the costs which other parties were ordered to pay by orders of 16 September and 25 November 1981.

	Mertens de Wilmars	Bosco	Touffait
Due	Pescatore	Mackenzie Stuart	O'Keeffe
Koopmans	Everling	Chloros	Grévisse

Delivered in open court in Luxembourg on 16 February 1982.

P. Heim
Registrar

J. Mertens de Wilmars
President

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 12 JANUARY 1982 [1]

Mr President,
Members of the Court,

1. Introduction

My opinion today concerns Joined Cases 39, 43, 85 and 88/81, which still remain to be dealt with following the withdrawal of the action brought be Metallurgiki Halyps SA. In these four cases two Greek steel producers seek to have declared void, under Article 33 of the ECSC Treaty, the individual decisions by thich the Commission imposed production quotas on them for crude steel and rolled products for the first quarter of 1981.

Those individual decisions were based on the general decisions of the Commission No 2794/80/ECSC of 31 October 1980 (Official Journal 1980, L 291) establishing a system of steel production quotas for undertakings in the iron and steel industry and No 3381/80/ECSC of 23 December 1980 (Official Journal 1980, L 355). According to the preamble to Decision No 2794/80, the main reason for these crisis measures was the abrupt fall in demand for steel in the third quarter of 1980, both on the Community market and on the world

1 — Translated from the Dutch.

market. According to that preamble, the utilization rate of iron and steel undertakings, which was approximately 70% in the second quarter of 1980, fell to 58% in September 1980, which was the lowest rate ever recorded in the Community. Forecasts for the fourth quarter indicated a further fall in the rate of utilization, possibly to below 55%.

The preamble goes on to state that between January and September 1980 the fall in demand resulted in a slump in steel prices in the Community, which fell by 13%, while production costs increased by 5% in the same period. The financial situation of the undertakings deteriorated further, therefore, and irreparable damage to the structure of the European iron and steel industry was likely to result.

For those reasons the Commission took the view that the European iron and steel industry was confronted with a period of manifest crisis, as referred to in Article 58 of the ECSC Treaty. Since, according to the preamble to its general decision, it had also established that the indirect courses of action available to it by virtue of Article 57 of the ECSC Treaty had proved ineffective or insufficient, it came to the conclusion that it was necessary to establish a system of production quotas in accordance with the provisions of Article 58. By Decision No 3381/80/ECSC of 23 December 1980, the Commission fixed rates of abatement for the first quarter of 1981, pursuant to Decision No 2794/80/ECSC.

The applications are not based on a submission that the individual quotas allocated to the Greek undertakings concerned were incorrectly calculated. On the contrary, they are based on the following two very general submissions:

1. Decisions No 2794/80/ECSC and No 3381/80/ECSC are not applicable to Greek steel undertakings or, in the alternative, they are void with regard to them;

2. Decision No 2794/80/ECSC, on which the contested individual decisions are based, is itself unlawful for infringement of an essential procedural requirement, inasmuch as the statement of reasons given for it is insufficient, and for infringement of Articles 58, 74 and 14 of the ECSC Treaty.

Owing to the objection of illegality the applications, although expressly directed against the decisions which concern the applicants individually, are therefore in substance directed against the aforesaid general decisions or even against the generally accepted scheme of the Act of Accession. No individual interests of the applicants affected by such illegality have emerged. Later in my opinion I shall return to the questions of the admissibility which could arise on that point. Those questions were not considered during the proceedings.

In the rest of my opinion I shall first examine the first ground of the application and then the second. I shall then summarize my findings.

For the facts concerning the contested individual quota decisions I refer to the report for the hearing. As I have already indicated, those individual decisions and the related quota figures hardly figured at all in the proceedings.

2. The first submission

It appears from the applicants' explanations that the submission of non-applicability or, in the alternative, limited nullity of the general decisions is based on the belief that decisions adopted by the institutions of the Community after the Decision of the Council of 24 May 1979 on the accession of the Hellenic Republic to the European Coal and Steel Community but before its accession, the so-called interim period, are not applicable to Greece since they could not have been the subject of negotiations in relation to the Act of Accession. Therefore after the accession of Greece the institutions, thus enlarged by the addition of Greece, should have expressly declared that such decisions also apply to Greece. The action therefore raises the issue of the scope, after accession, of decisions adopted in the interim period.

Since the action is, as I have stated, directed against the individual decisions in question, the first submission must be regarded as an objection of illegality with regard to those individual decisions. In that form the first submission may be regarded as admissible in view of the Court's first *Meroni* judgment in Case ([1957 and 1958] ECR 133), although according to that judgment such a submission cannot lead to the nullity of the general decisions, as the first submission seeks in the alternative. On that point the judgment stated:

"The annulment of an individual decision based on the irregularity of the general decisions on which it is based only affects the effects of the general decision in so far as those effects take concrete shape in the annulled individual decision."

The dicta following that passage then explain that where such an objection of illegality is raised an applicant who is contesting an individual decision is entitled to plead the four grounds of annulment set out in the first paragraph of Article 33 in order to contest the legality of the general decision on which the individual decision is based. In its judgment in Case 15/57 (*Compagnie des Hauts Fourneaux de Chasse* v *High Authority* [1957 and 1958] ECR 211) and in many later judgments the Court has more or less confirmed this. Annulment of the contested individual decisions could thus be sought in this case, too, but only if the general decisions on which they are based were unlawful on one of the four grounds specified in Article 33 and invoked by the applicants.

As I have stated, the applicants claim in particular that the general decisions are not applicable or are unlawful as against them on the ground that they are contrary to the Treaty or to certain implementing provisions because it cannot be inferred either from Article 2 or from any other provision of the Act of Accession that the scope of decisions adopted in the so-called interim period was to extend to Greece. Besides Article 2, they discuss in this connection Articles 9 and 146 in particular of the Act of Accession. As a subsidiary argument they claim in particular that the agreed information and consultation procedure was not applied and that the

preambles to the general decisions do not mention that that procedure was followed. It may be assumed from that subsidiary argument that the applicants believe that essential procedural requirements, as referred to in Article 33 of the ECSC Treaty, have been infringed.

The crux of the applicants' argument does not seem to me to be tenable, either on general principles of public international law or on the basis of the wording and scheme of the Act of Accession.

Under public international law the consent by a State to be bound by a treaty applies in principle from ratification or accession. Only if a treaty expressly provides that it is binding as from the date of signature may such legal effect be attached to that act: see for example Article 2 (1) (b) of the Vienna Convention on the Law of Treaties, which provides that:

"(b) 'ratification', 'acceptance', 'approval' and 'accession' means in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty."

The essential effect of a State's accession to an existing treaty governed by public international law is that on the date of accession the same rights and duties apply to the acceding State as apply to the original contracting parties. I refer here to Rousseau, *Principes Généraux de Droit International Public* (1944), p. 279; Rousseau, *Droit International Public*, Volume I, (1970), p. 115; Rousseau *Droit International Public*, (1977), p. 46; and McNair, *The Law of Treaties* (1961), p. 153. Similarly, Article 16 of the Vienna Convention on the Law of Treaties (Nederlands Tractatenblad 1972, p. 51) provides as follows with regard to accession to an existing treaty:

"Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon:

. . .

(b) their deposit with the depositary

. . ."

Article 2 of the Decision of the Council of the European Communities of 24 May 1979 on the accession of the Hellenic Republic to the European Coal and Steel Community provided that accession was to take effect on 1 January 1981 provided *inter alia* that the Hellenic Republic had deposited its instrument of accession on that date.

It thus appears from all the authorities cited that in principle the date of accession and not any previous date determines the rights and obligations of the acceding States and their subjects at the time of accession. Furthermore, the principle that acceding States and States already bound by a treaty should have equal rights and obligations at the time of accession appears to be regarded as a fundamental feature of accession. No support can be derived from academic writing, case-law or the Vienna Convention of 1969 for any restriction of the right to define in more detail the extent of the rights and duties of the parties at the time of accession, as occurred in the Act of Accession in question. For example, McNair expressly states on page 149 of the work cited above: "The law permits to the parties responsible for the negotiation of a treaty an almost complete discretion in

the provision that they make as to the manner in which States may become parties to it." In the final analysis therefore, only the terms of the Act of Accession itself are relevant for the purpose of assessing the applicants' principal submission.

In discussing the Act of Accession I shall state at the outset that in my view Articles 9 and 146 thereof are clearly not relevant for the purposes of these proceedings. Article 9 concerns transitional measures which derogate from primary and secondary rules of Community law applying in principle to the States concerned from 1 January 1981. Those derogating provisions do not concern the application of Article 58 of the ECSC Treaty. Article 146 governs the technical adaptation of measures adopted by the institutions before Greece's accession. However, it is not the adjustment of such measures adopted before accession which is at issue in the present case but the applicability, or in the alternative, the legality of certain decisions adopted before accession in so far as they were applied by the Commission to Greece after its accession.

In the final analysis, for the purposes of the argument that Decisions No 2794/80/ECSC and No 3381/80/ECSC are not applicable to Greek undertakings or are void as against them, only Article 2 of the Act of Accession remains relevant. That article reads as follows: "From the date of accession, the provisions or the original Treaties and the acts adopted by the institutions of the Communities shall be binding on the Hellenic Republic and shall apply in that State under the conditions laid down in those Treaties and in this Act." The applicants argue that in the absence of an express provision to that effect it may not be assumed that Greece accepted by treaty future measures which were not known on the date of the Treaty, were entirely undetermined in content and which were to be adopted unilaterally at a later date by institutions in which Greece was not represented at that time and without any possibility of Greek participation. Such a delegation of sovereignty is not conceivable without Greece's participation in the institutions. Only an express and unambiguous provision in the Act of Accession could have made such an uncertain and unlimited surrender of sovereignty possible.

However, the above-mentioned rule of public international law to the effect that on accession an acceding State must be put in the same legal position as the older Member States must in principle require Article 2 of the Act of Accession to be so construed that the word "acts" is taken to mean all the measures adopted before the date of accession, including those adopted between 25 May 1979 and 1 January 1981. Puissochet, too, points out in his well-known book on the enlargement of the European Communities that the first nine articles of the Act concerning the accession of the United Kingdom, Denmark and Ireland, which are identical in this regard, constitute in various respects the mere elaboration of a principle which is contained in the concept of accession itself. That principle is that immediately after accession new Member States must be in the same legal position as the old Member States: They must be bound by the same obligations and enjoy the same

rights as those States, subject to any special provisions agreed upon (J. P. Puissochet, *L'Élargissement des Communautés Européennes*, Paris 1974, p. 175). I indicated previously that no other conclusion may possibly be derived from general principles of public international law. An interpretation such as that propounded by the applicants would require an express provision to that effect.

In its defence the Commission has, in my opinion, rightly, submitted that any other interpretation would be inconceivable. An interpretation such as that propounded by the applicants would in fact have paralysed the administration and further development of the Community for the entire period of over 18 months between the signing of the accession documents and accession itself. Moreover, it would entail the risk that the application to Greece of legislative measures adopted in the interim period, and thus their application as regards every Member State, could be prevented by a Greek veto after the date of accession. At any rate a vacuum would arise in the legal system so long as no provision was adopted to extend the applicability of such measures. To me it seems obvious that such consequences — in the sphere of the common agricultural policy for instance — would be absolutely unthinkable and unacceptable. Therefore, no intention to create such a system can be attributed to Article 2. As I have stated, Article 2 does not contain any restriction of the type postulated by the applicants. The legal practice followed after the first and second enlargements of the Communities does not provide any support for the applicant's construction of Article 2 either. From the reference in Article 2 to the conditions laid down in the Treaties and the Act of Accession it is indeed possible to infer a reference to restrictions resulting from other provisions of those Treaties and the Act of Accession, but there is no ground for the conclusion drawn by the applicants that in the absence of further express authority from those other provisions Article 2 does not apply to general decisions such as those at issue here (see Puissochet, op. cit., p. 180).

As regards the subsidiary argument that, contrary to the agreed information and consultation procedure (Official Journal 1979, L 291, p. 191), the Greek Government was not given sufficient notice of the general decisions in question, I would first of all observe that the agreement relating to that procedure is mentioned only in the Final Act, where it is stated that "the Plenipotentiaries and the Council have also taken note of the arrangement regarding the procedure for adopting certain decisions . . ." (Official Journal 1979, L 291, p. 181). Therefore the applicants are wrong in stating on page 3 of their application that there was a joint declaration approved by the Final Act. According to McNair (op. cit. page 24), in public international law the Final Act is merely a kind of summary of instruments which does not in itself indicate acceptance of the instruments mentioned. Furthermore, the Final Act is not ratified as such. The procedure is not mentioned in the Act of Accession itself. In my opinion, therefore, the procedure cannot be regarded as a condition for

the application of the measures referred to in Article 2 of the Act of Accession. That alone is sufficient to show that in the context of this case the agreement on an information and consultation procedure cannot be successfully relied upon before the Court, despite its obvious political and practical importance.

Finally, the applicants have in no way demonstrated that the procedure was not followed. In my view the contrary should be inferred from the information provided by the Commission. It has pointed out that the procedure was applied as standard practice. Moreover, in my opinion, it is in the nature of the procedure that Greece in particular must react if the procedure is not observed. It appears that it did not do so in this case. In my opinion, so long as the parties to the information and consultation procedure do not allege the contrary, it must be assumed that it did indeed take place. For that reason also, this ground of the application must be rejected as legally unfounded. The applicants' other submission in this connection — to the effect that the general decisions did not contain a sufficient statement of reasons inasmuch as the preambles thereto failed to mention information and consultation procedures with regard to Greece — should also be rejected on the same grounds.

Since at the time of their adoption the general decisions in question concerned only undertakings in the existing nine Member States and the Act of Accession does not provide otherwise, only the essential procedural requirements applicable under the ECSC Treaty required to be observed, upon penalty of nullity when those decisions were adopted. Essential procedural requirements which it was necessary to observe on the adoption of the general decisions naturally afforded guarantees at that time only to undertakings in the existing nine Member States since they were to be bound by them at that time. The opinions to which the Commission must refer in its decisions pursuant to Article 15 of the ECSC Treaty are, by virtue of Article 58 (1), solely the opinion of the Consultative Committee and the assent of the Council.

3. The second submission

3.1 As I indicated previously, the applicants' second submission is that Decision No 2794/80, on which the contested individual decisions were based, is itself illegal for infringement of an essential procedural requirement, consisting in a failure to give sufficient reasons, and for infringement of Articles 58, 74 and 14 of the ECSC Treaty. This submission too is framed as an objection of illegality. Following the observations which I have made, with regard to the first submission, on the admissibility of such an objection, the admissibility of this second submission does not seem to be in doubt in view of the Court's decisions cited above.

I shall now examine the various parts of that submission in the order stated. In so far as the adequacy of the reasons given for the decision was challenged in the proceedings in connection with the first submission, I have already dealt with that point in my discussion of the first submission. Since the second submission partly overlaps with the first on this question, I shall now return to some specific points.

3.2 *Insufficiency of reasons*

(a) In the arguments in support of their first submission the applicants claimed that an essential procedural requirement was infringed inasmuch as the preamble to Decision No 2794/80 does not mention that Greece was informed in accordance with the information and consultation procedure in respect of measures adopted before accession. Another criticism levelled against the decision is that no reasons are given for its future entry into force in Greece. Finally, the inapplicability of the decision in Greece is said to be confirmed by the failure to indicate any considerations relating to the economic situation in Greece which would justify application of the decision in that new Member State.

As regards this argument, I refer first of all to the observations which I made when discussing the first submission. Since the decision was based solely on the ECSC Treaty it needed to observe only the procedural requirements which are essential in that context.

The decision did not have to state reasons for its future entry into force in Greece either. That follows automatically from Article 2 of the Act of Accession.

Finally, even if the position were different, I would agree with the Commission — solely as an alternative argument therefore — that the statement of reasons on which a general decision of the type in question is based does not need to discuss the special circumstances of each Member State. Every steel undertaking forms part of a Community with a common market. All that matters then, in the words of Article 58, is whether that Community as a whole is in a state of manifest crisis and whether for that Community as a whole the other conditions for the application of Article 58 are satisfied. It is not a question of whether each separate country is in such a state of crisis. I refer in this connection to the Court's judgment in the concrete reinforcement bars cases ([1980] ECR 907, paragraph 22 at p. 995). Moreover, the interdependence of the national market, the Community market and the world market, which also exists in the case of Greek producers, means that the abrupt fall in demand on both the Community market and the world market mentioned in the preamble must inevitably make its effects felt in Greece also. However, the most important consideration is that, for the reasons mentioned earlier, from the time of Greece's accession the same rights and obligations should apply to Greek undertakings as apply to the other steel undertakings of the Community in the absence of any express provision to the contrary. As this concerns a general principle on the applicability of Community law as a whole, it does not need to be expressly restated or supported by a statement of reasons in the preamble to an individual measure. Nor, in view of the said general principle, may it be inferred from the absence of such a statement of reasons that the decision is not applicable to Greece.

(b) A second essential procedural requirement lies, according to the applicants, in the fact that the general

decision gives no reasons why Article 74 of the ECSC Treaty, which enables action to be taken in the field of commercial policy, was not applied concurrently. However, in this regard the Commission points out, rightly in my opinion, that it is clear from Article 58 that a statement of reasons was required only for measures under Article 74 which were actually applied concurrently. In my opinion no reasons needed to be given for not applying Article 74 in this case.

3.3 *Infringement of Article 58 (1) and 74*

The applicants believe that the failure to apply Article 74 concurrently in this case constitutes an infringement of Articles 58 (1) and 74. They claim in particular that it is not only clear that reducing production within the Community is insufficient to bring supply down to the level of demand; in addition, and above all, it is clear that since the first quarter of 1981 in the absence of adequate measures in the field of commercial policy, adopted unilaterally or by agreement, a reduction of production in the Member States must inevitably open a greater part of the market to producers in non-member countries. As regards this part of the second submission, I wholly agree with the detailed observations of Mr Advocate General Reischl with regard to similar arguments put forward by the applicants in Cases 258/80 *Rumi* and 14/81 *Alphasteel* [1982] ECR 481. He also referred there to the relevant previous decisions of the Court. As the Commission has correctly argued in the present case, when it exercises its discretion in these matters it must take account not only of steel imports but also of steel exports, not to mention the Community's obligations under GATT and the possibility of retaliation by non-member countries against import restrictions adopted unilaterally by the Community. Nor have the applicants put forward in the present cases any convincing arguments showing that in weighing up the relevant factors requiring consideration the Commission acted contrary to some superior rule of law.

3.4 *Discrimination*

The part of the second submission alleging inequitable treatment, in the form of discrimination against Greek undertakings, has in my view been convincingly refuted by the Commission. However, here again I may refer to the opinion of Mr Advocate General Reischl of 29 October 1981 in the *Alphasteel* case (Case 14/81). The arguments put forward by the applicant in that case were in part similar to those put forward by the Greek undertakings in this case.

To conclude this part of my opinion I would however make the following observation: the proof of the pudding is in the eating. Therefore the Commission was right in my opinion to attach importance at the hearing to showing with the aid of statistics the actual effects of the contested measures on Greek steel undertakings. The figures produced clearly show that, far from being inequitable, the quotas allocated to those undertakings took ample account of their production capacity and sales opportunities, which in no case appear to

have been restricted thereby. On the contrary, not a single Greek steel undertaking exhausted its quota in the first quarter, which is the decisive period for the purposes of these proceedings. Those figures have not been challenged by the applicants. Nor has it been demonstrated in any degree that if the quotas had been based on production capacity instead of actual production during the reference period the result would have been better and more equitable for Greek undertakings. Furthermore, I have so far left aside the objections which the Commission rightly made against the system advocated by the applicants, objections based on the aim of bringing supply down to the level of demand and considerations of market economics underlying the ECSC Treaty. Indeed a quota system based on production capacity actually hinders the necessary reduction of excess capacity rather than promoting it. Moreover, it confers an advantage on less efficient undertakings with a relatively low rate of utilization.

The figures cited by the Commission raise the question, retrospectively, whether the applicants had any reasonable interest in bringing their action based solely on the objection of illegality. That in turn raises the question whether the generally reasonable assumption that an undertaking affected by an individual decision has an interest in pleading an objection of illegality is in fact always reasonable. That question brings us back to the question whether, in order for objections of illegality to be admissible, a reasonable interest should be demonstrated by the applicants in those cases in which such interest is not immediately obvious. Since the Court's previous decisions do not indicate any clear basis for that and the Commission does not contest the admissibility of the present applications, I think it would be wrong to attach any consequences to those questions in these cases. I would however point out that in principle the same risk of abuse of process may arise and the same considerations relating to the efficacious conduct of proceedings may have to be borne in mind as in the case of applications under the second paragraph of Article 215 directed against generally applicable provisions. In this connection, I may refer to my recent opinion in the *Ludwigshafener Walzmühle Erling* and other cases (Cases 197 to 200, 243, 245 and 247/80, [1981] ECR 1041).

4. Conclusion

On the basis of my earlier findings I confine myself to the conclusion that the present applications must be dismissed as unfounded and that the applicants should be ordered to pay the remainder of the costs.