JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
24 April 1996 *

In Joined Cases T-551/93, T-231/94, T-232/94, T-233/94 and T-234/94,

Industrias Pesqueras Campos SA, a company incorporated under Spanish law, with its registered office at Vigo (Spain), represented in Case T-551/93 by Antonio Creus and Xavier Ruiz, both of the Barcelona Bar, and by José Ramón García-Gallardo, of the Burgos Bar, with an address for service in Brussels at the Cuatrecasas Chambers, 78 Avenue d'Auderghem, and in Case T-233/94 by Santiago Martínez Lage, Rafael Allendesalazar Corcho and Javier Vías Alonso, all of the Madrid Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

Transacciones Maritimas SA,

Recursos Marinos SA,

Makuspesca SA,

companies incorporated under Spanish law, with their registered offices at Vigo (Spain), represented by Santiago Martínez Lage, Rafael Allendesalazar Corcho and Javier Vías Alonso, all of the Madrid Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

applicants,

* Language of the case: Spanish.

Commission of the European Communities, represented by Francisco Santaolalla, Legal Adviser, and Amparo Alcover, of its Legal Service, and at the hearing by Blanca Vila Costa, a national official on secondment to the Commission, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Commission's Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for, in Case T-551/93, compensation for the loss caused to the applicant by the Commission's non-payment of the Community financial aid which it had granted by its decision C(89) 632/73 of 26 April 1989 (file no ES/545/89/01) for the construction of the fishing vessel 'Escualo', and, in Cases T-231/94, T-232/94, T-233/94 and T-234/94, for the annulment, respectively, of Commission Decisions C(94) 670/1, C(94) 670/2, C(94) 670/3 and C(94) 670/4, whereby the Commission withdrew Community financial aid granted to each of the four applicants for the construction of fishing vessels and required three of the applicants to repay the amounts already paid,

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

composed of: K. Lenaerts, President, P. Lindh and A. Potocki, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 29 November 1995,

gives the following

Judgment

Legislative background

1 These actions for compensation and annulment have arisen in connection with the Community rules on aid for the construction of new fishing vessels.

2 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 1987 L 376, p. 7; 'Regulation No 4028/86'), whereby the Council permitted the Commission to grant Community financial aid towards projects for the construction of new fishing vessels (Article 6). That is the basic enactment of Community policy concerning the structure of the fishing industry. On 24 June 1988, the Council adopted Regulation (EEC) No 2052/88 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 185, p. 9; 'Regulation No 2052/88'). On 20 July 1993, the Council adopted Regulation No 2080/93 laying down provisions for implementing Regulation No 2052/88 as regards the financial instrument of fisheries guidance (OJ 1993 L 193, p. 1), which repealed Regulation No 4028/86 with effect from 1 January 1994, save for aid applications introduced before that date (Article 9).

3 Article 44 of Regulation No 4028/86 states the circumstances in which proceedings may be taken for suspending, reducing or withdrawing aid, and reads as follows:

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

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

— if certain conditions imposed are not satisfied, or

— if the beneficiary, contrary to the particulars given in the application and incorporated in the decision granting aid, has not begun the work within one year from the date of notification of the decision, or has not, before the end of this period, supplied satisfactory assurances that the project will be carried out, or

— if the beneficiary does not complete the work within a period of two years from the start of the project, except in cases of *force majeure*.

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

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

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

4 Article 46 of the same regulation specifies the powers of inspection conferred upon the Commission, and Article 46(2) reads as follows:

'2. Without prejudice to controls carried out by Member States in accordance with national laws, regulations and administrative provisions, and without prejudice to the provisions of Article 206 of the Treaty or to any inspection organized pursuant to Article 209(c) of the Treaty, the persons empowered by the Commission to make checks on location shall be given access to the accounts and any other documents relating to the expenditure financed by the Community. In particular, they may check the following:

(a) the conformity of administrative practices with the Community rules;

(b) the existence of the requisite supporting documents and their consistency with the operations financed from the Community budget;

(c) the manner in which the operations financed from the Community budget have been carried out and inspected.

In good time before such inspection, the Commission shall notify the Member State concerned by the inspection or in whose territory the inspection is to be conducted. Officials of the Member State concerned may take part in such inspections.

At the Commission's request and with the consent of the Member State, inspections or investigations relating to the operations referred to in this regulation shall

be carried out by the competent authorities of the Member State concerned. Commission officials may take part in such inspections.

In order to improve the scope for inspections, the Commission may, with the consent of the Member States concerned, involve the administrations of the Member States in certain inspections or investigations.'

5 Article 47 of Regulation No 4028/86 provides for consultation with the Standing Committee for the Fishing Industry in connection with suspension, reduction or withdrawal procedures.

6 On 13 February 1987, the Spanish Government adopted Royal Decree No 219/87, implementing Regulation No 4028/86 (BOE No 44 of 20 February 1987; 'Royal Decree No 219/87'), which was in turn brought into effect by the Decree of 3 March 1987 (BOE No 56 of 6 March 1987).

7 On 26 March 1987, the Commission adopted Regulation (EEC) No 970/87 laying down transitional measures and detailed rules for the application of Council Regulation (EEC) No 4028/86 with regard to the renewal and restructuring of the fishing fleet, the development of aquaculture and structural works in coastal waters (OJ 1987 L 96, p. 1; 'Regulation No 970/87'), the annexes to which contain the forms setting out the information and documents needed in order to make an application for Community financial assistance for new fishing vessel construction projects.

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

'Regulation No 1116/88'), the annex to which contains the models setting out the information and documents to be included in applications for Community financial aid towards new fishing vessel construction projects.

9 Article 7 of that regulation specifies the conditions for initiating procedures for suspending, reducing or terminating aid, and reads as follows:

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

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

— consult the competent authority responsible for forwarding supporting documents,

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

Factual background

10 The applicants are fishing companies with a common majority shareholder and sole manager. Transacciones Maritimas SA ('Tramasa') was established in April 1984,

Industrias Pesqueras Campos SA ('IPC') was established in September 1986, and Makuspesca SA and Recursos Marinos SA were established in November 1986.

11 On 7 April 1987, Tramasa applied to the Spanish authorities under Article 34 of Regulation No 4028/86 for authorization to build the trawl-fishing vessel 'Tiburon III' and for the grant of Community and national financial aid as provided for in Regulation No 4028/86 and Royal Decree No 219/87. The project was for the construction of a fishing vessel at a total cost of PTA 126 500 000, construction work being entrusted to the shipyard Construcciones Navales Santo Domingo SA. On 9 July 1987, the Spanish merchant shipping authority authorized construction of the vessel.

12 By Decision C(87) 2200/137 of 21 December 1987, the Commission granted Tramasa financial aid of PTA 39 283 091 for the construction of the vessel. That aid amounted to 35% of PTA 112 237 403, which the Commission stated was the maximum amount capable of being paid by way of subsidy. The construction of the vessel 'Tiburon III' also benefited from aid from the Spanish authorities of PTA 16 240 000. In addition, the yard received a shipbuilding subsidy of PTA 21 532 436 from the Gerencia del Sector Naval (Management Board for the Shipping Industry).

13 On 6 April 1988 Tramasa requested the Commission to make a part payment of the Community aid on the strength of an invoice from the constructing shipyard, dated 15 March 1988, which certified that 51% of the total investment, namely PTA 64 660 000, had been paid. The Commission made the part payment on 12 July 1988.

14 On 25 October 1988 Tramasa requested the Commission to pay the balance of the aid, on the strength of a shipyard invoice of 27 June 1988, certifying payment by a series of cheques of the full price of PTA 126 500 000 (Annex 3 to the Defence in Case T-231/94), which corresponded with the total investment amount as stated in

the application for Community financial aid and in the decision granting aid of 21 December 1987 (Annex 5 to the Application in Case T-231/94). Tramasa also supplied the Commission with a certificate of seaworthiness issued by the Spanish merchant shipping authority on 27 June 1988. The Commission paid the balance on 4 April 1989. On 9 October 1989 the applicant sold the vessel 'Tiburon III' to Puntapesca SA, a Spanish company, for PTA 112 837 453.

15 On 21 September 1987, Makuspesca applied to the Spanish authorities under Article 34 of Regulation No 4028/86 for authorization to build the fishing vessel 'Makus' and for the grant of Community and national financial aid as provided for in Regulation No 4028/86 and Royal Decree No 219/87. The project was for the construction of a fishing vessel at a total cost of PTA 217 250 000, construction work being entrusted to the shipyard Construcciones Navales Santo Domingo SA. The Spanish merchant shipping authority authorized construction of the vessel.

16 By Decision C(89) 632/47 of 26 April 1989, the Commission granted Makuspesca financial aid of PTA 74 924 630 for the construction of the vessel. That aid amounted to 35% of PTA 214 070 374, which the Commission stated was the maximum amount capable of being paid by way of subsidy. The construction of the vessel 'Makus' also benefited from aid from the Spanish authorities of PTA 21 407 038. In addition, the yard received a shipbuilding subsidy of PTA 23 000 000 from the Gerencia del Sector Naval.

17 On 5 June 1989, Makuspesca requested the Commission to pay the Community aid in full on the strength of a shipyard invoice of 8 February 1989, certifying payment in cash of the full price of PTA 217 250 000 (Annex 4 to the Defence in Case T-234/94), which corresponded with the total investment amount as stated in the application for Community financial aid (Annex 3 to the Defence in Case T-234/94) and in the decision granting aid of 26 April 1989 (Annex 5 to the Application in Case T-234/94). Makuspesca also supplied the Commission with the certificate of seaworthiness issued on 9 March 1989 by the Spanish merchant shipping

authority. The Commission paid the Community aid in July 1989. In July 1992 Makuspesca sold the vessel 'Makus' for PTA 63 000 000 (according to the reply to a written question from the Court).

18 On 28 September 1987, Recursos Marinos applied to the Spanish authorities under Article 34 of Regulation No 4028/86 for authorization to build the fishing vessel 'Acechador' and for the grant of Community and national financial aid as provided for in Regulation No 4028/86 and Royal Decree No 219/87. The project was for the construction of a fishing vessel at a total cost of PTA 324 500 000, construction work being entrusted to the shipyard Astilleros del Atlantico SA. Recursos Marinos subsequently amended its initial project, and replaced it with one for PTA 322 300 000. On 21 October 1987 the Spanish merchant shipping authority authorized construction of the vessel.

19 By Decision C(89) 632/73 of 26 April 1989, the Commission granted Recursos Marinos financial aid of PTA 107 570 697 for the construction of the vessel. That aid amounted to 35% of PTA 307 344 850, which the Commission stated was the maximum amount capable of being paid by way of subsidy. The construction of the vessel 'Acechador' also benefited from aid from the Spanish authorities of PTA 30 734 486. In addition, the yard received a shipbuilding subsidy of PTA 25 430 000 from the Gerencia del Sector Naval.

20 On 10 May 1989 Recursos Marinos requested the Commission to make a part payment of the Community aid on the strength of a shipyard invoice of 2 May 1989, which certified that 94% of the total investment, namely PTA 304 800 000, had been paid. The Commission made the part payment on 28 July 1989.

21 On 21 November 1989 Recursos Marinos requested the Commission to pay the balance of the aid, on the strength of a shipyard invoice of 4 October 1989, certifying payment in cash of the full price of PTA 322 300 000 (Annex 3 to the Defence in Case T-232/94), which corresponded with the total investment amount as stated in the application for Community financial aid and in the decision granting aid of 26 April 1989 (Annex 5 to the Application in Case T-232/94). Recursos Marinos also supplied the Commission with a certificate of seaworthiness issued by the Spanish merchant shipping authority on 16 May 1989. The Commission paid the balance on 28 November 1989. On 17 May 1990 Recursos Marinos sold the vessel 'Acechador' to Pesquerias Lumar SA for PTA 175 000 000.

22 On 21 December 1987 IPC applied to the Spanish authorities under Article 34 of Regulation No 4028/86 for authorization to build the fishing vessel 'Escualo' and for the grant of Community and national financial aid as provided for in Regulation No 4028/86 and Royal Decree No 219/87. The project was for the construction of a fishing vessel at a total cost of PTA 148 500 000, construction work being entrusted to the shipyard Construcciones Navales Santo Domingo SA. IPC subsequently amended its initial project, and replaced it with one for PTA 217 250 000. On 30 September 1988 the Spanish merchant shipping authority authorized construction of the vessel.

23 By Decision C(89) 632/73 of 26 April 1989, the Commission granted IPC financial aid of PTA 48 550 322 for the construction of the vessel. That aid amounted to 35% of PTA 138 715 208, which the Commission stated was the maximum amount capable of being paid by way of subsidy. The Commission refused to take into account the increase in the total cost of the project resulting from IPC's amendment. The construction of the vessel 'Escualo' also benefited from aid from the Spanish authorities of PTA 21 407 038. In addition, the yard received a shipbuilding subsidy of PTA 15 292 360 from the Gerencia del Sector Naval.

24 On 22 February 1990 IPC requested the Commission to pay the total amount of the subsidy, on the strength of a shipyard invoice of 4 October 1989, certifying payment in cash of the full price of PTA 217 250 000 (Annex 4 to the Defence in Case T-233/94), which corresponded with the total investment amount as stated in the application for Community financial aid (Annex 3 to the Defence in Case T-233/94) and in the decision granting aid of 26 April 1989 (Annex 5 to the Application in Case T-233/94). IPC also supplied the Commission with a certificate of seaworthiness issued on 23 October 1989 by the Spanish merchant shipping authority. The Commission has not yet paid the amount of Community financial aid claimed by IPC. The vessel 'Escualo' was sold on 18 April 1991 to Tusapesca SA for PTA 80 000 000 (according to the reply to a written question from the Court).

25 Between 25 and 31 March 1990, under powers conferred on the Commission by Article 46 of Regulation No 4028/86, Commission officials carried out on-the-spot inspections at the premises of the applicant companies in order to check the use of the aid granted, whether it had been paid or not. The inspections were particularly concerned with the accounting documents submitted by the companies in support of their applications for payment of Community aid.

26 The Commission officials present, and the Spanish official who accompanied them, were, however, unable to carry out their checks as anticipated, since the applicants did not at that time have any official accounting system.

27 The Commission therefore requested the Spanish authorities, in this case the Intervención General de la Administración del Estado (State Public Accounts Department; 'the IGAE'), to carry out an audit of the applicants' businesses and of the shipyards which had built the vessels in question, as required by Article 5 of Regulation No 1116/88, which was done in May 1991. Copies of the audit results were sent to the applicants on 17 June 1991, and on 10 July 1991 the results were sent to

the Commission in the form of an 'Audit of shipping undertakings corresponding to new construction subsidy files ES/099/87/01, ES/392/89/01, ES/397/89/01, ES/545/89/01' ('the audit report'). It contains much information.

28 The audit report refers to a number of aspects that the beneficiary companies have in common: their common majority shareholder and sole manager is Mr Albino Campos Quinteiro (p. 20); they all have a capital of PTA 100 000 or less (p. 20); the total investment amounts shown in the aid application forms and in the certificates drawn up in order to obtain full payment of the Community aid do not correspond in any of the cases with the basic values of the vessels declared by the shipyard to the Gerencia del Sector Naval for the purpose of obtaining the shipbuilding subsidy (p. 18); the shipyard invoices containing the figures to demonstrate that the whole of the investment had been made at the time payment was requested do not reflect the true cost of the investment and do not prove that the invoices were actually paid (p. 16); the amounts actually paid for the vessels are appreciably below the amounts which appear on those invoices (p. 22). The IGAE report also contains specific findings in relation to each of the applicants.

29 On 27 December 1991, the Spanish authorities decided to reduce their contributions to the Tramasa project by PTA 4 101 217, to the IPC project by PTA 7 439 459, and to the Makuspesca project by PTA 5 238 167. Those three decisions stated that 'this repayment is entirely independent of whatever the Commission of the European Communities may decide concerning the Community financial aid paid for the construction of the vessel in question' and that 'it is also without prejudice to any administrative penalties which the competent authority may impose by reason of the conduct of this undertaking'. The Commission maintains that the Spanish authorities adopted those decisions as a result of the findings in the audit report (p. 14 of the Defence and Annex 8 thereto). The applicants reply that, since Regulation No 4028/86 did not permit national aid to be granted in excess of 30% of the cost eligible for subsidy, those decisions were taken in order to bring the combined amount of the national aid and the shipbuilding subsidy within that limit.

30 The three applicants concerned by those decisions reducing national aid lodged an administrative complaint against them, on which the Spanish Minister of Agriculture, Fisheries and Food ruled by adopting a confirmatory decree. The Commission argues that the applicants did not bring an action against that decree in time, as is shown by a letter from the Secretariat-General for Sea Fishing of the Spanish Ministry of Agriculture, Fisheries and Food, which forms Annex 7 to the Rejoinder in the respective cases. The applicants reply that such an action was brought within the time-limit, as is shown by the orders made on 5 November 1992 and 16 December 1992 by the Tribunal Superior de Justicia (High Court of Justice), Madrid (Annex 4 to the Reply in the four cases), whereby the administrative case-files were to be sent to that court in order to enable the applicants to bring their actions there.

31 In November 1992, the Commission contacted the Secretariat-General for Sea Fishing of the Spanish Ministry of Agriculture, Fisheries and Food, in order to inform it of the Commission's intention to withdraw the Community aid granted to the applicants and to obtain its opinion on the matter. On 16 December 1992, the Director-General for the Fishing Industry sent his observations to the Commission, concluding that the aid initially granted should be regularized without being withdrawn altogether, since the total costs finally paid by the applicants were higher than the amounts held by the Commission to be eligible for subsidy (Annex 8 to the Defence in Case T-231/94; Annex 9 to the Defence in Case T-234/94; Annex 7 to the Defence in Case T-232/94; Annex 9 to the Defence in Case T-233/94). On 9 March 1993, the Director-General for the Fishing Industry sent fresh observations to the Commission, confirming his earlier observations (Annex 9 to the Defence in Case T-231/94, Annex 10 to the Defence in Case T-234/94, Annex 8 to the Defence in Case T-232/94; Annex 10 to the Defence in Case T-233/94).

32 On 8 June 1993, the Commission sent a letter by recorded delivery with a form for acknowledgment of receipt to each of the applicants in order to inform them of its intention to start proceedings for withdrawal of the Community financial aid previously granted following the discovery of a number of accounting irregularities in the documents presented in support of the applications for payment. Those letters

did not, however, reach the applicants until 15 July 1993, so that the applicants were not able to make their observations to the Commission in time, before the Commission adopted four decisions on 28 July 1993 withdrawing the aid granted to the applicants and demanding repayment.

33 Subsequent to the adoption of those decisions, however, the Commission took note of the observations made by the applicants within the time-limit stated, calculated from receipt of the letter of 8 June 1993. On 1 October 1993, the Commission adopted four decisions annulling the decisions withdrawing Community aid which had been adopted on 28 July 1993.

34 On the strength of the observations made by the applicants in their letter of 22 July 1993, the Commission had a series of meetings with the applicants' lawyers, during which it allowed them access to the documentation on each of the four cases.

35 On 12 October 1993, the Commission again requested the applicants to send their observations on the audit results concerning them, in order to enable the Commission to take a final decision regarding the Community financial aid for the construction of the fishing vessels 'Tiburon III', 'Makus', 'Acechador' and 'Escualo'. The applicants had the opportunity to make their observations to the Commission in a letter of 15 November 1993, and their additional observations during December 1993.

36 On 24 March 1994, the Commission adopted four decisions, C(94) 670/1, C(94) 670/2, C(94) 670/3 and C(94) 670/4, withdrawing the Community financial aid granted to the applicants and requiring three of them to repay the amount in question within three months. The Commission justifies the adoption of those decisions by reference to the applicants' refusal to allow free access to their accounting records and the existence of irregularities concerning the total cost of

the projects and the sums actually disbursed at the time the applications for payment were made. Those decisions were notified to the applicants on 5 April 1994.

Procedure and forms of order sought by the parties

37 On 27 October 1993, IPC brought an action for compensation against the Commission for failing to pay the Community aid which it had granted in its decision of 26 April 1989 (Case T-551/93).

38 On 15 June 1994, the applicants lodged four applications at the Registry of the Court of First Instance for the annulment of the decisions adopted by the Commission on 24 March 1994 ('the contested decisions'), respectively withdrawing Community financial aid and demanding its repayment (Cases T-231/94, T-232/94, T-233/94 and T-234/94).

39 On 6 July 1994, Tramasa, Makuspesca and Recursos Marinos each applied to the President of the Court of First Instance for interim measures suspending operation of Article 2 of Decisions C(94) 670/1, C(94) 670/2 and C(94) 670/3 of 24 March 1994, demanding repayment of the Community financial aid granted to those three applicants for the construction of fishing vessels.

40 On 26 October 1994, the President of the Court of First Instance made an interim order (Cases T-231/94 R, T-232/94 R and T-234/94 R *Transacciones Maritimas and Others* v *Commission* [1994] ECR II-885) joining the three applications for the purposes of the interim procedure, suspending operation of Article 2 of the three contested decisions until delivery of the Court's judgment in the main action — subject, however, to the provision by the applicants of a bank guarantee in favour of the Commission covering the full amount of the aid granted — and reserving

costs. The three applicants lodged an appeal against that order before the Court of Justice, dated 17 January 1995, which was dismissed (Order of the President of the Court in Case C-12/95 P *Transacciones Maritimas and Others* v *Commission* [1995] ECR I-467).

41 By order of the President of the Fourth Chamber of the Court of First Instance of 20 November 1995, Cases T-551/93, T-231/94, T-232/94, T-233/94 and T-234/94 were joined.

42 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber) decided to open the oral procedure without any preparatory inquiry. However, in connection with measures of organization of procedure, the parties were requested to reply in writing to a number of questions before the hearing.

43 The parties presented oral argument and replied to the oral questions of the Court at the hearing on 29 November 1995.

44 In Case T-551/93, the applicant claims that the Court should:

— order the Commission to pay the applicant PTA 48 550 322, namely the basic amount of the aid granted by the Commission in its decision C(89) 632/73 of 26 April 1989;

— order the European Economic Community to compensate the applicant for all the loss and damage suffered by reason of the Commission's delay in paying

the aid granted to the applicant in the decision of 26 April 1989, the amount of such compensation being estimated at ECU 329 442, made up as follows:

— ECU 133 580 by way of interest at the statutory rate applicable in Spain in the years 1990, 1991, 1992 and 1993 (10%), raised by 2 points for delay (12%), and applied to a maximum amount of PTA 48 550 322 as from 13 November 1990 until the date of the present action;

— ECU 84 633 in respect of overdraft charges at the rate of 8%, up to the amount of PTA 48 550 322;

— ECU 73 151, corresponding to the 'risk premium' imposed by suppliers for the granting of payment facilities, up to the amount of PTA 48 550 322;

— ECU 13 078 by way of legal costs incurred by the applicant in defending its interests at the pre-litigation stage;

— ECU 25 000 for non-material damage,

all such amounts to be adjusted as at the date of delivery of the judgment or of payment by the Commission, save in relation to legal costs,

— in the alternative, order the European Economic Community to pay such other amount as the Court of First Instance may judge appropriate, having regard to the facts established;

— adopt such further measures as it may deem necessary or appropriate;

— order the Commission to pay the costs.

The Commission claims that the Court should:

— declare the applicant's claim for payment of the subsidy inadmissible;

— in the alternative as to the latter claim, and as the Commission's main plea in relation to all the applicant's other claims, dismiss the application as unfounded;

— order the applicant to pay the costs.

45 In Cases T-231/94, T-232/94, T-233/94 and T-234/94, the applicants claim that the Court should:

— annul in their entirety Commission Decisions C(94) 670/1, C(94) 670/2, C(94) 670/3 and C(94) 670/4 of 24 March 1994, respectively withdrawing Community financial aid granted to the applicants and demanding its repayment;

— order the Commission to pay the costs.

The Commission claims that the Court should:

— dismiss the applications;

— order the applicants to pay the costs.

46 In the action for compensation and in the actions for annulment, as purported evidence in support of their claims offered pursuant to Article 44(1) of the Rules of Procedure of the Court of First Instance, the applicants seek, first, production of a series of documents a number of which already appear in annexes to the applications; secondly, the hearing as witnesses of Spanish and Community officials who took part in the on-the-spot inspections and in the IGAE audit; and, thirdly, information from the Directorate-General for the Fishing Industry in the Secretariat-General for Sea Fishing within the Spanish Ministry for Agriculture, Fisheries and Food as to the manner in which the inspections took place. For its part, the Commission proposes that, should the Court of First Instance consider it necessary, the Commission officials and the IGAE official who took part in the on-the-spot inspection carried out in March 1990 should be called as witnesses.

47 The Court of First Instance considers that the information contained in the pleadings is sufficient, and that the real offers of evidence made by the parties, namely for the hearing of Community and Spanish officials and for the production of certain documents, are therefore not necessary in determining these proceedings.

48 The Court also considers that, bearing in mind the particular features of the joined cases at issue, the actions for annulment in Cases T-231/94, T-232/94, T-233/94 and T-234/94 should be examined before the action for compensation in Case T-551/93.

The actions for annulment

Admissibility

Arguments of the parties

49 In Case T-232/94, the Commission points to the discrepancy between the wording of the certificate issued by the Pontevedra Registry of Commerce, which states that Recursos Marinos is dissolved and liquidated, and that of the power of representation granted by the liquidator, which states that Recursos Marinos is in liquidation.

50 The Commission also points out that the liquidator of Recursos Marinos granted authority to the lawyers who signed the application in this case to represent IPC. The latter do not therefore have the authority to represent Recursos Marinos, and the application is void.

51 In response to the directions issued to it by the Court under Article 44(6) of the Rules of Procedure of the Court of First Instance, Recursos Marinos has stated that, in accordance with well-established judicial and notarial practice in Spain, a company in liquidation still has a residual legal personality which allows it to perform certain legal actions in order to defend rights which arose before it went into liquidation. That practice was recently reaffirmed by Article 123 of Spanish Law No 2/1995 of 23 March 1995. Recursos Marinos adds that the error in the authority to act in litigation was purely clerical, and that it was rectified by the drawing up of a new document dated 12 August 1994, which was sent to the Court of First Instance on 26 August 1994.

Findings of the Court

52 The Court considers that the further particulars supplied by Recursos Marinos in support of probative documents which were not disputed by the Commission dispel the doubts which may have existed concerning the admissibility of the action for annulment brought by Recursos Marinos.

Substance

53 The applicants make five pleas in law in support of their action. First, they allege infringement of the principles of legal certainty and the protection of legitimate expectations, in that the decisions to withdraw the Community financial aid were adopted after a reasonable period had expired. The second plea, which is made in the alternative, alleges infringement of essential procedural requirements, in that the Commission did not request the opinion of the Standing Committee for the Fishing Industry before adopting the decisions withdrawing the aid, did not inform the Member State concerned in accordance with Article 7 of Regulation No 1116/88, and did not give reasons, or in any event sufficient reasons, for the contested decisions. The third plea, which is made both in the alternative and in addition, alleges infringement of Regulation No 4028/86, in that the Commission did not base its decisions on any of the grounds referred to in Article 44(1) of Regulation No 4028/86. The fourth plea, which is also made both in the alternative and in addition, alleges infringement of the principle of proportionality, in that the Commission decided to impose the maximum penalty laid down by Article 44(1) of Regulation No 4028/86, whereas the vessels benefiting from the Community financial aid were in fact constructed in accordance with the technical specifications of the projects, and the Commission raised only alleged administrative irregularities. The fifth plea, likewise in the alternative and in addition, alleges misuse of powers in that the Commission sought to penalize sales of fishing vessels which were perfectly lawful under the relevant Community rules.

The first plea in law: infringement of the principles of legal certainty and the protection of legitimate expectations

— Arguments of the parties

54 The applicants complain of the lengthy periods which elapsed, first between the decisions granting the aid and the decisions withdrawing it and, secondly, between the date the audit report was received and the date of the decisions withdrawing the aid. In that respect, they maintain that the Commission's conduct infringed the principle of the protection of legitimate expectations or, at the very least, the principle of legal certainty.

55 The applicants submit that the principle of the protection of legitimate expectations is but a partial manifestation of the principle of legal certainty, so that the same conduct may entail the infringement of both principles. They add that, where a provision of Community law does not require the Commission to adopt a decision within a set period, the role of the principle of legal certainty is all the more important, since it then has to fill a legislative vacuum.

56 The Commission's conduct in this matter entailed, first, infringement of the principle of the protection of legitimate expectations, since, between the time the aids were granted to the applicants and the time the decisions ordering their withdrawal were adopted, the applicants were not given any indication that the Commission considered they had acted unlawfully.

57 The Commission's silence, even after the Spanish authorities' demand in December 1991 for repayment of part of the aids they had granted, reinforced the legitimate expectations of the applicants, thereby justifying the annulment of the contested

decisions (see the judgment in Case 14/81 *Alpha Steel* v *Commission* [1982] ECR p. 749, paragraph 11).

58 Moreover, even if the persons concerned were aware of the unlawfulness of their position, the Commission could not determine that unlawfulness beyond the expiry of a certain period without infringing the principle of the protection of legitimate expectations (see the judgments in Case 344/85 *Ferriere San Carlo* v *Commission* [1987] ECR 4435 and Case 223/85 *RSV* v *Commission* [1987] ECR 4617).

59 The applicants maintain, moreover, that the illegalities of which they stand accused essentially concern differences of interpretation as to the method of calculating the cost of vessels and do not in any way constitute manifest infringements of the relevant rules, such as to exclude the application of the principle of the protection of legitimate expectations (see the judgment in Case 67/84 *Sideradria* v *Commission* [1985] ECR 3983, paragraph 21).

60 Nor, in the applicants' submission, were their legitimate expectations affected by the on-the-spot inspections carried out by the Commission's officials at the end of March 1990. That measure was merely a facility allowed by Article 46(2) of Regulation No 4028/86, which did not imply suspicion of any kind against the undertakings in question. Moreover, in the present case those inspections did not result in any document being sent accusing the applicants, from which they might have concluded that they had committed an infringement.

61 Even if the Commission's conduct cannot be regarded as an infringement of the principle of the protection of legitimate expectations, the applicants argue that it must, at the very least, infringe the principle of legal certainty. In the first place, a period of between four and six years elapsed between the time payment of the aids in question was requested from the Commission and the time when the Commission decided to withdraw them. The applicants produced tables at the hearing, showing the length of those periods in each case. Secondly, a period of about three

years elapsed between the time when the Commission received the audit report and its adoption of the contested decisions. That length of time cannot be regarded as a reasonable period, and therefore infringes the principles of legal certainty and sound administration (see the judgments in Joined Cases 7/56 and 3/57 to 7/57 *Algera and Others* v *Common Assembly of the European Coal and Steel Community* [1957] ECR 39 and Case 112/77 *Töpfer* v *Commission* [1978] ECR 1019 and *RSV* v *Commission*, cited above).

62 The applicants also maintain that the Commission's argument, whereby it seeks to reduce its period of inactivity to the period between the date of receipt of the audit report (19 June 1991) and the date of notification of the commencement of the withdrawal procedure (15 July 1993), does not in any way lessen the relevance of the principles on which they rely. They add that the unjustified passivity of the Commission is underlined by the Spanish authorities' adoption on 27 December 1991 of decisions partially withdrawing national financial aid.

63 In any event, the applicants insist that they have not committed any substantive and deliberate breach of Community rules. In the first place, they dispute the contents of the audit report at a number of points and, secondly, they enjoy the presumption of good faith which it is for the Commission to rebut. As proof of their good faith, they point out that the audit report and the observations of the Spanish authorities make no comment as to whether any infringements which might have taken place were deliberate. They argue, moreover, that, if they had committed infringements, the Spanish Public Prosecutor's Office should have been informed, pursuant to Article 262 of the Spanish Code of Criminal Procedure and Article 350 of the Spanish Criminal Code, which was not done. They maintain that the contested decisions do not contain any proof in that respect.

64 The Commission replies, first, that, by invoking as their main argument their legitimate expectations arising from the delay in adopting the contested decisions, the applicants impliedly acknowledge that those decisions were well founded.

65 It then maintains that the facts of this case do not establish the legitimate expectations claimed by the applicants. The applicants were each established with a capital of PTA 100 000 or less, divided between three company members who were also members of the same family, with the majority shareholder in each case being Mr Campos Quinteiro, because they were created with the intention, and apparently the exclusive intention, of obtaining large Community and national subsidies for the construction of fishing vessels and subsequently selling them. Since, moreover, three of the four applicants (Tramasa, IPC and Recursos Marinos) had ceased activity since the sale of the vessels built with the aid of the subsidies, the Commission was faced with undertakings which had been voluntarily placed in a financial situation which made it impossible to recover the aid which had been unduly paid. The Commission added at the hearing that, despite steps taken after the dismissal by the President of the Court of Justice of the applicants' appeal against the interim order of the President of the Court of First Instance of 26 October 1994, it had not been able to recover the Community financial aid paid to Tramasa, Makuspesca and Recursos Marinos, owing to the insolvency of those companies.

66 The Commission continues by maintaining that the period of time which elapsed before the contested decisions were adopted was due at least in part to the applicants, whose obstructive attitude at the time of the Commission's inspection visits at the end of March 1990 made it necessary for the Spanish authorities to carry out an audit.

67 The Commission also considers that the case-law cited by the applicants does not apply in this case, since the argument cited for rescinding acts of the Community institutions concerns neither an error by the Commission, nor the modification or relaxation of a practice, but the improper conduct of the persons concerned.

68 It follows that the applicants cannot rely on the legitimate expectation they claim to have placed in the enjoyment of a subsidy whose grant was based on false information supplied by them in manifest breach of the relevant rules. The invoices drawn up by the shipyards not only fail to correspond with payments actually made by the applicants, but do not even reflect the true cost of the investments, which was significantly below the amounts shown on the invoices. Nor do the total investment amounts shown on the forms requesting Community aid, and repeated, under the guise of sums paid, on the certificates drawn up with a view to obtaining payment of the total aid granted, anywhere coincide with the basic values of the vessels declared by the shipyards to the national authorities. The Commission adds that such declarations can only be made knowingly, as the Spanish authorities have also indicated.

69 Therefore, since the applicants knowingly infringed Community rules, they are not entitled to interpret the passage of a period of time, whatever its length, and the silence of the Commission as indications of the latter's alleged intention not to withdraw the aid granted.

70 In any event, the Commission argues, the applicants' legitimate expectation must have ceased when they became aware of the audit report and, *a fortiori*, when the Spanish authorities informed them that they were reducing their contribution.

71 Finally, the conduct of the applicants' majority shareholder, Mr Campos Quinteiro, in the way he managed the three recipient companies after he became aware of the audit results is a serious indication that there was no legitimate expectation. Recursos Marinos was dissolved and liquidated and the assets of Makuspesca and Tramasa were drastically reduced, so as to make any repayment of the subsidies impossible, as the Commission found when attempting to recover the aid unduly paid. Moreover, Mr Campos Quinteiro had refrained from claiming payment of the

financial aid granted to IPC until the Commission notified him of its intention to withdraw it.

— Findings of the Court

72 The applicants base their entire argument in this first plea on the allegedly excessive periods of time it took for the Commission to adopt the contested decisions. The Court therefore needs to determine the periods which must be taken into consideration in assessing whether the allegations of infringement are well founded.

73 In justifying the withdrawal of Community aid, the contested decisions refer in particular to the contents of the audit report. The period to be taken into consideration therefore begins at the time the applicants became aware of the results of the measures of inspection carried out by the Commission in accordance with the powers conferred upon it by the relevant rules. The audit report was addressed to the Commission on 10 July 1991, and the contested decisions were adopted on 24 March 1994. The period to be taken into consideration in these cases therefore amounts to some 32 months.

74 The Court finds, however, that the Commission did not remain inactive during that 32-month period. It maintained contacts with the Spanish authorities (letters from the Director-General for the Spanish Fishing Industry of 16 December 1992 and 8 March 1993, following the Commission's request in November 1992) and with the applicants (letters of 8 June 1993, received on 15 July 1993, decisions of 28 July 1993 and 1 October 1993, discussions and contacts in October and November 1993). In reality, therefore, the Commission's period of inactivity in relation to the applicants extends from 10 July 1991 to 8 June 1993, namely 23 months, whereas its inactivity in relation to the Spanish authorities is confined to the period from 10 July 1991 until November 1992, namely 16 months.

75 It has to be determined whether those periods could in any way have infringed the principle of the protection of legitimate expectations and the principle of legal certainty, on which the applicants rely. In so doing, the Court has to examine how far the applicants were entitled to believe that the aid paid, or to be paid, to them was definitively acquired by reason of a legitimate expectation or, at the very least, the effluxion of time.

76 Under the case-law of the Court of Justice, the principle of the protection of legitimate expectations may not be relied upon by an undertaking which has committed a manifest infringement of the rules in force (*Sideradria* v *Commission*, cited above, at paragraph 21 of the judgment). The Court of Justice has, moreover, indicated that, whilst it is important to ensure compliance with requirements of legal certainty which protect private interests, those requirements must be balanced against requirements of the principle of legality which protect public interests, and precedence must be accorded to the latter when the maintenance of irregularities would be likely to infringe the principle of equal treatment (see, in particular, the judgments of the Court of Justice in Joined Cases 42/59 and 49/59 *SNUPAT* v *High Authority* [1961] ECR 53, at pages 86 to 88, and in Case 14/61 *Hoogovens* v *High Authority* [1962] ECR 253, at pages 269 to 275).

77 The reason given in the contested decisions in this case for the withdrawal of Community financial aid is that the IGAE found irregularities which consisted 'in the fact that, at the time payment of the financial aid was requested, the sums declared as having been paid by the beneficiary were significantly higher than the sums actually paid at that time' and 'in the fact that the amounts for the total cost of the investment enjoying the subsidy, which appear both in the application for the subsidy and in the application for payment, and which are supported by budgets and corresponding invoices and used as the reference amounts for the granting of Community financial aid and the fixing of its amount, appear to be significantly higher than the sums actually paid'. The contested decisions also give as a reason for the withdrawal of the Community financial aid the fact that 'during the inspections carried out by Commission officials on 30 March 1990, the beneficiary refused those officials access to the undertaking's accounts, thereby making it impossible

to check whether the conditions to which the granting of the aid was subject were satisfied', and that, for that reason, 'the Commission requested the Spanish authorities to carry out an on-the-spot investigation'.

78 Regarding the discrepancy between the amount declared and the amount actually paid for the investment carried out at the time payment was requested, the authors of the audit report found that, contrary to what the applicants declared in their applications for payment of the aid with the support of shipyard invoices (see paragraphs 14, 17, 21 and 24 above), the documents examined did not demonstrate that the whole of the payments declared had been effected at that time (audit report, pages 26, 32, 38 and 47).

79 Moreover, far from having been paid in cash (Annex 3 to the Defence in Cases T-234/94, T-232/94 and T-233/94) or by cheque (Annex 3 to the Defence in Case T-231/94), as the applicants stated in the list of supporting documents submitted together with the applications for payment of the aid, the applicants have maintained since the audit was carried out that the shipyard invoices were paid by drafts.

80 At the hearing, in reply to a question from the Court, the applicants agreed that the amounts stated on those invoices, and thus in the applications for payment of the aid, did not correspond with the costs actually paid at that time. The applicants have not, however, offered any explanation to justify the inaccuracy of their statements, either in whole or in part.

81 Moreover, the lists of accounting documents submitted with the applications for payment (Annex 3 of the four Defences) show that the breakdown of the various categories of ship construction work used in the payment applications is identical

with the breakdown contained in the applications for the granting of the aid, as regards both the identification of the works and their respective cost.

82 Despite the existence of those false statements, the applicants maintain that no provision requires them to show that they actually paid the whole of the investment indicated in the application for the aid and in the decision granting it, at the time they requested final payment. In their submission, the Community rules must be interpreted as requiring them merely to have paid the costs eligible for subsidy, used by the Commission to calculate the amount of Community aid, at the time of claiming payment.

83 As regards that argument, the second paragraph of Article 3 of Regulation No 1116/88, which is cited in the contested decisions, provides that 'Applications for payment shall consist of a certificate and a list of supporting documents (which) shall be submitted in duplicate in the form shown in the Annex'. The information and documents mentioned in the annexes concerning the final payment of Community aid are to be presented in accordance with model forms. Amongst them is a model of the certificate whereby the competent national authority attests, *inter alia*, that, at the time of the application for payment, the 'amount of the total costs actually paid' amounts to a certain sum and 'is shared among the various categories of work planned as shown in the list of supporting documents for this application for payment (*Model 8*)' (paragraphs 2 and 4 of Model 6). It thus follows from the wording of the models for the information and documents which must be submitted at the time payment is requested that the beneficiary of a Community financial aid must produce information to the competent national authority to show that the total costs have actually been paid.

84 The applicants cannot argue that, because the models take the form of annexes to a regulation, the provisions they contain do not have the binding force of provi-

sions in a regulation. As stated in paragraph 83 above, the second paragraph of Article 3 of Regulation No 1116/88 requires the information and documents mentioned in the annex to the regulation to be shown in the certificate and the list of supporting documents accompanying the application for payment. Therefore, the provisions contained in those models have binding force identical to that of the provisions of the regulation to which they are annexed.

85 Moreover, there is nothing in the models annexed to Regulation No 1116/88 to permit the conclusion that the 'total costs' which must have been actually paid at the time of the application for payment refer only to costs eligible for subsidy. On the contrary, paragraph 6 of Model 6 in the Annex to Regulation No 1116/88 refers expressly to work described in the Commission decision to grant aid. Work described in that decision is not limited to that which the Commission holds to be eligible for subsidy, but includes all the work envisaged by the intending beneficiary in order to carry out the investment (see Annex 5 to the Application in the four cases).

86 The Court therefore considers that the 'total costs' which must actually be paid at the time payment is requested are those which correspond to the whole of the investment envisaged by the beneficiary in his application for the granting of Community aid and set out in the decision granting it. Moreover, the Court notes that the applicants considered it necessary to maintain that they had paid the total amount of the projected investment when they claimed payment of the Community aid, since in each case they produced a shipyard invoice whose amount corresponded with the total cost of each project (see above, paragraphs 14, 17, 21 and 24). Such conduct makes it reasonable to suppose that the applicants were convinced that the rules in force required them to demonstrate actual payment of the total amount of the projected investment before being able to receive the Community aid.

87 Moreover, the authors of Regulation No 1116/88 expressly provided that, in the event of differences between the work initially planned and that actually completed and paid for, such differences were to be indicated and justified in the information and documents accompanying the application for payment (Model 9 in the Annex to Regulation No 1116/88). In these cases, the applicants have not declared the existence of any differences between the work planned and the work completed, either at the time they made their applications for payment (see Annex 5 to the Defence in Cases T-233/94 and T-234/94) or subsequently.

88 In support of their arguments, the applicants have also alleged that the following expenses should be regarded as having been actually paid at the time payment of the Community financial aid was requested: the shipbuilding subsidy paid directly by the Gerencia del Sector Naval to the shipyard undertaking the construction of the vessel, drafts issued before the application for payment but whose maturity was after that date, and price reductions on account of delay in the construction of the vessel.

89 On the first point, the Court finds that the audit report expresses no opinion as to the treatment to be given to the shipbuilding subsidy when accounting for the expenses actually paid by the beneficiary of the Community aid. Nor has the Commission, either in the written procedure or at the hearing, formally opposed the taking into account of that subsidy amongst the expenses actually paid at the time of the application for payment. That being so, and without there being any need to examine that question further, the Court considers that the amount corresponding to the shipbuilding subsidy must be regarded as an expense actually paid as from the time the subsidy was granted by the Gerencia del Sector Naval.

90 On the second point, footnote 4 to Model 8 in the Annex to Regulation No 1116/88, to which the second paragraph of Article 3 of the regulation refers, states that the date of payment to be shown on the list of supporting documents accompanying the application for payment 'is that of the actual payment and not the date

on which a debt falls due, for example, in the case of payment by instalments'. Thus, if the date of actual payment of an instalment may not correspond to the date on which it became due, *a fortiori*, the date of actual payment of a draft may not correspond to the date of its issue. Therefore, costs paid by means of drafts which had not yet reached maturity, or which had reached maturity but had not yet been paid, at the time when the application for payment was made may not be regarded as having been actually paid at that date. In those circumstances, the Court does not consider it necessary to refer to Spanish law in order to determine the discharging effect of a payment by draft in the context of Community financial aid for the construction of new fishing vessels.

91 Finally, the documents before the Court show that three applicants, namely Tramasa, IPC and Makuspesca, included price reductions for delay in construction in the list of costs actually paid at the time of the applications for payment. The Commission rightly points out in that respect that the contracts for the construction of the vessels presented in support of the applications for the granting of the aid do not contain any provisions for price reductions in the event of delay in the performance of the contract. Moreover, the Court finds that only one applicant, IPC, lodged documents attesting, in its submission, the reality of the reductions obtained, amounting to PTA 40 100 000, representing 18% of the total cost of the project. Tramasa and Makuspesca merely contend that such price reductions for delay occurred, without supplying any proof whatsoever.

92 Amongst the documents lodged by IPC in support of its contention (Annex 3 to the Reply in Case T-233/94), a number were drawn up by an accountant who was consulted in October 1993, more than two years after the audit was carried out and only a few months after the Commission informed IPC in its letter of 8 June 1993 that it intended to withdraw the Community aid which it had previously granted. Moreover, the author of the documents in question qualified them by stating: 'By virtue of the above, and without this document being capable of being used as an audit document for the purposes of subsequent verification, I hereby issue this certificate at Vigo on 15 October 1993'. The Court therefore considers that those price reductions for delay in the performance of the contract cannot be established as genuine by means of those documents alone.

93 Accordingly, the price reductions for delay in the construction of the vessel, cited by those three applicants, cannot be regarded in this case as costs actually paid by the beneficiary of the aid, either at the time of the application for payment or subsequently.

94 Therefore, on the basis of the matters considered in paragraphs 89 to 93 above, in determining the amount of the investments actually made at the time when the applications for payment of the aid were submitted, it is necessary to deduct from the amounts which the applicants claim to have paid at that time, at the very least, the amount of drafts which had not reached maturity and had not been paid, or had reached maturity and had not been paid, and also, in appropriate cases, the amount of price reductions for delay in the performance of the contract [(amount claimed in these proceedings to have been paid) less (amount of drafts) less (amount of price reductions)] .

95 It therefore appears that:

— Tramasa actually paid only PTA 56 055 200 [PTA 123 085 272 (Reply, p. 20)-PTA 61 991 072 (Reply in Case T-231/94, p. 18; audit report, p. 26)-PTA 5 039 000 (audit report, pp. 28 and 54; Reply in Case T-231/94, p. 19)], namely 44.31% of the amount it declared (PTA 126 500 000);

— Makuspesca actually paid only PTA 26 359 511 [PTA 213 731 225 (Reply in Case T-234/94, pp. 20 and 21)-PTA 151 950 417 (Reply in Case T-234/94 pp. 18 and 20; audit report, p. 34)-PTA 35 421 297 (audit report, p. 34; Reply in Case T-234/94, p. 21)], namely 12.13% of the amount it declared (PTA 217 250 000);

— Recursos Marinos actually paid only PTA 295 480 510 [PTA 303 781 000 (Reply in Case T-232/94, p. 20)-PTA 8 300 490 (Reply in Case T-232/94,

pp. 18, 19 and 20)-PTA 0], namely 91.67% of the amount it declared (PTA 322 300 000);

— IPC actually paid only PTA 131 089 196 [PTA 210 429 468 (Reply in Case T-233/94, pp. 20 and 21)-PTA 39 240 272 (Reply in Case T-233/94, p. 19; audit report, p. 41)-PTA 40 100 000 (Reply in Case T-233/94, p. 20; audit report p. 41)], namely 60.34% of the amount it declared (PTA 217 250 000).

96 Moreover, the documents examined at the audit did not provide evidence of payment of a series of other costs which the applicants claim to have paid at the time of the applications for payment, so that the percentages stated in paragraph 95 above must be reduced still further (see the audit report, pages 25 and 26, 33 to 35, 38 to 41 and 46 to 49).

97 Secondly, concerning the lack of correlation between the amount declared and the amount actually paid for the investment carried out, as revealed by the audit report, the authors of that report found that, contrary to what the applicants have stated, even at that time, many months after the applications for payment of the aid were submitted, the documents examined did not demonstrate that the amount of the costs actually paid by the applicants corresponded with the investment amounts shown in the applications for aid and the decisions granting it, and in the shipyard invoices submitted in support of the applications for payment [audit report, section (k), p. 16; paragraph 2.1, pp. 21 and 22] .

98 The applicants dispute that assertion by maintaining that account should have been taken of price reductions for delay in performance of the contract and of the cost of supplies and various services effected by or for the applicants, as detailed by them at the reply stage of the proceedings.

99 As stated in paragraph 93 above, price reductions for delay in the performance of the contract cannot be accepted, in any of the three cases in which they are relied on, as constituting actual payment at any time. Moreover, the audit report established that, at the time it was carried out, the applicants were unable either to demonstrate the existence for accounting purposes of payments made for supplies and various services, or to establish their connection with the matters in question (audit report, pages 34, 41, 49, 54, 55, 57 and 59). Nor have the applicants adduced any fresh evidence since that time to contradict the contents of the audit report on that point. Therefore, those costs for supplies and various services cannot be taken into account as costs actually paid either.

100 Therefore, on the basis of what is found in the preceding paragraph alone, it is necessary to deduct from the amounts which the applicants claim to have finally paid, at the very least, the amount of the price reductions for delay in the performance of the contract and the amount of the costs for supplies and various services [(amount claimed in these proceedings to have been paid) less (amount of price reductions) less (amount of supplies and services)]

101 It follows that:

— Tramasa finally paid, at most, only 93.3% of what it declared [PTA 126 433 787 (Reply in Case T-231/94, p. 20)-PTA 5 039 000 (audit report, pp. 28 and 54; Reply in Case T-231/94, p. 19)-PTA 3 348 515 (Reply in Case T-231/94, p. 20)];

— Makuspesca finally paid, at most, only 82.07% of what it declared [PTA 217 250 000 (Reply in Case T-234/94, p. 21)-PTA 35 421 297 (audit report, p. 34, concerning deductions for the delivery of supplies for the construction of the vessel by the applicant; Reply in Case T-234/94, p. 20)-PTA 3 518 775 (Reply in Case T-234/94, p. 20)];

— Recursos Marinos finally paid, at most, only 92.81% of what it declared [PTA 310 719 066 (Reply in Case T-232/94, p. 16)-PTA 0-PTA 11 590 934 (audit report, p. 49; Reply in Case T-232/94, p. 21)];

— IPC finally paid, at most, only 61.15% of what it declared [PTA 217 773 539 (Reply in Case T-233/94, p. 21)-PTA 40 100 000 (Reply in Case T-233/94, p. 20; audit report, p. 41)-(PTA 7 343 971 + PTA 37 475 210)] .

102 The audit report also questions other payments on which the applicants rely, such as a bill of exchange which was not finally paid (pp. 34 and 35) and a cheque which was subsequently stopped (p. 59).

103 In any event, contrary to what the applicants have declared and maintained, they have in fact never been able to demonstrate that the investments were carried out in their entirety, despite the effluxion of a period of between 14 and 31 months between the various applications for payment of aid and the carrying out of the audit.

104 There are two further points to be made concerning the costs finally paid by the applicants. First, in its decisions granting Community financial aid (Annex 5 to the Application in each of the four cases), the Commission allocated responsibility for the investment between the beneficiary of Community aid, the Community and the Member State concerned. However, it did not take account of the subsidy granted by the Gerencia del Sector Naval in calculating the share of financial responsibility assumed by the Member State, so that, in the decisions granting aid, that subsidy falls within the financial responsibility assumed by the beneficiary.

105 It is apparent, on the basis of the expenses examined above in paragraphs 99 to 101 alone, that the costs actually paid by the applicants do not correspond with the amount of investment envisaged. Therefore, as from the moment the Community and national aids envisaged were paid, the applicants did not actually assume the financial responsibility that was theirs pursuant to the decisions granting the aid, even taking into account the shipbuilding subsidy paid to the shipyard.

106 Thus, if Community and national aid are deducted from the costs actually paid by the applicants, as established above in paragraph 101 [(costs actually paid, including the shipbuilding subsidy) less (Community aid) less (national aid)]:

— Tramasa has assumed financial responsibility for, at most, PTA 66 113 181 [PTA 118 046 272 (see paragraph 101 above)-PTA 39 283 091 (Community aid as stated in Annex 5 to the Application in Case T-231/94)-PTA 12 650 000 (national aid as stated in Annex 5 to the Application in Case T-231/94)], namely 88.66% of the amount required by the decision granting the aid [PTA 74 566 909 (as stated in Annex 5 to the Application in Case T-231/94)];

— Makuspesca has assumed financial responsibility for, at most, PTA 81 660 298 [PTA 178 309 928 (see paragraph 101 above)-PTA 74 924 630 (Community aid as stated in Annex 5 to the Application in Case T-234/94)-PTA 21 725 000 (national aid as stated in Annex 5 to the Application in Case T-234/94)], namely 67.71% of the amount required by the decision granting the aid [PTA 120 600 370 (as stated in Annex 5 to the Application in Case T-234/94)];

— Recursos Marinos has assumed financial responsibility for, at most, PTA 159 327 435 [PTA 299 128 132 (see paragraph 101 above)-PTA 107 570 697 (Community aid as stated in Annex 5 to the Application in Case T-232/94)-PTA 32 230 000 (national aid as stated in Annex 5 to the Application in Case T-232/94)], namely 87.30% of the amount required by the decision granting the aid [PTA 182 499 303 (as stated in Annex 5 to the Application in Case T-232/94)] .

Had IPC received the Community financial aid, it would have assumed financial responsibility for, at most, PTA 62 579 036 [PTA 132 854 358 (see paragraph 101 above)-PTA 48 550 322 (Community aid as stated in Annex 5 to the Application in Case T-233/94)-PTA 21 725 000 (national aid as stated in Annex 5 to the Application in Case T-233/94)], namely 42.57% of the amount required by the decision granting the aid [PTA 146 974 678 (as stated in Annex 5 to the Application in Case T-233/94)] .

107 Account must, however, be taken of the sums recovered by the Spanish authorities from Tramasa, Makuspesca and IPC, following their decisions of 27 December 1991, so that:

— Tramasa effectively assumed financial responsibility for, at most, PTA 70 214 398 [PTA 66 113 181 (see paragraph 106 above) + PTA 4 101 217 (reduction in national aid, Annex 8 to the Defence in Case T-231/94)], namely 94.16% of the amount required [PTA 74 566 909 (see paragraph 106 above)];

— Makuspesca effectively assumed financial responsibility for, at most, PTA 86 898 465 [PTA 81 660 298 (see paragraph 106 above) + PTA 5 238 167 (reduction in national aid, Annex 9 to the Defence in Case T-234/94)], namely 72.05% of the amount required [PTA 120 600 370 (see paragraph 106 above)];

— IPC effectively assumed financial responsibility for, at most, PTA 70 018 495 [PTA 62 579 036 (see paragraph 106 above) + PTA 7 439 459 (reduction in national aid, Annex 9 to the Defence in Case T-233/94)], namely 47.63% of the amount required [PTA 146 974 678 (see paragraph 106 above)] .

108 Secondly, in three of the four cases, the information before the Court shows that the investment amount indicated in the aid application, and repeated in the decision granting the aid, the application for payment and the shipyard invoice, is higher than the contract price for the construction of the vessels declared by the shipyard to the Gerencia del Sector Naval in order to obtain the shipbuilding subsidy. Thus,

the prices declared to the Gerencia del Sector Naval were PTA 163 300 000 for Makuspesca (as opposed to PTA 217 250 000), PTA 311 000 000 for Recursos Marinos (as opposed to PTA 322 300 000) and PTA 157 200 000 for IPC (as opposed to 217 250 000) (audit report, p. 18; Annex 3a to the Defence in Case T-232/94). In reply to a written question from the Court, Tramasa stated that it did not know the price declared by the shipyard to the Gerencia del Sector Naval.

109 Referring on this point to the terms of the audit report itself (p. 18), the Commission argues that the prices declared to the Gerencia del Sector Naval reflect the real cost of construction. Nevertheless, in reply to a written question, the applicants stated that 'the cost for the purposes of obtaining the shipbuilding subsidy ... does not necessarily have to coincide with the cost declared by the shipowner to the Commission and the national authorities in order to obtain subsidies from them'. In their submission, the shipbuilding subsidy takes account only of the price of constructing the vessel itself, excluding fittings, fishing equipment and refrigeration installations. The shipyards did not therefore include those headings when declaring the contract construction prices to the Gerencia del Sector Naval.

110 The applicants have not, however, considered it necessary to set out in detail the cost of the various fittings and installations not strictly forming part of the shipbuilding work, in order to demonstrate that the differences found to exist are justified by the explanation they gave. Moreover, in the light of the information before the Court, the applicants' argument is irrelevant. Whereas the difference between the costs declared, on the one hand, to the Commission and the national authorities and, on the other, to the Gerencia del Sector Naval amounts to PTA 11 300 000 in the case of Recursos Marinos, that difference rises to PTA 53 950 000 in the case of Makuspesca and is as high as PTA 60 050 000 in the case of IPC. And yet, in the latter two cases, the total investment amount (PTA 217 250 000) is lower than in the first case (PTA 322 300 000). The applicants have never established, or even contended, that the cost of fittings and installations as a proportion of the total cost of the project diminishes, falling from PTA 60 050 000 to PTA 11 300 000 (or from 27.6% of PTA 217 250 000 to 3.5% of PTA 322 300 000) as the total cost of the project increases.

111 The Court considers that the explanation offered by the applicants in reply to one of its written questions does not dispel the doubt raised by the fact that the cost declared to the Gerencia del Sector Naval (see paragraph 108 above) and the amount actually paid by the applicants (see paragraph 106 above), as shown by the audit report, clearly coincide.

112 Since the information set out in paragraphs 78 to 111 above has shown that the costs declared at the time of the applications for payment, which were identical with the investment amounts set out in the decisions granting the aid, did not correspond either with the costs actually paid at the time of the applications for payment or with the costs actually paid at the time the audit was carried out, it appears that the applicants made false declarations in order to obtain the granting and payment of a higher amount of Community and national financial aid than they would have been entitled to expect if they had declared the true construction costs of the vessels 'Tiburon III', 'Makus', 'Acechador' and 'Escualo' at the outset.

113 Thirdly, as regards the applicants' conduct during the on-the-spot investigation carried out in March 1990, the documents before the Court show that the Commission was obliged to ask the Spanish authorities to carry out an audit so as to enable it to inspect the supporting documents submitted by the applicants in support of their applications for payment. It is undisputed that the applicants did not have an official accounting system at the time of the on-the-spot inspection carried out by the Commission's officials. The parties disagree, however, as to whether or not that lack of an official system was intentional, and as to whether or not it was lawful. The audit report also showed that, at the time it was carried out, 'authentication of the official accounting records of those undertakings for the financial year 1987, during which the applicants ordered construction of the vessels and sought national and Community aid, was refused, as is shown by certificates of the tribunal for the Vigo No 2 District dated 3 May 1988. The accounts for 1988 were authenticated within the prescribed period, and the 1989 accounts were authenticated out of time' (p. 21).

114 However, the Court finds that the applicants were warned in good time of the Commission's intended inspection. On 12 October 1989, the Commission addressed a letter to each of the applicants, stating that an inspection would take place on 8 November 1989 (Annex 3 to the Rejoinder in each of the four cases). Following the applicants' replies, the inspection could not be arranged until March 1990, when the vessels in question were docked at the port of Vigo, where the applicants have their registered offices. Moreover, in its letters of 12 October 1989, the Commission specified the documents which needed to be prepared in view of the forthcoming inspection, so that the applicants were able to take the necessary action to put their official accounting system in order for that purpose.

115 In the light of the above, the Court finds it unacceptable for the applicants to take refuge behind the interpretation of national legislation in an attempt to justify an attitude which does not comply with even the lowest standard of care which the Commission is entitled to require from a beneficiary of Community aid. By their attitude, therefore, the applicants have prevented the Commission from exercising its right to carry out checks on location in accordance with Article 46(2) of Regulation No 4028/86.

116 It is clear from the findings in paragraphs 78 to 115 above that the applicants have, quite knowingly, committed flagrant breaches of the rules in force, consisting in particular in the repeated submission of declarations not reflecting the true position, as the contested decisions have rightly stated.

117 As a secondary point, the Court would mention that the Community rules have established a two-stage system for dealing with financial aid applications. The first stage takes place when the application for the granting of the aid is examined, and the second at the time payment is requested of the aid which has been granted. In order to ensure the functioning of that subsidy system, the Commission has organized its monitoring by reference to those two stages, but without monitoring on a systematic basis, having regard to the number of projects dealt with. The system therefore requires that information provided by the beneficiary of a subsidy should exist and be verifiable at those two stages. As the Commission has rightly pointed out (see, in particular, the Defence in Case T-231/94, pp. 9 and 10), it cannot therefore be required to check the truth of declarations of payments which have not

been made and are not verifiable at the time when payment of the aid is applied for, such as the payments which the applicants claim to have made by means of drafts. Nor, it should be added, is it the task of the Court to verify declared payments made subsequently to the application for payment of the aid.

118 Moreover, the information supplied by the applicants concerning costs actually paid at a date later than the applications for payment of the aid are no longer capable of being verified in the manner provided for by the Community rules, especially when the beneficiaries of the Community aid have not shown even the most elementary care during the on-the-spot inspections carried out by the Commission (see paragraphs 113 to 115 above).

119 Therefore, in the light of the case-law cited in paragraph 76 above, the Court considers, first, that the applicants cannot claim that any infringement of an alleged legitimate expectation occurred. Moreover, even if the passage of a significant period of time during which the Commission takes no steps in relation to an undertaking and the adoption at the end of such a period of a measure affecting the position of that undertaking may be capable of infringing the principle of legal certainty, the importance of the time criterion must be qualified in these cases. Since it appears that the applicants deliberately adopted an attitude which contravenes the rules in force, the passage of a period of 16 months, or 23 months, during which the Commission took no external steps cannot be regarded as unreasonable.

120 Furthermore, to maintain aids granted to the applicants, or already paid to them, when the granting and payment of those aids are tainted with flagrant irregularities, would undermine equality of treatment of all applications made to the

Commission for Community subsidies of projects for the construction of new fishing vessels.

121 It follows from all of the above that the first plea must be dismissed.

The second plea in law: in the alternative, infringement of essential procedural requirements

122 As a preliminary point, the Court takes formal note that, at the hearing, the applicants abandoned the part of their plea of infringement of essential procedural requirements alleging that reference should have been made to the Standing Committee for the Fishing Industry, which they put forward in the written procedure.

— Arguments of the parties

123 The applicants' second plea is in two parts. First, they maintain that the Commission did not inform the Member State concerned of the intended commencement of withdrawal proceedings, giving it the opportunity to express its views on the matter, as required by the first indent of Article 7 of Regulation No 1116/88. They maintain that that procedural requirement is all the more important since Article 45(2) of Regulation No 4028/86 provides that the financial consequences of irregularities or negligence are to be borne by the Member State if they are attributable to national administrations or agencies and, in this case, the opinion of the Spanish authorities on the question of withdrawing the aid is different from the Commission's opinion. The applicants add at the reply stage that none of the documents presented by the Commission show that the procedural requirements concerning the opinion of the Member State were met.

124 They go on to maintain that the contested decisions were adopted in breach of Article 190 of the Treaty, in that the reasons stated for the decisions are insufficient having regard to the length of time taken to adopt them and are identical in each of the four cases, even though the only link between the cases is a common shareholder, that the facts cited by the Commission to justify withdrawal are different in each case, and that the competent Spanish authority came to a different conclusion in each case.

125 Moreover, the reasons given were vague and imprecise. First, the accusations against the applicants concerning the differences found to exist between the investment amount declared in the various projects and the amount actually paid were not quantified in figures. Secondly, the irregularities allegedly discovered by the Commission were not specified, making it impossible to know whether the shipbuilding subsidies were or were not to be regarded as part of the price paid and whether the Commission had taken account of the payments made by means of drafts. Even though the Commission is not required to reproduce all the factual and legal information which led it to adopt its decision, the applicants maintain that the reasons stated must at the very least include the essential elements. They add that, in the contested decisions, the Commission refers first to 'irregularities' and then to 'deliberate and substantive untruths' without explaining further the reasons justifying the change.

126 According to the applicants, the statement of reasons also contains a mis-statement of fact and an unjustified assessment of other facts. First, the contested decisions refer to the applicants' obstructive attitude at the time of the on-the-spot inspection carried out in March 1990, whereas their accounting books did not exist and were not required to exist under Spanish accounting legislation, and the inspectors did not even mention it in their report. Secondly, the decisions make accusations of deliberate and substantive untruths without offering the least evidence.

127 Finally, the contested decisions are deficient in their statement of reasons in failing to indicate the legal basis for their adoption, even though they refer to a 'serious failure to fulfil the conditions for the granting of the subsidy'.

128 The Commission replies, first, that the Spanish authorities were informed of the procedure for withdrawing the aid and, where appropriate, of the Commission's intention to order repayment, and that, following contacts established, those same authorities submitted their observations to the Commission in December 1992 and March 1993. The Commission considers, therefore, first, that it fulfilled its obligation to inform the Member State and, secondly, that the latter expressed its views. The fact that the opinion of the Member State does not coincide with that of the Commission is irrelevant, and cannot prevent the latter from enforcing Community rules by applying its own assessment to the facts of the case, even if it arrives at a different result from that advocated by the Member State. At the reply stage, the Commission argues that where the national authorities with responsibility for fisheries is also under a duty to forward supporting documents, as is the case with the Spanish Secretariat-General for Fishing, the notification and consultation envisaged in Article 7 of Regulation No 1116/88 may be effected by one and the same measure.

129 The Commission then maintains that sufficient reasons were stated for the contested decisions. In the first place, the applicants confuse procedural arguments concerning the statement of reasons with substantive arguments concerning the alleged inaccuracy of certain facts. Secondly, the Commission draws attention to the case-law of the Court (see the judgments in Case 185/83 *University of Groningen* v *Inspecteur der Invoerrechten en Accijnzen, Groningen* [1984] ECR 3623; Case 3/84 *Patrinos* v *Economic and Social Committee* [1985] ECR 1421; Joined Cases 172/83 and 226/83 *Hoogovens Groep* v *Commission* [1985] ECR 2831; and Case 203/85 *Nicolet Instrument* v *Hauptzollamt Frankfurt am Main-Flughafen* [1986] ECR 2049), according to which the extent of the duty to state reasons must be assessed with regard to the context of the decision, so that information already given to the applicants did not have to be repeated in the decision. Thirdly, the differences found to exist between the amounts declared and the amounts actually paid were precisely quantified in figures in the audit report, to which the contested decisions expressly refer. The Commission emphasizes in that respect that whether the decisions reproduce in their text the figures concerning the irregularities or refer to the audit report communicated to the applicants is a purely technical choice

that has nothing to do with compliance with the two requirements that the statement of reasons must satisfy, namely that the persons concerned should be made aware of the reasons for the measure and that the Court should be enabled to exercise supervision.

130 Fourthly, the Commission considers that the argument concerning lack of reference to Article 44(1) of Regulation No 4028/86 is related to the applicants' third plea. It therefore refers to its arguments in relation to that plea.

— Findings of the Court

131 The first part of the second plea requires the Court to examine whether the Commission's approaches to the Spanish authorities in November 1992 and the observations made by the latter in December 1992 and March 1993 (see paragraph 31 above) satisfy the requirements of Article 7 of Regulation No 1116/88.

132 Under the first indent of that article, the Commission was under a duty to inform Spain of its intention to initiate the procedure for withdrawing aid and to allow that country to express its views on the matter. Under the second indent, the Commission was obliged to consult the competent Spanish authority responsible for forwarding supporting documents.

133 Neither the first indent of Article 7 of Regulation No 1116/88 nor any other provision in that regulation states which authority of the Member State in question must be informed. The wording of Article 7 does, however, show that the first and second indents constitute two distinct stages. According to the fourth and fifth recitals in the preamble to Regulation No 1116/88, the purpose of those two stages

is likewise distinct. The purpose of notifying the Member State concerned is to take note of its position and to ensure that any monitoring of the beneficiaries in question by the Commission or on its initiative is effective, whereas the purpose of consulting the competent national authority is to verify with that authority that the formalities have been properly carried out and, if necessary, to request it to forward fresh supporting documents.

134 Nor is there any provision to permit the conclusion from Article 7 of Regulation No 1116/88 either that the two State bodies to which its first two indents refer must be distinct, or that the national authority responsible for forwarding supporting documents cannot also be the national authority responsible for informing the Commission of the opinion of the Member State concerned. Article 7 of Regulation No 1116/88 does not therefore lay down any exclusive allocation of responsibilities between various bodies of the same Member State.

135 In the present four cases, the Court finds, first, that in November 1992 the Commission raised with the Secretariat-General for Sea Fishing of the Spanish Ministry for Agriculture, Fisheries and Food the question of the possible withdrawal of Community aid. On 16 December 1992, the Director-General for the Fishing Industry in the Secretariat-General for Sea Fishing sent the Commission a letter on that subject. On 9 March 1993, the same Director-General sent fresh observations to the Commission. In addition, the Commission sent copies of the letters to the applicants of 8 June 1993 to the Spanish authorities in question.

136 Moreover, the documents before the Court show that the Commission's communications with Spain always went through the Director-General for the Fishing Industry. It therefore seems logical that the Commission should inform Spain by means of that privileged intermediary and should also consult him as the authority responsible for forwarding supporting documents, since he was the only national authority concerned in the relevant files.

137 In any event, the applicants have not specified which authorities of the Member State concerned, in their opinion, the Commission should have informed in order to comply with Article 7 of Regulation No 1116/88. Nor have they argued that the Director-General for the Fishing Industry did not have authority to act on behalf of Spain in these four cases.

138 Therefore, since the Member State was informed and was able to express its views, and the competent national authority responsible for forwarding supporting documents was consulted, the first two indents of Article 7 of Regulation No 1116/88 have been complied with, even if, as a matter of organization, the national administrative authority acting is the same in both cases. The first part of the second plea must therefore be dismissed.

139 As for the second part of the second plea, alleging infringement of Article 190, the Court observes, as a preliminary point, that examination of the allegedly inadequate legal basis for the contested decisions under Regulation No 4028/86 should be deferred until the third plea, which is concerned with that very question, is examined.

140 As for the applicants' other arguments, it is well established in case-law, first, that, pursuant to Article 190 of the Treaty, the reasons stated for a measure must disclose clearly and unequivocally the reasoning of the Community authority which adopted it, so as to make the persons concerned aware of the reasons for the measure and thus enable them to defend their rights, and so as to enable the Court to exercise its supervisory jurisdiction, and, secondly, that the extent of the obligation to state reasons must be assessed in the light of its context (see the judgments in Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraph 15; and Case 92/77 *An Bord Bainne* v *Minister for Agriculture* [1978] ECR 497, paragraphs 36 and 37).

141 It therefore needs to be examined in these cases whether the applicants' complaints sufficiently demonstrate that the reasons given for the contested decisions do not clearly and unequivocally disclose the Commission's reasoning.

142 As stated in paragraph 77 above, the decisions set out three main reasons which, in the Commission's argument, justify withdrawal or repayment of the Community financial aid. Moreover, they expressly refer to the audit report and state that it was sent to the applicants and to the Spanish Secretariat-General for Sea Fishing.

143 The Court therefore considers that the reasons given for the contested decisions clearly and unequivocally demonstrate the reasoning of the Commission in deciding to withdraw Community financial aid in these four cases.

144 Nor can that statement of reasons be regarded as insufficient on the ground that it does not give the figures by which the existence of the irregularities of which the applicants stand accused can be established. The express reference to the audit report in the applicants' possession must be regarded as sufficient in that respect. Moreover, the absence of any reference to how the national shipbuilding subsidy and the drafts were dealt with does not obscure the Commission's reasoning.

145 What is more, the fact that the reasons given are identical in each of the four cases does not affect their sufficiency, firstly because those reasons refer to precise and

individual facts in relation to each applicant, and secondly because the conduct of the applicants in each case may be described as similar, or even identical.

146 As for the alleged lack of reference to the legal basis for the contested decisions, the Court finds that those decisions refer expressly to the relevant regulations in the matter (Regulations Nos 4028/86 and 1116/88) before referring more particularly to an infringement of Article 46(2) of Regulation No 4028/86 and of the conditions for granting the aid. Therefore, even if the text of the contested decisions does not mention Article 44 of Regulation No 4028/86 as such, the Court considers that, in the circumstances, the reference to the Community rules, and in particular to Regulation No 4028/86, is sufficient in this regard.

147 The absence of any mention of that provision does not therefore obscure the Commission's reasoning or render it confused or equivocal. Nor, as the Court has already pointed out in paragraphs 113 to 115 above, is there any error of assessment in the reason based on the applicants' obstructive attitude during the on-the-spot inspections. For all those reasons, the second part of the second plea must be dismissed.

148 Moreover, contrary to what the applicants maintain, the audit report contains enough information to demonstrate that the documents submitted by the applicants in connection with the granting and payment of Community aid contain irregularities which may be described as deliberate and basic untruths (see paragraphs 77 to 114 above). The applicants, on the other hand, have been unable to provide documentary justification for the differences revealed in the audit report between the amounts declared and the amounts actually paid.

The third and fourth pleas in law: in the alternative and in addition, infringement of Regulation No 4028/86 and of the principle of proportionality

— Arguments of the parties

149 The third plea corresponds in part to one of the arguments in the second part of the second plea, alleging infringement of the obligation to state reasons for the contested decisions, and also corresponds in part to the fourth plea. The third and fourth pleas in support of the action for annulment must therefore be examined together.

150 First, the applicants accuse the Commission of not basing its decisions on one of the cases set out in Article 44(1) of Regulation No 4028/86, which alone may justify the adoption of a decision withdrawing Community financial aid. They argue that the infringement of Article 46 of Regulation No 4028/86 referred to in the contested decisions is not a sufficient basis for a withdrawal decision, and that lack of foundation for the decisions to grant and pay the aid can entail only annulment of those decisions. At the reply stage, the applicants add that withdrawal of the aid was an indirect administrative sanction not provided for by the Community rules, since the Commission was going beyond the powers conferred upon it by Regulation No 4028/86.

151 Moreover, even if the contested decisions were to be regarded as being based on Article 44 of Regulation No 4028/86, the alleged irregularities do not, on the basis of that provision, allow withdrawal of the whole of the aid granted without infringing the principle of proportionality. In the applicants' submission, withdrawal of the aid constitutes the maximum penalty provided for in Article 44(1) of Regulation No 4028/86, which must be reserved for the last case envisaged by that provision, namely failure to build the vessel. In this case, the four vessels in question were built in accordance with the specifications of the various projects and are, moreover, still in use to this day. The Commission's reaction is therefore disproportionate and could even be regarded as contrary to the principle of non-discrimination if it could be shown that the Commission did not apply identical

measures to the other projects cited in the Report of the Court of Auditors of the European Communities No 3/93, concerning the application of Regulation No 4028/86, which mentions infringements and irregularities far more flagrant than those alleged against the applicants.

152 The applicants also maintain that the case-law of the Court of Justice (judgments in Case 181/84 *Man (Sugar)* v *Intervention Board for Agricultural Produce* [1985] ECR 2889 and Case 21/85 *Maas* v *Bundesanstalt für Landwirtschaftliche Marktordnung* [1986] ECR 3537) makes a distinction between the sanctions to be applied, according to whether they relate to non-compliance with a primary or a secondary obligation. In this case, since the primary obligation was to build a vessel, only non-compliance with that obligation was capable of giving rise to the maximum penalty, namely withdrawal of the aid granted. To apply that penalty to alleged administrative irregularities, which constituted nothing more than the infringement of a secondary obligation, was a breach of the principle of proportionality.

153 The Commission replies, first, that the contested decisions are clearly based on the second indent of Article 44(1) of Regulation No 4028/86. It also refers to the general principle concerning the recovery of undue payments, which applies whenever the amount stated in the initial project and in the application for payment is higher than the amount actually spent, as in this case. If the applicants' argument were followed, it would mean that the Commission would be prevented from recovering a subsidy obtained fraudulently by means of false declarations, since that event is not expressly provided for in Article 44 of Regulation No 4028/86.

154 Secondly, the Commission contends that the applicants deliberately falsified the investment amounts for which the aids were requested by submitting documents that did not show the true position, in order to obtain a higher, and earlier, subsidy than was justified. In the face of such conduct, merely to reduce the aid in proportion to the inaccuracies established would invite fraud. Bearing in mind the impossibility of verifying all applications made, the accuracy of the declarations is an essential element in the system of Community financial aid. The total

withdrawal of aid is therefore the only appropriate response, and is necessary in order to attain the objective sought, namely to ensure that aid is granted and paid only if justified. The Commission also emphasizes that it is bound by the obligation to ensure equality of treatment between the aid applications that are submitted to it, since the total amount of those applications far exceeds the budget available.

— Findings of the Court

155 The first requirement is to examine the scope of Article 44(1) of Regulation No 4028/86, which provides, in particular, that the Commission may decide to withdraw Community aid 'if certain conditions imposed are not satisfied'. That provision does not limit the types of condition to be taken into consideration, since it gives no detail concerning the nature of the conditions envisaged. Moreover, the first part of the same provision expressly refers to the 'financial or other conditions imposed for each project'. All conditions, whether technical, financial or temporal, are therefore included in that expression.

156 In this case, the Commission adopted the contested decisions because, in its view, the applicants had not complied with the conditions for the granting and payment of the aid, or, in other words, with financial conditions. Thus, the contested decisions show that the Commission based them, rightly, on Article 44(1) of Regulation No 4028/86.

157 Nor can the Court accept the applicants' argument that the only measure capable of being taken was the annulment of the decisions for the grant and the payment of the aid, on the ground that the Commission accused them of infringement of the conditions for grant and payment. Regulation No 4028/86 does not contain any

special provision that decisions for the grant and payment of Community aid are to be annulled if they prove to have been adopted on the basis of incorrect information.

158 Therefore, the solution of annulment proposed by the applicants does not meet the applicants' objection that the contested decisions lack a legal basis and could not therefore be adopted. Moreover, if the Commission were unable to withdraw aids granted on the basis of incorrect information, given that there is no special procedure for annulment in those circumstances, irregular conduct by beneficiaries of Community subsidies could never be penalized. In any event, so far as the beneficiary of Community financial aid is concerned, the result of withdrawing aid is identical to that of annulling the decision granting it.

159 Nor, finally, can it be maintained that Article 44(1) of Regulation No 4028/86 envisages the sanction of withdrawing the aid as being applied solely in the event that the project is not carried out. That article does not provide that the sanctions of suspension, reduction or withdrawal of Community aid are to apply exclusively to one or other of the cases envisaged. There is therefore no reason to make a distinction concerning the degree of the sanction to be applied to the situations envisaged by the provision, since no provision for such a distinction is made.

160 Secondly, the Court must rule on the alleged infringement of the principle of proportionality. To begin with, and contrary to what the applicants maintain, the Court considers that, given the very nature of financial aid granted by the Community, the obligation to comply with the financial conditions for the investment as indicated in the decision granting the aid constitutes one of the essential duties of the beneficiary, in the same way as the obligation actually to carry out the investment, and is therefore a condition for the award of Community aid.

161 The Court also finds that the subsidy system established by the Community rules rests in particular on the performance by the beneficiary of a series of obligations entitling him to receive the aid envisaged. If the beneficiary does not perform all those obligations, Article 44(1) of Regulation No 4028/86 authorizes the Commission to reconsider the extent of the obligations it assumes under the decision granting the aid. In the contested decisions, the Commission stated that 'the effect of the deliberate and substantive untruthfulness of the beneficiary's statements, which prompted the granting and payment of financial aid, is to remove the foundation for the decision to grant and pay the aid', and that 'the irregularities described (in paragraph 77 above), consisting in the making of statements and the production of accounting documents not reflecting the true position, also constitute a serious infringement of the conditions for the granting and payment of financial aid laid down by the Community rules — particularly Regulation No 4028/86, cited above, Regulation No 970/87 laying down transitional measures and detailed rules for the application of Council Regulation No 4028/86 with regard to the renewal and restructuring of the fishing fleet, the development of aquaculture and structural works in coastal waters, particularly Article 1 thereof and the annexes thereto, concerning the cost of investments, and Regulation No 1116/88 laying down detailed rules for the application of decisions granting aid for projects concerning Community measures to improve and adapt structures in the fisheries and aquaculture sector and in structural works in coastal waters, particularly Articles 3, 4 and 5 thereof and the annexes thereto concerning requests for payment and the justification therefor — and laid down in the decision granting aid'. The Commission therefore took the view that 'in those circumstances, total withdrawal of Community financial aid is a measure proportionate to the seriousness of the infringements'.

162 An examination of the first plea in these actions shows that the investment amount declared at the time of the application for payment corresponds neither with the amount actually paid at that time (see paragraphs 78 to 96 above), nor with the cost actually paid at the time the audit was carried out (see paragraphs 97 to 111 above), and that the applicants failed to exercise the most elementary care when the on-the-spot inspections took place in March 1990 (see paragraphs 113 to 115 above).

163 The Court therefore considers that, in these cases, the applicants' failure to fulfil their obligations was so serious that it was reasonable for the Commission to consider that any sanction other than withdrawal, amongst those envisaged in Article 44(1) of Regulation No 4028/86, was likely to invite fraud, since intending beneficiaries would be tempted to inflate the investment amount stated in their application for the granting of the aid in order to obtain greater Community financial assistance, at the risk only of having that aid reduced by the amount of the overvaluation. The alleged infringements of the principle of proportionality have not therefore been established.

164 Finally, the Court cannot accept the applicants' argument that the Commission has infringed the principle of non-discrimination. First of all, examination of the first two pleas has shown that the applicants committed serious irregularities in the application of the Community rules, so that they cannot rely on the fact of having committed allegedly minor irregularities in order to argue that the principle of non-discrimination was infringed. Moreover, for that principle to be infringed, comparable situations must have been treated in a different manner, without any objective justification. In these cases, however, the applicants have not stated in what way their situations are supposed to be comparable with those of the beneficiaries of Community financial aid referred to in the report of the Court of Auditors which they cite. Finally, it is not the function of the Court to undertake an examination, similar to that undertaken in these four cases, in order to determine, first, whether or not the vague accusations in the cases cited by the applicants are comparable with the irregularities they themselves have committed, and, secondly, whether those accusations are justified.

165 For all those reasons, the third and fourth pleas must be dismissed.

Fifth plea in law: in the alternative and in addition, misuse of powers

— Arguments of the parties

166 The applicants submit that the Commission has misused its powers by trying, by means of the contested decisions, to implement a recommendation by the Court of Auditors in its Report No 3/93, seeking to prevent the rapid resale of vessels built with the aid of Community funds, whether they are resold outside or inside the Community. The applicants argue that penalization of sale inside the Community, which is perfectly lawful under the current rules, can be done only by adopting new legislation, amending that currently in force.

167 The Commission considers that the applicants have not put forward any argument to support their contentions in that regard.

— Findings of the Court

168 The concept of misuse of powers has a precisely defined scope in Community law and refers to cases where an administrative authority has used its powers for a purpose other than that for which they were conferred on it. In that respect, it has been consistently held that a decision may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken for purposes other than those stated (see the judgment in Case T-146/89 *Williams* v *Court of Auditors* [1991] ECR II-1293, paragraphs 87 and 88, and the case-law cited therein).

169 In these cases, the evidence put forward by the applicants in support of their fifth plea is not sufficient to demonstrate that the Commission pursued a purpose other than that of penalizing irregularities which had been discovered in connection with the Community system for subsidizing the construction of fishing vessels. It cannot be deduced from the fact that all the applicants resold their vessels, and the fact that the Court of Auditors recommended in an annual report that the rules in question be amended to prevent such resales, that the Commission misused the powers conferred on it by those rules in order to penalize that type of sale.

170 The Court therefore finds that the applicants have not demonstrated that the Commission's real aim was to penalize the sale of vessels built with the assistance of Community aid. The fifth plea must therefore be dismissed.

171 It follows that the pleas for annulment must be dismissed in their entirety.

The action for compensation

Pleas in law and arguments of the parties

Admissibility

172 The Commission raises an objection of inadmissibility against part of the action, in that it seeks compensation for loss which precisely corresponds to the amount of Community financial aid granted by Decision C(89) 545/01 of 26 April 1989. The Commission accuses IPC of an abuse of process by bringing a compensation action under Article 178 and the second paragraph of Article 215 of the Treaty, whereas

the effects sought are identical to those which could be obtained in an action for failure to act under the third paragraph of Article 175.

173 The applicant, IPC, denies that part of its action is inadmissible. It argues, first, that the legal effects of an action for failure to act and an action for compensation are not identical in this case and, secondly, that payment of Community financial aid does not constitute a decision distinct from the decision granting the aid adopted by the Commission on 26 April 1989. In IPC's submission, the payment of a Community aid granted by the Commission does not satisfy the procedural conditions for constituting a decision, and is a purely executory measure against which an action for failure to act does not lie.

Substance

— Unlawful conduct

174 IPC maintains that the Commission acted unlawfully and reprehensibly in the administrative procedure before this action was brought. In the first place, during the period from 31 March 1990 (the on-the-spot inspection) to 8 June 1993 (the Commission's letter) its attitude was not consonant with the relevant Community rules, which required it either to pay the amount of the Community financial aid or to decide to suspend, reduce or withdraw it. IPC points out that, during that period, the Commission neither paid the aid nor initiated one of the procedures envisaged in Article 44 of Regulation No 4028/86.

175 The effect of the Commission's attitude was to prolong unjustifiably the period for initiating action in the matter (see the judgments in Joined Cases 83/76 and 94/76, 4/77, 15/77 and 40/77 *HNL* v *Council and Commission* [1978] ECR 1209 and Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477), and to infringe a number of principles cited in the action for annulment examined above.

176 IPC denies that it obstructed the Commission's action when its officials made their on-the-spot checks in March 1990, and maintains that any obstruction at that time cannot be the main cause of the fact that, three years later, the Commission had still not paid the Community financial aid or notified IPC that it was initiating one of the procedures laid down by Article 44 of Regulation No 4028/86.

177 Moreover, IPC rejects the Commission's explanation that its conduct was the result of a decision to 'freeze provisionally' the payment of Community financial aid, since the procedure to 'freeze provisionally' has no legal basis. To allow the Commission's argument on that point would be to deprive the suspension procedure under Article 44 of Regulation No 4028/86 of all effectiveness.

178 Secondly, concerning the aid withdrawal procedure commenced by the Commission's letter of 12 October 1993, IPC maintains that the Commission committed a manifest error of assessment by relying on the results of the audit, and repeats in that respect its arguments in the action for annulment examined above.

179 Moreover, by refusing IPC access to the file, the Commission had not allowed it the hearing to which it was entitled. IPC claims that it was not allowed access to the file until after the present action was commenced, and that the file supplied to it was incomplete. That, in IPC's submission, constitutes an infringement of the

right which any person has to examine and obtain copies of such documents in his file as are not confidential, such infringement having been condemned by the Court of First Instance in its judgment in Case T-65/89 *BPB Industries and British Gypsum* v *Commission* [1993] ECR II-389, paragraph 30. Moreover, all the documents which the Commission supplied to IPC after the hearing which it did allow the company turned out not to be confidential, amounting in IPC's submission to a serious infringement of the rights of the defence. The company concludes by remarking that a number of documents produced by the Commission in these proceedings were not in the file which it supplied at the time of that hearing.

180 Finally, IPC emphasizes that the Spanish authorities adopted a different attitude from the Commission, having clearly indicated to the Commission that IPC was entitled to receive the whole of the aid granted, since the amount of the total investments actually carried out exceeded the amount of the costs held by the Commission to be eligible for subsidy. In IPC's submission, the Commission could not adopt an attitude different from the Spanish authorities, especially in view of its period of inactivity.

181 The Commission replies that it has committed no fault in this matter, and that its attitude cannot be regarded as unlawful, having regard to the relevant rules and to general principles of Community law.

182 It points out that a beneficiary of Community financial aid must demonstrate that the conditions for entitlement to payment have been fulfilled before payment can be claimed.

183 In this case, IPC did not demonstrate actual payment of the planned investment, either at the time when the application for payment was made or subsequently, and obstructed an inspection of its accounting records by the Commission. The effect of that attitude was, first, to make payment of the aid impossible and to affect

irremediably the possibility of verifying the supporting evidence put forward by IPC, the latter's accounting records having probably been altered in the meantime, and, secondly, to bring about a difference of opinion between the national and Community authorities, so that a final decision could not be taken within a shorter period. In those circumstances, the Commission's duty to exercise due care in the management of public funds required it, for preventive purposes, to freeze payment of Community financial aid to IPC.

184 The Commission considers that the obstruction of its inspections and the irregularities revealed by the audit report constitute serious infringements of Community rules, especially since, in this area, the right to a subsidy under those rules concerns an aid scheme from public funds based on the concept of solidarity, and must therefore be subject to the condition that the beneficiary offers every guarantee of probity and trustworthiness (see the judgment in Case C-240/90 *Germany* v *Commission* [1992] ECR I-5383).

185 It is difficult in this case to maintain that the principles cited by IPC were infringed, since the supporting evidence offered by IPC contains deliberately incorrect information.

186 As for IPC's complaints concerning the access to the Commission's file it was allowed during the procedure prior to the withdrawal of the aid, the Commission replies that it allowed IPC a hearing before initiating the withdrawal procedure, as required by Article 7 of Regulation No 1116/88, by addressing letters to IPC on 8 June, 12 October and 15 November 1993. It also placed all the documents on the file at IPC's disposal, except for internal notes. IPC replied copiously and in detail to the Commission's requests, both in its letters of 22 July and 24 November 1993 and in the context of these proceedings, which, the Commission argues, tends to

demonstrate that the communications it sent were sufficient to inform IPC of the facts of which it was accused. Finally, the Commission points out that IPC repeated the same arguments in the letters and in the legal action, which demonstrates that the Commission did not have at its disposal any other evidence containing information substantially different from that contained in the audit, which had already been communicated to IPC by the Spanish authorities on 17 June 1991.

187 The Commission accordingly concludes that IPC is confusing the procedural requirement that the person concerned should be heard, which in the Commission's view consists in notifying that person of the infringements which the Commission considers it has discovered and allowing the person a period in which to make observations, with access to all the documents in the Commission's possession, including its internal memoranda. In any event, the Commission maintains that the measures it took in the withdrawal procedure were based on the audit report, which was communicated to IPC as early as 17 June 1991.

188 Finally, the Commission questions why IPC did not claim payment of the subsidy during the period it describes as manifest delay, but instead waited for the Commission to initiate proceedings for the withdrawal of Community financial aid before bringing the present action (27 October 1993), even though, in IPC's submission, that subsidy had been due to the company since February 1990, when the application for payment was made.

— Damage

189 IPC considers that the damage it has suffered is direct, certain, serious, demonstrable and quantifiable in money, and that it comprises first, the amount of the aid in question, namely PTA 48 550 322; secondly, IPC's defence costs in the pre-litigation procedure, amounting to ECU 13 078; thirdly, interest for delay on the

amount of the aid, totalling ECU 133 580, overdraft charges of ECU 84 633, and costs arising from the 'risk' premium charged by IPC's suppliers, amounting to ECU 173 151; and, fourthly, non-material damage resulting from the repercussions of the Commission's attitude on IPC's commercial relations and the loss of prestige caused to IPC's sole managing director, calculated at ECU 25 000.

190 IPC defends its choice of 12% as the interest rate for delay by reference to the statutory interest rate in Spain, raised by two percentage points to reflect a number of given objective criteria, the extra percentage being fixed annually by Spain's General Finance Act. The company maintains that the overdraft interest has been caused by a shortage of funds arising from payment of the construction invoices for the vessel and from the lack of Community financial aid.

191 Finally, IPC adds that, if the Commission considers it appropriate, legal costs incurred prior to the commencement of the action could be included in the taxation of costs, and could therefore be deducted from the sum claimed by way of compensation for damage.

192 The Commission replies that, since the Community aid has been withdrawn, the demands for payment, and for compensation for alleged damage resulting from non-payment, are without foundation. Payment of the subsidy is due only when it has been demonstrated to the Commission that the investment has been carried out and paid for. Otherwise, the subsidy is not payable. The Commission therefore

considers that, in any event, payment cannot be due until after delivery of judgment by the Court.

193 The Commission also questions whether the alleged damage is genuine, and puts IPC to strict proof, having regard to the case-law of the Court of First Instance in that respect. The Commission reserves the right to make observations at a later stage concerning the amount of the damage, in the event that the Court should find that damage is capable of being founded on the basis of the evidence alleged.

194 The Commission also questions the determination of the interest rates used, and the choice of a bank overdraft as the means of financing, as opposed to the usual line of credit.

— Causation

195 IPC maintains that it not only claims a right to receive certain amounts by reason of the damage caused by the Commission's conduct, but has also established the concrete justification for each of those amounts. It adds that the damage is an immediate, strict and necessary consequence of the Commission's inaction, as regards the financing necessary to put the vessel 'Escualo' into operation, as regards the company's defence at the pre-litigation stage, and as regards non-material damage.

196 It adds that the Commission's argument concerning an action for failure to act is easily rebutted, since the purpose of the present action is to secure compensation not only in relation to the amount of the subsidy, but in relation also to other

amounts deriving from the legitimate assumption that Community aid would be paid, and that, moreover, an action for failure to act could result only in a declaratory judgment, and not in a right to reparation of the damage.

197 The Commission considers that the causal link between the matters raised by IPC and the alleged damage has been broken by the conduct of IPC, which both obstructed inspection by the Commission, and neither brought an action for failure to act nor served formal notice on the Commission to perform its obligations before the aid withdrawal procedure was initiated.

198 The Commission also argues that a causal link is obviously lacking in respect of some of the alleged damage. As regards the risk premium, the Commission considers that the difficulties which resulted in it being charged arise from the decision of the Spanish authorities to reduce national aid and from the need to satisfy tax liabilities arising from knowledge of the company's true asset structure, rather than from the alleged wrongful delay by the Commission. The non-material damage arose from the conduct of IPC's managing director himself and the actions of the Spanish authorities. As for 'legal costs', the Commission considers that only those arising in the present proceedings are capable of being taken into account.

Findings of the Court

199 On examining the facts, and without there being any need to rule on the admissibility of this action, the Court finds that the Commission committed no fault.

200 IPC made its application for payment of the aid on 22 February 1990 (see paragraph 24 above), and one month later, between 25 and 31 March 1990, the Commission's officials carried out an on-the-spot inspection (see paragraph 25 above). Because of IPC's attitude during that inspection, and the resulting impossibility of carrying out the control envisaged (see paragraphs 113 to 115 above), the Commission ordered an audit, which was carried out in May 1991 (see paragraph 27 above) and which finally revealed that the amounts declared as having been paid by IPC were inaccurate, both at the time of the application for payment and at the time of the audit (see paragraphs 78 to 112 above).

201 In the light of those facts, the Commission cannot be criticized for taking the view that IPC had not yet fulfilled its obligations under Community rules at the time it made its application for payment, so that the Commission was under no obligation to accede to that application. It should be noted, moreover, that, by contrast with the attitude which any diligent beneficiary convinced that it had performed the obligations imposed by Community rules for obtaining payment of the financial aid granted to it would not fail to adopt, IPC took care not to take any step whatsoever towards the Commission during the period in question. It never addressed any reminder or formal notice to the Commission after its application for payment on 22 February 1990, and did not bring the present action until after being formally notified of the initiation of withdrawal proceedings by the Commission.

202 Furthermore, the infringement of the rights of the defence allegedly caused by inadequate access to Commission documents in the proceedings for withdrawal of the financial aid in question does not fall within the scope of this action for compensation but affects, if anything, the legality of the decision taken at the conclusion of those proceedings, namely the decision of 24 March 1994, subsequent to the commencement of this action. The Court finds that IPC did not raise this complaint in its action for annulment (Case T-233/94), examination of which has shown

that the Commission did not act unlawfully in deciding to withdraw the aid it had granted to IPC.

203 The Court therefore holds that the Commission has not committed any fault capable of rendering the Community liable, either in refusing to pay the aid or in initiating the procedure for its withdrawal.

204 The action for damages must therefore be dismissed, without there being any need to examine the parties' arguments concerning the alleged damage and the question of causation.

Costs

205 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 both the action for annulment and the action for damages, and the Commission has applied for costs, the applicants must be ordered to pay them, including the costs of the interim proceedings.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. Dismisses the actions for annulment in Cases T-231/94, T-232/94, T-233/94 and T-234/94;

2. Dismisses the action for damages in Case T-551/93;

3. Orders the applicants to pay the costs, including those of the interim proceedings.

Lenaerts Lindh Potocki

Delivered in open court in Luxembourg on 24 April 1996.

H. Jung K. Lenaerts

Registrar President