JUDGMENT OF THE COURT (Second Chamber)
7 April 1987 *

In Case 32/86

Società industrie siderurgiche meccaniche e affini (Sisma) SpA, whose registered office is in Milan, represented by Franco Pasquali, of the Bolzano Bar, with an address for service in Luxembourg at the Chambers of J. C. Wolter, Avocat, 8 rue Zithe,

applicant,

v

Commission of the European Communities, represented by Sergio Fabro, a member of its Legal Department, acting as Agent, assisted by Paulo De Caterini, of the Rome Bar, with an address for service in Luxembourg at the office of Georges Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that the Commission's individual decision, notified on 8 January 1986, imposing a fine on the applicant under Article 58 of the ECSC Treaty is void, or, in the alternative, the amendment of the said decision,

THE COURT (Second Chamber)

composed of: T. F. O'Higgins, President of the Chamber, O. Due and K. Bahlmann, Judges,

Advocate General: J. Mischo
Registrar: D. Louterman, Administrator

having regard to the Report for the Hearing and further to the hearing on 21 January 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 5 February 1987,

* Language of the Case: Italian.

gives the following

Judgment

1 By an application lodged at the Court Registry on 7 February 1986, the Società industrie siderurgiche meccaniche e affini SpA brought an action under Article 36 of the ECSC Treaty for a declaration that the Commission's decision of 20 December 1985 imposing on it a fine of 85 650 ECU pursuant to Article 58 of the ECSC Treaty and Article 12 of Commission Decision No 234/84 of 31 January 1984 on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry (Official Journal 1984, L 29, p. 1) for exceeding its production quotas in respect of the first quarter of 1984 was void, or, in the alternative, a reduction of the fine imposed on it.

2 Reference is made to the Report for the Hearing for the facts of the case and the arguments of the parties which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

I — The application for annulment

(a) *The alleged breach of essential procedural requirements*

3 The applicant claims that the Commission has infringed essential procedural requirements by virtue of:

(i) the uncertainty as to dates and time-limits in regard to the decision and to the letter communicating it concerning the point whether the decision was adopted by the Commission on 20 or 27 December 1985;

(ii) the uncertainty concerning the procedure followed by the Commission in adopting its decision;

(iii) the irrelevance of the reference to the amendment of Decision No 234/84 by Commission Decision No 2760/85 of 30 December 1985 (Official Journal

1985, L 260, p. 7) inasmuch as the latter decision had not entered into force at the time when the quota was exceeded;

(iv) absence of a statement of the reasons on which the decision is based inasmuch as it fails to indicate both the production quotas allocated and the mathematical calculation of the excess complained of.

4 The Commission has explained that the contested decision, although dated 27 December 1985, was adopted on 20 December 1985, as is indicated in the covering letter. It should be observed that the notice published in the Official Journal concerning the decision (Official Journal C 347 of 31 December 1985, p. 1) confirms the Commission's explanation. The reference to 27 December is therefore merely a clerical error. It should also be pointed out that the uncertainty resulting from that error could not have caused any damage to the applicant since the decision came into force on the date on which notice of it was given. It follows that the first limb of the submission is without foundation.

5 In its application, the applicant put forward no argument in support of the second limb of its submission other than the improbability that the Commission would have met between the Christmas and New Year holidays. After communication of the internal instructions on sanction procedures approved by the Commission on 5 September 1984 (Doc. SEC(84) 1365), annexed to the rejoinder, the applicant expounded its submission by arguing at the hearing that the accelerated and simplified written procedure provided for in those instructions, which, the Commission states, were followed in this case, does not apply to sanctions for the exceeding of quotas.

6 It is true that neither sanctions for the exceeding of quotas nor those imposed for failure to comply with price rules are expressly mentioned in the part of the instructions setting out the decisions covered by the said procedure. However, such sanctions are mentioned in the title of the document and it is clear from the contents thereof that the instructions are intended to modify and extend the procedure previously followed for the adoption of decisions concerning those very sanctions. The complaint that the contested decision was adopted in accordance with the accelerated and simplified written procedure cannot therefore be upheld.

7 The reference in the contested decision to the latest amendment of the general decision is in accordance with the practice of providing the reader with complete information as to the amendments of the basic decision. The fact that the Commission refers to it in the decision in no way implies that it applied retroactively that amendment, which, moreover, is of no relevance to a case such as the present one. That limb of the submission is therefore without any factual basis.

8 With regard to the complaint concerning the statement of the reasons on which the contested decision is based, it should be pointed out that, according to the settled case-law of the Court (see, *inter alia*, the judgment of 28 March 1984 in Case 8/83 *Bertoli* v *Commission* [1984] ECR 1649), the purpose of the obligation to state the reasons on which an individual decision is based is to enable the Court to review the legality of the decision and to provide the person concerned with sufficient information to make it possible to ascertain whether the decision is well founded or whether it is vitiated by a defect which may permit its legality to be contested. The extent of that obligation depends on the nature of the measure in question and on the context in which it was adopted.

9 In this case, the contested decision indicates the extent by which the quotas were found to have been exceeded and the rate of fine applied. It expressly refers to letters in which the Commission informed the applicant of the quotas allocated to it and of its complaints concerning the exceeding of those quotas in respect of the quarter in question, as well as the hearing of the applicant on the subject of that excess, and it replies to the submissions put forward by the applicant in its own defence during the administrative procedure. Seen in that context and having regard to the way in which the applicant was enabled to participate in the process of drawing it up, the contested decision thus provided the applicant with all the information necessary to ascertain whether the decision was well founded. Moreover, on the basis of all of the documents sent to the applicant during the administrative procedure, the Court has been able to review fully the legality of the decision.

10 It follows from the foregoing that the submission alleging a breach of essential procedural requirements must be rejected in its entirety.

(b) *The alleged infringement of the Treaty and of the general decision*

11 The applicant claims that when it calculated the excess, the Commission did not take account of the entirety of the production quotas to which it was entitled during the first quarter of 1984. In particular, it claims to be entitled to an additional quota of 1 491 tonnes in respect of products in category VI to be delivered to the Soviet Union and to an increase of 1 428 tonnes corresponding to a Soviet order for special sections.

12 The additional quota of 1 491 tonnes was allocated on the basis of Article 14C of Commission Decision No 2177/83 of 28 July 1983 on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry (Official Journal 1983, L 208, p. 1). According to that provision, the Commission may, on application, allocate to undertakings which have received orders from third countries exceeding by over 10% the part of the quota which the undertaking is not authorized to deliver in the common market additional quotas corresponding to the quantity in excess. After receiving an order from the Soviet Union, the applicant applied for such a quota in a letter of 15 September 1983. Since the Commission granted the additional quota only in a letter of 29 December 1983, received by the applicant on 9 January 1984, the latter claims that that quota should be carried over to the first quarter of 1984.

13. It must, however, be pointed out that the Commission imposed a fine on the applicant for exceeding its quota in respect of category VI during the fourth quarter of 1983 and that in calculating the excess, it took full account of the additional quota of 1 491 tonnes. Since the applicant has thus benefited from account being taken of that quota in the context of a previous decision which it did not contest, it cannot ask for account to be taken of the same quota a second time in calculating the excess in respect of the first quota of 1984.

14 As a result of a further Soviet order for 4 452 tonnes to be delivered during the first quarter of 1984, the applicant, in a letter of 10 February 1984, applied for a second additional quota under Article 14C of Decision No 234/84, which is similar to Article 14C of Decision No 2177/83, cited above, and the Commission, by decision of 17 April 1984, allocated it an additional quota of 610 tonnes for the first quarter of 1984. The applicant does not dispute that the Commission took

account of that additional quota of 610 tonnes in calculating the excess which is the subject of the contested decision.

15 The Soviet order for 1 428 tonnes was for special sections 'to be delivered before 15 April 1984', and the applicant notified it to the Commission by a letter of 19 March 1984. The applicant did not seek an additional quota in respect of that order but, on the contrary, expressed the view in its letter that the said special sections could be manufactured entirely outside the quota system.

16 Under those circumstances, the Commission cannot be criticized for failing to take account of that quantity in calculating the additional quota of 610 tonnes for the first quarter of 1984. Furthermore, the Commission's officials were right in informing the applicant, in a letter of 22 May 1984, that special products are also subject to the quota system and that the order in question could not by itself justify the allocation of an additional quota under Article 14C of Decision No 234/84.

17 Consequently, the applicant has not succeeded in showing that the Commission failed to take account of any quantity to which it was entitled during the first quarter of 1984. The applicant's second submission must therefore be rejected.

II — The application for reduction of the fine

18 The applicant complains that the Commission adopted the contested decision automatically, without carrying out a thorough study of the special position of the undertaking concerned. It asks that the fine should be reduced to a symbolic amount in consideration, on the one hand, of the uncertain and difficult position in which it found itself by reason of the Commission's maladministration and, on the other hand, of the fact that work carried out in the context of the restructuring of the undertaking made it necessary to shut down certain installations for part of the third quarter of 1983, with the result that some 8 000 tonnes of the applicant's quotas for 1983 were not used.

19 It can be seen from the foregoing appraisal of the application for annulment that the applicant's allegation that the Commission was guilty of irregularities in the allocation of quotas are not justified. With regard to the failure to use part of the quotas for the third quarter of 1983, the Commission admits that the applicant

informed it of its intention to carry the remainder over to the fourth quarter. It admits to the delay in correcting that erroneous interpretation of Article 11 (3) (d) of Decision No 2177/83, which permits carryover only in cases of *force majeure* or shutdown for repairs. However, the Commission took account of that circumstance by halving the fines not merely for the fourth quarter of 1983, by a decision which the applicant has not contested, but also for the quarter at issue in these proceedings, namely the first quarter of 1984.

20 Since the Commission has already taken account of the applicant's special position and since the circumstances relied on do not justify an additional reduction in the contested fine, that fine must be maintained.

21 For those reasons, the application must be dismissed in its entirety.

Costs

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

On those grounds,

THE COURT (Second Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the applicant to pay the costs.

O'Higgins Due Bahlmann

Delivered in open court in Luxembourg on 7 April 1987.

P. Heim
Registrar

T. F. O'Higgins
President of the Second Chamber