

Case T-291/01

Dessauer Versorgungs- und Verkehrsgesellschaft mbH and Others

v

Commission of the European Communities

(Action for failure to act — Action which has become devoid of purpose —  
No need to adjudicate — Order for costs)

Order of the Court of First Instance (First Chamber, Extended Composition), 27 November 2002 . . . . . II - 5035

Summary of the Order

1. *Action for failure to act — Failure remedied after commencement of proceedings — Subject-matter of the action ceasing to exist — No need to adjudicate (Arts 87 EC, 88 EC and 232 EC)*

2. *Procedure — Costs — No need to adjudicate ordered in the light of a Commission decision taken after commencement of an action for failure to act — Decision taken within a reasonable period — Order that parties bear their own costs*  
(*Rules of Procedure of the Court of First Instance, Art. 87(6)*)

1. Where, by adopting a decision declaring that certain tax exemptions are not State aid within the meaning of Article 87(1) EC, the Commission defines its position, within the meaning of the second paragraph of Article 232 EC, after the commencement of an action for failure to act seeking a declaration that the Commission infringed Article 232 EC by failing to examine a request to commence an investigation of State aid under Articles 87 EC and 88 EC with regard to those exemptions and by failing to take any decision within a period of two months, the Commission's decision renders that action devoid of purpose and there is, therefore, no need to adjudicate upon it.
2. In a case where an action for failure to act has become devoid of purpose and there is, therefore, no need to adjudicate upon it, because after its commencement the Commission adopted a decision which precludes a declaration of failure to act, the fact that such decision was, in the light of the complexity of the question to be decided, adopted within a reasonable period, justifies the Court, in the exercise of its discretion under Article 87(6) of the Rules of Procedure, in ordering, in fairness, that each party shall bear its own costs.

(see paras 1, 5-6, 11-12)

(see paras 13, 15-18)