

Case T-84/94

Bundesverband der Bilanzbuchhalter eV
v
Commission of the European Communities
(Admissibility)

Order of the Court of First Instance (Fourth Chamber), 23 January 1995 II - 103

Summary of the Order

1. *Actions for annulment of measures — Measures against which actions may be brought — Refusal by the Commission to initiate proceedings against a Member State for failure to fulfil obligations — Excluded*
(EC Treaty, Arts 169, 170 and 173, fourth para.)
 2. *Actions for annulment of measures — Refusal by the Commission to address to a Member State a directive or a decision concerning observance of the rules on competition by public undertakings — Excluded*
(EC Treaty, Arts 90 and 173)
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1. An action for annulment brought by a natural or legal person against a decision by the Commission not to initiate proceedings against a Member State for failure to fulfil its obligations under the Treaty is inadmissible.

First, the Commission is not bound to commence proceedings under Article 169 of the Treaty but enjoys discretionary power which precludes any right on the part of individuals to require it to adopt a specific position.

Secondly, a natural or legal person requesting the Commission to commence proceedings pursuant to Article 169 of the Treaty is in fact seeking the adoption of an act which would not be of direct and individual concern to it within the meaning of the fourth paragraph of Article 173 of the Treaty and which it could not therefore challenge by means of an action for annulment in any event.

Moreover, in so far as the action seeks a declaration that the Member State has infringed certain provisions of Community law, the power to apply to the Community judicature for a declaration that a Member State has failed to fulfil its

obligations does not extend, according to Articles 169 and 170, to legal or natural persons, but is held solely by the Commission and the other Member States.

2. An action for annulment brought by a natural or legal person against a decision by the Commission not to address a directive or a decision to a Member State by virtue of the powers conferred upon it by Article 90(3) of the Treaty is inadmissible.

As is apparent from that provision and the scheme of Article 90 as a whole, the power of supervision of the Commission with regard to Member States which are responsible for infringements of the rules of the Treaty, in particular those relating to competition, necessarily implies a wide margin of discretion for that institution which is not coupled with an obligation on its part to take action.