JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
15 March 1995 *

In Case T-514/93,

Cobrecaf SA, a company incorporated under French law, whose registered office is in Concarneau (France),

Pêche et Froid SA, a company incorporated under French law, whose registered office is in Boulogne-sur-Mer (France),

Klipper Investissements SARL, a company incorporated under French law, whose registered office is in Concarneau,

represented by Béatrice Ghelber, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Nico Schaeffer, 12 Avenue de la Porte Neuve,

applicants,

v

Commission of the European Communities, represented by Gérard Rozet, of the Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: French.

APPLICATION for, first, annulment of the Commission's letter of 2 June 1993 refusing to allocate to the applicants the balance of Community assistance granted for the construction of a fishing vessel and, secondly, an order pursuant to the second paragraph of Article 215 of the EEC Treaty that the Commission make good the harm allegedly suffered by the applicants,

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

composed of: K. Lenaerts, President, R. Schintgen and R. García-Valdecasas, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 1 December 1994,

gives the following

Judgment

Relevant legislation

1 Council Regulation (EEC) No 4028/86 of 18 December 1986 on Community measures to improve and adapt structures in the fisheries and aquaculture sector (OJ

1986 L 376, p. 7; hereinafter 'Regulation No 4028/86') governs the Community's structural policy in the fisheries sector and aims to enable maritime fleets to be renewed and modernized.

2 Article 1 provides that, in order to facilitate structural change in the fisheries sector within the guidelines of the common fisheries policy, the Commission may, subject to the conditions laid down in the regulation, grant Community financial aid for measures taken in particular for the restructuring, renewal and modernization of the fishing fleet.

3 Article 6(1) provides that the Commission may grant Community financial aid towards public, semi-public or private projects relating to the purchase or construction of new fishing vessels.

Facts and procedure

4 The applicants, Cobrecaf SA, Pêche et Froid SA and Klipper Investissements SARL, together form one of the five units for the management of the French tuna fleet and, with fourteen tuna-fishing vessels in service, represent approximately half the French tuna-fishing resources. In 1989, four companies, including the three applicants, combined forces to order two tuna-fishing vessels with a view to renewing their fleet by selling their three oldest tuna-fishing vessels outside the Community.

5 Those are the circumstances in which on 5 October 1989 the applicant Cobrecaf submitted an application for Community financial aid under Regulation No 4028/86, signed jointly with the two other applicants, for the construction of two

fishing vessels, including the vessel 'Gueotec'. The envisaged expenditure totalled FF 91 500 000, to be financed as to 25%, or FF 22 875 000, by Community aid. The French supervisory authority, the Maritime Fisheries Directorate of the State Secretariat for the Sea (hereinafter 'French Maritime Fisheries Directorate'), approved the application and forwarded it to the Commission. The application document was registered on 31 October 1989 at the Directorate-General for Fisheries (DG XIV) at the Commission under identification number F/0028/90/01.

6 On 26 February 1990, the Commission requested further information from the French Maritime Fisheries Directorate.

7 On 9 March 1990, the French Maritime Fisheries Directorate sent the Commission an estimate prepared on 6 March 1990 by the Bréheret, Leroux and Lotz yards.

8 By decision of 20 December 1990, the Commission granted Community financial aid for the investment project in question to the extent of 25% of the total costs eligible for aid. Considering that a sum of FF 14 170 000, representing non-eligible costs, namely FF 6 570 000 for the purchase of nets at a cost exceeding 10% of the total investment or for unspecified estimates and FF 7 600 000 for the purchase of unspecified material, should be deducted from the investment total (FF 91 500 000), the Commission fixed the amount of Community aid at FF 19 332 500.

9 By letter of 1 February 1991, the French Maritime Fisheries Directorate informed DG XIV that Annex C3 to the administrative note of the project gave a figure of FF 3 500 000 for the purchase of fishing nets, namely 3% of the total investment, and that that annex made no reference to a figure of FF 7 600 000. It therefore requested DG XIV to indicate exactly what the two sums declared ineligible

represented and the reasons which led the Commission to consider them to be ineligible.

10 On 25 February 1991, the director of the Société Interprofessionelle pour le Développement des Industries Thonières (hereinafter 'Siditho') informed the applicant Cobrecaf that the head of the 'fleet' unit in the 'structures' directorate of DG XIV had informed him at a meeting that a drafting error was the reason for the refusal to accept as eligible expenses the sum of FF 3 500 000 relating to the cost of fishing nets and that that clerical error was to be rectified.

11 On 31 May 1991, the French Maritime Fisheries Directorate requested DG XIV to re-examine the file on the basis of a document drawn up on 23 April 1991 by the Bréheret, Leroux and Lotz yards, specifying the work which had been carried out on the tuna-fishing vessel and its cost.

12 On 31 July 1991, the French Maritime Fisheries Directorate informed DG XIV that the tuna-fishing vessel 'Gueotec' would not, as initially envisaged, be replacing the vessels C. Colomb and F. de Magellan, but the vessels C. Colomb and Glenan.

13 On 10 January 1992, DG XIV sent a sum of FF 19 332 500 to the applicant Cobrecaf. Cobrecaf acknowledged receipt on 17 January 1992 and requested that it be paid in addition the balance of the Community financial aid which it was expecting, namely FF 3 542 500.

14 On 30 April 1992, the Commission adopted a decision amending its decision of 20 December 1990, which was notified on 5 May 1992 to Cobrecaf in accordance with Article 191 of the Treaty. That decision took account both of the substitution of

the vessels C. Colomb and Glenan for C. Colomb and F. de Magellen and of the inclusion in the eligible costs of the sum of FF 6 570 000 referred to above. Consequently the decision fixed the amount of Community financial aid at FF 20 975 000.

15 By letter of 20 May 1992, the applicant Cobrecaf, after acknowledging receipt of the decision of 30 April 1992, took formal notice of the partial rectification of the error made in the calculation of the Community financial aid and requested the Commission to grant it, by way of a further rectification, the balance of the financial aid corresponding to the investment of which it had provided full details.

16 On 12 June 1992, the Commission sent Cobrecaf a sum of FF 1 642 500, representing the Community share of the sum of FF 6 570 000 included in the eligible expenses pursuant to the decision of 30 April 1992.

17 By letter of 21 December 1992, the French Maritime Fisheries Directorate pointed out to DG XIV that the decision of 30 April 1992 had failed to take into consideration the amount of FF 7 600 000 in drawing up the eligible expenses and in determining the Community financial aid and that this would cause serious difficulties for Cobrecaf. It accordingly requested DG XIV to inform it of the Commission's definitive decision.

18 By letter of 6 April 1993, the applicant Cobrecaf approached DG XIV again, referring to alleged verbal assurances it had been given concerning subsequent rectification of the amount of Community financial aid.

19 By letter of 2 June 1993, DG XIV informed the French Maritime Fisheries Directorate that, in view of the information available to the Commission for determining the eligible costs in the light of the further information which it had asked for and obtained, it had to stand by its decision of 30 April 1992.

20 On 9 June 1993, the French Maritime Fisheries Directorate forwarded the Commission's letter of 2 June 1993 to Cobrecaf.

21 Those are the circumstances in which, by application lodged at the Registry of the Court of First Instance on 16 September 1993, the applicants brought this action.

22 By decision of the Court of First Instance on 7 July 1994, after hearing the submissions of the parties, the case was assigned to a Chamber composed of three judges.

23 Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory inquiry. However, the Court put a question to the Commission, which replied by letter of 18 November 1994.

24 The parties presented oral argument and answered oral questions from the Court at the hearing of 1 December 1994.

Forms of order sought

25 In their application, the applicants claim that the Court should:

1. annul the contested decision with all legal consequences (namely, grant them the missing FF 1 900 000);

2. order the European Economic Community to pay the sum of FF 825 438 by way of damages to the co-owner of the 'Gueotec' with interest at the legal rate from the date of the application for aid;

in the alternative

3. order the European Economic Community to pay the applicant shipowner the sum of FF 1 900 000 corresponding to the balance of the aid granted by decision of 20 December 1990.

26 In their reply, the applicants claim that the Court should:

order the defendant to pay the costs of the proceedings and a sum of FF 80 000 by way of advisers' costs.

27 The defendant contends that the Court should:

1. declare the application for the annulment of the Commission's decision of 2 June 1993 inadmissible;

in the alternative

2. reject as unfounded the application for the annulment of that decision;

3. declare unfounded the principal claim for damages for the harm alleged by the applicants,

4. declare inadmissible and, in the alternative, unfounded the subsidiary claim for damages for the harm alleged by the applicants;

5. order the applicants to pay the costs.

The claim for annulment of the decision of 2 June 1993

Summary of the arguments of the parties

28 The Commission pleads that the claim seeking annulment of the contested decision is inadmissible, submitting first that the letter of 2 June 1993, annulment of which is sought by the applicants, is not an act against which an action for annulment under Article 173 of the EEC Treaty (now the EC Treaty, hereinafter referred to as 'the Treaty') may lie since it simply confirms the terms of the formal decision adopted by the Commission on 30 April 1992 after consultation with the Standing Committee for the Fishing Industry. In the Commission's view, that decision alone had binding legal effect capable of affecting the applicants' interests in that it laid down the Commission's definitive position by making the amendments to the Commission's initial decision of 20 December 1990.

29 The Commission argues that the letter of 2 June 1993 was not a new decision adopted after re-examination of the situation in the light of the further information requested and obtained by the Commission after 30 April 1992. The only request for information sent to the applicants was that of 26 February 1990 to which the French Maritime Fisheries Directorate replied on 9 March 1990 and the only additional information provided by the applicants on 31 May 1991 concerned details relating to the cost of the unspecified material. That information had already been taken into consideration when the decision was adopted on 30 April 1992.

30 The Commission next submits that, even on the assumption that the letter of 2 June 1993 could be considered to be a decision against which an action for annulment may lie, the application of 16 September 1993 must be declared inadmissible because it was out of time.

31 The Commission moreover refuses to consider that the letter sent to it by the French Maritime Fisheries Directorate on 20 May 1992 can be considered to be an application brought before an institution lacking competence, but none the less admissible by virtue of an excusable error brought about by its own conduct. The Commission disputes the verbal assurances allegedly given by certain of its officials, as recounted in the letter of 7 January 1994 from the French Maritime Fisheries Directorate to Cobrecaf. In any event, a reasonably diligent businessman must have known that verbal assurances given by an official cannot anticipate the position of his institution or, *a fortiori*, commit that institution.

32 The applicants deny that the letter of 2 June 1993 can be regarded as simply confirming the decision of 30 April 1992. To them it is clear from the very wording of that letter that the Commission, 'having requested and obtained further information from the French Maritime Fisheries Directorate', intended to substitute its decision of 2 June 1993 for that adopted on 30 April 1992 and that the mere fact

that it keeps an earlier decision does not mean that the decision of 2 June 1993 ceases to be susceptible of challenge (see the judgment of the Court of Justice in Case 206/85 *Beiten* v *Commission* [1987] ECR 5301, paragraph 8, and the judgment of the Court of First Instance in Case T-16/90 *Panagiotopoulou* v *Parliament* [1992] ECR II-89, paragraph 20).

33 The applicants submit that, in so far as the Commission had, by its decision of 30 April 1992, already rectified a calculation error relating to the cost of fishing nets, they were justified in believing that, if they provided the Commission with further information, it would be prepared to re-examine the file and also to revise its decision of 30 April 1992. They argue that Commission officials stated several times that a new decision would be adopted in order to rectify the error made in relation to the sum of FF 7 600 000, declared ineligible because of the failure to specify the material corresponding to that sum. In its abovementioned letter of 7 January 1994, the French Maritime Fisheries Directorate confirmed that the entire cost of the project would be taken into consideration in calculating the Community financial aid.

34 As for the submission that the application is out of time in so far as it challenges the letter of 2 June 1993, the applicants state that they did not receive that letter until about 20 July 1993 and note that the Commission has provided no evidence as to the date when it was received.

35 Alternatively, the applicants submit that, even on the assumption that the Commission's letter of 2 June 1993 merely confirmed the decision of 30 April 1992, the letter sent to the Commission on 20 May 1992 must be regarded as an admissible application brought against the decision of 30 April 1992 before an institution without competence. It was as a result of an excusable error, brought about by the Commission's conduct, that the applicants sent to the Commission the letter of 20

May 1992 instead of duly bringing an action against the decision of 30 April 1992. Officials of the legal service assured them by word of mouth that the Commission would reconsider its decision of 30 April 1992 and that it would grant them the entire aid sought, thus giving rise to understandable confusion in the mind of a person acting in good faith and exercising normal care and attention (see the judgment of the Court of First Instance in Joined Cases T-33/89 and 74/89 *Blackman* v *Parliament* [1993] ECR II-249, paragraphs 32 to 36).

Findings of the Court

36 The Court finds first of all that the Commission has not adduced evidence that the applicants knew of the letter of 2 June 1993 before 10 July 1993. The plea that the application for annulment is time-barred in so far as it is brought against that letter must accordingly be rejected.

37 The Court finds, next, that both the decision of 20 December 1990 and the decision of 30 April 1992 were notified to the applicants as required by Article 191(3) of the Treaty.

38 It follows that the applicants, as addressees of the abovementioned decisions, could not have been unaware that the time-limit laid down by Article 173 of the Treaty had started to run.

39 The applicants however seek to explain the failure to bring an action against those decisions by pointing out that the Commission had already rectified a calculation error concerning the taking into account of the cost of the fishing nets which had been made in its initial decision and that Commission officials had verbally assured them that the balance of the aid sought would be paid. They consider that they are

victims of an excusable error due to the Commission's conduct and in support of that argument refer to a letter which was sent to them on 7 January 1994 by the French Maritime Fisheries Directorate, in which the administrator responsible for the sub-directorate of maritime fisheries confirmed, in response to a request by Cobrecaf, 'that it [had been] orally stated several times by the Commission officials then responsible for this case that the total cost, namely FF 91 500 000, would be taken into account.'

40 The Court notes that, on the question of time-limits for bringing proceedings, which, according to settled case-law, are at the discretion of neither the court nor the parties and are a matter of public policy, the concept of excusable error must be interpreted narrowly and can apply only to exceptional circumstances where, in particular, the conduct of the institution concerned was, either alone or to a decisive extent, such as to give rise to understandable confusion in the mind of a person acting in good faith and exercising normal care and attention (see the judgment in *Blackman* v *Parliament*, cited above, paragraph 34).

41 In this case the Court considers that, without prejudging the probative value of the letter of 7 January 1994, which was written at the applicants' request after the Commission had lodged its defence, the verbal assurances which are mentioned there, even assuming that they have been proven to have been given, could not, given the duties which a person exercising an ordinary degree of care must fulfil, amount to an exceptional circumstance such as to excuse the failure to bring an action against the decisions adopted by the Commission on 20 December 1990 and 30 April 1992. There was nothing to prevent the applicants from bringing an action against the decision of 30 April 1992, since the Commission did not reply to their letter of 20 May 1992 requesting payment of the balance of the aid sought.

42 It follows that the applicants could not have mistaken the definitive character of the decisions of 20 December 1990 and 30 April 1992 which precisely and unequivocally fixed the amount of the aid granted to them.

43 By letters of 20 May 1992, 21 December 1992 and 6 April 1993, the applicants and the French Maritime Fisheries Directorate requested the Commission to reconsider its decisions.

44 It is settled law that, where an applicant lets the time-limit for bringing an action against a decision unequivocally laying down a measure with legal effects affecting his interests and binding on him expire, he cannot start time running again by asking the institution to reconsider its decision and bringing an action against the refusal confirming the decision previously taken (see the judgments of the Court of Justice in Joined Cases 166/86 and 220/86 *Irish Cement* v *Commission* [1988] ECR 6473, paragraph 16, and Case C-199/91 *Foyer Culturel du Sart-Tilman* v *Commission* [1993] ECR I-2667, paragraphs 23 and 24).

45 In this case, it must accordingly be considered whether the letter of 2 June 1993, in which the Commission refused to reconsider its earlier decisions, simply confirmed the decisions taken previously or whether it clearly altered the applicants' legal position compared with that resulting from the decision of 30 April 1992 because it was based on a new factor capable of having mandatory legal effects such as to affect the applicants' interests.

46 The letter of 2 June 1993 reads as follows:

'In the letter mentioned in the reference above [letter no 2496 from Mr Boyer, deputy director in the French Maritime Fisheries Directorate, of 21 December 1992], your Directorate asked to be given the Commission's definitive decision on this case.

As you are aware, the Commission, having consulted the industry's standing committee, adopted the decision of 30 April 1992 (C(92)915) which amended the decision of 20 December 1990 fixing the Community aid for the construction of the "Gueotec".

That amendment of the decision took account of the relevant change in substitution and the inclusion of the costs of nets in the eligible costs.

In the light of the information available to the Commission for determining the eligible costs, after requesting and obtaining further information from your directorate, the Commission cannot do otherwise than stand by its decision of 30 April 1992.

Yours, etc.'

47 The Court notes that in that letter the Commission specifically and unequivocally indicated its intention to stand by its decision of 30 April 1992. Although it admittedly refers to further information requested and obtained from the French Maritime Fisheries Directorate, the documents before the Court none the less indicate, as the applicants acknowledged at the hearing in response to a question put by the Court, that no information was requested in writing by the Commission or provided in writing by the applicants after the decision of 30 April 1992.

48 Nor does the letter of 7 January 1994, which post-dated the commencement of the action, show that further information was requested and obtained by the Commission upon informal oral contacts with a view to establishing the amount of the balance of the aid sought.

49 It follows that the letter of 2 June 1993 contains no new element such as to make it a new decision in relation to the decision of 30 April 1992.

50 Consequently, the application, in so far as it seeks annulment of the decision of 2 June 1993, must be dismissed as inadmissible.

The claim for damages

Summary of the parties' arguments

51 The applicants' principal claim is for an order that the Commission pay them, pursuant to the second paragraph of Article 215 of the Treaty, the sum of FF 825 438 to make good the harm which they have allegedly suffered owing to the Commission's delays in correcting serious errors. In the alternative, they seek an order that the Commission pay them the sum of FF 1 900 000 corresponding to the Community share of the costs which the Commission wrongly considered to be ineligible for aid.

52 The Commission first contends that the applicants' alternative claim for damages is inadmissible, on the ground that it actually seeks to nullify the contested decision of 2 June 1993, which is in fact no more than confirmation of the decision of 30 April 1992, by removing the Commission's margin of discretion in complying with any annulling judgment and thereby enabling the same result to be achieved by a circuitous route as in an action for annulment of the decision of 30 April 1992, which is manifestly time-barred (see the judgment of the Court of Justice in Case

25/62 *Plaumann* v *Commission* [1963] ECR 95, p. 108, and the Opinion of Advocate General Gulmann in Case C-25/91 *Pesqueras Echebastar* v *Commission* [1993] ECR I-1719, pp. I-1753 to I-1754, points 20 to 22).

53 The Commission denies that it committed faults for which it can incur non-contractual liability. Although it acknowledges that it made an error in the decision of 20 December 1990 in excluding FF 6 570 000 from the eligible costs, it points out that that error was rectified in the decision of 30 April 1992.

54 As regards the harm allegedly suffered by the applicants, the Commission points out that the grant of financial aid under Regulation No 4028/86 is not a right vested in claimants. The Commission also denies that there is a causal link between the alleged faults and the alleged harm. It submits that the harm pleaded by the applicants does not arise from its conduct, but was caused by that of the victims themselves or that of the Member State concerned, or both. The applicants submitted an incomplete application for aid and provided an estimate showing the purchase of unspecified material. Similarly, the Member State did not react, notwithstanding its duty to exercise care when acting in the procedure for assessing the aid sought.

55 The applicants reply that it is clear from settled case-law of the Court of Justice that the action for damages based on Article 178 and the second paragraph of Article 215 was established by the Treaty as an independent form of action which has a particular purpose to fulfil within the system of actions, which is subject to conditions for its use conceived with a view to its specific purpose (see the judgment of the Court of Justice in Case 4/69 *Lütticke* v *Commission* [1971] ECR 325) and which differs from an application for annulment in that it seeks not the abolition

of a particular measure but compensation for damage caused by an institution in the performance of its duties (see the judgment in Case 5/71 *Zuckerfabrik Schöppenstedt v Council [1971] ECR 975). In this case, the Commission cannot claim that the letter of 2 June 1993 is not covered by the principle of the independence of actions, as established by the judgment in Plaumann v Commission, whilst asserting that that letter cannot be regarded as a decision.*

56 As regards the principal claim for damages, the applicants submit that the Commission was guilty of maladministration because of the delays in rectifying serious and inexcusable errors: first, it made an error of calculation in taking an incorrect sum for the cost of the nets, namely FF 6 570 000 instead of FF 3 500 000, the two amounts not in any event exceeding 10% of the investment of FF 91 500 000, and, secondly, it made an error of assessment in treating as 'unspecified material' material in relation to which it had sufficient information, at least at the time of its decision of 30 April 1992.

57 The applicants submit that because of those errors the aid sought could be paid only in part on 10 January 1992, thereby compelling them to resort to increased borrowings at a rate of 10.06% for the missing amount. The loan was for FF 1 642 500 until 12 June 1992, when that sum was paid following the decision of 30 April 1992, and for FF 1 900 000 which was not granted. They submit that the link between the Commission's oversights and the harm suffered is obvious.

Findings of the Court

58 The Court of Justice and the Court of First Instance have consistently held that the fact that an application for annulment is inadmissible does not in itself render

a claim for damages inadmissible, since the action provided for in Articles 178 and 215 of the Treaty is an independent form of action in the system of remedies available in Community law (see the judgment in *Lütticke* v *Commission*, cited above, the order of the Court of Justice in Case C-257/93 *Van Parijs and Others* v *Council and Commission* [1993] ECR I-3335, paragraph 14, and the order of the Court of First Instance of 17 May 1994 in Case T-475/93 *Buralux and Others* v *Council*, not published in the European Court Reports).

59 It has however been held, by way of exception to the principle stated above, that the fact that a claim for annulment is held to be inadmissible renders the claim for damages inadmissible where the action for damages is actually aimed at securing withdrawal of an individual decision which has become definitive and would, if upheld, have the effect of nullifying the legal effects of that decision (see the judgments of the Court of Justice in Case 175/84 *Krohn* v *Commission* [1986] ECR 753, paragraphs 32 to 33, and *Pesqueras Echebastar* v *Commission*, cited above, paragraph 15).

60 In the present case, the Court finds first that the actual purpose of the applicants' alternative claim for damages is to secure payment of a sum corresponding exactly to the amount denied to it by reason of the disputed decision and that it is therefore designed to secure indirectly annulment of the individual decision rejecting the applicants' request for financial aid.

61 The claim for an order that the Commission pay the sum of FF 1 900 000 must accordingly be dismissed as inadmissible.

62 Consequently, the applicants' principal claim for damages must also be held to be inadmissible in so far as it concerns interest for late payment relating to that sum.

63 The Court notes next that the applicants' principal claim for damages also seeks compensation for the harm allegedly caused to them by the Commission's delay in rectifying its error in refusing to include the sum of FF 6 570 000 in the total investment eligible for Community financial aid. That claim is admissible, since it seeks compensation for a fault unconnected with the decision granting the aid.

64 As regards the merits of the case, the Court cannot accept the Commission's argument that the applicants cannot base their claim on delay in paying the subsidy since at no point did they have a vested right to that subsidy. The right to the subsidy arises at the moment when the Commission decides that the project for which the aid is requested will receive aid calculated in accordance with the applicable regulation and paid on the conditions set by that regulation.

65 The Court of Justice has consistently held that in order for the Community to incur non-contractual liability within the meaning of the second paragraph of Article 215 of the Treaty a number of conditions, concerning the unlawfulness of the contested action of the institution concerned, actual damage and the existence of a causal link between the institution's action and the alleged damage, must be met (see the judgments of the Court of Justice in Case C-308/87 *Grifoni* v *EAEC* [1990] ECR I-1223, paragraph 6, and Joined Cases C-258 and 259/90 *Pesquerias De Bermeo and Naviera Laida* v *Commission* [1992] ECR I-2901, paragraph 42).

66 In the present case, the Court notes that in its rejoinder the Commission acknowledges that it made an error in treating as ineligible in its decision of 20 December 1990 the sum of FF 6 570 000, consisting of two amounts: FF 3 500 000 concerning the cost of nets and FF 3 070 000 concerning unspecified estimates.

67 In so far as the applicants' claim is for compensation for the harm allegedly caused by the delay in rectifying the Commission's error in treating the sum of FF 3 070 000 concerning unspecified estimates as ineligible for Community aid, the Court considers that that error is attributable, at least in part, to the conduct of the applicants, since in their application for aid they failed to give the information relating to that sum. Since that error is attributable to the applicants, the Commission's delay in correcting it cannot constitute a fault for which the Commission can incur liability. The claim for damages must accordingly be dismissed to that extent.

68 The applicants also seek compensation for the harm allegedly caused by the delay in rectifying the Commission's error in treating the sum of FF 3 500 000 concerning the cost of nets as ineligible for Community aid. The Court notes first that it is clear from the form 'summarizing the cost of the work envisaged' provided by the Commission and annexed to the application for aid that the applicants had indicated under the heading 'fishing nets' a sum of FF 3 500 000 and secondly that that form mentions in a footnote that the cost of fishing nets is allowable up to a limit of 10% of the total cost of the investment before tax. Consequently, the applicants had nothing to do with the error made by the Commission, which was under an obligation to rectify it as soon as possible after becoming aware of it.

69 It is quite clear that on 1 February 1991 the French Maritime Fisheries Directorate pointed out that error to the Commission and indicated in particular, in relation to the costs declared to be ineligible, that the sum of FF 3 500 000 entered in Annex C3 to the summary for the cost of the nets did not exceed 10% of the total investment. Similarly, the letter sent on 25 February 1991 by Siditho to the applicant Cobrecaf shows that the Commission was perfectly aware that an error of calculation had led it to refuse to take into consideration the cost of the nets in deter-

mining the sums eligible for the calculation of the aid sought. It is common ground that the Commission waited fifteen months before agreeing, without further comment, to include the cost of the nets in the Community financial aid by its decision of 30 April 1992.

70 In those circumstances, the Court considers that the Commission committed an administrative fault of a kind for which it incurs non-contractual liability in failing to rectify, within a reasonable time, the error which it accepts that it made. The fact that it took 15 months to rectify a manifest error shows obvious lack of care on its part (see the judgment of the Court of Justice in Joined Cases C-363/88 and 364/88 *Finsider and Falck* v *Commission* [1992] ECR I-359, paragraph 22).

71 That fault harmed the applicants in that the Community share relating to the cost of the nets, namely FF 875 000, was not paid until 12 June 1992 instead of 10 January 1992, the date of payment of the aid granted by the decision of 20 December 1990.

72 The harm suffered by the applicants must be evaluated at the amount of interest lost on the sum of FF 875 000 during the period from 10 January 1992 to 12 June 1992, of which the rate must be fixed at 8% per annum according to the criteria laid down by the Court of Justice concerning claims for interest (see the judgments of the Court of Justice in Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, paragraph 32, and Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission* [1992] ECR I-3061, paragraph 35).

Costs

73 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful in the main and the Commission has applied to have costs awarded against them, the Court considers it equitable to order them to bear their own costs and jointly and severally one quarter of the Commission's costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. **Declares the application inadmissible in so far as it seeks annulment of the decision of 2 June 1993;**

2. **Declares the application inadmissible in so far as it seeks payment of the balance of the aid sought;**

3. **Orders the Commission to pay the applicants interest at the rate of 8% per annum on the sum of FF 875 000 for the period from 10 January 1992 to 12 June 1992;**

4. **Dismisses the remainder of the application;**

5. Orders the applicants to bear their own costs and jointly and severally one quarter of the costs of the Commission. The Commission is to bear three quarters of its own costs.

Lenaerts Schintgen García-Valdecasas

Delivered in open court in Luxembourg on 15 March 1995.

H. Jung K. Lenaerts

Registrar President