ORDER OF THE COURT
21 November 1990 *

In Case C-12/90,

Infortec — Projectos e consultadoria, Ld.ª, a company incorporated according to Portuguese law, whose registered office is in Lisbon, represented by António Pacheco Ferreira, of the Lisbon Bar, with an address for service in Luxembourg in the office of José Manuel Fonseca Antunes, Union des banques portugaises, 10 rue de la Grève,

applicant,

v

Commission of the European Communities, represented by Herculano Lima, a member of the Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Guido Berardis, a member of its Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's decision of 14 September 1989 to the effect that expenses amounting to ESC 55 800 000 relating to application for assistance No 870965/P1 are not eligible for financing by the European Social Fund,

THE COURT,

composed of: O. Due, President, G. F. Mancini, T. F O'Higgins, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Presidents of Chamber, Sir Gordon Slynn, C. N. Kakouris, R. Joliet, F. A. Schockweiler, F. Grévisse and M. Zuleeg, Judges,

Advocate General: C. O. Lenz
Registrar: J.-G. Giraud

* Language of the case: Portuguese.

after hearing the views of the Advocate General,

makes the following

Order

1 By an application lodged at the Court Registry on 16 January 1990, Infortec — Projectos e consultadoria Lda requested, under the second paragraph of Article 173 of the EEC Treaty, the annulment of the Commission's decision of 14 September 1989 deeming not to be eligible for financing by the European Social Fund expenditure in the amount of ESC 55 800 000 relating to application for assistance No 870965/P1.

2 By a document lodged at the Court Registry on 2 March 1990, the Commission raised an objection of inadmissibility under Article 91(1) of the Rules of Procedure of the Court of Justice on the ground that the time-limit for instituting proceedings had not been observed.

3 Council Regulation (EEC) No 2950/83 of 17 October 1983 on the implementation of Decision 83/516/EEC on the tasks of the European Social Fund (Official Journal 1983 L 289, p. 1), defines the type of expenditure for which the Fund's assistance may be available. Article 5 thereof provides for the payment of advances on account of assistance granted. Under the terms of Article 6, 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 The department responsible for the affairs of the European Social Fund in Lisbon (hereinafter referred to as 'DAFSE'), acting in the name of the Portuguese Republic and on behalf of Infortec, made applications for Fund assistance in respect of 1987. On 30 April 1987 the Commission granted ESC 57 847 387 pursuant to application for assistance No 870965/P1. DAFSE also laid out an amount of ESC 47 329 650 and granted to the applicant on 7 August 1987 an

advance of ESC 23 664 840 'financed by the general receipts of the social security budget' and on 6 June 1987 an advance of ESC 28 923 693 'financed by the endowment of the European Social Fund'.

5 On 14 September 1989 the Commission adopted the following decision on application for assistance No 870965/P1:

'The European Social Fund's staff have found that there was expenditure amounting to ESC 55 800 000 which was not eligible at points 14.2, 14.3, 14.8 and 14.9 of the form, since no supporting documents were provided regarding the costs of organizing recruiting courses for trainers, expenditure for staff assigned to preparation, teaching theory and practice, technical non-teaching staff, administrative staff, travelling expenses of trainers, expenditure for meals and accommodation of training staff, technical control of teaching, the hiring of rooms, the hiring of equipment, perishable items and other supplies, accommodation, meals and travelling expenses of trainees.'

That decision was sent by DAFSE to the applicant on 19 September 1989 by registered letter with recorded delivery. By letter of 4 October 1989 the applicant informed the Commission that it had on 25 September 1989 received a note from DAFSE with the Commission's decision and stated that it would challenge the validity of the reductions. It then challenged that decision by letter sent to DAFSE on 24 October 1989.

6 Under the terms of Article 92(1) of the Rules of Procedure, where it is clear that the Court has no jurisdiction to take cognizance of an application lodged with it, it may by reasoned order declare the application inadmissible; it gives its decision under the conditions provided for in Article 91(3) and (4) of the Rules of Procedure. Having regard to the features of this case, the Court has decided to apply those provisions and to give a separate decision on the admissibility of the application by way of an order without opening the oral procedure.

7 By virtue of the third paragraph of Article 173 of the Treaty, the proceedings provided for in that article are to be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter. Under the

terms of Annex II to the Rules of Procedure, that period is extended by 10 days when, as in this case, the applicant has its habitual residence in Portugal.

8 In its written observations on the objection of admissibility, the applicant submits that, because it was imprecise and incomplete, the letter of 19 September 1989 did not enable it to comprehend the scope of the decision adopted in its regard. That letter mentioned only a part of the decision and required confirmation, which the Commission in fact provided in a letter dated 15 November 1989. Infortec observes, moreover, that by letter of 9 March 1990 DAFSE withdrew the contents of its letter of 19 September 1989. Finally, it argues that the communications of 4 and 24 October 1989, in which it asked for further details of the decision adopted in its regard, had the effect of extending the time-limit for instituting proceedings under Portuguese law, in particular Decree Law 267/85 of 16 July 1985 on the procedure applicable before administrative courts.

9 In reply to those arguments it should be stated that the letter of 19 September 1989 was precise, unequivocal and contained the reasoned decision of the Commission on the application for assistance. It must therefore be regarded as a notification of that decision within the meaning of the third paragraph of Article 173 of the EEC Treaty. It is not contested that the applicant received knowledge of the aforementioned letter on 25 September 1989. Since the application was lodged at the Court Registry on 16 January 1990, the application must be held to have been brought after expiry of the period provided for in the third paragraph of Article 173.

10 As regards the letter of 15 November 1989, it could not have the effect of creating a new time-limit for instituting proceedings since it has been consistently held by the Court (see, in particular, the judgment in Joined Cases 166 and 220/86 *Irish Cement Ltd* v *Commission* [1988] ECR 6473) that an action for the annulment of a decision which merely confirms a previous decision not contested within the time-limit for bringing the proceedings is inadmissible. Moreover, the letter from DAFSE of 9 March 1990 could have no effect on the decision adopted by the Commission on 14 September 1989. Finally, the time-limits for instituting proceedings before the Court are governed exclusively by Community law (see the judgment in Case 209/83 *Ferriera Valsabbia SpA* v *Commission* [1984] ECR 3089), so that the extension which may be claimed by the applicant under Portuguese law is of no effect.

11 It follows from the foregoing that the application is out of time and must be dismissed as inadmissible without its being necessary to examine the other arguments advanced by the parties.

Costs

12 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application as inadmissible;

(2) Orders the applicant to pay the costs.

Luxembourg, 21 November 1990.

J.-G. Giraud
Registrar

O. Due
President