

Case T-33/01

Infront WM AG

v

Commission of the European Communities

(Television broadcasting — Directive 89/552/EEC — Directive 97/36/EC — Article 3a — Events of major importance for society — Admissibility — Infringement of essential procedural requirements)

Judgment of the Court of First Instance (Fourth Chamber, Extended Composition), 15 December 2005 II - 5901

Summary of the Judgment

1. *Actions for annulment — Actionable measures — Meaning — Measures producing binding legal effects — Commission letter informing a Member State of the compatibility with Community law, and of the subsequent publication, of State measures adopted under Article 3a of Directive 89/552 — Included as an actionable measure*
(Art. 230 EC; Council Directive 89/552, Art. 3a)

2. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Whether directly concerned — Criteria — Commission decision establishing compatibility with Community law, and envisaging publication, of measures adopted by a Member State under Article 3a of Directive 89/552 — Holder of television broadcasting rights for the designated events directly concerned*
(Art. 230, fourth para., EC; Council Directive 89/552, Art. 3a)

3. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Commission decision establishing compatibility with Community law, and envisaging publication, of the measures adopted by a Member State under Article 3a of Directive 89/552 — Action by the holder of television broadcasting rights for the designated events — Admissibility*
(Art. 230, fourth para., EC; Council Directive 89/552, Art. 3a)

1. Any measure, the legal effects of which are binding on, and capable of affecting the interests of, the applicant by bringing about a distinct change in his legal position is an act or decision which may be the subject of an action for annulment under Article 230 EC. The form in which such acts or decisions are cast is, in principle, immaterial as regards the question whether they are open to challenge by an action for annulment. In order to ascertain whether or not a measure which has been challenged produces such effects it is necessary to look to its substance.

the Commission, in accordance with Article 3a of Directive 89/552, on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as amended by Directive 97/36/EC, constitutes a measure which may be challenged.

In this context, a letter from the Commission informing a Member State of its position as regards the compatibility with Community law, and the subsequent publication in the Official Journal, of measures, aimed at regulating the exercise of exclusive broadcasting rights of events of major importance for society, notified by that Member State to

That letter produces legal effects for the Member States in so far as it envisages the publication in the Official Journal of the national measures in question, which publication can only occur after the Commission has established the national measures' compatibility with Commu-

nity law, and which has the effect of triggering the mechanism for mutual recognition by other Member States as laid down by Article 3a(3) of that directive.

(see paras 87, 89, 92, 95, 103, 111)

of television broadcasting activities, as amended by Directive 97/36/EC. That decision enables the mechanism of mutual recognition to operate effectively, by triggering the obligation for the other Member States to comply with their obligations under that directive, in particular ensuring that a television broadcaster, under their jurisdiction, and having bought the rights at issue does not circumvent those measures.

(see paras 130, 138-139, 142, 150)

2. In order to be of direct concern to an individual within the meaning of the fourth paragraph of Article 230 EC the contested Community measure must directly affect the applicant's legal situation and its implementation must be purely automatic and result from Community rules alone without the application of other intermediate rules.

This is the case for the holder of the designated broadcasting rights, as regards the Commission decision establishing compatibility with Community Law, and envisaging the subsequent publication in the Official Journal, of those measures, aimed at regulating the exercise of exclusive broadcasting rights of events of major importance for society, notified by the Member States in accordance with Article 3a of Directive 89/552, on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit

3. Persons other than those to whom a decision is addressed may claim to be individually concerned, within the meaning of the fourth paragraph of Article 230 EC, only if that decision affects them by virtue of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person to whom the decision is addressed.

The holder of the broadcasting rights for an event included in the list of those designated by the national measures and having acquired those rights prior to the adoption of those measures and, a fortiori, prior to their approval by the

Commission, must be considered as individually concerned by the Commission decision — establishing compatibility with Community Law, and providing for the subsequent publication in the Official Journal, of those measures, aimed at regulating the exercise of exclusive broadcasting rights of events of major importance for society, notified by the Member States in accordance with Article 3a of Directive 89/552, on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning

the pursuit of television broadcasting activities, as amended by Directive 97/36/EC — since those measures impede its ability freely to dispose of its rights by restricting their transfer exclusively to a broadcaster established in another Member State and wishing to broadcast that event in the former State.

(see paras 142, 159, 165, 168)