

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)  
6 March 2001 \*

In Case T-331/94 RV,

**IPK-München GmbH**, established in Munich (Germany), represented by  
H.-J. Prieß, avocat,

applicant,

v

**Commission of the European Communities**, represented by J. Grunwald, acting  
as Agent, with an address for service in Luxembourg,

defendant,

APPLICATION for annulment of the Commission's decision of 3 August 1994  
not to pay the balance of financial assistance granted to the applicant in  
connection with a project to create a databank on ecological tourism in Europe,

\* Language of the case: German.

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

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

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on  
16 November 2000,

gives the following

### Judgment

#### Facto

- 1 On 26 February 1992 the Commission published in the *Official Journal* a call for proposals with a view to supporting projects in the field of tourism and the environment (OJ 1992 C 51, p. 15). It stated that it intended to allocate a total of ECU 2 million to that programme and to select about 25 projects. The call for proposals also stated that projects selected should be completed within one year after signature of the contract.

- 2 On 22 April 1992 the applicant, an undertaking established in Germany and active in the field of tourism, submitted a proposal to the Commission concerning the creation of a databank on ecological tourism in Europe. That databank was to be called 'Ecodata'. The proposal specified that the applicant was to be responsible for coordinating the project and that, in order to carry out the work, it would be assisted by three partners, namely the French undertaking, Innovence, the Italian undertaking, Tourconsult, and the Greek undertaking, 01-Pliroforiki. The proposal did not specify how tasks would be distributed between those undertakings, but merely stated that they were all 'consultants specialised in tourism, as well as in information- and tourism-related projects'.
  
- 3 The applicant's proposal specified that it would take a total of 15 months to carry out the project, which was divided into seven phases.
  
- 4 In a letter dated 4 August 1992 the Commission granted ECU 530 000 in aid to the Ecodata project, which represented 53% of the cost of the project, and requested the applicant to sign and return the 'declaration by the beneficiary of the aid' (hereinafter 'the declaration'), which was annexed to that letter and contained the conditions for receipt of the aid.
  
- 5 The declaration stipulated in particular that 60% of the total amount of aid would be paid when the Commission received the declaration, duly signed by the applicant; the balance was to be paid when the Commission had received and accepted the reports on the performance of the project, namely an interim report to be submitted within three months of the project commencing and a final report, accompanied by accounts, to be submitted within three months of completion of the project and by 31 October 1993 at the latest.

- 6 The declaration was signed by the applicant on 23 September 1992 and was received at the Directorate-General for enterprise policy, trade, tourism and social economics (DG XXIII) at the Commission on 29 September 1992.
  
- 7 By letter of 23 October 1992 the Commission informed the applicant that it expected to receive the first report by 15 January 1993. In the same letter, the Commission also asked the applicant to submit two additional interim reports by 15 April 1993 and 15 July 1993. Finally, it repeated that the final report was to be presented by 31 October 1993 at the latest.
  
- 8 The applicant was also asked to agree to the participation in the project of a German undertaking, Studienkreis für Tourismus ('Studienkreis'). The Commission had paid Studienkreis a subsidy of ECU 60 000 in 1991 to set up an ecological tourism project called 'Ecotrans'.
  
- 9 On 18 November 1992, Mr von Moltke, the Director-General of DG XXIII, thinking that the applicant had still not sent back the declaration, sent the applicant a further copy, which he asked it to sign and return to him.
  
- 10 On 24 November 1992, Mr Tzoanos, Head of Division within DG XXIII, invited the applicant and 01-Pliroforiki to a meeting, which took place in the absence of Innovence and Tourconsult. Mr Tzoanos is alleged to have required during that meeting that the majority of the work and the funds be allocated to 01-Pliroforiki. The applicant objected to that requirement.

11 The first tranche of the aid, namely ECU 318 000 (60% of the total subsidy of ECU 530 000), was paid in January 1993.

12 Studienkreis' participation in the project was discussed at a meeting which took place at the Commission on 19 February 1993. The minutes of the meeting state:

'Representatives of [the applicant], the three partners of Ecotrans [Studienkreis] will meet in Rome on Saturday 13 March in order to... agree an implementation plan involving all five organisations. [The applicant] will report on the outcome of the meeting to the Commission on Monday 15 March.'

13 A few days after the meeting on 19 February 1993, the Ecodata project case was withdrawn from Mr Tzoanos. A disciplinary procedure was subsequently initiated against Mr Tzoanos, which resulted in his dismissal.

14 In the end, Studienkreis did not take part in the Ecodata project. On 29 March 1993, the applicant, Innovence, Tourconsult and 01-Pliroforiki entered into a formal agreement on the distribution of tasks and funds within the Ecodata project. That distribution was explained in the applicant's initial report which was submitted in April 1993 (hereinafter 'the initial report').

15 The applicant submitted a second report in July 1993 and a final report in October 1993. It also invited the Commission to a presentation of the work which had been completed. That presentation took place on 15 November 1993.

16 By letter dated 30 November 1993 the Commission informed the applicant that:

‘... the Commission considers that the report submitted on the [Ecodata] project shows that the work completed by 31 October 1993 does not satisfactorily correspond with what was envisaged in your proposal dated 22 April 1992. The Commission therefore considers that it should not pay the outstanding 40% of its proposed contribution of ECU 530 000 for this project.

The Commission’s reasons for taking this position include the following:

1. The project is nowhere near complete. Indeed the original proposal provided for a pilot phase as the fifth stage of the project. Stages six and seven respectively were to be System Evaluation and System Expansion (to the 12 Member States) and it is clear from the timetable set out on page 17 of the proposal that these were to be completed as part of the project to be co-financed by the Commission.

2. The pilot questionnaire was manifestly over-detailed for the project in question having regard in particular to the resources available and the nature of the project. It should have been based on a more realistic appraisal of the principal information needed by those dealing with questions of tourism and the environment (...).

3. The linking together of a number of databases to establish a distributive database system has not been achieved at 31 October 1993.

4. The type and quality of data from the test regions is most disappointing, particularly as there were only 4 Member States with 3 regions in each. A great deal of such data as there is in the system is either of marginal interest or irrelevant for questions relating to the environmental aspects of tourism particularly at the regional level.

5. These reasons and others which are also apparent, sufficiently demonstrate that the project has been poorly managed and coordinated by IPK and has not been implemented in a manner which corresponds with its obligations.

The Commission has, moreover, to be satisfied that the 60% already paid (ECU 318 000) has been used, in accordance with the Declaration made by you on acceptance of your proposal of 22 April 1992, only for realising the project described in your proposal. The Commission wishes to make the following observations on your report relating to use of the funds:

[points 6 to 12 of the letter]

If [the applicant has] any observations to make on our assessment of the position in relation to costs, you are requested to do so as soon as possible. It is only at that stage that the Commission will be able to form its final opinion on whether

the 60% already paid has been used in accordance with the Declaration and decide as to whether retention of that amount by [the applicant] is justified.

...?.

- 17 The applicant expressed its disagreement with the contents of that letter, in particular in a letter to the Commission dated 28 December 1993. Meanwhile, it continued development of the project and made several public presentations. On 29 April 1994 the applicant met with representatives of the Commission in order to discuss their differences.
- 18 By letter dated 3 August 1994, Mr Jordan, a director in DG XXIII, informed the applicant as follows:

'I am sorry that it was not possible to reply to you directly at an earlier stage following our exchange of letters and the meeting [of 29 April 1994].

... [T]here is nothing in your reply of 28th December which would lead us to change our opinion. However you raise a number of additional matters on which I would like to comment....

I now have to inform you that having fully considered the matter... I see little point in our having a further meeting. I am therefore now confirming that we will

not, for the reasons set out in my letter of 30 November and above make any further payment in respect of this project. We will continue to review with the other services whether or not we should ask for a refund of part of the 60% already paid. In the event that we decide to seek such a refund, I will let you know'.

## Procedure

- 19 By an application lodged at the registry of the Court of First Instance on 13 October 1994, the applicant brought the present proceedings for annulment of the decision of 3 August 1994 (hereinafter 'the contested decision').
- 20 By its judgment of 15 October 1997 in Case T-331/94 *IPK v Commission* [1997] ECR II-1665, the Court of First Instance dismissed the application.
- 21 In paragraph 47 of its judgment, the Court of First Instance held:

'... the applicant cannot claim that the Commission caused the delay in the completion of the project. The applicant waited until March 1993 before starting discussions with its partners concerning the distribution of tasks with a view to completing the project, even though it was responsible for coordination of the project. Thus, the applicant allowed one-half of the time envisaged for completing the project to elapse before it was reasonably able to commence proper work. Even though the applicant has provided some evidence that one or more officials of the Commission did interfere in the project between November

1992 and February 1993, it has not established at all that this interference prevented it from engaging in proper cooperation with its partners before March 1993.’

22 By application lodged at the Registry of the Court of Justice on 22 December 1997, the applicant brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the judgment in *IPK v Commission* (cited in paragraph 20 above).

23 In its judgment in Case C-433/97 P *IPK v Commission* [1999] ECR I-6795, the Court of Justice held:

‘15 ... it should be observed that, as appears from paragraph 47 of the judgment under appeal, the applicant did provide some evidence of the Commission officials’ interference in the management of the project, particulars of which are given in paragraphs [8 and 10 above]. That interference was likely to have had an impact on the smooth running of the project.

16 In circumstances such as those, it was for the Commission to show that, notwithstanding the interference in question, the applicant continued to be able to manage the project in a satisfactory manner.

17 It follows that the Court of First Instance erred in law by requiring the applicant to furnish proof that the Commission officials’ actions made it impossible for it to engage in proper cooperation with its partners in the project.’

24 Consequently, the Court of Justice set aside the judgment of the Court of First Instance, referred the matter back to that Court and reserved the costs.

- 25 The case was assigned to the Third Chamber of the Court of First Instance and a new Judge-Rapporteur was appointed.
- 26 In accordance with Article 119 of the Rules of Procedure each of the parties lodged a supplementary statement of written observations, the applicant's dated 2 December 1999 and the defendant's 10 February 2000.
- 27 The parties presented oral argument and replied to the Court's questions at the public hearing held on 16 November 2000.

#### Forms of order sought by the parties

- 28 The applicant claims that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

29 The Commission contends that the Court should:

- dismiss the application;
  
- order the applicant to pay the costs.

### Admissibility

- 30 It must be pointed out that in its defence, the Commission specifically pleaded that the application was inadmissible on the ground that it was directed against a measure which was merely confirmatory. The Commission considered at that time that the contested decision merely confirmed a previous decision contained in the letter of 30 November 1993 which became conclusive at the time the proceedings were commenced.
- 31 In its judgment of 15 October 1997 *IPK v Commission* (cited in paragraph 20 above), paragraphs 24 to 27, the Court of First Instance rejected that argument and held that the action was admissible.
- 32 If account is taken of the fact that the paragraphs of the *IPK v Commission* judgment of 15 October 1997 (cited in paragraph 20 above) concerning the admissibility of the application were not disputed in the proceedings which concluded with the judgment in *IPK v Commission* of 5 October 1999 (cited in paragraph 23 above), the Commission must be regarded as no longer challenging the admissibility of the action, as it acknowledged at the hearing.

## Substance

- 33 The applicant advances two pleas in law in support of its application. The first plea alleges that there has been a breach of various general principles of law. The second plea alleges that Article 190 of the EC Treaty (now Article 253 EC) has been infringed.

### *The dispute*

- 34 In the present action the Court of First Instance is called upon to rule on the legality of the Commission's decision refusing to pay the second instalment of the aid granted to the applicant for the purposes of carrying out the Ecodata project. The grounds on which that refusal was based are set out in the contested decision and in the letter of 30 November 1993 to which the decision refers.
- 35 It must, however, be pointed out that the letter of 30 November 1993 is in two parts. The first part, namely points 1 to 5 of the letter, concerns the Commission's refusal to pay the second instalment of the aid and therefore contains the grounds on which the contested decision is based. The second part, namely points 6 to 12 of the letter, concern the possible recovery of 60% of the aid that had already been paid. However, as at that date the Commission had not yet taken a decision about recovery.
- 36 It follows, as the Commission acknowledged at the hearing, that points 6 to 12 of the letter of 30 November 1993 are not among the grounds on which the contested decision is based. Those points were raised merely in the context of a possible future Commission decision requiring repayment of the instalment of the aid that had already been paid. The arguments advanced by the applicant in its application which relate to points 6 to 12 of the letter of 30 November 1993 must therefore be held to be inadmissible.

*The breach of various general principles of law*

## Preliminary observations

- 37 The applicant submits that the Commission's refusal to pay the second instalment of the financial aid constitutes a breach of (i) the principle *patere legem quam ipse fecisti*, (ii) the principle by which the administration is bound by its own decisions ('Selbstbindung') and (iii) the principles of the protection of legitimate expectations and of good faith. The applicant complains that the Commission, by having acted in breach of those various principles, failed to comply with its obligations in the decision of 4 August 1992 to grant financial aid to the Ecodata project and, therefore, acted in breach of the principle that obligations should be executed in good faith.
- 38 In essence, the applicant submits that the project was to be completed on 15 January 1994. Furthermore, during the meeting on 19 February 1993, the Commission stated that it agreed to the Ecodata project being limited to four countries. The applicant also points out that the delay in carrying out the project was caused by the interference of Commission officials. Lastly, the Commission has only limited powers of control in respect of the applicant's work. Thus, the Commission is not entitled to refuse to pay the second instalment on the ground that it was not satisfied with the quality of the work carried out.
- 39 The Commission contends that the general principles relied on by the applicant are not relevant. It is necessary in the present case to examine whether the applicant is entitled to the aid by virtue of the conditions attaching to the aid itself, rather than on the basis of the principles cited. The Commission contends that the Ecodata project was not properly carried out by the applicant within the stipulated period, in accordance with the applicant's bid or the conditions laid down in the decision granting the aid.

- 40 The Court would point out that the obligation to comply with the conditions laid down in a decision granting aid is a condition of the award of Community aid (see, to that effect, Joined Cases T-551/93 and T-231/94 to T-234/94 *Industrias Pesqueras Campos and Others v Commission* [1996] ECR II-247, paragraph 160). Moreover, the applicant does not dispute that the Commission, before paying the balance of any aid that it has granted, is entitled to check whether those conditions have been complied with.
- 41 Irrespective of whether the Commission is entitled to carry out a qualitative assessment of the work completed — which the applicant contests — it is necessary to ascertain whether the applicant actually completed the databank which it described in its bid of 22 April 1992 within the time-limit laid down in the decision granting the aid.

The deadline for completion of the Ecodata project

- 42 The applicant observes that the Commission's call for proposals stated that any project selected was to be completed within a period of one year after the date of signature of the contract. That period was not, however, absolute. It is, furthermore, wrong to claim that the declaration imposed an obligation on the applicant to complete the project by 31 October 1993. The declaration merely required the report on the way the funds had been used to be submitted by 31 October 1993 at the latest.
- 43 The applicant also points out that the Commission, in its letter of 23 October 1992, had itself unilaterally set the starting date of the project as 15 October 1992, which, if account is taken of the fact that a fifteen-month period was provided for in the proposal, would mean that the deadline for completion of the project was 15 January 1994.

- 44 According to the Commission, 31 October 1993 was set from the outset as the deadline for completion of the Ecodata project.
- 45 The Court notes that the declaration attached to the decision granting the aid provides for a specific deadline for completion of the Ecodata project. In the declaration the applicant 'undertook to send [the final report] to the Commission within three months of the operation[s] being completed and... at the latest by 31 October 1993'.
- 46 There is no basis for the applicant's claim that 31 October 1993 was relevant only for submission of the final report.
- 47 The terms used in the declaration clearly indicate that the final report had to be submitted after completion of the 'operation'. Since the deadline for submission of the final report was 31 October 1993, it follows that, on that date, the Ecodata project should in any event have been completed.
- 48 The fact that 31 October 1993 was an absolute deadline is emphasised in point 7 of the declaration by which the applicant 'agrees to waive his right to payment of the balance of the aid if the time-limits [mentioned in the declaration] are not observed'. The reason for that requirement is given in point 5 of the declaration: 'according to the budgetary rules, the credits committed to this operation are available for a limited period'.
- 49 The applicant may not use the argument that its proposal of 22 April 1992 provided for a fifteen-month period for execution of the Ecodata project for the purposes of contesting that 31 October 1993 was the deadline for completion of the project. Given that the decision granting the applicant aid is dated 4 August

1992, the decision, by fixing the deadline as 31 October 1993, did not affect the applicant's projected timetable for execution of the project.

- 50 Nor may the applicant validly claim that the Commission had, by setting in its letter of 23 October 1992 the starting date of the project as 15 October 1992, fixed the deadline for its completion as 15 January 1994.
- 51 It should be observed in that connection that the letter in question, which was a standard-form letter sent to all the coordinators of projects selected in the February 1992 call for proposals, specifies under the heading 'Monitoring' that, 'for the purpose of this exercise, all projects are deemed to start by 15 October.'
- 52 However, as Advocate General Mischo pointed out in his Opinion prior to the 5 October 1999 judgment in *IPK v Commission* (cited in paragraph 23 above, ECR I-6797, point 52), the Commission mentions 15 October 1992 in its letter of 23 October 1992 only for the purposes of 'monitoring' the progress of the work. It must be borne in mind in that regard that the declaration obliged those responsible for the projects selected to submit a progress report on them within three months of their commencement. By deeming, in its letter of 23 October 1992, that work had begun on 15 October 1992, the Commission's intention was to fix the dates on which the various reports should be submitted (see paragraph 7 above). Thus the letter of 23 October 1992 provides that the first of those reports was to be submitted on 15 January 1993, the second on 15 April 1993 and the third on 15 July 1993. Finally, that letter confirmed unequivocally that the 'final report [was to] be with DG XXIII by 31 October 1993'.
- 53 The applicant also contends that on 4 August 1993, a meeting was held, which it attended together with Mr Jordan and Mr Dickinson, an official at DG XXIII, and during which it proposed that the deadline for completion of the project

should be fixed as the end of May 1994. The applicant cites Mr Jordan's note to Mr Schulte-Braucks of 25 February 1993 and Mr Tzoanos's note to Mr von Moltke of 12 March 1993 to show that the Commission had no legal or factual reason to refuse its request that the completion date for the project should be fixed for the spring of 1994.

54 However, the applicant's argument is not such as to show that the deadline for completion of the project was not fixed for 31 October 1993. It is, rather, designed to show that the Commission could not validly refuse to extend the time-limit. Finally, it must be noted that Mr Jordan's note to Mr Schulte-Braucks of 25 February 1993 confirms once again specifically 'the deadline of 31 October for completion of the contract'.

55 It is clear from the foregoing that the decision of 4 August 1992 granting the aid and the declaration attached to it required the applicant to complete the Ecodata project by 31 October 1993 at the latest. On page 89 of its final report the applicant indeed recognises that 'the deadline for the completion of the project was 31 October 1993'.

#### Status of the Ecodata project on 31 October 1993

56 The applicant submits that the Commission's criticisms that the project was unfinished relate to the final two phases of the project, which covered respectively system evaluation and the extension of the system to the twelve Member States at that time. Referring to the final report, the applicant submits that the system evaluation that it had undertaken corresponds in all essential respects to what it had provided for in its proposal. As to the failure to extend the system, the applicant observes that Ecodata was a pilot scheme. It states that Ecodata was already operational on the international network when it was introduced in November 1993 and that it was linked to all the Member States as well as to third countries. However, an extension of the Ecodata databank to all the Member

States would have cost around ECU 8 million and was not viable in the context of a pilot scheme.

57 The Court observes that the applicant's proposal provided that the Ecodata project would be in seven stages:

‘1. Requirements analysis and data determination

2. Database planning

3. Network technical specifications

4. Development of application software

5. Pilot phase

6. System evaluation

7. System expansion.’

- 58 Under the applicant's proposal, the pilot phase consisted of setting up a databank relating to the four Member States of the four undertakings participating in the project, namely, Germany, France, Italy and Greece. The system thus set up was to be evaluated in phase 6. As to phase 7, its objective was stated to be extension of the databank to the other Member States.
- 59 The timetable in the applicant's proposal set aside four months (from the ninth to the twelfth month) for phase 5, two months for phase 6 (the twelfth and thirteenth months) and three months for phase 7 (from the thirteenth month to the fifteenth month).
- 60 In point 1 of its letter of 30 November 1993, the Commission criticised the fact that phases 6 and 7 of the project were unfinished in the following terms: 'The project is nowhere near complete. Indeed the original proposal provided for a pilot phase as the fifth stage of the project. Stages six and seven respectively were to be System Evaluation and System Expansion (to the twelve Member States) and it is clear from the timetable set out on page 17 of the proposal that these were to be completed as part of the project to be co-financed by the Commission.' The Commission thus considers that 'the project has never got beyond the preliminary stage (task No 5)' (defence, paragraph 90). It adds 'Phase No 7 in particular ("System Expansion"), which is a key factor for the Commission, has never been completed.' (defence, paragraph 90).
- 61 The Commission therefore contends that on 31 October 1993 the project was at phase 5 or the pilot phase.
- 62 The applicant, for its part, submits that system evaluation (phase 6) took place. It acknowledges that the expansion of the system to the other Member States did not take place.

- 63 It follows that it is common ground between the parties that the Ecodata project did not, as at 31 October 1993, meet the conditions in the applicant's proposal, at least in so far as phase 7 is concerned.

The applicant's explanation as to why the 31 October 1993 deadline was missed

- 64 The applicant submits that the Commission itself is to blame for the delay cited in the contested decision in order to justify the refusal to pay the second instalment of the aid. In that regard, it refers first to the late payment of the first instalment of aid in January 1993 and points out that more than three months went by between the date on which payment was to be made and the date on which it was actually made. Next, it points out that Mr Tzoanos called it to a meeting on 24 November 1992 with a view to assigning the major part of the work and the funds to 01-Pliroforiki, a company controlled by him. Furthermore, the applicant reminds the Court that Mr Tzoanos and Mr Jordan brought pressure to bear on it on the express instructions of their Director-General, Mr von Moltke, to ensure that Studienkreis would be involved in the project. The applicant refers in that regard to letters dated 14 July 1992 and 16 February 1993 from Studienkreis to Mr von Moltke, to notes from Mr Tzoanos to Mr von Moltke of 17 February 1993 and 12 March 1993 and to a note from Mr Jordan to Mr Schulte-Braucks of 25 February 1993. The applicant also cites pressure brought to bear by a German deputy, Mr Olderog (see the letter from Mr Olderog to Mr von Moltke of 5 March 1993) to ensure that a key position was given to Studienkreis in the Ecodata project, with a view to preventing that undertaking from becoming insolvent.
- 65 The Commission first points out that the applicant itself was contributing 47% of the finance for the project. The late payment of the first instalment of the aid could not therefore have prevented it from financing the work necessary until the funds were obtained.

- 66 Second, as regards the meeting of 24 November 1992, the Commission submits that the division of tasks between the undertakings participating in the project should have been settled before the applicant submitted its proposal on 22 April 1992. The meeting in question is connected with the fact that there was collusion between Mr Tzoanos, 01-Pliroforiki, which he controlled, and the applicant.
- 67 Finally, as regards the attempt to involve Studienkreis in the Ecodata project, the Commission explains that in the summer of 1992 it considered whether, and to what extent, that undertaking would be able to participate in the project with the aim of facilitating the execution of the project and avoiding duplication of labour. It refers in that connection to Mr Tzoanos's letter of 27 July 1992 to Mr Hamele of Studienkreis. Furthermore, it is clear from the initial report that in September 1992 the applicant entered into negotiations with Studienkreis in order to bring about an amalgamation of, or cooperation between, the Ecotrans project and the Ecodata project. Mr von Moltke at no point, however, brought any pressure to bear in the context of the Ecodata project. The letter of 27 July 1992 shows clearly that Mr von Moltke had practical reasons for wishing to involve Studienkreis in the project. Furthermore, if Mr von Moltke had wanted to give preferential treatment to Studienkreis, he was free not to have chosen the Ecodata project or could have obliged the applicant to agree to that undertaking participating in the project. The Commission also explains that its letter of 27 July 1992 predates the decision of 4 August 1992 to grant aid of ECU 530 000 to the Ecodata project. The Commission also draws the Court's attention to the fact that it is clear from the minutes of the meeting of 19 February 1993 that the applicant's adviser had declared that it was the applicant's responsibility to decide who the other partners in the project were to be ('it was [the applicant's] responsibility to involve other partners'), an opinion with which Studienkreis concurred. That also contradicts the applicant's argument that the Commission brought pressure to bear on it.
- 68 The Court observes that the applicant has identified three actions on the part of the Commission which delayed execution of the Ecodata project, namely the late payment of the first instalment of the aid, the meeting on 24 November 1992 organised by Mr Tzoanos and the Commission's attempts to involve Studienkreis in the project.

- 69 As to the last occasion on which the Commission intervened, it must be observed that the proposal of 22 April 1992, which was accepted by the Commission, does not include Studienkreis among the applicant's partners. The only undertakings included in the proposal were the applicant, Innovence, Tourconsult and 01-Pliroforiki. If the Commission had taken the view that Studienkreis's participation was essential or desirable for the proper execution of the Ecodata project, it could, in its decision of 4 August 1992 granting the aid, have imposed a condition to that effect. It must be emphasised in that connection that the Commission was, at the time when it took the decision to finance the Ecodata project, familiar with Studienkreis's project on ecological tourism — Ecotrans. Indeed, the Commission had already subsidised the Ecotrans project in 1991. Furthermore, the Commission itself states that, even before aid was granted to the applicant, Mr von Moltke instructed Mr Tzoanos to try and involve Ecotrans in the project in order to put the experience acquired to good use. Thus, in a letter dated 27 July 1992, Mr Tzoanos informed Mr Hamele of Studienkreis that he had asked '[the applicant] to contact [Studienkreis] in order to examine possibilities of collaboration'.
- 70 It must subsequently be noted that although, in its decision of 4 August 1992, it accepted the applicant's proposal without imposing a condition as to any participation by Studienkreis in the Ecodata project, the Commission attempted, after the decision had been taken, to oblige the applicant to accept their participation.
- 71 Thus, the following is apparent from the initial report:

'[The applicant] has held intensive cooperation talks with "Studienkreis für Tourismus" (StfT) Starnberg/Germany *at the suggestion of DG XXIII...* The negotiations began at the end of September 1992 with initial informal contacts. They were intensified in the beginning of January 1993...' (Page 12, point 4.6; emphasis added by the Court).

- 72 In the same way, in the course of the meeting on 19 February 1993, which was attended by representatives of the Commission, the applicant, its partners in the Ecodata project and Studienkreis, Mr Jordan stated, as is clear from the minutes of the meeting: '*It was the Commission's wish* that Ecotrans [Studienkreis] should be involved due to the nature of their earlier work' (emphasis added by the Court). Following that meeting, Studienkreis drew up a formal proposal for cooperation dated 3 March 1993 which confirmed: '*The EC wishes to involve Ecotrans*, coordinated by [Studienkreis], in the Ecodata project'. (Emphasis added by the Court).
- 73 It must be pointed out that the Commission's wish to involve Studienkreis in the Ecodata project had the effect of binding the applicant. Thus, in his note to Mr Schulte-Braucks of 25 February 1993, Mr Jordan stated:

'... our imposing the... requirement [on the applicant] of their consulting and involving Ecotrans in the project'.

- 74 Furthermore, it is apparent from the documents before the Court that the applicant had to keep the Commission informed about the progress of negotiations with Studienkreis. Thus the minutes of the meeting of 19 February 1993 state:

'Representatives of [the applicant], the three partners and Ecotrans [Studienkreis] will meet in Rome on Saturday 13 March, in order to... agree an implementation plan involving all five organisations. [The applicant] will report to the Commission on the outcome of the meeting on Monday 15 March.'

- 75 Accordingly, it follows that from the summer of 1992 until at least 15 March 1993, the Commission continued to exert pressure on the applicant to involve Studienkreis in the Ecodata project.
- 76 It must next be considered whether, in its observations of 10 February 2000 on the judgment of 5 October 1999 in *IPK v Commission* (cited in paragraph 23 above), the Commission has shown, as the Court of Justice required, that, in spite of the interference designed to bring about Studienkreis's involvement in the Ecodata project, 'the applicant continued to be able to manage the project in a satisfactory manner' (paragraph 16 of the judgment).
- 77 In that regard, it must be noted that in its observations of 10 February 2000, the Commission explains: 'The Commission's aim, in suggesting that Studienkreis should participate in the project, was to save a project which was manifestly at a standstill by bringing in a partner which was indisputably competent and experienced. In February 1993, ten months after the [proposal] was submitted on 22 April 1992 and only eight months before the end of the project, the Commission was entitled, given the applicant's apparent difficulties, to find ways of managing the project in a satisfactory manner and in the interests of the project (see Article 2 of the Financial Regulation). If the applicant, as it could have done at once as the senior partner and as it should have done, had from the outset instigated a good working relationship with its partners in the project and had informed the Commission about Mr Tzoanos's corrupt practices, the Commission would not have interfered and it would not have been necessary to suggest that Studienkreis should become involved.' (Point 29 of the Observations). The Commission contends therefore that it was in February 1993 that it first suggested that Studienkreis should become involved because it had realised at that time that the Ecodata project was not making any progress.
- 78 If it were shown that the Commission had first intervened with a view to involving Studienkreis in the execution of the Ecodata project in February 1993

for the purpose of saving the project which, at that time, had still not got off the ground, it could be accepted that the interference in question had not prevented the applicant from carrying out the project in a satisfactory manner but was intended, on the contrary, to enable the applicant to honour its obligations within the period and under the terms prescribed.

79 However, the Commission's statements cited in paragraph 77 above are contradicted not only by the statements in its defence and its rejoinder but also by Mr Tzoanos's letter to Mr Hamele of 27 July 1992, and by the initial report, which show that the Commission's actions *vis-à-vis* the applicant to involve Studienkreis in the Ecodata project began in the summer of 1992. Furthermore, it is clear from the initial report, the minutes of the meeting of 19 February 1993, Mr Jordan's note to Mr Schulte-Braucks of 25 February 1993 and Mr Tzoanos's notes to Mr von Moltke of 17 February 1993 and 12 March 1993 that the Commission continued to exercise this pressure until the middle of March 1993 (see paragraphs 69 to 75 above).

80 Second, the Commission states that the project did not fail because of its interference but because of the applicant's incompetence. It observes in that regard that the distribution of tasks and funds among the applicant and its partners should have been settled at the time the applicant submitted its proposal on 22 April 1992.

81 The Court considers, first, that it is unreasonable to complain that the applicant and its partners did not enter into an agreement on all the details regarding the distribution of tasks and funds at a time when they still did not know whether their project would be selected and, if it were, how much aid would be granted to them. Furthermore, even if the applicant and its partners had entered into such an agreement before the proposal was submitted, the Commission's interference, the aim of which was to involve Studienkreis in the project, would necessarily have led to the agreement being undermined since it could not have foreseen Studienkreis's involvement.

- 82 Second, the fact that the applicant and its partners succeeded in entering into an agreement on the distribution of tasks and funds within the Ecodata project only on 29 March 1993 must be related to the fact that, until at least 15 March 1993 (see paragraph 75 above), the Commission exerted pressure on the applicant to involve Studienkreis in the project. The Commission's interference, which was intended, from the summer of 1992 onwards, to involve an undertaking in the Ecodata project that did not figure in the applicant's proposal, necessarily delayed the conclusion of any agreement and consequently the actual performance of the project.
- 83 Besides, during the period prescribed for carrying out the Ecodata project, the Commission itself was aware of the fact that its interference in the project's management had delayed realisation. Thus, in his note to Mr Schulte-Braucks of 25 February 1993, Mr Jordan explained:

'The project is way behind schedule for a variety of reasons.... IPK will always argue that this was due to our imposing the additional requirement of their consulting and involving Ecotrans in the project even though they did not form part of the original proposal or our subsidy-contract. There may even be some justification in this point although I am not sure that IPK would have worked more quickly in any event. The outcome of this is that we have had a delay of some 5 months out of approximately 14. In the circumstances I think it is most unlikely that the deadline of 31 October for completion of the project can be achieved... '.

- 84 However, according to the Commission (see paragraph 61 above), on 31 October 1993 the Ecodata project was in the pilot phase, which, according to the timetable included with the applicant's proposal, should have taken place between the ninth and the twelfth month of the project, whose estimated duration was fifteen months (applicant's proposal, page 17). If account is taken of the fact

that the Commission's interference delayed the project until March 1993, it cannot be inferred that the fact that the project was only partially performed on 31 October 1993 is attributable to the applicant's alleged incompetence.

85 In those circumstances and since the Commission has failed to put forward any other arguments, it must be held that the Commission has not shown that, in spite of its interference, in particular that intended to involve Studienkreis in the Ecodata project, 'the applicant continued to be able to manage the project in a satisfactory manner'.

86 Therefore, given that, first, from the summer of 1992 until at least 15 March 1993 the Commission insisted that the applicant involve Studienkreis in the Ecodata project (even though the applicant's proposal and the decision granting the aid did not provide for that undertaking's participation in the project), — something which necessarily delayed realisation of the project — and that, second, the Commission has not shown that, in spite of its interference, the applicant continued to be able to manage the project in a satisfactory manner, it must be held that the Commission acted in breach of the principle of good faith by refusing to pay the second instalment of the aid on the ground that the project was not completed on 31 October 1993.

87 It follows that the present plea must be upheld without its being necessary to consider whether the Commission's other actions, namely the late payment of the first instalment of the aid and the meeting on 24 November 1992 organised by Mr Tzoanos, were also of such a kind as to delay the Ecodata project.

88 However, in so far as, concerning the last intervention, the Commission needs to emphasise that there was collusion between Mr Tzoanos, 01-Pliroforiki and the

applicant (see paragraph 66 above), the Court must also rule on the application of the principle *fraus omnia corrumpit*, which, according to the Commission, calls for the present action to be dismissed.

89 In its observations of 10 February 2000 the Commission explains in that regard that the decision of 4 August 1992 to grant the Ecodata project aid of ECU 530 000 resulted from collusion between Mr Tzoanos, 01-Pliroforiki and the applicant. In support of its argument, the Commission refers to the minutes of the interviews held during the Belgian authorities' inquiry into Mr Tzoanos (Annexes 1 to 3 to the Commission's observations). It points out that Mr Freitag, the applicant's manager and owner, stated that Mr Tzoanos had asked him to appoint Mr Tzoanos as a partner in ETIC, one of Mr Freitag's companies, and led him to believe that the applicant would find it easier to obtain contracts from the Commission in the future (Annex 1 to the Commission's observations). In addition, Mr Tzoanos indicated to Mr Freitag that a future project referred to by Mr Freitag at a conference of DG XXIII in Lisbon in May 1992 'could work' if a commission of ECU 30 000 was paid to him (Annex 1 to the Commission's observations). In support of its argument, the Commission also points out that, from June 1992, the Lex Group represented ETIC in Greece (brochure No 1/92 of ETIC). Mr Tzoanos was the founder of the Lex Group, while the person who was responsible for making client contact for that company was Ms Sapountzaki, his fiancée at that time and subsequently his wife. 01-Pliroforiki succeeded the Lex Group as ETIC's representative in Greece. The Commission also refers to the statement made by Mr Franck, ETIC's collaborator, which, it claims, clearly establishes that there was collusion between Mr Tzoanos, 01-Pliroforiki and the applicant (Annex 2 to the Commission's observations). It is significant that Innovence, the only one of the applicant's partners in the project which had no connection with either Mr Tzoanos or Mr Freitag, was not invited to the meeting on 24 November 1992 (see paragraph 10 above), which was held in ETIC's offices. The Commission also points out that Mr Tzoanos had Mr Freitag's private telephone number. During the telephone conversation that Mr von Moltke had with Mr Freitag on 10 March 1993, Mr Freitag covered for Mr Tzoanos and thus became his accomplice. At the hearing the Commission again referred to the judgment of the Tribunal de Grande Instance (Twelfth Chamber)

(Regional Court), Paris, of 22 September 2000, by which Mr Tzoanos was sentenced to four years' imprisonment for corruption.

- 90 The Court notes that there is no mention in either the contested decision or the letter of 30 November 1993, to which the contested decision refers, of collusion between Mr Tzoanos, 01-Pliroforiki and the applicant, which prevented payment of the second instalment of the aid to the applicant. The contested decision and the letter of 30 November 1993 do not, furthermore, give any indication that the Commission considered that the way in which the aid had been granted to the applicant was irregular. In those circumstances, the Commission's explanation concerning the alleged existence of collusion between the parties concerned cannot be regarded as clarifying in the course of the proceedings the reasons stated in the contested decision (see, to that effect, Case 195/80 *Michel v Parlement* [1981] ECR 2861, paragraph 22; Case T-16/91 *RV Rendo and Others v Commission* [1996] ECR II-1827, paragraph 45; and Case T-77/95 *RV Ufex and Others v Commission* [2000] ECR II-2167, paragraph 54).
- 91 If account is taken of the fact that, under Article 173 of the EC Treaty (now, after amendment, Article 230 EC), the Court of First Instance must confine itself to a review of the legality of the contested decision on the basis of the reasons set out in that measure, the Commission's argument concerning the principle *fraus omnia corrumpit* cannot be upheld.
- 92 It must be added that if the Commission, having adopted the contested decision, had taken the view that the evidence mentioned in paragraph 89 above was sufficient to conclude that there was collusion between Mr Tzoanos, 01-Pliroforiki and the applicant which had vitiated the procedure by which aid was allocated to the Ecodata project, rather than pleading in the present proceedings a ground which was not mentioned in the contested decision, it could have withdrawn that decision and adopted another decision not only refusing to pay the second instalment of the aid but also ordering repayment of the instalment that had already been paid.

- 93 Accordingly, the contested decision must be annulled without there being any need to consider the other plea advanced by the applicant.
- 94 Under Article 176 of the EC Treaty (now Article 233 EC) it is for the Commission to take the necessary measures to comply with this judgment. In doing so, it must take account of all the grounds of the present judgment.

### Costs

- 95 The judgment of 15 October 1997 in *IPK v Commission* (cited in paragraph 20 above), which ordered the applicant to pay the costs, was set aside by the Court of Justice in so far as it, first, dismissed the applicant's claims for annulment of the contested decision and, second, ordered the applicant to pay the costs.
- 96 In its judgment of 5 October 1999 *IPK v Commission* (cited in paragraph 23 above), the Court of Justice reserved the costs. It is therefore for the Court of First Instance to make an order in this judgment concerning all costs relating to the various proceedings.
- 97 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been unsuccessful, it must be ordered to pay all the costs incurred before the Court of First Instance and the Court of Justice, as the applicant has applied for costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. **Annuls the Commission's decision of 3 August 1994 not to pay the balance of financial assistance granted to the applicant in connection with a project to create a databank on ecological tourism in Europe.**
2. **Orders the Commission to bear its own costs and to pay all the costs incurred by the applicant before the Court of First Instance and the Court of Justice.**

Azizi

Lenaerts

Jaeger

Delivered in open court in Luxembourg on 6 March 2001.

H. Jung

Registrar

J. Azizi

President