

## Case T-126/95

Dumez

v

Commission of the European Communities

(Refusal of the Commission to initiate the procedure for failure to fulfil obligations  
— Action for annulment — Action for failure to act — Inadmissible)

Order of the Court of First Instance (Third Chamber), 13 November 1995 ..... II - 2865

### Summary of the Order

1. *Actions for annulment — Actionable measures — Refusal of the Commission to initiate the procedure for failure to fulfil obligations — Not included*  
(*EC Treaty, Arts 169 and fourth para. of 173*)
2. *Actions for failure to act — Natural or legal persons — Actionable omissions — Failure to initiate the procedure for failure to fulfil obligations — Inadmissible*  
(*EC Treaty, Arts 169 and 175*)

1. An action for annulment brought by a natural or legal person in respect of a refusal on the part of the Commission to initiate the procedure for failure to fulfil obligations is inadmissible.

Such a refusal is not actionable because, first, Article 169 of the Treaty confers a discretionary power on the Commission to initiate that procedure and, secondly — in view of the fact that a negative decision must be appraised in the light of the request to which it constitutes a reply — the purpose of that request is to elicit the Commission's adoption of a reasoned opinion, which itself is not an act which can form the subject-matter of proceedings for annulment.

2. An action for failure to act brought by a natural or legal person which seeks a declaration that by deciding not to initiate the procedure for failure to fulfil obliga-

tions against a Member State the Commission has failed to act, in breach of the Treaty, is inadmissible.

In the first place, Article 175 refers to failure to act in the sense of failure to take a decision or to define a position, and not the adoption of a measure different from that desired or considered necessary by the persons concerned. Secondly, the action for failure to act is contingent on the institution concerned being under an obligation to act, so that its alleged failure to act is contrary to the Treaty.

However, it is clear from Article 169 of the Treaty that the Commission is not bound to initiate the procedure provided for therein; on the contrary, it has in this regard a discretion which excludes the right for individuals to require that institution to adopt a specific position.