JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
7 March 1995 *

In Joined Cases T-432/93, T-433/93 and T-434/93,

Socurte — Sociedade de Curtumes a Sul do Tejo, Ld^a^,

Quavi — Revestimentos de Cortiça, Ld^a^,

and

Stec — Sociedade Transformadora di Carnes, Ld^a^,

companies governed by Portuguese law, established at Pau Queimado, Portugal, represented by Carlos Botelho Moniz and António Magalhães Cardoso, of the Lisbon Bar, with an address for service in Luxembourg at the Chambers of Guy Harles, 8-10 Rue Mathias Hardt,

applicants,

v

Commission of the European Communities, represented by Nicholas Khan and Francisco de Sousa Fialho, of its Legal Service, acting as Agents, with an address

* Language of the case: Portuguese.

for service in Luxembourg at the office of Georgios Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for a declaration that the decision by which the Commission reduced the amount of the European Social Fund's contribution to Project 860012/P1, relating to vocational training carried out by the applicants in 1986, was legally non-existent prior to 10 July 1991 and is void since that date and for an order that the Commission pay the final balance of the Community contribution claimed under Project 860012/P1,

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

composed of: J. L. Cruz Vilaça, President, H. Kirschner and A. Kalogeropoulos, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 30 November 1994,

gives the following

Judgment

Legal background, facts and procedure

1 Under Articles 1(2)(a) and 3(1) of Council Decision 83/516/EEC of 17 October 1983 on the tasks of the European Social Fund (OJ 1983 L 289, p. 38), the European Social Fund (hereinafter 'the Fund') may participate in the financing of vocational training and guidance operations carried out within the framework of Member States' labour-market policies.

2 Under Article 5(1) of Council Regulation (EEC) No 2950/83 of 17 October 1983 on the implementation of Decision 83/516/EEC (OJ 1983 L 289, p. 1), approval by the Fund of an application submitted under Article 3(1) of Decision 83/516 is to be followed by the payment of an advance of 50% of the assistance approved on the date on which the operations are scheduled to begin.

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

4 During 1986, the Departamento para os Assuntos do Fundo Social Europeu (Department for European Social Fund Affairs, hereinafter 'DAFSE'), which comes under the authority of the Portuguese Ministry of Employment and Social Security, submitted an application for Fund assistance for a series of vocational training projects put forward by a number of undertakings, including the applicants,

Socurte — Sociedade de Curtumes a Sul do Tejo, Ld[a], Quavi — Revestimentos de Cortiça, Ld[a], and Stec — Sociedade Transformadora di Carnes, Ld[a], which carry on business in the fields of tannery (Socurte), the production and marketing of pressed and decorative cork items and the preparation and marketing of cork slabs (Quavi) and the production and marketing of pigmeat (Stec). Those various projects were brought together in the same file, numbered 860012/P1, which was approved by Commission Decision C(86)0736 of 7 May 1986, under which the Fund's financial participation in the project was to be ESC 874 905 836, out of a total of ESC 1 905 322 299.

5 On 16 June 1986, DAFSE informed the undertakings concerned, including the applicants, of the Commission's decision of approval and specified the amount of Fund assistance for each training project put forward (ESC 39 954 074 for Socurte, ESC 61 955 645 for Quavi and ESC 202 073 029 for Stec). DAFSE further informed the undertakings of the amounts which the Portuguese authorities had agreed to contribute to those training operations (ESC 29 416 970 for Socurte, ESC 50 690 990 for Quavi and ESC 165 332 478 for Stec).

6 On that basis, pursuant to Article 5(1) of Regulation No 2950/83, the first two applicants received an advance of 50% of the Fund assistance approved whilst the third, due to a delay in starting the training operation, received two advances. Each of the applicants also received a number of payments from the national authorities as part of the contributions out of Portuguese public funds.

7 After completion of the vocational training operations, the applicants submitted first the final report provided for in Article 5(4) of Regulation No 2950/83, showing that the cost of those operations had been lower than the approved budget by ESC 14 962 107 (20.6%) for Socurte, by ESC 7 864 023 (6.3%) for Quavi and by

ESC 130 377 456 (45.2%) for Stec, and then a final payment claim for the balance of the Fund assistance.

8 Pending the Commission's decision on that final payment claim, DAFSE made further payments to the applicants in 1988 and 1990, as part of both the Portuguese national contribution and the Fund assistance.

9 On 18 March 1991, DAFSE sent the applicants a letter informing them that the Commission of the European Communities had 'approved the final payment claim' for Project 860012/P1 and that 'under the abovementioned decision of the Commission', the Fund participation in the operations carried out was ESC 17 977 037 for Socurte, ESC 30 977 827 for Quavi and ESC 49 500 000 for Stec. DAFSE considered that the contributions from national funds should be fixed accordingly at ESC 14 708 485 for Socurte, ESC 24 345 495 for Quavi and ESC 40 500 000 for Stec. Taking account of the amounts already paid, the applicants were therefore requested to pay back to DAFSE the amounts of ESC 17 105 465 (Socurte), ESC 22 160 566 (Quavi) and ESC 46 354 557 (Stec). Finally, DAFSE informed the applicants that a copy of that letter, together with a copy of the Commission's decision, had been sent to the undertaking Area Critica, in whose name Project 860012/P1 was registered.

10 By letter of 15 April 1991, the applicants' lawyer asked DAFSE to inform him of the reasons for the request for the repayment of the said sums and to provide him with a copy of the Commission decision referred to in DAFSE's letter of 18 March 1991.

11 On 24 April 1991, DAFSE sent the applicants a letter informing them that the sums to be paid back were in fact lower than those given in the letter of 18 March 1991

and came to ESC 12 904 116 for Socurte, ESC 11 395 613 for Quavi and ESC 34 969 210 for Stec. DAFSE explained that the reduction in the amounts to be paid back was due to the fact that it had initially interpreted the Commission's decision as meaning that the Fund had paid out ESC 379 373 605 instead of the ESC 437 452 918 actually granted.

12 The Commission decision referred to in DAFSE's letter of 24 April 1991, which was enclosed with that letter and again sent to the applicants by DAFSE on 26 April 1991, was in the form of a letter from the Commission to DAFSE, dated 14 February 1991, the tenor of which was as follows:

'Re: Project 860012P1 — "Area Critica"

In reply to your letter No 9055 of 24 April 1989, we would inform you that the final claim for payment in respect of the abovementioned project file has been examined in due course by the Commission and that as a result it has been decided that the total Fund assistance will be ESC 437 452 918, the amount already paid as an initial advance, so that no transfer of any balance has been made.

We would further inform you that the following factors were taken into account when reaching that conclusion:

— the presence of a number of service contracts, and

— the inspections carried out on both the undertaking in whose name the project file was registered and the beneficiaries.'

13 By letters sent to DAFSE on 14 May 1991 and to the Commission on 17 May 1991, the applicants asked to be sent certified copies of the Commission's original decision granting Fund assistance to the training operations in Project 860012/P1 and of its decision relating to their final payment claim for the balance of the Fund's contribution to their training operations, referred to in DAFSE's letters of 18 March and 24 April 1991.

14 DAFSE informed the applicants orally that it did not have the requested documents in its possession then, on 5 June 1991, sent them a copy of a letter which it had sent to the Fund, requesting a copy of the Commission's decision on Project 8560012/P1.

15 By letter of 20 June 1991, the Commission's Directorate-General for Employment, Industrial Relations and Social Affairs (DG V) informed the applicants that they should apply to DAFSE for the documents requested.

16 On 26 June 1991, the applicants' lawyer consulted the administrative file on Project 860012/P1 in DAFSE's possession.

17 By letter of 30 July 1991, DAFSE sent the applicants 'a certified copy of the notification ... of the Commission's decision of approval' for Project 860012/P1.

18 That document took the form of a letter from the Commission, signed by a Head of Unit, dated 10 July 1991 and addressed to DAFSE, informing it that, with regard to the final payment claims relating to Project 860012/P1, the Fund's staff had concluded, from a series of relevant facts, that certain expenditure, amounting to ESC 423 853 516, was not eligible.

19 First, the information obtained during an inspection visit made to Stec during the week of 26 to 29 July 1988 showed that a significant part of the expenditure under service contracts with third parties was insufficiently substantiated, either as regards vouchers for the expenditure (there were no invoices or receipts in respect of many of those contracts) or as regards the nature thereof (the same services had been covered by repeated contracts).

20 Secondly, the raw materials used in the vocational training programmes, calculated on the basis of 12% of the value of the total consumption of raw materials in Stec's normal production process, were entered as a pure loss whereas it was inconceivable, in the context of training in production techniques, that there should be no corresponding income.

21 In that letter, the Commission went on to state that, because of that lack of transparency and substantiation with regard to the most significant expenditure, it had decided to carry out a reckonable-cost analysis on the basis of the national criteria drawn up by the Portuguese authorities after 1986. That analysis gave an eligible amount equal to 56% of the total expenditure submitted.

22 The letter further stated that, in accordance with Article 7(2) of Regulation No 2950/83, that conclusion was applied proportionally to the whole of the expenditure claimed under the project file and that there would therefore be a claim for the repayment of ESC 71 454 000 in respect of the Fund's participation.

23 It added that the Commission had already analysed the following documents, attached to the final payment claim:

— the copies of the service contracts between the undertaking Partex and each of the undertakings included in the project file;

— the reports on the Community inspection visits carried out on Area Critica, Stec (week of 27 October to 3 November 1986) and Granicentro (week of 28 September to 2 October 1987);

— the final quantitative assessment report on the operations of each of the undertakings included in the project file.

24 Finally, the Commission stated in its letter that, at a meeting held at DAFSE to present and discuss the final conclusions relating to the file, the national officials responsible had presented their observations, in which they had referred to 'the difficulties of the start-up year for Fund-aided operations'.

25 In conclusion, the Commission stated that, since the procedure laid down in Article 6(1) of Regulation No 2950/83 had been respected, it had been decided that the Fund assistance would amount to ESC 437 452 918, the sum which had already been paid as an initial advance.

26 Those were the circumstances in which the applicants brought the present actions, by applications lodged at the Registry of the Court of Justice on 10 October 1991, where they were registered, respectively, as Cases C-252/91, C-253/91 and C-254/91.

27 By document lodged on 13 November 1991, the Commission raised an objection of inadmissibility under Article 91 et seq. of the Rules of Procedure of the Court of Justice, on which the applicants submitted observations on 16 January 1992.

28 On 9 November 1992, the Court decided to join the objection of inadmissibility to the merits.

29 By order of the President of the Court of Justice of 12 January 1993, the cases were joined for the purposes of the written procedure, the oral procedure and the judgment.

30 The written procedure followed a normal course, ending with the lodging of the rejoinder on 2 July 1993.

31 By order of 27 September 1993, pursuant to Article 4 of Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 amending Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1993 L 144, p. 21), the Court of Justice transferred the cases to the Court of First Instance, where they were registered as Joined Cases T-432/93, T-433/93 and T-434/93.

32 By decision of the Court of First Instance of 7 July 1994, after hearing the views of the parties, the case was assigned to the First Chamber sitting as a chamber of three judges.

33 Upon hearing the report of the Judge-Rapporteur, the Court (First Chamber) decided to open the oral procedure and to put four written questions to the Commission and two written questions to DAFSE. At the hearing on 30 November 1994, the parties presented oral argument and answered the questions put orally by the Court.

Forms of order sought

34 The applicants claim that the Court should:

as a procedural measure

(i) order the production of the administrative files relating to the applicants (Project 860012/P1-FSE) held by the Commission and DAFSE;

with regard to the actions brought

(ii) declare the actions admissible;

(iii) declare the Commission decision referred to in DAFSE's letters of 18 March and 24 April 1991 legally non-existent;

(iv) annul the measure contained in the letter of DG V of the Commission of 10 July 1991;

(v) order the defendant to pay the final balance; and

(vi) order the defendant to pay the costs.

35 The Commission contends that the Court should:

(i) declare the actions inadmissible;

(ii) dismiss the actions as unfounded;

(iii) in the alternative, declare inadmissible the application for an order against the Commission to pay the final balance; and

(iv) order the applicants to pay the costs.

Admissibility of the claims for annulment

Summary of the parties' arguments

36 The Commission submits, first, that the actions, in so far as they are brought against the decision notified to the applicants by DAFSE's letters of 18 March and 24 April 1991, are inadmissible because the applications were lodged on 10 October 1991, after the expiry of the time-limit laid down in the third paragraph of Article 173 of the EEC Treaty (Case 352/87 *Farzoo and Kortmann* v *Commission* [1988] ECR 2281).

37 When those letters were received, on 21 March and 30 April 1991 respectively, the applicants were informed not only of the decision limiting the total Fund contribution under Project 860012/P1 to ESC 437 452 918 and refusing them the right to payment of any further balance but also of the reasons for that decision.

38 By 30 April 1991 at the latest, therefore, the applicants were aware of the Commission's decision which, although it might possibly have been vitiated by various defects, was perfectly clear and understandable in its purport, so that an action could be brought for its annulment.

39 Secondly, the Commission maintains that the actions are also inadmissible in so far as they are brought against the Commission's letter of 10 July 1991, of which the applicants were informed by DAFSE's letter of 30 July 1991.

40 That letter, which merely specified the grounds on which the amount of the Community's contribution to Project 860012/P1 was fixed and did not modify the amount already fixed, contained no decision concerning the applicants' final payment claim against which an action could be brought.

41 Furthermore, even if the letter of 10 July 1991 could be deemed to contain a decision, such a decision would merely have confirmed the Commission's previous decision reducing the Community's contribution to the project, which had been notified to DAFSE by the Commission's letter of 14 February 1991 and brought to the applicants' knowledge by DAFSE's letters of 18 March and 24 April 1991. In the Commission's submission, that decision has now become final *vis-à-vis* the applicants since it was not challenged in proceedings brought within the prescribed period; the present action is thus brought against a purely confirmatory decision

and is therefore inadmissible (Joined Cases 193/87 and 194/87 *Maurissen and Others v Court of Auditors [1989] ECR 1045, paragraph 26; Case C-12/90 Infortec v Commission [1990] ECR I-4265).*

42 The applicants, who maintain that the decisions challenged in their applications, although addressed to DAFSE, are of direct and individual concern to them (Case C-304/89 *Oliveira* v *Commission* [1991] ECR I-2283), stress that what they are seeking is not the annulment of the decision to which DAFSE's letters of 18 March and 24 April 1991 refer but a declaration that it is non-existent and submit that there is no time-limit for bringing an action of that kind before the Community Courts.

43 In that regard, the applicants point out that DAFSE's letters of 18 March and 24 April 1991 not only contained no copy of any measure which might be regarded as a decision of the Commission but also held no information from which the tenor of the decision to which they referred might be ascertained with any degree of accuracy. Since those communications from DAFSE were neither decisions of the Commission within the meaning of the case-law (Joined Cases 23/63, 24/63 and 52/63 *Usines Henricot* v *High Authority* [1963] ECR 217 and Case 54/65 *Forges de Châtillon* v *High Authority* [1966] ECR 185) nor did they contain sufficient details to identify such a decision and ascertain its precise content, they did not enable the applicants to exercise their right to bring proceedings (Case 76/79 *Könecke* v *Commission* [1980] ECR 665). The period within which an application for annulment must be brought could not, therefore, have started to run against the applicants on 30 April 1991, the date on which DAFSE's second letter, dated 24 April 1991, came to their attention.

44 The applicants therefore consider that only the Commission's letter of 10 July 1991, communicated to them on 30 July 1991, is to be regarded in law as a decision;

it was only in that letter that the Commission explained that it considered expenditure of ESC 423 853 516 to be ineligible and gave its reasons for that conclusion (points 1 and 2), referring to the inspection visit to Stec and the results thereof, to the meeting with the national authorities and to the observations submitted by those authorities (point 3), finally indicating that it had decided therefore to set the amount of Fund assistance at ESC 437 452 918 (point 4). The applicants conclude that the letter of 10 July 1991, having the nature of a decision, could not be confirmatory since a confirmatory act would presuppose the existence of a previous decision and there was no such decision in the present case.

45 The present applications, lodged on 10 October 1991, were therefore lodged in time, in so far as the actions are brought against the only measure against which proceedings could be instituted in the present case.

Findings of the Court

46 The Court finds that, following DAFSE's letters to them of 18 March and 24 April 1991, the applicants were, when they received the second of those letters on 30 April 1991, in possession of the Commission's letter of 14 February 1991 and thus aware both of the existence of a decision of the Commission reducing the Fund assistance and refusing to pay any further balance and of the repercussions which that decision would have on them, as indicated by the competent national body in those letters of 18 March and 24 April 1991.

47 According to the case-law, the existence in law of a decision is to be determined having regard to its tenor and its effects (Case T-36/92 *SFEI and Others* v *Com-*

mission [1992] ECR II-2479, paragraph 23; Case C-39/93 P *SFEI* v *Commission* [1994] ECR I-2681, paragraph 26 et seq.; Case T-3/93 *Air France* v *Commission* [1994] ECR II-121, paragraphs 57 to 59); moreover, in the specific field of Fund operations, decisions reducing Fund assistance may be notified by an ordinary letter from the Commission's DG V (order of 20 June 1994 in Case T-446/93 *Frinil* v *Commission*, not published in the ECR, paragraphs 29 and 32). Consequently, the fact that the decision in issue was formally embodied only in the documents by which it was notified (the letter of 14 February 1991 sent by a Head of Unit in DG V to DAFSE and the letter of 24 April 1991 from DAFSE to the applicants, to which the letter of 14 February 1991 was attached) does not call into question its existence in law. In those circumstances the applicants, whose legal position was affected inasmuch as, on 30 April 1991, they were refused the right to final payment of the balance of the Fund's financial contribution to their projects and required to pay back excess amounts received as part of that contribution, could not challenge the actual existence of a decision producing such effects but only its legality, with a view to removing those effects.

48 It must therefore be determined whether the applicants were in a position to bring proceedings effectively against the Commission's decision as it was brought to their knowledge on 30 April 1991.

49 In relation to the third paragraph of Article 173 of the Treaty, the Court of Justice has held (Case 236/86 *Dillinger Hüttenwerke* v *Commission* [1988] ECR 3761, paragraph 14; see also *Könecke*, cited above, Case 59/84 *Tezi Textiel* v *Commission* [1986] ECR 887 and Case T-465/93 *Murgia Messapica* v *Commission* [1994] ECR II-361, paragraph 29) that, failing publication or notification, it is for a party who has knowledge of a decision concerning it to request the whole text thereof within a reasonable period but, subject thereto, the period for bringing an action can begin

to run only from the moment when the third party concerned acquires precise knowledge of the content of the decision in question and of the reasons on which it is based in such a way as to enable it to exercise its right of action.

50 In the present case, it is undisputed that although the letter of 14 February 1991 contained information from which the existence of a decision and an abstract and general statement of reasons ('presence of a number of service contracts' — 'inspections carried out') could be inferred, it did not state the precise reasons for which that decision had been adopted as regards the applicants. On receiving DAFSE's letter of 24 April 1991 on 30 April 1991, the applicants requested, by letters of 14 May 1991 to DAFSE and of 17 May 1991 to the Commission, to be told the precise reasons for the decision refusing to pay the balance. They were not informed of those reasons until 30 July 1991, when DAFSE communicated the Commission's letter of 10 July 1991 to them. That letter gave a detailed account of the inspections carried out by the Fund's staff, mentioning in particular that they had begun with Stec, where they had revealed that certain service contracts were insufficiently substantiated and that losses had been overvalued, which had led to checks being extended to all the expenditure in the project file in question. Finally, that letter concluded that there was a sum of the order of ESC 71 454 000 of the Fund's participation to be paid back. It was therefore on 30 July 1991, from the letter of 10 July 1991, that the applicants acquired sufficient knowledge of the reasons for the Commission's decision to refuse payment of the balance and from that date that they could effectively bring proceedings against that decision.

51 It must therefore be held that the application for the annulment of the Commission's decision, as evidenced in the letter of 10 July 1991, was lodged within two months from the date on which that decision came to the applicants' knowledge and the action must thus be declared admissible.

Admissibility of the claim for an order against the Commission to pay the final balance

Summary of the parties' arguments

52 The Commission submits that the action is inadmissible in so far as it seeks an order to pay the final balance of the Fund's financial contribution. An order to pay a certain amount in annulment proceedings is justified only as compensation for loss or damage. Since the applicants have not claimed such compensation, the form of order sought implies the Court's usurping the Commission's role and ordering it to pay the balance, which falls outside the scope of its jurisdiction under Article 173 of the Treaty, the application of which may lead only to the annulment of a decision.

53 The applicants defer to the Court's judgment as regards the scope of its jurisdiction to grant their claim for an order against the Commission to pay the final balance of the Fund's assistance for the project in issue.

Findings of the Court

54 It has consistently been held that the Community judicature is not entitled, when exercising judicial review of legality, to issue directions to the institutions or to assume the role assigned to them (see Case T-19/90 *Von Hoessle* v *Court of Auditors* [1991] ECR II-615, paragraph 30) and that it is for the administration concerned to take the measures necessary to comply with a judgment delivered in an action for annulment (see Case 53/85 *AKZO Chemie* v *Commission* [1986] ECR 1965 and Case T-43/92 *Dunlop* v *Commission* [1994] ECR II-441, paragraph 181).

55 The applicants' claim for an order against the Commission to pay the final balance which they allege was unlawfully refused to them by the contested decision must therefore be dismissed as inadmissible.

Substance

56 The applicants put forward four pleas in law in support of their allegation that the Commission's decision, as contained in the letter of 10 July 1991, is unlawful: breach of the principles of legality and of the protection of legitimate expectations, breach of an essential procedural requirement and of the procedural rules laid down in Articles 6(1) and 7(2) of Regulation No 2950/83 and breach of the rules relating to the management of the Fund, in particular Articles 1 and 5(4) of Regulation No 2950/83.

57 The Court considers it appropriate here to examine first the plea alleging a breach of an essential procedural requirement, namely a failure to observe the procedural rules contained in Regulation No 2950/83 and in particular in Article 6(1) thereof.

Breach of the procedural rules provided for in Article 6(1) of Regulation No 2950/83

Summary of the parties' arguments

58 The applicants maintain that the contested decision, as contained in the letter of 10 July 1991, should be annulled on the ground of a breach of an essential procedural requirement, consisting of a failure to observe the procedure laid down in Article

6(1) of Regulation No 2950/83, under which the Commission, before deciding to suspend, reduce or withdraw Fund aid, must give the relevant Member State the opportunity to comment.

59 They stress that it is important to distinguish between the comments to be submitted by the national authorities of the relevant Member State on that specific point and any other remarks which the same authorities may make in the context of other contacts with the Commission during the course of inspections carried out by the Commission. They state that Project File 860012/P1, as held in DAFSE's records, does not contain a single document relating to any request from the Commission to DAFSE to comment on the reasons given to justify the reduction of the Fund assistance for the project in question or to any meeting between Commission staff and the national authorities, even though the letter of 10 July 1991 refers to such a meeting.

60 Finally, the applicants emphasize that their plea alleging this procedural defect is admissible under the relevant case-law (Case C-291/89 *Interhotel* v *Commission* [1991] ECR I-2257 and *Oliveira*, cited above).

61 The Commission stresses that Article 6(1) of Regulation No 2950/83 does not lay down any specific formality for hearing the Member State concerned, but merely the obligation to give it an opportunity to comment. In the present case, although DAFSE's files do not contain any record of the meetings held in June 1988 — a fact for which the Commission cannot be held responsible — the Commission gave the relevant Member State an opportunity to comment on several occasions, in particular during the inspection visits, when Commission staff were always accompanied by DAFSE officials, during the numerous meetings held in Lisbon to discuss

the conclusions to be drawn from those inspections and, finally, during top-level contacts between the Vice-President of the Commission and the Portuguese Minister for Employment and Social Security. The defendant refers to the inspection visits carried out in Lisbon from 27 October to 3 November 1986, from 28 September to 2 October 1987 and from 26 to 29 July 1988, in respect of which it drew up the reports produced as Annexes 3, 6, 12 and 13 to its defence, and to two meetings referred to in the documents produced in Annexes 12 and 14 to the defence, which were held, first, in Brussels in June 1988 between the Portuguese Minister for Employment and Social Security and the Vice-President of the Commission and, secondly, in Lisbon on 26 June 1988 between Commission staff and the Portuguese authorities.

62 The Commission considers, finally, that the applicants' plea in this regard is in any event inadmissible, since only the Member State concerned may rely on such a procedural defect and in this case the Member State had renounced its right to do so by accepting the decision to reduce the Fund assistance.

Findings of the Court

63 With regard to admissibility, the Court considers that the applicants' interest in raising this plea, which is contested by the Commission, cannot be denied. It is clear from the case-law (*Oliveira*, paragraphs 17 and 18, and *Interhotel*, paragraph 14) that individuals have a legitimate interest in relying in the Community courts on a possible non-observance of the procedure laid down by Article 6(1) of Regulation No 2950/83, inasmuch as such an irregularity could affect the legality of the contested decisions concerning them. It also follows from the same case-law that the Court may in any event and of its own motion consider the question of an infringement of an essential procedural requirement.

64 With regard to the merits of this plea, it must be borne in mind that, under Article 6(1) of Regulation No 2950/83, when Fund assistance is not used in conformity with the conditions set out in the decision of approval, the Commission may reduce the aid after having given the relevant Member State an opportunity to comment.

65 It must also be emphasized that the opportunity for the relevant Member State to comment before a definitive decision is taken to reduce assistance, whether as regards the principle of the reduction or as regards its precise amount, is an essential procedural requirement the disregard of which renders the decision void (*Interhotel*, paragraph 17; Case C-157/90 *Infortec* v *Commission* [1992] ECR I-3525, paragraph 20; Case C-199/91 *Foyer Culturel du Sart-Tilman* v *Commission* [1993] ECR I-2667, paragraph 34; and Case T-450/93 *Lisrestal and Others* v *Commission* [1994] ECR II-1177, paragraphs 40 and 47).

66 The submission by the relevant Member State of its comments prior to a decision reducing Fund assistance must therefore, as an essential procedural requirement, both precede that decision and be established with a sufficient degree of certainty and clarity, which precludes any proof by presumption.

67 In order to determine whether those conditions were observed in the present case, it is necessary to examine the purpose and content of the inspection visits carried out by the Commission in Portugal from 27 October to 3 November 1986, from 28 September to 2 October 1987 and from 26 to 29 July 1988, and the purpose and content of the meetings to which the Commission refers, held in June 1988, first, in Brussels between the relevant member of the Commission and the Portuguese

Minister for Employment and Social Security and, secondly, in Lisbon between Commission staff and the Portuguese authorities.

68 The Court finds, first, that the inspection visits carried out in Lisbon between 27 October and 3 November 1986 took place prior to the final payment claim on Project File 860012/P1 which was submitted, according to the Commission's answer to a question put in writing by the Court, on 31 July 1987 and, secondly, that the Commission's report, produced as Annex 3 to the defence, confines itself to noting (i) that the estimate of the expenditure concerned was sometimes based on over-generous hypotheses, (ii) that where practical training in undertakings was concerned there was an obvious tendency to assimilate training to production and that the Fund should reaffirm the need to respect the specific nature of training operations and, finally, (iii) that Fund aid should be concentrated where real training needs existed. That report, drawn up by the appropriate Commission staff, does not, however, mention any comments by the Portuguese authorities relating either to the conclusions of the report or to a possible reduction of Fund assistance.

69 During the course of the inspection visits carried out in Lisbon between 28 September and 2 October 1987, it is common ground that the Commission's staff were accompanied by a representative of the Portuguese Inspectorate-General of Finance, as an observer. According to the report subsequently drawn up on that inspection, produced as Annex 6 to the defence, it was found that further information should be produced before final payment and it was suggested to the national authorities that they should follow in all cases the model of the files in which the final payment claims were best presented. Again, that report makes no mention of any comment from the Portuguese authorities relating to the reduction of the Fund assistance.

70 With regard to the inspection visit carried out in Lisbon between 26 and 29 July 1988, the Commission's report, produced as Annex 12 to the defence, noted that a proposal for final payment had not yet been drawn up for reasons related to the lack of transparency of the expenditure and the high cost of trainee hours and that it was not possible to carry out a conventional expenditure eligibility check for reasons related to the existence and nature of the contracts and concluded that the expenditure incurred was neither substantiated by adequate accounting vouchers nor justified from the point of view of balanced financial management of a training course. That report also recorded the checks made at Stec and the reformulation of the costs as a result of those checks, bringing the eligible expenditure down to 56% of the amount requested. Finally, the report concluded that, because of the diversity of the circumstances surrounding each subsidiary project, in order to take account of the difficulties involved in starting up the operation in Portugal and even though it would have been possible to envisage requiring the undertaking in whose name Project 860012/P1 was registered to pay back ESC 71 454 000, it appeared preferable to refrain from any attempt at recovery, to consider that the advance paid out when approval was granted was sufficient to cover the expenditure incurred and to close the file without paying any further balance. Whilst it is true that those conclusions clearly indicate that the Commission was envisaging a possible reduction of Fund aid in the circumstances set out, the report does not show that the Portuguese authorities were able to comment on that point. That finding is corroborated by a document of 12 August 1988, numbered XX/42/88 and produced as Annex 13 to the defence, concerning the same inspection visit carried out in Portugal between 26 and 29 July 1988. In that document, the Commission indicates that the Fund now had the accounting, financial or other documents essential in order to take a decision in full knowledge of the facts and that the projects would therefore be re-examined in accordance with uniform criteria, in the hope that they could be dealt with shortly — which, in the absence of a final conclusion on the part of the Commission, rules out the possibility that the national authorities were able to comment on the principle and the amount of a reduction of the Fund's contribution.

71 It follows that the essential procedural requirement that the relevant Member State must be given an opportunity to comment before Fund assistance is reduced could not have been observed during any of the inspection visits carried out by Com-

mission staff in Lisbon between 27 October and 3 November 1986, 28 September and 2 October 1987 or 26 and 29 July 1988.

72 As regards the two meetings in June 1988 to which the Commission refers, the Court notes that the first of those meetings was held, according to the Commission, in Lisbon between representatives of the Commission and of the Portuguese authorities, as evidenced by the report drawn up on the checks carried out between 26 and 29 July 1988, produced as Annex 12 to the defence. As the Court has found, however (see above, paragraph 70), that document does not show that the Portuguese authorities were able to comment on the principle and the amount of a reduction of the Fund's contribution in this case. As regards the second meeting, in which the relevant member of the Commission and the Portuguese Minister for Employment and Social Security took part, the Court notes that it gave rise to a note dated 27 June 1988 sent by the Commission to the Portuguese Permanent Representative, worded as follows: 'Following the meeting held last week between your Minister and the Vice-President of the Commission, please find below the exact numbers identifying the 9 projects out of the 54 which, in the Commission's view, call for on-the-spot checks and/or answers to the additional questions which the Commission has put or will put to you.' Among those listed is Project 860012/P1, concerning the applicants. The Court considers that if the project in question called for such on-the-spot checks and/or additional questions, the Commission could not already at that date have adopted a decision reducing the Fund's contribution, on which the national authorities had commented.

73 That same meeting to which the Commission refers also gave rise to a note dated 19 October 1988 from the office of Mr Marín, Vice-President of the Commission, to a director in DG V, couched in the following terms:

'Re: Clearing of Project Files 860012/P1, 860288/P1, 860003/P3 and 86084/P3

Following receipt of the report on the abovementioned projects and in view of the solution proposed to the Portuguese authorities by the Commission (Mr Marín, DG XX and DG V) during the discussions last June concerning comparable projects, this office is able to approve the proposals contained in that report. I would therefore ask you to have the relevant de-commitment and payment orders (860003/P3) executed as soon as possible.'

74 It is clear from the terms of that note that, even on the assumption that the discussions in question related to a reduction of the Fund's financial contribution, the reduction proposed by the Commission concerned only comparable projects and not the applicants' own file; consequently, it cannot be considered on that ground either that the relevant Member State was able to comment on the principle and the amount of a reduction of the Fund's financing of the projects in File 860012/P1.

75 The Court further considers that any political compromise which may have been reached in the discussions between the Portuguese Minister and the Vice-President of the Commission cannot in any event be a substitute for the specific formality in issue, provided for in Regulation No 2950/83, as interpreted by the Court of Justice and the Court of First Instance.

76 It follows from all the foregoing, without there being any need to examine the other allegations of procedural defects or the other pleas in annulment put forward by the applicants, that the Commission cannot be considered to have observed its obligation under Article 6(1) of Regulation No 2950/83 to give the relevant Member State an opportunity to comment before taking the contested decision to reduce the Fund aid and that the decision in question must therefore be annulled.

Costs

77 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since it has been unsuccessful in substance and the applicants have applied for costs against it, the Commission must be ordered to pay all the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. Declares void the Commission's decision reducing the amount of the European Social Fund's contribution to Project No 860012/P1, relating to vocational training in Portugal in 1986;

2. Dismisses the remainder of the application;

3. Orders the Commission to pay all the costs.

Cruz Vilaça Kirschner Kalogeropoulos

Delivered in open court in Luxembourg on 7 March 1995.

H. Jung

Registrar

J. L. Cruz Vilaça

President