OPINION OF MR ADVOCATE-GENERAL ROEMER[1]

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Mr President,
Members of the Court,

I have today to deliver my opinion in two cases:

1. Meroni & Co., Industrie Metallurgiche, Società per Azioni, whose registered office is in Milan, represented by its *amministratore*, Aldo Meroni, Engineer,

v

High Authority of the ECSC (Register No 9, year 1956);

2. Meroni & Co., Industrie Metallurgiche, Società in Accomandita Semplice, whose registered office is in Erba, province of Como, represented by its *procuratore*, Agostino Artioli,

v

High Authority of the ECSC (Register No 10, year 1956).

1 — Translated from the German.

A – Preliminary remark

These applications have been made by two separate companies under Italian commercial law and they have not been joined during the proceedings.
Each of them contests an individual decision of the High Authority. The purpose of the two individual decisions was to claim and recover a sum, different in the two cases, owned by the addressees of the decisions by way of contributions to the Imported Ferrous Scrap Equalization Fund.
The nature of the submissions and arguments put forward in Case 10/56 and in Case 9/56 is identical. In the latter case, there is an additional submission arising from the fact that the amount of the contribution due was calculated by way of an estimate made by the Fund on its own authority and the applicant puts forward various complaints against that estimate. I think I shall be able to take sufficiently into account the necessity of dealing separately with the additional arguments with regard to the estimate and the submission arising from it by stressing the particular aspects of that part of the dispute.
In favour of the approach which I am choosing, there is also the fact that during the oral arguments the explanations of the applicants and of the defendant in the two cases were *de facto* submitted to the Court jointly and in an indivisible way.
So I would mention that except where I expressly indicate otherwise, my exposition will cover the two cases.

B – Right to bring an application and whether the applicants are lawfully represented

1. Meroni & Co., Industrie Metallurgiche, Società per Azioni, Milan, is represented by Aldo Meroni, *amministratore*, who alone holds that office. For the purposes of the present case, the *amministratore* has given a power of attorney to Arturo Cottrau of the Italian Bar.

2. Meroni & Co., Industrie Metallurgiche, Società in Accomandita Semplice, Erba, is legally represented by Ambrogio Meroni and Aldo Meroni, *gerenti*, who alone hold that office. The *gerente* Ambrogio Meroni has appointed Agostino Artioli *procuratore*, with power to represent the company, and in particular to conduct legal proceedings and defend it in legal proceedings in its name. For the purposes of the present case the *procuratore* has given a power of attorney to Arturo Cottrau of the Italian Bar.
The legal form of the applicant companies, their legal representation, the power of attorney given to the *procuratore* and to his agent are attested by documents certified as true copies and there is no objection on this point.
The two companies are undertakings for the purposes of Article 80 of the Treaty. They thus have the right to bring an application before the Court of Justice and they are lawfully represented.
For the procedure followed in the two cases, I would refer to the explanations of the Judge-Rapporteur. It has been in accordance with the Rules of Procedure of the Court of Justice and does not call for any comment.
I am thus in a position to come to the subject-matter of the dispute and to analyse the submissions in the application.

C – Analysis and order of the submissions

I – *Necessity for this study*

The contested decisions are individual decisions for recovery. The applications are based on three submissions, infringement of an essential procedural requirement, misuse of powers, and manifest failure to observe the Treaty.
But upon closer examination, this division – which seems simple – does not suffice. For the individual fixing of the contribution is based on general decision of the High Authority and on decisions of the Fund and the Joint Bureau. The complaints put forward as part of each submission are sometimes concerned directly with the individual decisions, sometimes with the activity of the Brussels agencies and with decisions adopted by them in application of the general decisions of the High Authority concerning the system for the equalization of purchases of ferrous scrap inside and out-

side the territory of the Community. According to the High Authority, certain complaints are even directed against the general decisions of the High Authority establishing the equalization system. It therefore argues that the time-limit has expired and that certain submissions are inadmissible. Thus it seems necessary to start by explaining the legal structure of the system for the equalization of ferrous scrap and in particular the bases for an individual decision of the kind contested. The order of the submissions and complaints necessary for proceeding to an examination from the legal point of view follows from this.

II — *Legal structure of the equalization system for ferrous scrap*

Before the Common Market was established, the need for an arrangement for the equalization of imported ferrous scrap had been recognized (see the preamble to Decision No 2/53, *JO No 1 of 10.2. 1953, p. 5*). At the same time the High Authority had fixed maximum prices for ferrous scrap, which were in force until 1 April 1954.

1. *Voluntary equalization arrangement (Decision No 33/53)*

From 15 March 1953 to 1 April 1954, equalization was based on a voluntary agreement between the Community producers of pig-iron and of steel, who had created a 'Joint Bureau of Ferrous Scrap Consumers' (hereinafter referred to as 'the Joint Bureau'), an 'Imported Ferrous Scrap Equalization Fund' (hereinafter referred to as 'the Fund') and an Office representing consumers and traders on a basis of parity. The Joint Bureau and the Fund take the form of companies established under private law. They are cooperative undertakings under Belgian commercial law and their registered offices are at Brussels. As appears from the file, these 'central Brussels agencies' created a 'regional office' in each country of the Community and empowered an association to take charge of the matters concerned. The regional office for Italy is 'Consorzio Approvvigionamenti Materie Prime Siderurgiche SA, Milano', or 'Campsider' for short.

The voluntary agreement was authorized by Decision No 33/53 of 19 June 1953 (*JO No 8 of 9.6.1953, p. 137*) of the High Authority acting under Article 65 of Article 53 (a) of the Treaty.
The conditions and obligations attaching to that authorization required in particular:

That the statutes of the Joint Bureau and of the Fund be published without delay in an appropriate newspaper in every Member State;
That all decisions of the Joint Bureau and of the Fund be communicated to the High Authority;
That an observer from the High Authority be present at all meetings;
That the administration and the accounts of the Fund be supervised by the High Authority;
Finally, that, after approval from the High Authority, all the decisions for which Article 3 of the statutes of the Fund makes provision be published.

As regards the latter provision, it should be noted that the German translation of Article 2 (4) of Decision No 33/53 contains an inaccurate translation using the word '*Geschäftsordnung*' as the equivalent of the French word '*règlement*'. The rules (règlements) referred to in Article 3 of the statutes of the Fund cover the means whereby equalization is to be achieved. Article 3 of the statutes says:

'The object of the Imported Ferrous Scrap Equalization Fund shall be:
To bring about, by the means referred to below, the equalization of the prices of ferrous scrap imported from third countries with the prices of ferrous scrap originating within the Community. The means whereby such equalization is to be achieved, both as regards the amount of the contributions to be paid for the subsidizing of imported ferrous scrap and as regards the basis for and *the rate* of the levy intended to finance the fund shall be laid down in rules to be drawn up by the Board'.

It appears from this provision in the statutes that the means whereby equalization is to be achieved must be laid down by rules drawn up by the Board of the Fund.

2. *First compulsory equalization system (Decision No 22/54)*

Since it was found that the first voluntary system was inadequate, the High Authority, acting by virtue of Article 53 (b) of the Treaty, created, by Decision No 22/54 of 26 March 1954 (*JO No 4 of 30.3.1954, p. 286*) and with effect from 1 April 1954, an equalization arrangement which was *compulsory* for *all* undertakings in the Community using ferrous scrap.

The High Authority entrusted the functioning of that equalization arrangement '*subject to its supervision*' to the above-mentioned existing agencies had already applied the voluntary equalization system, namely the Fund and the Joint Bureau (Art. 1 (2)).

The Fund, defined by the High Authority as the executive agency of the equalization scheme (first paragraph of Article 6), fixes the rate of the contributions and the accounting periods. On this point, the decision lays down the following rules: the contributions must be necessary for the equalization of imported ferrous scrap; the amount thereof is to be calculated in proportion to the tonnages of ferrous scrap purchased by each undertaking or imported from third countries. The Joint Bureau also has a part to play, as Article 5 provides that the Joint Bureau shall propose to the Fund the tonnage of ferrous scrap to be imported, the maximum import purchase price and the equalization price—factors which are essential for calculating the rate of contribution. Finally, it is provided that an observer from the High Authority is to be present at all meetings of the Joint Bureau and of the Fund. He can reserve the final decision to the High Authority. Where the deliberating bodies of the Fund and of the Joint Bureau fail to reach a unanimous decision as required by the first paragraph of Article 9 of the decision, the question concerned is to be 'resolved by decision of the High Authority'.

Article 4 provides that the Fund shall notify the undertakings of the amount of the contributions to be paid and the time within which they must be paid. It is given power to hold those amounts. Where there is a failure to pay within due time, the Fund is required to call upon the High Authority to intervene, and the latter 'may adopt an enforceable decision'. (Decision No 22/54, second paragraph of Article 4).

Contrary to the text of Decision No 33/53 of the High Authority, there is no express provision giving the High Authority the right to supervise the administration and the accounts. The High Authority no longer requires publication of alterations to the statutes or of the decisions of the Fund. However, since the Fund and the Joint Bureau—as I have pointed out—are companies under private law, alterations to the statutes are to be found published in the 'Commercial Companies' section of the annexes to the 'Moniteur Belge', these being matters relating to the Commercial Register.

3. *The expanded compulsory equalization system (Decision No 14/55)*

This compulsory equalization system was expanded on *1 April 1955* by Decision No 14/55 (*JO No 8 of 30.3.1955, p. 685*). The expanded system was originally to apply until 31 March 1956, but it was extended three times, finally until 31 January 1957:

By Decision No 10/56 (*JO No 7 of 15.3.1956, p. 81*) until 30 June 1956;
By Decision No 24/56 (*JO No 15 of 27.6.1956, p. 165*), until 31 October 1956;
Finally by Decision No 31/56 (*JO No 23 of 18.10.1956, p. 308*) until 31 January 1957.

Compared with the earlier rules, the two significant alterations to the system as from 1 April 1955 are as follows:

1. The Joint Bureau may, within certain limits, enter directly into contracts of purchase on behalf of consumers to be named at a later date.

2. A bonus is granted for economies in ferrous scrap by means of an increased use of pig-iron.

Decision No 26/55 (*JO No 18 of 26.7.1955, p. 869*), later supplemented by Decision No 3/56 (*JO No 4 of 22.2.1956, p. 17*), laid down detailed rules concerning the granting of the bonus for economies in ferrous scrap resulting from an increased use of pig-

iron. This point need not be examined in the present case.
The contributions must now finance and cover, in addition to the equalization of imported ferrous scrap, the means necessary for purchasing the tonnages available and for the granting of the bonus for economies, it being understood that, as regards imports in common, recourse is to be had, in principle, to the usual means of credit. But the obligation to pay this contribution continues to fall on all the undertakings of the Community which use ferrous scrap and not only on those which are members of the Fund and of the Joint Bureau.
The preamble to Decision No 14/55 expressly stresses the responsibility of the High Authority:

'The High Authority is responsible for the proper functioning of the financial arrangement and thus must be in a position to intervene effectively at any moment.'

The observer from the High Authority is now called its 'permanent representative'. Finally, it is provided that the High Authority may put any proposals to the Joint Bureau or to the Fund. If those agencies do not hold meetings within the following ten days, 'the decision shall be taken by the High Authority' (text of the third paragraph of Article 9 of the Decision).

4. *Basis for an individual assessment to the contribution*

The following bases appear from this legal structure. They are steps in the process at the end of which an individual decision is adopted fixing the contribution due by a given undertaking.

(a) First, it is necessary to refer to the relevant general decision of the High Authority. Since the decisions contested in the present applications cover the period from 1 April 1954 to 30 June 1956, it is necessary to refer to Decision No 22/54 for the period from 1 April 1954 to 31 March 1955 and to Decision No 14/55 for the period beginning on 1 April 1955.
No direct indication is to be found in those decisions as to the calculation and amount of the contribution payable by an undertaking. On the contrary, according to the second paragraph of Article 3 of the decisions, it is the Fund which fixes the rate of the contributions and the accounting periods.

(b) These decisions of the Fund, which fix the rate of the contributions and the accounting periods, valid equally for all undertakings using ferrous scrap, thus constitute the additional basis for the individual assessment to the contribution.
It is necessary to point out here that during the period under consideration the High Authority adopted a decision of its own, the Boards of the Joint Bureau and of the Fund having failed to reach a unanimous decision. The decision in question was Decision No 9/56 (*JO No 5 of 5.3.1956, p. 25*). That decision fixed for three months, from November 1955 to January 1956, not the rate of contribution itself but an element of the equalization price, that is to say an essential factor in the fixing of the equalization rate.

(c) It is only at this stage that it is possible to apply the system to the situation existing in the different undertakings. For each undertaking it is necessary to establish the tonnage of purchases of ferrous scrap subject to the contribution.
By multiplying that tonnage by the rate of contribution, the amount of the contribution is obtained.

(d) Three 'stages', so to speak, may thus be distinguished in fixing individual contributions:

1. The relevant general decision of the High Authority;

2. The decisions of the Fund in force during the period under consideration, concerning the rate of contribution, or the decision of the High Authority in lieu thereof;

3. The establishing of the tonnage of ferrous scrap subject to the contribution as the basis of the calculation for the undertaking concerned and the application of the contribution rate to that basic tonnage.

III — *Place and order of the complaints alleged*

In relation to these three stages, the complaints put forward by the applicants may be classified as follows:

1. *Against the general decisions of the High Authority* two complaints are made:

(a) the repercussions of the decisions were contrary to the recommendations which the Council of Ministers annexed to its assent;

(b) the decision to extend the period during which the system was to apply was irregular.

2. *Against the activity and decisions of the Fund* particularly as regards the fixing of the contribution rate, it is alleged:

(a) that the reasons stated were inadequate, particularly in that no indication was given of the various factors used in fixing the contribution rate;

(b) that matters were handled incompetently: incomplete information to the undertakings, inaccurate, provisional and late communications;

(c) errors of fact in determining the factors used in fixing the contribution rate, particularly as regards the average prices taken for Community scrap and imported scrap.

3. *Against the individual decisions of the High Authority* it is directly alleged:

(a) that the reasons stated were inadequate;

(b) that the procedure was irregular in that the applicants were not given an opportunity to submit their observations;

(c) in addition, but only in Case 9/56, that the purchases of ferrous scrap subject to the contribution were estimated by the Fund on its own authority without any legal basis and in an arbitrary manner.

D — Admissibility of the applications

Before examining whether the complaints are admissible and whether they are well founded, it is necessary to consider whether, as a whole, the applications are admissible.

The High Authority has objected that in the letters which they addressed to it on 12 and 13 April 1956, the applicants recognized their obligations and that consequently the applications are inadmissible. During the hearing, the High Authority emphasized that it was not saying that the said unqualified acceptance related to the individual decisions which it only took some months afterwards, but that it related to the decisions and statements of account of the Fund, duly communicated to the applicants and of which they had knowledge prior to 12 and 13 April.

An examination of the contents of the two letters and of those which had previously been addressed by the High Authority to the applicants shows that no sum due is specified and that the applicants object and make it clear that they are 'unconvinced'. These two facts are sufficient to exclude in this case an acknowledgement of the debt or a waiver of the right to bring proceedings, particularly since no decision against which proceedings could be instituted had as yet been adopted. The letters of 12 and 13 April 1956 do not affect any of the complaints directly put forward against the individual decisions.

When one considers the remainder of the complaints put forward against the *general* decisions and the decisions of the Fund, it appears that they are already more or less ascertainably contained in the letters of the applicants of April 1956 or that there is therein at least an allusion to them. In those letters the repercussions of the equalization system are criticized and it is suggested that the establishing of the bases for the calculation of the rate of contribution and in particular the two average prices, should be subjected to scrutiny. In general terms, it is complained that undertakings are not given enough information and that insufficient statistical data is available. In these circumstances, the offer to pay the debt by instal-

ments—of unspecified amounts—can only be interpreted as meaning that the principle of the equalization system as such is not disputed and that the existence of an obligation is *in principle* recognized. On the other hand, the applicants state that they have absolutely no knowledge of the factors determining *the amount* of their contribution.
From this I conclude that the applicants' letters of 12 and 13 April 1956 are not in contradiction with the arguments and submissions raised in the applications. Thus it is not necessary to inquire whether, in principle, the waiver of the right to argue the unlawful nature of such decisions could be effective in respect of a later legal action.

E — Admissibility of the different submissions raised

1. *Directly against the individual decisions*

The second paragraph of Article 33 of the Treaty provides that as against decisions concerning them undertakings may rely on all the grounds on which an application may be based. Those grounds are thus clearly admissible. Indeed the defendant does not raise any objection on this point.

2. *Against the general decisions*

The High Authority is of the opinion that the submissions put forward against General Decisions Nos 22/54 and 14/55 and against Decision No 10/56 extending the scheme are inadmissible because the period within which an application may be brought had expired and also because as against general decisions undertakings can only allege a misuse of powers affecting them.
This gives rise to a question of great importance as regards the legal protection of undertakings. It is a question which has been considered in detail in Case 15/57, *Compagnie des Hauts Fourneaux de Chasse*. It may be enunciated as follows:

In an application against an individual decision applying a general decision to an undertaking, may the undertaking or an association argue in addition that the general decision which is being applied is unlawful, first notwithstanding that the period within which an application may be made for annulment of the general decision has expired and secondly in reliance on the four grounds?

The third paragraph of Article 36 of the Treaty supplies an express answer to this question as regards the case where the contested individual decision imposes a pecuniary sanction or orders a periodic penalty payment. Such an individual decision is based on the fact that the addressee has not observed a general decision. Non-observance may consist of an infringement of a prohibition or of a failure to comply with a positive requirement. In the case of such non-observance, there is an express reference to the first paragraph of Article 33, which means that the four grounds mentioned in the first paragraph of Article 33 may be relied upon in support of the objection of illegality. The period prescribed in the third paragraph of Article 33 does not apply because what is involved here is merely an objection put forward by the applicant upon the occasion of another application and not a direct application for the annulment of the general decision. This objection is not intended to secure the annulment of the general decision, but its illegality is argued for the purpose of obtaining the annulment of the individual decision applying the general decision to the applicant.
Do the rules contained in the third paragraph of Article 36 of the Treaty constitute special rules as regards the imposing of pecuniary sanctions and periodic penalty payments, or have we, here, a significant instance of the application of a general concept of law, which, because of its significance, is especially emphasized by the Treaty? I do not see any good reason why the objection under discussion here should be interpreted restrictively. On the contrary, the field of application of the objection of illegality must be widened beyond the case of pecuniary sanctions and period penalty payments to supplement the legal protection of undertakings. Since it is only within strict limits that undertakings may contest general decisions by means of an application for annulment, it must be open to them, where

obligations, requirements and prohibitions arise directly from general decisions, to argue that the general decision which is being applied is illegal. It is from this point of view that Article 41 of the Treaty should also be considered. The general decision is the basis giving rise to actions brought before the national courts and the person affected may contest the validity of the decision of the High Authority, which is of significance as regards the judgment to be delivered by the court. It is only exceptionally that undertakings can be regarded as having a sufficient interest to bring a direct application for the annulment of general decisions. Often the interest of the undertakings is not apparent prior to such time as an individual decision applying a general decision to them is adopted against them. On the other hand, there is no denying that it is desirable that an illegal general decision should not be applied in practice to an undertaking and that the said undertaking should not be placed under obligations arising from it. It is interesting to note that Article 184 of the Treaty establishing the European Economic Community does not follow the limited terms of Article 36 of the ECSC Treaty, and provides generally:

'Notwithstanding the expiry of the period laid down in the third paragraph of Article 173, any party may, in proceedings in which a regulation of the Council or of the Commission is in issue, plead the grounds specified in the first paragraph of Article 173, in order to invoke before the Court of Justice the inapplicability of that regulation.'

The Treaty establishing the European Atomic Energy Community contains the same provision in Article 156.

Thus as regards this part of the problem, I come to the same result as did my colleague Mr Lagrange in his opinion. I am glad to note that we have reached this result absolutely independently.

It is therefore admissible for the applicants to raise the illegality of the general decisions upon which the contested individual decisions for recovery are based, and it is not possible to apply the limitations which would have been effective if the applicants had directly contested the general decisions by an application for annulment.

3. *Against the decisions of the Fund*

There is now no longer any difficulty in examining the admissibility of the complaints put forward against the 'second stage', that is to say against the decisions of the Fund. The applicants have rightly argued that it does not seem that any application lies against those decisions and that it must therefore be open to them to contest them when the individual decision of the High Authority applies them to them. Moreover, in its rejoinder, the High Authority has abandoned its first objection according to which the decisions of the 'independent' fund cannot be contested.

It does not matter here whether the decisions of the Fund, particularly those concerning the fixing of the rates of contribution, may in any case be contested as constituents of the individual decision or whether, on the contrary, it is necessary to consider them as general decisions within the meaning of the Treaty. For in both cases the submissions alleged are admissible.

To sum up, all the submissions are therefore admissible, whatever the 'stage' at which they are directed. However, it is only the contested individual decision that can be annulled.

F — Examination of the different submissions

I come now to the examination of the different submissions. Although, in investigating what were the bases on which the individual decisions for recovery were adopted, it has been necessary to start with the general decisions of the High Authority, here it seems to me that it will be useful to follow the reverse order and to start by examining the complaints which directly concern the contested individual decisions.

I — *Complaints directly concerning the contested individual decisions*

1. *Inadequate reasons*

(a) The reasons actually given

Each of the contested decisions states that the applicants must pay a certain amount to

the Fund in respect of a given period. In law, they are based on the general decisions of the High Authority. As regards fact, they state that the applicants have not paid the amounts due under those decisions.

(b) Reasons required by the Treaty

The Court of Justice has already on several occasions considered the extent of the duty, by which, under Article 15 of the Treaty, the High Authority is bound, to state reasons when it adopts its decisions. The Court has held in its judgments that the reasons on which a decision of the High Authority is based must mention, in addition to the rules of law being applied, the essential elements of the findings of fact on which the legal justification for the measure depends—I am referring to the judgments in Cases 6/54 and 2/56.

In the opinion which I delivered in the latter case, I said that the purpose of the duty to state reasons was to inform the interested parties and, should legal proceedings arise, the Court of Justice itself, as to the provisions being applied and the factual circumstances to which they were applied.

In the present case it is enforceable decisions in respect of pecuniary obligations which are involved. The reasons on which such decisions are based must above all indicate clearly the method of calculation and the composition of the sum mentioned in the operative part of the decision. In accordance with the legal structure of the equalization system which I have explained, the basis adopted, apart from the provisions of the Treaty and of the general decisions of the High Authority which are being applied, should be the decisions of the Fund fixing the rates of contributions and the accounting periods over the span of time in question. Finally it is necessary to establish the tonnage of ferrous scrap which is subject to the contribution and which is to be taken into consideration in the case of the undertaking concerned. These are the essential facts and foundations for the genesis of an enforceable decision of this kind.

(c) The arguments of the High Authority

There is no need of long explanations in order to show that the reasons stated for the contested decisions do not contain those features which I have said are essential. The reasons do not even refer to the Fund's decisions and findings or invitations to pay the amounts in question. The Fund is simply mentioned as the recipient of the payment.

Moreover the High Authority has admitted that it has not supplied full reasons of its own. It has taken the view that it was not necessary for it to do so because it had delegated its own tasks to an 'independent' association of undertakings and, according to Article 4 of Decisions Nos 22/54 and 14/55, its role was limited to adopting an enforceable decision under Article 92.

(d) The relationship between the High Authority and the Fund

There thus arises the question as to what is the relationship between the High Authority and the Fund. With the regard to the duty to state reasons, this question only calls for an answer in so far as it is necessary to examine whether the Fund is alone responsible for calculating the contribution of each undertaking, the High Authority having no other function than to adopt an enforceable decision under Article 92 of the Treaty.

In order to answer this question, it is necessary to start with the Treaty. The equalization system is based on Article 53 (b) of the Treaty, according to which the High Authority may make any financial arrangements which it recognizes to be necessary for the performance of the tasks set out in Article 3. The unanimous assent of the Council of Ministers is required. Apart from these financial arrangements made by the High Authority, Article 53 covers two other kinds of arrangements: arrangements made by several undertakings and arrangements made or maintained by a Member State. Whereas several undertakings may make, on a *voluntary* basis, an agreement which requires the authorization of the High Authority, the financial arrangements made by the Member States and by the High Authority rest on a *legislative foundation*. That appears with particular clarity in the case of this system for equalization of

ferrous scrap, which is *compulsory* for all the undertakings of the Community using ferrous scrap. Since the scheme is imposed by force of law and in view of the direct intervention of the High Authority, it is understandable that the *unanimous* assent of the Council is necessary. However the requirement that the Council must give its unanimous consent cannot possibly mean, although this was suggested by counsel for the High Authority, that the arrangement can be 'independent'. Since the High Authority brings the equalization arrangement into being by a legislative act it is much more natural to conclude that the means available under public law are also necessary for its application and that it must therefore undertake this matter itself. It is not necessary to consider here how far the High Authority may delegate application of the same to other bodies. This is a point to which I shall revert. It is enough to note that the Fund cannot be 'independent' for the very reason that it has not the status of a public authority. The fact that in many cases of non-payment by an undertaking, as here, a decision of the High Authority is necessary, is a proof of this. Under the Treaty, it is the High Authority alone which may adopt decisions and the duty to state reasons applies to all decisions of the High Authority.

The High Authority had no power to create, by General Decisions Nos 22/54 and 15/55, a category of decisions for which the Treaty makes no provision, and capable of adoption without any reasons being given. Article 14 of the Treaty enumerates exhaustively the forms whereby the High Authority may act by virtue of its prerogatives as a public authority. Reasons must be given for all these forms—decision, recommendation and opinion—for Article 15 so provides. The second paragraph of Article 4 of Decisions Nos 22/54 and 14/55 provides that the Fund shall call upon the High Authority 'to intervene'. Since it is the Fund's task 'under the responsibility of the High Authority' to apply the equalization arrangement, the High Authority must, upon being called upon so to do by the Fund, itself enforce the arrangement and consider what means of doing so is appropriate. Although its intervention may, apart from any other possible course, consist in adopting an enforceable decision, its power to do so is not based on the second paragraph of Article 4 of the general decisions, but exclusively on the Treaty. According to the Treaty it would be illegal for the High Authority to adopt an enforceable decision creating a pecuniary obligation towards a third party, that is to say, towards a body independent of the Community, and to leave responsibility for the factual accuracy of the decision to that third party. With regard to the duty to state reasons, it does not matter whether the High Authority controls the activities of the Fund. Even if the High Authority applied the equalization arrangement through its own servants, it would have to give full reasons for its decisions.

(e) Special features of this case

In concluding this part of my opinion, I must still point out the special features of this case.

Even if the High Authority's line of argument, which I have just rejected, were correct, it would at least have been necessary for the decision to refer to an invitation to pay emanating from the Fund and mentioning the same sum. That reference has not been made, nor is there before us any invitation on the part of the Fund to pay the sum. There are only to be found on the file a number of provisional invitations to pay, covering brief periods. It was only during the proceedings that the High Authority produced a statement of the total of the sums claimed in its decisions. A comparison between this statement and the various invitations to pay reveals obscurities and contradictions. It was only during the oral hearing that the High Authority explained an obvious difference in the figures in its statements by saying that an unspecified sum had been added to the principal amount by way of interest. In these circumstances it is understandable that the applicants said that they were 'unconvinced' in their observations of April 1956. That only made it the more necessary to produce clear and full reasons and to give accurate information as to the composition of the sum claimed.

(f) Results

I conclude that the contested decisions are not supported by sufficient reasons, that the inadequacy of the reasons for which the High Authority is itself to blame is to be explained by a misconceived notion of the relationship existing between the High Authority and the Fund and that, accordingly, there has been an infringement of an essential procedural requirement.

2. *Irregularity of the procedure*

In their reply, the applicants have also referred expressly for the first time, in support of the ground of 'infringement of an essential procedural requirement', to the fact that the procedure prior to the adoption of the decision was irregular because, since the High Authority did not supply them with precise information, it did not enable them to check or to submit their observations upon the amount and the composition of the contribution claimed.

The High Authority is of the opinion that this complaint is out of time and that therefore it is not admissible. Article 22 of the Protocol on the Statute of the Court provides that the application shall contain a brief statement of the grounds on which it is based. The application refers to the ground of 'infringement of an essential procedural requirement' and also indicates that the applicants have made unsuccessful requests to the Fund and to the High Authority for information, so that they have been unable to check either the account or the composition of the contributions claimed.

I therefore think that the formal requirements as to the exercise of these rights within the required period have been complied with and that we are not faced with a new and independent ground raised for the first time in the reply.

Moreover the High Authority was under an obligation to permit the applicants to submit their observations before adopting any immediately enforceable decision. While it is for the Fund to call upon the High Authority to intervene, it is for the latter to examine all aspects of the case submitted to it in order to be able to decide, with full knowledge of the relevant information, whether it should accede to the Fund's request for its intervention and, if so, what form its intervention should take.

Admittedly, the High Authority did, by letter of 21 March 1956, invite the applicants to submit their observations. But that letter does no more than state that the applicants have not yet paid the balance of the contributions which they owed by virtue of Decisions Nos 22/54 and 14/55, notwithstanding 'Campsider's' repeated invitations to pay. It says that the High Authority will adopt an enforceable decision if payment is not made within a fortnight or if arguments of substance have not been put forward.

The view may be taken that this invitation was in the first instance sufficient and that the High Authority could await any observations to be presented. The question then moves on: was the High Authority entitled, by virtue of the first observations of the applicants, namely the letters of 12 and 13 April 1956, which it regards as 'acquiescence', to adopt a decision without any other examination, or on the contrary, according to the rules of proper procedure, was it required to give more precise explanations in answer to those first observations of the applicants? For want of provisions clarifying this point in the Treaty, it seems to me to be primarily a question of what was reasonable. I have said that it was possible to conclude from the observations of the applicants that *in principle* they recognized their obligation. The fact that the High Authority then adopted a decision without taking the discussion any further cannot mean in principle that its procedure was defective so that the decision was adopted in infringement of an essential procedural requirement. However, *the amount* of the debt in respect of the contribution stated in the decision ought to have been supported by reasons set out with particular care because in their observations the applicants had said that they were unconvinced in respect of that amount.

Thus on the facts it emerges that this submission is well founded, but to a large extent it overlaps the submission of insufficient reasons for the contested decisions. Thus it has no special significance of its own.

II – *Additional submission in Application No 9/56: Assessment by the Fund on its own authority*

1. *The arguments of the parties*

As I said at the beginning of my opinion, Application No 9/56, brought against the individual decision of 24 October 1956, puts forward a submission which, just like the facts on which it is based, is not raised in Application No 10/56, and I shall therefore examine it only in respect of Case 9/56.

The applicant contests for several reasons the assessment by the Fund on its own authority of the applicant's purchases of ferrous scrap from within the Community, that is, of the tonnage subject to the contribution. This is the tonnage to which the rate of contribution is applied to give the amount payable by way of contribution.

It says that indeed it did not send in monthly returns of purchases of ferrous scrap from within the Community made during the accounting period concerned, but that it was never seriously invited to do so. Since it has been assessed for the contribution it has been forced to the conclusion that the Fund proceeded, acting on its own initiative, to make an assessment of the quantities of bought scrap assessable to the levy.

It argues that there is no legal basis either for the action of the Fund in making the assessment on its own authority or for using an estimate as a method of calculating one of the bases of assessment.

The High Authority began its defence by arguing that the compulsory equalization system necessarily involved the power to make assessments on the Fund's own authority of the starting points for the calculation, where undeclared, and the power to require payment of the contributions on the basis of the estimates thus made, for otherwise every undertaking subject to the contribution could avoid the obligation to pay by omitting to send in monthly returns.

During the preparations for this case, in its answer to the direct question put by the order of the Court of 18 July 1957, the High Authority declared that the decisions of the Joint Bureau and of the Fund of 26 May 1955, drafted in identical terms, give the latter the power to make assessments on its own authority, where no return is sent in, in order to proceed to requiring payment. The High Authority also declared that the applicant's monthly steel production, which had been declared to it for the purpose of calculating the general contribution, had constituted the basis for the assessments made by the Fund on its own authority of ferrous scrap bought by the applicant over the period in question.

The applicant then described as arbitrary the technical and accounting aspects of the calculation made in order to arrive at the estimated assessment made by the Fund, pointing out that, for no reason and in a bewildering way, the quantities of bought scrap in question had been estimated at a level lower than the quantity of its production of steel, sometimes by only 0.13 %, but sometimes by as much as 10.5 %.

2. *The facts*

The applicant claims that it was never seriously invited to declare its purchases of scrap. Two letters from Campsider of 22 May 1954 and of 14 June 1955, which have been produced to the Court, contradict this allegation. In those letters Campsider repeatedly invites the applicant to send in its returns and communicates to it the estimate of its consumption of ferrous scrap subject to the contribution for the period 1 April 1954 to 30 April 1955, while allowing it a period for rectifying the assessment and disclosing its actual purchases. Furthermore, the periodical invitations to pay sent out by the Fund carried a warning that it would make an assessment on its own authority should the returns not be sent in within the time allowed.

These facts, however, are of no relevance in arriving at a decision as regards the legality of these demands for payment and of the assessment later made by the Fund.

3. *The legal basis necessary according to the Treaty*

A legal basis founded on the Treaty is necessary in order to make an estimate.

By virtue of Article 53 (b), the High Authority may make financial arrangements. This wide power includes the power to

adopt the measures necessary in order that the arrangements shall function properly. A determination of the quantities of scrap purchased by the undertakings is necessary for the equalization system. The High Authority was therefore entitled to rely on the first paragraph of Article 47 of the Treaty so as to require every undertaking to send in returns as to its purchases of scrap and to investigate the returns, and to rely on the third paragraph of the same article to issue threats of fines or periodic penalty payments in the case of non-compliance. It may also be admitted that in a decision adopted on the basis of Article 53 (b), the High Authority may order that in the case of a failure to comply with the obligation to send in a return as to purchases of scrap, those purchases shall be determined by way of a lump-sum estimate made on its own authority. But it would be necessary to define rules and criteria in order to prevent arbitrary assessments. For where administrations proceed to assessments on their own authority, they have, and this is a universally accepted principle of national law, rights and duties. In particular, they are under the duty to follow a regular procedure rendering it possible to review the accounting and technical data and the logical conclusion appearing in the estimate. The decision must render it possible to check that the estimate is reasonable by reference to the elements of fact taken into account and to the factual consequences drawn from them. The applicant was quite right to refer, during the oral hearing, to the example of the general levy. Article 50 of the Treaty provides that the High Authority shall, *by a general decision*, determine the mode of assessment and collection. In Article 4 of Decision No 2/52 and in Article 5 of Decision No 3/52, which were decisions adopted for that purpose, the High Authority required the Community undertakings to send in returns as to their monthly production on a prescribed form. It was only in a later decision, Decision No 31/55 of 19 November 1955 (*JO No 21 of 28.11.1955, p. 906*), that the High Authority introduced assessments made on its own authority, for the following reason:

'Whereas ... the High Authority should be able, in default of a declaration on the part of an undertaking, to determine the assessable tonnage and the corresponding amount of levy;'.

4. *The legal basis alleged in the present case*

In the case of the Fund, there is nothing to be found in Decisions Nos 22/54 and 14/55 of the High Authority imposing an obligation whereby undertakings must send in returns. Nor, accordingly, is there any provision for penalties in the case of non-compliance with an obligation to send in returns nor is there any procedure for assessments by the Fund on its own authority. It should, on the contrary, be noted, and this is interesting, that Decision No 2/57, which replaced Decision No 14/55 as from 1 February 1957, provides in Article 16 that undertakings must send in returns to the Fund and to the High Authority, and that the second paragraph of Article 17 contains the warning that in the case of false declarations the measures provided for in the third paragraph of Article 47 of the Treaty will be applied. The case of omission to send in these returns is still not covered by any rules.

For the period with which we are concerned in the present case it is, according to the High Authority, in the decisions of the Joint Bureau and of the Fund of 26 May 1955, drafted in identical terms, that the legal basis is to be sought. Yet the lump-sum assessment in respect of the applicant was made as from 1 April 1954, when the compulsory equalization system came into force.

The question thus arises whether the High Authority had the power to confer upon an association of undertakings, required by it to put into practice the equalization arrangement which it had created, the task of adopting by means of regulations provisions of a type issued by a public authority, which it could itself adopt under the Treaty in the form of a general decision stating the reasons on which it was based and published in the Journal Officiel. In other words, could the High Authority delegate certain of the powers of a public authority to associations governed by private law?

5. *The delegation of the powers of a public authority to private associations in national law*

In domestic economic law, there is frequently found a delegation of the administrative powers of a public authority to associations of undertakings. The State reserves to itself a right of control and of supervision. That kind of delegation is made for the most varied reasons, for example in order that the State shall not have direct responsibility, or because technical knowledge and special installations are necessary and the public administrations do not possess these to a sufficient extent, or from a desire for decentralization. The creation of these associations endowed with special powers may also be useful to the State for various purposes, for example in planning the economy or in order to support a market in difficulty. Associations endowed with powers extending beyond the association and of which membership is compulsory, are of particular significance here. There are all sorts of different views as to the limits and constitutional conditions concerning them, and opinions differ as to whether they are politically desirable. However there is no need to examine these creations of national law any further. Let it suffice for me to extract two points which, in a modern State founded on the rule of law, seem to me to be generally accepted as conditions governing the delegation of the administrative powers of public authorities to private associations: the delegation must be governed by a law which specifies the content of the delegation precisely and which must guarantee not only sufficient control by the State, but also complete legal protection against the measures adopted by these associations. Legal protection may be achieved by assimilating the measures adopted by such associations to those of public administrations, so that they may be contested by legal proceedings in accordance with the general rules of administrative law.

6. *Delegation in Community law*

In my opinion, these two points are also of necessity fundamental for our Community law, because the Treaty does not expressly lay down rules concerning this question. I have just explained that the text of Article 53 (b), whereby the High Authority can make financial arrangements, does not admit of the conclusion that the financial arrangement created is independent and subject to no more than supervision by the High Authority. Thus the text of Article 53 does not compel us to the conclusion that the High Authority can delegate certain defined powers conferred on it by the Treaty to agencies for running the financial arrangements but, on the other hand, it does not seem to prohibit such a delegation either. At the very least, however, it is necessary to require that the guarantees laid down by the Treaty as to legal protection shall continue to exist even in the case of delegation. Those guarantees include the rules relating to the publication of decisions together with a statement of the reasons on which they are based and also the provisions relating to proceedings before the Court. The High Authority cannot evade those guarantees by leaving it to agencies to which powers have been delegated to adopt in its place the decisions which it is incumbent upon it to adopt itself. On the contrary, the decisions of these associations should be assimilated to decisions of the High Authority or otherwise the latter should itself adopt the real decisions, the supporting preparatory work and the purely technical implementing measures being left to others.

7. *Application to the present case*

Let me apply these considerations to the case examined here, that is to say to the provision according to which the Fund may make an assessment on its own authority in the case of non-compliance with the obligation to send in a return, which presupposes that rules have been laid down making such a return compulsory.

Article 3 of Decisions Nos 22/54 and 14/55 only lays down the rule that the quantity of scrap bought by each undertaking is to be taken as the basis for the calculation of the contributions. Nothing is said as to how these quantities shall be ascertained. Perhaps the Fund received declarations from regional offices. Moreover, it issued a warn-

ing on a form, under the heading 'Provisions governing payments' in its notices to pay (this it did for the first time in the notice of 22 October 1954 — Annex I to the rejoinder), that in the case of a failure to send in the return within the time prescribed, the Fund had power to estimate on its own authority with the aid of the regional offices the quantity of scrap bought. That warning corresponds word for word to the decisions of the Joint Bureau and of the Fund of 26 May 1955 which the High Authority disclosed during the early stages of this case at the request of the Court and which, says the High Authority, constitute the legal basis for the procedure for assessments on the Fund's own authority. It is not denied that those decisions of 26 May 1955 have not been published. They may, it is true, have been brought to the notice of the members of the 'sociétés coopératives' by the Board. Originally, 22 undertakings were members (Cf. the statutes of the Fund of 24 April 1953, Annex No 11,164 to the 'Moniteur Belge' of 18/19 May 1953 and the statute of the Joint Bureau of the same date, Annex No 11,165). When the statutes were first amended on 1 April 1954 the Fund had 58 members and the Joint Bureau had 155 (Cf. Annexes Nos 9,235 and 9,236 to the 'Moniteur Belge' of 26/27 April 1954). When they were amended for the second time, on 4 July 1955, the number of members of the Fund and the Joint Bureau was 136 (Cf. Annexes Nos 21,688 and 21,693 to the 'Moniteur Belge' of 29 July 1955), and it has finally come down to 123 since the amendment of the statutes on 21 February 1957 (Cf. Annexes Nos 4,328 and 4,317 to the 'Moniteur Belge' of 18/19 March 1957). Since the contribution on ferrous scrap affects about 240 consumers of scrap, the conclusion may be drawn that about 100 Community undertakings had no knowledge of these decisions which were important both in economic and in legal terms. It is generally known that it is mainly the small undertakings of the Community which do not belong to the Brussels 'sociétés coopératives', whereas the large undertakings have become members of those profit-making companies to defend their own interests. I would refer, here, to the published material which I have just mentioned in the annexes to the 'Moniteur Belge'.

So I do not see any possibility of assimilating these decisions to decisions of the High Authority. There is no statement of the reasons on which they are based and they were only communicated to the undertakings on statements of account as part of a note as to the means of *payment*. We do not even know the text concerning the obligation to send in returns.

Regulations of this kind, which were to be binding on all Community undertakings consuming ferrous scrap, whether or not they were members of the Joint Bureau and of the Fund, and whether or not they wished to participate in the equalization system, must be adopted by virtue of the Treaty in the form of general decisions.

I cannot, I must admit, adopt the applicant's argument to the effect that the Brussels decisions altered Article 3 of the decisions of the High Authority. Rather, those decisions supplemented the provision in question. But where I do agree with the applicant is as regards its assertion that the supplementary provision is essential for the functioning of the contribution procedure and that it ought to have been adopted by the High Authority itself, which was what happened as regards the general levy. The argument of the High Authority, to the effect that a *compulsory* equalization scheme must necessarily also involve assessments made on the assessing body's own authority, simply proves that the general decision was incomplete on this point.

I am thus led to the conclusion that the assessment made by the Fund lacks any legal basis.

8. *Manner in which the assessment on the Fund's own authority was in fact made*

In these circumstances, it will be sufficient, for the sake of completeness, for me to say a few words on how the assessment in question was made in practice.

Since there is no statement of the reasons on which it was based, it is impossible to grasp or review the procedure or the means used in making the assessment. For example, during this case, the conclusions drawn, in accountancy terms, from the con-

sumption of ferrous scrap estimated on the basis of the figure for the production of steel have been called in question, yet they have been neither explained nor justified. Even if it must be admitted that certain sources of errors are inherent in the very nature of assessments of this kind, when they are made, nevertheless it is necessary to require the uniform application of appropriate general or particular criteria. The significant and unexplained variations to which I have referred above render it reasonable to take the view that such criteria were not uniformly applied. This view has not been refuted, and accordingly it may be thought that matters have also been mishandled in the actual making of the assessment. Since the person liable to pay the levy has no fewer rights in a procedure for assessment on the assessing body's own authority than in a procedure for determining liability based on accurate accountancy returns, this presumption admits of the conclusion that there was an irregularity in the finding reached by way of the assessment made by the Fund on its own authority.

III – *Complaints against the fixing of the equalization rate*

In Case 9/56, in seeking a legal basis for the assessment made by the Fund on its own authority, I have already had to refer to the general decisions of the Fund and of the Joint Bureau which constituted that basis. Let me now come to the other complaints raised simultaneously in the *two* cases against the decisions of the Fund. These submissions, inadequate reasons, provisional and late communication of the *rates* of contribution, factually inaccurate fixing of the average prices for Community scrap and for imported scrap, are no longer concerned with the undertakings in particular, but with the general activity of the Fund to be found in the fixing of a contribution rate of general application over a given period. The rules relating to this activity of the Fund must be found first of all in the general decisions of the High Authority, which has created the equalization scheme and which, under its responsibility, has required the Fund to put it into effect. The second paragraph of Article 3 of Decisions Nos 22/54 and 14/55 only says that the Fund shall fix the contribution rate and the accounting periods. The only reservation is that the representative of the High Authority may make the decisions subject to the approval of the High Authority. Apart from this, only general information is to be found in the decisions: the total resources arising from the contribution are to make it possible to equalize the prices. The Fund, upon a proposal from the Joint Bureau, decides upon the quantity of ferrous scrap to be imported, the maximum import price and the equalization price. The Fund must take cognizance of the total quantity of the resources of the Community in ferrous scrap subject to the contribution.

The decisions do not contain any indication rendering it possible to ascertain how these factors are determined. Nor do they say whether the decision whereby the rate of contribution is fixed must be supported by reasons and published.

Let me put in a reminder here of a fact which I have already mentioned, namely that as regards the voluntary equalization arrangement based on Article 53(a), Article 2(4) of Decision No 33/53 describes the fixing of the rate of contribution as a regulation which must be published after prior approval by the High Authority. That regulation was only valid for the undertakings taking part in that voluntary agreement. They were in a position to withdraw from it and they were not subject to an authoritarian and enforceable decision of the High Authority. In the compulsory system, however, the fixing of the rate of contribution applies to all undertakings in the Community using ferrous scrap and it can be applied by an enforceable decision of the High Authority.

There thus arises again the question whether, in this way, the High Authority had power to delegate to the Fund the right to adopt a general decision, namely a decision fixing the rate of contribution. In order to decide this point, the significance of the contribution rate in the equalization system needs to be examined more closely.

1. *The significance of the fixing of the contribution rate*

The statement of the reasons on which De-

cisions Nos 22/54 and 14/55 are based explains that imported ferrous scrap and scrap treated as such must be made available to consumers on the Common Market at prices *comparable* to those current within the Community. According to the explanations given during the hearing, however, the Fund based its activities on the concept that *complete equalization* had to be brought about. This explains in particular why the final fixing of the rate could only take place *a posteriori* and after contracts for importation had been performed. I can even discern matters which go still further than complete equalization: 'the Zürich formula' for the calculation of the equalization price includes a 'bonus to encourage importers'. Hence the formula was manifestly intended to call forth special efforts for effecting the highest possible imports of scrap. In a given situation on the market, that may be very desirable, just as it may be necessary in a different situation to stimulate efforts to increase resources arising from domestic scrap. It thus emerges that the fixing of the contribution rate is a significant instrument of economic policy. To achieve merely 'comparable' prices, which might vary to a certain extent depending on the situation on the market, it would have been possible to fix the contribution rate for certain periods *in advance* and *definitively*. It would thus have been possible to take into account the trend and the results achieved in calculating the rate of contribution for the following period.

From 1 April 1955, the resources of the Fund had to suffice not only in order to equalize the prices of imported scrap, but also, according to the new Article 2 (Decision No 14/55 (b) and (c)), to enable it to import a certain quantity to be kept on hand, that is to say, a 'rotating fund' and in particular to enable it to pay a bonus for savings in scrap. The amount of that bonus was fixed by the Fund on a proposal from the Joint Bureau. Thus from 1 April 1955 it is even less possible than for the previous year to speak of an equalization of prices in pure accountancy terms.

Two decisions adopted, by way of exception, by the High Authority itself make it perfectly clear that the fixing of the rate of contribution must have been based on considerations and appraisals of economic policy of that kind. Where the Joint Bureau and the Fund were not unanimous, the High Authority was to adopt a decision itself by virtue of the second paragraph of Article 9 of Decisions Nos 22/54 and 14/55. Such an eventuality occurred and the High Authority itself determined, by a decision, not the rate of contribution properly so called, but a factor appertaining to the equalization price which itself constitutes an essential element as regards the rate of contribution. I have in mind Decisions Nos 9/56 (*JO No 5 of 5.3.1956, p. 25*) and 34/56 (*JO No 28 of 11.12.1956, p. 382*). The first, Decision No 9/56, which applied in the period with which we are concerned in these cases (it was valid from November 1955 to January 1956) contains the following recitals:

'...

Whereas it is necessary to maintain the equalization levy at the lowest level compatible with the objective sought by the Imported Ferrous Scrap Equalization Fund and to keep prices on the Common Market balanced within reasonable limits;

Whereas the equalization price for the months of November and December 1955 and January 1956 must be fixed having regard to a realistic assessment of the conditions observed on the common market in ferrous scrap during the months under consideration ...'

In my opinion, these facts and circumstances surely justify the conclusion that the fixing of the rate of contribution depended not only on technical collaboration and on accountancy operations (for example determination of the tonnage of Community scrap amenable to the contribution) but also on considerations and ideas appertaining to economic policy.

The fixing of the rate of contribution thus appears as the overriding decision in respect of the whole system.

2. *The power of the Fund to fix the rate of contribution*

The general decisions of the High Authority leave it entirely to the Fund to take this

important decision within the limits indicated, the Joint Bureau having, however, a right to make proposals in respect of certain matters. If, therefore, one refers to the text of the general decisions of the High Authority, the complaints of the applicants are not well founded, because the High Authority has not adopted any rules either as to how the rate is to be fixed, or as to publication, or as to the reasons to be given. Review by the Court must therefore look to the Treaty itself and the Court must examine whether the High Authority had the power, under the Treaty, to delegate to the Fund, by general decisions, as it has done, the duty of fixing the rate of contribution.

I have already set out the principles whereby this question may be answered in my examination as to the legal basis for the other general decisions of the Brussels agencies, namely the deliberations concerning assessments on their own authority. Thus the decisive element is whether the guarantees of legal protection to be found in the Treaty also exist in the case of a delegation of powers.

It was possible for the undertakings, upon reading the provisional invitations to pay, to ascertain the provisional rate of contribution. Furthermore, circular letters sent out by the regional office for Italy, Campsider, appear on the file. They give notice of the rate of contribution, which they also describe as *provisional*, and they indicate the date of the decisions of the Joint Bureau in Brussels. The first circular letter that we have is dated 8 February 1955 and it gives notice of the rates as from 1 April 1954. Sometimes the figure, stated in EPU units of account, includes the equalization rate charged with effect from 1 April 1955 in respect of the increased use of pig-iron, sometimes this latter equalization rate appears separately. The circular also states the equalization *price* applied. Finally, a fact which is not denied and which is to be found in the answer of the regional office, Campsider, produced by the applicants is that Campsider, in its circulars, also informed the undertakings of the formulae used in calculating the rate of contribution. On the other hand it does not seem that the undertakings were informed of the actual data, expressed in figures, used for each fixing of a contribution rate.

The method used for announcing decisions whereby the different rates of contribution were fixed, unsupported by any more precise reasons, does not accord with the requirements imposed by the Treaty as regards the publishing of and the stating of reasons underlying general decisions of the High Authority. Therefore as regards their legal status those decisions of the Fund cannot be assimilated to decisions of the High Authority. Taking into account the overriding significance of the fixing of the rate of contribution as regards the equalization system as a whole, it is necessary to insist on the same guarantees of legal protection as those that the Treaty requires for decisions of the High Authority. By virtue of the third paragraph of Article 48 of the Treaty the High Authority had the power to use producers' associations in order to obtain information which it required, and to *facilitate* the performance of the tasks entrusted to *it*, namely the High Authority. However, it could not leave these tasks to the initiative, to the responsibility and to the decisions of an association. It seems that Decisions Nos 22/54 and 14/55 of the High Authority do not take account of the difference of principle which exists, on the one hand, between an equalization arrangement based on a voluntary agreement between a number of undertakings, which only has effect as between themselves and only needs a prior authorization on the part of the High Authority, and, on the other hand, an equalization arrangement created by the High Authority itself, brought into force by means of its powers as a public authority and made compulsory for all the undertakings of the Community, such as the arrangement which is the basis for the decisions contested in these cases.

3. *Appraisal of the different complaints*

For these reasons, the decisions of the Fund fixing the rate of contribution, which have not even been described in the individual decisions of the High Authority against which the applications have been brought, do not constitute a sufficient legal basis for the said individual decisions.

If this view is adopted it becomes superflu-

ous to go on to a special examination of the different complaints. However, I shall do so briefly for the sake of completeness. It will be apparent that these complaints are in fact directed at infringements of certain important guarantees of legal protection the existence of which I have just noted. At the same time, it will be seen that the applicants have not been able to find much to say in support of their claims.

(a) Insufficient statement of reasons

In the first place, the applicants say that the statement of reasons is insufficient. In particular they complain of the failure to publish the essential data as regards the fixing of the rate of contribution.
This complaint is well founded. If the High Authority had itself fixed the rate of contribution, it would have been under a duty to state reasons for its decision by virtue of Article 15 of the Treaty and to publish the decision in the Journal Officiel, which is what it did in the case of Decision No 9/56.

(b) Method of fixing the rate

Secondly, the applicants complain that the rate was originally only fixed provisionally and that the definitive determination only took place a long time afterwards. More generally, the undertakings were given insufficient information, and did not receive information which they requested. This also includes the complaint that the amount of the additional contribution for the granting of the equalization bonus for scrap was not always fixed separately from the rate for the general contribution.
These complaints are concerned partly with infringements of an essential procedural requirement and partly with the fact that the rate was fixed by decisions of the Fund.
It is not necessary, as I have already said, to examine here whether it was possible to fix the rate of contribution at the beginning and on a definitive basis. The High Authority will have to examine this question, for which it must alone take entire responsibility. However, it may be thought that the undertakings ought to have been in a position to calculate exactly and at the earliest possible moment what payments they would be liable to make by virtue of the decisions published. Moreover it is perfectly reasonable to take the view that the publication of the average prices may have been significant as regards the way in which the undertakings conducted their business. Publication of the same necessarily forms part of the statement of the reasons on which the decisions fixing the rate of contribution are based. It is equally necessary that the statement of reasons should include an indication as to the part of the contribution which is necessary for the equalization of the prices and the part which is intended to render it possible to pay the bonus for saving scrap.

(c) Inaccurate fixing of the average prices

Thirdly, the applicants allege that incorrect figures have been taken for two factors involved in determining the rate of contribution, the average price of Community scrap having been taken at too low a figure and that of imported scrap at too high a figure. Here the applicants contradict themselves for elsewhere they have said that these figures, as in fact taken as starting points for the different settings for the rate, have not been published. They ought to have been published in the statement of the reasons, and when one turns to the decisions of the Fund and to the documents on the file, one gets no nearer to finding an indication of them. The equalization price stated in a given case is not identical with the average Community price. These two prices are different, in turn, from the price of Italian scrap. Thus the invoices produced by the applicants have not sufficient evidential value.
The statement of the reasons on which a decision is based is meant to enable the Court to proceed to a review. Where the reasons are inadequate, this infringement of an essential procedural requirement of itself means that the decision is defective.
Therefore it is not necessary, in the present cases, to determine what were the average prices which the Fund in fact took as its starting points for the different rates of contribution or whether the allegation of the applicants, which rests on presumptions

and which is to the effect that those prices do not reflect the true position, is correct. Rather, it will be for the High Authority, once the case is sent back to it, to determine these fundamental facts on its own responsibility and to indicate them in its decision.

4. *Result*

Thus it is clear that the contested individual decisions are inconsistent with the Treaty in so far as they are based on rates of contribution fixed by decisions of the Fund. For the delegation to the latter of the power to fix the rates of contribution, such as is provided for by the general decision of the High Authority, has ignored important guarantees as to legal protection laid down by the Treaty. In particular, there is no sufficient statement of the reasons on which the decisions are based and there has been no proper publication of them, whereas their significance for the equalization system and their compulsory application to all the undertakings of the Community made these matters essential.

IV — *Complaints against the general decisions of the High Authority*

Finally, I come to the complaints put forward against the third stage, that is against the general decisions of the High Authority. As regards these, we have just noted that the said decisions are irregular in so far as they delegate to the Fund the power to fix the equalization rate with general compulsory effect, while failing to uphold the essential guarantees as to legal protection.
The applicants also make two other complaints.

1. *Effects contrary to the recommendations of the Council of Ministers*

First, the applicants say that it was only on the basis of six recommendations which it appended that the Council of Ministers gave its assent to Decision No 14/55. The applicant in Case 9/56 says that none of those six recommendations was observed, whereas the applicant in Case 10/56 is of the opinion that three of them were not observed. The explanations of the applicants on this point are conceived in very general terms and are based on two points:

(a) The internal resources of the Community in scrap have diminished despite the recommendation of the Council of Ministers, because the importation of scrap has been excessively encouraged, the Fund having used incorrect average prices.
This argument has already been examined.

(b) The High Authority should not have remained inactive when faced with the increase in the rate of contribution, which went up from 0.75 EPU units in March 1954 to 10.5 EPU units in July 1956. It ought to have intervened.

This second assertion is no longer concerned with the legality of Decision No 14/55 at the time when it was adopted, but is to the effect that there should have been intervention on the part of the High Authority in fixing the rate of contribution.
I have already said, as regards this, that the High Authority ought to have proceeded to fix the rate of contribution in a decision adopted by itself. There does not seem any reason why, had it done so, the High Authority would not have increased the rate of contribution beyond a certain sum. Rather, it might have been inclined to accept an alignment of Community prices. The recitals, which I have already quoted, in the preamble to Decision No 9/56, appear to justify this idea where they state that it is necessary to keep the equalization charge at the lowest possible level and to maintain a balance between prices only *within reasonable limits*. At the time when the High Authority adopted Decision No 9/56 the rate of contribution had already reached the figure of 9 EPU units. However, as I have said, the High Authority did not itself fix the rate of contribution, but only one factor for determining the equalization price. The question whether the High Authority ought to have acted at a given moment does not arise if one starts with the idea that it ought itself, from the beginning, to have fixed the rate of contribution. It is therefore enough to observe that the material content of this com-

plaint has already been considered, but that the complaint cannot, in addition, result in a declaration that Decision No 14/55 was contrary to the Treaty as from a given moment which the applicants do not even specify.

2. *Inconsistency with the Treaty of Decision No 10/56 extending the system*

Finally the applicants say that the decisions whereby the system was extended were inconsistent with the Treaty. Since the contested individual decisions concern the period up till 30 June 1956, the first decision whereby the system was extended, No 10/56, was used for this purpose.
The applicants see an illegality in the light of the Treaty in the fact that the High Authority simply prolonged the applicability of Decision No 14/55 although in the recitals to Decision No 10/56 it stated itself that the system in force was in need of modification. The reason given for the extension is that new rules have not yet been drawn up.
In such a case there might be an infringement of the Treaty if the decision to be amended could have been revoked straight away, without its being necessary to replace it, or if the High Authority had been able to proceed to certain modifications, pending a general reform later. The applicants have not expressly put forward such arguments. It may be deduced from their explanations that what they had in mind was mainly the need to place an upper limit on the rate of contribution or to reduce it.
So this complaint is closely related to the one which I have just examined and according to which the High Authority ought to have acted when certain effects of the equalization system made themselves felt, particularly when the rate of contribution reached a certain level. However, it is not possible to deduce from this that the decision whereby the system was extended was itself contrary to the Treaty.

G — Result and conclusions

I — *Result*

1. *In Case 10/56*, I thus reach the result that the contested decision is irregular:

(a) for infringement of an essential procedural requirement, because, in failing properly to assess the powers of the Fund, the High Authority has not given supporting reasons;

(b) by reason of the application of the decisions of the Fund concerning the fixing of the rate of contribution, because the High Authority has delegated to the Fund the power to proceed to fix the same without due regard to the essential guarantees of legal protection laid down in the Treaty.

2. The decision contested in *Case 9/56* is also irregular for the two reasons stated above and, thirdly, because it is based on an assessment, made by the Fund on its own authority, of the applicant's purchases of scrap subject to the contribution, although there is no legal basis for such an assessment.

II — Conclusions

In respect of the two cases I am therefore of the opinion that:

1. In Case 9/56:
The decision of the High Authority of 24 October 1956 concerning the company Meroni & Co., Industrie Metallurgiche, Società per Azioni, Milan, notified to the latter on 12 November 1956, should be annulled; and that
The defendant should be ordered to bear the costs pursuant to Article 60 (1) of the Rules of Procedure of the Court and the case should be referred back to the High Authority in accordance with Article 34 of the Treaty.

2. In Case 10/56:
   The decision of the High Authority of 9 November 1956 concerning the undertaking Meroni & Co., Industrie Metallurgiche, Società in Accomandita Semplice, Erba, province of Como, communicated to the latter on 14 November 1956, should be annulled;
   The defendant should be ordered to bear the costs pursuant to Article 60 (1) of the Rules of Procedure of the Court, and the case should be referred back to the High Authority in accordance with Article 34 of the Treaty.