3. In order to define the general scheme and the exact scope of the first paragraph of Article 47 there is absolutely no need to resort to the provisions of the fourth paragraph of Article 86 of the Treaty, the aim of which is in no way define the extent of the power to obtain information and to make checks but solely to make available to the High Authority the compulsory powers afforded by national revenue laws for the direct and compulsory execution by its own officials of inspections capable of affecting the area of individual liberty and departing from the principle of the inviolability of private premises.

4. The exercise of the right of the High Authority to make checks must in principle be confined to the activities of undertakings in the coal- and steel-producing sectors.

However, the High Authority may claim a right to inspect the whole administration of an undertaking which is only partly concerned with production governed by the provisions of the ECSC Treaty, in order to ensure that the division between those sectors of production which are subject to the Treaty and those which are not is correct and that there is no discrepancy between the accounts of the two sections which might disclose a violation of the Treaty.

5. The first paragraph of Article 47 does not require the High Authority to indicate precisely before the checks are made the points to which they refer.

The need for the information required by the High Authority must be shown clearly in the decision but, in this respect, the aim pursued may constitute the sole criterion.

ACCIAIERIA E TUBIFICIO DI BRESCIA, a joint stock company, having its registered office at Brescia, represented by its Chairman, Dandolo Francesco Rebua, assisted by Cesare Grassetti, Professor at the Faculty of Law of the University of Milan, Advocate of the Milan Bar and the Corte di Cassazione, Rome, with an address for service in Luxembourg at the office of Guido Rietti, 15 boulevard Roosevelt,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Agent, Dr Mario Berri, Legal Adviser to the High Authority, assisted by Antonio Sorrentino, Advocate at the Corte di Cassazione, Rome, with an address for service in Luxembourg at its offices, 2 place de Metz,

defendant,

Application for the annulment of the decision of the High Authority of 15 April 1959 concerning the carrying out of an inspection at Acciaieria e Tubificio di Brescia, S.p.A., Via Zara 12, Brescia,

THE COURT

composed of: A. M. Donner, President, L. Delvaux, President of Chamber, O. Riese, Ch. L. Hammes (Rapporteur) and N. Catalano, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts may be summarized as follows:

The Acciaieria e Tubificio di Brescia company is an undertaking whose production is mixed.

In its 'Sider' works it produces iron and steel, whilst in its 'Tubificio' works it manufactures engineering equipment (principally penstocks for hydroelectric installations).

Although under the same management these two branches of production are quite separate as regards plants, manufacturing processes, sources of supply and customers.

In November 1958 an inspector of the High Authority with a written order arrived at the registered office of the applicant company in order to carry out an inspection of its production, terms and conditions of sale and turnover by auditing its books and accounts.

The undertaking submitted to the inspector a large number of business books and accounting documents but refused to show him certain other documents, in particular the profit and loss account. This refusal was based on the fact that the latter documents concerned the applicant company's engineering production which, unlike its iron and steel production, does not fall within the province of the High Authority.

By a letter dated 5 February 1959 the High Authority requested the applicant to produce to its inspectors at their next visit 'all the information and documents which they might need in order to perform their duties'.

In a letter dated 12 February 1959 the applicant again refused to produce the documents concerning its engineering operations.

On 15 April 1959 the High Authority adopted the contested decision which was notified to the applicant by letter dated 30 April and delivered on 5 May.

The operative part of this decision provides that the applicant 'shall be bound, during normal working hours, to provide the inspectors of the High Authority instructed by it to carry out the inspections referred to in the recitals to this decision with all the information necessary to enable them to perform their duties, and, for that purpose, to make available to them all the books and accounts of the company and in particular invoices, records of bank transactions and the constituent elements of the profit and loss account, such as the sales account and the charges account'.

On 8 June 1959 Acciaieria e Tubificio di Brescia lodged an application at the Court Registry for the annulment of the individual decision of the High Authority of 15 April.

II — Conclusions of the parties

The applicant claims that the Court should annul the decisions of the High Authority of 15 April 1959 concerning an inspection to be carried out at the company and that the High Authority should be ordered to bear the costs.

The High Authority contends that the Court should dismiss the application and order the applicant to bear the costs.

III — Submissions and arguments of the parties

As the applicant has not adhered to the provisions and nomenclature used in Article 33 of the ECSC Treaty and as the various arguments put forward by each party amount together to a general discussions of the powers to obtain information and carry out inspections conferred on the High Authority by the ECSC Treaty (in particular, by Articles 47 and 86) which includes and deals with the fairly specific submissions put forward by the applicant, the submissions and arguments of the parties may be summarized as follows:

A — Infringement of the Treaty

(1) *The part of the decision concerning information*

The *applicant* refers to the subject-matter of the contested decision and maintains that the part of that decision, both in the recitals in the preamble to and in the operative part, which requires it to provide the inspectors of the High Authority with 'all the information necessary to enable them to perform their duties' is imprecise and without definite subject-matter, in that it does not show what information is sought.

The *defendant* replies, first, that the recitals in the preamble to the contested decision indicate *inter alia* that the purpose of the inspection is:

to draw up the total of sales effected in disregard of the provisions of Chapter V of the Treaty, or decisions taken thereunder within the meaning of Article 64 of the Treaty;

to establish, where appropriate, the annual turnover of the undertaking in accordance with Articles 47 and 82 of the Treaty.

The High Authority points out that as it does not have 'the gift of prophecy' it could not indicate *a priori* the sales lawfully or unlawfully effected by the undertaking or the volume of its business.

It considers, however, that the contested decision shows clearly the information involved in this instance.

As the *applicant* replies that its complaint does not concern the aims of the decision but rather its subject-matter, that is, the specific content of the request for information, the *defendant* replies that the purpose of an inquiry necessarily delimits its subject-matter.

More generally, the *defendant* considers that the contested decision does not lack subject-matter since it is intended to record the applicant's refusal to enable the officials of the High Authority to perform their duties, to point out this obligation formally and, in the case of a persistent refusal, to enable the sanctions provided for in the third paragraph of Article 47 of the Treaty to be applied.

The defendant maintains that the scheme laid down by the Treaty is as follows: under the first paragraph of Article 47 undertakings are bound to allow checks and inspections to be carried out on request by inspectors with a written order. In the case of a refusal the High Authority may, under the third paragraph of Article 47, adopt a decision which takes note of this refusal and enables sanctions to be applied.

The first paragraph of Article 47 of the Treaty confers on the High Authority a general power of investigation which is subject to no limitations or conditions regarding the manner of its exercise and which corresponds to a duty imposed on the undertakings by law.

The third paragraph of Article 47 provides for a decision to be taken by the High Authority only where a failure to fulfil this obligation forces it to apply penalties.

In this instance the duty to provide information at the request of the High Authority stems directly from the Treaty without any need for such request to be set out in an *ad hoc* decision.

The *applicant* interprets the provisions of the Treaty in an entirely different way.

It interprets the third paragraph of Article 47 to mean that the High Authority must adopt a reasoned decision setting out the grounds on which the request for information is necessary and specifying the information which the undertaking must provide and that this decision is to be adopted before any investigation is made and, therefore, before any sanction is applied.

Under the Treaty the decisions of the High Authority are not in the nature of penalties but rather of rules. The High Authority must therefore first lay down the rules to be observed; only subsequently may it apply sanctions where they are appropriate.

In this instance, the duty to provide information can only arise when the undertaking is informed of an earlier decision setting out the facts and giving the reasons upon which it is based. No infringement may occur before that moment. Thus, the contested decision is not of the mandatory nature which the High Authority attributes to it; on the contrary, it is a decision which contains a request for information. It must therefore indicate the information which is required. As this essential indication is not given the contested decision is without subject-matter.

The *defendant* counters that interpretation with the argument that its effect would be to jeopardize the performance of the difficult and complex tasks with which it is entrusted.

Furthermore, it would not be in accordance with the Treaty.

The obligations on undertakings in fact stem directly from that Treaty.

The Treaty confers on the High Authority a supervisory power, which includes an unrestricted power to make investigations, and does not oblige it to adopt a previous reasoned decision specifying the need for the investigations and their content and scope.

Finally, a precise definition of the subject-matter of the information is inconsistent with the power given in the fourth paragraph of Article 86 of the Treaty for officials of the High Authority to act in the same way as national revenue officials, that is, with the widest power of investigation.

(2) *The part of the decision concerning the checks*

The *applicant* considers that, in so far as it requests it to make available 'all the books and accounts of the company, in particular invoices, records of bank transactions and the constituent elements of the profit and loss account, such as the sales account and the charges account', the contested decision infringes the Treaty.

In this respect it maintains that the right to have any necessary checks made, which is conferred on the High Authority by the first paragraph of Article 47 of the Treaty, only concerns information previously obtained and then only in case of necessity. A check or inspection assumes that information has been previously requested, that it has been obtained and that, in individual cases, it is considered necessary to check or audit it.

The applicant maintains that the argument that the information must be given before the check is carried out is simply one of logic: a check can only be made if there is something to check. The very concept of checks implies that they are subject to the obtaining of information.

In addition, the check must be necessary. The necessity does not exist *a priori*: the High Authority may obtain information which it will not be necessary to check.

Article 47 of the Treaty regards the information as the primary source of knowledge and one which is subject to a single limitation: it must be necessary in order for the High Authority to carry out its tasks. The checks, on the other hand, are a secondary source of knowledge. As their purpose is to verify the information they are subject to two limitations: first, they must be necessary to enable the High Authority to carry

out its tasks; secondly, it must be necessary to verify the information obtained. The Treaty does not assume bad faith on the part of undertakings.

For its part, the fourth paragraph of Article 86 of the Treaty is an implementing provision as regards the necessary checks referred to in the first paragraph of Article 47. It cannot increase the scope of the rule laid down by Article 47. The inspection is thus a means of carrying out checks. It cannot constitute a means of obtaining information and does not give the High Authority any direct power of inquiry.

Thus, no provision of the Treaty grants the High Authority a direct right of inspection or control.

The contested decision therefore reverses the system set up by the Treaty, since it seeks to have the information obtained and the checks made simultaneously.

The *defendant* interprets the Treaty in an entirely different way.

It considers that the subdivision of the powers of inquiry of the High Authority under Article 47 of the Treaty into power to obtain information and the power to have checks made does not create a hierarchy or an order of precedence. The two sentences in the first paragraph of Article 47 have equal weight and one is not subordinate to the other.

The High Authority may carry out such inspections or checks as are necessary not only to assure themselves that the information obtained is correct but also to obtain the information itself. Thus, the checks may precede the obtaining of information and may even be a source of information.

The obtaining of information and the checks are two independent methods which are open to the High Authority in carrying out its tasks. When using its discretionary power in its choice of method, the High Authority may employ one or the other and may use them alternatively, together, or successively.

The fact that it is entitled to make use of sources of information of all types and that the information may come not only from the undertaking concerned itself but also from third parties appears to the defendant to confirm this interpretation.

Furthermore, the defendant maintains that the inspection provided for in the fourth paragraph of Article 86 of the Treaty expressly includes investigations as a means of performing the duties imposed upon undertakings. The defendant maintains that this action comes within the sphere of sanctions, that is, a sphere which is akin to that of the criminal law in which the power of inquiry is a constituent of the power to determine what is unlawful. For this reason Article 86 gives the officials of the High Authority the rights and powers granted by the laws of the Member States to their national revenue officials. The inspectors of the High Authority may exercise in Italy the powers granted to the tax authorities. The powers of investigation of the latter are in fact very wide.

(3) *The decision considered as a whole*

The *applicant* maintains that it is a company whose production is mixed and that although its iron and steel production is within the province of the Community, its engineering production falls outside.

The contested decision orders it to provide all the necessary information and to produce all the books and accounts of the company, which inevitably includes those which concern its activities other than the production of iron and steel.

The power to obtain information and to have checks made (Article 47) and the power of inspection (Article 86) must remain within the framework of the performance of the tasks assigned to the High Authority. The exercise of these powers may only concern products which fall within the province of the High Authority.

The High Authority is thus attempting, by means of the contested decision, to extend its powers beyond those provided for in the Treaty.

The *defendant* freely admits that the books and accounts which may be used by its inspectors in their inquiries are only those which concern the iron and steel industry.

However, it considers that its inspectors are entitled, first, to examine all joint books in order to extract from them any factors concerning the iron and steel production of the undertaking and, secondly, to check whether books concerning its production of iron and steel have not been included intentionally or in error in the books which the undertaking maintains concern only its engineering production. The High Authority considers that it must be able to verify that the accounts which the undertaking has chosen to make available for inspection are appropriate.

B — Infringement of essential procedural requirements

(1) *The part of the decision concerning the information*

The *applicant* maintains that the part of the contested decision which deals with the information is vitiated because of the absence of grounds, in that it does not set out the reasons why the request for information is necessary. The mere reference to the 'information necessary to enable them to perform their duties' (that is, the duties of the inspectors), which is simply a repetition of the terms of the first paragraph of Article 47 of the Treaty, does not fulfil the duty to state the reasons for decisions, as imposed on the High Authority by Articles 5 and 15 of the Treaty and as defined by the Court.

The *defendant* considers, on the other hand, that sufficient reasons are given for the contested decision. First, since reference to the information must enable a check to be made that the provisions of the Treaty governing competition and prices are being observed, it gives exhaustive reasons for the existence of a need for the request. Secondly and more importantly, the 'preventive' purpose of the contested decision is to take formal note of the refusal of the undertaking to comply with the request of the High Authority. Thus, its duty to give a statement of reasons made it necessary for the High Authority to adopt a formal decision so as to confirm its to the applicant to acknowledge its power of inspection and not to prevent checks being made by its inspectors.

All of the foregoing follows clearly from the contested decision.

The *applicant* questions whether the purpose of the contested decision could have been that which the High Authority seeks to attribute to it, since a request for information only gives rise to a duty on the part of the undertaking after a decision has been adopted by the High Authority. In these circumstances a refusal to comply with a measure cannot be unlawful before a decision to that effect has been adopted.

The applicant considers that at all events the grounds for the decision are either insufficient or erroneous and points out that a mistake as to the grounds is equivalent to an absence of grounds.

The *defendant* maintains that the purpose of the contested decision was to recall the existence of an obligation on the undertaking and that a statement of reasons recalling the origin of that obligation satisfied the provisions of the Treaty.

(2) *The part of the decision concerning the checks*

As regards the checks the *applicant* puts forward the arguments based on the infringement of an essential procedural requirement with regard to the information.

It maintains that the High Authority should have given the reasons why it was necessary to check the information. If this duty is not fulfilled sufficient reasons have not been given for the decision.

In accordance with its interpretation of Article 47 of the Treaty, the *defendant* maintains that the purpose of the contested decisions is different from that attributed to it by the applicant. Its purpose is to recall the existence of an obligation on the undertak-

ing. Its reference to the checks which are necessary in relation to the rules governing competition and prices constitutes a sufficient statement of the reasons for the decision.

(3) *The decision considered as a whole*

The *applicant* maintains again that the contested decision infringes an essential procedural requirement, as the reasons given for it are vitiated on the grounds of error and inappropriateness.

Contrary to the statements made in the recitals of the preamble thereto, the accounts of an undertaking whose production is mixed are separable. It is incorrect to claim that if the High Authority does not have a power of inspection covering all the accounts and books of the company it is not in a position to carry out the tasks entrusted to it by the Treaty.

Although its accounts are consolidated in the form of a single balance sheet, an undertaking whose production is mixed is none the less able to arrange and divide up its accounts in such a way as to provide clearly and faithfully, in respect of each sector of its production, all the necessary information, in particular as regards receipts and production costs, and the examination and inspection of one sector does not necessarily involve the examination and inspection of all the others. This is also true as regards all the documents on which the accounts are based (for example, correspondence and statements of account).

The *defendant* considers that the checking of accounts which are entirely independent and separate for each branch of production can only be a consequence (*posterius*) of an inspection carried out by the High Authority and not an *a priori* and unverifiable assertion (*prius*) on the part of the undertaking which is binding on the High Authority.

The *applicant* argues from the fact that in its statement of defence the High Authority does not formally dispute that the data are divisible in order to show that this is itself evidence of the inaccuracy and, thus, of the inadequacy of the statement of reasons, since the contrary was stated in the recitals of the preamble to the contested decision.

The *defendant* considers that if its interpretation of the scheme laid down by Article 47 of the Treaty is accepted the complaint that insufficient reasons were given for the decision is automatically refuted.

C — *Misuse of powers*

The *applicant* maintains that the High Authority attempts to use the contested decision to turn an inspection, which may sometimes be expedient or even necessary, into a procedure which is inquisitorial in nature.

It is therefore acting in order to achieve an aim which is outside the scope of the Treaty. By using its powers for a purpose other than that for which they have been conferred on it the High Authority is misusing its powers.

The *defendant* disputes the claim that it has exceeded its powers or used them for a purpose which is outside the scope of the Treaty.

IV — Procedure

The procedure, which includes an application by the applicant for the adoption of an interim measure to suspend the operation of the decision, which application was dismissed by an order of the President of the Court dated 26 June 1959, followed the normal course.

Grounds of judgment

I — Procedure

The application has been introduced in due form and within the prescribed time-limit.

Neither the defendant nor the Advocate-General has contested the admissibility of the application and no such question has been raised by the Court.

II — Substance of the case

A — The infringement of the Treaty

1. The applicant claims, first, that the decision is 'absolutely imprecise and without definite subject-matter', in that neither the recitals in the preamble thereto nor the operative part indicate the information it is asked to provide or explain why it is necessary in this particular case and that this constitutes an infringement of the Treaty.

The ground of complaint refers in this case to the fact that the decision orders the undertaking to provide information but does not set out precisely its specific subject-matter and content or, in addition, why such information is necessary. The applicant seeks to draw a distinction between these elements and the objective pursued which, it maintains, is insufficiently clearly stated in the decision and thus cannot constitute the necessary legal basis for it.

2. Secondly, more generally, the applicant puts forward the same ground of complaint in order to deduce from the failure to satisfy the conditions to which any measure of investigation is subject under the first paragraph of Article 47 of the Treaty, that is, a preliminary decision setting out the reasons why a request for information is necessary and specifying and defining the information required, that there has been an infringement of the Treaty. Such information, it claims, may only subsequently be checked and, if necessary, the penalties referred to under the third paragraph of the same article may be imposed if it is refused or inaccurate.

3. The second of these grounds of complaint must be examined first.

By providing in a single section the two propositions that 'The High Authority may obtain the information it requires to carry out its tasks. It may have any necessary checks made', the first paragraph of Article 47 establishes, first the duties of undertaking to provide information and, secondly, the extent of the inquiries, which may be made at the same time. Nothing in the wording of this provision allows one to infer from it the implied provision that a preliminary decision is to be adopted before any check is made.

In fact, although an inspection only implies an examination as to the accuracy of the information provided, the check provided for in Article 47 applies not only *generaliter* to all the inquiries which the High Authority is entitled to make in order to carry out its tasks which go beyond the imposition of levies or of other parafiscal charges, the institution of proceedings for violations of the Treaty and the imple-

menting decisions adopted thereunder, but also to its many duties of obtaining information, for example, under subparagraphs (1) and (5) of the third paragraph of Article 46 of the Treaty.

However, as the task of collecting information referred to in the first paragraph of Article 47 is neither defined nor limited by that paragraph, it must be accepted that, if the undertakings consider that the activities of the officials of the High Authority exceed either their terms of reference or the jurisdiction of the Community, they may request that no information be gathered or checks be made before a decision is adopted in favour of one of the differing points of view.

Furthemore, in this instance the High Authority acted in accordance with these principles by specifying in the contested decision the applicant's duty to provide the information and to allow the checks to be made as soon as the dispute arose as to the extent of the powers of its officials.

Therefore, to define the general scheme and the exact scope of the first paragraph of Article 47 there is absolutely no need to resort to the provisions of the fourth paragraph of Article 86 of the Treaty, the aim of which is no way to define the extent of the power to obtain information and to make checks but solely to make available to the High Authority the compulsory powers afforded by national revenue laws for the direct and compulsory execution by its own officials of inspections capable of affecting the area of individual liberty and of departing from the principle of the inviolability of private premises.

It follows from the foregoing considerations that there is nothing in the letter, spirit or aim of the first paragraph of Article 47 to prohibit information being obtained and a check being made at the same time.

There has thus been no infringement of Article 47 and the applicant cannot succeed in his claim that the information must be obtained and the check made in two distinct and successive stages according to an order of priority which is not laid down in the text, provided of course that it is necessary for the checks to be made.

4. After this definition of the legal basis for the decision in question it is appropriate to examine the first ground of complaint, in which the applicant claims that the decision is imprecise and lacks definite subject-matter since the first paragraph of Article 47 requires the High Authority to give a prior and precise indication of the facts to which the checks apply and not only of the purpose for which they are intended.

The High Authority must of course give reasons for its decision and in the absence of any legal grounds for it, the terms of the Treaty are infringed. However, as the Court has just held, checks carried out by the High Authority when obtaining in-

formation may guide its inquiries and the subject-matter of such inquiries could not be defined in detail in the statement of reasons.

Furthermore, the need for information required by the High Authority must emerge from the decision with certainty.

In view of this it is only the object in view which must serve as the criterion and not an *a priori* statement of the results expected which, drawn up unilaterally and without knowledge of the facts, may change by reason of the checks when they are carried out.

The Court finds that the statement of reasons for the decision in question and its operative part set out in sufficient detail for the purposes of law all the elements of fact which justify its conclusions.

The two grounds of complaint examined above are therefore unfounded.

5. As regards the submission that the High Authority violated the Treaty and exceeded its powers by seeking to have checks made on the applicant's entire iron and steel and engineering production, thereby encroaching on an area not covered by the provisions of the ECSC Treaty, it must be noted that the exercise of the High Authority's right to have checks made must in principle be confined to the coal and steel production of the undertakings.

Therefore, as long as the administrative organization and, in particular, the accounts of the undertakings, are based upon a clear division between those sectors of production which are subject to the ECSC Treaty and other sectors of production, the High Authority ought not in principle to extend its checks beyond the coal or iron and steel sectors.

On the other hand, the High Authority must assure itself that such a division in fact exists and that it has not been falsified intentionally or as the result of an error. For this purpose it may claim a right to inspect the whole administration of the undertaking.

Furthermore, even if the division proves to be correct, the High Authority must be able to complete its inquiries by also inspecting that part of the administration which is concerned with the production which is not subject to the Treaty, in order to investigate whether there is any discrepancy between the accounts of the two sections which might disclose a violation of the Treaty.

Although the High Authority may have been too positive in the fourth recital to its decision, when it stated that the accounts of an undertaking are indivisible, this cannot invalidate the decision adopted in this instance which, as is shown by the

earlier correspondence between the parties, seeks to check whether factors concerning the production of iron and steel are not to be found in the part of the accounts which deals with the undertaking's engineering production.

Furthermore, it is not necessary to restrict the power of the High Authority to examine all the accounts of an undertaking whose production is mixed on the ground that it may divulge information which is harmful to such undertakings since, in the light of the duty of professional secrecy imposed on the inspectors of the High Authority, no vital interest of the undertakings is likely to be adversely affected by such a general examination.

Moreover, not only do the provisions of the fourth paragraph of Article 47 provide a safeguard for the interests of the undertakings, but they also give them a right to compensation for any damage which may result from indiscretion on the part of the officials of the High Authority.

This submission is therefore unfounded.

B — The infringement of essential procedural requirements

1. Contrary to the complaint made by the applicant and although the decision is imperfectly formulated as regards the need for the request for information, sufficient reasons are given for the decision, since the mere reference to the performance of its tasks by the High Authority is supplemented by the statement of the purposes for which the information was intended.

2. For the same reasons it cannot be held that insufficient reasons were given for the checks ordered to be carried out.

3. The arguments put forward in support of the complaint that the statement of reasons for the decision is vitiated on grounds of 'error and inappropriateness' and therefore infringes essential procedural requirements thus amount to the complaint of infringement of the Treaty which has already been dismissed above and there is no longer any need to consider them again in this new form.

C — Misuse of powers

The applicant wrongly maintains that the High Authority sought, by means of the contested decision, to transform the right to obtain information and, in particular, to have checks made, into a procedure which was inquisitorial in nature, in order to extend its powers beyond those laid down by the Treaty and that in this way it pursued an aim which it was not entitled to pursue under the Treaty.

This argument is not pertinent, since it fails to make clear what objectives outside

the scope of the Treaty the High Authority is allegedly trying to attain. Furthermore, it is not supported by any evidence and no evidence has been offered.

It must therefore be rejected.

Costs

Under the terms of Article 69 (2) of the Rules of Procedure of the Court of the European Communities the unsuccessful party shall be ordered to pay the costs.

In this instance the applicant has been unsuccessful both in his submissions in the application for the adoption of interim measures and in the main action.

The applicant must therefore be ordered to pay the costs of the section.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 5, 15, 33, 46, 47, 64, 82 and 86 of the Treaty establishing the European Coal and Steel Community
Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

hereby:

1. **Dimisses the application as unfounded;**

2. **Orders the applicant to pay the costs of the action, including those of the application for the adoption of interim measures.**

Donner Delvaux
Riese Hammes Catalano

Delivered in open court in Luxembourg on 4 April 1960.

A. Van Houtte — A. M. Donner
Registrar — President