OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 8 October 1985 *

Mr President,
Members of the Court,

1. On 14 February 1985, Cockerill-Sambre filed an application at the Court Registry under the second paragraph of Article 36 of the ECSC Treaty for a declaration that an individual decision addressed to it, Decision C (84) 1958/1 adopted by the Commission of the European Communities on 19 December 1984, is void. The decision imposed a fine of 620 570 ECU on the applicant pursuant to Article 58 of the ECSC Treaty for exceeding the production quotas fixed for the first and second quarters of 1983 by Commission Decision 1696/82/ECSC of 30 June 1982.

The question to be considered today concerns not the substance but the admissibility of the action. It must be determined whether it was brought within the time-limit fixed by the first paragraph of Article 39 of the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community, according to which:

'The proceedings provided for in Articles 36 and 37 of this Treaty must be instituted within the time-limit of one month provided for in the last paragraph of Article 33'.

That time-limit is extended by two days on account of distance in accordance with Article 81 of the Rules of Procedure of the Court and Article 1 of Annex 2 to those rules.

The Commission raised an objection of inadmissibility by a separate document in acccordance with Article 91 of the Rules of Procedure.

2. In support of its objection, it contends that:

(i) The contested decision was notified to Cockerill-Sambre at its registered office at Seraing on 9 January 1985;

(ii) Under the provisions referred to above, the application should have been lodged on 12 February 1985 at the latest;

(iii) The action was only brought on 14 February 1985.

On the basis of the Court's case-law, the Commission pointed out that time-limits must be strictly observed and contested the applicant's statement that notice of the decision at issue was not received until 11 January 1985 at its offices in Brussels.

3. In order to justify the latter claim, the applicant stated that although its registered office is still in Seraing, the offices of the President and the Director-General as well as the operational departments were transferred to Brussels in June 1984. All of the company's usual correspondents, including the Commission, were informed of that change by a circular of 29 May 1984.

Since it noticed that the Commission had not drawn the necessary consequences from that circular, the applicant, by identical

* Translated from the French.

letters of 21 December 1984 addressed to the Vice-President of the Commission (Mr Davignon) and to Directorate-General III (Steel) respectively, expressly requested that all correspondence be addressed to Brussels 'so as to avoid it being lost or delayed at the registered office in Seraing and that it be marked for the attention of the person to whom it is intended or for that of G. Paulus, Group Quotas, who will transmit it'. Those letters were delivered on 3 January 1985.

The contested decision, which the Commission sent by registered letter with acknowledgement of receipt on 8 January 1985, was received at the registerd office on 9 January 1985; the acknowledgement of receipt was signed there and it was sent on to the Brussels office by registered letter received on Friday 11 January 1985.

According to Cockerill-Sambre, no rule of Community law requires that decisions imposing fines be notified solely to the registered offices of the undertakings concerned.

The Commission must give notice at the addresses indicated by its correspondents if requested to do so (and there is no rule which prevents such a request being made); if it does not do so, then the effect of the third paragraph of Article 173 of the EEC Treaty is that the time-limit for instituting proceedings will begin to run from the day on which the decision actually came to the knowledge of the undertaking concerned.

Since it considers that the letter received on 9 January 1985 at its registered office was transmitted to Brussels with due diligence, Cockerill-Sambre contends that it must be regarded as having knowledge of that decision only on 11 January 1985, and that consequently the action was begun on the last day of the time-limit prescribed by law.

In the alternative, it contends that even if the Commission was justified in giving notice at the registered office, its negligence prevented the applicant from having knowledge of the decision before 11 January 1985.

4. In the reply which it was permitted to submit by reason of the new facts raised by the applicant, the Commission maintained its objection. In its view, the notice was lawful and valid, and in fact is based on a rule of common sense to the effect that notification of a Commission decison addressed to a legal person should be made at that person's registered office, particularly in the case of a decision imposing pecuniary sanctions.

In the alternative, the Commission claims that it was not possible to conclude from the circular of 29 May 1984 that it was 'required' to notify its decisions, and in particular those imposing fines, to the new address indicated therein. It added that the letter of 21 December 1984 did not provide any further details on the subject and, moreover, the date on which it was received (3 January) coincided almost exactly with that on which the decision was sent (8 January) and that deprives the complaint of negligence made against it of its force.

5. The question raised in this case is whether the Commission is required to give notice of its decisions at the place indicated by the person to whom they are addressed.

I consider that the reply to that question should be in the negative. The Commission could, of course, have acceded to such a wish. It was not obliged to do so.

In its judgment of 12 July 1984 in Case 209/83 (*Ferriera Valsabbia SpA* v *Commission* [1984] ECR 3089), the Court considered that:

'The strict application of Community rules on procedural time-limits meets the requirement of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice' (paragraph 14).

The Rules of Procedure of the Court do not define the arrangements for the notifications referred to in Article 81 (1), which states that:

'The period of time allowed for commencing proceedings against a measure adopted by an institution shall run from the day following the receipt by the person concerned of notification of the measure . . . '.

However, the Court has held that:

'A decision is properly notified within the meaning of the Treaty' (in that case it was the EEC Treaty) 'if it reaches the addressee and puts the latter in a position to take cognizance of it' (judgment of 21 February 1973 in Case 6/72 *Europemballage and Continental Can* v *Commission* [1973] ECR 215, paragraph 10 at p. 241).

In the judgment of 30 May 1984 in Case 224/83 (*Ferrriera Vittoria* v *Commission* [1984] ECR 2349), the Court, after referring to the third paragraphof Article 33 of the ECSC Treaty and Article 81 (1) of the Rules of Procedure, which also apply to the present case, stated that:

'The measure in question was notified by registered letter with an acknowledgement of receipt ... That is a method which enables the date from which time begins to run to be determined with certainty'.

Thus, the Court does not require that notification be in any particular form but it has decided that a registered letter with an acknowledgement of receipt is an appropriate form. The Court has also not laid down any rule as to the place at which notice must be given, the essential being that the person to whom the decision is addressed acquires actual knowledge of it.

In this case, it is not contended that the registered letter was delivered to a person not authorized to receive it. It is therefore difficult to accept that notice given to a company at its registered office (that is to say, at its domicile) does not permit it to have knowledge of the measure of which notice is being given.

What must be regarded as a mere preference expressed by Cockerill-Sambre as to the place at which notice of decisions should be given cannot, having regard to the relevant provisions and to the judgments of the Court, impose an obligation on the Commission nor can it have an effect on the time-limits. Legal certainty requires that the interpretation and application of procedural rules not be subject to the vagaries of the internal organization of the undertakings concerned.

A strict application of the Community rules leads to the conclusion that in this case, since notice of the decision at issue was duly given on 9 January 1985, the time-limit for challenging it expired on 12 February 1985.

6. In my opinion, therefore, the application brought on 14 February 1985 must be declared inadmissible.