do not allow the Court to check them and in particular ascertain whether the High Authority has fully observed Article 65(2). Such decisions thus infringe Article 15 of the ECSC Treaty. Insufficient grounds are equivalent to lack of grounds (Articles 15 and 65(2) of the ECSC Treaty).

In Case 18/57

I. NOLD, KG, KOHLEN- UND BAUSTOFFGROßHANDLUNG, Darmstadt, represented by Georg Thomas, Rechtsanwalt of the Amtsgericht and Landgericht Frankfurt am Main, and Joseph Kübel, Rechtsanwalt, of the Landgericht Bonn, with an address for service in Luxembourg at the offices of Félicien Jansen, Huissier, 21 rue Aldringer,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Dr Robert Krawielicki, acting as Agent, assisted by Professor Philipp Möhring, Rechtsanwalt, of the Bundesgerichtshof Karlsruhe, with an address for service in Luxembourg at its offices at 2 place de Metz,

defendant,

APPLICATION for annulment, or alternatively a declaration of the inapplicability, of the decisions of the High Authority Nos 16/57, 17/57, 18/57 and 19/57 of 26 July 1957 (JO No 24 of 10. 8. 1957).

THE COURT

composed of: A. M. Donner, President, O. Reise, President of Chamber, L. Delvaux, Ch. L. Hammes (Rapporteur) and R. Rossi, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGEMENT

Issues of fact and of law

I – Conclusions of the parties

1. In its application the *applicant* claims that the Court should:

'annul Decisions Nos 16/57, 17/57, 18/57 and 19/57 of the High Authority of 26 July 1957 (published in the JO of 10.8 1957).'

Further in the oral procedure it claimed in the alternative that the Court should:

'declare that Decisions Nos 16/57, 17/57, 18/57 and 19/57 are null and void or not applicable in so far as they relate to wholesalers who were receiving supplies as first-hand wholesalers before the decisions were adopted.'

2. The *defendant* contends in its statement of defence that the Court should:

'dismiss the application made by the applicant as inadmissible or in any event as unfounded with all the consequences arising in law, in particular with regard to costs.'

II – Facts

1. The plaintiff, a limited partnership, carries on business as a coal wholesaler in Darmstadt.

2. Until 15 February 1956 the applicant was a first-hand wholesaler.

3. On this date Decisions Nos 5/56, 6/56 and 7/56 were adopted by which the High Authority authorized under Article 65 of the ECSC Treaty the agreements of the mining companies associated in the Ruhr coal-selling agencies Geitling, Präsident and Mausegatt which contained *inter alia* commercial rules and in particular laid down conditions relating to qualification as first-hand wholesalers.

According to the rules approved on 15 February 1956 to be recognized by the three joint selling agencies as first-hand wholesalers for the 1956/57 coal-marketing year it was necessary for those wholesalers to show that in the previous coal-marketing year they had

(1) marketed at least 75 000 metric tons of fuel from Community market sources;

(2) of which 40 000 metric tons were in their own marketing area;

(3) and of which at least 12 000 metric tons were from the relevant marketing company.

Decisions Nos 5 to 7/56 contained as an exception to the above rule a provision (Article 9(3)) according to which during a transitional period to the expiry of the 1956/57 coal-marketing year, that is, to 31 March 1957, wholesalers who without satisfying the quantitative criteria laid down had nevertheless continued to be supplied as first-hand wholesalers during the 1955/56 coal-marketing year were allowed to buy directly from the joint selling agencies.

4. On 8 January 1957 the applicant company went into liquidation as a result of the retirement of the sole personally liable shareholder Mrs Ilse Nold, *née* Behne.

5. The transitional rules expiring on 31 March 1957 benefiting the applicant were extended to 30 June 1957 by Decisions Nos 10/57, 11/57 and 12/57 of the High Authority of 1 April 1957.

6. On 26 July 1957 the High Authority adopted Decisions Nos 16 to 19/57 at the request of the mining companies associated in the joint selling agencies.

7. Decisions Nos 16/57, 17/57 and 18/57 in particular reduced the quantities required for qualification as first-hand wholesalers from 75 000 to 60 000 metric tons, from 40 000 to 30 000 metric tons and from 12 500 to 9 000 metric tons.

8. Decision No 19/57 gave approval to the Oberrheinische Kohlenunion, for the benefit of its members who according to the sales conditions of the mining companies or their marketing organizations were entitled to purchase directly from these organizations, to purchase jointly from the districts of Aachen, Ruhr, Saar and Lorraine.

9. The joint selling agencies, Präsident and Mausegatt, wrote to the applicant on 19 September 1957, as did Geitling on 21 September 1957 in similar terms, that as from 1 October 1957 they could no longer treat the applicant as a first-hand wholesaler for sales area IV since it no longer fulfilled the required conditions, and that August and September would be regarded as transitional months.

10. On September 1957 the applicant lodged at the Registry of the Court the present application which is signed only by Mr Klibansky who during his lifetime was a Rechtsanwalt of the Landgericht Frankfurt am Main.

11. Mr Erich Nold, who signed the authority to act in favour of Rechtsanwälte Klibansky, Müller and Thomas, entered the applicant undertaking as a personally liable member on 16 October 1957.

III – Procedure

1. The application cited:
   (1) the High Authority of the European Coal and Steel Community;
   (2) 'Präsident' Ruhrkohlen Verkaufsgesellschaft mbH;
   (3) 'Mausegatt' Ruhrkohlen Verkaufsgesellschaft mbH;
   (4) 'Geitling' Ruhrkohlen Verkaufsgesellschaft mbH.

2. By agreement the applicant withdrew the action against the joint selling agencies; the Court took note of the withdrawal by Order dated 17 January 1958 and ordered the withdrawal of the case in so far as it related to the said defendants.

3. On application of the applicant the Court by Order dated 4 December 1957 recognized the applicant's capacity to institute proceedings which the High Authority had contested in its pleadings dated 23 October 1957 on the basis of the second paragraph of Article 33 and Article 80 in conjunction with Articles 65 and 66 of the ECSC Treaty and suspended operation of Decisions Nos 16/57, 17/57 and 18/57 until final judgment in the action in so far as the commercial rules provided for in these decisions disqualified the applicant from recognition as a first-hand wholesaler.

4. The procedure followed the normal course; the Advocate-General concluded that the application should be dismissed.

5. As the President of Chamber J. Reuff and Judge N. Catalano have been prevented from attending, the Court composed of five Judges gives judgment in accordance with Article 18 of the Statute of the Court of Justice of the ECSC.

IV – Submissions of the parties

The submissions of the parties may be summarized as follows:

A. *Capacity of the applicant*

1. The *defendant* objects to the admissibility of the action. It bases its submission on the uncontested fact that the applicant, a limited partnership, was in liquidation when the action was brought since it had no personally liable member and therefore no one entitled to represent it. It maintains that the partners acting as liquidators were not entitled to bring the action in the name of the company nor was Mr Erich Nold, who at the time was not a member of the firm, entitled to give an authority to act.

In the defendant's view the action is thus now inadmissible because the nullity has not been repaired within the period prescribed for bringing the action.

Mr Erich Nold entered the limited partnership on 16 October 1957 as a personally liable member and thus only after this time, that is, after the expiry of the period for bringing the action, was he entitled legally to represent the undertaking. He signed a statement approving all the previous procedural acts only after the expiry of this period; according to the High Authority it is therefore invalid.

2. The *applicant* cites Article 12 of the partnership deed and the statements of the retiring members in support of the claim that after the undertaking went into liquidation the members jointly entitled to represent the undertaking had transferred the further conduct of the business and the representation of the undertaking to Mrs Sophia Nold who in turn was entitled to grant a general power of attorney to a third person. It alleges that Mrs Sophia Nold transferred to Mr Erich Nold not only the conduct of the business but also the right to represent the other members of the undertaking in liquidation. The power of attorney in favour of Mr Erich Nold accordingly extended to conduct of the action.

The applicant adds further that Mr Erich Nold, acting on behalf and in the interest of the applicant to protect its vital interests could, in its name, rely on its right including a substantive foreign right.

The applicant states further that Mr Erich Nold was entitled by reason of the position

of the undertaking to act as a trustee at the time the application was lodged and this meant that he had to defend the existence of the undertaking by all available means.
Finally the applicant considers that by reason of the principle of good faith the fact that it was in the process of being restructured during the short period laid down for lodging an application and that there was an 'interregnum' cannot lead to rejection of the application for not being brought within the prescribed period.

B. *Formal validity of the application*

1. The defendant alleges that the application is invalid *ab initio* since it is signed only by Mr Klibansky who, although during his lifetime he was called to the Frankfurt am Main Bar, was nevertheless subject to disciplinary measures and suspension from practice at the time the application was brought and during the period of one month for bringing it.
From this the defendant infers that in the absence of a valid signature the application does not comply either with the provisions of the second paragraph of Article 20 of the Statute of the Court of Justice of the ECSC, which provides that parties must be assisted by a lawyer entitled to practise before a court of a Member State, or with the provisions of Article 29(1) of the Rules of Procedure which provides that the person representing the applicant must satisfy the conditions of the Statute.
2. The *applicant* in reply states that the validity of Mr Klibansky's signature to the pleading as Rechtsanwalt is not affected by the previous suspension from practice since this is only a professional disciplinary measure. In this it refers to Article 107(2) of the Rechtsanwaltsordnung of Hesse and a letter in the file from the President of the Anwaltskammer Frankfurt am Main.
Further it states that according to the wording of the Statute of the Court of Justice of the ECSC the lawyer need fulfil no condition other than that of being entitled to practise before a court of a Member State which is not contested in the present case.

C. *Substance*

(a) Submission of discrimination

1. *Admissibility of the submission*

The *High Authority* alleges that the contested decisions are general decisions and that the applicant was entitled to allege discrimination and thus infringement of the Treaty only if it had complained in due time of misuse of powers, which was not the case, and if the Court had held this claim to be well founded. It proposes to deal with this submission therefore only *ex abundanti cautela.*
The *applicant,* on the other hand, considers that the contested decisions affect it and are individual in character. In its view the second paragraph of Article 33 of the Treaty has regard to the case where a decision affects an undertaking and is individual in character. Moreover, the undertakings which are at a disadvantage are apparent from the contested decisions; no further measure of an individual character is necessary for their application.

2. *Merits of the submission*

(a) Decisions Nos 16 to 18/57

The *applicant* takes the view that the commercial rules contained in Decisions Nos 16 to 18/57 seriously discriminate against it and thus represent an infringement of the Treaty.
It sees discrimination especially in the fact that as a result of the laying down of tonnage limits, which it did not altogether achieve in the coal-marketing year in question, it lost its position as a first-hand wholesaler.
The fact that it did not fulfil the first condition requiring a turnover of 60 000 metric tons per annum is due to circumstances for which it is not responsible since it is due to a misunderstanding of the position by the High Authority. First, it is dependent on the deliveries of fuels which it receives; preference was, however, given to the subsidiaries of the joint selling agencies. Secondly, there has been a reduction in turnover because certain industrial customers

have received deliveries direct from the joint selling agencies.

This involves measures and practices leading to varied practice with regard to price and delivery between producers and buyers and between firms engaged in wholesale trade; thus there is discrimination.

Discrimination is also alleged in the fact that buyers are prevented from freely choosing their supplier. The rebates granted to the first-hand wholesaler and the advantages which it receives with regard to transport and delivery, etc. gives it such an advantage with regard to its offers for sale that buyers are compelled to have recourse to it and second-hand wholesalers are no longer seriously competitive and are thus forced out of business.

In the reply the applicant enlarges upon its case as follows:

There is a necessary internal connexion between Articles 65 and 4 of the Treaty. Where therefore an agreement submitted for authorization does not satisfy the conditions of Articles 65(2) and is likely to cause even only one buyer or dealer financial or economic loss there must also be said to be discrimination under Article 4(b). The commercial rules authorized by the High Authority in no way contribute to an apparent improvement in supply and are also not necessary to achieve this effect; they therefore infringe the conditions of Article 65 and thus involve discrimination.

The *High Authority* replies that the submission is not well founded because the contested decisions do not affect the applicant at all.

The applicant would be adversely affected, if at all, by the lapse of the limited transitional rules authorized by Decisions Nos 5 to 7/56; the termination of these transitional rules arose from Decisions Nos 10 to 12/57 which have not been contested by the applicant and under the terms of which the period expired on 30 June 1957.

Moreover, the applicant misunderstands the concept of discrimination. There is discrimination where dealers in a comparable situation are treated differently with regard to direct deliveries. The applicant cannot cogently allege that this is the case as the three criteria for recognition of a wholesaler were applied equally to all dealers in the Common Market.

There would be discrimination *vis-à-vis* the other dealers in the Common Market if the applicant continued to receive supplies as a first-hand wholesaler by virtue of limited transitional rules conceived as exceptions.

The defendant also objects to the applicant's supporting his allegation of discrimination by saying that it has lost substantial customers because the joint selling agencies made deliveries direct to certain industrial customers. There can be no discrimination here because the direct supply to certain industrial customers is made on the basis of criteria applying equally to the applicant as to other wholesalers.

The defendant is of the opinion that the applicant would lose even more industrial customers previously supplied by wholesalers if no tonnage limits were placed on deliveries to industrial customers.

The applicant can, moreover, no longer challenge the rules which the contested decisions have laid down for deliveries to industrial customers since those rules depend on other decisions of the High Authority which are no longer open to challenge owing to the expiry of the relevant period, namely Decisions Nos 5 to 7/56 of 15 February 1956. In addition, the authorization for these rules is based on an evaluation of the situation, resulting from economic facts and circumstances which the Court may not review.

The High Authority expressly denies that there are any quantitative restrictions in the coal trade. It takes the view that the introduction of the delivery scheme is not responsible for the applicant's situation and could not have prevented it from achieving the prescribed turnover. This failure is due solely to the considerable reduction in its trade in recent years, as the standard of quantities laid down in the delivery scheme related not to deliveries to the wholesalers but to deliveries to their customers, so that it would have been possible for the applicant to extend its custom.

The defendant further takes the view that Articles 4(b) and 65 of the Treaty govern different aspects of economic activity and are not mutually contradictory and exclusive.
It also states that it is in no way free to approve the commercial rules submitted to it as it pleases or with arbitrary limitations and conditions. In this respect it is bound by the Treaty and must give authorization if, on the one hand, the conditions of Article 65(2) are fulfilled and, on the other hand, Article 4(b) is not infringed.
The requisite conditions are fulfilled here: the number of recognized first-hand wholesalers (73) is large enough to ensure effective competition in the sale of fuel from the three joint selling agencies in sales area IV. The rules contain no limitation going beyond their objective, namely the improvement of supply. The criterion laid down by them arises from economic facts and circumstances which the Court may not review.
Nor do the rules infringe the prohibition on discrimination in Article 4(b) since they apply equally to all dealers; an exception, such as that claimed by the applicant on the grounds of its seniority, would on the other hand be discriminatory *vis-à-vis* all the other dealers.

(b) Decision No 19/57

The *applicant* maintains that Decision No 19/57 also contains a limitation and discrimination against it.
The applicant has been passed over in the preparation of the agreement on the joint purchase of fuel, although it has obtained supplies from the Oberrheinische Kohlenunion.
In addition, the discrimination caused by Decisions Nos 16 to 18/57 extends to Decision No 19/57 since the latter proves to be the implementation of the aforementioned decisions.
Further Decision No 19/57 favours a cartel structure and the Oberrheinische Kohlenunion, including the wholesalers associated in it and the other members, are given a monopoly position which makes any normal competition impossible.

The *High Authority* denies that it is required to make its decision dependent on the participation of a third party in the drawing up of the agreement.
In fact the applicant did take part indirectly in drawing up the authorized agreement.
The applicant is not adversely affected by the decision. It does not regulate the direct supply of wholesalers by the producers and does not give the Oberrheinisiche Kohlenunion or the coal wholesalers belonging to it a monopoly position since both non-members as well as members of the Oberrheinische Kohlenunion have to fulfil the conditions laid down for direct supply.

(b) Submission that the provisions of the Basic Law of the Federal Republic of Germany and the constitution of the Land Hesse are infringed.

The *applicant* alleges in the application that the rules in the decisions infringe the Basic Law of the Federal Republic of Germany and in particular Articles 14 (expropriation), 3 (principle of equality) and 12 (right to choose trade, occupation or profession) and the constitution of the Land Hesse, namely Article 43 (protection of small and medium-sized industrial and commercial undertakings). The applicant makes no further mention of these submissions in its reply.
Against this the *High Authority* states that the provisions of the national law of the individual Member States, including the rules of a constitutional law, are not included in the provisions the application of which is subject to review by the Court.

(c) Submission of misuse of powers

1. *Admissibility of the submission*

In the *High Authority's* view the applicant cannot be heard to submit that there is misuse of powers since it is out of time. The submission is not contained in the application; neither Article 22 of the Statute of the Court of Justice of the ECSC nor Article 29(3) of the Rules of Procedure allows grounds on which the application is based but which are not mentioned in the application to be put forward subsequently.

The *applicant* in reply says that the submission of misuse of powers is connected with the general concept of discrimination which includes it. It is further of the view that the Court in application of the principle *da mihi factum, dabo tibi ius* may infer this submission from the facts in the application.

2. *Merits of the submission*

The *applicant* sees a misuse of powers in the fact that the High Authority in adopting the contested decisions has failed to consider the facts.

In properly considering the facts it should have found that the commercial rules authorized by it could make no apparent improvement in the distribution of coal production but were only likely to give greater possibilities of profit to the producers or first-hand wholesalers, for whom the concentration in marketing made possible a considerable reduction in costs.

The decision has simply pursued the objective of crushing the medium-sized wholesale undertakings; thus it infringes the principles of the Treaty.

The defendant has neither found that the agreements are essential to achieve the aims pursued in Article 65(2) nor that they provide for no further limitations than their objective requires.

In the *High Authority's* view this submission is neither relevant nor well founded.

The applicant misunderstands the concept of misuse of powers. There is a misuse of powers only where the High Authority uses its powers for an objective other than that for which those powers were given; the applicant has not even alleged that this is the case.

(d) Submission of infringement of an essential procedural requirement

1. *Admissibility of the submission*

The *High Authority* states that the applicant's submission cannot be allowed since it is not mentioned in the application and is thus out of time.

Further the contested decisions are general decisions so that the submission would be admissible only if the decisions involved a misuse of powers. It cannot be alleged that the concept of discrimination covers all the submissions mentioned in the first paragraph of Article 33 of the Treaty.

The *applicant* says that the submission of infringement of an essential procedural requirement is covered by the general concept of discrimination contained in the application.

2. *Merits of the submission*

The *applicant* alleges that the contested decisions do not state the reasons on which they are based as required by Article 15 of the ECSC Treaty, for the bare repetition of the wording of the provisions of the Treaty cannot be regarded as such. In the applicant's view the High Authority should have given details of the improvements necessary *vis-à-vis* the previous position and to what extent the measures adopted were likely to bring about this improvement.

The *High Authority* considers this submission substantially unfounded since the contested decisions comply with the requirements laid down by the Court in an earlier case (Case 2/56 *Geitling* v *High Authority*). Further the grounds could be limited to the provisions which supplemented and amended Decisions Nos 5 to 7/56.

Grounds of Judgment

A – Capacity of the applicant

The limited partnership Nold was formed and established in Germany. Its partnership deed, winding up and dissolution are governed by the national provisions applying to the place where it has its registered office. Under German law a company in liquidation has the capacity to institute proceedings and to vindicate its

rights for the purposes of its liquidation. Included among these in the present case without doubt are the preservation of the right essential to the existence of the company to receive supplies as a first-hand wholesaler.

According to German law the partners of a limited partnership which has gone into liquidation by operation of law as a result of there being no longer a partner with unlimited liability can empower a representative to undertake certain acts in law in so far as this is necessary for the purposes of the liquidation. The partners acting as liquidators were therefore entitled to give Mr Erich Nold a power of attorney to bring the present action.

To the written declaration of the partners that they have given Mr Nold power of attorney to this effect the defendant simply says that the power of attorney has not been given in writing and for this reason is not valid. The German law applicable in the present case does not require the power of attorney to be in writing even if the act for which the power is given must itself be in writing.

Mr Erich Nold was accordingly authorized to bring the action against the High Authority since he was acting on behalf of the partners who were in turn acting lawfully as liquidators within the framework of the tasks of the liquidation. The legal significance of the declaration by which Mr Erich Nold authorized the bringing of the action after he entered the applicant company as a partner with unlimited liability does not need to be examined.

B — The formal validity of the application

The application is signed by Mr Klibansky of the Frankfurt am Main Bar; the measures taken against him did not disbar him.

Under Article 107(2) of the Rechtsanwaltsordnung of Hesse, the provisions of which applied to Mr Klibansky and on which Mr Nold as his client could rely, a suspension from practice does not affect the legality of the acts undertaken by the advocate concerned.

In view of these considerations the application is valid from the formal point of view.

C — The legal nature of the contested decisions

The admissibility of the submissions upon which the application relies depends on the legal nature and the legal scope of the contested decisions. With regard to actions by undertakings Article 33 of the ECSC Treaty distinguishes between

individual and general decisions in so far as it allows the right to have a general decision declared void only where the applicant considers it to involve a misuse of powers affecting it.

Decisions Nos 16 to 18/57 of 26 July 1957 authorize the agreements on the joint sale of fuel by the mining companies associated in the coal-selling agencies of the Ruhr, Geitling, Präsident and Mausegatt. Decision No 19/57 which was also adopted on 26 July 1957 authorized the joint purchase of fuel from certain coal wholesalers operating in southern Germany through the intermediary of Oberrheinische Kohlenunion.

The contested decisions were adopted on the basis of Articles 65(2) of the ECSC Treaty as a result of applications for authorizations. These related in the case of Decisions Nos 16 to 18/57 to the commercial rules of the aforementioned coal-selling agencies of the Ruhr and in the case of Decision No 19/57 to a company contract between southern German and French wholesalers.

The contested decisions authorized, subject to certain conditions and restrictions, these rules and this contract and therefore ruled as to the legal validity of actual decisions taken by clearly identified undertakings.

From this it is clear that the authorizations in question are individual in character in relation to the undertakings concerned.

Although the Treaty is silent on the matter a decision which is individual in character in relation to the undertakings to which it is directed cannot at the same time be regarded as a general decision in relation to third parties.

Moreover, general decisions are quasi-legislative measures which issue from a public authority and have a legislative effect *erga omnes*. In the present case the High Authority has simply authorized joint-selling agreements (Decisions Nos 16 to 18/57) and joint-buying agreements (Decision No 19/57) on the basis of Article 65(2) and by way of exception to the basis of Article 65(2) and by way of exception to the basic prohibition contained in Article 65(1). The conditions of sale were laid down by the coal-selling agencies of the Ruhr and the undertakings associated therein and the conditions for acceptance into the Oberrheinische Kohlenunion were laid down by the undertakings and coal wholesalers operating in southern Germany. The agreements laying down these conditions were simply approved by the High Authority and have accordingly not lost their character of acts of private law. As a result they are not to be regarded as quasi-legislative measures adopted by a public authority in the exercise of its powers to adopt generally binding provisions.

In view of all this the contested decisions must be regarded as individual in character within the meaning of the ECSC Treaty.

D – The individual submissions

In order to give a right for an undertaking to institute proceedings against such decisions it is sufficient that the decisions are individual in character and affect the applicant undertaking. In the present case the contested decisions affect the applicant since they relate to wholesalers and their application directly affects the position of the applicant.

The second paragraph of Article 33 of the ECSC Treaty allows the applicant therefore to plead all the grounds described in the first paragraph of this article against the decisions adopted.

The applicant bases its application on the following grounds:

1. Infringement of the Treaty;
2. Infringement of the Basic Law of the Federal Republic of Germany and the constitution of the Land Hesse;
3. Misuse of powers;
4. Infringement of an essential procedural requirement.

E – Submission of infringement of an essential procedural requirement

First it must be considered whether the last-mentioned submission is well founded, since in this event consideration of the remaining grounds is unnecessary.

The applicant first made the submission of infringement of an essential procedural requirement because of insufficient reasons for the contested decisions in its pleading of 11 November 1957.

Article 22 of the Statute of the Court of Justice of the ECSC and Article 29(3) of the Rules of Procedure provide that the application shall contain a brief statement of the grounds on which it is based. These provisions accordingly mean that grounds which are not mentioned in the application are inadmissible.

The Court likewise rejects the applicant's argument that the general complaint of discrimination, on which the application rests, includes the submission of infringement of an essential procedural requirement. They have nothing in common and cannot be compared.

However, the obligation under Article 15 of the ECSC Treaty on the High

Authority to state the reasons for its decisions is not only for the protection of interested parties, but also has as objective to enable the Court to review the decisions fully from the legal point of view as required by the Treaty. As a result the Court can and must of its own motion take exception to any deficiencies in the reasons which would make such review more difficult.

The High Authority is empowered under Article 65 to authorize joint-selling agreements if it finds that 'the agreement in question is essential in order to achieve (a substantial improvement in the production or distribution) and is not more restrictive than is necessary for that purpose'.

The High Authority has made the right of wholesalers to obtain supplies direct from the joint selling agencies dependent on the fulfilment of three quantitative criteria set out in the said decisions without specifying in which way the laying down of these tonnage limits can contribute to a substantial improvement in the distribution of fuel and without discussing the question whether the tonnage limits are more restrictive than is necessary for the purpose of the agreement.

In the grounds of Decisions Nos 16 to 18/57 the High Authority has limited itself, as regards the laying down of quantitative conditions for the recognition of first-hand wholesalers, to referring to the general principles already stated in the grounds of Decisions Nos 5 to 7/56.

Although there is a general justification of the joint selling of fuel in the 1956 decisions, the 29th recital in the preamble to Decision No 5/56 (JO, p. 34) observes with regard to the criteria provided for in the general commercial rules for the direct supply of wholesalers and their numerical limitation that the limitation adopted 'does not have discriminatory effects nor does it lead to . . . certain dealers obtaining a position which restricts . . . competition'. This statement of reasons and the lack of any justification for the quantitative limitations introduced do not show that in adopting the contested decisions the High Authority has examined whether the said limitations are more restrictive than is necessary for a substantial improvement in distribution, which is the objective of Article 65(2)(b).

From this it appears that the reasons for Decisions Nos 16/57, 17/57 and 18/57 neither on their own nor by reference to the 1956 decisions contain a sufficient and proper statement of the factual and legal considerations on which the contested decisions are based. They thus do not permit review by the Court, in particular as to whether the High Authority has had full regard to Article 65(2).

The same observations apply to Decision No 19/57 which in the result merely implements Decisions Nos 16/57, 17/57 and 18/57, in so far as it enables joint buying

of fuel through the Oberrheinische Kohlenunion only by those coal wholesalers operating in southern Germany who are allowed to obtain direct supply from the joint selling agencies.

Decisions Nos 16/57, 17/57, 18/57 and 19/57 accordingly infringe Article 15 of the ECSC Treaty since insufficient reasons are equivalent to absence of reasons. The decisions must accordingly be annulled in so far as they make the recognition of first-hand wholesalers dependent on their achieving certain minimum tonnages.

Costs

The defendant has failed in its submissions both in the main action and in the application for an interim measure.

Article 60 of the Rules of Procedure of the Court provides that the unsuccessful parties shall be ordered to pay the costs.

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 4, 5, 14, 15, 31, 33, 65, 66 and 80 of the Treaty establishing the European Coal and Steel Community;
Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community;
Having regard to the Rules of Procedure of the Court of Justice and the rules on costs of the Court,

THE COURT

hereby:

1. **Declares the application admissible;**

2. **Annuls Article 2(1), (2) and (3) of Decisions Nos 16/57, 17/57 and 18/57 of the High Authority of 26 July 1957;**

3. **Annuls Decision No 19/57 of the High Authority of 26 July 1957 in so far as it restricts the admission of wholesalers to the Oberrheinische Kohlenunion to those wholesalers operating in southern Germany who fulfil the conditions for obtaining supplies direct under Decisions Nos 16/57, 17/57 and 18/57;**

4. Orders the defendant to pay the costs of the action including the costs of the application for an interim measure.

Donner Riese

Delvaux Hammes Rossi

Delivered in open court in Luxembourg on 20 March 1959.

A. Van Houtte
Registrar

A. M. Donner
President

OPINION OF MR ADVOCATE-GENERAL ROEMER[1]

Summary

	Page
A – *Facts*	55
I – *Particulars of the action*	55
II – *Applicant's status and its representation in the action*	55
III – *The history and content of the contested decisions*	56
IV – *Conclusions of parties*	58
V – *General view of the submissions and arguments of the parties*	58
B – *Legal discussions*	59
I – *Admissibility of the application*	59
1. Regularity of the bringing of the action: necessity for an advocate	59
2. Applicant's capacity; representation of the applicant	60
3. Right of trading undertakings to bring actions	62
4. The contesting of several decisions in one action	62
5. Merits of the action; the legal interest of the applicant	62
II – *Nature of the contested decisions*	63
1. Decisions Nos 16 to 18/57	63
2. Decision No 19/57	64
III – *Mention of the claims in the statement of claim*	65
IV – *Consideration of the submissions*	66
1. Decisions Nos 16 to 18/57	66
(a) Misuse of powers	66
Pursuit of the objectives of Article 65	68
Disregard of the special position of existing wholesalers	68
Disregard of coal tonnages	70
Disregard of the possibility of making deliveries direct to industrial consumers	71
(b) The plaintiff's remaining submissions	71

1 – Translated from the German.