

Case T-66/02

**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
— Application for amendment — Action for failure to act — Failure rectified by
adoption of a position — No need to adjudicate)

Order of the Court of First Instance (Fourth Chamber), 15 March 2004 . . . II - 857

Summary of the Order

*Actions for failure to act — Failure after commencement of proceedings — Subject-matter
of the action ceasing to exist — No need to adjudicate
(Arts 232 EC and 233 EC)*

The remedy provided for in Article 232 EC is founded on the premiss that the unlawful inaction on the part of the institution concerned enables the matter to be brought before the Court of Justice in order to obtain a declaration that the failure to act is contrary to the Treaty, in so far as it has not been repaired by the institution concerned. The effect of that declaration, under Article 233 EC, is that the defendant institution is required to take the necessary measures to comply with the judgment of the Court of Justice or the Court of First Instance, without prejudice to any actions to establish non-contractual liability to which the aforesaid declaration may give rise. Where the act whose absence constitutes the subject-matter of the proceedings was

adopted after the action was brought but before judgment, a declaration by the Community Court to the effect that the initial failure to act is unlawful can no longer bring about the consequences prescribed by Article 233 EC. It follows that in such a case, as in cases where the defendant institution has responded within a period of two months after being called upon to act, the subject-matter of the action has ceased to exist and there is no longer any need for the Court to give a decision.

(see para. 31)