

Case T-139/02

Idiotiko Institutou Epaggelmatikis Katartisis N. Avgerinopoulou
Anagnorismenes Technikes Idiotikes Epaggelmatikes Scholes AE
and Others

v

Commission of the European Communities

(Structural Funds — Community support framework — Operational programme
— Commission reply to a request for amendment of a decision approving an
operational programme — Action for annulment — Direct concern —
Inadmissibility)

Order of the Court of First Instance (Fourth Chamber), 15 March 2004

II - 878

Summary of the Order

- 1. Actions for annulment — Actionable measures — Definition — Measures producing binding legal effects — Letter sent by an institution (Art. 230 EC)*

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2. *Actions for annulment — Action brought against a decision refusing to withdraw or amend an earlier act — Admissibility to be appraised in the light of whether the act in question can be challenged*
(Art. 230 EC)
3. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Whether directly concerned — Criteria — Commission decision approving a draft operational programme for the purposes of structural action in a Member State — Whether persons who are not final beneficiaries of the measures envisaged are directly concerned — Not so affected*
(Art. 230, fourth para., EC)
4. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Action by an association representing persons not individually concerned — Inadmissible*
(Art. 230, fourth para., EC)

1. The fact that a letter has been sent by a Community institution to a person in response to a prior request by that person is not sufficient for that letter to be regarded as a decision within the meaning of Article 230 EC, thereby opening the way for an action for annulment. Only measures having binding legal effects of such a nature as to affect the interests of the applicant by having a significant effect on his legal position constitute acts or decisions against which proceedings for annulment may be brought under Article 230 EC.
2. When an act of an institution amounts to a rejection it must be appraised in the light of the nature of the request to which it constitutes a reply. In particular, the refusal by a Community institution to withdraw or amend an act may itself constitute an act whose legality may be reviewed under Article 230 EC only if the act which the Community institution refuses to withdraw or amend could itself have been contested under that provision.

(see para. 56)

(see para. 57)

3. In certain circumstances even an act having general scope applying to the traders concerned in general may be of direct and individual concern to some of them, and hence amount to a decision with regard to them. For an individual to be directly affected the Community measure challenged must directly affect his legal position and leave no discretion to the addressees of that measure who are entrusted with its implementation, that being a purely automatic matter flowing solely from the Community legislation without the application of other intermediate rules.

Consequently, a Commission decision approving a draft operational programme, which constitutes a measure having general scope and is addressed to a Member State, cannot be considered to be a measure which has a direct effect on the legal position of persons who are not final beneficiaries of the planned measures, if the national authorities had a degree of discretion,

by means of intermediate national rules, with regard to implementing that decision, in particular as to the definition of the types of final beneficiary of the various measures envisaged under the programme in question.

(see paras 61, 62, 70)

4. The protection of the general collective interests of a category of persons is insufficient to establish the admissibility of an action for annulment brought by an association. An association is therefore not entitled to bring an action for annulment where its members may not do so individually.

(see para. 72)