

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
9 July 2003 *

In Case T-288/02 R,

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.-J. Kuijper and
B. Schöfer, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: French.

APPLICATION for suspension of the operation of the Commission's decision of 22 February 2002 concluding a research contract under the Asia-Invest programme with the Center for Energy-Environment Research and Development,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES

makes the following

Order

Facts and procedure

- 1 By application lodged at the Court Registry on 23 September 2002, the Asian Institute of Technology (hereinafter 'the AIT' or 'the applicant') brought an action under the fourth paragraph of Article 230 EC for the annulment of the Commission's decision of 22 February 2002 concluding a research contract under the Asia-Invest programme with the Center for Energy-Environment Research and Development (hereinafter 'the contested decision').

- 2 By separate document lodged at the Court Registry on 23 May 2003, the applicant also applied for an order suspending the operation of the contested decision.
- 3 The Commission filed its written observations on the application for interim relief on 12 June 2003.
- 4 By letter of 17 June 2003, the applicant sought leave to lodge written observations in reply to those of the Commission.
- 5 The President of the Court of First Instance, by decision dated 20 June 2003, notified to the parties on 24 June 2003, rejected that application.
- 6 Before considering this application, it is appropriate to recall the history of the proceedings, as they appear from the pleadings lodged by the parties in the course of the proceedings for interim relief.
- 7 The AIT is a non-profit-making technological instruction and research agency established in Thailand by Royal Charter in November 1967.
- 8 The Center for Energy-Environment Research and Development (hereinafter 'the CEERD') was, until 2001, a department of the AIT without legal personality. Mr Thierry Lefèvre was its director until 31 December 2001.

9 On 17 July 2002, the AIT's Counsel wrote a letter to the Commission in which he said:

I act for the Asian Institute of Technology, whose seat is in Bangkok, Thailand, and whose president is Mr Jean-Louis Armand.

I am instructed by it without further details that the Commission of the European Communities has entrusted the Center for Energy-Environment Research and Development with a project entitled "Facilitating the Dissemination of European Clean Technologies in Thailand" under the Asia-Invest programme.

That project, which necessarily involves European financing, has materialised, if I understand correctly, in a contract between the Commission and the CEERD, represented by its supposed director, Mr Thierry Lefèvre.

I am instructed to contest the decision to award that contract before the Court of Justice of the European Communities on the ground of its nullity because the CEERD is simply a service of the AIT and not a legal entity, with no capacity to contract under that usurped name, above all through Mr Thierry Lefèvre who has not been director of that body for a long time.

But I have to do so within a time-limit, which leads me to ask you whether the decision to conclude that contract with the CEERD was the subject of a notice in the *Official Journal of the European Communities* and when.

...'

10 In reply to that letter of 17 July 2002, Mr E.W. Muller, Director of the Cooperation Office of the Commission (EuropeAid), on 21 July 2002, sent to the AIT's Counsel a letter as follows:

'In answer to your request, I give you below the information sought:

- the relevant contract was signed on 22/02/2002 by myself and Mr Eich of EuropeAid, of the one part, and, on 27/02/2002, by Professor Thierry Lefèvre, Director of the "Center for Energy-Environment Research and Development", of the other part;

- the total amount of the project is [EUR] 68 704.70 of which [EUR] 34 352.35 was the subsidy paid by the European Commission to the project;

- 80% of the Community subsidy, that is [EUR] 27 481.88, was paid as an advance. The remainder, that is [EUR] 6 870.47, will be paid when the project is completed;

- the period of execution of the project is 15 months which will terminate on 28/05/2003;

- the annex to this letter will inform you as regards the location of the amount;

- the contract was drawn up following the publication, in the *Official Journal of the European Communities*, of a request for proposals for the Asia-Invest programme dated 10/04/2001 with the same title as that in the heading;

- the award of the contracts results from the deliberations of an assessment committee, which must also be approved by the contracting authority, that is the European Commission.

...'

Law

- 11 Under the combined provisions of Articles 242 EC and 243 EC, and of Article 225(1) EC, the Court of First Instance may, if it considers that the circumstances so require, order that operation of the contested act be suspended and prescribe any necessary interim measures.

- 12 Article 104(2) of the Rules of Procedure of the Court of First Instance provides that applications for interim measures must state the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for.

- 13 In this case, without it being necessary to rule on the possible inadmissibility of this application, it is appropriate, first, to consider the condition relating to urgency.

- 14 It follows from consistent case-law that the urgency required by Article 104(2) of the Rules of Procedure must be assessed in relation to the need to make an interim order so as to avoid serious and irreparable damage to the party seeking the interim measure.
- 15 It follows that it is not sufficient for the purposes of satisfying the requirements of that provision merely to allege, as the AIT has done, that the measure whose suspension is being sought is about to be put into effect; circumstances must be adduced that are capable of establishing a case of urgency and showing that, without an order suspending operation of the measure, serious and irreparable damage would be caused to the applicant (order of the President of the Court of Justice in Case C-378/87 R *Top Hit Holzvertrieb v Commission* [1988] ECR 161, paragraph 18; orders of the President of the Court of First Instance of 16 February 1995 in Case T-5/95 R *Amicale des résidents du square d'Auvergne v Commission* [1995] ECR II-255, paragraphs 15 to 17, and of 3 July 2000 in Case T-163/00 R, EC SCFP *Carotti v Court of Auditors* [2000] ECR I-A-133 and II-607, paragraph 8).
- 16 In this case, the applicant has in no way satisfied that last condition since its application does not specify the damage which it will suffer if the contested decision is implemented and does not show that the failure to suspend its operation will cause it serious and irreparable damage. The applicant confines itself to stating in its application for suspension of operation that '[t]he expiry on 28 May establishes, by itself alone, the urgency'. The mere reliance on the imminent expiry of the contract cannot be sufficient to establish that the failure to suspend the operation of the contested decision will cause it loss, nor, *a fortiori*, that such damage will be serious and irreparable.
- 17 Moreover, the applicant lodged its application for interim relief eight months after the commencement of its main action and less than a week before the expiry of the contract. While it is effectively for the applicant to judge the appropriate moment to commence an application for suspension of operation and to decide at what stage of the proceedings such an application should be initiated, the President of the Court considers it necessary to emphasise that, in this case, the circumstances have not changed since the commencement of the main action and

that, therefore, the lodging of the interlocutory application several months after the commencement of the main action is a factor which tends to suggest that the suspension being sought is not urgent. The Commission is therefore justified in maintaining in its written observations, in support of its case that the condition relating to urgency is not satisfied, that the payment of the balance of the contract to the CEERD was an event which, far from becoming known by the applicant in May 2003, was, on the contrary, foreseeable long beforehand.

- 18 The above considerations require the dismissal of this application, without the need to hear the parties' oral arguments.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. **The application for interim relief is dismissed.**
2. **The costs are reserved.**

Luxembourg, 9 July 2003.

H. Jung

Registrar

II - 2894

B. Vesterdorf

President