

Case 236/86

Dillinger Hüttenwerke AG

v

Commission of the European Communities

(Action for a declaration of nullity under Article 33 of the ECSC Treaty —  
Steel — Allocation of additional references to a competitor)

Report for the Hearing .....	3763
Opinion of Mr Advocate General Darmon delivered on 19 April 1988 .....	3774
Judgment of the Court (Sixth Chamber), 6 July 1988 .....	3780

Summary of the Judgment

1. *Action for a declaration of nullity — Action brought by an undertaking against an individual ECSC decision of which it is not the addressee — Decision conferring benefits on competitors*  
(ECSC Treaty, Art. 33 (2))
2. *Action for a declaration of nullity — Limitation periods — Starting point — Decision neither published nor notified to the applicant — Precise knowledge of the content and reasons — Duty to request the whole text of the decision within a reasonable time once its existence is known*  
(ECSC Treaty, Art. 33 (3))
3. *ECSC — Production — System of quotas for the production and delivery of steel — Determination of reference production and reference quantities in the event of merger — Adjustments — Allocation of additional references in order to give incentive to plant closure — No legal basis in general Decision No 3485/85*  
(general Decision No 3485/85, Art. 13)

1. An undertaking is concerned, within the meaning of Article 33 (2) of the ECSC Treaty, by an individual decision of the Commission enabling benefits to be conferred on one or several other undertakings which are in competition with it.

In the context of the system of quotas for the production and delivery of steel, an undertaking producing only one category of products is concerned by a decision of the Commission granting, in that same category, additional reference production and reference quantities to a competitor undertaking.

2. In the absence of publication or notification, it is for a party that has knowledge of a decision concerning it to request the whole text thereof within a reasonable period. Subject to that proviso, the period for bringing an action begins to run only from the moment when the third party concerned has precise knowledge of the content of the decision in question and of the reasons on which it is based in such a way as to enable it to exercise its right of action.
3. Article 13 (4) of general Decision No 3485/85 confers on the Commission, in cases of concentration of undertakings, separation of merged undertakings and the formation of independent undertakings, the power to carry out the adjustments needed to reference production and reference quantities, that is to modify the results of the calcu-

lations made in accordance with the basic rules laid down in paragraphs (1), (2) and (3) of that article, for the purpose of allocating new references in such cases.

However, neither the wording of that provision nor the reasons on which the general decision are based provide any criteria enabling the conditions to be determined in which such adjustments are to be deemed 'needed', so that reference must be made to the purpose of the quota system, which is to spread in the most equitable manner possible amongst all undertakings the limitations on production required by the steel crisis. It follows that the adjustments which the Commission may carry out in accordance with Article 13 (4) can only be deemed to be needed if the application of the basic rules were to bring about inequitable results. Therefore, the allocation of additional references as a means of encouraging the closure of plant has no legal basis in Article 13 (4).

However, although it is permissible for the Commission, in exercising its responsibilities in the management of the crisis in the steel manufacturing sector, to pursue a policy of incentives to restructuring, where appropriate by allocating additional references as compensation for plant closures entailing reductions in capacity, it may not do so by means of individual decisions which have no legal basis in the applicable general decision.