

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

Société des mines de Sacilor — Lormines

v

Commission of the European Communities

(Interlocutory proceedings — Suspension of operation —
Interim measures — Article 88 CS)

Order of the President of the Court of First Instance, 11 July 2002 II-3196

Summary of the Order

1. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Negative administrative decision — Decision refusing to take measures against a Member State — Suspension could not change applicant's position — Applicant's interest in obtaining the suspension sought — No such interest*
(Art. 39, second para., CS)

2. *Application for interim measures — Interim measures — Application for an order directing the Commission to make a finding under Article 88 CS that a Member State has failed to fulfil obligations — Measure incompatible with the distribution of powers between institutions — Measure which is not merely protective — Dismissal (Arts 39, third para., CS and 88 CS)*
3. *Application for interim measures — Interim measures — Application for an order directing the Commission to issue directions to a Member State which has allegedly failed to fulfil obligations — Application based on an action for annulment of the Commission's refusal to find that the Member State has failed to fulfil obligations — Requested measure to produce effects for a third person not party to the main proceedings — Competence to issue directions not conferred on the Commission by Article 88 CS — Dismissal (Arts 35 CS, 88 CS, 232 EC and 243 EC)*

1. An application for suspension of operation cannot, in principle, be envisaged against a negative administrative decision, since the grant of suspension in such a case could not have the effect of changing the applicant's position. The judge ruling on the application therefore cannot order suspension of the operation of the Commission's refusal to adopt measures against a Member State which has allegedly failed to fulfil obligations since such suspension would not have the effect of requiring the Commission to declare the alleged breach of obligations and would thus be of no interest to the applicant.
2. The judge ruling on the application for interim measures cannot order the Commission to make a finding under Article 88 CS that a Member State has failed to fulfil its obligations.

First, in doing so, the judge would be assuming the role of the Commission, which would constitute an interference with the exercise of that institution's power, incompatible with the distribution of powers between the various Community institutions, as intended by the authors of the ECSC Treaty.

Second, the interim measures which the judge may order under Article 88 CS can only be protective, which would not be the case with a finding of a failure to fulfil obligations, which is

(see paras 48-49)

not a preparatory measure but the final result of a procedure.

First, it cannot order interim measures which do not fall within the framework of the final decision which may be given on the main action, to which the Member State is not a party.

(see paras 52-58)

3. Even if the main action on which the application before him is based challenges the Commission's refusal to make a finding under Article 88 CS that a Member State has failed to fulfil its obligations, the judge ruling on the application for interim measures cannot order the Commission to issue instructions to the Member State concerned with a view to remedying the alleged breach.

Second, Article 88 CS does not provide that the Commission has competence to issue such directions to a Member State.

(see paras 59-61)