

Case T-64/89

Automec Srl

v

Commission of the European Communities

(Procedure — Admissibility — Preparatory measure)

Judgment of the Court of First Instance (First Chamber), 10 July 1990 369

Summary of the Judgment

1. *Actions for annulment of measures — Conditions for admissibility — Measures against which actions may be brought — Questions which the Court may consider of its own motion (EEC Treaty, Art. 173; Rules of Procedure, Art. 92(2))*
2. *Competition — Administrative procedure — Examination of complaints — Successive stages of the procedure — Possibility of closure by a final decision of rejection against which an action for annulment may be brought (Council Regulation No 17, Art. 3(2); Commission Regulation No 99/63, Art. 6)*
3. *Actions for annulment of measures — Measures against which actions may be brought — Measures producing binding legal effects — Administrative procedure implementing the rules on competition — Preliminary observations of the Commission — Notification provided for in Article 6 of Regulation No 99/63 — Preparatory measures (EEC Treaty, Art. 173; Council Regulation No 17, Art. 3(2); Commission Regulation No 99/63, Art. 6)*
4. *Procedure — Action brought against a preparatory measure — Adoption of a subsequent measure — New factor permitting the applicant to amend the conclusions in the application — None (Statute of the Court of Justice of the European Communities, Art. 19; Rules of Procedure, Art. 38)*

1. The existence of the measure whose annulment is sought under Article 173 of the Treaty is an essential requirement for admissibility, the absence of which may be considered by the Court of its own motion. In particular, the fact that a measure is a preparatory measure constitutes one of the barriers to the admissibility of an action for a declaration that the measure is void which the Court may consider of its own motion.

2. The procedure for examining complaints of infringements against the Community competition rules, governed by Article 3(2) of Regulation No 17 and Article 6 of Regulation No 99/63, comprises three successive stages.

During the first of those stages, following the submission of the complaint, the Commission collects the information on the basis of which it will decide what decision it will take on the complaint. That stage may include, *inter alia*, an informal exchange of views and information between the Commission and the complainant with a view to clarifying the factual and legal issues with which the complaint is concerned and to allowing the complainant an opportunity to expand on his allegations in the light of any initial reaction from the Commission.

In the second stage, the Commission states, in a notification addressed to the complainant, the reasons for which it considers that there are insufficient grounds for granting the application and gives the complainant the opportunity to submit any further comments within a time-limit which the Commission fixes.

In the third stage of the procedure, the Commission takes cognizance of the observations submitted by the complainant. Although Article 6 of Regulation No 99/63 does not explicitly provide for the possibility, this stage may end with a final decision, against which an action for annulment may be brought, to reject the complaint and close the file.

3. In view of their legal nature and effects, neither the preliminary observations made by the Commission at the beginning of a procedure relating to an infringement of the competition rules nor the communication to the complainant provided for in Article 6 of Regulation No 99/63 may be regarded as decisions within the meaning of Article 173 of the Treaty, against which an action for annulment is available. In the context of the administrative procedure as regulated by Article 3(2) of Regulation No 17 and by Article 6 of Regulation No 99/63, they do not constitute measures the legal effects of which are binding on, and capable of affecting the interests of, the applicant, but preparatory measures.

4. When an action for annulment has been brought against a preparatory measure which cannot produce any legal effects and against which, therefore, an action for annulment cannot validly be brought, the adoption of a subsequent act while the action is in progress cannot be regarded as a new factor enabling the applicant to amend its conclusions.