JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
9 July 2003 *

In Case T-102/00,

Vlaams Fonds voor de Sociale Integratie van Personen met een Handicap, established in Brussels (Belgium), represented by J. Stuyck, lawyer, with an address for service in Luxembourg,

applicant,

v

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

defendant,

* Language of the case: Dutch.

APPLICATION for annulment of Commission Decision C (2000) 36 of 31 January 2000 reducing the amount of the financial assistance originally provided for by Decision C (1994) 3059 of 25 November 1994 approving the grant by the European Social Fund of aid for an operational programme under the Community support framework for the attainment of Objective 3 in Belgium (Flemish Community),

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

composed of: V. Tiili, President, P. Mengozzi and M. Vilaras, Judges,
Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 29 January 2003,

gives the following

Judgment

Legal background

1 Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities

between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 185, p. 9), in the version resulting from the adoption of Council Regulation (EEC) No 2081/93 of 20 July 1993 amending it (OJ 1993 L 193, p. 5) (hereinafter 'the framework regulation'), lays down in Article 1, among the priority objectives to be pursued by the Community through, in particular, the Structural Funds, that of 'combating long-term unemployment and facilitating the integration into working life of young people and of persons exposed to exclusion from the labour market' (hereinafter 'Objective 3').

2 More specifically, under Articles 2(1) and 3(2) of the framework regulation, it is the European Social Fund (ESF) which is to contribute to the attainment of Objective 3.

3 Article 4 of the framework regulation sets out a number of principles governing the Community's structural policy as a whole. Among them, the principle of 'complementarity', according to which Community operations are to be such as to complement or contribute to corresponding national operations, and the principle of 'partnership', according to which Community operations are the result of consultations between the Commission, the Member State concerned and the competent authorities and bodies designated by the Member State at national, regional, local or other level, with all parties acting as partners in pursuit of a common goal.

4 Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing the framework regulation as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1), in the version resulting from the adoption of Council Regulation (EEC) No 2082/93 of 20 July 1993 amending it (OJ 1993 L 193, p. 20) (hereinafter 'the coordinating regulation'), provides in Article 17(1) that the financial contribution of the Funds to the financing of measures covered by Objectives 1 to 4 and 5(b) is to be laid down by the Commission, within the

framework of the partnership, and states in Article 17(2) that '[t]he financial contribution from the Funds shall be calculated in relation to either the total eligible cost of, or the total public or similar eligible expenditure (national, regional or local, and Community) on, each measure (operational programme, aid scheme, global grant, project, technical assistance, study)'.

5 Article 24 of the coordinating regulation governs the reduction, suspension and cancellation of assistance from a Structural Fund. It states in particular:

'1. If an operation or measure appears to justify neither part nor the whole of the assistance allocated, the Commission shall conduct a suitable examination of the case in the framework of the partnership, in particular requesting that the Member State or authorities designated by it to implement the operation submit their comments within a specified period of time.

2. Following this examination, the Commission may reduce or suspend assistance in respect of the operation or measure concerned if the examination reveals an irregularity or a significant change affecting the nature or conditions for the implementation of the operation or measure for which the Commission's approval has not been sought.

...'

6 Article 2 of Council Regulation (EEC) No 4255/88 of 19 December 1988 laying down provisions for implementing the framework regulation as regards the ESF (OJ 1988 L 374, p. 21), in the version resulting from the adoption of Council

Regulation (EEC) No 2084/93 of 20 July 1993 amending it (OJ 1993 L 193, p. 39) (hereinafter 'the ESF regulation'), lists the 'eligible expenditure' for which ESF assistance may be granted.

7 Finally, the framework regulation and the coordinating regulation were repealed with effect from 1 January 2000 by Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1), which states in Article 52, entitled 'Transitional provisions', that it 'shall not affect the continuation or modification, including the total or partial cancellation, of assistance approved by the Council or by the Commission on the basis of Council Regulations (EEC) No 2052/88 and (EEC) No 4253/88 or any other legislation which applied to that assistance on 31 December 1999'. Likewise, the ESF regulation was repealed with effect from 1 January 2000 by Regulation (EC) No 1784/1999 of the European Parliament and of the Council of 12 July 1999 on the ESF (OJ 1999 L 213, p. 5), which states in Article 9, entitled 'Transitional provisions', that the transitional provisions set out in Article 52 of Regulation No 1260/1999 are to apply to it *mutatis mutandis*.

Facts

8 The Vlaams Fonds voor de Sociale Integratie van Personen met een Handicap (Flemish Fund for the Social Integration of Disabled Persons, hereinafter 'the VFSIPH' or 'the applicant') is a Flemish public-law body possessing legal personality. It was established by decree of 27 June 1990 and placed under the supervision of the Vlaamse regering (Flemish Government).

9 The VFSIPH is intended to encourage the social integration of disabled persons, in particular into the work environment. To that end, it undertakes a number of activities designed to improve opportunities for such persons on the labour

market and in particular initiatives aimed at providing them with vocational training. The VFSIPH does not provide any vocational training itself but organises the contracting-out of training activities to private-law persons managing centres for the vocational training or rehabilitation of disabled persons (hereinafter 'VTCs'), which are service providers approved and subsidised by the VFSIPH in accordance with the Flemish Government Decree of 22 April 1997 on the approval and subsidisation of vocational training or rehabilitation centres for disabled persons.

10 With regard to the subsidisation of VTCs by the VFSIPH, the Flemish legislation provides for a system under which VTCs are not reimbursed for the expenditure which they have actually incurred in the delivery of training projects on behalf of the VFSIPH, but receive lump sums (hereinafter also 'the global allocation'). In particular, the Decree of 22 April 1997 provides in Article 11(1) that '[e]ach centre shall be subsidised to the amount of 550 000 [Belgian francs (BEF)] per training package and per year'. In Article 1(4), the decree defines a training programme as the 'operating unit comprising 3 600 hours of training spread over a maximum of 24 months' and in Article 8 states that '[t]raining and support may consist, per disabled person, of up to 3 600 actual hours and be spread over a maximum period of 24 months'. In addition, Article 12(1) of that decree provides that '[o]ver and above the grant referred to in Article 11, each centre shall receive an additional lump sum for "equipment-related operating costs", which shall amount per training programme and per year to [BEF] 39 000 for training programmes which prepare the trainee for employment as a salaried employee and [BEF] 26 000 for training programmes which prepare the trainee for other occupations'.

11 By Decision C (94) 3059 of 25 November 1994, the Commission approved, at the request of the Kingdom of Belgium, the grant of ESF assistance for a Flemish Community operational programme (No 94.3040B3) covering the period from 1 January 1994 to 31 December 1999 and forming part of the Community support framework for Objective 3 in Belgium (Flemish Community). That

decision was subsequently amended on several occasions, most recently by Commission Decision C (99) 4286 of 23 December 1999, in order to adapt the financing plan for the assistance in question to take into account the annual indexations and actual implementation of the measures concerned.

12 The VFSIPH was designated as promoter of joint projects under that operational programme, the delivery of which involved the VTCs De Werkgaard and GOCI. Under Decision C (94) 3059, the VFSIPH therefore received, through the Flemish Community, European Community financial aid in respect of those projects.

13 Between 7 and 11 December 1998, the Commission carried out, in accordance with Article 23(2) of the coordinating regulation, an on-the-spot financial check (hereinafter 'the first check') relating to the delivery, during 1997, of several projects provided for by the operational programme in question. The check concerned projects selected by sampling and was carried out at the level of the VTCs concerned, including De Werkgaard and GOCI, thus leading to the review of the management of the projects by the VFSIPH.

14 Following that check, the VFSIPH sent to the Commission, by letter of 18 December 1998, an explanatory note on the calculations made.

15 In its report of 29 December 1998 (hereinafter 'the first check report'), forwarded on 18 February 1999 to the Ministry of the Flemish Community as the designated authority for Flemish operational programmes, the Commission mentioned irregularities which its staff had found during the first check.

16 Subsequently, by letter of 25 February 1999, the Afdeling Europa en Werkgelegenheid (Europe and Employment Division; hereinafter 'the AEW'), which was responsible, within the Ministry of the Flemish Community, for all administrative tasks connected with the ESF, forwarded to the VFSIPH the parts of that check report concerning it. The VFSIPH was informed that it had the right to send its comments to the AEW by 19 March 1999. Those comments would be forwarded to the Commission.

17 On 16 March 1999 the VFSIPH sent its written comments to the AEW.

18 By letter of 5 May 1999 from the AEW, the Commission was informed of the comments of the AEW and the promoters concerned, including the VFSIPH, on the first check report.

19 The AEW therefore instructed the firm of auditors Deloitte & Touche (D & T) to undertake a detailed examination of the operations implemented in 1997 by the VTCs De Werkgaard and GOCI and of the management and control system which the VFSIPH applied to the VTCs for that year.

20 By registered letter of 17 August 1999, the Commission, referring to Article 24(1) of the coordinating regulation, notified the Belgian authorities of the initiation of the procedure relating to the possible withdrawal, on account of the irregularities found in the first check report, of the ESF assistance granted for the operations and/or initiatives concerned. It invited those authorities to inform the promoters concerned of this and to send it any comments they might have within two months.

21 By registered letter of 26 August 1999, the AEW informed the VFSIPH of the Commission's intention to recover, in accordance with Article 24 of the

coordinating regulation, a total of BEF 15 327 449 in respect of VFSIPH projects delivered by De Werkgaard and GOCI, and invited it to submit its written comments by 1 October 1999 at the latest.

22 By registered letter of 28 September 1999, the VFSIPH sent its comments to the AEW.

23 On 13 October 1999, D & T submitted its final audit report (hereinafter 'the D & T report') to the AEW, which forwarded it to the Commission on 15 October 1999, together with the comments of the operators concerned, including the VFSIPH.

24 On 28 October 1999, the Commission carried out a second financial check, this time directly at the premises of the VFSIPH, covering all its associated VTCs and the years 1997 and 1998 (hereinafter 'the second check').

25 On 31 January 2000 the Commission adopted a decision, the addressee of which was the Kingdom of Belgium (hereinafter 'the contested decision'), making a reduction, equivalent to EUR 638 859, in the maximum amount of ESF financial assistance granted to the Flemish Community for the operational programme covered by Decision C (94) 3059, as amended by Decision C (99) 4286. The contested decision states that that reduction concerns the operations implemented by the organisations and/or establishments specified in its annex, which include the VFSIPH and the VTCs De Werkgaard and GOCI.

26 By registered letter of 21 February 2000, the AEW informed the VFSIPH that the Commission had asked it, by letter of 15 February 2000, to submit its comments

on the report relating to the second check (hereinafter 'the second check report') and invited the VFSIPH to send it any comments it might have by 6 March 2000.

27 By registered letter of 23 February 2000, received on 24 February 2000, the AEW communicated the contested decision to the VFSIPH and informed it that it considered itself bound, pursuant to that decision, to reclaim from it a sum of BEF 7 502 564 (EUR 181 087 at the exchange rate on 25 November 1994, the date of approval of the operational programme).

28 By 29 January 2003 the Commission had not yet concluded the procedure relating to the irregularities established by the second check report.

The contested decision

29 In the contested decision, referring to the results of the first check, the Commission found, so far as the applicant is concerned, first, that Article 17 of the coordinating regulation had been infringed inasmuch as the applicant had declared to the ESF for 1997 the actual costs incurred by De Werkgaard and GOCI, even though it had in fact paid them lower lump sums, thus claiming an excessive ESF contribution, and, second, in respect of the GOCI dossier, that Article 2 of the ESF regulation had been infringed inasmuch as the applicant had accepted from GOCI an excessive number of training hours, since public holidays and leave had been treated as training days.

30 In the seventh recital in the preamble to the contested decision, the Commission states that, 'after examining the comments of the recipients of assistance and the project initiators concerned', it 'found that their arguments could not be accepted for the following reasons, which are set out in detail in the annex:

— infringement of Article 17 of the [coordinating] regulation (so far as concerns... the VFSIPH-GOCI and De Werkgaard);

— infringement of Article 2 of the [ESF] regulation (so far as concerns... the VFSIPH-GOCI)'.

31 In the annex to the contested decision, the '[r]easons for which the comments of the project operators and/or designated authorities cannot be accepted' are explained as follows:

'The VFSIPH calculates the Community contribution on the basis of the actual costs of the project operators... the VTCs. However, the expenditure actually incurred by the VFSIPH, which acts as applicant in this dossier, comes, for each training module of 1 800 hours per year, to only BEF 550 000 (before indexation) plus BEF 26 000 (training of manual worker) or BEF 39 000 (training of salaried employee). In point of fact that results in a cost of, respectively, BEF 320/hour actually provided as part of a manual worker's training [(550 000 + 26 000)/1 800] and BEF 327.22/hour actually provided as part of a salaried employee's training [(550 000 + 39 000)/1 800]. For the purposes of the correction, account was taken of the amounts actually paid out by the VFSIPH, after indexation.

However, since the VFSIPH declares the expenditure incurred by the VTCs/ project operators without paying the training cost/hour difference, the VFSIPH carries out the calculation on too high a basis, thereby claiming too large a financial contribution from the ESF and thus failing to take any account of Article 17 of the [coordinating] regulation (maximum financial contribution from the Funds).

The foregoing line of argument concerns the VFSIPH GOCI and De Werkgaard dossier.

In addition, with regard to the VTC GOCI, it was found that public holidays and leave were treated as training days. Under Article 2 of the [ESF] regulation and the [ESF] rules adopted in 1997 by the designated authority, that necessitates a 13% correction to the hours accepted by the VFSIPH.'

32 Finally, the annex in question contains a 'correction calculation' made 'on the basis of the amounts communicated by the VFSIPH and the designated authority'. The structure of that calculation can be described as follows.

33 The Commission first shows the amount actually paid out by the applicant, under its system of lump-sum grants, to the VTC concerned ('amount granted'). It thus shows that the applicant granted an amount of BEF 14 471 188 to De Werkgaard for 25 training modules and an amount of BEF 26 635 331 to GOCI for 45 training modules.

34 The Commission then indicates the number of hours of training provided by the VTC, which the applicant itself accepted as eligible for ESF co-financing ('hours accepted'). The Commission adopts as hours eligible for ESF co-financing the

'hours accepted' by the applicant, subject, in the case of GOCI, to the reduction of 13% made to the 'hours accepted' in order to exclude those corresponding to public holidays and leave. The eligible hours are thus fixed at 17 563 for De Werkgaard and 26 694 for GOCI.

35 Next, in order to calculate the 'eligible amount to be declared... to the ESF', the Commission multiplies the 'amount granted' by a coefficient (hereinafter 'the apportionment coefficient') designed to reduce the ESF co-financing in proportion to the fraction of that amount which the Commission considers ineligible for co-financing. More specifically, the apportionment coefficient consists, for each of the two dossiers, of the ratio between the number of eligible hours (17 563 and 26 694 respectively) and the number of training hours resulting from multiplication of the number of training modules declared (25 and 45 respectively) by 1 800 hours.

36 The Commission determines the amount of ESF assistance to which the applicant was entitled ('maximum acceptable ESF assistance') by applying to the 'eligible amount to be declared to the ESF', arrived at by the method described in the previous paragraph (BEF 5 647 944 and BEF 8 777 821 respectively), the rate of 45%, which represents the maximum rate of assistance applicable in this case.

37 Finally, after reiterating the 'amount declared' to the ESF and the amount of assistance allocated by the ESF (equal to 45% of the 'amount declared'), the Commission finds, with regard to both the De Werkgaard dossier and the GOCI dossier, a difference between the amount received by the applicant in respect of ESF assistance and the amount to which it was entitled in that respect, which difference thus constitutes the overpayment received by the applicant. That overpayment amounts to BEF 3 560 040 and BEF 3 942 524 for the De Werkgaard dossier and the GOCI dossier respectively, that is, in total, to the sum of EUR 181 067 mentioned in paragraph 27 above.

Procedure and forms of order sought by the parties

38 By application lodged at the Registry of the Court on 25 April 2000, the applicant brought the present action.

39 The written procedure was concluded on 1 December 2000.

40 Upon hearing the report of the Judge-Rapporteur, the Court (Fourth Chamber) opened the oral procedure and, by way of measures of organisation of procedure as provided for in Article 64 of the Court's Rules of Procedure, requested the defendant to produce its Decision C (99) 4286 of 23 December 1999, mentioned in paragraph 11 above, and both parties to reply in writing to certain questions. The parties complied with that request within the time-limits set.

41 The parties presented oral argument and their replies to the Court's questions at the hearing on 29 January 2003.

42 The applicant claims that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

43 The defendant contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

Law

Admissibility

44 It should be observed as a preliminary point that the contested decision makes a reduction equivalent to EUR 638 859 in the ESF financial assistance for operational programme No 94.3040B3, whereas it quantifies the overpayment received by the applicant at only EUR 181 067. The difference between those two amounts, that is, EUR 457 792, is accounted for by the sums alleged to have been wrongly received from the ESF by another beneficiary of that assistance.

45 In the form of order which it seeks, the applicant claims that the contested decision should be annulled, without expressly limiting that claim to the part of the decision which concerns it and which is, moreover, the only part referred to by the pleas in law raised by it in support of its action. Since the applicant has by no means established a legal interest in bringing an action against that part of the Commission decision which concerns that other beneficiary of the assistance at issue, the form of order sought by it must be considered inadmissible in so far as it relates to that part.

Substance

46 In support of its action, the applicant alleges, first, infringement of the rights of the defence and infringement of an essential procedural requirement; second, infringement of Articles 23 and 24 of the coordinating regulation; third, infringement of Article 17 of the coordinating regulation; fourth, infringement of Article 2 of the ESF regulation; fifth, breach of the obligation to state reasons; sixth, infringement of the principle of cooperation in good faith enshrined in Article 10 EC; seventh, infringement of the principle of the protection of legitimate expectations; eighth, infringement of the principle of legal certainty.

The first plea in law: infringement of the rights of the defence and infringement of an essential procedural requirement

— Arguments of the parties

47 The applicant points out that the principle of respect for the rights of the defence requires that any person who may be adversely affected by the adoption of a decision should be placed in a position in which he may effectively make known his views on the evidence against him which has been taken as the basis for such a decision (Case T-450/93 *Lisrestal and Others* v *Commission* [1994] ECR II-1177, paragraph 42). In this case, according to the applicant, the Commission infringed that principle on two counts. On the one hand, it adopted the contested decision without first placing the applicant in a position to submit its comments on the second check report, and, on the other, it did not take account of the detailed D & T report on the first check, the conclusions of which were favourable to the applicant.

48 In addition, the applicant points out that, where the financial assistance allocated for an operation does not seem justified, Article 24(1) of the coordinating regulation requires the Commission to conduct a suitable examination in the framework of the partnership, in particular by requesting that the Member State or authorities designated by it to implement the operation submit their comments within a specified period of time. In that regard, it maintains that that opportunity which, according to the case-law, constitutes an essential procedural requirement, the disregard of which renders the measure adopted void (Case C-291/89 *Interhotel* v *Commission* [1991] ECR I-2257, paragraph 17, and Case C-304/89 *Oliveira* v *Commission* [1991] ECR I-2283, paragraph 21), was not afforded to the Belgian authorities since the results of the second check and the invitation to submit comments in regard to them were not sent to the AEW until 15 February 2000, that is to say, after the contested decision had been adopted.

49 The applicant points out that, although the Commission refers in it only to the first check, that decision is in reality also based on facts which were established by the Commission only at the time of the second check. It was in fact the second check which led it to raise questions regarding the system of lump-sum grants for VTCs, which was considered contrary to Article 17 of the coordinating regulation in the contested decision.

50 Without the second check report, the Commission could not have come to the findings on which it bases the contested decision. In order to assess the amount of assistance allegedly overpaid, it applied in that decision a different method of calculation from that used in the first check report, namely, the method specifically adopted in the second check report.

51 With regard to the D & T report, the applicant observes that Chapter 2 of that report relates to a consolidated audit of the VFSIPH, aimed in particular at ascertaining whether, as a whole, the system which it applied enabled the data from the VTCs to be reflected accurately in the declaration to the ESF. It infers from this that the Commission could not simply disregard that report, especially since the first check had been conducted at project level.

52 The defendant contends that it complied rigorously with the procedure laid down in Article 24(1) of the coordinating regulation and with the guarantees described in the judgment in *Lisrestal and Others* v *Commission*, cited above, by sending both to the Belgian authorities and to several interested parties (including the applicant and GOCI) the letter of 17 August 1999 requesting them to submit their comments within two months. It adds that all those parties had already previously been afforded the opportunity to make known their comments on the first check report.

53 The defendant points out that the applicant's complaint regarding the second check report flows from the erroneous premiss that the content of that report is relevant to the contested decision. The latter is in fact based solely on the results of the first check and of the procedure laid down by Article 24 of the coordinating regulation which followed it. All the irregularities described in that decision (systematic disparity between the expenditure declared to the ESF and the expenditure incurred by the applicant, declaration of hours of training during holidays, etc.) are analysed in the first check report.

54 The defendant concedes that the figures used in the contested decision are different from those contained in the first check report, while pointing out that that is merely the consequence of applying the very principle that the parties should be heard, in that it took account of the comments on the first check report which the applicant and the AEW had sent to it. In particular, in its decision, the defendant took account, at the applicant's request, of the indexations, equipment grants and definitive amounts declared by the applicant, in accordance with the data communicated by the AEW in an annex to its letter of 5 May 1999.

55 With regard to the calculations made, the defendant maintains that there is no difference in method between those contained in the first check report and those in the contested decision, but merely a difference in presentation of the same calculations. It submits that the applicant has completely failed to show in what respect the calculations set out in the decision are based on the calculations which appear in the second check report.

56 The defendant points out that it is not entirely correct to state, as the applicant does, that the first check took place exclusively at project level. It was in fact a verification of the whole chain of financial flows relating to projects selected by sampling, the emphasis being placed systematically on the applicant.

57 Finally, with regard to the D & T report, the defendant argues that it relates to the projects, whereas the systematic problem found to exist by the contested decision lies, not in the implementation of the projects by the VTCs, nor in the accuracy of the data on the VTCs in the declaration to the ESF, but in the declaration to the ESF by the applicant of the costs relating to those projects and in the disparity existing between those data and the amounts actually paid by the applicant to the VTCs. According to the defendant, since the D & T report did not cover that question, that report could be disregarded in so far as the irregularity penalised by that decision was concerned.

58 Only one passage of the D & T report mentions that question, namely point 2.4.4, which summarises the Commission's objections. D & T's comments, however, deal exclusively with the fact that the costs declared by the applicant correspond to the expenditure actually incurred by the VTCs and there is not a single word about the disparity between the applicant's expenditure and the declarations made to the Commission.

— Findings of the Court

59 First, it is settled case-law that respect for the rights of the defence is, in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person, a fundamental principle of Community law which must be guaranteed even in the absence of any rules governing the proceedings in question. That principle requires that the addressees of decisions

which significantly affect their interests should be placed in a position in which they may effectively make known their views on the evidence against them which has been taken as the basis for such a decision (judgments of the Court of Justice in Case C-32/95 P *Commission* v *Lisrestal and Others* [1996] ECR I-5373, paragraph 21, and Case C-462/98 P *Mediocurso* v *Commission* [2000] ECR I-7183, paragraph 36; judgment in *Lisrestal and Others* v *Commission*, cited above, paragraph 42).

60 It is equally settled case-law that a Commission decision reducing or cancelling financial assistance granted by the ESF is capable of directly and individually concerning the beneficiaries of such assistance and of adversely affecting them, even though the Member State concerned is the sole interlocutor of the ESF in the relevant administrative procedure. It is the beneficiaries of the aid who are adversely affected by the economic consequences of the decision to reduce or cancel the assistance since they have primary liability for repayment of the sums paid without warrant (see, to that effect, *Lisrestal and Others* v *Commission*, paragraphs 43 to 48 and the case-law cited).

61 It follows that the Commission, which alone assumes legal liability to the beneficiaries of the ESF assistance for the decision to reduce it, is not entitled to adopt such a decision without first giving those undertakings the possibility, or ensuring that they have had the possibility, of effectively setting forth their views on the proposed reduction in assistance (*Lisrestal and Others* v *Commission*, paragraph 49, and Case T-72/97 *Proderec* v *Commission* [1998] ECR II-2847, paragraph 127).

62 Second, the Court has already ruled that, having regard to the central role of the relevant Member State and to the importance of the responsibilities which that State assumes in the presentation and supervision of the financing by the ESF of training measures, the opportunity for that State to comment before a definitive decision to reduce assistance is adopted constitutes an essential procedural requirement the disregard of which renders such a decision void (*Interhotel* v

Commission, cited above, paragraph 17, and *Oliveira* v *Commission*, cited above, paragraph 21).

63 In this case, the documents before the Court, and in particular the circumstances mentioned in paragraphs 14 to 18 and 20 to 23 above, show that the applicant and the AEW were kept informed of the results of the first check and of the Commission's intention to reduce the ESF assistance on account of the alleged irregularities found during that check, and that they were given the opportunity to submit comments on the first check report and on that intention before the contested decision was adopted.

64 Nevertheless, in order to ascertain whether the Commission discharged properly both its obligation to ensure that the applicant had been placed in a position in which it could effectively set forth its views before a decision to reduce the ESF financial assistance was taken in this case and its obligation to enable the relevant Member State to do likewise, it is necessary to examine the two arguments which the applicant puts forward regarding the failure to take into account the D & T report and the failure to communicate the second check report beforehand.

65 With regard to the failure to take into account the D & T report, it must be pointed out that such a failure cannot in any event constitute an infringement of the applicant's rights of defence. On the one hand, it is common ground that the evidence against the applicant which the Commission took as the basis of the contested decision is not taken from the D & T report, which had in any case been submitted by the AEW for the purpose of exculpating the operators concerned, and, on the other hand, the applicant neither alleges nor complains that it was prevented from submitting its comments on that report.

66 With regard to the failure to communicate the second check report beforehand, it is clear from the documents before the Court that that report, which was drawn

up following the check carried out on 28 October 1999, was forwarded first to the AEW by letter from the Commission on 15 February 2000, requesting comments on the report, and then by the AEW to the applicant on 21 February 2000. It is therefore established that neither the AEW nor the applicant was placed in a position in which it could make known its views on the second check report before the contested decision was adopted on 31 January 2000.

67 In those circumstances, in order to establish whether the applicant's rights of defence and the procedural requirement laid down by Article 24(1) of the coordinating regulation were infringed in this case, it must be determined whether the Commission was entitled to adopt the contested decision without having first placed the applicant and the AEW in a position to make known their views on the evidence contained in the second check report.

68 In that regard, the defendant contends that the first and second checks form part of two strictly separate procedures. The contested decision is based exclusively on the data which were collected during the first procedure and on which the applicant expressed its views on two occasions. The second check therefore did not affect the contested decision.

69 The purpose of the first check was to verify the delivery in 1997 of certain training projects co-financed by the ESF as part of operational programme No 94.3040B3, which were selected by sampling. That check, which was carried out at the premises of the VTCs themselves, had, according to the Commission, revealed not only irregularities specific to each project, but also a 'systematic' irregularity at the level of the VFSIPH itself, concerning the manner in which it declared to the ESF the expenditure incurred in connection with projects co-financed by the ESF.

70 The second check was initiated following the detection of that alleged systematic irregularity and consequently covered the VFSIPH itself and all the projects for which it had sought ESF assistance.

71 The second check report therefore mentions the results of an audit carried out by the Commission in respect of all the VFSIPH's expenditure statements to the ESF for 1997 and 1998 and therefore has a wider scope than the first check report, which concerned only certain training projects delivered in 1997. The second report nevertheless contains references to the projects delivered in 1997 by the VTCs De Werkgaard and GOCI, which were covered by the first check.

72 That being so, it must be observed that the applicant bases the main points of its argument on the assertion that, in the contested decision, the Commission used a different method to calculate the amount of assistance allegedly overpaid from that used in the first check report, namely that specifically applied in the second check report. Consequently, by its complaint relating to the failure to communicate the second check report beforehand, it seeks in essence a declaration that there was no prior exchange of arguments between the parties with regard to the reasoning which ultimately led the Commission to assess the amount of assistance overpaid. That is also clear from the conclusion which the applicant draws in Annex 2 to its reply, in which it complains that the Commission did not give it the opportunity to set out beforehand its comments on the reasoning followed in that decision (and not in the first check report), which consisted in determining the eligible amount to be declared to the ESF ('amount of grants made by the VFSIPH for hours of training eligible for ESF assistance') by applying to the amount granted an apportionment coefficient having as its denominator the 'maximum number of hours capable of being provided (45 000)' and not the number of 'hours actually provided (21 342)'.

73 The applicant has also provided concrete evidence that the second check report and the contested decision, notwithstanding different presentations of the data, are based on a common methodology which consists in determining the eligible

amount which should have been declared to the ESF by taking into account only the fraction of the amounts granted to the VTCs which corresponds to the ratio between the eligible hours of training actually provided and a figure arrived at by multiplying the number of training modules declared by 1 800 hours. Moreover, the defendant has not disputed that identity of approach which characterises both the documents referred to above.

74 The defendant does, however, dispute the claim that the contested decision departs from the method of calculating the overpayment which was adopted in the first check report. The only relevant differences between those two documents concern the results of the calculation and are due to the very fact that, in the contested decision, the defendant accepted the definitive data communicated by the AEW in its comments annexed to the letter of 5 May 1999 to the Commission (cited in paragraph 18 above), which were essentially a reiteration of the comments which the applicant itself had sent to the AEW by letter of 16 March 1999 (cited in paragraph 17 above).

75 In that regard, it must be pointed out that, since, in the contested decision, the Commission complains that the applicant made an excessive claim on the ESF, the method of calculating the overpayment is an integral part of the reasoning underlying such a complaint. It follows that respect for the rights of the defence, in the same way, moreover, as compliance with the obligation to state reasons (see, in that regard, paragraph 99 et seq. below), must also be verified in relation to the method of calculation applied.

76 A comparison between the 'correction calculation' contained in the annex to the contested decision and the relevant passages of the first check report shows that there is a quite striking difference in result as regards the determination of the overpayment in the two documents and that such a difference, which is unfavourable to the applicant, is not, as the defendant claims, attributable solely to its acceptance of the data forwarded by the AEW.

77 As the table below shows, the two documents contain different figures for all the relevant items, with the exception of the 'hours accepted' by the applicant and the 'eligible hours' in the case of the De Werkgaard dossier.

		De Werkgaard		GOCI	
		First Report	Contested Decision	First Report	Contested Decision
1	Eligible amount declared to the ESF	14 002 094	13 559 144	20 299 171	17 538 985
2	Amount granted to the VTC	13 750 000	14 471 188	24 750 000	26 635 331
3	Hours accepted by the VFSIPH	17 563	17 563	30 164	30 164
4	Eligible hours	17 563	17 563	30 164	26 694
5	Hours subsidised by the amount granted	21 342	45 000	66 918	81 000
6	Apportionment coefficient	17 563/ 21 342	17 563/ 45 000	30 164/ 66 918	26 694/ 81 000
7	Eligible amount to be declared	11 315 305	5 647 944	11 156 325	8 777 821
8	Assistance received by the VFSIPH	6 300 942	6 101 615	9 134 627	7 892 543
9	Assistance payable to the VFSIPH	(5 091 887)	2 541 575	(5 020 346)	3 950 019
10	Overpayment	1 209 055	3 560 040	4 114 281	3 942 524

The figures in brackets do not appear in the document but are the result of applying the 45% rate of assistance to the eligible amount to be declared.

78 Although the amount declared to the ESF in respect of eligible expenditure (line 1 of the table) and the amount granted by the applicant to the VTCs (line 2 of the table), as they appear in the contested decision, are identical to those mentioned by the AEW and the applicant in their comments referred to in paragraph 74 above, it must be pointed out that the contested decision applies, in particular, an apportionment coefficient (line 6 of the table) with a denominator significantly higher than in the first check report, that denominator having increased from 21 342 to 45 000 for De Werkgaard and from 66 918 to 81 000 for GOCI.

79 In the first check report, the Commission had applied an apportionment coefficient having, as a numerator, the training hours allocated by the VTC which were eligible for ESF co-financing and, as a denominator, the total number of training hours completed by the VTC, which the Commission regarded as having been subsidised by the amount granted by the VFSIPH to the VTC in the form of a global allocation.

80 In the first check report, the Commission justified the application, to the amounts granted by the applicant to the VTCs in the form of a global allocation, of apportionment coefficients having such a value as their denominator by the fact that the amounts in question were intended to subsidise not only hours of training eligible for ESF co-financing, but also hours of training provided over and above the ceiling of 1 800 hours per year or to students not included in the accounts rendered by the VFSIPH to the ESF.

81 By taking, in the contested decision, the figures 45 000 and 81 000 as the denominators of the apportionment coefficients, the Commission did not simply correct upwards the total number of hours of training carried out by the VTC, from which it could still have been concluded that the method of calculation used in the contested decision and that used in the first check report were identical, but adopted a completely different parameter which, moreover, had not been suggested in the comments of the AEW and the applicant. As the latter correctly pointed out, taking the example of the calculation relating to the De Werkgaard dossier, in the contested decision the global allocation made by the VFSIPH is no longer set against the total number of hours of training actually provided by the VTC (as was the case in the first report), namely 21 342 hours, but against a maximum number of hours capable of being provided, equal to 25 training modules multiplied by 1 800 hours, that is, 45 000 hours.

82 Consequently, although the corrections to the amount declared to the ESF and to the amount granted to the VTCs, made on the basis of the definitive data communicated by the AEW, were in the direction of a reduction in the

overpayment of assistance mentioned in the first check report, in the contested decision that overpayment (line 10 of the table) turns out to be almost trebled in the case of the De Werkgaard dossier (from BEF 1 209 055 to BEF 3 506 040) and only slightly reduced in the case of the GOCI dossier (from BEF 4 114 281 to BEF 3 942 524), mainly as a result of the significant increase in the denominator of the apportionment coefficients. If, however, the Commission had made its calculations on the basis of the definitive data communicated by the AEW, without modifying the apportionment coefficients which it had fixed in the first check report, the results would have been much more favourable to the applicant.

83 The contested decision therefore contains conclusive evidence for the purpose of establishing the existence and extent of the alleged overpayment of assistance (namely the value represented by the denominator of the apportionment coefficients), which is taken neither from the first check report nor from the comments submitted by the AEW and the applicant during the administrative procedure, and which the Commission was therefore not entitled to use against the applicant without having first placed it and the AEW in a position to submit comments on the matter.

84 Finally, there is no need in this case to consider whether that procedural irregularity may have had a particular effect on the contested decision, in accordance with the case-law which requires that such a condition must also be satisfied for failure to respect the rights of the defence to result in annulment of the contested decision (Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959, paragraph 48, and Case C-191/98 P *Tzoanos* v *Commission* [1999] ECR I-8223, paragraph 34).

85 In view, on the one hand, of the difficulties of understanding the statement of reasons for the contested decision, as highlighted in the examination of the fifth plea in law, alleging breach of the obligation to state reasons (see paragraph 99 et seq. below) and, on the other hand, of the case-law which allows the Commission a considerable measure of latitude in evaluating complex facts and accounts with a view to a possible reduction of ESF assistance (Joined Cases T-180/96 and

T-181/96 *Mediocurso* v *Commission* [1998] ECR II-3477, paragraph 120, Joined Cases T-194/97 and T-83/98 *Branco* v *Commission* [2000] ECR II-69, paragraph 76, and Case T-80/00 *Associação Comercial de Aveiro* v *Commission* [2002] ECR II-2465, paragraph 51), the Court is unable to adjudicate on the question whether the Commission was, in any event, obliged to take the decision which it took.

86 Consequently, the first plea in law, alleging infringement of the rights of the defence and infringement of an essential procedural requirement, must be accepted to the extent resulting from the foregoing considerations.

The fifth plea in law: breach of the obligation to state reasons

— Arguments of the parties

87 The applicant submits that the Commission failed to give an adequate statement of reasons for the contested decision and therefore infringed Article 253 EC.

88 It points out that, according to the Court's case-law, the obligation to state reasons has a particular scope in cases where it is necessary for the Commission to adopt a decision reducing the amount of financial assistance already paid. The Court refers in that connection to *Lisrestal and Others* v *Commission*, cited above, paragraph 52, in which it held that a decision to reduce assistance originally granted, which has serious consequences for those applying for it, must show clearly the grounds which justify a reduction in the amount of the assistance in relation to the amount originally approved.

89 In that regard, the applicant observes, first, that in the contested decision the Commission merely gives a brief summary of its findings and does not indicate clearly why it rejected the applicant's comments on the first check report and the conclusions of the D & T report.

90 Second, the Commission also failed to state the reasons why the second check report did not merit consideration with a view to the adoption of the contested decision.

91 Third, the applicant complains that the Commission failed to state reasons for the rejection of its system of lump-sum grants and failed to set out its interpretation of Article 17 of the coordinating regulation.

92 Fourth, it is almost impossible to ascertain from the data furnished in the contested decision the method by which the Commission reached the conclusion that there had been an overpayment of assistance.

93 The applicant adds, finally, that those failures of the Commission are all the more serious since the reasoning behind the contested decision does not correspond to that followed in the first check report and the Commission was unable, in order to substantiate its decision, to accept the results of that report, in regard to which it must have had doubts, since it decided to carry out a second check after studying the D & T report.

94 The defendant contends that a decision is not required to go into every relevant point of fact and law. The question whether the statement of reasons for a decision is sufficient must be assessed with reference not only to its wording but

also to its context and the whole body of legal rules governing the matter in question (Case C-122/94 *Commission* v *Council* [1996] ECR I-881, paragraph 29, and Case C-278/95 P *Siemens* v *Commission* [1997] ECR I-2507, paragraph 17). In that regard, it points out that, since co-financing rates play a crucial role in the administration of the structural funds, it must be assumed that the staff responsible for implementing structural measures in the Member States are made broadly familiar with the application of those rates, an assumption which lowers the threshold of the requirement to state reasons as far as the technical aspects of the reduction are concerned.

95 In any event, the decision shows clearly the nature of the irregularities and the figures on which it is based, thus indicating with clarity the reasons justifying the reduction in the assistance. In particular, in the annex to the contested decision, the defendant described the system which the applicant operated and explained why that system was incompatible with Article 17 of the coordinating regulation. It adds that the sentence '[The VFSIPH] carries out the calculation on too high a basis, thereby claiming too large a financial contribution from the ESF' shows that the decision refers to failure to abide by the co-financing rates. In addition, it points out that the seventh recital in the preamble to the decision expressly refers to Article 2 of the ESF regulation which, read in conjunction with the general concept of actual expenditure (Article 21 of the coordinating regulation) implies an a priori rejection of lump-sum systems.

96 The defendant further observes that, in its judgment in Case T-182/96 *Partex* v *Commission* [1999] ECR II-2673, at paragraphs 76 to 78, the Court held that earlier measures adopted by the national authorities could be regarded as contributing to the reasons for a decision to reduce assistance, provided that the decision in question referred clearly to those measures and in so far as the beneficiary of the assistance was able to take cognisance of them. That reasoning is even more valid as regards the first check report, on which the applicant was able to express its views and to which the fifth recital in the preamble to the contested decision refers clearly. Account should therefore also be taken, in

assessing the adequacy of the statement of reasons on which the decision in question is based, of that report, which describes the irregularity in question in clear terms consistent with those used in that decision, and of the letter of 17 August 1999 (see paragraph 20 above), by which the Commission again set out its views on the irregularities found.

97 As far as the second check report and the D & T report are concerned, the defendant repeats its arguments to the effect that those reports are not relevant to the examination of the lawfulness of the contested decision.

98 Finally, the defendant points out that the decision contains in its annex the exact calculations which gave rise to a reduction in respect of the projects delivered by De Werkgaard and GOCI. The applicant has not specified in what respect those calculations are incomplete or incorrect.

— Findings of the Court

99 First of all, it is necessary to consider the fourth part of the present plea in law, by which the applicant complains that it is impossible to ascertain from the data contained in the contested decision the reasons which led the Commission to conclude that there had been an overpayment of assistance.

100 According to consistent case-law, the purpose of the obligation to state the reasons on which an individual decision is based is to provide the person concerned with sufficient information to make it possible to ascertain whether the decision is well founded or whether it is vitiated by a defect which may permit its legality to be contested, and to enable the Community judicature to review the lawfulness of the decision. The extent of that obligation depends on the nature of

the measure in question and on the context in which it was adopted (judgments of the Court of Justice in Case 32/86 *Sisma* v *Commission* [1987] ECR 1645, paragraph 8, Case C-181/90 *Consorgan* v *Commission* [1992] ECR I-3557, paragraph 14, and Case C-189/90 *Cipeke* v *Commission* [1992] ECR I-3573, paragraph 14; and judgments of the Court of First Instance in Case T-85/94 *Branco* v *Commission* [1995] ECR II-45, paragraph 32, *Partex* v *Commission*, cited above, paragraph 73, and *Asssociação Comercial de Aveiro* v *Commission*, cited above, paragraph 35).

101 Since a decision reducing the amount of ESF assistance originally granted has, in particular, serious consequences for the beneficiary of the assistance, that decision must state clearly the grounds which justify the reduction in the assistance in relation to the amount originally approved (*Consorgan* v *Commission*, cited above, paragraph 18; *Cipeke* v *Commission*, cited above, paragraph 18; *Lisrestal and Others* v *Commission*, paragraph 52; *Branco* v *Commission*, cited above, paragraph 33, *Partex* v *Commission*, paragraph 74, and *Associação Comercial de Aveiro* v *Commission*, paragraph 36). Moreover, the statement of reasons for such a decision must also inform the beneficiary of the assistance of the method by which the reduction effected was calculated (see, to that effect, *Consorgan* v *Commission*, paragraphs 22 to 24, and *Cipeke* v *Commission*, paragraphs 21 and 22).

102 It is relevant in that regard that, in the present case, although the contested decision certainly makes it clear that the applicant declared to the ESF amounts (expenditure actually incurred by the VTCs) greater than the (lump-sum) amounts which it actually granted to the VTCs, it does not show sufficiently clearly the reasoning on the basis of which the Commission concluded that the amounts declared were greater than the amounts granted.

103 It is noteworthy that, according to the data contained in the annex to the contested decision, the amounts granted by the applicant to the VTCs are greater than the amounts declared to the ESF (BEF 14 471 188 against BEF 13 559 144 for De Werkgaard; BEF 26 635 331 against BEF 17 538 985 for GOCI).

104 However, in determining, for each dossier, the eligible amount to be declared by the VFSIPH to the ESF, the Commission did not take into account the full amounts granted to the VTCs, but excluded a portion of those amounts by the application of an apportionment coefficient.

105 In those circumstances, the Commission had a duty, under Article 253 EC, to explain clearly in its decision the reasons for which it found it necessary not to take into account the full amounts granted by the applicant to the VTCs and to apply to those amounts the apportionment coefficients adopted by it.

106 The unavoidable conclusion is that the Commission did not discharge such an obligation since, in particular, it did not state in the contested decision, any more than it has during the present proceedings before the Court, the reason which led it to fix at 45 000 and 81 000 respectively the denominators of the apportionment coefficients applied to the De Werkgaard and GOCI dossiers, since the wording of the contested decision indicates only that those figures are the product of the multiplication by 1 800 hours of the number of training modules declared by the applicant for each dossier.

107 The relatively obscure explanations concerning the hourly cost of training, contained in the first two paragraphs of the reasons set out in the annex to the contested decision, the meaning and relevance of which were not adequately clarified for legal purposes by the defendant's replies to the questions put by the Court, fail to provide any guidance in this regard. On the contrary, they even seem to be in conflict with the data contained in the 'correction calculation'. The Commission states, in those explanations, that the cost of training amounted, per 'hour actually provided', to BEF 320 in the case of De Werkgaard (training of a manual worker), whereas if the 'amount granted' to De Werkgaard, as set out in the calculation in question (BEF 14 471 188), is divided by the number of hours

actually provided by that VTC (21 342 according to the first check report and the applicant, a figure not disputed by the defendant), the cost borne by the applicant per hour actually provided was equal to BEF 678.06, and therefore much higher than BEF 320.

108 In reply to a written question from the Court, the Commission confined itself to contending that, in adopting as denominators for the apportionment coefficients the amounts of 45 000 and 81 000 respectively, it was merely adhering to the choices made by the Flemish Government when it adopted the Decree of 22 April 1997, which provided for a system of lump-sum grants for VTCs.

109 A mere reference to that decree and to that system is not in itself sufficient to facilitate an understanding of the reasoning followed in the contested decision. In that regard, in the first check report, the Commission, while recalling the characteristic features of the system of lump-sum grants for VTCs, under which 'for the VFSIPH, training costs are limited to a lump-sum amount of BEF 550 000 per training module... and the maximum number of training hours is subject to a ceiling of 1 800 hours per year', was nevertheless able to adopt, as the denominator of the apportionment coefficients, not the value mentioned in paragraph 106 above, but a completely different value, namely, the hours actually provided by the VTC concerned.

110 For that same reason, the defendant cannot claim that the reasoning underlying the fixing of the denominator of the apportionment coefficients applied in the 'correction calculation' is apparent from the first check report or, indeed, from the letter of 17 August 1999, in which the Commission merely made a reference to that report, without altering its wording in any way.

111 It must therefore be concluded that the statement of reasons for the contested decision, even when assessed in the light of the context, the legal rules and the

previous documents referred to by the defendant, does not show clearly the reasoning on the basis of which the Commission established the eligible amounts paid by the applicant to the VTCs concerned under the system of lump-sum grants and was therefore able to form the view that those amounts were lower than the amounts which the applicant declared to the ESF as eligible for co-financing.

112 The fourth part of the present plea in law, alleging breach of the obligation to state reasons, must therefore be accepted.

113 In the light of all the foregoing, the contested decision must be annulled in so far as it makes a reduction, equivalent to EUR 181 067, in the ESF financial assistance of which the applicant was the beneficiary, and there is no need to examine the other arguments and pleas in law raised by the applicant.

Costs

114 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. In this instance, since the Commission has been unsuccessful, it must, in accordance with the form of order sought by the applicant, be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. Annuls Commission Decision C (2000) 36 of 31 January 2000 reducing the amount of the financial assistance originally provided for by Decision C (1994) 3059 of 25 November 1994 approving the grant by the European Social Fund of aid for an operational programme under the Community support framework for the attainment of Objective 3 in Belgium (Flemish Community) in so far as it makes a reduction, equivalent to EUR 181 067, in the European Social Fund financial assistance of which the Vlaams Fonds voor de Sociale Integratie van Personen met een Handicap was the beneficiary;

2. Orders the Commission to pay the costs.

Tiili Mengozzi Vilaras

Delivered in open court in Luxembourg on 9 July 2003.

H. Jung
Registrar

V. Tiili
President