

**Action brought on 24 January 2011 — Aecops v Commission**

(Case T-52/11)

(2011/C 139/38)

*Language of the case: Portuguese***Parties**

*Applicant:* AECOPS — Associação de Empresas de Construção, Obras Públicas e Serviços (Lisbon, Portugal) (represented by J. da Cruz Vilaça and L. Pinto Monteiro, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul, in accordance with and for the purpose of Article 263 TFEU, the Commission's decision of 27 October 2010 relating to file No 89 0979 P3, reducing to PTE 426 070 the amount of the assistance granted by Commission Decision C(89) 0570 of 22 March 1989 and, at the same time, requiring reimbursement of the amount of EUR 14 430;
- order the European Commission to pay both its own costs and those of the applicant.

**Pleas in law and main arguments**

In support of its action, the applicant relies on two pleas in law.

1. First plea in law, alleging failure to observe a reasonable time-limit within which to take the decision, as a result of which:
  - the proceedings are time-barred: the applicant maintains that the contested decision was adopted after the elapse of the period of four years fixed for the limitation of proceedings, as provided for by Article 3 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests. Likewise, even if there had been an interruption to the running of the limitation period for the proceedings, twice the limitation period had elapsed without any decision's having been adopted, in accordance with Article 3(1) of that regulation. The contested decision must be considered unlawful and incapable of being given effect, for the exercise of the corresponding right is time-barred;
  - breach of the principle of legal certainty: the applicant takes the view that the fact of the Commission's having let more than 20 years go by between the alleged irregularities and the adoption of the final decision entailed disregard for the principle of legal certainty. That fundamental principle of the legal order of the European Union states that all persons have the right to have

the matters concerning them dealt with by the institutions of the Union within a reasonable period;

- breach of rights of defence: the applicant claims that its rights of defence have been breached, inasmuch as, seeing that more than 20 years passed between the occurrence of the alleged irregularities and the adoption of the final decision, the applicant was deprived of any chance of submitting its observations in good time, that is to say, at a time when it still held documents that might have enabled it to explain the expenditure considered ineligible by the Commission.

2. Second plea in law, alleging breach of the duty to state reasons: the applicant argues that the contested decision does not satisfy the obligation to state reasons imposed by Article 296 TFEU. The contested decision does not explain, even summarily, what reasons led to the reduction of the financial assistance granted by the European Social Fund, nor does the letter of the European Social Fund Management Institute notifying the applicant of the contested decision explain, in an even remotely comprehensible manner, the reasons prompting the reduction of that assistance or which expenditure was, and which was not, eligible. In the applicant's view, the defect of want of reasoning must lead the Court to annul the contested decision.

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*Language of the case: Portuguese***Parties**

*Applicant:* AECOPS — Associação de Empresas de Construção, Obras Públicas e Serviços (Lisbon, Portugal) (represented by J. da Cruz Vilaça and L. Pinto Monteiro, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul, in accordance with and for the purpose of Article 263 TFEU, the Commission's decision of 27 October 2010 relating to file No 89 0771 P1, reducing to PTE 48 504 201 the amount of the assistance granted by Commission Decision C(89) 0570 of 22 March 1989 and, at the same time, requiring reimbursement of the amount of EUR 628 880,97;
- order the European Commission to pay both its own costs and those of the applicant.

### Pleas in law and main arguments

In support of the action, the applicant relies on @@ plea(s) in law.

1. First plea in law, alleging failure to observe a reasonable time-limit within which to take the decision, as a result of which:
  - the proceedings are time-barred: the applicant maintains that the contested decision was adopted after the elapse of the period of four years fixed for the limitation of proceedings, as provided for by Article 3 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests. Likewise, even if there had been an interruption to the running of the limitation period for the proceedings, twice the limitation period had elapsed without any decision's having been adopted, in accordance with Article 3(1) of that regulation. The contested decision must be considered unlawful and incapable of being given effect, for the exercise of the corresponding right is time-barred;
  - breach of the principle of legal certainty: the applicant takes the view that the fact of the Commission's having let more than 20 years go by between the alleged irregularities and the adoption of the final decision entailed disregard for the principle of legal certainty. That fundamental principle of the legal order of the European Union states that all persons have the right to have the matters concerning them dealt with by the institutions of the Union within a reasonable period;
  - breach of rights of defence: the applicant claims that its rights of defence have been breached, inasmuch as, seeing that more than 20 years passed between the occurrence of the alleged irregularities and the adoption of the final decision, the applicant was deprived of any chance of submitting its observations in good time, that is to say, at a time when it still held documents that might have enabled it to explain the expenditure considered ineligible by the Commission.
2. Second plea in law, alleging breach of the duty to state reasons: the applicant argues that the contested decision does not satisfy the obligation to state reasons imposed by Article 296 TFEU. The contested decision does not explain, even summarily, what reasons led to the reduction of the financial assistance granted by the European Social Fund, nor does the letter of the European Social Fund Management Institute notifying the applicant of the contested decision explain, in an even remotely comprehensible manner, the reasons prompting the reduction of that assistance or which expenditure was, and which was not, eligible. In the applicant's view, the defect of want of reasoning must lead the Court to annul the contested decision.

**Appeal brought on 18 February 2011 by the European Training Foundation (ETF) against the judgment of the Civil Service Tribunal of 9 December 2010 in Case F-87/08 Schuerings v ETF**

(Case T-107/11 P)

(2011/C 139/40)

*Language of the case: French*

### Parties

*Appellant:* European Training Foundation (ETF) (represented by L. Levi, lawyer)

*Other party to the proceedings:* Gisela Schuerings (Nice, France)

### Form of order sought by the appellant

- Annul the judgment of the European Union Civil Service Tribunal of 9 December 2010 in case F-87/08;
- In consequence, dismiss the action at first instance and, accordingly,
- Order the respondent to the appeal to pay all the costs of both sets of proceedings.

### Pleas in law and main arguments

In support of the appeal, the appellant relies on four pleas in law.

1. First plea in law, alleging that the CST disregarded the interest of the service and of the post, and infringed Articles 2 and 47 of the Conditions of employment of other servants of the European Union and the obligation to state reasons, insofar as the CST held in paragraph 62 of the judgment under appeal that 'before an agency dismisses a member of staff employed under a contract of indefinite duration on the ground that the tasks to which that member of staff was assigned have been cancelled or transferred to another body, the agency concerned is under an obligation to consider whether the person concerned can be reassigned to another post already in existence or soon to be created, in particular, following the attribution of new responsibilities to the agency concerned'.
2. Second plea in law, alleging breach of the principles of proportionality and legal certainty, insofar as the CST held in paragraph 63 of the judgment under appeal that the administration must, when considering the possibility of reassignment, 'weigh the interest of the service, which requires the recruitment of the most suitable person to fill the post already in existence or *soon to be created*, against the interest of the member of staff whose dismissal is contemplated. In order to do so, it must take account ... of various criteria, which include the requirements of the post in the light of the qualifications and *potential of the member of staff*, ... and his age, seniority and the number of years of pension contributions remaining before he can claim a retirement pension'.