Costs

Under the first paragraph of Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs if they have been asked for in the successful party's pleadings. The applicant must therefore be ordered to pay the costs of the present action.

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 the second paragraph of Article 33 and to Articles, 36, 53 and 92 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, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 37 to 45 and 69;

THE COURT

hereby:

1. **Dismisses Application 108/63 as unfounded;**
2. **Orders the applicant to pay the costs of the action.**

Hammes Donner Lecourt
Delvaux Trabucchi

Delivered in open court in Luxembourg on 21 January 1965.

A. Van Houtte
Registrar

Ch. L. Hammes
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 2 DECEMBER 1964[1]

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Mr President,

Members of the Court,

In connexion with the winding-up of the scheme for the equalization of ferrous scrap, we are concerned with another action arising from the decisions of the High Authority, whereby an undertaking's consumption of ferrous scrap was the subject of an estimated assessment by the High Authority and the amount of contributions owed by it was established.

We are concerned with an Italian steel undertaking which was engaged in producing steel but which had to cease production at the end of February 1957. Its economic difficulties in the first instance led to proceedings for a scheme of arrangement and to the acceptance of a proposed arrangement which was approved by a court order of 21 December 1957. As the periods for payment were not complied with an order was made for the arrangement proceedings to be closed and for consequential winding-

up proceedings to be commenced (judgment of 20 February 1960). Within the framework of the winding-up proceedings a compulsory scheme of arrangement was approved by the court by orders of 4 August and 4 September 1961, under which the preferential creditors were to be paid in full and the ordinary creditors at 40%.

The High Authority participated in these proceedings, and first of all put forward a provisional demand for the payment of equalization contributions, calculated on the basis of the undertaking's declaration of consumption of ferrous scrap. Checks which it caused to be carried out on the applicant's premises in September 1958 led to the finding, reached by way of calculations and estimates, that the consumption of ferrous scrap was higher than that declared. The amount of the contributions originally fixed was therefore amended. Subsequent general decisions relating to the equalization of ferrous scrap brought about further increases culminating in two decisions of 30 October 1963 which at the same time revoked a decision of 25 July 1962, and which established on the basis of General Decision No 7/63 the quantities of ferrous scrap consumed by the applicant and fixed the claim for the corresponding contribution.

These two decisions of 30 October 1963 form the subject of the present proceedings. It must now be considered whether they should be annulled on the grounds indicated by the applicant, in accordance with the conclusions in the application.

I — Remarks on the procedure

The High Authority raised procedural objections in connexion with two of the applicant's statements, that is to say, its reply to the statement of defence and a note submitted at the same time as the replies to the questions put by the Court.

With regard to the reply, Counsel for the applicant merely submitted a statement drafted by the applicant itself, stating in a separate document that the applicant's note should be considered an integral part of the reply. This mode of procedure is certainly not free from objection, even if it has formally complied with Article 37 (1) of the Rules of Procedure, since Counsel signed the applicant's note. It might in fact be maintained that the obligation imposed on individuals by the Protocol on the Statute of the Court of Justice to be assisted by a lawyer has as its aim that there shall be submitted to the Court only legal opinions and explanations of fact which, having been *examined* by a lawyer are considered by him as fit to be put forward. This did not happen in the present case as Counsel expressly admits. On the other hand we find that Counsel adopted the applicant's note *as his own*. Thus this mode of procedure, properly understood, is perhaps essentially a case of negligence by the lawyer in his conduct of the proceedings, which might perhaps be considered as incompatible with the dignity of the Court within the meaning of Article 35 of the Rules of Procedure, rather than that of an inadmissible pleading. However these grounds do not lead me to refrain entirely from examining the statement in question. To what extent it should not be taken into account for other reasons (production out of time), is a question which I shall consider in each of the submissions in respect of which it arises.

The note submitted by the applicant containing the replies to the Court's questions should also be treated in the same way. It contains in part comments on the replies and to that extent it may be considered as an admissible pleading. I shall only consider in a subsequent context whether it contains inadmissible fresh arguments and to what extent.

II — On the individual submissions

1. Infringement of the Italian Bankruptcy Law of 16 March 1942 in so far as the decision on the amount of the contributions due from the applicant does not take account of the dividend of 40% established under the compulsory scheme of arrangement

In this connexion the applicant states that under Article 135 of the Italian Bankruptcy Law the compulsory scheme of arrangement approved by the court has the effect that all the creditors of the insolvent party (including those whose debts have not been proved and those whose claims have not been notified) may press their claims only within the limits of the dividend fixed in the arrangement. By establishing an enforceable title, after the approval of the compulsory scheme of arrangement, for all the equalization contributions owed by the applicant, the High Authority infringed that law.

The High Authority rightly objects that it cannot be its task, far less that of the Court, to take account of the national bankruptcy law and to adjudicate on the difficult question of the legal consequences of a compulsory scheme of arrangement, which could have the effect that the claims against the debtor were in part extinguished, but might also result in the entire debt being claimed if the conditions laid down in the said arrangement are not complied with. In this connexion it refers to the case-law of the Court (Case 1/58) according to which the High Authority is not in principle obliged to apply national law.

In fact the task of the High Authority can only be to establish a claim, arising from Community law, and to leave the rest of the enforcement procedure to take place under the national law of the debtor in accordance with Article 92 of the Treaty. In the course of the enforcement procedure, it may be objected that it is impossible to try to obtain payment in full, by enforcement, of the existing debts of a given debtor. It has not been proved to our satisfaction that there are no ways or means of arguing such objections under Italian law. Moreover the applicant is not limited to these possibilities as the High Authority has given an express assurance that, with regard to the applicant, it does not intend to enforce its claim to the contributions in full.

It is thus impossible to annul the decision on the extent of the applicant's obligation to contribute on the ground of infringement of the Italian law on bankruptcy.

2. Infringement of Article 55 of the Italian Bankruptcy Law

In the statement of the applicant, which it describes as a reply, it is argued that the High Authority's enforceable decision is also illegal to the extent that, in addition to the equalization contributions, it also includes interest for failure to comply with the periods for payment, which is also prohibited by the Italian law on bankruptcy.

This argument must in any event be left out of account even if the applicant's statement is not as a matter of principle excluded from the procedure. Article 42 (2) of the Rules of Procedure and the decisions of the Court as a whole point to this interpretation, since this is obviously a fresh issue in the course of proceedings which has not even been referred to in the application.

Even if a more lenient view is taken because, as has been pointed out in the application, possibilities of enforcement are more limited under the Italian Bankruptcy Law, the question might first of all be asked whether the Italian Bankruptcy Law makes any provision for interest of the kind due under the equalization scheme or only to interest for delay in payment. The High Author-

ity has informed us that the figures appearing in the contribution owed are not due because of delays in payment and that they are not calculated in respect of the amount of each debt, but represent sums attributed to the equalization creditors and to undertakings which have paid their equalization debts punctually. The High Authority takes the view that this is something in the nature of interest for capital advanced and used temporarily under the equalization scheme, that is to say, of expenses which by reason of their nature came rather within the category of administrative expenses.

But, ultimately, this question may be left open. In fact the arguments put forward with regard to the first submission are also valid in this case: the High Authority and the Court are not required to consider the application of the Italian law on bankruptcy. It is not their business to inquire into what types of interest are excluded from enforcement in the Italian law on bankruptcy and whether that rule is also to be applied in a compulsory arrangement. The problem of interest, which comes within the framework of enforcement under Italian law on bankruptcy, ought rather to be regarded as relating to the enforcement procedure and left to the national legal authorities charged with its enforcement. Consequently the second submission can no more bring about the annulment of the contested decision than can the first submission.

3. Failure to state reasons

The applicant has been unable to find any clear and detailed statement of reasons either in the decision relating to the determination by induction of its consumption of ferrous scrap or in the decision fixing the amount of its debt by way of contributions. It considers this an infringement of Article 15 of the Treaty, which must entail the annulment of the two decisions.

In a relatively recent decision in 1963 (Case 24/62, E.C.R. 69 [1963]) concerning the EEC Treaty the Court set forth clearly how the obligation to state reasons is to be understood. No other solution can be valid for the system of law of the ECSC. In order to comply with this obligation a decision must 'set out, in a concise but clear and relevant manner, the principal issues of law and of fact upon which it is based and which are necessary in order that the reasoning which has led the Commission to its Decision may be understood'.

If the two contested decisions are examined in the light of this passage, it will be found that they contain the following particulars:

The first decision

This gives precise information as to the legal bases on which it is founded (Articles of the Treaty, general decisions on the equalization of ferrous scrap); it states that when the High Authority's inspectors carried out a check, the applicant failed to produce clearly specified documents which meant that its consumption of ferrous scrap had to be estimated. The assessment was made in terms of the consumption of electricity which was deduced partly from certain documents, and was in part established by reckoning on the basis of the applicant's electricity bills as extracted from its books of account. The consumption of electricity made it possible to deduce the production of steel and thereby the necessary input of ferrous scrap (consumption of ferrous scrap) by a parameter ascertained by experts. The findings thus made were checked and confirmed by factors based on the productive capacity of the applicant's blast furnaces which the High Authority had moreover admitted were not operating at full capacity.

The second decision

This also gives precise information as to the legal basis on which it is founded,

and it relates in particular to the general decisions on the equalization of ferrous scrap, establishing the provisional rates of contribution, the parities of currencies and the rules on interest, and finally to Decision No 7/63 which is of decisive importance. The contribution owed by the applicant arises from the multiplication of the quantities of ferrous scrap calculated in the first decision by the rates of contribution mentioned for the different periods of contribution.

That, in my opinion, is in both cases sufficient to comply with any sensibly conceived obligation to state reasons, which should never be understood as an obligation to give detailed explanations in the manner of pleadings.

Nor am I able to discover any infringement of the obligation to state reasons as the result of some additional arguments which only appeared in the reply.

During the discussions of the inductive method applied by the High Authority to find the consumption of ferrous scrap, the applicant criticized the fact that the chief criteria applied by the above-mentioned committee of experts to determine the ratio between the consumption of current and the consumption of ferrous scrap had not been brought to its notice. In fact, the first decision contains nothing more than the formula applied. However I consider that it would exceed the bounds of an obligation to give reasons if it were necessary to give what is virtually a scientific dissertation on the technical questions implied in ascertaining the consumption of ferrous scrap and fixing an order for payment in respect of certain undertakings. It is sufficient that the High Authority has mentioned the decisive formula. Furthermore, the question of the basis on which and the technical deductions from which the formula was drawn up may be the subject of argument in litigation.

In its reply, the applicant also criticizes the fact that in the Annexes to the various general decisions on ferrous scrap, the expenses of administration and checking were assessed at different figures and that the reserves for contributions not promptly paid were for different amounts, without these differences being explained.

These criticisms may be passed over without examination since it is claimed that they fall quite outside the complaint of failure to state reasons raised in the application, as the complaint only refers to disputed *individual* decisions. In comparison with this complaint, the case-law of the Court regards them as fresh issues which, under Article 42 (2) of the Rules of Procedure, may no longer be raised in the reply. Moreover they are certainly unfounded as, on any fair view, general decisions cannot be required to provide detailed calculations with specific comments on each entry contained in them, as this would amount to giving reasons for a statement of reasons.

In sum, the third submission, with all its special aspects, is sufficient to bring about the annulment of the contested decision.

4. Inadmissibility of new charges

In a fourth complaint, the applicant criticizes the fact that the contribution owed by it increased from the original 102 000 000 lire (in 1960) to 313 000 000 lire (in the contested decision), as the High Authority had originally proceeded on the basis of the consumption of ferrous scrap as declared, but had subsequently twice altered the declarations by increases. All this occurred after the applicant ceased to operate its business in 1957, which aggravated its difficulties in furnishing evidence.

As it appears in the application, this complaint may be understood in various ways.

(a) It could be understood to mean that communications from the High Authority on the consumption of ferrous scrap

and the contributions owed are definitive and thus impossible to amend. In this sense, the complaint is certainly wrong. The High Authority has never created the impression that its individual communications within the framework of the equalization of ferrous scrap were final. On the contrary it always stressed that they were only of a provisional nature. This was the case in its first letter of 14 March 1957, addressed to the administrator of the winding-up of the applicant company, in the formal submission of its claim in the winding-up by letter of 1 April 1960, and also in its subsequent communications on the applicant's consumption of ferrous scrap, in particular in its letter of 18 August 1961, in which the calculations were still based on the ratio of 1 100 kilowatt-hours per metric ton of liquid steel produced.

(b) If this complaint must be understood as meaning that the undertakings party to the equalization scheme could under no circumstances, after the expiry of certain periods of time, find themselves confronted with an amended basis of assessment the concern underlying the complaint is perfectly understandable, even if certain commercial requirements make it appear more justified in the case of undertakings continuing production than for those, like the applicant, which have gone into liquidation.

But even if the complaint is understood in this sense, it cannot entail the annulment of the contested decisions on equalization. The nature of the equalization scheme precludes this: by its nature, a final liquidation, that is to say, a final statement of all debts and credits, is impossible until all the disputed points are resolved. The Court has noted on several occasions in the past the enormous difficulties which the High Authority met in 1958 when it took control of the administration of the equalization scheme. It was necessary to carry out carefully comprehensive checks in order to continue and wind up the scheme in a proper manner. This brought with it numerous actions before the Court on complicated disputes; these extended over some years and are not yet ended today. In view of this situation, there can be no question of excluding the new calculation in 1963 of equalization debts on the grounds of delay. It is moreover evident that in this connexion we are not faced with that illegal retroactive effect of legislation of which the applicant itself complains in its reply. The principle of the equalization of ferrous scrap has been well established since 1954; no judgment of the Court has called it in question, not even when certain forms of organization were incidentally objected to as illegal. All later general decisions on the equalization of ferrous scrap are based on this principle and merely served to clarify certain specific points. They may in fact be referred to, as was done by the High Authority, as interpretative decisions, which shows quite clearly that the argument on the retroactive effect of the decisions on ferrous scrap is wrong.

(c) Finally it is possible to interpret the complaint as meaning that checks on declarations of ferrous scrap cannot be carried out a long time after an undertaking has ceased production, since winding-up procedures might aggravate the legal problems of such an undertaking in defending itself.

But even if it is understood in this sense, the complaint is not valid. There can be no talk of an excessive delay in making the checks, as they took place in September 1958, that is to say, a short time after the High Authority took control of the administration of the equalization scheme. It was difficult for the applicant to imagine that it would not be checked again, because until then (and indeed until the present time) it has not paid anything at all towards its debts under the equalization scheme. Moreover a letter from the High Authority of 14 March 1957 specifically warned

the applicant that its consumption of ferrous scrap might be ascertained by inductive means. Likewise it is not clear that the commencement of the scheme of arrangement and of the winding-up proceedings hindered the applicant in furnishing proof. It was precisely the commencement of these procedures which in the present case were moreover only concluded at the end of 1961, that is to say, after the notification of the first results of the High Authority's assessment, which gave a special guarantee of the preservation of all important business documents. Under Italian law this is dealt with by Article 16 of the Italian Bankruptcy Law together with the corresponding penal provisions (Articles 216 and 220 of the same law). This is why it must be concluded that the documents missing when the checks were carried out in September 1958 were already missing prior to the commencement of the composition proceedings in February 1957, which makes it apparent that the applicant's observation on the delay between its cessation of business and the carrying out of the checks is of no importance in its defence.

(d) Although logically they do not wholly come within the submissions which I have just considered, I shall now mention some further complaints contained in the applicant's statement in reply to the High Authority's statement of defence since a closer connexion cannot be found with any other submission set forth in the application.

The applicant submits that the fixing of its debt in respect of contributions must be regarded as illegal, because Decision No 7/63, by including interest, necessitated an increase in the amount received from the contributions, because Decision No 7/61 contains an error of calculation which appears in calculating the average monthly consumption of ferrous scrap used and because the new division of the periods for the basis of assessment and statements of account are harmful to the applicant.

All these complaints are however so far outside the arguments in the application that, in relation to it, they must be considered as fresh issues within the meaning of Article 42 (2) of the Rules of Procedure. Because of this, in my opinion, they may not be taken into consideration in deciding the application.

5. Inaccurate assessment of the consumption of ferrous scrap

This submission embraces several complaints some of which were already raised in Case 18/62 (*Barge* v *High Authority*) where they were dismissed by the Court.

(a) This is the case, first of all, with regard to the objection of principle that establishing the consumption of ferrous scrap by means of the consumption of current is a doubtful method. In this connexion the Court stated that the consumption of current is only one of the factors which make it possible to draw conclusions on the consumption of ferrous scrap. It might be resorted to if other bases for calculation were completely lacking. In my opinion this does not mean that the inductive method of ascertaining the consumption of ferrous scrap may only be applied when an undertaking has not made *any* declaration; it must also be admissible when there is weighty evidence giving rise to doubt as to the truth of the declarations submitted and when the checks subsequently carried out give no information other than the consumption of current for determining the consumption of ferrous scrap.

This is plainly the position here. According to information given by the High Authority, during the check of 1958, its officials did not have at their disposal any accounting documents relating to the receipt and the consumption of ferrous scrap, which accounts

would have been valid evidence as to the actual consumption (invoices, weighing tickets, etc.). But the few documents found relating to the consumption of electric current, in the form of declarations by the applicant to its own industrial association ('Consumi B' forms) led the officials to the conclusion that the declarations of ferrous scrap made by the applicant to the Caisse de Bruxelles were plainly inaccurate. Consequently the High Authority was in principle justified in applying the inductive method in this case, even if there previously existed other documents relating to the consumption of ferrous scrap in the meantime destroyed by the applicant, as the lapse of time between the business transactions in question (purchase and consumption of ferrous scrap from April 1954) was never so great as to justify the destruction of business documents (books and papers).

(b) I would also refer to Case 18/62, as regards the argument of the applicant that when the High Authority reaches the conclusion by an assessment that the real consumption of ferrous scrap is higher than that declared, then it is bound to notify the undertaking concerned of this, so that it may have the opportunity of defending itself through administrative proceedings. The judgment expressly states that estimated assessments should not be regarded as sanctions within the meaning of Article 36; consequently it suffices to give the undertakings concerned, during the administrative proceedings *or* before this Court, the opportunity of submitting its claim that the assessment is incorrect.

(c) I might similarly refer to Case 18/62 concerning the argument on the accuracy of the parameter applied by the High Authority (950 kilowatt-hours per metric ton of liquid steel), the correctness of calculation following from it, without reference to any judicial process, by a committee of experts appointed solely by the High Authority and not by both parties, as well as the legality of checks entrusted to a private firm of accountants without drawing up a minute duly signed by the undertaking concerned. Finally it may be submitted that this also applies to the other arguments in respect of which it is possible to conclude that the Court considered them in Case 18/62 by implication, because they could also have been raised in that case, but there was no occasion for the Court to do so of its own motion. Such is the case with regard to the question whether a general decision should previously have stipulated in advance detailed particulars of the procedure for the High Authority's estimated assessment of consumption or whether Decision No 13/58, which provides for estimated amendments by the High Authority had been improperly given retroactive effect. In fact, it should be admitted that very detailed rules, quite apart from the fact that they might have been inopportune from an administrative point of view, would not in any case have given additional guarantees to the parties concerned, because they are always free to request the Court to check whether this procedure has been correctly applied in any given case. Furthermore, there can be no question of any illegal retroactive effect of Decision No 13/58, because it is merely the legal basis for the checks and assessments subsequent to its entry into force. Besides, it could be said that this procedure is inherent in any scheme for the recovery of taxes under public law. The determining factor here is provided by the obligation to preserve important commercial documents, which, by virtue of general principles, or as a consequence of Article 47 of the Treaty, has surely existed since the setting up of the equalization scheme for imported ferrous scrap.

(d) In the specific matter of estimating its consumption of ferrous scrap the applicant put forward the following objections:

(aa) The High Authority was wrong in proceeding on the basis of a constant consumption of electricity and of ferrous scrap until the cessation of production. During the months preceding the commencement of the composition procedure, the applicant worked at an appreciably reduced capacity: above all, it hired its biggest furnace (10 metric tons) to another undertaking, and consequently the consumption of ferrous scrap by that furnace should not be debited to its account.

(bb) The electricity consumption on which the High Authority has based its assessments includes electricity used for purposes other than steel production.

(aa) With regard to the first point, in connexion with which the applicant produced a contract for the hire of its 10-ton furnace, the High Authority emphasized that in its decision it did not take account of the productive capacity of this furnace but only of that of the three smaller furnaces. This in fact arises from the text of the contested decision. It is clear that this 10-ton furnace was installed only in the course of 1956, as was notified to the High Authority's inspectors during their check in 1958, and to all intents and purposes it only went into production when it was hired to the Società Anonima Commerciale Siderurgica (hereinafter referred to as SACS). But (this arises from the calculations which it produced) as the High Authority had to assess the consumption of current in the last months when the applicant was in business by means of extrapolation from the figures which the applicant notified to its group of undertakings at a time when the 10-ton furnace was not yet in use (January 1955 to April 1956), the use of this 10-ton furnace by another enterprise cannot cast doubts upon the accuracy of the High Authority's assessments. In fact, the High Authority assumed that the applicant had never operated more than three furnaces and it excluded the 10-ton furnace.

When the applicant notes that apart from hiring its 10-ton furnace, its production was in fact appreciably reduced during the final months before it collapsed, it may be said that there is a presumption in favour of the correctness of this statement. A business crisis is usually perceptible at least some time in advance and there is consequently a corresponding reduction in production. Nevertheless, I should not wish to regard this factor as a reason for declaring that the High Authority's necessarily rough assessment is vitiated. Any faults ought to a large extent to have been already compensated by reason of the fact that the High Authority took as its basis the monthly averages for the whole period during which the applicant was subject to the equalization scheme (April 1954 to February 1957). Moreover, the applicant has not put forward any plausible factor for ascertaining the extent of the falling off in production during that period. According to its own declarations, from October 1956 its own consumption was only approximately 10% of the current showing on its meters, while SACS used 90% of it for the furnace it hired. But so far the applicant has not furnished us with the slightest evidence of this. This might come in the form of information from SACS. But as the applicant has so far failed to give any indication of the evidence to this effect, or even to begin doing so (for example in the form of a request to SACS), I submit that the applicant has lost its right to furnish evidence in rebuttal in the sense of the judgment in Case 18/62. In any event, in order to avoid further prolonging the proceedings, I suggest the Court should not now undertake such an investigation; on the contrary, I suggest that no account be taken of the said factor.

(bb) As for the second objection relating to amounts of current consumed for purposes other than steel production but

which formed the basis of the High Authority's calculations, the situation appears as follows.

The High Authority in essence based its calculations on the 'Consumi B' forms, completed by the applicant itself, and only on those columns relating to the consumption of current which are described as relating to 'usi termici'. In this connexion the applicant declares that they are based on an error, and that in reality the said figures also include the consumption of current for 'usi forza'. At the entrance to its factory there was only a 27 000 volt cable and part of this current had to be transformed by a special apparatus, with intermediate meters, into 500 volts for power. It produced as evidence a register which it used for its internal purposes and which was said to contain various meter readings. The consumption of 500-volt current could be read there and the deduction made that it certainly featured in the calculations of the current made by the High Authority. Moreover the applicant produced an electricity invoice in the name of the present operator of its business and for a month in 1964 from which it could be deduced that the consumption of 500-volt current was separately recorded for fiscal reasons which was also the case for the period of assessment under the equalization of the ferrous scrap, the operating conditions of the applicant being the same.

The question of how these various factors are to be appraised now presents itself. It may certainly be said that the documents which the applicant has so far produced do not constitute valid evidence in plenty such as to invalidate the assessments of the High Authority. The applicant itself entered figures in the register in question which are meaningless without explanations. The register is moreover incomplete. The copy of an electricity invoice submitted to us relates to a month in 1964 and thus does not concern the applicant's production. It is consequently impossible to contemplate the *annulment* of the contested decision on the basis of these factors alone. At the most, all that remains is to wonder whether an attempt should not be made to gather other evidence which might confirm the accuracy of the applicant's allegations: according to the information supplied by the applicant, its former electricity supplier should be questioned in order to obtain the invoices for the current.

However I hesitate in principle to submit such a proposal to the Court for the same reasons which guided me in considering the first objection of the applicant. Certainly we must recognize the right of the applicant to put forward reasoned criticisms and to adduce contrary evidence to invalidate the estimated assessments made by the High Authority; but on the other hand, in the interests of an orderly and expeditious conduct of the case, we must insist that a late indication of further evidence does not involve delays (Article 42 (1) of the Rules of Procedure). When, both in the application and in the reply, the applicant fails to put forward appropriate indications of evidence and indeed is content, at a late stage in the proceedings, to submit evidence (in this case in the form of copies of invoices addressed to its successor) instead of making an immediate endeavour directly to obtain the appropriate documentary evidence by requesting information from its former electricity supplier, we ought not to find any reason to order an inquiry now the result of which would be nothing if not uncertain, owing to the lapse of time following the cessation of business. The Court would be all the more justified in adopting this stand-point in that the High Authority, in its calculations, has on the whole kept to the applicant's own information (the 'Consumi B' forms), and in that the applicant only now questions their accuracy, alleging error on its part, and finally above all because the High

Authority supported its assessments by calculations based on the applicant's production capacity and in doing so plainly acted with moderation.

To sum up, at the present stage in the proceedings I am of the opinion, then, that this submission is not such as to entail the annulment of the contested decision.

6. Illegal determination of the rate of contribution for the purposes of the ferrous scrap equalization scheme

The applicant's sixth complaint is to state that the fixing of the rates of contribution applicable to its consumption of ferrous scrap is illegal, because it was done not by the High Authority, but by the agencies in Brussels, and that these rates reached unduly high levels in the interests of their members.

With regard to the question of jurisdiction thus raised, it is evident that this complaint is unfounded. It cannot be said that after adopting its Decision No 13/58, that is to say, after the reorganization of the equalization scheme, the High Authority simply adopted the decisions of the agencies in Brussels. On the contrary, Decision No 13/58 expressly provides the means for the checking and revocation of earlier decisions. In fact, this method has to a large extent been employed, as is evidenced by the extensive checks carried out by the High Authority since 1958 and the numerous decisions which it took itself after that date.

With regard to the rate of contributions which in the applicant's case rose from 1.65 lire to 13 lire per kilogramme, the High Authority notes that this is not incomprehensible, having regard to the increase in the production of steel and imports of ferrous scrap which characterizes the period in question and taking account of the determinative prices within the Common Market and of imports and of the costs of administering the equalization scheme. It must also be pointed out, in connexion with legal proceedings, that deciding what is a 'reasonable level' of the rates of contributions for the ferrous scrap equalization scheme includes, within the meaning of Article 33 of the Treaty, the evaluation of the situation resulting from economic facts or circumstances which the Court may examine only if the High Authority is alleged to have committed a misuse of powers or manifestly failed to observe the provisions of the Treaty. In the present case the applicant has failed to submit a sufficiently detailed and relevant case, in particular when the arguments of the High Authority are contrasted with the complaints of the applicant, so that the Court is not entitled to undertake that evaluation and even less to annul the contested decision on the grounds of the submissions put forward by the applicant.

7. Misuse of powers

Finally, according to the applicant, the High Authority committed a misuse of powers by failing to oppose the large industrial combines' attempts to keep the rate of contribution as high as possible. They had thus the opportunity of importing ferrous scrap on favourable conditions discriminating against the small undertakings who were obliged to purchase ferrous scrap within the Common Market. In particular, through their subsidiary commercial undertakings, the large industrial undertakings succeeded in keeping the price of ferrous scrap within the Common Market artificially low, lower than the real market price, and thus they obtained bigger refunds on ferrous scrap purchased abroad.

When in this connexion the applicant points to some decisions on equalization according additional advantages to im-

porters of ferrous scrap (in all, as inducements to import and for special expenses, 1.5 units of account), the High Authority replies that these advantages, which moreover were only in force for some months, were necessary to increase imports and to ease the situation in the Common Market. It follows from this that, as in the case of the rates of contribution in the case of the preceding complaint, the Court can only check the economic expediency of the measures in question to a limited extent, within the framework of Article 33. Furthermore it is not clear that these measures were necessarily discriminatory. Apart from the fact that in order to avoid complaints of discrimination, the High Authority cannot take account of the particular position of each enterprise, even of the smallest, it is certain, according to its explanations, that even undertakings smaller than the applicant could enjoy the advantages of imported ferrous scrap. They had only to notify their requirements with regard to ferrous scrap to the office in Brussels which organized imports.

With regard to the complaint that the large industrial undertakings kept the equalization price artificially low in order to obtain higher refunds for their ferrous scrap purchased abroad, the applicant has only been able to cite the purchase price allegedly paid within the Common Market by various Italian undertakings which it knew, and these prices were below the average prices in the Community. But as account had only been taken, for the purposes of the equalization scheme, of the average prices in the Community, these figures, even assuming that they are correct, cannot be regarded as even an indication, much less as proof, of alleged improper practices by large industrial undertakings tolerated by the High Authority or the agencies in Brussels. Consequently the last complaint of misuse of powers is not an argument capable of bringing about the annulment of the contested decisions.

III — Summary and conclusion

In the light of the foregoing, I am of the opinion that the application of the Merlini company, a limited liability company in liquidation, should be dismissed as unfounded, and that it should be ordered to bear the costs of the proceedings.