JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
14 May 2002 *

In Case T-81/00,

Associação Comercial de Aveiro, established in Aveiro (Portugal), represented by J. Amaral e Almeida and B. Diniz de Ayala, lawyers, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by H. Speyart and M. França, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for annulment of Commission Decision C(99) 3721 of 30 November 1999 reducing the European Social Fund assistance granted in the framework of project No 891038/P 3 to Associação Comercial de Aveiro,

* Language of the case: Portuguese.

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

composed of: J.D. Cooke, President, R. García-Valdecasas and P. Lindh, Judges,

Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 11 December 2001,

gives the following

Judgment

1 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) provides that the European Social Fund (ESF) is to participate in the financing of operations concerning vocational training.

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) lists the types of expenditure for which assistance may be granted from the ESF, in particular that relating to vocational training.

3 Article 5(1) of Regulation No 2950/83 states that the approval of an application for financing from the ESF is to be followed by the payment of an advance of 50% of the assistance approved on the date on which the training operation is scheduled to begin. Under Article 5(4), final payment claims are to contain a detailed report on the content, results and financial aspects of the relevant operation. 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 having given the relevant Member State an opportunity to comment. Article 6(2) states that sums paid which are not used in accordance with the conditions laid down in the decision of approval are to be refunded and that to the extent that a Member State repays to the Community sums owed by the bodies financially responsible for an operation, the Community's rights in the matter are to be transferred to the Member State.

5 Under Article 7(1) of Regulation No 2950/83, both the Commission and the Member State concerned may check the use of the assistance.

6 Article 7 of Commission Decision 83/673/EEC of 22 December 1983 on the management of the European Social Fund (OJ 1983 L 377, p. 1) states that the Member State which is investigating the use of assistance because of suspected irregularities must notify the Commission without delay.

Facts

7 In 1988 the Departamento para os Assuntos do Fundo Social Europeu (Department of ESF Affairs, part of the Portuguese Ministry of Employment and Vocational Training, 'the DAFSE') sent to the Commission an application for approval of financial assistance to enable the Associação Comercial de Aveiro ('the ACA') to carry out a series of vocational training operations for which the total financing was (PTE) 257 394 377 Portuguese escudos, the ESF contribution being PTE 127 410 217, the contribution from the Portuguese public authorities being PTE 104 244 723 and private contributions being PTE 25 739 437.

8 By Decision C(89) 0570 of 22 March 1989, the Commission approved the grant of financial assistance to the ACA for its project No 891038/P 3 involving total financing of PTE 87 186 732, of which PTE 43 157 433 were paid by the ESF, PTE 35 310 627 from the Orçamento da Segurança Social (the social security budget, 'the OSS') and PTE 8 718 672 in the form of private contributions. Those operations were to be carried out between 8 February and 31 December 1989 and were intended for the vocational training of 166 persons.

9 On 9 May 1989, the ACA, as the recipient of the ESF assistance, signed an acceptance of the Commission decision, by which it undertook that 'the assistance granted will be used in accordance with the relevant rules of national and Community law'.

10 In accordance with Article 5(1) of Regulation No 2950/83, the ACA received an advance of PTE 39 234 029, corresponding to approximately 50% of the amount approved, which was made up of PTE 21 578 716 in the form of ESF assistance and PTE 17 655 313 in the form of OSS contribution.

11 On completion of the training operations, on 26 April 1990 the applicant submitted to the DAFSE a final payment claim for PTE 11 617 837, corresponding to ESF assistance of PTE 33 196 553 and total financing of PTE 67 195 490, the total cost of the training operations proving to be lower than the amount initially forecast. On 30 October 1990, the DAFSE submitted that claim to the Commission and informed it that the certification of the information which it contained was subject to further analysis.

12 By letter of 13 February 1991, the DAFSE informed the applicant that, although the final payment claim had already been sent to the Commission, its payment was subject to financial audit.

13 On several occasions, in March and October 1991 and in February 1992, the applicant requested the DAFSE to carry out that audit as soon as possible and stated that the delay in final payment was causing it serious financial damage.

14 On 25 March 1993, the Inspecçao Geral de Finanças (General Tax Inspectorate, 'the IGF') was requested to carry out a financial audit of the expenditure incurred in connection with the vocational training operations carried out in 1989 by the ACA, in accordance with Article 7(1) of Regulation No 2950/83. The IGF delivered its conclusions on the audit requested in a report of 28 September 1995 ('the 1995 IGF report').

15 The 1995 IGF report proposed treating as ineligible certain expenditure charged by the applicant in the final payment claim and also referred to the DAFSE for assessment the eligibility or reasonableness of other expenditure charged in it.

16 Subsequently, the DAFSE analysed the reasonableness of the expenditure charged and the corrections proposed by the IGF. It delivered its conclusions in a report issued on 1 July 1997 under No 1618 ('the DAFSE report'), in which it proposed reducing by PTE 5 770 902 the amount to be cofinanced, on account of the ineligibility of certain expenditure. The DAFSE suggested the following amendments to the financing:

ESF assistance	PTE 30 405 171
Contribution from the Portuguese public authorities (OSS)	PTE 24 876 958
Private contributions	PTE 6 142 459
Total cost of the operation	PTE 61 424 588

17 By letter No 6131 of 27 August 1997, the DAFSE proposed to the Commission that the total cost of the operation be reduced to PTE 61 424 588 (instead of PTE 67 195 490), with ESF assistance reduced to PTE 30 405 171 (instead of PTE 33 196 533), and requested payment of the balance of PTE 8 826 455, having regard to the advance of PTE 21 578 716 already received by the applicant.

18 By letter No 25693 of 5 December 1997 ('the draft decision'), sent in accordance with Article 6(1) of Regulation No 2950/83, the Commission informed the DAFSE that ESF assistance to project No 891038/P 3 could not exceed

PTE 30 405 171. The draft decision also indicated that the amount of PTE 5 770 902 as broken down in the DAFSE report was ineligible.

19 By letter of 19 December 1997, the DAFSE sent to the applicant a copy of the draft decision and a copy of the DAFSE report based on the 1995 IGF report and gave the applicant a time-limit expiring on 20 January 1998 in which to submit any observations.

20 The applicant did not submit any observations on the draft decision.

21 On 30 November 1999, the Commission adopted Decision C(99) 3721 ('the contested decision') reducing the amount of ESF assistance granted to the ACA pursuant to Commission Decision C(89) 0570 of 22 March 1989 adopted in connection with project No 891038/P 3. Under Article 1 of the contested decision, the assistance of PTE 43 157 433 initially granted by the ESF to the ACA, which had already been reduced on 30 October 1990 to PTE 33 196 553, was reduced to PTE 30 405 171.

22 By letter of 26 January 2000, the DAFSE notified the contested decision to the applicant.

Procedure and forms of order sought by the parties

23 By application lodged at the Court Registry on 4 April 2000, the applicant brought the present action.

24 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fifth Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure under Article 64 of the Rules of Procedure, requested the parties to produce certain documents. By letters of 28 November and 6 December 2001, the parties complied with those requests.

25 The parties presented oral argument and replied to the Court's questions at the hearing of 11 December 2001.

26 The applicant claims that the Court should:

— annul Commission Decision C(99) 3721 of 30 November 1999 approving the final payment claim relating to file No 891038/P 3, in so far as it imposes a reduction under subheadings 14.2.3, preselection and selection of trainees, 14.2.5, reproduction of documents, 14.3.1.b, non-teaching technical staff, and 14.3.9, hire and rental charges;

— order the Commission to pay the costs.

27 The Commission contends that the Court should:

— dismiss the application as unfounded;

— order the applicant to pay the costs.

The claims for annulment

28 The applicant challenges the reduction made by the Commission under the following four subheadings of its final payment claim:

— subheading 14.2.3 — preselection and selection of trainees —, in respect of which it pleads failure to state reasons and erroneous assessment of the facts;

— subheading 14.2.5 — reproduction of documents —, in respect of which it pleads failure to state reasons and breach of the principle of proportionality;

— subheading 14.3.1.b — non-teaching technical staff —, in respect of which it pleads failure to state reasons and erroneous assessment of the facts;

— subheading 14.3.9 — hire and rental charges —, in respect of which it pleads erroneous assessment of the facts.

Preliminary remarks on the pleas alleging breach of the obligation to state reasons

Arguments of the parties

29 The applicant recalls that Article 253 EC requires the Commission to state the reasons on which its decisions are based and points out that, according to settled case-law, a Commission decision reducing the amount of assistance initially granted, which has serious consequences for the persons concerned, must show clearly the grounds which justify the reduction. According to the applicant, such a decision must also show clearly and unequivocally the reasoning of the institution which enacted the measure (Case T-84/96 *Cipeke* v *Commission* [1997] ECR II-2081, paragraph 46, and Joined Cases T-180/96 and T-181/96 *Mediocurso* v *Commission* [1998] ECR II-3477, paragraph 99).

30 In the present case, the contested decision is vitiated by failure to state the reasons for the reduction in the amount under subheadings 14.2.3, preselection and selection of trainees, 14.2.5, reproduction of documents, and 14.3.1.b, non-teaching technical staff and should thus be annulled with all the legal consequences which such annulment entails.

31 In response to the Commission's argument to the effect that the contested decision satisfies all the requirements laid down by the case-law cited in paragraphs 73 to 75 of the judgment in Case T-182/96 *Partex* v *Commission* [1999] ECR II-2673, the applicant points out that the wording of the contested decision, the context in which that decision was adopted and the whole body of legal rules governing the matter do not provide sufficient information to make it

possible to determine whether the decision is well founded or whether it is vitiated by an error which may permit its validity to be contested in respect of the reduction of the amount under the three subheadings in question.

32 More specifically, in response to the Commission's argument to the effect that the fifth recital in the preamble to the contested decision states that 'certain expenditure submitted does not comply with the conditions set out in the approving decision, with the result that the contribution must be further reduced', the applicant points out that it is not correct that the approving decision laid down such conditions.

33 The Commission states that the applicant was able to take cognisance of the measures of the national authorities to which the contested decision refers and that the information which those measures contain is sufficient to enable it to identify and understand the reasons for the reductions, having regard to the context in which the decision was adopted.

Findings of the Court

34 The purpose of the obligation to state the reasons for an individual decision is to provide the person concerned with sufficient information to make it possible to determine whether the decision is well founded or whether it is vitiated by an error which may permit its validity to be contested, and to enable the Community judicature to review the lawfulness of the decision. The extent of that obligation depends on the nature of the measure at issue and the context in which it was adopted (Case 32/86 *Sisma* v *Commission* [1987] ECR 1645, paragraph 8; Case C-181/90 *Consorgan* v *Commission* [1992] ECR I-3557, paragraph 14; Case C-189/90 *Cipeke* v *Commission* [1992] ECR I-3573, paragraph 14; Case T-85/94 *Commission* v *Branco* [1995] ECR II-45, paragraph 32, and *Partex* v *Commission*, paragraph 73).

35 Since a decision reducing the amount of ESF assistance initially granted has, in particular, serious consequences for the recipient of the assistance, that decision must show clearly the grounds which justify the reduction in the assistance initially authorised (*Consorgan* v *Commission*, paragraph 18; *Cipeke* v *Commission*, paragraph 18; Case T-450/93 *Lisrestal and Others* v *Commission* [1994] ECR II-1177, paragraph 52; *Branco* v *Commission*, paragraph 33, and *Partex* v *Commission*, paragraph 74).

36 The question as to whether the statement of reasons for a decision satisfies those requirements must be assessed with reference not only to its wording but also to its context and the whole body of legal rules governing the matter in question (Case C-278/95 P *Siemens* v *Commission* [1997] ECR I-2507, paragraph 17, and *Partex* v *Commission*, paragraph 75).

37 In a case where the Commission simply confirms the proposal of a Member State to reduce financial assistance initially granted, its decision may be regarded as sufficiently reasoned for the purposes of Article 253 EC either when the decision itself clearly demonstrates the reasons justifying the reduction of the assistance or, if that is not the case, when it refers clearly to a measure of the competent national authorities in the Member State concerned in which the latter clearly set out the reasons for such a reduction (*Branco* v *Commission*, paragraph 36, confirmed on application to have that judgment set aside in Case T-85/94 OP *Commission* v *Branco* [1995] ECR II-2993, paragraph 27, and *Partex* v *Commission*, paragraph 76).

38 As it appears from the file that the Commission decision does not diverge on any particular point from the measures adopted by the national authorities, it may properly be considered that the content of the said measures forms part of the reasons given for the Commission's decision, at least in so far as the recipient of

the assistance was able to take cognisance of it (Case T-72/97 *Proderec* v *Commission* [1998] ECR II-2847, paragraph 105, and *Partex* v *Commission*, paragraph 77).

39 It is therefore necessary to consider whether the applicant was able to take cognisance of the measures referred to in the contested decision and whether the information contained therein was sufficient, having regard to the context in which the contested decision was adopted, to enable it to identify and understand the reasons for the reductions (*Partex* v *Commission*, paragraph 78).

40 In the present case, the contested decision refers, in the fourth recital in the preamble, to the reasons set out in letter No 6131 from the DAFSE of 27 August 1997, which included as an annex a copy of the DAFSE report, and, in the fifth recital in the preamble, to the 'results of the audit submitted in the communications notified in due time to the body concerned', that is, the 1995 IGF report and the DAFSE report. The fifth recital in the preamble to that decision also refers to the draft decision.

41 It is thus clear from the wording of the contested decision that the various factors making it possible to understand the reasons which led the Commission to reduce the amount of the assistance granted by the ESF are set out in the letters and reports cited therein.

42 In that regard, it should be noted that the DAFSE report and the draft decision were notified to the applicant by letter from the DAFSE of 19 December 1997 and that the applicant does not deny having also received a copy of the 1995 IGF report.

43 It is also clear from the context in which the contested decision was adopted that the Commission merely confirmed the proposal of the Member State concerned to reduce the assistance initially approved. The draft decision thus states that 'after examining the final payment claim and the associated documents sent by the Member State (DAFSE), the services of the [ESF] concluded, on the basis of the results of the audit report contained in Note No 1618 [of the DAFSE] that the amount of PTE 5 770 902 was ineligible'.

44 Finally, it should be noted that the contested decision refers in the fifth recital in the preamble to the fact that 'certain expenditure submitted is not in conformity with the conditions set out in the approving decision' and that that reference must be understood as relating to the acceptance of the approving decision, which was signed by the applicant on 9 May 1989 and in which the ACA, as the recipient of the ESF assistance, expressly declared:

'[T]he assistance granted will be used in accordance with the relevant rules of national and Community law and in conformity with all the decisive elements of the decision approving the "file" referred to above.'

45 These were the provisions therefore which the applicant was to comply with when implementing the ESF assistance and, pursuant to Article 6(1) of Regulation No 2950/83, the Commission had the power to suspend, reduce or withdraw that assistance on the basis of a national or Community rule not complied with in the performance of the operation in question (*Mediocurso* v *Commission*, paragraphs 113 and 119).

46 It is accordingly necessary to examine the content of the documents communicated to the applicant, referred to in the contested decision, and the relevant

provisions of national and Community law in order to rule on the pleas alleging breach of the obligation to state reasons in respect of subheading 14.2.3, preselection and selection of trainees, subheading 14.2.5, reproduction of documents, and subheading 14.3.1.b, non-teaching technical staff.

Subheading 14.2.3, preselection and selection of trainees

Examination by the Commission

47 In the final payment claim the applicant charged PTE 1 857 500 under this subheading for the preselection and selection of 166 trainees, visits to the undertakings, preparation of the application files and psychological tests.

48 The Commission reduced that sum for the reasons set out in the draft decision, namely that the cost of PTE 11 190 charged by the applicant for each candidate selected (PTE 1 857 500: 166 candidates selected) was excessive and that, in order to determine the amount eligible, it was appropriate to adopt, as 'reasonable criteria', a selection rate of 80% of the preselected candidates (166 candidates selected: 80 × 100 = 208 preselected candidates) and a cost of PTE 5 000 per preselected candidate, which gives the sum of PTE 1 040 000 (208 × PTE 5 000).

The pleas alleging breach of the obligation to state reasons and erroneous assessment of the facts

49 The Court notes that the applicant's pleas relate to both the statement of reasons and the merits of the criteria used by the Commission to determine the amount of expenditure eligible under the subheading at issue.

50 As a preliminary point, it should 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 laid down in the approving decision, the Commission may suspend, reduce or withdraw that assistance. 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 confine itself to examining whether the Commission committed a manifest error in assessing the information in question (*Mediocurso* v *Commission*, paragraphs 118 and 120).

51 The applicant considers that neither the draft decision nor the DAFSE report discloses the grounds on which the costs were judged to be excessive or on which the selection of 80% of the preselected candidates is regarded as reasonable, which is in breach of the obligation to state reasons laid down in Article 253 EC.

52 First, the applicant submits that the obligation to state reasons is all the more important because the 1995 IGF report did not question the cost of PTE 11 190 per selected candidate (that is 1 857 500: 166).

53 The Court finds, none the less, that the 1995 IGF report shows that the IGF left to the DAFSE the task of assessing the reasonableness and eligibility of the expenditure charged by the applicant, having regard to the fact that it had not

been possible for the IGF to trace the costs corresponding to the invoices submitted by the ACA in the accounts of the subcontracting undertaking used and that 'the "weight" of the expenses linked to the preparation of the courses exceeded the percentage usually accepted by the DAFSE (8% of operation and administration, and 5% of the total cost of the operations)'.

54 The DAFSE report then proposed the reduction of the ESF assistance under the subheading at issue, considering that the cost per selected candidate of PTE 11 190 was 'very high' and that, 'if we accept as reasonable' a selection rate of 80% of the preselected candidates and a cost of PTE 5 000 per preselected candidate, the amount eligible is PTE 1 040 000 (that is 166: 80 × 100 = 208; 208 × 5 000 = 1 040 000). The draft decision adopted that reasoning in order to arrive at the same result.

55 The applicant cannot therefore rely on the 1995 IGF report in order to claim that the DAFSE and the Commission were not able to assess the eligibility of the sum here at issue.

56 Second, the applicant states that it is correct to adopt a cost of PTE 11 190 per selected candidate, since the training was mainly aimed at employees of small businesses and it related in total to 78 undertakings spread over six communes. According to the applicant, the participation of each undertaking required on average three visits from one of the ACA's representatives and from an executive of Lusogref (the company with which it had entered into a contract for that purpose). Furthermore, the rate of participation per undertaking visited was below 30% and meetings were organised with each participating undertaking and the candidates registered for a training operation. Finally, before each of those meetings, it was necessary to collect and analyse the data relating to the candidates, in order to measure their expectations and those of their undertaking.

57 For these reasons, the applicant takes the view that the number of participating undertakings, their geographical spread and the rigour of the recruitment and selection display a degree of complexity higher than that made clear by the draft decision, the conclusions of which bear no relationship to reality.

58 The Court notes, however, that the expenses associated with the various steps taken by the ACA and the subcontractor in respect of the participating undertakings are not, as such, accounted for, but merely incorporated into the sum charged by the applicant under this subheading. The lack of any evaluation of the expenses referred to by the applicant is to be considered in relation to the conclusion of the 1995 IGF report, according to which the DAFSE was required to assess the reasonableness and eligibility of the expenses charged under this subheading, and to the DAFSE's assessment, adopted in the draft decision, according to which those expenses were very high.

59 In those circumstances, the Commission considered that the eligible amount was to be calculated by multiplying 208 preselected candidates — a number based on the 166 selected candidates indicated by the applicant and a selection rate, regarded as reasonable, of 80% of the preselected candidates — by the sum of PTE 5 000. The Court finds that the Commission did not commit a manifest error of assessment in using that formula in order to determine the reasonableness and eligibility of the expenses which could be charged under the subheading here at issue rather than taking into consideration all the expenses actually incurred by the applicant, the amount of which was criticised by both the IGF and the DAFSE.

60 It is however appropriate to examine the merits of the two criteria used by the Commission in order to determine the amount of the eligible expenses.

61 As regards the selection rate of 80% of the preselected candidates, it should be noted that the draft decision states that 'the selection of 80% of the preselected

candidates is... regarded as reasonable, since they had been nominated by the undertakings themselves'. Such an indication also appears in the 1995 IGF report, according to which 'the difference in cost per candidate between the two operations [PTE 17 259 per selected candidate in project No 890365/P 1, which related to persons aged between 18 and 25, as compared with PTE 11 190 in the project at issue, which related to employees of small and medium-sized businesses] is explained by the fact that there were numerous registrations in the case of the "young persons" whereas the situation was made easier in respect of the "employees of small and medium-sized businesses" since they were directed by the undertakings themselves'.

62 The fact that the undertakings presented their candidates to the ACA was not disputed by the applicant during the administrative procedure and the Commission could reasonably take the view that it made the process at issue easier by enabling 80% of the preselected candidates to be selected.

63 As regards the sum of PTE 5 000 per preselected candidate, the applicant challenges the Commission's argument to the effect that that amount must be regarded as reasonable on the grounds that it is, pursuant to Order No 20/MTSS/87 of 19 June 1987 of the Portuguese Minister for Labour and Social Security (*Diário da República*, Series II, No 148 of 1 July 1987, p. 8141; 'Order No 20/MTSS/87'), equivalent to the hourly rate of remuneration of a trainer who has completed nine years of schooling and has recognised professional experience and that one hour is sufficient for the preselection and selection of a candidate.

64 The applicant considers that Order No 20/MTSS/87 applies only to the limits on the remuneration of teaching staff, and not the remuneration of recruiters, and that it does not therefore justify the reasonableness of a cost of only PTE 5 000 per hour for a recruiter. The applicant also claims that there is nothing to explain why one hour was enough for the preselection and selection of a candidate. Accordingly, it declares that it does not understand in what way the costs charged are 'excessive' and 'unreasonable'.

65 The Court finds that Order No 20/MTSS/87 fixes maximum limits for the remuneration of teaching staff in respect of vocational training operations financed by the ESF and that the applicant is presumed to be aware of the Portuguese legislation on that type of operation (*Partex* v *Commission*, paragraphs 85 and 86). The concept of vocational training must be interpreted as meaning that it incorporates all the activities necessary to complete the vocational training, including preparatory activities such as the preselection and selection of candidates for the vocational training operations. In the present case, the Commission chose the hourly rate of remuneration of PTE 5 000 which corresponds to that of a trainer with recognised professional experience. The Court finds that it did not commit a manifest error of assessment in considering that criterion reasonable and appropriate, taking account of the subject-matter and content of the courses to be given, which related to administrative techniques of office systems, sales techniques, computer-based taxation and computer-based business management, and indeed required a person with recognised experience.

66 The Court also finds that, in considering that one hour was a reasonable time for examining an application, the Commission did not exceed the discretion which it enjoyed in the present case.

67 It follows from the foregoing that, first, the statement of reasons contained in the DAFSE report and the draft decision, to which the contested decision refers, read in the light of the relevant provisions of national and Community law, shows the reasons for which the ESF assistance was reduced and complies with the requirements of Article 253 EC and, second, the Commission did not commit a manifest error of assessment in reducing the ESF assistance.

68 Accordingly, the applicant's pleas alleging breach of the obligation to state reasons and erroneous assessment of the facts must be rejected.

Subheading 14.2.5, reproduction of documents

Examination by the Commission

69 In the final payment claim the applicant charged PTE 1 184 000 under subheading 14.2.5, reproduction of documents.

70 The Commission reduced the eligible amount to PTE 30 000 for the reasons set out in the draft decision in these terms:

'As regards the reproduction of documents, the amount charged was rectified, taking account of the fact that the cost of all the books and manuals distributed was allowed in full. Given that there were four courses in the operation and that the use of three reams of paper (1 500 sheets) per course and the amount of [PTE] 5 per photocopy are reasonable, since the ACA charged under subheading 14.3.14 — general administrative expenses — the purchase of paper and toner for the photocopier, the eligible amount becomes [PTE] 30 000 (4 courses × 1 500 sheets × [PTE] 5).'

The plea alleging breach of the obligation to state reasons

71 The applicant submits that the contested decision and the acts preparatory to it do not contain any indication of the grounds on two essential points. First, the Commission did not explain the reason for which it considered that a reasonable use of paper was three reams (that is, 1 500 sheets) per course, although it used a much greater quantity. Second, the Commission did not state the reason for

which it fixed the price of a photocopy at PTE 5, although such a price is appreciably different from market rates, both in 1989 and today, and the prices charged by the DAFSE.

72 The Court finds, first, that the 1995 IGF report shows that the IGF took the view that '[the sum of PTE 1 184 000 was] exaggerated, having regard, first, to the number of photocopies which it represents per trainee and, second, to all the manuals and books which were distributed, which should, in theory, have avoided the use of such a high number of photocopies'.

73 The Court also finds that the DAFSE report considered that the cost of PTE 1 184 000 charged by the applicant was exaggerated, having regard to the series of manuals and books which were distributed, the cost of which was allowed in full, and considering that it was reasonable to use three reams of paper per course (that is, 1 500 sheets), that the vocational training operation in question consisted of four courses, that the ACA had charged under subheadings 14.2.8, other preparation expenses, and 14.3.14, general administrative expenses, expenses relating to the purchase of reams of paper and ink cartridges for photocopiers and that a cost of PTE 5 per photocopy was reasonable. Consequently, the DAFSE took the view that the eligible amount was PTE 30 000 (1 500 sheets × 4 courses × PTE 5). That reasoning was adopted in the draft decision.

74 The Court therefore concludes that the explanations contained in the documents to which the contested decision refers show the reasons for which the ESF assistance was reduced and thus satisfy the requirements of Article 253 EC.

75 Consequently, the applicant's plea alleging breach of the obligation to state reasons must be rejected.

The plea alleging breach of the principle of proportionality

76 The applicant submits that the Commission has infringed the principle of proportionality by basing its decision on inappropriate criteria unsuited to a rational evaluation of the cost of the reproduction of documents.

77 The Court finds that the applicant's plea alleging breach of the principle of proportionality in fact relates to the question whether the Commission committed an error of assessment by reducing the ESF assistance.

78 It should be recalled that, according to the DAFSE report and the draft decision, there were four reasons for the reduction of the ESF assistance: books and manuals were distributed to the trainees; each of the four courses required 1 500 photocopies; the price of a photocopy is PTE 5; the costs of purchasing paper and ink cartridges for photocopiers are charged under subheadings 14.2.8, other preparation expenses, and 14.3.14, general administrative expenses.

79 The applicant does not dispute the validity of the fourth criterion according to which subheading 14.2.5, reproduction of documents, was not to take account of the costs of purchasing paper and ink cartridges for photocopiers, since those expenses had already been charged under subheadings 14.2.8, other preparation expenses, and 14.3.14, general administrative expenses. The fact that such expenses were able to be charged under the latter subheading, just like the fact that the Commission also accepted the amount corresponding to other expenses for purchasing paper of A3 and A4 format and of the photocopying expenses under subheading 14.3.10, material and consumables, should have been taken into consideration by the Commission in order to assess the amount of the expenses under subheading 14.2.5, reproduction of documents, since that meant that part of the costs associated with photocopying was charged under other subheadings and that that part of the costs could not therefore be included under the subheading here at issue.

80 As a result, it is appropriate to determine whether the other three criteria taken into account in the DAFSE report and the draft decision amount to an error of assessment on the part of the Commission in respect of the calculation of the expenses eligible for ESF assistance.

81 First, the applicant submits that the argument relating to the distribution of books and manuals cannot be relied on to justify a reduction in the number of photocopies since those books and manuals were in fact distributed in the form of photocopies.

82 In that regard, the applicant asserts that the amount of PTE 1 225 000 charged under subheading 14.2.1, teaching material, represents the cost of royalties relating to the photocopying of the books and manuals which were reproduced and not the cost of actually photocopying them, which was charged under subheading 14.2.5, reproduction of documents.

83 The Court finds that the final payment claim broke down the sum of PTE 1 225 000 charged under subheading 14.2.1, teaching material, as follows:

'[14.2.1] Teaching material:

(1 Lot Manuals on Intro. to Info. Tech. × PTE 115 000

+ 1 Lot Manuals on MS-DOS × PTE 145 000

+ 1 Lot Manuals on Word IV × PTE 190 000

+ 1 Lot Manuals on Lotus 123 × PTE 160 000

+ 1 Lot Manuals on Marketing × PTE 225 000

+ 1 Lot Manuals on Sales Tech. × PTE 260 000

+ 1 Lot Manuals on Org. Meth. in Admin. × PTE 130 000)

COST PTE 1 225 000.'

84 At the hearing, the applicant asserted that the abbreviation 'Conj. Manuais' ('Lot Manuals') used in its final payment claim could, depending on the circumstances, cover a single book — even though the word 'Manuais' is in the plural — or two or three books, namely the theory manual, the book of exercises and, possibly, a book of applications describing different situations, and that the cost of each of those lots covered only the purchase of one set and the royalties relating to the photocopying of the manuals.

85 It should, none the less, be noted that those assertions are not substantiated by any evidence and are inconsistent with the fact that the word 'Manuais' ('Manuals') is in the plural.

86 Moreover, the size of the sums charged by the applicant in respect of each lot of manuals allows the inference that the abbreviation used does indeed designate the purchase price of one lot of manuals and not that of the royalties relating to photocopying them. Thus the lot of sales techniques manuals cost PTE 260 000 according to the final payment claim. According to the breakdown of the number of photocopies distributed per course provided by the applicant as an annex to

the reply, 38 photocopies of those manuals were made. If the applicant had purchased 38 sales techniques manuals for PTE 260 000, the price per manual would have been PTE 6 842, which represented a not inconsiderable sum at the material time. The relationship between the price of the other lots of manuals and the number of photocopies which the applicant claims to have made also make it possible to arrive at an amount per item capable of representing the purchase price of those manuals.

87 It follows that the Commission could reasonably take the view that books and manuals had been purchased and distributed to the trainees, which reduced accordingly the need to make photocopies.

88 Second, the applicant notes in respect of the number of photocopies that the Commission treated different situations similarly by failing to take account of the particular features of the four courses, whose subject-matter, number of trainees, duration and, consequently, copying costs varied from one course to another. Thus, the Commission considered that the same number of photocopies was required for the administrative techniques of office systems course, which had 86 trainees and ran over 429 days (1 500 hours), the sales techniques course, which had 38 trainees and ran over 84 days (1 260 hours), the computer-based taxation course, which had 15 trainees and ran over 40 days (200 hours), and the computer-based business management course, which had 20 trainees and ran over 80 days (400 hours).

89 The applicant points out that not 6 000 (that is, 1 500 × 4), but 110 320 photocopies were distributed to the trainees. In the reply, the applicant supplies the breakdown of the number of photocopies distributed per course and the photocopying costs for each course and notes that such a document was never requested of it during the administrative procedure.

90 The Court finds, however, that in order to determine the number of photocopies it is necessary to take into consideration the fact that, according to the breakdown supplied by the applicant as an annex to the reply, most of the photocopies were of manuals, the cost of which was charged under subheading 14.2.1 (such as the manuals on MS-DOS, Word IV, Lotus 123, sales techniques or introduction to information technology). The Court has held that the Commission could reasonably take the view that books and manuals had been purchased and distributed to the trainees, which reduced accordingly the need to make photocopies.

91 Therefore, in the absence of sufficient evidence provided in due time by the applicant to the Commission in respect of the number of photocopies which were actually distributed for each course, the Commission cannot be criticised for having found the figure of 1 500 photocopies per course to be reasonable. Since the applicant was the recipient of ESF assistance, it was incumbent upon it to send such evidence to the competent authorities in due time, in the light of the DAFSE report and the draft decision.

92 Third, as regards the price per photocopy, the applicant observes that the price of PTE 10 which it proposed is the same as that chosen by the DAFSE. Such a price cannot therefore be regarded as excessive. Furthermore, the applicant states, by way of comparison, that the price of a photocopied page is PTE 100 according to the scale of charges and fees for notaries public, approved by Decree-Law No 397/83 of 2 November 1983 (amended several times).

93 The Court finds that the letter from the DAFSE relied on by the applicant in order to justify the price of PTE 10 is dated 3 April 1996. That letter thus relates to a period different from that during which the vocational training operations took place, that is, between February and December 1989. Furthermore, it should be noted that the price mentioned in that letter covers not only the cost of the photocopy but also the price of the service provided by the administrative authorities in making it. Moreover, the prices charged according to the scale of charges and fees for notaries public fall under a particular scheme which is not applicable in the present case.

94 It follows that the applicant has not demonstrated that the price used by the Commission is unreasonable.

95 It is clear from the foregoing that the applicant's plea alleging breach of the principle of proportionality must be rejected.

Subheading 14.3.1.b, non-teaching technical staff

Examination by the Commission

96 In the final payment claim the applicant charged PTE 1 562 500 (45 days at PTE 17 500 and 31 days at PTE 25 000) for teaching coordination and PTE 2 250 000 (50 days at PTE 45 000) for general coordination.

97 The Commission reduced the eligible amount for teaching coordination to PTE 1 025 000 and that for general coordination to PTE 2 100 000 for the following reasons, set out in the draft decision:

— in respect of teaching coordination, it took the view that 'there [was] no evidence that teaching coordination lasted 26 days longer than general coordination' and that, consequently, the eligible amount in respect of teaching coordination was to be reduced from PTE 1 562 500 (45 days at

PTE 17 500 and 31 days at PTE 25 000) to PTE 1 025 000 (30 days at PTE 17 500 and 20 days at PTE 25 000; the figures of 30 and 20 days being in the same proportion as that indicated by the applicant in the final payment claim, 45 and 31 days, that is 59% and 41% respectively of the expenses charged under teaching coordination);

— in respect of general coordination, it stated 'that it [was] not reasonable for a general coordinator to be paid at an hourly rate higher than that for a trainer with a degree and that the coordinators pursued, as such, no other activity and devoted six hours per day to the programme'. Consequently, it considered that the eligible amount in respect of general coordination was to be reduced from PTE 2 250 000 (50 days at PTE 45 000) to PTE 2 100 000 (50 days at PTE 42 000 per day, that is 6 hours at PTE 7 000 per hour), the figure of PTE 7 000 having been chosen as eligible on the basis of Order No 20/MTSS/87.

The pleas alleging breach of the obligation to state reasons

98 The applicant claims that the contested decision is vitiated by failures to state reasons, which also constitute breaches of Article 253 EC.

99 As regards teaching coordination, the applicant notes that the Commission failed to state the reasons for which it considers that there is no evidence that teaching coordination lasted 26 days longer than general coordination and technical coordination, since the difference between the types of coordination alone cannot serve as justification in this respect.

100 As regards general coordination, the applicant submits that the Commission failed to give the reason why it is not reasonable for a general coordinator with a degree to be paid at an hourly rate higher than that of a trainer with a degree when their functions are different. The applicant also observes that the Commission failed to provide any of the reasons for which it considered that a coordinator had worked only six hours per day when the length of the working day in Portugal is eight hours.

101 The Court notes that the 1995 IGF report shows that the IGF considered that the expenses included under this subheading represented approximately 21.5% of the expenses relating to the teaching staff, which exceeded the limits usually accepted for this type of expenses. Consequently, the IGF referred to the DAFSE for assessment the eligibility and reasonableness of the expenses for operating and managing the courses, of which the expenses charged under subheading 14.3.1.b, non-teaching technical staff, form part.

102 As regards teaching coordination, the DAFSE report and the draft decision proposed reducing the ESF assistance on the ground that there was nothing to justify the fact that it lasted 26 days longer than general coordination and technical coordination. The DAFSE and the Commission thus took into consideration 50 days, and not 76 days, in order to calculate the eligible sum, which was reduced from PTE 1 562 500 (45 days at PTE 17 500 and 31 days at PTE 25 000) to PTE 1 025 000 (30 days at PTE 17 500 and 20 days at PTE 25 000).

103 As regards general coordination, the DAFSE report and the draft decision proposed reducing the ESF assistance on the grounds that the coordinators were pursuing no other activity and were supposed to devote six hours per day to training and that it was not reasonable in the light, in particular, of Order No 20/MTSS/87 for a general coordinator to be paid at an hourly rate higher

than that of a trainer with a degree, namely PTE 7 000 per hour. The DAFSE and the Commission thus considered that the eligible sum was not PTE 2 250 000 (50 days at PTE 45 000), but PTE 2 100 000 (50 days × 6 hours × PTE 7 000).

104 The Court finds that the explanations contained in the documents to which the contested decision refers show the reasons for which the ESF assistance was reduced in respect of both teaching coordination and general coordination. Those explanations also enabled the party concerned to challenge their validity and the Court to review the legality of the contested measure. The requirements of Article 253 EC have therefore been satisfied.

105 Consequently, the applicant's pleas alleging breach of the obligation to state reasons must be rejected.

The pleas alleging erroneous assessment of the facts

106 As regards teaching coordination, the applicant claims, first, that it is incorrect to assert, as the DAFSE report and the draft decision do, that 'there is no evidence that teaching coordination lasted 26 days longer than general coordination'. General coordination, which lasted 50 days, was undertaken by one person, while teaching coordination, which represents 76 days, was undertaken by two persons, one having worked for 45 days and the other for 31 days. The applicant states that the difference between the number of days charged to general coordination (50 days) and that charged to teaching coordination (76 days) is explained simply by the fact that teaching coordination is more demanding and requires more work than the other types of coordination.

107 The Court finds, however, that the Commission did not commit a manifest error of assessment when it found that there is no evidence that teaching coordination lasted 26 days longer than general coordination. In the absence of relevant evidence from the applicant, it is difficult to understand how teaching coordination, which takes place throughout training operations, may be attributed a greater number of days than that for general coordination, which may take place before, during or after training operations. In that regard, it should be recalled that since the applicant was the recipient of the ESF assistance, it was incumbent on it to send such evidence to the competent authorities in due time, in the light of the DAFSE report and the draft decision.

108 As regards general coordination, the applicant submits, first, that the assertion to the effect that the coordinators devoted only six hours per day to their activities during the course is incorrect, since the length of the working day in Portugal is eight hours and that there is no evidence that the coordinators, whose cost was taken into account by the applicant, failed to work a full day.

109 The Court finds, however, that the applicant is not entitled to rely on the fact that the working day in Portugal is eight hours in order to challenge the Commission's assessment, in the absence of other elements of fact justifying its assertion. Eight hours constitutes a maximum, not a minimum, and the Commission could reasonably take the view that, because there were specific coordinators for teaching and technical matters, the attribution of six hours per day to the general coordinator was sufficient.

110 Second, the applicant rejects the argument to the effect that the general coordinator should not have been paid at a rate higher than that applicable to the trainer with a degree.

111 The Court finds that the Commission cannot be criticised for having taken the view that the application to the general coordinator of the remuneration corresponding to that of a trainer with a degree was appropriate to the type of course which was the subject of the vocational training operation in question. The use of a higher rate, such as that applicable to a trainer who is a university professor or holds a doctorate, is not reasonable or appropriate having regard to the subject-matter of the courses given, which did not justify general coordination being carried out by a person of such a level since they concerned administrative techniques of office systems, sales techniques, computer-based taxation and computer-based business management.

112 It follows that the applicant's pleas alleging erroneous assessment of the facts must be rejected.

Subheading 14.3.9, hire and rental charges

Examination by the Commission

113 In the final payment claim the applicant charged PTE 10 627 777 under the subheading here at issue, which concerns the services of hire and rental of movable and immovable property provided by the subcontractor SI — Sistemas de Informação Ld[a] ('SI').

114 The Commission reduced the amount eligible in respect of those services to PTE 8 460 000 for the following reasons, set out in the draft decision:

'Under this subheading, in respect of hire and rental charges, the sum of [PTE] 10 627 777 is charged, all of which was invoiced by the undertaking [SI]. In the course of the audit carried out by the IGF in respect of that undertaking, it became apparent that the amount of rents and hire charges declared on Form 22 of its income tax return for 1989 was [PTE] 14 842 000. Second, even though it was not possible to determine the actual costs borne by SI in the invoice issued to the ACA, it is obvious that, even if that had been possible, those costs would have been clearly below [PTE] 14 842 000, since some of the costs declared certainly had nothing to do with training.

...

If a profit margin of 50% on the real costs of the invoice issued by its client is accepted as reasonable, and given that the amount of [PTE] 10 628 000 represents 38% of the total invoiced to the ACA ([PTE] 10 628 000: [PTE] 27 842 000 (This amount is wrong. The exact amount is PTE 27 847 288, but this does not change the proportion of 38% used by the Commission.)), the application of that percentage to the cost declared by SI on Form 22 gives the figure of [PTE] 5 640 000 ([PTE] 14 842 000 × 38%) which, with a profit margin of 50%, is raised to [PTE] 8 460 000 ([PTE] 5 640 000 × 1.5).'

The plea alleging erroneous assessment of the facts

— Arguments of the parties

115 The applicant submits that the contested decision is vitiated in respect of subheading 14.3.9, hire and rental charges, since it is based on a false premiss

according to which the costs entered by SI under 'rents and hire charges' in its income tax return for 1989, namely PTE 14 842 000, must serve as the basis for the calculation of the expenses eligible under that subheading.

116 The Commission states, however, that the 1995 IGF report referred to the DAFSE for assessment the reasonableness and eligibility of the expenses included under that subheading; it asserted: '[T]he report on the audit of SI shows that the column for rents and hire charges contains a figure of PTE 14 842 000, as compared with PTE 27 847 000 invoiced, and includes PTE 4 323 000 in rental of offices to Aveiro and PTE 4 300 000 in equipment hire, an amount which seems in no way credible.' The IGF report of 5 March 1993 on the audit of the four subcontractors used by the ACA in connection with the training operations ('the 1993 IGF report') confirms that assertion in respect, in particular, of the analysis of the current account statements and SI's corresponding copies.

117 The Commission also states that the IGF was not able to identify the direct costs corresponding to the invoices issued in the name of the ACA in SI's accounts. It also notes that even if the IGF had succeeded in establishing the direct costs alone by means of the invoices issued in the name of the ACA, those costs would have been lower than PTE 14 842 000, since certain expenses declared by SI are not associated with the training operations undertaken by the applicant.

118 Consequently, faced with the need to assess the reasonable and necessary nature of certain expenses and of the corresponding amounts, and having regard to the prices charged on the market and the duty of bodies in receipt of public money to exercise the diligence required of a good manager in the administration of his own interests, the Commission takes the view that a margin of 50% on the direct costs invoiced to the client is reasonable for a subcontractor, even if it is 'objectively high', as the DAFSE report observes.

— Findings of the Court

119 The Commission decision to reduce the amount of expenses eligible in respect of subheading 14.3.9, hire and rental charges, is based on the view that those charges must be calculated on the basis of the 'actual costs of the invoice issued by SI' and follows, according to the draft decision, from the 1993 IGF report, which was made at the request of the DAFSE.

120 The 1993 IGF report first of all analyses SI's revenue and notes that its income tax return for 1989 shows that the sales and services carried out by that undertaking amount to approximately PTE 144 187 010. That amount includes the PTE 10 627 777 invoiced by SI to the ACA in respect of the hire or rental of movable and immovable property, on the subject of which the IGF notes that examination of the invoices submitted by the ACA and of its final payment claim shows that the services provided by SI concern the hire of computer equipment (for PTE 7 841 000), maintenance, technical assistance and the transportation of equipment (for PTE 1 202 000) and rents (for PTE 1 585 000).

121 That report then examines SI's expenditure, in respect of which the IGF analyses merely the item 'rents and hire charges' in that undertaking's income tax return for 1989 and states: 'Whereas the invoices issued by SI to the ACA concern generally sums relating to services for hiring computer equipment and renting rooms, the analysis of the expenses was restricted to the item "rents and hire charges" in the result accounts for the 1989 tax year, the total of which amounted

on 31 December 1989 to [PTE] 14 842 000.' That sum is broken down as follows:

'Rents	4 323 000
Automercantil	736 000
Sofinloc	1 788 000
Renault Gest	750 000
A.A. Castanheria Rent a Car	200 000
Fiat	446 000
Regisconta	2 049 000
Sobran	1 300 000
Unital	3 000 000
RST	250 000
[Total]	14 842 000.'

122 The 1993 IGF report also states that the total amount entered under the heading 'Rents', namely PTE 4 323 000, includes sums relating to the rental of office premises in the Vera Cruz building in Aveiro; that in respect of the other headings the amount of PTE 1 300 000 corresponds to an invoice issued by Sobran, which has been declared bankrupt, and that the amount of PTE 3 000 000 corresponds to the provision of an NCR 8250 computer for 30 days, which was entered in Unital's fixed assets and had been purchased in 1985 for PTE 3 500 000.

123 In that context, the 1993 IGF report compares SI's revenue and expenditure and concludes that the examination of whether the invoices issued for a total amount of PTE 27 847 288 (PTE 17 219 511 for project No 890365/P 1 and PTE 10 627 777 for project No 891038/P 3) are consistent with the item of corresponding expenditure shows that the sum entered in SI's accounts under

'rents and hire charges' is PTE 14 842 000, including the rental of premises for PTE 4 323 000 and the hire of equipment for PTE 4 300 000, and the report states that that amount 'does not seem credible for the reasons given'.

124 The 1993 IGF report does not examine whether the other rents and hire charges incurred by SI with Automercantil (PTE 736 000), Sofinloc (PTE 1 788 000), Renault Gest (PTE 750 000), A.A. Castanheira Rent a Car (PTE 200 000), Fiat (PTE 446 000), Regisconta (PTE 2 049 000) and RST (PTE 250 000) have an impact on the cost of the services provided by SI for the ACA. The naming of those undertakings does not however make it possible to assert that SI's hire contracts with them are directly connected with the services provided to the ACA.

125 The Court finds that the reasoning adopted in the 1993 IGF report is based on the incorrect premiss that the costs entered under 'rents and hire charges' in SI's income tax return for 1989 must be used to determine the costs of the services invoiced by that undertaking to the ACA.

126 From the details of the expenses charged in the final payment claim in respect of subheading 14.3.9, hire and rental charges, it is clear that the sum of PTE 10 627 777, which corresponds to the ACA's expenses of hiring equipment from SI in connection with project No 891038/P 3, may be broken down as follows:

— PTE 7 840 734 for hire of equipment;

— PTE 1 585 350 for hire of facilities;

— PTE 470 444 for maintenance and insurance; and

— PTE 731 250 for transportation and installation of equipment.

127 The applicant states, without being challenged by the Commission, that the equipment hired from SI by the ACA for the project in question was in part the property of SI and in part hired by SI from third persons. The equipment belonging to SI was thus entered under 'tangible fixed assets' as reserve for depreciation, which the income tax return for 1989 indicates as PTE 11 169 034, whereas the property hired by SI was entered under 'rents and hire charges', which amount to PTE 14 842 000 in the income tax return for 1989.

128 Similarly, the costs of the services relating to maintenance, transportation and installation of equipment and insurance were accounted for by SI under items other than 'rents and hire charges', namely items relating to the costs of staff, upkeep and repairs, and insurance.

129 Thus, the search for the costs of the services provided by SI in the accounts of that undertaking should not have been limited to 'rents and hire charges' alone, but should have taken into consideration all the items capable of including the abovementioned costs, since SI's services do not cover only the hire of equipment and facilities by SI from third persons, as the IGF supposes, but also the hire from SI of equipment or facilities which it owns and the maintenance, transportation, installation and insurance of that equipment.

130 It must therefore be held that the PTE 14 842 000 entered under 'rents and hire charges' in SI's income tax return for 1989 cannot serve as the basis for determining the expenses eligible under subheading 14.3.9, hire and rental charges.

131 The 1995 IGF report, the DAFSE report and the draft decision reproduced the same error.

132 The 1995 IGF report adopted the conclusion of the 1993 IGF report and referred to the DAFSE for assessment the reasonableness and eligibility of the expenses listed under the subheading here at issue.

133 Subsequently, after having noted the basis of the comparison made by the IGF between the amount of the invoice (namely PTE 27 847 288, including PTE 10 627 777 for project No 891038/P 3) and the sum entered under 'rents and hire charges' for SI (namely PTE 14 842 000), the DAFSE report proposed calculating the eligible amount by using the sum of PTE 14 842 000 as a reference point.

134 The draft decision adopted that reasoning and arrived at the same result.

135 It follows that the Commission committed a manifest error of assessment in adopting the incorrect premiss that the costs of PTE 14 842 000 entered under 'rents and hire charges' in SI's income tax return for 1989 make it possible to determine the amount of the expenses eligible under the subheading at issue.

136 It is clear from the foregoing that the applicant's plea alleging erroneous assessment of the facts is well founded.

137 Consequently, the contested decision must be annulled in so far as it reduces, under subheading 14.3.9, hire and rental charges, the amount of the expenses charged by the applicant as payment for the services of hiring or renting movable and immovable property provided by the subcontractor SI.

Costs

138 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, Article 87(3) provides that the Court may order that costs be shared or that the parties bear their own costs if each party succeeds on some and fails on other heads.

139 In this case, the claims for annulment made by the applicant, which applied for the Commission to be ordered to pay the costs of the present proceedings, have been declared well founded in part. The Court considers that a decision requiring that the Commission bear its own costs and pay one third of those incurred by the applicant fairly reflects the circumstances of the case, and particularly the long period which elapsed between the submission of the final payment claim on 26 April 1990 and the adoption of the contested decision on only 30 November 1999.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber),

hereby:

1. **Annuls Commission Decision C(99) 3721 of 30 November 1999 reducing the European Social Fund assistance granted to the Associação Comercial de Aveiro in the context of project No 891038/P 3 in so far as it reduces the amount of the services invoiced by SI — Sistemas de Informação Ld[a] under subheading 14.3.9, hire and rental charges;**

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

3. **Orders the Commission to bear its own costs and to pay one third of those incurred by the applicant;**

4. **Orders the applicant to bear two thirds of its own costs.**

Cooke García-Valdecasas Lindh

Delivered in open court in Luxembourg on 14 May 2002.

H. Jung
Registrar

J.D. Cooke
President