JUDGMENT OF THE COURT
3 October 1985 *

In Case 214/83

Federal Republic of Germany, represented by M. Seidel, Ministerialrat at the Federal Ministry for the Economy, Bonn, and A. Deringer and J. Sedemund, Rechtsanwälte, Cologne, acting as Agents, with an address for service in Luxembourg at the Embassy of the Federal Republic of Germany,

applicant,

supported by

Wirtschaftsvereinigung Eisen- und Stahlindustrie, whose registered office is in Düsseldorf, represented by D. Knopp, Rechtsanwalt, Cologne, with an address for service in Luxembourg at the Chambers of J. Loesch,

intervener,

v

Commission of the European Communities, represented by its Legal Adviser, N. Koch, and M. J. Jonczy, a member of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of M. Beschel, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that Commission Decisions Nos 83/391/EEC, ECSC, 83/393/ECSC, 83/396/ECSC and 83/399/ECSC of 29 June 1983 whereby the Commission authorized the Belgian, French, Italian and United Kingdom Governments to grant aid to certain steel producers (Official Journal L 227, pp. 1, 14, 24 and 36) are partially void,

* Language of the Case: German.

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco and O. Due, Presidents of Chambers, P. Pescatore, T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot and R. Joliet, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: H. A. Rühl, Principal Administrator

after hearing the Opinion of the Advocate General delivered at the sitting on 23 May 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By application received at the Court Registry on 22 September 1983, the Federal Republic of Germany brought an action under the first paragraph of Article 33 of the ECSC Treaty in which it sought a declaration that Commission Decisions Nos 83/391, 83/393, 83/396 and 83/399 of 29 June 1983 on aid which the Belgian, French, Italian and United Kingdom Governments plan to grant to the steel industry or to certain steel producers (Official Journal L 227, pp. 1, 14, 24 and 36) are void.

2 In its reply the applicant reformulated its application, asking the Court merely to declare the contested decisions partially void. According to its reformulated application, the applicant claims that the Court should declare the contested decisions void:

(1) principally, in so far as the four decisions find compatible with the Common Market aid which is not demonstrably essential in order to implement the planned restructuring of the steel industry in the four Member States concerned;

(2) secondarily, in so far as the amount of aid which the four Member States are authorized to grant exceeds the amount of the aid notified to the Commission by 30 September 1982.

I — The background to the proceedings

3 Since the emergence in 1973 of the particular difficulties affecting the steel industry in the Community, the viability of many steel undertakings has been under serious threat from a combination of different factors including, notably, surplus capacity and falling prices. In order to alleviate those difficulties or offset their impact, some Member States proceeded to grant aid to steel undertakings.

4 In response to that development the Commission announced a series of measures with the aim of restructuring the steel industry, including the framing of a system of aid with a view to enabling subsidies granted by the Member States to be coordinated at Community level. As early as 1977 the Commission stated that the aim of such a system would be to ensure that aid granted to steel undertakings was designed to bring about a profound restructuring of the sector as a whole and could not give rise to distortions of competition contrary to the common interest.

5 It was against that background that the Commission, acting with the Council's approval, issued general Decision No 257/80 of 1 February 1980 establishing Community rules for specific aids to the steel industry (Official Journal L 29, p. 5). According to the preamble to that decision, the cost of the restructuring measures required in order to adapt the steel industry's production capacity to foreseeable demand and to restore competitiveness to the industry exceeded the financial resources of almost all steel undertakings. Since it was impossible to abandon the restructuring effort without jeopardizing the objectives of the ECSC Treaty, it was necessary to establish a Community aid system whereby specific aid could be granted to the steel industry for clearly defined aims, provided that it promoted restructuring, its duration and intensity was restricted and it did not give rise to unacceptable distortion of competition.

6 That decision was replaced by general Commission Decision No 2320/81 of 7 August 1981 establishing Community rules for aids to the steel industry (Official Journal L 288, p. 14). According to the preamble to that decision, the crisis confronting the steel industry had deepened, demand for most steel products had fallen and the financial difficulties of the undertakings had worsened. The need for capacity reductions and the restoration of competitiveness had become all the more urgent. If restructuring was to be accomplished in a coherent manner it was desirable to establish a comprehensive Community system to take account both of changed circumstances and of experience acquired in the application of Decision No 257/80. Such a system, while retaining the same broad objectives as before, should ensure, by the application of stricter rules designed to phase out aids within a fixed period, that restructuring, including capacity reductions, was carried through with all necessary speed.

7 Decision No 2320/81 (hereinafter referred to as 'the Second Aids Code') introduces a uniform procedure for determining whether aid to the steel industry, irrespective of its form, may be considered compatible with the orderly functioning of the common market. In order to be compatible, the aid must first of all fulfil the general conditions laid down in Article 2, which provides, *inter alia*, that the recipient undertaking must be engaged in the implementation of a restructuring programme and that the aid must not lead to payments after 31 December 1985. The aid must also satisfy the specific conditions laid down in Articles 3 to 7, the stringency of which differs according to the type of aid. A distinction is made for that purpose between investment aid, aid for closures, aid for continued operation, emergency aid and aid for research and development.

8 Under Article 8 of the Second Aids Code, the Commission has to be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid as referred to in Articles 3 to 7. Notification must be made to the Commission no later than 30 September 1982; the Member State concerned may put its proposed measures into effect only with the approval of, and subject to any conditions laid down by, the Commission. Article 8 further provides that the Commission is to seek the views of the Member States on major aid plans notified to it before adopting a position on them.

9 On 29 June 1983 the Commission, acting pursuant to the Second Aids Code, issued nine separate decisions, that is to say, the four contested decisions and five decisions addressed to the German, Greek, Irish, Luxembourg and Netherlands Governments, respectively. In those nine decisions the Commission approved the grant in the nine Member States in question of all the types of aid covered by Articles 3 to 7 of the Code with the exception of 'emergency aid'.

10 The nine decisions of 29 June 1983 relate to a total of 21 900 million European Currency Units (ECU) in aid and involve cuts in production capacity in respect of hot-rolled products of 26.7 million tonnes. The four contested decisions relate to a total of 17 500 million ECU and involve production capacity being reduced by 18.7 million tonnes.

11 The Government of the Federal Republic of Germany has brought this application for a declaration of nullity after repeatedly expressing reservations about the Commission's policy on aid and after urging, during the consultations provided for in the Second Aids Code, that the provisions of the Code be strictly observed. Its application seeks the annulment of the four decisions addressed, respectively, to the Belgian, French, Italian and United Kingdom Governments, on the ground that the aid approved therein is too large in relation to the required cuts in capacity. It considers that the resultant imbalance favours steel producers in the four Member States concerned, who have already been heavily subsidized for a long time.

12 The Wirtschaftsvereinigung Eisen- und Stahlindustrie, an association of German iron and steel producers whose object is to defend the collective interests of its members, intervened in the proceedings in support of the applicant's claims. It challenges the uneven burden of the restructuring carried out by the Commission by means of its decisions of 29 June 1983.

II — Admissibility

13 In its application the Federal Republic of Germany claimed that the Court should declare the four contested decisions void; in addition, it should lay down the

principles and guidelines which the Commission must follow when authorizing aid and order the Commission to take fresh decisions on that basis.

14 In its defence the Commission contended that the application was partially inadmissible, on the grounds that some arguments formulated in the application were not directly related to the object of the action and that the applicant was claiming, *inter alia*, that the capacity cuts required of it were excessive, even though Decision No 83/392 of 29 June 1983 addressed to the German Government was not covered by the action.

15 In its reply the applicant stated that the object of the action was not to obtain a smaller reduction in production capacity or more aid for the German steel industry. Instead, its intention was to ensure that steel undertakings in Belgium, France, Italy and the United Kingdom received less aid or made greater reductions in their production capacity. It was for that reason that the applicant had clarified its application by amending it so as to seek the partial annulment of the four decisions at issue in so far as the Commission authorized aid which was not strictly necessary to implement the plans for restructuring the steel industry in the four Member States in question.

16 The applicant also explained that its initial argument based on the infringement of the procedure laid down by the Second Aids Code was in reality a secondary claim. In the event that the Court does not accept the applicant's principal claims, the applicant, in its reply, claims that the Court should declare the four contested decisions partially void in so far as the amount of the aid approved therein by the Commission exceeds the amount of the aid notified to the Commission by 30 September 1982, the date by which, by virtue of Article 8 (1) of the Second Aids Code, all aid plans had to be notified to the Commission.

17 In its rejoinder the Commission states that, since the applicant has restricted the scope of its action in that manner, its objections concerning the admissibility of the application no longer apply. However, in its view, the reformulated application raises new problems of admissibility, since an application for a declaration of nullity is admissible only in so far as it defines its scope unconditionally, clearly and definitively. It argues that the principal claim fails to satisfy that requirement, since it seeks in essence to have that part of the contested decisions declared void which the Court considers to be unlawful and hence is wholly lacking in precision.

18 The Commission adds that, in its opinion, the secondary claim is also inadmissible on the ground that it is not in fact a secondary claim but an alternative claim: the claims described as principal and secondary do not rank differently but are simply two separate claims.

19 The argument that the principal claim is inadmissible on the ground that it lacks precision must be rejected. In its reply the applicant asks the Court to declare void the authorization given by the contested decisions to grant aid in so far as the amount of the aid is excessive in relation to the restructuring required of the Member State concerned. The applicant has provided figures to illustrate the extent to which the relationship between the amount of aid granted and the restructuring required differs in the case of the four contested decisions from the ratio employed in the five other decisions issued on 29 June 1983. In asking the Court in that manner whether the Second Aids Code establishes a direct relationship between the amount of aid and the reduction in production capacity the applicant has formulated a request which is sufficiently precise to be considered by the Court.

20 Neither can the Commission's argument against the admissibility of the secondary claim be accepted. The fact that the applicant describes its second claim as a secondary claim (*Hilfsantrag*) merely signifies that the Court is requested to consider it only if the principal claim is dismissed. That manner of proceeding is not contrary to the Rules of Procedure.

III — The relationship between the aid and the restructuring

21 In support of its principal claim, the applicant argues in the first place that the Second Aids Code has been infringed. It contends in particular that aid far in excess of that needed in order to achieve the required reductions in production capacity was approved in the case of steel undertakings in Belgium, France, Italy and the United Kingdom. Secondly, it argues that non-subsidized undertakings, in particular German undertakings, have suffered discrimination in so far as they have been required to make significantly greater cuts in production capacity in relation to authorized aid.

22 In support of its contention that the Commission has infringed the Second Aids Code, the applicant argues in particular that the capacity cuts required by the Commission are insufficient to restore the competitiveness of the European steel

industry and that the Commission authorized aid which was not justified by a prior restructuring plan. In authorizing that aid the Commission attached too much weight to regional and social problems and failed to take account of the unsubsidized reductions in capacity carried out by certain undertakings. It contends that the Commission authorized the grant of aid for continued operation in a manner that was disproportionate and not covered by the Second Aids Code, and that by granting disproportionate aid the Commission created distortions of competition.

23 The applicant claims, in that connection, that the Commission required the German steel industry to cut capacity by 6.01 million tonnes in return for aid totalling 4 300 million ECU, which works out at approximately 720 ECU per tonne of reduction. It argues that if that is the criterion applied to German undertakings it should also be applied to undertakings in the four Member States to which the contested decisions are addressed. It contends that, as a result, those decisions should be declared void in so far as they authorize the grant of aid exceeding 720 ECU per tonne of reduction.

24 The applicant adds that the unequal treatment of German undertakings in comparison with undertakings in the four Member States in question is all the more serious as the Commission, in adopting the contested decisions, failed to take account both of the restructuring undertaken before 1980 by German steel undertakings and of the considerable amounts of aid which had already been paid to undertakings in the four Member States in question. On the one hand, the German steel undertakings had already taken pains well before 1980 to reduce their surplus capacity by their own efforts in order promptly to adapt themselves to the new requirements of the steel market. On the other, the undertakings of the four Member States concerned retain unprofitable or even obsolete plant owing to years of public subsidies.

25 The Wirtschaftsvereinigung Eisen- und Stahlindustrie, intervening, expresses doubts as to the legality of the Second Aids Code; in addition it claims that the Comission exceeded its powers under the Code in the four contested decisions. It argues that the Commission approved aid for continued operation enabling uneconomic plant to be retained and aid to undertakings whose competitiveness could not be guaranteed after 31 December 1985 without State aid.

26 The Commission claims that those two arguments, on which, in its opinion, the action is based, are without foundation. First, it contends that the decisions at issue do not treat steel undertakings in the four Member States concerned differently from other steel undertakings in the Community. Secondly, it argues that the Second Aids Code did not establish an arithmetical ratio between the amount of aid authorized and the size of the necessary cuts in production capacity.

27 In that connection, the Commission contends, in the first place, that it is impossible to apply uniformly to all Member States a single criterion, quantitative or otherwise, as regards the relationship between aid which may still be granted and the necessary cuts in capacity. In point of fact the Second Aids Code requires the Commission, when assessing aid plans notified to it, to take various factors into account, such as the extent of the restructuring carried out and regional and social problems, which differ from one Member State to another. The Commission points to the unequal burden of unemployment as between the Member States; it provides figures on employment in the steel sector from which it appears that some 300 000 steelworkers lost their jobs in the Community between 1973 and 1984 — 22 800 in Belgium, 64 700 in Germany, 61 000 in France, 2 600 in Italy and 132 500 in the United Kingdom.

28 While not denying that the Second Aids Code did aim to promote the restructuring of the steel market, including cuts in production capacity, the Commission states that the total elimination of surplus capacity in the Community was not its objective. Otherwise only the heavily subsidized undertakings would have to bear the burden of the restructuring, which would be likely to result in the steel industry's becoming completely extinct in some regions of the Community. By way of illustration the Commission pointed out that the Community's total capacity as regards hot-rolled products was 168 million tonnes, of which 76 million tonnes were produced by subsidized undertakings; the restructuring objective decided on for 1980 to 1985 by the Commission and the Council was a reduction in capacity of 30 to 35 million tonnes. It would scarcely be possible to require the subsidized undertakings to reduce their production capacity by half.

29 The Commission observes finally that the decisions of 29 June 1983 constituted overall decisions relating to the maximum amounts of aid and the minimum cuts in capacity. The granting of the aid authorized by those decisions depends on

compliance with the conditions and obligations laid down therein as regards, in particular, the restoration of the undertakings' viability and the reduction of their production capacity. The Member States could not actually grant the aid in question until the Commission had satisfied itself that those conditions and obligations had been complied with. The aid, and in particular aid for continued operation, was only 'released' after the Commission had examined the prospects of restoring the competitiveness of the undertaking in question by means of specific restructuring measures.

30 The Court considers that the applicant rightly emphasizes that in a situation of crisis there is a close link, for the purposes of the implementation of the ECSC Treaty, between the granting of aid to the steel industry and the restructuring which that industry is required to undertake. Article 4 of the ECSC Treaty prohibits 'subsidies or aids granted by States . . . in any form whatsoever'. Accordingly, by establishing under the first and second paragraphs of Article 95 of the ECSC Treaty a Community aid system (the legality of which as a matter of principle has not been contested by the German Government in these proceedings), the Commission was under no circumstances entitled to authorize the granting of State aid which was not necessary to attain the objectives of the Treaty and would be likely to give rise to distortions of competition on the common market in steel.

31 It appears from the Second Aids Code that the Commission, in adopting that code, and the Council, in giving its assent, took the view that, for a limited time, aid was vital to restore the competitiveness of the European steel industry and that, in order to achieve that aim, a considerable effort would have to be put into restructuring the industry, which would include, in particular, a significant reduction in production capacity. To that end, the Second Aids Code established a clear relationship between the grant of aid and efforts towards restructuring.

32 The use of aid for the purposes of restructuring and the potential impact of such aid on the process of cutting production capacity can be more readily understood in the case of investment aid, aid for closures and aid for research and development than in the case of aid for continued operation, which, according to Article 5 of the Second Aids Code, is simply intended 'to facilitate the continued operation of certain undertakings or plants'. However, it must be borne in mind that the grant of aid for continued operation is subject, by virtue of that article, to

very strict conditions, which are designed precisely to make sure that such aid is granted with a view to the accomplishment of a specific restructuring task.

33 However, although the Second Aids Code establishes a link between restructuring and the grant of aid, there is nothing in its provisions or in its preamble to suggest that an exact quantitative ratio was established or intended between the amount of the aid and the size of the required cuts in production capacity. In particular, there is nothing in the Second Aids Code to suggest that the capacity cuts required by the Commission have to be in a fixed ratio, in all the Member States, to the total amount of aid granted.

34 The Commission rightly pointed out that, for the purposes of the implementation of the Second Aids Code, the factors which are likely to influence the exact amount of the aid to be authorized do not consist simply in the number of tonnes of production capacity having to be cut; there are other factors, too, which vary from one region of the Community to another, such as the restructuring effort made before 1980, the regional and social problems occasioned by the crisis in the steel industry, technical change and the adaptation of undertakings to suit market requirements.

35 It follows from the foregoing considerations that the complaint that the aid authorized by the contested decisions was not commensurate with the cuts in capacity required by those decisions cannot be upheld.

36 As for the complaint of unequal treatment, that would be justified only if the contested decisions had given rise to different advantages for steel undertakings placed in the same situation or to identical advantages for steel undertakings placed in appreciably different situations. However, it does not appear either from the written or from the oral proceedings before the Court that either of those cases applied in this instance. The Commission rightly emphasized the important differences in the situations of individual undertakings and the very varied conditions which must be met before individual undertakings can receive the authorized aid.

37 As regards more specifically the applicant's argument that the German steel undertakings have borne a disproportionate share of the burden of restructuring, it should be noted that, according to uncontested figures relating to hot-rolled products, German undertakings' share of the Community's total production capacity will amount to 33.1% in 1986 as against 31.6% in 1980. The contribution of German undertakings to the reduction in production capacity since 1980 amounts to 11.3%, compared with a Community average of 15.9%.

38 The applicants' submissions must therefore also be rejected in so far as they are based on the claim that German undertakings have suffered discrimination with respect to the other steel undertakings.

39 Consequently the principal claim must be dismissed.

IV — Compliance with time-limits

40 Secondarily, the applicant claims that Article 8 of the Second Aids Code has been infringed. It argues that the total amount of aid authorized by the contested decisions differs by some 7 500 million ECU from the total amount of aid notified to the Commission by 30 September 1982, the date by which, under Article 8 (1), all aid plans had to be notified to the Commission. The applicant observes that it was informed of the increase in aid only by the publication of the decisions of 29 June 1983.

41 The applicant argues that, by acting in that way, the Commission infringed the Second Aids Code in two respects: first, it disregarded the date specified in Article 8 (1), even though that date constituted a time-limit precluding any further notification of aid; secondly, it failed, contrary to Article 8 (2), to put the Member States in a position to state their views on the aid plans notified after 30 September 1982.

42 The Commission admits that the amount of the aid which it authorized by its decisions of 29 June 1983 exceeds the amount of the aid plans notified to it by 30 September 1982 and that it did not seek the Member States' views thereon. The

Commission further admits that, by virtue of Article 12 (1) of the Second Aids Code, the date laid down in Article 8 (1) of the Code may be altered solely with the assent of the Council, which was not given in this case.

43 However, the Commission considers that the date of 30 September 1982 laid down in Article 8 (1) of the Second Aids Code constitutes a purely procedural time-limit exclusively intended to promote effective action on the part of the Commission and, in particular, to ensure that the latter had sufficient time to consider whether the aid plans were compatible with the common market. It argues that the legal significance of the notification date may be determined only in the light of the object of Article 8 (1) and of the significance of that date in relation to the other dates specified in the Second Aids Code. The real time-limit, in its view, was 1 July 1983, the last date on which, according to Article 2 (1) of the code, aid might be granted.

44 In response to a question from the Court the Commission explained that the increase in the amount of aid between 30 September 1982 and 29 June 1983 was not due to new plans notified after 30 September 1982 but to increases in items which had already been submitted to the Commission by the Member States.

45 The first problem in this connection is whether, as the applicant maintains, the notification date specified in Article 8 (1) is such as to preclude the approval of any aid plan notified subsequent to it.

46 The Commission's argument on this point cannot be accepted. Article 12 of the Second Aids Code expressly provides that the time-limits laid down in Article 8 (1) and Articles 2, 5 and 6 may not be amended by the Commission unless it proves to be necessary to do so in the light of the market trend and the level of prices for iron and steel products and unless the Council gives its consent.

47 Consequently the Commission was not entitled to authorize aid if the plans to grant or alter the aid had not been notified to it by 30 September 1982.

48 The second problem raised by the interpretation of Article 8 (1) of the Code is that of determining the scope of the phrase 'plans to grant or alter aids'.

49 The Commission emphasizes in that connection that it endeavoured to reach a decision with the utmost speed on the compatibility, with the substantive provisions on aid, of the restructuring plans submitted to it and to consult the Member States, in accordance with Article 8 (2), as part of that procedure. The Commission admits that, in many cases, the plans notified by the Member States did not yet specify the exact amount of the contemplated aid.

50 The Court considers that the 'plans' which were to be notified to the Commission no later than 30 September 1982 were programmes which, within the framework of a restructuring plan, identified the type, the aim and the proposed use of the aid; it was not necessary, at that stage, for the exact amount of aid requiring authorization to have been determined. Whilst it is true that the Commission cannot establish whether certain aid is compatible with the Common Market unless it is informed of the order of magnitude of the amounts of aid contemplated, knowledge of the exact figures is not necessary at the initial stage of the examination of the aid plans; exact figures could therefore be specified at a later stage.

51 Consequently, the fact that the amount of aid finally approved by the Commission exceeded the amount notified on 30 September 1982 does not in itself constitute a breach of Article 8 (1) of the Second Aids Code, unless the increase which took place after that date had the effect of changing the nature of the proposed aid and, as a result, the plan which was implemented was no longer that which was notified. However, the applicant does not claim that the plans notified were altered in such a way.

52 As regards more specifically the applicant's argument that the Commission failed to satisfy the requirement to consult the Member States on the plans notified, it should be noted that it is common ground that the Commission did consult the Member States on the plans as initially notified. Furthermore, the Commission has stated, without being contradicted, that it proceeded to 'release' the aid, thus allowing the Member States actually to grant it, only after consulting the Member States at multilateral meetings. Such a procedure does not conflict with the requirements of Article 8 (2) of the Second Aids Code.

53 Consequently, the secondary claim must be dismissed.

V — Conclusion

54 As a result of the foregoing considerations the application must be dismissed in its entirety.

Costs

55 Pursuant to Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicant has failed in its submissions, it must be ordered to pay the costs. The intervener must pay its own costs.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application;

(2) Orders the applicant to pay the costs, save those of the intervener which are to be borne by the latter.

Mackenzie Stuart Bosco Due Pescatore

Koopmans Everling Bahlmann Galmot Joliet

Delivered in open court in Luxembourg on 3 October 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President