

Joined Cases T-107/01 and T-175/01

Société des mines de Sacilor — Lormines SA

v

Commission of the European Communities

(ECSC Treaty — Steel — Abandonment of mining concessions — Charges imposed on mining undertakings by the French Republic — Complaint — No favourable response from the Commission — Action for failure to act — Action for annulment — Admissibility — Capacity to bring proceedings — Undertaking within the meaning of Article 80 CS)

Judgment of the Court of First Instance (Fourth Chamber), 7 July 2004 . . . II - 2128

Summary of the Judgment

1. *Procedure — Objection of inadmissibility — Absolute bar to proceeding — To be considered of the Court's own motion*
(Art. 80 CS; Rules of Procedure of the Court of First Instance, Art. 113)

2. *Actions for annulment — Actions by undertakings or associations brought under Article 33, second paragraph, CS — Capacity to bring proceedings — Undertakings within the meaning of Article 80 CS — Undertaking not having that status at the time of bringing the application or at the time of the conduct complained of in the complaint which was rejected by the contested decision — No capacity to bring proceedings*
(Arts 33, second para., CS and 80 CS)
3. *Actions for failure to act — Actions by undertakings or associations brought under Article 35 CS — Capacity to bring proceedings — Undertakings within the meaning of Article 80 CS*
(Arts 35 CS and 80 CS)

1. Under Article 113 of the Rules of Procedure the Court may at any time of its own motion consider whether there exists any absolute bar to proceeding with an action, including the jurisdiction of the Community judicature to entertain the application. Review by the Court is therefore not limited to absolute bars to proceedings raised by the parties.

considered by the Court of its own motion.

(see paras 51, 52)

An objection relating to the absence of the status of undertaking within the meaning of Article 80 CS raises the question whether there is an absolute bar to proceeding with the case, in so far as it concerns the applicant's capacity to bring proceedings and its access to certain remedies, and may therefore be

2. The enumeration in Article 33, second paragraph, CS of the persons entitled to bring an action for annulment is limitative, so that persons who are not referred to there may not validly institute such proceedings.

An undertaking which, because it is not engaged in production, cannot claim the status of an undertaking within the meaning of Article 80 CS at the time of bringing its application, and also could not do so at the time of the conduct complained of in the complaint whose rejection it is contesting, does not therefore have capacity to bring an action for annulment against an ECSC decision.

3. An action for failure to act is, by virtue of Article 35 CS, admissible only if the applicant has the status of an undertaking within the meaning of Article 80 CS.

(see paras 53, 54, 56, 59-62)

(see para. 55)