

Case T-182/98

UPS Europe SA

v

Commission of the European Communities

(State aid — Letter from the Commission to a complainant — Act open to challenge — Inadmissibility)

Order of the Court of First Instance (Fourth Chamber, Extended Composition), 30 September 1999. II-2860

Summary of the Order

1. *Actions for annulment — Actionable measures — Measure open to challenge by the author of a complaint alleging State aid — Commission letter informing the complainant of its refusal to initiate the procedure provided for in Article 93(2) of the Treaty (now Article 88(2) EC) — Not an actionable measure — Inadmissible (EC Treaty, Art. 93(2) (now Art. 88(2) EC) and Art. 173 (now, after amendment, Art. 230 EC))*

2. *Actions for annulment — Actionable measures — Meaning — Measures producing binding legal effects — Holding letter addressed to the author of a complaint alleging State aid — Not an actionable measure — Inadmissible*
 (EC Treaty, Art. 93 (now Art. 88 EC) and Art. 173 (now, after amendment, Art. 230 EC))

1. Decisions adopted by the Commission in the field of State aid must be addressed to the Member States concerned. That is also the case where such decisions concern State measures to which objection is taken in complaints, on the ground that they constitute State aid contrary to the Treaty, and the Commission refuses to initiate the procedure under Article 93(2) thereof (now Article 88(2) EC) because it considers either that the measures complained of do not constitute State aid within the meaning of Article 92 of the Treaty (now, after amendment, Article 87 EC) or that they are compatible with the common market. Where the Commission adopts such a decision and proceeds, in accordance with its duty of sound administration, to inform the complainants of its decision, it is the decision addressed to the Member State which must form the subject-matter of any action for annulment which the complainant may bring, not the letter to that complainant informing him of the decision.

Even though a decision terminating the investigation as to the compatibility with the Treaty of an aid measure is always addressed to the Member State concerned, a communication addressed to a complainant may outline the terms

of such a decision, even if the decision has not been sent to the Member State concerned.

2. Only a measure which produces binding legal effects such as to affect the interests of an applicant by bringing about a distinct change in his legal position is an act or decision which may be the subject of an action for annulment under Article 173 of the Treaty (now, after amendment, Article 230 EC).

Furthermore, in the case of acts or decisions drawn up in a procedure involving several stages, and particularly at the end of an internal procedure, it is only those measures which definitively determine the position of the institution upon the conclusion of that procedure which are open to challenge and not intermediate measures whose purpose is to prepare for the final decision.

A letter in which the Commission does not characterise the facts with regard to Article 92 of the Treaty (now, after

amendment, Article 87 EC), but informs the author of a complaint concerning State aid that it has no intention of initiating, for the time being, a procedure under Article 93 of

the Treaty (now Article 88 EC) and that it does not 'preclude the possibility that State aid aspects might be involved in the case' does not have any legal effects.