JUDGMENT OF THE COURT
26 JUNE 1958[1]

Société d'Électro-Chimie, d'Électro-Métallurgie et des Aciéries Électriques d'Ugine v High Authority of the European Coal and Steel Community

Case 11/57

Summary

1. *Procedure — Application for annulment — General decision — Undertaking as applicant — Misuse of powers — Admissibility*
   [*Cf. paragraph 1, summary in Case 10/57 of 26 June 1958*]

2. *Financial arrangements — Indirect means of action*
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3. *Fundamental objectives of the Community*
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   [*Cf. paragraph 4(a), summary in Case 8/57 of 21 June 1958*]

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4. *Financial arrangements — System of allocation — Direct action on production*
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In Case 11/57

between

SOCIÉTÉ D'ÉLECTRO-CHIMIE, D'ÉLECTRO-MÉTALLURGIE ET DES ACIÉRIES ÉLECTRIQUES D'UGINE, a limited company governed by French law, having its registered office in Paris, represented by its Vice-Chairman and Managing Director, René Perrin, assisted by Professor Jean Rault, Advocate at the Cour d'Appel, Paris, with an address for service in Luxembourg at the offices of the Chambre Syndicale de la Sidérurgie Française, 49 boulevard Joseph-II,

applicant,

1 — Language of the Case: French.

and

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Gérard Olivier, acting as Agent, assisted by André de Laubadère, Professor in the Faculty of Law, Paris, with an address for service in Luxembourg at its office at 2 place de Metz,

defendant,

Application for the annulment of Articles 3 (1) (b), 6 (3), 8 and 9 of Decision No 2/57 of 26 January 1957, published in the Journal Officiel No 4 of 28 January 1957, and, consequently, of Articles 4 (3), 5, 6 (1) and (2) and 7 thereof,

THE COURT

composed of: M. Pilotti, President, A. van Kleffens and L. Delvaux, Presidents of Chambres, P. J. S. Serrarens, O. Riese, J. Rueff, Ch. L. Hammes, Judges,

Advocate-General: M. Lagrange
Registrar: A. Van Houtte
gives the following

JUDGMENT

Issues of fact

1. — Facts

In Decision No 2/57 which, *inter alia,* extends the application of Decisions No 26/55 and No 3/56, the same arrangement provides for the equalization of the prices of imported ferrous scrap and domestic scrap and the effecting of economies in scrap. It requires, in addition to contributions at the basic rate, contributions at a supplementary rate imposed in terms of the proportion of scrap consumed in existing plant in excess of the amount of scrap consumed during a reference period in the past. In order to take account of all individual situations each undertaking is permitted to choose its reference period (six months from seven consecutive months between 1 January 1953 and 31 January 1957).

Article 8 of the decision imposes upon undertakings a gradually increasing contribution whilst Article 9 permits undertakings which have reduced the specific input of their plant or their production processes, to reduce or even completely to eliminate their contributions at the supplementary rate.

The *applicant* states that a system of allocation combined with penalties must allow those to whom it applies to avoid such penalties by their own actions. The system in question is discriminatory and unfair because it requires certain of those to whom it applies to choose between incurring the penalties or basically altering their industrial strategy. It is unusual and unfair for an additional charge to be imposed upon certain industries and not upon others as a result of a factual situation existing before the system was introduced, and which for geographical and technical reasons cannot be altered.

It should be noted that the Ugine works manufactures special alloy steel exclusively by electric furnaces charged with ferrous scrap and in addition with ferrous alloys. This undertaking wás modernized ten years ago and planned a 30% increase in production in the future which it took into consideration in calculating the profitability of the

investments made. The geographical situation of the undertaking precludes the use of liquid pig-iron and technical reasons rule out the use of solid pig-iron in its furnaces. The Moustiers works produces very low carbon stainless steel by means of ferro-chromium produced in the works. For both technical and geographical reasons it cannot use pig-iron.
The decision to set up the new Ardoise works was taken in 1955 and it was sited at Ardoise because of energy supplies, access routes and local supplies of lime for the production of ferro-chromium. Only ferrous scrap can be used for this works. It will in fact only be possible to put it into operation after February 1958; accordingly this undertaking will not be entitled to any reference consumption in respect of bought scrap. It will be required to pay the supplementary charge without being able to claim refunds.
The *defendant* replies that a general decision may affect certain individual interests. The High Authority effected a balance with those interests as was required, taking a broad view of the general interest of the Community. If all individual interests had been taken into account, it would have been impossible to arrive at a solution. Whilst it is true that certain steel works producing special steel are in practical terms unable to effect economies in scrap, they nevertheless benefit from higher selling prices for their steel in relation to the prices for ordinary steel and thus this charge is relatively light.

II — Conclusions of the parties

The *applicant* claims that the Court should:

annul Articles 3 (1) (b), 6 (3), 8 and 9 and, consequently, Articles 4 (3), 5, 6 (1) and (2) of Decision No 2/57; take official note that the applicant offers to submit both written evidence and the evidence of witnesses as to the genuineness of the facts upon which it relies in its application; as an alternative, order such measures of enquiry in this connexion as the court thinks fit; order the High Authority to bear the costs.

The *defendant* contends that the Court should:

'dismiss the proceedings instituted against Decision No 2/57 in that it does not involve misuse of powers affecting the applicant, with all the consequences thereof in law, in particular with regard to the settlement of fees, costs, and any other expenses.'

III — Submissions and arguments of the parties

A — *Admissibility*

1. Whether it is possible for a misuse of powers to have been committed affecting the applicant undertaking itself.

The *defendant* states that, in accordance with the case-law of the Court, for undertakings to allege misuse of powers such misuse must be directed against them or at least must adversely affect them. In the present case the misuse of powers was not directed against the applicant since Decision No 2/57 is a general decision adopted in the common interest of all the undertakings in the Community and the applicant does not allege that, when the High Authority adopted this decision, instead of pursuing an objective in the general interest, it really pursued a particular objective of its own. Since the applicant complains of the different effect of the application of the general rules in Decision No 2/57 depending on whether or not it is possible to effect economies in the use of scrap, it may to this extent be adversely affected by the provisions which it claims are illegal.
The *applicant* replies that as a producer of special steel manufactured exclusively in solid-charged electric furnaces it is impossible for it to effect the slightest economy in ferrous scrap by reducing its specific input reference so that the supplementary rate will of necessity constitute an unavoidable pecuniary penalty. Likewise, it will be unable to claim refunds. It will be unable to obtain any reference consumption in respect of its Ardoise works which were put into operation after 31 January 1958 and it will have to pay the higher supplementary rate. It follows from this that the alleged misuse of powers has certainly affected the applicant adversely.

2. Whether the submissions constitute complaints of misuse of powers.

The *defendant* states that four complaints have been put forward on the basis of Article 53 of the Treaty in relation to Articles 3, 54, 59 and 65 respectively of the Treaty. The complaint in relation to Article 65 is based upon a manifestly mistaken interpretation of the wording of Article 53. If the classic distinction between the concept of motive and that of object is applied to the remaining three groups in the application, they may be classified as follows:

(a) two complaints of misuse of powers, one in relation to Article 59 and the other in relation to Article 54;

(b) two complaints of infringement of the Treaty, one relating to Article 54 (the scope of the powers conferred by Article 53 with reference to Article 54) and the other relating to Article 3 (b), (c), (d), (e) and (g).

The *applicant* replies that although Article 53 (b) of the Treaty confers upon the High Authority power to make any financial arrangements this power is only conferred upon it in order that it may perform the tasks particularly set out in Article 3. Further Article 53 (b) requires that the relevant financial arrangements should be compatible with the Treaty, and in particular with Article 65. As soon as it is established that the High Authority, under the pretext of attaining an objective apparently in accordance with the tasks laid down in Article 3, was really pursuing objectives affecting the applicant which are expressly opposed to its tasks, it is thereby proved that the High Authority has committed a misuse of powers affecting the applicant, not an infringement of the Treaty.
With regard to the alleged confusion between the concepts of objective and of result the applicant replies that the admissibility of the application depends upon proof of a lawful interest and for this reason it is necessary to establish the damage caused in any proceedings for annulment based upon misuse of powers. It is justified in giving as the results the consequence of the contested measure to the extent to which those results reveal the true objective pursued by the author of the impugned measures. In the present case the applicant has put forward the actionable consequences of the decision complained of in order, first, to establish that the High Authority was of necessity aware of the damage which it would cause and, secondly, in order to show that it did not act in the common interest and thus that the High Authority, even if it did not act deliberately, at any rate through a serious lack of foresight or of care pursued an objective other than that for which the power to make financial arrangements was conferred upon it under the Treaty.

B — *Substance*

First complaint: The contested provisions of the financial arrangement pursue objectives contrary to the general objectives laid down for the activities of the High Authority.
The *applicant* states that the power conferred upon the High Authority by Article 53 (b) to make financial arrangements is confined by that provision itself within strict limits, since that power is only conferred upon the High Authority for the performance of the tasks set out in Article 3 and those arrangements must be compatible with the Treaty, in particular with Article 65 thereof. These constitute two kinds of limits. First, the financial arrangement made by the High Authority must be enacted in the common interest of consumers of ferrous scrap. Secondly, it must pursue an objective which is not incompatible with the specific objectives set out in Article 3 in relation to the activities and powers of the High Authority.
In the present case it cannot be disputed that those two limits have been exceeded. The High Authority argues in vain that the financial arrangement in question was made in the common interest of consumers of ferrous scrap. A mere remark in the statement of reasons does not constitute evidence, still less proof. A binding measure imposing a penalty on all manufacturers of special steel in respect of all new plant, especially when the measure affects a category of products which cover privileged requirements, cannot be considered as genuinely enacted in the common interest.

Moreover, the objectives of the contested measures are at variance with most of the specific objectives laid down in Article 3 for the activities of the High Authority.

(a) The principle of equal access to the sources of production (Article 3 (b)) is excluded from the High Authority's reasons since it:

has reduced to nil the reference consumption in respect of plant and manufacturing processes put into operation after 31 January 1958 (Article 6 (3) of the decision),
has imposed a supplementary rate in respect of increases in consumption (Article 3 (1) (b) and Article 8 of the decision),
has granted refunds in respect of reductions in the specific input reference of ferrous scrap (Article 9 of the decision).

(b) The establishment of the lowest prices (Article 3 (c)), the maintenance of conditions encouraging undertakings to expand and improve their production potential (Article 3 (d)) and the requirement to promote the orderly expansion and modernization of production (Article 3 (g)) are excluded from the reasons for the High Authority's action since they hamper the development of undertakings by measures which lead either to an increase in selling prices, in so far as the imposition of penalties in fact allows competitive prices to be obtained,
or, if that is not so, to a limited use of productive capacities.
Since, in order to effect economies in ferrous scrap, those measures are intended to penalize undertakings putting plant into operation after 31 January 1958, they also contradict the objectives of Article 65 (Article 6 (3) of the decision). They are more restrictive than is necessary for their purposes.

(c) Protection of employment (Article 3 (e)) is precluded from the reasons for the High Authority's action since through the contested measures it is hampering factories' production and causing unemployment or movement of workers.
The *defendant* replies that a charge of misuse of powers obtains if it is actually alleged that the High Authority pursued objectives other than those laid down for it by the Treaty. The arguments submitted in the application do not really call in question the objective pursued by the High Authority, rather the effects of the decision with regard to the applicant undertaking.
The defendant then criticizes the explanations put forward by the applicant regarding the general scope of Article 3 and concludes that no valid argument may be derived from it.
The defendant maintains that it has observed the provisions of Article 3 (b), (c), (d), (e) and (g).

(a) With regard to subparagraph (b) the applicant criticizes Article 6 (3), 8 and 9 of the contested decision which bring about the fixing of different prices for purchasers of ferrous scrap. Furthermore there is no reason why the financial arrangements had to ensure strictly uniform compensation since the discrimination consisted in exempting producers of special steel from the levy at the supplementary rate. The contested system does not involve an arbitrary distinction affecting a specified category of producers. Nor is it capable of distorting competition between categories of producers whose products, special steel on the one hand, and ordinary steel on the other, are not in competition with each other.

(b) With regard to subparagraph (c) it has by no means been established that, but for the contested system, the applicant undertaking would have obtained supplies of ferrous scrap more cheaply; there are good grounds for considering that the reverse would have been the case.

(c) With regard to subparagraphs (d) and (g) the objectives to which they relate cannot be isolated and considered apart from the context of the article as a whole. The objectives of Article 3 must be properly reconciled and the objective of subparagraph (a) takes precedence over the others.

(d) With regard to subparagraph (e) the gloomy prospects which the applicant holds out are purely hypothetical.

Second complaint: Misuse of powers arising

from the influence of the financial arrangement on investment.

The *applicant* states that a measure which requires a price to be paid in respect of new plant double that imposed upon industries which can provide grounds for granting a reference consumption manifestly tends to prevent the creation and operation of new works. The High Authority, through its recourse to the power conferred upon it by Article 53 (b), wished to avoid the formalities and limits which Article 54 places upon its actions with regard to investment.

The *defendant* replies that the contested decision did not have as its specific objective, or as a decisive reason, the influencing of investments, rather a regular supply to the Common Market at a reasonable price. As with all arrangements concerning prices, the system might lawfully and in accordance with the pursuit of the objectives of Article 3 (especially subparagraphs (d) and (g)) have effects with regard to the influencing of investments. The reduction to nil of the reference consumption in respect of plant put into operation after 31 January 1958 (Article 6 (3) of the decision) provides no basis whatever for a complaint of influencing investments. This provision does no more than give effect to the principle of supplementary taxation on increased consumption of ferrous scrap in relation to a reference period prior to Decision No 2/57. The High Authority granted a notional reference consumption in respect of plant put into operation in the course of the reference period selected by the undertakings and after this reference period, because it wished to make its system gradual and to avoid its harsh application at a specific date. No complaint can be made against the High Authority on the ground that it deferred the full application of its system by adding transitional provisions since the precise intention of these was to allow steel manufacturers to adjust to the new situation by seeking supplies on the market in pig-iron. The applicant wrongly complains that the High Authority exceeded the limits of the power conferred upon it under Article 53 and of trespassing upon subject-matter reserved for the procedures laid down in Article 54 because, as the defendant has already stated, indirect means of action on production and in particular the financial arrangements under Article 53 may properly involve consequences with regard to the influencing of investments.

Third complaint: Misuse of powers in that the financial arrangement was used for the purposes of allocation.

The *applicant* states that if it is technically impossible for manufacturers of special steels to effect the slightest economies in ferrous scrap the establishment of the supplementary rate and of the system of refunds cannot in such circumstances be considered as proper procedures for attaining the alleged objective and must rather be considered as measures of a financial or fiscal nature the real objective of which is to allocate products. It is clear that, although the influence exercised on the allocation of ferrous scrap through the arrangement relating to prices is indirect, it is none the less decisive. The principle of freedom of purchase becomes a mere cipher from the point where an important category of consumers are subjected to prohibitive prices involving an increase of one hundred per cent on the prices paid by competitors. The contested measures in fact set up a double market which is capable of preventing an important category of consumers from obtaining their supplies. This amounts to a measure of allocation and can only be carried out by recourse to Article 59 which contains essential guarantees for the undertakings.

The *defendant* replies that the complaint is unfounded. Although the arrangement is intended to affect quantities by means of prices, it cannot be considered as equivalent to a system of allocation. Further, its sole objective is to make increased consumption of ferrous scrap dearer in relative terms with regard to a reference period but it in no way prohibits such increases. So far as producers of special steel are concerned, ferrous scrap constitutes an extremely small element of the cost price.

Nor can the complaint be admitted with regard to misuse of procedure. A proper view of the concept of indirect means of action on production within the meaning of Article 57 required the High Authority to adopt the procedure for the financial arrangement laid down in Article 53 with regard to the

circumstances prevailing on the market in ferrous scrap at the time when it adopted the contested decision.

IV — Procedure

The application is in the appropriate form and was submitted within the prescribed period.

The instruments appointing the agents and lawyers of the parties were in order.
The written procedure followed the normal course. The statements of the parties, with their related annexes, were lodged within the prescribed periods and were duly served.

Law

A — Admissibility

According to the applicant's statutes, it constitutes a private undertaking governed by French law having as its object the production of steel within the territories referred to in the first paragraph of Article 79 of the Treaty. Accordingly it has capacity to institute proceedings against decisions and recommendations of the High Authority before the Court of Justice in accordance with the provisions of Articles 33 and 80 of the Treaty.
Pursuant to the provisions of the second paragraph of Article 33, the Treaty permits the undertakings referred to in Article 80 to institute proceedings for the annulment of general decisions of the High Authority which they consider to involve a misuse of powers affecting them.
Decision No 2/57 is a general decision establishing a principle having the force of law, which imposes generalized principles for its application and sets out the legal consequences thereof.
The applicant asserts that it was adversely affected by the contested provisions because of the extreme difficulty for it in effecting economies in ferrous scrap and, consequently, because it is obliged to pay the supplementary contribution if it increases its consumption of bought scrap. In this connexion it formally alleges that it has been affected by misuse of powers on one or more occasions and produces a relevant statement of reasons leading it to believe that there has been a misuse of powers on one or more occasions. The purpose of the arguments upon which it relies is to obtain a declaration that, when the High Authority adopted the contested decisions, it exercised the powers conferred upon it under Article 53 (b) of the Treaty for purposes other than those for which they were conferred upon it, both through serious disregard for certain of the objectives referred to in Article 3 and through the clear intention of attaining objectives specifically governed by Articles 54 and 59 whilst avoiding the special procedures laid down in those articles.
Consequently the application is admissible.

B — Substance

The High Authority has selected Article 53 as the legal basis of the scheme for the equalization of ferrous scrap which it has established. That article permits it

to intervene in connexion with the tasks assigned to it under the Treaty, in particular under Article 3 thereof.

Article 53 appears in Chapter II, entitled 'Financial Provisions', the other articles of which relate to the use of funds which the High Authority obtains through levies on production or by loans and it may accordingly be considered that the financial arrangements referred to in Article 53 are arrangements based on the transfer of resources, in particular arrangements in the nature of equalization or compensation. This interpretation is confirmed by the last paragraph of Article 62 which provides that certain equalization payments 'may ... be instituted as provided in Article 53'.

The equalization arrangements and refunds do not directly affect prices but rather the factors contributing to the formation of prices. In this way those factors, without preventing prices from being freely fixed, modify the level at which they are fixed. The financial arrangements provided for in Article 53 affect by such alterations in the level of prices the other characteristic features of the state of the market and in particular the supply of and demand for the relevant products. These arrangements thus constitute powerful and effective intervention procedures at the disposal of the High Authority, but are nevertheless 'indirect' within the meaning of Article 57 of the Treaty as distinct from the direct means of action through establishment of production quotas (Article 58) or the allocation of resources (Article 59).

The High Authority, by using the financial arrangements provided for in Article 53, is in a position to exercise a broad influence on the market in coal and steel whilst it must be borne in mind that Article 53 restricts the application of such arrangements to the procedures 'necessary for the performance of the tasks set out in Article 3 and compatible with this Treaty, and in particular with Article 65'. The express reference made to Article 3 does not release the High Authority from its duty to observe the other articles of the Treaty and in particular Articles 2, 4 and 5 which, together with Article 3, must always be observed because they establish the fundamental objectives of the Community. Those provisions are binding and must be read together if they are to be properly applied. These provisions can stand by themselves and accordingly, in so far as they have not been adopted in any other provision of the Treaty, they are directly applicable. If they have been adopted or are governed by other provisions of the Treaty words relating to the same provision must be considered as a whole and applied together. In practice it will always be necessary to reconcile to a certain degree the various objectives of Article 3 since it is clearly impossible to attain them all fully and simultaneously as those objectives constitute general principles which must be observed and harmonized as far as possible; on the other hand such financial arrangements must be instituted without infringing the provisions of Article 58 and of Chapter 5 of Title III of the Treaty.

Decisions prior to Decision No 2/57 were concerned to equalize the prices of imported ferrous scrap and domestic scrap. Decision No 2/57 continues this system but adjusts it and supplements it with new provisions intended to affect at the

same time the price of ferrous scrap and the total volume of purchases in order to encourage undertakings to effect economies in ferrous scrap in the interests of a regular supply to the market.
If the demand had over an extended period exceeded the supply of scrap it could have led to a 'serious shortage' for which the procedures laid down in Article 59 are appropriate. If the High Authority wished to avoid following those procedures—and the provisions of Article 57 require it to endeavour as far as possible to refrain from doing so—it could not avoid the need and the duty to apply the procedure prescribed in Article 53 (b), subject to observance of the conditions for its application.

1. *The complaint of misuse of powers with regard to Article 3 of the Treaty, that is to say that the objectives pursued through contested provisions of the financial arrangements are contrary to the general objectives laid down for the activities of the High Authority.*

(a) Pursuant to Article 53 (b) of the Treaty the High Authority may, with the unanimous assent of the Council, itself make any financial arrangements which it recognizes to be necessary for the performance of the tasks set out in Article 3. The exercise of the powers thus conferred upon the High Authority is subject to the conditions set out in Articles 2 to 5 concerning the establishment, administration and guidance of the Common Market.
Pursuant to Article 2 of the Treaty the Community has as its task to contribute to economic expansion, growth of employment and a rising standard of living in the Member States. The means prescribed for the attainment of those objectives consists in the establishment of a Common Market on the conditions laid down in Article 4 concerning the abolition of obstacles to trade. Pursuant to Article 2 the Community is obliged progressively to bring about conditions which will of themselves ensure the most rational distribution of production at the highest possible level of productivity while safeguarding continuity of employment and taking care not to provoke fundamental and persistent disturbances in the economies of Member States.
To those ends the Community must ensure on the market the establishment, maintenance and observance of normal conditions of competition and, subject to observance of the priorities laid down by Article 57 of the Treaty in relation to its means of action, it must, in accordance with the provisions of Article 5, 'exert direct influence upon production or upon the market only when circumstances so require'.
In pursuing the objectives laid down in Article 3 of the Treaty the High Authority must permanently reconcile any conflicts between those objectives considered individually and, when such reconciliation proves unattainable, must grant such temporary priority to one or other of them as appears necessary having regard to the economic facts or circumstances in the light of which, in carrying out the tasks entrusted to it under Article 8 of the Treaty, it adopts its decisions.

Pursuant to the provisions of Article 57 of the Treaty in the sphere of production, the High Authority is required to give preference to the indirect means of action at its disposal, in particular to intervention in regard to prices. As has previously been stated, such means of action must be regarded as including the financial arrangements provided for in Article 53 since they influence prices in particular through compensation for and correction of factors which contribute to their formation. Since those arrangements contribute to the formation of prices they alter the price-level on the market and thereby influence the effects which the price-level produces on the direction of production, and thus on the structure of the means of production. Such arrangements thus provide the High Authority with the means to modify the effects of 'normal competitive conditions' whilst ensuring, in accordance with the requirements of Article 5 of the Treaty, the maintenance and observance of these conditions. By making appropriate use of this powerful means of intervention the High Authority is largely capable, provided that the circumstances require it, of bringing about the required reconciliation between the objectives listed in Article 3 of the Treaty in carrying out the task with which it is entrusted under the Treaty.

The powers which have thus been conferred on the High Authority are however limited by the specific provisions set out in Title III of the Treaty. In particular these powers would be used for an objective other than their legal purpose if it appeared that the High Authority had applied them with the exclusive, or at any rate the decisive, purpose of evading a procedure especially prescribed by the Treaty in order to deal with the circumstances with which it is required to cope.

At the time when the contested decisions were adopted the market in ferrous scrap was widely recognized as being characterized by a severe shortage of Community supplies, by mounting difficulties in imports and by large-scale and rapid increases in the price of foreign scrap. This situation arising from those economic facts and circumstances cannot in any event be regarded as *prima facie* excluding intervention by the High Authority to counter the consequences at variance with the requirements of Article 3 of the Treaty which this situation might have involved. Furthermore the High Authority's appraisal of the situation in the light of which the contested provisions were adopted does not by itself show that the authors of the said measures were inspired by an unlawful motive.

Accordingly the Court does not consider that the circumstances were such as to rule out, at that time, action by the High Authority on the market in ferrous scrap with a view to affecting indirectly means of production using scrap.

(b) The purpose of the provisions contested in the present application was to make the contribution for the equalization of the prices of imported ferrous scrap progressively selective by increasing the rate applicable to the consumption of bought scrap above a given reference level and by graduating the charges thereby imposed in terms of a specific input coefficient for ferrous scrap in the installations and the manufacturing processes requiring scrap.

Furthermore the said provisions contain a set of transitional measures intended

to permit undertakings to adapt themselves progressively to the conditions thereby created for them, in particular the choice by each undertaking of its own reference period, the period of six months during which payment of the contribution at the supplementary rate is suspended, the graduated nature of the rate, the allocation of a reference consumption and a specific input reference for plant which began operations during the year following the entry into force of the decision together with the allocation of a specific input reference without a time-limit for all plant beginning operations after the expiry of this latter period. Through those measures the High Authority provided the scheme for the equalization of the prices of imported ferrous scrap, which it had previously established, with conditions intended to prevent a fall in the price of ferrous scrap resulting from equalization from encouraging producers in the Common Market to increase their consumption of scrap.
Thus defined the decisive aim of the contested provisions constitutes lawful indirect action, within the meaning of Article 57, applied to the market in ferrous scrap in order to ensure, bearing in mind the facts and circumstances then observed, regular supplies to the Common Market. The said aims are thus in accordance with the provisions of Article 3 (a) and the latter part of (d), the second paragraph of Article 2 and the third subparagraph of the second paragraph of Article 5 of the Treaty.

(c) Nevertheless consideration must be given to the question whether the measures taken are compatible with the rules in Article 3 (b), the beginning of subparagraph (d) and subparagraph (g) and the applicant alleges that the High Authority's adoption of the said measures constitutes serious disregard of these objectives.
Pursuant to Article 3 (b) of the Treaty the institutions of the Community are required, within the limits of their respective powers, to ensure in the common interest that all comparably-placed consumers in the Common Market have equal access to the sources of production; this provision constitutes a necessary objective for the action of the High Authority in the exercise of the powers conferred upon it by the Treaty. Failure to observe the principle of the equality of treatment of consumers in the matter of economic rules, as that principle has been described above, may constitute misuse of powers affecting the persons or classes of persons deliberately sacrificed.
Pursuant to a principle generally accepted in the legal systems of the Member States, equality of treatment in the matter of economic rules does not prevent different prices being fixed in accordance with the particular situation of consumers or of categories of consumers provided that the differences in treatment correspond to a difference in the situations of such persons. If there is no objectively-established basis distinctions in treatment are arbitrary, discriminatory and illegal. It cannot be alleged that economic rules are unfair, on the pretext that they involve different consequences or disparate disadvantages for the persons concerned when this is clearly the result of their operating conditions.

The supplementary rate established under Article 3 (1) (b) of the contested decision applies generally and entirely to any consumption of bought scrap in excess of that relating to a reference period. The discretion conferred upon the undertakings subject to the scheme themselves to select, within specially prescribed temporal limits, the period most favourable to them does not, however, mean that the criterion used for distinguishing between them thus loses its objective nature, without which it would appear arbitrary. Indeed the factual differences which this situation entails for undertakings stem from their dissimilar operating conditions and not from any legal inequality inherent in the decision.

The graduation of the contested supplementary rate laid down by the provisions of Article 8 is based exclusively on the successive periods for the application of Decision No 2/57. The graduation is thus general and absolute, objectively based upon the wish progressively to provide encouragement, by influencing prices, to steel undertakings consuming ferrous scrap to economize in using it so as to avoid its unconsidered exhaustion.

The refunds of the proportion of the equalization contribution calculated at the supplementary rate, which were established pursuant to Article 9 of the disputed decision, are granted on a purely objective basis, the reduction of the specific input coefficient of ferrous scrap for each type of plant and manufacturing process using that material. The varying effects which the application of that article produces on the persons concerned, by reason of varying operating conditions and technical problems which, for certain categories of plant, may reduce or even exclude entitlement to refunds cannot render the rule inequitable in law—which is excluded by the nature of the criterion adopted.

(d) Pursuant to Article 3 (d) and (g) of the Treaty the institutions of the Community, and particularly the High Authority in exercising the powers conferred upon it by Article 53 (b), are required to ensure the maintenance of conditions which will encourage undertakings to expand and improve their production potential and promote the orderly expansion and modernization of production and the improvement of quality. The High Authority refers to those legal objectives at the beginning of the disputed decision, the stated aim of which is to ensure regular supplies to the market in ferrous scrap and to encourage undertakings to save ferrous scrap without, however, making it more difficult to increase output capacity.

The applicant complains that the High Authority has seriously disregarded the objectives thus referred to by hampering, through the contested provisions, the development of certain methods of production. It must be considered whether the provisions indicate, in this respect, an unlawful motive or a serious lack of care amounting to failure to observe the purpose of the law and whether in this respect priority was perhaps accorded to certain lawful aims at the expense of certain others to an extent which is unjustified by the circumstances.

The attainment of the objectives referred to in Article 3 (d) and (g) of the Treaty cannot be pursued in isolation from and without regard to the other objectives laid down in the said article. The attainment of orderly expansion and the moderni-

zation of production may lawfully be sought within the framework of a general action on the basis of reconciling the objectives of Article 3, if necessary granting such priority to one or other of them as appears necessary having regard to the situation arising from the economic facts or circumstances observed at the time of the intervention.

(e) Furthermore the objectives laid down in Article 3 of the Treaty must be appraised as a whole and pursued exclusively in the common interest. The concept of the common interest referred to in Article 3, far from being restricted to the sum of the individual interests of coal and steel undertakings subject to the jurisdiction of the Community, considerably exceeds the scope of such interests and is defined in relation to the general aims clearly laid down in Article 2.
Consequently pursuit of the objectives prescribed in Article 3 does not rule out selective measures based in particular upon the nature of the means of production to be developed or created if it appears that economic circumstances and the reasonably foreseeable trend of market conditions call for such measures. This is certainly so when there are dangers of a serious shortage of one of the basic raw materials for the steel industry or if it appears necessary to adopt a policy of using resources rationally in order to avoid their unconsidered exhaustion. The distinctions which may consequently prove necessary to maintain conditions which will encourage undertakings to expand and improve their production potential and to promote its regular development nevertheless must be based upon purely objective criteria in accordance with the principle of equality laid down in the Treaty.
The provisions of Article 6 of the contested decision are intended progressively to encourage steel undertakings to use scrap as rationally as possible. To attain this the provisions alter the cost of financing the equalization of the prices of imported ferrous scrap both in terms of the nature of the plant and manufacturing processes and the date when operations were commenced, through the combined action of reference consumption and refunds granted in respect of relative economies in scrap. The graduated increase in the cost of ferrous scrap and the selective influence thereof on the cost price of steel products vary in terms of objectively determined quantitative and qualitative criteria. Consequently the contested measures constitute, with regard to the principle of non-discrimination, provisions encouraging undertakings to develop new capacities considered compatible with regular supplies of scrap for the steel industry and the orderly expansion of production.
The provisions of Articles 6 and 8 of the contested decision thus constitute a body of progressive rules without which the financial arrangement established by the said decision would forfeit its character of an indirect means of action in relation to production thereby rendering it unlawful with respect to the provisions of Articles 5 and 57.

(f) The 'indirect means of action' in relation to production prescribed in Article 57 are to be distinguished from the 'direct influence' referred to in the third subparagraph of the second paragraph of Article 5 not by the aims pursued but by the

methods appropriate to attain them. Indirect means of action, by affecting, especially as a result of the financial arrangements under Article 53, certain of the factors which play a part in forming prices, create conditions which encourage undertakings freely and willingly to choose the behaviour desired by the High Authority for the accomplishment of the tasks with which it is charged under the Treaty. On the other hand direct influence, such as the allocation of resources for which provision is made in Article 59, is not concerned with how producers would behave if they acted freely but directly prescribes, on pain of fines, as is stated in Article 59 (7), the behaviour which the High Authority considers necessary with regard to the situation with which the Treaty requires it to cope.

The two procedures, indirect and direct, are intended to modify the structures to which, unless modified by intervention, individual behaviour would give rise. The procedures thus both constitute procedures for economic intervention but the former create the right conditions to encourage producers freely to adopt the behaviour which the common interest, referred to in Article 3, requires of them whilst the latter impose upon undertakings in the same common interest behaviour other than that which they would be prompted to adopt by the actual circumstances.

The indirect means of action are identical in their effects and in the power of intervention which they confer but make it possible for all those participating in the market to retain their freedom of decision whilst direct influence requires the limitation, if not the abolition, of such freedom.

All the provisions of Article 6 of Decision No 2/57 are intended to make it possible for established situations to continue and to avoid the immediate and harsh resort to measures for the allocation of resources provided for in Article 59, in preference to which Article 57 prescribes indirect means of action. The provisions in particular with regard to 'reference consumption of bought scrap', 'specific input references', the period of exemption from contributions at the supplementary rate and the graduated nature of that rate are steps in accordance with the wish to respect that preference.

With regard to 'new plant' it is true that, subject to the refunds for which it may qualify inasmuch as Article 6, at the end, grants a 'notional specific input reference', the price of ferrous scrap with which they are charged will in principle be higher. The same is true of 'solid-charged electric furnaces' in respect of which it can scarcely be anticipated that technical developments will bring about a notable reduction in their specific input of ferrous scrap.

Nevertheless those findings do not affect the lawfulness of the system. In fact the lack of supplies and the increase in the price of ferrous scrap required the High Authority at one and the same time to encourage undertakings to reduce their consumption of ferrous scrap and to prevent the price of Community scrap from being fixed at the level of that of imported scrap. It was thus necessary to provide the equalization scheme with a supplementary contribution to counter the incentive to increase consumption of ferrous scrap which might have resulted from the fall in the price brought about by equalization.

Although the High Authority wished at the same time to 'promote a policy of using natural resources rationally and of avoiding their unconsidered exhaustion', an objective laid down in Article 3 (d) of the Treaty, it also had to take into account the conditions appropriate to various categories of consumers and thus modify the application of the supplementary contribution imposed on the latter in accordance with the variations in their consumption of ferrous scrap. This modification entailed the gradual elimination of the effects of equalization, or even in certain cases their abolition.

The contested scheme was thus intended above all to ensure a regular supply to the market and to promote a policy of using resources rationally. Nevertheless there are no grounds for asserting that, by according temporary priority to certain of the aims set out in Article 3, and consequently only partially reconciling all of the aims set out therein, the High Authority used the powers given it under the Treaty for purposes other than those for which they were conferred.

Since misuse of powers has not been established this complaint must be rejected.

2. *The complaint of misuse of powers with regard to Article 59 of the Treaty in that the financial arrangement was used for the purpose of allocation.*

The financial arrangement in the contested provisions does not constitute, with regard either to its form or to its effects, the system of allocation described in Article 59 and in Annex II. In certain economic circumstances and subject to certain procedures, those measures authorize the allocation in tonnages of raw material resources to the various categories of possible consumers. The procedures thus provided for consist exclusively in establishing consumption priorities and allocating resources. Such activities are directly and solely of a quantitative nature and are thereby distinct from all indirect action on production by means of prices without restriction of the volume of purchases. Article 58 itself, upon which the applicant relies, concerns the establishment of a system of production quotas or the regulation of the level of activity of undertakings by appropriate levies on tonnages exceeding a reference level set by a general decision. It is further necessary to note the difference between the measures prescribed in cases of manifest crisis (Article 58) where the dominant idea concerns direct levies on tonnages, and the measures prescribed in cases of serious shortage (Article 59), where the concept of direct allocation of available resources predominates.

Accordingly the financial arrangement contained in the contested provisions does not constitute a system of allocation which may be treated as equivalent in its essential characteristics to the arrangement under Article 59 and Annex II.

The establishment of the supplementary contribution and the refusal of a reference consumption for plant and manufacturing processes put into operation after 31 January 1958 do not have such compelling force that they amount in practice to a system of allocation. They rather constitute means of intervention inherent in the financial arrangement itself which necessarily, by its very nature, affects the field of competition and production. None of the arguments put forward consti-

tutes sufficient proof in law that in this respect the system may be treated as equivalent to the allocation for which provision is made in Article 59 and Annex II.
In the contested measures the High Authority was concerned to deal with a situation marked by extreme scarcity of ferrous scrap; in applying for this purpose the powers conferred upon it under Article 53 (b) of the Treaty it was acting in accordance with the provisions of Article 59 which provide that recourse shall only be had to the special procedure of quantitative allocation, even if a case of serious shortage has been duly found, if the means of action provided for in Article 57, amongst which the financial arrangements referred to in Article 53 must be classified, do not permit sufficiently effective action.
Furthermore, whilst the contested provisions are intended progressively to increase the cost of ferrous scrap in proportion to the quantities consumed and to graduate that cost so that it varies in terms of the type of plant and manufacturing processes using scrap, the applicant has failed to establish that the financial burden which this entails for the relevant undertakings is determined in such a way that the arrangement complained of must be considered as equivalent to a direct and specific arrangement for quantitative allocation or for regulating the level of their activity.
Furthermore, although the system set up does not constitute a system of allocation, even on the view that such a system might display certain characteristics of indirect allocation it would be necessary to prove that the objective of the contested decisions was to attain this allocation by means of Article 53 (b), through the expedient of a financial arrangement and contrary to the stated objective of effecting economies in ferrous scrap and ensuring a regular supply of scrap to the market, or else, to prove that the High Authority had been motivated by a wish to evade Article 59 or that, through a serious misconception, it had failed to recognize that the contested arrangement amounted to an arrangement under Article 59. Since this has not been sufficiently proved in law misuse of powers has not been established.

3. *The complaint of misuse of powers with regard to Article 54 of the Treaty, by the influence of the financial arrangement on investments.*

Article 54 of the Treaty confers upon the High Authority certain powers in coordinating investment programmes and in providing financial assistance in carrying out these programmes. Those powers must be exercised within the framework of the general objectives laid down in Article 46. Within such limits the powers are applied by the publication of programmes of general guidance in accordance with the common interest and by formulating individual opinions on the plans submitted to it by the undertakings.
The abovementioned provisions in no way impede the adoption of measures in accordance with the provisions of Articles 3, 5, 53 (b), 57 and 59 of the Treaty, taken together, the application of which may influence investments planned by undertakings. In particular the rules concerning prices laid down in Article 61 of

the Treaty and, above all, the financial arrangements referred to in Article 53 (b), which the High Authority is entitled to use as an indirect means of action on production, entail by their nature results capable of affecting the plans of producers, and in particular their investment plans. It is consequently impossible to complain that the contested provisions, which are in accordance with the provisions of Articles 3 and 53 (b) read together, are vitiated by misuse of powers with regard to Article 54. The applicant has completely failed to establish that the High Authority's sole, or at any rate principal, purpose in having recourse to the contested provisions was to evade the specific procedures prescribed in the said article. Consequently the complaint of misuse of powers with regard to Article 54 must be dismissed.

Costs

Under Article 60 of the Rules of Procedure of the Court the unsuccessful party shall be ordered to bear the costs. In the present case the applicant has been unsuccessful with regard to the substance of the case and the defendant has been unsuccessful as regards admissibility. In accordance with the second paragraph of the said article the applicant must thus be ordered to bear four-fifths of the costs of the proceedings and the defendant to bear one fifth.

Upon reading the pleadings;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 2, 3, 4, 5, 33, 46, 47, 48, 53, 54, 57, 58, 59, 65 and 80 of the Treaty and Annex II thereof;
Having regard to the Protocol on the Statute of the Court of Justice;
Having regard to the Rules of Procedure of the Court of Justice and the rules of the Court on costs,

THE COURT

hereby:

Declares that the application is admissible but unfounded and consequently dismisses the application for the annulment of the provisions contained in Articles 3 (1) (b), 4 (3), 5, 6, 8 and 9 of Decision No 2/57 of the High Authority dated 26 January 1957;

Orders the applicant to bear four-fifths of the costs of the proceedings and the defendant to bear one fifth thereof.

Pilotti van Kleffens Delvaux

Serrarens Riese Rueff Hammes

Delivered in open court in Luxembourg on 26 June 1958.

M. Pilotti
President

L. Delvaux
Judge-Rapporteur

A. Van Houtte
Registrar

OPINION OF MR ADVOCATE-GENERAL LAGRANGE

(see p. 288)