

ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)  
25 June 2003 \*

In Case T-287/02,

Asian Institute of Technology (AIT), established in Pathumthani (Thailand),  
represented by H. Teissier du Cros, lawyer, with an address for service in  
Luxembourg,

applicant,

v

Commission of the European Communities, represented by P. Kuijper and  
B. Schöfer, acting as Agents, with an address for service in Luxembourg,

defendant,

\* Language of the case: French.

APPLICATION for annulment of the Commission's decision of 4 July 2000 to conclude a research contract under the 'Asia-Invest' programme with the Center for Energy-Environment Research and Development,

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

composed of: R. García-Valdecasas, President, P. Lindh and J.D. Cooke, Judges,

Registrar: H. Jung,

makes the following

**Order**

**Facts and procedure**

- <sup>1</sup> The Asian Institute of Technology (hereinafter 'the applicant' or 'the AIT') is a non-profit-making organisation for technology teaching and research established in Thailand by Royal Charter in November 1967.

2 The Center for Energy-Environment Research and Development (hereinafter 'the CEERD') was, until 2001 at least, a division of the AIT, with no legal personality. Mr Thierry Lefèvre was director of the Center until 31 December 2001.

3 The 'Asia-Invest' programme is part of a series of European Community initiatives designed to promote mutual benefits and agreements between the European Union and Asia by supporting economic cooperation. It aims to facilitate partnerships between European and Asian companies, in particular small and medium-sized companies, and to strengthen trade flows and investment between the two regions.

4 On 1 July 1999, the Commission, in the context of that programme, published in the *Official Journal of the European Communities* the Call for proposals No 1B/AP/384 (OJ 1999 C 185, p. 14). Following that publication it received a number of proposals from candidates for the grant, one of which came from an organisation called 'the Center for Energy-Environment Research & Development — Asian Institute of Technology'. Included with that proposal was a letter of 21 October 1999, written on headed notepaper also bearing the name of the Center for Energy-Environment Research & Development — Asian Institute of Technology and signed by Mr Lefèvre.

5 The Commission decided to approve that proposal and consequently signed on 4 July 2000 contract No ASI/B7-301/95/108-62 with the Center for Energy-Environment Research & Development — Asian Institute of Technology (hereinafter 'the contested decision'). That contract is hereinafter referred to as 'the first contract'.

6 The first contract provided for the Center for Energy-Environment Research and Development — Asian Institute of Technology to be awarded a Community

grant of up to EUR 42 227.50 for the purpose of financing a programme to familiarise small and medium-sized Thai companies with Community law and, more particularly, with the ‘new approach’ directives. That contract also provided for the Commission to pay an advance of EUR 33 782 and to make a final future payment of EUR 8 445.50. Under Article 4(3) of the contract, those payments were to be made to the AIT’s bank account No 381-1-00099-9 at the Thai Farmers Bank.

- 7 Article 5 of the first contract gave the following address as the contact address for the recipient of the Community grant:

‘Center for Energy-Environment Research and Development — Asian Institute of Technology, Km 42, Paholyothin Highway, Klong Luang, Pathumthani, Thailand 12120, Tel: +66 2 5245401/5246581, Fax: +66 2 5245451, Contact Person: Prof. Thierry Lefèvre, Director.’

- 8 On 4 September 2000, Mr Lefèvre, acting as Director of the CEERD, signed the first contract, affixing the AIT seal beside his signature.
- 9 On 28 December 2000, the Commission deposited the prearranged advance of EUR 33 782 into the abovementioned bank account. By letter of 18 January 2001, attaching a receipt from the AIT’s cashier, Mr Lefèvre acknowledged receipt of that amount. In May 2002, a ‘final payment’ of EUR 78.86 was made by the Commission into that same account.

10 On 17 July 2002, counsel for the AIT wrote a letter to the Commission in which he stated:

'I act on behalf of the Asian Institute of Technology, the headquarters of which is in Bangkok, Thailand, and the president of which is Mr Jean-Louis Armand.

Mr Armand has informed me, without explaining in detail, that the Commission of the European Communities made the Center for Energy-Environment Research & Development responsible for a project entitled "Facilitating the Dissemination of European Clean Technologies in Thailand" as part of the Asia-Invest programme.

That project, which necessarily requires European funding, was initiated, if I have understood correctly, by a contract between the Commission and the CEERD, represented by its alleged director, Mr Thierry Lefèvre.

I am instructed to contest the decision to conclude that contract before the Court of Justice of the European Communities on the ground of nullity in so far as the CEERD is not a legal entity but merely a division of the AIT, with no capacity to conclude contracts under that assumed name, in particular by the intervention of Mr Thierry Lefèvre, who is no longer the director of that organisation and has not been so for some time.

However, I am bound in that regard by rules concerning time-limits, which leads me to my question of whether the decision to conclude that contract with the CEERD was published in the *Official Journal of the European Communities*, and if so when?

...’

- 11 In response to that letter of 17 July 2002, Mr E.W. Muller, director of the European Commission Cooperation Office (EuropeAid), wrote a letter to AIT’s counsel on 21 July 2002 stating:

‘With regard to your request I hereby inform you of the following:

- the contract in question was signed on 22/02/2002 by myself and Mr Eich of EuropeAid, and by Professor Thierry Lefèvre, Director of the “Center for Energy-Environment Research and Development” on 27/02/2002;
  
- the total cost of the project amounts to EUR 68 704.70, EUR 34 352.35 of which consists of a grant awarded by the European Commission for that project;
  
- 80% of the Community grant, i.e. EUR 27 481.88, was paid in advance. The remainder, i.e. EUR 6 870.47, will be paid at the conclusion of the project;

- the duration of the project is fifteen months and it will finish on 28/05/2003;
  
- the annex to this letter details the total value of the contract;
  
- the contract was drawn up following the publication in the *Official Journal of the European Communities* of a call for proposals for the Asia-Invest Programme dated 10/04/2001 with the same title as that currently in question;
  
- contracts are granted on the basis of an evaluation committee's deliberations, which must then be approved by the contracting authority, namely the European Commission.

For your information, a similar contract was signed on 4/07/2000 by the European Commission and by Mr T. Lefèvre, director of the CEERD. The amount of the grant awarded by the European Commission was EUR 42 227.50. The duration of the project was 17 months and it has now finished. The Community grant was paid in its entirety.

...'

- 12 Accordingly, by application lodged at the Registry of the Court of First Instance on 23 September 2002 the applicant brought the present action.

- 13 By application lodged on the same day, the AIT also brought an action for annulment of the Commission's decision of 22 February 2002 to conclude a second contract (see paragraph 11 above, hereinafter 'the second contract'). That case was registered under case number T-288/02.
- 14 On 20 December 2002, the Commission lodged its defence at the Registry.
- 15 On 23 January 2003 the Court of First Instance invited the parties to submit their observations on the admissibility of the present application, particularly in the light of the fact that it was lodged on 23 September 2002, whereas the contested decision was dated 4 July 2000.
- 16 Furthermore, the Court of First Instance requested that the applicant answer the following questions:
- could the applicant confirm that the bank account mentioned in Article 4(3) of the contract of 4 September 2000 (Annex B2 to the defence) at the Thai Farmers Bank (No 381-1-00099-9) was an AIT account,
  
  - could the applicant confirm that the payments made to the AIT, referred to by the Commission in paragraphs 16 to 18 of the defence, were paid into the account in question and received by the applicant?

- 17 By letter lodged at the Registry of the Court of First Instance on 11 February 2003, the applicant submitted its observations on the admissibility of the action and answered the two above questions in the affirmative. By letter lodged at the Registry on 12 February 2003, the Commission asked the Court of First Instance to declare the action inadmissible on account of delay.

### Arguments of the parties

- 18 The applicant submits that the Court of First Instance should:
- declare the action admissible;
  - annul the contested decision.
- 19 The Commission contends that the Court of First Instance should:
- declare the action inadmissible;
  - alternatively, reject the action as unfounded;
  - rule on costs in accordance with the law.

## Law

- 20 According to settled case-law the time-limits for bringing proceedings are at the discretion of neither the Court nor the parties and are a matter of public policy (Case T-514/93 *Cobrecap and Others v Commission* [1995] ECR II-621, paragraph 40, and Case T-119/95 *Hauer v Council and Commission* [1998] ECR II-2713, paragraph 22).
- 21 Under Article 113 of its Rules of Procedure the Court of First Instance may at any time of its own motion consider whether there exists any absolute bar to proceeding with an action, and is to give its decision in that respect in accordance with Article 114(3) and (4) of those Rules. Therefore, the Court of First Instance must ascertain of its own motion whether the time-limit was observed (Joined Cases T-121/96 and T-151/96 *Mutual Aid Administration Services v Commission* [1997] ECR II-1355, paragraph 39).
- 22 Under Article 114(3) of the Rules of Procedure of the Court of First Instance the remainder of the proceedings are to be oral unless the Court of First Instance otherwise decides. In the present case the Court of First Instance has sufficient information from the file and there is no need to hear the parties' oral submissions.
- 23 It must be noted that under the fifth indent of Article 230 EC an application for annulment must be instituted within two months of the publication of the contested measure, of its notification to the applicant or, in the absence thereof, of the day on which it came to the knowledge of the applicant as the case may be. That time-limit should, moreover, be extended on account of distance. In that regard, it is clear from Article 102(2) of the Rules of Procedure, together with the

provisions of Annex II to the Rules of Procedure of the Court of Justice, in the form applicable until 1 February 2001 that, for parties who have their normal residence outside of a European country or territory, the extension of the time-limit on account of distance is one month.

- 24 In the present case the Commission adopted the contested decision on 4 July 2000. It was notified to Mr Lefèvre on an undetermined date, but it can be assumed that it came to his knowledge on 4 September 2000, the date on which he signed the first contract.
- 25 According to the Rules referred to in paragraph 23 above, the time-limit for bringing the action thus expired on 4 December 2000 at the latest.
- 26 The present action, brought on 23 September 2002, is therefore, in principle, out of time.
- 27 In its observations of 11 February 2003, the applicant noted, however, that the time-limit did not begin to run until 21 July 2002, the date on which the Commission wrote to the AIT to inform it of the signature, on 4 July 2000, of the first contract. It submits that that contract was concluded 'without the knowledge of the directors of the company', by a 'mere branch managed by a mere branch manager'. Since, according to the applicant, Mr Lefèvre was not in a position to represent the AIT, notification of the first contract to that Mr Lefèvre could not have activated the time-limit.
- 28 That argument cannot be accepted. It is undisputed that the CEERD was a department of the AIT, that, until 31 December 2001, Mr Lefèvre was the director of that department and that he was entitled to manage its business in relation to third parties. The mere fact that there was a dispute between AIT's

managing bodies and one of its employees, Mr Lefèvre, in relation to the scope of his powers and, in particular, his ability to enter AIT into business with third parties, did not allow the AIT to distance itself from the first contract. It is particularly clear from the file in the present case that the contract has been fully executed and that the AIT received financial benefits from the execution thereof, since the grant was lodged to its bank account.

29 In any event, it is unlikely that the annulment of the contested decision would be of any benefit. As mentioned above, the first contract was fully executed and the grant in question was lodged by the Commission into the AIT's bank account. The annulment of the contested decision would be of no practical consequence to the applicant.

30 Finally, it must be noted that if the AIT believes that it has suffered any damage as a result of Mr Lefèvre's actions, it should assert its rights before the relevant national authorities.

## Costs

31 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs as applied for by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby orders:

1. **The application is dismissed as inadmissible.**
2. **The applicant shall bear its own costs and pay those of the Commission.**

Luxembourg, 25 June 2003.

H. Jung

Registrar

R. García-Valdecasas

President