

Case T-247/04

**Asociación de exportadores españoles
de productos farmacéuticos (Aseprofar)
and Española de desarrollo e impulso farmacéutico, SA (Edifa)**

v

Commission of the European Communities

(Action for annulment — Admissibility — Challengeable act — Failure to bring
infringement proceedings — Communication 2002/C 244/03)

Order of the Court of First Instance (Fourth Chamber), 19 September 2005 II - 3451

Summary of the Order

Actions for annulment — Actionable measures — Definition — Measures producing binding legal effects — Pre-litigation phase of infringement proceedings — Commission decision to close its file on a complaint — Not included

(Arts 226 EC and 230 EC)

Decisions whereby the Commission closes the case definitively on complaints of a State's conduct capable of giving rise to the initiation of infringement proceedings are not challengeable acts and an action for annulment brought against them must be dismissed as inadmissible, without there being any need to consider whether it satisfies the other requirements of Article 230 EC.

part of the actions undertaken by the Commission in the interests of sound administration of the pre-litigation phase of infringement proceedings, as is indicated by Commission Communication 2002/C 244/03 on relations with the complainant in respect of infringements of Community law.

Challengeable acts for the purposes of that provision are measures whose legal effects are binding on, and are capable of affecting the interests of, the applicant, by bringing about a distinct change in his legal position.

Since the sole purpose of the pre-litigation phase of the procedures for non-compliance is to enable the Member State to comply of its own accord with the requirements of the Treaty or, as the case may be, to give it the opportunity to justify its position, no measures adopted by the Commission in that context are binding.

Decisions to close the file on complaints concerning State conduct liable to give rise to proceedings under Article 226 EC form

(see paras 44, 46-48, 56, 60)