

Sophie Billon

The relation between direct actions and indirect actions before the European Courts

Supervisor: Professor Andrea Biondi

The Treaty establishing the European Communities is supposed to provide private parties with an effective and complete system of judicial remedies consisting of actions for annulment under article 230 on the one hand and of indirect actions under article 234 and 241 on the other hand. The aim of this paper is to analyze the relationship between actions for annulment (direct actions under article 230) and references on validity (indirect actions under article 234) with a focus on actions initiated by natural or legal persons.

As the subject of this paper has mainly been shaped by the European Courts, the sources used consist primarily of judgments of the European Courts and Opinions of Advocate Generals'. Articles of various periodicals were useful to deepen the reasoning; and finally the background reading was composed of several books on European Community law.

Although, as we will see in a first part, the Court has traditionally perceived article 230 and 234 as two independent actions, in *TWD Deggendorf*, the Court established a new perception of procedural exclusivity by basically preventing private parties to challenge indirectly the validity of a Commission decision via a national court if they had "without any doubt" *standing* under article 230 but did not initiate a direct action before the European Courts within the time limit of two months. In the second part we will examine the underlying aim and justifications of this procedural exclusivity principle and assert whether it can be confined to cases where there is an abuse of process or whether the knowledge of standing under article 230 is sufficient for the principle to apply. By virtue of the case law of the Court since *TWD* we will in a third part scrutinize the scope of application of this principle as regards general Community measures and different areas of Community law. The essential objective of the paper is to critically appraise the reasoning and motivations of the European Court concerning the procedural exclusivity doctrine. Finally we will question the effectiveness of judicial protection for private parties by linking the *TWD* principle to

the conservative standing conditions under article 230(4) and to the difficulty to contest unimplemented Community measures before national courts, and thus to initiate indirect actions. We will investigate the evolution of European Union law in that area and evaluate its consequences on the *TWD* principle, and thus on the relation between direct action and indirect actions.

The conclusion will be that, in view to ensure the effectiveness of the Community remedy system and to protect the European citizens' substantive rights, the application of the procedural exclusivity principle should be limited to individual decisions or acts of dual nature which could "undoubtedly" have been challenged directly before the Court and where there is proof of abuse of process.

(Words: 480)