JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
3 February 2000 *

In Joined Cases T-46/98 and T-151/98,

Council of European Municipalities and Regions (CEMR), an association governed by French law, established in Paris, represented by Daniel M. Tomasevic and Francis Herbert, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Katia Manhaeve, 56-58 Rue Charles Martel,

applicant,

v

Commission of the European Communities, represented by Peter Oliver, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the Chambers of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's decision reducing the financial assistance granted to the applicant by the European Regional Development Fund for the European City Cooperation System Programme,

* Language of the case: French.

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

composed of: R.M. Moura Ramos, President, V. Tiili and P. Mengozzi, Judges,

Registrar: A. Mair, Administrator,

having regard to the written procedure and further to the hearing on 17 June 1999,

gives the following

Judgment

Background and procedure

1 The Council of European Municipalities and Regions ('CEMR') is an association governed by French law which brings together national associations of local and regional authorities in Europe. As part of its work of representing and assisting local and regional authorities, CEMR promotes interregional and intermunicipal cooperation by assisting local and regional authorities in their search for Community funding linked to programmes set up by the European Community. The applicant is associated with the management of several projects and programmes financed by the Commission.

2 By letter of 10 December 1991, the Commission granted CEMR assistance of a maximum of ECU 4 844 250 ('the first grant') from the European Regional Development Fund ('ERDF') for the implementation of the European City Cooperation System (ECOS) pilot project, presented by CEMR on 19 July 1991 under the 'Regions and Towns of Europe' (RECITE) programme. That decision was based on Article 10 of Council Regulation (EEC) No 4254/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the European Regional Development Fund (OJ 1988 L 374, p. 15). The amount granted represented 50% of total eligible expenditure. The pilot project covered the period from 1 January 1992 to 31 December 1994.

3 In 1993 CEMR organised its triennial 'États Généraux' (General Assembly, hereinafter 'the Strasbourg General Assembly') on the theme of interregional and intermunicipal cooperation in Europe. The City of Strasbourg, which provided a permanent secretariat for the ECOS project, offered to organise the event, which was to include a Workshop 2 entitled 'Cooperation in reinforcing the European Union and developing solidarity (networks, exchange of experience and ECOS programme)'.

4 By letter of 31 March 1993 the City of Strasbourg asked the Commission for a subsidy for that purpose.

5 By letter of 23 June 1993 the Commission informed the City of Strasbourg that it agreed to make a contribution of up to a maximum of ECU 100 000. It added that 'this contribution... is granted by way of exception and will in no event form a precedent for other events of the same type'.

6 In addition, by letter of 7 October 1993 the Commission informed CEMR: '... by way of exception you will have the possibility of cofinancing, up to a maximum of ECU 100 000 from the ECOS Programme, for the running of Workshop 2, relating to East-West interregional cooperation, at the CEMR Assembly'.

7 By letter of 9 December 1993 CEMR was given a maximum of ECU 2 550 000 additional assistance for the same pilot project for a period to run from 1 December 1993 ('the second grant'). That amount represented 60% of eligible new expenditure, except for ERDF's participation in overheads, which was limited to 55%. The total amount of Community cofinancing was accordingly ECU 7 394 250.

8 In March 1996 CEMR submitted the final report on the first grant to the Commission, pursuant to the second paragraph of the special conditions for grant of the assistance which provides that 'an annual report shall be submitted to the Commission at the end of each year. A final report shall contain a detailed evaluation of the results of the project...'.

9 On 19 April 1996 an official from DG XVI sent a fax to CEMR informing it that the final report on the first grant had been approved by the operational service which had 'considered it satisfactory as to both content and finances'.

10 In August 1996 the applicant submitted the final report on the second grant.

11 On 7 November 1996 CEMR lodged a joint report covering both grants, the final amount applied for being the same as that given in the two preceding reports added together, namely ECU 6 119 866. That report split the expenditure under two headings: 'Projects' and 'Coordination and promotions'.

12 From 21 to 24 April 1997, the staff of the Commission made an inspection visit.

13 In a letter of 16 May 1997 addressed to CEMR, the Commission considered 'the statement by the operational service of DG XVI in respect of the first version of the final ECOS report [to have been] somewhat optimistic and did not take sufficiently into consideration the time needed by the Commission's financial services to give its views'; it informed CEMR that the final report had been sent to Financial Control for approval.

14 By letter of 30 July 1997 the Director-General of DG XVI informed CEMR as follows:

'The following non-documented expenditure cannot be accepted for cofinancing:

— CEMR's estimates as to possible non-documented expenditure that mayors and municipal officials might have incurred in order to take part in events of interest for cooperation;

— any expenditure that municipalities and regions might have incurred in various promotional events; and

— any contributions in kind that local bodies might have incurred in respect of financial, legal and technical expertise.

Those estimates by CEMR concerned possible expenditure, unsupported by any evidence, that might have been incurred *de facto*. There is no proof of payment and in any event this expenditure was not borne by CEMR. Moreover, the

amounts submitted are not exact, since they are mere estimates of possible costs which cannot be accepted as expenditure to be cofinanced by the ERDF.'

15 In consequence the Commission announced that the maximum amount accepted by the ERDF was reduced to ECU 5 552 065, but when the advance of ECU 5 915 400 made to CEMR was taken into account the latter had to repay ECU 363 335.

16 By letter of 28 August 1997 CEMR replied to the Commission's critical comments and asked it to call a meeting to discuss matters. That meeting, attended by representatives of CEMR and the Commission, took place on 24 September 1997. After the meeting the Commission asked CEMR to send it evidence of expenditure incurred in order to enable it to complete its file and take a decision finally closing matters in respect of the two grants concerned. It asked the City of Strasbourg, which was one of the local municipalities involved in the management of the ECOS Programme, to do the same.

17 CEMR replied to the Commission's criticism by letter of 2 October 1997, while maintaining the conclusions submitted in the preceding financial reports. In addition it transmitted a file of supporting documents for expenditure in respect of which objections had been raised.

18 Meanwhile the applicant received two letters from the Commission, the first sent on 1 October 1997 by a director of DG XVI and the second sent on 24 October 1997 by the Director-General of DG XVI, containing tables relating to the closing of the project's accounts and giving details of the settlement to be made in respect of the two grants for the ECOS pilot project as a whole.

19 In January 1998 CEMR received an undated debit note numbered 97009405 F issued in December 1997 by which the Commission required repayment of the amount overpaid on the first and second grants in the sum of ECU 363 336.

20 The parties subsequently had contact with each other with a view to finding a solution to their differences. At a meeting on 5 March 1998 the Commission's services claim to have informed CEMR of the conclusions which they had drawn from the documentation forwarded to them following the meeting of 24 September 1997. That assertion is disputed by the applicant.

21 By application lodged at the Registry of the Court of First Instance on 10 March 1998, the applicant sought the annulment of the decision taken in Debit Note No 97009405 F. The application was allocated the number T-46/98 by the Registry.

22 By letter of 15 June 1998 addressed to the applicant, the Commission acknowledged that it had committed certain errors in calculating the amount of cofinancing for overheads granted to the ECOS Programme. The Director-General of DG XVI consequently informed CEMR that the amount demanded had been reduced to ECU 300 173 and that the first debit note was cancelled and replaced by another, carrying the same number, issued on 15 July 1998. It further stated that 'as regards the overheads declared in your final reports, the supporting documents produced by your services following the Commission's inspection visit do not enable that expenditure — in particular as regards the decentralised management — to be identified as attributable to the ECOS Programme or suffice as valid evidence to corroborate that expenditure. In consequence the Commission is not able, without such supporting evidence, to increase the share of that expenditure that can be considered eligible'.

23 By application lodged at the Registry of the Court of First Instance on 22 September 1998, CEMR brought a second action against the decision contained in the second debit note. The application was registered in the Registry under number T-151/98.

24 By order of 18 May 1999, the President of the Fourth Chamber of the Court of First Instance joined the two cases for the purposes of the oral procedure and the judgment pursuant to Article 50 of the Rules of Procedure of the Court of First Instance.

25 On hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber) decided to open the oral procedure and called on the parties to reply in writing to certain questions. At the hearing on 17 June 1999, the parties presented oral argument and replied to the oral questions put by the Court.

Forms of order sought

Case T-46/98

26 The applicant claims that the Court should:

— annul the decision contained in the debit note of December 1997, as amended by the decision contained in the debit note of 15 July 1998;

— order the Commission to pay the costs.

27 The defendant contends that the Court should:

dismiss the application as unfounded (except as regards the amount of ECU 63 163, which has been the subject of a rectification);

— order the applicant to pay the costs.

Case T-151/98

28 The applicant claims that the Court should:

— annul the decision contained in the debit note of 15 July 1998;

— order the Commission to pay all the costs, whatever the outcome of the proceedings.

29 The defendant contends that the Court should:

— dismiss the application as unfounded;

— order the applicant to pay the costs.

Subject-matter of the actions in Cases T-46/98 and T-151/98

Arguments of the parties

30 The Commission contends that since it has replaced the first debit note by a second which claims a lesser sum, the application in Case T-46/98 has become devoid of purpose and is therefore inadmissible.

31 The applicant states that the replacement of the decision initially challenged by a subsequent decision does not cause the application to become inadmissible but rather gives rise to a ruling that there is no need to adjudicate inasmuch as the application may, after that event, become devoid of purpose. That difference is relevant, since it has consequences for the application of the provisions of the Rules of Procedure concerning costs.

32 In any event, the second debit note did not render the first application devoid of purpose. The Commission changed the contested decision only partially and the case should therefore continue for the remainder. CEMR therefore asks the Court to allow it to continue with the application, adapting the form of order sought in accordance with the position taken by the Commission. The second application was lodged as a precautionary measure to cover the event of the Court's upholding the Commission's case and deciding to rule that there was no need to adjudicate in Case T-46/98.

Findings of the Court

33 As a preliminary point, reference should be made to the case-law according to which, where a decision is, during the proceedings, replaced by a decision with the same subject-matter, this must be considered a new factor allowing the applicant to adapt its pleas in law and claims for relief. As the Court of Justice has held, in particular in Case 14/81 *Alpha Steel* v *Commission* [1982] ECR 749, paragraph 8, '[i]t would not be in the interests of the due administration of justice and the requirements of procedural economy to oblige the applicant to make a fresh application to the Court. Moreover, it would be inequitable if the Commission were able, in order to counter criticisms of a decision contained in an application to the Court, to amend the contested decision or to substitute another for it and to rely in the proceedings on such an amendment or substitution in order to deprive the other party of the opportunity of extending his original pleadings to the later decision or of submitting supplementary pleadings directed against that decision' (see also Joined Cases 351/85 and 360/85 *Fabrique de Fer de Charleroi and Dillinger Huttenwerke* v *Commission* [1987] ECR 3639, paragraph 11; and Case 103/85 *Stahlwerke Peine-Salzgitter* v *Commission* [1988] ECR 4131, paragraph 11).

34 In this case, despite the fact that, in the second debit note, the Commission indicates that it cancels and replaces the first one, it must be observed that in the second note the Commission repeats the same facts and complaints as were contained in the decision embodied in the first. The only change made relates to the fact that the Commission revised its calculation of the rates of cofinancing for overheads and applied a rectified cofinancing rate. In consequence, in the second debit note the defendant confined itself to changing the amount of cofinancing approved and amending the sum previously demanded from the applicant. The second debit note therefore constitutes merely a rectification of the first.

35 That conclusion is borne out by the fact that the Commission itself indicates, in the form of order which it seeks in Case T-46/98, that it rectified the contested decision after the application was lodged but before the defence was submitted.

36 In those circumstances the rectified decision must be regarded as a new matter allowing the applicant to adapt its pleas in law and claims for relief as it did in its reply in Case T-46/98. The fact that a second application was lodged by the applicant against the latter decision, as a precautionary measure, cannot alter that conclusion since the applicant thereby availed itself of the possibility open to it under the case-law to take into account changes that have occurred in the course of proceedings.

37 It follows that the plea raised by the Commission in this connection cannot be upheld.

38 It follows from all the foregoing that the subject-matter of Case T-151/98, which was brought by the applicant as a purely precautionary measure, is the same as that in Case T-46/98, namely an application for the annulment of the Commission's decision contained in Debit Note 97009405 F, issued in December 1997, as amended by the debit note issued on 15 July 1998 ('the contested decision'). In the circumstances the Court of First Instance declares of its own motion, pursuant to Article 113 of its Rules of Procedure, that there is no need to adjudicate in Case T-151/98.

Substance

39 First of all, the scope of the dispute must be ascertained. In that connection the parties confirmed at the hearing that the sum indicated in the debit note constituting the contested decision corresponds to the difference between the amount of expenditure declared by the applicant and the amount accepted by the Commission for cofinancing. That difference is the result, on the one hand, of the Commission's refusal to accept certain expenditure and, on the other hand, the Commission's attribution to the heading 'Coordination and promotions' of expenditure declared by CEMR under the heading 'Projects'.

40 The expenditure declared ineligible for cofinancing is as follows:

Expenditure	Amount (in ECU)
Strasbourg General Assembly	
— Heading A: Launch and promotional conferences	101 598
— Heading C2: Examination of files/Promotions	53 300
— Heading E: Participation in training activities	256 882
Total deducted for the CEMR General Assembly	411 780
C1 — Permanent secretariat, Strasbourg (overheads)	56 565
C2 — Examination of files/Promotions (expenditure on equipment)	18 471
D — Coordination of cooperation projects (travel expenses/meetings)	19 520
E — Decentralised management of cooperation (financial, legal and technical expertise)	432 000
E — Decentralised management of cooperation (coordinators at 12 Community points)	85 204
Total	1 023 540

41 The expenditure transferred from one heading to another was as follows:

Expenditure	Cofinancing anticipated by the applicant (in ECU)	Cofinancing applied by the Commission (in ECU)
East-West Cooperation Days	69 016	36 394

42 The applicant relies, essentially, on three pleas in law in its application for annulment: the first, principal, plea alleges breach of the obligation to state reasons. The second and third alternative pleas are made up of arguments based

on, first, breach of the principles of protection of legitimate expectations and legal certainty and, secondly, breach of the principles of proportionality and equal treatment.

Principal plea in law: breach of the obligation to state reasons

Arguments of the parties

43 The applicant claims that the contested decision does not enable it to understand why the numerous receipts supplied to the Commission following the meeting of 24 September 1997 are not sufficient evidence of the expenditure actually incurred and its attribution to the ECOS Programme. Moreover, the Commission has never replied to the applicant's arguments put forward in the letters sent after that meeting. That situation constitutes an infringement of the duty, under Article 190 of the EC Treaty (now Article 253 EC) to state reasons for the Commission's acts, in particular in a case where a decision relates to the reduction of the amount of financial aid, in so far as such a decision has serious consequences for the person receiving the aid (Case T-450/93 *Lisrestal and Others* v *Commission* [1994] ECR II-1177, paragraph 52; and Case T-331/94 *IPK-München* v *Commission* [1997] ECR II-1665, paragraph 51).

44 The Commission points out that the debit note at issue was the culmination of a long dialogue between the parties during which they exchanged several letters and held meetings on 24 September 1997 and 5 March 1998. Since the debit note is merely a standard form, it does not contain detailed reasons, which were to be found in the letter sent to the applicant by the Commission's services on 15 June 1998. In that connection, the Commission cites the case-law of the Court of Justice according to which a specific statement of reasons in support of all the details which might be contained in the contested measure cannot be required,

provided such details fall within the general scheme of the measure as a whole (Case 16/65 *Schwarze* [1965] ECR 877, 888 and 889, and Case 92/77 *An Bord Bainne* [1978] ECR 497, 515).

45 In addition the Commission agreed to meet CEMR's representatives on 24 September 1997 and explained its point of view at some length. In those circumstances, according to the Commission, CEMR's arguments are unfounded.

Findings of the Court

46 It is settled case-law that the purpose of the obligation to state the reasons on which an individual decision is based is to enable the Community judicature to review the legality of the decision and to provide the person concerned with sufficient information to make it possible to ascertain whether the decision is well founded or whether it is vitiated by a defect which may permit its legality to be contested. The extent of that obligation depends on the nature of the measure in question and on the context in which it was adopted (Case T-85/94 *Branco* v *Commission* [1995] ECR II-47, paragraph 32, and the case-law cited in that judgment).

47 It follows that the statement of reasons must in principle be notified to the person concerned at the same time as the decision adversely affecting him and that a failure to state the reasons cannot be remedied by the fact that the person concerned learns of the reasons for the decision during the proceedings before the Court (Case 195/80 *Michel* v *Parliament* [1981] ECR 2861, paragraph 22).

48 With regard to the reasons given for a decision reducing the amount of European Social Fund assistance initially granted, it has been held that, in view in particular of the fact that such a decision has serious consequences for the person benefiting

from the assistance, that decision must clearly show the grounds which justify a reduction of the amount of the assistance initially authorised (*Branco* v *Commission*, cited above, paragraph 33).

49 The requirements laid down by the case-law with regard to the statement of reasons for a decision reducing financial assistance under the European Social Fund must also be applied to a similar decision under the ERDF. Consequently the Court must examine the question whether the contested decision satisfies the requirements laid down by Article 190 of the Treaty as interpreted by the Community judicature.

50 It must be held that the amendment made by the debit note of 15 July 1998 added nothing to the complaints made against the applicant when the first debit note was issued. In those circumstances, and in view of the fact that the decision is confined to ordering repayment, the adequacy of the statement of reasons must be analysed with regard to the contacts between the parties up to that date. It appears from an examination of the file that the reduction of financial assistance formed the subject-matter of various letters sent to the applicant and of a meeting between the parties in the following chronological order:

— letter from the Commission dated 30 July 1997 in which it informed the applicant that, having made an inspection visit, the Commission could not accept certain undocumented expenditure for cofinancing;

— meeting of 24 September 1997 at which, as the applicant's letter of 2 October 1997 makes clear, the Commission identified the expenditure which it considered ineligible and set out the faults it had found;

— letter from the Director of DG XVI dated 1 October 1997 setting out, in respect of the first and second grants, heading by heading, ineligible expenditure;

— letter from the Director-General of DG XVI dated 24 October 1997 containing an incomplete and not very detailed table in which the Commission confines itself to setting out the sums still owed by CEMR for each submission under the title 'Projects';

— letter dated 15 June 1998 confirming the refusal to accept the supporting documents submitted by the applicant.

51 The applicant's allegation that the statement of reasons was inadequate is based, first of all, on the Commission's failure to explain why it rejected the supporting documents in respect of expenditure falling under Headings C1, C2, D and E (under its two subheadings; see paragraph 40 above) which the applicant had sent following the meeting of 24 October 1997; secondly, it is based on the failure to justify the budget heading transfers in respect of expenditure relating to the East-West days, thereby *de facto* reducing the financial assistance anticipated; lastly it is based on the inadequacy of the statement of reasons for the Commission's refusal to consider the expenditure relating to the Strasbourg General Assembly eligible under the heading 'coordination and promotions'.

52 First, with regard to Headings C1, C2 and E (under its two subheadings), it appears from the file that none of the documents exchanged between the parties,

following the applicant's letter of 2 October 1997, provides an explanation that is sufficient to enable the applicant to understand the reasons which led the Commission to refuse to treat the documents, sent after the meeting of 24 September 1997, to answer the Commission's criticism of certain expenditure, as having probative value. Furthermore, none of those documents enables the Court of First Instance to exercise its power of review of the legality of that refusal.

53 The defendant cannot claim in this regard that its letter of 15 June 1998 contains a sufficient statement of reasons for the decision. In that letter the Commission confined itself to repeating the reasons which had been cited in the first exchange of letters between the parties, in particular in the letter of 30 July 1997. The letter of 15 June 1998 contains no clarification of the reasons for which the Commission considered that neither the supporting documents nor the receipts produced by CEMR after the inspection visit and the meeting of 24 September 1997 enabled it to confirm that that expenditure was payable and should be attributed to the ECOS Programme.

54 Secondly, with regard to the transfer, by the Commission, of expenditure concerning East-West Cooperation Days from the budget heading relating to 'Projects' to that relating to 'Coordination and promotion' operations, thereby giving rise to a reduction of financial aid of ECU 32 622, it follows from the note sent by the Commission to the applicant on 30 December 1993 that the defendant had given precise indications to the effect that that expenditure should be covered by the funds available under the budget heading 'Projects'. Although, in its letter of 2 October 1997, the applicant had drawn the Commission's attention to the fact that the planned transfer included an amendment to the overall contractual budget and a reduction in the financial assistance granted by the Commission, it must be held that until the adoption of the contested decision the Commission had not provided any information to enable the applicant to understand its reasons for changing its mind in the interim and to enable the Court of First Instance to assess whether the transfer was a proper one.

55 Lastly, with regard to the expenditure relating to the Strasbourg General Assembly, it appears from the letter sent by the applicant on 2 October 1997 that

by that date the applicant was already aware of the Commission's reasons for considering certain expenditure relating to the organisation of that Assembly to be ineligible. The Commission has always maintained that that expenditure exceeded the ceiling authorised both when the ECOS Programme was approved and when specific authorisation was obtained for the holding of that Assembly.

56 It follows from the foregoing that the contested decision must be annulled on the ground that the statement of reasons was inadequate, both as regards all the expenditure the ineligibility of which was justified by the refusal to accord probative value to the receipts and as regards the reduction of assistance by the transfer to a different budget heading of expenditure relating to East-West Cooperation Days.

57 That conclusion includes all the expenditure covered by the contested decision apart from that relating to the Strasbourg General Assembly, with respect to which the plea alleging an inadequate statement of reasons for the refusal of cofinancing is dismissed.

58 In those circumstances the other claims for annulment put forward by the applicant must be examined only in so far as they concern the refusal of cofinancing for expenditure relating to the Strasbourg General Assembly. The Court will therefore consider the plea alleging breach of the principles of the protection of legitimate expectations and legal certainty which is the only plea relied on in this connection.

Alternative plea: breach of the principles of protection of legitimate expectations and legal certainty

Arguments of the parties

59 The applicant maintains, first, that the expenditure incurred in connection with the Strasbourg General Assembly was in accordance with the conditions laid down in the first grant decision and, in particular, according to the terms of paragraph 7 of the General Conditions annexed to that decision, which stipulates that CEMR is to be responsible for implementation of the ECOS Programme and is to ensure that it receives adequate publicity.

60 It maintains that, apart from a contribution of ECU 100 000 given to the City of Strasbourg, the expenditure incurred by CEMR in order to contribute to the financing of the Strasbourg General Assembly was eligible as overheads under the ECOS Programme.

61 Even supposing that, by its letter of 7 October 1997, the Commission had intended to limit the expenditure incurred by CEMR for activities marginal to the organisation of the General Assembly to a maximum cofinancing amount of ECU 100 000, that reduction in the budget was made belatedly and was prejudicial to the applicant. The Commission could not limit that amount of cofinancing without having given CEMR adequate advance notice. Although the Commission sent a letter relating to the cofinancing of that event to the City of Strasbourg on 23 June 1993, it was only on 7 October 1993, several days after the event, when the expenditure had largely been committed, that it informed the Secretary-General of CEMR of the limit imposed on that expenditure.

62 In addition, high-ranking officials of DG XVI were aware of the event and the Director-General of DG XVI had actually taken part as a speaker. Moreover, in a letter of 19 July 1993, the Commission had indicated that the competent Member of the Commission, Mr Millan, was pleased that the Community could be involved in the financing of the event. That letter, furthermore, clearly let it be understood that the expenditure in question could be eligible for Community financing.

63 Moreover, the expenditure relating to the General Assembly was approved by the DG XVI official responsible for the management of the ECOS Programme in a fax dated 19 April 1996, in which he stated that he was satisfied with the final report on the first grant and informed the applicant that the report had been found satisfactory at both the operational and financial levels. Relying on the judgment in Case T-37/92 *BEUC and NCC* v *Commission* [1994] ECR II-285, the applicant claims that that reply was sufficiently clear and precise to give rise to a justified expectation that the financial implementation of the project would not be challenged at a later date.

64 In the light of those factors, the applicant claims it was entitled to expect that the cofinancing of that expenditure would not be thrown into doubt. In refusing to accept the expenditure the Commission frustrated the legitimate expectations that the applicant had entertained as to the cofinancing of the expenditure in question. Such an attitude furthermore undermined the terms of the grant conditions and the principle of legal certainty.

65 The Commission contests the applicant's arguments and maintains that since no provision was made for that expenditure in the initial budget, it could only be eligible if authorised. Authorisation was given in the letters of 23 June and 7 October 1993, which nevertheless limited the cofinancing in question to ECU 100 000. If the Commission accepted ECU 200 000 worth of expenditure eligible for cofinancing declared under the heading 'Projects' in CEMR's final report, it could not accept other expenditure, because the latter was not covered by that authorisation.

Findings of the Court

66 The first point to note is that in its final report the applicant declared four types of expenditure linked to the holding of the Strasbourg General Assembly.

(a) ECU 200 000 under the heading 'Projects', which the Commission considered eligible for cofinancing to a maximum of ECU 100 000 pursuant to the commitment it had made in its letters of 23 June and 7 October 1993;

(b) the remaining expenditure was declared under the heading 'Coordination and promotions' (management):

— ECU 101 598 under Heading A 'Launch and promotional conferences' for the participation of local elected representatives to Workshop 2 on East-West interregional cooperation and the ECOS Programme;

— ECU 53 300 under Heading C2 'Examination of files/Promotions' (subheading 'Information events/Publications') for the setting up of an information stand intended to provide information to local elected representatives;

— ECU 256 882 under Heading E 'Decentralised management of cooperation' (subheading 'Participation in promotions') for the financing of participants' travel expenses to the CEMR's General Assembly.

67 The expenditure declared under the heading 'Coordination and promotions' (see paragraph 66(b) above) was considered ineligible by the Commission in that no provision had been made for it in the initial budget and it exceeded the limit imposed in the letters of 23 June and 7 October 1993 by which the Commission had, by way of exception, authorised cofinancing of ECU 100 000.

68 It must be noted at the outset that grant of financial assistance is subject not only to compliance with the conditions laid down by the Commission in the decision granting assistance but also to compliance with the terms of the application for assistance in respect of which that decision was given (Case T-81/95 *Interhotel* v *Commission* [1997] ECR II-1265, paragraph 42).

69 Moreover, it should be borne in mind that when the principle of protection of legitimate expectations is invoked in this context, the Commission is entitled to reject the applicant's final payment claim, to the extent to which approval was requested for costs which had not been mentioned in the application for assistance, without any consequent breach of the principle of protection of legitimate expectations (*Interhotel* v *Commission*, cited above, paragraph 46).

70 Similarly, as regards the principle of legal certainly, although it is true that, according to settled case-law, certainty and predictability of Community legislation are requirements which must be observed all the more strictly in the case of legislation which is liable to entail financial consequences (Case C-10/88 *Italy* v *Commission* [1990] ECR I-1229), that principle cannot reasonably be

relied on where the rules in force clearly provide for the possibility of financial assistance being recovered in cases where the conditions to which its payment was subject have not been fulfilled (*Interhotel* v *Commission*, cited above, paragraph 61).

71 In this case, when it applied for financial assistance, the applicant submitted to the Commission a programme of work together with the planned budget. This was accepted by the Commission, which made it subject to general and particular conditions. Paragraph 8 of the General Conditions states that 'non-compliance with one of the abovementioned conditions... will entitle the Commission to reduce or cancel the assistance granted by the present decision; the Commission may, in such cases, demand full or partial reimbursement of the assistance already paid to the beneficiary of the decision...'.

72 It appears from the file that provision was made for the sum of ECU 53 300 declared under 'Information activities/Publications' and considered ineligible by the Commission in the initial budget. The applicant had planned to spend ECU 128 700 (ECU 42 900 × 3) for information and promotional activities which cover the expenditure incurred in the ECOS Programme promotion and information stand at the Strasbourg General Assembly. In the circumstances, since it approved the initial budget, the Commission may not, without infringing the principles of the protection of legitimate expectations and legal certainty, reduce financial assistance as regards that amount.

73 However, it is clear that no budgetary provision was made for the other expenditure relating to the Strasbourg General Assembly, namely ECU 101 598 (Launch and promotional conferences) and ECU 256 882 (participation in training activities).

74 With regard to Heading A (ECU 101 598), the sum declared under the heading 'Launch conferences expenditure', the budget provided for only ECU 120 000 for launch conferences to be held in Strasbourg in March 1992 and Prague in October 1992. Consequently no budget heading was provided for in respect of the Strasbourg launch conference in October 1993. Furthermore, in the work programme submitted by CEMR to the Commission, only those two conferences are expressly provided for to launch the ECOS Programme.

75 With regard to Heading E (ECU 256 882), the sum declared for participation in promotion activities, the Court of First Instance finds that no budget heading had been provided for that purpose.

76 Consequently, expenditure falling under Headings A and E relating to the Strasbourg General Assembly is unconnected to the project as initially accepted. It must therefore be ascertained whether that expenditure may be eligible pursuant to the Commission's express authorisation contained in the letters of 23 June and 7 October 1993.

77 It must be held that the amount expressly authorised by the Commission in those letters, which was declared by the applicant as part of a project and accepted by the Commission, was used by the City of Strasbourg entirely for the organisation of Workshop No 2 relating to East-West interregional cooperation. In those circumstances no other expenditure can benefit from that authorisation.

78 The arguments put forward by the applicant in order to show that the Commission's attitude towards it could have led it legitimately to anticipate that expenditure under Headings A and E relating to the Strasbourg General Assembly would be cofinanced or that the Commission infringed the principle of legal

certainty in not considering that expenditure eligible cannot be accepted. With regard to the argument which seeks to show that that financing was awarded to the City of Strasbourg and that CEMR learned of its existence and the ceiling on it barely a few days before the event, the Court considers that, as the beneficiary of Community financing for setting up the ECOS Programme and the body responsible for the overall financial management of the network, the applicant cannot validly claim to have been unaware of the steps taken by the City of Strasbourg, which was, moreover, providing the permanent secretariat for the ECOS network, with a view to organising its own general assembly.

79 As for the argument based on the tenor of the fax of 19 April 1996, it is clear from that document, first, that the Commission's agreement referred to therein extended only to the operational implementation of the project and, secondly, that that agreement concerned only the first grant. The applicant received the fax in question on 19 April 1996 and did not submit the joint financial report covering the two grants until 7 November 1996. Moreover, the applicant, which manages several other projects financed by the Commission, was in a position to know that the approval of any project cofinanced by that institution is conditional on a check as to substance carried out by DG XVI and a check as to procedures carried out by the financial services of DG XVI and DG XX.

80 In addition, inasmuch as the applicant claims to have had a legitimate expectation, with regard to the abovementioned fax, that the Commission would not proceed to reduce its financial assistance, it need merely be observed that the Commission's position as set out in that fax does not amount to a clear and definitive decision approving the financial report submitted and could not therefore give rise to such an expectation.

81 As far as the applicant's arguments based on the support given by DG XVI are concerned, in its letter of 19 July 1993 the Commission solely declined the invitation extended to Mr Millan and his Chef de Cabinet to take part in the

Strasbourg General Assembly and indicated that the Commissioner was pleased that the Commission was participating in the financing of that event. That statement could also not give rise to legitimate expectations on the part of the applicant that all the expenditure incurred at that event would be eligible for Community financing.

82 It follows that, with regard to the expenditure falling under Headings A and E relating to the Strasbourg General Assembly, the Commission confined itself to deducting, from the final statement of costs submitted by the applicant in its final report, expenditure that had been neither provided for nor subsequently authorised. In those circumstances the principles of protection of legitimate expectations and legal certainty were not infringed in relation to the refusal to recognise that expenditure as eligible for cofinancing.

83 It follows from all the foregoing that this plea is partially upheld with regard to the expenditure, in an amount of ECU 53 300, falling under Heading C2 and relating to the setting up of an information stand on the ECOS Programme and dismissed as for the remainder.

84 Consequently the application is allowed as regards the Commission's decision to refuse cofinancing of all the expenditure declared ineligible, with the exception of expenditure connected with the Strasbourg General Assembly in the amounts of ECU 101 598 and ECU 256 882.

Costs

In Case T-46/98

85 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to pay the costs if they have been applied for in the successful party's pleadings.

86 In the present case the claim for annulment made by the applicant, which has applied for an order awarding costs against the Commission in this case, has been partially successful. The Court considers that, although the applicant has been partially unsuccessful, it is nevertheless also necessary to take account, in determining the question of costs, of the conduct of the Commission, which waited until the action had been brought before it partially accepted the applicant's request and thereupon revised its position.

87 It is therefore appropriate to apply, in addition, the second subparagraph of Article 87(3) of the Rules of Procedure, according to which the Court may order even a successful party to pay the costs in proceedings which have arisen as a result of the conduct of that party (see, *mutatis mutandis*, *Interhotel* v *Commission*, cited above, at paragraph 82, and the case-law referred to in that judgment).

88 The Commission should therefore be ordered to bear its own costs and, in addition, to pay the costs incurred by the applicant in this case.

In Case T-151/98

89 Where a case does not proceed to judgment, Article 87(6) of the Rules of Procedure provides that the costs are to be in the discretion of the Court.

90 The Court considers that by its conduct the Commission encouraged the bringing of an action in this case by pleading that there was no need to proceed to judgment in Case T-46/98 and thereby obliging the applicant to bring a fresh action against the rectified decision notwithstanding well-established case-law on the subject.

91 Since the bringing of this action was justified by the Commission's conduct, the Commission should be ordered to bear its own costs and, in addition, to pay the costs incurred by the applicant.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. **Annuls the Commission decision contained in Debit Note No 97009405 F relating to the European City Cooperation System Project No 91/00/29/003,**

issued in December 1997 and amended on 15 July 1998, in so far as it concerns the refusal of cofinancing in respect of expenditure declared by the Commission to be ineligible, with the exception of expenditure connected with the Strasbourg General Assembly in the amounts of ECU 101 598 and ECU 256 882;

2. Dismisses the remainder of the application in Case T-46/98;

3. Rules that there is no need to adjudicate in Case T-151/98;

4. Orders the Commission to bear all the costs.

Moura Ramos Tiili Mengozzi

Delivered in open court in Luxembourg on 3 February 2000.

H. Jung
Registrar

V. Tiili
President