which it is being asked to adopt. That is not the case where a letter, whilst stating the purpose of the request, contemplates the possibility of further discussions with the Commission and hence does not clearly indicate that the Commission is being called upon to adopt a formal decision within a mandatory period.

3. Since a request for an increase in annual reference production in respect of certain products as from a given quarter amounts to an application for additional production quotas, the Commission decision which must be regarded as an implied rejection of that request and which is therefore capable of adversely affecting the undertaking concerned is the first decision which, after the submission of the request and without taking it into account, fixes the production quotas for the undertaking. Since the latter did not challenge that decision within the period prescribed for the initiation of proceedings, an application directed against a subsequent decision of the Commission which, by fixing the production quotas for another quarter without taking into account the adjustment of the reference production sought, merely reaffirms the first decision's refusal of the request must be dismissed by the Court of its own motion, inasmuch as it is not directed against the decision adversely affecting the undertaking.

4. It follows from Article 34 of the ECSC Treaty that an action for compensation for the damage arising from an individual decision may be brought by an undertaking only after the decision which allegedly caused the damage has been declared void and after it has been established that the Commission does not intend to take the steps needed to redress the illegality found to exist.

OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 23 April 1986 *

Mr President,
Members of the Court,

A — On 24 May 1982 the applicant in this case notified the Commission — through Galvanor, an undertaking belonging to the same group — pursuant to Decision No 3302/81/ECSC of an investment programme relating to a plant for the production of galvanized sheet. The products concerned fall within Categories Ic and Id in Article 1 of Decision No 234/84/ECSC on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry. The plant, with a capacity of 155 000 tonnes a year, was to be brought into operation in the second quarter of 1984. It was expressly stated in the notification that the new plant was intended to replace two plants which had, or were to be, closed down (in particular the Blagny plant, with a capacity of 60 000 tonnes for

* Translated from the German.

Category Ic products, and the cold-rolling mill at Montataire with a capacity of 400 000 tonnes for Category Ib products).

On 10 February 1983 the Commission delivered its opinion on that programme pursuant to Article 54 of the ECSC Treaty. It stated that, in its assessment, it had taken account of the closure of the two plants referred to and that, accordingly, the investment plan could be regarded as being in conformity with the general objectives of the Community.

After the plant had been brought into operation, in the second quarter of 1984 as anticipated, the applicant sought to obtain *additional* production quotas for that plant under the system of steel quotas. The applicant accordingly requested the Commission on 27 April 1984 to increase its annual reference production in respect of Categories Ic and Id by 155 000 tonnes as from the second quarter of 1984, to be apportioned as follows: 65% for Category Ic and 35% for Category Id. In its request it referred to the rules in force at the time (that is to say, the rules applicable in the spring of 1983), which clearly meant that an adjustment was sought pursuant to Article 15 of Decision No 1696/82/ECSC, a provision which the Court has had occasion to consider in other cases (but which ceased to be part of the quota rules following Decision No 2177/83/ECSC of 28 July 1983).

Since the applicant was informed, by letter of 20 June 1984 from a director of the Commission, merely that the Directorate for steel was examining its request with a view to submitting a decision to the Commission, it made further representations to the Commission on 5 July 1984. It reminded the Commission that the new galvanizing plant had been brought into operation as anticipated and pointed out that since the quotas had not been adjusted in time, they had already been exceeded in the second quarter of 1984 as it had not been possible to exchange or acquire any quotas. Moreover, in order to avoid the imposition of penalties, it asked the Commission to authorize such excess production to be carried forward for inclusion in the quotas to be allocated for the third galvanizing plant (that is to say the additional quotas requested by the applicant).

The applicant's efforts, as the Court is aware, were unsuccessful. The applicant inferred from a notice dated 31 December 1984, which was based on Decision No 234/84 and related to the first quarter of 1985, that the annual reference production and reference quantities for 1985 had been fixed at the same level as those applicable for 1984. That was apparent from a comparison with a notice dated 23 May 1984 relating to the first two quarters of 1984. It was also clear from a notice of 20 February 1985 in which a slightly higher production quota was fixed, solely for the first quarter of 1985, as a result of the alteration of the abatement rate for Category Ic by Decision No 313/85/ECSC of 6 February 1985. For the rest, the production and delivery quotas referred to in the notice of 31 December 1984 were left unchanged.

This led to the applicant's first application to the Court on the question of increased production quotas to take account of the bringing into service of the new galvanizing plant. That application was lodged on 1 April 1985 (Case 81/85). In its *conclusions* (I refer to the version set out in the reply) the applicant claimed that the Court should:

(a) declare void the Commission's decision of 20 February 1985 in so far as it refuses to increase the applicant's reference production in respect of Category Ic and Id products;

(b) declare that the absence of any mention in Decisions No 2177/83 and No 234/84 of the possibility of adjusting the reference production is to be interpreted as relating solely to new investments and not to investments which were commenced under the rules previously in force and after the Commission had delivered a favourable opinion;

(c) in the alternative, in the event of the rejection of the preceding claim, declare unlawful Decision No 234/84 in so far as it withdrew the possibility of increasing reference production which existed while Decision No 1696/82 was in force or inasmuch as it failed to provide for transitional measures;

(d) admit the claim for damages and reserve judgment thereon until a later stage of the proceedings

Even before the submission of the application in Case 81/85, the author of the letter of 20 June 1984 sent a further letter to the applicant on 18 March 1985 (referring to the first-mentioned letter). In that letter reference was made in the first place to the defeat, as a result of the unanimous opposition of Eurofer (of which the applicant is a member), of the proposal submitted by the Commission at the end of 1984 for the amendment of Decision No 234/84, which would have enabled a solution to be found to the applicant's problems (by providing for the merger of Categories Ic and Id and for an increase in the reference production). Secondly, attention was drawn to Decision No 470/85/ECSC of 25 February 1985 amending Decision No 234/84 (enabling additional quotas to be granted in respect of Category Id) and the suggestion was made that an appropriate request should be submitted to the Commission (the applicant evidently took that advice and — as the Court has learnt during the oral procedure — the request was granted). The applicant also received a letter dated 29 March 1985 from Mr Narjes, Vice-President of the Commission. In the first place, Mr Narjes repeated in substance the explanations concerning both the Commission's proposal for a decision submitted at the end of 1984 and Decision No 470/85. Secondly, with regard to the bringing into operation of the applicant's new galvanizing plant and the production quotas for Category Ic which the applicant considered inadequate, Mr Narjes pointed out that Decisions No 2177/83 and No 234/84 no longer made provision for an increase in reference production in the case of plants brought into service whilst those decisions were in force.

As a result, the applicant, who treated that as an express rejection of its request of 27 April 1984, brought a further application before the Court (Case 119/85). In its *conclusions* — once again I refer to the version set out in the reply — the applicant claimed that the Court should:

(a) declare void the decision of 29 March 1985 and, in so far as is necessary, the letter of 18 March 1985 in so far as the Commission thereby refused to increase the applicant's reference production for Category Ic and Id products;

(b) make a declaration identical to that requested in the aforesaid claim (b) in Case 81/85;

(c) in so far as is necessary, declare Decisions No 2177/83 and No 234/84 unlawful inasmuch as they do not expressly provide for the possibility of increasing reference production in respect of Categories Ic and Id, which existed under the decisions previously in force, and do not provide for transitional measures;

(d) admit the claim for damages and reserve judgment thereon until a later stage of the proceedings (namely claim (d) in Case 81/85).

The Commission's primary contention, as the Court is aware, is that those claims are inadmissible. In the alternative, the Commission contends that they should be dismissed as unfounded.

B — *My opinion* on this case is as follows:

I — Admissibility of the actions

1. *Action in Case 81/85*

(a) The central feature of this case is the claim for the annulment of the decision of 20 February 1985 in so far as it refuses to increase the applicant's reference production in respect of Category Ic and Id products.

This claim is based, *inter alia*, on the argument that Decision No 234/84 (like its predecessor) wrongly contained no provision such as Article 15 of Decision No 1696/82 enabling adjustments to be made to the reference production of undertakings whose plans to install a new production plant had not evoked a negative opinion from the Commission and which had already begun to implement the corresponding investment programme whilst Decision No 1696/82 was in force.

The defendant takes the view that the applicant should have objected to that omission as soon as it became apparent in Decision No 2177/83; having failed to do so in due time, the applicant cannot raise the matter in 1985 in connection with the review of a perfectly normal decision on the allocation of quotas. Moreover, in the defendant's view, the application is in any event clearly inadmissible since the applicant failed to pursue the matter in due time by bringing an action under Article 35 of the ECSC Treaty after its request of 27 April 1984 had failed to evoke a favourable response within the prescribed period.

The applicant contests that argument, in the first place, by reference to the limited right of action against general decisions which is conferred on undertakings by the second paragraph of Article 33 of the ECSC Treaty. Secondly, the applicant disputes the contention that its request of 27 April 1984 caused time to start to run for the purposes of Article 35 of the ECSC Treaty, on the ground that it did not constitute a formal demand that action be taken. Moreover, it contends that on 20 June 1984 the Commission undertook to examine its request. Since past experience has shown that such investigations last some considerable time (as is clear for instance from the decision given on 27 January 1986 in response to an application based on Article 10 (3) of Decision No 234/84), it cannot be assumed in the applicant's view that after two months of silence a decision had been taken to refuse its request. Rather, an (implied) rejection of that kind could be inferred only from the decision of 20 February 1985 (since it left the applicant's reference production unchanged as compared with 1984). The applicant maintains that it subsequently brought an action challenging that decision in due time, and indeed brought a further action (Case 119/85) when on 29 March 1985 its request was expressly rejected by the Commission.

(aa) On this issue, I was initially inclined to accept the view of the Commission, which relies exclusively on the failure to challenge Decisions No 2177/83 and No 234/84. That is so particularly because it may be inferred from the applicant's reasoning that the limitation imposed by the second paragraph of Article 33 of the ECSC Treaty on the right to challenge general decisions has no effect in a case such as this (since the applicant contends that the Commission failed to adopt transitional measures to cover cases such as the applicant's, a contention which clearly falls within the term 'a misuse of powers *affecting [it]*').

It must however be borne in mind first of all that, according to the reply, the applicant's principal argument is that the correct interpretation of the aforesaid general decisions is that in cases such as this they permit the reference production to be adjusted by the method provided for in Article 15 of Regulation No 1696/82 (even in the absence of any express provisions to that effect). Hence that argument is in no way a *criticism* of those general decisions nor an assertion that they are unlawful. Moreover, in so far as the applicant does make such an assertion in the alternative, in the event of a different interpretation of the general decisions, it is doubtful whether such an *objection of illegality* raised against general decisions — for that is precisely what is at issue — can be rejected on the ground that those decisions were not challenged in due time. The Court has in fact consistently held that in challenging an individual decision it is possible to rely on the illegality of a general decision on which that individual decision is based, even though the period for challenging the general decision has expired (see the judgments of the Court in Cases 9/56, 10/56 and 15/57). [1]

1 — Judgment of 13 June 1958 in Case 9/56 *Meroni* v *High Authority* [1957-1958] ECR 133; judgment of 13 June 1958 in Case 10/56 *Meroni* v *High Authority* [1957-1958] ECR 157; judgment of 12 June 1958 in Case 15/57 *Hauts Fourneaux de Chasse* v *High Authority* [1957-1958] ECR 211.

Moreover, in contrast to the Commission's view, it can scarcely be disputed that a 'direct legal connection' (within the meaning of the Court's judgment in Case 21/64) [2] exists between the rejection of the applicant's request and the allegedly defective general decision, No 234/84, since, according to the applicant's alternative argument, its request was rejected because Decision No 234/84 did not contain a provision allowing for the adjustment of reference production such as Article 15 of Decision No 1696/82.

(bb) I am certain, however, that the Commission is right in stating that legal proceedings were not instituted in due time, if the period is calculated from the date of the submission of the request in April 1984.

In that connection it is difficult, in the first place, to dispute the view that in its letter of 27 April 1984, which I considered earlier, the applicant effectively raised the matter with the Commission within the meaning of Article 35 of the ECSC Treaty. [2] In that letter the applicant clearly seeks the adoption of a favourable decision and, although no legal basis is expressly mentioned, that is immaterial because it is sufficiently clear that the reference to the provisions concerning an increase in reference production which were in force at the time when the implementation of the

2 — Judgment of 31 March 1965 in Case 21/64 *Macchiorlati* v *High Authority* [1965] ECR 175 at p. 187.

investment plan began is in fact a reference to Article 15 of Decision No 1696/82. In my view, therefore, it was made sufficiently clear to the Commission that its inaction would be impugned (see the Court's judgment in Case 17/57).[3] Clearly there was no further need for a formal demand under the system established by the Treaty. If, however, a formal demand were considered necessary, reference could be made to the applicant's reminder of 5 July 1984 (once again, the proceedings would not have been instituted within the prescribed period if that were taken as the date from which time started to run).

It is also clear that the decision sought by the applicant was not adopted within two months of the submission of the request. According to the system of legal protection established by the Treaty, this means that after that period an *implied* decision of rejection is deemed to have been adopted, which should have been challenged within one month (in this case this would have meant the summer of 1984 and not the spring of 1985). That is how Article 35 of the ECSC Treaty should be interpreted, as can clearly be inferred from the judgments of the Court in Cases 42 and 49/59[4] and 81/83.[5]

With regard to the applicant's reference to the letter of 20 June 1984 from a Commission director undertaking to carry out an examination (which would necessarily last some considerable time), I would endorse the Commission's view that this could not lead to an extension of the period for instituting proceedings with regard to the applicant's request, which alone is relevant at this stage.

That is how the Court's judgment in Case 42/58[6] should be understood; in that case the Court held that a letter from the director of the Market Division of the High Authority stating that a question was under study did not constitute a decision within the meaning of the Treaty and there was therefore an implied decision of refusal as meant by Article 35 (see also the judgment in Joined Cases 42 and 49/59 *SNUPAT* v *High Authority* [1961] ECR 53 at p. 74). In the sphere of Community staff law the Court has consistently held that failure to take a decision on a request or failure to answer a complaint after the expiry of certain specified periods also have legal effects, in relation to which action must be taken in due time. The Court has stressed quite categorically that the expiry of the prescribed period is tantamount to the adoption of an implied decision of rejection; it is that decision which must be challenged. However, an interim decision urging forbearance and undertaking to examine the matter cannot be regarded as a measure which extends the period for instituting proceedings because, in the interests of legal certainty, that period cannot be altered by the parties (see the Court's judgments in Cases 12/65, 52/64, 79/70 and 40/71).[7]

I think it is also significant that the examination promised by the Commission, as was clearly apparent to the applicant, did not concern the request contained in the letter

3 — Judgment of 4 February 1959 in Case 17/57 *Steenkolenmijnen* v *High Authority* [1959] ECR 1 at p. 8.

4 — Judgment of 22 March 1961 in Joined Cases 42 and 49/59 *SNUPAT* v *High Authority* [1961] ECR 53 at p. 74 *et seq.*

5 — Judgment of 12 July 1984 in Case 81/83 *Busseni* v *Commission* [1984] ECR 2951 at p. 2962.

6 — Judgment of 17 July 1959 in Case 42/58 *SAFE* v *High Authority* [1959] ECR 183 at p. 191.

7 — Judgment of 14 December 1965 in Case 12/65 *Bauer* v *Commission* [1965] ECR 1003; judgment of 14 December 1965 in Case 52/64 *Pfloeschner* v *Commission* [1965] ECR 981; judgment of 7 July 1971 in Case 79/70 *Müllers* v *Economic and Social Committee* [1971] ECR 689; judgment of 17 February 1972 in Case 40/71 *Richez-Parise* v *Commission* [1972] ECR 73.

raising the matter with the Commission (the request for an *increase* in its reference production on account of the new plant brought into operation pursuant to the provisions which were in force at the start of the work on the plant). In that respect the legal position, which was known to the applicant, was quite clear (Article 15 of Decision No 1696/82 had deliberately been left out of the new provisions) and no further examination was necessary. Instead, as was explained at the hearing, it was necessary to ascertain whether the applicant could be assisted by recourse to flexible provisions that were in force (such as Article 15 (2) of Decision No 234/84, which permitted the transfer of the reference figures in the event of the closure of a plant), and in particular to deal with the question of the amendment of the rules applicable to galvanized sheet (namely the merger of Categories Ic and Id and the establishment of a new, more favourable reference production for the new joint category). Negotiations concerning the latter question were already in progress when the applicant submitted its request (as it expressly acknowledges in the reply in Case 119/85). They formed the subject-matter of a communication from the Commission to the Council dated 29 November 1984 and of a draft decision dated 21 December 1984 (which came to nothing, with the result that in the end the system adopted — embodied in Decision No 470/85 — was new only in part and permitted additional quotas to be granted for Category Id alone).

However, although the applicant preferred to await the (uncertain) outcome of the other steps it had taken instead of pursuing its original request, there is no doubt that, following the definitive clarification of the situation and the expiry of the relevant period, it could not again take up its initial request for the allocation of an additional reference production on the basis of the rules previously in force.

Finally, it must also be stated that even if the applicant's interpretation of the effects of the letter of 20 June 1984 were adopted (and it were accepted that the applicant was right to await notification of the reference production for 1985, which in its view evidently constitutes the final limit of the period of examination), it is difficult to see how the proceedings can have been instituted within the prescribed period. In fact, the decision of 20 February 1985 (on which the applicant relies) was not the first measure from which it could deduce that its reference production had not been adjusted (and that its request for an adjustment had been rejected). That was already clear from an earlier decision relating to the first quarter of 1985, namely the decision of 31 December 1984 (Annex 2 to the application). Consequently, the applicant should, at the very latest, have reacted when that decision was adopted, without waiting for the adoption of the decision of 20 February 1985 (which admittedly replaced the first-mentioned decision, although only as regards the abatement rates for Category Ic, but in other respects, including reference production, merely *confirmed* the decision of 31 December 1984).

(cc) The principal claim should therefore be considered inadmissible on the ground that it was submitted out of time.

(b) With regard to the claim that Decisions No 2177/83 and No 234/84 should be given a specific interpretation (and the alternative claim for a declaration that they are unlawful), the Commission has also expressed misgivings. It takes the view that, in the case of the application for interpretation, the Court cannot take the Commission's place and, by way of interpretation, revive Article 15 of Decision No 1696/82, nor can it instruct the Commission

to re-introduce it retroactively when there is no such provision in Decision No 234/84. With regard to the alternative claim, the Commission contends that the applicant cannot effectively raise an objection of illegality because it cannot be said that the general decisions provided a legal basis for the contested individual decision, in so far as that decision contained a refusal to adjust the reference production; accordingly, in the Commission's view, there is no direct connection between the individual decision, which merely involves an automatic application of the quota system, and the failure to make any provision for adjustment in the general decisions.

(aa) I am convinced that neither of those two claims — if they are to be taken as separate claims — can be regarded as admissible.

The system of legal protection established by the ECSC Treaty, which refers only to certain specific forms of action, makes no provision for an application for a declaration that a legal provision is to be interpreted in a particular way, and it is equally clear that Article 31, which was referred to by the applicant and which contains only a general description of the functions of the Court of Justice, cannot serve as a legal basis for such an application.

With regard to the *alternative claim*, it must, as a separate claim, be regarded as inadmissible on the ground that it was submitted out of time.

(bb) If, however, — and this applies particularly to the alternative claim — we assume that the real purpose of those claims is to support the principal application (that is to say, they constitute *grounds for the application*), it follows that there is no need to consider them since the principal application is inadmissible, as I have shown.

(c) Finally, as far as the claim for damages is concerned, it is not quite clear from the wording used in the application whether such a claim has already been submitted or whether notice of the claim is simply being given for the future (which would clearly release the Court from any obligation to consider it at present).

If the claim has already been submitted — a view which is supported by the remark in the reply to the effect that the claim has been submitted as a precaution and in order to avoid the need for fresh proceedings — I would refer to my Opinion in Joined Cases 63 and 147/84 [8] where the facts were similar and in which I said all that was necessary. It is clear from Article 34 of the ECSC Treaty that an action for damages may be brought only if the Commission fails to take appropriate steps after the contested decision has been declared void and has been held to involve a fault of such a nature as to render the Community liable. Accordingly, a claim for damages is clearly premature and, consequently, inadmissible if it is brought at the same time as a claim for annulment.

Moreover, no purpose would appear to be served by treating the claim as a claim for a declaration that the contested decision involves a fault of such a nature as to render the Community liable. If, as I have shown, the application for annulment cannot be considered admissible, it is also impossible for the Court to make a declaration in connection therewith under Article 34 of the ECSC Treaty.

(d) Accordingly, the application in Case 81/85 must, as the Commission has

8 — Opinion of 11 June 1985 in Joined Cases 63 and 147/84 *Finsider* v *Commission* [1985] ECR 2858.

suggested, be dismissed as inadmissible in its entirety.

2. *The application in Case 119/85*

In the light of all the foregoing considerations, I can deal briefly with this application.

(a) With regard to the principal claim (the claim for annulment, see p. 1780 above) it is sufficient to state that the applicant's request for an increase in its reference production must be deemed to have been rejected by an implied decision two months after the matter was raised with the Commission (that is to say at the end of June 1984); failing that, it was rejected at the latest by the decision of 31 December 1984 notifying the applicant of its reference production for 1985 (unless of course the decisions notifying the quotas for the third and fourth quarters of 1984 are considered important). Subsequent decisions which relate to the same subject-matter can be regarded only as confirmatory measures and, in the absence of fresh facts, cannot cause the period for instituting proceedings to start to run afresh. That is clear from the consistent case-law of the Court (see the judgment of the Court in Joined Cases 7 and 9/54[9] where, after the expiry of the period prescribed by Article 35 for the initiation of proceedings, an express decision of rejection was adopted). The relevant decisions of the Court on Community staff law are once again of interest in this connection (judgments in Case 24/69[10] and in Case 79/70).

Accordingly, the claim for a declaration that the decisions of 29 March 1985 and 18 March 1985 are void in so far as the Commission thereby refused to increase the applicant's reference production in respect of Category Ic and Id products is clearly inadmissible. Consequently, there is no need to answer the question whether the letters concerned really are in the nature of decisions or whether, as the Commission maintains, that is questionable since they merely contain information furnished in the interests of the applicant (which, moreover, in the case of the letter of 18 March 1985, emanated not from the Commission but from a senior official of that institution).

(b) With regard to the remaining claims, which correspond to the other claims put forward in Case 81/85, I would refer to the remarks which I made in connection with that case.

3. *Accordingly, both applications should be dismissed as inadmissible.*

II — Substance

In view of the unequivocal outcome of my examination of the admissibility of the applications, I would be justified in departing from the practice of considering *in the alternative* whether the applications are well founded. I shall nevertheless briefly set out my views on that question.

1. To begin with, it is necessary to consider the argument which logically constitutes the central feature of the applicant's reasoning, namely that the Commission's refusal to increase its reference production is unlawful because the correct interpretation of Decision No 234/84 (and of its predecessor) is that there was still a possibility of adjusting reference production in cases where the implementation of an investment programme had begun under quota rules permitting such an adjustment (such as those contained in Decision No 1696/82).

9 — Judgment of 23 April 1956 in Joined Cases 7 and 9/54 *Industries Sidérurgiques Luxembourgeoises* v *High Authority* [1954-1956] ECR 175.

10 — Judgment of 14 April 1970 in Case 24/69 *Nebe* v *Commission* [1970] ECR 145.

In my view, that argument is clearly untenable. A comparison between Decision No 1696/82 and the subsequent decisions shows quite clearly that the latter contain no provision concerning adjustment of the kind that would correspond to the applicant's wishes. The fact that such a provision was omitted deliberately and without qualification may be inferred, according to the Commission's uncontested statements, from the Commission's communication to the Council of June 1983, which was used in the preparation of Decision No 2177/83 and was notified to the undertakings concerned.

Accordingly, what the applicant has in view is not so much the *interpretation* as the *creation of law*, a task which the Court, faced with the clearly expressed intention of the author of the decision, clearly cannot undertake.

2. The question next arises whether Decision No 234/84 is unlawful in so far as it fails to make provision for the adjustment of reference production in cases where new plants are brought into operation.

The applicant considers that to be the case for a number of reasons.

(a) In the first place, the applicant pleads a breach of the *principle of the protection of legitimate expectation*. According to that principle, provision should have been made for the adjustment of reference production as a transitional measure at least in the case of undertakings whose investment programmes had evoked a favourable opinion under the system previously in force.

That question was also considered in Joined Cases 63 and 147/84, where the Court took a different view. The applicant in these proceedings, however, contends that this case calls for a different appraisal because in that judgment the Court stated that opinions delivered pursuant to Article 54 in connection with the quota system are to be assessed differently and not, as was the case in the Court's original decisions, as mere advice, and it expressly held that in other circumstances a favourable opinion under Article 54 could give rise to a legitimate expectation on the part of the undertaking (paragraph 21, see also my Opinion in that case, [1985] ECR section B II 1 (c), pp. 2865-2867).

That contention and, in particular, the applicant's view that a favourable opinion delivered under Article 54 of the ECSC Treaty in connection with the quota system is in reality tantamount to *authorization* (because without it there is no possibility of obtaining additional quotas or, consequently, of bringing a new plant into operation) call for the preliminary remark that it is quite clear from the aforesaid judgment *as a whole* that a favourable opinion under Article 54 of the ECSC Treaty cannot be treated as authorization for the purposes of the quota system (see in particular paragraph 21 of the judgment).

Furthermore, it is of paramount importance — and this brings me to the 'other circumstances' in this case, on which the applicant lays so much emphasis — to determine *what expectations based on the legal position under Decision No 1696/82* (as the Court is aware, it was whilst that decision was in force that the Commission delivered a favourable opinion concerning the applicant's proposal) could have been aroused regarding the adjustment of reference production and whether the Commission 'conveyed nothing' (in the words used by the Court in its judgment in Case 68/77) [11] to arouse the applicant's expectations that it would be able to bring the proposed plant into service with the

11 — Judgment of 14 February 1978 in Case 68/77 *IFG* v *Commission* [1978] ECR 353.

benefit of additional quotas. In that regard it must be borne in mind, in the first place, that the provisions concerning adjustment applicable to new plants have become increasingly strict since the quota system was established (as the Commission has shown) and that, consequently, in view of the continuation and aggravation of the crisis (as was evident in 1983) there were grounds for supposing that such possibilities would not be maintained as they were but would be further *restricted.* Secondly, concentrating on the situation prevailing at the time when Decision No 1696/82 was applicable, I would point out that another significant factor is that Article 15 of that decision did not confer an unconditional right to the adjustment of reference production but accorded the Commission a *discretion* in that regard. Accordingly, in order to establish the existence of a legitimate expectation, it was essential to consider how that discretion was exercised. That discretion however — and the applicant should have taken steps to obtain information on this point, if none was available to it, before taking action — would appear to have been exercised in such a manner as to allow adjustments only for Category Id and, moreover, only if the use of the reference production for plants which had been closed was insufficient to attain the average capacity of such plants in the Community (after a specified deduction). Hence, at the time when the Commission delivered its opinion — on which the applicant lays so much emphasis — a legitimate expectation cannot have been aroused that the new plant would definitely qualify for an increase in reference production (notwithstanding the closures referred to by Usinor in its application and also by the Commission in its opinion). Nor, quite clearly, could any such expectation be justified in relation to Category Ic products since the capacity of the new plant coincided more or less with that of the plants which had been closed (55 000 tonnes and 60 000 tonnes respectively). However, it was essentially with those products that the applicant was concerned, according to the terms of its request of 27 April 1984. On the other hand, there were evidently no insuperable difficulties as regards Category Id products (the applicant itself states that in 1984 they could have been overcome by recourse to Article 11 of Decision No 234/84). Moreover, as a result of improved market conditions, Decision No 470/85 could also have been of some assistance to the applicant (the Court has learnt at the hearing that such assistance was forthcoming in the form of a decision adopted in January 1986).

I must therefore conclude that it is not possible, in this case either, to declare Decision No 234/84 (and its predecessor) unlawful on the ground that it does not contain a provision concerning adjustment (comparable to Article 15 of Decision No 1696/82), by relying on the principle of the protection of legitimate expectation.

(b) The applicant also contends that the aforesaid general decisions are unlawful on the ground that the *principle of legal certainty* has been contravened.

The applicant has developed that submission by explaining that subsequent measures cannot abolish the effects of measures adopted earlier which have created rights. It follows, in its view, that undertakings which have a right to the adjustment of their reference production on the basis of a favourable opinion delivered by the Commission under Decision No 1696/82 cannot be deprived of that right by subsequent decisions.

In that regard the Commission has rightly pointed out that, in substance, this argument is similar to that previously put forward by the applicant in support of its contention that the principle of the protection of legitimate expectation has been contravened; expressed in terms of the principle of legal certainty, the argument is therefore no more valid than it was in relation to the previous contention. In fact,

as I have shown, any attempt to deduce a *right* to an adjustment from an opinion delivered by the Commission while Decision No 1696/82 was in force is clearly misconceived. It is also clear that the possibility of adjustment provided for by Article 15 of Decision No 1696/82 was applicable only in connection with a quota system of limited duration. It can scarcely be supposed, however, that there was an obligation to retain the system unchanged, without regard to economic trends (quite apart from the fact that, according to the information available to the Court, such a provision would have been of no benefit to the applicant in connection with the operation of its new plant).

It is also difficult to see how the principle of legal certainty could be relied upon as grounds for challenging the absence of a rule permitting the applicant's reference production to be adjusted in respect of Categories Ic and Id as a result of the bringing into service of a new plant.

(c) Furthermore, the applicant criticizes the general decisions under consideration on the ground that the Commission, in formulating the decisions, acted *contrary to its earlier expressions of intent* and also *infringed* certain objectives of *Article 3 of the ECSC Treaty*, including in particular the objectives set out in paragraphs (a), (c) and (g) (in that respect the applicant has contended that it was prevented from satisfying customers' demand for successful products).

In that regard, as far as the first part of the applicant's argument is concerned, reference may once again be made to the Court's judgment in Joined Cases 63 and 147/84, in which similar considerations were held to be irrelevant (see paragraph 26 of the decision and also my Opinion, [1985] ECR Section B II 3, at p. 2868). Moreover — in so far as the applicant claims in this connection that the Commission's opinion was tantamount to authorization and that the absence of a provision concerning adjustment prevented it from operating its new plant profitably — it should be pointed out in the first place that in reality the opinion delivered by the Commission does not constitute authorization (as was made clear by the Court in the *Finsider* case). Secondly — quite apart from the fact that the quota system, as the Court has repeatedly emphasized in its case-law, in principle offers no guarantee that plants can be operated profitably — the applicant has failed to demonstrate that the quotas allocated to it in respect of the plants which have been or are to be closed (which were expressly mentioned by the Commission in its opinion) are insufficient to enable it to utilize its new plant to a satisfactory extent (in relation to the Community average).

With regard to the second part of the applicant's argument, the answer is once again essentially to be found in the *Finsider* judgment (paragraph 27 of the decision and my Opinion, [1985] ECR Section B 3, at pp. 2868 and 2869). It should perhaps be added, with regard to the applicant's contention that this case is concerned with products which have become far more easily marketable, that after the changes described by the Commission in the abatement rates in 1983 and 1984, that contention does not hold true for products in Category Ic (that is to say, the quotas which the applicant particularly wishes to see increased). Moreover, as far as the applicant's reference to the satisfaction of customers' demand is concerned, it wrongly relies on Article 3 (a) and it should be remembered that, in its

judgment in Case 78/83, [12] the Court held that a quota infringement cannot be justified by the need to satisfy customers' wishes.

(d) Finally, I can deal briefly with the applicant's contention that the general decisions are *discriminatory*, inasmuch as other undertakings were granted increases in their reference production.

In my view, the Commission has effectively refuted that contention with the argument that the situations are not comparable. That certainly applies to undertakings which, *having brought new plant into service earlier*, qualified for an adjustment whilst the provision was still in force (the material date being the date of entry into service). It also holds true for other undertakings to which the *highly specific provisions concerning adjustment* were applied (namely those applicable to the commencement of a new production activity or to undertakings which exceeded the minimum production and consequently came within the scope of the quota system).

3. Finally, since it is clear from the foregoing that the applicant's criticism of the general decisions is unjustified, it is necessary briefly to consider the applicant's contention that the Commission's decisions *did not state the reasons on which they were based.*

As the Court is aware, the applicant has argued in that regard that the decision of 20 February 1985 refusing to increase its reference production does not state the reasons on which it was based; in that respect neither the general reference to Decision No 234/84 (which also gives no grounds for failing to make provision for adjustment) nor the communication to Eurofer in the summer of 1983 to the effect that the validity of the provision concerning adjustment would not be extended by Decision No 2177/83 can be regarded as sufficient.

In that connection, as regards the decision of 20 February 1985 notifying the applicant of the production quotas for the first quarter of 1985, which Usinor however treats as an *implied* rejection of the request which it made in April 1984, it is clear in my view that the absence of a statement of reasons concerning the part of the decision which allegedly constitutes an implied rejection of that request is not open to criticism. The position here is the same as in cases where the Commission takes no action at all after a matter has been raised with it and where, by definition, there can be no complaint that it has failed to state reasons (since, if it were otherwise, every implied decision of rejection would automatically have to be annulled owing to the failure to state the reasons on which it was based). I would also refer to the judgment in Case 14/81 [13] in which the Court emphasized that the Commission is not required to indicate its reasons for not adopting measures other than those contained in a decision (paragraph 18 of the judgment).

If the applicant — as might be assumed from its argument — is also referring to the statement of reasons in Decision No 234/84, reference may once again simply be made to the judgment in the *Finsider* case, in which the Court held, in response to a similar contention, that the provision concerning adjustment applicable in respect of new plants had already been abolished by Decision No 2177/83 and that the

12 — Judgment of 13 December 1984 in Case 78/83 *Usinor* v *Commission* [1984] ECR 4177.

13 — Judgment of 3 March 1982 in Case 14/81 *Alpha Steel* v *Commission* [1982] ECR 749 at p. 766.

Commission could not be required to give reasons for every detail in a decision.

4. Accordingly, my analysis of the substance of the case leads me to the conclusion that neither the applicant's criticism of the measures directly contested by it nor its criticism of their legal basis seems to be well founded. It is clear, therefore, that no fault is involved of such a nature as to render the Community liable, within the meaning of Article 34 of the ECSC Treaty.

C — To summarize, I am of the opinion that the applications submitted by Usinor should be dismissed as inadmissible or, in any event, as unfounded. The applicant should therefore be ordered to pay the costs.