ORDER OF THE COURT
28 MARCH 1984 [1]

European Independent Steelworks Association v Commission of the European Communities

Case 45/84 R

Application for the adoption of interim measures — Suspension of operation — Conditions for grant thereof — Urgency — None, because of undertakings given to the Court

(ECSC Treaty, Art. 39; Rules of Procedure, Art. 82 (2))

In Case 45/84 R

EUROPEAN INDEPENDENT STEELWORKS ASSOCIATION, an association of undertakings formed under the law of Belgium, whose registered office is at 21 Rue Ducale, Brussels, represented by Michel Waelbroeck of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34 Rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, 200 Rue de la Loi, 1049 Brussels, represented by R. Wägenbaur of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, Jean Monnet Building, Kirchberg,

defendant,

1 — Language of the Case: French.

Application pursuant to Article 39 of the ECSC Treaty for the suspension of the operation of Article 15 B of Commission Decision No 234/84/ECSC of 31 January 1984 on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry,

THE COURT

composed of: J. Mertens de Wilmars, President, T. Koopmans, K. Bahlmann and Y. Galmot (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco, O. Due, U. Everling and C. Kakouris, Judges,

Advocate General: G. F. Mancini
Registrar: H. A. Rühl, Principal Administrator

makes the following

ORDER

I — Summary of the facts

By Decision No 234/84/ECSC of 31 January 1984 (Official Journal L 29, p. 1), adopted pursuant to articles 47 and 58 of the ECSC Treaty, the Commission extended and amended the system of monitoring and production quotas for certain products of undertakings in the steel industry, previously governed by Decision No 2177/83/ECSC (Official Journal L 208, 31. 7. 1983, p. 1), which extended the system established by Decision No 1696/82/ECSC (Official Journal L 191, 1. 7. 1982, p. 1). Article 15 B of the decision provides that any Member State may submit a complaint to the Commission if it establishes, with regard to certain categories of steel products, that deliveries of products in one of those categories have been altered during a quarter to a significant extent compared with traditional deliveries. After considering whether the complaint is justified, in accordance with the procedures laid down in the decision, the Commission may request the undertakings in question to give a commitment in writing that, during the following quarter, they will correct the imbalance in their traditional deliveries. If an undertaking does not give such a commitment, or if the commitment is not honoured, the Commission may, pursuant to that provision, reduce the part of the undertaking's quota which

may be delivered in the common market for the following quarter by a quantity not exceeding that which caused the imbalance in its traditional deliveries.

By application registered at the Court on 20 February 1984, the European Independent Steelworks Association brought an action claiming that Article 15 B of the Commission Decision of 31 January 1984 should be declared void. By a separate document registered at the Court on the same day, the applicant applied pursuant to Article 39 of the ECSC Treaty for the suspension of the operation of the provision in issue.

By an order of 2 March 1984 the President referred the matter to the full Court.

II — Written procedure

In its application for the adoption of interim measures the *applicant* claims that the Court should order that the operation of Article 15 B of Commission Decision No 234/84 be suspended and should reserve the costs. In support of its application the applicant argues that this article completes the implementation by the Commission of the policy of freezing the traditional patterns of trade between Member States, adopted by the Council on 22 December 1983. A first measure implementing that policy has already been taken by the Commission in the form of Decision No 3717/83, introducing for steel undertakings and steel dealers a production certificate and an accompanying document for deliveries of certain products; the applicant has already brought an action for a declaration that that decision is void, together with an application for the suspension for its operation.

The first decision was, according to the applicant, adopted in factual and legal circumstances which establish a *prima facie* case for the adoption of interim measures and which are likely already to cause serious and irreparable harm to the members of the applicant association, and the same is *a fortiori* true of Article 15 B of Decision No 234/84.

By adopting Decision No 3717/83, introducing a system for supervising undertakings, the Commission seemed to have subscribed to the policy adopted by the Council and seemed ready to follow it even to the extent of taking sanctions against undertakings which did not observe the traditional patterns of trade between Member States; Article 15 B of Decision No 234/84 confirms that position and proves positively that the Commission intends to implement completely the decision adopted by the Council. It therefore becomes even more urgent to suspend the implementation of that policy by the Commission before it results in a lasting renationalization of the steel market.

The *Commission* insists that it is fully aware of the principles underlying the common market in steel products, including the free movement of goods and the abolition of measures causing discrimination between producers, purchasers or consumers, or interfering with the freedom of purchasers to choose suppliers. The Commission is also aware that the ECSC Treaty requires it to ensure the maintenance and observance of normal competitive conditions. In that regard it had been receiving information

for some time that certain undertakings, benefiting in particular from aid schemes covering operating losses, had been tempted to change their traditional market and to conquer new markets, if necessary at a loss. It seemed to the Commission that normal competitive conditions would not be observed if steel undertakings could act in this manner, in so far as their actions were influenced by factors which entailed distortion of competition. The restructuring of the market would also be imperilled if undertakings were entirely free to take advantage of the relative weakness of certain of their competitors in order to capture their market by increasing deliveries. Experience has shown that the existing sanctions do not always make it possible to obtain the intended result within the required period. In the absence of the contested measure, and if there were no means of effective action in specific cases, Member States would be inclined either to take national compensatory measures, which would lead to the disintegration of the common market, or to request the implementation of the safeguard clause contained in Article 37 of the ECSC Treaty, with unforeseeable results which could cause much more harm to the common market than the limited measures provided for in Article 15 B.

The Commission points out that Article 15 B can be implemented only upon the complaint of a Member State, setting out all the circumstances. It applies only to products in categories Ia, Ib, II, III, that is to say, the products covered by the decision which introduced minimum prices (Commission Decision No 3715/83/ECSC of 23 December 1983 fixing minimum prices for certain steel products; Official Journal L 373, 31. 12. 1983, p. 1).

Although the term "traditional deliveries" is not defined in the decision the Commission intends to take as a reference period the period between the beginning of the second half of 1981 and the end of the first half of 1982. It is not disputed by the undertakings that that represented a normal period.

The Commission describes the procedure which is followed when it receives a complaint. It sets out in particular the various reasons for which an undertaking may modify its delivery patterns. The Commission points out moreover that the sanction imposed pursuant to Article 15 B is in no way automatic, first because the Commission tries to obtain from the undertaking a voluntary commitment to reduce deliveries and secondly because the quota reduction may be varied according to the seriousness of the undertaking's action.

The Commission rejects the applicant's assertion that Article 15 B makes possible the lasting renationalization of the steel market. It is incorrect to say that that provision reflects a policy of freezing the traditional patterns of trade between Member States. It is also incorrect to contend that Article 15 B is likely to cause serious and irreparable harm to the members of the applicant association.

Referring to its own observations and to those of the applicant in Case 37/84, the Commission adds that the applicant oversimplifies the matter in presenting Article 15 B of Decision No 234/84 as the complement of Decision No 3717/83. It is true that Article 15 B explicitly refers to the statistical information provided by the Member States in accordance with Decision No 3717/83. The implementation of Article 15 B is however in no real sense dependent on

the implementation of that decision. Both the Member State seeking to submit a complaint and the Commission, which must examine it, may rely either on existing statistics or on *ad hoc* information of any kind.

Decision No 3717/83 is not intended merely to serve as basis for the implementation of Article 15 B of Decision 234/84. Its value is entirely independent in so far as it makes it possible in particular to increase the transparency of the market, to detect infringements of the pricing rules and to improve market assessments and the fixing of abatement rates in the case of the decision on the quota systems.

Adding to its previous explanations of the reasons which led to the adoption of Article 15 B, the Commission wishes to correct certain misunderstandings which have been repeated in the press. There is no question of a freeze on trade between Member States. Recourse to Article 15 B is linked to abnormal behaviour attributable to distortions of competition such as those inherent in certain aid schemes. The article is not designed to shackle a competitive undertaking which receives no subsidies, observes the rules on prices and quotas and seeks for reasons of commercial strategy to deliver its products in a Member State where it has not previously made deliveries. The objection might be raised that this restrictive interpretation of Article 15 B is not supported by the wording of paragraph (1) thereof. However, in paragraph (3) the article provides that the Commission must take into account all the circumstances of the particular case.

The Commission goes on to discuss how the provision would be applied in practice in various circumstances. Some circumstances indicate entirely normal behaviour, while others indicate an infringement of other provisions of Community law, such as production quotas, minimum prices, competition law or the provisions concerning aid.

The function of Article 15 B is simply to provide a supplementary countermeasure whose mere existence has a useful effect. Actual recourse to this weapon is called for in particular when the sanctions referred to above have proved ineffective as a means of combating infringements of the quota system or of the price system. The Commission is aware of the double sanction problem and will not fail to apply an appropriate solution in that eventuality.

The Commission concludes that the applicant has not fulfilled the first condition for an order suspending the operation of the measure because the factual and legal circumstances pleaded do not establish a *prima facie* case for the adoption of interim measures.

The Commission also contends that the adoption of interim measures is not urgently required. Taking into account the interpretation which should be given to Article 15 B, the existence of that provision cannot cause serious and irreparable damage to undertakings. Even if the Court does not agree with the Commission on that point, no urgency has been proved since in any event sanctions imposed by the Commission under Article 15 B can be challenged in an action before the Court of Justice.

The Commission also considers that the grant of interim measures would prejudice the decision on the substance of the case. Proof of that is the fact that the observations lodged by the applicant in support of the action for a declaration of nullity and in support of the application for the suspension of the operation of the decision are virtually identical.

III — Oral procedure

Having been duly summoned, the parties presented oral argument at the interlocutory hearing on 20 March 1984.

Decision

1 On 20 February 1984 the applicant brought an action in which it requested the Court to declare void Article 15 B of Commission Decision No 234/84/ ECSC of 31 January 1984 (Official Journal, 1984, L 29) on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry.

2 At the same time the applicant made an application for the suspension of the operation of that article of the decision pursuant to Article 39 of the ECSC Treaty.

3 In support of its application the applicant argues that Article 15 B of the decision completes the implementation by the Commission of the policy of freezing traditional patterns of trade between Member States, adopted by the Council on 22 December 1983.

4 Article 15 B of Decision No 234/84 provides that a Member State may submit a complaint to the Commission if it establishes, with regard to certain categories of steel products, that deliveries of products in one of those categories have been altered during a quarter to a significant extent compared with traditional deliveries. After examining whether the complaint is justified, in accordance with the procedures laid down in the decision, the Commission may request the undertakings in question to give a commitment in writing that, during the following quarter, they will correct the imbalance in their traditional deliveries. If an undertakings does not give such a commitment, or if the commitment is not honoured, the Commission may, pursuant to that provision, reduce the part of the undertaking's quota which may be delivered in the common market for the following quarter by a quantity not exceeding that which caused the imbalance in traditional deliveries.

5 According to Article 39 of the Treaty establishing the European Coal and Steel Community, actions brought before the Court do not have suspensory

effect. The Court may, however, if it considers that circumstances so require, order that the application of the contested decision be suspended. It may also prescribe any other necessary interim measures.

6 According to Article 83 (2) of the Court's Rules of Procedure, the Court may suspend the operation of a measure or grant other interim measures only where there are circumstances giving rise to urgency and factual and legal grounds establishing a *prima facie* case for such measures.

7 Article 15 B was adopted on the basis, in particular, of Article 58 of the Treaty. That article permits the Commission, in the event of a reduction in demand amounting to a manifest crisis, to establish production quotas. Those quotas must be determined on an equitable basis, taking into account the principles set out in Articles 2, 3 and 4 of the ECSC Treaty, which in the last-mentioned article declares quantitative restrictions on the movement of steel products to be incompatible with the common market for coal and steel.

8 Since the procedure provided for in Article 15 B will be used against undertakings which have altered their deliveries to a significant extent compared with traditional deliveries, it cannot at first sight be excluded that Article 15 B may be directed towards objectives other than those permitted by Article 58 of the Treaty, inasmuch as it conduces to the establishment of quantitative restrictions on trade between Member States in some steel products.

9 Simply by reading the decision it would be difficult for a producer or dealer to identify the circumstances in which he could continue to export to other Member States. For example, the term "traditional deliveries" is not defined in the decision; nor does it explain what is meant by "alteration of deliveries to a significant extent".

10 The decision contains no limit or condition on the use of the power to reduce quotas if a significant alteration in traditional deliveries is established.

In particular, an undertaking which observes the rules on prices, quotas, competition and State aid may fear sanctions merely because it has increased its deliveries to other Member States.

11 Because of the influence which it is likely to have on the immediate actions of undertakings, the system so established is such that the requirement of urgency would normally be considered to have been met.

12 However, during the interlocutory proceedings the Commission has made a number of statements with regard to the way in which it intends to apply the provision in issue. The Court has taken note of those statements.

13 The Commission has undertaken to apply Article 15 B according to the following conditions:

(a) First, Article 15 B will not be applied simply because an alteration in traditional deliveries has been observed; it will only be applied where the change in traditional deliveries may be ascribed to the action of undertakings engaging in practices which are contrary to Community law.

(b) Secondly, the mere fact that the undertaking concerned is in receipt of aid authorized by the Commission may not give rise to a quota reduction pursuant to Article 15 B.

(c) Thirdly, if the Commission's inquiry reveals infringements of other provisions of Community law such as those on prices, quotas, competition or State aid, it will first of all apply the sanctions provided for those infringements.

14 In those circumstances, pending a full examination of the compatibility of Article 15 B with the Treaty, it may be held that those assurances remove the threat with which the undertakings were confronted and which could have justified the urgent measures requested by the applicant.

On those grounds,

THE COURT,

by way of interim decision,

hereby orders as follows:

1. **Note is taken of the undertakings given by the Commission;**
2. **The application is dismissed;**
3. **The costs are reserved.**

Luxembourg, 28 March 1984.

P. Heim
Registrar

J. Mertens de Wilmars
President