in particular of the Isviconsult company, the chairman of whose board of directors is also chairman of the Consorzio.

40 As regards the participation of two municipalities in the project, the Commission stated at the hearing that the applicant had merely annexed to its project documentation two letters in which the mayors concerned stated that they were willing to take part in the applicant's consortium provided that the municipal councils passed a resolution to that effect. However, no such resolution was ever passed. Thus, in

the final version of its project, the applicant does not speak of membership but of support. As regards the italian legislation on consortia, the Commission stated that other Italian groups, whose projects were approved, had included municipalities in their membership. It therefore seems that the Italian legislation does not prevent public bodies from becoming members of a local action group.

— The Court's assessment

41 This Court finds that the only specific complaints made by the applicant to establish errors of fact on the part of the Commission are directed against the latter's statements that the project submitted was not immediately 'cantierabile' and that the group entrusted with its implementation was not sufficiently representative to justify the grant of Community assistance under the Leader Programme.

42 As regards the question of 'cantierabilità', that Italian term, in the context in which it was used, is intended to express the idea that the Commission regarded the measures envisaged in the final version of the project at issue as inadequate. The applicant, by interpreting it as referring to the need for building sites, therefore misconstrued the meaning of the passage in the Commission's letter of 26 November 1992, in which it was stated that the action provided for in the project was not 'specific and immediately "cantierabile"'.

43 At the hearing, the Commission added, without being contradicted by the applicant, that the measures proposed in the project appeared advantageous only to the individual members of the Consorzio and could not therefore be put into effect under the Leader Programme.

44 It follows that the applicant has not shown, with regard to the 'cantierabilità' of its project, that the Commission committed any error concerning the possibility of implementing the measures proposed in its project which was liable to affect the overall assessment of it.

45 It must also be emphasized, with respect to the extent to which the group entrusted with implementation of the project was representative, that the parties are in agreement as to the factual information on which the decision of 5 March 1992 was based, namely the composition of the Consorzio and, in particular, that fact that when the last official version of the project was lodged, in February 1992, no public body had formally become a member of it, only two municipalities having expressed their intention to join it. It follows that, in reality, the applicant is not criticizing the Commission for making an error of fact in that regard but is accusing it of having made an error of assessment by withholding Community assistance under the Leader Programme from the project in question because the group responsible for implementing it was inadequately representative.

46 The Commission enjoys a wide discretion regarding the existence of conditions justifying the grant of Community financial assistance (see most recently the judgment of the Court of Justice in Joined Cases C-258/90 and C-259/90 *Pesquerías De Bermeo y Naviera Laida* v *Commission* [1992] ECR 2901, paragraph 25). Moreover, the applicant itself stated at the hearing that it knew that the Court cannot undertake a detailed re-examination of the project in question.

47 However, the applicant has not adduced any matters of law or fact to show that the Commission's assessment of the project, which was negative on the ground that the Consorzio represented only individual interests, that none of its members was a body representing collective interests and that a mere declaration of intent by two municipalities to support the project was insufficient by comparison with the guarantees offered by other Italian projects, was vitiated by any manifest error.

The applicant declined — despite the intention which it expressed in its reply — to show at the hearing, on the basis of the documentation for its project, that the project was representative.

48 In those circumstances, the plea alleging manifest error of fact and the plea alleging an error of assessment cannot be upheld, and it is unnecessary for the Court to accede to the applicant's request that it order the Commission to produce documents allegedly in its possession which relate to the representative nature of the local action groups in the projects which it did approve.

2. The plea as to infringement of essential procedural requirements

— The parties' arguments

49 The applicant complains, first, of a lack of transparency in the relations between the Commission, the Italian authorities and the applicant itself. In the meeting in which the applicant took part, neither the national body responsible for selection nor the Commission at any time made any criticisms or asked for modifications concerning the specific matters which were subsequently relied on as grounds for rejecting the project. Moreover, there are no minutes of those meetings recording any request for modifications made either by the Commission or the MAF.

50 As regards the conduct of the administrative procedure, the applicant states that in Italy the MAF made a first selection of projects, which included that of the applicant. The second stage was initiated by the forwarding of the projects to the Commission and ended with the meeting of 24 October 1991 between the Commission and the MAF. At that meeting, of the 42 projects already approved by the MAF, 30 were adjudged to be in conformity with the Leader Programme criteria, including that of the applicant; furthermore, funds were allocated to those 30 projects.

The third successive stage of the procedure was confined to optimizing the projects already selected in the two preceding stages. At that stage, it was no longer possible to reject the project submitted by the applicant. Finally, the applicant criticizes the Commission for delay in notifying its negative assessment of the project at issue, at a time when it was no longer possible to make any modification to it.

51 In connection with its allegation of manifest errors of fact, the applicant also contends that none of the negative aspects indicated by the Commission in its letter of 26 November 1992 as grounds for excluding the project — apart from the criticism that the Consorzio was insufficiently representative — fulfilled the criteria laid down in the Leader notice, and that the Commission had therefore applied evaluation criteria not provided for in that notice. That, it claims, applies particularly to the matter of 'cantierabilità' (see paragraph 36 above).

52 The Commission states emphatically that it was under no obligation to seek changes to the projects submitted. Nevertheless, it discussed them in detail with the Member States and the groups involved, including the applicant, in order to maximize the success of the Leader Programme. Moreover, the applicant had made several changes both to its project and to its statutes.

53 The Commission next states that, contrary to the applicant's assertions, funds were not allocated to the projects submitted at the partnership meeting of 24 October 1991. In fact, that was an official meeting devoted to a first joint examination of the projects. The fact that 12 projects were rejected at that early stage certainly does not mean that the 30 remaining projects were to be considered approved and that the subsequent meetings were merely to bring the procedure to its conclusion.

54 In response to the applicant's statement that no minutes of the meetings with the Commission were sent to the participants, the Commission maintains that it was never envisaged — and there was no obligation to that effect — that those meetings should be regarded as formal since they were technical meetings outside the institutional framework of the meetings held with the representatives of the Member States.

55 As to the changes which the Consorzio made to its project, the Commission states that they were all minor and fell short of what had been requested, namely changes relating to essential features of the project, such as the composition of the group and the location and nature of the action proposed to be taken. The Commission refers in that respect to its letter to the MAF of 31 January 1992.

— The Court's assessment

56 It is clear in the first place that there can be no question in the present case of any infringement of essential procedural requirements within the meaning of the second paragraph of Article 173 of the Treaty unless the Commission disregarded the rules of procedure concerning the use of Structural Funds, that is to say the rules laid down by the relevant regulations and those which the Commission itself laid down in its Leader notice (judgment of the Court of Justice in Case 68/86 *United Kingdom* v *Commission* [1988] ECR 855, paragraphs 48 and 49).

57 It must be borne in mind that when changes were made to the Structural Funds in 1988, essentially in order to ensure coordination between the various funds, Article 4 of the basic regulation and Article 14 of the implementing regulation introduced a 'partnership' procedure (see, on that point, the judgment of the Court of Justice in Case C-303/90 *France* v *Commission* [1991] ECR I-5315, paragraph 31). That system is characterized by close cooperation between the Commission, the Member States and the competent authorities appointed by the latter. Applications for assistance are submitted to the Commission only by the competent national authorities and the final decision as to the grant of assistance is made

by the Commission. Within the structure of that system, local action groups seeking assistance from the Structural Funds must, as a formal requirement, rely on contacts with their national authorities for matters relating to the submission of their projects and any changes to be made to them at the request either of those authorities or of the Commission.

58 Furthermore, in paragraph 20 of its Leader notice, the Commission indicates that it will offer technical assistance in connection with the selection of local action groups. The relations between Commission officials and the various local action groups thereby created are purely technical, their purpose being to expedite and enhance the implementation of the Leader Programme. The existence of such relations is not such as to undermine the present procedural system, under which the local action groups are required to address themselves to the national authorities.

59 In view of the foregoing, this Court will draw a distinction between the various legal relationships which came into being under the procedure for the grant of the Community assistance at issue: those between the Commission and the Italian authorities, on the one hand, and, on the other, those between the applicant and the Commission.

60 The only specific complaint of a procedural nature made by the applicant concerning the relations between the Commission and the Italian authorities is the assertion — based on the applicant's description of the various stages of the procedure followed by the Commission and the Italian authorities — that the Commission was no longer entitled to reject the applicant's project at the stage of the procedure which it had reached. However, both that description and the assertion based on it, which are both dismissed as incorrect by the Commission, are mere allegations unsupported by any submission of law or fact. The applicant further claims, in that context, that its project had already been approved by the MAF, but in so doing overlooks the fact the it was for the Commission, and the Commission alone, to

decide, on conclusion of the 'partnership' procedure, whether or not to grant assistance from the Structural Funds; what is more, the MAF had itself classified the project at issue only amongst those accorded secondary priority.

61 As regards the relations between the applicant and the Commission, the applicant's complaint that the Commission did not at any stage make any criticisms concerning the features of the project later questioned must be considered first. This Court finds that the applicant has not provided support for its allegations in response to the Commission's denials on this point. In particular — despite the intention expressed in its reply — the applicant did not give details at the hearing of the changes which were requested of it and which it made to its project. As regards the complaint as to the absence of minutes of the meetings between the group concerned, the Commission and the MAF, it need merely be pointed out that none of the relevant provisions indicates that minutes should be prepared of such meetings, which are only informal technical meetings.

62 The applicant also maintains that the Commission, in rejecting the project, applied new evaluation criteria not provided for in the Leader notice. That allegation cannot be upheld. The criteria mentioned in the Commission's letter of 26 November 1992, including the lack of 'cantierabilità', which the Commission specified as grounds for its rejection of the project, all relate either to the extent to which the Consorzio was representative or to the quality of the project and its multiplier effect and the extent of the involvement of local inhabitants or the effectiveness of the action envisaged. They are thus criteria already provided for in the implementing regulation (Articles 13 and 14) and in the Leader notice (paragraphs 6, 17 and 18). Consequently, they cannot be described as new criteria and the applicant's complaint must be rejected.

63 As regards, finally, the alleged lack of procedural transparency and the allegedly belated notification by the Commission of its rejection of the project, this Court finds that no provision of the EEC Treaty, the applicable regulations or the Leader notice requires the Commission to inform the local action groups of its decision.

Under the rules in force, the Commission need only keep the Member State concerned informed of the steps taken by it and notify it of its final decision.

64 Since no procedural defect has been established, the plea as to infringement of essential procedural requirements must be rejected.

3. The pleas as to misuse of powers and breach of the principle of the protection of legitimate expectations

65 By its first plea, the applicant merely contends that the Commission, despite holding meetings for the purpose of discussing and improving the project in question, in reality pursued the aim — by a procedure lacking transparency — of excluding the project from Community assistance even though it was eligible for such assistance.

66 It has been consistently held that a decision may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent factors, to have been taken with the purpose of achieving an end other than that envisaged by the applicable rules (see, for example, the judgment of the Court of Justice in Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 24). This Court finds that the applicant has not in this case adduced any such objective, relevant and consistent factors. The allegation of lack of procedural transparency is disproved by the fact that meetings were held to improve the project at issue and by the changes which the applicant actually made to its initial project. Similarly, the procedure followed after the decision of 5 March 1992 reflects the Commission's concern to use up the funds available for the Italian Republic and there is no indication of any intention on the part of the Commission to exclude any project which actually satisfied the criteria laid down by the Leader Programme.

67 As regards the second plea, alleging breach of the principle of the protection of legitimate expectations, this Court considers that in circumstances such as those of the present case the notion of legitimate expectations presupposes that the person who seeks the adoption of a decision favourable to him entertains hopes based on specific assurances given to him by the Community administration (see the judgment of the Court of Justice in Case 289/81 *Mavridis* v *Parliament* [1983] ECR 1731, paragraph 21, and the judgment of the Court of First Instance in Case T-123/89 *Chomel* v *Commission* [1990] ECR II-131, paragraphs 25 and 26). It need merely be stated that the applicant has not claimed, still less adduced evidence to show, that the Commission gave it specific assurances as to the provision of Community assistance.

68 Consequently, the pleas alleging misuse of powers and breach of the principle of the protection of legitimate expectations cannot be upheld.

69 It follows that the forms of order sought in respect of the decision of 5 March 1992 cannot be granted.

The claims concerning the Commission decision of 30 September 1992

Admissibility

70 The Court notes that a period of three weeks elapsed between the date of the decision and 20 October 1992, the date of the letter in which the applicant sought disclosure of the official reasons for the rejection of its project, which must therefore be regarded as a reasonable period (see paragraph 29 above).

Substance

1. The plea alleging manifest errors

71 The Commission did not, with a view to the adoption of the decision of 30 September 1992, re-examine the project submitted by the applicant. There is therefore no possibility that it could have committed errors of fact or of assessment in relation to the project. The plea as to manifest errors must therefore be rejected as unfounded.

2. The plea alleging breach of essential procedural requirements

— The parties' arguments

72 The applicant complains of a lack of transparency in the procedure followed, particularly in connection with the extension of the time-limit for the submission of fresh applications, that extension not having been published in the *Official Journal of the European Communities* or otherwise made public at national level. It also objects to the fact that the Commission excluded the project at issue, which had been rejected in March 1992, from the benefit of that extension. It considers that the fact that that extension was confined to new projects is beyond doubt. It would have been more reasonable to have made final adjustments to its project which, in its view, had reached a very advanced stage of preparation. In that regard it states that it forwarded an updated version of its project to the 'competent authorities' on 6 May 1992.

73 As regards the alleged 'extension of the time-limit', the Commission stresses that it was not applicable to the projects already submitted. For all such projects, the latest date continued to be that notified to the MAF by letter of 31 January 1992 and

to the parties concerned at the Brussels meeting of 3 and 4 February 1992. Finally, the Commission states that the latest official version of the applicant's project was submitted as an annex to the communication to the Italian authorities dated 14 February 1992. No other version was forwarded by those authorities. There could have been no point whatsoever in sending other versions to the Commission on an informal basis.

74 At the hearing, the applicant confirmed, in reply to a question put by the Court, that the latest official version of its project that had been submitted to the Commission was that of February 1992. On 6 May 1992, it sent the Commission a report on the membership of the Consorzio and the changes to its statutes. Mrs C., a Commission official with responsibility for Leader matters, also stated at the hearing that that report had been sent to her on 6 May 1992 on a personal basis; it was not an official communication from the MAF.

— The Court's assessment

75 It is necessary to consider whether the Commission infringed the applicable procedural rules by excluding the applicant's project from any re-examination for the purposes of its decision of 30 September 1992. It became apparent in the course of the procedure before this Court that the latest official version of the applicant's project was submitted by the MAF to the Commission by letter of 14 February 1992, whereas the changes made to it on 6 May 1992 were notified by the applicant only to a Commission official. However, the 'partnership' system provides that applications for assistance from the Structural Funds are to be submitted to the Commission only by the competent national authorities. It follows that the Commission was not required, or even authorized, to take account of the changes subsequently made by the applicant to the project in question. It was entitled to maintain the definitive rejection of the project in question which was implicit in its decision of 5 March 1992. Consideration of the present plea in law has thus not disclosed anything to show that the Commission, by not re-examining the project in question for the purposes of its decision of 30 September 1992, contravened the procedure for the allocation of Community assistance.

76 Finally, the fact that the Commission's letter of 15 July 1992, which concerned only one Member State, was not made public likewise cannot be considered indicative of a procedural defect. No such publication is required by any of the applicable provisions.

77 Consequently, the plea as to infringement of essential procedural requirements must be rejected.

78 As regards the pleas alleging a misuse of powers and breach of the principle of the protection of legitimate expectations, it need merely be observed that the applicant has not in any way developed the arguments that it put forward against the decision of 5 March 1992. Accordingly, both pleas must be rejected for the reasons given above (paragraphs 65 to 68).

79 Since the Commission was under no legal obligation to re-examine the applicant's project in connection with the adoption of its third decision, the claims made in respect of the decision of 30 September 1992 must in any event be rejected as unfounded, it being unnecessary to decide whether or not that decision was of individual concern to the applicant and, therefore, whether those claims are admissible.

80 It follows that the application must be dismissed in its entirety.

Costs

81 Under Article 87(2) of the Rules of Procedure, an unsuccessful party is to be ordered to pay the costs if they are asked for in the opposite party's pleadings. Since the applicant has failed in its submissions, it must be ordered to pay the costs, as applied for by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. Dismisses the application;

2. Orders the applicant to pay the costs.

Schintgen García-Valdecasas Kirschner

Vesterdorf Bellamy

Delivered in open court in Luxembourg on 19 May 1994.

H. Jung R. Schintgen

Registrar President