JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
24 February 2000 *

In Case T-145/98,

ADT Projekt Gesellschaft der Arbeitsgemeinschaft Deutscher Tierzüchter mbH, established in Bonn, represented by A. Hansen, Rechtsanwalt, Bienenbüttel, Uelzener Straße 8, Bienenbüttel, Germany,

applicant,

v

Commission of the European Communities, represented by M.-J. Jonczy, Legal Adviser, and B. Brandtner, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: German.

APPLICATION for, first, annulment of the decision by the Commission not to award the applicant the contract relating to Project FD RUS 9603 ('The Russian Federation: Adapting Russian Beef and Dairy Farming to Restructuring') and, second, compensation for the harm allegedly suffered by the applicant as a result of the Commission's conduct,

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

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

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 7 October 1999,

gives the following

Judgment

Legal context

1 Under the co-operation between the Community and Russia which takes place within the framework of the TACIS programme governed by Council Regulation

(Euratom, EC) No 1279/96 of 25 June 1996 concerning the provision of assistance to economic reform and recovery in the New Independent States and Mongolia (OJ 1996 L 165, p. 1; 'the TACIS Regulation'), the Commission and the Russian Academy of Agricultural Sciences agreed to implement a project for the development and restructuring of beef and dairy farming in Russia, called 'The Russian Federation: Adapting Russian Beef and Dairy Farming to Restructuring' and bearing the reference FD RUS 9603.

2 Articles 6 and 7 of the TACIS Regulation and Annex III thereto define the conditions governing the award of contracts under the TACIS programme, in particular by means of restricted tendering.

3 That legislation is supplemented by the General Regulations for Tenders and the Award of Service Contracts financed from PHARE/TACIS Funds ('the General Regulations').

4 Article 12 of the General Regulations, in the version applicable at the material time, provides:

'FAIR COMPETITION

1. Natural and legal persons who have co-operated to prepare the terms of reference [specifications] of the tendered project, or have otherwise contributed to define the activities to be implemented under the contract, may not participate in the tender either as tenderers or as members of a consortium or as sub-contractors or as member of the tenderer's staff.

2. If, none the less, any of the abovementioned persons participate in a tender, the relevant offer will be rejected by the contracting authority.

3. During six months after signature of the contract, a tenderer who has been awarded a contract may not employ in any capacity the natural and legal persons who have co-operated to prepare the terms of reference of the tendered project, or have otherwise contributed to define the activities to be implemented under the contract.

4. No tenderer, member of his staff or any other person anyhow associated to the tenderer for the purpose of the tender shall take part in the evaluation of the tender in question.

5. In the event that a contract is signed between the contracting party and a tenderer who is in violation of Article 12.1, 12.3 and 12.4 above, the contracting party may terminate the contract with immediate effect.'

5 Article 23 of the General Regulations, in the version applicable at the material time, provides:

'INFORMATION TO UNSUCCESSFUL TENDERERS

1. After the conclusion of the tender unsuccessful tenderers shall be informed in writing [of] the grounds of rejection of their offers and [of] the name of the tenderer to whom the contract was awarded.

2. In the event that a tenderer has serious reasons, he may submit to the contracting authority a motivated request that a tender be considered again. The contracting authority shall provide a reasoned reply in writing.'

6 Article 24, in the version applicable at the material time, provides:

'ANNULMENT OF THE TENDERING PROCEDURE

1. The contracting authority may, prior to awarding the contract, without thereby incurring any liability to the tenderers, and notwithstanding the stage in the procedures leading to the conclusion of the contract, either decide to close or annul the tender, or order that the procedure be recommenced, if necessary, on amended terms.

2. A tender procedure may be closed or annulled in particular in the following cases:

(a) if no tender satisfies the criteria for the award of the contract;

(b) if the economic or technical data of the project have been significantly altered;

(c) if, for reasons connected with the protection of exclusive rights, the services can only be provided by a particular firm;

(d) if exceptional circumstances render normal performance of the tender procedure or contract impossible;

(e) if every tender received exceeds the financial resources earmarked for the contract;

(f) if the offers received contain serious irregularities resulting in interference with the normal play of market forces;

(g) if there has been no competition;

(h) if the project has been cancelled;

(i) if the conditions for a fair competition have not been implemented.

3. In the event of annulment of any tender procedure, tenderers shall be notified thereof by the contracting authority. Such tenderers shall not be entitled to compensation.'

7 Article 25(1) and (3), in the version applicable at the material time, states:

'AWARD OF CONTRACTS

1. The contracting authority may, after negotiations or clarification meetings if appropriate, conclude a contract with the tenderer or tenderers whose offers have been considered as the economically most advantageous.

...

3. The contract shall be concluded on signature by both parties.'

Facts

8 After having issued a general notice seeking expressions of interest in Project FD RUS 9603 in December 1996, the Commission published a notice of restricted invitation to tender for that project in the *Official Journal of the European Communities*, under reference number RU96010401, on 7 February 1997.

9 On 11 February 1997 the applicant asked the Commission to be included on the tender short-list.

10 On 13 March 1997 it was selected as one of the nine candidates allowed to tender for the project.

11 On 14 April 1997 the tender documents were sent to the nine candidates on the short-list.

12 On 16 June 1997 the applicant submitted its tender to the Commission.

13 On 9 and 10 July 1997 the eight candidates which had submitted tenders were heard by an evaluation committee comprising Mr Daniilidis, President of the Committee, Mr Portier and Mr Whiley, representatives of the Commission, Mr Van de Walle and Mr Scheper, independent experts, and Mr Cherekaev, representing the recipient of the project.

14 On 23 September 1997 the Commission, referring to an unforeseen delay, requested the applicant to extend the period of validity of its tender by 60 days.

15 On 1 October 1997 the Commission informed the applicant that it was interested in its tender but wished to obtain clarification on some points in the technical proposal.

16 On 14 October 1997 the applicant provided that clarification to the Commission.

17 On 6 November 1997 the applicant expressed its surprise at the lack of response from the Commission to its letter of 14 October and asked the Commission what was proposed with regard to the award of the contract for Project FD RUS 9603.

18 On 11 December 1997 the Commission, again referring to an unforeseen delay, requested the applicant to extend the period of validity of its tender by a further 60 days.

19 On 7 January 1998 the Commission informed the applicant that, because of problems encountered during the evaluation of the tenders, it had decided that a fresh evaluation should be undertaken. While changes could be made to the composition of the team responsible for carrying out the project, no other amendment of the technical section of the tender was permissible. Five copies of the new proposals had to be received by the Commission no later than 26 January 1998. The new proposals were to be valid for 120 days from the date on which the renewed tender was received. The applicant was requested to notify the Commission of its acceptance of the fresh evaluation procedure if it intended to participate in it.

20 On 8 January 1998 the Commission criticised Mr Cherekaev for awarding unusual marks in the evaluation procedure of 9 and 10 July 1997. It also asked him to ensure that another representative of the Russian Academy of Agricultural Sciences was appointed for the purpose of the fresh evaluation procedure which was planned.

21 On 9 January 1998 it informed the applicant that the hearings for evaluation of the tenders would take place on 4 and 5 March 1998 and that a formal invitation to attend would be sent to it after 26 January 1998.

22 On 22 January 1998 the applicant informed the Commission that it accepted the procedure proposed for a fresh evaluation of the tenders.

23 On 26 January 1998 it submitted its tender for the fresh evaluation.

24 On 4 and 5 March 1998 the seven tenderers who had given notice that they wished to take part in the fresh evaluation procedure were heard by a committee comprising Mr Kjellstrom, President of the Committee, Mr Portier and Mr Wiesner, representatives of the Commission, Mr Risopoulos and Mr Macartney, independent experts, and Mr Strekosov, representing the recipient of the project.

25 On 9 April 1998 the applicant, relying on Article 23(2) of the General Regulations, asked the Commission to reconsider its tender. In support of its request, it put forward nine complaints relating, in particular, to the conduct of Mr Van de Walle and the Belgian company AGRER in the course of the tendering procedure, the conduct and the presence of Mr Portier on the two evaluation committees, intimidation directed at the Russian Academy of Agricultural Sciences following the first evaluation procedure and the arbitrary nature of the second evaluation procedure. It also complained of attacks on its reputation by the other tenderers and the persons responsible for the TACIS programme.

26 On 5 June 1998 it repeated this request to the Commission.

27 On 15 June 1998 the Commission assured the applicant that its letter of 9 April 1998 would receive due attention. It added, however, that it was not in a position to discuss details of the tendering procedure with the applicant as long as that procedure was still in progress. It also advised the applicant that it would be informed in due course of the outcome of the procedure.

28 On 18 June 1998 the Commission entered into a contract with AGRER for the implementation of Project FD RUS 9603.

29 On 23 June 1998 it acknowledged receipt of the applicant's letter of 5 June 1998, drawing the applicant's attention to its reply of 15 June 1998 and pointing out that the 'tendering process [was] still ongoing'.

30 On 26 June 1998 it informed the applicant that its tender had been unsuccessful because it was less attractive with regard to both the experience of the team responsible for carrying out the project and the proposed financial terms than that of AGRER, to which the contract had been awarded.

31 On 6 July 1998 the applicant acknowledged receipt of the Commission's letter of 26 June 1998. It went through the various stages of the tendering procedure, distinguishing the two evaluation procedures, and then referred to the criticisms expressed in its letters of 9 April 1998 and 5 June 1998. It expressed surprise that the first evaluation procedure had been cancelled following intervention by a competitor, and that its allegations of 9 April 1998 had not been taken into consideration before the contract was awarded.

32 On 29 July 1998 the Commission explained to the applicant why its tender was less attractive than AGRER's and rejected its allegations.

33 On 6 August 1998 the applicant informed the Commission that it was not satisfied with its explanations. It stated that it had information to the effect that Mr Van de Walle had been involved in drawing up AGRER's tender. It also

criticised the bias shown by him in favour of AGRER at the time of Mr Cherekaev's stay in Belgium in May 1997. Finally, it enquired about possible means of challenging the Commission decision of 26 June 1998.

34 Since the Commission provided no information on that last point, it repeated its request by telephone in August 1998. The Commission representative who was contacted refused to provide the information.

Procedure

35 It was in those circumstances that, on 11 September 1998, the applicant lodged an application at the Registry of the Court of Justice which, in accordance with the first paragraph of Article 47 of the EC Statute of the Court of Justice, transmitted it to the Registry of the Court of First Instance.

36 On 20 November 1998 the applicant sought legal aid by a separate document lodged at the Registry of the Court of First Instance. On 3 February 1999 the Commission lodged its observations on that request. By order of the President of the Third Chamber of the Court of First Instance of 6 May 1999, the request was refused.

37 Upon hearing the Report of the Judge-Rapporteur, the Court of First Instance decided to open the oral procedure after adopting measures of inquiry for the

examination of witnesses and measures of organisation of procedure requiring the parties to reply to written questions.

38 With a view to ascertaining the facts of the case, the Court ordered on 7 July 1999 that Mr Ochs (an independent consultant engaged by the applicant), Mr Cherekaev (the representative of the Russian Academy of Agricultural Sciences on the first evaluation committee) and Mr Dunleavy (AGRER's senior project director for carrying out Project FD RUS 9603) be examined as witnesses, in accordance with a request to that effect by the applicant. It also ordered the appearance as a witness of Mr Van de Walle — the expert entrusted by the Commission with drawing up the specifications for Project FD RUS 9603 and a member of the first evaluation committee — whose testimony the Commission had requested should the Court decide to examine the witnesses proposed by the applicant. Mr Ochs and Mr Dunleavy were examined on 14 September 1999. Mr Cherekaev was summoned for the same date but did not appear. The examination of Mr Van de Walle took place on 7 October 1999.

39 On 12 July 1999 the Court, by way of a measure of organisation of procedure, requested the Commission to produce the original evaluation records for the tendering procedure relating to Project FD RUS 9603 or a certified copy thereof, together with the minutes of the hearings organised in July 1997 and March 1998.

40 On 28 July 1999 the Commission informed the Court that, for reasons of confidentiality, it refused to produce to the Court an unexpurgated version of the minutes of the evaluation procedures which had taken place on 9 and 10 July 1997 and 4 and 5 March 1998. It expressed its willingness to lodge, at the Court's request, non-confidential versions of the documents covered by the measure of organisation of procedure.

41 By order of 14 September 1999 the Court, considering that it was necessary, for examination of the case, to obtain a complete version of the abovementioned

minutes, instructed the Commission to produce a certified copy thereof no later than midday on 22 September 1999 so that it could be placed on the file and brought to the applicant's attention.

42 By application lodged at the Registry of the Court of Justice on 22 September 1999, the Commission brought an appeal pursuant to Articles 49 and 51 of the EC Statute of the Court of Justice against the order of the Court of First Instance of 14 September 1999. By separate document lodged at the Registry of the Court of Justice on the same day, it applied, in accordance with Articles 242 EC and 243 EC, for an interim order suspending the operation of the order under appeal.

43 By order of 4 October 1999 in Case C-349/99 P *Commission* v *ADT Projekt* [1999] ECR I-6467, the Court of Justice dismissed the appeal. By order of 7 October 1999 in Case C-349/99 P-R *Commission* v *ADT Projekt*, not published in the ECR, the President of the Court of Justice dismissed the application for interim relief.

44 In those circumstances, the Commission agreed to the complete version of the minutes in question being placed on the file and brought to the applicant's attention on condition that they were used exclusively in connection with the present proceedings, and that the applicant gave an undertaking to that effect. The applicant acquainted itself with those documents before the hearing.

45 The parties presented oral argument at the hearing on 7 October 1999.

Forms of order sought

46 The applicant claims that the Court should:

— declare that the decision adopted by the Commission on 26 June 1998 and received on 6 July 1998 is unlawful;

— declare that the Commission was obliged to entrust to it the implementation of Project FD RUS 9603;

— order the Commission to pay it damages of DEM 550 000 to compensate for the loss of profit consequent upon the award of the contract to a competitor undertaking or, at the very least, damages of DEM 225 250 corresponding to the cost of drawing up its tender.

47 At the hearing the applicant claimed additionally that the Court should order the Commission to pay the costs.

48 The Commission contends that the Court should:

— dismiss the action as inadmissible because of the defective nature of the authority to act supplied by the applicant's lawyer, inherent contradictions in the way in which the subject-matter of the proceedings is formulated and a failure to specify the pleas in the application;

— in the alternative:

— reject as inadmissible for being out of time the claim for a declaration that the decision of 26 June 1998 is unlawful, if it constitutes an application under Article 173 of the EC Treaty (now, after amendment, Article 230 EC), or reject it as manifestly unfounded if it amounts to an application for the question of the illegality to be disposed of as a preliminary issue in proceedings under the second paragraph of Article 215 of the EC Treaty (now the second paragraph of Article 288 EC);

— reject as inadmissible the claim for a declaration that it was obliged to entrust the implementation of Project FD RUS 9603 to the applicant;

— reject the applicant's claims for damages as manifestly unfounded;

— order the applicant to pay the costs.

Admissibility

49 The Commission disputes the admissibility of the action and puts forward two pleas in support of its contention: the application does not comply with formal requirements and it was out of time. In a third plea, it challenges the admissibility

of the head of claim seeking a declaration that it is obliged to award Project FD RUS 9603 to the applicant.

The first plea, that the application does not comply with formal requirements

50 The Commission contends first of all that the authority supplied by the applicant's lawyer to prove that he is instructed to act is defective. In its submission, the details in the document included as Annex 19 to the application do not satisfy the requirements laid down by Article 19 of the EC Statute of the Court of Justice and Article 44(5)(b) of the Rules of Procedure of the Court of First Instance. That document does not make clear the capacity of the signatories of the authority. According to the Commission, those signatories acted purely as individuals, as is shown by the content of the authority which refers particularly to cases of a private nature concerning natural persons, such as divorce. Since ADT Projekt GmbH alone has a legal interest in bringing the present proceedings, the issue as to whether the authority is in accordance with the law has a decisive bearing on the admissibility of the application.

51 In that regard the Court notes that, in accordance with Article 44(6) of the Rules of Procedure, it is for the Registrar on his own initiative to check that the authority given to the lawyer is in order and, where appropriate, to prescribe a reasonable period for correcting any defect.

52 In the present case, the Registrar has checked that the authority included as Annex 19 to the application corresponds, as the applicant states, to a standard form of authority in Germany, a fact which explains the reference to disputes of a private nature. Besides, that authority contains the words 'Case of ADT Projekt GmbH v EC Commission', removing all doubt as to the existence of a connection between it and the present case.

53 Also, in response to a request made by the Registrar pursuant to Article 44(5) and (6) of the Rules of Procedure, the applicant provided on 8 October 1998 an extract from the commercial register (see the final document annexed to the application), from which it is clear that the two signatories of the authority, Mr Meyn and Mr Schmitt, had the necessary capacity to give the lawyer authority to act for the applicant in the present case.

54 It follows that the Commission's proposition to the effect that the authority is defective must be rejected.

55 The Commission submits, next, that the content of the application does not satisfy the formal requirements laid down by Article 19(1) of the EC Statute of the Court of Justice and by Article 44(1)(c) and (d) of the Rules of Procedure. It puts forward four arguments in support of its contention.

56 In its first argument, it alleges that there is a contradiction between the subject-matter of the proceedings, as defined on the first page of the application, and the form of order sought as set out on its second page. The action seeks the cancellation of the tendering procedure in its entirety while the form of order sought relates to annulment of the award of the contract to a competitor and its grant to the applicant, together with damages. According to the Commission, it is impossible to reconcile those claims because, if the contract is to be awarded to the applicant, the part of the procedure relating to the first evaluation cannot be cancelled, an outcome incompatible with the applicant's claim as defined in the subject-matter of the proceedings.

57 In its second argument, the Commission questions the effect of the first claim in the form of order sought. It points out that the EC Treaty makes no provision for a declaratory action. That claim actually contains a request to settle a preliminary issue, something which may be perfectly appropriate in proceedings under the

second paragraph of Article 215 of the Treaty. Here, however, the basis of the claim is Article 173 of the Treaty.

58 In its third argument, the Commission maintains that the pleas put forward in the application do not satisfy, in fact or in law, the requirements of the Rules of Procedure.

59 In the first place, the application contains numerous accusations against third parties not involved in the present dispute for whose acts the Commission cannot be held responsible without explanation. In its rejoinder the Commission stresses the belated and inadequate nature of the explanations which the applicant seeks to put forward in order to show that the Commission should be held responsible for those acts. It also points out that, since the criticisms set out in the application are not the same as those contained in the applicant's letters of 9 April 1998 and 6 July 1998, it is not even permissible to hold that the complaint made by the applicant against it relates to its failure to take account of the criticisms which the applicant had levelled at it during the administrative procedure.

60 Nor, second, does the applicant explain the reasons why it relies on facts relating to the first evaluation procedure, when its action is directed at the decision adopted at the end of the second evaluation procedure and it expressly and unconditionally accepted the cancellation of the former and the organisation of the latter. The applicant did not dispute the cancellation immediately or within a reasonable period after it had discovered the irregularities allegedly punctuating the first evaluation procedure. Nor does it explain how it became aware of those irregularities before the decision awarding the contract was notified to it. According to the Commission, the applicant is time-barred from contesting the legality of its decision to cancel the first evaluation procedure and initiate a second one.

61 Third, the applicant contradicts itself by relying on a series of matters which, if proved, could only lead to the cancellation of the first evaluation procedure, notwithstanding the fact that the second claim in the form of order sought by it implies the opposite outcome.

62 Fourth, the applicant has very little factual evidence to support its claim that the second evaluation procedure should be cancelled.

63 Fifth, the applicant's argument concerning the absence of information in the decision of 26 June 1998 on possible means of recourse and the refusal of the official contacted in August 1998 to provide assistance is insufficient to call into question the validity of that decision.

64 In its fourth argument, the Commission asserts that the third and fourth claims in the form of order sought are inadmissible inasmuch as the applicant identifies neither the harmful act nor any causal link between the conduct of the institution and its loss. Furthermore, the two sums claimed by the applicant in damages are widely divergent and unsubstantiated.

65 The Court notes first of all that, in accordance with the first paragraph of Article 19 of the Protocol on the Statute of the Court of Justice of the EC, applicable to the procedure before the Court of First Instance by virtue of the first paragraph of Article 46 of that Statute, and Article 44(1)(c) and (d) of the Rules of Procedure of the Court of First Instance, an application must, in particular, state the subject-matter of the proceedings, the form of order sought and a summary of the pleas in law on which the application is based.

66 Irrespective of any question of terminology, those particulars must be sufficiently clear and precise to enable the defendant to prepare its defence and to enable the

Court to give judgment in the action without having to seek further information. In order to guarantee legal certainty and sound administration of justice it is necessary, in order for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the text of the application itself (order of 21 May 1999 in Case T-154/98 *Asia Motor France and Others* v *Commission* [1999] ECR II-1703, paragraph 49, and judgment in Case T-84/96 *Cipeke* v *Commission* [1997] ECR II-2081, paragraph 31).

67 As the Commission acknowledges, the pleas in law on which the application is based, within the meaning of the Rules of Procedure, need not be set out in a particular way. The pleas may be expressed in terms of their substance rather than of their legal classification provided that the application sets them out with sufficient clarity (*Asia Motor France and Others*, cited above, paragraph 55).

68 In the present case, it is sufficiently clear from the application that the action is for the annulment of the Commission's decision not to award the applicant the contract relating to Project FD RUS 9603 and for damages in respect of the harm that the applicant claims to have suffered by reason of irregularities, for which the Commission can be held responsible, in the course of the tendering procedure ending with its decision of 26 June 1998. The fact that on the first page of the application the applicant defines the subject-matter of the proceedings as an application for annulment of the 'award of Project FD RUS 9603...' cannot be considered to reveal a contradiction with the passages in the application, and particularly with the forms of order sought, which claim annulment of the Commission's decision of 26 June 1998 to award Project FD RUS 9603 to AGRER rather than to the applicant, or with those disclosing a claim for damages. On that last point, the Commission's contentions referred to in paragraph 64 above show, moreover, that it clearly understood that the application included such a claim.

69 Second, as regards the first claim in the form of order sought, it can be readily understood from the content of the application that, by that claim, the applicant

seeks to obtain, on the basis of Article 173 of the Treaty, the annulment of the Commission's decision of 26 June 1998.

70 Third, it is apparent from Section VII of the application that the applicant puts forward in support of its claim for annulment a single plea alleging infringement of the rules governing tendering procedures and of the principle of 'fair competition', an allegation which is made in turn against AGRER, Mr Van de Walle and SATEC — one of the applicant's competitors in the contested tendering procedure — as well as against the Commission and Mr Portier. A presentation of that kind satisfies the formal requirements laid down by the first paragraph of Article 19 of the EC Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure.

71 The fact that the application contains accusations against persons for whose conduct the Commission cannot be held responsible, that it contains complaints relating to the first evaluation procedure which the applicant is allegedly time-barred from relying on or which it has no interest in putting forward given the objective pursued in the second claim of the form of order sought by it, and that the complaints concerning the second evaluation procedure may not be substantiated does not mean that the formal requirements prescribed by the Rules of Procedure are thereby infringed. Nor, as is clear from the defence and the rejoinder, have those matters prevented the Commission from defending itself, by adopting a position on the various complaints put forward by the applicant in support of its claim for annulment. Furthermore, the Court is fully in a position to rule on that claim.

72 The Commission's criticisms as set out in paragraphs 59 to 62 above cannot in fact be separated from its arguments in defence disputing, as appropriate, the admissibility, the relevance or the substance of the matters put forward by the applicant in support of its claim for annulment. These criticisms will be considered, in so far as is necessary, when those matters are examined.

73 As regards its assertion that the legality of its decision of 26 June 1998 is not affected by the failure to provide information in June and August 1998 as to the possible means of challenging it, the Commission does not explain how that assertion relates to any infringement by the applicant of the abovementioned formal requirements.

74 Fourth, in order to fulfil the formal requirements laid down by Article 19 of the EC Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, an application seeking compensation for damage allegedly caused by a Community institution must state the evidence from which the conduct alleged by the applicant against the institution may be identified, the reasons for which the applicant considers there to be a causal link between the conduct in question and the damage which he claims to have suffered and the nature and extent of that damage (Case T-13/96 *TEAM* v *Commission* [1998] ECR II-4073, paragraph 27).

75 In the present case, it is apparent from Section VIII of the application that the improper conduct alleged by the applicant against the Commission consists in its having carried out the tendering procedure relating to Project FD RUS 9603 in an unlawful manner. The applicant claims that it has accordingly suffered harm equivalent to the loss of profit, estimated at DEM 550 000, consequent upon the award of the project to another tenderer or, at the very least, to the cost of drawing up its tender, assessed at DEM 225 250, an amount which it itemises in its reply.

76 Particulars of that kind were sufficiently precise to enable the Commission to defend itself against the claim for damages, as it did in its defence and rejoinder.

77 In conclusion, it is necessary to reject the Commission's argument that the applicant failed to comply with the formal requirements laid down by Article 19(1) of the EC Statute of the Court of Justice and Article 44(1)(c) and (d) of the Rules of Procedure.

78 It follows from all of the foregoing considerations that the first plea must be rejected.

The second plea, that the application was out of time

79 The Commission submits that the application for annulment brought by the applicant against its decision of 26 June 1998 was out of time. It states that the date on which the application was registered at the Registry of the Court of First Instance, namely 15 September 1998, was after the expiry of the period of two months and six days available to the applicant for bringing such an action. While the applicant lodged its application at the Registry of the Court of Justice before that period ran out, it must suffer the consequences of failing to designate the Court with jurisdiction in its application. The applicant's errors cannot prejudice the defendant's position.

80 The Court notes that, in accordance with Article 43(3) of the Rules of Procedure, only the date of lodgement at the Registry is to be taken into account in the reckoning of time-limits for taking steps in proceedings. In the present case, the Commission does not dispute that, while the application was entered in the register of the Court of First Instance on 15 September 1998, it was lodged at the Registry of that Court on 11 September 1998, the day it was lodged at the Registry of the Court of Justice and transmitted by it to the Registry of the Court of First Instance. On that date the period allowed to the applicant for applying for the annulment of the Commission's decision of 26 June 1998 had not expired, as the Commission acknowledges.

81 It follows that this second plea, which the Commission in any case abandoned at the hearing, must be rejected.

The third plea, that the claim for the implementation of Project FD RUS 9603 to be entrusted to the applicant is inadmissible

82 According to the Commission, the second claim in the form of order sought, by which the applicant asks the Court to declare that the Commission was obliged to entrust implementation of Project FD RUS 9603 to it, is inadmissible.

83 In that regard, as the Commission points out, the Court may not, in the exercise of its jurisdiction, issue directions to the Community institutions or assume the role assigned to them (see, in particular, Case C-5/93 P *DSM* v *Commission* [1999] ECR I-4695, paragraph 36, and Joined Cases T-374/94, T-375/94, T-384/94 and T-388/94 *ENS and Others* v *Commission* [1998] ECR II-3141, paragraph 53).

84 In an action for annulment founded on Article 173 of the Treaty, the jurisdiction of the Community judicature is limited to reviewing the legality of the contested measure. If it concludes that the measure is unlawful, it annuls it. It is then for the administration concerned to adopt, in accordance with Article 176 of the EC Treaty (now Article 233 EC), the necessary measures to comply with the judgment annulling that measure (Case T-67/94 *Ladbroke Racing* v *Commission* [1998] ECR II-1, paragraph 200).

85 In an action for damages founded on Article 215 of the Treaty, the Community judicature assesses whether the facts alleged amount to wrongful conduct such as to render the Community institution concerned liable, whether there is a causal

link between the alleged wrongful conduct and the harm which the applicant claims to have suffered and whether, and to what extent, that harm is proved.

86 In the present case, therefore, the Court lacks jurisdiction to rule on the quality of the applicant's tender compared with those of its competitors in the tendering procedure at issue or to order the Commission to award the applicant the contract relating to Project FD RUS 9603.

87 It is thus necessary to allow the third plea and conclude that the second claim in the form of order sought set out in the application is inadmissible in that it exceeds the jurisdiction conferred on the Community judicature by the Treaty.

88 The action is accordingly admissible only in so far as it seeks annulment of the Commission decision not to award the applicant the contract relating to Project FD RUS 9603 and compensation for the loss allegedly suffered by the applicant as a result of the Commission's conduct.

Substance

Claim for the annulment of the Commission's decision of 26 June 1998

89 In support of its claim for annulment the applicant puts forward a single plea in law, alleging infringement of the rules relating to tendering procedures and of the principle of 'fair competition'. This plea essentially falls into three parts.

First part of the plea

90 The applicant alleges that AGRER infringed Article 12(1), (2) and (4) of the General Regulations, which should have led the Commission to cancel the tendering procedure, in accordance with Article 24(2)(f) thereof. The applicant puts forward three arguments in support of this assertion.

91 First, it refers to a lunch arranged at the initiative of Mr Van de Walle which took place at his home on 11 May 1997 and brought together Mr Cherekaev and Mr Couturier, the General Manager of AGRER. The applicant alleges that Mr Van de Walle wished the representative of the recipient of the project and AGRER to be brought into contact with each other in that way before the tenders were evaluated.

92 The fact that that lunch took place has been confirmed by Mr Van de Walle, first, in a letter sent to the Commission on 28 April 1998 in response to a request for him to provide an explanation regarding the accusations made against him by the applicant in a letter of 9 April 1998 and, second, when being examined as a witness by the Court.

93 Nor is it in dispute that in May 1997 the restricted tender procedure for Project FD RUS 9603 was already in progress (see the Commission's reply of 28 July 1999 to a written question of the Court of 12 July 1999). When Mr Van de Walle was examined, he stated that he knew at that time that he had been appointed as a member of the evaluation committee. He did not rule out the possibility that the project at issue had been discussed over lunch.

94 However, as the Commission points out in its defence, the abovementioned letter from Mr Van de Walle makes it clear that a member of the applicant's board, Mr Meyn, also attended the lunch, a fact which the applicant did not dispute in its reply.

95 When questioned at the hearing, the applicant provided clarification of its argument, stating that it criticised the holding of that lunch not as such but inasmuch as it had provided the setting for preferential contact between Mr Van de Walle, Mr Couturier and Mr Cherekaev, which led to an attempt to bribe Mr Cherekaev directed at securing the project for AGRER.

96 Clarified in that way, the argument cannot in fact be distinguished from that considered under the second part of the plea concerning an alleged attempt by Mr Van de Walle to bribe Mr Cherekaev during the latter's stay in Belgium between 11 and 13 May 1997, an attempt designed to secure the contract relating to Project FD RUS 9603 for AGRER (see paragraph 120). It is therefore unnecessary to rule on that argument in this part of the judgment which is devoted to analysis of the first part of the plea.

97 In its second argument, the applicant asserts that Mr Van de Walle assisted AGRER in drawing up the technical section of its tender.

98 On this point, first, it applied for Mr Ochs to be examined as a witness.

99 When examined by the Court, Mr Ochs confirmed the applicant's contention, relying on statements from three people.

100 According to Mr Ochs, Mr Chabot, who worked for AGRER, suggested to him in a telephone conversation which dates back to June 1996 that AGRER and the applicant should set up a consortium for Project FD RUS 9603 and stated that Mr Van de Walle was going to assist him in drawing up the technical section of AGRER's tender.

101 Next, Mrs Russe, who was working for AGRER at the time, contacted him by telephone in April 1997 to offer him a job with AGRER connected with Project FD RUS 9603. In the course of that telephone conversation she informed him of Mr Van de Walle's involvement in drawing up the technical section of AGRER's tender.

102 Finally, between 10 and 13 June 1997 Mr Mertens, who worked for AGRER, mentioned on the telephone to Mr Griffith, who worked for ULG Consultants Ltd — the applicant's United Kingdom partner in the contested tendering procedure — that Mr Van de Walle had helped AGRER to draw up the technical section of its tender.

103 When Mr Van de Walle was examined, he categorically denied having given AGRER any assistance whatsoever in the preparation of its tender.

104 The Court notes, with regard to the third matter referred to by Mr Ochs, that the applicant stated in its application that the telephone call by Mr Mertens was to Mr Moffett, Mr Griffith's superior. Furthermore, it placed that telephone conversation as occurring on 14 August 1997. It invited the Court to hear evidence from Mr Moffett on the point. When questioned at the hearing about the contradiction between the version set out in its application and the evidence of Mr Ochs, the applicant stated that it would no longer rely on that element of its application.

105 Secondly, the fact that persons working for AGRER informed Mr Ochs that Mr Van de Walle was involved in drawing up AGRER's technical proposal does not prove that he was in fact involved. It should be noted that the three matters referred to by Mr Ochs took place before 16 June 1997, the date on which the applicant submitted its tender for Project FD RUS 9603 to the Commission. It is therefore possible that the persons working for AGRER — whom the applicant did not at any stage seek to have examined as witnesses, not even when Mr Van de Walle suggested it to the Court during his evidence — stated that Mr Van de Walle was involved in drawing up the technical section of AGRER's tender in order to persuade the applicant to set up a consortium with it in connection with the tendering procedure at issue. Moreover, the applicant states in its application that it was approached in May and June 1996 with a view to setting up such a consortium.

106 In those circumstances, the evidence of Mr Ochs does not prove the applicant's contention set out in paragraph 97 above.

107 Secondly on this point, the applicant refers to the message in an anonymous telephone call on 8 August 1997 to one of its secretaries, Mrs Dietzsch, who immediately drafted a note of the call's contents.

108 That note, included as Annex 17 to the application, states:

'Today I received a telephone call from a man who wished to remain anonymous. He told me that we were in first place for the Russian project. The Russians have given us the maximum mark. The firm AGRER would not accept that state of affairs. He said: "They are doing everything... Even with money... You should be careful... I advise you to touch the respective officer in Brussels and ask him what the situation is... But very softly!"'

('Ich erhielt heute einen Anruf von einem Herren, der anonym bleiben wollte. Dieser Herr sagte, daß wir im Rußland-Projekt auf Platz 1 seien. Die Russen hätten uns die maximale Punktzahl gegeben. Die Firma Agrer werde sich damit nicht zufriedengeben. Er sagte: "They are doing everything... Even with money... You should be careful... I advise you to touch the respective officer in Brussels and ask him what the situation is... But very softly!"')

109 It is unnecessary to discuss the evidential value of that note (which as the Commission points out is dated 7 August 1998 and not 8 August 1997) having regard to the links between its author and the applicant; it need merely be stated that its contents do not establish that Mr Van de Walle assisted AGRER in drawing up its tender.

110 Thirdly on this point, the applicant asserted in its reply that, after commencing the present action, it became aware of statements by Mr Dunleavy which confirmed its suspicions concerning Mr Van de Walle's involvement in drawing up AGRER's tender. It requested the Court to examine Mr Dunleavy as a witness.

111 The Court can only record, however, that when Mr Dunleavy was examined, he categorically denied having stated that he had learnt that Mr Van de Walle helped AGRER to draw up its tender.

112 In conclusion, none of the evidence put forward by the applicant proves that Mr Van de Walle assisted AGRER in drawing up the technical section of its tender.

113 Moreover, if Mr Van de Walle had wanted to favour AGRER in the contested tendering procedure, bias of that kind would in all probability have been reflected

in his assessments in the evaluation procedure of 9 and 10 July 1997. However, it is clear from reading the minutes of that procedure that, in the technical evaluation, Mr Van de Walle awarded two tenderers, one of which was the applicant, a higher mark than AGRER. Such a finding conclusively rules out the applicant's contention set out in paragraph 97 above.

114 In its third argument, the applicant submits that AGRER bribed high-ranking Russian officials in the Ministry of Agriculture in order to obtain the contract relating to Project FD RUS 9603.

115 It should be noted, without it being necessary to rule on the admissibility of this argument — raised in the reply — in the light of Article 48(2) of the Rules of Procedure, that the applicant sought evidence from Mr Dunleavy on this matter. However, when Mr Dunleavy was examined he categorically denied having stated or learnt that AGRER had bribed or sought to influence members of the Russian administrative authorities in order to be awarded the contract at issue.

116 As Mr Dunleavy's evidence was the only evidence offered by the applicant to support its contention referred to in paragraph 114 above, the contention cannot be accepted.

117 It follows from the foregoing (paragraphs 90 to 116) that the first part of the plea must be rejected.

Second part of the plea

118 The applicant refers to attempted bribery of Mr Cherekaev by Mr Van de Walle and of a member of the Russian administrative authorities by the company SATEC, as well as to pressure brought to bear on Mr Cherekaev by SATEC. It submits that such acts constitute serious infringements of the principle of 'fair competition' which underlies any tendering procedure and should have led the Commission to annul the procedure at issue, in accordance with Article 24(2)(f) of the General Regulations.

119 In its application, the applicant puts forward two arguments to support that contention.

120 First, it claims that during Mr Cherekaev's stay in Belgium from 11 to 13 May 1997 Mr Van de Walle offered him a sum of USD 50 000 on condition that AGRER was entrusted with the implementation of the project at issue. As noted in paragraph 95 above, the applicant explained at the hearing that the lunch organised by Mr Van de Walle at his home on 11 May 1997 had been the setting for preferential contact between Mr Van de Walle, Mr Couturier and Mr Cherekaev which had led to the alleged attempt to bribe Mr Cherekaev.

121 The Court considers that, in order for an allegation of that kind to be regarded as proven, it must be founded on irrefutable evidence or, at the very least, on a body of objective, relevant and consistent evidence.

122 In its application, the applicant invited the Court to hear evidence from Mr Cherekaev concerning events which took place in May 1997 during his stay

in Belgium. As already stated, Mr Cherekaev did not respond to the summons served on him by the Court for that purpose.

123 Mr Ochs, whose appearance as a witness the applicant had also requested, stated during his examination that Mr Cherekaev and Mrs Gluchowzewa, the person in charge of external relations at the Russian Academy of Agricultural Sciences, who had accompanied Mr Cherekaev in Belgium in May 1997, had informed him after that stay of an attempt by Mr Van de Walle to bribe Mr Cherekaev in order to secure the contract relating to Project FD RUS 9603 for AGRER.

124 When Mr Van de Walle was examined he categorically denied that allegation, adding that he had never spoken to Mr Cherekaev in favour of the bid of any tenderer at all.

125 Even if Mrs Gluchowzewa, whose appearance as a witness the applicant also requested, had confirmed Mr Ochs's statement, her evidence by itself would not have enabled the Court to resolve the contradiction between the depositions of Mr Ochs and Mr Van de Walle.

126 It is accordingly necessary to establish whether the file contains evidence corroborating the statement of Mr Ochs.

127 In point of fact, it does not. On the contrary, as stated in paragraph 113 above, it is apparent from reading the minutes of the first evaluation procedure that, in the technical evaluation, Mr Van de Walle awarded two tenderers, one of which was the applicant, a higher mark than AGRER. If Mr Van de Walle had interceded

with Mr Cherekaev on behalf of AGRER during Mr Cherekaev's stay in Belgium in May 1997, such action would in all probability have been reflected in the assessments of Mr Van de Walle in the first evaluation procedure.

128 In the absence of irrefutable evidence or a body of objective, relevant and consistent evidence, the Court must conclude that the attempted bribe alleged by the applicant has not been proved.

129 In its second argument, the applicant claims that after the first evaluation procedure Mr Cherekaev was subjected to strong pressure from SATEC. It maintains that an attempt was also made (by offering payment of USD 50 000) to bribe a member of the Russian administrative authorities, with the aim that another organisation should replace the Russian Academy of Agricultural Sciences as the recipient of the project. That scheme failed thanks to the intervention of Mr Cherekaev.

130 The Court notes first of all that the applicant does not specify the nature of the pressure allegedly put on Mr Cherekaev by SATEC.

131 Next, the applicant requested in its application that Mr Cherekaev be heard in evidence. Since Mr Cherekaev failed to respond to the summons served on him by the Court for that purpose and the applicant has not adduced other evidence to substantiate its allegations in this regard, the Court must conclude that those allegations are not proven.

132 In any event, even if the facts alleged by the applicant were proven and had been known to the Commission at the time, they could only have resulted in the latter excluding SATEC from the tendering procedure. They would not have altered the decision by the Commission to award the contract to AGRER.

133 It follows from the foregoing that the second part of the plea must be rejected.

Third part of the plea

134 The applicant submits that the Commission infringed the obligation imposed by the principle of 'fair competition' to be seen to be impartial, and to conduct the tendering procedure in a lawful manner. It puts forward six arguments in support of that contention.

135 In its first argument, it criticises the fact that Mr Portier both chaired the hearing of 9 July 1997 and took part in the vote in the first evaluation procedure.

136 When asked to specify the legal basis for this argument, the applicant (see its response of 3 September 1999 to the Court's written question of 12 July 1999) produced the 'Guidelines for Task Managers for Awarding Service Contracts (TACIS)' ('the Guidelines'). According to paragraph 2(a) of Section D ('The evaluation committee') of Part VIII ('Restricted tendering') of the Guidelines, the chairman has no right to vote, in order to guarantee his role as arbitrator in the evaluation procedure. The applicant states, furthermore, that the fact that Mr Portier chaired the hearing of the applicant is contrary to paragraph 2(b) of Section D, under which the task manager, in this instance Mr Portier, may take part in the vote as a Commission representative only if he does not take on the chairmanship of the evaluation committee.

137 In that regard, the Court notes, without it being necessary to rule on the objection of inadmissibility raised at the hearing by the Commission in respect of the

information provided by the applicant in its response of 3 September 1999, that the applicant does not dispute the particulars in the defence according to which the chairmanship of the first evaluation committee was taken on by Mr Daniilidis, who did not take part in the vote.

138 It is true that the Commission does not rule out the possibility that Mr Daniilidis did not attend all the hearings relating to the first evaluation procedure and that, in his absence, Mr Portier conducted a hearing or two, including the applicant's.

139 However, a circumstance of that kind, which the Commission explained at the hearing by the fact that Mr Daniilidis, a Commission official as required by the rules governing tendering procedures, could have been obliged to absent himself now and again for work-related reasons, did not affect the applicant's situation at the time of the first evaluation procedure. The applicant was considered to be the tenderer putting forward the best bid at the conclusion of that procedure.

140 Furthermore, acceptance of the applicant's view could only lead to the conclusion that the first evaluation procedure had to be cancelled, a step which the Commission took. On the other hand, the alleged irregularity, which the applicant does not claim was repeated in the evaluation procedure of 4 and 5 March 1998, cannot have affected in any way the validity of that procedure, following which the contested decision was adopted.

141 The applicant's argument on that point must therefore be rejected.

142 Similarly, without it being necessary to rule on its admissibility in the light of Article 48(2) of the Rules of Procedure, the argument set out by the applicant in

its response referred to in paragraph 136 above, according to which the absence of Mr Daniilidis from certain hearings in the first evaluation procedure infringes the provision in the Guidelines requiring the members of the evaluation committee to attend all its meetings (paragraph 3 of Section D of Part VIII), must be rejected for reasons identical to those set out in paragraphs 139 and 140 above.

143 In its second argument, the applicant asserts that in the course of the first evaluation procedure Mr Portier unjustifiably accorded SATEC favourable treatment by examining, in contravention of the relevant rules, the financial section of its tender although the tender's technical section had not obtained 65 points.

144 However, it is clear from reading the minutes of the first evaluation procedure that the applicant's contentions are unfounded. In the technical evaluation, the members of the committee awarded SATEC's tender an average mark below the threshold of 65 points set for qualification for the financial evaluation. Its tender was therefore excluded at the technical evaluation stage. Only two tenders, the applicant's and AGRER's, were the subject of a financial evaluation, having obtained a mark above the threshold of 65 points in the technical evaluation.

145 In its third argument, the applicant disputes the lawfulness of the decision by the Commission to carry out a second tender evaluation. The first evaluation procedure demonstrated that its tender was by far the best and the justification that Mr Cherekaev awarded too many points to the applicant cannot be sustained. Mr Cherekaev kept to the limits laid down by the Commission when performing his duties as a member of the evaluation committee. On the other hand, Mr Portier, who awarded an abnormally high number of points to SATEC, was not subject to any Commission criticism.

146 The applicant states in its reply that if only two of the eight tenderers obtained a sufficiently high technical mark in the first evaluation procedure for the financial section of their tender to be considered, that could not have resulted solely from Mr Cherekaev's assessment. Such an outcome means that other members of the evaluation committee also awarded marks below the threshold of 65 points. The applicant contends furthermore that Mr Portier and Mr Van de Walle awarded abnormally high marks to SATEC and AGRER in the first evaluation procedure.

147 On this issue, the Court notes that the Commission has a broad discretion with regard to the factors to be taken into account for the purpose of deciding to award a contract following an invitation to tender (Case 56/77 *Agence Européenne d'Interims* v *Commission* [1978] ECR 2215, paragraph 20, and Case T-19/95 *Adia Interim* v *Commission* [1996] ECR II-321, paragraph 49). Review by the Community judicature must be limited to checking that the rules governing the procedure and statement of reasons are complied with, the facts are correct and there is no manifest error of assessment or misuse of powers.

148 In the present case, the minutes of the meeting of the evaluation committee on 9 and 10 July 1997 show that, of the eight competing tenderers, only two obtained, for the technical section of their tender, an average mark above 65 points, the threshold for qualifying for the financial evaluation. The average marks awarded by the members of the evaluation committee to the six other tenderers for the technical section of their tender ranged from 50.47 to 62.44 points.

149 At the end of the technical evaluation, Mr Cherekaev's attention was drawn to the fact that he had placed only the applicant's tender above the threshold of 65 points and that his marks differed significantly from those of the other evaluators. After hearing Mr Cherekaev's explanations and recording that, since he stood by his marks, this divergence could not be reduced, the members of the evaluation committee carried out the financial evaluation of the two tenders still in the running following the technical evaluation and concluded that the applicant's

tender was the best. The evaluation committee nevertheless pointed out to the Commission that, if it endorsed the outcome of the evaluation procedure, two technical matters should be clarified with the applicant before the contract was signed: the appointment of a third local expert and the production of a declaration certifying that none of the local experts appointed by the applicant was employed by the Russian Academy of Agricultural Sciences.

150 By proceeding in that way, the evaluation committee scrupulously observed the provisions in the Guidelines to be followed where the marks of one evaluator diverge significantly from those of the other members of the evaluation committee.

151 In Section G ('The evaluation process') of Part VIII of the Guidelines it is stated (p. 30):

'In the event that some evaluators deviate from the majority of the Committee in their marks and particularly in the case of extreme evaluators [*sic*] the Chairman, before the signature of the grids, asks the deviating evaluators the reasons of their disagreement with the other members of the Committee and ask[s] if they really wish to confirm their marks.

If the deviating evaluators are firm in their position the Committee sign[s] the grids...'.

152 As the Commission points out in its defence, as the contracting authority it is not bound by the evaluation committee's proposal (*TEAM* v *Commission*, cited above, paragraph 76, and Case C-27/98 *Metalmeccanica Fracasso and Leitschutz Handels- und Montage GmbH* v *Amt der Salzburger Landesregierung* [1999] ECR I-5697, paragraphs 33 and 34). The fact that the Commission did not entrust the implementation of Project FD RUS 9603 to the applicant when the evaluation committee had taken the view that it had put forward the best tender therefore does not in itself amount to a breach of procedure capable of resulting in the annulment of the Commission's decision's of 26 June 1998 to award the contract to AGRER.

153 However, it is necessary to ascertain whether the Commission made a serious and manifest error of assessment by deciding to cancel the evaluation procedure of 9 and 10 July 1997 and organise a second evaluation on 4 and 5 March 1998.

154 According to the Commission, such a decision was essential because Mr Cherekaev had awarded unusual marks in the technical evaluation without a valid explanation (see its letter of 8 January 1998 to Mr Cherekaev).

155 As was immediately noted by the evaluation committee itself at the end of the technical evaluation, Mr Cherekaev's marks, other than the marks which he had awarded the applicant, differed radically from those of the other committee

members. While all the other evaluators had considered that several tenders deserved a technical mark above the threshold of 65 points, Mr Cherekaev had awarded very much lower marks, between 37.50 and 53.20 points, to all the tenderers except the applicant, to which he had awarded 72.70 points. Disregarding Mr Cherekaev's marks, four tenders instead of two would have obtained an average technical mark above 65 points and could thus have been the subject of a financial evaluation.

156 Contrary to the applicant's assertions, the marks of Mr Van de Walle and Mr Portier were not extreme. Neither of them awarded an abnormally high number of points to SATEC. It is true that their marks were the highest awarded to that undertaking, but they differed from those of the other evaluators — with the exception of Mr Cherekaev — by only four to seven points, a disparity appreciably smaller than the difference observed between the marks awarded by Mr Cherekaev and those awarded by the other members of the evaluation committee to the tenderers other than the applicant. Furthermore, Mr Van de Walle and Mr Portier awarded a mark above 65 points to other tenderers. Nor did Mr Van de Walle and Mr Portier award an exaggeratedly high mark to AGRER. Two other members of the evaluation committee awarded it a mark higher than theirs.

157 The explanations provided by Mr Cherekaev to the other members of the evaluation committee with regard to his assessment of the technical bids related, first, to the fact that his assessment reflected not only his opinion but also that of his institution and, second, to the fact that it was based on the contact which he had had with the undertakings when they were on fact-finding trips in Russia (minutes of the evaluation committee of 9 and 10 July 1997, p. 10).

158 The Commission was justified in not accepting such explanations.

159 First, Mr Cherekaev represented the Russian Academy of Agricultural Sciences, the recipient of the project, on the evaluation committee and it was thus natural for his marking to reflect the opinion of his institution. He therefore could not properly rely on that factor in order to justify his evaluation. Besides, to allow an explanation of that kind would effectively compromise the balance sought by means of the voting-rights allocation laid down in the rules on evaluation procedures, by according undue weight to the vote given by the representative of the project recipient.

160 Second, as the Commission rightly pointed out in its pleadings and at the hearing, the evaluators' assessment may be based only on the analysis of the written bids submitted by the tenderers. Any contact which the representative of the project recipient may have had in Russia with tenderers cannot be relevant to his assessment of the competing tenders, as otherwise subjective criteria will interfere in a procedure which, in the interests of equality of opportunity, and thus equal treatment for the tenderers involved, must be founded exclusively on objective criteria so far as concerns the award of the contract in question. Moreover, in Annex III to the TACIS Regulation, which is concerned with the principles governing the award of contracts by means of tendering, paragraph 3 provides that specific experience of a tenderer in TACIS is not to be taken into account in the assessment of tenders.

161 Given, on the one hand, the wide divergence recorded between Mr Cherekaev's marks and those of the other evaluators, as well as between the marks awarded by Mr Cherekaev to the applicant and those which he awarded to the other tenderers, and, on the other, the lack of valid explanations on his part for those divergences, the Commission did not make a serious and manifest error of assessment when it took the view in its letter of 8 January 1998 to Mr Cherekaev that, in the evaluation procedure of 9 and 10 July 1997, he had not displayed the impartiality required in that kind of procedure.

162 It is true that, as the applicant pointed out at the hearing, there was still an element of competition following the technical evaluation despite Mr Cherekaev's

marks, since two tenderers remained eligible for the purpose of the financial evaluation of the tenders.

163 However, it has already been found (paragraph 155 above) that Mr Cherekaev's marks fundamentally distorted the results of the technical evaluation and that, if they had been disregarded, four tenders instead of two could have been the subject of a financial evaluation. Furthermore, Mr Cherekaev's assessment of the technical section of the two tenders affected the competition between the tenderers concerned beyond the technical evaluation stage. As is clear both from the minutes of the relevant evaluation committee and from the explanations provided by the Commission in its pleadings, the best tender was determined on the basis of a weighting of the technical and financial evaluations, the former having a 70% weighting and the latter a 30% weighting. The marks awarded by Mr Cherekaev at the technical evaluation stage thus affected the position of the tenderer whose bid, like the applicant's, was the subject of a financial evaluation, until the end of the evaluation procedure.

164 In those circumstances, the Commission had good grounds, in order to restore equal treatment and, thereby, equality of opportunity for all the tenderers, which it is bound to ensure at each stage of a tendering procedure (see, in particular, Case T-203/96 *Embassy Limousines & Services* v *Parliament* [1998] ECR II-4239, paragraph 85), for cancelling the evaluation procedure of 9 and 10 July 1997 and organising a fresh one, open to the same tenderers as those who had competed in the first evaluation procedure, while ensuring that the recipient of the project was represented in that second evaluation procedure by someone other than Mr Cherekaev.

165 It is true that Article 24 of the General Regulations, upon which the Commission bases such a decision, mentions, expressly, only the Commission's power to decide to close or cancel the tender procedure, or where appropriate to recommence it on amended terms.

166 Nevertheless, it follows from the broad logic of that provision and from the principle of good administration that the Commission was, *a fortiori*, entitled, in the interests of the economy and effectiveness of the administrative procedure and those of the recipient of the project, to confine itself to cancelling only the disputed evaluation procedure and to organising a fresh one, as it did in the present case.

167 Besides, where an administrative procedure is flawed the Commission is not required, in the absence of an express provision to the contrary, to repeat the stages of the procedure which preceded the irregularity where they have not been affected by it (see Joined Cases T-305/94 to T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *Limburgse Vinyl Maatschappij and Others* v *Commission* [1999] ECR II-931, paragraphs 189 to 250). In the present case, the stages of drawing up the specification and establishing the short-list of candidates allowed to tender were not vitiated by the irregularity which occurred during the first evaluation procedure. The Commission was thus fully entitled to resume the tendering procedure from the tender evaluation stage rather than recommencing it from the beginning.

168 Moreover, the Commission cogently answered the applicant's question as to why it decided, after giving the impression in a letter of 1 October 1997 that it was going to accept the applicant's tender, to cancel the evaluation procedure of 9 and 10 July 1997 six months after it had taken place.

169 The Commission stated that, after the meeting of the evaluation committee on 9 and 10 July 1997, the appropriate persons within the institution were informed of the committee's proposal through official channels. Mr Cherekaev's marks drew conflicting reactions. Certain persons considered them unacceptable. Others took the view that it was, despite everything, preferable to continue the tendering procedure in the interests of the project, pointing out the risk of a situation of that kind arising again should there be a fresh evaluation procedure. According to the Commission, the time taken by it to cancel the first evaluation procedure is thus

explained by the delicate nature of a decision of that kind *vis-à-vis* the recipient of the project, having regard to the actual reason for the cancellation.

170 The sending of the letter of 1 October 1997 to the applicant was attributed by the Commission to a lack of co-ordination, which it regretted, between the unit responsible for TACIS programmes (the sender of the letter) and its own staff.

171 In any event, the applicant does not explain how its situation could have been affected merely because six months elapsed between its hearing and the decision by the Commission to recommence the evaluation procedure. The applicant states, on the contrary, that the letter of 1 October 1997 enabled it to improve the quality of the technical section of its tender between the two evaluation procedures, something which, it maintains, the other tenderers were not allowed to do.

172 Having regard to the foregoing considerations, the applicant's argument to the effect that the Commission's decision to cancel the result of the evaluation procedure of 9 and 10 July 1997, exclude Mr Cherekaev from the evaluation committee and organise a second evaluation procedure was unlawful must be rejected.

173 In its fourth argument, the applicant contends that for the second evaluation procedure there should have been a completely new committee in order to ensure the impartiality of its members. It criticises the fact that Mr Portier, who had been a member of the first evaluation committee and, in its view, had awarded SATEC an abnormally high number of points and displayed bias against the applicant, took part in the second evaluation procedure. In its submission, the principle of fairness was infringed. Mr Cherekaev's exclusion from the evaluation committee should have resulted in the replacement of all the members of the first committee.

174 The applicant complains furthermore of the influence of Mr Portier, when the second evaluation committee was formed, in the selection of one of the two independent experts, Mr Risopoulos, who resembled Mr Van de Walle in career and nationality. It also alleges that Mr Portier awarded SATEC an abnormally high mark in the second evaluation procedure.

175 The Court notes, however, that Mr Portier was the person responsible for managing Project FD RUS 9603 within the Commission. That is a valid explanation for his participation in both evaluation committees.

176 Nor does the applicant specify what provision the Commission infringed by not appointing an entirely new evaluation committee for the purpose of the second procedure. It relies at best on a breach of the principle of fairness, invoking the allegedly biased attitude of Mr Portier during both evaluation procedures. However, no evidence to prove such bias was produced.

177 It has already been held (see paragraph 156 above) that a reading of the minutes of the meeting of the evaluation committee of 9 and 10 July 1997 shows the applicant's accusations as to the excessive number of points awarded by Mr Portier to SATEC are without substance. Nor do the minutes of the meeting of the evaluation committee of 4 and 5 March 1998 show that Mr Portier awarded SATEC an abnormally high number of points in the second evaluation procedure. One member of the second committee gave SATEC a mark much higher (by more than five points) than that of Mr Portier, which was very close to the mark awarded by another evaluator. Furthermore, in that second evaluation procedure Mr Portier awarded two other tenderers a mark practically equal to the mark which he awarded to SATEC (differing by less than 0.5 of a point). The mark which he gave to the applicant was only 2.65 points less than the mark he gave to SATEC.

178 Also, while Mr Portier awarded the applicant's tender, when assessing its technical section in the first evaluation procedure, a mark slightly below the threshold of 65 points required to qualify for the financial evaluation stage, such a mark cannot be regarded as revealing bias against the applicant, as is indeed borne out by the fact that in the second evaluation procedure Mr Portier gave the applicant a mark above that threshold.

179 Finally, whatever influence Mr Portier might have had on the selection of Mr Risopoulos as a member of the second evaluation committee, the applicant adduces no cogent evidence to cast doubt on the impartiality of that independent expert in the second evaluation procedure. Even if the only allegation, relating to the similar career paths and nationalities of Mr Van de Walle and Mr Risopoulos, is assumed to be true, it is entirely irrelevant for these purposes.

180 Besides, it is clear from the minutes of the second evaluation procedure that Mr Risopoulos gave the applicant's tender a mark for its technical section exceeding the threshold of 65 points. That mark is higher than the mark awarded to the applicant's tender by the other independent expert, Mr Macartney, whose appointment as a member of the second evaluation committee is not, however, contested by the applicant. It is, in addition, higher than the marks awarded by Mr Risopoulos to the bids of three of the other six tenderers who were competing with the applicant in the second evaluation procedure.

181 The applicant's argument that the composition of the second evaluation committee was unlawful, particularly because of Mr Portier's presence, must therefore be rejected.

182 In its fifth argument, the applicant complains that, before awarding the contract, the Commission paid no attention at all to its letter of 9 April 1998 in which it

relied on a series of factors affecting the propriety of the tendering procedure to request the Commission to reconsider its tender. On 15 June 1998, following repeated requests from the applicant, the Commission responded to that letter by stating that it was not in a position to discuss matters with one of the tenderers involved in the tendering procedure while it was still in progress. In the applicant's submission, the Commission infringed Article 23(2) of the General Regulations by acting in that way.

183 The Court observes as a preliminary point that under Article 23 of the General Regulations (see paragraph 5 above), in order for a tenderer to submit a request seeking reconsideration of his tender by the contracting authority and for the latter to reply to it, the tenderer must previously have been informed in writing by the contracting authority of the grounds for rejection of his offer and of the name of the tenderer to which it has decided to award the contract.

184 In the present case, however, the applicant submitted its complaints concerning the conduct of the tendering procedure to the Commission for the first time on 9 April 1998 and then on 5 June 1998, while it was only on 26 June 1998 that the Commission informed it in writing of the rejection of its tender, the reasons for that rejection and the award of the contract to AGRER.

185 Irrespective of the question as to how the applicant, as its letter of 9 April 1998 clearly intimates, could have become aware of the outcome of the evaluation procedure of 4 and 5 March 1998 before it received notification of the decision by the Commission to award the contract to AGRER, it is thus clear that the Commission did not infringe Article 23(2) of the General Regulations by informing the applicant on 15 and 23 June 1998 that it was not yet in a position to discuss details of the tendering procedure with it, and by not replying to its criticisms until 29 July 1998, when it had adopted its decision to award the contract to AGRER and had informed the applicant in writing of that decision.

186 With regard to the substance, six grounds were relied on by the applicant in its letter of 9 April 1998 to support its request that the Commission reconsider its tender.

187 First, the applicant criticised the conduct of Mr Van de Walle and AGRER during the tendering procedure. It alleged that Mr Van de Walle assisted AGRER in drawing up the technical section of its tender, although he had written the specifications and was a member of the first evaluation committee (point 1 of the letter). It also complained that he had arranged for Mr Cherekaev and AGRER's General Manager to meet in Belgium in May 1997 and lobbied on that occasion for AGRER to be awarded the contract (point 2). It stated that it was convinced that Mr Van de Walle had not displayed the necessary impartiality during the first evaluation procedure, using his influence to promote AGRER's tender, and that he had made the applicant's bid available to AGRER for the second evaluation procedure, giving AGRER an unfair advantage (point 3). It therefore considered that AGRER had to be excluded from the procedure (point 4).

188 Second, it said that it was firmly convinced that Mr Portier had constantly cast discredit on its bid in the course of the tendering procedure. Nor could it understand why Mr Portier had been the only member of the first evaluation committee to take part in the second evaluation procedure. It requested the Commission to analyse the assessments given by him in both evaluation procedures (point 5).

189 Third, it claimed that after the first evaluation procedure Mr Cherekaev had been intimidated by threats that the project would be cancelled if the representative of the Russian Academy of Agricultural Sciences called on to be a member of the second evaluation committee were to give excessive marks again. That representative's freedom of assessment was therefore affected (point 6).

190 Fourth, the applicant expressed its conviction that, in that context, it had been impossible for the independent consultants who took part in the second evaluation procedure to assess its tender in an unbiased manner (point 7).

191 Fifth, it stated that it was convinced that, since its tender had been placed first at the end of the first evaluation procedure and it had been possible to improve it before the second evaluation procedure took place, the fact that its tender was not ranked first at the end of the second procedure meant that it had been assessed arbitrarily (point 8).

192 Sixth, the applicant maintained that its competitors and the persons in charge of the TACIS programme had tarnished its reputation, particularly with the Commission and in the livestock consulting business in Europe (point 9).

193 As regards the criticisms relating to the conduct of Mr Van de Walle and AGRER during the tendering procedure, the Court notes that as soon as the Commission received the applicant's letter of 9 April 1998 it asked Mr Van de Walle to explain his relations with Mr Cherekaev and AGRER during that procedure, a fact which shows that, contrary to the applicant's assertion, the Commission took account of its letter before awarding the contract.

194 On 28 April 1998 Mr Van de Walle provided explanations as requested. He categorically denied having offered to assist AGRER, or any other tenderer whatsoever, to prepare bids in tendering procedures for projects financed by the Commission or other sources. He explained that he had arranged a lunch at his home in Belgium on 11 May 1997 which brought together Mr Cherekaev and Mr Couturier, the General Manager of AGRER, as well as a representative of the applicant, Mr Meyn. He affirmed, however, that he had always displayed total impartiality in the tendering procedures in which he had been involved, in

particular under the TACIS programmes, as was borne out, so far as concerned the tendering procedure for Project FD RUS 9603, by his technical assessments of the competing tenders at the meeting of the evaluation committee on 9 and 10 July 1997.

195 The minutes of that evaluation procedure cast no doubt on Mr Van de Walle's conduct during it. In particular, they do not show that he sought to favour AGRER over the applicant. In fact, he awarded the former a lower mark than the latter (see paragraph 113 above).

196 Having regard to the information provided by Mr Van de Walle in his letter of 28 April 1998 and the minutes of the meeting of the evaluation committee on 9 and 10 July 1997, the Commission was justified in not giving any credence to the accusations of bias made by the applicant against Mr Van de Walle.

197 The Commission was also entitled to reject the applicant's allegation that Mr Van de Walle had passed its bid to AGRER for the second evaluation procedure. Apart from being pure conjecture, such an allegation may well have appeared particularly implausible to the Commission because, by letter of 7 January 1998, it had expressly informed the applicant and the other tenderers involved that, with the exception of changes to the composition of the teams proposed for carrying out the project in the first evaluation procedure, it was not allowing any other amendment of the technical sections of the tenders for the second evaluation procedure.

198 As to the presence of Mr Portier on both evaluation committees, the Commission answered the applicant cogently in its letter of 29 July 1998 to the effect that his presence was explained by his responsibilities as the task manager in Directorate C (Relations with the New Independent States and Mongolia) of Directorate-

General IA (External relations: Europe and the New Independent States, Common Foreign and Security Policy, External Service) of the Commission.

199 As regards Mr Portier's conduct during the two evaluation procedures, it has already been held, by reference to the minutes of those procedures, that his assessments do not reveal bias against the applicant (see paragraph 178 above). The Commission was therefore justified in rejecting the applicant's allegations in that regard.

200 So far as concerns the alleged intimidation of Mr Cherekaev, designed to restrict the freedom of the representative of the project recipient to assess the tenders in the second evaluation procedure, the minutes of that procedure show that the said representative, Mr Strekosov, awarded a mark more than six points higher than that given by Mr Cherekaev in the first evaluation procedure, proving that he enjoyed full freedom to assess the tenders. Furthermore, the mark given by Mr Strekosov to the applicant was considerably higher than those awarded by him to the other six tenders, which ranged from 43.10 to 68.90 points. The Commission was therefore right to reject the applicant's complaints in that regard.

201 Since the preceding charges levelled by the applicant appear wholly unfounded and are unsupported by any evidence whatsoever on its part, the Commission was also fully entitled not to give any credence to the applicant's contention that the particular context of the tendering procedure prevented the two independent experts from assessing its tender with complete impartiality.

202 As for the allegedly arbitrary nature of the second evaluation procedure, it is clear from reading the minutes of the meeting of the evaluation committee on 4 and 5 March 1998 that the various competing tenders were analysed in detail and evaluated on the basis of a weighting of technical quality and cost. The technical

evaluation was carried out in accordance with the normal criteria, pursuant to paragraph 3 of Annex III to the TACIS Regulation (organisation and plan of work envisaged for realising the project, quality of the staff proposed, use made of local companies or experts). There was nothing in those minutes to create a doubt in the Commission's mind as to the propriety of the second evaluation procedure.

203 Finally, the applicant's complaints relating to the harm to its reputation were not supported by any evidence.

204 In conclusion, the Commission was justified in replying to the applicant on 29 July 1998 that 'there [was] no evidence that [the] result [of the second evaluation was] based upon a manifest error of judgment or procedure' and that the allegations of bias set out in its letter of 9 April 1998 were 'pure conjecture and... not borne out by the facts'.

205 Having regard to the foregoing considerations, the applicant's argument that the Commission infringed Article 23(2) of the General Regulations must be rejected.

206 In its sixth argument, the applicant claims that the 'principles of fairness and of transparency of the administrative procedure' were seriously infringed because the Commission did not indicate in its letter of 26 June 1998 the means of recourse open to the applicant and the Commission representative contacted by telephone in August 1998 refused to provide it with such information.

207 The Court notes, however, that the applicant does not deny having received from the Commission, with the tender documents, a copy of the General Regulations,

as is moreover demonstrated by its reference, in its letter of 9 April 1998, to Article 23(2) of those regulations.

208 It therefore knew that, under that very provision, it could submit a reasoned request to the Commission seeking reconsideration of its tender after it was informed, on 26 June 1998, of the decision by the Commission to award the contract to AGRER.

209 Indeed, it exercised that right by repeating to the Commission on 6 July 1998 the complaints set out in its letter of 9 April 1998 concerning the conduct of the tendering procedure, which the Commission correctly rejected (see paragraphs 193 to 204 above) in its reply of 29 July 1998.

210 Moreover, in the absence of express provisions of Community law, the Community administration and judicature cannot be placed under a general obligation to inform individuals of the remedies available or of the conditions under which they may exercise them (order in Case C-153/98 P *Guérin Automobiles* v *Commission* [1999] ECR I-1441, paragraph 15).

211 The applicant's argument to the effect that the Commission infringed the 'principles of fairness and of transparency of the administrative procedure' because it failed to indicate the possible remedies for disputing its decision of 26 June 1998 must therefore be rejected.

212 It follows from the foregoing (paragraphs 134 to 211) that the third part of the plea must be rejected.

213 Following consideration of the three parts of the plea, it remains to be noted that the applicant states in point 3 of Section II of its application that Mr Van de Walle went on two occasions to its registered office in Bonn, in May and June 1996, to obtain information useful for drawing up the specifications relating to Project FD RUS 9603. At the hearing, it relied on the evidence of Mr Ochs to dwell on that point, disputing the details given by Mr Van de Walle in his examination as to the frequency and subject-matter of his contacts with it at that time. In the same paragraph of its application it contends, furthermore, that on those two visits Mr Van de Walle advised it cooperate with AGRER and submit a joint tender for Project FD RUS 9603.

214 However, the applicant does not draw any legal consequence from that factual argument. It is not referred to at all in Section VII of the application, where the applicant sets out the single plea which constitutes the basis for its claim for annulment. The Court therefore holds that the argument lacks precision and for that reason alone must be rejected.

215 In its application, the applicant also expresses its conviction that Mr Van de Walle passed to AGRER a copy of the technical section of the tender which it had submitted for the purpose of the first evaluation, thereby giving AGRER an advantage when the second evaluation procedure took place.

216 Again, however, the applicant does not draw any legal consequence from that point, which is not referred to in Section VII of the application under the arguments raised in support of the plea for annulment. Nor is the applicant's assertion supported by evidence, so that it must be regarded as pure conjecture. It too must therefore be rejected for lack of precision.

217 In point 2 of Section V of its application, the applicant contends furthermore that no qualitative evaluation of the competing tenders actually took place in the second evaluation procedure, that being the only possible explanation for the fact that its tender, considered to be the best at the end of the first evaluation procedure and further improved on a technical level before the second, was not again placed first following that second procedure. In its reply, the applicant puts forward a series of factors to demonstrate that its tender was superior to AGRER's and also claims that the selection of AGRER as the successful tenderer for Project FD RUS 9603 was arbitrary. In its submission, AGRER has in fact proved to be incapable of seeing that project through. It also failed in its implementation in the Ukraine of Project FD UK 9301 which had been entrusted to it in 1996, a matter which was criticised by the Court of Auditors of the European Communities.

218 In this regard, the applicant again does not draw any legal consequence from that factual argument, which is not mentioned in Section VII of the application under the arguments supporting the plea for annulment. That argument therefore lacks precision.

219 In any event, as has already been held (see paragraph 202 above), it is clear from reading the minutes of the evaluation committee of 4 and 5 March 1998 that the various competing tenders were subject to thorough analysis based on the technical and financial criteria traditionally applied. There is nothing in those minutes to cast doubt on the propriety of the second evaluation procedure.

220 Even assuming that, prompted by the Commission's letter of 1 October 1997, the applicant improved certain points in its tender's technical section having regard to the criteria laid down in the specifications, the fact that its tender was not placed first after the second evaluation procedure, as it had been after the first, merely reflects a difference of assessment on the part of the two evaluation committees that is necessarily explained by the inclusion on the second committee of members not on the first, a matter which does not amount to a breach of procedure.

221 As for the rest, it should be recalled, without it being necessary to rule on the admissibility, in the light of Article 48(2) of the Rules of Procedure, of the arguments put forward by the applicant in its reply to prove that its tender was superior to AGRER's and that the selection of AGRER as the successful tenderer for the project at issue was arbitrary, that the Court is not entitled in the exercise of its jurisdiction to substitute its assessment for that of the Community institution concerned or issue directions to it, such as, in this case, a direction to award the contract to the applicant (see paragraphs 83 to 86 above).

222 Furthermore, the applicant cannot properly dispute the legality of the decision by the Commission to award AGRER the project by relying on circumstances subsequent thereto. When examining the legality of that decision, the Court may take into account only the circumstances known to the Commission when it adopted it. The conditions of AGRER's implementation of the project thus fall outside an examination of that kind.

223 Nor can the applicant properly rely on AGRER's alleged failure in its implementation of Project FD UK 9301. Even if the allegation is well founded, such a fact is irrelevant when assessing the legality of the Commission decision relating to the tender for Project FD RUS 9603.

224 In conclusion, the applicant's argument set out in paragraph 217 above must be rejected.

225 On the basis of the above analysis (paragraphs 89 to 224), the Court rejects the plea alleging infringement of the rules relating to tendering procedures and of the principle of 'fair competition'.

226 The claim for annulment of the Commission's decision of 26 June 1998 must therefore be dismissed.

Claim for damages

227 In support of its claim for damages, the applicant alleges that the Commission carried out the procedure for awarding the contract relating to Project FD RUS 9603 in an unlawful manner.

228 It is apparent, however, from the consideration of the claim for annulment that the Commission did not, in the course of the tendering procedure for Project FD RUS 9603, commit any irregularity capable of rendering it liable to the applicant.

229 The claim for damages must therefore be dismissed.

Costs

230 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 applicant has been entirely unsuccessful and the Commission has applied for costs, the applicant must be ordered to pay the costs incurred by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. **Dismisses the claim for an order requiring the Commission to entrust implementation of Project FD RUS 9603 to the applicant as inadmissible;**

2. **Dismisses the remainder of the application as unfounded;**

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

Lenaerts Azizi Jaeger

Delivered in open court in Luxembourg on 24 February 2000.

H. Jung K. Lenaerts

Registrar President