

JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)

5 March 2002 \*

In Case T-241/00,

Azienda Agricola 'Le Canne' Srl, established in Porto Viro (Italy), represented by G. Carraro, F. Mazzone and G. Arendt, lawyers, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by E. de March and L. Visaggio, acting as Agents, assisted by A. Dal Ferro, lawyer, with an address for service in Luxembourg,

defendant,

\* Language of the case: Italian.

APPLICATION for the annulment of Commission Decision C (2000) 1754 of 11 July 2000, reducing the Community financial aid granted to the applicant in respect of Project I/16/90/02, and damages,

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

composed of: B. Vesterdorf, President, N.J. Forwood and H. Legal, Judges,  
Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 28 November 2001,

gives the following

**Judgment**

**Legal context of the dispute**

- 1 Article 1(1) of Council Regulation (EEC) No 4028/86 of 18 December 1986 on Community measures to improve and adapt structures in the fisheries and

aquaculture sector (OJ 1986 L 376, p. 7), empowers the Commission to grant Community financial aid for the purposes of those measures.

2 Article 44(1) of Regulation No 4028/86 provides:

‘1. Throughout the period for which aid is granted by the Community, the authority or agency appointed for the purpose by the Member State shall send to the Commission on request all supporting documents and all documents showing that the financial or other conditions imposed for each project are satisfied. The Commission may decide to suspend, reduce or discontinue aid, in accordance with the procedure laid down in Article 47:

— if the project is not carried out as specified...,

...

Decisions shall be notified to the Member State concerned and to the beneficiary.

The Commission shall take steps to recover any sums unduly paid.

...’

## Background to the dispute

- 3 By Decision C (90) 1923/99 of 30 October 1990, the Commission granted the applicant, Le Canne Srl, financial aid of ITL 1 103 646 181 (EUR 569 986), that is 40% of the amount of the eligible expenditure of ITL 2 759 115 453 (EUR 1 424 964), in respect of Project I/16/90/02.
- 4 That project, which was aimed at the modernisation and development of the fish-farming installations belonging to Le Canne, provided for the construction of hydraulic infrastructure (channels, ponds, and seawater tanks) and the purchase of equipment.
- 5 Under Article 1 of Decision C (90) 1923/99, '[I]n the circumstances laid down in this decision, the Community financial aid is granted for the investment project, whose funding conditions are set out in the annex.'
- 6 The annex to that decision included, among others, the two following provisions:
- 'The amount of the aid which the Commission shall pay for the completed project shall depend on the nature of the works carried out as against those specified in the project.'
  - 'In accordance with the statement appearing in Part B of the application for aid submitted by the recipient, the specified works may neither be modified

nor changed without the prior consent of the national administration and, if required, of the Commission. Substantial modifications without the consent of the Commission may result in the reduction or cancellation of the aid, if they are considered to be unacceptable by the national administration or by the Commission...’.

- 7 By Decision C (94) 1531/99 of 27 July 1994, the Commission granted Le Canne a second financial aid in respect of Project ITA/100/94.
- 8 By letter dated 12 December 1994 addressed to the Italian Ministry of Agriculture, Foodstuffs and Forests (hereinafter ‘the Ministry’) and to the Commission, Le Canne stated that, owing to circumstances beyond its control, certain alterations to the works provided for in the context of Project I/16/90/02 had become essential. However, Le Canne did not consider that the project had, overall, undergone any substantial changes, apart from a difference in the siting and configuration of the intensive rearing ponds. Therefore, whilst stating that it had become aware, but only since completion of the works, that it had not complied with the necessary formality of prior notification of those alterations, Le Canne requested the national authorities and, if appropriate, the Commission itself, to conduct a technical examination of the alterations made, albeit after the event, in order to establish that they were justified, and that the choices made were necessary and opportune.
- 9 After an inspection, on 1 February 1995, of the completed works relating to Project I/16/90/02, the Ministry forwarded to Le Canne an official report drawn up on 24 May 1995 (hereinafter ‘the report’).
- 10 In the Ministry’s view that inspection brought to light a number of differences between the project and the works carried out in respect of it. According to the Ministry, Le Canne was required, under Community legislation, to seek

authorisation prior to carrying out those modifications. The Ministry decided that, apart from their technical implications, those modifications had resulted in greater expenditure than that projected on the basis of the different items taken into account in the estimated bill of quantities, in particular concerning the excavation works.

- 11 As a result, the Ministry reduced the total of the eligible expenditure in respect of Project I/16/90/02 to about 69.13% of the amount initially approved by the Commission.
- 12 It is in those circumstances that, by final payment order issued on 5 July 1995, the Commission paid Le Canne ITL 419 822 440 (EUR 216 820) in respect of the balance of the Community financial aid in relation to Project I/16/90/02. Thus, on the basis of the report, the Commission reduced the total amount of that aid from ITL 1 103 646 181 (EUR 569 986) to ITL 762 940 040 (EUR 394 026), that is by ITL 340 706 141 (EUR 175 960).
- 13 By letter of 26 July 1995, received by the Commission on 3 August 1995, and also addressed to the Ministry, Le Canne challenged the report and applied for a review of its situation.
- 14 Le Canne claimed, in particular, that the disputed alterations, which did not involve any change in the aims or profitability of the project, or of its location, had been made necessary in the course of carrying out the works relating to Project I/16/90/02 by events beyond its control.

- 15 By telex No 12497 of 27 October 1995, the Commission notified the national authorities that on the information available it was not necessary to review the procedure followed by the Ministry in finalising Project I/16/90/02.
- 16 On 14 November 1995 the Ministry also rejected the applicant's application for review.
- 17 By judgment of 7 November 1997 in Case T-218/95 *Le Canne v Commission* [1997] ECR II-2055, the Court of First Instance dismissed the action brought by Le Canne for annulment of telex No 12497 and for damages.
- 18 Following an appeal brought by the applicant, by judgment of 5 October 1999 in Case C-10/98 P *Le Canne v Commission* [1999] ECR I-6831, the Court of Justice set aside the judgment of 7 November 1997 in *Le Canne v Commission*, cited above. The Court of Justice annulled telex No 12497 for failure to observe the procedure laid down in Articles 44(1) and 47 of Regulation No 4028/86, and Article 7 of Commission Regulation (EEC) No 1116/88 of 20 April 1988 laying down detailed rules for the application of decisions granting aid for projects concerning Community measures to improve and adapt structures in the fisheries and aquaculture sector and in structural works in coastal waters (OJ 1988 L 112, p. 1).
- 19 Those provisions require, in particular, that the recipient be asked, prior to the reduction of a financial aid, to provide an explanation for the failure to comply with the conditions to which the grant of that aid was subject, and that every draft measure for reduction be submitted to the Standing Committee for the Fishing Industry (hereinafter 'the Committee').

- 20 By letter of 23 November 1999, a copy of which was sent to the competent Italian authorities, the Commission informed Le Canne of its intention to reduce the financial aid granted in respect of Project I/16/90/02 and invited the applicant to inform it of the reasons for which the conditions laid down for the grant of the aid had not been complied with.
- 21 In its reply of 14 December 1999, addressed to the Ministry and to the Commission, Le Canne pointed out that, as it considered it had shown in its observations of 26 July 1995, the alterations made to Project I/16/90/02 did not constitute substantial modifications, but mere adjustments.
- 22 Le Canne submitted, among other things, that, according to the wording of Article 44(1) of Regulation No 4028/86, a decision to reduce a financial aid is purely discretionary, and not obligatory, even if the project has not been carried out as specified. Thus, according to Le Canne, the Commission was clearly required to set out the reasons for which it considered that the alterations made to the project were unacceptable, even after the event. Le Canne also argued that it was therefore not sufficient to declare a change to a project unacceptable merely because it had not been previously notified.
- 23 By its Decision No 882/00 of 30 March 2000, the Regional Administrative Court of the Veneto (hereinafter ‘the RAC’) annulled the Ministry’s rejection dated 14 November 1995 of the application for review submitted by Le Canne. According to the RAC, that rejection, founded in its entirety on the considerations set forth by the Commission in its telex No 12497, was tainted with the same procedural defects as those which affected that telex and led to its annulment by the judgment of 5 October 1999 in *Le Canne v Commission*, cited above.
- 24 On 11 May 2000 the Committee issued its opinion on the envisaged reduction of the financial aid in accordance with the requirements of Article 47 of Regulation No 4028/86.

25 By Decision C (2000) 1754 of 11 July 2000, the Commission reduced the amount of the Community financial aid originally granted in respect of Project I/16/90/02 by ITL 340 706 141 (EUR 175 960).

26 The Commission, in support of that reduction, found, in particular, as follows:

' ...

Whereas it was only on 12 December 1994 — 14 months after the completion of the works — that the recipient notified the Ministry and the Commission of the alterations made to the project, although the conditions for payment of the aid provided that changes or modifications were not to be carried out without the prior consent of the national administration and, as the case might be, of the Commission;

...

Whereas..., by letter of 23 November 1999, the Commission informed the competent national authorities and the recipient of its intention to reduce the Community aid; whereas the reduction was made because of the substantial modifications to the project as submitted and approved, while the works were being executed and without prior notification to the national administration or its authorisation;

...

Whereas, contrary to what is claimed by the recipient in its letter of 14 December 1999:

- the reduction of the aid results from the report of the inspection of the completed works drawn up by the representatives of the Ministry following the inspection made on 1 February 1995; that report fully sets out the reasons for the reduction of both the Community and national aid;
  
- further, it follows from the abovementioned report of the inspection that the modifications are not merely adjustments; they are on the contrary substantial changes carried out without prior notification to the national administration. The recipient notified the modifications by letter of 12 December 1994, that is to say, more than a year after the completion of the works and several months after sending the request for payment of the balance of the aid to the Ministry; yet the “conditions for payment of the aid” annexed to [Decision C (90) 1923/99] make any changes or modifications to the specified works subject to the prior agreement of the national administration and, as the case may be, of the Commission;
  
- in the view of the national administration and of the Commission, those modifications considerably changed the project in issue and are therefore unacceptable; the acceptance of the later Project ITA/100/94 for receipt of a Community aid in no way implies the acceptance by the Commission of the modifications carried out to the first project;
  
- some works provided for under Project ITA/100/94 were carried out within the framework of Project I/16/90/02 and cannot benefit from Community aid under the latter project; on the other hand, part of the works provided for

under the latter project have not been carried out and some equipment provided for has not been bought;

Whereas the national authorities have not changed their view that the aid should be reduced;

Whereas under Article 44(1) of [Regulation No 4028/86] the Community aid may be suspended, reduced or discontinued, if the project is not carried out as specified;

...’.

27 By application lodged on 14 September 2000, Le Canne brought this action.

28 By separate document, lodged on the same day, Le Canne made an interlocutory application for suspension of the operation of Decision C (2000) 1754 and other interim relief.

29 That application was dismissed by order of the President of the Court of First Instance of 15 January 2001 (Case T-241/00 R *Le Canne v Commission* [2001] ECR II-39).

- 30 By decision of the Court of First Instance the Judge-Rapporteur was attached to the First Chamber, to which the case was therefore assigned.
- 31 Upon hearing the views of the Judge-Rapporteur, the Court (First Chamber) decided to open the oral procedure.
- 32 At the hearing on 28 November 2001 the parties presented oral argument and replied to questions put by the Court.

### Forms of order sought by the parties

- 33 Le Canne claims that the Court should:

— declare Decision C (2000) 1754 null and void;

— order the Commission to pay compensation for loss on the basis of the legal interest rate in force in Italy, from the date of the previous part payment until payment of the balance;

- alternatively, if appropriate, order that an expert's report be obtained to establish whether the alterations made to Project I/16/90/02 were such as to constitute substantial modifications;
  
- order the Commission to pay the costs.

34 The Commission contends that the Court should:

- dismiss the application as unfounded;
  
- order the applicant to pay the costs.

#### The effects of the judgment of 5 October 1999 in *Le Canne v Commission*

35 As a preliminary point, the Court observes that the annulment of telex No 12497 by the judgment of 5 October 1999 in *Le Canne v Commission*, cited above, because of the failure to hear Le Canne and to consult the Committee did not affect the validity of the steps leading up to the annulled act, which were taken prior to the occurrence of the established irregularities.

- 36 Further, the file does not show that Decision 882/00 of the RAC, cited above, annulling the Ministry's refusal, on 14 November 1995, of Le Canne's application for review affected the lawfulness of the report drawn up on 24 May 1995.
- 37 It must therefore be accepted that the report, on which the Commission based its adoption of Decision C (2000) 1754, has been neither annulled nor invalidated by a later act and could therefore be taken into account in the procedure for adopting that decision.

## The claim for annulment

### *The plea alleging breach of the obligation to state reasons*

### Arguments of the parties

- 38 Le Canne points out that Section II/B of the Guidelines of the Directorate-General for Fisheries for the treatment of applications for Community financial aid made under Regulation No 4028/86 distinguishes between, on the one hand, adjustments, which alter neither the social justification, nor the aims, nor the profitability, nor the location of the project and which are allowed under that regulation and, on the other hand, modifications which change the nature of the original project from the economic and technical point of view, which alone are not allowed.

- 39 Le Canne contends that it has demonstrated on several occasions that the alterations made to Project I/16/90/02 were not substantial modifications but mere adjustments which did not at all affect the aims of that project. Those adjustments were made necessary by the change in the hydraulic system of the site and in fish-rearing in the fisheries due to the execution, at the same time, of other works cofinanced by the Community within the framework of the same programme.
- 40 Decision C (2000) 1754 confines itself to referring to the report. However, that document predated the technical arguments advanced by Le Canne in its observations of both 26 July 1995 and 14 December 1999. It could not, therefore, have included any consideration of those arguments.
- 41 Furthermore, since the Commission was vested, under Article 44(1) of Regulation No 4028/86, with a discretionary power in relation to the reduction of financial aid, it was incumbent upon it to explain why any particular modification to the project was not acceptable, even after the event.
- 42 Nor does Decision C (2000) 1754 mention that Le Canne had notified both the Ministry and the Commission of the adjustments in issue, nor that those same adjustments were again reported later, in the request for the inspection of the completed works.
- 43 In those circumstances, the reasoning based on the lack of prior authorisation of substantial modifications to the project is even less sufficient because Decision C (2000) 1754 reduced, after the event, the amount of the financial aid initially granted (Case C-181/90 *Consorgan v Commission* [1992] ECR I-3557, paragraph 18).

- 44 According to the Commission, a decision to reduce financial aid may be regarded as adequately reasoned if it refers with sufficient clarity to a measure of the competent national authorities which sets out unambiguously the reasons for such a reduction (Case T-85/94 *Branco v Commission* [1995] ECR II-45, paragraph 36).
- 45 Decision C (2000) 1754 contains an answer to the arguments put forward by the applicant in its observations of 14 December 1999 by its explicit reference to the report. That document mentions the modifications carried out to the project without prior notification to the national administration. The detailed information which it includes in support of the declaration of ineligibility of the unjustifiable expenditure sets out succinctly, but with sufficient clarity, the reasons underlying Decision C (2000) 1754 (Case C-189/90 *Cipeke v Commission* [1992] ECR I-3573, paragraph 18).
- 46 The report detailed the works carried out in addition to those referred to in Project I/16/90/02, the works which were not carried out, as well as the expenditure regarded as eligible and ineligible.
- 47 Decision C (2000) 1754 makes clear that the alterations noted were not mere adjustments but substantial modifications, notified more than a year after the completion of the works, that they were not acceptable and that the national authorities had not changed their opinion favouring the reduction of the aid in issue.
- 48 Having regard to the system of collaboration between the Commission and the Member States, on which the granting of financial aid is based (*Branco v Commission*, cited above, paragraph 36), Decision C (2000) 1754 does not depart from the report, as no valid reason for doubting the justification of the conclusions in that document could be derived from the observations of Le Canne.

## Findings of the Court

- 49 The second sentence of the first subparagraph of Article 44(1) of Regulation No 4028/86 confers on the Commission the power to suspend, reduce or discontinue the financial aid, if the project is not carried out as specified.
- 50 It follows from the wording of that provision, as interpreted by the Court of Justice, that the Commission is not bound to exercise that power (see judgment of 5 October 1999 in *Le Canne v Commission*, cited above, paragraph 25).
- 51 The Commission's practice is, moreover, consistent with that interpretation. According to the actual terms of the Annex to Decision C (90) 1923/99 (see paragraph 6 above), modifications to a project which are carried out without the approval of the Commission result in the reduction or cancellation of the financial aid only if they are both substantial and considered unacceptable by the national administration or the Commission.
- 52 In those circumstances, the Commission was vested, even given the substantial modifications carried out to Project I/16/90/02 without its consent, with a discretion to assess the conformity, with regard to the subject-matter, structure and purpose of that project, of the alterations noted between the specifications thereof and the works actually carried out, in order to determine whether those alterations were acceptable or unacceptable.
- 53 Respect for the guarantees conferred on economic operators by the Community legal order in administrative procedures is of fundamental importance where the

Community institutions are vested, as in this case, with a discretion (see, to that effect, Case C-269/90 *Technische Universität München* [1991] ECR I-5469, paragraph 14).

- 54 In such a situation, those guarantees include the obligation on the part of the institution concerned to state sufficient reasons for its decisions. The purpose of that statement of reasons is to inform the addressee of the decision of the grounds of fact and law on which it is based, so as to enable the party concerned to determine, in particular, whether it is appropriate to submit it for review by the competent court.
- 55 In the case of a decision reducing a Community financial aid for a project not carried out as specified, the statement of the reasons for such a measure must include an indication of the reasons for which the alterations taken into account have been judged to be unacceptable. Considerations relating to the extent of those alterations or their lack of prior authorisation cannot, by themselves, constitute sufficient reasoning in that respect.
- 56 However, Decision C (2000) 1754, cited at paragraph 26 above, confines itself to referring in this regard to the reasons for the reduction of the financial aid set out in the report, by stating that the alterations described therein ‘considerably changed the project in issue and are therefore unacceptable’.
- 57 Thus Decision C (2000) 1754 gives no reason for the reduction of the financial aid other than the extent of the modifications carried out to the project, without prior notification. While the decision does state that those modifications are unacceptable, it fails to indicate in what respect, according to the Commission, they are unacceptable, apart from some considerations relating to their extent. It

does not specify, in particular, the reasons for which the project, as modified, was less suited than the initial project to receive a Community financial aid.

- 58 Decision C (2000) 1754 does not, therefore, enable the recipient of the financial aid to ascertain the Commission's assessment as to the conformity of the alterations noted with the subject-matter, structure and purpose of the project. Yet that assessment determines whether the alterations made during the execution of the project are acceptable or unacceptable.
- 59 Decision C (2000) 1754 therefore deprives the applicant and the Court of necessary information, particularly with a view to the judicial review of the measure in issue; it is, in this respect, insufficiently reasoned.
- 60 In those circumstances, the plea now under consideration must be upheld and Decision C (2000) 1754 annulled, without there being any need to rule on the other pleas raised by Le Canne in support of its claim for annulment, or on its request that an expert's report be obtained.

### The claim for damages

- 61 Under its second head of claim, Le Canne requests the Court to order the Commission to make good, on the basis of the legal interest rate in force in Italy, from the date of the first part payment until payment of the balance, the financial loss which the applicant claims to have suffered because of the reduction at issue.

62 However, it is for the Commission, under Article 233 EC, to decide on the measures necessary to comply with this judgment and to adopt, if appropriate, a new decision supported by sufficient reasoning.

63 It follows that the Court cannot, without prejudging the substance of any new decision to be taken, give a decision, in this action, on Le Canne's claim.

64 That claim is therefore dismissed.

## Costs

65 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.

66 Since the Commission has, in the main, been unsuccessful, it must be ordered to pay the costs, including the costs of the interlocutory application.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. **Annuls Decision C (2000) 1754 of 11 July 2000;**
2. **Dismisses the remainder of the application;**
3. **Orders the Commission to pay the costs, including the costs of the interlocutory application.**

Vesterdorf

Forwood

Legal

Delivered in open court in Luxembourg on 5 March 2002.

H. Jung

Registrar

B. Vesterdorf

President