

Case T-47/01

Co-Frutta Soc. coop. rl

v

Commission of the European Communities

(Action for annulment — Access to documents — Decision 94/90/ECSC, EC, Euratom — Refusal — Authorship rule — Misuse of powers)

Judgment of the Court of First Instance (Fifth Chamber), 16 October 2003 II-4445

Summary of the Judgment

1. *Actions for annulment — Actionable measures — Definition — Measures with binding legal effects — Preparatory measures — Exclusion — Secretary-General's decision replacing an initial statement of position in the context of an application for access to Commission documents — Included*
(Art. 230 EC; Commission Decision 94/90, Art. 2(2))

2. *Commission — Right of public access to Commission documents — Decision 94/90 — Exceptions to the principle of access to documents — Authorship rule — Scope — Collection by the Commission, in a single computer database, of data notified by the Member States*
(Commission Decision 94/90)
3. *Commission — Right of public access to Commission documents — Decision 94/90 — Exceptions to the principle of access to documents — Authorship rule — To be narrowly construed — Documents on which the decision-making process is based*
(Commission Decision 94/90)
4. *Commission — Right of public access to Commission documents — Decision 94/90 — Exceptions to the principle of access to documents — Authorship rule — Documents from the Member States — Difficulties in gaining access to documents by applying to the Member States — Not relevant*
(Commission Decision 94/90)
5. *Commission — Right of public access to Commission documents — Decision 94/90 — Exceptions to the principle of access to documents — Authorship rule — Possibility of relying on Regulation No 1049/2001 to justify a strict construction of that rule — Not possible*
(Regulation No 1049/2001 of the European Parliament and of the Council; Commission Decision 94/90)
6. *Commission — Right of public access to Commission documents — Decision 94/90 — Review of initial refusal — Discrepancy in the reasoning — Misuse of powers — None*
(Art. 230 EC; Commission Decision 94/90)

1. Only a measure the legal effects of which are binding on and capable of affecting the interests of an applicant by bringing about a distinct change in his legal position is an act against which an action for annulment may be brought under Article 230 EC. In the case of acts or decisions adopted by a procedure involving several stages, in particular where they are the culmination of an internal procedure, only measures definitively establishing the position of the institution on the conclusion of that procedure, and not

provisional measures intended to pave the way for the final decision, may be the subject of an action for annulment.

In that regard, under the procedure established by Decision 94/90 on public access to Commission documents, if, in the event of an initial refusal, the applicant makes a confirmatory appli-

cation to the Secretary-General for review of that position, the Secretary-General's decision constitutes the final statement of the institution's position. Consequently, only the measure adopted by the Secretary-General, which is a decision and which entirely replaces the previous statement of position, is capable of producing legal effects such as to affect the interests of the applicant and, therefore, of being the subject of an action for annulment under Article 230 EC.

(see paras 28-29, 31)

2. It is not enough to deprive the Member States of their authorship of those documents for the purposes of Decision 94/90 on public access to Commission documents, that the Commission collects in a single computer database data notified by those States where that institution confines itself to collecting the data, for the simple purposes of facilitating the tasks of comparison and checking for double counting of the data, but without being able itself to effect alterations, corrections or other treatment, since the appropriate checks or corrections of that data must be requested of the national authorities.

(see para. 47)

3. While the authorship rule, which makes an exception to the right of access provided for in Decision 94/90 on public access to Commission documents, must be construed and applied strictly so as not to restrict that right of access, nevertheless, the argument that since that rule must be construed strictly it is not applicable to cases where the third-party documents sought are those on which the Community's decision-making process was based, cannot be accepted. Since the Code of Conduct adopted by Decision 90/94 does not provide for any restriction on the application of that rule, it must be construed as meaning that it is fully applicable to every sort of third-party document to which access is sought, and it is not possible to have different levels of applicability according to whether such documents may affect the commercial player concerned or according to their use by the Commission in its decision-making process.

In addition, the legal test of strict construction and application of the authorship rule is necessary particularly when there are doubts as to the authorship of the document sought. If there are no doubts in that regard, since the Member States alone are the authors of the documents in question, that case-law cannot be relied upon.

(see paras 57-58, 60-61)

4. For the purposes of the procedure under Decision 90/94 on public access to Commission documents, difficulties in gaining access to the documents sought by applying to the Member States are irrelevant as regards the lawfulness of a decision of that institution refusing access to the documents sought on the ground that those States were their authors. The position taken by the Member States on the information sought is a matter of domestic law and is governed by the restrictions laid down by the relevant national legislation, so that it cannot undermine the correct application by the Commission of the authorship rule laid down by the Community legislature.
6. A measure is vitiated by misuse of powers only if it appears on the basis of objective, relevant and consistent evidence to have been taken with the exclusive, or at least the main, purpose of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case.

(see para. 64)

5. Since Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents entered into force on 3 June 2001 and applied only from 3 December 2001, it cannot be relied upon against a Commission decision, which was adopted on an earlier date and in compliance with the regime laid down by Decision 94/90 on public access to Commission documents to justify a strict construction of the authorship rule which would result in its inapplicability.

(see para. 65)

In that regard, since the system established by the Code of Conduct concerning public access to Council and Commission documents and put in place as regards the Commission by Decision 94/90 makes refusal to grant access to documents subject to a procedure involving two applications, in which only the Secretary-General's confirmatory decision constitutes the institution's final statement of position, any discrepancy in the reasoning stated by the Commission in the course of the review procedure cannot be regarded as an indication of misuse of powers since that review procedure is intended precisely to enable the Secretary-General to reconsider the matter, without constraint from previous statements of position by the competent services.

(see paras 72-73)