OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 21 JUNE 1979 [1]

Mr President,
Members of the Court,

1. In the present case the jurisdiction of the Court is governed by Article 36 of the ECSC Treaty. The Court thus has *unlimited jurisdiction:* it is required on the one hand to rule on the lawfulness of a decision of the Commission which, on 30 May 1978, imposed a pecuniary sanction pursuant to Article 64 of the ECSC Treaty on Metallurgica Luciano Rumi S.p.A. of Bergamo and on the other hand to assess the appropriateness of the sanction, which amounts to 65 135 units of account.

The decision of the Commission was adopted with regard to the alleged infringement by Rumi both of the provisions of Article 60 (2) of the ECSC Treaty concerning publication of price lists and conditions of sale applied by iron and steel undertakings within the common market and of the general decisions in implementation of that article (in particular Decisions Nos 30-53 and 31-53 of the High Autority of 2 May 1953 on practices prohibited by Article 60 and on the publication of price lists and conditions of sale applied by undertakings in the steel industry, as last amended by Decisions Nos 72/440/ ECSC and 72/441/ECSC of the Commission of 30 December 1972).

The infringement with which Rumi is specifically charged is the conclusion of a contract on 28 April 1977 with the French undertaking Descours and Cabaud of Lyons for the supply of a very large quantity of certain reinforcement bars at fixed prices *below the list prices* charged by Rumi at the time, as the Commission found in the course of a check on Rumi in June 1977. The amount of the discounts, which are shown by a series of invoices concerning order G 20 RM from Descours and Cabaud dates 28 April 1977, was assessed by the Commission at Lit 458 998 933, whilst the total value of the irregular sales amounts to Lit 1 678 688 435. The Commission, in its decision of 30 May 1978 declared that in determining the amount of the fine it had had regard to the nature of the infringements, the amount of the discounts, the circumstances in which the infringements were committed and Rumi's ability to pay.

Rumi, in the application which it lodged on 22 June 1978, requests the annulment of or at least an amendment to the contested decision (such as to reduce the amount of the fine) and that the Commission should be ordered to pay the costs. In support of those claims it relies on infringement of essential procedural requirements, consisting in a failure to state reasons, on manifest failure to observe the provisions of the Treaty, in particular Article 60 (2) (a) and (b), on failure to exonerate it on grounds of *force majeure* and on misuse of powers. I would note, however, that

1 — Translated from the Italian.

the objection concerning failure to provide an adequate statement of reasons is closely linked with certain arguments which the applicant has adduced in connexion with one of the objections relating to the submission of manifest failure to observe the provisions of the Treaty. The objection of a formal defect should therefore be considered after those arguments have been set out.

2. The applicant emphasizes that, having regard to the wording of Article 60 of the Treaty, of its internal logic and of the objective of publication of price lists, which have been made clear in the decisions of the Court of Justice, the provision prohibiting increases or reductions in relation to list prices relates exclusively to *comparable* transactions. According to the applicant the Fe E 45 high adherence reinforcement bars produced by it for the French market constitute a product which differs from all other types of bar produced for the other markets of the Community and cannot be sold on such markets. Furthermore, Rumi maintains that it has only a single customer in France, from whom it obtained the order of 28 April 1977. Those two circumstances mean that it is impossible for there to be comparable transactions concerning the bars in question. In this connexion the applicant recalls that the said Decision No 31-53 of the Commission, as amended by Decision No 72/440/ECSC, defined as being comparable, within the meaning of Article 60 (1) of the Treaty, "transactions ... concluded with purchasers ... who compete with one another"; in the present case, on the other hand, the special nature of the product precludes any competitive relationship between purchasers. The applicant accordingly concludes that, in connexion with order G 20 RM of 28 April 1977 (and indeed in connexion with the subsequent order G 21 RM of 2 May 1977) there was no breach of the obligation to publish prices laid down in Article 60 (2) of the ECSC Treaty, for the simple reason that the obligation did not arise in relation to the product in question.

The arguments set out above are principally concerned to show that the contested decision infringes the Treaty. However, the arguments must also apply in support of the submission concerning the formal aspects of the contested measure which amounts to an objection that the Commission said nothing, in the statement of reasons for its decision, concerning the facts set out above and their legal relevance.

The decisions of the Court have already made it clear that in order for the Commission to provide an adequate statement of reasons for a measure it is unnecessary that it should consider all the arguments and facts put forward by the persons concerned. It is sufficient that it should set out clearly the essential matters of fact and of law which form the basis of its decision, so as to make clear the reasoning behind that decision. In the present case it does not appear that the said matters of fact and of law relied upon by the applicant are significant for the purposes of understanding the reasons why the Commission adopted the contested decision. The circumstance that such reasons might be mistaken as to law or as to fact may constitute a substantive defect and not a purely formal one; this is especially clear in the present case in which, as we have seen, the objection of a formal nature is not truly independent of the complaint of manifest failure to observe the provisions of the Treaty. Accordingly it is the latter submission which must be considered; there appears to be no call to speak of a defect in respect of the statement of reasons.

3. In order to ascertain whether the applicant's argument to the effect that it is unnecessary to publish the price of a

special product is well founded I shall attempt first of all to establish the purpose of such publication.

Article 60 (2) of the ECSC Treaty requires the price lists and conditions of sale applied by iron and steel undertakings to be made public to the extent and in the manner prescribed by the High Authority for the purpose of enforcing observance of the prohibition on practices contrary to Articles 2, 3 and 4 of the Treaty (in particular, unfair competitive practices and discriminatory practices) laid down in Article 60 (1).

Publication is thus essentially a means of preventing undertakings from applying discriminatory treatment with respect to their customers; it is intended to ensure "that users are able to ascertain the quality and calculate precisely the cost of the products they are considering buying, and to compare offers from various suppliers", as is emphasized in the preamble to Decision No 31-53 of the High Authority adopted in implementation of Article 60 (2).

The fact that at present there is only one customer does not exclude the possibility that there may be more in future. Objections, such as that of the applicant, that the bars intended for France were sold by it to a single undertaking (a statement which is moreover disputed by the Commission) cannot therefore prevail. Furthermore, the above passage from Decision No 31-53 shows that publication of the lists is also a means of complying with a basic requirement of transparency of the market; there is transparency of the market in so far as the price list of every undertaking includes the entire range of products currently manufactured by it. That is the only way in which actual or potential purchasers of bars identical with or comparable to those sold by Rumi to its French customer could "compare offers from various suppliers" in accordance with the said Decision No 31-53 of the High Authority.

The applicant was thus bound to insert the prices of the product in question in its price list. This holds good even on the view that the obligation to publish price lists is dependent on the commercial transactions' being comparable. In this connexion it must be observed that the scope of the concept of non-comparability is restricted to contracts for sale which differ fundamentally from those usually concluded by the same supplier. Transactions may thus be said to be not comparable (with those which must be effected in accordance with the price list) only in the case of anomalous contracts which are concluded by the undertaking in a wholly exceptional way: this is stated in Decision No 1-54 of the High Authority (Official Journal, English Special Edition 1952-1958, p. 14). This certainly does not apply to the contracts in question, concluded by the applicant with its French customer which, far from constituting an exception to the sales operations of the undertaking in relation to the particular characteristics of the product sold, on the contrary constitute the rule, at all events with regard to the continuous relations which Rumi maintains with the French market.

In fact any differences which the bar produced by the applicant for its French customer may display derive solely from variations between national technical standards and it does not appear that they can affect the basic characteristics of the product which, wherever it is sold,

must fulfil the same functions. The Commission has maintained that the bar sold by Rumi in France is entirely comparable with regard to its basic functions, in particular the degree of elasticity and tensile strength, with the kinds of bar sold by that undertaking in Italy. The applicant has not disputed that statement; it has on the other hand maintained that the product sold in France is also distinguished by specific geometric characteristics as well as by its trade-mark.

It must be stated from the outset that the trade-mark of a product cannot render it non-comparable with other products which display the same fundamental technical characteristics and are suited to performing the same functions. It would otherwise be too easy to evade the obligations imposed by Article 60 of the ECSC Treaty. The geometrical characteristics, then, are relevant only in so far as they are such as to influence the functional properties of the product; examination of the present case shows that they do not.

It accordingly seems to me that there is good reason to hold that the sales in France of the Fe E 45 bar manufactured by Rumi do not constitute exceptional operations exempt from the obligation to observe the list price duly published by the undertaking. The foregoing likewise confirms that there is no justification for the applicant's claim that it was not obliged to publish lists of the prices applicable to the product in question.

4. With regard to the submission of manifest failure to observe the provisions of Article 60 (2) of the ECSC Treaty the applicant advances a second argument: its price list was rendered wholly redundant by the exceptional situation on the market so that it should not be charged with a sale at a price at variance with the list but at the most with a breach of its obligation to publish a new list. However, that breach should not be penalized since its commission was prompted by reasons of *force majeure:* the crisis in the sector made it impossible at the time of the conclusion of the contract in question to maintain a fixed price for more than two days, so that contracts, negotiations for which commenced on the basis of a fixed price, were concluded on that of a price varying in accordance with the fluctuations which the market underwent in the meantime.

That argument, which Rumi had already adopted in the course of the administrative procedure, was rejected by the Commission in the statement of reasons for the contested decision in which it was stated *inter alia* that, according to Article 4 of Decision No 31-53, price lists and conditions of sale are applicable following the second working day after they have been sent to the Commission and that that requirement applies equally to any amendment of price lists. Rumi was thus required and able to publish a new price list coinciding with the situation on the market. That would merely have entailed the inconvenience of postponing the signing of the contract for two days.

Certainly it is impossible to deduce an amendment to the price list on the basis of prices charged in individual sales. The price list can perform its function of rendering the market transparent in relation to products available for sale only if it is clearly drawn up and published. That is the reason for the obligation to notify the Commission of the price list and any amendments

thereto. As the Court ruled in its judgment of 17 December 1959 in Case 1/59 *Macchiorlatti Dalmas*, "any price which departs from the price list, even if the latter has been departed from uniformly in all comparable transactions and the departure for that reason is not an infringement of the rules on non-discrimination, is a breach of the rules regarding publication" ([1959] ECR 199).

The applicant, however, refers to *force majeure* as a basic principle in any legal system which, in an exceptional situation, releases persons from their duty to observe the rules applicable in a normal situation. The decision of the Commission is said to be invalid in that it failed to take account of that principle and in particular in that it refused to have regard for the actual impossibility of following, day by day in a situation of serious crisis, the fluctuations of the market and of reflecting them in price lists intended for publication. According to the applicant, in the absence of a minimum degree of stability on the market it is unreasonable to require the publication of continuous amendments to price lists.

In my view it is necessary to distinguish between the reference to the alleged circumstances of *force majeure*, which are said to absolve the undertaking from its failure to fulfil the obligation to notify its prices, and the argument which appears to entail not so much the actual impossibility as the virtual or complete absence of purpose in fulfilling that obligation in a situation characterized by continuous and rapid changes in prices.

With regard to the first matter it appears to me superfluous to broach the discussion of the complex question of the existence and possible content of a general principle of Community law concerning *force majeure:* I have already had occasion to consider this point in my opinion in Case 68/77 *IFG* v *Commission* ([1978] ECR 371 *et seq.* in particular p. 380). For the purposes of the present action it is sufficient to emphasize that the applicant, far from showing that it was impossible for it to give due notification to the Commission of the amendment to its price list at least two days before the conclusion of the contract in question, has admitted that it could have done so by postponing conclusion of the contract for two days if it had realized that that was necessary to avoid infringing Community law.

With regard to the second matter it must be conceded that in a disturbed situation accompanied by repeated and frequent alterations in prices communication to the Commission of every amendment to price lists cannot perform its function of ensuring the transparency of the market with the same efficacy as in a period of relative stability. Nevertheless, that consideration only serves to mitigate the adverse effects of Rumi's conduct on the market and it cannot serve to justify the failure to provide notice in view of the fact that the obligation to inform the Commission of every change in the price list is clearly laid down by the Treaty and the decisions in implementation thereof. Likewise it is impossible to rely in justification on the alleged good faith of the undertaking, even if it is supposed that the Commission had in fact adopted a tolerant attitude in the past, as the applicant maintains, and that this had given rise to an expectation of a like attitude in the present case. Factors of that nature are relevant only for the purposes of determining the amount of the fine.

5. I shall now consider the objection of misuse of powers. It was put forward — though not subsequently developed — by the applicant on the basis of the fact that the contract in question was concluded shortly before Decision No 962/77/ ECSC of the Commission of 4 May 1977 fixing minimum prices for certain concrete reinforcement bars was adopted and that the said contract stipulated prices lower than those minimum prices. The Commission, extending the criteria embodied in the said decision to cover a prior transaction, is therefore said to have misused its powers in that it penalized a lawful act.

In fact there is nothing to show that the argument advanced by the applicant is well founded. The Commission made no reference to Decision No 962/77 either during the administrative procedure or in the course of the action and the fine was imposed for the infringement of Article 60 of the Treaty which we are considering. The lawfulness of the individual decision of 30 May 1978 concerning Rumi must thus be decided by verifying whether Article 60 was properly interpreted and applied; there is no trace of the alleged misuse of powers.

6. In the alternative, the applicant advances a third argument in the context of its objection of infringement of Article 60. It maintains that the contested decision failed to have regard to the possibility of reducing selling prices in order to permit undertakings to align their prices on those of competitors, which is conferred, subject to certain restrictions, by Article 60 (2) (b). In fact that provision permits reductions below the prices on the published list provided that such reductions do not exceed "the extent enabling the quotation to be aligned on the price list, based on another point which secures the buyer the most advantageous delivered terms". Rumi stated in the course of the administrative procedure before the Commission that the prices charged by it in the transactions referred to in the notification of objections were aligned on the prices charged in comparable operations by other manufacturers in the Community, in particular the undertakings Feralpi and IRO. The applicant, in its Telex of 17 April 1978 to the Commission, stated that it had effected those alignments on the basis of a "communication made to us by competitors of their basic list price, which was subsequently confirmed by your publication 'Ghisa a Acciai'." It further maintained that it had applied a basic price higher than the basic price of its competitor, thereby "effecting a partial alignment which is approved by Zimmermann in 'Preisdiskriminierung' at p. 310, in that the price finally stipulated was higher than the delivered price of the competitor on which we aligned ourselves. For example: concerning our sales in France which are at issue our basic prices of Lit 162 917 and Lit 153 965 respectively for the various zones in France are higher than the basic price on Feralpi's list, namely Lit 152 500, and accordingly the final price is also higher".

Previously, in the course of the hearing which the Commission held on 12 April 1978, the presiding official stated *inter alia* that "the intention to effect an alignment must be made clear at the time when a contract is concluded". In conformity with that view the contested decision then merely maintained that, since Rumi had failed to state in writing at the time when the contract in question was concluded that it intended to effect the alleged alignment a factor essential to the permissibility of that alignment

had been omitted. That rendered superfluous any consideration of the substance of the matter.

In the statement of reasons for its decisions the Commission also noted that at the time of the investigation Rumi gave no indication of the alleged alignment. The alignment was thus invoked *ex post facto* in order to justify conduct which was in fact based on quite different considerations.

However, it appears to me that if the prices fixed and charged by Rumi were objectively justifiable with regard to the criterion of alignment contained in Article 60 and in relation to the level of the prices of its competitors, the mere fact that it did not expressly state its intention to effect an alignment at the time when the contracts were concluded and did not mention it at the time of the investigation is insufficient to deprive that justification of the stipulated price of all validity.

In fact the right to effect alignments conferred by the said Article 60 (2) (b) is intended to place all undertakings in a position to compete with rival undertakings in their relations with individual customers. And the High Authority emphasized in its report of 1953 on the establishment of the common market in steel, by virtue of the criterion of alignment competition can in practice extend to the entire common market since every undertaking is enabled to sell in the zone of a rival undertaking, having regard to the different basing point adopted by the latter for its tariff. Thus the right in question was not merely intended to protect the interest of individuals but fulfils a function of general interest. In so far as that right constitutes a restriction on the prohibition against departing from list prices it cannot be said to constitute a derogation, which would require a restrictive interpretation.

7. Now that the foregoing has been dealt with I shall consider whether there is any foundation to the Commission's argument that an express intention to effect an alignment must be stated at the time the contract is concluded.

There is no provision in force which lays down such an obligation clearly and unequivocally, or indeed the obligation to refer to the alignment effected in the business books and accounting documents. The defendant refers to Article 1 of Decision No 14/64 of the High Authority which provides that undertakings must make available to officials or agents of the High Authority carrying out checks or verifications as regards prices, business books and accounting documents including at least information concerning "price and all other conditions of sale". The Commission deduces from this that the means of forming the price, in particular if it is based on the criterion of alignment, must be shown in the documents. This also corresponds to the requirements laid down by the Court in its judgment of 12 July 1962 in Case 16/61 *Acciaierie Ferriere e Fonderie di Modena* [1962] ECR 289 in accordance with which the alignment must be made on the basis of factors which are "known and verifiable". The Commission observes that those requirements would be set at nought if undertakings could disregard published prices and subsequently justify their conduct on the basis of their intention to align their prices.

It nevertheless appears necessary to discount the argument that the requirement to make express reference to the alignment in the contract of sale may be inferred from the said obligation to state the price (which is naturally made clear in the order in the present case, altnough without details of the method by which it was determined), still less

from the obligation to mention the *other* conditions of sale (as distinct from the price). In my view the existence of an obligation of a formal nature, failure to fulfil which carries a pecuniary sanction, cannot be inferred without a clear provision, which is absent in the present case.

Since there is no provision of that nature it is insufficient to rely, as does the defendant, on the circular of the High Authority of 20 December 1962. Apart from the fact that the circular in question was not binding, being essentially intended to inform undertakings of the said judgment of the Court of 12 July 1962 in Case 16/61, it recognized by implication that there was no formal obligation as strict as that which the defendant now seeks to establish. The High Authority in fact merely "urgently recommended" the undertakings, in sales effected at aligned prices, to mention in the documents confirming the sale the price list on which the alignment was effected, in order to avoid the risk of disputes and, where appropriate, fines.

At the time of the said circular the Community executive did not appear to exclude the possibility that undertakings might furnish evidence such as to prove that, although there was no express reference to an alignment at the time of the contract, the reduction made with regard to the list price was effected on the basis of an alignment.

The defendant recalls in support of its point of view the abovementioned judgment of 12 July 1962 in Case 16/61. According to that judgment the right to align prices "constitutes an exception to the principle of list prices, but it must not divest that principle of all effect through the exclusion of publicity by means of alignments carried out *a posteriori*". However, the context of the judgment shows that the Court was referring exclusively to cases in which the alignment was relied upon in justification of discounts granted at the time of implementation of the contract in relation to the price stated in the invoices and the accounting documents of the undertaking. In the present case, on the other hand, Rumi has not been charged with any accounting contrivance. The reductions granted by the applicant in relation to its list prices were clearly stated in the invoices and other accounting documents and are undoubtedly contemporaneous with the conclusion of the contracts of sale. This means that there is a clear distinction between the present case and that with which the said judgment was concerned.

The sole criterion resulting from that previous case which must be considered applicable to the present one is the requirement that determination of the price by the method of alignment must truly be effected at the time when the contract is concluded and that accordingly the price must remain fixed at the time of implementation of the contract, It is in fact clear that when the Court refers to an alignment carried out *"a posteriori"* it means instances where the price actually charged is less than that mentioned in the contract and shown in the accounting documents of the undertaking. In that context the reference to known and verifiable factors, on the basis of which it is possible to establish that the alignment is correct, merely means that the price actually charged must coincide with that shown on the invoice and in the accounting documents and that regard may be had only to price lists which are official, and can thus be objectively checked, of the competing undertakings on which the alignment was carried out.

I certainly do not wish to dispute that it is useful, in order to assist investigations by the Commission, that information capable of identifying the alignment should appear in the undertakings's books. What I do dispute is that there is a clear obligation of that nature at present incumbent on undertakings.

Turning to the present case I note that Rumi advanced the justification of alignment for the first time not before this Court but when the administrative procedure was begun, as soon as the objections were formally made known to it. The applicant has pointed out that in its statement of 15 October 1977 it gave details relating to every individual contract of the competing undertakings on which it had effected the alignment. Failure by the representatives of the undertaking to mention the alignment in the course of the investigation carried out by the agents of the Commission does not seem to me sufficient evidence to substantiate an allegation of bad faith against the applicant. An inspection is not a contentious procedure in which the person concerned is required to set out all the arguments constituting his defence; in particular, it does not appear reasonable to claim that it is the duty of administrative personnel to point out, in connexion with a check on accounting documents, a circumstance whose relevance to the assessment of the undertaking's conduct could not have been fully understood by them.

8. In the light of the above-mentioned considerations I take the view that if the prices charged by the applicant in the sales in question had been objectively justified in terms of the criterion of alignment, there would have been no infringement of Article 60 and accordingly the sanction prescribed by Article 64 would not have been lawfully imposed. At the most, even accepting the point of view of the Commission concerning the obligation to state the method employed in forming the price at the time of conclusion of the contract, Rumi could only have been charged with a purely formal infringement of a provision which is anything but precise and clear; accordingly there would be considerable doubt concerning the lawfulness of the fine imposed.

However, following the oral procedure the Commission finally considered the substance of the matter of alignment and an important factor, previously disregarded by the defendant, was thus introduced into the proceedings for the first time.

In the statement accompanying the documents which the Court requested it to furnish in the course of the hearing on 11 May 1979 the defendant provided information which shows that the alignment relied upon by Rumi could not provide objective justification for the prices charged in the sales in question. In this connexion the Commission has observed that in the price lists of Feralpi and IRO, that is, of the two competitors upon whom the applicant maintains that it aligned its prices, the price of the product displaying the greatest similarity in quality to the bar sold by Rumi in France was, at the time of the sale, higher than the price charged by Rumi. In fact Feralpi sold the bar FEB 44 K at Lit 178 000 per tonne free Lonato and IRO sold the straight bar 4400 at Lit 168 000 per tonne free Odolo, whilst the price charged by Rumi was Lit 159 336 per tonne free Montello. Furthermore, since the undertakings Feralpi and IRO have Lonato and Odolo respectively as their places of delivery, that is as the points on the basis of which the transport costs are calculated, alignment on those places for a sale in France could not have afforded Rumi, which has Montello as

its place of delivery, any reduction in the price in respect of lower transport costs.

The figures given by the Commission for sales by Feralpi and IRO correspond to those emerging from Documents Nos 38 and 39 in Annex II to the statement of 11 May. Furthermore the applicant, in its observations of 30 May, did not refute the statements of the defendant either with regard to the details of the products of Feralpi and IRO which were best suited to comparison with the bars which it sells in France or with regard to the level of prices on the lists of those undertakings. That indicates that the defendant's objection concerning Rumi's failure to effect a true alignment on the prices of its competitors is well founded. If the Commission had ensured that this decisive objection was raised in good time against Rumi the latter would probably have been persuaded not to submit its appeal against the decision. On the other hand that decision, in view of the manner in which its reasons stated, gives rise, as we have seen, to a series of difficulties concerning an essential point.

Nevertheless, since in the present case the Court, as I have already emphasized, exercises unlimited jurisdiction it has power to take account of the evidence adduced, albeit belatedly, by the defendant which appears to justify on another basis the existence of the infringement of Article 60 with which Rumi is charged and, accordingly, to uphold the contested decision.

9. In those circumstances I consider it proper to reduce the amount of the fine. The Commission has explained in the hearing that it calculated the amount of the fine by reference to the general criterion of proportionality based on the extent of the departure from the prices on the list.

In this connexion it must be recalled that the facts in question were recorded on a market already in a state of crisis and subject to swift changes in prices which manufacturers communicated irregularly to the Commission, as it conceded in the hearing. As I have already said, the rapidity of the changes rendered less effective in objective terms the discharge of the function which publication of the prices was intended to serve. A certain importance must also be attributed to the good faith of the undertaking, against which no objection of fraud has been raised since the prices actually charged are shown in its books. Finally, it should be emphasized that the irregularity concerning the alignment did not entail any discrimination by Rumi against its customers.

Those factors mitigate the seriousness of the infringement in question and must therefore also indicate that the fine should be reduced.

With regard to the costs of the action, I consider that regard must be had to the above-mentioned incompleteness in the administrative inquiry in the present case, which is reflected in the statement of reasons for the contested decision and in the arguments of the Commission up to the final stage of this procedure. We have seen that the statement of reasons for the decision settles the problem of alignment on the basis of the single contention, which in my view is not well founded, that there exists an obligation to state the method whereby the price was formed at the time when the contract is concluded. We have also seen that the substantive aspect of the alignment was discussed by the Commission only in the last document in its defence and that the applicant did not contest the argument put forward by the

respondent. It is accordingly reasonable to suppose that if that objection, which forms a proper legal basis for the fine, had been put forward during the administrative procedure it would have been possible to forestall the present proceedings.

In those circumstances I consider it proper to apply to the present case the second subparagraph of Article 69 (3) of the Rules of Procedure, in accordance with which "The Court may order even a successful party to pay costs which the Court considers that party to have unreasonably or vexatiously caused the opposite party to incur", and accordingly to order the defendant to pay whole of its own costs and one third of those of the applicant.

10. On the basis of all the considerations set out above I conclude by suggesting that the Court should reject the application for the annulment of the contested decision, halve the amount of the fine and order the defendant to pay, in addition to its own costs, one third of the costs incurred by the applicant.