JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
16 September 1999 *

In Case T-182/96,

Partex — Companhia Portuguesa de Serviços, SA, a company incorporated under Portuguese law, established in Lisbon, represented by Rui Chancerelle de Machete, Pedro Machete and Miguel Pena Machete, of the Lisbon Bar, with an address for service in Luxembourg at the Chambers of Louis Schiltz, 2 Rue du Fort Rheinsheim,

applicant,

v

Commission of the European Communities, represented by Maria Teresa Figueira and Knut Simonsson, 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 (96) 1184 of 14 August 1996, reducing the European Social Fund assistance granted in the framework of project No 880412/P3,

* Language of the case: Portuguese.

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

composed of: M. Jaeger, President, K. Lenaerts and J. Azizi, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 15 December 1998,

gives the following

Judgment

Legislative background

1 According to the first paragraph of Article 124 of the EC Treaty (now Article 147 EC) the Commission is responsible for the administration of the European Social Fund (hereinafter 'the ESF').

2 Article 1(2)(a) of Council Decision 83/516/EEC of 17 October 1983 on the tasks of the ESF (OJ 1983 L 289, p. 38, hereinafter 'Decision 83/516') provides that the ESF is to participate in the financing of operations concerning vocational training and guidance.

3 Acording to Article 2(2) of that decision, the Member States concerned are required to guarantee the successful completion of the operations.

4 Article 5(1) of Council Regulation (EEC) No 2950/83 of 17 October 1983 on the implementation of Decision 83/516 (OJ 1983 L 289, p. 1) provides that approval by the ESF of an application for financial assistance is to be followed by payment of an advance of 50% of the assistance on the date on which the training operation is scheduled to begin.

5 Article 5(4) of Regulation No 2950/83 provides that final payment claims must contain a detailed report on the content, results and financial aspects of the relevant operation and requires the Member State concerned to certify the accuracy of the facts and accounts in those claims.

6 Article 6(1) of Regulation No 2950/83 provides that when ESF assistance is not used in conformity with the conditions set out in the decision granting approval the Commission may suspend, reduce or withdraw the aid after giving the relevant Member State an opportunity to comment.

7 Under Article 6(2), sums paid which are not used in accordance with the conditions laid down in the decision granting approval must be refunded.

8 Article 7(1) provides that the Commission may, without prejudice to any controls carried out by the Member States, make on-the-spot checks.

9 Article 6 of Commission Decision 83/673/EEC of 22 December 1983 on the management of the ESF (OJ 1983 L 377, p. 1) requires Member States' final payment claims to reach the Commission within 10 months of the date of completion of the operations concerned. It is stated that no payment may be made in respect of financial aid for which the application is submitted after the expiry of that period.

Facts of the case

A — *Events preceding the contested decision*

10 In 1987, the applicant, Partex — Companhia Portuguesa de Serviços, SA (hereinafter 'Partex'), submitted applications for ESF financial assistance on behalf of Pirites Alentejanas SA (hereinafter 'Pirites Alentejanas'), Tintas Robbialac SA (hereinafter 'Tintas Robbialac') and Sapec — Chemical Products and Fertilisers of Portugal SA (hereinafter 'Sapec') with a view to carrying out technical-vocational training programmes linked to the restructuring of those undertakings.

11 On 20 October 1987 the Departamento para os Assuntos do Fundo Social Europeu (Department of European Social Fund Affairs, part of the Portuguese Ministry of Employment and Social Security) (hereinafter 'DAFSE'), acting for

the Portuguese Republic and for the benefit of the applicant, submitted an application to the ESF for assistance for the 1988 financial year to finance a vocational training programme for Pirites Alentejanas, Tintas Robbialac and Sapec (file number 880412/PE).

12 By Decision C (88) 831 of 29 April 1988, the defendant granted the applicant assistance, for the aforementioned undertakings, amounting to PTE 146 321 461 and intended for training 416 people.

13 On an unspecified date, the applicant received an advance of PTE 73 160 730, pursuant to Article 5(1) of Regulation No 2950/83.

14 On 30 April 1989, after completing the training programme which took place over seven months between 1 January and 31 December 1988, the applicant submitted a claim for final payment to DAFSE.

15 By letter of 13 October 1989 DAFSE asked the applicant to amend its claim of 30 April. In its amended claim of 23 October 1989, the applicant stated that the total cost of the training programme had been PTE 130 350 556, including PTE 64 523 525 in the form of ESF assistance.

16 On 30 October 1989 the Portuguese authorities submitted to the Commission an application, dated 28 October 1989, for payment of the balance of PTE 8 637 205.

17 As the first advance had been of PTE 73 160 730 (see paragraph 13 above), on 12 February 1990 DAFSE corrected that claim stating that it was necessary to repay the sum of PTE 8 637 205 to the Commission, which corresponded to the difference between the advance paid to the applicant and the proportion of the total cost of the training programme to be met by the ESF, as stated in the amended claim for final payment submitted by the applicant (see paragraph 15) (PTE 73 160 730 minus PTE 64 523 525).

18 On 24 June 1991 DAFSE obtained additional information in order to reconsider the matter.

19 By DAFSE letters No 1107 of 30 January, and No 1941 and No 1966 of 10 February 1995, concerning, respectively, Pirites Alentejanas, Tintas Robbialac and Sapec, the applicant was notified of the draft certification decisions sent by DAFSE to the Commission concerning each of those undertakings. It was also invited to submit its comments on those draft certification decisions.

20 Those letters were accompanied by tables summarising eligible and ineligible expenditure, together with an insert setting out the criteria against which the 1988 files in which the applicant had intervened had been re-examined (hereinafter 'the re-examination criteria').

21 Those criteria were as follows:

'An analysis of the documents submitted by Partex regarding the invoices issued in 1988 and the costs relating thereto shows that:

— the structural expenditure, by its nature, cannot be accepted as training costs;

— the amounts relating to expenditure which may be regarded as training costs do not appear reasonable in the light of the type of aid provided in the context of the courses.'

22 Furthermore, the annexes to the draft certification decisions concerning Tintas Robbialac and Sapec included audit reports drawn up by Oliveira Rego & Alexandre Hipólito.

23 By letters of 15 and 24 February 1995 the applicant submitted its comments on the draft certification decisions. Pirites Alentejanas and Tintas Robbialac also submitted comments, by letters of 16 and 27 February 1995 respectively.

24 In response to Pirites Alentejanas' comments, DAFSE re-examined the file. By letter No 615/DSAFEP/95 of 17 March 1995, it fixed the eligible amount, which was higher than the amount in the draft certification decision relating to Pirites

Alentejanas' part. The Annex contained an amended table, and DAFSE's response to the comments in question.

25 On 27 March 1995 DAFSE adopted decisions, concerning Pirites Alentejanas, Tintas Robbialac and Sapec respectively, certifying the final payment claims and ordering the repayment of certain sums.

26 Each of those decisions was accompanied by a letter. Those concerning the parts relating to Tintas Robbialac and Sapec confirmed the draft notification decisions (No 1233/DSJ/DSAFEP, paragraph 20 and No 1218/DSJ/DSAFEP, paragraph 16, respectively), whilst the one concerning the part relating to Pirites Alentejanas stated that, after examination of the comments submitted by that company (see paragraph 23 above), the amount stated to be ineligible in the draft decision was to be reduced (No 1212/DSJ/DSAFEP, paragraph 17).

27 The information letters also stated that DAFSE was able to evaluate the reasonable nature of the expenditure by reference to its essential character, the amount, market prices and the duty of recipients to manage grants from the ESF and the Portuguese State as if they were their own funds (No 1218/DSJ/DSAFEP/95 concerning Sapec, paragraphs 18 and 19; No 1233/DSJ/DSAFEP/95 concerning Tintas Robbialac, paragraphs 22 and 23; No 1212/DSJ/DSAFEP/95 concerning Pirites Alentejanas, paragraphs 19 and 20), and that excessive expenditure could lead to a reduction (No 1218, paragraph 46, No 1233, paragraph 50 and No 1212, paragraph 47).

28 Finally, the letters stated that they were based on the grounds set out in documents which had previously been sent to the applicant, in particular DAFSE letters No 1107, No 1941 and No 1966 (see paragraph 19 above).

29 The applicant challenged those decisions before the Tribunal Administrativo de Circulo de Lisboa (Administrative Circuit Court, Lisbon), which suspended application of the repayment orders.

30 By letter No 4085 of 30 March 1995 DAFSE informed the Commission that, according to the audits, the total cost of the training programmes actually amounted to PTE 100 591 892, of which PTE 49 792 986 was in the form of ESF assistance.

31 By three letters of 19 June 1995, DAFSE informed the applicant that, after re-examination of the file, and without prejudice to a final decision by the Commission on the final payment claim, the certified expenditure amounted to PTE 11 746 270 in respect of the part relating to Pirites Alentejanas, PTE 10 349 849 in respect of the part relating to Tintas Robbialac and PTE 27 696 868 in respect of the part relating to Sapec.

32 By letter No 9600 of 22 August 1995, DAFSE indicated to the ESF that the corrections made to the amounts charged in the context of the programme and determined by documents emanating from Partex had been made in accordance with the criteria established by the working group responsible for the previous fund on 23 September 1994.

33 By letters No 2567, 2569 of 27 February and 2837 of 1 March 1996, DAFSE informed the applicant that the Commission had approved the certification of the final payment claim in respect of the amount stated in the letters of 19 June 1995.

34 By letter of 22 March 1996 and fax of 11 April 1996, the applicant asked DAFSE for explanations, and for a copy of the Commission's decision.

35 The applicant subsequently lodged an application before the Court of First Instance for annulment of the Commission decision approving DAFSE's certification of final payment claim (see paragraph 33 above), registered as Case No T-58/96. In its defence, the defendant acknowledged that its decision did not satisfy the requirement for a statement of reasons, as set out at paragraph 27 of the judgment of the Court of First Instance of 13 December 1995 in Case T-85/94 (122) *Commission* v *Branco* [1995] ECR II-2993. For that reason, the defendant withdrew its decision. The President of the Fifth Chamber of the Court of First Instance consequently removed Case T-58/96 from the register and by order of 3 June 1997 ordered the defendant to pay the costs.

B — *Contested decision*

36 On 14 August 1996 the defendant adopted Decision C (96) 1184 reducing the ESF assistance granted to Partex in accordance with Decision C (88) 831 of 29 April 1988 adopted in the context of project No 880412/P3 (hereinafter 'the contested decision').

37 That decision reads as follows:

'[...] whereas the Portuguese Government submitted to the Commission on 30 October 1989 a final application for payment of PTE 8 637 205 (to be repaid to the Commission) and certified the accuracy of the facts of and accounts for that claim in accordance with Article 5(4) of Regulation [...] No 2950/83;

whereas the Member State, having noted various irregularities in the performance of the operations financed by the [ESF], decided — the Commission being kept informed — to re-examine certain files and whereas, in those circumstances, on completion of re-examination of the final payment claim for file No 880412/P3 and examination of the accounts for the operations carried out by Tintas Robbialac SA and SAPEC, part of the expenditure indicated cannot be accepted for the reasons set out in letter No 4085 of 30 March 1995 and the Annexes sent by the Member State;

whereas the Member State gave the undertakings concerned by the operations, Partex, Tintas Robbialac, Sapec and Pirites Alentejanas, the opportunity to submit their comments (DAFSE letters No 1107 of 30 January 1995 and No 1941 and No 1966 of 10 February 1995, sent to Partex, and No 1106 of 30 January 1995 and No 1940 and No 1967 of 10 February 1995, sent to the other undertakings concerned); whereas only Partex, Pirites Alentejanas and Tintas Robbialac submitted observations (Annexes to DAFSE letter No 5653 of 10 May 1996);

whereas, of the total amount of assistance approved by the Commission for file No 880412P 3, which totalled PTE 146 621 461, an amount of PTE 81 797 936 was not used by Partex; following an analysis of the observations submitted by

the Member State and by Partex, Pirites Alentejanas and Tintas Robbialac, the Commission considers that certain expenses indicated by Partex do not meet the conditions laid down in the approval decision, so that the assistance should be further reduced by PTE 14 730 539 and the [ESF] assistance should therefore be set at PTE 49 792 986 for the reasons set out in:

— the audit reports drawn up by O. Rego & A. Hipólito regarding Tintas Robbialac and Sapec,

— information No 615/DAFSEP/95 concerning the re-examination of the expenses indicated by Pirites Alentejanas,

— DAFSE letter No 4085 of 30 March 1995 and the annexes thereto,

— DAFSE letter No 9600 of 22 August 1995, and the annexes thereto;

whereas, pursuant to Article 6(2) of Regulation No 2950/83, the sums paid were not used in accordance with the conditions laid down in the approval decision giving rise to recovery of sums unduly paid, and the Member State concerned is also responsible for the repayment of the sums unduly paid;

whereas, pursuant to Article 5(1) of Regulation [...] No 2950/83, the sum of PTE 73 160 730 was paid in the form of an initial advance;

whereas the Member State has repaid the sum of PTE 8 637 205 to the Commission;

whereas the sum of PTE 14 730 539 should be recovered,

has adopted the present decision:

Article 1

The [ESF] assistance of PTE 146 321 461 awarded to Partex [...] by Commission decision C (88) 0831 of 29 April 1988 is reduced to PTE 49 792 986.

Article 2

The sum of PTE 14 730 539 shall be repaid to the Commission [...]'

Procedure

38 In those circumstances, by application lodged at the Registry of the Court of First Instance on 15 November 1996 the applicant brought the present proceedings.

39 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) opened the oral procedure without ordering any preparatory inquiry. However, it put a number of written questions to the parties, which were answered within the time allowed.

40 The parties presented oral argument and replied to the Court's questions at the hearing on 15 December 1998.

Forms of order sought

41 The applicant claims that the Court should:

— annul the contested decision in so far as it reduces the assistance initially granted and requires it to repay the sum of PTE 14 730 539 to the Commission;

— order the Commission to pay the costs.

42 The defendant claims that the Court should:

— dismiss the application as unfounded;

— order the applicant to pay the costs.

Substance

43 The applicant puts forward four pleas in law alleging, first, infringement of the relevant rules in relation to the second certification carried out by DAFSE on 27 March 1995; second, infringement of the obligation to state reasons laid down in Article 190 of the EC Treaty (now Article 253 EC); third, abuse of rights, infringement of the applicant's rights of defence and the principles of good faith, protection of legitimate expectations and protection of acquired rights; and, fourth, misuse of powers.

A — *The first plea, alleging infringement of the relevant rules in relation to the second certification carried out by DAFSE*

44 The applicant alleges defects affecting DAFSE's second certification, on 27 March 1995, of the factual and accounting accuracy of the expenses

submitted in support of the claim for payment of the balance of the ESF assistance and challenges the legality of the contested decision adopted on the basis of that certification.

45 The plea is in two parts, alleging, respectively, lack of competence *ratione temporis* on the part of DAFSE and infringement of the rules concerning the division of powers between the Member States and the Commission.

DAFSE's lack of competence ratione temporis

Arguments of the parties

46 The applicant claims that DAFSE had no competence *ratione temporis* for two reasons. First, the period within which the factual and accounting certification was to take place was exceeded (first claim). Second, DAFSE disregarded the temporal division of tasks between the Member State concerned and the Commission (second claim).

— The first claim, alleging that the second factual and accounting certification was out of time

47 According to Article 6(1) and (2) of Decision 83/673, certification of the factual and accounting accuracy of expenditure submitted in a claim for payment of ESF assistance by the recipient must take place within 13 months of completion of the

operations thus funded. In the present case the applicant had completed the funded operation at the end of 1988. The second factual and accounting certification (see paragraph 26 above) was therefore carried out after the deadline laid down by those provisions and is consequently unlawful. Even though the contested decision refers only to the first factual and accounting certification, it incorporates the statement of reasons for the second.

48 Since it is based on that unlawful DAFSE decision, the contested decision itself is unlawful.

— The second claim, based on failure to respect the temporal division of tasks between the Member State concerned and the Commission

49 The applicant notes that, on 30 October 1989, DAFSE certified the accuracy of the facts and accounts in the final payment claim which it had submitted, in accordance with Article 5(4) of Regulation No 2950/83. Once that certification had been sent to the Commission, the power of DAFSE and the Member State concerned came to an end. The rules applicable and, in particular, Regulation No 2950/83, do not allow DAFSE, after sending the certification to the Commission, to carry out, of its own initiative, a 're-examination' of the file, thereby altering its prior certification.

50 In this case, DAFSE re-examined the file on its own initiative and sent the Commission a second certification of the accuracy of the facts and accounts in the final payment claim.

51 By adopting the contested decision on the basis of that second certification, the defendant infringed the applicable rules.

52 The defendant challenges the applicant's arguments, pointing out that the Member State's obligation to certify should be understood in the light, first, of the need to avoid irregularities in the use of assistance approved by the ESF and, second, of the Member State's secondary liability as regards the repayment of aid used irregularly (Article 6(2) of Regulation No 2950/83).

Findings of the Court

53 In so far as it confirms the accuracy of the facts and accounts in final payment claims, the Member State is responsible to the Commission for certifications which it submits (Case T-142/97 *Branco* v *Commission* [1998] ECR II-3567, paragraph 44).

54 Bearing in mind the obligation of Member States under Article 2(2) of Decision 83/516 to guarantee the successful completion of the operations financed, any certification under Article 5(4) of Regulation No 2950/83 must be regarded as being by its nature an operation carried out by Member States subject to all reservations. A different interpretation would undermine the effectiveness of Article 7 of Decision 83/673, which requires Member States to give notice of irregularities found in the management of operations to be financed through the ESF (Case T-72/97 *Proderec* v *Commission* [1998] ECR II-2847, paragraph 74).

In addition, the Commission may, under Article 7(1) of Regulation No 2950/83, check final payment claims, 'without prejudice to any controls carried out by the Member States' (*Branco* v *Commission*, paragraph 45).

55 Those obligations and powers devolving on Member States are not limited by any restriction in time (*Branco* v *Commission*, paragraph 46).

56 Accordingly, in a case such as this, in which the Member State has already certified the accuracy of the facts and accounts in the final payment claim, that State may still alter its assessment of the final payment claim if it considers that it contains irregularities which had not been previously detected (*Branco* v *Commission*, paragraph 47).

57 Article 6 of Decision 83/673 provides in this regard that applications for final payment must reach the Commission within 10 months of the date of completion of the training operations and that no payment may be made in respect of aid for which the application is submitted after the expiry of that period. In those circumstances, if checks to establish conformity could be made only before certification that the facts and accounts in a final payment claim were accurate, the Member State might not be in a position to submit that claim to the Commission within the above 10-month period, with the result that final payment of the aid could not be made. It follows that, in some cases, certification of the accuracy of the facts and accounts in a final payment claim prior to a check to establish conformity or before its completion may be in the interest of the aid recipient (*Branco* v *Commission*, paragraph 48).

58 It follows from the foregoing that the defendant did not disregard the applicable rules by confirming the factual and accounting certification as amended by DAFSE by decision of 27 March 1995 (see paragraph 25 above). The first part of the first plea must consequently be dismissed.

The infringement of the rules governing the division of the tasks of the Member States and the Commission

Arguments of the parties

59 In its reply, the applicant submitted, in the alternative, that DAFSE acted beyond its powers. The applicable rules grant Member States jurisdiction to ascertain whether expenditure in respect of which repayment is sought by the beneficiary is covered by the approval decision and whether the information in the claim for payment and the corresponding entries in the accounts are accurate, but not to determine whether an item of expenditure is eligible for Community funding. In view, first, of the autonomous administration of the ESF, as an instrument of a Community policy for employment and professional training, and, second, the need to ensure uniform application of Community law and, more specifically, the conditions laid down in the decision approving an application for Community funding, assessment of compliance with those conditions is a matter within the exclusive competence of the Commission.

60 As DAFSE made the 1995 certification on the basis of criteria concerning 'the reasonableness of the expenditure incurred by the recipient' and 'sound financial management of the assistance', it exceeded its power to ascertain the factual and accounting accuracy of the information in claims for payment. As the contested

decision was based on that unlawful certification, the Commission disregarded the division of powers between the Member State and itself as provided for by the applicable Community rules. The contested decision is consequently also invalid.

61 The defendant challenges that argument.

Findings of the Court

62 The second part of the first plea must be regarded as a new plea within the meaning of Article 48(2) of the Rules of Procedure of the Court of First Instance. It was raised for the first time in the reply. As it is not based on matters of law or fact which came to light in the course of the procedure, it must therefore be dismissed as inadmissible.

63 Moreover, the application of criteria concerning the 'reasonableness of the expenditure incurred by the beneficiary' and 'sound financial management of the assistance' falls within the scope of the control which the Member State is required to exercise under Article 7 of Decision 83/673 (*Proderec* v *Commission*, paragraph 88; Joined Cases T-180/96 and T-181/96 *Mediocurso* v *Commission* [1988] ECR II-3481, paragraph 115).

64 It follows from the foregoing that the first plea must be rejected in its entirety.

B — *The second plea, based on breach of the obligation to state reasons laid down by Article 190 of the Treaty*

Arguments of the parties

65 According to the applicant, the contested decision does not satisfy the requirements of Article 190 of the Treaty. First, the content of the draft DAFSE decisions (see paragraph 19 above) was not incorporated into the contested decision. Second, the applicant did not receive a copy of letter No 4085 of 30 March 1995 and letter No 9600 of 22 August 1995 and the annexes thereto (see paragraphs 30 and 32 above), to which the contested decision refers. Third, the factual and legal grounds of that decision are neither identified nor explained.

66 The statement of reasons does not make it possible to understand the reasons why the Commission considered that the conditions for grant of the assistance had not been respected, nor to identify the criteria relating to the 'reasonableness' and the 'sound financial management' on the basis of which the Commission considered part of the expenditure to be ineligible. Nor did it make it possible to determine whether those criteria were apparent from the decision of 29 April 1988 granting the assistance, nor the extent to which they had been disregarded.

67 The applicant supposes that the reference to the criterion of 'reasonableness' is to be taken to be a reference to the re-examination criteria (see paragraph 21 above). In that respect, it is not aware of the reasons for which the structural expenditure cannot be accepted as training costs. Likewise, it wonders why certain training costs appeared to be unreasonable having regard to the type of aid at issue.

68 As regards the part relating to Pirites Alentejanas, the justifications given in DAFSE's proposal (see paragraph 19 above) do not explain the adjustments made, in particular, in sub-headings 14.2.7 (specialised work), 14.3.1(b) (remuneration of non-teaching technical staff), 14.3.1(c) (remuneration of administrative staff), 14.3.5 (travel expenses) and 14.3.14 (general administrative expenses). As regards sub-headings 14.3.1(a) (remuneration of teaching staff) and 14.3.2 (deductions from remuneration), the defendant did not explain the reason for the reduction, notwithstanding Pirites Alentejanas' submission that paragraph 7 of Decree 20/MTSS/87 of 19 June 1987 of the Portuguese Ministry of Employment and Social Security (*Diário da República*, Series II, No 148 of 1 July 1987, p. 8141) did not apply to those headings. Finally, adequate reasons were not given for the reduction made in sub-heading 14.6.

69 As regards the part relating to Tintas Robbialac, the applicant submits that the audit report does not state which conditions of the decision approving the operation were not complied with, in particular as regards the reductions made in sections 14.1 (income of persons undergoing vocational training), 14.3 (operation and administration of courses), 14.8 (meals and lodging for persons undergoing training) and 14.9 (travel for vocational training). The reductions made in sub-headings 14.3.8 and 14.3.11 (other deliveries and services rendered by third parties) were based on subjective considerations. No reasons are given to justify the reduction made in sub-heading 14.3.15 (other operational and administrative costs). The reasons given for the reductions affecting sub-headings 14.2.6 (cost of personnel responsible for preparation of courses), 14.2.7 (specialised work), 14.3.1(b) (remuneration of non-teaching technical staff), 14.3.1(c) (remuneration of administrative staff), 14.3.7 (budgetary control and management) and 14.3.8 (specialised work) by reference to the re-examination criteria do not make it possible to identify exactly why those reductions were made. As regards sub-headings 14.3.1(a) (remuneration of teaching staff) and 14.3.2 (deductions from remuneration), the defendant failed to explain the reason for the reduction, notwithstanding Tintas Robbialac's submissions concerning the erroneous interpretation of Decree 20/MTSS/87.

70 Finally, as regards the part relating to Sapec, the defendant merely challenged, by dubious arguments, the validity of part of the expenditure relating to sub-

headings 14.3.5 (travel costs), 14.3.9 (rental for movable and immovable items) and 14.8 (meals and lodging for persons undergoing training). The audit report did not indicate which conditions of the decision approving the operation had not been met, nor the criteria according to which the expenditure previously certified in 1989 were ineligible. Nor are precise reasons given for the refusal to accept the costs of meals incurred during travel as travel costs (paragraph 6.3.3 of the audit report) and for the reduction relating to rent and other rental costs (paragraph 6.3.6 of the financial report).

71 The defendant considers that sufficient grounds are given for the contested decision, since it clearly refers to DAFSE measures in which the reasons for the reduction are clearly set out (Case T-85/94 *Branco* v *Commission* [1995] ECR II-45, paragraph 36). The applicant was aware of the financial reports drawn up by Oliveira Rego & Alexandre Hipólito, of letter No 615/DSAFEP/95 and the annexes to DAFSE letter No 4085, since they were annexed to its application. As regards the annexes to the DAFSE letter No 9600, they describe the re-examination method used by the defendant. That method was also brought to the attention of the applicant, which, indeed, helped to draw it up.

72 The same is true of the criteria relating to the reasonableness of the expenditure incurred by the beneficiary and the sound financial management of the assistance. It is apparent from the comments submitted by the applicant (see paragraph 23 above) that it was aware of those criteria. Furthermore, they were implicitly referred to in the approval decision, which refers to the relevant national and Community provisions, which require respect for the rules of sound financial management.

Findings of the Court

1. Preliminary observations

73 The obligation to state the reasons for an individual decision is intended to provide the person concerned with sufficient information to enable him to determine whether the decision is well founded or whether it is vitiated by an error which may permit its validity 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 at issue and the context in which it was adopted (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; *Branco* v *Commission*, cited at paragraph 71 above, paragraph 32).

74 In view in particular of the fact that a decision reducing the amount of ESF assistance initially granted has serious consequences for the person benefiting from the assistance, that decision must clearly show the grounds which justify a reduction of the amount of the assistance initially authorised (judgments in *Consorgan* v *Commission*, cited above, paragraph 18, *Cipeke* v *Commission*, cited above, paragraph 18; Case T-450/93 *Lisrestal* v *Commission* [1994] ECR II-1177, paragraph 52 and *Branco* v *Commission*, cited at paragraph 71 above, paragraph 33).

75 The question whether a statement of reasons for a decision satisfies those requirements 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-278/95 P *Siemens* v *Commission* [1997] ECR I-2507, paragraph 17 and the judgment referred to therein).

2. Incorporation of the statement of reasons for measures of national authorities in the Commission's decision

76 In a case such as this where the Commission purely and simply confirms the proposal of a Member State to reduce financial assistance initially granted, the Court considers that a Commission decision may be regarded as sufficiently reasoned, for the purposes of Article 190 of the Treaty, either when the decision itself clearly demonstrates the reasons justifying the reduction of the assistance or, if that is not the case, when it refers sufficiently clearly to a measure of the competent national authorities in the Member States concerned in which the latter clearly set out the reasons for such a reduction (*Branco* v *Commission*, cited at paragraph 71 above, paragraph 36, confirmed on appeal in *Commission* v *Branco*, cited at paragraph 35 above, paragraph 27).

77 Since it appears from the file that the Commission decision does not diverge on any particular point from the measures adopted by the national authorities, it may properly be considered that the content of the said measures forms part of the reasons given for the Commission's decision, at least in so far as the beneficiary of the assistance was able to take cognisance of it (*Proderec* v *Commission*, cited at paragraph 54 above, paragraph 105).

78 It is therefore necessary to consider whether the applicant was able to take cognisance of the DAFSE measures referred to in the sixth recital in the preamble to the contested decision and whether the information contained therein was sufficient, having regard to the context in which the contested decision was adopted, to enable it to identify and understand the reasons for the reductions.

3. Applicant's awareness of the factors referred to in the contested decision

79 It is not disputed that the applicant did not receive DAFSE letters No 4085 of 30 March 1995 and No 9600 of 22 August 1995 and the annexes thereto. However, the reasons contained in those letters, in particular those set out in the documents including the tables of eligible and ineligible expenditure on the one hand, and the audit reports of Oliveira Rego & Alexandre Hipólito on the other, had already been brought to the attention of the applicant, in particular by letters No 1107, No 1941 and No 1966 (see paragraph 19 above).

80 It follows that the applicant was informed of all the reasons for the reductions contained in the documents referred to in the contested decision.

4. Adequacy of the statement of reasons

81 The applicant also submits that the statement of reasons is inadequate. As the contested decision refers to the reasons put forward by DAFSE in its proposals for reductions referred to in the certification decisions (see paragraphs 25 to 28 above), those reasons are incorporated into the statement of reasons for the contested decision. It must therefore be assessed in the light of those reasons. The Court will examine those reasons below, and distinguish between each part of the project at issue.

(a) Reasons for the reductions made in the part of the project relating to Pirites Alentejanas

82 The applicant does not deny that it was aware of the DAFSE letter of 17 March 1995 entitled 'Informação No 615/DSAFEP/95', concerning the re-examination of the expenses indicated by Pirites Alentejanas. That letter determines the amount to be repaid by the latter in respect of the proportion of the financial assistance relating to it. An annex to that letter sets out DAFSE's conclusions concerning various sections of the final payment claim and its position on the comments submitted by the undertakings concerned on the draft certification decision (paragraph 23 above).

83 That letter and its annexes, together with the table of eligible and ineligible expenditure (see paragraph 20 above), contain information concerning the reasons for the reductions.

84 The Court will examine below the statement of reasons in relation to each of the sub-headings which gave rise to reductions.

— Sub-heading 14.1.4 (insurance)

85 DAFSE considered that, since the eligible insurance costs corresponded to 7.286% of the amount of the salaries entered in section 14.1.1, the sum charged under section 14.1.4 should be reduced by PTE 94 134.

86 Since the applicant should have been aware of the Portuguese legislation on industrial accident insurance, that statement of reasons satisfies the requirements of Article 190 of the Treaty.

— Sub-heading 14.2.6 (cost of staff responsible for preparation of courses)

87 DAFSE explained that the costs covered by this sub-heading should be reduced by PTE 267 012 since they had already been charged under remuneration of administrative staff [section 14.3.1(c)].

88 Furthermore, they were also to be reduced by PTE 290 000 by virtue of the re-examination criteria. In the light of those criteria (see paragraph 21 above), as explained in the certification decision (see paragraph 27 above), that expenditure was considered to be excessive having regard to the nature of the services and market prices.

89 That statement of reasons satisfies the requirements of Article 190 of the Treaty.

— Sub-heading 14.2.7 (specialised work)

90 DAFSE considered a sum of PTE 722 000 to be ineligible having regard to the re-examination criteria. It concludes from those criteria (see paragraph 21 above), as explained in the certification decision (see paragraph 27 above), that expenditure was considered to be excessive having regard to the nature of the services and market prices.

91 That statement of reasons satisfies the requirements of Article 190 of the Treaty.

— Sub-heading 14.3.1(a) (remuneration of teaching staff)

92 DAFSE proposed a reduction of PTE 753 304 on the ground that the hourly rate for practical classes had not been reduced by 50%, in accordance with Decree 20/MTSS/87, which provides that 'the remuneration of teachers for practical classes shall be 50% of the amounts determined in accordance with the preceding paragraphs'.

93 It also proposed a reduction of PTE 465 511 on the ground that Pirites Alentejanas had deducted that sum in respect of value added tax.

94 That statement of reasons satisfies the requirements of Article 190 of the Treaty.

— Sub-heading 14.3.1(b) (remuneration of non-teaching technical staff) and 14.3.1(c) (remuneration of administrative staff)

95 According to the table of eligible and ineligible expenditure (see paragraph 20 above) reductions were made in respect of the remuneration of non-teaching technical staff and administrative staff after application of the re-examination criteria. In the light of those criteria (see paragraph 21 above), as explained in the certification decision (see paragraph 27 above), that expenditure was considered to be excessive having regard to the nature of the services and market prices.

96 That statement of reasons satisfies the requirements of Article 190 of the Treaty.

— Sub-heading 14.3.2 (deductions from remuneration)

97 The reduction of the deductions from remuneration was justified by the fact that the eligible amount corresponded to 31.786% of the eligible amounts under sub-headings 14.3.1(a) (teaching staff), 14.3.1(b) (non-teaching technical staff) and 14.3.1(c) (administrative staff) as regards in-house staff (24.5% for social security charges and 7.286% for contributions in respect of industrial accident insurance).

98 Since the applicant is deemed to have been aware of the Portuguese social security legislation, that statement of reasons satisfies the requirement of Article 190 of the Treaty.

— Sub-heading 14.3.3 (lodging) and 14.3.4 (meals)

99 It is clear from the table of eligible and ineligible expenditure (see paragraph 20 above) that reductions of the amounts requested under sub-headings 14.3.3 (lodging) and 14.3.4 (meals) for the staff of the undertaking were made on the ground that they had no direct link with the financed operation.

100 That statement of reasons satisfies the requirements of Article 190 of the Treaty.

— Sub-heading 14.3.5 (travel costs)

101 DAFSE proposed that travel costs be reduced by PTE 40 930, on the ground that they had no direct link with the financed operation, and by PTE 339 000 after application of the re-examination criteria. In the light of those criteria (see paragraph 21 above), as explained in the certification decision (see paragraph 27 above), that expenditure was considered to be excessive having regard to the nature of the services and market prices.

102 That statement of reason satisfies the requirements of Article 190 of the Treaty.

— Sub-heading 14.3.14 (general administrative costs)

103 In the table of eligible and ineligible expenditure (see paragraph 20 above), DAFSE stated that the general administrative costs were not eligible on the ground that they related to the remuneration of a teacher which had already been included in the section concerning remuneration.

104 In its note setting out its position on certain comments by Pirites Alentejanas (see paragraph 23 above), DAFSE stated that, in view of the amounts entered in sub-heading 14.3.1(c) (remuneration of administrative staff) in respect of the remuneration of three officials for a total of 807 hours and in sub-heading 14.3.1(d) (remuneration of staff other than teaching, technical or administrative staff) in respect of the remuneration of two officials assigned for 1 028 hours, the amount entered under that section was not justified in the light of the nature and extent of the operation.

105 That statement of reasons satisfies the requirements of Article 190 of the Treaty.

— Sub-heading 14.6.3 (depreciation of electrical equipment)

106 DAFSE stated, in the table of eligible and ineligible expenditure (see paragraph 20 above), that depreciation in respect of a telephone answering machine, a video camera and a car radio were not accepted, on the grounds that they did not form part of the financed operation.

107 That statement of reasons satisfies the requirements of Article 190 of the Treaty.

(b) The statement of reasons for the reductions made in the part of the project relating to Tintas Robbialac

108 The documents referred to in paragraphs 19 to 28, 31 and 33 above, brought to the attention of the applicant before the adoption of the contested decision, contain information relating to the reasons for the reductions made.

109 The Court will examine the statement of reasons in respect of each of the sections giving rise to a reduction.

— Section 14.1 (income of persons undergoing vocational training)

110 DAFSE proposed the following reductions:

— PTE 3 105 095 (sub-heading 14.1.1: wages);

— PTE 78 936 (sub-heading 14.1.2: additional remuneration);

— PTE 809 409 (sub-heading 14.1.3: deductions from remuneration);

— PTE 65 083 (sub-heading 14.1.4: insurance).

111 Those proposals were based on the conclusions of the audit report by Oliveira Rego & Alexandre Hipólito. According to that report, the eligible amount in respect of salaries was determined by reference to the hourly salary and attendance recorded on the attendance registers (page 11). Point 5.6 of the report contains a table setting out the hourly attendance at the courses by persons undergoing training.

112 Furthermore, as regards sub-heading 14.1.2 (additional remuneration), the report indicates that, by letter No 18861 of 13 October 1989, DAFSE informed the beneficiary that costs in respect of bonuses for production, regular attendance, productivity and merit had been considered to be ineligible by the Commission, thus justifying the corresponding reductions.

113 That statement of reasons satisfies the requirements of Article 190 of the Treaty.

— Section 14.2 (preparation of courses)

114 In the table attached to the draft certification decision (see paragraph 20 above), DAFSE stated that the actual costs of teaching material (sub-heading 14.2.1) and reproduction of documents (sub-heading 14.2.5) was PTE 1 114 530 and PTE 62 288 respectively.

115 It considered the sums of PTE 197 730 (sub-heading 14.2.6: costs of staff assigned to preparation of courses) and PTE 78 390 (sub-heading 14.2.7: specialised work) to be ineligible.

116 DAFSE justified its assessments by the application of the re-examination criteria (see paragraph 21 above). None the less, in the audit report drawn up by Oliveira Rego & Alexandre Hipólito, which is referred to in the statement of reasons for the contested decision (see paragraph 37 above), the expenditure relating to those sub-headings had been considered eligible in its entirety.

117 The defendant did not state that it was appropriate to diverge from the assessment of that expenditure contained in the report nor did it state why it was appropriate to diverge from them. In those circumstances, the statement of reasons for the contested decision is contradictory, since it refers both to that report, which concludes that the expenditure in respect of sub-headings 14.2.6 and 14.2.7 is eligible in its entirety, and to Letters No 4085 and No 9600 and the annexes thereto, which contain DAFSE's tables (see paragraphs 20 and 79 above) concluding that part of that expenditure is ineligible.

118 It follows that that statement of reasons does not satisfy the requirements of Article 190 of the Treaty.

— Section 14.3 (operation and administration of courses)

119 It is apparent from the table (see paragraph 20 above) that DAFSE considered the following expenditure to be ineligible, on the grounds set out in the audit report by Oliveira Rego & Alexandre Hipólito:

— PTE 1 780 080 (sub-heading 14.3.1(a): remuneration of teaching staff);

— PTE 121 669 (sub-heading 14.3.2: deductions from remuneration);

— PTE 8 898 (sub-heading 14.3.4: meals);

— PTE 1 588 925 (sub-heading 14.3.9: rental for movable and immovable items);

— PTE 475 330 (sub-heading 14.3.11: other deliveries and services provided by third parties);

— PTE 103 400 (sub-heading 14.3.15: other operation and management costs).

120 Furthermore, it considered the following expenditure to be ineligible after applying the re-examination criteria described in the annex to the table (see paragraph 21 above):

— PTE 464 490 (sub-heading 14.3.1(b): remuneration of non-teaching technical staff);

— PTE 186 030 (sub-heading 14.3.1(c): remuneration of administrative staff);

— PTE 491 400 (sub-heading 14.3.7: budgetary control and management);

— PTE 315 900 (sub-heading 14.3.8: specialised work).

121 The Court will examine the statement of reasons in respect of each of those sub-headings.

— Section 14.3.1(a) (remuneration of teaching staff)

122 The audit report drawn up by Oliveira Rego & Alexandre Hipólito states that the eligible amount was calculated on the basis of attendance of teachers and the hourly teaching rate to be charged on the basis of Decree 20/MTSS/87, which lays down maximum limits for financial assistance in respect of remuneration of teaching staff in the operations to be carried out in 1988. It also states that only courses in respect of which attendance sheets are signed either by a teacher or, at least, by a person undergoing training, have been accounted for and held to be eligible. Furthermore, the maximum remuneration provided for in Decree 20/MTSS/87 includes VAT. Finally, the report adds that the hourly remuneration of in-house teachers charged by Tintas Robbialac was generally higher than that used by the applicant to calculate the hourly rate to be charged. A table sets out the differences in respect of each teacher (pages 17 to 19 of the report).

123 That detailed statement of reasons satisfies the requirements of Article 190 of the Treaty.

— Sub-headings 14.3.1(b) (remuneration of non-teaching technical staff) and 14.3.1(c) (remuneration of administrative staff)

124 DAFSE considered a part of the expenditure relating to those sub-headings to be ineligible, having regard to the re-examination criteria (see paragraph 21 above). Nevertheless, in the audit report drawn up by Oliveira Rego & Alexandre Hipólito, referred to in the statement of reasons for the contested decision (see paragraph 37 above), that expenditure had been considered to be eligible in its entirety.

125 The defendant did not state that it was appropriate to diverge from the assessments concerning that expenditure contained in the report nor did it state the reasons why it was appropriate to diverge from them. In those circumstances,

the statement of reasons for the contested decision is contradictory, since it refers both to that report, which concludes that the expenditure in respect of sub-headings 14.3.1(b) and 14.3.1(c) is eligible in its entirety, and to Letters No 4085 and No 9600 and the annexes thereto, which contain DAFSE's tables (see paragraphs 20 and 79 above) concluding that part of that expenditure is ineligible.

126 It follows that that statement of reasons does not satisfy the requirements of Article 190 of the Treaty.

— Sub-heading 14.3.2 (social charges)

127 The report explains that the reduction made in the context of sub-heading 14.3.1(a) involves a reduction of PTE 121 669, in accordance with the formula used by Tintas Robbialac to charge the social charges relating to in-house administrative and teaching staff.

128 That statement of reasons satisfies the requirements of Article 190 of the Treaty.

— Sub-heading 14.3.4 (meals for in-house teachers)

129 The report states that it was necessary to make an adjustment in respect of expenditure concerning teachers, since 239 days were charged by the undertaking, even though only 190 days of training took place. The amount of the

eligible expenditure in respect of that category of staff results from multiplying the number of days of training by the cost of a meal and the percentage of time in which teachers were involved in training. By contrast, the expenditure in respect of the director of the project and secretaries was accepted in full.

130 That detailed statement of reasons satisfies the requirements of Article 190 of the Treaty.

— Sub-headings 14.3.7 (budgetary control and management) and 14.3.8 (specialised work)

131 Unlike the document containing the table of eligible and ineligible expenditure (see paragraph 20 above), the audit report drawn up by Oliveira Rego & Alexandre Hipólito concludes that the expenditure in respect of sub-heading 14.3.7 is eligible. As regards sub-heading 14.3.8, the report refers to an invoice from Partex concerning 89 hours of services rendered by two experts who had assisted the undertaking in relation to legal and teaching issues, and in the analysis of the reports and the drafting of the final payment claim. The authors of the report concluded that the amount charged should be reduced by 20%, or PTE 130 104, on the ground that the expenditure relating to the preparation of the final payment claim had not been incurred during the period of the operation, and not by PTE 315 900 as proposed by DAFSE in the document containing the table of eligible and ineligible expenditure.

132 The defendant did not state that it was appropriate to diverge from the assessments concerning that expenditure contained in the report nor did it state the reasons why it was appropriate to diverge from them. In those circumstances,

the statement of reasons for the contested decision is contradictory, since it refers to letters No 4085 and No 9600 and the annexes thereto, which contain DAFSE's tables (see paragraphs 20 and 79 above) concluding that certain expenditure considered to be eligible by that report, which is also referred to in the statement of reasons, was ineligible.

133 It follows that that statement of reasons does not satisfy the requirement of Article 190 of the Treaty.

— Sub-heading 14.3.9 (rental for movable and immovable items)

134 The report notes that the cost of hiring rooms at the Novotel (PTE 8 230) was charged by the applicant under meal costs. It is clear that those costs should have been charged under sub-heading 14.3.4. However, the amounts charged under that section had reached the maximum authorised. The sum of PTE 8 230 is consequently not eligible.

135 As regards the computing equipment, the report states that a total of PTE 1 588 925 was not considered to be eligible, since the undertaking acquired that equipment at the end of the lease. The eligible amount therefore corresponds to the depreciation at the rate specified in the table attached to Decree No 737/81 of 29 August 1981 (Diário da República, Series I, No 198 of 29 August 1981, p. 2290), as amended. Since the operation lasted only seven months, the eligible amount is equivalent to the acquisition price multiplied by 7/60.

136 That detailed statement of reasons satisfies the requirements of Article 190 of the Treaty.

— Sub-heading 14.3.11 (other deliveries and services rendered by third parties)

137 It was found that the annual costs in respect of electricity, water and fuel charged by Tintas Robbialac amounted to PTE 38 642 355, even though its tax declaration mentioned only PTE 22 060 815 in that respect. The eligible amount was calculated in the light of that declaration, on the basis of the formula used by Tintas Robbialac to charge those costs. According to the report, a similar calculation was carried out in respect of telephone, fax and telex charges, in respect of which the amount charged was PTE 22 791 837 per annum, whilst the tax declaration mentioned PTE 16 738 000.

138 This detailed statement of reasons satisfies the requirements of Article 190 of the Treaty.

— Sub-heading 14.3.15 (other operational and management expenses)

139 The report states that this expenditure, relating to the preparation of coffee, is not eligible for ESF assistance, but does not, however, give reasons.

140 That statement of reasons does not, therefore, satisfy the requirements of Article 190 of the Treaty.

— Section 14.8 (meals and lodging for persons undergoing training)

141 According to the document containing the table of expenditure considered to be eligible and ineligible (see paragraph 20 above), a reduction of PTE 64 170 was

made in sub-heading 14.8.1 (cost of board outside the centre) for the reason indicated in the audit report drawn up by Oliveira Rego & Alexandre Hipólito. That report concluded that that sum was ineligible because of the absence of any documentary evidence prepared by an external source.

142 That statement of reasons satisfies the requirements of Article 190 of the Treaty.

— Section 14.9 (travel for vocational training)

143 According to the audit report drawn up by Oliveira Rego & Alexandre Hipólito, the amount charged by the undertaking had not been provided for in the application for assistance and there was no reasonable ground to diverge from the application. The costs relating to that section cannot therefore be financed under the contested assistance.

144 That statement of reasons satisfies the requirements of Article 190 of the Treaty.

(c) Grounds for the reductions made in the part of the project relating to Sapec

145 The documents referred to in paragraphs 19 to 28, 31 and 33 above, brought to the attention of the applicant before the adoption of the contested decision, contain information relating to the reasons for the reductions made.

146 The Court will examine below the statement of reasons in respect of each of the sections giving rise to a reduction.

— Section 14.2 (preparation of courses)

147 The document containing the table (see paragraph 20 above) states that, as an amount of PTE 100 000 per course had been accepted in respect of teaching material (sub-heading 14.2.1), the sum charged by the applicant was considered to be excessive having regard to the nature and extent of the operation. The sum claimed in respect of teaching material was consequently reduced by PTE 1 435 850.

148 Sub-heading 14.2.8 (other preparatory costs) was reduced by PTE 763 000, after application of the re-examination criteria. Nevertheless, in the audit report drawn up by Oliveira Rego & Alexandre Hipólito, which is referred to in the statement of reasons for the contested decision (see paragraph 37 above), the expenditure in respect of that sub-heading had been considered to be eligible in its entirety.

149 The defendant did not state that it was appropriate to diverge from the assessments concerning that expenditure contained in the report nor did it state the reasons why it was appropriate to diverge from them. In those circumstances, the statement of reasons for the contested decision is contradictory, since it refers both to that report, which concludes that the expenditure in respect of sub-heading 14.2.8 is eligible in its entirety, and to Letters No 4085 and No 9600 and the annexes thereto, which contain DAFSE's tables (see paragraphs 20 and 79 above) concluding that part of that expenditure is ineligible.

150 It follows that that statement of reason does not satisfy the requirements of Article 190 of the Treaty.

— Section 14.3 (operation and administration of courses)

151 DAFSE considered the following expenditure to be ineligible on the grounds set out in the audit report drawn up by Oliveira Rego & Alexandre Hipólito:

— PTE 5 744 (sub-heading 14.3.5: travel costs); and

— PTE 8 049 589 (sub-heading 14.3.9: rental for movable and immovable items).

152 It also considered the following expenditure to be ineligible, after applying the re-examination criteria described in the annex to the table (see paragraph 20 above):

— PTE 811 000 (sub-heading 14.3.1 (b): remuneration of non-teaching technical staff);

— PTE 541 000 (sub-heading 14.3.1 (c): remuneration of administrative staff);

— PTE 1 082 000 (sub-heading 14.3.7: budgetary control and management);

— PTE 1 104 000 (sub-heading 14.3.11: other deliveries and services rendered by third parties).

153 The Court will examine the statement of reasons in respect of each of those sub-headings.

— Sub-headings 14.3.1(b) (remuneration of non-teaching technical staff) and 14.3.1(c) (remuneration of administrative staff).

154 DAFSE considered a part of the expenditure relating to those sub-headings to be ineligible having regard to the re-examination criteria (see paragraph 21 above). Nevertheless, in the audit report drawn up by Oliveira Rego & Alexandre Hipólito, which is referred to in the statement of reasons for the contested decision (see paragraph 37 above), that expenditure had been considered to be eligible in its entirety.

155 The defendant did not state that it was appropriate to diverge from the assessments concerning that expenditure contained in the report nor did it state the reasons why it was appropriate to diverge from them. In those circumstances,

the statement of reasons for the contested decision is contradictory, since it refers both to that report, which concludes that the expenditure in respect of sub-headings 14.3.1(b) and 14.3.1(c) is eligible in its entirety, and to Letters No 4085 and No 9600 and the annexes thereto, which contain DAFSE's tables (see paragraphs 20 and 79 above) concluding that part of that expenditure is ineligible.

156 It follows that that statement of reasons does not satisfy the requirements of Article 190 of the Treaty.

— Sub-heading 14.3.5 (travel costs)

157 Point 6.3.3 of the audit report drawn up by Oliveira Rego & Alexandre Hipólito states that legal justification was not given to support meals costs amounting to PTE 5 744.

158 That statement of reasons satisfies the requirements of Article 190 of the Treaty.

— Sub-heading 14.3.7 (budgetary control and management)

159 DAFSE considered part of the expenditure in respect of this sub-heading to be ineligible having regard to the re-examination criteria (see paragraph 21 above). Nevertheless, in the audit report drawn up by Oliveira Rego & Alexandre

Hipólito, which is referred to in the statement of reasons for the contested decision (see paragraph 37 above), that expenditure had been considered to be eligible in its entirety.

160 The defendant did not state that it was appropriate to diverge from the assessments concerning that expenditure contained in the report nor did it state the reasons why it was appropriate to diverge from them. In those circumstances, the statement of reasons for the contested decision is contradictory, since it refers both to that report, which concludes that the expenditure in respect of sub-heading 14.3.7 is eligible in its entirety, and to Letters No 4085 and No 9600 and the annexes thereto, which contain DAFSE's tables (see paragraphs 20 and 79 above) concluding that part of that expenditure is ineligible

161 It follows that that statement of reasons does not satisfy the requirements of Article 190 of the Treaty.

— Sub-heading 14.3.9 (rental for movable and immovable items)

162 The costs charged under these sections relate to the hire of rooms in Lisnave (where the courses were given), equipment (a photocopier, an electric typewriter and various computers) and the rental of factory equipment.

163 Point 6.3.6 of the audit report drawn up by Oliveira Rego & Alexandre Hipólito contains a table summarising the eligible amounts, bearing in mind the depreciation rules to be applied to those goods. The application of those rules is explained as follows:

'We have noted that the photocopier and the electric typewriter had been acquired by the undertaking in the framework of a finance lease payable in 12 three monthly instalments, which corresponds to depreciation over three years. The undertaking charged four instalments in respect of one of the machines (rental of PTE 32 175) and five instalments for the other (rental of PTE 46 800), which had already been deleted from the financial costs. The depreciation rate to be applied pursuant to the table annexed to decree number 737/81 of 29 August 1981 is 14.28%. The eligible amount corresponds to 9/84 of the acquisition cost.

As regards the computers and additional informatic material, rented to Prológica Sistemas de Informaçao e Gestão SA, we have noted that the undertaking retained possession of the material at the end of the rental period and there is no proof that it had any residual value.

The transaction is in the form of a genuine long-term rental contract with delivery-up of the equipment at the end and may, by analogy, be treated as a finance lease.

The depreciation rate in this case is 20%, so 9/60 of the acquisition price is considered to be eligible.

In view of the period of use of 9 months, the table is as follows [...]'

164 The report concludes that the costs resulting from rental of the computing equipment had been charged unreasonably as the equipment had subsequently been acquired by the undertaking.

165 That detailed statement of reasons satisfies the requirements of Article 190 of the Treaty.

— Sub-heading 14.3.11 (other deliveries and services rendered by third parties)

166 DAFSE considered a part of the expenditure in respect of this sub-heading to be ineligible having regard to the re-examination criteria (see paragraph 21 above). Nevertheless, in the audit report drawn up by Oliveira Rego & Alexandre Hipólito, which is referred to in the statement of reasons for the contested decision (see paragraph 37 above), that expenditure had been considered to be eligible in its entirety.

167 The defendant did not state that it was appropriate to diverge from the assessments concerning that expenditure contained in the report nor why it was appropriate to do so. In those circumstances, the statement of reasons for the

contested decision is contradictory, since it refers both to that report, which concludes that the expenditure in respect of sub-heading 14.3.11 is eligible in its entirety, and to Letters No 4085 and No 9600 and the annexes thereto, which contain DAFSE's tables (see paragraphs 20 and 79 above) concluding that part of that expenditure is ineligible.

168 It follows that that statement of reasons does not satisfy the requirements of Article 190 of the Treaty.

— Section 14.8 (meals and lodging for persons undergoing training)

169 Finally, an amount of PTE 891 502 requested in respect of sub-heading 14.8.4 (expenditure for meals taken outside the centre) was considered to be ineligible for the reasons set out in the audit report drawn up by Oliveira Rego & Alexandre Hipólito.

170 Point 6.5 of that report explains that the expenditure incurred in respect of meals outside the centre for persons undergoing training was considered to be ineligible because it had been justified only by internal documents, even though that expenditure must be substantiated by documentary evidence from an external source. The report consequently calculates the eligible expenditure for this section to be PTE 2 280 404.

171 That statement of reasons satisfies the requirements of Article 190 of the Treaty.

172 It follows from the forgoing that the second plea must be upheld to the extent that it seeks the annulment of the contested decision in so far as it requires a reduction under sub-headings 14.2.6, 14.2.7, 14.3.1 (b), 14.3.1 (c), 14.3.7, 14.3.8 and 14.3.15 of the part of the project relating to Tintas Robbialac and sub-headings 14.2.8, 14.3.1 (b), 14.3.1 (c), 14.3.7 and 14.3.11 of the part of the project relating to Sapec of the amounts claimed by the applicant in its final payment claim.

C — *The third plea, based on an abuse of rights and breach of the rights of the defence, of general principles of good faith, protection of legitimate expectations and protection of acquired rights*

Arguments of the parties

173 According to the applicant, although the Community rules do not provide for any time-limit for the adoption of the Commission's decision on a final payment claim, it is nonetheless required to adopt it within a reasonable period.

174 In the present case, the amount of time which lapsed between submission of the final payment claim and adoption of the contested decision (six years) constitutes an abuse of rights and breaches the principle of good faith.

175 Furthermore, after certification of the facts and accounts by the Member State, the beneficiary was entitled to assume that the advances paid could be considered to be acquired. With the passage of time, that legitimate expectation is tacitly transformed into a subjective right in the event that the beneficiary is not informed of the existence of any suspicions of irregularity. Delaying adoption of a

decision on the final payment claim for such a long time, in the course of which the beneficiary's expectation had been transformed into a subjective right, infringes the beneficiary's rights of defence, and general principles of procedural law, namely the principles of good faith, legitimate expectations and protection of acquired rights. Furthermore, such a time lapse seriously prejudices the beneficiary's rights of defence, since it is extremely difficult to provide proof of facts dating back eight years.

176 The defendant disputes the applicant's claims. First, neither Article 6(1) nor Article 7 of Regulation No 2950/83 requires the Commission to exercise its powers within a specific period. Second, since the applicant did not comply with the conditions laid down in the approval decision, it cannot reasonably rely on the principles of good faith, protection of legitimate expectations and protection of acquired rights. Third, the applicant has not shown how its rights of defence were prejudiced.

Findings of the Court

1. The reasonable nature of the duration of the procedure

177 It is settled law that the question whether the duration of an administrative proceeding is reasonable must be determined in relation to the particular circumstance of each case and, in particular, its context, the various procedural stages followed, the complexity of the case and its importance for the various parties involved (*Mediocurso* v *Commission*, cited at paragraph 63 above, paragraph 61 and the case-law cited therein).

178 That is the approach to be borne in mind when assessing the reasonableness of the time which elapsed between the lodging of the final payment claim by DAFSE on 30 October 1989 and the adoption of the contested decision on 14 August 1996. In the course of that assessment, it is necessary to take account of the various stages in the decision-making procedure in this case.

179 On 12 February 1990, DAFSE amended the final payment claim sent to the Commission on 30 October 1989.

180 On 24 June 1991 DAFSE considered it necessary to gather additional information concerning the file in question and, in respect of Tintas Robbialac and Sapec, to commission the accounting firm Oliveira Rego & Alexandre Hipólito to carry out a factual and accounting audit.

181 There is nothing in the file to suggest that any administrative measures were carried out between 12 February 1990 and 24 June 1991. Nevertheless, the decision to commission a firm of auditors to carry out a factual and accounting audit of the operations carried out by two companies in the context of the assistance at issue could only have been taken after doubts had arisen in the minds of officials of DAFSE as to the validity of certain expenditure. Such doubts could have arisen only after re-examination of the file in question. In view of the complexity of that file, the number of persons involved in carrying out the operations and the necessary contacts between the national authorities and the services of the Commission, this time period does not seem to be excessive.

182 The defendant has claimed, without contradiction by the applicant, that in the context of the re-examination of the final payment claim, contacts took place between DAFSE and Tintas Robbialac, Sapec and Pirites Alentejanas between 1992 and 1994, in particular in the context of meetings of the working group responsible for the previous fund. That working group defined the re-

examination criteria in respect of the 1988 files in which the applicant had been involved, which were subsequently applied by the defendant in consultation with the Portuguese authorities. DAFSE obtained various documents from the undertakings involved in carrying out the operations, which had to be examined and assessed. In view of the complexity of the file, that period of three years, although undeniably long, did not exceed what was reasonable.

183 From 30 January 1995, DAFSE notified draft decisions to the undertakings, which were placed in a position to submit their comments.

184 Following those comments, on 30 March 1995 DAFSE notified an amended factual and accounting certification to the defendant (see paragraph 30 above).

185 On 19 June 1995 DAFSE informed the applicant of the amount of expenditure which it had certified after re-examination of the file, without prejudice, however, to a final Commission decision on the final payment claim (see paragraph 31 above).

186 By letters No 2567 and No 2569 of 27 February and No 2837 of 1 March 1996, DAFSE informed the applicant that the Commission had approved the certification of the final payment claim for the amount stated in the letters of 19 June 1995.

187 Finally, in view of the judgment in *Commission* v *Branco*, cited at paragraph 35 above, the defendant withdrew an initial decision and replaced it by the contested decision.

188 It follows from this series of events that each of the procedural steps leading up to the adoption of the contested decision took place within a reasonable time having regard to the circumstances which could legitimately be taken into account by the national and Community bodies responsible for management of the ESF in the context of examination of final payment claims.

189 In those circumstances the claim based on infringement of the principles of reasonable time-limits, good faith and abuse of rights must be rejected.

2. The claims based on infringement of the principles of protection of legitimate expectations, legal certainty and protection of acquired rights.

190 In a case in which the recipient of ESF assistance has not implemented the training programme in accordance with the conditions to which the grant of assistance was made subject, the recipient cannot rely on the principles of protection of legitimate expectations and acquired rights with a view to securing final payment of the full amount of assistance initially granted (judgment in *Branco* v *Commission*, cited at paragraph 53 above, paragraphs 97 and 105, and the case-law referred to therein).

191 Since the principle of protection of legitimate expectations is the corollary of the principle of legal certainty, which requires that legal rules be clear and precise and aims to ensure that situations and legal relationships governed by Community law remain foreseeable (Case C-63/93 *Duff and Others* v *Minister for Agriculture and Food and Attorney General* [1996] ECR I-569, paragraph 20), the same conclusion must be drawn as regards the alleged infringement of the principle of legal certainty.

192 According to the contested decision, the conditions in the approval decision were not complied with in respect of certain expenditure. The applicant has not demonstrated that the defendant's assessment which led it to that conclusion was erroneous. In the present case, it must therefore be considered that the applicant failed to comply with the conditions governing the training programmes in question.

193 In any event, the applicant could not legitimately have expected that it would definitely obtain the full amount of the financial assistance, or even just the amount of the advances paid. First, it is apparent from paragraph 18 that, since 1991, the steps taken by DAFSE suggested that it had not finished examining the file and that there were doubts as to the correctness of the factual and accounting certification of 30 October 1989. Second, since it is the Commission which adopts the final decision in accordance with Article 6(1) of Regulation No 2950/83 (Case C-32/95 P *Commission* v *Lisrestal and Others* [1996] ECR I-5373, paragraph 29), the applicant could not presume that the certification of 30 October 1989 would entitle it to receive the amount claimed in the final payment claim which was the subject of the aforementioned certification.

194 It follows that the plea in law alleging infringement of the principles of protection of legitimate expectations, legal certainty and protection of acquired rights must be rejected.

3. The alleged infringement of the applicant's rights of the defence

195 The applicant merely states in a general manner that the time which has elapsed since the period during which the programme was carried out jeopardises its chances of proving that the allegations against it are unfounded.

196 The system of grants developed in the relevant rules is based, *inter alia*, on compliance by the beneficiary with a series of conditions of entitlement to assistance. It is clear from those rules, in particular Article 7(1) of Regulation No 2950/83, that both the national authorities and the Commission are entitled to check that the beneficiary has complied with those conditions. It follows that, in order to ensure that the assistance is paid, beneficiaries are required to keep the supporting documents demonstrating that they have fulfilled those conditions, at least until the Commission adopts a decision on the final payment claim.

197 It follows that the plea in law alleging infringement of the rights of the defence must be rejected.

198 It follows from the foregoing that the third plea must be rejected.

D — *The fourth plea, based on misuse of powers*

Arguments of the parties

199 In the alternative, the applicant claims that the defendant misused its powers by substituting itself for the Portuguese State in reducing the assistance in question and thus recognising the — unlawful — action by DAFSE after the certification of the facts and accounts of 30 October 1989. By accusing the beneficiaries of ESF funding of having misused it, DAFSE was motivated by the desire to reduce the assistance previously approved at any cost in order to improve the social

security budget out of which the national contributions granted in the framework of ESF assistance are granted. By approving the unlawful initiatives taken by DAFSE, the defendant exceeded its powers under Article 7 of Regulation No 2950/83 and misused its powers.

200 That misuse of powers is apparent from:

— the fact that the amount of the reduction decided on by the defendant corresponds to the sums refused in the DAFSE certification decisions of 19 June 1995 (see paragraph 31 above);

— the re-examination of the files in question in the light of new criteria;

— public interest in the situation of public finances in 1995, an election year;

— the documents attached to the defence, in particular those concerning the work of the working group of the previous fund concerning the definition of a method for reviewing the files relating to ESF funding, in which the applicant had been involved (documents 7 to 9 and 17).

201 The defendant contests those allegations and points out that it merely confirmed the certification by the Portuguese State, in accordance with the relevant Community legislation, in particular Article 6 of Regulation No 2950/83.

Findings of the Court

202 A measure is a misuse of powers only if it appears, on the basis of objective, relevant and consistent factors, to have been taken with the exclusive purpose, or at least the main purpose, of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (see in particular the judgment in *Proderec* v *Commission*, cited at paragraph 54 above, paragraph 118).

203 The factors relied on by the applicant to prove such a misuse of powers are not sufficient to reverse the presumption of lawfulness enjoyed, in principle, by acts of the Community institutions.

204 As the Court held in *Proderec* v *Commission* (cited at paragraph 54 above, paragraph 69), the act of certification by the Member State pursuant to Article 5(4) of Regulation No 2950/83 does not absolve it from its other obligations under the relevant Community legislation.

205 Furthermore, the criteria in the light of which the files in question were re-examined are those of 'reasonableness of the expenditure by the beneficiary', and 'sound financial management of the assistance'. Application of those criteria,

which consists simply of verifying whether the expenditure claimed by a beneficiary and which it incurred take appropriate account of the services in respect of which it was incurred, fall squarely within the context of the check which the Member State is required to carry out over and above mere factual and accounting certification, in accordance with Article 7 of Decision 83/673, where it suspects the existence of irregularities, fraudulent or otherwise (judgment in *Proderec* v *Commission*, cited at paragraph 54 above, paragraph 88).

206 Since, in the present case, the Portuguese State suspected irregularities in the ESF funding files covered by the certification of the facts and accounts of 30 October 1989, re-examined those files and changed its certification of the facts and accounts accordingly and the defendant confirmed that certification as amended following the re-examination, the defendant was entitled to reduce the assistance accordingly.

207 Finally, Portuguese public interest in the state of the country's finances is not in any way indicative of a misuse of powers.

208 To conclude, the arguments put forward by the applicant are insufficient to establish the existence of a misuse of powers and the fourth plea must therefore be rejected.

209 It follows from the foregoing that the application must be upheld to the extent that it seeks the annulment of the contested decision in so far as it reduced the amounts claimed by the applicant in its final payment claim under sub-headings 14.2.6, 14.2.7, 14.3.1(b), 14.3.1(c), 14.3.7, 14.3.8 and 14.3.15 of the part of the project relating to Tintas Robbialac and sub-headings 14.2.8, 14.3.1(b), 14.3.1(c), 14.3.7 and 14.3.11 of the part of the project relating to Sapec.

Costs

210 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.

211 In the present case, the application for annulment, which requested that the Commission be ordered to bear the costs of the present proceedings, was held to be founded in part.

212 Each party must therefore be ordered to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. **Annuls Commission Decision C(96) 1184 of 14 August 1996 reducing the European Social Fund assistance granted in the context of Project No 880412/P3 in so far as it reduces the amounts claimed by the applicant in the final payment claim under sub-headings 14.2.6, 14.2.7, 14.3.1(b),**

14.3.1(c), 14.3.7, 14.3.8 and 14.3.15 of the part of the project relating to Tintas Robbialac SA and sub-headings 14.2.8, 14.3.1(b), 14.3.1(c), 14.3.7 and 14.3.11 of the part of the project relating to Sapec — Chemical Products and Fertilisers of Portugal SA;

2. **Dismisses the remainder of the application;**

3. **Orders each party to bear its own costs.**

Jaeger Lenaerts Azizi

Delivered in open court in Luxembourg on 16 September 1999.

H. Jung M. Jaeger

Registrar President

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