

Case T-72/97

Proderec — Formação e Desenvolvimento de Recursos Humanos, ACE

v

Commission of the European Communities

(European Social Fund — Decision to reduce two amounts of financial assistance —
Action for annulment — Admissibility — Certification of factual
and accounting accuracy — Lack of competence of the national body —
Statement of reasons — Rights of the defence)

Judgment of the Court of First Instance (Fourth Chamber), 16 July 1998 II - 2850

Summary of the Judgment

1. *Actions for annulment — Time-limits — Point from which time starts to run — Measure neither published nor notified to the applicant — Exact knowledge of the content and grounds (EC Treaty, Art. 173, fifth para.)*
2. *Social policy — European Social Fund — Assistance with the financing of vocational training initiatives — Certification by Member States of the factual and accounting accuracy of applications for payment of the balance — Scope (Council Regulation No 2950/83, Art. 5(4); Council Decision No 83/516, Art. 2(2); Commission Decision No 83/673, Art. 7)*

3. *Acts of the institutions — Statement of reasons — Obligation — Scope (EC Treaty, Art. 190)*
4. *Actions for annulment — Pleas in law — Misuse of powers — Meaning*
5. *Social policy — European Social Fund — Assistance with the financing of vocational training initiatives — Decision to reduce assistance initially granted — Defence rights of the undertakings concerned*

1. The period which an undertaking has in which to bring an annulment action against Commission decisions reducing amounts of financial assistance initially granted to it by the European Social Fund does not start to run until the date on which that undertaking acquired precise knowledge of the author, the content and the grounds of the decisions, the latter having been notified to the competent national authorities, and not having been published in the *Official Journal of the European Communities*.

2. The certification referred to in Article 5(4) of Regulation No 2950/83 on the implementation of Decision 83/516 on the tasks of the European Social Fund consists, as far as Member States are concerned, in checking the factual and accounting accuracy of the data forwarded in support of the claim for payment of the balance of aid by the beneficiary. The act of certification by the Member State does not absolve it from its other obligations under the relevant Community legislation. Thus, even if it has already carried out such certification, it remains bound by the obligations under Article 2(2) of Decision 83/516 and

Article 7 of Decision 83/673 respectively, concerning the management of the fund, to guarantee the successful completion of the operations financed with the fund's aid and to notify the Commission of any suspected irregularities. Those obligations are not subject to any time restriction, and must be interpreted as applying throughout the management of an operation financed by the European Social Fund. Moreover, the exercise of the exclusive power of the Commission to reduce Community financial assistance under the European Social Fund cannot be made conditional upon the certification referred to in Article 5(4) of Regulation No 2950/83.

Accordingly, any certification under Article 5(4) of Regulation No 2950/83 must be regarded as being by its nature an operation carried out by Member States subject to all reservations. A different interpretation would undermine the effectiveness of Article 7 of Decision 83/673, which requires Member States to give notice of irregularities found in the management of operations to be financed through the European Social Fund.

3. 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 Community judicature to exercise its powers of review. The scope of that obligation depends on the nature of the measure in question and the context in which it was adopted.

purpose, or at least the main purpose, of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case.
4. A measure may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent factors, to have been taken with the exclusive
5. Since the defence rights of a beneficiary of financial assistance from the European Social Fund must be respected where the Commission reduces the amount of that assistance, the Commission may not adopt a decision reducing such assistance without first giving the beneficiary the possibility, or ensuring that it has had the possibility, of effectively setting forth its views on the proposed reduction.