JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
7 November 2002 *

In Joined Cases T-141/99, T-142/99, T-150/99 and T-151/99,

Vela Srl, established in Milan (Italy),
Tecnagrind SL, established in Barcelona (Spain),
represented by G.M. Scarpellini, lawyer, with an address for service in Luxembourg,

applicants,

v

Commission of the European Communities, represented by C. Cattabriga, acting as Agent, assisted by M. Moretto, lawyer, with an address for service in Luxembourg,

defendants,

APPLICATION, in Case T-141/99, for the annulment of Commission Decision C (1999) 540 of 9 March 1999 withdrawing the assistance granted to Vela Srl by Commission Decision C (92) 1494 of 30 June 1992, concerning grant of a contribution from the European Agricultural Guidance and Guarantee Fund

* Language of the case: Italian.

(EAGGF), Guidance Section, pursuant to Council Regulation (EEC) No 4256/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the EAGGF Guidance Section (OJ 1988 L 374, p. 25), in connection with Project No 92.IT.06.001 entitled 'Action in the form of a demonstration project for the introduction and promotion of cylindrical luffa in disadvantaged European areas'; in Case T-142/99, for the annulment of Commission Decision C (1999) 541 of 4 March 1999 withdrawing the assistance granted to Sonda Srl by Commission Decision C (93) 3401 of 26 November 1993, concerning grant of an EAGGF, Guidance Section, contribution pursuant to Regulation No 4256/88, in connection with Project No 93.IT.06.057 entitled 'Pilot demonstration project for the reduction of production costs and fertiliser costs in sunflower cultivation'; in Case T-150/99, for the annulment of Commission Decision C (1999) 532 of 4 March 1999 withdrawing the assistance granted to Tecnagrind SL by Commission Decision C (93) 3395 of 26 November 1993, concerning grant of the EAGGF, Guidance Section, contribution pursuant to Regulation No 4256/88, in connection with Project No 93.ES.06.031 entitled 'Demonstration project for the multiple optimisation of Vetiver (*Vetiveria Zizanoides*) in the Mediterranean area'; and, in Case T-151/99, for the annulment of Commission Decision C (1999) 533 of 4 March 1999 withdrawing the assistance granted to Tecnagrind SL by Commission Decision C (96) 2235 of 13 September 1996, concerning grant of the EAGGF, Guidance Section, contribution pursuant to Regulation No 4256/88, in connection with Project No 95.ES.06.005 entitled 'Demonstration project for the processing of castor-oil plants (*Ricinus Communis*) in agricultural undertakings for the extraction of aromatic essences',

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

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

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 20 February 2002,

gives the following

Judgment

Legal background

1 In order to strengthen economic and social cohesion within the meaning of Article 158 EC, Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 185, p. 9), entrusted the Structural Funds with the tasks, in particular, of promoting the development and structural adjustment of the regions whose development was lagging behind, speeding up the adjustment of agricultural structures and promoting the development of rural areas with a view to reform of the common agricultural policy (Article 1, points 1 and 5(a) and (b)). That regulation was amended by Council Regulation No 2081/93 of 20 July 1993 (OJ 1993 L 193, p. 5).

2 In its original version, Article 5(2)(e) of Regulation No 2052/88 provided that financial assistance could be provided by the Structural Funds in the form of support for technical assistance and studies in preparation for operations. In the version as amended by Regulation No 2081/93, it provides that financial assistance may be provided by the Structural Funds in the form of support for technical assistance, including the measures to prepare, appraise, monitor and evaluate operations, and pilot and demonstration projects.

3 On 19 December 1988, the Council adopted Regulation (EEC) No 4256/88 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the (EAGGF) Guidance Section (OJ 1988 L 374, p. 25). That regulation was amended by Council Regulation (EEC) No 2085/93 of 20 July 1993 (OJ 1993 L 193, p. 44).

4 Article 8 of Regulation No 4256/88 stated, in its original version, that EAGGF assistance for the measures provided for in Article 5(2)(e) of Regulation No 2052/88 may cover, in particular, carrying out pilot projects for promoting the development of rural areas, including the development and exploitation of woodland (first indent) and carrying out demonstration projects to show farmers the real possibilities of systems, methods and techniques of production which are in accordance with the objectives of the reform of the common agricultural policy (fourth indent). In the version as amended by Regulation No 2085/93, that article provides that, in achieving its tasks, the EAGGF may devote up to 1% of its annual budget to financing, notably, pilot projects for adjusting agricultural and forestry structures and promoting rural development, and demonstration projects, including projects for developing and exploiting forests and projects for processing and marketing agricultural products, to show the real possibilities of systems, methods and techniques of production and management which are in accordance with the objectives of the common agricultural policy.

5 On 19 December 1988 the Council also adopted Regulation (EEC) No 4253/88 laying down provisions for implementing Regulation No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1). That regulation was amended by Council Regulation No 2082/93 of 20 July 1993 (OJ 1993 L 193, p. 20).

6 According to the 12th recital in the preamble to Regulation No 4253/88 Community assistance from the structural funds should be provided mainly in the

form of part-financing of operational programmes. Detailed rules for the provision of that assistance are laid down in Article 17 of the regulation, as amended.

7 Regulation No 4253/88, as amended, also lays down provisions relating to payment of the financial assistance (Article 21), control of the operations financed (Article 23) and the reduction, suspension and cancellation of assistance (Article 24).

8 Article 23(2) of Regulation No 4253/88, as amended, provides, as regards financial checks:

'Without prejudice to checks 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 arranged on the basis of Article 209(c) of the Treaty, Commission officials or servants may carry out on-the-spot checks, including sample checks, in respect of operations financed by the Structural Funds and management and control systems.

Before carrying out an on-the-spot check, the Commission shall give notice to the Member State concerned with a view to obtaining all the assistance necessary. If the Commission carries out on-the-spot checks without giving notice, it shall be subject to agreements reached in accordance with the provisions of the Financial Regulation within the framework of the partnership. Officials or servants of the Member State concerned may take part in such checks.

The Commission may require the Member State concerned to carry out an on-the-spot check to verify the regularity of payment requests. Commission officials or servants may take part in such checks and must do so if the Member State concerned so requests.

The Commission shall ensure that any checks that it carries out are performed in a coordinated manner so as to avoid repeating checks in respect of the same subject matter during the same period. The Member State concerned and the Commission shall immediately exchange any relevant information concerning the results of the checks carried out.'

9 Article 24 of Regulation No 4253/88, as amended, provides, as regards the reduction, suspension and cancellation of assistance:

'1. If an operation or measure appears to justify neither part nor the whole of the assistance allocated, the Commission shall conduct a suitable examination of the case in the framework of the partnership, in particular requesting that the Member State or authorities designated by it to implement the operation submit their comments within a specified period of time.

2. Following this examination, the Commission may reduce or suspend assistance in respect of the operation or measure concerned if the examination reveals an irregularity or a significant change affecting the nature or conditions for the implementation of the operation or measure for which the Commission's approval has not been sought.

3. Any sum received unduly and to be recovered shall be repaid to the Commission. Interest on account of late payment shall be charged on sums not repaid in compliance with the provisions of the Financial Regulation and in accordance with the arrangements to be drawn up by the Commission pursuant to the procedures referred to in Title VIII.'

The facts

10 The present cases relate to four of the five projects presented, pursuant to Article 8 of Regulation No 4256/88, between January 1992 and March 1995 by a series of companies owned by a small group of individuals.

11 Case T-141/99 relates to the project presented by the Italian company Vela Srl ('Vela') for the introduction and promotion of cylindrical luffa in disadvantaged European areas. Case T-142/99 concerns the project presented by the Italian company Sonda Srl ('Sonda') for whom Vela acts as promoter, which is designed to reduce the production costs and fertiliser costs in sunflower cultivation. Case T-150/99 concerns the project presented by the Spanish company Tecnagrind SL ('Tecnagrind') for the purpose of optimising vetiver in the Mediterranean area. Case T-151/99 concerns the project presented by Tecnagrind relating to the processing of castor-oil plants in agricultural undertakings for the extraction of natural aromatic essences. During the period mentioned in the previous paragraph, the Italian company Faretra Srl ('Faretra') also presented a project designed to develop 'tree pasture'.

The Luffa Project

12 On 17 January 1992, Vela applied to the Commission for Community assistance for a land-management and commercial-development demonstration project for

the introduction and promotion, in certain disadvantaged European areas, of cylindrical luffa, a cucurbitaceous plant whose fruit, when it reaches maturity, produces a particularly resistant fibrous pulp (Project No 92.IT.06.001, 'the Luffa Project').

13 It is apparent from that application that the Luffa Project was to be implemented on Mr Troglia's farm in Alghero in the province of Sassari, Italy. The aim of the project was to replace chemical and synthetic products with biodegradable products in non-food applications. Vela stated that it had acquired extensive professional expertise in materials and was engaged in research in that field. It indicated that it was in touch with the agronomy faculty of the University of Sassari and with the Sassari Provincial Farming and Woodland Inspectorate, which had both expressed interest in the project.

14 As far as labour was concerned, the Luffa Project required a project manager for a period of 26 man months, a product manager for a period of 28 man months, a technical manager for the same length of time, an agronomist for a period of 24 man months and agricultural workers for a period of 140 man months. The total budget of the Luffa Project was ECU 2 310 000. Vela requested Community financing of 75%, that is, ECU 1 732 500. It intended to finance, with Mr Troglia's farm, 10% of the project, that is, ECU 231 000, and to obtain financing from regional funds for the remaining 15%. It said that it had been assured that the Italian company SoFIM ('SoFIM') would guarantee up to a maximum of 25% of the amount of the part-financing of the Luffa Project, by opening a current account credit facility in the event of late payment of the aid by the Sardinian regional authorities.

15 By Decision C (92) 1494 of 30 June 1992 ('the decision granting aid for the Luffa Project'), the Commission granted Vela an EAGGF, Guidance Section, contribution for the Luffa Project (Article 1).

16 Under Article 2 of that decision, the period for implementing the Luffa Project was set at 45 months from the date of the decision, that is, 30 June 1992 to 31 March 1996.

17 Under Article 3 of the above decision, the whole cost of the Luffa Project, estimated to be ECU 2 310 000, was eligible and the Community's maximum financial contribution had been fixed at ECU 1 470 000. That provision added that, if the costs eventually borne were lower than the eligible cost originally forecast, the amount of the aid would be reduced accordingly when the balance of the aid was paid.

18 The financial plan contained in Annex I to the decision granting aid for the Luffa Project shows that the balance of the financing for the Luffa Project was to be paid by the Sassari Provincial Inspectorate and by Vela, which would provide ECU 350 000 and ECU 490 000 respectively.

19 In accordance with the financial terms laid down in Annex II to the decision, the Commission was authorised, for the purposes of verifying the financial information relating to the various items of expenditure, to ask to inspect any original documentary evidence or a certified copy, and to carry out that inspection directly on-the-spot or to ask for the documents in question to be sent to it (point 5). It was also stipulated that, if any of the conditions mentioned in the Annex were not observed or if measures not provided for in Annex I were taken, the Community could suspend, reduce or cancel the aid and call for the reimbursement of any payments made (point 10).

20 On 24 September 1992, the Commission paid Vela a first instalment of ECU 584 000.

21 On 3 May 1993, Vela requested payment of a second instalment, in the amount of ECU 438 000. After carrying out an administrative and financial on-the-spot check and visiting the demonstration fields between 19 and 23 July 1993, and finding no specific anomaly, the Commission paid the second instalment.

22 By letters dated 11 and 23 March 1994, Vela informed the Commission that, since the Sassari Provincial Inspectorate had not granted it the financing of ECU 350 000 provided for in the decision granting aid for the Luffa Project, the amount of financing put at its disposal by SoFIM had been increased from ECU 580 000 to ECU 840 000.

23 On 11 June 1996, the Commission received from Vela a request for payment of the balance of the Community assistance, that is ECU 438 000.

24 Between 22 and 26 July, it carried out another on-the-spot check. Apart from the fact that some costs were ineligible, no specific anomaly was revealed on that occasion.

25 On 17 December 1996, the Commission paid Vela the balance of the Community assistance.

The Girasole Project

26 On 8 September 1993, Sonda applied to the Commission for Community assistance for a demonstration pilot project designed to reduce the production

costs and fertiliser costs in sunflower cultivation (Project No 93.IT.06.057, 'the Girasole Project').

27 It is apparent from that application that the Girasole Project was to be implemented on the Santa Margherita farm situated in the province of Sassari, Italy. The aim of the project was to reduce technical and energy costs in sunflower cultivation by means of the 'mulching' process, which consists in spreading waterproof tarpaulins over the fields; this prevents weeds from growing, thus making it possible to save a significant amount of irrigation water. At least 14 collaborators were needed to implement it.

28 By Decision C (93) 3401 of 26 November 1993 ('the decision granting aid for the Girasole Project'), the Commission granted Sonda an EAGGF, Guidance Section, contribution for the Girasole Project (Article 1).

29 Under Article 2 of that decision, the period for implementing the Girasole Project was set at 26 months from the date of the decision, that is, 1 November 1993 to 31 December 1995.

30 The total cost of the Girasole Project was ECU 1 235 000. Article 3 of the decision provided that the eligible cost was ECU 1 036 000 and the Community's maximum financial contribution had been fixed at ECU 777 000. The provision added that, if the costs eventually borne were lower than the eligible cost originally forecast, the amount of the aid would be reduced accordingly when the balance of the aid was paid.

31 The financial plan contained in Annex I to the decision granting aid for the Girasole Project shows that the balance of the financing for the Girasole Project, ECU 458 000, was to be paid by Sonda.

32 In accordance with the financial terms laid down in Annex II to the decision, the Commission was authorised, for the purposes of verifying the financial information relating to the various items of expenditure, to ask to inspect any original documentary evidence or a certified copy, and to carry out that inspection directly on-the-spot or to ask for the documents in question to be sent to it (point 5). It was also stipulated that, if any of the conditions mentioned in the Annex were not observed or if measures not provided for in Annex I were taken, the Community could suspend, reduce or cancel the aid and call for the reimbursement of any payments made (point 10).

33 On 11 January 1994, the Commission paid Sonda a first instalment of ECU 310 800, that is, 40% of the Community contribution. On 11 January 1995, it paid Sonda a second instalment, in the amount of ECU 233 100. On 31 May 1996, it paid it the balance of the Community contribution.

34 In 1997 Sonda was taken over by Vela by merger.

The Vetiver Project

35 On 15 September 1993, Tecnagrind applied to the Commission for Community assistance for a demonstration project concerning possible ways of optimising vetiver, a plant with particularly resistant and fibrous roots, in the Mediterranean area (Project No 93.ES.06.031, 'the Vetiver Project').

36 According to that application, the aim of the Vetiver Project was to optimise vetiver, a plant with particularly resistant and fibrous roots, in the Mediterranean area (Project No 93.ES.06.031, hereinafter 'the Vetiver Project').

37 The Vetiver Project involved the leasing of a 10-hectare plot of land for 30 months, work to prepare the land for growing vetiver, technical advice and monitoring costs estimated at 10 man months, the leasing of a mobile turbodistillation unit for extracting the essences, the purchase of the instruments and equipment needed to monitor the plants and the end product, personnel costs estimated at 10 man months, and also sundry costs relating to the involvement of outside laboratories, certifications and the services of specialist technicians and researchers.

38 By Decision C (93) 3395 of 26 November 1993 ('the decision granting aid for the Vetiver Project'), the Commission granted Tecnagrind an EAGGF, Guidance Section, contribution for the Vetiver Project (Article 1).

39 Under Article 2 of that decision, the period for implementing the Girasole Project was set at 30 months, from January 1994 to June 1996.

40 The total cost of the Vetiver Project was ECU 1 261 131. Article 3 of the decision provided that the eligible cost was ECU 1 237 125 and the Community's maximum financial contribution had been fixed at ECU 927 843. The provision added that, if the costs eventually borne were lower than the eligible cost originally forecast, the amount of the aid would be reduced accordingly when the balance of the aid was paid.

41 The financial plan contained in Annex I to the decision granting aid for the Vetiver Project provided that the balance of the financing for the Vetiver Project, ECU 333 288, was to be paid by Tecnagrind.

42 In accordance with the financial terms laid down in Annex II to the decision, the Commission was authorised, for the purposes of verifying the financial information relating to the various items of expenditure, to ask to inspect any original documentary evidence or a certified copy, and to carry out that inspection directly on-the-spot or to ask for the documents in question to be sent to it (point 5). It was also stipulated that, if any of the conditions mentioned in the Annex were not observed or if measures not provided for in Annex I were taken, the Community could suspend, reduce or cancel the aid and call for the reimbursement of any payments made (point 10).

43 On 13 January 1994, the Commission paid Tecnagrind a first instalment of ECU 371 137, which was 40% of the Community contribution to the Vetiver Project.

44 On 19 January 1995, it paid the second instalment, in the amount of ECU 278 352, which was 30% of the Community contribution.

45 On 24 December 1996, Tecnagrind submitted its final report on the Vetiver Project to the Commission. It forwarded relevant additional documentation on 12 February and 27 March 1997.

46 On 20 March 1997, it asked the Commission to pay the balance of the assistance, ECU 278 353. On 5 June 1997, it repeated its request to the Commission.

47 On 12 June 1997, the Commission informed Tecnagrind that it had started a general technical and accounting inspection of all the projects financed under Article 8 of Regulation No 4256/88 and approved by the Commission, and that, in view of the scale of that operation, it would be unable to pay the balance for about five months.

The Ricino Project

48 On 31 March 1995, Tecnagrind applied to the Commission for Community assistance for a demonstrative project relating to the processing of castor-oil plants in agricultural undertakings for the extraction of natural aromatic essences (Project No 95.ES.06.005, 'the Ricino Project').

49 According to that application, the aim of the Ricino Project was to grow castor-oil plants and to process them in order to obtain, by a process of natural fermentation, a peach essence which is very expensive to produce from the fruit. The Ricino Project was designed to demonstrate that castor-oil plant cultivation was profitable and to create jobs. The Andalusian cooperative company Campo de Paterna had been given the task of implementing it. Two other Spanish companies, Codema, SA ('Codema') and Genforsa, SA ('Genforsa') were to participate in the Ricino Project by providing 5% each of the part-financing.

50 By Decision C (96) 2235 of 13 September 1996 ('the decision granting aid for the Ricino Project'), the Commission granted Tecnagrind an EAGGF, Guidance Section, contribution for the Ricino Project (Article 1).

51 Under Article 2 of that decision, Community financing was to be provided for the period between 1 September 1996 and 30 June 1999.

52 Implementation of the Ricino Project was to take 28 months, between September 1996 and December 1998. The total cost of the project was estimated at ECU 1 264 674. Article 3 of the decision provided that the eligible cost was ECU 1 262 674 and the Community's maximum financial contribution had been fixed at ECU 947 005. The provision added that, if the costs eventually borne were lower than the eligible cost originally forecast, the amount of the aid would be reduced accordingly when the balance of the aid was paid.

53 The financial plan contained in Annex I to the decision granting aid for the Ricino Project provided that the balance of the financing for the Ricino Project was to be paid by Tecnagrind, Codema and Genforsa, which would provide ECU 191 401, ECU 63 134 and ECU 63 134 respectively.

54 In accordance with the financial terms laid down in Annex II to the decision, the Commission was authorised, for the purposes of verifying the financial information relating to the various items of expenditure, to ask to inspect any original documentary evidence or a certified copy, and to carry out that inspection directly on-the-spot or to ask for the documents in question to be sent to it (point 5). It was also stipulated that, if any of the conditions mentioned in the Annex were not observed or if measures not provided for in Annex I were taken, the Community could suspend, reduce or cancel the aid and call for the reimbursement of any payments made (point 10).

55 On 20 January 1997, the Commission paid Tecnagrind a first instalment of ECU 378 802, which was 40% of the Community contribution to the Ricino Project.

56 On 15 May 1997, Tecnagrind submitted its intermediate technical progress report on the Ricino Project to the Commission.

57 On 9 July 1997, it asked the Commission to pay the second instalment of the Community contribution.

The Pascolo Arboreo Project

58 On 8 September 1993, Faretra applied to the Commission for Community assistance for a demonstration pilot project to develop a large environmentally-friendly Mediterranean animal-rearing centre, called 'tree pasture' (Project No 96.IT.06.058, 'the Pascolo Arboreo Project'). By decision of 26 November 1993, the Commission granted Faretra an EAGGF contribution of ECU 890 625 for the Pascolo Arboreo Project. The contribution was paid to Faretra in full.

The on-the-spot checks conducted in July and November 1997

59 Following an inspection of an Irish project made in January 1997 by the Court of Auditors of the European Community ('the Court of Auditors'), the Commission decided to carry out a series of checks concerning a certain number of projects receiving financial assistance under Article 8 of Regulation No 4256/88, because it suspected that a network had been set up with the aim of fraudulently obtaining Community subsidies. The Luffa, Girasole, Pascolo Arboreo, Vetiver and Ricino Projects were subject to those checks.

60 By letters dated 10 June 1997, the Commission informed Vela, Sonda and Tecnagrind of its intention to carry out on-the-spot checks of the project(s) for which they were responsible, pursuant to Article 23 of Regulation No 4253/88.

61 The on-the-spot check in respect of the Vetiver and Ricino Projects was carried out between 22 and 25 July 1997. It was conducted by officials from the Commission's Directorate-General (DG) for Agriculture and Directorate-General for Financial Control, and from the Unit on Coordination of Fraud Prevention (UCFP). The officials of the Financial Control DG and UCFP subsequently prepared reports containing their findings. An official from the Intervención General del Estado (a department of the Spanish Ministry of Finance) attended the inspections carried out by the Community officials.

62 On the basis of the findings contained in the reports mentioned in the previous paragraph, the Commission considered that it had sufficient evidence for opening the procedure to withdraw the assistance relating to the Vetiver and Ricino Projects and decided to carry out a check on the Italian projects.

63 By letters dated 23 September 1997, the Commission informed Vela and Sonda that, pursuant to Article 23 of Regulation No 4253/88, it intended to carry out an on-the-spot check of the Luffa and Girasole Projects, starting on 10 November 1997. An identical letter was sent to Faretra in respect of the Pascolo Arboreo Project.

64 That check took place between 10 and 14 November 1997 in Milan and then in Sassari. Its aim was to check the Luffa, Girasole and Pascolo Arboreo Projects and to complete the check carried out in July 1997 in respect of the Vetiver and Ricino Projects. It was conducted by officials from the Agriculture DG, the Financial Control DG and UCFP. Officials from the Ragioneria Generale dello

Stato (Italian general accounts department) took part in the check. Following the check, the official from the Financial Control DG drew up a report recommending the initiation of the procedure for withdrawing the assistance for the projects concerned and recovering the sums wrongly paid for those projects. The officials from the Italian authority also compiled a record of a series of findings made during the check carried out between 10 and 12 November 1997 at Vela's seat in Milan.

Administrative procedure

65 By letters dated 3 April 1998, the Commission informed Vela, Sonda and Tecnagrind that, pursuant to Article 24 of Regulation No 4253/88, it was at the time carrying out an inspection of the financial assistance which had been granted to them for the project(s) for which they were responsible and that, since that inspection revealed matters which might constitute irregularities, it had decided to initiate the procedure laid down by the aforementioned article of Regulation No 4253/88 and by point 10 of Annex II to each of the award decisions. Those details were set out in the letters.

66 The Commission gave Vela, Sonda and Tecnagrind six weeks in which to furnish the explanations and accounting and administrative documents which would show full compliance with the obligations imposed on them when the EAGGF assistance had been granted.

67 At the same time, it sent a request for observations to the Italian Republic, in respect of the Luffa and Girasole Projects, and to the Kingdom of Spain, in respect of the Vetiver and Ricino Projects.

68 By letters dated 19 June 1998, observations were submitted in reply by Vela, in respect of the Luffa and Girasole Projects, and by Tecnagrind in respect of the Vetiver and Ricino Projects.

The contested decision in Case T-141/99

69 By decision of 9 March 1999 ('the contested decision in Case T-141/99'), the Commission, in accordance with Article 24(2) of Regulation No 4253/88, withdrew the financial assistance granted to Vela and claimed reimbursement of the sum of EUR 1 470 000.

70 In that decision, the Commission stated, in particular, as follows:

'1. Under the award decision, the proportion of the admissible expenditure in respect of the [Luffa] project not covered by the Community contribution, namely ECU 840 000, was to be the subject of financing to be arranged by the beneficiary. The findings made during the inspection visit [November 1997] raised doubts regarding the part-financing of the [Luffa] project.

2. A joint inspection of the accounting documents relating to the project at issue and to the other four projects, which also received Community assistance within the meaning of Article 8 of Regulation No 4256/88, revealed a system of internal financial exchanges between the beneficiary companies of the five projects, certain partners in those companies and other undertakings associated with them. The projects in question (and the corresponding beneficiary companies) are the project at issue (beneficiary: Vela Srl), project No 9[3].IT.06.057 (beneficiary: Sonda Srl), project No 93.IT.06.058 (bene-

ficiary: Faretra Srl), project No 93.ES.06.031 (beneficiary: Tecnagrind SL), project No 95.ES.06.005 (beneficiary: Tecnagrind SL). The relevant partners are Claudio Zarotti and Marco Troglia. The undertakings associated with the partners in the beneficiary companies are AITEC Srl, Noesi Sas and l'Azienda agricola Barrank. The financial exchanges made between the companies, the partners and the associated undertakings involve a sum of approximately ITL 10 000 000 000, which is about 65% of the expenditure declared to the Commission (or forecast expenditure, in the case of the uncompleted projects) for all five projects. The Commission's staff effected a reconstruction of all the internal financial exchanges, which revealed that the companies involved belong, for the most part, to the same small group of individuals. Systematic subcontracting between the beneficiary companies of the five projects and the undertakings associated with them had the effect of creating an item of income which has no established economic basis and unjustifiably constitutes the beneficiary's share of the part-financing.

3. The expenditure invoiced to the beneficiary by Faretra Srl, Sonda Srl, AITEC Srl, Mr Baldassar[r]e, l'Azienda agricola Barrank and Mr Claudio Zarotti, for a sum (approximately ITL 3 000 000 000) representing 60% of the total expenditure declared in respect of the project, is not justified. The participation of the four subcontractors (Faretra Srl, Sonda Srl, AITEC Srl, Mr Baldassar[r]e) was covered by contracts involving the supply of specific personnel, equipment and expertise. The checks carried out on the books and stocklists of those four subcontractors have revealed that they had neither specific personnel nor equipment. They therefore lacked expertise and there was nothing to justify their participation in the implementation of the [Luffa] Project. Furthermore, those various undertakings have not incurred expenditure which might justify the invoicing.

4. Many invoices, issued by other companies, are not adequately substantiated or reveal a lack of proportion between the price paid and the service provided. This relates, in particular, to the following invoices:

   (a) the invoice for the sum of ITL 61 882 002 (about ECU 29 000) paid to Magenta Finance in respect of an "Information Manual for Farmers"; the manual was not available to the Commission's inspectors;

(b) the invoice for the sum of ECU 20 939 paid to Detentor in respect of "fees" for a feasibility study, and of plans and designs for a prototype press for the low-temperature compression of "luffa" husks;

(c) the invoice for a total sum of ECU 133 057 paid to Cedarcliff in respect of, amongst other items, a list of 160 undertakings with which the beneficiary was to carry out dissemination operations. The beneficiary was unable to produce an explanation of the price invoiced in the light of the service provided.'

The contested decision in Case T-142/99

71 By decision of 4 March 1999 ('the contested decision in Case T-141/99'), the Commission, in accordance with Article 24(2) of Regulation No 4253/88, withdrew the financial assistance granted to Sonda and claimed reimbursement of the sum of EUR 770 000.

72 In that decision, the Commission stated, in particular, as follows:

'1. Under the award decision, the proportion of the admissible expenditure in respect of the [Girasole] project not covered by the Community contribution, namely ECU 458 000, was to be the subject of financing to be arranged by

the beneficiary. The findings made during the inspection visit [in November 1997] raised doubts regarding the part-financing of the [Girasole] project.

2. A joint inspection of the accounting documents relating to the project at issue and to the other four projects, which also received Community assistance within the meaning of Article 8 of Regulation No 4256/88, revealed a system of internal financial exchanges between the beneficiary companies of the five projects, certain partners in those companies and other undertakings associated with them. The projects in question (and the corresponding beneficiary companies) are the project at issue (beneficiary: Sonda Srl), project No 92.IT.06.001 (beneficiary: Vela Srl), project No 93.IT.06.058 (beneficiary: Faretra Srl), project No 93.ES.06.031 (beneficiary: Tecnagrind SL), project No 95.ES.06.005 (beneficiary: Tecnagrind SL). The relevant partners are Claudio Zarotti and Marco Troglia. The undertakings associated with the partners in the beneficiary companies are AITEC Srl, Noesi Sas and l'Azienda agricola Barrank. The financial exchanges made between the companies, the partners and the associated undertakings involve a sum of approximately ITL 10 000 000 000, which is about 65% of the expenditure declared to the Commission (or forecast expenditure, in the case of the uncompleted projects) for all five projects. The Commission's staff effected a reconstruction of all the internal financial exchanges, which revealed that the companies involved belong, for the most part, to the same small group of individuals. Systematic subcontracting between the beneficiary companies of the five projects and the undertakings associated with them had the effect of creating an item of income which has no established economic basis and unjustifiably constitutes the beneficiary's share of the part-financing.

3. The expenditure invoiced by two companies (Faretra Srl, for an amount of approximately ITL 1 155 000 000 and Noesi Sas, for an amount of approximately ITL 830 000 000), which represents 90% of the total expenditure declared in respect of the project (ITL 2 255 934 354), is not justified.

The participation of the two companies was covered by contracts involving the supply of specific personnel, equipment and expertise. Checks carried out

on the books and stocklists of the two companies have revealed that they had neither specific personnel nor equipment. They therefore lacked expertise and there was nothing to justify their participation in the carrying out of the project under consideration. Furthermore, those undertakings have not incurred expenditure which might justify the invoicing.'

The contested decision in Case T-150/99

73 By decision of 4 March 1999 ('the contested decision in Case T-150/99'), the Commission, in accordance with Article 24(2) of Regulation No 4253/88, withdrew the financial assistance granted to Tecnagrind for the Vetiver Project and claimed reimbursement of the sum of EUR 649 490.

74 In that decision, the Commission stated, in particular, as follows:

'1. A joint inspection of the accounting documents relating to the project at issue and to the other four projects, which also received Community assistance within the meaning of Article 8 of Regulation No 4256/88, revealed a system of internal financial exchanges between the beneficiary companies of the five projects, certain partners in those companies and other undertakings associated with them. The projects in question (and the corresponding beneficiary companies) are the project at issue (beneficiary: Tecnagrind SL), project No 92.IT.06.001 (beneficiary: Vela Srl), project No 93.IT.06.057 (beneficiary: Sonda Srl), project No 9[5].ES.06.005 (beneficiary: Tecnagrind SL), project No 93.IT.06.058 (beneficiary: Faretra Srl). The relevant partners are Claudio Zarotti and Marco Troglia. The undertakings associated with the partners in the beneficiary companies are AITEC Srl, Noesi Sas and l'Azienda agricola Barrank. The financial exchanges made between the companies, the partners and the associated undertakings involve a sum of approximately ITL 10 000 000 000, which is about 65% of the expenditure declared to the Commission (or forecast expenditure, in the case of the

uncompleted projects) for all five projects. The Commission's staff effected a reconstruction of all the internal financial exchanges, which revealed that the companies involved belong, for the most part, to the same small group of individuals. Systematic subcontracting between the beneficiary companies of the five projects and the undertakings associated with them had the effect of creating an item of income which has no established economic basis and unjustifiably constitutes the beneficiary's share of the part-financing.

2. Statements made in the aid application do not reflect the true position:

(a) In the application, it is stated that "[Tecnagrind] provides agricultural services". However, the company was formed on 25 January 1993 and the grant application was sent to the Commission on 15 September 1993. Moreover, the company has not operated.

(b) Furthermore, the application mentioned that a certain amount of research and testing in the area in conjunction with the physical geography department of the University of Murcia and with the La Alberca branch of the agricultural research centre for the Murcia region had been carried out. Mr Troglia, Tecnagrind's director and the project leader, said at the time of the inspection [July 1997] that the research and testing work had been carried out exclusively by those bodies, and that the beneficiary had taken no part in it.

3. During the inspection visit, [Tecnagrind] was unable to present any document to prove that it had provided 25% of the part-financing for the project, as required under point 7 of the decision granting the aid.

4. In the final report, it is stated that the area used for growing the vetiver in order to produce and distil its roots is two hectares. During the on-the-spot check, the Commission's staff found that only half a hectare had been cultivated.

5. The invoice from the owner of the leased land shows that the area of the plot was 4 hectares, not 10 hectares as stated in the project and the final report. Also, according to the various invoices presented at the time of the check, the leasing costs were ESP 712 000, although the budgetary item earmarked for that part of the expenditure was ESP 10 934 772. The difference was used to meet other costs, without obtaining the prior consent of the Commission as required in point 1 of Annex 2 of the decision.

6. Certain costs corresponding to the company's general expenses — such as the fees paid to Asedem (accounting and tax consultancy) and telephone bills (Mr Troglia's Italian mobile telephone) are charged to the project, at the rate of 50%, with no justification. Also, invoices have been charged to the project for services which were provided after the final stage of the project and therefore could not be taken into account for the part-financing.'

The contested decision in Case T-151/99

75 By decision of 4 March 1999 ('the contested decision in Case T-151/99'), the Commission, in accordance with Article 24(2) of Regulation No 4253/88, withdrew the financial assistance granted to Tecnagrind for the Ricino Project and claimed reimbursement of the sum of EUR 378 802.

76 In that decision, the Commission stated, in particular, as follows:

'1. A joint inspection of the accounting documents relating to the project at issue and to the other four projects, which also received Community assistance within the meaning of Article 8 of Regulation No 4256/88, revealed a system of internal financial exchanges between the beneficiary companies of the five projects, certain partners in those companies and other undertakings associated with them. The projects in question (and the corresponding beneficiary companies) are the project at issue (beneficiary: Tecnagrind SL), project No 92.IT.06.001 (beneficiary: Vela Srl), project No 93.IT.06.057 (beneficiary: Sonda Srl), project No 93.ES.06.031 (beneficiary: Tecnagrind SL), project No 93.IT.06.058 (beneficiary: Faretra Srl). The relevant partners are Claudio Zarotti and Marco Troglia. The undertakings associated with the partners in the beneficiary companies are AITEC Srl, Noesi Sas and l'Azienda agricola Barrank. The financial exchanges made between the companies, the partners and the associated undertakings involve a sum of approximately ITL 10 000 000 000, which is about 65% of the expenditure declared to the Commission (or forecast expenditure, in the case of the uncompleted projects) for all five projects. The Commission's staff effected a reconstruction of all the internal financial exchanges, which revealed that the companies involved belong, for the most part, to the same small group of individuals. Systematic subcontracting between the beneficiary companies of the five projects and the undertakings linked to them had the effect of creating an item of income which has no established economic basis and unjustifiably constitutes the beneficiary's share of the part-financing.

Mr Troglia, Director of [Tecnagrind] and the person in charge of the project, told the inspectors, during the [July 1997] check that [Tecnagrind] did not have the practical experience needed for installing a small processing plant to meet the farmers' operational requirements, which was why it had subcontracted that activity and, more generally, the whole industrial stage of the project to Vela. In the course of an inspection carried out by the Commission's services on the premises of [Vela], a beneficiary of assistance granted under Article 8 of Regulation No 4256/88, it became apparent that that company had neither personnel or specific equipment. It therefore did not seem to process the practical knowledge needed and the intervention of [Vela] as subcontractor was not justified.

2. It seems that several contracts were concluded with Mr De Bartolomeis and with Cedarcliff for a total value of ECU 155 800, that is to say, more than 12% of the total cost of the project. According to Mr Troglia, the activities subcontracted to Cedarcliff relate to the dissemination stage of the project. Those invoices could not be charged to the project when it began, since dissemination was to take place at the end of the project.

3. During the inspection visit, he was unable to present any document to prove that the beneficiary company was in a position to provide 25% of the part-financing for the project, as required under point 8.3 of Annex I to the decision granting the aid.

4. Certain costs corresponding to the company's general expenses — such as the fees paid to Asedem (accounting and tax consultancy) and telephone bills (Mr Troglia's Italian mobile telephone) were charged to the project, at the rate of 50%, with no justification.'

Procedure

77 By applications lodged at the Registry of the Court of First Instance on 10 June 1999, Vela brought two actions, seeking, respectively, the annulment of the contested decision in Case T-141/99 and the annulment of the contested decision in Case T-142/99.

78 By applications lodged at the Court Registry on 21 June 1999, Tecnagrind brought two actions, seeking, respectively, the annulment of the contested decision in Case T-150/99 and the annulment of the contested decision in Case T-151/99.

79 At the request of the parties, the President of the Third Chamber of the Court of First Instance stayed proceedings in the four cases, in accordance with Article 77(c) of the Rules of Procedure of the Court of First Instance, first until 12 January 2000, by orders dated 12 November 1999, and then until 12 April 2000, by orders dated 10 January 2000. The written procedure was closed on 14 March 2001.

80 After the parties had been heard on the point, the President of the Third Chamber of the Court of First Instance, by orders dated 29 November 2001, joined the cases for the purposes of the oral proceedings and the judgment, in accordance with Article 50 of the Rules of Procedure.

81 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure. As measures of organisation of procedure, it requested the parties to submit certain documents and to reply to certain questions. The parties complied with those requests within the time-limits set.

82 The hearing, which was originally fixed for 10 January 2002, was adjourned to 20 February 2002 at the request of the applicants, who stated that the communication from the Court Registry containing the written questions put by the Court of First Instance and the notice of the date of the hearing had reached them belatedly.

83 At the hearing held on 20 February 2002, the parties presented oral argument and their answers to the questions put by the Court.

Forms of order sought by the parties

84 In each of the cases the applicant claims that the Court should:

— annul the contested decision and, in the alternative, reduce the amount of the grant to be repaid to the Commission to such extent as may be decided in the course of the proceedings;

— grant the request for measures of inquiry formulated in the application;

— order the Commission to pay the costs.

85 In each of the cases the Commission contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

Substance

86 At the hearing, the applicants stated that, as shown in their pleadings, the sole object of these actions is to seek the annulment of the contested decisions. They added that the summary arguments relating to compensation for damage are formulated as a purely protective measure and, in the context of these cases, are not tantamount to a claim for compensation. The Court took formal note of that.

87 Furthermore, after the cases had been joined for the purposes of the oral procedure and the judgment, the applicants, which are represented by the same counsel, and the defendant, which is also represented by the same counsel in all four cases, had access to all the material contained in the files relating to those cases. The Court took formal note of that. In the circumstances, that material must be regarded as forming a single file relating to the four cases.

88 The actions for annulment are based, in all four cases, on four identical pleas. The first plea alleges infringement and misapplication of the Treaty and of secondary Community law, and misuse of powers. The second plea alleges failure to state adequate reasons, and errors of assessment. The third plea alleges breach of the principles of legal certainty and of the protection of legitimate expectations. The fourth plea alleges breach of the principle of proportionality.

I — *The first plea, alleging infringement and misapplication of the Treaty and of secondary Community law, and misuse of powers*

89 In the four cases, this plea is subdivided into two parts. Under the first part, the applicants maintain that the Commission wrongly based the checks of July and

November 1997 on Article 23 of Regulation No 4253/88, and its letters of 3 April 1998 and the contested decisions on Article 24 of the same regulation, and that it misused its powers. Under the second part, which is presented in the alternative, they claim that the Commission misapplied the aforementioned provisions of Regulation No 4253/88.

The first part of the plea

90 The applicants maintain, first, that the Commission could not rely on the provisions of Articles 23 and 24 of Regulation No 4253/88 as the legal basis for the checks carried out in July and November 1997 and for the contested decisions. Points 5 and 10 of Annex II to the decisions granting the aid had, in fact, precluded application of those general provisions. In Case T-141/99, Vela adds that, given that the Commission had carried out checks in July 1993 and July 1996 before paying, respectively, the second instalment and the balance of the contribution to the Luffa Project, it had exhausted the powers of inspection conferred by point 5 of Annex II to the decision granting the aid for the Luffa Project.

91 The applicants maintain that, in actual fact, the aim of the checks carried out in July and November 1997 was not to verify that the projects had been carried out in accordance with Article 8 of Regulation No 4256/88. Those checks were part of a general investigation into fraud. They were designed to investigate the financial links between the companies involved in the various projects and had focused on the administrative and accounting aspects of the projects, principally on methods of providing the part-financing. The applicants argue that they should therefore have been based on Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 1), and Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ 1996 L 292, p. 2).

92 In that regard, the Court notes that the parties agree that the checks carried out in July and November 1997 were based on Article 23 of Regulation No 4253/88.

93 Furthermore, it is apparent from the Commission's letters of 10 June and 23 September 1997, referred to in paragraphs 60 and 63 above, and from the reports produced to the Court by the Commission and drawn up, respectively, on 30 September 1997 by UCFP following the July 1997 check ('the UCFP report of 30 September 1997') and on 18 December 1997 by the Financial Control DG at the end of the November 1997 check ('the Financial Control DG's report of 18 December 1997'), that the checks consisted in establishing that the projects concerned had actually been carried out and investigating the administrative, financial and accounting management of the projects, in particular whether the declared expenditure was in order and whether the beneficiary company had complied with the obligation to provide part-financing laid down in the decisions granting the aid. The Financial Control DG's report of 18 December 1997 also states that, '[O]n the basis of the finding that checks carried out in the past on certain projects taken in isolation had not revealed evidence of the existence of irregularities or fraud, the investigation team opted to take an overall approach, preferring to carry out cross-checks between the various projects, the various beneficiaries and the other parties concerned' (page 4 of the report).

94 By its letters of 3 April 1998, referred to in paragraph 65 above, the Commission informed Vela, Sonda and Tecnagrind that, pursuant to Article 24 of Regulation No 4253/88, it was at that time carrying out a review of the assistance which had been granted to them by the EAGGF. It added that the review revealed matters which could constitute irregularities and that it had therefore decided to initiate the procedure provided for in Article 24 of the aforementioned regulation and in point 10 of Annex II to each of the decisions granting the aid.

95 Since it considered that the review of the files relating to the projects had confirmed the existence of irregularities, the Commission, on the basis of Article 24(2) and (3) of Regulation No 4253/88, adopted the contested decisions

withdrawing the assistance which was the subject of the award decisions and claiming repayment of the sums received from the EAGGF by the beneficiary companies.

96 It must be determined whether the Commission was justified in relying on Articles 23 and 24 of Regulation No 4253/88 as a basis for the checks and the decisions taken in the cases in point.

97 Under Article 23(2) of Regulation No 4253/88, as amended, Commission officials or servants may carry out on-the-spot checks, including sample checks, in respect of operations financed by the Structural Funds.

98 It is clear from the general nature of its wording that Article 23(2) of Regulation No 4253/88, as amended, provides the Commission's officials and servants with a legal basis for checking projects which are receiving or have received assistance from a Structural Fund. In the absence of any indication to the contrary, it must be held that the provision applies to operations financed by any Structural Fund whatsoever, including the EAGGF, Guidance Section. There is no reason for claiming, as the applicants appear to do in their pleadings, that the provision under consideration applies only to operations which are the subject of financial assistance decided by the Member State concerned, or by the authorities designated by it, and submitted to the Commission by that Member State, and not to projects such as those to which the contested decisions refer, which receive financial assistance decided by the Commission.

99 In the absence of clear information to the contrary, it must also be held that an on-the-spot check based on Article 23(2) of Regulation No 4253/88 may be carried out by any Commission official or servant, may take place during the implementation of the project concerned, — for example, after a request for

payment of an instalment of assistance —, or subsequently, and may examine both whether the project has been carried out in accordance with the objectives laid down by the Community legislation and by the decision granting the aid, and also whether the conditions for implementing the project, particularly those relating to its financial and accounting management, are in order.

100 There is no basis for inferring from Article 23(2) of Regulation No 4253/88 that the Commission is prevented from carrying out another on-the-spot check, pursuant to that provision, after the project has actually been completed, even though it has already been the subject of one or more checks of that nature, for example, in connection with requests for payment of the assistance. Nor are Commission officials or servants precluded from carrying out, pursuant to the aforementioned provision, cross-checks relating simultaneously to several projects subsidised by the EAGGF.

101 Any reading of Article 23(2) of Regulation No 4253/88 other than that set out in the two previous paragraphs would have the consequence of rendering redundant the Commission's obligation, under Regulation No 2052/88, to contribute to the effectiveness of the operation carried out by the Community with the help of the Structural Funds in order to attain the objective of economic and social cohesion specified in Article 158 EC.

102 In those circumstances, it must be held that the Commission was permitted, in the cases in point, to use Article 23 of Regulation No 4253/88 as a basis for the on-the-spot checks carried out in July and November 1997 in respect of the projects which are the subject of the contested decisions.

103 Under Article 24(1) of Regulation No 4253/88, as amended, if an operation or measure appears to justify neither part nor the whole of the assistance allocated, the Commission is entitled to conduct an appropriate examination of the case, in

particular requesting that the Member State or authorities designated by it to implement the operation submit their comments within a specified period of time.

104 It must therefore be held that the Commission, since it suspected, following the on-the-spot checks carried out in July and November 1997, that irregularities had occurred in the cases in point, was justified in invoking Article 24(1) of Regulation No 4253/88 in order to initiate the examination procedure referred to in its letters to Vela, Sonda and Tecnagrind on 3 April 1998.

105 Under Article 24(2) of Regulation No 4253/88, the Commission may, following the examination referred to in Article 24(1), reduce or suspend assistance in respect of the operation or measure concerned if the examination reveals an irregularity or a significant change affecting the nature or conditions of the operation or measure for which the Commission's approval has not been sought. As the case-law has made clear (judgment of the Court of Justice of 24 January 2002 in Case C-500/99 P *Conserve Italia* v *Commission* [2002] ECR I-867, paragraphs 85 to 91), that provision also authorises the Commission to cancel the assistance if the examination provided for under Article 24(1) of Regulation No 4253/88 reveals an irregularity.

106 Article 24(3) of Regulation No 4253/88 provides that any sum received unduly and to be recovered is to be repaid to the Commission, and that interest may be charged on account of late payment.

107 In the light of what has been said in the two previous paragraphs, it must be held that, in the cases in point, the Commission, since it considered that the examination procedure had confirmed the existence of the irregularities suspected following the checks carried out in July and November 1997, was justified in basing the contested decisions, adopted at the end of that examination, on Article 24 of Regulation No 4253/88.

108 The applicants' argument that points 5 and 10 of Annex II to the decisions granting the aid had precluded application of Regulation No 4253/88 to the cases in point, cannot be accepted.

109 Point 5 of Annex II to the decisions granting the aid provides: 'For the purpose of verifying financial information relating to the various items of expenditure, the Commission may ask to examine any original documentary evidence or a certified copy. The Commission may carry out such an examination directly on the spot or by asking for the documents to be sent to it...'. Such a provision does no more than make explicit the Commission's power, under Article 23(2) of Regulation No 4253/88, to carry out on-the-spot checks in order to verify, at any moment, whether the financial and accounting management of the project concerned is in order, including after the project has actually been implemented and even if it has been the subject of previous on-the-spot checks.

110 Point 10 of Annex II to the decisions granting the aid states: 'If any of the aforementioned [financial] conditions is not observed or if actions for which provision is not made in Annex I are undertaken, the Community may suspend, reduce or cancel its own contribution and require reimbursement of the sums paid. If such reimbursement is considered necessary, the Community may require payment of interest. In those circumstances, the beneficiary will be given the opportunity to submit its observations within a time limit set by the Commission before it suspends, reduces or cancels the assistance or requests reimbursement.' As the applicants themselves state in their application, that provision repeats the wording of Article 24(2) and (3) of Regulation No 4253/88.

111 Accordingly, the provisions contained in points 5 and 10 of Annex II to the decisions granting the aid must be regarded not as constituting an independent legal basis such as to oust application of the general provisions of Articles 23 and 24 of Regulation No 4253/88, but as offering the Commission an additional basis on which to adopt the measures and decisions which it took in the cases in point.

The Commission was therefore right to invoke, in its letters of 3 April 1998, both Article 24 of Regulation No 4253/88 and point 10 of Annex II to the decisions granting the aid as forming the basis of its decision to initiate the examination procedures in respect of the Luffa, Girasole, Vetiver and Ricino Projects.

112 The applicants' contention that the checks carried out in July and November 1997 should have been based on Regulations Nos 2988/95 and 2185/96 likewise cannot be upheld.

113 Apart from the fact that that contention demonstrates the inconsistency in the reasoning of the applicants, who maintain, on the one hand, that the Commission could not rely on points 5 and 10 of Annex II to the decisions granting the aid and, on the other hand, that it should have invoked the provisions of the regulations referred to in the previous paragraph, it should be noted that, according to the 13th recital in the preamble to Regulation No 2988/95, the provisions laid down by that regulation apply 'to supplement existing provisions'. Under Article 9(2) of the regulation, the Commission 'may carry out checks and inspections on the spot under the conditions laid down in the sectoral rules'; Article 10 of the regulation states that 'additional general provisions relating to checks and inspections on the spot shall be adopted later'.

114 Those additional general provisions were laid down by Regulation No 2185/96. According to the sixth recital in that regulation, they 'do not affect the application of Community sectoral rules as referred to in Article 9(2) of the said Regulation [No 2988/95]'. Article 1 of the same regulation provides that '[t]his Regulation lays down the additional general provisions within the meaning of Article 10 of Regulation... No 2988/95' and that, '[w]ithout prejudice to the provisions of the Community sectoral rules, [it] shall apply to all areas of the Communities' activity'.

115 It is clear from what has been said in the two previous paragraphs that the provisions of Regulations Nos 2988/95 and 2185/96 establishing the Commission's powers to carry out on-the-spot checks and inspections are designed to apply on a supplementary basis, without prejudice to the Community sectoral rules. They cannot therefore set aside the legal bases which those rules afford to the Commission for carrying out on-the-spot checks in order to protect the Community's financial interests.

116 Since, in the cases in point, Article 23 of Regulation No 4253/88 — the regulation whose categorisation as Community sectoral legislation in the sense contemplated in the aforementioned provisions of Regulations Nos 2988/95 and 2185/96 is not called into question by the applicants — affords the Commission a suitable legal basis for the on-the-spot checks carried out in July and November 1997, it did not need to invoke those latter provisions for that purpose.

117 At the end of the above analysis (paragraphs 92 to 116), it is clear that Articles 23 and 24 of Regulation No 4253/88 provided a suitable and adequate legal basis for the on-the-spot checks conducted by the Commission in July and November 1997 in respect of the projects which are the subject of the contested decisions, for the initiation of an examination procedure relating to those various projects and also for the adoption of the contested decisions. The applicants' arguments set out in paragraphs 90 and 91 above must therefore be rejected.

118 Second, the applicants maintain that the Commission should have informed them properly of the legal basis, objective and context of the checks carried out in July and November 1997, and also of the legal basis on which it intended to found the contested decisions, so as to allow them to verify the legality of the measures the Commission intended to take and to organise their defence effectively. They maintain that, as they did not know that the checks were going to relate to the method of part-financing the projects, they were unable to secure the cooperation of accounting and administrative experts and legal advisers who would have helped them to provide the requisite explanations.

119 However, so far as concerns, first of all, the advising of Vela, Sonda and Tecnagrind of the legal basis, objective and context of the checks carried out in July and November 1997, the Court observes, with regard to Cases T-141/99 and T-142/99, that the Commission, in its letters to Vela and Sonda dated 10 June 1997 notifying them of its intention to carry out an on-the-spot check of the Luffa and Girasole Projects (see paragraph 60 above), stated that the basis for the planned check was Article 23 of Regulation No 4253/88. It asked Vela and Sonda to arrange for its officials to have access, during the check, to all the documentation, especially that relating to the accounts, and supporting documents connected with their project and to meet the persons able to explain them.

120 In its letters to those companies dated 23 September 1997 (see paragraph 63 above), the Commission informed them that, starting on 10 November 1997, its staff would carry out an on-the-spot check of the Luffa and Girasole Projects pursuant to Article 23 of Regulation No 4253/88. It stated that, during that check, its officials wished to talk to their legal representatives and to the persons responsible for the technical and administrative aspects of the project. It asked them to make available to its officials, at the time of the inspection, the originals of a series of documents mentioned in an appendix, relating to the company responsible for the project and to the project itself, and also any other document relating to the above documents which proved necessary to the check. It also informed them that it would be represented by, amongst others, staff from the Financial Control DG and UCFP, and that representatives of the Ragioneria Generale dello Stato were required to participate in the check. Finally, it asked them to forward to it immediately a copy of their balance sheets — for the years 1992 to 1996, in the case of Vela, and 1993 to 1996, in the case of Sonda —, a copy of the detailed statement of expenditure itemised in accordance with the financial plan contained in the decisions granting the aid for the Luffa and Girasole Projects respectively, and a copy of the statement of expenditure relating to the contracts concluded by Vela with Tecnagrind, Sonda and Faretra, in respect of the Luffa Project, and to the contracts concluded by Sonda with Tecnagrind, Vela and Faretra, in respect of the Girasole Project.

121 As regards Cases T-150/99 and T-151/99, the Court points out that the Commission, in its letter to Tecnagrind of 10 June 1997 announcing its intention

to carry out an on-the-spot check of the Vetiver and Ricino Projects (see paragraph 60 above), informed the company that the check, which was planned for 22 and 23 July 1997, would be conducted pursuant to Article 23 of Regulation No 4253/88. It stated that, at the time of the check, it wished to meet the company's legal representative and also the persons responsible for the technical, administrative and financial implementation of the project. It requested that, at the time of the inspection, its officials should be provided with the originals of a series of documents mentioned in an appendix, relating to the company responsible for the project and to the project concerned, and also any other document relating to the above documents which proved necessary to the check. It also informed them that it would be represented by, amongst others, staff from the Financial Control DG and UCFP, and that representatives of the Intervención General de la Administración del Estado were required to participate in the check.

122 It should be added, as far as concerns Case T-150/99, that Tecnagrind has produced to the Court the copy of the letter sent to it by the Commission on 12 June 1997, which shows that the Commission, in reply to Tecnagrind's request for payment of the balance of the EAGGF grant for the Vetiver Project, stated, as its reason for deciding to suspend the payment, that it was carrying out a general technical and accounting inspection of the projects financed under Article 8 of Regulation No 4256/88 (see paragraph 47 above).

123 It is clear from what has been said in the four previous paragraphs that Vela, Sonda and Tecnagrind received sufficiently clear and precise notification of the fact that the on-the-spot checks planned by the Commission were based on Article 23 of Regulation No 4253/88 and would consist in monitoring the financial and accounting management of the projects overall, including compliance with the obligation to provide part-financing laid down in the decision granting the aid. That information also enabled the companies to realise that the Commission's officials intended to carry out cross-checks on the various projects of which the companies were the instigators.

124 The fact that it was only after the July and November 1997 checks that the Commission, in its letters of 3 April 1998, expressed criticism — in the light of

the findings made during those checks — of the method of part-financing adopted by the beneficiary companies and invited them to submit their comments on the matter cannot be regarded as indicating a lack of clarity in the Commission's letters of 10 June and 23 September 1997 with regard to the objective of the checks announced therein.

125 Next, as far as concerns the advising of Vela, Sonda and Tecnagrind of the legal basis on which the Commission intended to adopt the contested decisions, the Court notes, with respect to Cases T-141/99 and T-142/99, that, in its letters to Vela and Sonda dated 10 June 1997 (see paragraph 60 above), the Commission drew their attention to the measures which might be taken under Article 24 of Regulation No 4253/88 following the examination procedure.

126 It is also clear from the letter which the Commission sent to Vela, Sonda and Tecnagrind on 3 April 1998 (see paragraph 65 above) that it told them that it was at the time carrying out an examination within the meaning of Article 24 of Regulation No 4253/88 and that it had decided, in the light of matters which might constitute irregularities, to initiate the procedure laid down by that provision and by point 10 of Annex II to the aid decision concerned. After stating its objections, it pointed out that they might constitute an irregularity or significant change within the meaning of the aforementioned provision of Regulation No 4253/88. It also drew the attention of the beneficiary companies to the measures which it might find it necessary to take pursuant to paragraphs 2 and 3 of that provision if, at the end of the examination, the irregularities were confirmed.

127 The information reproduced in the two previous paragraphs was sufficiently clear and specific to enable Vela, Sonda and Tecnagrind to ascertain the legal basis on which the Commission was initiating the examination procedure and the decisions it was likely to take at the end of that procedure. It should also be noted that, in their letter of 19 June 1998 containing their comments on the claims made by the Commission in its letters of 3 April 1998 (see paragraph 68 above),

the applicants were already maintaining that the Commission was wrong to rely on Articles 23 and 24 of Regulation No 4253/88, which goes to show that they were clearly aware of the provisions on which the Commission based its action.

128 From the foregoing analysis (paragraphs 119 to 127), it is clear that the applicants' arguments set out in paragraph 118 above must be rejected.

129 Third, the applicants argue that the difference between the declared basis and aim of the July and November checks, on the one hand, and the actual basis and aim of those checks, on the other, reveals a misuse of powers justifying annulment of the contested decisions.

130 In that regard, the Court points out that misuse of powers has a specific definition in Community law and that it refers to the adoption, by a Community institution, of a measure taken with the exclusive purpose, or at any rate the main purpose, of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (see, in particular, Case C-248/89 *Cargill* v *Commission* [1991] ECR I-2987, paragraph 26; Case C-285/94 *Italy* v *Commission* [1997] ECR I-3519, paragraph 52; Case T-143/89 *Ferriere Nord* v *Commission* [1995] ECR II-917, paragraph 68, and Joined Cases T-551/93 and T-231/94 to T-234/94 *Industrias Pesqueras Campos and Others* v *Commission* [1996] ECR II-247, paragraph 168).

131 In the present case, it is clear that the on-the-spot checks made by the Commission in July and November 1997 were based — as the Commission told Vela, Sonda and Tecnagrind in its letters informing those companies of its intention to carry out the checks — on Article 23 of Regulation No 4253/88 and sought to verify that the financial and accounting management of the project was being properly conducted in accordance with the provisions of that article.

132 The applicants' argument alleging misuse of powers must therefore be rejected.

133 In the light of the above considerations, the first part of the first plea must be rejected.

The second part of the plea

134 The applicants claim that the Commission misapplied the provisions of Articles 23 and 24 of Regulation No 4253/88 in the present cases.

135 First, Vela maintains, in Cases T-141/99 and T-142/99, that, contrary to the requirements laid down by Article 23 of Regulation No 4253/88, the Commission did not carry out sample checks during the November 1997 check. Furthermore, that check was a repeat of the checks carried out in July 1993 and July 1996.

136 However, the Court points out, first, that the first subparagraph of Article 23(2) of Regulation No 4253/88 provides that Commission officials or servants may carry out on-the-spot checks, 'including sample checks', in respect of operations financed by the Structural Funds. That provision refers to the technique of sample checking by way of example and therefore does not preclude the Commission's officials or servants from carrying out more thorough on-the-spot checks than sample checks, depending on the circumstances.

137 Second, it should be pointed out that, under the fourth subparagraph of Article 23(2) of Regulation No 4253/88, the Commission is to ensure that any checks that it carries out are performed in a coordinated manner so as to avoid repeating checks 'in respect of the same subject matter during the same period'.

138 Without its being necessary to consider whether a possible repetition of the Commission's checks in respect of the same subject-matter during the same period is capable, as such, of affecting the legality of those checks and of the decision taken by the Commission at the end of them, it should be pointed out that, in the present case, there is nothing before the Court to show that the Luffa and Girasole Projects were subject, in November 1997, to checks by the Commission other than the on-the-spot check carried out by officials of the Agriculture DG, the Financial Control DG and UCFP.

139 As regards the on-the-spot checks made by the Commission in July 1993 and July 1996, it must be observed, first, that those checks related to a different period from the November 1997 check.

140 Next, as Vela itself points out in its application in Case T-141/99, they sought to verify compliance with the conditions laid down in Annex II to the decision granting the aid for the Luffa Project, fulfilment of which was a prerequisite for payment of the second instalment of the assistance for that project, in the case of the July 1993 check, and payment of the balance of the assistance, in the case of the July 1996 check. By contrast, the aim of the November 1997 check was to verify the regularity of the accounting and financial management of the Luffa and Girasole Projects in the light of new matters — which might reveal irregularities in that management — revealed during a check on an Irish project made by the Court of Auditors in January 1997 and during the check carried out by the Commission at Tecnagrind in July 1997 in respect of the Vetiver and Ricino Projects.

141 Finally, the checks carried out in July 1993 and July 1996 related exclusively to the Luffa Project, so that Vela's argument that the November 1997 check is a repeat check has no factual basis in so far as concerns Case T-142/99.

142 Vela's argument set out in paragraph 135 above must therefore be rejected.

143 Second, the applicants maintain that the Commission did not inform them, at the time, whether a copy of the letters which it had sent them of 3 April 1998 had been sent to the national authorities concerned and whether those authorities had been given a time-limit for submitting their observations on the allegations made in those letters. They learned only through the contested decisions that the Commission had asked the national authorities to submit such observations.

144 Stressing the fundamental importance, under Article 23 of Regulation No 4253/88 and the case-law, of the duty to consult the Member State at the administrative procedure stage, the applicants claim that, by involving the national authorities only at the stage of the submission of observations on its claims of irregularity and by not informing the applicants, during that procedure, that it had invited the authorities to submit its observations, the Commission prevented a proper exchange of arguments between the applicants and those authorities.

145 However, the Court points out, first, that the letters sent by the Commission on 10 June 1997 to Tecnagrind (see paragraph 60 above) and on 23 September 1997 to Vela and Sonda (see paragraph 63 above) respectively, the UCFP report of 30 September 1997 and the Financial DG report of 18 December 1997 corroborate the fact that representatives of the Spanish authorities — officials

from the Intervención General de la Administración del Estado — and the Italian authorities — officials from the Ragioneria Generale dello Stato — took part in the July 1997 check and the November 1997 check respectively.

146 Those facts show that, in accordance with the second subparagraph of Article 23(2) of Regulation No 4253/88, the Commission, before carrying out the on-the-spot checks, informed the Member States concerned, which were consequently able to be represented at those checks by officials from their administrative authorities, and are such that the applicants' claim that the Member States had been involved in the procedure leading to the adoption of the contested decisions only at the stage of the submission of observations on the claims of irregularities made by the Commission following the checks must be rejected.

147 Next, the Court points out that Article 24(1) of Regulation No 4253/88 requires the Commission to request the Member State concerned to submit its comments within a specified period of time on the case which it submits to a suitable examination if it considers that the implementation of the operation or measure in question does not justify the assistance allocated. On the other hand, Article 24 of the regulation does not require the Commission to inform the beneficiary of the assistance that it has complied with that obligation. In those circumstances, the applicants' argument alleging infringement of Article 24 of Regulation No 4253/88 owing to the Commission's failure to inform them in its letters of 3 April 1998 that it had invited the national authorities concerned to submit, within a specified period of time, their comments on the claims made in those letters has no legal basis and must therefore be rejected.

148 For the sake of completeness, it should be pointed out that the Commission had told Vela, Sonda and Tecnagrind, in its letters of 3 April 1998, that it was carrying out an examination of the assistance pursuant to Article 24 of Regulation No 4253/88 (see paragraph 65 above). In their letters of 19 June 1998 (see paragraph 68 above), the applicants reproduced in full the provisions of

Article 24(1) of the regulation. They were therefore aware of the fact that the Commission was required to request the Member States concerned to submit their comments within a specific period of time. In those circumstances, it was open to them to contact the competent authorities in their Member States in order to confirm that that obligation had been fulfilled and to initiate, if they considered it necessary, an exchange of arguments with those authorities before the end of the period allowed by the Commission for submitting comments on the claims contained in its letters of 3 April 1998.

149 In their reply, the applicants deny that the documents enclosed by the Commission with its defence in order to show that the national authorities concerned were requested, on 3 April 1998, to submit their comments on the contents of the letters sent on the same day to Vela, Sonda and Tecnagrind, have any evidential value.

150 In Cases T-141/99 and T-142/99, Vela points out, first, that the document on this point enclosed by the Commission with the defence it lodged in those two cases is neither dated nor signed.

151 However, the Court notes that, in an annex to its rejoinders lodged in the two cases concerned, the Commission produced a copy of a letter dated 3 April 1998, signed by Mr G. Legras, the Director-General of the Agriculture DG, addressed to the Permanent Representation of the Italian Republic at the European Union, inviting that representation to submit its comments on the claims of irregularities in respect of the Luffa and Girasole Projects. The objection raised by Vela must therefore be rejected.

152 In all four cases, the applicant points out, secondly, that the copies, enclosed with the Commission's pleadings, of its letters of 3 April 1998 to the Permanent Representations of the Italian Republic and the Kingdom of Spain are not accompanied by an acknowledgment of receipt confirming that they were

actually received by those representations. The applicants maintain that, consequently, the Commission has not proved that it has complied with its obligation under Article 24(1) of Regulation No 4253/88.

153 However, in connection with a measure of organisation of procedure, the Commission produced to the Court a copy of the fax sent to it on 18 February 2002 by the Permanent Representation of the Italian Republic confirming that the Commission's letter of 3 April 1998 requesting it to submit its comments on the claims of irregularities in respect of the Luffa and Girasole Projects arrived at the Representation on 9 April 1998 and was registered under number 1781. The Commission also produced a copy of the letter sent to it on 12 February 2002 by the Permanent Representation of the Kingdom of Spain affirming, and attaching the document proving the point, that the Commission's letter of 3 April 1998 requesting it to submit its comments of the claims of irregularities in respect of the Vetiver and Ricino Projects was received by the Representation on 7 April 1998 and registered under number A 14-13535.

154 The applicants' argument that there was no proof that the Commission's letters of 3 April 1998 were actually received by the Permanent Representations concerned must therefore be rejected.

155 Third, the applicants claim that the contested decisions do not specify whether and, if appropriate, to what extent, the Commission took into account the comments made by the national authorities concerned.

156 In that regard, the Court points out, first, that Article 24(1) of Regulation No 4253/88 requires the Commission — if an operation or measure appears to justify neither part nor any of the assistance allocated and causes it to carry out a

suitable examination of the case — to request the Member State concerned to submit its comments within a specified period of time.

157 That provision must be interpreted as requiring the Commission to give the Member State concerned the opportunity of submitting its comments within a given period of time and not to take any decision before the end of that period, in order not to negate the effectiveness of the obligation. On the other hand, once the time-limit has expired, the Commission is justified, if the examination which it has carried out has confirmed the existence of an irregularity, in adopting one or other of the measures provided for in Article 24 of that regulation even though the Member State has not taken the opportunity it has been offered to submit comments within a certain period of time. Any other interpretation would be tantamount to allowing a Member State to block indefinitely the adoption of a Commission decision by failing to respond to a letter from the Commission inviting it to submit its comments.

158 Next, although it is true that the duty to state reasons requires the Commission to reply, where appropriate, in the decision suspending, reducing or withdrawing the assistance, to any observations made by the Member State concerned during the administrative procedure, neither the provisions of Articles 23 and 24 of Regulation No 4253/88, which the applicants allege, in the part of the plea now under consideration, has been infringed, nor the duty to state reasons require the Commission to state that the national authorities concerned have not submitted comments during that procedure.

159 In the present case, the Commission stated in its defence, without being contradicted by the applicants, that neither the Italian nor the Spanish authorities had sent it their comments after acquainting themselves with its letters of 3 April 1998. That fact explains why the contested decisions contain no reference to the conduct of the national authorities concerned.

160 At the end of the above analysis, the second part of the first plea must be rejected. The plea must therefore be rejected in its entirety.

II — *The second plea, alleging defective statement of reasons and errors of assessment*

161 In all four cases, the second plea is divided into two parts. Under the first part, the applicants maintain that the statement of reasons for the contested decisions is defective. Under the second part, they dispute the irregularities found by the Commission in those decisions.

The first part of the plea

162 The applicants claim that the contested decisions are based only on serious doubts as to whether the obligation to provide part-financing was fulfilled or on matters which might constitute irregularities, but not on certainties. Furthermore, the Commission does not explain how it established the existence of the alleged financial exchanges, or why they are allegedly unjustified; nor does it specify the causal link between those exchanges and the alleged failure to provide part-financing. Nor is it possible to understand, from reading the contested decisions, the meaning of the term 'item of income without any economic basis' used in the decisions. In Cases T-141/99 and T-142/99, Vela criticises the Commission for stating that there is a disproportion between the expenditure declared to have been incurred in connection with the projects concerned and the services provided in relation to them, without identifying the items of expenditure corresponding to services allegedly not provided.

163 The applicants also maintain that the statement of reasons for the contested decisions is inconsistent in that one passage refers without distinction to the links between the companies which are the beneficiaries of the projects concerned, between certain partners in those companies and between those partners and companies with which they are associated, whereas another passage mentions the fact that the companies involved belong, in the most part, to the same small group of individuals.

164 In Case T-150/99, Tecnagrind adds that, although, in its letters of 3 April 1998, the Commission mentioned financial exchanges amounting to ITL 10 783 284 972, that is, 71% of the total cost of the projects concerned, in the contested decision in that case, on the other hand, it refers to a sum of ITL 10 000 000 000, which is 65% of that cost. In those circumstances, it is impossible to know what method the Commission adopted to calculate the amount of the assistance to be repaid and doubts may be expressed about the accuracy of that calculation.

165 In Case T-151/99, Tecnagrind maintains that the Commission contradicts itself in the contested decision in that case, by stating, on the one hand, that the systematic recourse to subcontracting between the companies which were the beneficiaries of the projects and associated companies had the effect of creating an income whose economic basis was not demonstrated and which unjustifiably constitutes its share of the part-financing and, on the other, that at the on-the-spot check Tecnagrind did not produce any document to show that it had provided 25% of the part-financing, in accordance with the decision granting the aid for the Ricino Project.

166 As regards, next, the irregularities specific to each project pointed out by the Commission in the various contested decisions, the applicants state that, in their letter of 19 June 1998, they explained to the Commission in detail that the invoices queried by the Commission corresponded to services provided in connection with the project concerned. However, in the contested decisions, the Commission does not respond to those explanations. It merely states that the

beneficiary companies did not put forward arguments to refute the specific complaints which it had formulated in its letters of 3 April 1998. In doing that, it had infringed its duty to state reasons.

167 In Case T-150/99, Tecnagrind further claims that, in spite of the request it made in its letter of 19 June 1998, the Commission did not supply — in the contested decision in that case — any information enabling it to identify the invoices which were the subject of the Commission's claim that invoices corresponding to services provided after the concluding stage of the Vetiver Project were charged to the project budget.

168 In that regard, the Court points out that it is settled case-law that the statement of reasons required by Article 253 EC must be appropriate to the act at issue (Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219, paragraph 71). Decisions such as the contested decisions, which have serious consequences for the applicants (see, by analogy, Case T-450/93 *Lisrestal and Others* v *Commission* [1994] ECR II-1177, paragraph 52) must show clearly and unequivocally the reasoning of the Community authority which adopted the measure so as to inform the persons concerned of the justification for the measure adopted so that they may defend their rights and to enable the Court to exercise its powers of review (*Van der Kooy and Others* v *Commission*, cited above, the same paragraph, and *Industrias Pesqueras Campos and Others* v *Commission*, cited in paragraph 130 above, paragraph 140).

169 Moreover, the requirement to state reasons must be appraised on the basis of the particular features of the case in point, such as the content of the measure in question and the nature of the reasons given (Joined Cases 296/82 and 318/82 *Netherlands and Leeuwarder Papierwarenfabriek* v *Commission* [1985] ECR 809, paragraph 19).

170 It is not required that the reasoning should go into all the relevant facts and points of law, since the question whether the statement of reasons meets the

requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63).

171 In the light of that case-law, it is necessary to consider whether the Commission correctly stated the reasons for the contested decisions.

172 In that regard, it must be observed that, in each of the contested decisions, the Commission refers, first, to the decision granting the aid for the project concerned and to the various stages of the administrative procedure, in particular to the fact that the on-the-spot check carried out by its staff in July or November 1997, depending on the case in point, revealed matters which might constitute irregularities. Noting that the aid decision concerned imposed on the beneficiary undertaking the obligation to participate in part-financing, it points out that, at the time of that on-the-spot check, serious doubts arose as to compliance with that obligation. It states that an examination of those matters and of the whole file confirmed the existence of irregularities within the meaning of Article 24(2) of Regulation No 4253/88.

173 Next, it sets out those irregularities in detail. First, in the various contested decisions, it states that the joint examination of the accounts of the Luffa, Girasole, Pascolo Arboreo, Vetiver and Ricino Projects revealed a system of internal financial exchanges in the amount of approximately ITL 10 000 000 000 between the companies which were the beneficiaries of the various projects, namely, Vela, Sonda, Faretra and Tecnagrind, certain partners in those companies, namely, Mr Zarotti and Mr Troglia, and others companies associated with the beneficiary companies, namely AITEC Srl ('AITEC'), Noesi Sas ('Noesi') and l'Azienda agricola Barrank. It states that, after reconstituting those internal financial exchanges, its staff reached the conclusion that the companies

concerned were owned, in the most part, by a small group of individuals. It adds that the systematic use of subcontracting between the beneficiary companies and the companies associated with them had the effect of generating a financial income whose economic basis was not demonstrated and which unjustifiably constituted the project beneficiary's share of the part-financing.

174 It also points, in each contested decision, to the existence of a series of irregularities specific to the project concerned. In the contested decision in Case T-141/99, it refers to a series of expenses invoiced to Vega by Faretra, Sonda, AITEC, l'Azienda agricola Barrank, Mr Zarotti and Mr Baldassarre, Magenta Finance ('Magenta Finance'), Detentor ('Detentor') and Cedarcliff ('Cedarcliff'), which were not, or not adequately, substantiated, or which revealed a disproportion between the price paid and the service provided. In the contested decision in Case T-142/99, the Commission claims that invoices issued in connection with the Girasole Project by Faretra and Noesi for an overall amount of 90% of the total cost of the project were unsubstantiated. In the contested decision in Case T-150/99, it alleges a series of irregularities regarding, on the one hand, the inaccuracy of the statement made by Tecnagrind in its aid application, to the company's inability to prove, during the July 1997 check, that it had fulfilled its obligation to provide part-financing, to differences between the information supplied in the abovementioned application and/or in the final report on the Vetiver Project and, on the other, to the findings made by the Commission's officials during the on-the-spot check or on the basis of certain invoices, to the fact that sums entered in the project budget were allocated, without the Commission's prior consent, to expenditure for which provision had not initially been made, and also to the fact that certain items of expenditure charged to the project were ineligible. In the contested decision in Case T-151/99, the irregularities pointed out by the Commission relate to the unsubstantiated nature of expenditure declared in respect of the Ricino Project concerning the establishment of a small processing plant to meet the needs of farmers, to the charging, at the beginning of the project, of invoices relating to the dissemination stage of the project, to Tecnagrind's inability to prove, during the July 1997 check, that it had fulfilled its obligation to provide part-financing, and to the charging of ineligible expenditure to the project budget.

175 In the various contested decisions, the Commission concludes that the irregularities found provide grounds, under Article 24(2) and (3) of Regulation

No 4253/88, for withdrawing the assistance originally granted and for recovering the sums paid by the EAGGF in respect of that assistance.

176 From the analysis set out in paragraphs 172 to 175 above, it may be seen that the statement of reasons for the contested decisions shows clearly and unequivocally the reasoning followed by the Commission in order to adopt the decisions.

177 Moreover, the arguments advanced by the applicants in connection with their pleas show that they understood the Commission's reasoning. In particular, it appears that they well realised that, in mentioning, in the contested decisions, items of income whose economic basis was not demonstrated, the Commission is referring to financial income which has not been shown to correspond to services actually provided. In their pleadings, the applicants argue that a subcontracting operation, even if it involves two associated companies which both receive EAGGF funding for their respective projects, is bound to generate for the subcontractor company income which is financially justified and may be used to comply with its obligation to provide part-financing, from the very moment when that income represents consideration for services actually provided to the company responsible for the project concerned. To that effect, they develop a series of arguments designed to show that, in the present case, the financial exchanges found by the Commission between the companies responsible for the Luffa, Girasole, Pascolo Arboreo, Vetiver and Ricino Projects corresponded not to accounting devices but to the specific provision of services in connection with the implementation of the various projects concerned.

178 It should also be pointed out that, contrary to the assertions made by the applicants, the statement of reasons for the contested decisions clearly shows that the doubts which arose during the checks carried out in July and November 1997 in respect of the regularity of the management of the projects concerned, gave way, in the Commission's mind, — at the end of the examination carried out by the Commission under Article 24(2) of Regulation No 4253/88, in particular the

joint study of the accounts of the projects —, to the certainty that financial and accounting irregularities, connected with the existence of a financial exchange mechanism, had been committed by the beneficiary companies in order to evade the obligation to provide part-financing imposed on them by the award decisions.

179 In that regard, the fact that the Commission chose to mention, in the contested decisions, that the exchanges concerned were substantial in nature, rather than give the more precise amount stated in its letter of 3 April 1998, cannot lead to the conclusion that the statement of reasons is defective. That circumstance is in no way capable of impeding a proper understanding of the reasoning underlying those decisions and the exercise by the Court of First Instance of its review of legality. Furthermore, it is unequivocally clear from those decisions that, contrary to what Tecnagrind claims in Case T-150/99, the amount which the Commission orders to be refunded corresponds to the sums received from the EAGGF by Vela, Sonda and Tecnagrind and does not depend at all on the magnitude of the exchanges complained of.

180 Furthermore, contrary to what the applicants maintain, the mention, in one passage in the contested decisions, of links between the companies benefiting from the projects, certain partners in those companies and companies associated with those companies, in no way contradicts the emphasis laid, in another passage in those decisions, on the fact that the companies involved in the internal financial exchanges revealed by the Commission's staff belong to the same small group of individuals.

181 As regards Case T-151/99, the Court likewise finds no inconsistency in the fact that the Commission claims, on the one hand, that the existence of income generated by activities whose economic basis has not been demonstrated precludes the conclusion that Tecnagrind lawfully complied with its obligation to provide part-financing for the Ricino Project, and states, on the other hand, that at the time of the July 1997 check, Tecnagrind submitted no document to show that it had complied with that obligation.

182 As for Tecnagrind's argument alleging that, in the contested decision in Case T-150/99, the Commission does not identify the invoices relating to its claim that invoices in respect of services carried out after the final stage of the Vetiver Project were charged to the project budget, it should be pointed out that the parties agree that that claim is based, like the other claims contained in that decision, on an examination of the accounting documents submitted by Tecnagrind during the July 1997 check, so that, in the light of the dates appearing on the various documents, Tecnagrind was bound to be able to verify whether the claims were well founded.

183 It should be added that, for the purposes of exercising its review of legality, it is for the Court of First Instance, pursuant to Articles 64 and 65 of the Rules of Procedure, to ask the Commission, if the Court considers it necessary in order to examine an argument raised by the applicant, for details of the documents on which the claim contested by the applicant is based; however, such a request cannot be regarded as designed to make up for a defective statement of reasons for the contested decision (see, to that effect, Joined Cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 *Cimenteries CBR and Others* v *Commission* [2000] ECR II-491, paragraphs 4734 to 4737).

184 In the case concerned, the Court requested the Commission, in a written question addressed to it on 13 November 2001, to specify the accounting documents referred to in the claim mentioned in paragraph 182 above. On 4 December 2001, the Commission provided the Court with the information requested, which falls to be considered when the substance of the case is examined later (see paragraphs 355 to 357 below).

185 Finally, the applicants cannot criticise the Commission for failing to adopt a position, in the contested decisions, with regard to the various arguments put forward by them during the administrative procedure in response to the

Commission's claims relating to the irregularity of a certain number of the invoices declared in respect of the projects concerned. According to the case-law, the Commission is not required to provide, in the contested decision, a detailed reply to all the arguments raised by the parties during that procedure (*Cimenteries CBR and Others* v *Commission*, cited in paragraph 183 above, paragraph 846, and the case-law cited therein). Since, in the present case, the statement of reason gives the information necessary to enable the applicants to assess whether or not the contested decisions are well founded and the Community Court to exercise its review of legality, the Commission was entitled merely to state, in those decisions, that in their comments on the claims contained in its letters of 3 April 1998, the beneficiary companies did not put forward any argument to justify withdrawing those claims.

186 In the light of the foregoing considerations, the first part of the second plea must be rejected.

The second part of the plea

187 The applicants put forward arguments to dispute the existence of the irregularities pointed out by the Commission in relation to the part-financing of the projects which are the subject of the contested decisions. Furthermore, in each of the four cases, a series of arguments is formulated with the aim of denying the existence of the specific irregularities found by the Commission in respect of each of the projects.

The arguments put forward by the applicants for rejecting the Commission's claims of irregularities in relation to the part-financing of the projects

188 The arguments set out by the applicants to dispute the irregularities found by the Commission in relation to the part-financing of the projects are essentially four in number.

189 First, the applicants state that no provision prohibited the companies responsible for the projects from entrusting to third parties, possibly associated with them, the whole or part of the implementation of those projects. Likewise, no provision precluded those companies from part-financing the project for which they were responsible with sums — received in consideration for a service provided for a company possibly associated with them — corresponding to Community funds made available to the latter in connection with another project. For a project to be regarded as properly implemented, it is necessary and sufficient for the operations provided for in the decision granting the aid to be carried out under the supervision of the company identified in the decision. Such was the situation as regards the projects concerned, which had been carried out by the rule book and very professionally. The sums paid to subcontractors in connection with those projects corresponded to specific services.

190 In Cases T-141/99, T-142/99 and T-150/99, the applicants maintain, with the support of figures, that Vela, Sonda and Tecnagrind had own resources which enabled them to meet their obligation to provide part-financing. In Case T-150/99, Tecnagrind adds that, at the time of the July 1997 check, it submitted to the Commission's servants accounting documents showing that all the payments made in respect of the Vetiver Project had been in accordance with the itemised cost headings laid down in the decision granting the aid for that project, and that all the expenditure relating to that project had actually been incurred. It adds that it was able, on its own, to bear — under its obligation to provide part-financing — the difference between the total amount of that expenditure and the EAGGF assistance.

191 In their replies, the applicants contend that the Commission's claims relating to a disproportion between the expenditure declared in respect of the projects and the services carried out in respect of those projects should be held to be manifestly

unfounded, since the Commission did not adduce evidence of that disproportion. They draw attention to Mr Zarotti's excellent professional qualifications and competence and produce the curricula vitae of a number of persons and their written statements that they spent many hours working on the projects.

192 In that regard, the Court would point out that the applicants do not dispute that, under the decisions granting the aid for the projects concerned and particularly the financial plan contained in Annex I to those decisions, Vela, Sonda and Tecnagrind were required to provide part-financing for the project(s) which they were respectively responsible for implementing.

193 It is clear from Article 17 of Regulation No 4253/88, as amended, that the part-financing of the operation in question by the beneficiary of Community assistance is one of the essential conditions for the award of the aid. The obligation to comply with the financial conditions for the investment as indicated in the decision granting the aid constitutes one of the essential commitments of the beneficiary, in the same way as the obligation actually to carry out the project, and is therefore a condition for the award of Community aid (*Industrias Pesqueras Campos and Others* v *Commission*, cited in paragraph 130 above, paragraph 160). In those circumstances, if the Commission's claims in relation to the part-financing of the projects which are the subject of the contested decisions prove to be founded, it should be concluded that there are irregularities within the meaning of Article 24 of Regulation No 4253/88.

194 From the information contained in the contested decision, it is apparent that the irregularities which the Commission alleges exist in respect of the part-financing of the projects which are the subject of those decisions are connected with the fact that, owing to a mechanism of financial cross flows based on systematic subcontracting between the companies receiving EAGGF assistance, namely Vela, Sonda, Faretra and Tecnagrind, certain partners in those companies, namely Mr Zarotti and Mr Troglia, and associated companies belonging to the same

group of individuals, namely AITEC, Noesi and l'Azienda agricola Barrank, the aforementioned beneficiary companies, particularly Vela, Sonda and Tecnagrind, did not properly assume their obligation to provide part-financing. According to the contested decisions, the effect of the abovementioned mechanism was to generate financial income with no economic basis which unjustifiably constituted the beneficiary's share of the financing for the project concerned.

195 From a study of the pleadings submitted to the Court by the parties during the written procedure, it is clear that they all agree that the Commission's claims have a dual significance.

196 First, the Commission criticises the fact that the mechanism referred to in paragraph 194 above enabled the companies responsible for implementing the projects to part-finance them from income — received from other companies receiving EAGGF aid — which had no economic justification because it did not correspond to any actual service. Second, the Commission maintains that that mechanism enabled Vela, Sonda and Tecnagrind artificially to increase the expenditure declared in respect of the project concerned and thus to obtain more EAGGF assistance than that which corresponded to the actual cost of the project, and thereby covered the amount of expenditure which, in principle, they should have funded from own resources.

197 In their pleadings, the applicants, placing themselves first in the position of the contracting company and then in that of the subcontracting company, put forward a series of arguments designed to show, first, the regularity of the operations by which they entrusted to third parties work connected with the implementation of the project for which they were responsible, and, second, the legality of part-financing provided from funds received from other companies in receipt of Community aid in consideration for services carried out for them in connection with projects subsidised by the EAGGF.

198 For the purposes of review of legality, the significance of the Commission's claims in each of the two cases involves the same analysis. In each case a review is called for of the validity of the finding, made by the Commission at the end of the joint examination of the accounts of the projects concerned, that the subcontracting system set up, in connection with the implementation of those projects, between the companies receiving EAGGF aid and the natural and legal persons associated with them and identified in the contested decisions, led to the issue of invoices for which no economic consideration has been shown and which improperly secured for the beneficiary companies resources — corresponding to Community funds — which removed the burden of their obligation to provide part-financing.

199 That review should be carried out in the light of the arguments put forward by the applicants.

200 In that regard, it should be observed at once that the arguments put forward by the applicants in the replies to draw attention to the high level of professional competence of Mr Zarotti — the founder of Vela, Sonda and Tecnagrind —, a competence which the Commission does not call into question, do not provide grounds for precluding the existence of the irregularities pointed out by the Commission in relation to the part-financing of the projects.

201 That also applies to the evidence submitted by the applicants to show that the projects were implemented properly. Apart from the fact that that aspect is not criticised by the Commission, it should be pointed out that it is possible for one part of the expenditure declared in respect of one or other of the projects to relate to services actually provided and sufficient to justify the conclusion that the project concerned has been implemented in accordance with the decision granting the aid, and for the other part of that expenditure not to correspond to any actual provision of services.

202 That said, the validity of the Commission's claims should now be examined.

203 The parties agree that the use of subcontractors was not forbidden, as such, in order to complete the projects concerned successfully.

204 The Commission maintains, however, that, in the present case, the setting up of a subcontracting arrangement between Vela, Sonda, Faretra, Tecnagrind, AITEC, Noesi and l'Azienda agricola Barrank enabled the companies in receipt of EAGGF assistance to avoid the financial burden imposed on them under the decision granting the aid. In essence, the Commission's argument is based on the finding that the various abovementioned companies did not have the human and material resources to provide the services subcontracted to them and, furthermore, had not proved that they had to pay invoices issued by third parties on whom they in turn had called to carry out the services which they had undertaken to provide in connection with the project concerned. That system had led to invoices being issued with no economic justification, enabling the companies receiving EAGGF assistance to avoid the burden relating to the part-financing of the projects.

205 In that regard, the Court finds, first, that it is apparent from the record drawn up by the Italian officials who took part in the check carried out at Vela's seat in Milan between 10 and 12 November 1997 ('the record of the November 1997 check'), at the bottom of which appear the signatures of Mr Zarotti — the sole director and partner of Vela and Sonda and a partner in Faretra and Tecnagrind — and Mr Baldasarre — a director of Noesi and partner in Faretra —, that, in order to implement the Luffa Project, Vela had used Sonda and Faretra, which sent it invoices for total amounts, respectively, of ITL 395 659 500 and ITL 623 431 050 (pages 4 and 5 of the record). According to that same record (page 2), it appeared, during the check, that Sonda and Faretra did not have their own personnel.

206 The record of the November 1997 check also states that Vela used — in order to implement the Luffa Project — AITEC, a company set up in 1994 and dissolved in 1996, whose partners were, according to statements made by Mr Zarotti himself, his father and uncle (page 5 of the record). AITEC sent Vela invoices for a total amount of ITL 1 188 197 920 (same page). According to the record of the November 1997 check (same page), it appeared from the documents voluntarily presented by Mr Zarotti during the check that, as confirmed by the list of its depreciable assets produced to the Court, AITEC, during its existence, had no movable or immovable property except a motorised cultivator.

207 So far as concerns the Girasole Project, the record of the November 1997 check states (page 6) that Sonda subcontracted the services connected with that project to Faretra and Noesi, which sent it invoices for a total amount, respectively, of ITL 1 103 500 000 and ITL 829 743 450. However, as has already been pointed out (see paragraph 205 above), that record shows that Faretra had no employees. As regards Noesi, the record states (page 6) that it presented Sonda with invoices for an overall amount of ITL 829 743 450, in respect of services involving the supply of assets which do not appear on the list of its depreciable assets, which mentions only a computer and other office items. Furthermore, it is clear from the record of the November 1997 check that Noesi had no salaried staff (page 6). It is also mentioned in the record that the examination of Noesi's accounts showed that it had received two invoices from Vela in respect of services which it had undertaken to carry out for Sonda but which it had entrusted to Vela. However, the record shows (page 1) that Vela did not have own resources enabling it to carry out those services.

208 It is also apparent from the record of the November 1997 check (page 7) that, in the case of the Pascolo Arboreo Project, Faretra used, in particular, Tecnagrind, which presented it with invoices for a total amount of ITL 450 000 000. However, according to the statements made by Mr Zarotti at the time of the check, Tecnagrind does not appear to have had salaried staff (same page).

209 So far as concerns the Vetiver and Ricino Projects, the Court finds that Tecnagrind does not dispute the findings contained in the UCFP report of 30 September 1997, according to which it used Vela and Sonda in connection with the Vetiver Project, and Vela in connection with the Ricino Project. Tecnagrind itself states, in the reply lodged in Case T-150/99, that it entrusted part of the work on the Vetiver Project to Vela and paid it for that work. In the reply lodged in Case T-151/99, it stated that it had subcontracted some work on the Ricino Project to Vela and had paid it the amount of ECU 151 000. However, as has already been pointed out (see paragraphs 205 and 207 above), it is clear from the record of the November 1997 check that neither Vela nor Sonda had the necessary resources to do the work.

210 It is also clear from its letters of 19 June 1998, mentioned in paragraph 68 above, that Tecnagrind also used Noesi in connection with the Vetiver and Ricino Projects. However, as has already been pointed out (see paragraph 207 above), Noesi did not have own resources.

211 Faced with the Commission's claims contained in its letters of 3 April 1998, that, in the light of the findings made during the July and November 1997 checks, the systematic subcontracting between the companies receiving EAGGF aid and the companies associated with them might have given rise to financial income without economic basis, the applicants, in their letters of 19 June 1998, stressed, in essence, that the projects had been implemented properly, that there was no prohibition on using subcontractors to carry them out, and that the decisions granting the aid did not require the beneficiary companies and the subcontractor companies themselves to have the human and material resources necessary for providing the services concerned and therefore did not preclude those companies from using outside collaborators for that purpose. They also pointed out that, during the July and November 1997 checks, the Commission's officials had had access to the accounts relating to the projects concerned.

212 However, although they were the best placed, as responsible for the management of the projects, to supply the Commission with the details and supporting documents it requested (see, to that effect, Case T-81/95 *Interhotel* v *Commission* [1997] ECR II-1265, paragraph 47), they did not put forward anything to show that the associated companies on which they had called in the course of the implementation of the projects concerned had the necessary human and material resources or that those companies had had to meet costs, — justifying the invoices issued —, in respect of the remuneration of third parties on whom they had in turn called to carry out the agreed services.

213 During the written procedure before the Court, the applicants repeated the arguments they had put forward during the administrative procedure. They did not produce evidence capable of rebutting the Commission's claims — supported by the information contained in the November 1997 record — that the associated companies which they had used in connection with the projects concerned did not have their own material and human resources. Nor did they adduce any evidence to show that those companies incurred expenditure linked to the fact that they had in turn called on subcontractors to provide the services agreed with the company responsible for the project concerned.

214 As regards the documents produced by the applicants at the reply stage, relating to the curricula vitae of a number of persons and their written statements confirming that they had spent many hours working on the projects concerned, it must be observed that the documents submitted show, at most, that many hours of work were provided by the authors of those statements in connection with the projects to which the contested decisions apply. On the other hand, those documents do not contain any information concerning the amounts of and the possible addressees of the invoices which had been issued in respect of the declared services. They do not therefore prove that those services corresponded to the services — put in issue in the contested decisions — invoiced by one or other of the associated companies to which the companies responsible for the projects

concerned had subcontracted specific services relating to those projects. It follows that those documents do not make up for the lack of justification for the invoices issued, in their capacity as subcontracting companies, by the associated companies called upon by the companies receiving EAGGF aid in connection with the projects concerned.

215 It should also be pointed out that, in connection with a measure of organisation of procedure, the applicants stated that Vela, Sonda and Tecnagrind did not have salaried staff during the period in which the projects were implemented, but that they had used groups of self-employed workers. In support of their assertions, they produced a series of accounting documents or documents sent at the time to the national tax authorities showing payments made by Vela, Sonda and Tecnagrind to third persons.

216 However, none of those documents contains information showing that the payments to which they refer were designed to remunerate third parties for providing services which had been subcontracted to Vela, Sonda or Tecnagrind, as the case might be, in connection with one or other of the projects to which the contested decisions applied. The aforementioned documents therefore do not prove that Vela, Sonda and Tecnagrind, which had no resources of their own, had had costs — for subcontracting work to third parties — justifying the invoices they sent to the company responsible for the project on which part of the work had been subcontracted to them.

217 At the hearing, the applicants also produced two decisions given by the Commissione tributaria provinciale di Milano on 17 May and 21 June 2001 respectively, upholding the appeal lodged by Vela against charges of false invoicing brought by the Italian tax authorities in relation to the Luffa Project.

218 However, the production of those documents cannot invalidate the conclusion drawn from the above analysis (paragraphs 205 to 216) with regard to the Commission's finding relating to the issue, particularly in connection with the Luffa Project, of invoices with no economic justification by companies associated with the companies receiving EAGGF aid.

219 Second, the Court finds that, as stated in the record of the 1997 check, it was not possible to ascertain from the check with what financial resources Vela and Sonda had met their obligation to provide part-financing (pages 6 and 7).

220 It is also clear from the Financial Control DG report of 18 December 1997 that '[w]ith regard to private part-financing, Mr Zarotti stated that he did not have, either at the time the various projects were presented or during their implementation, the financial resources necessary to meet that legislative obligation' (page 5).

221 In the reply lodged in Case T-150/99, Tecnagrind disputes the accuracy of the information reproduced in the above paragraph and challenges the Commission to produce a document signed by Mr Zarotti repeating the statement attributed to him in the report in question.

222 However, it must be observed that the information referred to in paragraph 220 above is confirmed, as regards Vela and Sonda, by the particulars contained in the report of the November 1997 check, signed by Mr Zarotti, according to which it was not possible, during that check, to ascertain with what financial resources those two companies had complied with their obligation in respect of the part-financing of the Luffa and Girasole Projects.

223 Furthermore, it should be pointed out that, in order to assess the evidential value of a document, it is necessary to determine whether the information it contains is credible, to take into account the origin of the document and the circumstances in which it was drawn up, and to consider whether it seems, on the basis of its content, sensible and reliable (see *Cimenteries CBR and Others* v *Commission*, cited in paragraph 183 above, paragraph 1838). However, in the present case, the Financial Control DG report of 18 December 1997 was prepared immediately after the check to which Mr Zarotti's statement is linked. In those circumstances, and in the light of the information contained in the report of the 1997 check, according to which the check did not reveal with what financial resources Vela and Sonda, two other companies founded by Mr Zarotti, had met their obligation to provide part-financing, the evidential value of that report and the plausibility of the information concerned cannot reasonably be called into question.

224 It should also be pointed out that, although, in its letters sent on 3 April 1998 to Vela, Sonda and Tecnagrind, the Commission, in the light of the findings made during the July and November 1997 checks, had expressed serious doubts as to the regularity of the part-financing of the Luffa and Girasole Projects, drawn attention to the lack of evidence of Tecnagrind's ability to part-finance the Vetiver and Ricino Projects and invited the companies concerned to send it documents to show that they had complied properly with the obligations, particularly the financial obligations, laid down by the decisions granting the aid, the applicants, who were still best placed to provide the Commission with the supporting documents it requested and who were responsible for establishing that the financial conditions relating to the grant of the aid had been fulfilled (see, to that effect, *Interhotel* v *Commission*, cited in paragraph 212 above, paragraph 47), stated, in their letter of 19 June 1998, in respect of the Luffa, Girasole and Vetiver Projects, that, at the time of the aforementioned checks, the Commission officials had had access to the evidence of the payments made by Vela, Sonda and Tecnagrind in connection with their respective projects and that the difference between the total amount of the costs declared in respect of the project and the EAGGF aid could only be borne by the company receiving that aid, under its obligation to provide part-financing. So far as concerns the Ricino Project, Tecnagrind claimed that the decision granting the aid for that project required only that it should meet its obligation to provide part-financing before the completion of the project and that there was no reason to doubt its ability to fulfil that obligation.

225 On the other hand, the applicants did not establish, during the administrative procedure, that, during the period in which the projects were implemented, Vela, Sonda and Tecnagrind had had the intention and ability to allocate, in addition to the income deriving from the subcontracting — which was rightly disregarded by the Commission on the ground that it had no economic basis and therefore could not prove compliance with the obligation to provide part-financing —, other financial resources to that part-financing.

226 During the proceeding before the Court, Tecnagrind, in Case T-151/99, did not adduce evidence to show that it had, at the time, funds, other than the income referred to in the previous paragraph, enabling it to provide part-financing.

227 As regards the Luffa and Girasole Projects, Vela, in Cases T-141/99 and T-142/99, supplied a series of data relating to the own resources held by Sonda and itself at the time. As regards the Vetiver Project, Tecnagrind mentions, in Case T-150/99, that it had financial income of ECU 700 000 deriving from the sale of the vetiver cultivation technology to Faretra.

228 However, those data, even if they are accurate, prove at most that Vela, Sonda and Tecnagrind had own resources at that time. On the other hand, they do not prove that those resources were allocated to the part-financing of the projects concerned. In any event, even if such were the case, that circumstance does not make it possible to set aside the findings which emerge from the analysis carried out in paragraphs 205 to 216 above, according to which Vela, Sonda and Tecnagrind received income the economic basis of which has not been established from other companies receiving EAGGF aid and also charged to their project budget invoices from associated companies which had no economic justification and artificially inflated the project costs, so that the burden of their obligation relating to the part-financing for those projects was in any case removed.

229 From the analysis set out in paragraphs 192 to 228 above it is clear that the irregularities noted by the Commission in the contested decisions concerning the part-financing of the projects to which those decisions apply have proven to be well founded.

230 Secondly, the applicants claim that the Commission was aware of the methods of part-financing the projects from the time those projects were presented and implicitly approved them during the checks which preceded the payment of the various instalments of the aid. They add that the Commission also knew of the links between Vela, Sonda and Tecnagrind. In that regard, they refer to a letter dated 24 May 1995, in which Vela informed the Commission of the imminent completion of the various projects. In Case T-150/99, Tecnagrind states that, in its progress report of December 1994 on the Vetiver Project, it expressly told the Commission that it had used Vela's services.

231 In the reply lodged in Case T-141/99 Vela states that it does not understand how the Commission's staff, who, during the checks in July 1993 and July 1996, had considered the implementation of the Luffa Project to be correct in every respect and had authorised payment of the subsequent instalments of the aid, could have concluded, during the November 1997 check, that the project costs had been artificially inflated, that the demonstration activity was inadequate and that there were no positive effects for farmers.

232 In Case T-142/99, Vela states that the Commission acceded to Sonda's requests for payment of the various instalments of the aid, which shows that it was satisfied that the Community funds had been lawfully allocated and the Girasole Project properly implemented. A check carried out by the Court of Auditors in January 1997 revealed that that project had been properly executed and managed as regards administration and accounts. Vela states that, in those circumstances, it does not see why the Commission's officials concluded, during the November

1997 check, that there was a disproportion between the expenditure declared in respect of the Girasole Project and the services provided in connection with that project.

233 In Case T-150/99 Tecnagrind states that the file relating to the Vetiver Project shows that the project was implemented correctly in every respect. In Case T-151/99 it states that the intermediate progress report on the Ricino Project which it sent to the Commission in May 1997 revealed that, until the project was interrupted owing to the adoption of the contested decision, it had been carried out professionally.

234 In that regard, the Court points out, first, that, for the reasons stated in paragraph 201 above, the evidence submitted by the applicants to show that the project was implemented properly is irrelevant for the purposes of refuting the Commission's claims relating to financial and accounting irregularities. For those same reasons, Vela's argument, in respect of the Luffa Project, concerning the satisfaction expressed by the Commission, during its on-the-spot checks carried out in July 1993 and July 1996, as regards the practical implementation of the project must be held to be irrelevant.

235 Next, as regards the applicants' arguments designed to show that the Commission was aware of the links between Vela, Sonda and Tecnagrind and also of the methods of part-financing adopted in connection with those projects, and that it had never expressed criticism during the on-the-spot inspections or checks carried out prior to the checks of July and November 1997, those arguments cannot invalidate the conclusion, which emerges from the analysis carried out in paragraphs 192 to 228 above, that the irregularities noted in the contested decisions in relation to the part-financing of the projects have proven to be well founded.

236 It should be added that, if the effectiveness of Article 24 of Regulation No 4253/88 is not to be undermined, the fact that those irregularities were not pointed out by the Commission during the document inspections or on-the-spot checks carried out before the July and November 1997 checks, cannot be regarded as precluding the Commission from finding those irregularities during the latter checks and noting them in the contested decisions.

237 It is also important to point out that the inspections and on-the-spot checks carried out prior to July 1997 related on each occasion — and the applicants do not dispute this — to a project considered in isolation, with the result that the Commission was not in a position to realise, during those inspections and checks, that the associated companies called upon in connection with each of the projects, did not have the own resources necessary to provide the services invoiced and furthermore had not incurred any expenditure to justify the invoices issued. Only cross checks, such as those made in July and November 1997, which related simultaneously to the various projects and involved a joint examination of the accounts relating to them, were such as to enable the Commission to detect the fictitious subcontracting arrangement of which it complains in the contested decisions.

238 The analysis carried out in the three previous paragraphs also applies to the check, referred to by Vela in Case T-142/99, carried out by the Court of Auditors in January 1997 on the Girasole Project. Even if it is acknowledged, in accordance with Vela's argument, that, at the end of that check, the Court of Auditors did not find accounting and financial irregularities, that fact cannot, in any event, exclude the conclusion referred to in paragraph 235 above. Furthermore, like the inspections carried out by the Commission before the July and November 1997 checks, the check carried out by the Court of Auditors, as is clear both from the information provided by Tecnagrind in its reply in the abovementioned case and from the Financial Control DG report of 18 December 1997, concerned only Sonda and the Girasole Project. It was impossible, in that isolated check, to detect the existence of the fictitious subcontracting arrangement in which that company and that project were involved.

239 As for the letter on Vela's headed notepaper sent by Mr Zarotti to the Commission on 24 May 1995, it states that completion of the Luffa, Pascolo Arboreo, Girasola and Vetiver Projects is imminent and that the companies responsible for those projects wish to organise a joint conference on them at the offices of the Agriculture DG in Brussels. Therefore, although the letter reflects the links between Vela, Sonda, Faretra and Tecnagrind, it was not such as to make the Commission aware of the existence of the unlawful system set up, particularly between those various companies, in order to enable them to avoid their obligation to provide part-financing for the projects. The same finding applies to the information — contained in the progress report on the Ricino Project sent by Tecnagrind to the Commission in December 1994 — concerning Vela's involvement in the work relating to that project. In any event, factors of that kind provide no ground for excluding the conclusion referred to in paragraph 235 above.

240 Third, Vela claims, in Cases T-141/99 and T-142/99, that the Commission's argument that the part-financing for the Luffa and Girasole Projects is unlawful on the ground that the sums allocated to the part-financing come from other companies receiving Community funds has no factual basis. In Case T-141/99 it states that the first two payments made by the EAGGF in respect of the Luffa Project preceded payment of the aid for the projets carried out by Sonda, Faretra and Tecnagrind. In Case T-142/99 it states that the decision granting the aid for the Girasole Project was taken, and the aid was paid, before aid was paid in relation to the Faretra and Tecnagrind projects.

241 However, as regards Case T-141/99, the Court observes that, under the decision granting the aid for the Luffa Project, the project was to be completed by 31 March 1996, so that the obligation to provide part-financing imposed on Vela by that decision endured until that date. That factor must be considered in connection with the information contained in the reply lodged in Case T-150/99, according to which Vela received from Tecnagrind sums deemed to correspond to services provided in connection with the Vetiver Project, which was implemented, as provided in the decision granting the aid for that project, between January 1994 and June 1996. However, Vela did not have the resources for that purpose

and it has not been proved that it had to meet costs — in respect of the remuneration of outside collaborators to whom it had entrusted services relating to the Vetiver Project — justifying the invoices which it sent to Tecnagrind (see paragraphs 207 and 211 to 216 above). In those circumstances, the Commission was justified in finding that Vela, under the subcontracting arrangement criticised in the contested decisions, received from another company receiving EAGGF aid income with no proven economic basis which unjustifiably constituted its share of the financing for the Luffa Project.

242 Furthermore, the argument put forward by Vela does not provide grounds for invalidating the finding that, in connection with the Ricino Project, that company issued invoices without economic justification (see paragraphs 209 and 211 to 216 above), which artificially inflated the expenditure declared by Tecnagrind in respect of that project, and enabled the latter company to evade all or part of the burden relating to the part-financing of the project.

243 Nor can that argument provide grounds for discounting the information contained in the record of the November 1997 check, according to which Sonda, Faretra and AITEC, in connection with the Luffa Project, sent Vela invoices without proven economic justification (see paragraphs 205, 206 and 211 to 216 above), which artificially inflated the costs of the Luffa Project, enabling Vela to avoid its obligation to provide part-financing.

244 In conclusion, the argument put forward by Vela in Case T-141/99 does not refute the criticisms expressed by the Commission as regards the irregularities in the part-financing of the projects to which the contested decisions apply.

245 As regards Case T-142/99, the Court points out that, under the decision granting the aid for the Girasole Project, the period for implementing the project expired

on 31 December 1995, so that the obligation to provide part-financing imposed on Sonda by that decision, endured until that date. That factor must be considered in conjunction with the information contained in the record of the November 1997 check, according to which Sonda received from Vela, in 1995, sums deemed to correspond to services provided in connection with the Luffa Project, and with the information — which Vela does not dispute — contained in the UCFP report of 30 September 1997, according to which services relating to the Vetiver Project, which was implemented between January 1994 and June 1996, were subcontracted to Sonda. However, Sonda did not have the resources for that purpose and it has not been proven that it had to meet costs — in respect of the remuneration of outside collaborators to whom it had entrusted services relating to the Luffa and Vetiver Projects — justifying the invoices which it sent to Vela and Tecnagrind respectively (see paragraphs 205, 209 and 211 to 216 above). In those circumstances, the Commission was justified in finding that Sonda, under the subcontracting arrangement criticised in the contested decisions, received from other companies receiving EAGGF aid income with no established economic basis which unjustifiably constituted its share of the financing for the Girasole Project.

246 Furthermore, the matter put forward by Vela provides no grounds for discounting the information, contained in the record of the November 1997 check, that, in connection with the Girasole Project, Faretra and Noesi sent Sonda invoices without proven economic justification (see paragraphs 207 and 211 to 216 above), which artificially inflated the costs of the Girasole Project, enabling Sonda to avoid its obligation to provide part-financing.

247 In conclusion, the argument put forward by Vela in Case T-142/99 does not refute the criticisms expressed by the Commission as regards the irregularities in the part-financing of the projects to which the contested decisions apply.

248 Fourth, Tecnagrind argues, in Case T-151/99, that, under the decision granting the aid for the Ricino Project, it was only required to fulfil the obligation to

provide part-financing before the completion of the project. However, implementation of the project was interrupted by the contested decision. In those circumstances, the Commission could not criticise Tecnagrind for not having complied with its obligation to provide part-financing.

249 However, the Court observes that there is no provision in the decision granting the aid for the Ricino Project to support Tecnagrind's argument with regard to the duration of its obligation to provide part-financing. On the contrary, point 5 of Annex II to that decision provides as follows: 'For the purposes of verifying the financial information relating to the various items of expenditure, the Commission may ask to inspect any original documentary evidence or a certified copy; To that end, it may send a representative to carry out that inspection directly on-the-spot or ask for the documents in question to be sent to it.' Furthermore, point 7 of Annex II provides: 'The Commission may at any time require the beneficiary to submit information concerning the progress of the operations or the technical results obtained, and also financial information.' Those passages show that a beneficiary of Community aid who is required, as in the present case, to provide part-financing for a subsidised project, must fulfil that obligation as the project progresses, as is stipulated in the case of Community funding.

250 It should be added that, in its application for aid for the Ricino Project, lodged in March 1995, Tecnagrind had itself provided, in point 8.3 of the finance plan, for its share of the financing to be spread over the whole of the implementation period originally envisaged for the project, September 1995 to December 1997. Thus, it had stated that it would fund the project in the amount of ESP 5 661 000 in 1995, ESP 14 179 500 in 1996 and ESP 11 449 500 in 1997. In view of the information, contained in the decision granting the aid for the Ricino Project, that the implementation period for the project was finally fixed as September 1996 to December 1998, Tecnagrind, which, on 15 May 1997, had sent the Commission an intermediate progress report on the project, should have been in a position, at the time of the July 1997 check, to prove that it had fulfilled its obligation to provide part-financing, at least for the period between September 1996 and May 1997, which it does not dispute that it was unable to do.

251 In any event, Tecnagrind's argument set out in paragraph 248 above cannot invalidate the Commission's findings that, under the subcontracting arrangement referred to in the contested decisions, Tecnagrind received — directly or through Faretra, another company receiving EAGGF aid — sums corresponding to Community funds on the basis of invoices with no economic justification.

252 In the light of the foregoing considerations, the applicants' arguments designed to invalidate the Commission's findings of irregularities in respect of the part-financing for the projects to which the contested decisions apply must be rejected.

The applicants' arguments denying the existence of the specific irregularities found by the Commission in respect of each of the projects

— The Luffa Project

253 As regards the Luffa Project, the Commission claims that there is no justification for the expenditure invoiced to Vela by Faretra, Sonda, AITEC, l'Azienda agricola Barrank, Mr Baldassarre and Mr Zarotti, for a total amount of approximately ITL 3 000 000 000, that is, 60% of the total expenditure declared in respect of that project. It claims that the intervention of Sonda, AITEC and Mr Baldassarre was covered by contracts involving the supply of specific personnel, equipment and skills. However, the checks carried out on the accounts and stocklists of those four subcontractors revealed that they had neither specific personnel nor equipment and, consequently, no skills which could justify their participation in the Luffa Project. Furthermore, those various companies had not incurred any expenditure justifying the disputed invoices.

254 The Commission also criticises the fact that a series of invoices addressed to Vela in connection with the Luffa Project are not adequately substantiated or reveal a disproportion between the price paid and the service provided. It refers to the invoice for ITL 61 882 002 issued by Magenta Finance for an information manual for farmers, the invoice of Detentor for ECU 20 939 in respect of fees for a feasibility study, and of plans and designs for a prototype press for the low-temperature compression of 'luffa' husks, and the invoice for ECU 133 057 of Cedarcliff in respect of, amongst other items, a list of agricultural undertakings with which the beneficiary was to undertake dissemination operations.

255 Faced with those claims, Vela maintains that the Commission cannot use the November 1997 check as a basis for calling into question the regularity of invoices accepted unreservedly at the time of the checks carried out in July 1993 and July 1996.

256 So far as concerns the expenditure invoiced by Faretra, Sonda, AITEC and Mr Baldassarre, it claims that the fact, alleged by the Commission, that the four subcontractors had neither the specific equipment nor the specific skills necessary is irrelevant, since no contractual provision required the subcontractors to have their own personnel and equipment or prohibited them from calling on casual workers.

257 It claims, referring to a series of documents enclosed with its pleadings, that the invoices in question all correspond to services actually provided in connection with the Luffa Project. It states that it does not understand how the Commission's officials reached the conclusion — during the accounts check carried out in November 1997 — that the amount of ITL 573 000 000 invoiced to Faretra and corresponding to the total cost of a processing plant for the luffa harvest had been inflated, although the tender submitted by the Consiglio Nazionale delle Ricerche in 1993 shows a price of ITL 1 000 000 000 for such a plant. It adds that all the objectives stated in that decision were achieved, if not exceeded, and that all the

operations provided for were carried out according to the rule book. It also claims that the subcontractors on which it called to implement the Luffa Project are third parties to the relationship established between the Commission and Vela in respect of the funding for that project, so that the way in which the subcontractors balanced their expenditure and revenue could not be reviewed by the Commission in connection with that project.

258 As regards the sums paid to Mr Zarotti (ITL 60 000 000 per annum), it states that they correspond to four years' work by Mr Zarotti on the Luffa Project, and that the decision granting the aid for that project had earmarked an overall sum of ECU 170 000 to pay the person in charge of the project.

259 As regards the invoices issued by Magenta Finance, Detentor and Cedarcliff, it maintains, referring to the information contained in its letter of 19 June 1998, that those various invoices correspond to services actually carried out. The Magenta Finance invoice relates to the supply of an information manual the final version of which was preceded by numerous preliminary drafts and intermediate versions. Detentor's invoice relates to a technical study for reducing the volume of the luffa for conservation and transportation purposes. Cedarcliff's invoice relates to a market study which was designed to target, for the purpose of disseminating the Luffa Project, undertakings likely to be interested in luffa exploitation and which, amongst other things, necessitated the creation of a data bank.

260 The Court would observe, as a preliminary point, that the charging, to the budget of a project subsidised by the EAGGF, of wholly justified expenditure is part of the general duty of the beneficiary of the aid to comply with the financial conditions laid down for the award of the aid, an obligation which constitutes an essential undertaking on the part of that beneficiary (see paragraph 193 above). Consequently, if the Commission's claims set out in paragraphs 253 and 254 above proved to be well founded, it would have to be held that there were irregularities within the meaning of Article 24 of Regulation No 4253/88.

261 Furthermore, it must be remembered that, for the reasons stated in paragraph 201 above, the evidence presented by Vela to show that the Luffa Project had been carried out correctly, is irrelevant to those claims, — the validity of which should now be considered in the light of Vela's arguments —, which relate to the expenditure invoiced by Faretra, Sonda, AITEC, Mr Baldassarre, Mr Zarotti, Magenta Finance, Detentor and Cedarcliff.

262 As regards the invoices from Faretra, Sonda, AITEC and Mr Baldassarre, the Court notes that Vela does not deny that, in connection with the Luffa Project, contractual relations were established between Vela, on the one hand, and those various natural or legal persons, on the other, and that those contractual relations involved the supply of human and technical resources. Nor does it deny that it received invoices in respect of that expenditure from the aforementioned persons. It maintains, however, that that expenditure is justified, contrary to the Commission's claims.

263 However, it has already been pointed out, with regard to the expenditure invoiced by Faretra and Sonda, that those two companies did not have own resources enabling them to provide, themselves, the services subcontracted to them by Vela (see paragraph 205 above). Furthermore, both during the administrative procedure and the present proceedings, Vela, faced with the Commission's claims, made a general reference to the accounts of the Luffa Project and pointed out that, under the contractual relations referred to in the previous paragraph, subcontractors were not precluded from calling on outside collaborators to fulfil their undertakings in that regard. However, at no time did it adduce any evidence to show that Faretra and Sonda had to pay invoices issued by outside collaborators on whom it had called to provide the services agreed with Vela in connection with the Luffa Project.

264 In those circumstances, the Commission was justified in concluding that there was no justification for the invoices issued by Faretra and Sonda in connection with the Luffa Project. The comparison made by Vela between the price quoted in

a tender submitted by the Consiglio Nazionale delle Ricerche for installing a luffa processing plant and the amount invoiced by Faretra for such a plant in connection with the Luffa Project cannot, in that regard, rule out the finding that, in the present case, it has not been established that Faretra had the resources to carry out the services subcontracted to it by Vela or that it had met costs — relating to the use of outside collaborators — justifying the invoices addressed to Vela.

265 As regards the expenditure invoiced by AITEC, it has already been pointed out that, at the time of the November 1997 check, that company did not appear to have any equipment, infrastructure or immovable property, except a motorised cultivator (see paragraph 206 above). Furthermore, it is clear from the record of that check (page 5) that, at the time of the check, Mr Zarotti, Vela's sole director, whose father and uncle were AITEC's partners, could not prove that the payments made by the company during its existence and shown in the company accounts had any connection with the implementation of the Luffa Project.

266 In those circumstances, and as Vela has failed to produce any evidence whatever to invalidate the findings referred to in the previous paragraph, it was permissible for the Commission to conclude that the expenditure invoiced by AITEC in connection with the Luffa Project was not justified.

267 As regards the expenditure invoiced by Mr Baldassarre, it is clear from the copies of his invoices put before the Court by the Commission that those invoices relate to the activities of the project's 'technical manager'. It was provided in the presentation of the Luffa Project, contained in the application for aid made by Vela, that the technical manager was supposed to be responsible for the 'industrial stages', which included, in particular, the development of techniques for the preliminary processing of the fruit, for separating the pulp from the fibrous reticule and for extracting vegetable proteins, the chemical, physical and mechanical analysis of the products obtained, the preparation of samples for

industrial testing, analysis to identify simple storage, packaging and transport systems, the preparation of small quantities of products for carrying out market trials, the design and construction of prototype plants for on-the-spot processing of the product (pages 15 and 22 of the application).

268 However, Vela did not deny that Mr Baldassarre did not himself have the resources to carry out those various activities. Furthermore, the invoices issued by him contain no information to justify the conclusion that they related to expenditure connected with the use of outside collaborators for carrying out the activities entrusted to him by Vela in connection with the Luffa Project.

269 In those circumstances, the Commission was entitled to conclude that the expenditure invoiced by Mr Baldassarre in connection with the Luffa Project was unjustified.

270 As for Vela's argument that the subcontractors it used are third parties to the relationship between Vela and the Commission, which could not subject them to checks in connection with the Luffa Project, it should be pointed out that, if a project, such as the Luffa Project, receives Community funding, the Commission is entitled to examine the lawfulness of any invoice declared to relate to that project and, if appropriate, to declare that there is an irregularity, whether the invoice was issued by the beneficiary of the funding or by a natural or legal person whom it used in connection with the implementation of the subsidised project. To deprive the Commission of the opportunity to review the lawfulness of expenditure invoiced by subcontractors to a beneficiary of EAGGF aid would risk that beneficiary receiving undue payments on the basis of statements of expenditure whose economic basis could not be verified.

271 In the present case, the Commission was therefore justified in finding that the invoices issued by the subcontractors used by Vela in connection with the implementation of the Luffa Project were unlawful because they lacked justification.

272 As regards the expenses invoiced by Mr Zarotti, the Court points out that it is clear both from the record of the November 1997 check and from Vela's pleadings that he sent the company, in his capacity as manager of the Luffa Project, invoices for a total amount of approximately ITL 260 000 000 in connection with that project.

273 However, although it is true that a sum of ECU 170 000, that is, about ITL 340 000 000, was earmarked in Annex I to the decision granting the aid for the Luffa Project, to cover the personal expenses of the project manager, the Court considers that it was reasonable for the Commission to conclude — in the light of its findings, which have proved to be justified, that the work carried out by Mr Zarotti on the Luffa Project consisted, in particular, of setting up a subcontracting arrangement which involved a series of associated companies and allowed Vela improperly to receive funds on the basis of unjustified invoices representing approximately 60% of the total expenditure declared in respect of that project, — that the invoices addressed by Mr Zarotti to Vela were not justified.

274 As regards the invoice for ITL 61 882 002 paid by Vela to Magenta Finance, the Court points out that it is clear from the record of the November 1997 check that, during that check, Mr Zarotti was unable to present the Commission's officials with the version of the manual corresponding to the invoice issued by Magenta Finance in March 1995. In fact, according to that record, '[t]he copy of the manual produced by Zarotti was a version resulting from several amendments made to the one invoiced by Magenta, of which Vela did not retain a copy' (page 4).

275 Furthermore, Vela, faced with the Commission's claims concerning the invoice issued by Magenta Finance, stated in its letter of 19 June 1998 that several

intermediate versions had been needed to reach the final version of the manual and that those versions which did not fulfil the technical and aesthetic requirements had been removed so that there would not be a mass of documents which might lead to confusion. On the other hand, it is not clear from the abovementioned letter that it sent the Commission the version of the manual corresponding to the invoice in question.

276 In those circumstances, the Commission was justified in finding, in the contested decision in Case T-141/99, that it had not been given the version of the manual supplied by Magenta Finance and corresponding to the invoice for ITL 61 882 002 issued by that company.

277 It should also be pointed out that, during these proceedings, Vela submitted a series of documents, in French, English and Italian, relating to the manual entitled 'Luffa in the Mediterranean region — Manual of Cultivation and First Processing' stating that those documents were published by Magenta Finance. At the hearing, Vela stated that the content of those documents was identical to the final version — also produced to the Court — of the information manual of the Luffa Project published for farmers.

278 However, the evidence presented by Vela during the proceedings cannot refute the finding which emerges from the analysis carried out in paragraphs 274 to 276 above, that Vela was unable, during the November 1997 check and during the administrative procedure, to present the Commission with the manual corresponding to the invoice issued by Magenta Finance.

279 Furthermore, it must be observed that the final version of the manual, referred to in paragraph 277 above, contains no indication that Magenta Finance was involved in the many technical improvements (the insertion of photographs,

graphics and charts in colour, aesthetic amendments to the brochure) which distinguished that final version from the documents mentioned in that paragraph of this judgment. On the contrary, that version states: 'Published by Vela Srl' and 'Design & Pre-press: Vela Srl'. It makes no reference to Magenta Finance.

280 From the evidence in the file it is therefore possible at most to attribute to Magenta Finance the preparation of the documents referred to in paragraph 277 above. However, it must be observed, on the basis of an examination of those documents, that their preparation clearly does not justify an invoice of almost ITL 62 000 000.

281 As regards Detentor's invoice for ECU 20 939, the Court points out that, annexed to its application, Vela produced four documents alleged to relate to that invoice. Following the observations made by the Commission in its defence in respect of the fact that one of those documents — which was made up mostly of pages taken from Internet sites and whose content irrefutably shows that it is research carried out after the implementation of the Luffa Project and unconnected with it — was unconnected with the Luffa Project, Vela stated in its reply that the document had been produced to the Court by mistake.

282 It is also clear from the explanations provided by Vela in its reply that, of the four documents referred to in the previous paragraph, only one has a connection with Detentor's invoice referred to in the contested decision in Case T-141/99, namely that relating to a study entitled 'La pressatura dei frutti della luffa cylindrica come soluzione dei problemi connessi al loro trasporto e immagazzinamento — Valutazioni e caratteristiche delle presse per le luffe'. The other three documents refer to the Internet research mentioned in the previous paragraph and to two documents for which there is no evidence that they are linked to Detentor.

283 It must be observed that the study mentioned in the previous paragraph contains about 40 pages and a few diagrams relating to a luffa press, which clearly do not justify an invoice for ECU 20 939.

284 In its letter to the Commission dated 19 June 1998, Vela, faced with the Commission's claims that the expenses invoiced by Detentor were disproportionate, stated that the price had been fixed taking into account a series of factors, such as the uncertainty of finding a solution to the problem of reducing the volume of the luffa for conservation and transportation purposes, the fruitless attempts made in that respect by many companies which it had contacted previously, and the very short period of time which it had to resolve the problem.

285 It must be observed, however, that those arguments, particularly the one relating to the effect on the price invoiced by Detentor of the alleged research carried out unsuccessfully by other companies previously contacted by Vela, are not supported by any tangible evidence. In any event, they cannot refute the fact that an invoice for fees of ECU 20 939 is disproportionate in the light of the content of the study provided by Detentor in connection with the Luffa Project.

286 It follows that it was reasonable for the Commission to conclude that the service provided by Detentor in connection with the Luffa Project was disproportionate to the amount of the fees which that company invoiced to Vela.

287 As regards the invoice for ECU 133 057 paid by Vela to Cedarcliff, the Court points out that the parties agree that that company was owned by Mr De Bartholomeis, a lobbyist in Brussels, and was established in Dublin.

288 It also notes that Vela has produced, in connection with the invoice referred to in the previous paragraph, a series of documents which it claimed it had presented to the Commission during the administrative procedure.

289 Those documents are a seven-page note relating to the methodology used to select a series of farms for the purpose of disseminating the Luffa Project and several indexes containing, according to various criteria, the details of a certain number of farms established in various European countries (Germany, Spain, France and the United Kingdom).

290 However, it must be observed, on the basis of an examination of those documents, that they clearly do not justify the amount invoiced by Cedarcliff to Vela.

291 In its letter to the Commission dated 19 June 1998, Vela, faced with the Commission's claims that the invoices issued by Cedarcliff were disproportionate, stressed, in order to justify the invoiced price for the service provided, the scope of the activities (definition of selection criteria, contacts and on-the-spot visits, data research and analysis, creation of a computerised database) required in order to create a list of the farms which might be interested in the Luffa Project.

292 However, neither during the administrative procedure nor during these proceedings has Vela adduced evidence to refute the finding, contained in the UCFP report of 30 September 1997, that, according to the information obtained from the Companies Registration Office in Dublin, Cedarcliff had no personnel at the time.

293 In those circumstances, the various activities listed by Vela in its letter of 19 June 1998 in order to justify the amount of the Cedarcliff invoice cannot be regarded as having been carried out by that company. Furthermore, as Vela has not adduced any evidence to show that Cedarcliff had to pay invoices issued by third parties on whom it had called to carry out the aforementioned activities, the Commission was justified in concluding that there was no justification for the sum of ECU 133 057 invoiced by Cedarcliff to Vela in connection with the Luffa Project.

294 Finally, in respect of Vela's argument that the Commission did not call in question the regularity of the invoices at issue at the time of the checks carried out in July 1993 and July 1996, it should be pointed out that that fact cannot refute the conclusion, which emerges from the analysis carried out in paragraphs 260 to 293 above, concerning the irregularity of the invoices referred to in the contested decision in Case T-141/99. Nor, for the reasons stated in paragraph 236 above, can that fact be regarded as precluding the Commission from finding the irregularities in question during a subsequent check. It is important, in that regard, to add that the November 1997 check was properly carried out, contrary to what Vela claims, so that the Commission was justified in using it as the basis for its findings of irregularities.

295 Furthermore, the Court is concerned to point out that it is clear, both from the record of the November 1997 check and from the copies of the invoices from Magenta Finance, Detentor and Cedarcliff, produced to the Court by the Commission, that those invoices are subsequent to the July 1993 check, so that Vela's arguments, designed to show that the invoices at issue had been accepted without reservation by the Commission at the time of that check, have no factual basis in the case of the invoices from Magenta Finance, Detentor and Cedarcliff.

296 It is clear from the above analysis that Vela's argument designed to refute the findings of irregularities relating to the invoices referred to in the contested decision in Case T-141/99 must be rejected.

— The Girasole Project

297 As regards the Girasole Project, the Commission claims that there is no justification for the expenses invoiced to Sonda by Faretra and Noesi totalling approximately ITL 1 155 000 000 and ITL 830 000 000 respectively, representing altogether 90% of the total expenditure declared in respect of that project. It claims that the intervention of Faretra and Noesi was covered by contracts involving the supply of specific personnel, equipment and skills. However, the checks carried out on the accounts and stocklists of those two subcontractors had revealed that they had neither specific personnel nor equipment and, consequently, no skills which could justify their participation in the Girasole Project. Furthermore, those companies had not incurred any expenditure justifying the disputed invoices.

298 Faced with those claims, Vela maintains that the Commission cannot use the November 1997 check as a basis for calling into question the regularity of the expenses invoiced by Faretra and Noesi.

299 It also claims that the fact, alleged by the Commission, that Faretra and Noesi had neither the specific equipment nor the specific skills necessary is irrelevant, since no contractual provision required the subcontractors to have their own personnel and equipment or prohibited them from calling on occasional collaborators.

300 It claims, referring to a series of documents enclosed with its pleadings and to the explanations given in its letter to the Commission dated 19 June 1998, that the invoices in question all relate to services actually carried out in connection with the Girasole Project. The invoice issued by Faretra relates to a complex data

research job and to work to update specialised farm machinery, while the invoice issued by Noesi is consideration for technical assistance provided by Noesi to Sonda in connection with the project. The fact that Noesi, owing to the difficulties it encountered in managing its activities, asked Vela to carry out the services subcontracted by Sonda is irrelevant since the existence of those services and the fact that they were in proportion to the costs charged had not been called in question.

301 Vela adds that all the objectives stated in the decision granting the aid for the Girasole Project were attained, if not exceeded, and that all the operations provided for were carried out according to the rule book.

302 It also claims that the subcontractors on which Sonda called to implement the Girasole Project are third parties to the relationship established between the Commission and Sonda in respect of the funding for that project, so that the way in which the subcontractors balanced their expenditure and revenue could not be reviewed by the Commission in connection with that project.

303 The Court would observe, as a preliminary point, that, in the light of what is said in paragraph 260 above, if the Commission's claims set out in paragraph 297 above proved to be well founded, it would have to be held that there were irregularities within the meaning of Article 24 of Regulation No 4253/88.

304 Furthermore, it must be remembered that, for the reasons stated in paragraph 201 above, the arguments put forward by Vela to show that the Girasole Project had been carried out correctly, are irrelevant to those claims, the validity of which should now be considered in the light of Vela's arguments.

305 In that regard, the Court notes that Vela does not deny that, in connection with the Girasole Project, contractual relations were established between Sonda, on the one hand, and Faretra and Noesi, on the other, and that those contractual relations involved the supply of human and technical resources. Nor does Vela deny that Sonda received invoices in respect of that expenditure from those two companies. It maintains, however, that that expenditure is justified, contrary to the Commission's claims.

306 However, it has already been pointed out, with regard to the expenditure invoiced by Faretra, that that company did not have own resources enabling it to provide, itself, the services subcontracted to it by Sonda (see paragraph 207 above). Furthermore, both during the administrative procedure and the present proceedings, Vela, faced with the Commission's claims, made a general reference to the accounts of the Girasole Project and pointed out that, under the contractual relations referred to in the previous paragraph, the subcontractors were not precluded from calling on outside collaborators to fulfil their undertakings in respect of Sonda. However, at no time did it adduce any evidence to show that Faretra had to pay invoices issued by outside collaborators on whom it had called to provide the services agreed with Sonda in connection with the Girasole Project.

307 In those circumstances, the Commission could properly conclude that there was no justification for the invoices issued by Faretra in connection with the Girasole Project.

308 As regards the expenses invoiced by Noesi, the documents produced to the Court in that regard by the Commission show that the invoices in question, issued during the period between June 1994 and October 1995, relate to the supply of computer equipment and technical assistance (setting up a meteorological centre, computer services, laboratory analyses and tests, preparing technical brochures, disseminating the results of the project, preparing a technical and dissemination manual, particularly on CD-ROM, advisory services...).

309 However, it has already been pointed out that Noesi had neither its own personnel nor equipment of its own to assign to the services agreed with Sonda (see paragraph 207 above).

310 The Commission was therefore justified in finding, in the contested decision in Case T-142/99, that Noesi had no skills or material or human resources to justify its participation in the implementation of the Girasole Project.

311 It is appropriate, next, to review the validity of the Commission's finding that Noesi did not incur expenditure justifying the invoices which it sent to Sonda.

312 On that point, Vela states in its reply that it participated in the Girasole Project in order to provide the services which Noesi had undertaken to carry out for Sonda.

313 In that regard, the Court points out that the record of the November 1997 check states that 'an analysis of Noesi's accounts... shows that it received two invoices from Vela (invoices no 5 dated 13 February 1995 for ITL 291 550 000 and no 8 dated 27 February 1995 for ITL 351 050 000) relating to services which it had undertaken to carry out for Sonda... , and which it then arranged for Vela to carry out, as is apparent from the pleadings of 29 July 1994 and 10 November 1994' (page 6).

314 However, even if it is accepted, — in spite of the lack of any indications, in the invoices and pleadings referred to in the extract reproduced in the previous

paragraph, that the sums invoiced to Vela are related to the implementation of the Girasole Project, and in spite of the lack of any indications, in the invoices sent by Noesi to Sonda, enabling those invoices to be linked to the services provided by Vela for Noesi, — that Noesi asked Vela to work on the Girasole Project, it has already been found that Vela had no resources of its own. Furthermore, Vela has adduced no evidence to show that it had to meet costs justifying the invoices sent to Noesi, arising from the fact that it in turn had called on outside collaborators in order to fulfil its commitments to Noesi in connection with the implementation of the Girasole Project.

315 Accordingly, the Commission was entitled to consider that the expenditure invoiced by Noesi to Sonda in connection with the Girasole Project was not justified.

316 As for Vela's argument that the subcontractors used by Sonda are third parties to the relationship between Sonda and the Commission which could not inspect them in connection with the Girasole Project, the Court refers to its findings in paragraph 270 above.

317 Finally, as regards Vela's argument alleging that the Commission was precluded from using the November 1997 check as a basis for its findings of irregularities, it is important to point out that that check was properly carried out, contrary to what Vela claims, so that the Commission was justified in using it as the basis for its findings of irregularities. It should be added that the fact that the Commission did not call in question the regularity of the invoices at issue at the time when the various instalments of the aid for the Girasole Project were paid cannot refute the conclusion, which emerges from the analysis carried out in paragraphs 303 to 315 above, as to the validity of the Commission's findings concerning the irregularity of the invoices referred to in the contested decision in Case T-142/99. For the reasons stated in paragraph 236 above, that fact likewise cannot be regarded as precluding the Commission from finding the irregularities in question during the November 1997 check.

318 It is clear from the above analysis that Vela's arguments designed to refute the findings of irregularities made, in respect of the invoices sent by Faretra and Noesi to Sonda, in the contested decision in Case T-142/99 must be rejected.

— The Vetiver Project

319 As regards the Vetiver Project, the Commission complains of a series of irregularities arising from the inaccuracy of statements made by Tecnagrind when it applied for aid for that project, from its inability to prove — at the time of the on-the-spot check carried out in July 1997 — that it had complied with its obligation to provide part-financing, from discrepancies between the information provided in the abovementioned application and/or in the final report on the Vetiver Project, on the one hand, and the findings made by the Commission's officials during the on-the-spot check or the information contained in certain invoices, on the other hand, from the fact that sums entered in the project budget were allocated, without the Commission's prior consent, to expenditure for which provision had not initially been made, and from the fact that some of the expenditure charged to the project was ineligible.

320 First of all, the Court refers, so far as concerns the Commission's finding in respect of the part-financing of the Vetiver Project, to the analysis set out in paragraphs 192 to 228 above, which shows that that finding proves to be justified and constitutes an irregularity within the meaning of Article 24 of Regulation No 4253/88.

321 The Court would also point out that expenditure incurred in an operation financed by the Community is eligible only if expressly mentioned in the decision granting the financial aid. In those circumstances, the charging to the project budget, without the Commission's prior consent, of expenditure for which

provision has not initially been made and declaring, in connection with the project, expenditure unconnected with it, must be regarded as constituting serious breaches of the essential obligations on which the grant of the EAGGF aid is conditional. Such breaches, if proven in the present case, would lead to the conclusion that there were irregularities within the meaning of Article 24 of Regulation No 4253/88.

322 Furthermore, it is clear from the case-law that applicants for, and beneficiaries of, aid are required to satisfy themselves that they are submitting to the Commission reliable information which is not liable to mislead it, since otherwise the system of controls and evidence established to determine whether the conditions for granting the aid are fulfilled cannot function properly. In the absence of reliable information, projects which do not fulfil the conditions required could become the subject of aid. It follows that the obligation on applicants for, and beneficiaries of, aid to provide information and act in good faith is inherent in the EAGGF aid system and essential for its effective functioning (Case T-216/96 *Conserve Italia* v *Commission* [1999] ECR II-3139, paragraph 71). In those circumstances, the inaccuracies complained of by the Commission in the information provided by Tecnagrind in respect of the Vetiver Project in the aid application and in the report on the implementation of that project, if they were to be proved, would also have to be regarded as irregularities within the meaning of Article 24 of Regulation No 4253/88.

323 It is now necessary to review the validity of the Commission's claims in the light of the arguments put forward by Tecnagrind.

324 The specific irregularities pointed out by the Commission in the contested decision in Case T-150/99 relate, first, to the inaccuracy of statements contained in the aid application lodged by Tecnagrind in relation to the Vetiver Project.

325 The Commission notes, on the one hand, that, in that application, it was stated that Tecnagrind 'provided agricultural services'. However, the company was formed on 25 January 1993, a few months before the application was lodged. Moreover, the company has not operated.

326 Tecnagrind states, in that regard, that its formation had been delayed owing to technical and administrative problems. It contends that, once the company had been formed, it had available to it all the knowledge necessary to implement the Vetiver Project successfully, as is demonstrated by the fact that the operations planned in connection with the project were carried out perfectly.

327 In that regard, the Court observes that, in the application for aid for the Vetiver Project which it submitted to the Commission in September 1993, Tecnagrind stated that it 'provides agricultural services' (page 10).

328 However, Tecnagrind does not dispute the Commission's assertion that it was formed on 25 January 1993, that it to say, a few months before the application was made, as is clear, furthermore, from Tecnagrind's document incorporation which has been produced to the Court by the Commission. Nor does it deny that it did not operate between the date on which it was formed and the date on which the aforementioned aid application was submitted. On the contrary, it states in its application that, for technical reasons, it was still in the process of being formed when it submitted the aid application.

329 The fact that, after it was formed, Tecnagrind had available to it all the knowledge necessary to implement the Vetiver Project, even if it were true, does not alter the fact that the statements it made in the aid application were inaccurate.

330 The Commission also notes that in the aid application mention was made of research and testing operations carried out in collaboration with the Physical Geography Department of the University of Murcia and the La Alberca Centre of the Agricultural Research Department for the Region of Murcia. However, Mr Troglia, director of Tecnagrind and manager of the Vetiver Project, stated, at the time of the July 1997 check, that Tecnagrind had taken no part in those operations.

331 Tecnagrind states in response that it only became aware of the statement attributed by the Commission to Mr Troglia when it received the Commission's letter of 3 April 1998, so that it was unable to refute it in good time. It adds that, as far as it knew, Mr Troglia never made such a statement and that, in any event, it is incorrect and can be refuted. It had, in fact, collaborated consistently and effectively with the University of Murcia and with the Agricultural Research Department for the Region of Murcia, which gave the Vetiver Project an international flavour and a local base, in accordance with the requirements of the decision granting the aid for that project.

332 In that regard, the Court points out, first, that the statements attributed to Mr Troglia are related to the July 1997 check. By confronting Tecnagrind with those statements in its letter of 3 April 1998, the Commission gave the company the opportunity to react to them in good time before the adoption of the contested decision in Case T-150/99.

333 The Court also finds that the information reproduced by the Commission in the contested decision in Case T-150/99 regarding the research and testing operations carried out with the Physical Geography Department of the University of Murcia and the La Alberca Centre are in fact mentioned in the application for aid for the Vetiver Project. Such information must be read as designed to stress, in support of Tecnagrind's aid application, that company's participation in research and testing work carried out by the aforementioned bodies.

334 However, without its being necessary to rule on the point whether Tecnagrind's aim, in giving the information referred to in the previous paragraph, was to stress the experience it had acquired, before lodging the aid application, in agricultural research and testing by collaborating with the bodies mentioned in that information or to underline its intention to carry out such research and testing with those bodies in connection with the Vetiver Project, and, furthermore, without its being necessary to make any determination with respect to Tecnagrind's argument disputing the evidential value of the document from which the Commission derives the statement, which it attributes to Mr Troglia, that Tecnagrind took no part in the abovementioned research and testing, it is sufficient to point out that Tecnagrind was formed a few months before the Vetiver Project was presented and that it does not deny that it did not operate prior to presentation of the project (see paragraph 328 above). It is therefore inconceivable that Tecnagrind could have participated in work of that kind before the aid application was made. Moreover, it has already been pointed out that Tecnagrind did not have its own personnel during the period of implementation of the Vetiver Project (see paragraph 208 above), so that it cannot reasonably be maintained that it collaborated in scientific work during that period.

335 Furthermore, neither during the administrative procedure nor during the present proceedings, did Tecnagrind, when confronted with the Commission's claims, adduce any evidence to show that it was itself involved in research and testing work. It contends that it had been in constant collaboration with the bodies referred to in paragraph 330 above, at the end of which those bodies had certified the results of the Vetiver Project and which had made it possible to give the project an international influence and a local anchorage. However, those assertions, even assuming them to be valid, cannot mask the inaccuracy of the statements made by Tecnagrind, when applying for the aid, in respect of its own involvement in the research and testing work carried out by the aforementioned bodies.

336 Second, the Commission points out that, in the final report on the Vetiver Project, it is stated that the area used for growing vetiver in order to produce and distil its

roots is two hectares. However, the Commission's officials found, during the July 1997 check, that only half a hectare had been cultivated.

337 Referring to its letter to the Commission dated 19 June 1998, Tecnagrind claims there was a transcription error and maintains that the difference between the area initially intended for growing the vetiver and that which was used could not, in any event, have had a significant effect on the results of the project, which was intended, in particular, to demonstrate vetiver's essential role in protecting the environment.

338 In that regard, the Court would observe, first, that the Commission's complaint relates not, as Tecnagrind purports to understand in its pleadings, to the existence of a difference between the total area which it was originally planned to use for growing vetiver and the total area actually used for that purpose, but to the existence of a difference, as regards growing vetiver in order to produce and distil its roots — which constitute one of the components of vetiver cultivation provided for in the vetiver project —, between the information given in the final report on the project and the findings made by the Commission's officials during their on-the-spot check carried out in July 1997. It follows that the arguments put forward by Tecnagrind, both during the written procedure and at the hearing, with the aim of minimising the difference between the total area to be used for growing vetiver referred to in the aid application and in the decision granting the aid for the vetiver project, namely 10 hectares, and the total area cultivated in connection with the vetiver project, namely, according to the information contained in Tecnagrind's letter to the Commission dated 19 June 1998, 9.28 hectares, are irrelevant for the purpose of verifying the Commission's complaint.

339 That said, it must be observed that Tecnagrind does not deny the existence, as regards the cultivation of vetiver in order to produce and distil its roots, of a difference of 1.5 hectares between the area indicated in the final report on the Vetiver Project, namely two hectares, and the area actually used for that cultivation, namely, 0.5 hectares.

340 Referring to its letter of 19 June 1998, it claims, however, that there was a transcription error. In the report referred to in the previous paragraph, the cultivation area initially planned had been mentioned by mistake, instead of the area actually cultivated, which had been smaller than that owing to technical problems which had caused many vetiver plants to die. In reply to a written question from the Court, it specified the passages in the final report relating to those problems.

341 However, it must be observed that the information supplied by Tecnagrind can at most clarify the reasons for which only half a hectare of vetiver, and not two hectares as initially planned, was cultivated in order to produce and distil its roots. That information, on the other hand, does not refute the finding that Tecnagrind supplied the Commission, in the final report on the Vetiver Project, with incorrect information as regards the area of land under cultivation, and thus failed in its obligation to check the reliability of the information forwarded to the Commission (see paragraph 322 above).

342 Third, the Commission claims that it is apparent from the invoice issued by the owner of the land rented by Tecnagrind for the Vetiver Project that the area of that land was four hectares, and not 10 as stated in the aid application and in the final report on the project. Furthermore, the invoices presented to the Commission's officials during the July 1997 check show that the total costs amounted to ESP 712 000, whereas the budget heading reserved for costs of that kind was ESP 10 934 772. Tecnagrind used the excess to meet other costs, without having obtained the Commission's prior consent, contrary to the requirements of point 1 of Annex II to the decision granting the aid for the Vetiver Project.

343 Faced with those claims, Tecnagrind acknowledges that it had to pay rent for only four hectares of land. It adds, however, that it cultivated another plot of six

hectares which had been given to it free and that the savings thus made had been used for a tenancy of horticultural nurseries, which was necessary because many plants had been lost as a result of adverse weather conditions and of the activities linked to that tenancy.

344 That measure had led, according to Tecnagrind, to a marked improvement in the technical aspects of the vetiver cultivation. On the other hand, it did not significantly change the Vetiver Project and therefore did not require the Commission's prior consent.

345 In that regard, the Court points out, first, that Tecnagrind does not dispute the Commission's claim that, in the application for aid for the Vetiver Project, a cost heading had been provided for leasing 10 hectares of land.

346 Tecnagrind acknowledges, as was pointed out in paragraph 343 above, that the area of the land for which rent was paid was four hectares, not 10. Furthermore, it did not deny that the final report on the Vetiver Project mentions 10 hectares as the area of land rented in connection with the project.

347 It must therefore be found that Tecnagrind failed in its duty to provide information in good faith as regards that aspect of the implementation of the Vetiver Project.

348 It should also be pointed out that Tecnagrind does not dispute the Commission's finding that the cost of renting the land for the Vetiver Project was ESP 712 000, whereas the budget heading for such costs was ESP 10 934 772. Nor does

Tecnagrind deny that the difference between the two aforementioned amounts was used to cover costs which were not provided for in the decision granting the aid. As regards Tecnagrind's claims set out in paragraph 343 above, they cannot, even if they were true, obscure the fact that, by using almost all the sums entered in the Vetiver Project budget for renting 10 hectares of land to rent horticultural nurseries, Tecnagrind carried out an operation for which provision had not been made in the decision granting the aid. In doing that, Tecnagrind, as the Commission rightly maintains, made a significant change to the operations described in Annex I to the decision granting the aid for the Vetiver Project. Under point 1 of Annex II to that decision, such a change requires the Commission's prior consent, a requirement which Tecnagrind does not deny failing to fulfil.

349 Fourth, the Commission points out irregularities relating to the charging of ineligible expenditure to the Vetiver Project budget.

350 It states, first, that up to 50% of Tecnagrind's overheads, such as the fees payable to an accountancy and tax consultancy and invoices connected with the use of a mobile phone, were unjustifiably charged to that budget.

351 In response to this Tecnagrind states that that charging is in accordance with the budgetary requirements contained in the decision granting the aid for the Vetiver Project, which provided a heading for overheads.

352 In that regard, the Court points out that Tecnagrind's arguments consist not in denying that the costs referred to in paragraph 350 above were incurred and were declared in respect of the Vetiver Project, but in maintaining that that declaration was lawful.

353 However, although, admittedly, there is a reference, in the estimate of expenditure contained in Annex I to the decision granting the aid for the Vetiver Project, to a cost heading entitled 'Travel expenses and overheads' (page 8), it must be observed that that heading falls under the section 'Evaluation stage' (same page), which corresponds, according to the wording of that Annex, to the stage of 'harvest processing' (page 6). However, there is nothing before the Court to show that the costs referred to in paragraph 350 above were connected with that particular stage of the Vetiver Project or, what is more, with any other stage of it. The Commission was therefore justified in concluding that the charging of the aforementioned costs to the project budget was unjustified.

354 Second, the Commission states that some invoices charged to the Vetiver Project budget related to services carried out after the final stage of the project and therefore could not be taken into account for the part-financing.

355 In that regard, the Court points out that, in connection with a measure of organisation of procedure, the Commission specified the invoices referred to in the statement reproduced in the previous paragraph (see paragraph 184 above). They are invoices issued by Codema between 15 July and 10 December 1996, receipts issued by Mr Bertolini and Mr Berlusconi on 16 September 1996, a receipt issued by Mr Mutti on 30 September 1996, bills relating to costs paid by Mr Tasias between 22 and 31 July 1996 and by Mr Troglia between 1 and 31 July 1996, between 1 August and 30 September 1996 and between 13 and 16 October 1996, hotel bills dated between 13 July and 7 September 1996, invoices issued by Medur on 31 July 1996, by the company Zyan on 31 July and 10 September 1996 and by the company Elioprint on 30 July 1996.

356 It must be observed, from a reading of the copies of those various invoices and bills produced to the Court, that the invoices and bills in question relate, without exception, to services provided after the end of the implementation period for the Vetiver Project, fixed in Article 2 of the decision granting the aid for that project, namely June 1996.

357 In those circumstances, and since Tecnagrind has not denied that the invoices and bills referred to in paragraph 355 above were charged to the Vetiver Project or adduced any evidence to challenge the Commission's claim that those invoices and bills could not be taken into account for the part-financing, it must be concluded that the finding of irregularity referred to in paragraph 354 is well founded.

358 From the above analysis it is clear that the arguments put forward by Tecnagrind to refute the findings of irregularities in the Vetiver Project must be rejected.

— The Ricino Project

359 As regards the Ricino Project, the irregularities pointed out by the Commission relate to the unjustified expenses declared in relation to the project for the installation of a small processing plant to meet farmers' operating requirements, to the charging, at the beginning of that project, of invoices relating to the dissemination stage, to Tecnagrind's inability to prove, during the July 1997 check, that it had fulfilled its obligation to provide part-financing, and to the charging of ineligible expenditure to the budget of that project.

360 As a preliminary point, the Court refers, as regards the Commission's finding relating to the part-financing for the Ricino Project, to the analysis set out in paragraphs 192 to 228 and 248 to 251 above, from which it may be seen that that finding has proven to be well founded and that the substance thereof constitutes an irregularity within the meaning of Article 24 of Regulation No 4253/88.

361 Furthermore, the Court would point out that, in the light of what has been stated in paragraphs 260 and 321 above, the other infringements alleged by the Commission, if they were to be proved, would have to be regarded as irregularities within the meaning of Article 24 of Regulation No 4253/88.

362 It is now necessary to determine whether the Commission's claims are well founded in the light of the arguments put forward by Tecnagrind.

363 First, the Commission points out that Mr Troglia, Tecnagrind's director and the person in charge of the Ricino Project, declared, during the July 1997 check, that Tecnagrind did not have the practical experience necessary for installing a small processing plant to meet the farmers' requirements and that, for that reason, it had subcontracted that activity and, more generally, the whole of the industrial stage of the Ricino Project, to Vela. However, during the November 1997 check, it appeared that Vela had neither personnel nor specific equipment and that it therefore did not dispose of the practical knowledge required, so that its participation in the Ricino Project was not justified.

364 In response to this Tecnagrind replies, first, that, as far as it knew, Mr Troglia did not make the statements attributed to him by the Commission. Next, it contends that, even if they were made, those statements may be refuted by means of an expert's report on the implementation of the Ricino Project. It also refers to the intermediate report which it sent to the Commission in May 1997 and also to the documentation relating to the Ricino Project which it communicated to the Commission in July 1997. Those documents confirm that the Ricino Project was carried out in accordance with the requirements laid down in the decision granting the aid and that the companies which participated in its implementation had at their disposal the necessary skills and knowledge.

365 In that regard, the Court observes that Tecnagrind itself states in its pleadings that it called on Vela to carry out the industrial stage of the Ricino Project and

that it paid it ECU 151 000 for doing so. However, it has already been pointed out that Vela did not have its own human and technical resources enabling it to carry out itself the services which had been subcontracted to it by Tecnagrind (see paragraphs 207 and 209 above). Furthermore, Tecnagrind has not adduced any evidence to show that Vela used the services of outside collaborators for the work agreed with Tecnagrind in connection with the Ricino Project and that, in that respect, it incurred expenditure such as to justify the invoices issued in connection with that project.

366 In those circumstances, the Commission could properly conclude that Vela's participation in the Ricino Project was unjustified. The fact, pointed out by Tecnagrind, that the Ricino Project was properly implemented until it was interrupted following the July 1997 check, even if it were proved, cannot rule out that conclusion.

367 Second, the Commission finds that various contracts were concluded with Mr De Bartolomeis and with Cedarcliff for a total value of ECU 155 800, that is, more than 12% of the total cost of the Ricino Project. It states that, according to Mr Troglia, the activities subcontracted to Cedarcliff related to the dissemination stage of that project. It maintains that the invoices concerned could not be charged to the Ricino Project when it began, given that the dissemination stage could not take place until it ended.

368 Tecnagrind contends in response that the fact that the disputed invoices were drawn up when the implementation of the Ricino Project had just begun is to be explained by the length of time needed to promote the project in good time. In the decision granting the aid for the Ricino Project, it was provided that the results of the project were to be disseminated at the various stages of the work throughout its duration. It adds that, since it was arranged that dissemination operations would begin in April 1997, it was obviously necessary to begin preparing those operations before that date. It cites a series of facts from the case-file illustrating

the considerable amount of work done in collecting, classifying and computerising technical data (types of castor oil, cultivation techniques, techniques and plant for the extraction of essences...) and market data in relation to the Ricino Project.

369 In that regard, the Court would point out that the Commission's claims reproduced in paragraph 367 above are directed to disputing the charging to the budget of the Ricino Project, when this was only in its early stages, of invoices which, according to Mr Troglia, related to dissemination activities.

370 In support of its claims, the Commission produced to the Court copies of a series of invoices addressed to Tecnagrind by Mr De Bartolomeis and Cedarcliff respectively, which Tecnagrind does not deny correspond to the invoices disputed in the contested decision. Those documents show that the invoices were drawn up between 7 January and 18 February 1997. Furthermore, Tecnagrind does not dispute the information supplied to the Commission by Mr Troglia, according to which those invoices relate to activities connected with the dissemination stage of the Ricino Project.

371 It should be noted that, under point 4.1 of Annex I to the decision granting the aid for the Ricino Project, the implementation of the project was divided into four stages of operation. The fourth and last of those stages concerned documentation and dissemination (page 8 of the aforementioned decision).

372 In connection with that stage, the following operations were planned (same page):

— collating and preparing data, preparing and organising reports for the Commission and for the dissemination of the results;

— disseminating the results obtained at the different stages of advancement of the work throughout the duration of the project;

— preparing the final results and disseminating them to local public bodies, professional associations and technological research and development centres by means of specialised publications, organising seminars and producing a short documentary;

— preparing a dissemination manual in several languages for those areas of the European Union likely to be interested.

373 Under point 4.2 of that Annex, relating to the timetable of operations, it was provided that the documentation and dissemination operation would begin in April 1997 (page 9). Under those circumstances, without its being necessary to consider whether the services invoiced by Cedarcliff and by Mr De Bartolomeis were actually carried out, it must be concluded that the Commission was justified in considering that the invoices they sent to Tecnagrind in January and February 1997 could not be charged to the Ricino Project, since the dissemination stage had not yet begun according to the timetable of operations laid down in the decision granting the aid.

374 That view cannot be invalidated by Tecnagrind's argument based on an alleged obligation to disseminate the results at the various stages of advancement of the Ricino Project and on the importance of the activities which were a necessary preliminary to the dissemination stage.

375 Even if it were accepted, in accordance with Tecnagrind's interpretation, that the allusion, on page 8 of Annex I to the decision granting the aid for the Ricino

Project, to the 'dissemination of the results obtained at the various stages of the works throughout the duration of the project' must be taken as referring to operations, carried out throughout the duration of the project, to disseminate the successive results of the project, the fact remains that, in the timetable of operations, it was provided that the documentation and diffusion stage were to begin only in April 1997, and not as early as September 1996, which is quite understandable owing to the physical impossibility of obtaining results suitable for dissemination during the first months of the Ricino Project.

376 Furthermore, it is evident from the information reproduced in paragraph 372 above that the timetable of operations for the implementation of the Ricino Project, particularly the starting point of the documentation and dissemination stage, had been fixed in the light of the fact that the dissemination of the results of the project presupposed the gathering and preparation of data.

377 Third, the Commission finds that up to 50% of Tecnagrind's overheads, such as the fees of a firm of accountancy and taxation consultants and invoices relating to the use of a mobile phone, were unjustifiably charged to the Ricino Project's budget.

378 In response to this Tecnagrind states that such charging is in accordance with the budgetary provisions in the decision granting the aid for the Ricino Project, which included a heading for overheads.

379 In that regard, the Court points out that Tecnagrind's argument consists not in denying that the costs referred to in paragraph 377 above existed and were declared under the Ricino Project, but in maintaining that that declaration was lawful.

380 However, it should be pointed out that, although, admittedly, it is clear from Annex I to the decision granting the aid for the Ricino Project, that an expenditure heading for 'Overheads' had been written into the budget for that project (point 7.1.2, page 11), that heading must necessarily be interpreted as referring to the overheads incurred in respect of the Ricino Project. The action undertaken by the Community through the Structural Funds cannot entail responsibility for expenditure unrelated to the subsidised project. It is also important to point out, by analogy, that, as regards personnel and travel costs, it was required, under point 2 of Annex II to the aforementioned decision, that those costs should be 'directly related to the measures' implementing the project.

381 There is nothing in the documents before the Court to show that the costs referred to in paragraph 377 above had any connection whatsoever with the implementation of the Ricino Project. The Commission was therefore justified in concluding that the charging of the aforementioned costs to that project's budget was unjustified.

382 From the foregoing analysis it is evident that the arguments put forward by Tecnagrind to refute the findings of irregularities specific to the Ricino Project must be rejected.

383 In the light of all the foregoing considerations, the second part of the second plea must be rejected. Consequently, the plea must be rejected in its entirety.

III — *The third plea, alleging breach of the principles of legal certainty and of protection of legitimate expectations*

384 In the third plea, the applicants maintain that the contested decisions infringe the principles of legal certainty and of protection of legitimate expectations.

385 They maintain that they implemented the measures set out in the decisions granting the aid and bore all the expenditure mentioned therein. They state that the favourable assessments issued by the Commission at the time of the checks carried out on the Luffa Project in July 1993 and July 1996, and by the Court of Auditors at the time of the check it carried out on the Girasole Project in January 1997, and the payment in full of the aid for the Luffa and Girasole Projects led the beneficiaries of that aid to entertain the legitimate expectation that their conduct had been correct. In Cases T-141/99 and T-142/99, Vela states that, under the second and third indents of point 4 of Annex II to the decisions granting the aid for the Luffa and Girasole Projects, payment of the second instalment and of the balance of the aid meant that the Commission was persuaded that the project concerned was implemented properly and that the conditions, especially the financial conditions, laid down in those decisions were observed.

386 The applicants also claim that the Commission knew or should reasonably have known at the time that the beneficiaries had subcontracted the implementation of the projects to associated companies. The Commission also knew about the method of part-financing adopted in connection with the projects concerned. Both the use of subcontracting and the method of part-financing used were considered by the Commission to comply with the conditions laid down by the decisions granting the aid. By purporting to discover what it had always known, or should have known, the Commission has infringed the principle of legal certainty.

387 In that regard, the Court notes that, according to case-law, the right to rely on the principle of protection of legitimate expectations extends to any economic operator to whom an institution has given justified hopes (*Interhotel* v *Commission*, cited in paragraph 212 above, paragraph 45, and Case T-126/97 *Sonasa* v *Commission* [1999] ECR II-2793, paragraph 33).

388 However, it is settled case-law that the principle of protection of legitimate expectations may not be relied upon by an undertaking which has committed a manifest infringement of the rules in force (Case 67/84 *Sideradria* v *Commission* [1985] ECR 3983, paragraph 21; *Industrias Pesqueras Campos and Others* v

Commission, cited in paragraph 130 above, paragraph 76, and *Sonasa* v *Commission*, cited in paragraph 387 above, paragraph 34).

389 In the present case, it has been shown to be established, at the end of the analysis of the second plea, that Vela, Sonda and Tecnagrind committed — in connection with the Luffa, Girasole, Vetiver and Ricino Projects — a series of irregularities within the meaning of Article 24(2) of Regulation No 4253/88. By means of a process of fictitious subcontracting and false invoicing, they evaded assuming the obligation to provide part-financing imposed on them in the decisions granting the aid and charged unjustified or ineligible costs to the budgets of the projects, which constitutes serious infringements of the conditions for granting the financial aid in question and, accordingly, of the applicable legislation. Furthermore, as regards Case T-150/99, Tecnagrind did not give the Commission correct information in its aid application and in the final report on the Vetiver Project, although the duty of aid applicants and beneficiaries to provide information and to act in good faith is an integral part of the EAGGF aid system and is essential for its proper working. It also made a significant change to the conditions for implementing the Vetiver Project, without the Commission's prior consent, thus contravening the provisions of the decision granting the aid for that project.

390 It follows that Vela, Sonda and Tecnagrind committed manifest infringements of the applicable legislation. Consequently, without it being necessary to express a view on the applicant's arguments relating to the attitude adopted by the Commission before the checks of July and November 1997, it must be concluded that the applicants are not justified in invoking, in the present case, the principle of the protection of legitimate expectations in order to obtain the annulment of the contested decisions.

391 Nor can the applicants invoke the principle of legal certainty. That principle, which requires that legal rules be clear and precise and aims to ensure that situations and legal relationships governed by Community law remain foreseeable (Case C-63/93 *Duff and Others* [1996] ECR I-569, paragraph 20), cannot

be regarded as infringed in the present case, since the applicable legislation provides for the possibility for the Commission — in the event that irregularities are proved — to withdraw the financial aid and request reimbursement of the sums unduly paid by the EAGGF (*Interhotel* v *Commission*, cited in paragraph 212 above, paragraph 61, and *Sonasa* v *Commission*, cited in paragraph 387 above, paragraph 47). It is important to point out, in that regard, that, in point 10 of Annex II to the decisions granting the aid, the attention of Vela, Sonda and Tecnagrind had been drawn to the consequences of failing to comply with the conditions laid down in those decisions (see paragraphs 19, 32, 42 and 54 above).

392 At the end of the foregoing analysis, the third plea must be rejected.

IV — *The fourth plea, alleging breach of the principle of proportionality*

393 In the fourth plea, the applicants claim that the contested decisions infringe the principle of proportionality.

394 They maintain that the withdrawal of the aid is an excessive sanction in view of the fact that the irregularities complained of are purely administrative and not the result of fraudulent intent or negligence. Furthermore, that sanction is not supported by the applicable legislation, which authorises the Commission to withdraw financial aid only in the event of an infringement so serious that it jeopardises the implementation of the project or involves a significant change affecting the nature and very existence of the project. According to the applicants, that was not the case of the projects in question, since they were implemented in full compliance with the conditions laid down by the decisions granting the aid and the results obtained were higher than those originally envisaged, and since the Commission was kept informed about the accounting and administrative methods used, particularly with regard to part-financing, and approved them without reservation.

395 In Case T-141/99, Vela adds that, if the irregularities relating to the invoices from Magenta Finance, Detentor and Cedarcliff were proved, it would be appropriate not to withdraw the aid but to reduce it by the amount of the difference between the total costs charged to the project and an amount to be determined during the proceedings in accordance with the rule that a scale of sanctions should be operated according to whether the infringement found was primary or secondary in nature (Case 181/84 *Man (Sugar)* [1995] ECR I-2889, and Case 21/85 *Maas* [1986] ECR 3537). Those precedents are also invoked by Vela in Case T-142/99 and by Tecnagrind in Cases T-150/99 and T-151/99.

396 In that regard, the Court points out that the principle of proportionality requires that the measures adopted by Community institutions must not exceed what is appropriate and necessary for attaining the objective pursued (see, in particular, Case 15/83 *Denkavit Nederland* [1984] ECR 2171, paragraph 25, and Case T-260/94 *Air Inter* v *Commission* [1997] ECR II-997, paragraph 144).

397 It is also apparent from the case-law that the infringement of obligations whose observance is of fundamental importance to the proper functioning of a Community system may be penalised by forfeiture of a right conferred by Community legislation, such as entitlement to aid (Case C-104/94 *Cereol Italia* [1995] ECR I-2983, paragraph 24, and the case-law cited therein).

398 As regards the present cases, it should be pointed out that the objective of Regulation No 2052/88 and of Regulations Nos 4253/88 and 4256/88 which lay down provisions for implementing it is to promote, within the context of support for economic and social cohesion and with a view to reform of the common

agricultural policy, the adjustment of agricultural structures and the development of rural areas. In that connection, as may be seen from the 20th recital and Article 23 of Regulation No 4253/88, the legislature, in order properly to attain the aforementioned objectives, intended to establish an effective control procedure to ensure that the beneficiaries complied with the conditions laid down when the EAGGF was granted.

399 It should also be remembered that the Court, in its judgment in *Industrias Pesqueras Campos and Others* v *Commission*, cited in paragraph 130 above (paragraph 160), stated 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 project, and is therefore a condition for the award of Community aid.

400 Finally, as has already been pointed out (see paragraph 322 above), it is essential for the proper working of the system for carrying out checks and acquiring evidence to verify that the conditions for the grant of the aid are being fulfilled, for Community aid applicants and beneficiaries to provide information which is reliable and not likely to mislead the Commission.

401 In the present cases, it is clear from the analysis set out in the examination of the second plea that the applicants committed irregularities for the purposes of part-financing the projects and charged to those projects unjustified or ineligible costs. As regards Case T-150/99, Tecnagrind also provided the Commission with incorrect information in its application for aid for the Vetiver Project and also in the final report on the project. Furthermore, it made a significant change to the

conditions for implementing the Vetiver Project, without the Commission's prior consent, thus contravening the provisions of the decision granting the aid for that project. Such conduct, far from constituting, as the applicants maintain, mere administrative irregularities, reveals serious infringements of the beneficiaries' fundamental obligations which provide grounds for withdrawing the aid in question.

402 In the light of those infringements, it was reasonable for the Commission to take the view that any sanction other than the total withdrawal of the aid and recovery of the sums paid by the EAGGF might invite fraud, in that potential beneficiaries would be tempted either artificially to inflate the amount of the expenditure charged to the project with the aim of evading their obligation to provide part-financing and of obtaining the maximum amount of EAGGF aid provided for in the decision granting the aid, or to provide false information or conceal certain data, with the aim of obtaining aid or of increasing the amount of aid requested, and risk only that the aid would be reduced to the level at which it would have been if the beneficiary had declared the correct amount of the expenditure and/or the information it gave the Commission had been accurate (see to this effect the judgment in *Industrias Pesqueras Campos and Others* v *Commission*, cited in paragraph 130 above, paragraph 163).

403 It should also be stated that, contrary to the applicants' claims, there are no grounds for maintaining that the measures to withdraw the aid and recover the amounts paid unduly, provided for in Article 24 of Regulation No 4253/88, apply only to infringements which jeopardise the implementation of the project concerned or involve a significant change affecting the nature or very existence of the project. On the contrary, in the light of what has been stated in paragraph 398 to 400 above, and according to the wording of Article 24(2) of the aforementioned regulation, those measures are applicable to all cases of irregularity, such as those found by the Commission in the contested decisions.

404 At the end of the foregoing analysis, it is apparent that the alleged infringements of the principle of proportionality are not proved. The fourth plea must therefore be rejected.

The measures of inquiry requested by the applicants

405 The applicants request the Court to order the Commission to produce a series of documents relating to the projects concerned.

406 They also ask for a technical and accountancy report to be prepared, designed to confirm that the projects in question were implemented correctly and to establish that the beneficiaries fulfilled their obligation to provide part-financing.

407 They also ask for evidence to be taken from a series of persons (Commission officials who took part in the checks of July 1993, July 1996, and July and November 1997; persons involved in implementing the project) on a certain number of specific questions. As regards the Luffa Project, those questions relate to the positive findings and assessments made by the Commission's officials during the checks of July 1993 and July 1996, in respect of the material implementation of the project, particularly the services allegedly provided by Faretra, AITEC, Sonda and Magenta Finance, and the administrative and accountancy management of that project. As regards the Girasole Project, they relate to the favourable assessments issued by the official of the Court of Auditors during the check he carried out in January 1997 in respect of the administrative and accountancy management and the results of the project. As regards the Vetiver Project, they relate to the area of land cultivated, the quantity of essence extracted from the vetiver beds, the completion of the operations provided for in the decisions granting the aid for that project and the reasons why Tecnagrind used the technique of growing the Vetiver in nurseries. As regards the Ricino

Project, it relates to the detailed nature of the explanations given by Tecnagrind to the Commission's officials during the July 1997 check regarding the CD-ROM data bank concerning that project and the findings made by the Commission during that check in respect of the scale on which the castor-oil plants were grown and the care with which they were cultivated in connection with that project.

408 In that regard, the Court would point out that it falls to itself to assess the value and relevance of the measures of inquiry requested in regard, in particular, to the subject-matter of the dispute (Case C-185/95 P *Baustahlgewebe* v *Commission* [1998] ECR I-8417, paragraph 70, and *Industrias Pesqueras Campos and Others* v *Commission*, cited in paragraph 130 above, paragraph 47).

409 In the present cases, with regard, first of all, to the request for the production of documents, the Court finds that some of the documents mentioned by the applicants were annexed by the Commission to its pleadings on its own initiative. Furthermore, the Commission produced a series of documents in connection with the measures of organisation of procedure taken by the Court pursuant to Article 64(2) of the Rules of Procedure, with a view to facilitating the taking of evidence and to assessing the merits of these actions. Moreover, at the end of the analysis of the various pleas for annulment raised by the applicants, the Court comes to the conclusion that the production of the other documents referred to by the applicants has proved to be in no way necessary for the purposes of the decision in these cases.

410 Next, as regards the request for an expert's report to confirm that the projects were carried out properly, the Court would point out that the Commission's criticisms do not relate to the material implementation of the projects and that an expert's report confirming that they were implemented in accordance with the requirements laid down in the decisions granting the aid is, for the reasons stated in paragraph 201 above, irrelevant as a ground for rejecting the claims of irregularities, mainly accounting and financial irregularities, set out in the

contested decisions. As regards the request for an accountant's report, such a report could not refute the Commission's precise and factually substantiated claims concerning the irregularity of the expenditure specifically mentioned in the contested decisions, claims which the arguments put forward by the applicants during the administrative procedure and during the present proceedings have failed to invalidate.

411 Finally, as regards the proposals for witnesses to be heard, the Court points out that some of them are designed to show that the projects concerned were carried out correctly. However, for the reasons stated in paragraph 201 above, tenders of evidence with such an object in view are irrelevant for the purpose of refuting the findings of irregularities contained in the contested decisions. The object of the other tenders of witness evidence is to draw attention to the favourable assessments issued by the Commission and by the Court of Auditors, before the checks of July and November 1997, regarding the accountancy management of the projects. However, such matters, even if they were established, could not, on any view, rule out the existence of the irregularities correctly found in the contested decisions or allow the conclusion that the Commission was precluded from pointing out those irregularities after the aforementioned checks.

412 In the light of all the foregoing considerations, the applications for annulment must be dismissed in their entirety.

Costs

413 Under Article 87(2) of the Rules of Procedure, 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, they must be ordered to pay the costs, as applied for by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. **Dismisses the applications;**

2. **Orders, in each case, the applicant to bear its own costs and pay those of the Commission.**

Jaeger Lenaerts Azizi

Delivered in open court in Luxembourg on 7 November 2002.

H. Jung
Registrar

K. Lenaerts
President