

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)

31 May 2005 *

In Case T-272/02,

Comune di Napoli (Italy), represented by M. Merola, C. Tesauro, G. Tarallo and E. Barone, lawyers,

applicant,

v

Commission of the European Communities, represented by L. Flynn and A. Aresu, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: Italian.

APPLICATION for annulment of the decision of the Commission notified in a letter of 11 June 2002 to the Italian Ministry of Finance concluding the financial assistance granted from the European Regional Development Fund (ERDF) (Assistance No 850503066) and the implied rejection of an application for correction of the account relating to other financial assistance granted from the ERDF (Assistance No 850503067),

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

composed of P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges,
Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 July 2004,

gives the following

Judgment

Facts

- 1 On 24 July 1981, the applicant approved plans submitted by Metropolitana di Napoli SpA for the construction of an underground rail line (Line 1) linking the Garibaldi

and Colli Aminei stations in Naples (Italy). That line includes one particular section between the Dante and Vanvitelli stations and linking the Dante, Museo, Materdei, Salvator Rosa, Cilea and Vanvitelli stations.

- 2 By Decision C (88) 0166/038 of 16 February 1988 ('the decision of 16 February 1988'), addressed to the Italian Republic, the Commission granted assistance from the European Regional Development Fund (ERDF), pursuant to Articles 20(2) and 22(4) of Council Regulation (EEC) No 1787/84 of 19 June 1984 on the European Regional Development Fund (OJ 1984 L 169, p. 1), as amended by Council Regulation (EEC) No 3641/85 of 20 December 1985 (OJ 1985 L 350, p. 40), for the completion of part of that project, namely the construction of the Museo-Cilea section and the Materdei station ('Project No 850503067'). That assistance amounted to 50% of the eligible public expenditure in respect of Project No 850503067, (set at ITL 156 963 000 000), and therefore to a maximum of ITL 78 481 500 000 ('Grant of Assistance No 850503067'). The total investment cost of that project was estimated at ITL 156 963 000 000.

- 3 By Decision C (89) 2178/021 of 21 December 1989 ('the decision of 21 December 1989'), addressed to the Italian Republic, the Commission awarded, pursuant to the same provisions of Regulation No 1787/84, a second grant of ERDF assistance for the completion of another part of the Line 1 construction project, namely the construction of the Dante-Museo section and the Museo and Dante stations ('Project No 850503066'). That assistance amounted to 35.22% of the eligible public expenditure for Project No 850503066 (set at ITL 227 153 000 000), and therefore to a maximum of ITL 80 000 000 000 ('Grant of Assistance No 850503066'). The total investment cost of that project was estimated at ITL 227 153 000 000.

- 4 ERDF assistance (Grant of Assistance No 850503068) was also granted for the construction of the Cilea-Vanvitelli section and the Salvator Rosa and Cilea stations (Commission Decision C (87) 250/27 of 3 March 1987). The grant of that assistance is not in issue in the present action.
- 5 The applicant claims that, in their decisions approving the plans for the construction of Line 1, the Italian authorities concerned (namely the applicant on 24 July 1981, the Italian Ministry of Transport on 7 August 1982 and the Campagna Region (Italy) on 2 February 1983) ‘advocated a proposed amendment to the original plans submitted by [Metropolitana di Napoli] in respect of the Museo station (which fell within [Grant of Assistance No 850503066])’. The purpose of the amendment was to avoid carrying out the works in question at street level which would cause serious disruption to road traffic.
- 6 The applicant states that, during 1991 (it refers, more particularly, to ‘Municipal Decision No 257 of 14 May 1991’), those authorities decided to approve amendments to the original plans so as to place the Museo station underground and move it nearer to the Dante station. That entailed lengthening the Museo-Materdei section (from 638 metres to 1 160 metres), shortening the Dante-Museo section (from 450 metres to 405 metres) and increasing the cost of the works.
- 7 On 28 October 1999, the paying authority, in this case the Department of Development and Cohesion of the Italian Ministry of Finance, requested payment from the Commission of the balance of Grant of Assistance No 850503067. The paying authority stated that the total investment cost and the public eligible expenditure for Project No 850503067 was ITL 225 473 000 000 and that the balance to be paid was ITL 15 696 300 000, that is to say, the difference between the maximum amount specified in the decision of 16 February 1988 (ITL 78 481 500 000) and the amount already paid under that grant of assistance (ITL 62 785 200 000).

- 8 On the same date, the paying authority also submitted to the Commission a request for payment of the second tranche under Grant of Assistance No 850503066.
- 9 On 7 April 2000, Grant of Assistance No 850503067 was finally concluded (see paragraph 12 below).
- 10 On 26 February 2001, the paying authority sent the Commission a document relating to Grant of Assistance No 850503066 entitled 'Extract of the inspection sheet of 11 January 2001'. That document states, inter alia:

'8. The works carried out and the ERDF assistance granted

Grant of Assistance ... No 850503066 ... was paid in the amount of [ITL] 80 billion for the construction of Line 1 of the Naples metro, in respect of the following works:

— Museo station

— Dante station

— tunnel for the Museo-Dante line.

The investment cost was estimated, at the date of the Community decision, at [ITL] 227 153 billion.

It had been intended to make the Museo station and the Dante-Museo tunnels “at street level”, which would have brought major roads to a standstill for the duration of the works ...

The Ministry of Transport, the Campagna Region and the [applicant] took the view that that proposal was incompatible with the problems of inner-city traffic and requested that the plans be amended so that the Dante-Museo tunnels, and therefore the Museo station, be constructed underground, thereby avoiding disruption to road traffic during the period of the works.

Given the maximum incline of the tracks on that line, lowering the works necessitated the extension of the tunnel section uphill from the Museo station (the Materdei-Museo section, which was the subject of Grant of Assistance No 850503067).

The plan appended hereto ... clearly illustrates the change in the route and the new location of the Museo station.

That relocation entailed shortening the Museo-Dante section (as is clear from the decision which is the subject of the present report).

When the expenditure on the Materdei-Museo section [Grant of Assistance No 850503067] was audited, the cost of extending the line uphill from the Museo station (which arose, as stated above, from lowering the Museo station) was allocated to that section, which brought the total cost thereof to ITL 225 795 934 379 compared with a projected cost, according to the Community decision, of ITL 156 963 000 000, amounting to an overspend of ITL 68 832 934 379.

It should be noted that (i) the division into sections is purely financial since this is a single project [and the sections] are closely interconnected both in terms of their realisation and functionally; (ii) the allocation of the expenditure incurred in extending the section uphill from the Museo station is due to lowering that station and physically relocating it; (iii) that relocation shortened the Museo-Dante line (from 450 to 405 metres); (iv) the total length of the tunnels constructed on those two sections (1 160 metres + 405 metres = 1 565 metres) is, as is clear from the plan appended hereto ... , longer than that approved in the initial plans (638 metres + 450 metres = 1 088 metres); (v) the fact that the evidence in support of the expenditure relating to that extension was allocated to the Materdei-Museo section and not to the Museo-Dante section (which includes the cost of constructing the Museo station) is due to an error arising from the designation of the ERDF decisions; (vi) the effect of transferring the expenditure for that extension from the Materdei-Museo section to the Dante-Museo section is that the ERDF application No 850503067 (already concluded) nevertheless represents a substantial overspend; (vii) if that transfer was not acceptable, the evidence in respect of ERDF application No 850503066 would not be sufficient to exhaust the assistance in full, which would mean that part of the total assistance would not be financially covered; (viii) the assistance as a whole would be unjustifiably penalised with loss of part of the assistance (ERDF Application No 850503066) in spite of the fact that the overall plan necessitated more major works and the total expenditure incurred exceeded that which was projected and approved.

Given those factors, we take the view that the [applicant's] request to discharge, under the present grant of assistance, the part of the expenditure incurred as a result of lowering the Museo station, which was previously allocated to ERDF Decision No 850503067, is sensible, acceptable and justified.'

11 In that same document, the paying authority envisaged two situations in which Grant of Assistance No 850503066 could be provided with 'financial certification', dependent upon whether a 'transfer of expenditure' was refused or granted. In the first case, ('no transfer of expenditure'), the total eligible expenditure paid at the date of the inspection was ITL 187 181 583 042 and the balance of the assistance was ITL 1 161 353 547. In the second case ('transfer of expenditure'), the total expenditure at the date of the inspection and the balance were ITL 230 957 083 117 and ITL 15 236 000 000 respectively.

12 By letter of 7 March 2001, the Commission replied to the letter of 26 February 2001 in the following terms:

'...

Grants of Assistance No 850503066 and No 850503067 were the subject of two separate applications by the Italian authorities and, consequently, of two separate Community decisions [Decisions C (89) 2178 021 of 21 December 1989 and C (88) 0166 038 of 16 February 1988 respectively].

On the basis of the documentation in our possession, it does not appear that the Italian authorities notified in due time the amendments to the plans entailing amendments to the financial structuring in each case.

The Commission's financial regulations require that budgetary commitments correspond exactly to payments made and to the legal obligations arising from specific Commission decisions.

Grant of Assistance No 850503067 was concluded on 7 April 2000 pursuant to the request for final payment made by your Ministry on 28 October 1999.

In light of the foregoing, we consider that the final discharge of Grant of Assistance No 850503066 will have to be made on the basis of the first situation ("no transfer of expenditure"), appearing on page 7 of the Extract of the inspection sheet appended to your letter referred to above.

...'

¹³ On 26 March 2001, the paying authority applied to the Commission for payment of the balance of Grant of Assistance No 850503066 in the sum of ITL 15 236 000 000 by instancing eligible public expenditure of ITL 227 153 000 000 and a total investment cost of ITL 230 957 000 000.

- 14 On the same day the paying authority also sent to the Commission a request for payment of the balance of Grant of Assistance No 850503067 in substitution of the request of 28 October 1999. The new balance claimed was still in the sum of ITL 15 696 300 000, but the total investment cost and the eligible public expenditure were ITL 185 252 000 000 and ITL 156 963 000 000 respectively. The applicant pointed out at the hearing that in making that request, the paying authority was seeking to obtain a correction not of the balance of that grant of assistance but of the certification of the eligible public expenditure in respect thereof.
- 15 At a meeting on 2 April 2001 the Commission reiterated to the paying authority the position set out in its letter of 7 March 2001.
- 16 On 11 May 2001, the Commission sent to the paying authority a proposal to conclude Grant of Assistance No 850503066 'based on the position adopted ... in its letter ... of 7 March 2001 and confirmed at the meeting of [2 April 2001]'. That proposal was based on eligible public expenditure of ITL 187 181 583 042 and ERDF assistance in the sum of ITL 65 922 645 280 (instead of the ITL 80 000 000 000 initially provided for) amounting to 35.22% of the eligible public expenditure. It requested the authorities concerned to notify it of any observations they might wish to make within a period of three weeks.
- 17 The paying authority and the Campagna Region submitted observations to the Commission by letters of 21 May and 5 June 2001 respectively.
- 18 By letter of 12 September 2001 addressed to the Italian Republic, the Commission confirmed the proposal made in its letter of 11 May 2001 and requested the Italian authorities to inform it of their final position within two months.

- 19 By letter of 6 December 2001, the applicant informed the Commission of its 'complete and utter disagreement with the proposal to conclude [Grant of Assistance No 850503066]'.
- 20 In a report dated 13 March 2002, drawn up following a request for information from the Commission, the paying authority found that there was no overlap between the expenditure in respect of Grant of Assistance No 850503066 and that in respect of Grant of Assistance No 850503067. It stated that the figure of ITL 40 221 000 000, representing the difference between the total investment cost of Project No 850503067 specified in the letter of 28 October 1999 (ITL 225 473 000 000) and that stated in the application for correction of 26 March 2001 (ITL 185 252 000 000), related to the following costs: extension works on the Materdei-Museo tunnel, consolidation works following that extension and concession charges in respect of those extension and consolidation works.
- 21 In its report, the paying authority also pointed out that the application for correction of 26 March 2001 arose from 'the need to transfer the allocation of the costs of extending the Materdei-Museo tunnel ... to the finance provided by ERDF Grant of Assistance No 850503066 in so far as it was caused by lowering and relocating the Museo station'. It concluded that the request for payment of the balance of Grant of Assistance No 850503066, contained in the letter of 26 March 2001 (see paragraph 13 above), was 'fully justified'.
- 22 By letter of 11 June 2002, copied to the applicant on 26 June 2002, the Commission informed the paying authority of 'its final decision to conclude [Grant of Assistance No 850503066] in the manner indicated in its letter of 11 May 2001' ('the contested decision'). In particular, it stated:

'It is clear [from the Report of 13 March 2002] that expenditure in the amount of ITL 39 971 416 958 previously declared in the context of [Grant of Assistance No 850503067] was reallocated to the final certificate [of Grant of Assistance No 850503066]. That expenditure relates to the extension of the Museo-Materdei tunnel.

The Commission maintains that that expenditure cannot be allocated to [Grant of Assistance No 850503066] on the following grounds:

- the Commission decisions relating to [Grants of Assistance No 850503066 and No 850503067] draw a clear physical distinction:
 - the decision ... of 21 December 1989 makes provision for ERDF assistance for works to be carried out on the Dante-Museo section, including the Dante and Museo stations [Grant of Assistance No 850503066];
 - the decision ... of 16 February 1988 makes provision for ERDF assistance for works to be carried out on the Museo-Cilea section, including the Materdei station but excluding the stations of S. Rosa and Cilea [Grant of Assistance No 850503067];
- since the extension work on the Museo-Materdei tunnel referred to above was plainly carried out on the Museo-Cilea section, it therefore relates to [Grant of Assistance No 850503067] and is covered by the decision of 16 February 1988;

— it is clear from the evidence available that the effect of the amendment to the plan made at the end of 1988/beginning of 1989 was to increase the expenditure chargeable to [Grant of Assistance No 850503067] and that the expenditure relating to the extension of the Materdei-Museo tunnel was not included in the cost of the assistance in question.’

23 On 3 September 2002 the applicant lodged with the Commission an application for correction of the final payment of the balance of Grant of Assistance No 850503066 pursuant to Article 32(5) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1), and requested that ‘the Italian authorities’ application of 26 March 2001 for correction of the accounts relating to [Grant of Assistance No 850503067]’ be upheld. The applicant stated in reply to a question put by the Court by way of a measure of organisation of procedure that, by decision of 25 September 2002, the Commission had announced that it was maintaining the view stated in the contested decision.

Procedure and forms of order sought

24 By application lodged at the Registry of the Court of First Instance on 4 September 2002, the applicant brought the present action.

25 The Commission did not lodge a defence within the prescribed time-limit. However, because the applicant did not set out in the proper form the form of order sought, pursuant to Article 122(1) of the Rules of Procedure of the Court of First Instance, the Commission was allowed a further period within which to submit a defence.

26 On 19 December 2002, the Commission lodged a defence in which it confined itself to the following submissions:

‘1. By application lodged and entered in the Register of the Court of First Instance on 6 September 2002, [the applicant] brought an action for annulment of the [contested decision].

2. In the introduction to the application (paragraphs 1 to 4, pages 3 and 4), [the applicant] states that on 3 September 2002, it made an administrative application for correction of the contested decision pursuant to the relevant provisions in force and that it was awaiting the outcome of that application. In that context, the applicant states that it brought “the present action as a precaution”, to prevent its action from becoming time-barred and that it reserved “the option to withdraw these proceedings should the Commission decide to reopen the procedure in respect of [Grant of Assistance No 850503066] and simultaneously grant the application for correction of the balance in respect of [Grant of Assistance No 850503067] which had been made to the paying authority on 26 March 2001”.

3. In that respect, the Commission notes that the relevant unit of the Directorate-General for Regional Policy and [the applicant] are in talks with a view to arriving at an amicable settlement. In those circumstances it is to be hoped that [the applicant] will soon be in a position reasonably to withdraw this application and that the Court, without giving judgment on the subject-matter of the dispute, can order that the case be removed from the register.

4. In the meantime, the Court is requested, with the consent of [the applicant], to stay the proceedings pursuant to Article 77(c) of the Rules of Procedure.'

27 By order of 10 March 2003, the President of the Fifth Chamber of the Court of First Instance decided pursuant to Article 77(c) of the Rules of Procedure to stay the proceedings until 15 May 2003.

28 By letter of 9 May 2003, the applicant stated that it did not intend to lodge a reply.

29 As a measure of organisation of procedure pursuant to Article 64 of the Rules of Procedure, by letters of 26 September 2003, 8 December 2003 and 6 April 2004, the Court requested that the applicant disclose certain documents and reply to certain questions. The applicant complied with those requests within the prescribed time-limits.

30 The written procedure was closed on 23 December 2003.

31 The parties presented oral argument and their replies to the Court's questions at the hearing on 6 July 2004.

32 The applicant claims that the Court should:

- annul the contested decision;
- order the Commission to pay the costs.

33 The form of order sought by the Commission reads as follows:

'The Commission hopes that:

- [the applicant] will soon be in a position reasonably to withdraw its application in the present case;
- the Court is not called upon to give judgment on the subject-matter of the dispute and will be able to order removal of the case from the register;
- in the meantime the Court can stay these proceedings;

- the Court may make an order as to costs in accordance with the provisions of the Rules of Procedure.’

Law

Preliminary observations

- ³⁴ It is necessary to make certain preliminary observations on the purpose of Grants of Assistance No 850503066 and No 850503067 and of the decisions of 16 February 1988 and 21 December 1989.
- ³⁵ To a large extent, the applicant bases its application on the premiss that the grants of ERDF assistance in the present case are ‘unitary in nature’. It claims that ‘the [Dante-Vanvitelli] line should as a whole be regarded as a single technical, functional and financial project’ and that the division of that line into three sections, namely the Dante-Museo, Museo-Cilea and Cilea-Vanvitelli sections, was for ‘purely financial reasons connected with the progress of the works and, thus, with the detailed rules for the payment of structural funds.’
- ³⁶ Those assertions cannot be accepted. It is clear from the file that each of those three sections, even if they form part of a greater investment project (namely, in addition to the Dante-Vanvitelli section, the completion of Line 1), constituted a separate project and that each of those projects received a specific grant of ERDF financial assistance. Those grants of financial assistance were contained in three separate

Commission decisions, adopted at different times and, in particular, providing for different rates of intervention, and were themselves the result of three separate applications by the Italian authorities.

37 Thus, in respect more particularly of Grant of Assistance No 850503066, this formed the subject-matter of the decision of 21 December 1989, adopted pursuant to Application No 85/IT/03/064/CA lodged by the Italian authorities on 18 November 1985. The project in respect of which that assistance was granted was the construction of the Dante and Museo stations and the section between them. The completion of that project was originally planned for the period from 1 November 1989 to 30 June 1994. The rate of intervention was 35.22% of the total public expenditure incurred in respect of those works.

38 For its part, Grant of Assistance No 850503067 formed the subject-matter of the decision of 16 February 1988, adopted as a result of Application No 85/IT/03/065/CA lodged by the Italian authorities on 18 November 1985. The project in respect of which that assistance was granted was the construction of the Materdei station and the Museo-Cilea section. The completion of that project was originally planned for the period from December 1987 to December 1990. The rate of intervention was 50% of the total public expenditure incurred in respect of those works.

39 The applicant advances three pleas in law in support of its application. The first alleges an infringement of the principle of the protection of legitimate expectations, the second alleges an infringement of a 'principle of substantive fairness' and the third alleges a failure to state reasons.

40 It is convenient first to examine the plea alleging an infringement of a 'principle of substantive fairness'.

The second plea in law, alleging infringement of a 'principle of substantive fairness'

41 The applicant repeats, first of all, that the completion of the Dante-Museo and Museo-Materdei sections formed part of a single 'technically, functionally and financially indissociable' project.

42 It goes on to explain as follows:

- first, the paying authority merely divided the total eligible expenditure 'on the basis of the location of the works without taking account of the amendment', which resulted in a significant increase in the 'investment to be allocated, on that basis, to the Museo-Materdei section' and, consequently, 'a drastic and unjustified reduction in the cofinanced percentage [of Grant of Assistance No 850503067]';

- since a change in the allocation of the 'total credit' between the two grants of assistance in question, as a result of the imputation to Grant of Assistance No 850503067 of part of the credit payable under Grant of Assistance No 850503066 would have required the Commission to adopt a new decision, the paying authority preferred to apply for a correction of the detailed account for Grant of Assistance No 850503067, seeking to separate from it the expenditure occasioned by the extension of the section and to impute it to Grant of Assistance No 850503066;

- in fact the paying authority took the view that 'that expenditure could just as well be imputed on the basis of the functional criterion instead of the criterion of the location of the works [covered by Grant of Assistance No 850503066],

since they had been incurred ... as a result of the amendment to the plan for the Museo station, which came under [Grant of Assistance No 850503066]’;

- consequently, in its application for payment of the balance of Grant of Assistance No 850503066, the paying authority referred to total expenditure in the sum of ITL 230 957 000 000 and simultaneously applied for correction of the detailed account for Grant of Assistance No 850503067;

- whilst the increase in the expenditure declared to be eligible under Grant of Assistance No 850503067 did not result in an increase in the amount of that assistance, by contrast, the shortening of the Dante-Museo section resulted in a reduction in the amount of Grant of Assistance No 850503066.

⁴³ In light of those various factors, the applicant considers that the Commission has demonstrated an excessive and unjustified formalism in rejecting the application for correction referred to above and by reducing the amount of Grant of Assistance No 850503066 ‘because of the lack of eligible expenditure (inasmuch as that expenditure had already been wrongly imputed [to Grant of Assistance No 850503067] in spite of the fact that the total expenditure incurred was higher than that provided for and it was acknowledged that the works were completed in accordance with the plans’. In so doing, the applicant submits that the Commission committed a manifest infringement of a ‘principle of substantive fairness’.

⁴⁴ The applicant adds that, if the Commission had genuinely considered the ‘functional criterion for the allocation of expenditure’ applied by the paying authority in the application for correction to be unacceptable, it should have advised the Italian authorities in due time of that fact and informed them of the proper procedure to follow. It considers that the Commission could have overcome that purely formal problem and thus avoided causing it loss.

- 45 The Court considers that, contrary to the applicant's assertion, the contested decision is fully justified and in no way demonstrates excessive formalism.
- 46 More particularly, that decision is justified by the need to ensure the proper operation of the Community system of financial assistance and the sound financial management of Community funds. It satisfies the principle that the legal and financial framework of each assistance must be strictly defined by the Community decision granting that assistance.
- 47 As the Commission rightly pointed out in the contested decision, the decisions of 16 February 1988 and 21 December 1989 make a 'clear physical distinction'. It is clear from the file that the works relating to Project No 850503067, covered by the decision of 16 February 1988, referred to the completion of the Museo-Cilea section, including the Materdei station, but excluding the Salvator Rosa and Cilea stations, and that those relating to Project No 850503066, covered by the decision of 21 December 1989, related to the completion of the Dante-Museo section, including the latter two stations.
- 48 It is also clear from the file (see, more particularly, the document entitled 'Extract of the inspection sheet of 11 January 2001' referred to at paragraph 10 above and the report of the paying authority dated 13 March 2002 referred to at paragraph 20 above) that the expenditure in question in the present case relates exclusively to works carried out beyond the Museo station in regard to the extension of the Museo-Materdei line.
- 49 There is therefore no doubt that that expenditure and those works relate to Project No 850503067 and not to Project No 850503066. Moreover, that is how the paying authority at the outset understood matters to stand, having referred in its

application of 28 October 1999 for payment of the balance of Grant of Assistance No 850503067 in the sum of ITL 225 473 000 000 representing the total investment cost and the eligible public expenditure, that is to say the entirety of the expenditure concerned.

50 Since the decision of 16 February 1988 made provision for assistance in the maximum amount of ITL 78 481 500 000, the Commission was right to limit itself to paying that amount notwithstanding the fact that total public expenditure for Project No 850503067 turned out to be higher than initially provided for.

51 Similarly, since the expenditure at issue in the present case could not be imputed to Project No 850503066 and had already been allocated to Project No 850503067, which had been concluded since April 2000, the Commission could not accept the 'transfer of expenditure' hypothesis advanced by the paying authority on 26 February 2001. It was therefore right to bring the amount of Grant of Assistance No 850503066 to ITL 65 922 645 280, that is to say 35.22% of the eligible public expenditure (ITL 187 181 583 042).

52 Furthermore, the Court finds that the paying authority's attempt in the present case to obtain payment of the maximum amount of ITL 80 000 000 000 covered by the decision of 21 December 1989 merely by submitting an application for correction of the detailed account of the expenditure in respect of Project No 850503067 was not regular.

53 First, that application was submitted even though Grant of Assistance No 850503067 had been finally concluded for almost a year and the public expenditure in question had been imputed to Project No 850503067.

54 Second, and in any event, a mere application for correction of a detailed account, even when lodged in due time before the conclusion of Grant of Assistance No 850503067, would not have allowed the applicant to obtain the result sought. In fact, as the Commission stated more than once at the hearing, the relevant Italian authorities at the latest when they approved the amendments to the Dante-Vanvitelli section should have submitted to the Commission a formal request to amend the decisions of 16 February 1988 and 21 December 1989, containing a new estimate of the total investment cost and the eligible public expenditure for each of the two projects in question. Such a request would have resulted in a redefinition of the works in respect of each of the two projects or an adjustment of the amount of the two grants of financial assistance.

55 However, it cannot but be noted that no such formal request was ever made in the present case. The letter from Metropolitana di Napoli to the Commission of 8 November 1988 produced by the applicant in response to a written question from the Court was insufficient in that regard, as it was merely a presentation of the state of progress of the works on the various sections comprising Line 1. More particularly, as regards the Museo-Materdei section, that company essentially merely refers to the fact that the applicant intended to approve the 'proposed amendment'.

56 Moreover, the applicant has adduced no convincing evidence in support of its assertion that the Commission 'was kept permanently informed of the changes made to the original plan by the amendment [in question]'. The evidence made available by it to the Court in response to a written request for clarification of that point is, at most, probative of the fact that, when the Italian authorities submitted the applications for allocation of the ERDF assistance, the Commission was informed that, some years before, a study had been made of the possibility of not carrying out the construction works on the Museo station at street level. In the case of the

‘municipal decision’ to which the applicant refers in its first plea (see paragraph 61 below), which in all likelihood is Municipal Decision No 257 of 14 May 1991 (see paragraph 6 above), it suffices to note that, in addition to the fact that it is not in the file, there is no reason to believe that it was ever disclosed to the Commission.

57 Lastly, the Court considers that the applicant cannot seriously complain that the Commission did not inform the Italian authorities in due time that the criterion for imputing the expenditure that they were advocating was irregular and that it did not inform them of the correct procedure to follow. It is clear from the file that it was only on 26 February 2001 (see paragraph 10 above) that the paying authority for the first time submitted to the Commission its two hypothetical cases for imputation of the expenditure. However, as early as 2 April 2001 the Commission held a meeting with the paying authority at which the Commission set out the reasons why it considered that the ‘transfer of expenditure’ hypothesis should be rejected. Moreover, on 11 May 2001, the Commission sent the paying authority a proposal to conclude Grant of Assistance No 850503066, expressly referring to its letter of 7 March 2001 and to its meeting of 2 April 2001 (see paragraph 16 above).

58 It follows from all the foregoing considerations that the plea in law alleging an infringement of a ‘principle of substantive fairness’ cannot be upheld.

The first plea in law, alleging infringement of the principle of the protection of legitimate expectations

59 The applicant alleges that by reducing the amount of Grant of Assistance No 850503066, as compared to the amount set out in the decision of 21 December 1989, and by rejecting the application for correction in respect of Grant of Assistance No 850503067, the Commission infringed the principle of the protection of legitimate expectations.

60 The applicant claims that, by its earlier conduct, the Commission gave rise to a reasonable expectation on the applicant's part that the full amount comprised in Grant of Assistance No 850503066 would be paid to it.

61 In support of that assertion, the applicant refers to the following facts:

- 'the municipal decision amending the plans for the construction of the Museo station and the tunnel on the Museo-Materdei section' was notified to the Commission;

- the Commission was therefore informed of the technical need to move the Museo station nearer to the Dante station, which was to entail a shortening of the Dante-Museo section and a lengthening of the Museo-Materdei section and of the tunnel on that section, and an increase in the total length of the route;

- the Commission never objected to that amendment to the plan or cast doubt on its expediency from a technical point of view or on its 'financial soundness';

- the Commission never stated that that amendment 'would, owing to division of the project -- for financial reasons -- into two grants of assistance, result in a reduction of the total amount of assistance notwithstanding the increase in investment';

- the works were completed according to the plans and within the prescribed time-limits;

- the total expenditure incurred in the construction of the Dante-Vanvitelli section was not less but more than that originally provided for;

- the applicant never intended the Commission to contribute to the additional expenditure arising from the amendment of the plan, but merely sought payment by it in full of the entirety of the amount originally comprised in the grants of assistance.

⁶² In that regard, the Court points out that, under the case-law, any economic operator to whom an institution has given justified hopes may rely on the protection of legitimate expectations (Case T-81/95 *Interhotel v Commission* [1997] ECR II-1265, paragraph 45, and Case T-126/97 *Sonasa v Commission* [1999] ECR II-2793, paragraph 33).

⁶³ In the present case, the factors relied upon by the applicant were not such as to give rise to justified hopes on its part that it would receive the entirety of the amount provided for in the decision of 21 December 1989.

⁶⁴ As already stated at paragraph 56 above, it has not been established that 'the municipal decision amending the plan for the construction of the Museo station and the tunnel on the Museo-Materdei section' was notified to the Commission. More

generally, it has not been shown that the relevant Italian authorities informed the Commission in due time, and with the detail that it was entitled to expect from the beneficiaries of assistance, of the relevant amendments to the plans. The absence of objections on the part of the Commission to those amendments cannot in the circumstances be taken to signify its acceptance that certain public expenditure plainly within Project No 850503067 could nevertheless be imputed to Project No 850503066.

65 Still less can the Commission's attitude be taken to mean that it was the paying authority itself which, in its request of 28 October 1999 for payment of the balance of Grant of Assistance No 850503067, had imputed that public expenditure to Project No 850503067, whilst waiting until 26 February 2001 to advance its argument that such expenditure in fact fell within Project No 850503066.

66 In any event, as already stated in paragraph 54 above, the outcome anticipated by the applicant could in any case only have been achieved following a formal application to amend the decisions of 16 February 1988 and 21 December 1989; no such application was made in the present case.

67 It follows that the plea in law alleging an infringement of the principle of the protection of legitimate expectations is unfounded.

The third plea in law, alleging failure to state reasons

68 The applicant submits that the contested decision is vitiated by a failure to state reasons.

69 It submits, first, that in that decision, the Commission did not clearly and unequivocally set out the reasons for rejecting the application to correct the detailed account of Grant of Assistance No 850503067 or state the reasons why it found that the increase in expenditure resulting from the amendment to the plan should be imputed to that grant of assistance rather than to Grant of Assistance No 850503066.

70 Second, the applicant alleges that the contested decision does not clearly set out the reasons justifying the reduction of Grant of Assistance No 850503066 by comparison with the amount initially allocated. In support of that plea it cites Case C-189/90 *Cipeke v Commission* [1992] ECR I-3573, paragraphs 16 to 18, and Case T-450/93 *Lisrestal and Others v Commission* [1994] ECR II-1177.

71 In that regard it should be noted that, according to settled case-law, the statement of reasons must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community Court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context (see Case C-367/95 P *Commission v Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63, and the case-law cited).

72 It is perfectly clear from the contested decision that the Commission took the view that the decision of 21 December 1989 covered the works to be carried out on the Dante-Museo section, whereas the decision of 16 February 1988 covered the works to be carried out on the Museo-Cilea section, and that the expenditure in question in the present case should be exclusively imputed to Grant of Assistance No

850503067 on the ground that it concerned the works carried out on that section. It is also clear from the contested decision that the Commission found in those circumstances that that expenditure should be deducted from the expenditure declared in Grant of Assistance No 850503066, thereby reducing the amount initially agreed for that assistance.

73 Furthermore, it should be noted that in its letter of 7 March 2001 (see paragraph 12 above), the Commission had already clearly emphasised the distinctiveness of Grants of Assistance No 850503066 and No 850503067 and of its decisions to grant them, and the fact that the Italian authorities did not inform it in time of the amendments to the plans for the construction of the Dante-Vanvitelli line.

74 It follows that the plea in law alleging a failure to state reasons cannot be upheld.

75 In light of all the foregoing, the action must be dismissed.

Costs

76 Under Article 87(2) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings. In this case the Commission requested the Court to make an order as to costs 'in accordance with the provisions of the Rules of Procedure'. That form of order cannot be regarded as a request that the applicant be ordered to pay the costs (see, to that effect, Case C-255/90 P *Burban v Parliament* [1992] ECR I-2253, paragraph 26). The parties must therefore bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders the parties to bear their own costs.**

Lindh

García-Valdecasas

Cooke

Delivered in open court in Luxembourg on 31 May 2005.

H. Jung

Registrar

P. Lindh

President