JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
15 June 1999 *

In Case T-277/97,

Ismeri Europa Srl, a company incorporated under Italian law, established in Rome, represented by Sergio Ristuccia and Gian Luigi Tosato, of the Rome Bar, with an address for service in Luxembourg at the Chambers of Alex Schmitt, 7 Val Sainte-Croix,

applicant,

v

Court of Auditors of the European Communities, represented by Jean-Marie Stenier, Jan Inghelram and Paolo Giusta, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the Court of Auditors, 12 Rue Alcide de Gasperi, Kirchberg,

defendant,

APPLICATION for damages under Articles 178 and 215 of the EC Treaty (now Articles 235 EC and 288 EC) for injury allegedly suffered by the applicant undertaking following criticisms made against it by the Court of Auditors in Special Report No 1/96 on the MED programmes together with the Commis-

* Language of the case: Italian.

sion's replies, submitted pursuant to the second subparagraph of Article 188c(4) of the EC Treaty (OJ 1996 C 240, p. 1),

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

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

Registrar: A. Mair, Administrator,

having regard to the written procedure and further to the hearing on 11 February 1999,

gives the following

Judgment

Facts

The MED Programmes

1 Aid from the European Union to the Mediterranean non-member countries comes under a single programme known as the New Mediterranean Policy (NMP). The

overall objectives of this policy are, economically speaking, to foster the emergence of a prosperous region around the Mediterranean and, politically speaking, to reinforce democracy and regional integration there.

2 The MED programmes are a reflection of the Community's desire to develop multilateral cooperation with and between the Mediterranean non-member countries. They were created because the financial protocols, which are bilateral agreements between States, were unsuited to carrying out such a policy.

3 The MED programmes were designed so as to make it possible to develop decentralised cooperation on the basis of new instruments. Under those programmes, partners from Member States of the European Union and from the Mediterranean basin which form networks of four to eight members amongst themselves are entrusted with the realisation of a project planned by themselves. The areas concerned are local government (MED-Urbs), higher education (MED-Campus), the media (MED-Media), research (MED-Avicenne), and small and medium-sized companies (MED-Invest). The Commission provides the additional financing and technical assistance which they need in order to complete their projects.

Management of the MED programmes

4 Since it lacks sufficient own resources to enable it to manage the MED programmes itself, the Commission subcontracts their administration and financial management to the Agence pour les Réseaux Transméditerranéens (Agency for Trans-Mediterranean Networks — ARTM), a non-profit-making organisation established by it under Belgian law specifically for this task. The

technical monitoring functions were contracted out to Technical Assistance Bureaux (BATs), which are usually consultancy firms.

5 Projects are approved by a committee, known as the Commitment Committee, made up of both the ARTM and the BAT representatives, the latter attending discussions in order to give technical advice but without voting rights. The committee is presided over by the Commission official responsible.

The Court of Auditors' Special Report No 1/96 on the MED programmes

6 In view of the large number of irregularities and major shortcomings in the financial management of the MED programmes, the Court of Auditors adopted on 30 May 1996 Special Report No 1/96 on the MED programmes together with the Commission's replies, submitted pursuant to the second subparagraph of Article 188c(4) of the EC Treaty (OJ 1996 C 240, p. 1, hereinafter 'Special Report No 1/96').

7 In particular, the Court of Auditors found that the conditions under which contracts were awarded, and the involvement of the same consultancy firms in the conception of the programmes, in the preparation of financing proposals, in the management of the ARTM, and in the technical monitoring of the programmes, had given rise to a serious conflict of interests, which was prejudicial to the proper management of Community funds.

8 Furthermore, the resources and procedures of the Commission for monitoring the implementation of the MED programmes and for supervising their decentralised administration were inadequate: when the serious conflict of interests referred to

above was identified by the Commission, it was unable for a long time to resolve the matter.

9 In this connection the Court of Auditors points out in particular that:

'... Two of the four administrators of the ARTM were, until April 1995, also managers of the BATs (the firms FERE Consultants and Ismeri) responsible for monitoring the MED programmes.

... These same BATs participated in the planning of the MED programmes, including the stage at which draft financing proposals were prepared, a task which is the exclusive responsibility of the Commission. In order to carry out this work, FERE Consultants, as part of the preparation of the MED-Urbs programmes and component B of the MED-Invest programme, and Ismeri Europa with regard to MED-Campus, obtained ECU 323 000 and ECU 199 960 respectively. These contracts were also awarded by direct negotiation with these bodies.

... The conditions for awarding the contracts and the involvement of the same firms of consultants in preparing the programmes, drawing up financing proposals, on the Management Board of the ARTM and in monitoring the programmes, resulted in a situation where there was a conflict of interests that was prejudicial to the sound management of Community funds and contrary to the principle of equality of access to public contracts. Two particularly serious cases must be highlighted:

(a) once the Committee had given its approval, the ARTM... signed... private treaty contracts to BATs that were managed by two of its administrators for ECU 547 750 and ECU 748 900 respectively. The first case was a contract

dated 14 December 1992 between the ARTM and FERE Consultants. The second case concerned a contract dated 21 December 1992 between the ARTM and Ismeri. In both cases, the signatory managers occupied, when they signed the contract with the ARTM, two of the four administrator posts on the ARTM's Management Board. It must also be noted that both of the firms to which the aforementioned contracts were awarded took part in the meetings of the Commitment Committee which approved the contracts in question;

(b) In the context of the implementation of the MED-Invest programme, these same two BATs were awarded the contract to carry out two projects even though there was no tender or selection procedure. The sums in question totalled ECU 270 000 in one case and ECU 405 000 in the other;

...

Once the Commission had realised the danger of this situation, it asked the managers of the BATs responsible for monitoring to resign from the ARTM's Management Board. The minutes of the meetings of the Agency's Management Board show how vigorously those concerned resisted the Commission's requests. Nearly a year and a half went by before they finally decided to step down, in circumstances which are questionable, to say the least. Thus, the minutes of the meeting of 11 October 1994 of the Agency's Management Board show that the two administrators concerned "would resign if:

— FERE Consultants were chosen by the European Commission to provide technical assistance for the MED-Invest programme,

— [or if] Ismeri Europa were reselected as Technical Assistance Bureau (BAT) for the MED-Campus programme."

Furthermore, both of these managers asked to be able to propose a candidate of their choice to replace them in the event of their resignation. Once all of these conditions were fulfilled, both administrators resigned from the ARTM's Management Board in April 1995.

... In view of the seriousness of these findings, the Court immediately informed the Commission of them, so that it could take appropriate measures and examine, in particular, the need to take legal action against those responsible. At the end of November 1995, the responsible Commission departments informed the Court that they intended not to renew contracts signed with the ARTM when they expired in January 1996 and to wind up the ARTM. They were also minded not to renew contracts signed with the BATs and to open an enquiry so as to establish responsibilities and to examine, in cooperation with the Commission's Legal Service, whether it was appropriate to take legal action.'

Resolution of the Parliament of 17 July 1997 on Special Report No 1/96

10 On 26 September 1996 Special Report No 1/96 was submitted by the Court of Auditors to the Parliament's Committee on Budgetary Control, in accordance with Article 206(1) of the EC Treaty (now Article 276(1) EC). Subsequently, under the arrangements for assistance laid down in the fourth subparagraph of Article 188c(4) of the EC Treaty (now, after amendment, the second subparagraph of Article 248(4) EC), that committee was also given access to the defendant's files on the investigation.

11 On 17 July 1997, in plenary session, the Parliament adopted a Resolution on Special Report No 1/96 (OJ 1997 C 286, p. 263), in which it drew attention to the following matters in particular:

'... 62% of the total expenditure on technical assistance in the framework of the programmes went to only two technical assistance bureaux, and by April 1995 two of the four ARTM board members were also managers of these bureaux, so that for several years an obvious case of confusion of interests had been in existence,

... in accordance with the Commission's instructions, ARTM awarded the contracts to these technical assistance bureaux on the basis of mutual agreements, even though the managers of the two firms to which the contracts were awarded were at the same time members of ARTM's board of directors,

... these same technical assistance bureaux received, in the context of the implementation of the MED-Invest programme, contracts to carry out two projects to a value of ECU 270 000 and ECU 405 000 respectively without any invitation to tender being issued or selection procedure taking place,

... this procedure resulted in a confusion of interests and the possibility of interference by external staff in the Commission's own decision-making procedures, even though the Commission chaired the Commitment Committees with a right of veto,

... Commission officials thus contributed to the creation and operation of a system which impeded the proper administration of Community funds and gave rise to additional costs and significant anomalies,

... Commission officials also allowed the abovementioned ARTM board members to remain in a situation which, as a result of the confusion of interests, could be a criminal offence under the penal code of the Member States concerned,

... the case as a whole is instructive in many respects and..., against this background, the Commission, whose credibility is in question, must take forceful measures;... rigorous checks are therefore called for in order to ensure that similar difficulties do not arise in the case of other cooperation programmes with other regions.'

Pre-litigation procedure

12 Ismeri Europa Srl (hereinafter 'the applicant') is a company whose objects are the organisation and provision of services relating to research into and the design of multidisciplinary projects in the economic, social, legal and administrative spheres, with a special interest in the European dimension.

13 In preparing Special Report No 1/96, two of the defendants' auditors visited the applicant's headquarters in Rome, from 16 to 19 June 1995. Following that visit, the applicant sent the defendant, at the latter's request, its replies to two detailed questionnaires, the one concerning its task as the BAT for the MED-Campus programme and the other querying its role as coordinator of a project in Morocco under the MED-Invest programme. Those questionnaires included, *inter alia*, a request that the applicant evaluate the results achieved in the projects in which it was involved. The applicant's replies were accompanied by a particularly large number of documents.

14 The Commission, to which the defendant had, on 6 October 1995, informally forwarded a draft of Special Report No 1/96, sent a copy of that document to the ARTM. The latter's replies, dealing specifically with the conflict of interests, were forwarded by the Commission to the defendant. When those replies were drafted, the applicant was still a founder member of the ARTM.

15 On 31 January 1997 the applicant addressed an initial letter to the defendant in which it requested that a corrigendum to Special Report No 1/96 be published. It considered that the report contained inaccuracies concerning itself and that the defendant ought to have consulted the applicant before publishing it.

16 On 7 March 1997 the defendant's director of 'external institutional relations, public relations and legal services' replied that Special Report No 1/96 contained no errors and that the procedure had been observed.

17 By a letter dated 24 April 1997 the applicant challenged the validity of that reply on the ground that its initial request did not appear to have been placed before the Members of the Court of Auditors.

18 On 9 June 1997 the defendant's abovementioned director confirmed in writing that when he gave his reply on 7 March 1997 the correct procedure had been followed.

19 On 12 June 1997 the applicant circulated to each of the Members of the Court of Auditors a letter in which it once again set out its position in some detail.

20 On 18 July 1997 the President of the Court of Auditors replied that there were no grounds on which to review Special Report No 1/96 and for the rest referred the applicant to the letter of 7 March 1997.

Procedure and forms of order sought by the parties

21 In those circumstances, Ismeri Europa, by application lodged at the Registry on 20 October 1997, brought the present proceedings under Article 178 and the second paragraph of Article 215 of the EC Treaty (now Article 235 EC and the second paragraph of Article 288 EC).

22 The applicant claims that the Court should:

— order, by way of a measure of inquiry, the hearing of witnesses;

— order the defendant to publish the operative part of the judgment in the *Official Journal of the European Communities* and to pay the sum of ECU 200 000 or such amount as the Court may deem equitable by way of damages for the injury to the applicant's reputation;

— order the defendant to pay the applicant the sum of ECU 943 725 by way of damages for the loss suffered as a result of the termination of contracts and such amounts as the Court may deem equitable by way of damages for loss of profit;

— order the defendant to pay the applicant statutory interest together with an amount to take account of monetary devaluation;

— order the defendant to pay the costs.

23 The defendant contends that the Court should:

— dismiss the application as inadmissible or, in the alternative, as unfounded;

— order the applicant to pay the costs.

Admissibility

24 The defendant considers that the action is inadmissible. It distinguishes, in its pleas of inadmissibility, between the various heads of damage alleged by the applicant.

Admissibility of the claim for damages in respect of the various financial losses allegedly sustained

25 The defendant raises specific pleas as regards the claim for damages in respect of losses incurred as a result of the termination of a FEDER contract entered into on

17 February 1997 with the Commission's Directorate-General for Regional Policy and Cohesion (DG XVI) (hereinafter the 'FEDER contract'), the Commission's failure to award a contract, the termination of a contract with the Agency for Interregional Cooperation Networks (hereinafter 'ARCI'), and loss of profit.

The claim for damages for financial loss arising from termination of the FEDER contract

26 The defendant raises two pleas of inadmissibility, the first based on the contractual nature of the loss and the second, put forward in the alternative, relating to the formal irregularity of the application. As a matter of logic, the second plea should be examined first.

— The plea of inadmissibility based on insufficient evidence in the application of the causal link between the alleged fault and the loss reportedly sustained

27 The defendant points to the lack of evidence in the application of a causal link between the improper conduct alleged by the applicant and the loss that it claims to have suffered as a result of the termination of the FEDER contract. From that, it concludes that the application is inadmissible.

28 Under 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, all applications are to contain the subject-matter of the dispute and a brief statement of the grounds on which the application is based.

29 That statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, if necessary, without any further information. In order to guarantee legal certainty and sound administration of justice, it is necessary, 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 application itself (see Case C-347/88 *Commission* v *Greece* [1990] ECR I-4747, paragraph 28; Case C-52/90 *Commission* v *Denmark* [1992] ECR I-2187, paragraph 17 et seq.; Case T-387/94 *Asia Motor France and Others* v *Commission* [1996] ECR II-961, paragraph 106; and Case T-113/96 *Dubois et Fils* v *Council and Commission* [1998] ECR II-125, paragraph 29).

30 In order to satisfy those requirements, an application seeking compensation for damage allegedly caused by a Community institution must state the evidence from which the conduct which the applicant alleges against the institution can be identified, the reasons for which the applicant considers that there is a causal link between the conduct and the damage it claims to have suffered, and the nature and extent of that damage (see, for example, *Dubois et Fils* v *Council and Commission*, cited above, paragraph 30, and the order in Case T-262/97 *Goldstein* v *Commission* [1998] ECR II-2175, paragraph 22).

31 In the present case, the application states that publication by the defendant of Special Report No 1/96 led the Commission to terminate the FEDER contract. It therefore indicates in a coherent and comprehensible manner the causal link, according to the applicant, between the defendant's alleged conduct and the damage reportedly sustained. The fact that there is evidence in the case-file which may refute the argument advanced by the applicant is not capable of rendering the application inadmissible but merely calls in question whether it is well founded.

32 It follows that the application satisfies the formal requirements laid down by the abovementioned provisions and that the plea must therefore be rejected.

— The plea of inadmissibility alleging that the claim for damages is of a contractual nature

33 The defendant contends that, in the present case, the applicant is bringing an action to establish the non-contractual liability of the other party to the contract, namely the Community, on the ground of the latter's termination of the contract. The termination of that contract is, it is contended, a matter of contractual liability which is governed by the first paragraph of Article 215 of the Treaty. Since the application in the present case seeks damages for losses arising out of a contract, it is inadmissible (order in Case T-180/95 *Nutria AE* v *Commission* [1997] ECR II-1317, paragraphs 39 and 40).

34 The Court notes that the Community may indeed incur non-contractual liability as provided for in the second paragraph of Article 215 of the Treaty, on which the action is based. None the less, such liability is incurred as a result of 'damage caused by (the) institutions', which means that the institution to which the damage is to be imputed must be determined.

35 In the present case, the applicant bases its claim for damages on the termination by the Commission of the FEDER contract, entered into with the Community. It does not challenge the legality of such termination, whether formally or substantively. Its action is directed solely against publication by the defendant of Special Report No 1/96, which induced the Commission to terminate the contract in question.

36 It follows that the defendant's alleged conduct is unconnected with the performance of obligations arising under the contract between the applicant and the Community. The liability which it is sought to establish is thus of a non-contractual kind.

37 The plea must therefore be rejected.

The claim in respect of financial loss arising from failure to award a contract

38 The applicant refers to the loss arising from the fact that it was deprived of the possibility of being awarded a contract following a major tendering procedure launched by the Commission for the creation of a technological park in Santiago, Chile (project CHI/B7-3011/94/172).

39 The defendant points to the contractual origin of the loss. It takes the view that the act by the Commission which occasioned the loss cannot be imputed to the latter and that the action is therefore inadmissible. Finally, it contends that the application does not indicate to a sufficient extent the causal link between the loss and the act alleged against it, namely publication of Special Report No 1/96. As a matter of logic, this last plea must be examined first.

— The plea of inadmissibility based on insufficient evidence in the application of the causal link between the alleged fault and the loss reportedly sustained

40 The defendant takes the view that the applicant did not indicate with the requisite degree of clarity and precision what constituted the causal link between the allegedly unlawful conduct and the loss arising from the fact that the Commission failed to award it a contract. Moreover, the applicant did not produce any Commission document giving particulars of that contract and stating the reasons why it was not awarded to the applicant. The defendant concludes that the claim in question is inadmissible.

41 According to the application, publication of Special Report No 1/96 by the defendant induced the Commission not to include the applicant amongst the firms eligible for the award of the contract in question. It is apparent from the

documents appended to the application that the applicant had participated in the tendering procedure. Finally, the applicant claims that it was probably selected as one of the companies submitting the most favourable tenders. It offers to prove this by proposing that the Court order the Commission to produce the relevant documents.

42 Those statements are sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application. Thus, in that respect, the application complies with the requirements laid down in Article 19 of the EC Statute of the Court of Justice and in Article 44(1)(c) of the Rules of Procedure of the Court of First Instance.

43 The plea must therefore be rejected.

— The plea of inadmissibility alleging that the loss suffered is of a contractual nature

44 The defendant contends that if the loss occasioned by the failure to award a contract were to be regarded as being contractual in nature, the claim for damages based, in the present case, on non-contractual liability would be inadmissible.

45 The Court finds that the alleged loss consists in the Commission's failure to award a contract to the applicant. The latter holds the defendant to blame for that loss in that, by publishing Special Report No 1/96, it induced the Commission not to award the contract in question to the applicant. Accordingly,

the loss suffered is unconnected with the performance of contractual obligations. The liability incurred in that regard is therefore of a non-contractual nature.

46 The plea must therefore be rejected.

— The plea of inadmissibility alleging that the defendant cannot be held liable for the loss suffered

47 The defendant contends that the action is inadmissible because the alleged loss, that is to say the failure to award the contract, was caused by the Commission. Special Report No 1/96 is not in any way binding and thus in no way limited the Commission's freedom of action.

48 The Court notes that by this plea the defendant seeks to argue that the Commission's freedom of action broke the alleged causal link between the act attributable to the defendant, namely publication of Special Report No 1/96, and the alleged loss, namely that occasioned by failure to award the contract. The defendant is calling in question the existence of a causal link, which is one of the substantive conditions for establishing the Community's non-contractual liability. Accordingly, it is a matter to be examined in connection with the substance of the case rather than at the stage of admissibility.

49 In support of this plea, the defendant cites two judgments of the Court (Case 133/79 *Sucrimex and Westzucker* v *Commission* [1980] ECR 1299, paragraphs 22 and 23, and Case 217/81 *Interagra* v *Commission* [1982] ECR 2233, paragraph 8), which declared actions for damages to be inadmissible on the ground that the act occasioning injury could not be imputed to the defendant institution. However, those judgments were given in cases in which an action for

damages had been brought against the Community, although the decision adversely affecting the applicants had been taken by a national agency acting in implementation of Community rules. Since the combined provisions of Articles 178 and 215 of the Treaty confer on the Court jurisdiction only to award compensation for damage capable of giving rise to non-contractual liability on the part of the Community, the allocation to a national agency of liability for injury removes jurisdiction from the Court, thus rendering the action inadmissible (see also, to that effect, Case 175/84 *Krohn* v *Commission* [1986] ECR 753, paragraphs 18 and 19, and Joined Cases 89/86 and 91/86 *L'Étoile Commerciale and CNTA* v *Commission* [1987] ECR 3005, paragraphs 17 and 18).

50 However, in the present case the question of liability for injury arises exclusively as between two Community institutions. The liability incurred by them is a matter for the Community judicature.

51 The plea must therefore be rejected.

The claim for damages in respect of financial loss incurred as a result of the termination of a contract with ARCI

52 The applicant refers to the loss resulting from the termination, on 16 July 1997, of a contract entered into on 23 December 1996 with ARCI.

53 The defendant contends that the claim for damages under this head is inadmissible on the grounds, first, that it cannot be held liable for the loss and, secondly, that the application did not indicate with the requisite degree of clarity and precision the causal link between the act which purportedly gave rise to liability and the injury.

54 As a matter of logic, the second plea must be examined first.

— The plea of inadmissibility based on insufficient evidence in the application of the causal link between the alleged fault and the loss reportedly sustained

55 The defendant takes the view that the applicant did not indicate with the requisite degree of clarity and precision what constituted the causal link between the allegedly unlawful conduct and the loss arising from the termination of a contract with ARCI.

56 The defendant points out in that connection that the letter produced by the applicant does not state the reason for termination. Moreover, the applicant, it is contended, agreed that the contract should be terminated. Finally, the contract in question was entered into with the applicant on 23 December 1996, that is to say after publication of Special Report No 1/96, which made it very unlikely, if not impossible, for there to be any causal link between the special report and any loss arising from termination of the contract.

57 The defendant accordingly concludes that the application is inadmissible.

58 The Court notes that the application states that publication by the defendant of Special Report No 1/96 led ARCI to terminate the contract in question. It therefore indicates in a coherent and comprehensible manner the causal link, according to the applicant, between the defendant's alleged conduct and the damage reportedly sustained. It should be borne in mind (see paragraph 31 above) that the fact that there is evidence in the case-file which may refute the argument advanced by the applicant is not capable of rendering the application inadmissible but merely calls in question whether it is well founded.

59 It follows that the application satisfies the formal requirements laid down by the provisions mentioned at paragraphs 28 to 30 above and that the plea must therefore be rejected.

— The plea of inadmissibility alleging that the defendant cannot be held liable for the loss suffered

60 The defendant contends that the action is inadmissible because the alleged loss, that is to say the termination of the contract, was caused by ARCI, either of its own accord or at the Commission's behest. In any event, the defendant had no way of compelling ARCI to take that step. Special Report No 1/96 is not in any way binding and thus in no way limited the Commission's, or ARCI's, freedom of action.

61 The Court notes that by this plea, which is analogous to that examined at paragraphs 47 to 51 above, the defendant seeks to argue that ARCI's and the Commission's freedom of action broke the alleged causal link between the act attributable to the defendant, namely publication of Special Report No 1/96, and the alleged loss, namely that occasioned by termination of the contract. The defendant is thus calling in question the existence of a causal link, which is one of the substantive conditions for establishing the Community's non-contractual liability. Accordingly, it is a matter to be examined in connection with the substance of the case rather than at the stage of admissibility.

62 The plea must therefore be rejected.

The claim for damages for financial injury deriving from loss of profit

63 The defendant contends that the claim under this head is inadmissible on the ground that the application did not indicate with the requisite degree of clarity and precision the injury, on the one hand, and the causal link between the act which purportedly gave rise to liability and the injury, on the other.

— The plea of inadmissibility alleging that the application gave insufficient particulars of the loss

64 The defendant states that, in the absence of any indication either of the amount of the loss or at least of the factual criteria on the basis of which its nature and extent might be assessed, a claim for damages for loss arising out of an alleged downturn in the applicant's commercial activities is inadmissible (Case T-64/89 *Automec* v *Commission* [1990] ECR II-367, paragraphs 73 to 77).

65 The Court, whilst referring to the principles set out at paragraphs 28 to 30 above, points out that a claim for any unspecified form of damages is not sufficiently concrete and must therefore be regarded as inadmissible (see Case 5/71 *Zuckerfabrik Schöppenstedt* v *Council* [1971] ECR 975, paragraph 9; Case T-64/89 *Automec* v *Commission*, cited above, paragraph 73, and Case T-13/96 *TEAM* v *Commission* [1998] ECR II-4073, paragraph 27).

66 In the present case, the applicant stated in its application that the injury sustained by it in respect of loss of profit stemmed from the fact that contract CHI/B7-3011/94/172 (see paragraphs 38 to 51 above) was not awarded to it, from the fact that it was deprived of the possibility of participating in tendering procedures organised by the Community and from the attendant loss of prospective business opportunities. The loss sustained is said to be evidenced by damage to the intangible assets of its business and by the impossibility of acquiring new business

expertise. Furthermore, its balance sheet showed turnover varying between ITL 2 000 million and 2 500 million. Finally, it stated that it was in the light of those figures that the injury caused to it by Special Report No 1/96, in terms of the downturn in its commercial activities, should be assessed.

67 From this, the Court concludes that, although the applicant has not quantified the loss which it claims to have been suffered, it has indicated the evidence on the basis of which its nature and extent can be assessed. The defendant has thus been able to defend itself and the Court is in a position to give judgment in the action. In those circumstances, the absence of figures in the application does not affect the rights of the defence, especially since the applicant produced those figures in the reply, thereby enabling the defendant to discuss them both in the rejoinder and at the hearing (see, to that effect, Joined Cases 29/63, 31/63, 36/63, 39/63 to 47/63, 50/63 and 51/63 *Usines de la Providence and Others* v *High Authority* [1965] ECR 911 at p. 935).

68 Thus, in the present case the applicant has produced in the reply a table showing that its turnover, which from 1993 to 1995 had increased each year by 8%, fell sharply by around 55% in 1996 and 1997 compared to 1995. That loss could be quantified as ECU 683 742 per annum.

69 The plea must therefore be rejected.

— The plea of inadmissibility based on insufficient evidence in the application of the causal link between the alleged fault and the loss reportedly sustained

70 The defendant maintains that the applicant did not indicate with the requisite degree of clarity and precision what constituted the causal link between the

unlawful conduct alleged against it, on the one hand, and the loss of profit, on the other. The applicant merely submits that its turnover fell, but makes no attempt to explain how that came about.

71 First of all, if termination of both the FEDER contract and the contract entered into with ARCI were recognised as having contributed to the fall in its turnover, the applicant would in fact be seeking damages twice over for the same loss.

72 Secondly, the applicant's argument that, owing to Special Report No 1/96, it was no longer able to operate as before in regard to the provision of assistance under and the evaluation of Community programmes should, the defendant contends, be rejected. In the first place, the two abovementioned contracts were entered into at a time when the special report was already in the public domain, that is to say known to all participants. Secondly, during an audit of expenditure under the European Social Fund carried out in Italy by the defendant's auditors from 2 to 6 February 1998, the applicant was found to have secured in September and October 1997, jointly with another undertaking, two consultancy agreements for ITL 800 million and ITL 1 200 million respectively, which were wholly financed out of Community funds. The total amount of those two contracts was significant in relation to the applicant's annual turnover.

73 The defendant concludes from the foregoing that the application is inadmissible in that respect as well.

74 The Court notes that the application explains in what way the injury arising from loss of profit was caused by Special Report No 1/96. That report, which was unfavourable to the applicant, was drawn up by a Community institution enjoying considerable prestige; it was published in the *Official Journal of the European Communities* and was thus widely distributed in all the Member States

and particularly in circles which play an influential role in political and economic terms.

75 The application goes on to distinguish clearly between injury due to loss of profit and injury deriving from the termination of contracts entered into with the Commission and ARCI. Those two heads of damage are described and evaluated separately. A distinction is drawn between them according to their degree of certainty, injury deriving from the termination of contracts being described as 'loss', as opposed to mere loss of profit.

76 The Court therefore considers that those indications are sufficiently clear and precise to enable the defendant to prepare its defence and for judgment to be given in the action.

77 Moreover, the argument put forward by the defendant in the rejoinder to the effect that in September and October 1997 the applicant secured major contracts financed by Community funds can have no bearing on the issue of the application's admissibility. That argument does not cast doubt on the internal coherence of the application or on its formal validity but can only go to the merits of the case.

78 It follows that the application complies with the requirements of 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.

79 The plea must therefore be rejected.

Admissibility of the claim for damages in respect of non-material injury

80 The defendant pleads that the application is inadmissible on the ground that it did not indicate with the requisite degree of clarity and precision the extent and nature of the non-material injury allegedly sustained. Moreover, the figure of ECU 200 000 put on the claim in the reply is inadmissible as a fresh claim and is not sufficiently precise.

81 The Court refers to the principles set out at paragraphs 28 to 30 and 65 above and adds that a claim for damages in respect of non-material injury, whether as symbolic reparation or as genuine compensation, must give particulars of the nature of the injury alleged in connection with the conduct for which the defendant is held responsible and must quantify the whole of that injury, even if approximately (see, to that effect, the order in Case T-112/94 *Moat* v *Commission* [1995] ECR-SC II-135, paragraph 38, and Case T-157/96 *Affatato* v *Commission* [1998] ECR-SC II-97, paragraph 49).

82 In the present case, the applicant states in the application that the non-material injury consists in an attack on its integrity and reputation by the publication of Special Report No 1/96, which it describes as defamatory. It lays emphasis on the fact that, as stated in paragraph 74 above, that attack was made by a Community institution enjoying considerable prestige and was published in the *Official Journal of the European Communities* which is an official publication and is widely distributed in all the Member States and particularly in circles which play an influential role in political and economic terms. It points out that an attack of that kind on integrity and reputation seriously disrupts the smooth functioning of a firm which, as in the applicant's case, is a small or medium-sized one.

83 From this, the Court concludes that, although the applicant has not quantified the loss which it claims to have suffered, it has indicated the evidence on the basis of which its nature and extent can be assessed. The defendant has thus been able to

defend itself and the Court is in a position to give judgment in the action. In those circumstances, as stated in paragraph 67 above, the absence of figures in the application does not affect the rights of the defence, especially since the applicant produced those figures in the reply, thereby enabling the defendant to discuss them both in the rejoinder and at the hearing (see, to that effect, *Usines de la Providence and Others* v *High Authority*, cited above, and *TEAM* v *Commission*, cited above, paragraph 29).

84 Thus, the applicant submitted in the reply an exhaustive analysis of the non-material injury suffered by it. First, it set out five criteria for evaluating that injury, namely the extent of the damage, its seriousness, whether it could have been avoided, the financial standing of the person occasioning the injury and the status of the person injured. Then, on the basis of the judgment in Case T-52/92 *Caronna* v *Commission* [1993] ECR II-1129, paragraph 107, it proposed that the damage be quantified as ECU 200 000. Finally, it added that it would be prepared to accept such sum as the Court may consider appropriate.

85 The plea alleging that the extent of the injury was not specified to a sufficient extent in the application must therefore be rejected.

86 Furthermore, it follows from the arguments put forward by the applicant, as they have been set out, that the quantum of damages proposed in the reply has as its purpose merely to particularise the claim for damages in respect of non-material injury made in the application, and does not amount to a fresh claim.

87 Accordingly, the plea alleging that the evaluation of non-material injury at ECU 200 000 is inadmissible inasmuch as it constitutes a fresh claim must be rejected.

88 Next, the defendant takes issue with the applicant's attempt to include under the heading of non-material injury the health problems suffered by its director. The

conclusion it draws therefrom is that this head of the claim is inadmissible for lack of sufficient particulars.

89 The Court considers, however, that this line of argument by the defendant fails to recognise that the formal requirements laid down in 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 are merely intended to enable the defendant to prepare its defence and the Court to give judgment in the action. The head of claim at issue complies with those requirements. The fact that it may not be well founded does not mean that it is inadmissible.

90 The plea must therefore be rejected.

91 Finally, the defendant contends that the claim for damages does not adequately distinguish between material and non-material injury. In that connection it refers to paragraphs 68 and 72 of the reply.

92 Admittedly, at paragraph 68 of the reply, the applicant refers to paragraphs 58 to 61 and 64 of the application for an assessment of the non-material injury. Paragraphs 58 to 61 of the reply deal with the causal link between Special Report No 1/96 and all the heads of damage. At paragraph 64, the applicant states that it has provided all the evidence necessary to enable the damage to be quantified, which therefore covers non-material injury as well. Moreover, the nine paragraphs following paragraph 68 are intended to specify and quantify that injury.

93 At paragraph 72 of the reply, the applicant explains in what respect its status and functions should be taken into account in assessing non-material injury. It claims to be highly regarded professionally and to carry on the bulk of its business with the Community institutions. Moreover, an attack on a person's integrity

aggravates the financial loss suffered where the event which gave rise to that attack is brought to the knowledge of the circles in which the victim carries on business. However, that reference to financial loss is merely incidental.

94 The plea must therefore be rejected.

Substance

95 The Community's liability under the second paragraph of Article 215 of the Treaty depends on the fulfilment of a series of conditions as regards the unlawfulness of the conduct alleged against the Community institutions, the fact of damage and the existence of a causal link between the conduct of the institution concerned and the damage complained of (Case C-308/87 *Grifoni* v *EAEC* [1990] ECR I-1203, paragraph 6, and Case T-168/94 *Blackspur and Others* v *Council and Commission* [1995] ECR II-2627, paragraph 38).

96 The applicant takes the view that the defendant conducted itself unlawfully, inasmuch as it infringed the principle that proceedings must be *inter partes* and expressed defamatory criticisms of the applicant in Special Report No 1/96.

Infringement of the principle that proceedings must be inter partes

97 The applicant points out that Special Report No 1/96 is highly critical of it. In accordance with the principle that proceedings must be *inter partes*, the

defendant ought to have given the applicant the opportunity of submitting its observations before the adoption of the report and ought to have re-examined it in the light of the observations which the applicant made after the report's publication.

98 The defendant contends, primarily, that the plea is devoid of purpose since the applicant had the opportunity of making its point of view known both before and after the adoption of Special Report No 1/96. In the alternative, it contends that the plea is unfounded, the principle that proceedings must be *inter partes* being applicable only to judicial proceedings or administrative proceedings capable of resulting in the imposition of penalties. However, the special report is not in the nature of a decision and merely expresses an opinion. In the further alternative, it contends that the plea is irrelevant since infringement of the principle that proceedings must be *inter partes* could not have caused the injury claimed.

99 The Court proposes to examine the defendant's last argument first.

100 Fault does not of itself establish the Community's liability and confer on the applicant entitlement to the compensation claimed. In that connection, the Court observes that, for the Community to incur liability, the applicant must prove not only the illegality of the conduct alleged against the institution concerned and the fact of the damage but also the existence of a causal link between that conduct and the damage complained of (Joined Cases 197/80, 198/80, 199/80, 200/80, 243/80, 245/80 and 247/80 *Ludwigshafener Walzmühle and Others* v *Council and Commission* [1981] ECR 3211, paragraph 18; Case C-257/90 *Italsolar* v *Commission* [1993] ECR I-9, paragraph 33; and Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 80). Moreover, it is settled case-law that the damage must be a sufficiently direct consequence of the conduct complained of (Joined Cases 64/76, 113/76, 167/78, 239/78, 27/79, 28/79 and 45/79 *Dumortier Frères and Others* v *Council* [1979] ECR 3091, paragraph 21; Case T-175/94 *International Procurement Services* v *Commission* [1996] ECR II-729, paragraph 55; and Case T-7/96 *Perillo* v *Commission* [1997] ECR II-1063, paragraph 41).

101 In the present case, the injury allegedly sustained by the applicant stems from the adoption and publication by the defendant of Special Report No 1/96. On the assumption, however, that the defendant was under an obligation to allow the applicant to make its point of view known before the adoption and publication of the report, or was required to examine in greater detail any observations submitted by the applicant, neither course could, in the circumstances of the case, have led to any alteration or rectification of the contents of the report, as published.

102 Notwithstanding the existence and implementation of the principle that proceedings must be *inter partes*, the defendant still retained its discretionary power and the right to maintain its point of view. The defendant's appraisal of the arguments submitted by the applicant is contained in its reply of 7 March 1997, cited at paragraph 16 above, to the request by the applicant's lawyer, cited at paragraph 15 above, to publish in the *Official Journal of the European Communities* a rectification to Special Report No 1/96. In that reply, the defendant refutes, in detail and point by point, the applicant's observations on the inaccuracy of passages in the special report concerning the applicant and informs the latter that there are no grounds on which to rectify the report. If the applicant had been in a position to submit those observations prior to adoption of the special report, therefore, the defendant would not have adopted a different viewpoint. Similarly, it is sufficiently clear from the tenor of that reply that, after an even more exhaustive examination of the applicant's observations, the defendant would still not have rectified the report.

103 Likewise, on the assumption that the defendant was under an obligation to re-examine the report in light of the applicant's observations and that its letter of 7 March 1997 does not indicate satisfactory compliance with that obligation, the tenor of that letter shows sufficiently clearly that the defendant would not, even after a still more exhaustive examination of the applicant's observations, have rectified Special Report No 1/96.

104 It follows that neither the defendant's failure to request the applicant to submit its observations prior to the adoption and publication of Special Report No 1/96 nor

the failure to examine those observations in sufficient depth could have caused or aggravated the injury claimed in the application.

105 The plea alleging infringement of the principle that proceedings must be *inter partes* must therefore be rejected without there being any need to consider the question whether or not, in the present case, the applicant was entitled to rely on that principle.

Defamatory nature of the defendant's criticisms of the applicant

The principle of defamation

106 The applicant claims that in Special Report No 1/96 the defendant expressed criticisms of it which are unfounded. This is, it states, the first time that the defendant has included in a special report to the Parliament serious criticisms relating directly to persons outside the Community institutions and referring to them by name. The accusations made are based on a partial and distorted view of the true state of affairs.

107 It takes the view that an assertion may be defamatory irrespective of whether or not the matter reported is well founded. A statement may be defamatory even if the matter raised is true or partly true. Thus, under Italian law, not only untrue or subjective statements but also insinuations are deemed liable to injure or jeopardise the reputation of another person.

108 The Court notes that, under the first subparagraph of Article 188c(2) of the Treaty, the Court of Auditors is required to examine whether all revenue has been received and all expenditure incurred by the Community in a lawful and regular manner and whether financial management has been sound. Under paragraph 4 of that provision, it is to submit its observations either in the annual report or in the form of special reports.

109 Actuated by the concern to ensure that its tasks are properly carried out, the Court of Auditors may exceptionally, and in particular where there is a serious malfunction affecting the lawfulness and regularity of revenue and expenditure or the requirements of sound financial management, make a full report on the facts established and give the names of any third parties directly involved. The naming of those involved is all the more necessary where anonymity may give rise to confusion or cast doubt on their identity, which is liable to harm the interests of those concerned by the investigation of the Court of Auditors but not implicated by its critical assessments.

110 In those circumstances, the assessments made concerning third parties are fully subject to review by the Court of First Instance. They may constitute maladministration and thus give rise, where appropriate, to non-contractual liability on the part of the Community, if either the facts reported are not substantively correct or the interpretation placed on facts which are substantively correct is erroneous or one-sided.

The specific allegations of defamation

111 The applicant denies that it gained a privileged position for itself as a result of a conflict of interests or that it resisted the Commission's requests. Furthermore, the defendant allegedly failed to take account of the significant results yielded by work to which the applicant had contributed.

— The conflict of interests

112 The fact that a person who helps to evaluate and select tenders for a public contract has the contract awarded to him is highly questionable and constitutes a chargeable offence under the criminal law of several Member States, regard being had to the principle of equal treatment in the award of public contracts, the concern for sound financial management of Community funds and the prevention of fraud.

113 Where, in the exercise of its duties, the Court of Auditors encounters serious irregularities of that kind, it is obliged to report them.

114 In the present case, Special Report No 1/96 states, at paragraphs 50 to 55 and in Annex 3 thereto, that the applicant participated in the proceedings of the management board of the ARTM, its director being one of the ARTM's four administrators, in the planning of the MED programmes, including the stage at which draft financing proposals were prepared, and in monitoring the programmes. Yet, during that period, in its capacity as a BAT it was awarded contracts under those programmes totalling ECU 2 088 700.

115 The applicant does not contest the accuracy of the facts, which are moreover supported by ample documentary evidence produced by the defendant, but maintains that there could be no conflict of interests. The Commission, it asserts, retained decision-making power and the ARTM merely had a preparatory and executive role.

116 However, that argument is not relevant. Even if that assertion is correct, the fact remains that the applicant participated in meetings at which decisions were taken on the assessment and selection of projects entrusted to it.

117 Thus, the technical assistance contract for the implementation of the MED-Campus programme, which is mentioned at paragraph 52(a) of the special report and was entered into on 21 December 1992 between the ARTM and the applicant for ECU 748 900, was proposed by the ARTM of which the applicant was a founder member and its director one of the four administrators.

118 Moreover, the contract mentioned at paragraph 52(b) of the special report and entered into on 12 July 1993 between the ARTM and the applicant for ECU 405 000 was awarded on a private treaty basis, without any tendering or selection procedure.

119 It follows that the applicant was in a position to influence the decision-making process and thus to use its position, and that of its director, in order to further its own interests. The situation in which it found itself therefore involved a conflict of interests.

120 Furthermore, although it is true, as the applicant maintains, that the Commission had a right of veto within the Commitment Committee, the fact remains that the applicant's director for his part enjoyed voting rights on the ARTM's management board. In the circumstances referred to above, the projects which the applicant was offered were adopted without any objection from the Commission.

121 The applicant further emphasises that, during the trial phase of the MED programmes, the Commission entered into contracts directly with the consultancy firms assisting it; those firms were then invited to participate in the newly-established ARTM; the applicant itself accepted the additional workload in a

spirit of cooperation and never sought to obtain any advantage from that situation.

122 It is common ground that, during a trial period, the Commission had to enter into contracts on a private treaty basis with consultancy firms including the applicant. In that connection Special Report No 1/96 refers at paragraph 51 to the contract entered into on 10 August 1992 between the Commission and the applicant for ECU 199 960 involving the preparation of draft financing proposals as part of the MED-Campus programme. The conclusion of that contract preceded the setting up, on 24 September 1992, of the ARTM, of which the applicant was a founder member.

123 However, that argument is not relevant. The conflict of interests constitutes, objectively and in itself, a serious irregularity without there being any need to qualify it by having regard to the intentions of the parties concerned and whether they were acting in good or bad faith. The presence of BATs, including the applicant, on the ARTM's management board was objectively incapable of being justified. The defendant was therefore bound to report it without being required to consider whether that serious irregularity was due to a mere lack of foresight or a clear intent to defraud. That question, which has no bearing on the financial supervision exercised by the Court of Auditors, is, however, relevant to any action to be taken by the Commission in response to Special Report No 1/96.

124 It follows that there was no maladministration on the part of the defendant, nor did the latter misinterpret or put a one-sided interpretation on the facts by drawing attention in the special report to a conflict of interests involving the applicant.

125 The plea must therefore be rejected.

— The applicant's opposition to the Commission's requests

126 The applicant criticises the following passage in Special Report No 1/96 (paragraph 56):

'... The minutes of the meetings of the Agency's Management Board show how vigorously those concerned resisted the Commission's requests. Nearly a year and a half went by before they finally decided to step down, in circumstances which are questionable to say the least.'

127 The applicant considers this presentation of the facts to be a complete distortion. There was no resistance on the part of those concerned to resigning, nor were the circumstances in which they resigned questionable.

128 The Court notes that on 28 May 1993 the Commission informed the ARTM of its wish to see the directors of the BAT leave the management board of the ARTM since, in its view, their presence on the board was ambivalent and giving rise in certain quarters to increasingly persistent questions.

129 Initially, that request was favourably received by the ARTM. Thus, in an internal memorandum dated 14 June 1993, it submitted a plan and a specific timetable to that end, the proposed change in composition to be carried through by January 1994. That intention was confirmed by the management board of ARTM at its meetings on 1 July 1993 and 5 October 1993. On 18 June 1993 steps were taken with a view to appointing new members to the management board.

130 Subsequently, however, not only was the timetable not adhered to but the ARTM proved reluctant to change the composition of its management board and made any change subject to compliance with a number of conditions, laid down successively.

131 Thus, on 18 May 1994, when the ARTM applied to take part in the tendering procedure organised for the continued implementation and monitoring of the MED programmes, the chairman of the ARTM wrote to the Commission that the management board would resign only if the ARTM were awarded that contract.

132 However, even though that contract was awarded to it, and signed on 1 September 1994, the ARTM did not carry out the promised alteration in the composition of the board. On the contrary, the general meeting of the ARTM held on 11 October 1994 renewed the term of office of the applicant's director for a further two years. The minutes of that meeting note that the applicant's director would none the less have been prepared to resign if, first, the applicant were reappointed as the BAT for the MED-Campus programme and, secondly, the director were allowed to put forward a candidate of his own choosing in the event of his resignation. This was confirmed by the ARTM in an internal document dated 12 January 1995.

133 That twofold condition was apparently complied with. In the first place, the applicant's appointment as BAT for the MED-Campus programme was renewed for 1995 by a contract signed with the Commission on 18 January 1995. Secondly, it is clear from the ARTM's observations of 12 January 1996 on the draft of Special Report No 1/96 that one of its new administrators had formerly worked with the applicant.

134 It was in those circumstances that the applicant's director finally resigned from the management board of the ARTM in April 1995.

135 The applicant claims that Special Report No 1/96 misinterprets the conduct of the ARTM as from 1994, inasmuch as in January 1994 the Commission waived

its request that the ARTM's management board should resign. In that connection the applicant refers to the minutes of the meeting of the ARTM's management board of 21 January 1994 which, at point 3.6 'Changes in the management board', states as follows:

'The Commission requested some months ago that the ARTM's management board be modified so that the BATs running the programmes no longer participate at the same time in proceedings of the ARTM's management board. The Commission and the administrators consider that that request is no longer appropriate.'

136 The Court notes, first of all, that the credibility of this document is open to doubt. It does not explain why the Commission's request is no longer appropriate. It does not state which Commission representative expressed that view of the matter and by what authority. Finally, the document emanates from the ARTM and not the Commission.

137 In the second place, it is contradicted by other, subsequent documents emanating from both the ARTM and the Commission.

138 Accordingly, the reference, in the abovementioned letter of 18 May 1994 from the chairman of the ARTM to the Commission, to the problem caused by the presence of BAT representatives on the ARTM's management board and the statement that they would resign if the contract were awarded to the ARTM, would be meaningless if the Commission had in fact decided in January 1994 not to seek their resignation. Moreover, that letter was addressed to Mrs Y. of DG I who, according to the minutes of the meeting of the ARTM's management board of 21 January 1994 in which the passage under discussion appears, was present at that meeting. It would therefore make no sense for the ARTM to write to her four months after that meeting without mentioning that alleged change of attitude,

and to offer to comply, subject to certain conditions, with a request which the Commission had reportedly waived.

139 Besides, in its observations on the draft version of Special Report No 1/96, the ARTM pointed out that the Commission had expressed the wish to see the BAT representatives leave the management board of the agency and had itself initially consented to it. However, not only does the ARTM not mention a decision by the Commission not to seek their resignation but it clearly states that the resignations were postponed on the ARTM's own initiative.

140 In its observations appended to Special Report No 1/96, the Commission considers that the long delay recorded before the resignation of the BAT representatives from the ARTM's management board, despite the assurances it had received, was unacceptable. In no way does it bear out, therefore, the observation in the document under discussion.

141 Moreover, the applicant explains the alleged decision by the Commission not to seek a change in the composition of the management board of the ARTM by the fact that the tasks hitherto performed by the ARTM, namely the operation of the MED programmes, were to be reallocated in 1994 by means of a tendering procedure in which the ARTM was free to participate. However, that justification is not persuasive, as the defendant has rightly contended. The conflict of interests arising from the presence of BAT representatives on the management board of the ARTM cannot be avoided or resolved by the participation of the ARTM in a tendering procedure with a view to being entrusted with the management of those programmes. That problem would persist undiminished once the ARTM had secured the award of the contract.

142 In conclusion, paragraph 56 of Special Report No 1/96 not only refers to established facts but also gives an objective and comprehensive interpretation of those facts by stressing that the circumstances in which the applicant's director resigned were questionable. That resignation, which was justified owing to a conflict of interests, was subsequently made subject to a series of new conditions.

Initially, it was made subject to the grant to the ARTM of the contract for the management of the MED programmes. Then it was made subject to the twofold condition that the applicant be reappointed as the BAT for the MED-Campus programme and that the applicant's director could propose a candidate of his choice to replace him. It was only after all those conditions had been fulfilled that the applicant's director finally resigned in April 1995. However, between the date on which the Commission first sought that resignation, in May 1993, and the date on which it finally occurred, in April 1995, the applicant was awarded two contracts as the BAT for the MED-Campus programme, the first in January 1994 relating to 1994 for ECU 610 800, and the second on 18 January 1995 relating to 1995 for ECU 720 000.

143 The plea must therefore be rejected.

— Failure by the defendant to take into consideration the results of work to which the applicant contributed

144 The applicant criticises the defendant for making no mention whatever in Special Report No 1/96 of the results obtained under the MED programmes during the trial period. It considers those results to have been very positive, a conclusion based on the outcome of a survey conducted at the Commission's request with the network participants mentioned in the Parliament's Resolution of 17 July 1997 on the special report. Furthermore, the independent auditors called upon to appraise the activities carried on during the trial period had even laid emphasis on the need to strengthen the applicant's role as a BAT.

145 The Court points out that, under Article 188c(2) of the Treaty, the Court of Auditors is competent to examine whether revenue has been received and

expenditure incurred in a lawful and regular manner and whether the financial management of the Community has been sound. In principle, therefore, its competence is limited to the financial sphere. Without there being any need to answer the question whether that competence might also extend to the appraisal of fundamental policy choices, it must nevertheless be held that it plainly covers a review, in terms of sound financial management, of the means by which effect is given to those choices.

146 In the present case, the defendant uncovered serious irregularities in the financial management of the MED programmes which took the form, in particular, of a conflict of interests involving the applicant. A conflict of interests as regards the award of public contracts already compromises the sound management of Community funds and equal access for all to such contracts, without there being any need for it to cause quantifiable material injury as well. Assessment of the quality of the work carried out by the applicant and of the results achieved is not therefore a criterion which is capable of calling into question the relevance of the findings made by the defendant.

147 The plea must therefore be rejected.

148 It follows from the foregoing that the action must be dismissed in its entirety.

Costs

149 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 unsuccessful in its submissions, it must be ordered to pay the costs, in accordance with the form of order sought by the defendant.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. **Dismisses the action;**

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

Jaeger Lenaerts Azizi

Delivered in open court in Luxembourg on 15 June 1999.

H. Jung M. Jaeger

Registrar President