OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 2 FEBRUARY 1971[1]

Mr President,
Members of the Court,

Because of their similarity, the two cases (67/69 and 70/69), which occupy us today, have been joined for the purposes of the oral procedure, under an order of the Court of 8 July 1970. They concern once more the scheme which was created under the ECSC Treaty to make imported ferrous scrap and scrap treated as such cheaper and with which we are familiar from numerous previous cases; it concerns the equalization scheme which operated from 1954 to 1958 and the accounts of which are not yet closed. As concerns the two applicant undertakings (I will describe them hereinafter as the first applicant and the second applicant), let me recall that they operate or have operated steel works in Naples and in Rome and that in consequence they were, as consumers of scrap, liable to contribute to the equalization scheme. Moreover, also thanks to a series of previous cases (Nos 23/59, 16 and 20/60, 9/64, 25 and 26/65), we know the essentials of their relationships with that organization as well as with the High Authority of the ECSC so that it is not necessary to set them out in detail now.

Concerning the situation of the first applicant, I will content myself with showing that after making the normal checks the High Authority had doubts as to the correctness of the declarations concerning scrap made by that undertaking (for the period from January 1957 to November 1958, they showed 15 469 metric tons in all). These doubts prompted it to calculate the consumption of scrap of the applicant on the basis of its consumption of electric current, which, for the period between 1 June 1956 and 30 November 1958, showed a total of 37 668 tons of scrap subject to equalization. A corresponding notice of assessment was sent to the applicant by letter by the High Authority's markets management on 18 August 1964. As the undertaking took no notice, on 11 February 1965 the High Authority adopted two formal decisions. The first specified that during the period between 1 June 1956 and 30 November 1958 the applicant had consumed the quantity of bought scrap indicated in the letter of 18 August 1954 and the second put at Lit. 252 974 228 the amount of contributions due from the applicant.

On the same day the High Authority also adopted a formal decision in respect of the second applicant. In respect of the tonnage of bought scrap declared (32 805 metric tons), it fixed the contribution due up to 31 May 1963 at Lit. 105 899 634 (taking account of payments made and corresponding interest).

As you know these decisions were contested in Joined Cases 25 and 26/65 [1967] ECR 33. The application of the second applicant was dismissed on the ground that it was made out of time. Under the decision taken in respect of the undertaking the Commission, as the successor of the High Authority, therefore subsequently took enforcement proceedings and consequently had rolling plant belonging to the applicant sold by auction. On the other hand the application of the first applicant succeeded. The decisions which had been notified to it were annulled by a judgment of 2 March 1967, because the calculation of the consumption of scrap had been irregular, since it did not appear that at the time of the checking of its undertaking, the applicant had refused to produce the documents asked for.

While the legal proceedings were still taking place, the Commission on 15

1 — Translated from the French version.

December 1965 adopted General Decision No 19/65 relating to the fixing of final rates of contribution and drawing up of final statements of account (OJ No 224 of 30. 12. 1965). It provides in respect of each undertaking for the drawing up of the complete statement of account as at 31 December 1965 and specifies that the balances established as at 31 December 1965 shall carry interest at 5% per annum from 1 January 1966 until the date of payment. Further, interest falling due during one year must, to the extent to which it is unpaid, be capitalized on 31 December of the same year. Accounts of this type were sent to the undertakings by letters from the markets management on 23 December 1965. As regards the first applicant the account was based on the tonnages of scrap set out in the decision of 11 February 1965, and showed on 31 December 1965, a debit balance of lit. 274 845 521. Following the judgment of 2 March 1967, however, it was impossible to maintain that figure. The case of the first applicant was therefore re-examined and this led to the inclusion in the account, in addition to the consumption of scrap declared for 1957 and 1958, a tonnage of 2 268 metric tons which was ascertained at the time of the checks made in 1960 on the basis of purchase invoices produced and referring to the year 1956. On this basis (17 737 tons), the Commission on 9 October 1969 adopted an individual decision fixing the amount of the contribution due on 31 December 1968. That decision specifies in detail the manner in which this debt is calculated, taking account of payments made, of the distribution of equalization bonuses wrongly paid and recovered, as well as outstanding interest on debits and credit balances, the total amounting to lit. 140 594 449. As the decision also specifies, interest is due on that sum at the rate of 5% per annum, as from 1 January 1969 until the date of payment. On the same day the Commission adopted in respect of the second applicant an individual decision fixing the amount of its contribution. Taking account of payments made, of corresponding interest due, of the distribution of equalization bonuses recovered, including interest on the debt, the total of the contribution amounted to lit. 130 089 513 on 31 December 1968 and finally, after the deduction of the sum fixed in the decision of 11 February 1965, to lit. 24 189 879. This debit balance also carries interest at 5% per annum from 1 January 1969 until the date of payment.

The decisions mentioned were notified to the undertakings concerned on 18 and 27 October 1969. It is because of these decisions that on 14 and 29 November 1969 the matter was referred to the Court and that the two applications upon which you are now asked to decide were made. The claims formulated in these applications have above all the common purpose of procuring the annulment of the individual decisions of 9 October 1969. Further, the two undertakings ask that the Commission should be ordered to pay damages because of the wrongful act on the part of the administration constituted by the late notification of the sums owing by way of contributions and by the fact that by virtue of its inadequate management and supervision of the equalization scheme, the High Authority did not prevent fraudulent practices, and more especially the unwarranted payments of equalization bonuses.

Legal discussion

In considering these cases I shall in the first place deal with the requests for annulment and the submissions put forward to that end: I shall then consider the claims which put in issue the liability of the administration. In doing this I can in the main deal with the two cases together because the arguments are mostly identical. It is only within the framework of the action for annulment that the first applicant has put forward certain particular complaints, which I will consider first of all.

I — The requests for annulment

1. *Case 67/69*

(a) Arguments relating directly to the contested individual decision

Referring to a series of arguments as to form and substance, the applicant first of all raises the objection that the amount of its contribution was fixed on the basis of tonnages of scrap which it did not declare, that is to say, by including 2 268 metric tons for the year 1956.

(aa) It is necessary in the first place to consider whether these quantities were properly included in the statement of account, that is to say, whether in addition to the quantities which it declared (15 469 metric tons for the period from January 1957 to November 1958), the applicant in 1956 really made additional purchases of scrap to the extent of the amount mentioned by the Commission.

Under the scrap equalization scheme, declarations by undertakings may be corrected by the High Authority on its own initiative when it is proved that they do not correspond to the real facts. In the present case the incorrectness of the declarations was established at the time of a check of the applicant undertaking which the High Authority caused to be carried out from 21 to 25 March 1960 by a servant of the Société Anonyme Fiduciaire Suisse. The report on the investigation of 15 June 1960 prepared by that body states that new invoices for the purchase of scrap for the year 1956 were produced to the servant. The tonnages which they disclosed were added up for each month and amounted in the report (page 2) to 2 268 metric tons in all. As the applicant strenuously disputed this fact a preparatory inquiry was held before the competent Chamber on 17 November 1970. The persons who took part in the inquiry in 1960 were then heard. Following the hearing of the witnesses, in particular after the evidence given on oath by the servant of the Société Fiduciaire Suisse, there is no doubt in my opinion that the invoices for the purchase of scrap mentioned were really produced. That servant remembered in fact that the invoices showed the suppliers, the dates of the invoices, and some of the invoices disclosed the date of delivery, the description of the scrap delivered, its weight and the prices. When he was being examined this witness was also able to produce the roll of paper from the machine on which calculations were made. The roll gave separate particulars, at least as regards quantities. The witness stated that it was possible that he did not extract and put into the report other detailed notes because his duty in the first place was to check the electricity invoices and it was not customary to give a fuller description when making supplementary checks (of the type which took place in 1960). This was confirmed by another, more senior servant of the Société Fiduciaire Suisse, who assured the Court that he had himself given instructions to this effect. That servant mentioned further that detailed checks had been carried out by means of sample surveys relating to a single month (in the case of the applicant they took place previously and were concerned with a month in the year 1957). For the rest, there can in my opinion be no doubt as to the correctness of the statements which were made and consequently as to the correctness of the information contained in the report of 15 June 1960; in fact a number of other indications mentioned by the Commission is to the same effect. These appear on pages 7 and 8 of the rejoinder and refer particularly to the declarations made by the applicant concerning the following date: the stock of scrap which it held on 1 January 1957 (1 625 metric tons), the installation of an electric furnace in February 1956 and its entry into service in May 1956, its considerable consumption of electricity in the second half of 1956, its consumption of scrap in 1956, as appears from 'internal vouchers',

the quantity of own arisings, of stocks of semi-finished and finished products on 1 January 1957, its consumption of raw materials in 1956 as well as certain particulars in the profit and loss account of 31 December 1956. All this compels the conclusion that in 1956 the applicant bought considerable quantities of scrap which it consumed. This is so at least as regards the quantities set out in the report of 15 June 1960; it is extremely likely that the figures which should be taken into account are even higher.

Consequenty it is certain that no objection based on the arguments considered can be raised against the correction of the scrap declarations made by the applicant and against the fact that the Commission has taken account of an additional 2 268 tons for the year 1956.

(bb) Let us consider what other considerations could militate against the inclusion in the statement of account of the quantities of scrap which I have just mentioned.

— There is first of all the complaint of an inadequate statement of reasons. This need not detain us long,because it is easy to show that it is unfounded. This applies on the one hand to the argument that the statement of reasons is incorrect because it bases the assessment only on the applicant's declarations. It is sufficient to read the reasons for the decision to show that such is not the case. In fact the statement of reasons distinguishes clearly between the year 1956 (for which purchase invoices were produced when the check was made at the undertaking) and the later period to which the applicant's declarations refer. On the other hand it is not possible either to see an inadequacy in the statement of reasons in the fact that the contested decision specifies neither the invoices put forward nor their essential content. The case-law has never required that a statement of reasons should satisfy such requirements; it is clear that they would patently go beyond what could reasonably be required.

On the other hand the applicant disputes the procedure for calculating the additional quantities of scrap: it points out that the inquiry was made by a private trust company of a third country, without the participation of the competent national organizations and without a final report being prepared. It clearly has in mind in this connexion an infringement of the fourth paragraph of Article 86 of the ECSC Treaty. It is unnecessary, too, to labour this point because the case-law has for a long time rejected as untenable such complaints regarding the duty entrusted to a reputable firm of consultants and examiners operating on an international scale in the form of a company governed by commercial law, constituted in accordance with national law. In fact according to the case-law on the subject it is certain that the Treaty recognizes not only the formal visits of inspection mentioned in the fourth paragraph of Article 86 with authenticated statements of findings, but that the High Authority (now the Commission) may without special formalities entrust suitable professional persons, (whose suitability is not disputed) to gather information (Case 31/59, Rec. 1960, p. 172); Cases 5 to 11 and 13 to 15/62 ([1962] ECR 449 p. 462). The Commission may use this information as proof and, as Case 18/62 ([1963] ECR 259) emphasizes, those concerned may invalidate the information thus obtained only by producing proof to the contrary.

I must therefore state that, considered in its different aspects, the first submission relied upon by the first applicant does not justify a partial annulment of the contested decision.

(b) Arguments directed against the general decisions on which the contested decision is based

A second complaint which also is put forward only in Case 67/69 concerns the calculation of interest in the contested decision. The applicant considers

that interest may be charged not only for delayed payment but only after communication of the exact amount of the debt and after a formal demand, that is to say in its case, at the earliest as from 18 October 1969 (the date on which the contested decision was notified). Further the annual capitalization of interest, that is to say, the charging of interest on interest, must be regarded as irregular.

In respect of the specific arguments put forward on this subject, the applicant cannot refute the Commission's objection that its deductions, based only on Italian law, are clearly inadequate. Further—as the Commission has also shown—it emerges from the national legal systems that not only can interest be required in case of wrongful failure to pay (and therefore after a formal demand) but there even exists statutory interest and which runs automatically as from a particular day. In the same way the national legal systems (as the Commission has shown by referring to German, French and Italian law) do not absolutely exclude capitalization of interest and consequently the charging of interest on interest.

The decisive question is therefore whether the system of interest chosen by the Commission can be justified by the particular requirements of the scrap equalization scheme. Let me say at once that this certainly appears to be the case. An essential principle in this scheme is in fact to place all undertakings consuming scrap in the same situation on a particular date whether or not they consumed internal scrap (and consequently were required to make a contribution by way of equalization), or purchased imported scrap (and consequently had the right to an equalization bonus. The rules on interest, too, must serve this equalizing function. This means that it must have an objective structure, to be limited as to time only and not to be linked to subjective factors such as knowledge of the equalization debt and culpable delay in payment. The Court of Justice has expressly affirmed this in Case 111/63 ([1965] ECR 677) concerning the regulation of the legal interest on credit balances referred to in Decision No 7/61 which was then being considered (OJ of 25. 4. 1961, p. 653): in fact it emphasized that the system relating to interest on overdue payments in force previously might have resulted in unjustified disadvantages in view of the varying behaviour of the undertakings. In my opinion it must be the same for the objective system of interest on overdue payments introduced as from 1 January 1966, at the same time as the final fixing of rates of contribution by Decision No 19/65, because, in the first place, the system in question applies uniformly both to debit balances and to credit balances, that is to say, it ensures equality of treatment. It follows that interest could properly be taken into account without individual notifications being sent to the undertakings (notifications which were, furthermore, addressed several times to the applicant), merely on the basis of general decisions which not only fixed rates of contribution but made provision also for demands for payment on specified dates, as well as warnings concerning the possibility that interest might become payable.

Further it seems to me impossible to raise objections against the annual capitalization of interest, that is to say, the charging of interest on interest (which, too, applies equally to creditors and debtors); that is so not only because this capitalization (by analogy with current bank interest) culminates in a hardly noticeable increase in the burden of interest. It is necessary also to take account of the fact that Decision No 19/65 made provision for final statements of account and that in order to ensure their rapid closing off, in which all the participants necessarily had an interest, it might appear perfectly proper to adopt special measures. The arguments of the applicant (based

on the concept that balances produce interest) therefore provides no ground justifying a declaration of the illegality of the general decisions and consequently the annulment of the individual decision for which they serve as a basis.

2. *Arguments put forward jointly in the two cases*

Like the argument which I have just discussed, the essentially concurring arguments which were put forward in the two cases in order to support the applications for annulment all refer to General Decisions Nos 7/63 (OJ No 54 of 6. 4. 1963) and 19/65 (OJ No 224 of 30. 12. 1965); they thus amount to objections of illegality.

(a) We must consider first of all the complaint that the producers of steel alloys were not subject to equalization contributions in the same way as the producers of steel castings in integrated steel works and independent steel works. In the opinion of the applicant that must be regarded as an unjustified privilege granted to undertakings which have also benefited from the equalization schemes.

In this connexion, the Commission has been able from the beginning to establish clearly that, to the extent to which they have consumed ordinary scrap (which was the case most of the time) the producers of steel alloys were not in fact exempt from the requirement to contribute to the equalization scheme; from this point of view the complaint raised by the applicants is wide of the mark. If they consider on the other hand that the exemption of steel alloy scrap (which clearly was consumed only to a small extent) was illegal, it is necessary to reply to them that this problem was already solved in Case 18/62 when the legality of such an exemption was accepted. In fact the Court stated that, because of its non-ferrous content which is not subject to the ECSC Treaty, that scrap had a higher price and was not therefore part of the ordinary scrap market.

The reference to the decision in Case 18/62 applies moreover to the exemption of scrap processed in integrated steel casting works. The Court of Justice has stated that in order to ensure equality of conditions of competition in relation to independent steel foundries there could not reasonably be any question of subjecting the integrated undertakings to compulsory equalization to the extent to which they consume scrap for casting steel. As the applicants have not put forward new arguments capable of bringing about on alteration in the case-law of the Court, it is not necessary for the time being to pursue my discussion on this point. I will say only that the arguments which I have just considered are likewise of no value for the requests of the applicants.

(b) Raising another complaint against the general decisions concerning scrap, the applicants have emphasized that in taking Decision No 14/55 (OJ No 8 of 30. 3. 1955), the Council of Ministers made six recommendations on which must depend the lawfulness of scrap equalization. However when it brought the equalization scheme into operation, the High Authority did not take account of two of them, that is to say, the recommendation that equalization contributions should not be increased (except for serious reasons) and the recommendation that a considerable increase in the consumption of scrap should be avoided. They claim that in fact the amount of the contribution and the size of imports of scrap have constantly increased without the Commission's having asked the Council of Ministers to depart from the recommendations which it had issued.

The Commission replies to these allegations first of all that the rates of contribution fixed in Decision No 19/65 are lower than those laid down by Decision No 7/63 and that the latter are themselves lower than the rates fixed in Decisions No 19 and No 20/60. The

complaint relied upon by the applicants against Decision No 7/63 and No 19/65 therefore is in reality irrelevant. It is necessary further to take account of the fact that the increase in the rates of contributions is due above all to the rules concerning interest laid down in Decision No 7/61 and therefore to a measure which the Court of Justice declared legal in Case 111/63. As to the increase in consumption of scrap and of imports, that must be considered in relation to the increase in production which actually took place, in accordance with the objectives of Article 3(g) of the Treaty and in relation to the increase in stocks which had diminished considerably in the past. Further, it must not be forgotten that the High Authority tried to keep the increase in imports of scrap within certain limits, by forbidding exports and by creating by Decision No 26/55 the so-called 'pig-iron scrap' allowance (OJ No 18 of 26. 7. 1955). It is not therefore possible to say that it exercised no supervision over the development of the situation.

In fact these remarks appear to be sufficient to eliminate the complaint of failure to conform to the recommendations of the Council of Ministers (we can leave aside the question of the extent to which these recommendations are binding. Moreover since the case-law concerning similar problems has stated to what extent the unanimous assent of the Council of Ministers is necessary (it does not apply, as is well known, except to the extent to which the very *fundamentals* of the equalization scheme are in question ([1965] ECR 677), we can only say in the present case that the complaints put forward by the applicants with a view to having the general decisions declared illegal are insufficient.

(c) Another complaint concerns two important facets of equalization appearing in the general decisions: the costs of internal scrap and those of imported scrap. In this respect the applicant maintains that the equalization scheme worked on false data, that the costs of internal scrap were decreased in an unlawful manner and that those of imported scrap were increased in an equally unlawful manner leading in consequence to a corresponding increase in contributions. Further Decisions Nos 7/63 and 19/65 contained no details concerning the costs of internal scrap.

As regards first of all this latter complaint, as the Commission properly points out, a reading of the decisions quoted suffices to show that it is indefensible. In fact Annexes II(c) contain all the necessary particulars. Moreover one could even dismiss as inadmissible the complaints relied upon because no grounds whatever for them are stated and no particulars thereof are given (the applicants refer, we know, only to matters of common knowedge). If, however, one did not wish to do this, one can on this point refer also to the Court's previous case-law (Case 30/65, [1966] ECR 65). It appears from this that the correctness of the data utilized was ensured by thorough check of the monthly declarations of the undertaking. Further, it must not be forgotten that only the weighted average of scrap prices was concerned, which makes the existence of certain differences at the regional level perfectly understandable. The same applied to the data used for imported scrap, concerning which I must further mention that it is based exclusively on contracts of purchase made by the Joint Bureau (measures which consequently could not be the subject of manipulation on the part of certain undertakings) Consequently I can state without saying more that the complaints which I have just considered cannot assist the requests of the applicants.

(d) Lastly, in connexion with applications for annulment, it is necessary for me to consider a last complaint of a formal nature. It is concerned with the statements of the reasons on which the general decisions are based; the applicants state that they show only the final

result and not the facts on which the calculations in question are based. Further, they criticize the fact that the Commission has not published the detailed report of the accounts concerning the working of the equalization scheme and has not had a check made of this by the auditor of the Community or by the Commission of the Four Presidents.

Since the Court's previous judgments provide the essentials of the reply to be given to these complaints I can this time also limit myself to a few brief remarks. In fact the Court's case-law is not limited to stating in a general manner that the statement of the reasons on which general decisions are based must be subject to other requirements than those of individual decisions (Case 18/62). I can further refer to Case 30/65 according to which it is sufficient that the statement of reasons should reproduce shortly the essential facts without its being necessary to publish all the factors which have been used for the calculation of the various data relating to equalization. From this point of view no objection can in fact be raised against the statements of the reasons for the decisions which concern us in the present case, in the first case because they refer mainly to the previous decisions on this subject. As to the necessity to publish a report on the management of the equalization scheme the Commission has been able to refer to its general reports and to its special communications addressed to the undertakings which provided sufficient information. It has been able to point out further that not only have its departments examined the figures which had to be taken into account but also that the matter of the Community undertook a review of the management and the annual balance sheets of the equalization scheme. These arguments must suffice, especially since in Case No 18/62 the Court of Justice has accepted that similar complaints which were raised by the applicant were not relevant.

As regards the requests for annulment I can therefore conclude that none of the numerous complaints directed against individual and general decisions can contribute to the success of the applications.

II — The claims for damages

As I have already said it is now necessary to study the claims for damages based on the alleged liability of the administration which the applicants put forward from two points of view: on the one hand on the ground that the Commission delayed in communicating the equalization debt and on the other hand on the ground it did not prevent the well-known cases of fraud which caused an increase in rates of contribution.

1. As concerns the first aspect, the applicants point out that only from the contested decisions did they obtain any precise knowledge of their indebtedness to the equalization scheme. Nevertheless during the accounting periods to which the indebtedness refer, they had to conform to the obligation to publish accurate price lists. It was not possible for them to take account of the equalization charges which were not communicated to them until much later. They thus suffered damage which they put at 15% of the sale prices which they charged at the time.

That aspect of the claim will not keep us long either, because once more the previous case-law of the Court in the matter greatly assists its solution. According to that case-law it is first of all beyond doubt that the fixing, after the event, of provisional rates of contribution, on the basis of the matter in which the undertakings made their compulsory declarations and of the result of the corrections made necessary by the checks, is inherent in the equalization scheme and cannot therefore be criticized. As the Court has pointed out in particular in Case 20/60 the delays in the fixing of equalization rates must be regarded as normal and inevitable dis-

advantages and, given the complex character of the factors to be taken into account it is impossible to state in particular, that the period within which the contribution rates were fixed, exceeded reasonable bounds (Rec. 1961, p. 319). If these statements were valid at the time they are still so today because on the one hand the forecasts of the undertakings depended in the first instance on the knowledge which they had of the rates of contribution (in relation to which the equalization debts could themselves be deterimned) and on the other hand the rates set out in Decisions Nos 7/63 and 19/65, which are mainly involved here, were lower than those in the previous decisions. It is necessary further to emphasize that as regards the publication of price lists it is equally impossible in the present case, as it was in Case 20/60, already mentioned, to speak of violation of the principles of Article 60 of the ECSC Treaty. As regards the late communication of equalization debts to the applicants, the behaviour of the institutions responsible for equalization was therefore not illegal and consequently there was no wrongful act or omission on the part of the administration.

Apart from that, it is also doubtful whether the measures criticized caused damage to the applicants. In this respect I can say already that the observations put forward to show the existence of damage are more than inadequate and that consequently the applicants have not complied with the obligation incumbent upon them to provide detailed argument. But further (as in Case 20/60), I can, having regard to the laws of the market, throw doubt on the existence of any damage and state that in spite of many uncertainties it was not impossible to take account of the equalization charges. In fact all the participants knew that only provisional statements of account were concerned and on the other hand it is already proved that the increase has not been continuous but that there were fluctuations which made possible a certain compensation in the calculations.

Consequently the applicant cannot establish a right to damages based on a wrongful act or omission because the equalization debts were communicated to them too late.

2. And lastly what is to be made—and this will be the last point which I shall consider—of the claim for damages based on the liability of the administration which the applicants put forward, relying upon the existence of fraudulent practices in connexion with the equalization of scrap, that is to say, the fact that, in a series of cases, equalization bonuses were wrongly paid and that in consequence the rates of contribution were increased to the detriment of the undertakings subject to equalization? The applicants consider that the High Authority was guilty of a wrongful act or omission in that it took insufficient measures as regards the proof of origin of the scrap and did not sufficiently supervise the equalization scheme. Further, when its attention was drawn to the frauds it did not make effective enquiries and did nothing to prevent such practices from continuing.

The Commission, as the successor of the High Authority, defends itself against this complaint first of all by relying on Article 38(1) of the Rules of Procedure and Article 22 of the Protocol on the Statute of the Court of Justice, that is to say, by pointing out that the applicants do not set out the facts in an exact manner and do not describe the alleged irregularities precisely; they consider therefore that the claim must be dismissed as inadmissible. However, notwithstanding the case-law of the Court in Cases 46 and 47/59 ([1962] ECR 411), it does not appear clear to me that these arguments are absolutely convincing. I would rather incline to the view advocated by my former colleague, Mr Lagrange, according to whom it could hardly be expected, in this sphere, that the undertakings concerned, which had no up-to-date information concern-

ing the details of the internal working of the equalization scheme, should rely in support of their actions on more precise facts than a reference to the very detailed Parliamentary reports which exist concerning the matter. Nevertheless that question may finally be left open, because in my opinion, the problem touched upon, which has already been submitted to you, may in the present case, too, be resolved without all its complex implications being considered exhaustively.

In fact it appears to me that these claims are still premature. During the procedure the Commission informed us of the result of the previous attempts of the High Authority and of its own, to recover the sums fraudulently obtained. This has resulted in four-fifths of the improperly paid equalization bonuses already being recovered; as to the remainder, actions against those liable are still pending before national courts. It is only after all these proceedings are finally settled that it will be possible to say whether there is any subsisting damage to the undertakings which took part in the equalization scheme and what is its extent (as regards the applicants, it appears to me possible to state here and now that, in view of the total figure of 256 undertakings concerned in equalization and in view of the tonnage of scrap amounting to 0.4% of the total quantity of scrap subject to equalization—which is the tonnage still at issue—, the damage caused to the applicants, especially when compared with the total of their equalization debt, would appear, to say the least, quite minimal). As in Cases 9 and 25/64 ([1965] ECR 311), and despite Decision No 19/65 fixing the final rates of contribution, it is therefore too early to talk, in view of the proceedings still pending and the impossibility of determining the damage, of a final settlement of the equalization accounts, that is to say, of a final statement of account, the actions for damages must therefore be rejected as premature. With that, there remains nothing further to be said for the moment; there is no need now to examine all the other questions which the Commission has discussed in detail, and particularly that of liability.

III — Summary

My conclusion, after all the foregoing considerations, may be summarized as follows:

I consider that the applications made by the Simet and Feram undertakings must be dismissed in their entirety as unfounded and that the applicants should be ordered to bear the costs.