

Joined Cases T-297/01 and T-298/01

SIC — Sociedade Independente de Comunicação, SA

v

Commission of the European Communities

(State aid — Public television — Complaint — Action for failure to act —  
Definition of a position by the Commission — Whether aid new or existing —  
Request for a ruling that there is no need to adjudicate — Dispute —  
Compliance with an annulling judgment — Commission's obligation to make an  
investigation — Reasonable period)

Judgment of the Court of First Instance (Fourth Chamber, Extended Com-  
position), 19 February 2004 . . . . . II - 746

Summary of the Judgment

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 226 EC, 232 EC and 233 EC)*

2. *Action for failure to act — Scope ratione materiae — Dispute relating to the extent of the obligation to give effect to an annulling judgment — Included (Arts 232 EC and 233 EC)*
3. *Action for failure to act — Institution must be called on to act — Definition of position within the meaning of the second paragraph of Article 232 EC — Concept (Arts 230 EC and 232, second para., EC)*

1. The remedy provided for in Article 232 EC, which pursues different objectives from the remedy provided for in Article 226 EC, is founded on the premiss that unlawful inaction on the part of the institution concerned enables the matter to be brought before the Court in order to obtain a declaration that the failure to act is contrary to the Treaty, in so far as it has not been remedied by that institution. 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, without prejudice to any actions to establish non-contractual liability to which the 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 Court to the effect that the initial failure to act was 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, so that there is no longer any need to adjudicate. The fact that the definition of its position by the institution does not satisfy the applicant is, in that regard, irrelevant,

because Article 232 EC refers to failure to act in the sense of failure to take a decision or to define a position, not the adoption of a measure different from that desired or considered necessary by the applicant.

(see para. 31)

2. An action for failure to act is the appropriate means of bringing before the Court a dispute relating to whether, in addition to replacing the measure annulled, the institution was also bound, in accordance with Article 233 EC, to take other measures relating to other acts which were not challenged in the initial action for annulment. It follows that an action for failure to act is also the appropriate means for obtaining a declaration that an institu-

tion unlawfully failed to take the measures required in order to comply with such a judgment.

3. An act which is not challengeable by an annulment action may constitute a definition of position terminating the failure of an institution to act if it is the prerequisite for the next step in a procedure which has, in principle, to culminate in a legal act that itself will be challengeable by an action for annulment.

(see para. 32)

(see para. 53)