

JUDGMENT OF THE COURT OF FIRST INSTANCE
(First Chamber)
14 July 1997 *

In Case T-81/95,

Interhotel, Sociedade Internacional de Hotéis, SARL, a company governed by Portuguese law, established in Lisbon, represented by José Miguel Alarcão Júdice, Nuno Morais Sarmiento and Gabriela Rodrigues Martins, of the Lisbon Bar, with an address for service at the Chambers of Victor Gillen, 16 Boulevard de la Foire,

applicant,

v

Commission of the European Communities, represented by António Caeiro, Legal Adviser, and Günter Wilms, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Decision C(94)1410/11 of 12 July 1994 (Case No 870840/P1), notified to the applicant on 27 December 1994, concerning financing from the European Social Fund for vocational training measures,

* Language of the case: Portuguese.

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

composed of: A. Saggio, President, V. Tiili and R. M. Moura Ramos, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 15 January 1997,

gives the following

Judgment

Facts and procedure

A project (to which was assigned Case No 870840/P1) containing an application for financial assistance for the applicant, which the Departamento para os Assuntos do Fundo Social Europeu (Department for the Affairs of the European Social Fund, hereinafter 'the Department'), Lisbon, proposed in respect of 1987, was approved by the Commission by decision of approval of 30 April 1987, subject to certain changes. The applicant had applied to the European Social Fund (hereinafter 'the ESF') for ESC 152 466 071 for vocational training for 284 persons but was granted financial assistance by the ESF amounting to ESC 121 647 958 for the training of 277 persons.

- 2 The Commission sent to the Department a memorandum entitled 'Annex to Commission Decision C(87)0860' (Annex 1 to the defence) containing the following information:

Number of persons concerned	277
Amount applied for	ESC 152 466 071
Amount granted	ESC 121 647 958
Ineligible	ESC 27 766 349
Reduction	ESC 3 051 763
Total amount refused	ESC 30 818 112

- 3 The Department notified that decision to the applicant on 27 May 1987, indicating the amount granted and the number of persons approved (Annex 4 to the application). It was stated in that communication that assistance from the European Social Fund (hereinafter 'the ESF') comprises credits which are conditional upon completion of the training measures in accordance with the Community rules and that failure to comply with that condition would entail the repayment of sums advanced and non-payment of the balance. It was also made clear that any change affecting the application as submitted would have to be notified to the Department.

- 4 The training measures were completed in 1987. By circular 10/87 dated 8 January 1987 which, according to the applicant, was received by it on 29 June 1987, the Department asked the recipients of the ESF assistance to reduce the periods of practical training to the same length as that of the periods of theoretical instruc-

tion. To meet the requirements of the circular, the applicant reduced the planned number of hours of theoretical instruction by 36.13%. It claims that it also, on its own initiative, made a proportional reduction of 36.13% of the costs under all headings of the training budget.

5 The applicant received an advance of 50% of the ESF assistance, namely an advance of ESC 60 823 979. When the training was completed, it submitted a final payment claim, in which it claimed from the ESF the sum of ESC 73 496 941, namely the amount of the advance plus ESC 12 672 962.

6 On 19 July 1989 the Department informed the applicant that, pursuant to a Commission decision which it enclosed with its letter, the ESF assistance could not ultimately exceed ESC 42 569 539 on the ground that certain expenses relating to points 14.1, 14.2, 14.3, 14.6 and 14.8 on the form were ineligible 'since there was no proportional reduction in the training time and certain aspects of the initial proposal were not complied with (14.1)'.

7 Following an action brought by the applicant, the first decision was annulled by the Court of Justice on the ground that the Commission had not given the Portuguese Republic an opportunity to comment before the adoption of the final decision reducing the assistance (Case C-291/89 *Interhotel v Commission* [1991] ECR I-2257).

8 With a view to adopting a new decision on the applicant's final payment claim, on 6 August 1991 the Commission forwarded to the Department a first draft decision. By letter of 26 August 1991 the Department informed it that it did not agree with certain proposed reductions.

- 9 On 9 February 1993 the applicant asked the Commission to adopt a new decision within the time-limit laid down by the Treaty, namely within two months following the request.
- 10 Following the observations from the Department and the request from the applicant referred to in the foregoing paragraph, the Commission organized an inspection visit on 19 February 1993, with a subsequent visit on 18 March 1993, to examine on the spot the evidence indicating that the training measures had been completed. The applicant was granted a hearing during that inspection visit. According to the Commission, the evidence available was limited and difficult to rely on, particularly because the applicant had entrusted certain measures to a sub-contractor, Partex, which in turn had employed two sub-contractors Europraxis and Fortécnica. In those circumstances, an examination was made of financial and accounting records of the sub-contractors used by the sub-contractor employed by the applicant. The results of that examination were considered from 24 to 26 May 1993 by a working party on which the Commission and the Department were represented.
- 11 Then, on 12 November 1993, by memorandum No 22917, the Commission notified to the Department a new draft decision, according to which the ESF assistance was to be ESC 41 190 905 unless the Department's comments justified adjustment of that amount.
- 12 Memorandum No 22917 contains a number of explanations regarding the proposed reductions. First, it draws attention to divergences between the durations indicated in the final payment claim, the attendance record of the trainees and the reports drawn up by the instructors. The note adds that it was not possible to confirm the breakdown of the duration of training as between the theoretical and practical parts. Finally, it had not been possible to identify the training periods in terms of timetables and objectives.

More specifically, with respect to the various headings of the final payment claim, the reasons given for the proposed reductions were as follows:

14.1 Salaries of trainees

Training aid ESC 3 180 878

- It was found that 56 trainees had not received eligible practical training, hence a corresponding reduction, supporting calculation attached.

14.2 Preparation of the courses

Recruitment and selection of trainees ESC 1 456 000

- It was found that the Partex invoice and the final payment claim referred to 490 tests at a unit price of ESC 7 000, whereas that work had been carried out by an outside organization which had invoiced Partex for carrying out 282 tests at a unit cost of ESC 12 000. Consequently, because Partex had provided no additional service, it was considered reasonable to fix the costs for the 282 trainees at ESC 7 000 each.

Copying of documents ESC 1 183 680

- That expense was not included in the decision of approval and was not justified, in view of the amounts indicated in respect of teaching materials and the type of measures carried out.

14.3 Functioning and management of the courses

Teaching staff

ESC 21 705 954

- This heading concerns salaries, and teaching staff's travel expenses, board and lodging.

The amount in respect of teaching staff was invoiced in its entirety by Partex which, in turn, used a sub-contractor. The check carried out at the sub-contractor's premises showed that Partex had concluded a contract under which the sub-contractor was to organize courses for measures undertaken both by Interhotel and by another undertaking, Grão-Pará without any difference of value. The maximum amount eligible for training measures was determined on the basis of the costs borne by the sub-contractor in respect of the teaching staff who gave courses to Interhotel trainees, plus a gross margin of 50%. The maximum amount eligible for the training measures was thus ESC 10 613 646.

As regards the cost of board and lodging of teaching staff, the initial application referred to two specialists and a manager. The costs relating to the first two were rejected in the decision of approval, so that, as regards the balance, only the costs in respect of one staff member were regarded as eligible. The eligible amount of ESC 462 000 was calculated on the basis of the envisaged and approved cost of ESC 700 per day.

Administrative staff

ESC 2 912 955

- The expenses indicated in the final payment claim related to the work of one specialist and two secretaries, whereas in the decision of approval only the amount for one secretary had been approved.

Board and lodging and travel expenses for non-teaching staff ESC 2 409 940

— The expenses for non-eligible, non-teaching, administrative and technical staff (11 persons) were totally rejected in the decision of approval.

Management and budgetary control ESC 2 241 136

— Expenditure not justified and not allowed in the decision of approval.

Specialized work ESC 2 363 000

— Expense not justified and not allowed in the decision of approval.

Hire and rent ESC 4 841 969

— In accordance with what was envisaged and allowed in the decision of approval, only a daily cost of ESC 8 000 was included for the hire of each duly equipped room.

Equipment and non-durable goods ESC 4 550 324

— In accordance with what was envisaged and allowed in the approval decision, a unit cost of ESC 2 500 per week and per trainee during the practical training period was regarded as eligible.

Other supplies and services of third parties ESC 1 777 183

— Expenses not justified and not allowed in the initial application.

14.6 Normal depreciation

ESC 3 668 700

- In the decision of approval, accelerated depreciation was refused and reclassification as normal depreciation was not accepted at the stage of the final payment claim.

14.8 Board and lodging for trainees

ESC 5 673 000

Those costs were not envisaged or allowed in the decision of approval.

- 13 At the request of the Department, the applicant submitted its observations on the draft decision on 17 December 1993. The Department sent its own observations to the Commission by letter of 7 February 1994, recognizing that the reductions proposed by the Commission were justified.
- 14 The Portuguese Republic thus having been heard in accordance with Article 6(1) of Council Regulation (EEC) No 2950/83 of 17 October 1983 on the implementation of Decision 85/516/EEC concerning missions of the European Social Fund, as amended by Council Regulation (EEC) No 3823/85 of 20 December 1985 by reason of the accession of Spain and Portugal (OJ 1983 L 289, p. 1, and OJ 1985 L 370, p. 23, respectively, hereinafter 'Regulation No 2950/83'), on 12 July 1994 the Commission adopted a new decision (C(94)1410/11) by which the ESF assistance was amended to ESC 41 190 905 (hereinafter 'the contested decision'). According to that decision, an analysis of the final payment claim showed that part of the ESF assistance had not been used in the manner prescribed by the decision of approval for the reasons set out in the abovementioned memorandum No 22917. That decision was notified to the applicant on 27 December 1994 and was accompanied by a letter from the Department.
- 15 In those circumstances, by application lodged at the Registry of the Court of First Instance on 9 March 1995, the applicant brought the present action. The procedure followed the normal course.

- 16 The parties presented oral argument and answered questions put to them in writing and orally by the Court at the hearing on 15 January 1997.

Forms of order sought

- 17 The applicant claims that the Court of First Instance should:

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

- 18 The defendant contends that the Court of First Instance should:

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

Substance

- 19 The applicant puts forward two pleas in law. The first alleges breach of general principles of law, namely the principles of the protection of acquired rights, of legal certainty and of legitimate expectations and breach of the principle of sound administration and the duty of care. The second alleges breach of the obligation to state the reasons on which a measure is based.

The plea alleging breach of general principles of law, and breach of the principle of sound administration and the duty of care

Summary of the parties' arguments

- 20 The applicant considers that the contested decision must be annulled for breach of general principles of law, namely the principles of the protection of acquired rights, of legal certainty and of legitimate expectations, and contravention by the Commission of the principle of sound administration and the duty of care. It emphasizes the importance of the general principles on which it relies in the context of ESF action, particularly where measures are involved which might preclude the payment of financial support claimed by a Member State or an individual (Case 44/81 *Germany v Commission* [1982] ECR 1855).
- 21 It refers, first of all, to its lack of experience in the relevant area in 1987, and that of the Department, in view of the recent accession of Portugal to the European Communities. It also refers to the problems of adjustment inherent in the legal, economic and social situation in Portugal at the material time, of which the Commission should have taken account. In that connection, it refers to Commission Decision 86/221/EEC of 30 April 1986 on the Guidelines for the Management of the European Social Fund in the financial years 1987 to 1989 (OJ 1986 L 153, p. 59, hereinafter 'Decision 86/221'). Even in such circumstances, it observed the rules in force and the applicable instructions and its action was in conformity with the objectives of the ESF. It refers in that connection to Council Decision 83/516/EEC of 17 October 1983 on the tasks of the European Social Fund (OJ 1983 L 289, p. 38) and Regulation No 2950/83.
- 22 The applicant maintains that the Commission decision of approval, as brought to its notice, was subject only to determination of the amount of the ESF assistance as ESC 121 647 958 and the number of trainees as 277. In its view, there was no reason to consider that it would be necessary to carry out any additional checks whatsoever. It explains that, in those circumstances, it allocated the difference

between the amount applied for in the application for assistance and the amount allowed in the decision of approval, as notified to it, on a linear or proportional basis amongst all the headings.

- 23 The applicant claims that it set out the method under which it made those reductions in its application for the payment of an advance, to which it attached a document entitled 'summary of the situation' indicating the hours of training to be undertaken. It adds that the method used is also clear from the quantitative and qualitative evaluation report which accompanied the final payment claim. It states that neither the Commission nor the Department made any objections or comments on that point. In fact, the Department certified the factual and statistical correctness of the information contained in the evaluation report.
- 24 The applicant thus acted in the legitimate belief that all the expenses contained in the initial application for assistance, subject to the linear reduction made by it following the decision of approval, on the one hand, and the Department circular on the other, were properly incurred and accepted and were therefore eligible. In its view, any other interpretation would involve breach of the principles of legal certainty and protection of legitimate expectations, and infringement of Decision 86/221.
- 25 According to the applicant, the decision by which the Department notified to it the conditions for the approval of its project is an administrative measure which confers certain rights on it and is valid even if it is regarded as part of a wider and incomplete decision-making process carried out by the Commission. The withdrawal of such a measure would frustrate the applicant's legitimate expectations and acquired rights.
- 26 As regards the alleged failure to justify certain expenses, it states, first, that the amounts correspond to the normal market values at the material time, second, that the services invoiced were actually provided and, third, that the amounts set out in the final payment claim correspond to the costs which it actually incurred. It

added, at the hearing, that in 1987 it was sufficient, under the national provisions in force, to produce the contract by way of justification, and that receipted invoices have only been required since 1988.

- 27 As regards, more specifically, justification of the costs under the heading 'Functioning and management of the courses — teaching staff', the amount initially approved was not exceeded. Similarly, in the case of the costs for preparation of the courses, the Commission merely challenged the invoice submitted by Partex to the applicant. The applicant emphasizes that the tests for selection of trainees, as invoiced, were in fact carried out. As regards the heading 'Equipment and non-durable goods', the amount indicated corresponds to the real cost and should have been accepted as such. Finally, with respect to normal depreciation, the applicant criticizes the Commission for not allowing, at the stage of the final payment claim, rectification of the error contained in the application for assistance.
- 28 In any event, it is incumbent upon the Commission, in the applicant's view, to prove any irregularity in the amounts put forward and in the supporting documents, and it failed to do so.
- 29 At the hearing the applicant also explained that, if it incurred expenses not provided for regarding board and accommodation for trainees, that was because, having been obliged to reduce the hours, it had had to organize the training at the height of the hotel season and could not therefore accommodate the trainees in the hotels as had been planned.
- 30 The applicant also claims that the time which elapsed between the opening of the file and the adoption of the contested decision was about eight years. That lapse of time caused it significant damage since it has been obliged to bear until the present time high financial costs which it was entitled to assume would be borne by the Commission. It asks the Court to assess the extent to which the period concerned

involves any failure to observe the limits and principles to which the exercise of the Commission's discretion is subject. It also maintains that it is clearly impossible to reconstruct all the events after such a long period, since the people responsible for providing the training are no longer available to supply information. As regards its obligation to retain supporting documents, the applicant maintains that the period prescribed for that purpose was, until 1 January 1989, five years and was extended to ten years only after the training had been completed, even though that change in fact occurred before the inspection visit was carried out.

31 In its reply the applicant also submits that the contested decision was not adopted within the time-limit laid down by the Treaty, namely two months after the request which it submitted for that purpose.

32 For its part, the defendant contends that it did not fail to verify the propriety and genuineness of the expenditure set out in the final payment claim. As regards the expenditure which it rejected in the contested decision on the ground that it had already been considered ineligible in the decision of approval, the defendant contends that it again arrived at the conclusion that it was ineligible. As regards the other reductions which it made, it explains that certain expenses allowed in the decision of approval were not sufficiently documented in the final payment claim and therefore were not justified at the stage of the final examination.

33 The defendant, which observes that the proposed measures would not even have been approved if they had not conformed with ESF objectives, emphasizes that in this case the issue is whether the organizer of the measures complied with all the rules applicable thereto, in particular those concerning justification of expenses included in the final payment claim. The Commission considers that that was not the case.

34 As regards the method of applying the reductions and the areas to which they relate, the defendant explains that it would have been sufficient for the applicant to have divided the cost of the proposed measures by the number of trainees indicated in the proposal and to have compared that result with the result obtained by dividing the cost of the approved measures by the number of trainees approved to see that the total reduction decided on by the Commission in the decision of approval did not represent a simple linear reduction. If the costs per trainee decreased, that means that certain expenses were not regarded by the Commission as eligible. The Commission contends, referring to the Opinion of Advocate General Darmon in Case C-291/89, paragraph 28, that it is incumbent upon the organizer, before incurring any expense, to satisfy himself that the corresponding head of expenditure had been approved by the Commission, failing which he must bear the consequences. According to the Commission, neither it nor the Department was informed of the linear reduction made by the applicant of the expenses envisaged in the initial application. The evaluation report was not sent to the Commission in its entirety.

35 The defendant points out that the decision of approval notified to the Department clearly indicated the amount applied for, the amount granted, the amount of the expenses declared ineligible, the reduction and the total amount refused. Those amounts represented the ESF portion of the financing, namely 49.5% of the total cost envisaged in the application for assistance. The Commission is unaware whether the Department notified that decision to the applicant in detail or whether it simply forwarded the memorandum appended as annex 4 to the application (see paragraph 3 above).

36 According to the defendant, if the applicant did not check that the corresponding head of expenditure had been approved in the decision of approval, it cannot claim any legitimate expectation, still less acquired rights, as to the eligibility of expenditure referred to in the initial application for assistance.

37 The defendant also contends, relying on the Opinion of Advocate General Darmon in Case C-291/89, paragraph 38, that even if the Department confirmed the costs and financing as set out in the file, 'such an examination by the national

authorities cannot confirm rights which the applicants acquire definitively only at the end of a thorough examination carried out by the Commission ...' and that 'the analysis by the national authorities prior to the forwarding of the application for payment to the Commission in no way prejudices the Commission's decision'.

- 38 Nor does the Commission accept that a commercial undertaking which, under national law, is under a legal obligation to retain its documentation for ten years can rely, in order to accuse the Commission of failing in its duty of care, on its own lack of care or that of third parties in keeping documents for that period.
- 39 The defendant states that the decision-making procedure followed the normal course, was not excessively long and scrupulously respected the interests of the organizer of the training measures.

Findings of the Court

- 40 The Court observes first that the procedure relating to ESF contributions, governed by Regulation No 2950/83, comprises several stages. Initially, the Commission gives a decision under Article 4(1) on applications for assistance submitted by the Member States on behalf of undertakings (decision of approval). Under Article 5(1) and (2) the approval of an application is followed by the payment of an advance. Subsequently, when the operation is completed, the recipient submits a final payment claim containing a detailed report on the content, results and financial aspects of the relevant operation. Article 5(4) provides that the Member State is to certify the accuracy of the facts and accounts in payment claims.

- 41 Moreover, the advance received by the beneficiary covers a maximum of 50% of the expenditure approved so that he himself is obliged to advance considerable sums against the expectation of payment of the balance which he may legitimately hope to receive, provided that he proves that he used the assistance in accordance with the conditions laid down in that regard (Case C-189/90 *Cipeke v Commission* [1992] ECR I-3573, paragraph 17).
- 42 When examining the final payment claim, the Commission is required to verify whether the conditions to which the training measures were subject have been fulfilled. Article 6(1) provides that, when fund assistance is not used in conformity with the conditions set out in the decision of approval, the Commission may suspend, reduce or withdraw the aid after giving the relevant Member State an opportunity to comment. It is clear from that provision that the grant of ESF aid is subject to compliance by the beneficiary with the conditions for the training laid down by the Commission in the decision of approval or by the beneficiary in the application for assistance in respect of which that decision was given.
- 43 Finally, the Court of Justice has described as indisputable the view that 'it is only after receiving a detailed report on the relevant operations after they have been carried out that it is possible to calculate the precise amount of eligible expenditure' (Case 84/85 *United Kingdom v Commission* [1987] ECR 3765, paragraph 23). It follows that the Commission must be empowered to reject even expenditure approved in advance on the ground that it has not been properly justified, without undermining the acquired rights of the beneficiary of the assistance. Consequently, it is essential to allow the Commission such a discretion in examining the final payment claim since it is only at that stage that it can verify *in concreto* the supporting evidence submitted by the undertaking (see also the Opinion of Advocate General Darmon in Case C-291/89, paragraphs 35 and 36).
- 44 In the present case, after the applicant submitted its final payment claim, the Commission rejected certain expenditure for three different reasons (see paragraph 12 above). First, expenditure not mentioned by the applicant in its application for

assistance was rejected. Second, the Commission regarded certain expenditure as not properly documented and therefore not justified. Third, it drew attention to the existence of certain expenses not allowed in the decision of approval. Consequently, after hearing the Department, which, for its part, had heard the applicant, the Commission, by the contested decision, reduced the ESF assistance to an amount lower than that initially granted. Moreover, the Department approved those reductions.

- 45 The Court considers that it is appropriate to examine first the alleged breach of the principle of the protection of legitimate expectations. Any economic operator to whom an institution has given justified hopes may rely on the protection of the principle of legitimate expectations (Joined Cases T-466/93, T-469/93, T-473/93, T-474/93 and T-477/93 *O'Dwyer and Others v Council* [1995] ECR II-2071, paragraph 48). The question whether the contested decision meets the requirements of the principle of protection of legitimate expectations must be assessed by examining separately the three categories of reductions mentioned above.
- 46 It follows from the rules mentioned above (paragraphs 42 and 43) that, first, the Commission was entitled to reject the applicant's final payment claim, to the extent to which approval was requested for costs which had not been mentioned in the application for assistance, without any consequent breach of the principle of protection of legitimate expectations. Second, it was also legitimate, from the point of view of compliance with that principle, to reject its final payment claim to the extent to which approval was sought for expenses not covered by supporting documents proving that they had actually been incurred and were linked with the training measures as approved.
- 47 It was incumbent on the beneficiary to prove that the expenses were actually incurred and were linked with the training measures approved. It is in the best position to do so and must establish that the receipt of resources from public funds is justified. However, the applicant has merely asserted that the calculation methods used by the Commission to determine the overall amount of the approved expenses were arbitrary and that the costs mentioned by it were in fact incurred,

without providing either supporting documents or any other evidence to establish that the information and findings relied on by the Commission were incorrect. It follows that the applicant's arguments concerning justification of the expenses mentioned in its final payment claim cannot be upheld.

48 The principle of the protection of legitimate expectations was thus not infringed as regards the first two categories of reduction.

49 As regards the third category of reduction, it must be borne in mind *in limine* that the Department's notification of the decision of approval indicates only the total amount granted and the number of persons approved (see paragraph 3, above). Thus, the Commission's assessments concerning the eligibility of the proposed expenses for the purposes of the decision of approval were not brought to the applicant's notice before completion of the training measures in such a way that the applicant could see how they were allocated to each heading. The applicant, in carrying out the measures, was thus unable to identify the items approved, those refused and those subjected to a reduction.

50 It is also common ground that the applicant, having received the succinct notification mentioned above, decided, rather than finding out whether certain expenses had been treated as ineligible, to spread the difference between the amount applied for and the amount approved, that is to say the total reduction, proportionally among all the headings of its application for assistance. Moreover, it made other reductions, in accordance with the Department's abovementioned circular (see paragraph 4), under all the headings of its application for assistance. The amount claimed in the final payment claim, namely ESC 73 496 941, was considerably lower than the amount allowed by the Commission in the decision of approval, namely ESC 121 647 958.

51 It is important to analyse the justification of the third category of reductions having regard to the fact that the decision of approval was not communicated to the applicant in full detail, with the result that it was not informed in due time of the

reductions made in respect of each heading. The issue is whether non-fulfilment of the conditions of a decision of approval which were not communicated to the beneficiary before completion of the training measures, so as to enable the latter to take account of them, is of such a nature as to justify the Commission's conclusion that the expenses envisaged in the application for assistance but rejected in the decision for approval are ineligible, even if the beneficiary produces supporting documents proving that they were actually incurred.

52 In this case, whilst it is true that the rules did not require details of the decision of approval to be communicated to the person concerned, that information was nevertheless, in fact, necessary for the beneficiary to be able to fulfil the conditions for grant of the assistance in relation to the expenses which, according to the Commission, were not approved in the decision of approval.

53 The Court considers that the beneficiary of assistance cannot be deemed to understand, on reading a decision in the form in which the decision in this case was communicated to the applicant, that the reductions made by the Commission related to specific headings. On the contrary, a beneficiary might reasonably think and accept that an overall reduction had been made and that, consequently, it was merely an overall limit that had been imposed on expenditure. In such circumstances, for the Commission to be entitled, when examining the final payment claim, to regard as ineligible those expenses which were envisaged in the application for assistance but were allegedly rejected in the decision of approval, it is necessary for the decision of approval to be brought to the notice of a beneficiary in sufficient detail. That condition is fulfilled only if the notification indicates the reductions by headings or, at least, contains the information which the Commission communicated in this case to the Department, namely the number of persons concerned, the amount allowed, the amount of ineligible expenses, the amount of other reductions and the total amount refused. By virtue of, *inter alia*, the principle of legal certainty, if he is to observe the conditions of the decision of approval regarding the reductions by headings, the beneficiary must be in a position, when carrying out the training measures, to identify the approved items, the refused items and the items subject to a reduction.

- 54 In those circumstances, given that the applicant was informed of the adoption of a decision which was partially favourable to it, but whose content was not disclosed to it in its entirety, it cannot be criticized for failing to react, at that time, to the decision of approval by asking the Department for clarifications as to the apportionment of the amount granted.
- 55 The Court finds that the decision of approval, as notified to the applicant, contained no indication of the apportionment of the reductions made. Accordingly, the decision must be regarded as capable of causing the applicant to entertain justified hopes, so that it might have thought that there were no other reductions and that it was authorized to allocate *pro rata*, as it did in this case, the amount of the total amount of the reductions among all the headings.
- 56 Moreover, the Commission cannot rely on the terms of a decision which were not notified to the beneficiary. It is irrelevant that it was the Department which informed the applicant that its project has been approved. When the Commission does not take the necessary precautions to satisfy itself that the beneficiary of ESF aid is informed of the conditions imposed by the decision of approval, it cannot reasonably expect it to observe those conditions.
- 57 The Court concludes that, in so far as the fact that the expenses were actually incurred and were connected with the training measures is demonstrated by supporting documents, it was contrary to the principle of legitimate expectations for the Commission, when examining the final payment claim, to have rejected the claim to the extent to which it included expenditure provided for in the application for assistance but allegedly not approved in the decision of approval, without the beneficiary having been notified to that effect.

58 The present plea in law, in so far as it alleges a breach of the principle of the protection of legitimate expectations, must therefore be upheld to the extent to which it relates to the reductions made by the Commission merely because the costs had not been allowed in the decision of approval.

59 For all the foregoing reasons the contested decision should be annulled to the extent to which the Commission reduced the amounts claimed in the applicant's final payment claim merely because the costs in question had not been allowed in the decision of approval.

60 As regards, on the other hand, the other reductions made on the ground that the corresponding costs were not provided for or not documented, it must be concluded, contrary to the applicant's assertions, that they do not contravene the principles of legal certainty and protection of acquired rights or the principle of sound administration and the duty of care.

61 As far as the principle of the protection of legal certainty is concerned, it requires in particular that Community rules enable the person affected by them to ascertain unequivocally what his rights and obligations are and to take steps accordingly (see, to that effect, Case C-143/93 *Van Es Douane Agenten and Others v Inspecteur der Invoerrechten en Accijnzen* [1996] ECR I-431, paragraph 27). Although that principle plays a role, *inter alia*, in the examination of the legality of the decisions concerning the recovery of benefits unduly paid, there can be no question of any infringement of that principle where, as in this case, the rules in force clearly provide for the possibility of financial assistance being recovered in cases where the conditions to which its payment was subject have not been fulfilled. Those conditions include, as already observed, the requirement that the cost should have been provided for and duly documented.

62 Similarly, the beneficiary of assistance for which the application was approved by the Commission does not thereby acquire any definitive right to full payment of the assistance if he does not satisfy the abovementioned conditions.

63 As regards the principle of sound administration and the duty of care, the Court considers that the Commission fulfilled the requirements of sound administration and care by carefully examining all the aspects of the case, and, in so doing, contacting the sub-contractors in order to obtain information and supporting documents which the applicant was not in a position to provide. In any event, since the applicant has not developed its complaint further and has thus not explained the nature of the alleged infringements, the complaint cannot be upheld.

64 As regards the argument concerning the considerable period of time which elapsed after the file was opened, the Court considers that the relevant period in this case, for the purpose of examining that argument, runs from the delivery of the judgment of annulment in Case C-291/89 on 7 May 1991 to the adoption of the contested decision on 12 July 1994, that is to say a period of 38 months or more than three years. Since the Commission was required, following annulment of the first decision by the Court of Justice, to re-examine all the information available when the measure was adopted and to adopt a new decision on the final payment claim, the period prior to the annulment of the first Commission decision on the final payment claim is not in any way relevant to assessment of the propriety of the contested decision.

65 The question whether the delay was reasonable must be assessed in each individual case. However, the Commission is required, following annulment of the first decision by the Court of Justice, to re-examine all the information available at the time of adoption of the measure and to adopt a new decision on the final payment claim. Account must therefore be taken of the various stages involved in the procedure leading to the decision in this case. It was necessary to reconstitute the file. That task, in which the approach taken was heavily influenced by suspicions of irregularities, involved the organization of an inspection visit to Portugal, visits to sub-contractors, analysis of the information gathered and several consultations with the Portuguese authorities. The national authorities heard the views of the applicant on the Commission's draft decisions. The Court considers, in view of the special circumstances mentioned above, that the procedure was long but was not unreasonably protracted.

- 66 In any event, in proceedings for annulment, even an unreasonable delay cannot in itself render the contested decision unlawful and thereby justify its annulment for breach of the principle of legal certainty. A delay in the conduct of the procedure for implementation of a judgment is not, in itself, of a nature such as to affect the validity of the measure which is the outcome of that procedure: if that measure were annulled merely because of its belatedness, it would be impossible to adopt a valid measure since the measure intended to replace the annulled measure could be no less belated than the latter, (see, by analogy, Case T-150/94 *Vela Palacios v ESC* [1996] ECR-SC II-877, paragraph 44).
- 67 Finally, the Court rejects, for the same reasons, the applicant's argument that the contested decision is vitiated because it was not adopted within a period of two months after a request in that regard was submitted by the applicant. It need only be observed that the sole effect of the applicant's calling on the Commission to act under the third paragraph of Article 175 of the Treaty was to enable it to bring an action for failure to act if the institution in question failed to define its position within two months of being so called upon, as prescribed by the second paragraph of Article 175 of the Treaty. In this case the applicant did not bring an action for failure to act within the period of two months following the expiry of the period within which the institution should have defined its position. In any event, a subsequent decision cannot be vitiated merely because it was adopted after the expiry of that period because such a result, if upheld, would make it entirely impossible, at that stage, to adopt any valid decision.

The plea alleging breach of the obligation to state reasons

- 68 In view of the foregoing, the plea alleging breach of the obligation to state reasons need be examined only to the extent to which the application to the Court has not yet been upheld, namely in so far as it relates to the reductions made on the ground that the expenditure had not been provided for in the application for assistance or was not evidenced by supporting documents.

Summary of the parties' arguments

- 69 According to the applicant, the contested decision does not contain an adequate statement of the reasons for the reductions imposed on the ground that the expenses under the heading 'Functioning and management of the courses — teaching staff', preparation of the courses, equipment and non-durable goods and normal depreciation were not supported by evidence and were therefore ineligible. As regards, first, the heading 'Functioning and management of the courses — teaching staff', the Commission did not, it is alleged, explain the arbitrary criterion in accordance with which it determined the acceptable overall amount. Similarly, with regard to preparation of the courses, the Commission merely objected to the invoice submitted by Partex to the applicant, without giving sufficient reasons. As regards the heading 'equipment and non-durable goods', the amount indicated corresponds to the actual cost and should have been taken into account as such. However, the Commission failed to explain its position on that point.
- 70 The defendant refutes the criticisms levelled against it by the applicant regarding the statement of the reasons on which its decision was based. It explains that it notified to the Department the overall amount approved and the amount of the reduction made for each application for assistance. In this case, it communicated to it the memorandum referred to in paragraph 2 above. That procedure is accounted for by the fact that the Commission was required to deal with several thousand applications for assistance within a short period and, as the Court of Justice has already recognized, it could not therefore specify and justify in such a short period the reasons for which it considered certain expenses ineligible (Case 185/83 *University of Groningen v Inspecteur der Invoerrechten en Accijnzen* [1984] ECR 3623 and Case C-213/87 *Gemeente Amsterdam and VIA v Commission* [1990] ECR I-221). The Commission adds that, when, in 1988, the Department asked the Commission to provide it with a breakdown of reductions by headings, it duly responded.
- 71 In its pleadings the defendant explains at length the reductions made by it in the contested decision. That explanation repeats, essentially, the reasoning contained in memorandum No 22917.

Findings of the Court

- 72 It is settled case-law that the purpose of the obligation to state the reasons on which an individual decision is based is to enable the Community judicature to review the legality of the decision and 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 enable its legality to be contested. The extent of that obligation depends on the nature of the measure in question and on the context in which it was adopted (*Cipeke v Commission*, cited above, paragraph 14).
- 73 The question whether the statement of the reasons on which the contested decision was based was sufficient, and thus in conformity with the Treaty and the case-law, must be assessed by examining separately the reductions made on the ground that the expenditure had not been provided for in the application for assistance and those made on the ground that it was not evidenced by supporting documents.
- 74 As regards reduction of the expenses not provided for in the initial application for assistance, the first category mentioned above, the Court considers that since the applicant originated that application, after receiving memorandum No 22197 and the contested decision, it was sufficiently apprised of the grounds for the partial or total reductions made by the Commission. The information contained in those two documents was sufficient to enable the applicant to realize that, in the contested decision, the Commission had imposed reductions in respect of the headings 'hire and rent', 'equipment and non-durable goods' and 'board and lodging [of trainees]' and that it had reduced to zero the heading 'normal depreciation' because the corresponding expenditure had not been provided for in its application for assistance. In those circumstances, the Court is in a position to carry out its review of that part of the contested decision.

75 The applicant's complaint, in so far as it relates to the statement of the reasons for that first category of reductions, is therefore without foundation.

76 As regards the second category mentioned above, the reductions made on the ground that certain expenses were not duly evidenced by supporting documents, the Court considers that the contested decision likewise gives an adequate statement of reasons. It is clear from memorandum No 22197 that the reductions under the headings 'salaries of trainees', 'preparation of courses, recruitment and selection of trainees', 'copying of documents', 'management and budgetary control', 'specialized work' and 'other supplies' and also part of the heading 'functioning and management of the courses — teaching staff' were made because of the inadequacy of the documentation submitted. The methods used and the calculations made were set out in sufficient detail to enable the applicant to assess their correctness and, if necessary, contest them by producing appropriate documentation.

77 The applicant's complaint, in so far as it relates to the statement of reasons for that second category of reductions, is also without foundation.

78 It follows that the plea alleging inadequacy of the statement of reasons, to the extent to which it has been necessary to examine it, must be rejected in its entirety.

79 Save to the extent to which the application for annulment has already been upheld, it must therefore be dismissed.

Costs

80 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to pay the costs if they have been applied for in the successful party's pleadings.

81 In the present case the annulment sought by the applicant, which applied for an order that the Commission pay the costs of these proceedings, has been partially granted. The Court considers that, although the applicant has been partially unsuccessful, it is nevertheless also necessary to take account, in awarding costs, of the course taken by the decision-making procedure, as described above, which was such that the applicant was left for a long period in a state of uncertainty as regards its right to obtain in its entirety the financial assistance which had been granted to it. In those circumstances the applicant cannot be criticized for bringing the matter before the Court for the Commission's conduct to be reviewed and, in the light of that review, for appropriate determinations to be made. It must therefore be held that the defendant's conduct contributed towards creating the conditions for the dispute to arise.

82 It is therefore necessary to apply, in addition to Article 87(2) of the Rules of Procedure, the second indent of Article 87(3), according to which the Court may order even a successful party to pay the costs in proceedings which have arisen as a result of the conduct of that party (see, *mutatis mutandis*, Case 263/81 *List v Commission* [1983] ECR 103, paragraphs 30 and 31, and Case T-336/94 *Efisol v Commission* [1996] ECR II-1343, paragraphs 38 and 39), and to order the Commission to pay the costs in their entirety.

83 The Commission should therefore be ordered to pay in addition to its own costs all the costs incurred by the applicant.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

- 1. Annuls Commission Decision C(94)1410/11 of 12 July 1994, notified to the applicant on 27 December 1994, in Case No 870840/P1, concerning financial assistance from the European Social Fund in respect of training measures, to the extent to which it reduces the amounts claimed by the applicant in its final payment claim solely because the costs in question had not been allowed in the decision of approval;**
- 2. For the rest, dismisses the application;**
- 3. Orders the Commission to bear its own costs and pay all the costs incurred by the applicant.**

Saggio

Tiili

Moura Ramos

Delivered in open court in Luxembourg on 14 July 1997.

H. Jung

A. Saggio

Registrar

President