JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)

3 April 2003 *

In Joined Cases T-44/01, T-119/01 and T-126/01,

Eduardo Vieira, SA, established in Vigo-Pontevedra (Spain), represented by J.-R. García-Gallardo Gil-Fournier and D. Domínguez Pérez, lawyers,

applicant in Cases T-44/01 and T-126/01,

Vieira Argentina, SA, established in Buenos Aires (Argentina), represented by J.-R. García-Gallardo Gil-Fournier and D. Domínguez Pérez, laywers,

applicant in Case T-44/01,

Pescanova, SA, established in Chapela (Spain), represented by A. Creus Carreras, B. Uriarte Valiente and S. Rodríguez Artacho, lawyers,

applicant in Case T-119/01,

* Language of the case: Spanish.

Commission of the European Communities, represented by S. Pardo Quintillán, acting as Agent, assisted by J. Guerra Fernández, lawyer, with an address for service in Luxembourg,

defendant,

APPLICATION, in Case T-44/01, for compensation under Article 235 EC and the second paragraph of Article 288 EC for damage arising from the suspension of payment of the balance of the financial aid granted to project ARG/ESP/SM/26-94 for the creation of a joint enterprise within the framework of the Agreement between the Community and the Argentinian Republic on relations in the sea fisheries sector; in Case T-119/01, for annulment of the Commission decision of 19 March 2001 reducing the aid granted to project ARG/ESP/SM/17-94 for the purpose of creating a joint enterprise within the framework of the Agreement between the Community and the Argentinian Republic on relations in the sea fisheries sector; and, in Case T-126/01, for annulment of the Commission decision of 19 March 2001 reducing the aid granted to project ARG/ESP/SM/26-94 for the purpose of creating a joint enterprise within the framework of the Agreement between the Community and the Argentinian Republic on relations in the sea fisheries sector,

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

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

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 28 November 2002,

gives the following

Judgment

Legal framework

Agreement between the European Economic Community and the Argentine Republic on relations in the sea fisheries sector

1 The Agreement between the European Economic Community and the Argentine Republic on relations in the sea fisheries sector (hereinafter 'the fisheries agreement') was approved on behalf of the Commission by Council Regulation (EEC) No 3447/93 of 28 September 1993 (OJ 1993 L 318, p. 1).

2 Articles 5(1) and (2) of the fisheries agreement provides:

'1. The Parties shall create suitable conditions for the establishment in Argentina of undertakings using capital originating in one or more Member States of the Community and the creation of joint enterprises and joint ventures in the fisheries sector between Argentinian and Community shipowners with the aim of jointly exploiting and, where appropriate, jointly processing Argentinian fishery resources under the conditions laid down in Protocol I and Annexes I and II.

2. Argentina shall grant the undertakings referred to in paragraph 1 access to the fishing opportunities set out in Protocol I in accordance with the provisions of Annexes I to IV.'

3 Article 2(e) of the fisheries agreement defines 'joint enterprise' as 'a company constituted under private law consisting of one or more Community shipowners and one or more Argentinian natural or legal persons bound by a joint enterprise contract for the purpose of exploiting and, where appropriate, processing Argentinian fishery resources with a view to the priority supply of the Community market'.

4 The creation of a joint enterprise in principle implies the transfer of a Community vessel (Article 5(3) of the fisheries agreement). That vessel is then removed from the Community register.

5 Point 2 of Annex III to the fisheries agreement provides that projects for the formation of joint enterprises are to be presented to the Commission by the Member States 'in accordance with Community rules'.

6 Under point 3 of Annex III to the fisheries agreement, the Community is to submit to the Joint Committee the list of projects eligible for financial assistance. That provision provides that:

'The Joint Committee shall evaluate the projects in accordance basically with the following criteria:

(a) technology appropriate to the proposed fishing operations;

(b) species and fishing zones;

(c) modernisation of vessels;

(d) total investment in the project;

(e) investment in on-shore plant;

(f) previous experience of Community shipowner and any Argentinian partner in the fisheries sector.'

7 In accordance with points 4 and 5 of Annex III to the fisheries agreement, projects are approved on the recommendation of the Joint Committee, by the Argentinian enforcement authority and the Community.

8 Protocol I of the fisheries agreement is headed 'fishing opportunities and financial compensation'. Article 1 sets annual fishing limits for the surplus species (Patagonian grenadier, Argentinian shortfin squid, Patagonian rockcod and/or roughhead grenadier) and non-surplus species (*Merluccius hubbsi*) covered by the fisheries agreement.

9 Joint enterprises are authorised to catch the surplus and non-surplus species referred to in the quantities specified in Protocol I (Article 6 of the fisheries agreement) and are eligible for financial assistance in accordance with that protocol (Article 7 of the fisheries agreement).

10 To that end, Article 3 of Protocol I provides:

'1. ... the Community shall provide financial assistance for the formation of joint enterprises...

This financial assistance... shall be paid to the Community owner to cover part of his financial contribution to the establishment of a joint enterprise... and/or to remove the vessels in question from the Community register.

2. With a view to encouraging the establishment and development of joint enterprises, the Community shall grant to joint enterprises established in Argentina financial support of fifteen (15) per cent of the amount paid to the Community owner...

...

4. The provisions governing applications for and the grant of Community assistance to the Community owner as referred to in paragraph 1 shall be laid down in accordance with the relevant Community rules in force...'.

Community legislation concerning joint enterprises in the fisheries sector

11 On 18 December 1986, the Council adopted Regulation (EEC) No 4028/86 on Community measures to improve and adapt structures in the fisheries and aquaculture sector (OJ 1986 L 376, p. 7). That regulation, as amended successively by Council Regulation (EEC) No 3944/90 of 20 December 1990 (OJ 1990 L 380, p. 1), Council Regulation (EEC) No 2794/92 of 21 September 1992 (OJ 1992 L 282, p. 3) and Council Regulation (EEC) No 3946/92 of 19 December 1992 (OJ 1992 L 401, p. 1), provides, in Articles 21(b) to 21(d), that the Community may grant various types of financial aid to projects of joint fisheries enterprises, for an amount varying as a function of the tonnage and age of the vessels concerned, in so far as those projects comply with the conditions laid down in the Regulation.

12 Article 21(a) of Regulation No 4028/86 defines 'joint enterprise' as a company incorporated under private law 'comprising one or more Community shipowners and one or more partners from a third country..., set up for the purpose of exploiting and, where appropriate, using the fishery resources of waters falling within the sovereignty and/or jurisdiction of such third country, primary consideration being given to the supply of the Community market'. The Commission grants financial aid for joint enterprise projects 'used to cover the financial contribution of the Community partner or partners corresponding to the capital invested in the joint enterprise' (Article 21(c)(1)).

13 Article 44 of Regulation No 4028/86, which was applicable until 31 December 1993, provides:

'Throughout the period for which aid is granted by the Community, the authority or agency appointed for the purpose by the Member State shall send to the Commission on request all supporting documents and all documents showing that the financial or other conditions imposed for each project are satisfied. The Commission may decide to suspend, reduce or discontinue aid, in accordance with the procedure laid down in Article 47:

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

— if certain conditions imposed are not satisfied...'.

14 With the adoption of Council Regulation (EEC) No 2080/93 of 20 July 1993 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the financial instrument of fisheries guidance (OJ 1993 L 193, p. 1) and

Council Regulation (EC) No 3699/93 of 21 December 1993 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products (OJ 1993 L 346, p. 1), the management and financing of joint enterprises was integrated into the financial instrument for fisheries guidance (FIFG). The Member States are henceforth responsible for selecting which joint enterprise projects to finance. They are also responsible for the management and control of those projects.

15 From 1 January 1994, Regulation No 2080/93 repealed Regulation No 4028/86. Under the second indent of the second subparagraph of Article 9(1) of Regulation No 2080/93, Regulation No 4028/86 and its implementing provisions nevertheless continued to apply to applications for financial aid submitted before 1 January 1994.

16 Finally, Article 24 of Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different structural funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1), as amended by Regulation (EEC) No 2082/93 (OJ 1993 L 193, p. 20), provides that the Commission, after a suitable examination of the case where 'an operation or measure appears to justify only part of the assistance allocated' (paragraph 1), 'may reduce or suspend assistance in respect of the operation or measure concerned if the examination reveals an irregularity and in particular a significant change affecting the nature or conditions of the operation or measure for which the Commission's approval has not been sought' (paragraph 2).

17 Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1) repealed Regulation No 4253/88 as from 1 January 2000. However, Article 54 of Regulation No 1260/1999 provides that the repeal is 'without prejudice to Article 52(1)'.

Under the latter paragraph, Regulation No 1260/1999 'shall not affect the continuation or modification, including the total or partial cancellation, of assistance approved... by the Commission on the basis of Council Regulation... (EEC) No 4253/88'.

Facts giving rise to the proceedings in Cases T-44/01 and T-126/01 and the decision reducing the aid granted to Eduardo Vieira, SA

18 Within the framework of the fisheries agreement, the Spanish undertaking Eduardo Vieira, SA (hereinafter 'SAEV') proposed a project to create a joint enterprise called Vieira Argentina, SA (hereinafter 'VASA'), comprising SAEV and an Argentinian shipowner. The project proposed fishing for the species Patagonian toothfish. The Community vessel *Ibsa Cuarto*, subsequently renamed *Vieirasa XII*, was to be transferred to the project.

19 By letter of 13 October 1994, the Commission informed SAEV that the project could not be considered, since the species referred to was not among the species covered by the fisheries agreement.

20 By letter of 20 October 1994, the Spanish authorities then sent the Commission documents declaring a change in the catch plan which the applicant had sent to them. That plan referred to catching, within the Argentinian Exclusive Economic Zone (EEZ), surplus species mentioned in Protocol I of the fisheries agreement: Patagonian grenadier, roughhead grenadier and Patagonian rockcod.

21 By letter of 8 December 1994, the Commission informed SAEV that its project had not been recommended by the Joint Committee of 5 and 6 December 1994, since the 'Argentinian partner insist[ed] on retaining the Patagonian toothfish (a species not covered by the fisheries agreement) in the catch plan of the project presented to the Argentinian authorities'.

22 By fax of 12 December 1994, SAEV informed the Commission that the Argentinian partner had 'renounced the plan to fish for Patagonian toothfish, in a letter sent to the Argentinian Directorate-General of fisheries and agriculture on 24 November 1994'.

23 The Argentinian authorities approved the project in Resolution No 14/95 of 14 July 1995 and issued the *Vieirasa XII* with a fishing permit for surplus species, under which the vessel could catch 1 204 tonnes of roughhead grenadier, 301 tonnes of Patagonian grenadier and 301 tonnes of other species.

24 By letter of 18 July 1995, the joint enterprise VASA applied to the Argentinian authorities for a supplementary permit, for Patagonian toothfish, to be added to the fishing permit granted on the basis of the fisheries agreement.

25 By decision of 25 July 1995 (hereinafter 'the decision to grant assistance of 25 July 1995') the Commission approved the grant of financial aid to the project proposed by SAEV (project ARG/ESP/SM/26-94) 'under the conditions established by the provisions laid down in the [fisheries] agreement..., the applicable Community law and the provisions in the Annexes' (Article 1).

26 Annex I to the decision to grant assistance of 25 July 1995 establishes the financial aid granted to SAEV, of ECU 1 881 936. That annex also sets the amount of aid granted to the joint enterprise VASA, which receives aid equal to 15% of the amount granted to SAEV, that is, ECU 282 290.4. The total aid for the project is thus ECU 2 164 226.4.

27 Annex I to the decision to grant assistance of 25 July 1995 provides:

'The information contained in the present annex may not be altered without prior authorisation by the Argentinian authorities and the Commission.'

28 By resolution of 14 November 1995, the Argentinian authorities granted the *Vieirasa XII* a definitive fishing permit which reduced the tonnage of surplus species to 750 tonnes of roughhead grenadier, 230 tonnes of Patagonian rockcod and 230 tonnes of Patagonian grenadier and which included a new fishing permit for 1 800 tonnes of Patagonian toothfish.

29 On 27 June 1996, the Commission paid the first instalment (80%) of the aid.

30 The vessel *Vieirasa XII* permanently left Argentinian waters on 5 July 1996 in order to fish in international waters.

31 SAEV submitted a request for payment of the balance of the aid on 25 February 1997.

32 By letter of 21 April 1998, the Commission informed SAEV that the procedure for reducing Community aid could be initiated in the absence of a satisfactory reply from the undertaking. In that letter, the Commission stated that the departure of the vessel from Argentinian waters on 5 July 1996 constituted an infringement of Article 5(1) of the fisheries agreement and Article 3(1) of Protocol I to that agreement, since joint enterprises are established with the aim of exploiting and, where appropriate, processing Argentinian fishery resources.

33 On 19 May 1998, SAEV submitted its observations. In that letter, it set out the reasons on the basis of which it considered that the conditions for granting financial aid had not been infringed.

34 By letter of 9 June 1999, the Commission informed SAEV that it was of the opinion that 'the explanations set out in the letter of 19 May 1998 do not make it possible to conclude that the relevant Community law was complied with, but confirm that the vessel left Argentinian waters on 5 July 1996'. The Commission explained that it had therefore 'decided to reduce the aid granted to that project'. The letter set out the method for calculating the reduction and concluded that the Commission should be reimbursed the amount of EUR 355 477. The Commission stated that, in the absence of agreement by SAEV to the proposed solution, it would have to 'continue the procedure for reduction and recovery in progress'.

35 That letter was followed by an exchange of correspondence between SAEV (letters of 16 July 1999, 21 December 1999 and 5 April 2000) and the Commission services (letters of 23 September 1999 and 28 February 2000). Meetings also took place between representatives of SAEV and the Commission services.

36 By letter of 14 September 2000, the Commission informed SAEV that a new calculation had led it to consider that an amount of EUR 419 446 would have to be repaid.

37 SAEV, which considered that the Commission had unlawfully failed to pay it the balance of the Community aid, gave formal notice to the Commission to do so by letter of 21 September 2000.

38 By letter of 16 October 2000, the Commission informed SAEV that the procedure for reducing the aid granted to the Community shipowner was in progress and that a decision in the matter would be taken after consultation with the Standing Committee for the Fishing Industry.

39 By Decision C(2001) 680 final of 19 March 2001, addressed to the Kingdom of Spain and SAEV, the Commission reduced the financial aid which had been granted to that undertaking. Article 2 of the Decision requires SAEV to reimburse the amount of EUR 419 466. The Decision contains no determination on a possible reduction in the aid granted to the joint enterprise VASA.

40 The grounds for Decision C(2001) 680 final are as follows:

'2. Pursuant to Article 1 of [the] decision (decision to grant assistance of 25 July 1995), the aid was granted under conditions established by the provisions laid down by the... fisheries agreement, the applicable Community legislation and the provisions in the Annexes...

3. The... fisheries agreement, and in particular Article 5(1) thereof, states that the creation of joint enterprises in Argentina has the aim of exploiting Argentinian fishery resources under the conditions laid down in Protocol I and Annexes I and II; under Article 6, joint enterprises are authorised to take the catch quantities specified in Protocol I.

4. Point 3.2.1 of Part B of the application for Community aid completed and signed by [SAEV] expressly states that the Commission only grants financial aid to projects which intend to exploit fishery resources in waters which are under the sovereignty or jurisdiction of the third country taking part...

5. ...

6. Consequently, the granting of Community aid for the creation of the joint enterprise at issue applied only to catches carried out by the fishing vessel *Ibsa Cuarto*, of the species mentioned in the annexes to the decision (aid decision of 25 July 1995), that is to say, roughhead grenadier, Patagonian grenadier and Patagonian rockcod, and located in Argentinian waters.

7. As from 5 July 1996, the vessel *Ibsa Cuarto* ceased its fishing activities in the Argentinian EEZ and began to fish in international waters for Patagonian toothfish, without prior notification to the Commission of that fact and without having obtained its authorisation.'

41 After pointing out that it learned of that situation on 2 July 1997, the Commission concludes, in point 9 of Decision C(2001) 680 final, that SAEV had not complied with the conditions for granting financial aid. It goes on, in points 10 to 13 of the Decision, to calculate the reduction of the aid in question. It first states that SAEV is entitled, under the scale of assessment laid down in Regulation No 3699/93, to aid of EUR 688 187 for the definitive transfer of the *Vieirasa XII* to the joint enterprise. The balance of the aid granted it by the decision to grant assistance of 25 July 1995 is therefore EUR 1 193 749 (1 881 936 - 688 187). Since the *Vieirasa XII* was active for only 12 months (of the 36 months stipulated) in Argentinian waters, the Commission concludes that SAEV is entitled to only one third of the EUR 1 193 749 envisaged, that is to say, EUR 397 916. The total amount of reduced aid is therefore, according to the Commission, EUR 1 086 103 (397 916 + 688 187). SAEV, which had already received 80% of the aid (EUR 1 505 549) is therefore required to reimburse EUR 419 446 to the Commission.

Facts giving rise to the proceedings in Case T-119/01 and the decision reducing the aid granted to Pescanova

42 Within the framework of the fisheries agreement, Pescanova, SA (hereinafter 'Pescanova') proposed a project to establish a joint enterprise named 'Calanova', made up of Pescanova and Argentinian shipowner Argenova. The project envisaged fishing for Argentinian shortfin squid. The Community vessel *Orense* was to be transferred to the project.

43 By decision of 21 December 1994 (hereinafter 'the decision to grant assistance of 21 December 1994'), the Commission approved the grant of financial aid to the project proposed by Pescanova (project ARG/ESP/SM/17-94) 'under the conditions established by the provisions laid down in the [fisheries] agreement..., the applicable Community law and the provisions in the Annexes' (Article 1).

44 Annex I to the decision to grant assistance of 21 December 1994 establishes the financial aid granted to Pescanova, that is, ECU 1 824 813. That annex also sets the amount of aid granted to the joint enterprise, Calanova. The latter receives aid equal to 15% of the amount granted to Pescanova, that is, ECU 273 721.9. The total aid for the project is thus ECU 2 098 534.9.

45 Annex I to the decision to grant assistance of 21 December 1994 provides:

'The information contained in the present annex may not be altered without prior authorisation by the Argentinian authorities and the agreement of the Commission.'

46 Subsequent to that decision, the *Orense* was removed from the Spanish register of ships on 23 January 1995 and registered in the Argentinian national register of ships on 15 March 1995. On 21 April 1995 it obtained the fishing permit needed to catch 4 000 tonnes of Argentinian shortfin squid and immediately began its fishing activities.

47 On 23 April 1995 the applicant submitted to the Spanish authorities a request for payment of the first instalment of the financial aid. That request was communicated to the Commission on 13 June 1995. Payment was made following review.

48 As regards activities for the year 1996, the *Orense* ceased all fishing activities in Argentinian waters after 23 August 1996. The vessel headed out to international waters. The withdrawal from fishing in Argentinian waters was due to the

depletion of fishery resources in those waters, which required the Argentinian authorities to order limits or prohibitions on fishing.

49 On 2 October 1996 the applicant requested payment of the balance of the financial aid. It attached to that request the first activity report for the joint enterprise for the period from 30 April 1995 to 30 June 1996.

50 The application form for payment of the balance of the aid stated that Pescanova undertook to 'present to the Commission the second and third activity reports corresponding to the second and third years of activity by the enterprise'.

51 The Commission paid the balance of the financial aid on 1 January 1997.

52 As regards the activities for the year 1997, the *Orense* concentrated its activities in international waters, in particular in the waters of the Indian Ocean.

53 On 14 January 1998 the *Orense* sank off Mauritius.

54 In May 1998 Pescanova presented the Spanish authorities with the second activity report for the joint enterprise, covering the period from 1 January 1996 to 31 December 1996.

55 By letter of 14 July 1999 the Commission informed Pescanova that it was of the opinion that the conditions for the granting of Community financial aid had not been complied with, since the vessel operated by the joint enterprise had ceased its fishing activities in Argentinian waters on 23 August 1996. Accordingly, it initiated the procedure to reduce aid and gave formal notice to Pescanova to make observations on the reduction and the method for calculating the proposed reduction.

56 On 10 September 1999 Pescanova sent a letter to the Commission in which it asked the Commission to specify which provisions had been infringed.

57 On 24 October 1999, the Spanish authorities sent the Commission a letter from the applicant concerning the sinking of the vessel, as well as the third periodic activity report for the joint enterprise, dated 4 August 1998.

58 By letter of 18 November 1999 the Commission informed Pescanova that, having analysed its observations, it did not consider it necessary to alter its original position.

59 By letter of 5 July 2000 Pescanova again asked the Commission to specify which provisions had been infringed.

60 In a letter of 18 August 2000 the Commission explained that the recovery of a part of the aid was warranted since the *Orense* had ceased its activities in Argentinian waters in August 1996, without requesting authorisation from the Commission.

61 By letter of 14 September 2000 the Commission informed Pescanova that the amount to be reimbursed was EUR 472 818. It granted the undertaking a period of 30 days in which to submit its observations. They were submitted to the Commission on 7 November 2000 (to D. Steffen Smidt) and on 8 November 2000 (to Giorgio Gallizioli). Pescanova submitted additional observations on 16 February 2001.

62 By Decision C(2001) 727 final of 19 March 2001, addressed to the Kingdom of Spain and to Pescanova, the Commission reduced the financial aid which had been granted to that undertaking. Article 2 of the Decision requires Pescanova to reimburse the amount of EUR 427 818. That decision does not contain a determination on a possible reduction of the aid granted to the joint enterprise Calanova.

63 Decision C(2001) 727 final is based on the following grounds:

'4. The fishing vessel *Orense*, transferred to Argentina as part of the creation of the... joint enterprise (Calanova), ceased its fishing activities in Argentinian waters on 23 August 1996, that is, 16 months after the creation of the joint enterprise, without prior authorisation from the Commission.

...

7. In accordance with Article 24(2) of Regulation No 4253/88, the Commission may reduce or suspend assistance in respect of the operation or measure concerned if an appropriate examination of the case confirms that a significant change has been made which affects the nature or the conditions of operation of the action or measure and for which the Commission's approval was not sought.

8. The cessation of fishing activities by the abovementioned vessel was not submitted by [Pescanova] to the Commission for prior authorisation; that situation constitutes a significant change to the conditions set for the granting of aid.'

64 According to the Commission, the situation warrants a reduction in financial aid under the principle of proportionality (Decision C(2001) 727 final, point 9). The Commission first points out that, under the scale of assessment laid down in Regulation No 3699/93, Pescanova is entitled to aid of EUR 973 740 for the definitive transfer of the *Orense* to the joint enterprise. The balance of the aid which was granted it by the decision to grant assistance of 21 December 1994 is therefore EUR 851 073 (1 824 813 - 973 740). Since the *Orense* was active for only 16 months (of the 36 months stipulated) in Argentinian waters, the Commission concludes that Pescanova is entitled to only 16/36ths of the EUR 851 073 envisaged, that is to say, EUR 378 255. The total amount of reduced aid is therefore, according to the Commission, EUR 1 351 995 (378 225 + 973 740). Pescanova, which had already received the whole amount of the aid (EUR 1 824 813), is therefore required to reimburse EUR 472 818 to the Commission (Decision C(2001) 727 final, points 10 to 12).

Procedure

65 By application lodged at the Registry of the Court of First Instance on 26 February 2001, SAEV and VASA (Case T-44/01) brought an action for compensation for the damage which they claim to have suffered as the result of the unlawful suspension of aid which had been granted to them by the Decision of 25 July 1995.

66 By application lodged at the Registry of the Court of First Instance on 1 June 2001, Pescanova (Case T-119/01) brought an action for annulment of Decision C(2001) 727 final of 19 March 2001 (hereinafter 'the contested decision in Case T-119/01').

67 By application lodged at the Registry of the Court of First Instance on 8 June 2001, SAEV (Case T-126/01) brought an action for annulment of Decision C(2001) 680 final of 19 March 2001 (hereinafter 'the contested decision in Case T-126/01').

68 Upon hearing the report of the Judge-Rapporteur, the Court (Third Chamber) decided to open the oral procedure. By way of measures of organisation of procedure under Article 64 of the Rules of Procedure, certain written questions were put to the parties. They responded within the time allowed.

69 The parties presented oral argument and replied to the questions put by the Court at hearings which took place on 28 November 2002.

70 Having heard the parties as to a possible joinder, the Court of First Instance decided to join Cases T-44/01, T-119/01 and T-126/01 for the purpose of the judgment.

Forms of order sought

71 In Case T-44/01, the applicants claim that the Court of First Instance should:

— declare the application admissible;

— in the exercise of its unlimited jurisdiction and in the terms sought in the application, order the Commission to pay a compensation for the damage caused by the delayed payment of part of the aid;

— order the Commission to pay the costs.

72 The Commission contends that the Court should:

— declare the application inadmissible as regards the claim that the procedure for reducing the financial aid is unlawful or, in the alternative, unfounded as regards that same claim;

— for the rest, declare the application unfounded;

— order the applicants to pay the costs.

73 In Case T-119/01, the applicant claims that the Court of First Instance should:

— declare the application admissible and well founded;

— annul the contested decision in Case T-119/01;

— order the Commission to pay the costs.

74 The Commission contends that the Court should:

— declare the application unfounded;

— order the applicant to pay the costs.

75 In Case T-126/01, the applicant claims that the Court of First Instance should:

— declare the application admissible;

— join the present case to Case T-44/01;

— declare null and void the contested decision in Case T-126/01;

— order the Commission to pay the costs.

76 The Commission contends that the Court should:

— dismiss the application for joinder;

— declare the application unfounded;

— order the applicant to pay the costs.

Law

Cases T-119/01 and T-126/01

77 The Court of First Instance considers it appropriate first to examine the substance of the actions for annulment brought in Cases T-119/01 and T-126/01.

78 In those cases, the applicants raise a total of eight pleas in law. The first plea concerns the absence of a legal basis or an incorrect legal basis for the contested

decisions. Under the second plea, the applicants dispute that there was a significant change to their project which could have warranted a reduction in aid. The third plea alleges breach of the principle of proportionality and the fourth incorrect application of Community legislation concerning the reduction of financial aid. The fifth plea alleges breach of the principle of a reasonable time-limit and breach of the principles of the protection of legitimate expectations and of legal certainty. The sixth plea alleges infringement of the right to be heard, and the seventh plea alleges the inconsistency of the contested decision in Case T-126/01. Finally, the last plea alleges infringement of Article 253 EC.

The plea alleging absence of a legal basis or an incorrect legal basis for the contested decisions

79 The applicants claim that there is no provision in the fisheries agreement which entitles the Commission to reduce financial aid granted under that agreement for the creation of joint enterprises. Nor do the fisheries agreement and the decisions to grant assistance of 21 December 1994 and 25 July 1995 refer to a Community provision which establishes a procedure for reducing such financial aid.

80 The applicant in Case T-119/01 therefore infers that the contested decision lacks a legal basis.

81 The applicant in Case T-126/01 acknowledges that, under a general principle of law, the Commission must be entitled to suspend, reduce or discontinue Community financial aid if the conditions for a grant of aid are not observed. Nevertheless, it contends that the Commission was not entitled to base the contested decision in Case T-126/01 on Regulation No 4253/88. It points out in

that respect that Regulation No 4253/88 applies to the Structural Funds. The financial aid granted under the fisheries agreement is not structural assistance. It also points out that the financing of activities proposed under the fisheries agreement is charged to the credit line B7-8000 of subsection B7 (external operations) of the Community budget, while activities planned within the framework of Regulation No 4253/88 come under subsection B2 (structural measures) of that budget.

82 The Court observes, first, as regards the legal basis, that the contested decisions are based on Regulation No 4253/88, in particular Article 24 thereof, and on Regulation No 3447/93, which approves the fisheries agreement on behalf of the Commission.

83 It is necessary to consider whether Regulation No 3447/93 and the fisheries agreement confer on the Commission competence to adopt the contested decisions.

84 In that regard, as the applicants have rightly pointed out, Regulation No 3447/93 and the fisheries agreement do not contain any provision specifically relating to a possible reduction or withdrawal of financial aid granted under that agreement.

85 None the less, since, under Article 7 of the fisheries agreement and Article 3(1) of Protocol I to the fisheries agreement, the Community grants financial aid for the creation of joint enterprises, it must also have the power to reduce that aid if the conditions under which it was granted have not been observed (see, to that effect, Case T-251/00 *Lagardère and Canal+* v *Commission* [2002] ECR I-4825, paragraph 130).

86 As the Commission points out, any other interpretation of the fisheries agreement would be contrary to the general principles of law common to the legal systems of the Member States, such as the principle which prohibits unjust enrichment or that which allows bilateral commitments to be unilaterally terminated when one of the contracting parties fails to comply with its obligations.

87 It follows that, on the basis of Regulation No 3447/93 and the fisheries agreement, the Community had general competence to adopt the contested decisions.

88 Next, as to the question whether Regulation No 4253/88 granted the Commission a specific competence to adopt the contested decisions, it must be borne in mind that under Article 24 of that regulation the Commission is entitled, following suitable examination, to 'reduce or suspend' financial aid granted on the basis of that regulation 'if the examination reveals an irregularity and in particular a significant change affecting the nature or conditions of the operation or measure for which the Commission's approval has not been sought'.

89 It must therefore be considered whether the decisions to grant assistance of 21 December 1994 and 25 July 1995 have a legal basis in Regulation No 4253/88. If that is the case, the regulation will constitute, under Article 24 thereof, an appropriate legal basis for the contested decisions.

90 In that regard, it must be observed, first, that the decisions to grant assistance of 21 December 1994 (Case T-119/01) and 25 July 1995 (Case T-126/01) are explicitly based solely on Regulation No 3447/93, which approves the fisheries agreement.

91 However, Article 1(1) of those decisions states that the aid is granted 'under the conditions established by the provisions laid down in the [fisheries] agreement..., the applicable Community law and the provisions in the Annexes'.

92 The reference to the 'applicable Community law' must be understood as a reference to, *inter alia*, Regulation No 4253/88. That regulation has an extremely wide field of application. As its title makes clear, it concerns the 'coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments'. It thus applies to various 'actions for structural purposes' (Article 3(1) of Regulation No 4253/88). The financial aid granted for the creation of joint enterprises under the fisheries agreement has a structural purpose. As the second recital in the preamble to the decisions to grant assistance of 21 December 1994 and 25 July 1995 states, the creation of joint enterprises, which entails the transfer of Community vessels and opens new fishing zones to Community shipowners, 'meets the objectives of the Community structural policy' in the fisheries sector.

93 The budget credit line used to finance the aid granted under the fisheries agreement does not assist the applicant in Case T-126/01. The requirements for making available the funds needed to carry out activities under the fisheries agreement cannot have any implications as regards the procedural requirements for the adoption of a decision to grant financial aid under the fisheries agreement (see, to that effect, Case 242/87 *Commission* v *Council* [1989] ECR 1425, paragraph 18).

94 Since the aid was, correctly, granted on the basis of Regulation No 4253/88, among others, the Commission was substantively competent to base the contested decisions on that regulation, and in particular on Article 24 thereof.

95 Finally, the temporal application of Regulation No 4253/88 must be considered.

96 Regulation No 1260/1999 repealed Regulation No 4253/88 with effect from 1 January 2000. However, Article 54 of Regulation No 1260/1999 provides that the repeal is 'without prejudice to Article 52(1)'. Under that paragraph, Regulation No 1260/1999 'shall not affect the continuation or modification, including the total or partial cancellation, of assistance approved... by the Commission on the basis of Council Regulation... No 4253/88...'.

97 Since the financial aid which is the subject of the present cases constitutes 'assistance approved... by the Commission on the basis of... Regulation No 4253/88' (see above, paragraphs 89 to 94), it must be concluded that, pursuant to the provisions cited in the preceding paragraph, the procedure to reduce that aid continued to be governed by Article 24 of Regulation No 4253/88, even after 1 January 2000.

98 Accordingly, both the fisheries agreement approved on behalf of the Community by Regulation No 3447/93 and Regulation No 4253/88, in particular Article 24 thereof, grant the Commission competence to reduce the Community aid received by the applicants. Nevertheless, it must subsequently be considered whether the conditions for applying Article 24 of Regulation No 4253/88 were fulfilled (see paragraphs 113 to 135 below).

99 The applicant in Case T-126/01 goes on to state that the legal system for joint enterprises was established by a joint agreement between the Community and the Argentine Republic. The applicant contends that, under the fisheries agreement, the Commission should have obtained prior authorisation from the Argentinian

authorities and the opinion of the Joint Committee set up by the fisheries agreement before it reduced the amount of aid granted. It refers in that regard to Article 10 of the fisheries agreement, under which the Joint Committee is, *inter alia*, to 'check that the projects are being properly administered and oversee the use of the financial support given to projects in accordance with Article 7', and to the footnote on page 1 of Annex I to the decision to grant assistance of 25 July 1995, which states that 'the information contained in the present annex may not be altered without prior authorisation by the Argentinian authorities and the Commission'. The amount of financial aid granted to the applicant is part of the information contained in that annex.

100 In that regard, the Court points out, first, that the fisheries agreement does not contain any specific provision relating to the reduction or withdrawal of financial aid. The question is therefore whether it follows implicitly but necessarily from the general scheme of the fisheries agreement, and in particular from the provisions cited by the applicant, that the Commission is required to consult the Joint Committee and to obtain the approval of the Argentinian authorities before it reduces financial aid which has been granted under the fisheries agreement to a Community shipowner, such as the applicant in Case T-126/01.

101 As regards the selection of projects which may be financed by the Community, Annex III(2) to the fisheries agreement provides that projects are first to be presented to the Commission by the competent authorities of the Member State or States concerned.

102 In addition, under Annex III(3) to the fisheries agreement, the Community is to submit to the Joint Committee the 'list of projects eligible for financial assistance'. Pursuant to the same provision, the Joint Committee is to evaluate the projects in accordance with various criteria (see paragraph 6 above).

103 In accordance with Annex III(4) and (5) to the fisheries agreement, projects are to be approved, on the recommendation of the Joint Committee, by 'the Argentinian enforcement authority and the Community'.

104 Those provisions provide no ground for inferring that the Commission is required to consult the Joint Committee and to obtain the approval of the Argentinian authorities before taking a decision to reduce financial aid granted to a Community shipowner for the creation of a joint enterprise. The fisheries agreement is divided into two parts: the international component, concerning cooperation between the Community and the Argentine Republic, and the Community component, which includes, *inter alia*, the financing granted by the Commission to Community shipowners for the creation of joint enterprises under the fisheries agreement.

105 The selection and evaluation of projects to create joint enterprises fall under the international component of the fisheries agreement. The creation of such enterprises is an instrument of cooperation between the Community and the Argentine Republic in the fisheries sector. As such, under the provisions cited in paragraphs 101 to 103 above, the selection of projects requires an evaluation by the Joint Committee and approval by both the Community and the Argentinian authorities.

106 By contrast, the grant of financial assistance to Community shipowners for projects which are selected is a unilateral measure by the Community and therefore comes under the Community component of the fisheries agreement.

107 Moreover, under Annex III(2) to the fisheries agreement, the Commission first considers all the projects presented to it by the Member States 'in accordance with Community rules'. Pursuant to paragraph 3 of that annex, the Commission

submits to the Joint Committee only those projects which it has determined to be eligible for financial assistance.

108 In addition, Article 3(4) of Protocol I to the fisheries agreement confirms that internal Community law applies to the aid granted to the Community owner under the fisheries agreement. That provision states that '[t]he provisions governing applications for and the grant of Community assistance to the Community owner... shall be laid down in accordance with the relevant Community rules in force'.

109 The applicant in Case T-126/01 cannot rely on Article 10 of the fisheries agreement, pursuant to which the Joint Committee must, *inter alia*, 'check that the projects are being properly administered and oversee the use of the financial support given to projects in accordance with Article 7'. That provision does not grant any power to the Joint Committee as regards the grant or the reduction of financial aid.

110 Finally, the argument relating to the footnote on page 1 of Annex I to the decision to grant assistance of 25 July 1995 (see paragraph 99 above) must also be rejected. A decision to reduce aid granted to a Community owner cannot be regarded as a decision which changes the 'information contained' in the original decision to grant assistance within the meaning of that footnote. It is an autonomous decision penalising failure to comply with the conditions to which the grant of aid is subject.

111 It follows from the foregoing considerations that, since the grant of financial aid to Community shipowners and its reduction constitute unilateral measures by the

Community which come under the Community component of the fisheries agreement, the Commission was entitled to adopt the contested decision in Case T-126/01, which was addressed solely to the Community shipowner concerned, without consulting the Joint Committee and without seeking prior agreement from the Argentinian authorities.

112 It follows that the present plea must be rejected in its entirety.

Plea in law alleging the absence of a significant change to the project which could have warranted a reduction in aid

113 In the contested decisions in Cases T-119/01 and T-126/01, the Commission considers that the vessel operated by the joint enterprise was required to be active in the Argentinian EEZ over a period of at least 36 months. The Commission states in those decisions that the vessels operated by the joint enterprises had ceased their fishing activities in Argentinian waters on 23 August and 5 July 1996 respectively, after 16 months and 12 months of activity in the Argentinian EEZ respectively. According to the Commission, that represents a significant change to the project within the meaning of Article 24 of Regulation No 4253/88, justifying the reduction of aid.

114 The contested decision in Case T-126/01 also complains of the fact that the vessel *Vieirasa XII* fished for a species which was not covered by the fisheries agreement, that is, the Patagonian toothfish.

115 The Court observes that the applicants do not dispute that the vessels operated by the joint enterprises, that is, the *Orense* in Case T-119/01 and the *Vieirasa XII* in Case T-126/01, stopped fishing in Argentinian waters and left those waters in

1996, although the applicant in Case T-119/01 disputes the exact date of departure from those waters (see paragraphs 146 to 151 below). Nor do they deny that they had not sought prior authorisation from the Commission before leaving Argentinian waters. In addition, in Case T-126/01, the applicant acknowledges that the *Vieirasa XII* was in possession of a fishing permit for, *inter alia*, 1 800 tonnes of Patagonian toothfish. It explains that the vessel left Argentinian waters in order to fish for that species in particular. The applicants nevertheless maintain that those circumstances cannot be regarded as significant changes to the project within the meaning of Article 24 of Regulation No 4253/88, justifying the reduction in aid.

116 First, as regards the question whether the departure from Argentinian waters may be characterised as a significant change within the meaning of Article 24 of Regulation No 4253/88, it must be pointed out that one of the principal objectives of the Community in entering into the fisheries agreement was to obtain access to Argentinian fishery resources for Community shipowners. In that regard, the first recital in the preamble to Regulation No 3447/93, which approves the fisheries agreement on behalf of the Community, states that the agreement 'provides Community fishermen with new fishing opportunities'. In order to attain that objective, the fisheries agreement encourages the creation of joint enterprises. According to Article 2(e) of the fisheries agreement, joint enterprises are created 'for the purpose of exploiting and, where appropriate, processing Argentinian fishery resources with a view to the priority supply of the Community market'. Similarly, Article 5(1) of the fisheries agreement states that joint enterprises are created 'with the aim of jointly exploiting and, where appropriate, jointly processing Argentinian fishery resources'.

117 It therefore follows that joint enterprises created within the framework of the fisheries agreement are required to exploit and, where appropriate, process Argentinian fishery resources.

118 Next, it must be borne in mind that in the decisions of 21 December 1994 and 25 July 1995, the Commission granted financial aid to the applicants for the

purpose of creating a joint enterprise under the fisheries agreement. Article 1 of those decisions states that the financial aid is granted 'under the conditions laid down in the provisions of the fisheries agreement', an agreement which, as is stated in the first recital in the preamble to the decisions to grant assistance, 'establishes the conditions and procedures for the creation of joint enterprises'. It follows that the conditions to which joint enterprises are subject under the fisheries agreement constitute the conditions governing the grant of aid.

119 It must therefore be held that one of the conditions to which the grant of financial aid to the applicants was subject in the present case is that the joint enterprises in question exploit and, where appropriate, process Argentinian fishery resources. Only fishery products caught in Argentinian waters constitute Argentinian fishery resources.

120 The applicant in Case T-126/01 cannot claim that the fishery products caught both within and beyond the waters of the Argentinian EEZ by a vessel flying the Argentinian flag must be regarded as Argentinian fishery resources. The objective of the fisheries agreement is to obtain access for the Community for new fishing zones within the Argentinian EEZ.

121 In addition, the applicants explicitly mentioned in the application for Community aid that they would be active in the Argentinian EEZ. That application (point 3.2) contains the following caution:

'The Commission only grants Community financial assistance to projects intended to exploit and, possibly, develop fishery resources located in waters under the jurisdiction or sovereignty of the third country taking part in the joint enterprise...'.

122 As may be seen from the foregoing, in the present case the granting of financial aid was subject to the condition that the joint enterprise would operate in waters under Argentinian jurisdiction or sovereignty. The departure from those waters by the *Orense* (Case T-119/01) and *Vieirasa XII* (Case T-126/01) and, consequently, the cessation of their fishing activities in those waters, without prior authorisation from the Commission, therefore constitutes a clear breach of that condition.

123 The applicants nevertheless maintain that the departure from Argentinian waters was necessary as the result of the depletion of fish stocks in the Argentinian EEZ, or of fishing prohibitions or limitations ordered by the Argentinian authorities. Moreover, the departure from Argentinian waters took place with the agreement of the Argentinian authorities.

124 Those arguments cannot be accepted. The Court points out in that regard that recipients of Community financial aid are under an obligation to provide information and to act in good faith. That is an obligation inherent in the system of such aid and is essential to its functioning. In accordance with that obligation, the applicants should have informed the Commission of the problems they encountered in carrying out their projects. Correct information would have enabled the Commission to take possible measures to adapt the fisheries agreement to the new circumstances, pursuant to Article 9(1) of the agreement.

125 In any event, the vessels operated by the joint enterprises should not have left the Argentinian EEZ without prior approval by the Commission, since the exploitation and processing of Argentinian fishery resources was one of the main conditions to which the grant of Community financial aid was subject.

126 Secondly, as regards the possible breach of the conditions to which the grant of aid was subject on the basis of the catch of the Patagonian toothfish, a species not covered by the fisheries agreement, it should be pointed out that that argument was invoked only in Case T-126/01.

127 Nevertheless, the catch of a species which is not covered by the fisheries agreement does not affect the reduction in aid made in the contested decision in Case T-126/01. The documents in the case show that the *Vieirasa XII*, which since 14 November 1995 held an Argentinian fishing permit for the catch, *inter alia*, of 1 800 tonnes of Patagonian toothfish, was fishing for that species before it left Argentinian waters on 5 July 1996, without that fact causing the Commission to reduce the Community aid. The applicant itself recognises that the vessel chose to leave the Argentinian EEZ and to fish in international waters owing, among other reasons, to the paucity of Patagonian toothfish in Argentinian waters.

128 At the hearing the parties acknowledged that the departure of the *Vieirasa XII* from the Argentinian EEZ was the sole reason for the reduction of aid which had been granted to the applicant in Case T-126/01.

129 It follows that the arguments put forward by the applicant in Case T-126/01 which seek to establish that no provision in the fisheries agreement or the decision to grant assistance of 25 July 1995 prohibits the joint enterprise from fishing for Patagonian toothfish have no bearing on the issue.

130 Thirdly, it must further be considered whether the joint enterprises created under the fisheries agreement are required to fish in Argentinian waters during a period of at least 36 months. Only the applicant in Case T-119/01 denies the existence of such a requirement with respect to joint enterprises.

131 In that regard, the Court notes that the footnote on page 2 of Annex I to the decision to grant assistance of 21 December 1994 states that, when requesting payment of the aid, the recipient is to use the forms approved by the Joint Committee at its meeting on 5 and 6 December 1994. In the form requesting the balance of the aid which it completed for that purpose, the applicant in Case T-119/01 agreed to 'present to the Commission the second and third periodic reports corresponding to the undertaking's second and third years of activity'. It necessarily follows that the activities of the joint enterprise must extend over at least three years.

132 Similarly, the form used by the applicant in Case T-119/01 to submit its first activity report stated that the second report had to be presented '12 months after the presentation of the first periodic report to the Commission' and the third report '12 months after the presentation of the second periodic report to the Commission'.

133 In the light of the fact that the joint enterprise created under the fisheries agreement was meant to report its activities during a period of at least three years, the Commission rightly observed, in the decision contested in Case T-119/01, that the minimum activity required for such an enterprise was of three years' duration — an activity which, in accordance with the definition of the joint enterprise itself, was to be carried out in Argentinian waters.

134 This last argument is therefore also unfounded.

135 Consequently, the plea must be rejected in its entirety.

Plea in law alleging a breach of the principle of proportionality

136 The applicants claim, in the alternative, that the decisions in question infringe the principle of proportionality.

137 In the present case, the Commission infringed the principle of proportionality by applying a mechanism for reduction of the aid which does not distinguish between the primary obligations and the secondary obligations imposed on the recipient of the aid (Case C-326/94 *Maas* [1996] ECR I-2643, paragraph 29). The applicants claim in that regard that the recipients of the aid complied with all their primary obligations, that is, the creation of a joint enterprise, the removal of a vessel from the Community register and its registration in the fishing register of a third country and the priority supply of the Community market.

138 Since all the primary obligations were complied with, the system of reduction *pro rata temporis* for the months when one of the secondary obligations was not observed is in breach of the principle of proportionality.

139 The Court observes that it is settled case-law that, by virtue of the principle of proportionality laid down in Article 5 EC, the measures adopted by Community institutions must not exceed what is appropriate and necessary for attaining the objective pursued (see Case 15/83 *Denkavit Nederland* [1984] ECR 2171, paragraph 25; and Case T-260/94 *Air Inter* v *Commission* [1997] ECR II-997, paragraph 144 and Case T-216/96 *Conserve Italia* v *Commission* [1999] ECR II-3139, paragraph 101).

140 In the contested decisions, the Commission took into account the fact that the Community aid to which the applicants were entitled is made up of two elements: 'first, an amount equivalent to that of the premium for the definitive transfer to a third country and, secondly, an amount proportional to the period of activity during which the vessel concerned has operated in Argentinian waters with reference to the regulatory period of 36 months, calculated by months due and a deduction from the amount corresponding to the premium for the definitive transfer' (contested decision in Case T-119/01, point 9, and contested decision in Case T-126/01, point 10).

141 It is therefore clear from the contested decisions that the aid received by the Community owner for registering a Community vessel in an Argentinian fisheries register was not reduced. That point, moreover, is not in dispute. The aid granted by the decisions of 21 December 1994 and 25 July 1995, after deduction of the amount received for the transfer of the vessel operated by the joint enterprise, was reduced for the period during which the vessel was not active in the Argentinian EEZ.

142 The reduction *pro rata temporis* of the aid for the period when the vessel was not active in the Argentinian EEZ is wholly proportionate to the alleged infringement, that is, the cessation of fishing activities in the Argentinian EEZ. Since the main purpose pursued by the fisheries agreement so far as the Community is concerned is access for Community owners to the Argentinian EEZ, the requirement to exploit and process Argentinian fishery resources must be regarded as a primary obligation which forms an integral part of the system of subsidies for joint enterprises (see paragraphs 116 to 125 above; see also T-180/00 *Antipesca* v *Commission* [2002] ECR II-3985, paragraph 91).

143 It is true, as the applicants point out, that the creation of the joint enterprise and the priority supply of the Community market (see paragraph 137 above) are also primary obligations under the system for subsidies. However, it must be stressed that the joint enterprise is created 'for the purpose of exploiting and, where

appropriate, processing Argentinian fishery resources' (Article 2(e) of the fisheries agreement) and that the priority supply of the Community market relates to a supply of fish caught in the Argentinian EEZ. The departure from Argentinian waters without Commission authorisation therefore necessarily involves an infringement of the other primary obligations which are binding on the recipient of aid.

144 The applicants next point out that the vessels *Orense* and *Vieirasa XII* left the Argentinian EEZ because of the depletion of fishery resources in that zone. That situation also led, according to the applicants, the Argentinian authorities to set limits on or prohibit fishing.

145 Nevertheless, the Court finds that the Commission was not obliged to take account of those circumstances in the contested decisions. The applicants should have sought prior authorisation from the Commission before leaving Argentinian waters (see also paragraphs 124 and 125 above).

146 The applicant in Case T-119/01 also disputes the *Orense*'s exact date of departure from the Argentinian EEZ, stating that the vessel left Argentinian waters on 2 October 1996 and not 23 August 1996.

147 The Court observes that, in the contested decision, the Commission calls in question the fact that '[t]he fishing vessel *Orense*, transferred to Argentina as part of the creation of that joint enterprise, ceased its fishing activities in Argentinian waters on 23 August 1996, without prior authorisation from the Commission' (point 4).

148 That cessation of fishing activities in Argentinian waters as regards the year 1996 is not in dispute. It is clear from the second activity report on fishing activities by the *Orense* that 'fishing activities for 1996 began on 31 January and ended on 23 August'. The applicant confirms, in point 2 of its reply, that '[i]t is therefore clear that the enterprise informed the Commission that its fishing activities in Argentina lasted only until 23 August 1996'.

149 Nor is it denied that the *Orense* subsequently left the Argentinian EEZ. During the last quarter of 1996, at least as from 2 October 1996, the *Orense* pursued its fishing activities in international waters.

150 Next, as regards the year 1997, the applicant acknowledges that the *Orense* was active in international waters, although it claims that minimal catches were made in Argentinian waters. It must be observed, however, that the applicant does not put forward any evidence whatsoever that it carried out any fishing activities in Argentinian waters in 1997. On 14 January 1998, the *Orense* sank off the coast of Mauritius.

151 In those circumstances, and independently of the exact date when the *Orense* left Argentinian waters, the Commission could reasonably consider that, for the purpose of calculating the amount of aid to which the applicant was entitled, the *Orense* had ceased exploiting Argentinian fishery resources on 23 August 1996, only 16 months after the creation of the joint enterprise on 30 April 1995. In the light of the minimum fishing period of 36 months in the Argentinian EEZ (see above, paragraph 133), the Commission could rightly consider that the applicant was entitled to only 16/36ths of the financial aid originally granted.

152 The applicant in Case T-119/01 also claims that the contested decision is in breach of the principle of proportionality, since the Commission did not take into account the sinking of the *Orense*, which constitutes a case of *force majeure*.

153 However, it must be recalled that on 14 January 1998, the *Orense* sank in the Indian Ocean off Mauritius. At the time it sank, the vessel was therefore no longer active in Argentinian waters. In those circumstances, the Commission was not required to take account of the sinking of the *Orense* when, in the contested decision, it fixed the amount of aid to which the applicant was definitively entitled.

154 It follows from the foregoing that the plea alleging breach of the principle of proportionality must be rejected.

Plea in law alleging misapplication of Community legislation concerning the reduction of financial aid

155 The applicant in Case T-126/01 points out that Regulation No 4028/86 was repealed by Regulation No 2080/93 as from 1 January 1994. Nevertheless, the Commission applied Article 44 of the former regulation throughout the administrative procedure. Thus, the Standing Committee for the Fishing Industry was consulted in accordance with Articles 44 and 47 of Regulation No 4028/86. The applicant adds that, for the purpose of calculating the reduction in aid in the contested decision, the Commission applied the provisions of Regulation No 3699/93. However, under the system in Regulation No 3699/93, the management authorities are the national authorities and not the Commission. The latter therefore applied both a repealed regulation and a regulation which does not confer competence on it.

156 The applicant in Case T-126/01 also points out that the consequences of applying Regulation No 4028/86 or Regulation No 3699/93 are very different for the purpose of calculating the amount of aid to which it was entitled for the definitive transfer of the vessel *Vieirasa XII*. In accordance with the scale of assessment in Regulation No 4028/86, the applicant could have received aid of EUR 784 140, instead of the EUR 688 187 held back in the contested decision on the basis of the provisions in Regulation No 3699/93.

157 The Court notes that the contested decision in Case T-126/01 is based on Regulation No 4253/88, in particular Article 24 thereof, and on Regulation No 3447/93, which approves the fisheries agreement on behalf of the Community. Therefore, neither Regulation No 4028/86 nor Regulation No 3699/93 constitutes the legal basis for the contested decision.

158 The fact that the Commission consulted a committee the consultation of which was prescribed by Regulation No 4028/86 does not show that the contested decision in Case T-126/01 was based on that regulation. That regulation was no longer in force at the time when the applicant proposed its plan to create a joint enterprise, on 26 July 1994, so that in the present case, that regulation could no longer govern the procedure for reducing the aid (see above, paragraph 15, and *Astipesca* v *Commission*, cited in paragraph 142 above, paragraph 61). Voluntary consultation with a committee which need not be consulted does not affect the lawfulness of an act which, moreover, was adopted in compliance with the obligatory procedures laid down for its adoption.

159 It is true that the contested decision contains a reference to Regulation No 3699/93. The Commission applied the scale of assessment in Regulation No 3699/93 to calculate the amount of aid due for the definitive transfer of the vessel *Vieirasa XII* to the joint enterprise.

160 It must be pointed out in that regard that neither the two acts on which the contested decision is based, that is, Regulation No 4253/88 and Regulation

No 3447/93 approving the fisheries agreement on behalf of the Community, nor the fisheries agreement itself, contains specific provisions concerning the portion of the aid which is due in respect of the transfer of a Community vessel to a joint enterprise. The decision to grant assistance of 25 July 1995 therefore grants a global amount to the Community shipowner and to the joint enterprise, without specifying the amount granted for the transfer of the vessel.

161 When the Commission, having noted the infringement of the conditions to which the aid granted to the applicant in Case T-126/01 had been subject, calculated the definitive amount of the aid to which the applicant was entitled, it first determined the amount received by the applicant for the transfer of the vessel, since it did not consider that that part of the financial aid should be reduced (see paragraphs 140 and 141 above). In that regard, the Commission refers, in the contested decision, to the provisions of Regulation No 3699/93 in Case T-126/01 (point 11).

162 Even if, during the administrative procedure, the Commission referred in its letter of 28 February 2000 to Regulation No 4028/86, it should be pointed out that, in its letter of 14 September 2000, the Commission informed the applicant that it was going to apply the scale of assessment contained in Regulation No 3699/93 in order to calculate the amount of aid due to the applicant for the definitive transfer of the vessel *Vieirasa XII* to the joint enterprise. The applicant made known its views on that point in its letter of 21 September 2000.

163 It is not open to the applicant in Case T-126/01 to criticise the Commission for not applying, in the contested decision, the scale of assessment in Regulation No 4028/86 to calculate the amount of aid to which it was entitled for the transfer of the vessel. That regulation was no longer in force when, on 26 July 1994, the applicant proposed its project to create a joint enterprise (see paragraph 158). The Commission, which was bound only by the principle of proportionality in calculating the definitive amount of aid due the applicant, was fully entitled to be guided, by analogy, by the provisions of Regulation No 3699/93 in order to

establish the amount due to the applicant for the transfer of the vessel. In acting in that way, it took care to harmonise the treatment accorded to a joint enterprise created under the fisheries agreement with that accorded to joint enterprises falling within the scope of Regulation No 3699/93.

164 It follows from the foregoing that this plea must also be rejected.

Plea in law alleging breach of the principle of a reasonable time-limit and breach of the principles of the protection of legitimate expectations and of legal certainty

165 The applicant in Case T-126/01 claims that the Commission infringed the obligation to act within a reasonable time in the present case. Referring to the case-law of the Court of Justice and the Court of First Instance on State aid which, it claims, apply by analogy (Case 15/85 *Consorzio Cooperative d'Abruzzo* v *Commission* [1987] ECR 1005, and the Opinion of Advocate General Mischo in that case; Case 223/85 *RSV* v *Commission* [1987] ECR 4617), the applicant maintains that a general principle exists in Community law, based on the need for legal certainty and good administration, which requires the administrative authority to exercise its powers within a given period in order to protect the legitimate expectations which those subject to it have of it. Therefore, when the Commission requires the reimbursement of financial aid after an unreasonable delay, it is not acting with the necessary diligence, is not complying with the requirements of legal certainty and is no longer acting within the limits of good administration.

166 The applicant in Case T-126/01 states that it had already presented its request for payment of the balance of the Community aid, which gave rise to the initiation of the reduction procedure on 25 February 1997. It took over four years for the

Commission to adopt the contested decision. It took it three years and nine months from the start, on 21 April 1998, of the checks, which related exclusively to the zone in which the vessel *Vieirasa XII* was operating. The applicant states that, on 7 July 1997, it had already informed the Commission of its fishing licence. In particular, it is incomprehensible that a year and a month were needed for the Commission to reply to the observations submitted by the applicant on 19 May 1998. The Commission claimed, in its letter of 9 June 1999, that those observations merely confirmed that the vessel had left Argentinian waters on 5 July 1996.

167 The Court points out that observance of a reasonable time-limit is a general principle of Community law which the Commission must observe in administrative proceedings (see Joined Cases T-213/95 and T-18/96 *SCK and FNK* v *Commission* [1997] ECR II-1739, paragraph 56).

168 It must be observed that, in the present case, the length of the administrative procedure was long. The applicant in Case T-126/01 presented its request for payment of the balance of the Community aid on 25 February 1997. The Commission itself states in the contested decision (point 8) that it learned on 2 July 1997 of the fact which warranted the reduction in the aid granted to the applicant, that is, the definitive departure of the vessel *Vieirasa XII* from the Argentinian EEZ on 5 July 1996.

169 In addition, the contested decision in Case T-126/01 was not taken until 19 March 2001. It is true that there were various contacts between the Commission and the Spanish authorities and the applicant during the administrative procedure (see paragraphs 32 to 38 above). Nevertheless, in the present case, there were periods of inactivity for which the Commission puts forward no justification. Thus, after receiving on 19 May 1998 the applicant's observations on its letter of 21 April 1998, the Commission did nothing further until 9 June 1999, at which time it informed the applicant of its decision to initiate a procedure to reduce aid.

170 None the less, the breach of the principle of a reasonable time-limit, if proved, does not justify automatic annulment of the contested decision (Joined Cases T-305/94 to T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *LVM* v *Commission* [1999] ECR II-931, paragraph 122, and Case T-197/00 *Onidi* v *Commission* [2002] ECR-SC I-A-69 and II-325, paragraph 96).

171 The applicant in Case T-126/01 claims that the contested decision should be annulled since the length of time which elapsed gave rise to legitimate expectations on its part that the financial aid was definitively secured.

172 Nevertheless, in the present case, the Court finds that the delay on the part of the Commission in adopting the contested decision in Case T-126/01 could not justify a legitimate expectation on the part of the applicant such as to prevent the Commission from reducing the aid which had been granted to it.

173 In that regard, it is to be observed that correspondence between the Commission and the applicant (see paragraphs 32 to 38) repeatedly confirms the Commission's intention to initiate a reduction in the aid granted. The present case therefore differs fundamentally from that which gave rise to the judgment *RSV* v *Commission* (cited in paragraph 165 above), where the Court of Justice found that a recipient of unlawful State aid had acquired a legitimate expectation by virtue of the unreasonable delay in the procedure carried out between the Commission and the Member State concerned.

174 In any event, the legitimate expectation of the applicant in Case T-126/01 with respect to payment of the balance of the aid was extinguished once the applicant infringed the conditions for the grant of aid (see, to that effect, Case T-142/97 *Branco* v *Commission* [1998] ECR II-3567, paragraphs 97 and 105 to 107).

175 The applicant in Case T-119/01 claims that the decision of 21 December 1994 granted it financial aid for the creation of a joint enterprise without laying down the conditions to which the aid was subject and without referring to the legislation which might be applicable. In the past, the Commission never reduced the aid granted to joint enterprises, even where there was a flagrant infringement of the applicable legislation. The applicant points out that it informed the Argentinian authorities of its departure from that country's waters, assuming that those authorities would communicate the information to the Joint Committee. The sinking of the *Orense* was communicated to the Argentinian authorities and to the Commission. Since the fisheries agreement does not provide for a procedure for the reduction of aid and in the light of the passivity of the Argentinian authorities and the time that elapsed between the sinking of the *Orense* in January 1998 and the initiation of the procedure by the Commission in July 1999, the contested decision infringes the principles of legal certainty and the protection of legitimate expectations.

176 The Court points out, first, that it is clear from the fisheries agreement, the application form for Community aid and the decision to grant assistance that the *Orense* was to operate in Argentinian waters (see paragraphs 116 to 125).

177 In a case such as the present, where a recipient of aid does not comply with a primary condition to which the grant of aid was made subject, that recipient may not rely on the principle of the protection of legitimate expectations or the principle of legal certainty in order to prevent the Commission from reducing the aid granted to it (see, to that effect, *Branco* v *Commission*, cited in paragraph 174 above, paragraph 97, and the case-law there cited).

178 In any event, the Commission never gave specific assurances to the applicant in Case T-119/01 that it would not reduce the financial aid despite infringement of the condition that the vessel exploited by the joint enterprise must operate in the

Argentinian EEZ (see, to that effect, the order of the Court of First Instance in Case T-195/95 *Guérin automobiles* v *Commission* [1996] ECR II-171, paragraph 20, and Case T-336/94 *Efisol* v *Commission* [1996] ECR II-1343, paragraph 31).

179 Finally, the applicant does not provide any evidence that the Commission failed to prosecute infringements of the legislation applying to joint enterprises. Moreover, the possible existence of earlier irregularities which were not prosecuted can in no case serve as a basis for a legitimate expectation in the case of the applicant.

180 It follows from the foregoing that this plea must also be rejected.

Plea in law alleging infringement of the right to be heard

181 After pointing out that observance of the right to be heard must be guaranteed in any procedure initiated against a person which is liable to culminate in a measure adversely affecting that person (Case C-135/92 *Fiskano* v *Commission* [1994] ECR I-2885; Case T-450/93 *Lisrestal and Others* v *Commission* [1994] ECR II-1177; and *Air Inter* v *Commission*, cited in paragraph 139 above), the applicant in Case T-119/01 claims that it was not properly heard during the administrative procedure. It states that, on several occasions, it asked the Commission to specify exactly which provisions of the fisheries agreement or the applicable legislation it had infringed. In addition, at no time did the Commission take a view on the consequences of the sinking of the *Orense*.

182 The Court points out that the contested decision in Case T-119/01 is based on the ground that the conditions to which the grant of aid was made subject were not

complied with. The contested decision is therefore not based on an infringement of a specific provision of the fisheries agreement or of the Community legislation relating to financial aid. The ground of complaint which justified the reduction in aid is the fact that the *Orense* did not operate in Argentinian waters during 16 months of the 36 months originally planned. The vessel ceased its fishing activities in Argentinian waters on 23 August 1996.

183 It is to be observed that the Commission informed the applicant of that ground of complaint by letters of 14 July 1999, 18 August 2000 and 14 September 2000. In addition, by letters of 14 July 1999 and 14 September 2000, the Commission explicitly asked the applicant to submit its observations in that regard.

184 In those circumstances, there can be no question of infringement of the right to be heard.

185 That plea must therefore also be rejected.

Plea in law alleging inconsistency in the contested decision

186 The applicant in Case T-126/01 states that the joint enterprise VASA suffered the suspension of the payment of the balance of aid without being given the opportunity to submit its observations. It points out that the draft decision submitted to the Standing Committee for the Fishing Industry in November 2000 referred to a reduction in the aid granted to the applicant and to VASA. The contested decision is inconsistent since it refers only to the aid granted to the applicant. The aid granted to the Community shipowner and to the joint

enterprise constitute a single grant of aid. In addition, it states that, in the present case, the joint enterprise, which owned the vessel and was responsible for its management, adopted the decisions which gave rise to the reduction in the financial aid. The applicant and VASA must therefore be treated on an equal footing.

187 The Court observes that the contested decision in Case T-126/01 is addressed only to the applicant. It is intended only to reduce the financial aid granted to the applicant. It is therefore not relevant to consider the situation of the joint enterprise VASA in the context of the present action.

188 Next, it is clear from Article 3(2) of Protocol I to the fisheries agreement that the Community aid granted by the Commission to joint enterprises is paid to the Argentinian enforcement authority, which determines the conditions for its disbursement and management. The procedure governing the application and payment of the aid granted to joint enterprises, which are Argentinian companies, is therefore governed by Argentinian law.

189 In those circumstances, the applicant in Case T-126/01 cannot criticise the fact that the contested decision is addressed solely to the Community owner. The joint enterprise VASA, which was required to send its application for the payment of the balance of the financial aid to the Argentinian enforcement authority, did not take that step until 23 April 2001, that is, about a month after the contested decision was adopted.

190 Accordingly, the present plea must also be rejected.

Plea in law alleging infringement of Article 253 EC

191 Referring to the judgment of the Court of Justice in Case C-367/95 *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719 and to the case-law according to which the requirement of an adequate statement of reasons applied with particular force in cases where the Commission has a broad discretion (Joined Cases 36/59 to 38/59 and 40/59 *Präsident Ruhrkohlen-Verkaufsgesellschaft and Others* v *High Authority* [1960] ECR 423), the applicant in Case T-119/01 claims that sufficient reasons for the contested decision have not been given.

192 First, the contested decision nowhere mentions the provisions of the fisheries agreement or the applicable legislation which were infringed. Secondly, the contested decision does not refer to the depletion of fishery resources in Argentinian waters which led the Argentinian authorities to limit fishing activities. Nor does it mention the sinking of the *Orense*. The decision therefore also fails to explain why those events could not be considered as cases of *force majeure*. Thirdly, the contested decision does not identify the legal basis for the reduction of aid.

193 In that regard, the Court recalls that it is settled case-law that the statement of reasons required by Article 253 EC must be appropriate to the legal nature of the measure in question and that the reasoning of the institution which adopted the measure must be stated clearly and unequivocally, so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its power of review (Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy* v *Commission* [1988] ECR 219, paragraph 71; *Astipesca* v *Commission*, cited in paragraph 142 above, paragraph 125).

194 In the case of a decision reducing Community financial aid for a project not carried out as specified, the statement of the reasons for such a measure must

include an indication of the reasons for which the alterations taken into account have been judged to be unacceptable. Considerations relating to the extent of those alterations or their lack of prior authorisation cannot, by themselves, constitute sufficient reasoning in that respect (Case T-241/00 *Le Canne* v *Commission* [2002] ECR II-1251, paragraph 55).

195 However, the question whether the statement of reasons for a measure complies with the requirements of Article 253 EC must be assessed in the light not only of its wording, but also of its context and of the body of legal rules which govern the matter concerned (*Commission* v *Sytraval and Brink's France*, cited in paragraph 191 above, paragraph 63).

196 In the present case, in contrast to the case in *Le Canne* v *Commission* (cited in paragraph 194 above), the contested decision includes specific information concerning the nature of the alteration at issue and the reasons for which that alteration justifies, on account of its significance, the reduction of the aid granted in the present case. The contested decision shows clearly and precisely that the Commission complains that the *Orense* carried out its fishing activities in international waters after 23 August 1996, barely 16 months after the creation of the joint enterprise, rather than in the Argentinian EEZ, as had been provided, although the obligation to exploit and, where appropriate, process fishery resources situated in the waters of the third country referred to in the decision to grant assistance constitutes a primary condition of that grant (contested decision, point 4; see also paragraphs 116 to 125 and 130 to 134 above).

197 The Commission was not required to explain why it considered that the depletion of fishery resources and the sinking of the *Orense* were not relevant in calculating the reduction of the aid. The ground which justifies the reduction of the aid is the fact that the *Orense* no longer carried out fishing activities in Argentinian waters as from 23 August 1996. The claimed depletion of fishery resources which caused the *Orense* to head for international waters, where the vessel subsequently sank,

cannot justify the fact that the applicant failed to seek prior authorisation from the Commission for leaving Argentinian waters, as it was its duty to do by virtue of its obligation to provide information and to act in good faith (contested decision, point 8; see also paragraphs 123 to 125, 152 and 153 above).

198 It follows that the applicant's argument alleging an insufficient statement of reasons cannot be accepted.

199 This last plea must therefore also be rejected.

200 It follows from all the foregoing considerations that the applications for annulment in Cases T-119/01 and T-126/01 must be dismissed.

Case T-44/01

Application for compensation

201 By this application, the Community shipowner SAEV and the joint enterprise VASA seek compensation for the damage which they claim to have suffered as a result of the unlawful suspension of the aid granted to them by the decision of 25 July 1995.

202 It is settled case-law that, in order for the Community to incur non-contractual liability within the meaning of the second paragraph of Article 288 EC, a number of conditions must be satisfied concerning the illegality of the conduct alleged against the Community institutions, the fact of the damage and the existence of a causal link between that conduct and the damage complained of (Joined Cases C-258/90 and C-259/90 *Pesquerias De Bermeo and Naviera Laida* v *Commission* [1992] ECR I-2901, paragraph 42).

203 The applicants state, first, that the unlawful conduct complained of in the present case resides in the fact that the Commission suspended the payment of the balance of the aid without complying with essential procedural requirements.

204 As regards the damage undergone, the applicants state that it can be calculated in two ways. The first way would be to refer to the interest due on a loan that VASA had to take out in 1998, allegedly because of non-payment of the balance of the aid. Compensation would be equivalent to the interest to be paid by the applicants on the amount of the loan corresponding to the balance of the financial aid. A second way of assessing compensation would be to calculate the interest for late payment due on the amount of the balance of the aid to which the applicants are entitled.

205 As regards the causal link, the applicants explain that their loss has its 'direct, immediate and exclusive origin in the absence of an official decision to suspend the balance of the aid, an absence which constitutes an unlawful act' (application, paragraph 143).

206 The Commission contends that the application is inadmissible. It points out that the present application is based on the unlawfulness of the procedure which resulted in the adoption of the contested decision in Case T-126/01 on 19 March

2001. The present application would therefore result in a judgment concerning the legality of a measure which did not yet exist at the time when the action for compensation was brought, anticipating the effects of a possible action to annul that measure.

207 The Court considers that that argument must be rejected. The applicants seek, by the present application, compensation for the damage they claim to have suffered as the result of the unlawful suspension of the financial aid to which they maintain they are entitled. However, it cannot be excluded that a suspension of financial aid during the administrative procedure intended to result in the adoption of a decision reducing financial aid will give rise to a loss for one or other of the parties covered by that procedure before the decision to reduce the aid is adopted.

208 In support of their argument that the suspension of aid is unlawful, the applicants state that the Commission should have adopted a formal suspension decision on 27 August 1997 at the latest if it had serious doubts as to the applicants' compliance with the conditions for the grant of the aid.

209 That argument cannot succeed. Even if the Commission had unlawfully refrained from taking a formal suspension decision by 27 August 1997 at the latest, which is not proved, such a failure to act could not have caused harm to the applicants. If the Commission had adopted such a decision on 27 August 1997 or even earlier, the balance of the aid would still not have been paid.

210 Next, the applicants maintain that the Commission, by letter of 21 April 1998 (see paragraph 32 above), addressed an implicit suspension decision to SAEV. The implicit suspension decision is unlawful. Since the fisheries agreement does not refer to Regulation No 4253/88, the suspension procedure was in the present

case founded on an incorrect legal basis. In addition, the applicants maintain that the Commission infringed the suspension procedure specific to the fisheries agreement since the Joint Committee was not consulted, and that the Commission did not seek the approval of the Argentinian authorities. The implicit suspension decision therefore also infringes the principle of a reasonable time-limit and was adopted in breach of the joint enterprise VASA's right to be heard.

211 In that regard, the Court considers that a distinction must be drawn between the position of the Community shipowner SAEV, which was the only enterprise covered by the procedure for reduction of aid, during which payment of the aid was implicitly suspended, and the position of the joint enterprise VASA.

212 First, as regards SAEV, the letter of 21 April 1998 or, in any event, the letter of 9 June 1999 in which the Commission informed SAEV of the fact that it had decided to reduce the financial aid granted to the enterprise (see paragraph 34 above) necessarily entailed the non-payment of the balance of the aid originally promised. In those circumstances, it must be held that SAEV was the addressee of an implied decision to suspend the aid. Considered in the light of case-law (Case C-359/98 P *Ca'Pasta* v *Commission* [2000] ECR I-3977, paragraphs 30 to 32 and 36 to 39; *Astipesca* v *Commission*, cited in paragraph 142 above, paragraph 141), that decision is a measure adversely affecting SAEV, which could have contested it within the period prescribed, which it did not, however, do. The decision to suspend the aid therefore became definitive with regard to SAEV.

213 While it is true that the action for compensation based on the second paragraph of Article 288 EC is an independent action in the context of the legal remedies available under Community law, so that the fact that an application for annulment is inadmissible does not in itself render a claim for damages inadmissible (see, *inter alia*, Case T-514/93 *Cobrecaf and Others* v *Commission* [1995] ECR II-621, paragraph 58 and the case-law cited therein), an action for

damages must nevertheless be held to be inadmissible when it is in fact aimed at securing the withdrawal of an individual decision which has become definitive, and would, if successful, cause the legal effects of that decision to be nullified (Case 175/84 *Krohn* v *Commission* [1986] ECR 753, paragraphs 32 and 33; *Cobrecaf and Others* v *Commission*, cited above, paragraph 59, and *Astipesca* v *Commission*, cited in paragraph 142 above, paragraph 139).

214 Accordingly, claims for damages in a sum corresponding to the amount denied to the applicants by reason of a decision which has become definitive (*Cobrecaf and Others* v *Commission*, cited in paragraph 213 above, paragraph 60) and claims for interest for late payment relating to that sum (*Cobrecaf and Others* v *Commission*, paragraph 62, and *Astipesca* v *Commission*, cited in paragraph 142 above, paragraph 140) are inadmissible.

215 In the present case, the applicants put forward two formulas for calculating the loss resulting from the allegedly unlawful suspension of the aid (see paragraph 204 above). However, both those formulas are designed for the purpose of calculating the interest due on the balance of the aid. It must therefore be stated that the claim for damages based on the alleged unlawfulness of the suspension of the aid is in fact aimed at securing the payment of an amount intended to offset the legal effects inherent in the decision to suspend aid in terms of the delay in the payment of that balance — legal effects which would have been effaced by the invalidation of that decision following an action for annulment brought in good time and crowned with success, given the measures which the Commission is required to take under Article 233 EC in order to comply with the annulling judgment (see *Astipesca* v *Commission*, paragraph 146).

216 It follows that, in the light of the case-law referred to in paragraphs 213 and 214 above, the application must be declared inadmissible in so far as it concerns the loss resulting from the alleged unlawfulness of the implied suspension decision adopted by the Commission with regard to SAEV.

217 As regards the joint enterprise VASA, the applicants state that their right to be heard was infringed, since that enterprise was not heard during the procedure which preceded the adoption of the contested decision in Case T-126/01.

218 It must be pointed out, however, that the Commission did not adopt a decision which reduced the aid granted to VASA. The decision contested in Case T-126/01 is addressed solely to the Community owner SAEV.

219 In that regard, it is clear from Article 3(2) of Protocol I to the fisheries agreement that the Community aid granted by the Commission to joint enterprises is to be paid to the Argentinian enforcement authority, which determines the conditions for its disbursement and management. Although, as regards the aid granted to the Community owner, the application and payment procedure for assistance must, in accordance with Article 3(4) of the Protocol, be in accordance with the relevant Community rules in force, the application and payment procedure for aid granted to joint enterprises which are Argentinian companies is governed by provisions of Argentinian law.

220 It is for that reason that, by letter of 23 April 2001, VASA sent the Argentinian enforcement authority an application seeking the payment of the balance of the aid. Nor, since VASA itself stated in that letter that the content of the decision contested in Case T-126/01 'did not affect its legitimate right to payment of the balance due to the Argentinian joint enterprise', can it claim that the procedure for reduction of the aid initiated against SAEV, which led to the adoption of an implied decision to suspend the aid to the latter, caused it damage.

221 It follows from all the foregoing considerations that the claim for compensation must be rejected.

Application for withdrawal of a document

222 In the context of Case T-44/01 the Commission contends that the draft decision to reduce the aid which was produced by the applicants as Annex 24 to the application does not correspond to the text which was approved by the Standing Committee for the Fishing Industry on 20 November 2000 and subsequently adopted by the Commission on 19 March 2001. It was an internal note, liable to mislead the Court. The Commission therefore asks that Annex 24 be withdrawn from the file.

223 However, since the Court has not based itself on the document in question for the purpose of deciding this case, it is unnecessary to rule on the Commission's request (see, to that effect, *Branco* v *Commission*, cited in paragraph 174 above, paragraphs 116 and 117).

Conclusion

224 It follows from all the foregoing that the applications in Cases T-44/01, T-119/01 and T-126/01 must be dismissed.

Costs

225 Under Article 87(2) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to pay the costs, as applied for by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. **Declares that Cases T-44/01, T-119/01 and T-126/01 are joined for the purposes of the judgment;**

2. **Dismisses the applications;**

3. **Orders the applicants to pay the costs.**

Lenaerts Azizi Jaeger

Delivered in open court in Luxembourg on 3 April 2003.

H. Jung
Registrar

K. Lenaerts
President