

Case T-271/94

Eugénio Branco Lda

v

Commission of the European Communities

(Application for annulment — European Social Fund —
Reduction of financial assistance initially granted —
Absence of an act which may be challenged — Inadmissibility)

Judgment of the Court of First Instance (Fifth Chamber), 11 July 1996 II - 751

Summary of the Judgment

Social policy — European Social Fund — Financial assistance for training programmes — Reduction of assistance initially granted — Exclusive power of the Commission — Transfer of the Community's rights to the Member States provided for in Article 6(2) of Regulation No 2950/83 — Transfer limited to the right to refund arising from the decision adopted by the Commission to reduce the assistance — Action for annulment brought by a recipient following a purely national decision reducing the national contribution and demanding the repayment of certain sums — Inadmissibility in the absence of a measure against which an action may be brought (EC Treaty, Art. 173; Council Regulation No 2950/83, Art. 6(1))

Although any national authority which has competence with regard to the financing of European Social Fund operations may, in a final payment claim submitted in accordance with Article 5(4) of Regulation No 2950/83 on the implementation of Decision 83/516 on the tasks of the Fund, propose a reduction in the financial assistance granted by the Fund, it is, however, the Commission which takes the decision on final payment claims, and it is the Commission, and the Commission alone, which has the power to reduce financial assistance in accordance with Article 6(1) of the aforementioned regulation. It follows that it is the Commission which assumes, *vis-à-vis* the recipient of assistance, legal responsibility for the decision by which its assistance is reduced, irrespective of whether or not that reduction was proposed by the national authority concerned.

Since the Commission alone is entitled to reduce assistance, that right cannot be transferred to the competent national authority. Moreover, the transfer of rights referred to in Article 6(2) of the regulation does not affect in any way the powers conferred by Article 6(1) but only the rights of the Community to the refund of advances improperly paid. Those rights are transferred to the Member State only to the extent to which it repays to the Commission the sums owed by the body financially responsible for an operation. Only sums paid to the recipient

which have not been used in accordance with the conditions laid down in the decision granting approval are to be refunded. Since it is for the Commission alone to assess whether the financial assistance has been properly used, the transfer of rights presupposes a prior Commission decision.

In the absence of any decision by the Commission to reduce aid or not to pay the balance within the meaning of Article 6(1) and intended to alter the legal position of the recipient resulting from the decisions granting approval, an action for the annulment of the reduction of assistance is inadmissible in the absence of a measure against which an action may be brought within the meaning of Article 173.

Since the decisions of a national authority reducing the national financial contribution and demanding the repayment of certain sums are purely national decisions and are in no way attributable to a Community institution, they fall outside the purview of the Community judicature since review of the validity of national measures implementing Community acts relating to the aid at issue is a matter for the competent national court which may, pursuant to Article 177 of the Treaty, refer to the Court of Justice a question as to the validity of those Community acts.