JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
15 September 1998 *

In Joined Cases T-180/96 and T-181/96,

Mediocurso — Estabelecimento de Ensimo Particular Lda, a company incorporated under Portuguese law, established in Lisbon, represented by Carlos Botelho Moniz and Paulo Moura Pinheiro, of the Lisbon Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

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) 1185 of 14 August 1996 reducing the aid granted in Decision C (89) 0570 of 22 March

* Language of the case: Portuguese.

1989, and of Commission Decision C (96) 1186 of 14 August 1996 reducing the aid granted in Decision C (89) 0570 of 22 March 1989,

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

composed of: V. Tiili, President, C. P. Briët and A. Potocki, Judges,

Registrar: B. Pastor, Principal Administrator,

having regard to the written procedure and further to the hearing on 11 June 1998,

gives the following

Judgment

Legislative background

1 By virtue of Article 1(2)(a) of Council Decision 83/516/EEC of 17 October 1983 on the tasks of the European Social Fund (OJ 1983 L 289, p. 38, hereinafter 'Decision 83/516'), the Fund is to participate in the financing of operations concerning

vocational training and guidance. Article 2(2) of that decision provides that the relevant Member States are to guarantee the successful completion of the operations.

2 Article 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, hereinafter 'Regulation No 2950/83') enumerates the expenses for which assistance may be granted from the European Social Fund (hereinafter 'the ESF').

3 The approval of an application for financing is to be followed, pursuant to Article 5(1) of Regulation No 2950/83, by the payment of an advance of 50% of the assistance on the date on which the training action is scheduled to begin. By virtue of Article 5(4), final payment claims are to contain a detailed report on the content, results and financial aspects of the relevant operation and the Member State is to certify the accuracy of the facts and accounts in payment claims.

4 Under Article 6(1) of Regulation No 2950/83, when ESF assistance is not used in conformity with the conditions set out in the decision of approval, the Commission may suspend, reduce or withdraw the aid after giving the relevant Member State an opportunity to comment. Article 6(2) provides that sums paid which are not used in accordance with the conditions laid down in the approval decision are to be refunded.

5 Under Article 6(1) of Commission Decision 83/673/EEC of 22 December 1983 on the management of the European Social Fund (OJ 1983 L 377, p. 1, hereinafter 'Decision No 83/673'), Member States' payment applications must reach the Commission within ten months of the date of completion of the operations concerned. No payment is to be made in respect of aid for which the application is submitted after the expiry of that period.

6 Finally, pursuant to Article 7 of that decision, where the management of an operation for which assistance has been granted is the subject of an investigation because of suspected irregularities, the Member State is to notify the Commission thereof without delay.

Facts and procedure

7 The applicant is a commercial company whose main business is the organisation of vocational training and technical specialisation courses.

8 In 1988 the Departamento para os Assuntos do Fundo Social Europeu (Department for ESF matters, hereinafter 'DAFSE') submitted several applications for financial assistance in favour of the applicant for a number of vocational training projects for 1989.

9 The application for the first project concerned was registered under file No 890583 P1 (hereinafter 'the first file') and is the subject of Case T-180/96. The application concerning the second project was registered under file No 890588 P1 (hereinafter 'the second file') and is the subject of Case T-181/96.

10 The first file concerns an application for assistance for the training of people specialising in work with glass fibre reinforced polyesters, in work with automatic electrical apparatus and in marketing and advertising, in which 30 people were initially to take part. The sum involved was ESC 9 592 058. At the request of DAFSE, the number of participants was reduced to 23.

11 The first file, thus amended, was approved 'in accordance with the annexed notification' by Commission Decision notified to the applicant by a letter from DAFSE dated 10 April 1989 (No 8149). The decision set the amount of ESF aid at ESC 7 468 207. The Portuguese State, for its part, undertook to finance that project in the amount of ESC 6 110 351 through the Orçamento da Segurança Social/Instituto de Gestão Financeira da Segurança Social (Social Security Budget/ Institute for Financial Management of Social Security, hereinafter 'the OSS/ IGFSS').

12 In August 1989 the applicant received under Article 5(1) of Regulation No 2950/83 an advance of 50% of the amount of aid granted by the ESF, and of that granted by the OSS/IGFSS, comprising ESC 3 734 103 and ESC 3 055 175 respectively.

13 The second file relates to an application for assistance for two training programmes for commercial and advertising specialists and advertising and graphic arts specialists, in which 22 people were initially to take part. The sum involved was ESC 8 627 355. At the request of DAFSE, the number of participants was reduced to 17.

14 The second file, thus amended, was approved 'in accordance with the annexed notification' by a Commission Decision notified to the applicant by a letter from DAFSE dated 10 April 1989 (No 8154). The decision set the amount of ESF aid at ESC 6 890 635. The Portuguese State, for its part, undertook to finance that project in the amount of ESC 5 637 792, through the OSS/IGFSS.

15 In August 1989 the applicant received, under Article 5(1) of Regulation No 2950/83, an advance of 50% of the amount of the aid granted by the ESF, and of that granted by the OSS/IGFSS, comprising ESC 3 445 317 and ESC 2 818 896 respectively.

16 The training programmes provided for in the two files were carried out between July and December 1989.

17 On completion of the training programmes, the total cost of which proved to be less than that indicated in the project documents, the applicant submitted a final application for payment to DAFSE in respect of each of the two files. It asked to be paid ESC 3 337 539 for the first file and ESC 3 286 799 for the second.

18 According to those applications, 15 people completed the first training programme and 12 completed the second.

19 By letter of 11 April 1990, relating to both files, DAFSE informed the applicant that it 'intended suspending the payment orders [...] and possibly amending the balance payable, following financial checks to be made in relation to the training programmes carried out by [it] covered by the files in question'.

20 On 30 October 1990 the Portuguese authorities, in accordance with Article 5(4) of Regulation No 2950/83, certified the accuracy of the facts and accounts in the final payment applications submitted by the applicant in respect of the two files. However, in the letters to the Commission accompanying those applications, DAFSE stated that the certification of the particulars contained in their applications was subject to a financial audit yet to be carried out.

21 By identical letters of 25 January 1991 DAFSE informed the applicant that Audite, a firm of auditors, had been instructed to verify the facts and accounts relating to the two files at issue.

22 On 28 January 1991 DAFSE sent the applicant a letter in which it stated that its final decision on the two files would be dependent upon the conclusions reached in the financial audit.

23 On 20 February 1991 Audite sent DAFSE two audit reports, one for each file.

24 The applicant, DAFSE and representatives of Audite then held a meeting on 10 September 1991 to discuss the two files.

25 On 11 September 1991 DAFSE sent the applicant a letter informing it of the conclusions of the audit. DAFSE also asked it to pay back the sums which it considered ineligible. The applicant immediately contested the legality of that measure before the Portuguese administrative courts. However, it did not send a separate notification to DAFSE on its objections to the reductions of aid mentioned in the letter of 11 September 1991.

26 DAFSE then awaited, until 22 September 1995, the outcome of the proceedings commenced by the applicant against the letter of 11 September 1991.

27 By letter of 22 September 1995 DAFSE notified the Commission of the results of the audit carried out in 1991 and therefore forwarded to it the final payment applications, amended in accordance with the results of the audit.

28 On 6 March 1996, DAFSE informed the applicant that the Commission had taken a decision on its two final payment applications and had confirmed the results of the financial audit which had already been notified to it on 11 September 1991.

29 On 4 April 1996 the applicant asked DAFSE for a copy of the Commission decision. It also sought leave to consult the ESF administrative file. The applicant was granted access to the administrative file on 24 April 1996 and found that there were no documents in the nature of a decision other than the Commission's debit notes determining the amounts which it was to reimburse in respect of the two files concerned.

30 The applicant then instituted proceedings before the Court of First Instance against those measures, registered as Cases T-70/96 and T-72/96. However, the Commission withdrew the measures on its own initiative and replaced them by the two decisions of 14 August 1996 which are the subject of these proceedings. Consequently, the President of the Second Chamber ordered that Cases T-70/96 and T-72/96 be removed from the register of the Court of First Instance and, by orders of 12 November 1996, ordered the Commission to pay the costs.

31 On 14 August 1996 the Commission adopted Decision C (96) 1185 in relation to the first file. The decision was notified to the applicant by DAFSE on 20 September 1996.

32 That decision reads as follows:

'[...] whereas the Portuguese Government submitted to the Commission on 30 October 1990 a final application for the payment of ESC 3 337 532 and certified the accuracy of the facts and accounts for that claim, in accordance with Article 5(4) of Regulation No 2950/83;

whereas the Member State, having noted certain 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 890583 P1 on the basis of examination of the accounts for that operation, part of the expenditure indicated by Mediocurso [...] cannot be accepted, for the reasons set out in letter No 10992 of 22 September 1995 sent by the Member State;

whereas the Member State notified Mediocurso [...] of the results of the audit (letter No 8739 of 11 September 1991) and Mediocurso [...] has submitted no observations;

whereas, of the total amount of assistance approved by the Commission for file No 890583 P1, which totalled ESC 7 468 207, an amount of ESC 396 572 was not used by Mediocurso [...], and the Commission considers that certain expenses indicated by Mediocurso [...] do not meet the conditions laid down in the approval decision, so that the assistance should be further reduced by ESC 4 819 741 and the ESF aid should therefore be set at ESC 2 251 894 for the reasons set out in:

— the audit report and

— DAFSE letter No 10992 of 22 September 1995 and the annexes thereto;

[...]

has adopted the present decision:

Article 1

The ESF aid of ESC 7 468 207 awarded to Mediocurso [...] by Commission decision C (89) 0570 of 22 March 1989 is reduced to ESC 2 251 894.

Article 2

The sum of ESC 1 482 209 must be repaid to the Commission [...]'

33 On 14 August 1996, the Commission also adopted Decision C (96) 1186 in relation to the second file. It is essentially the same as the decision for the first file. It was notified to the applicant by DAFSE on 20 September 1996.

34 The operative part of that decision is as follows:

'Article 1

The ESF aid of ESC 6 890 635 awarded to Mediocurso [...] by Commission Decision C (89) 0570 of 22 March 1989 is reduced to ESC 2 174 072.

Article 2

The sum of ESC 1 271 245 must be repaid to the Commission [...]'.

35 By application received at the Registry of the Court of First Instance on 14 November 1996, the applicant brought an action for annulment of the Commission's decision of 14 August 1996 in relation to the first file, registered as Case T-180/96.

36 By application lodged at the Registry of the Court of First Instance on 14 November 1996, the applicant also brought an action for the annulment of the Commission's decision of 14 August 1996 in relation to the second file, which was registered as Case T-181/96.

37 By letter of 24 March 1998 the parties were invited to submit their views concerning joinder of Cases T-180/96 and T-181/96. They stated that they had no objection. Consequently, it is appropriate to join Cases T-180/96 and T-181/96 for the purposes of this judgment, in accordance with Article 50 of the Rules of Procedure of the Court of First Instance.

38 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure without any preparatory inquiry. However, as a measure of organisation of the procedure, it asked the parties to reply in writing to a number of questions. The parties complied.

39 The parties presented oral argument and answered questions put to them by the Court of First Instance at the public hearing on 11 June 1998.

Forms of order sought

In Case T-180/96

40 The applicant claims that the Court should:

— order that the Commission's administrative file and DAFSE's file be placed in the case-file;

— annul Commission Decision C (96) 1185 of 14 August 1996;

— order the defendant to pay the costs.

41 The Commission contends that the Court should:

— dismiss the application as unfounded;

— order the applicant to pay the costs.

In Case T-181/96

42 The applicant claims that the Court should:

— order that the Commission's administrative file and DAFSE's file be placed in the case-file;

— annul Commission Decision C (96) 1186 of 14 August 1996;

— order the defendant to pay the costs.

43 The Commission contends that the Court should:

— dismiss the application as unfounded;

— order the applicant to pay the costs.

Substance

44 In both cases, the applicant puts forward five pleas in law:

— first: breach of the applicant's rights of defence;

— second: failure to observe reasonable time-limits;

— third: infringement of Article 6(1) of Regulation No 2950/83, in that the Portuguese State was not given an opportunity to express its observations before the adoption of the contested decisions;

— fourth: breach of the principles of legal certainty and protection of legitimate expectations, in that the contested decisions conflict with the prior certification of the information contained in the final payment claims; and

— fifth: breach of the obligation to state reasons, breach of certain general principles of law and commission of a number of errors of assessment of the facts.

The first plea: breach of the applicant's rights of defence

Arguments of the parties

45 The applicant considers, first, that the Commission did not give it an opportunity to express its views on the reductions of financial assistance concerned. However, respect for the rights of the defence in all proceedings which are liable to culminate in an adverse measure is a fundamental principle of Community law (Case T-450/93 *Lisrestal and Others* v *Commission* [1994] ECR II-1177, paragraph 42). That principle is of particular importance in circumstances, such as those of this case, in which the contested decisions reduce financial assistance which was initially approved (Case C-189/90 *Cipeke* v *Commission* [1992] ECR I-3573, paragraphs 16 to 18).

46 It observes that, under Article 6(1) of Regulation No 2950/83, the Commission has exclusive authority to suspend, reduce or withdraw ESF aid. Consequently, the Commission itself should have arranged for the applicant to be heard before adopting the contested decisions.

47 It concedes that a hearing was possible before another body, such as DAFSE, before the Commission adopted a preliminary position. However, such a prior hearing would be useful only if details of it were given to the Commission, and they were not so given in this case.

48 The Commission contends that, since the applicant had an opportunity to submit its written observations in 1991 after notification by DAFSE of the outcome of the audit and at the various meetings with DAFSE, it must be deemed to have been given the possibility of effectively expressing its views on the envisaged reductions in assistance, in accordance with the judgment in *Lisrestal* v *Commission*, cited above (paragraph 49).

Findings of the Court

49 According to settled case-law, the rights of defence of a beneficiary of ESF aid must be respected where the Commission reduces such aid (see, among others, Case C-32/95 P *Commission* v *Lisrestal and Others* [1996] ECR I-5373, paragraphs 21 to 44).

50 It should also be noted that, at paragraph 49 of its judgment in *Lisrestal* v *Commission*, cited above, the Court of First Instance, without being criticised on that point by the Court of Justice in Case C-32/95 P *Commission* v *Lisrestal*, stated that the Commission, which alone assumes legal liability to the beneficiary of ESF aid for decisions to reduce such aid, was not entitled to adopt such a decision without first giving the beneficiary the possibility, or ensuring that it had the possibility, of effectively setting forth its views on the proposed reduction.

51 The applicant, both in setting out the forms of order which it seeks and in its answer to the written question put to it by the Court, has recognised that it was heard by DAFSE before the letter of 11 September 1991 was formalised. In that letter, DAFSE did not accept all the observations made by the applicant regarding the proposed reductions.

52 It must be pointed out that the applicant did not formally submit observations on that letter, as the contested decisions rightly indicate. It in fact merely commenced proceedings against the letter before the Portuguese administrative courts. However, in this case, the applicant should also have formally submitted such observations so that they could be notified to the Commission by DAFSE. In such circumstances, the applicant cannot complain that its observations were not notified to the Commission since that fact was attributable to its own omission.

53 The Court considers that the applicant was thus given the possibility of 'effectively' setting forth its views on the findings against it within the meaning of the judgment of the Court of First Instance in *Lisrestal* v *Commission*, cited above.

54 Accordingly, the first plea must be rejected.

The second plea: failure to observe reasonable time-limits

Arguments of the parties

55 The applicant considers that Regulation No 2950/83 and Decision 83/673 are incomplete in that they set no time-limit within which the Commission must adopt a decision on a final claim for payment of ESF aid. It considers unacceptable the view that the Community legislature allows the adoption of such decisions to be deferred indefinitely. It states that the Court of Justice has laid down the criterion of a 'reasonable time-limit' for dealing with problems of this kind (Case 59/70 *Netherlands* v *Commission* [1971] ECR 639 and Case 120/73 *Lorenz* v *Germany* [1973] ECR 1471).

56 It infers that, since there is nothing in the applicable legislation or the factual circumstances to show that the files in question were particularly complex, the Commission infringed the principle of the protection of legitimate expectations by adopting a decision only after seven years had passed.

57 Finally, it states, it is irrelevant whether it was informed of DAFSE's doubts as to the eligibility of certain expenses. The whole purpose of the principle of legal certainty is to ensure that uncertainty does not continue for protracted periods.

58 The Commission contends, first, that Article 6(1) of Regulation No 2950/83 imposes no time-limit on its power to reduce ESF aid. In its view that situation reflects the legislature's will not to make the reduction of assistance subject to time-limits where there is any presumption of irregularity. The applicant could not therefore legitimately expect that no reduction of aid would be decided upon.

59 It contends, secondly, that in its judgment in T-73/95 *Oliveira* v *Commission* [1997] ECR II-381 (paragraphs 45 to 47), the Court of First Instance made it clear that the reasonableness of a time-limit depends on the nature of the measures to be adopted and the circumstances surrounding each case.

60 Finally, it considers that, in this case, the period at issue cannot be regarded as excessively long since the applicant was given fairly prompt notice of the results of the financial audit. Moreover, it knew that certain expenditure was regarded as ineligible.

Findings of the Court

61 It is settled case-law that the question whether the duration of an administrative proceeding is reasonable must be determined in relation to the particular circumstances 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 (judgments of the Court of First Instance in Joined Cases T-213/95 and T-18/96 *SCK and FNK* v *Commission* [1997] ECR II-1739, paragraph 57, and *Oliveira* v *Commission*, cited above, paragraph 45).

62 That is the approach to be borne in mind when assessing the reasonableness of the time which elapsed between the lodging of the applicant's final payment claims in December 1989 and the adoption of the contested decisions on 14 August 1996.

63 Between December 1989 and September 1991 DAFSE carried out, in cooperation with Audite, a financial audit to determine the accuracy of the facts and accounts relating to the expenses incurred by the applicant.

64 Between September 1991 and 22 September 1995, the date of notification of the results of that audit to the Commission, DAFSE, for understandable reasons, waited for the Portuguese administrative courts to take a decision in the proceedings brought by the applicant itself against the letter of 11 September 1991.

65 DAFSE then informed the applicant, by letter of 6 March 1996, that the Commission had taken a decision on its final payment claims.

66 Finally, having regard to the judgment of the Court of First Instance in Case T-85/94 (122) *Commission* v *Branco* [1995] ECR II-2993, the Commission withdrew those decisions and replaced them by the two contested decisions, which set out in detail the reasons for which it had been decided to reduce the ESF aid.

67 It is clear from that sequence of events that each of the procedural stages prior to the adoption of the contested decisions was completed in a reasonable time having regard to the circumstances of which the national and Community authorities responsible for running the ESF could legitimately take account in examining final payment claims.

68 In those circumstances, the second plea in law must be rejected.

The third plea: infringement of Article 6(1) of Regulation No 2950/83, in that the Portuguese State was not given an opportunity to present its views before the adoption of the contested decisions

Arguments of the parties

69 The applicant submits that, under Article 6(1) of Regulation No 2950/83, the Commission may suspend, reduce or withdraw the aid after giving the relevant Member State an opportunity to comment.

70 It considers that in this case the Commission adopted the contested decisions without giving the Portuguese authorities an opportunity to comment, with the result that essential procedural requirements were infringed (judgment of the Court of Justice in Case C-304/89 *Oliveira* v *Commission* [1991] ECR I-2283).

71 The Commission considers that the contested decisions constitute confirmations of proposals for reductions submitted by DAFSE. In those circumstances, the formal requirement referred to in Article 6(1) of Regulation No 2950/83 should be regarded as having been fulfilled.

Findings of the Court

72 In support of its third plea, the applicant essentially criticises the Commission for failing to give DAFSE an opportunity to submit afresh its comments on the reductions of aid which it proposed.

73 However, it is clear from the judgment of the Court of Justice in Case C-200/89 *FUNOC* v *Commission* [1990] ECR I-3669, paragraph 17, that where a decision of the kind at issue in these cases was taken following an exchange of letters between the Commission and the national authorities, which submitted their comments before the final decision was adopted, the duty to consult the Member State must be regarded as having been discharged.

74 It is, furthermore, common ground that DAFSE, which represents the Portuguese State for ESF matters, gave the Commission its assessment in relation to the files in question by letter of 22 September 1995.

75 It is also clear from the statements of the reasons for the contested decisions that the positions adopted in them by the Commission constitute mere confirmations of proposals made by DAFSE to reduce aid.

76 In those circumstances, the obligation to consult the Member State must be regarded as having been discharged by the mere fact of that Member State's communication of its proposals to reduce the aid before the adoption of the final decisions of 14 August 1996.

77 Accordingly, the third plea must be rejected.

The fourth plea: breach of the principles of legal certainty and of protection of legitimate expectations, in that the contested decisions conflict with the prior certification of the accuracy of the information contained in the final payment claims

Arguments of the parties

78 The applicant states that the Portuguese authorities certified the accuracy of the facts and accounts in the final payments claims in accordance with Article 5(4) of Regulation No 2950/83. However, it considers that the contested decisions conflict with that certification in so far as they raise doubts as to whether certain expenditure was actually incurred and as to the accounting classification accepted at an earlier stage.

79 The discrepancy between the views thus taken at different times constitutes, in its view, a breach of the principles of legal certainty and protection of legitimate expectations. The certification constitutes a measure definitively determining the applicant's legal situation. Such certification may not, it accepts, prevent the Commission from withdrawing or reducing aid initially approved, but only if it does not call in question the actual incurring of the expenses concerned or the manner in which they were classified.

80 The applicant states that it was only during the procedure before the Court of First Instance that the Commission alleged that the certification by the Portuguese authorities was conditional, whereas the contested decisions were silent on that point. Moreover, the applicable legislation makes no provision for any such provisional certification.

81 It considers that national authorities receiving final payment claims have only two options: to certify or not to certify. Since Regulation No 2950/83 sets a time-limit for certification, the Portuguese authorities were not entitled to certify anything 'on a conditional basis', thereby evading that mandatory time-limit.

82 The Commission contends that it was to protect the applicant's interests and comply with the ten-month time-limit laid down in Article 6(1) of Decision 83/673 that the Portuguese authorities certified the payment claims in question, whilst at the same time making it clear that any final decision was subject to a later audit.

83 It also submits that Article 7 of Regulation No 2950/83 provides that, without prejudice to any controls carried out by the Member States, final payment claims may be the subject of subsequent checks. Finally, under the relevant case-law, the Commission alone is responsible for reducing ESF financial assistance, irrespective of any proposal to that effect from the national authority concerned (*Commission* v *Branco*, cited above, paragraphs 23 and 24).

Findings of the Court

84 It must first be borne in mind that, following the certification of 30 October 1990, DAFSE informed the applicant, by letters of 25 and 28 January 1991, that Audite

had been instructed to verify the facts and accounts relating to the expenditure incurred and that its final assessment would be dependent upon the outcome of that financial audit. The applicant was therefore promptly informed that the eligibility of the expenditure allegedly incurred was seriously in doubt.

85 It is then necessary to determine to what extent certification by the national authorities of certain expenditure means that those authorities have taken a final view on those matters *vis-à-vis* the beneficiary of the assistance and whether such a view is binding on the Commission.

86 Certification by a Member State does not release it from its other obligations under the applicable Community legislation. Thus, that Member State is required, under Article 2(2) of Decision 83/516, to guarantee the successful outcome of ESF operations. Moreover, Article 7 of Decision 83/673 provides that, where the management of an operation for which assistance has been granted is the subject of an investigation because of suspected irregularities, the Member State is to notify the Commission thereof without delay.

87 Since compliance with those obligations is not subject to any time-limit, they are binding on the national authorities until such time as the Commission has adopted a definitive decision on final payment.

88 It is also clear from Articles 6 and 7 of Regulation No 2950/83, which govern the procedure to be followed where the Commission finds that the conditions for the grant of assistance have not been met or where it wishes to carry out certain checks following a final payment claim, that the Member State must be regarded as having privileged access to the Commission for management of the ESF.

89 Consequently, the Member State must be regarded as continuing to be bound by certain obligations, more particularly that of reporting any irregularity in the management of the ESF, even after carrying out the certification of facts and accounts provided for by Article 5(4) of Regulation No 2950/83. The applicant's legal situation was not therefore finally settled by the certification of the expenses incurred by it.

90 Moreover, it is clear from the case-law that the Commission alone assumes responsibility for any decision to reduce aid, irrespective of any proposal to that effect by the national authority concerned (*Commission* v *Lisrestal*, cited above, paragraph 29, and *Commission* v *Branco*, cited above, paragraphs 23 and 24). The exercise of that exclusive power of the Commission cannot be made conditional upon the certification referred to in Article 5(4) of Regulation No 2950/83. The Commission remains entirely free to reduce Community aid even if the Member State has certified the accuracy of all the facts and accounts in the final payment claim, provided that it gives an adequate statement of the reasons for its decision to reduce the aid where that decision does not coincide with the national authorities' proposal.

91 The applicant's argument that the Commission's power was in this case limited as regards the type of withdrawal or reduction of aid which it might decide upon after the accuracy of the facts and accounts relating to the expenses incurred and had been certified cannot therefore be accepted.

92 Moreover, in view of the guarantee of the successful outcome of ESF operations given by the national authorities on the basis of Article 2(2) of Decision 83/516 and their obligation to report any suspected irregularity to the Commission, contained in Article 7 of Decision 83/673, the certification referred to in Article 5(4) of Regulation No 2950/83 must be regarded as being, intrinsically, an operation undertaken by the national authorities on an entirely uncommitted basis. If it were not, the effectiveness of the national authorities' obligation to report irregularities ascertained in the management of the ESF would be undermined. The certification

is thus without prejudice to the other powers which the national authorities and the Commission must be able to continue to exercise to ensure the proper use of ESF assistance.

93 It follows that the DAFSE properly discharged its duty to supervise the manner in which assistance awarded by the ESF was dealt with by arranging for the expenditure incurred by the applicant to be audited by Audite, after it had itself certified the accuracy of the facts and accounts relating to those expenses.

94 Consequently, the fourth plea must be rejected.

The fifth plea: breach of the obligation to state reasons, breach of certain general principles of law and commission of a number of errors of assessment of the facts

The first part of the fifth plea: breach of Article 190 of the Treaty

— Arguments of the parties

95 The applicant states that the two contested decisions are based both on Audite's report for each of the files and on DAFSE's letter of 22 September 1995.

96 It states, however, that it does not know to which specific report the Commission refers in each of the files. Audite carried out various checks at its premises and drew up several reports, containing sometimes contradictory conclusions. Each of Audite's reports had, moreover, subsequently been amended by that firm. It also submits that the amounts of which repayment is required by the Commission in the two contested decisions do not correspond to those appearing in Audite's reports.

97 Finally, although the Court of First Instance has accepted the principle of a 'referential' statement of reasons, its case-law requires a decision containing such a statement of reasons to refer with sufficient clarity to the measure containing the explanation (*Commission* v *Branco*, cited above, paragraph 27). In this case, however, the references to the audit reports do not meet that condition in so far as those reports were not sufficiently identifiable and their content had not been previously disclosed to the applicant. In those circumstances, the contested decisions infringe Article 190 of the Treaty.

98 The Commission considers that the contested decisions clearly mention the specific documents on which they are based.

— Findings of the Court

99 According to settled case-law, the statement of reasons required by Article 190 of the Treaty must show clearly and unequivocally the reasoning of the institution which enacted the measure so as to inform the persons concerned of the justification for the measure adopted and to enable the court to exercise its powers of review (Case C-22/94 *The Irish Farmers Association and Others* v *Minister for Agriculture, Food and Forestry, Ireland, and the Attorney General* [1997] ECR I-1809, paragraph 39; and Case T-81/95 *Interhotel* v *Commission* [1997] ECR II-1265, paragraph 72). The extent of that obligation depends on the nature of the measure in question and on the context in which it was adopted.

100 Moreover, it was held in Case T-89/94 *Branco* v *Commission* [1995] ECR II-45, paragraph 36, that in a situation where, as in the present case, the Commission purely and simply confirms the proposal of a Member State to reduce assistance initially granted, its decision may be regarded as adequately reasoned, for the purposes for Article 190 of the Treaty, if it either clearly sets out itself the reasons which justify the reduction in assistance or, failing that, refers with sufficient clarity to a measure of the competent national authorities of the Member State concerned in which those authorities set out clearly the reasons for such a reduction.

101 Those are the principles to be borne in mind when examining the applicant's arguments.

102 It must be observed, first, that the applicant's allegation that there were several contradictory audit reports for each of the files is unfounded. Audite issued only one report in respect of each of the two files. Those two reports, annexed to the defence in each of the cases, were registered at DAFSE on 20 February 1991.

103 The differences between the amounts given in those two audit reports and those appearing in the contested decisions are due to changes made, admittedly, after those reports were lodged with DAFSE but before notification to the applicant of the final results of the check carried out by DAFSE on 11 September 1991 — with which the applicant was, moreover, very closely involved.

104 The applicant also conceded in its written reply to the questions put to it by the Court and at the hearing that the essential content of the audit reports prepared by Audite was brought to its notice by letter of 11 September 1991, although that letter did not contain a copy of the reports as such.

105 The applicant was thus given an opportunity to apprise itself of the statement of reasons to which the Commission refers in the contested decisions, particularly since its decisions referred also to DAFSE's letter of 22 September 1995 which likewise indicated in detail the reasons for which the contested reductions had been made.

106 It follows that, subject to the results of the detailed examination of the individual items of the accounts carried out below in relation to the third part of the present plea, the contested decisions show clearly and unequivocally the general reasoning adopted by the Commission, referring generally as they do to clearly identified documents of DAFSE.

107 Consequently, the first part of the fifth plea must be rejected.

The second part of the fifth plea: breach of the principles of protection of legitimate expectations and legal certainty

— Arguments of the parties

108 The applicant claims that the contested decisions are in reality based on irregularities in the supporting documentation submitted or on inappropriate classification in the accounts of the expenses in question. It considers that such reservations regarding use of the assistance should have come to light no later than the time of approval of the assistance, not *ex post facto* at the time of approval of the final payment, as in this case. It states in that connection that Article 6(1) of Regulation No 2950/83 provides that it is only when assistance is not used in conformity with the conditions set out in the approval decision that the Commission may suspend, reduce or withdraw it.

109 Consequently, in many instances, the withdrawal of assistance in the contested decisions infringes the principles of the protection of legitimate expectations and legal certainty because it is not based on legal rules known when the assistance was approved (Case 170/86 *Von Deetzen* [1988] ECR 2355 and Case 84/85 *United Kingdom* v *Commission* [1987] ECR 3765).

110 In the Commission's view the applicant cannot claim that the principles of legal certainty and protection of legitimate expectations have been infringed. An approval decision can cause a beneficiary of assistance to entertain legitimate expectations only where the assistance has been used in conformity with the conditions laid down by that decision. However, in this case, the assistance was used only partly in conformity with those conditions.

111 It also states that, by virtue of Order No 6/88, published in the *Diário da República* of 18 February 1988:

'1. DAFSE shall accept only invoices and receipts as vouchers for expenses incurred in respect of the operations in question.

2. The documents mentioned in the foregoing paragraph must contain the necessary details and breakdowns corresponding to the items indicated in point 14 of the form for European Social Fund Final Payment Claims.'

— Findings of the Court

112 In view of the powers granted to them for verification and monitoring (see paragraphs 84 to 93 above), both the Member State and the Commission must be

authorised to remark on any disregard, fraudulent or otherwise, by the beneficiary of the conditions imposed when the Community financial assistance was granted.

113 The Court also notes that in the statements of acceptance of the decisions granting assistance signed by the applicant (Annex 9 to each of the applications, paragraph 1(b)), the applicant itself undertook to comply with the applicable national and Community conditions.

114 It is, furthermore, undisputed that both Portuguese Law and Community Law make the use of public funds subject to the requirement of sound financial management. The Commission has referred in its pleadings to Order No 6/88 (paragraph 111), which specifically requires the beneficiary of assistance to provide supporting documents for expenditure incurred in the operations in question and to indicate the account items to which they relate.

115 Contrary to the applicant's submission, the irregularities complained of were thus not based on a criterion not included among the requirements upon observance of which grant and payment of the assistance was conditional. Moreover, the application of criteria of 'reasonableness' of the expenditure incurred by the beneficiary and 'sound financial management' of the assistance clearly falls entirely within the scope of the control which the Member State is required to exercise under Article 7 of Decision 83/673 where it suspects the existence of irregularities. The application of those criteria simply involves verifying that the expenses allegedly incurred by the beneficiary properly reflect the services for which they were incurred.

116 Accordingly, the second part of the fifth plea must be rejected

The third part of the fifth plea: alleging, essentially, manifest errors of assessment by the Commission in deciding to reduce, in accordance with DAFSE's letter of 22 September 1995, the amount of assistance initially granted

— Preliminary observations

117 In the third part of the fifth plea in both of the present cases, the applicant alleges, essentially, that the Commission erred in law and in its assessment of the facts in accepting the content of DAFSE's letter of 22 September 1995. Essentially, the applicant criticises the Commission for reducing the amount of assistance initially granted by relying, wrongly, on DAFSE's objection to the manner in which it classified its various items of expenditure in its final payment claims and/or the probative value of the information produced by it to prove that expenditure.

118 Before the various arguments put forward on this point by the applicant in both cases are examined, it should again be pointed out that, under Article 6(1) of Regulation No 2950/83, where ESF assistance has not been used in conformity with the conditions set by the approval decision, the Commission may suspend, reduce or withdraw that assistance.

119 Moreover, the Commission may suspend, reduce or withdraw ESF assistance on the basis of a national or Community rule not complied with in the performance of the operation in question. It is significant here that, when accepting the approval decisions, the applicant stated that the assistance would be used in accordance with the applicable national and Community rules (see paragraph 113 above).

120 Furthermore, the application of Article 6(1) of Regulation No 2950/83 may render it necessary for the Commission to undertake an evaluation of complex facts and accounts. When undertaking such an evaluation, the Commission must therefore enjoy a considerable measure of latitude. Consequently, this Court must, in examining this part of the plea, confine itself to examining whether the Commission committed a manifest error in assessing the information in question (see, to that effect, Case C-122/94 *Commission* v *Council* [1996] ECR I-881, paragraph 18, and Joined Cases T-39/92 and T-40/92 *CB and Europay* v *Commission* [1994] ECR II-49, paragraph 109).

121 The decisions at issue in this case are based entirely on DAFSE's letters of 11 September 1991, reiterating the essential particulars of the audit report of Audite, and of 22 September 1995. In those circumstances, it is necessary to determine whether, by accepting the content of those letters from DAFSE, the Commission committed a manifest error of assessment.

— The merits of the applicant's arguments in Case T-180/96

122 As regards, first, the teaching material (sub-heading 14.2.1), the applicant claims not to understand why the expenditure for the purchase of chairs and tables was regarded as ineligible, in contrast to previous practice.

123 The Commission observes that such furniture must be regarded as durable goods. Consequently, the relevant amounts were placed under heading 14.6 'normal depreciation', and a rate of depreciation of 10% was applied.

124 The Court does not consider that the Commission committed any manifest error in considering that tables and chairs are durable goods and not teaching material and by therefore transferring the amount relating to those goods to the heading covering normal depreciation.

125 Moreover, the fact that the inclusion of expenditure under an account heading may have been accepted in the past does not necessarily imply that the same classification will also be approved at a later stage where it is incompatible with the conditions imposed by the approval decision or with the provisions of national or Community law. In any event, no illegal act committed in the past can cause an applicant to entertain legitimate expectations (see, to that effect, Case T-156/89 *Valverde Mordt* v *Court of Justice* [1991] ECR II-407, paragraph 76).

126 Consequently, the first argument must be rejected.

127 As regards, second, the specialised work (sub-heading 14.2.7), the applicant considers, first, that there was no reason to limit the remuneration of the technical specialists who provided services for the preparation of courses and manuals. It then observes that it also included under that sub-heading an amount of ESC 374 400, evidenced by an invoice. That invoice related to services which had to be placed under several different account headings, which is not prohibited by any rules.

128 The Commission considers that the reduction of the remuneration paid to those technical specialists was based on an analysis of the four receipts for preparation, by the applicant, of manuals and exercise books. They were not shown under the appropriate account heading and furthermore contain no specific reference to their

content. Consequently, a rational approach was adopted. As regards the sum of ESC 374 400, the Commission observes that the invoice produced contains a description so lacking in detail that it was regarded as ineligible in its entirety.

129 The Court observes that, as is clear from the documents before it, the invoices in question are not sufficiently detailed to establish the reality of the expenditure which they are supposed to prove. The Commission did not therefore commit any manifest error of assessment by taking the rational approach to that expenditure described in point 14.2.7 of the letter of 22 September 1995. The invoice for ESC 374 400 drawn up by 'C. Peres Feio Lda' (Annex 20 to the application) is, furthermore, so vague that the Commission cannot have committed a manifest error of assessment in considering the sum indicated in it to be wholly ineligible.

130 Consequently, the second argument must be rejected.

131 As regards, third, the remuneration of the teaching staff (sub-heading 14.3.1a), the applicant denies that the sum of ESC 4 363 684 is entirely ineligible. It recognises that the 'summary tables' (Annex 21 to the application) produced by it do not distinguish the theoretical course hours from the practical course hours, but does not understand the conclusion drawn by DAFSE from that fact.

132 The applicant points out that, under the applicable national legislation, the expenditure incurred for the operations in question can be proved only by invoices or receipts. It considers that, in view of the receipts provided by it (Annex 22 to the application) and the certainty that the courses were held, there is nothing to justify cancellation of the amount entered under that sub-heading. In any event, even if doubts persisted regarding the type of courses held, the principle of proportionality requires that at least an amount based on the lowest level of remuneration should be regarded as justified for all the courses, that it is to say that all the courses should be regarded as practical courses.

133 The Commission considers that the applicant has not provided information to show that the receipts submitted have any bearing on the courses at issue, since the documents submitted do not indicate clearly either the identity of the staff or the type of courses held. Moreover, the sum of the expenditure documents submitted does not coincide with the sum declared. Finally, it points out that Order No 18/MTSS/87, published in the *Diário da República* of 11 May 1987, provided that 'recipient organisations shall keep, for each operation, an attendance record for trainees and training staff and course programmes, distinguishing theoretical courses from practical courses'.

134 The Court considers that the documents produced by the applicant to indicate the kind of course provided in relation to the first file and the identity of the training staff who took part (Annexes 21 and 22 to the application) are, when scrutinised, so imprecise as to raise serious doubts as to whether the courses in question were actually held, as DAFSE rightly observed in point 14.3.1a of its letter of 22 September 1995. The Commission therefore committed no manifest error of assessment by considering that the applicant, which ran a large number of different training courses involving numerous staff, had not demonstrated that the documentary evidence produced by it in fact related to the courses covered by the first file and by consequently refusing to accept in their entirety the expenses claimed in that regard.

135 Consequently, the third argument must be rejected.

136 As regards, fourth, the administrative staff (sub-heading 14.3.1c) the applicant considers that the reduction made by the Commission for that item is based on a misunderstanding, since the disputed receipts were signed and stamped, as is clear from Annex 23 to the application. It considers that the evidential value of the receipts concerned is not in any event affected by the absence of signatures or stamps.

137 The Commission observes that the reduction at issue was prompted by the fact that the receipts concerned bore neither stamps nor signatures when the financial audit took place.

138 The Court considers that the applicant has not demonstrated that it produced to DAFSE the stamped and signed documents annexed to the application before DAFSE completed its financial audit. Consequently, the Commission committed no manifest error of assessment by refusing to take account of receipts which, when presented, did not meet the national legal requirements intended, *inter alia*, to ensure that such receipts relate to an expense actually incurred.

139 Consequently, the fourth argument must be rejected.

140 As regards, fifth, the specialised work (sub-heading 14.3.8), the applicant considers that the disqualified expenditure is proved by the invoice appended as Annex 20 to the application. It states once more that there is no reason why a single receipt should not cover services attributable to different account headings.

141 The Commission states that the item concerned was not taken into consideration because of the lack of supporting documents: the invoice produced by the applicant related to other items.

142 The Court observes that the amounts shown in the documents submitted by the applicant as Annex 20 to its application do not correspond with those which accompanied its final payment claim. The Commission did not therefore commit any manifest error of assessment by refusing to take account of the documents concerned in determining the final payment of assistance to be made to the applicant.

143 Consequently, the fifth argument must be rejected.

144 As regards, sixth, rental for moveable and immoveable items (sub-heading 14.3.9), the applicant considers that the statement of reasons in the letter of 22 September 1995 does not enable it to understand the grounds on which the Commission made the first two reductions for that item. As regards the third reduction, it refers to the considerations which it put forward in relation to sub-heading 14.2.7 (see paragraph 127).

145 The Commission states that the first reduction related to the acquisition of durable goods which could not, under the applicable national legislation, qualify for depreciation in the year of acquisition. The second amount related to a design course not covered by the first file. The third amount was refused because the invoice relating to it did not properly indicate the services provided.

146 The Court considers that the reasons provided by DAFSE's letters of 11 September 1991 and 22 September 1995 concerning the first two reductions made in respect to that item, although indeed concise, nevertheless enabled the applicant, which knew the details of the file concerned, to challenge the content thereof. However, the applicant has produced no evidence to show that the Commission in any way committed a manifest error of assessment in that regard. As regards the third reduction, the Court refers to paragraph 129 above.

147 Consequently, the sixth argument must be rejected.

148 As regards, seventh, the raw materials, auxiliary materials and consumables (sub-heading 14.3.12), the applicant states that, under Portuguese social legislation,

expenditure attested by invoices dated no later than the fifth working day of January in the year following that in which the expense was incurred must be accepted. The invoice at issue (Annex 24 to the application) fulfilled that condition.

149 The Commission considers that the invoice does not fall within the period actually covered by the financing for the operation. Under the national VAT code, an invoice of that kind should have been issued when the goods in question were supplied and should have been accompanied by delivery documents. However, neither of those conditions was fulfilled in this case.

150 The Court finds that neither the Commission's precise reasoning nor the national legislation on which it relied in rejecting the expenditure indicated in the invoice at issue can be identified from an analysis, in the light of the documents before the Court, of the contested decision and of the relevant paragraphs of the DAFSE letters of 11 September 1991 — which essentially repeats the objections raised in the report by Audite — and of 22 September 1995, to which that decision refers. Consequently, the Court is not in a position to undertake the requisite judicial review of the contested decision, as required by the case-law cited in paragraph 99 above. Therefore, the contested decision infringes Article 190 of the Treaty to the extent to which it relates to sub-heading 14.3.12 of the final payment claim.

151 Consequently, the seventh argument must be upheld. The contested decision must therefore be annulled to the extent to which it relates to sub-heading 14.3.12.

152 As regards, eighth, taxes and charges (sub-heading 14.3.13), the applicant states that it included in that item the amounts paid in respect of VAT to the teachers who were VAT registered, the VAT having been deducted from their remuneration, shown under sub-heading 14.3.1a.

153 Since the Court has taken the view above (paragraph 134) that the Commission committed no manifest error of assessment in refusing to take account of expenses claimed by the applicant in respect of teachers' remuneration, this eighth argument, concerning the VAT applicable to that remuneration, must be rejected for the same reasons.

154 As regards, last, normal depreciation (sub-heading 14.6), the applicant denies that its activity can be assessed solely on the basis of the number of workers 'employed', that number being particularly low in its case because providers of occasional services play a significant role.

155 The Commission states that DAFSE applied the usual criteria to that item, namely a coefficient based on time and physical factors, which reflects the proportion of the normal business activity of an undertaking accounted for by training.

156 Although it is indeed conceivable, as maintained by the applicant, that depreciation methods can be based more specifically on the actual proportion of an undertaking's turnover accounted for by training rather than on the total number of employees assigned to such training activities, the Court considers that the traditional method used by DAFSE in this case, and accepted by the Commission, in itself takes sufficient account of the relative importance of training amongst the overall activities of the recipients of ESF assistance. Since the method used is reasonable, the Commission committed no manifest error of assessment by applying it.

157 Consequently, this last argument must be rejected.

— The merits of the applicant's arguments in Case T-181/96

158 As regards, first, the teaching material (sub-heading 14.2.1), the applicant maintains that DAFSE wrongly considered that some of that material constituted 'durable goods', not eligible for inclusion under the heading 'teaching material'. The criterion used for that exclusion had no legal basis.

159 The Commission states that the applicant included under the heading of 'teaching material', purchases of chairs, cupboards, desks and tables, which are durable goods.

160 The Court considers that the Commission committed no manifest error by considering that the chairs, cupboards, desks and tables concerned constituted durable goods and not teaching material or by consequently transferring the amounts relating to those goods to the heading 'normal depreciation' (see also paragraphs 124 and 125).

161 Consequently, the first argument must be rejected.

162 As regards, second, advertising of the courses and the recruitment of trainees (sub-headings 14.2.2 and 14.2.3), the applicant considers that, contrary to the view expressed by DAFSE in its letter of 22 September 1995, it is not possible to require the content of newspaper advertisements to be specified in the invoices for those advertisements. It observes that the invoices and receipts submitted (Annex 18 to the application) indicate precisely the newspapers in which the announcements were published.

163 The Commission observes that the receipts produced by the applicant do not describe the nature or substance of the expenditure concerned. Nor did the applicant annex to those receipts a copy of the advertisements in question, as is the normal practice.

164 The Court does not consider it unreasonable to require a recipient of ESF assistance to provide copies of advertisements published in newspapers to promote its training activities. The sole purpose of that requirement is to make certain that expenditure was actually incurred for that purpose. The Commission did not therefore commit any manifest error of assessment by accepting the position adopted by DAFSE on that point in its letter of 22 September 1995.

165 Consequently, the second argument must be rejected.

166 As regards, third, the specialised work (sub-heading 14.2.7), the applicant observes that the letter of 22 September 1995 states that the invoices produced indicate 'neither the hours nor the technical specialists concerned'. Such a requirement, it says, is not imposed by the applicable Portuguese tax legislation. As regards more particularly the 'TV Europa' invoice (Annex 20 to the application), the nature of the services provided is clear from the words 'repairs to electrical equipment' appearing on that invoice.

167 The Commission considers that the receipt issued by TV Europa does not specify the nature of the expenditure concerned. In so far as it may have related to the repair of a video recorder, that expenditure was, in any event, ineligible.

168 The Court observes that the applicant has not produced evidence to show incontestably that the invoices produced to DAFSE were sufficiently detailed to enable it to verify the reality of the expenses concerned. As regards more particularly the

invoice from TV Europa, the Court notes that it makes no mention of the specific type of repair to which it relates. The Commission therefore committed no manifest error of assessment by accepting the position adopted by DAFSE regarding those various reductions in its letter of 22 September 1995.

169 Consequently, the third argument must be rejected.

170 As regards, fourth, the remuneration of teaching staff (sub-heading 14.3.1a), the applicant contests the view that the full sum relating to that item is ineligible. It puts forward the same arguments as in Case T-180/96 (see paragraphs 131 and 132).

171 The Commission considers that the applicant has not produced evidence that the receipts submitted bore any relation to the courses in question.

172 The Court considers, as it has already observed with regard to Case T-180/96 (paragraph 134), that the documents produced by the applicant to indicate the kind of course provided in relation to the second file and the identity of the training staff who took part are, when scrutinised, so imprecise as to raise serious doubts as to whether the courses in question were actually held, as DAFSE rightly observed in paragraph 14.3.1a of its letter of 22 September 1995. The Commission therefore committed no manifest error of assessment by considering that the applicant, which ran a large number of different training courses involving numerous staff, had not demonstrated that the documentary evidence produced by it in fact related to the course covered by the second file and by consequently refusing to accept in their entirety the expenses claimed in that regard.

173 Consequently, the fourth argument must be rejected.

174 As regards, fifth, the administrative staff (sub-heading 14.3.1c), the applicant agrees that Mrs Irene Vaz Lopes did indeed attend one course while providing training in another, but denies that she was thereby prevented from providing assistance for the second course.

175 The Court observes that, since one and the same person cannot attend one course and at the same time assist in the teaching of another, the Commission cannot have committed any manifest error of assessment by refusing to take account of the remuneration of the person concerned as an administrative assistant.

176 Consequently, the fifth argument must be rejected.

177 As regards, sixth, budgetary control and management (sub-heading 14.3.7), the applicant accepts that it erroneously included a receipt (Annex 24 to the application) under heading 14.3.1, whereas it should have appeared under heading 14.3.7. It considers, however, that the auditors were informed of that fact in due time.

178 The Commission contends that a receipt produced at the stage of proceedings before the Court of First Instance cannot be taken into consideration.

179 Since the applicant has not been able to establish that, as it claims, it produced the receipt annexed to its application during the administrative procedure before

DAFSE, the Court considers that the Commission committed no manifest error of assessment in refusing to take account of the amount in question.

180 Consequently, the sixth argument must be rejected.

181 As regards, seventh, the specialised work (sub-heading 14.3.8), the applicant states that DAFSE took the view that an invoice drawn up by the company Novafarm was not sufficiently specific. However, the description of the services provided is brief because a description of that kind is sufficient for tax purposes.

182 Since the applicant itself concedes that the invoice at issue is in summary form, the Commission cannot have committed any manifest error of assessment by refusing to take account of the expense in question.

183 Consequently, the seventh argument must be rejected.

184 As regards, eighth, rental for moveable and immoveable items (sub-heading 14.3.9), two receipts are involved. The first receipt, the applicant states, was included under that heading at the suggestion of DAFSE itself. Nor does it understand the legal basis on which the second receipt was considered partially ineligible, the criterion of rationality applied being unknown.

185 The Commission states that the sum shown on the first receipt was transferred to the item 'normal depreciation' (sub-heading 14.6) because it related to a durable

good. The second sum corresponded to the ineligible part of a receipt concerning the rental of computers which had been dealt with on the basis of a criterion of rationality.

186 The Court considers, with regard to the first receipt, which is accepted as relating to data-processing equipment, that the Commission committed no manifest error of assessment in considering that such equipment constituted 'durable goods' to be included under heading 14.6, 'normal depreciation'. As regards the second receipt, the Court finds that the applicant's argument is not sufficiently well set out to meet the requirements of Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, under which every application must contain, in particular, a summary of the pleas in law on which it is based. In that connection, the applicant essentially does no more than claim not to understand the basis of the criterion of rationality applied, even though specific details of it are given in the letter of 22 September 1995. Under those circumstances, the applicant's argument in its application, as amplified in the reply, does not enable the Court to examine its merits (see, to that effect, Case T-84/96 *Cipeke* v *Commission* [1997] ECR II-2081, paragraph 30 et seq.).

187 Consequently, the eighth argument must be rejected.

188 As regards, ninth, non-durable materials and goods (sub-heading 14.3.10), the applicant states that, by refusing that expenditure with respect to the purchase of office equipment, DAFSE glossed over the fact that the management and operation of courses necessarily involve the expense of purchasing items of that kind.

189 The Court considers that the sum concerned was properly refused, inasmuch as it constitutes a duplication of expenses included in item 14.2.3 (paragraph 160).

Consequently, the Commission committed no manifest error of assessment in rejecting that expense.

190 Consequently, the ninth argument must be rejected.

191 As regards, tenth, taxes and charges (sub-heading 14.3.13), the applicant states that it included under that item amounts paid in respect of VAT to VAT registered teachers, the VAT having been deducted from their remuneration, included under sub-heading 14.3.1a.

192 Since the Court has taken the view above (paragraph 172) that the Commission committed no manifest error of assessment by refusing to take account of expenses claimed by the applicant in respect of teachers' remuneration, this tenth argument, concerning the VAT applicable to that remuneration, must be rejected on the same grounds.

193 As regards, eleventh, general administrative expenses (sub-heading 14.3.14), the applicant states that office equipment is necessary for the various stages of training, thus justifying the inclusion of that type of equipment under various headings.

194 The Commission merely points out that, since the sums in question have already been taken into account in items 14.2.3 and 14.3.10, they cannot be regarded as qualifying twice.

195 The Court considers that, since the applicant has not demonstrated that, contrary to what is stated in the letter of 22 September 1995, the expenditure included by it under that heading had not already been included under other headings, the Commission cannot have committed any manifest error of assessment by refusing to take account, a second time, of the same type of expenses under heading 14.3.14.

196 Consequently, the eleventh argument must be rejected.

197 As regards, twelfth, other operating and management expenses (sub-heading 14.3.15), the applicant denies that the invoice for the first contested amount was not presented. The other two amounts refused corresponded to equipment to be used for the courses and were not durable goods.

198 The Commission states that the evidence concerning the first amount was not produced in due time. The other two amounts relate to furniture falling within the heading 'normal depreciation', to which the annual rate of depreciation of 10% was applied.

199 The Court considers that, in the absence of any documents showing that the first receipt was forwarded to DAFSE during the administrative procedure and that the other amounts involved related to non-durable goods, the applicant has not proved that the Commission committed any manifest error of assessment in withdrawing aid for the expenditure at issue.

200 Consequently, the twelfth argument must be rejected.

201 As regards, lastly, normal depreciation (sub-heading 14.6), the applicant claims not to understand the calculation method on the basis of which DAFSE considered certain amounts to be 'unconfirmed'. It then puts forward the same arguments as in Case T-180/96 (see paragraph 154).

202 The Commission states that DAFSE applied the usual criterion to that item, namely a coefficient based on time and physical factors, which reflects the proportion of the normal business activity of the undertaking accounted for by training.

203 Although it is indeed conceivable, as maintained by the applicant, that depreciation methods can be based more specifically on the actual proportion of an undertaking's turnover accounted for by training rather than on the total number of employees assigned to such training activities, the Court considers that the traditional method used by DAFSE in this case, and accepted by the Commission, in itself takes sufficient account of the relative importance of training amongst the overall activities of the recipients of ESF assistance. Since the method used is reasonable, the Commission committed no manifest error of assessment by applying it.

204 Consequently, this last argument must be rejected.

The request for the production of documents

205 In each of its applications, the applicant claims that the Court should order the production both of the Commission's administrative files and of DAFSE's administrative files.

206 It is clear from the foregoing considerations that the Court has effectively been able to reach a decision in these proceedings on the basis of the documents produced by the parties in the written procedure and those provided by the Commission pursuant to measures of organisation of procedure.

207 It is not therefore necessary to order the Commission to produce the administrative files relating to the two cases.

208 Nor is it necessary to request the Portuguese authorities, pursuant to the second paragraph of Article 21 of the EC Statute of the Court of Justice, to produce in their entirety the national administrative files relating to the two files in question.

209 The applicant's request for the production of documents must, for those reasons, be rejected.

Costs

210 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they are asked for in the successful party's pleadings. However, under Article 87(3), the Court may order that the costs be shared where each party succeeds on some and fails on other heads.

211 Since the application in Case T-180/96 has been partially upheld and each party has applied for costs, it is appropriate to order the parties to bear their own costs in that case.

212 Since the applicant has been unsuccessful in Case T-181/96 and the Commission has asked for costs, the applicant should be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Joins Cases T-180/96 and T-181/96 for the purposes of judgment;

2. In Case T-180/96, annuls Commission Decision C (96) 1185 of 14 August 1996 to the extent to which it relates to sub-heading 14.3.12 of the applicant's final payment claim, and for the rest dismisses the application;

3. Dismisses the application in Case T-181/96;

4. Orders the parties to bear their own costs in Case T-180/96;

5. Orders the applicant to pay the costs in Case T-181/96.

Tiili Briët Potocki

Delivered in open court in Luxembourg on 15 September 1998.

H. Jung V. Tiili

Registrar President