(b) Reconciliation of the various objectives of Article 3

The provisions of Articles 2 to 5 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
(Treaty, Articles 2, 3, 4 and 53).

5. *Misuse of powers — Objectives of contested measures*
In considering a complaint of misuse of powers in connexion with the basic provisions of Articles 2 to 5 of the Treaty it is not sufficient to find that the contested measures contradict or are incompatible with one or more of those basic provisions. The objectives of the contested measures must be considered in connexion with a complaint of misuse of powers relating to any article of the Treaty and no provision of the Treaty justifies the omission of such consideration when the said Articles 2 to 5 are concerned
(Treaty, Articles 2, 3, 4 and 5).

6. *Financial arrangements — System of allocation — Direct action on production*
Since the procedures for which provision is made in Article 59 and in Annex II to the Treaty consist exclusively in establishing consumption priorities and allocating resources they 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, like the action effected by a financial arrangement established in accordance with Article 53 (b)
(Treaty, Articles 53 (b) and 59 and Annex II).

7. *Influence on investments — Financial arrangements — Indirect action regarding investments*

The provisions of Article 54 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 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 undertakings, such as, for example, their investment plans
(Treaty, Articles 53 (b) and 54).

In Case 8/57

GROUPEMENT DES HAUTS FOURNEAUX ET ACIÉRIES BELGES, a non-profit-making association governed by Belgian law, having its head office in Brussels, represented by its Chairman, Pierre Van der Rest and Baron Donald Fallon, Director of its economic and social division, assisted by Marcel Grégoire, Advocate at the Cour d'Appel, Brussels, and J. Mertens de Wilmars, of the Antwerp Bar, with an address for service in Luxembourg at the Belgian Embassy, 9 boulevard du Prince-Henri,

applicant,

V

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 the provisions contained in Articles 3 (1) (b), 6, 8 and 9 of Decision No 2/57 of 26 January 1957 making a financial arrangement to ensure a regular supply of ferrous scrap to the Common Market, published in the Journal Officiel No 4, of 28 January 1957,

THE COURT

composed of: M. Pilotti, President, A. van Kleffens and L. Delvaux, Presidents of Chambers, 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

Since March 1956 the applicant has submitted observations and suggested amendments with regard to the various proposals of the defendant concerning a re-organization of the market in ferrous scrap; nevertheless it did not agree with any of those proposals which gave rise to Decision No 2/57 of 26 January 1957.
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 proposition 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 provides a guarantee for undertakings that the increase in the contribution shall be slowly progressive 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 Decision No 2/57 discourages not only the increase in the percentage of the specific input but also the absolute increase in the consumption of ferrous scrap. This system gives a new direction to the arrangements for the equaliza-

tion of ferrous scrap and does not really represent a saving of ferrous scrap; instead it crystallizes the previous situation for the benefit of undertakings which have wasted ferrous scrap and penalizes undertakings which have economized in it and new undertakings which do not have the advantage of a reference period. A logical solution would have been some increase in the price of ferrous scrap.

The *defendant* replies that it had to cope with the structural failings in the market in ferrous scrap in the Community; it had to rectify defects in the system existing before Decision No 2/57, that is to say to counter the incentive provided by the functioning of the equalization scheme to increase consumption of ferrous scrap; it had to face both a problem relating to prices and a problem relating to quantity. It was thus necessary to adopt measures intended essentially to discourage any increases in the total consumption of ferrous scrap and to encourage scrap to be used with a maximum of economy. Those objectives could not have been attained merely by a general increase in the price of scrap.

2. Conclusions of the parties

The applicant claims that the Court should:

'Annual the provisions contained in Articles 3 (1) (b), 6, 8 and 9. Make an appropriate order on costs.'

The defendant contends that the Court should:

'Dismiss the application submitted against Decision No 2/57 in that it is not vitiated by misuse of powers affecting the applicant, with all the legal consequences thereof, in particular with regard to settlement of the fees, costs and any other expenses.'

3. Submissions and arguments of the parties

A — *The admissibility of the application*

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

The *defendant* maintains that it is clear from the judgments of the Court of Justice in Cases 3 and 4/54 that for an application by an association of undertakings to be admissible it is sufficient that certain undertakings are affected by the relevant decision although other undertakings are not. Furthermore in the judgments in Cases 8 and 9/55 the Court noted that the second paragraph of Article 33 constitutes an exception which is to be explained by the fact that the individual factor prevails in this instance. Since the present case concerns an application by an association of undertakings reference must thus be made to the collective factor. Can this collective interest prevail against the individual interests of the undertakings which are members of the association if those interests are divergent?

The *applicant* replies that all the undertakings in its group have been adversely affected by the contested decision of which they are both the subject-matter and the victims.

2. Whether the submissions constitute complaints of misuse of powers

The *defendant* maintains that, if the classic distinction between the concept of motive and that of object is applied to the four submissions in the application, they may be classified as follows.

(a) Three complaints of misuse of powers:
that a system has been established amounting to allocation whilst avoiding recourse to the procedure under Article 59;
that an influence has been exerted on investments although this is not an objective which may be pursued under Article 53;
that the High Authority has endeavoured, by encouraging undertakings to effect economies in ferrous scrap, to impair the development of steel production.

(b) Three complaints of infringement of the Treaty:
infringement of Articles 53 and 54 (the scope of the powers conferred by Article 53 with reference to Article 54);
infringement of Articles 53 and 59

(scope of the powers conferred upon the High Authority with reference to Article 59); and
infringement of Articles 3 (b) and 4 (b).

The applicant maintains the form of its submissions and states that the conditions for the admissibility of its action have been fulfilled:

A formal complaint of misuse of powers;
Misuse of powers affecting it or one or more of the undertakings grouped in the association which it represents (in fact, all the undertakings have been adversely affected in varying degrees);
A relevant statement of the reasons leading it to believe that there has been a misuse of powers.

The applicant concurs with the defendant as to the concept or indeed the definition of misuse of powers: it consists in the use by a public authority of powers for a purpose other than that for which they were conferred upon it. Nevertheless this concept must be preserved intact and must not gravitate under the influence of French case-law towards the concept of infringement of the law, to the point of being absorbed by it.
It is impossible further to restrict in this way the access of undertakings to the Court contrary to what was intended in the Treaty.
All legal procedures may be employed to prove misuse of powers; the objective illegally pursued may be proved through the result brought about if on the one hand it disregards the legal aim and on the other was sought, foreseen or in any case normally foreseeable (Cf. judgment in Case 8/55 Recueil 1955-1956, p. 310).

B — *Substance*

First complaint: Misuse of powers with regard to Article 53 (b), Article 59 and Annex II to the Treaty: by effecting, under the guise of financial arrangements, an allocation of ferrous scrap whilst disregarding the provisions of Article 59 the defendant has committed a misuse of powers.
The *applicant* maintains that Decision No 2/57 pursues an objective, allocation, which may only be pursued through the procedure under Article 59. To state, as the decision does, that persons are entitled to a fixed quantity of material at a moderate price and that any additional material will be subject to a double levy constitutes distribution or allocation.
The High Authority's objective is to prevent any consumption of ferrous srap exceeding the reference consumption. It follows that the machinery employed has the purpose of allocation.
Pursuant to Article 58 of the Treaty, which indicates the procedure to be observed in order to allocate products when there is a surplus, the High Authority may establish production quotas and in particular regulate the level of activity of undertakings by appropriate levies on tonnages exceeding a reference level set by a general decision. This is precisely what the High Authority has done in the present case and what constitutes allocation where there is a surplus also constitutes allocation where there is a shortage.
The reason why the High Authority did not employ Article 59 was that it wished to avoid the formalities which are prescribed and which it considered more burdensome than the formalities in Article 53 since they contain guarantees for the undertakings concerned.
The *defendant* denies that it used the powers which it posseses under Article 53 for the purpose of allocating ferrous scrap. The sole purpose of the contested provisions is to render more difficult the increased consumption of ferrous scrap; those provisions do not amount to a system of purely quantitative allocations and relate solely to prices.
The applicant's line of argument amouts to claiming that all action which tends to discourage increases in the total consumption of ferrous scrap and to encourage the reduction of specific input constitutes allocation; this cannot be accepted.
The contested measures do not have as their final objective the prohibition of all increases in consumption in relation to a reference period.
The claim that to use Article 53 for the purpose of taking any action as to quantities constitutes a misuse of power amounts to

denying that it is at all possible to emply indirect means of action in relation to quantities.
The machinery set up by the contested decision cannot be treated as equivalent to the arrangement in Article 58 (2), in which the levy is the essential feature and compensation is subsidiary, the opposite of the system of equalization of imported ferrous scrap.
With regard to misuse of procedure the applicant is not justified in maintaining that the High Authority had recourse to the procedure under Article 53 in order to avoid making a study jointly with the undertakings. On the contrary the High Authority submitted the proposals on which Decision No 2/57 was based to the persons concerned.
Finally, with regard to infringement of the Treaty, the concept of 'financial arrangement' must be interpreted as a kind of 'indirect means of action relating to production'. The concept of allocation would have to be improperly extended if it were to encompass financial arrangements.

Second complaint: Misuse of powers in connexion with Article 53 (b) and Articles 2, 3, 4 and 5 of the Treaty: the objectives pursued by the High Authority by means of the financial arrangements under Article 53 are contrary to the objectives defined by Articles 3 and 4 of the Treaty.
The *applicant* maintains that the objectives of the contested decisions which would normally be anticipated are:

The establishment of a system of double prices fixed in terms of a reference period with possible refunds in accordance with certain criteria;
The creation of unequal access to the sources of raw materials, in particular for undertakings putting plans into operation after 31 January 1958;
The prevention of increases in the consumption of ferrous scrap and of the installation of new plant.

The first two aims are contrary to the objectives of Articles 3 (b) (equal access to the sources of production) and 4 (b) (prohibition of discrimination between producers). The third aim is incompatible with the provisions of Article 3 (d) (improvement of production capacity) and 3 (g) (orderly expansion of production).
In its operations the High Authority in the context of a market economy must have regard only to the objectives laid down in Article 3.
The *defendant* denies that it endeavoured, by encouraging undertakings to effect economies in ferrous scrap, to hinder the development of steel production.
Article 3 lays down for the institutions of the Community objectives which must be pursued in the common interest. It outlines for the High Authority a general programme the various parts of which must not be artificially isolated from each other but on the contrary must be harmonized. In the circumstances of the present case Article 3 (a) takes a certain precedence over the other paragraphs as it is a condition for their implementation.
Furthermore Article 3 of the Treaty in no way prohibits the High Authority from undertaking a long-term action; it does not limit its action to taking into consideration the immediate facts of the market situation.
Finally the applicant has by no means proved that the measures to encourage economies in ferrous scrap were not intended to maintain opportunities for expansion, which is the objective of Article 3 (d) and (g) in accordance with the indication which may be inferred from the general objectives laid down by the High Authority.
With regard to Articles 3 (b) and 4 (b), viewed in relation to infringement of the Treaty, the defendant replies that the applicant is mistaken in maintaining that discrimination is constituted by the fact that the general measure has effects which vary in accordance with the actual situation of the persons concerned. This interpretation would mean that public authorities would be debarred from enacting any general measures. In taking care to ensure supplies of ferrous scrap at a reasonable price the High Authority was in fact concerned to ensure the maintenance of equal access to the sources of production.

Third complaint: Misuse of powers in respect of Article 53 (b) and Articles 2, 3, 4,

5, 46 and 54 of the Treaty: the High Authority may not have recourse to the financial arrangements under Article 53 for the purpose of prohibiting certain new installations or of encouraging certain investments, whilst disregarding the requirements of Article 54.

The *applicant* maintains that the contested provisions, under the guise of the financial arrangements pursuant to Article 53 (b), have as their aim or inevitable and foreseeable effect the regulation or penalizing of investments. In this sphere Articles 46 and 54 clarify and limit the powers of the defendant. The defendant may not exceed those limits, even through the expedient of Article 57; it may not do through indirect action what is prohibited through direct action. Since the defendant is aware (Cf. the preamble to Decision No 3/56) that in certain manufacturing processes, such as basic Bessemer converters and solid-charged electric furnaces, it is impossible to effect economies in ferrous scrap, it is directly influencing investments and penalizing additional consumption of ferrous scrap.

The *applicant* in addition charges the High Authority with having desired to prohibit certain investments and to regulate others without having regard to individual consultations and to the specific studies required under Article 54 and, consequently, in order to avoid recourse to the formalities provided for therein which it considered more irksome.

The *defendant* replies that although it is true that the contested provisions are capable of having an effect on investments it is none the less true that this consequence, albeit foreseeable, cannot be treated as equivalent to the objective, which remains the regular supply to the market of ferrous scrap acquired at a reasonable price.

With regard to the misuse of procedure this complaint is unacceptable. With regard to investments Article 54 is not exhaustive and Article 53 makes it possible to adopt measures which must be expected to affect investments. Accordingly there are no grounds for complaining that the High Authority has exercised the powers conferred upon it by Article 53.

Fourth complaint: Contradiction between the various objectives stated in Decision No 2/57 on the one hand and the objectives stated and the objectives actually pursued on the other.

The applicant states that there exists a contradiction between the two objectives stated by the decision, one objective being to encourage economies in ferrous scrap and the other not to exacerbate the difficulties in establishing new production capacities, since the High Authority is aware that there are steel-works which cannot effect economies in ferrous scrap and others which, in order to do so, would have to alter basically their manufacturing methods. Moreover there is a contradiction between the objectives stated and the objectives actually pursued. By obliging undertakings to effect economies in ferrous scrap of which they are technically incapable and by penalizing them if they fail to do so the High Authority, contrary to the objective stated in the preamble to Decision No 2/57 is preventing them from increasing their production or taxing them in terms of the selling price of their products which has nothing to do with effecting economies in ferrous scrap.

The *defendant* replies that this complaint does not constitute a submission of powers because it merely refers to the effects of the decision. The applicant is in fact confusing it with the second complaint (pursuit of an objective prohibited by Article 3 (d) and (g)).

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

The instruments appointing the agents and lawyers of the parties are 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 association governed by Belgian law having as its objective the furtherance and defence of the general interests of Belgian iron and steel producers; it is common ground that the contested provisions of General Decision No 2/57 are capable of affecting certain interests, even though perhaps divergent, entrusted to the applicant. The applicant accordingly has capacity to institute proceedings before the Court of Justice in accordance with the provisions of Articles 33, 48 and 80 of the Treaty.
The applicant formally alleges that its members have been affected by misuse of powers on one or more occasions; it produces a relevant statement of the 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 in fact to obtain a declaration that, when the High Authority adopted the contested provisions, 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 prescribed in the said articles, and because of the contradiction existing between the various objectives stated in the decision on the one hand and between those objectives and the objectives actually pursued on the other.
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. 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 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 Aticle 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 crap 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.

Futhermore, despite the argument of the applicant, it cannot be conceded that in considering a complaint of misuse of powers in connexion with the basic provisions of Articles 2, 3, 4 and 5, which set out the objectives and tasks of the Community, it is sufficient to find that the contested measures contradict or are

incompatible with one or more of those basic provisions and that this finding renders unnecessary any consideration of the actual objectives of those measures although such consideration is required in connexion with a complaint of misuse of powers in relation to all the other provisions of the Treaty.
In fact the second paragraph of Article 33 of the Treaty only entitles undertakings to institute proceedings against general decisions of the High Authority if the undertakings consider that such decisions involve a misuse of powers affecting them. This is plainly a restrictive provision requiring a consideration of whether there has in fact been a misuse of powers and this in essence entails a review of the aim pursued and, indeed, consideration of the objectives of the contested measure since no provision of the Treaty justifies a derogation in this respect in proving misuse of powers.

1. *The complaint of misuse of powers with regard to Article 53 (b) and Articles 2, 3, 4 and 5 of the Treaty, that is to say that the objectives pursued by the High Authority by means of financial arrangements under Article 53 are contrary to the objectives defined by Articles 3 and 4 of the Treaty.*

(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 taks 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, maintenace 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 porduction 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 partcular through compensation for and correction of factores 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 provisons 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 adopt 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 the indifferent 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 for 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 Groupement des Hauts Fourneaux et Aciéries Belges, 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 lawful motive aims 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 modernization 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 foreseeeable 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 their 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 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 increased 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 based on the contradiction between the various objectives stated in Decision No 2/57 on the one hand and between the objectives stated and the objectives actually pursued on the other*

The objectives stated in the decision, certain of which are contested by the applicant, are the ensuring of a regular supply of ferrous scrap to the Common Market and encouragement to steel undertakings consuming ferrous scrap to economize in it without thereby making it more difficult to raise output capacity for steel, through exerting an appropriate influence on the development of their production potential.
It is clear from the oral procedure that the expansion of the steel industry in the Community would have been compromised if the maintenance of scrap prices through equalization at a lower level than that which, having regard to the need for imports, the effects of supply and demand would have led to, had encouraged the creation of new plant consuming ferrous scrap, the requirements of which could not have been met, or could only have been met at prices which would have been unacceptable having regard to the requirements of Article 3 of the Treaty.
Far from contradicting each other the objectives thus pursued achieve in the common interest the reconciliation of objectives which the High Authority is required to attain under Article 53 of the Treaty since, without hindering the expansion of production, they encourage producers to bring it about through plant using pig-iron rather than ferrous scrap, which would have imposed upon consumers of scrap in general, through equalization, increases in charges capable of seriously jeopardizing the objectives listed in Article 3.
Consideration of the contested provisions in the context of the scheme for the equalization of the prices of imported ferrous scrap to which they relate does not indicate a contradiction between the various objectives stated in Decision No 2/57

on the one hand and between the objectives stated and the objectives actually pursued on the other.
Consequently the complaint based on the contradiction between the objectives must be rejected.

3. *The complaint of misuse of powers with regard to Article 53 (b), Article 59 and Annex II to the Treaty, namely that, since the defendant has effected the allocation of ferrous scrap in the guise of a financial arrangement whilst refraining from observing the provisions of Article 59, it has committed a misuse of powers*

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 producers 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 for 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 constitutes 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 market 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 clas-

sified, 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.

4. *The complaint of misuse of powers with regard to Article 53 (b) and Articles 2, 3, 4, 46 and 54 of the Treaty, namely that the High Authority cannot have recourse to financial arrangements under Article 53 for the purpose of prohibiting certain new plant or of favouring certain investments, whilst disregarding the provisons of Article 54*

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 thereto;
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), 6, 8 and 9 of Decision No 2/57 of the High Authority dated 26 January 1957;

Orders the applicant to bear four-fifths on 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 21 June 1958.

M. Pilotti
President

L. Delvaux
Judge-Rapporteur

A. Van Houtte
Registrar

OPINION OF MR ADVOCATE-GENERAL LAGRANGE

(see p. 288)