JUDGMENT OF THE COURT (Sixth Chamber)

13 July 2000 *

In Case C-210/98 P,

Salzgitter AG, formerly Preussag Stahl AG, established in Salzgitter (Germany), represented by J. Sedemund, of the Berlin Bar, with an address for service in Luxembourg at the Chambers of A. May, 398 Route d'Esch,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber, Extended Composition) of 31 March 1998 in Case T-129/96 *Preussag Stahl* v *Commission* [1998] ECR II-609, seeking to have that judgment set aside,

the other parties to the proceedings being:

Commission of the European Communities, represented by D. Triantafyllou and P. Nemitz, of its Legal Service, acting as Agents, with an address for service in

* Language of the case: German.

Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant at first instance,

and

Federal Republic of Germany, represented by C.-D. Quassowski, Regierungsdirektor at the Federal Ministry for Economic Affairs, acting as Agent, assisted by H. Wissel, of the Düsseldorf Bar,

intervener at first instance,

THE COURT (Sixth Chamber),

composed of: J.C. Moitinho de Almeida, President of the Chamber, C. Gulmann, J.-P. Puissochet (Rapporteur), G. Hirsch and F. Macken, Judges,

Advocate General: F.G. Jacobs,
Registrar: H.A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 11 November 1999,

after hearing the Opinion of the Advocate General at the sitting on 30 March 2000,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 5 June 1998, Salzgitter AG (formerly Preussag Stahl AG and hereinafter 'Salzgitter') brought an appeal pursuant to Article 49 of the ECSC Statute of the Court of Justice against the judgment of 31 March 1998 in Case T-129/96 *Preussag Stahl* v *Commission* [1998] ECR II-609 (hereinafter 'the contested judgment'), in which the Court of First Instance dismissed its application for annulment of Commission Decision 96/544/ECSC of 29 May 1996 on State aid to Walzwerk Ilsenburg GmbH (OJ 1996 L 233, p. 24).

Legal framework and facts of the dispute

2 Article 4 of the ECSC Treaty is worded as follows:

'The following are recognised as incompatible with the common market for coal and steel and shall accordingly be abolished and prohibited within the Community, as provided in this Treaty:

...

(c) subsidies or aids granted by Sates, or special charges imposed by States, in any form whatsoever;

...'

3 The first and second paragraphs of Article 95 of that Treaty provide that:

'In all cases not provided for in this Treaty where it becomes apparent that a decision or recommendation of the Commission is necessary to attain, within the common market in coal and steel and in accordance with Article 5, one of the objectives of the Community set out in Articles 2, 3 and 4, the decision may be taken or the recommendation made with the unanimous assent of the Council and after the Consultative Committee has been consulted.

Any decision so taken or recommendation so made shall determine what penalties, if any, may be imposed.'

4 On the basis of those provisions, the Commission adopted Decision No 3855/91/ECSC of 27 November 1991 establishing Community rules for aid to the steel industry (OJ 1991 L 362, p. 57), the so-called 'Fifth Steel Aid Code' (hereinafter 'the Fifth Code').

5 According to Article 1(1) of the Fifth Code, any aid to the steel industry financed by Member States or their regional or local authorities may be deemed

compatible with the orderly functioning of the common market only if it satisfies the provisions of Articles 2 to 5.

6 According to Article 1(3) of the Fifth Code:

'Aid coming within the terms of this Decision may be granted only after the procedures laid down in Article 6 have been followed and shall not be payable after 31 December 1996.

The deadline for payments of aid falling under Article 5 is 31 December 1994 with the exception of the special fiscal concessions (Investitionszulage) in the five new *Länder* as provided for in the German "Tax amendment law 1991", which may be payable up to 31 December 1995.'

7 Article 5 of the Fifth Code provides that:

'Aid granted to steel undertakings for investment under general regional aid schemes may until 31 December 1994 be deemed compatible with the common market, provided that the aided undertaking:

...

— is located in the territory of the former German Democratic Republic and the aid is accompanied by a reduction in the overall production capacity of that territory.'

8 Article 6 of the Fifth Code provides that:

'1. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid of the types referred to in Articles 2 to 5. It shall likewise be informed of plans to grant aid to the steel industry under schemes on which it has already taken a decision under the EEC Treaty. The notifications of aid plans required by the article must be lodged with the Commission at the latest by 30 June 1994 as regards aid covered by Article 5 and 30 June 1996 as regards all other aid.

2. ...

3. The Commission shall seek the views of the Member States on plans ... for regional investment aid when the amount of the aided investment or of the total aided investments during 12 consecutive months is in excess of ECU 10 million, and on other major aid proposals notified to it before adopting a position on them. It shall inform the Member States of the position it has adopted on all aid proposals, specifying the form and volume of the aid.

4. If, after giving notice to the interested parties concerned to submit their comments, the Commission finds that aid in a given case is incompatible with the provisions of this Decision, it shall inform the Member State concerned of its decision. The Commission shall take such a decision not later than three months after receiving the information needed to assess the proposed aid. Article 88 of

the Treaty shall apply in the event of a Member State's failing to comply with that decision. The planned measures falling within paragraph 1 or 2 may be put into effect only with the approval of and subject to any conditions laid down by the Commission.

5. If the Commission fails to initiate the procedure provided for in paragraph 4 or otherwise to make its position known within two months of receiving notification of a proposal, the planned measures may be put into effect provided that the Member State first informs the Commission of its intention to do so. Where the Commission seeks the views of Member States under the provisions of paragraph 3, the abovementioned time period shall be three months.

6. All individual awards of the types of aid referred to in Articles 4 and 5 shall be notified to the Commission in accordance with the procedure provided for in paragraph 1 ...'

9 Pursuant to Article 9, the Code entered into force on 1 January 1992 and was to apply until 31 December 1996.

10 It is apparent from the contested judgment that Walzwerk Ilsenburg GmbH (hereinafter 'the Ilsenburg mill'), established in Saxony-Anhalt, formed part of the State-owned undertakings of the former German Democratic Republic. It was acquired by the appellant in 1992 as a legally independent subsidiary. In 1995 the Ilsenburg mill merged with the appellant, which now holds the rights previously vested in that undertaking.

11 In order to ensure the viability of the undertaking under the new market conditions, the appellant had to carry out substantial rationalisation, including the transfer of production of heavy plates from its factory in Salzgitter in the former West Germany to the Ilsenburg mill.

12 In order to finance the investment needed for that transfer, amounting to DEM 29.5 million, it was agreed that Saxony-Anhalt would grant aid comprising an investment subsidy of DEM 5.850 million and a special fiscal concession of DEM 0.9505 million. That aid fell within two general regional aid schemes approved by the Commission in accordance with the relevant provisions of the EC and ECSC Treaties, namely the joint framework programme for the 'improvement of regional economic structures' and the Law on investment subsidies respectively.

13 The German Government notified the planned aid to the Commission by fax dated 24 November 1994, which was registered the following day by the Commission with the designation No 777/94 (hereinafter 'proposed aid No 777/94'). The fax referred expressly to the notification, on 10 May 1994, of another proposal for investment aid of DEM 11.8 million to the Ilsenburg mill for the reconversion of energy sources and the improvement of environmental protection (hereinafter 'proposed aid No 308/94').

14 By letter dated 1 December 1994 the Commission invited the German Government to withdraw the notification of proposed aid No 777/94 in order to avoid having to open a procedure solely on the ground of failure to observe the time-limit for notification, which had expired at the end of June 1994. The Commission noted that the fact that the time-limit had not been observed did not preclude examination of the planned aid, provided that the institution was still in a position to adopt a decision before the end of 1994. However, as proposed aid No 777/94 had only been notified on 25 November 1994, that is to say, just 17 working days before the Commission's last meeting in 1994, the latter considered that, even by expediting the procedure as much as possible, it would be unable to give a decision before the end of the year, since it was necessary to seek the views of the Member States because of the level of the proposed investments.

15 By letter dated 13 December 1994 the Federal Government informed the Commission that it would not withdraw the notification of proposed aid No 777/94 under any circumstances. The Federal Government informed Preussag of that decision.

16 In the meantime, the appellant had sent a letter to Commissioners Van Miert and Bangemann on 7 December 1994, explaining that the delay in notification had been due to the protracted and detailed discussions made necessary by the impact which proposed aid No 777/94 would have on employment in the region concerned. For that reason Preussag asked the two Commissioners to ensure that the Commission still examined the proposed aid under the provisions of the Fifth Code.

17 On 21 December 1994 the appellant received the following fax, confirmed by letter of the same date:

'Martin Bangemann

Member of the European Commission

Thank you for your letter dated 7 December 1994.

My colleague Karel van Miert and I share your view as to the urgency of adopting a decision on the aid to undertakings situated in the new German *Länder* so that their economic development is not hindered by excessively long administrative procedures.

For that reason I am pleased to be able to inform you that the European Commission today approved the aid to the Ilsenburg mill, pursuant to your request. I wish your undertaking every success.

Yours sincerely,

Signed: Martin Bangemann.'

18 By telex SG(94)D/37659 of 21 December 1994 the Commission informed the German authorities of the planned aid in respect of which it had no objections, including proposed aid No 308/94.

19 The amount of the investment subsidy, which the Landesförderinstitut Sachsen-Anhalt had granted to the appellant by decision of 20 October 1994 subject to notification to the Commission, was paid into the applicant's bank account on 23 December 1994.

20 By letter SG(95)D/1056 of 1 February 1995 to the Federal Government, the Commission confirmed that certain planned regional aid, including proposed aid No 308/94, was compatible with Article 5 of the Code.

21 On 15 February 1995 the Commission decided to open the examination procedure pursuant to Article 6(4) of the Fifth Code with regard to proposed aid No 777/94. That decision was notified to the German authorities by letter dated 10 March 1995, subsequently reproduced in a notice published in the *Official Journal of the European Communities* (OJ 1995 C 289, p. 11). The Commission pointed out in the letter that the extremely late notification of the planned aid had made it impossible to give a decision on its compatibility before 31 December 1994 and that, after that date, it was no longer competent to adopt a decision according to the wording of Article 5 of the Fifth Code itself. In addition, the Commission invited other Member States and other interested parties to submit their comments on proposed aid No 777/94 within one month of the date of publication of the notice.

22 By letter dated 23 February 1995 Mr Bangemann informed the appellant that the authorisation referred to in his letter dated 21 December 1994 concerned proposed aid No 308/94 and not proposed aid No 777/94.

23 The special fiscal concession relating to proposed aid No 777/94 was granted by two decisions of the Finanzamt Wolfenbüttel of 26 October 1995 and 9 January 1996, for DEM 428 975.70 and DEM 190 052 respectively, and was paid to the applicant on those dates.

24 By Decision 96/544 the Commission found that the investment subsidy and the special fiscal concession constituted State aid incompatible with the common market and prohibited under the Treaty and the Fifth Code and ordered them to be repaid. That decision was notified to the German Government on 26 June 1996 and forwarded by it to the appellant on 9 July 1996.

25 By application lodged at the Registry of the Court of First Instance on 15 August 1996, the appellant brought an action pursuant to Article 33 of the ECSC Treaty for the annulment of Decision 96/544. That action, which was supported by the Federal Republic of Germany, was dismissed by the contested judgment.

The contested judgment

26 In the contested judgment the Court of First Instance, after rejecting the Commission's objection that the action was inadmissible on the ground that it was out of time and constituted an abuse, examined and rejected each of the seven pleas put forward by the appellant in support of its claim that Decision 96/544 should be annulled.

27 As regards the first plea, concerning the scope of the Commission's powers *ratione temporis*, the Court of First Instance considered that it followed from Articles 1, 5 and 6 of the Fifth Code that aid coming within the terms of the Code could be put into effect only with the prior approval of the Commission and that the deadline of 31 December 1994 laid down for the payment of regional investment aid was necessarily the deadline imposed on the Commission for adopting decisions on the compatibility of that category of aid (paragraph 41). The Court of First Instance held that the same was true in respect of the special fiscal concessions, even though they could be put into effect until 31 December 1995, since that deferral of the deadline for payment resulted solely from the condition that the aided investments had already been made and could not operate so as to extend the deadline imposed on the Commission for adopting decisions on the compatibility of that type of aid (paragraph 42).

28 In that regard, the Court of First Instance rejected the appellant's argument that the ECSC aid scheme and the EC aid scheme were analogous and pointed out that, unlike the EC Treaty, which empowers the Commission to adopt decisions on the compatibility of State aid on a permanent basis, the derogation laid down in the Fifth Code to the principle of the absolute prohibition of aid in Article 4(c) of the Treaty was limited in time (paragraph 43).

29 The Court of First Instance also rejected the argument based on its judgment in Case T-266/94 *Skibsværftsforeningen and Others* v *Commission* [1996] ECR II-1399, where it held that the Commission had the power to authorise operating aid after the deadline laid down in Article 10a(2) of Council Directive 90/684/EEC of 21 December 1990 on aid to shipbuilding (OJ 1990 L 380. p. 27), as amended by Council Directive 92/68/EEC of 20 July 1992 (OJ 1992 L 219. p. 54, hereinafter 'Directive 90/684'). The Court of First Instance pointed out, in particular, that in that case the Commission was required to adopt a decision on the need for and compatibility of operating aid connected to specific contracts which could be signed until the end of the reference period, rather than investment aid, and that, in contrast to the Fifth Code, Article 10a of Directive 90/684 did not lay down any time-limit for notification (paragraphs 44 and 45).

30 The Court of First Instance further held that the Commission's decision of 15 February 1995 to open the procedure for examination of proposed aid No 777/94 had been adopted in accordance with the procedural provisions in Article 6 of the Fifth Code, which was applicable until 31 December 1996, and could not therefore be taken to mean that the Commission considered it still had the power to take a decision on the substantive compatibility of the aid with the Fifth Code (paragraph 46).

31 As regards the second plea, alleging that the Commission had sufficient time to examine proposed aid No 777/94, the Court of First Instance noted that the general scheme of the procedural provisions of the Fifth Code indicated that it was designed to afford the Commission a period of at least six months within which to give a decision on the compatibility of planned aid notified to it (paragraph 53). It concluded that in the instant case the Commission had needed at least six months before the deadline of 31 December 1994 in order to open and close the procedure before that deadline and that, accordingly, since proposed aid No 777/94 had been notified after 30 June 1994, the Commission was no longer required to adopt a decision on its compatibility before 31 December 1994 (paragraphs 56 and 57).

32 The Court of First Instance also held that even on the assumption that there was no doubt as to the compatibility of the aid in question and consultation of the Member States necessitated only a short time, the Commission was in any event under no obligation to inform the German Government of any decision not to raise objections to the planned aid before the expiry of the three-month period laid down in the second sentence of Article 6(5) of the Fifth Code, and still less to do so before 31 December 1994 (paragraph 58). Therefore, by maintaining notification of proposed aid No 777/94 on a date which left the institution substantially less than the six-month period required by the Fifth Code, the German authorities were held to have taken the risk of making it impossible for the Commission to examine the planned aid before its powers in that respect expired and, in the absence of any proof of a manifest negligence on its part, the Commission could not be criticised for the fact that that risk had materialised (paragraph 59).

33 In rejecting the third plea, alleging that Article 6(4) of the Fifth Code empowered the Commission to take a negative decision only in the event of material incompatibility of the aid, and not in the case of a simple infringement of a procedural rule, the Court of First Instance pointed out that the time-limit for the Commission to adopt a decision on the compatibility of the aid in question expired on 31 December 1994. That aid could therefore no longer be deemed compatible with the common market on the basis of the provisions of the Fifth Code and was thus prohibited pursuant to Article 4(c) of the ECSC Treaty (paragraph 63).

34 In rejecting the fourth plea, alleging infringement of the principle of non-discrimination, in that the Commission had authorised a whole series of aid which had been notified well after the time-limit for notification had expired, the Court of First Instance merely observed that the planned aid to which the appellant referred had either been notified earlier than proposed aid No 777/94 or had not required consultation of the Member States (paragraph 67).

35 As regards the fifth plea, alleging infringement of the principle of protection of legitimate expectations, the Court of First Instance pointed out that, according to settled case-law, undertakings to which State aid has been granted may not entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the appropriate procedure, something which a diligent businessman ought to be able to ascertain (paragraph 77) and an individual may rely on the principle of protection of legitimate expectations only in so far as the Community administration has led him to entertain justified hopes by giving him specific assurances (paragraph 78).

36 The Court of First Instance pointed out that in the instant case the German authorities, which had been invited by the Commission to withdraw the notification of proposed aid No 777/94 owing to the exceptional delay in notifying it and been informed that the Commission had decided not to raise any objections in respect of 26 proposals which were listed and clearly identified by number, but which did not include proposed aid No 777/94, must have been aware that the latter proposal had not been approved and that the same was true of the appellant, which had been aware of the Commission's negative position

with regard to it (paragraphs 79 and 80). In those circumstances, the letter of 21 December 1994 signed by Mr Bangemann in response to the appellant's unofficial request for intervention could not have given the appellant an assurance that the Commission had altered its position and the appellant could not therefore validly claim that that letter had led it to entertain a legitimate expectation that the aid in question would be approved (paragraphs 81 to 83).

37 As regards the sixth plea, alleging infringement of Article 6(5) of the Fifth Code, which treats silence by the Commission at the end of a period of two or three months from notification of the proposal as equivalent to authorisation, the Court of First Instance pointed out that the aid in question had been granted even before expiry of the three-month period from notification of the proposal laid down in that provision (paragraph 88). It further observed that the German Government had failed to inform the Commission in advance of its intention to put proposed aid No 777/94 into effect, contrary to the requirement of that provision (paragraph 89).

38 The seventh plea, alleging breach of the duty to state reasons, was rejected on the ground that, as was apparent from the examination of the preceding pleas, the statement of the reasons on which Decision 96/544 was based clearly and unequivocally revealed the Commission's reasoning, enabling the applicant to know the reasons for the measure adopted so that it could defend its rights and ascertain whether or not Decision 96/544 was well founded and the Court to exercise its power of review in that respect (paragraph 93).

The appeal

39 In support of its appeal, Salzgitter raises six grounds of appeal, concerning respectively the scope of the Commission's powers *ratione temporis*, the time available for examining proposed aid No 777/94, Article 6(4) of the Fifth Code, the principle of non-discrimination, the principle of the protection of legitimate expectations and, last, the obligation to state reasons.

Admissibility

40 The Commission requests the Court to declare the appeal manifestly inadmissible, in that it consists principally of a repetition of the pleas raised before the Court of First Instance, although those pleas are formulated differently, have been retitled or are presented in a different order. Although it does not dispute that points of law which have been examined at first instance may again be raised in the course of an appeal, the Commission contends that the appeal must contain legal arguments which specifically seek annulment of the judgment of the Court of First Instance, which is not sufficiently so in the present case.

41 Salzgitter maintains that its appeal meets the requirements of both Article 51 of the ECSC Statute of the Court of Justice, which provides that an appeal is to be limited to points of law and is to lie on grounds of, *inter alia*, infringement of Community law by the Court of First Instance, and Article 112(1)(c) of the Rules of Procedure, which provides that an appeal is to contain the pleas in law and legal arguments relied on. According to Salzgitter, all the grounds of complaint set out in the appeal seek to challenge the interpretation by the Court of First Instance of the Community provisions at issue and thus constitute pleas in law alleging infringement of Community law by the Court of First Instance.

42 According to settled case-law, where an appeal merely repeats or reproduces verbatim the pleas in law and arguments previously submitted to the Court of First Instance, including those based on facts expressly rejected by that Court, it fails to satisfy the requirements under Article 51 of the ECSC and EC Statutes of the Court of Justice and Article 112(1)(c) of the Rules of Procedure. In reality, such an appeal amounts to no more than a request for re-examination of the application submitted to the Court of First Instance, which, under Article 49 of those statutes, falls outside the jurisdiction of the Court of Justice (see, in

particular, the order of 25 March 1998 in Case C-174/97 P *FFSA and Others* v *Commission* [1998] ECR I-1303, paragraph 24).

43 As the Commission itself acknowledges, however, provided that the appellant challenges the interpretation or application of Community law by the Court of First Instance, the points of law examined at first instance may be discussed again in the course of an appeal.

44 In the present case the appeal, taken as a whole, specifically seeks to challenge the position adopted by the Court of First Instance on various points of law raised before it at first instance.

45 The Commission's request that the Court dismiss the appeal as manifestly inadmissible in its entirety must therefore be rejected.

Substance

46 As regards the first two grounds of appeal, Salzgitter maintains, first, that the contested judgment is vitiated by an error of law, in that there is no legal basis for the finding by the Court of First Instance that the Commission's powers *ratione temporis* to determine the compatibility of aid is limited and, second, that according to the case-law of the Court of Justice the Commission must always act with the necessary diligence within a reasonable time, which was available in the present case.

47 The German Government puts forward essentially the same arguments and claims that the interpretation of the ECSC Treaty and the Fifth Code by the Court of First Instance ignores the distinction between the material illegality and procedural illegality of the aid and is tantamount to classifying periods for notification as periods which operate as a time-bar.

48 The Commission contends, principally, that the appellant's arguments are inadmissible in that they merely repeat part of its arguments at first instance and rely in part on findings of fact which cannot be discussed in an appeal. In the alternative, the Commission adopts the Court of First Instance's findings, first, that the specific provisions of the Fifth Code lay down individual time-limits, from which the Commission is unable to derogate, and, second, that notifying a proposed aid too late entailed the risk of making it impossible for the Commission to examine that proposed aid before its powers in that respect expired.

49 The Court of Justice has already had occasion to hold that the period for notification laid down in a specific provision of Commission Decision No 2320/81/ECSC of 7 August 1981 establishing Community rules for aid to the steel industry (OJ 1981 L 228, p. 14), the so-called 'Second Steel Aid Code' (hereinafter 'the Second Code'), operated as a time-bar such as to preclude the approval of any aid plan notified subsequent to it (Case 214/83 *Germany* v *Commission* [1985] ECR 3053, paragraphs 45 to 47). The Court held that according to the express requirements of the Second Code the time-limits laid down in such provisions could not be amended by the Commission unless certain conditions were satisfied and unless the Council gave its assent.

50 When they were invited at the hearing to express their views on the solution adopted in the judgment in *Germany* v *Commission*, cited above, Salzgitter and the German Government claimed, essentially, that that judgment concerned the Second Code and therefore had no relevance to the interpretation of the Fifth

Code. The Commission observed that in the instant case it was the expiry of the period within which it was authorised to reach a decision, not the expiry of the period prescribed for notification, that had made it impossible to authorise the aid. The Commission concluded that the nature of the period for notification was not material to the outcome of the dispute.

51 It must be pointed out, however, that the specific provisions of the Fifth Code laying down time-limits, in particular for notification of planned aid, are drafted in terms comparable to the analogous provisions of the Second Code. The only differences are to be found in the duration of the periods and in the absence in the Fifth Code of express provisions relating to their amendment.

52 As regards the duration of the periods, while Member States had a little over a year between the date of entry into force of the Second Code and the date of expiry of the period for notification of the planned aid, the corresponding period under the Fifth Code was significantly longer, since that code entered into force on 1 January 1992 and, pursuant to Article 6(1), the period for notifying proposed aid of the type at issue in the present case expired on 30 June 1994. On the other hand, the period between that date and the expiry of the period for authorisation by the Commission was limited, for aid such as that at issue, to six months, since it ended on 31 December 1994, whereas under the Second Code that period was nine months.

53 In the absence of any express provisions in that regard in the Fifth Code, the relevant time-limits could only be amended in accordance with the procedure

followed for the adoption of the Fifth Code, that is to say, pursuant to Article 95 of the ECSC Treaty, which requires the unanimous assent of the Council.

54 In those circumstances, it is impossible to accept that the time-limit for notification laid down in the Fifth Code, which in practice is more favourable to Member States than that laid down in the Second Code (although, conversely, the period within which the Commission is to authorise the aid is less generous in the Fifth Code than in the Second Code), and the amendment of which is not even contemplated, constitutes, unlike that laid down in the Second Code, merely a procedural time-limit of an indicative nature.

55 Thus, within the framework of each of those codes, the Commission was not entitled to authorise aid unless the plans to grant or alter it had been notified before the time-limit specifically laid down.

56 Since that is a finding which touches on the competence of the Commission, it must be raised by the Court of its own motion even though none of the parties has asked it to do so (see, in that regard, Case 19/58 *Germany* v *High Authority* [1960] ECR 225, at 233).

57 The Court of First Instance therefore erred in the contested judgment in not holding of its own motion that since proposal No 777/94 had not been notified until after the expiry of the period laid down in Article 6 of the Fifth Code the Commission could in no way authorise the corresponding aid.

58 However, it should be pointed out that where the grounds of a judgment of the Court of First Instance disclose an infringement of Community law but the operative part of the judgment is shown to be well founded for other legal reasons, the appeal must be dismissed (see Case C-30/91 P *Lestelle* v *Commission* [1992] ECR I-3755, paragraph 28, and Case C-320/92 P *Finsider* v *Commission* [1994] ECR I-5697, paragraph 37).

59 The Commission was required to adopt a negative decision in respect of proposal No 777/94, since it had not been notified to it within the prescribed period. The action brought against Decision 96/544 before the Court of First Instance therefore had to be dismissed irrespective of the pleas in law put forward in support of that action.

60 It follows that the grounds of appeal relied on by the appellant against the contested judgment and alleging infringement of Community law by the Court of First Instance are of no consequence and that its appeal must therefore be dismissed.

Costs

61 Under Article 69(2) of the Rules of Procedure, which is applicable to the appeal procedure pursuant to Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has requested that Salzgitter be ordered to pay the costs and Salzgitter has been unsuccessful, it must be ordered to pay the costs. Article 69(4) of the Rules of Procedure provides that Member States and institutions which intervene in the proceedings are to bear their own costs. The Federal Republic of Germany shall bear its own costs.

On those grounds,

THE COURT (Sixth Chamber),

hereby:

1. **Dismisses the appeal;**

2. **Orders Salzgitter AG to pay the costs;**

3. **Orders the Federal Republic of Germany to bear its own costs.**

Moitinho de Almeida Gulmann Puissochet

Hirsch Macken

Delivered in open court in Luxembourg on 13 July 2000.

R. Grass

Registrar

J.C. Moitinho de Almeida

President of the Sixth Chamber