Upon hearing the opinion of the Advocate-General;
Having regard to Articles 3, 5, 8, 15, 33, 34, 35, 36 and 47 of the Treaty;
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 of the European Coal and Steel Community and to the rules of the said Court on costs;
Having regard to Decision No 13/58 of the High Authority of 24 July 1958,

THE COURT

hereby

1. **Declares that the applications of the undertakings Fer. Ro (Ferriere Rossi), an undertaking trading as an individual, Magliano Alpi (Cuneo) (40/58) and Acciaierie San Michele SpA, Turin (41/58), for the annulment of Decision No 13/58 of 24 July 1958, published in the Journal Officiel of 30 July 1958, are inadmissible.**

2. **Dismisses the applications of the undertakings Società Industriale Metallurgica di Napoli (Simet), SpA, Naples (36/58), Meroni & C., Industrie Metallurgiche, a limited partnership, Erba (37/58), and Meroni & C., Industrie Metallurgiche, SpA, Milan (38/58), for the annulment of the abovementioned decision as unfounded.**

3. **Orders the applicant to bear the costs.**

Donner Riese Rueff Delvaux

Hammes Rossi Catalano

Delivered in open court in Luxembourg on 17 July 1959.

A. Van Houtte — Registrar

A. M. Donner — President

OPINION OF MR ADVOCATE-GENERAL ROEMER[1]

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Mr President,
Members of the Court,

I – Introduction

I do not need, in these five cases, to give an explanation of the facts and of the course of the procedure. The report of the Judge-Rapporteur, Mr Jacques Rueff, President of Chamber, is so complete and so exhaustive that I can permit myself to take it as the starting point for my explanations.

Only one matter of procedure remains to be explained.

Written answers, to which I shall return, have been received to the questions put to the parties, by letter of 17 April 1959, further to the order of the Court of 15 April.

With the agreement of the parties, an order of the Court made during the oral hearing joined the five cases, with a view to determining them by just one judgment. This opinion is therefore concerned with the five applications.

The legal form, the capacity of the parties to bring applications, the regular character of the powers of their representative, the

authorization *ad litem* of their representative before the Court, and the regularity of his admission before the Italian national courts have been proved with the help of the required documents. The applicants are undertaking within the meaning of Article 80 of the Treaty and they therefore have the right to come before the Court, before which they are duly represented.

In these proceedings, it is possible to distinguish three categories of applicants.

First, there are the undertakings against which the High Authority raises the defence that the application is out of time (Cases 40/58 Fer Ro (Ferriere Rossi), Magliano Alpi (Cuneo) and 41/58 Acciaierie San Michele SpA, Turin).

Secondly, the undertakings Meroni & C., Industrie Metallurgiche, a limited partnership, Erba, and Meroni & C., Industrie Metallurgiche SpA, Milan (Cases 37/58 and 38/58), which, in previous applications, obtained the annulment of two decisions of the High Authority.

Finally, Società Industriale Metallurgica di Napoli (Simet), SpA, Naples (Case 36/58).

All these applications are directed against the same decision of the High Authority (No 13/58 of 24. 7. 1958, JO of 30. 7. 1958). The arguments, both of the applicants and of the High Authority, are absolutely identical in the five cases, apart from the defences concerning the time-limit for bringing an application. The principal arguments of all the applicants may be summarized as being to the effect that the High Authority did not draw the consequences which necessarily followed from the judgments delivered in the *Meroni* cases (9/56 and 10/56). I should point out that the High Authority's Decision No 13/58 contains, in the preamble, a reference to the judgment of the Court in Case 9/56, and draws the consequences from it.

It seems convenient to start by examining the defence, raised in Cases 40/58 and 41/58, that the time-limit for bringing an application has not been observed, because *a priori* that defence may be regarded as capable of calling in question the admissibility of the applications.

II—Failure to observe the time-limit in Cases 40/58 and 41/58

As I have said, the two applications contest the decision of the High Authority of 24 July 1958, published in the Journal Officiel of 30 July 1958.

The third paragraph of Article 33 of the Treaty establishing the ECSC provides for a period of one month for instituting proceedings. We are here concerned with applications for annulment, as the applicants themselves submit. It is the publication of the decision in the Journal Officiel which is the decisive factor as regards the moment when time starts to run. As regards the admissibility of the submissions, the applicants are of the opinion that the contested decision is, in part, individual in character. However, they do not go so far as to assert that the decision ought to have been notified to them, which was never done, and that the period for instituting proceedings would only have started to run from notification.

According to Article 85 of the old Rules of Procedure of the Court which, under Article 111 of the new Rules of Procedure, is still applicable in the present cases, where a decision is published, the period of one month within which an application must be brought starts to run on the fifteenth day following publication in the Journal Officiel. In addition, that time limit is extended by five extra days for applicants who are habitually resident in or whose registered office is in Italy. Hence the following calculation: the date of publication in the Journal Officiel being 30 July 1958, the fifteenth day was 14 August. It was on that date that the period of one month and five days started to run, and the fact that it was a Sunday does not make any difference. So time expired at midnight on Thursday 18 September 1958. If the day on which time started to run is not counted, although there is no reason for doing so, because the wording of Article 85 is quite clear, especially compared with the first alternative in paragraph 1 and with Article

84, time expired at midnight on Friday 19 September 1958.

The applications in Cases 40/58 and 41/58 were lodged on 22 September at the Registry of the Court. The applicants allege that they were posted on 19 September, that is to say, *before* the expiry of the time-limit and that it is that date alone which is relevant as regards the time-limit. In this they are mistaken, because the unequivocal wording of Article 33(3) of the Rules of Procedure (and not Article 33(2), as the High Authority would inadvertently have it) states that it is the date of *lodging* pleadings with the Registry which is taken into consideration in calculating procedural time limits. The time-limit for bringing an application must itself be considered as a procedural time-limit, despite the fact that the procedure only starts from the institution of the proceedings, that is to say, with the lodging of the application at the Registry.

Hence the extra time for distance which would not be justified if the transmission of the application by post did not have to take place within the time-limit. A cursory look at national laws confirms this proposition, despite the applicants' allegations. As examples let me merely mention *Evermann-Fröhler,* Kommentar zum Verwaltungsgerichtsgesetz der ehemaligen amerikanischen Besatzungszone, note 1 to paragraph 42, and *Odent*, Contentieux administratif, p. 357 *et seq.*

Nor can the applications of the undertakings Ferriere Rossi and Acciaierie San Michele be considered as interventions for the purposes of Article 34 of the Statute of the Court of the European Coal and Steel Community. The attempt by counsel for the applicants to substantiate this during the hearing cannot be of any avail, because under Article 71 of the Rules of Procedure a valid request to intervene lodged with the Registry of the Court in writing before the end of the written procedure would have been necessary.

So I therefore come to the conclusion that the applications in Cases 40/58 and 41/58 were made out of time and are, accordingly, inadmissible.

III – The legal nature of the contested decision

In the other three cases, Meroni, Erba, Meroni, Milan, and Simet, the High Authority objects that the submission as to misuse of powers is only supported in the application by general words and not by sufficient facts. Furthermore the other grounds are not admissible where general decisions are being contested.

The applicants argue that the grounds set out in Article 33 are admissible in the present case. It is therefore pertinent to start with a few words on the legal nature of the contested decision and on the nature of the applications submitted.

1. *The purpose of the contested decision*

The decision of the High Authority briefly states four points:

(a) It is the High Authority itself which must undertake the administration of the ferrous scrap equalization machinery to which it has devoted a whole series of its decisions. Only powers of enforcement may be delegated to the Brussels agencies.

(b) The High Authority may overrule decisions of the Brussels agencies.

(c) Extra sums may be levied by the High Authority in order to defray the costs of the equalization machinery.

(d) The High Authority may make rectifications to the declarations of ferrous scrap and estimated assessments in the case of a failure to submit a return.

2. *The nature of the decision*

The applicants allege in very general terms that they fear that Decision No 13/58 was dressed up as a general decision so as to hide an individual decision which was of individual concern only to a certain number of undertakings which were not in a position to import ferrous scrap.

Furthermore, they are of the opinion that the decision was individual in character in so far as it establishes the power to overrule or to confirm the decisions of the Brussels agencies and to make estimated assessments,

because, they say, those powers are only relevant in respect of a small number of undertakings subject to the levy.

Their opinion on the individual aspects of the contested decision does not strike me as accurate. The Court has shown its tendency to give a broad interpretation to the concept of 'a decision which is individual in character' in order for undertakings to have thorough legal protection. That position has been favourably received, although it has given rise to theoretical objections. However, even using the criteria elaborated by the Court, it is impossible to classify the contested decision as within the category of decisions which are individual in character.

In fact, neither the wording of the decision and its exterior form nor its meaning and practical consequences enable it to be classed as such. All undertakings which are users of ferrous scrap and are covered by the ferrous scrap equalization system can be equally affected by the contested decision. This is why the decision was published in the Journal Officiel.

There is no way of telling which of the many decisions of the Brussels agencies will be overruled upon review by the High Authority. Nor can one tell in respect of which undertakings the right to rectify and to make estimated assessments will be exercised, for it is not only those undertakings which do not submit returns that are involved, but also all those whose returns may give rise to reasonable doubts as to their accuracy.

Although, by reason of his particular situation, a user of ferrous scrap might have to expect that the High Authority will rectify his declarations or make an estimated assessment as to the amount due from him by way of equalization and, although he might thus feel that his individual rights are affected, nevertheless the decision of the High Authority will not become a decision which is individual in character through acknowledgement of the fact that it has had an individual and particular effect.

No special explanation is necessary in order to state that rules which provide for payment of a supplementary contribution by all the undertakings subject to the equalization levy on ferrous scrap in order to defray the administrative costs must be considered of their essence as being rules of a general nature.

The Brussels agencies, to the extent to which they are affected by the decision, are not the addressees; they are at most the subject-matter of the new rules. That being so, in assessing the legal nature of the decision, the only possible conclusion is that the said decision must be classified as falling within the category of general decisions.

We are here concerned with general rules (in so far as what is involved is the reversion to the High Authority of its own powers) and with rules giving general powers to the High Authority. Those rules, just like the old general decisions on the equalization machinery which they are to modify, may be of importance in the same way for an indeterminate number of cases.

IV – Admissibility of grounds

1. *Does it suffice to allege the existence of a misuse of powers in order to be able to raise the other grounds?*

The finding that the contested Decision No 13/58 contains a set of rules of a general nature has the consequence that, according to the wording of the second paragraph of Article 33, the applicants can only raise the ground of 'misuse of powers affecting them' in their application. There is nothing in the applicants' arguments to justify adopting another opinion. This is true in particular of the proposition that it suffices to assert that a general decision 'involves a misuse of powers affecting them' in order for the grounds set out in the first sentence of the first paragraph of Article 33 to be also open to them. In my opinion, that interpretation of the Treaty is opposed to the purpose of Article 33, which only allows undertakings and associations to institute proceedings against general decisions to a lesser extent than is available to the Member States or to the Council.

If the applicants' proposition were adopted, the result would be that in order for an application to be admissible it would suffice to allege a ground without reference to the question whether the judgment of the Court as to substance would consider it as well-founded. The submission of a ground of strictly limited scope would thus suffice in order to be able to introduce into the case other grounds more favourable to the applicant. But it is obvious that if the ground of 'misuse of powers affecting them' raised against a general decision is well-founded, the applicant has no need, I would say as a general rule, to invoke others in order to obtain an annulment. And if the ground of misuse of powers is not entertained because the Court does not accept that it is well-founded, then it would be incomprehensible if the opinion of the applicant, contrary to the Court's opinion, that the contested decision involves a misuse of powers, could suffice to open up to him, alongside the ground of misuse of powers which has been declared invalid, the four grounds set out in the first sentence of the first paragraph of Article 33. This is the point of view which the Court itself adopted in Case 8/55 (see the judgment of 16 July 1956 in *Fédération Charbonnière de Belgique* v *High Authority*, Rec. 1955-1956, p. 199).

As regards general decisions, there is only one reasonable and convincing interpretation of the terms of *Ansicht* in the German version and of 'décisions . . . qu'elles *estiment* entachées de détournement de pouvoir à leur égard' (decisions . . . which they consider to involve a misuse of powers affecting them) in the French text. The statement of the opinion of the applicant starts off the application and renders it admissible, but only by means of the submission of 'misuse of powers affecting' the applicant in the second paragraph of Article 33, and not by means of misuse of powers in the first sentence of the first paragraph of Article 33.

2. *Remarks on Article 36*

It is not necessary to say very much about the alleged contradiction between Articles 33 and 36 and about the assertion that the limitation of the grounds which may be raised against general decisions would illegally reduce the legal protection of the applicants. Article 36 presupposes an individual decision having particularly serious consequences, which is based on earlier decisions or recommendations. In such a case there is a much keener interest in evaluating the general decisions on which they are based than in cases where the general decision has not yet taken concrete form in respect of individuals. The legal protection of the applicants is in no way diminished when they wait for a general decision to be applied to them by way of an individual decision before bringing an application. Such patience not only has the consequence of appreciably enlarging the right to bring an application, but also makes it possible to determine whether or not a first general decision has been implemented by other general or individual decisions which explain it, and whether or not the applicant is wrongly affected by one of those decisions.

3. *Can another delimitation of the admissibility of grounds be seen in Article 34?*

The applicants' arguments to the effect that their right to institute proceedings may be deduced from Article 34 of the Treaty and that in support of their application the four grounds set out in the first sentence of the first paragraph of Article 33 are admissible leads to the question whether such arguments may be based on the Treaty's system of legal protection and in particular on the wording of Article 34.

Article 34 concerns the obligation of the High Authority to act in accordance with the Court's judgments of annulment. The applicants refer to the judgment in Case 9/56 (applicant: Meroni & C., Milan) and to the judgment in Case 10/56 (applicant: Meroni & C., Erba) both of 13 June 1958 concerning certain individual decisions of the High Authority. As I said at the beginning, only two of the present applicants took part in those earlier cases.

The abovementioned judgments held that certain individual decisions of the High

Authority to the effect that the applicants owed a certain sum by way of equalization levy were void. They were annulled for the following legal reasons:

In the judgment in Case 9/56:

(1) Insufficient reasons were stated for the decisions of the High Authority as they did not contain a detailed calculation of the sums claimed;
(2) The decisions did not mention the fact that the contribution had been calculated by way of an estimate and did not refer to any provision authorizing the fixing of the amount in such a way;
(3) The High Authority had published neither the data necessary for calculating the rate of the equalization levy nor its methods of calculation;
(4) The individual decision was based on a general decision of the High Authority, which had wrongly delegated to the Brussels agencies powers which, in the form delegated, did not belong to the High Authority itself.

The judgment in Case 10/56 did not go so far, for the facts were not the same. It did not mention the failure to submit returns and the making of estimated assessments in their absence.

An examination of the judgments delivered by the Court on 13 June 1958 in Cases 9/56 and 10/56, of Decision No 13/58 of the High Authority of 24 July 1958 and of the arguments of the parties, taking into account Article 34 of the Treaty, has led me to the following conclusions.

The judgments in Cases 9/56 and 10/56 annulled the decisions of the High Authority which individually concerned the Meroni applicants, and referred the matter back to the High Authority with the consequence that the latter had to take the necessary steps to comply with the judgment (the first two sentences of the first paragraph of Article 34).

The third sentence of the first paragraph of that article, according to which appropriate damages shall be paid to undertakings where the Court has held that there has been a fault of such a nature as to render the Community liable, obviously does not apply in the cases before the Court today.

Similarly, the rule in the last sentence of the last paragraph of Article 34, according to which proceedings for damages may be instituted before the Court if the High Authority fails to take the measures mentioned above within a reasonable time, cannot apply here either. Certainly the applicants are alleging that the conditions described in the part of the article which I have just mentioned are fulfilled, but they are not asking for any indemnity, and therefore the Court cannot exercise its unlimited power of review which clearly results from that sentence, in respect of liability for wrongful acts or omissions.

The applicants, on the contrary, are seeking the annulment of a decision of the High Authority which was adopted in order to comply with the Court's judgment. But Article 34 does not contain any provision on the procedure for the annulment of a decision. The result of this legal situation is that the annulment sought by the applicants here can only be obtained by way of the procedure under Article 33.

Thus, as regards its legal nature and as regards procedure, the contested decision stands on an identical footing for the applicants Meroni, Erba, and Meroni, Milan, on the one hand, and Simet, on the other. The starting point in this matter is thus the same for the three applicants, and they can therefore only raise the ground of misuse of powers under the second paragraph of Article 33 in order to contest Decision No 13/58 of the High Authority.

V – Has the submission as to misuse of powers been put forward in proper form, that is to say, with supporting arguments?

The High Authority denies this. In their application and despite significant divergences as to their starting point the applicants are at one in asserting that:

The High Authority did not adopt Decision

No 13/58 in order to comply with the judgment in Case 9/56 and, therefore, with the judgment in Case 10/56, but in order to obtain, by measures therein criticized or by similar measures, the recovery of moneys owing by way of equalization levy calculated on an unreliable basis and supported by unreliable arguments, regardless of the findings in the judgment in Case 9/56.

It omitted conscientiously and correctly to make the equalization system accord with the judgment in Case 9/56, the reason for such omission being to avoid, for reasons of convenience, the difficulties with which it was faced by that judgment.

It ought to have adopted an individual decision (they mean by that an individual decision for the applicant in Case 9/56 and another for the applicant in Case 10/56).

It illegally chose the form of General Decision No 13/58, although only a few small undertakings were involved.

It thus intended that they would be forced only to raise the complaint of misuse of powers affecting them in their application.

The High Authority would be committing a misuse of powers if it relied on Decision No 13/58 so as to introduce again, despite the judgment in Case 9/56, an estimated assessment as the basis for the levy, where no return is made.

It wrongly omitted to publish, as according to the judgment in Case 9/56 it should have done, the data relating to the calculation of the quantities of ferrous scrap subject to the equalization levy, to the rate of the equalization levy, and to the amounts of levy payable.

It cannot validly give itself the power to confirm decisions of the Brussels agencies which have been annulled by the Court, and to annul decisions which have been annulled by the Court.

If these explanations are compared with the definition of misuse of powers given by the Court, according to which:

> 'a misuse of powers can only exist if an administration uses its powers for a purpose other than the purpose prescribed therefor or if, through grave lack of foresight or circumspection amounting to a disregard for the legal purpose, it has pursued objectives other than those for which those powers were granted to it',

and if, from another standpoint, it is noted that no complete exposition of the submissions is required in the application, it is not possible to declare the application inadmissible, even taking into account the High Authority's objections.

It is not indispensable to indicate in all their details the facts substantiating the High Authority's own wrongful act. In many cases that would be impossible. Thus for the application to be admissible, it suffices that the submission of misuse of powers be stated in express and relevant terms and that, in order that it shall be clear, it be based on deductions from the judgments of 13 June 1958, from the contested decision of the High Authority and from the intentions of the High Authority to be found in the said decision.

The applicants, whose task it is, have made this exposition. For example it may be accepted without objection that the adoption of a decision which could and should concern one undertaking and according to its contents affect it individually, under the external form of a general decision with an individual notification, instead of the individual form appertaining to the nature of the case, can involve misuse of powers affecting that undertaking.

VI—Is the submission as to misuse of powers affecting the applicants well-founded?

I have tried to make an orderly presentation to the Court of the complaints which have been uniformly put forward on behalf of all the applicants, despite their differences of interest, in order that it might more fully understand the arguments on which the different applications are based. But in examining the exposition of the submission of 'misuse of powers affecting them' logic requires that since each claim made by an

applicant in a case has its own independent legal existence I should now examine whether each of the applications is well-founded and answer in the affirmative or in the negative.

In order to avoid being repetitive in this examination let me go back with a critical eye to what it is that the applicants contest in common, Decision No 13/58, going over its relationship with the earlier decisions of the High Authority establishing the financial arrangements for the equalization of ferrous scrap, with the judgments of 13 June 1958, and with the steps necessary to comply with those judgments. Let me, furthermore, interpret and define the meaning of Decision No 13/58. In other words: what is the purpose and the scope of Decision No 13/58 in respect of the financial arrangements for the equalization of ferrous scrap instituted under Article 53?

1. *Contents of Decision No 13/58*

The preamble to Decision No 13/58 refers to the legal basis for it (Article 53 of the Treaty), to the general decisions of the High Authority of 1954 to 1957, from No 22/54 to No 2/57, and to the judgment in Case 9/56.

The preamble mentions the problem of the 'delegation of powers' to the Brussels agencies considered in the judgment and it mentions the general decisions prior to the judgment in which that delegation of powers was an essential element.

The preamble also refers to the issue of an enforceable decision by the High Authority which based itself on Decision No 14/55. In doing so, the preamble at the same time mentions the problem of determining, by way of estimated assessments, the quantities of ferrous scrap subject to the equalization levy, but not declared, and to impose the levy thereon by means of administrative decision on the basis of that assessment.

The decision also states that it is necessary for a competent authority to conclude equalization cases as yet still open.

Then the decision says that the High Authority, having considered the matter, considers it necessary to proceed in future by way of new fundamentals as follows . . . The High Authority then describes the fundamentals necessary in a new part of its preamble:

> Necessity to revoke the powers delegated to the Brussels agencies;
>
> Necessity to review the decisions of the Brussels agencies so as to confirm or overrule them;
>
> Necessity to confine the enforcement measures to the Fund in Brussels or to another appropriate body;
>
> Necessity to defray the costs of the work which now falls on the High Authority;
>
> Necessity to determine the rights and obligations of the undertakings resulting from equalization on the basis of the returns sent in by the undertakings, to rectify itself inaccuracies in their returns and, where an undertaking fails to send in a return, to replace it by an estimated assessment.

It was on this basis and with the unanimous assent of the Council of Ministers that the decision was adopted. It is as follows:

> The powers formerly conferred on the Brussels agencies by certain general decisions shall henceforth belong to the High Authority, which shall have power to require the Fund in Brussels or another body to enforce the same;
>
> The High Authority shall have power:
>
> To overrule any decisions of the Brussels agencies whenever, in its opinion, it is necessary to do so, and to adopt any consequential measures;
>
> To require undertakings to pay contributions proportional to their purchases of ferrous scrap in accordance with rules the details of which shall be fixed by the High Authority; the said contributions shall be payable in order to defray the costs of the High Authority;
>
> To make estimated assessments where an undertaking fails to send in a return, and to make rectifications itself in the case of an inadequate return.

2. *The legal assessment of the decision*

If we now consider not only the operative

part of that decision, but also its preamble, spirit, construction and purpose, it will be seen that the intention of the High Authority is to comply with the conditions imposed on it by the judgment in Case 9/56 in respect of the ferrous scrap equalization system. It will further be seen that the intention is to make the equalization procedure accord with the judgment, primarily as regards what the judgment stated as to delegation powers, making estimated assessments of turnover in place of the figures which are supposed to appear in the returns, and orders for enforcement, and not, therefore, as regards *all* the parts of the judgment in Case 9/56, which are binding on the High Authority.

Naturally, it will readily be seen that the judgment of 13 June 1958, just as my opinion in that case, imposes other requirements on the High Authority concerning the organization of the equalization system, especially the important business relationships from the legal point of view with undertakings which partake of the equalization system either as debtors or as creditors.

It is here, also, that the criticisms of the applicants in the cases occupying us today begin and I wish to examine them briefly. They do not seem to me to be justified on any important point or in any respect.

(a) The power to examine and overrule decisions of the Brussels agencies cannot adversely affect the applicants, because they have always criticized those decisions as being irregular.

It is unimaginable that the High Authority might be in a position to annul decisions which the Court has already annulled. Still less can the applicants fear that the High Authority might confirm and thus put back into force decisions which have been annulled in the judgments of the Court.

Moreover the operative part of the decision does no more than state the right to *overrule* the Brussels decisions, without mentioning in the decision itself the *confirmation* mentioned in the preamble. Thus as regards confirmation there does not exist any right created by a measure liable to be contested.

(b) Where the applicants contest the power of delegation let me say as regards this that in its judgment the Court declared that a delegation was in principle legal and not illegal. In Article 1 (b) of Decision No 13/58 the High Authority provides that it shall be possible for certain measures of enforcement to be confided to the Fund in Brussels or to some other body. This accords with the judgment in Case 9/56 according to which the High Authority may delegate clearly defined measures of enforcement to third parties. It may be that later decisions of the High Authority will go beyond the context of the judgment, but the present case is not concerned with that and therefore I do not need to examine it.

(c) The applicants seem to consider that the estimated assessments and rectifications by administrative decision rendered possible where an undertaking does not send in any return or sends in an inadequate and incorrect return are illegal.

In its judgments, the Court ruled that such assessments, based on clear rules excluding arbitrary conduct, are legal. Although the High Authority has not laid down such rules in the contested decision, it cannot be presumed that it will make direct use of the provision complained of without publishing the criteria for its method of assessment in a general or individual decision. As at present advanced, this complaint is unfounded.

The same goes for the complaint that the High Authority could use its power to make estimated assessments before exhausting all other possibilities including those under Article 47.

The third paragraph of Article 47, together with the first paragraph of Article 36, would appear to be applicable in any event as a general rule of the Treaty. However, we have in the present case, in addition, the organization and the functioning of a particular institution established under Article 53. In the interests of all the participants it is necessary to achieve more than the result expected of the method of constraint under Article 47, which is directed at obtaining an attitude or an action from an undertaking. Here, the High Authority must take cognizance of all quantities of ferrous scrap

subject to equalization and thus bring about an impeccable and regular functioning of the equalization system.

Quite apart from the general methods of constraint under Article 47, estimated assessments in the case of a failure to make a return and rectifications by administrative decision, in the case of an incorrect return, must therefore be considered as legal, subject to the proviso that a debtor in respect of an equalization contribution must be supplied with data which he can check and from which he can note mistakes in assessments made by administrative decision, criticize them and, should he so chose, contest them by way of legal action.

The applicants' criticisms concerning the retroactive effect of the assessment for the period *prior* to the adoption of Decision No 13/58 do not appear to be well-founded. As regards this I would note that estimated assessments and rectifications made by the administration can only affect quantities of ferrous scrap which have not yet been subjected to equalization measures, and claims and accounts not yet settled, which fall to be determined by the High Authority after the adoption of Decision No 13/58.

(d) The complaint raised in respect of the extra contributions intended to defray the administrative expenses of the High Authority arising as part of the arrangements established under Article 53 would also appear to be unfounded. The said general expenses can only arise where participants' accounts not yet settled and not yet cleared are dealt with. Thus they only concern pure accountancy matters and measures for obtaining payment occurring after the adoption of Decision No 13/58.

3. *Remarks on the letters from Campsider and the High Authority produced by the applicants*

During the procedure the applicants produced letters from Campsider and the High Authority which were sent after delivery of the judgments in Cases 9/56 and 10/56. Those letters can in fact give the impression that the High Authority did not go to much effort to comply with the abovementioned judgments. However, it must not be forgotten that the contested decision, and it alone is decisive, does not contain any basis for this procedure, and that no relationship between the letters and the contested decision is discernible. To that extent, as regards Decision No 13/58 which is contested here, the applicants' arguments are not relevant. If it were to appear in the future that in adopting general or individual decisions open to legal process, the High Authority was not respecting the principles laid down by the Court in Cases 9/56 and 10/56, the persons who might thereby be prejudiced will have an opportunity of contesting those individual decisions.

4. *Points not covered in Decision No 13/58*

Finally, although the contested Decision No 13/58 does not deal with all the questions which were subjected to criticism by the Court in Cases 9/56 and 10/56, and I am thinking in particular of the obligation to publish all the information necessary (p. 31 of the judgment in Case 9/56 and p. 67 of the judgment in Case 10/56, Italian version), the incomplete nature thereof cannot usefully be contested by an application for annulment which can only result in the annulment of what has been *decided*. Rather, the appropriate submission would be an action for failure to act, but the applicants have not brought such an action up to now.

5. *The submission to the effect that the High Authority wrongly adopted a general decision*

In running a critical eye over Decision No 13/58, its form, content, field of application and effects, it also appears that the argument of the applicants, which claim that an individual decision ought to have been adopted in respect of each of them and that it was only with an illegal intention in mind that a general decision was adopted instead of individual decisions, is not justified. When the time comes when the applicants are faced with a decision of the High Authority stating what their obligations as

to payment are, if necessary in the form of an enforceable decision, they will be in a position to see and examine whether the individual decision concerning them has been backed up with adequate reasons, and has been adopted regularly so that it lends itself to review. The legal protection which they rightly expect against the financial demands of the High Authority will then be granted to them straight away upon their putting forward the grounds set out in the first paragraph of Article 33.

VII – To summarize, I am able to say that the four grounds of action set out in the first paragraph of Article 33 are not available to the applicants against Decision No 13/58 of the High Authority, and that the ground under the second paragraph of Article 33 of 'misuse of powers affecting them', is unfounded. As regards certain complaints, I even find that there has been no loss and that accordingly there is not the necessary interest for bringing an application.

I thus come to the opinion that:

the applications in Cases 40/58 and 41/58 should be dismissed as inadmissible, because they are brought out of time;

the applications in Cases 36/58, 37/58 and 38/58 should be dismissed as unfounded.