JUDGMENT OF THE COURT
19 September 1985 *

In Joined Cases 63 and 147/84

Finsider, Società Finanziaria Siderurgica per Azioni, represented by S. M. Carbone, of the Genoa Bar, by R. Barabino and by N. Schaeffer, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 12 Avenue de la Porte-Neuve,

applicant,

v

Commission of the European Communities, represented by O. Montalto, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of M. Beschel, also a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATIONS for:

— A declaration that 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) and the Commission's individual decision, contained in the letter of 18 April 1984 addressed to the applicant, are void in so far as they prevent the applicant from obtaining an adjustment of the reference production for the bringing into operation of the new wide-strip mill at Bagnoli;

— In any event, an order requiring the Commission to make good the loss suffered by the applicant by reason of the decisions at issue,

* Language of the Case: Italian.

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco and O. Due (Presidents of Chambers), P. Pescatore, T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot and R. Joliet, Judges,

Advocate General: C. O. Lenz
Registrar: D. Louterman, Administrator

after hearing the opinion of the Advocate General delivered at the sitting on 11 June 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By applications lodged at the Court Registry on 7 March and 12 June 1984, Società Finanziaria Siderurgica per Azioni (Finsider), of Rome, brought two actions under the second paragraph of Article 33 of the ECSC Treaty for a declaration that Commission Decision No 234/84 of 31 January 1984 on the extension of monitoring and production quotas for certain products of undertakings in the steel industry (Official Journal 1984, L 29, p. 1) and the Commission's individual decision contained in the letter of 18 April 1984 addressed to the applicant are void in so far as the former prevents the applicant from obtaining an adjustment of the reference production for the bringing into operation of its new wide-strip mill at Bagnoli and the latter rejected an application to that end submitted by the applicant. In addition, the applicant seeks an order requiring the Commission to make good the loss it suffered by reason of the contested decisions.

2 By an order of 28 November 1984 the Court ordered the cases to be joined, because of their close relationship, for the purposes of the procedure and the judgment.

3 Before considering these applications, the contested decisions must be placed in their context.

4 Since 1973, the Community steel industry has been in particular difficulty owing to the recession which has affected all economic activities and which has entailed a reduction in demand for steel products. In addition to those difficulties flowing from the present economic situation, the steel industry is suffering as a result of the arrival on the common market of highly competitive products manufactured in non-member countries, and as a result of serious structural problems in the Community steel industry itself, such as the fact that much of its plant is obsolete. All those factors have combined to create excess capacity and a drop in prices which has affected the viability of the greater part of the undertakings in the steel industry. In order to remedy that situation or at least to alleviate its effects, the Commission adopted measures which, in the initial stage, fixed certain minimum prices and limited the quantity of steel products which could be imported from non-member countries. Subsequently, the Commission adopted measures designed to restructure the steel industry, among which was an aids code, drawn up at the beginning of 1980, designed to coordinate at Community level the subsidies granted by the Member States.

5 In the light of the worsening situation on the steel market, which manifested itself particularly by a sudden drop in demand in the third quarter of 1980, the Commission, considering that there was a manifest crisis on the steel market within the meaning of Article 58 of the ECSC Treaty, also established, by Decision No 2794/80 of 31 October 1980 (Official Journal 1980, L 291, p. 1), a system of production quotas for undertakings in the Community's steel industry. That system is based on the principle of applying to the actual production during a reference period a rate of abatement which is the same for all the undertakings concerned. However, because of the rigidity of that principle, the decision provides for certain exceptions. In this case, it is sufficient to note that Article 4 (4) of the Decision provides for an adjustment of an undertaking's reference production where, further to an investment programme which was duly reported and was not the subject of an unfavourable opinion on the part of the Commission under Article 54 of the ECSC Treaty, the undertaking activates new plant after 1 July 1980.

6 Similarly, Article 13 of Commission Decision No 1831/81 of 24 June 1981 (Official Journal 1981, L 180, p. 1) extending the quota system for a further period running from 1 July 1981 to 30 June 1982 provides that adequate adjustments are to be made to reference production, in particular where new rolling mills have been brought into service after a certain date subsequent to an investment programme which has been duly reported and in respect of which the Commission has not delivered an unfavourable opinion. Finally, Article 15 of Commission Decision No 1696/82 of 30 June 1982 (Official Journal 1982, L 191, p. 1) extending the quota system until 30 June 1983 provides as follows:

'In the context of a restructuring programme complying with the following conditions:

it must conform to the general objectives,

as regards planned investment which has been duly reported, the Commission has not delivered an unfavourable opinion or, as regards investment not subject to compulsory notification, the Commission considers that such an opinion would not have been delivered,

as regards aids granted, the latter must be in accordance with Decision No 2320/81/ECC,

the following rules shall apply:

(1) ...

(2) Where an undertaking requests a modification of its reference production to take account of the internal reorganization of its plant, the Commission may:

in the case of the commissioning of new rolling mills ... after 1 July 1982 ..., providing that this does not disturb the proper functioning of the system, authorize a modification of the production references of the above undertaking ...'

7 Subsequently, the quota system was extended by the Commission, first until 31 January 1984 by Decision No 2177/83 of 28 July 1983 (Official Journal 1983, L 208, p. 1), then until 31 December 1985 by the aforementioned Decision

No 234/84. In the first of those Decisions, the possibility that an undertaking might obtain an adjustment of reference production in respect of the bringing into service of new rolling mills was withdrawn.

8 It appears from the documents in the case that on 16 May 1979 Italsider SpA, a company controlled by the applicant, submitted to the Commission, in accordance with Decision No 22-66 of the ECSC High Authority of 16 November 1966 on information to be furnished by undertakings about their investments (Official Journal, English Special Edition 1965-66, p. 280), an investment programme including in particular construction of a hot wide-strip rolling mill at Bagnoli. According to the Italsider programme, that mill could have been brought into service in July 1982. The investment programme was balanced by a restructuring programme including, in particular, reductions in capacity and closure of other installations belonging to the applicant.

9 When it came to study that project, the Commission requested the applicant to make certain declarations regarding the time-table for bringing the hot wide-strip rolling mill into service in the period from 1 August 1983. When the applicant complied with that request, the Commission, by letter of 31 May 1980, delivered a favourable opinion on the investment programme in question under the fourth paragraph of Article 54 of the ECSC Treaty. It can be seen from that letter that, with regard to the wide-strip mill in question, the Commission had 'duly taken account of the verifications carried out . . . and the conclusions to be drawn from them, particularly with regard to the economic validity of the investments and having regard to the objective of long-term competitiveness on a competitive market'. The letter also stated that the closures and reductions in capacity at existing installations which had been announced 'contribute to the efforts which are being made to restructure the Community steel industry'.

10 Following that opinion, the hot wide-strip rolling mill was built, part of the finance coming from loans granted by the Community. Though construction work had been terminated, the mill had not been brought into service at the time when the action was brought because the applicant considered that it did not have the necessary production quotas for that purpose. Consequently, in a letter to the Commission dated 9 February 1984, the applicant sought an adequate increase in its reference production for the bringing into service of the new mill. In that letter, the applicant observed in particular that, if the installations in question had been brought into service in July 1982 as originally planned, it would legitimately have been able to benefit from the second indent of Article 15 (2) of Decision No 1696/82 and that it was 'completely impossible to believe' that, as a result of

the entry into force of Decision No 2177/83, which did not contain any provision similar in terms and in effect to Article 15 of Decision No 1696/82, the applicant would no longer be entitled to benefit from that provision. Furthermore, the Commission could not refuse to grant the necessary quotas for the bringing into service of plant which it itself had authorized, without breaching the principle of the protection of legitimate expectation. In order to comply with the time-limits for the bringing of actions laid down in the Treaty, the applicant initiated proceedings in Case 63/84 against Decision No 234/84 without waiting for a reply to its letter.

11 In a letter of 18 April 1984, the Commission rejected the applicant's request and drew attention to the fact that Decision No 234/84 did not permit it to grant an adjustment of reference production for the bringing into service of new rolling mills. The applicant therefore brought a further action, registered as Case 147/84, against that individual decision, pleading the unlawfulness of Decision No 234/84.

12 In support of its application for a declaration that Decision No 234/84 is void, the applicant advances a series of submissions. It claims essentially that that Decision is unlawful and should be declared void on the grounds of:

(i) misuse of powers, inasmuch as the Commission is in breach of the principle of the protection of legitimate expectation;

(ii) misuse of powers, inasmuch as the Commission has infringed the right to engage in economic activity;

(iii) misuse of powers, inasmuch as the Commission's present conduct is contrary to its previously expressed intentions;

(iv) misuse of powers, inasmuch as the Commission is in breach of the principle of solidarity and the requirement of proportionality between the advantages obtained from, and the sacrifices imposed by, membership of the ECSC;

(v) breach of the law;

(vi) failure to give an adequate statement of the reasons on which the decision is based.

13 In support of its action against the Commission's individual decision of 18 April 1984 rejecting the applicant's request for an adjustment of its reference production, the applicant claims that, since that decision is, for the reasons indicated above, based on an unlawful general decision, it also must be declared void. It is thus necessary to consider whether or not all of the submissions advanced are well founded, without its being necessary to consider whether or not they relate to the concept of misuse of powers.

The alleged breach of the principle of the protection of legitimate expectation

14 The applicant claims that the new wide-strip mill at Bagnoli was approved and partly financed by the Commission and that it could have been brought into service in July 1982, that is to say, at a time when the applicant would have been entitled to obtain an adjustment of its reference production under Article 15 of Decision No 1696/82. Since the bringing into service of that plant had been postponed at the express request of the Commission, the applicant was legitimately entitled to trust the Commission as regards the prospects for making use of the plant, but that trust unexpectedly proved to be misplaced when the Commission adopted Decision No 234/84, which contained no provision similar to that contained in Article 15 of Decision No 1696/82. The Commission ought therefore to have at least adopted transitional measures.

15 The applicant considers that it has fulfilled all the conditions laid down in the first paragraph of Article 15 of Decision No 1696/82 for obtaining the adjustment provided for in the second paragraph of the same article. In the favourable opinion delivered in 1980, the Commission itself admitted that the applicant's restructuring programme was in accordance with the general objectives being pursued by the Commission and later developments have in no way changed that situation. Moreover, the applicant denies having received aids which were not in conformity with Commission Decision No 2320/81 of 7 August 1981 establishing Community rules for aids to the steel industry (Official Journal 1981, L 228, p. 14). Finally, the applicant observes that the abolition of the type of relief provided for in Article 15 of Decision No 1696/82 was unforeseeable and cannot be justified on the basis of the general interest. The Commission has accepted that recourse to that provision had become very rare. Its actual effect on the quota system was therefore minimal.

16 The Commission emphasizes that a favourable opinion is a measure which cannot impose any legal obligation on the person to whom it is addressed but is a means by which the Commission exercises its guiding rôle. In fact, the freedom of decision and the responsibility which undertakings have is not affected by such an opinion. The opinion is based on the situation at a particular time and cannot therefore give rise to any legitimate expectation that the Commission will behave in a particular way when faced at a later date with a completely different situation. The opinion delivered by the Commission in this case was obtained in 1980, at a time when the economic situation and future prospects were different from what they later became.

17 In the Commission's view, the fact that in the initial stages of the quota system it was able to grant adjustments of reference production for the bringing into service of new plant in respect of which it had not delivered an unfavourable opinion was also not of such a nature as to give rise a legitimate expectation of that sort. As the crisis on the steel market worsened, that possibility was in fact progressively restricted by successive decisions, until, finally, it was completely withdrawn by Decision No 2177/83. The decision not to adopt a provision similar to Article 15 of Decision No 1696/82, which did not confer any right to an adjustment, even if the undertaking fulfilled all the conditions laid down therein, and which the Commission had seldom used, was therefore foreseeable and even necessary.

18 The Court notes that, under the fourth paragraph of Article 54 of the Treaty, the Commission may deliver a reasoned opinion on undertakings investment programmes 'within the framework of the general objectives provided for in Article 46'. The latter article states that 'to provide guidance . . . on the course of action to be followed by all concerned . . . the High Authority shall . . . periodically lay down general objectives for modernization, long- term planning of manufacture and expansion of productive capacity'. It follows that the delivery of opinions under Article 54 is part of the Commission's duty under the Treaty to provide guidance.

19 In its judgment of 10 December 1957 (Joined Cases 1 and 14/57, *Usines à Tubes de la Sarre* v *High Authority*, [1957 and 1958] ECR 105), the Court emphasized that such opinions are merely advice given to undertakings, which remain free to heed or ignore them, and that the freedom of decision and the responsibility of the undertakings remain, like those of the Commission, unchanged.

20 It is true that doubt may be cast on that classification of such opinions as 'mere advice' in view of the fact that the Commission, in certain of its decisions on production quotas, made the possibility of an adjustment to the quotas subject to the condition that an unfavourable opinion had not been delivered, and that in its decisions concerning aids it made the grant of investment aids subject to the existence of a favourable opinion. It is also true that in this case both the wording of the favourable opinion and the procedure which led to its adoption, which involved long negotiations and a requirement that the undertaking should make certain declarations, could give the impression that what was being delivered was an 'authorization'. However, it is none the less true that an opinion cannot involve the person to whom it is addressed in any legal obligation, nor does a favourable opinion constitute an authorization, failure to obtain which would prevent the undertaking from lawfully carrying out the proposed investment and which, as such, gives the person to whom it is addressed a special right different from the rights of other undertakings.

21 That such is the nature of a favourable opinion does not of course prevent the undertaking from entertaining certain expectations regarding the profitability of the investment, in view of the fact that the Commission, in drawing up its opinion, must take account not merely of the current situation but also of its forecasts, particularly those dealing with the development of the steel market, and the fact that that institution is well placed, by reason in particular of the studies which it is required to conduct and the information which it is required to gather, to be aware of the direction which that development is taking. It is not disputed however that at the date of the favourable opinion it was difficult to foresee that the increasing seriousness of the crisis was going to entail the introduction of a quota system, the extension from year to year of that system, which was in principle temporary, and its subsequent reinforcement by withdrawal of the exemptions originally provided for. Without its being necessary to decide whether, in other circumstances, a favourable opinion under Article 54 could give rise to a legitimate expectation on the part of the undertaking, it must therefore be decided that in this case the applicant is not entitled to rely on such an expectation in order to obtain an exemption from the general quota rules at a time when those rules no longer provide for such exemptions.

22 The applicant's first submission must therefore be dismissed.

The alleged infringement of the applicant's right to engage in economic activity

23 According to the applicant, the absence in Decision No 234/84 of a provision such as the one contained in Article 15 of Decision No 1696/82 is also unlawful, having regard to the hopes which it had been allowed to entertain, inasmuch as it infringes the applicant's fundamental right, recognized in Community law, to engage in economic activity. Without additional production quotas, the Bagnoli plant is of no value to the applicant and the profits which it should derive from a major economic initiative are thus expropriated without any compensation.

24 That submission must also be dismissed. As the Commission rightly stated, the contested provisions in no way prohibit the bringing into service of the new Bagnoli rolling mill, since the applicant remains free to transfer to the new plant part of the reference production granted to it in respect of plant which has been closed or which is about to be closed. If such a measure is not sufficient to produce the desired profitability of the new plant, it should be pointed out that Article 58 of the Treaty does not require the Commission to guarantee to any one undertaking, to the detriment of other undertakings in the Community, the minimum production which that undertaking considers necessary in accordance with its own criteria of profitability and development and it is clear from consideration of the first submission that the delivery of a favourable opinion also does not imply such a guarantee.

The alleged contradiction between the intentions previously expressed by the Commission and its present behaviour

25 In the applicant's view, the absence of a provision in Decision No 234/84 providing for adjustments of reference production for the bringing into service of new rolling mills is contrary both to Article 3 of the ECSC Treaty and to the Commission's earlier statements when the investment programme for Bagnoli was approved, on the subject of competitiveness and the contribution to the efforts being made to restructure the Community's steel industry. By not permitting the applicant to obtain additional quotas, Decision No 234/84 does not permit it to continue its restructuring efforts or to achieve the improvement of production and the necessary amortization, which are among the objectives set out in Article 3 (c) and (g) of the Treaty. Finally, the decision does not permit the applicant to satisfy the demand from its customers, particularly those with whom it has concluded long-term supply contracts, and that is contrary to Article 3 (a) of the Treaty.

26 With regard to the alleged contradiction between the Commission's earlier statements, namely the favourable opinion delivered on 31 May 1980, and the provisions of Decision No 234/84, the Commission is correct in pointing out the differences between the nature of the two measures and betweeen the situations in which they were adopted. As has been stated above, the opinion was a non-binding measure addressed to an individual undertaking on the basis of the information available to the Commission at the time. On the other hand, Decision No 234/84 forms part of a body of rules, general and binding in nature, which were introduced subsequently because of a sharp deterioration in the crisis, for the purpose of re-establishing a balance between supply and demand on the Community steel market as a whole. In those circumstances, it is not possible to speak of a contradiction between those two measures.

27 With regard to the alleged failure to respect the objectives set out in Article 3 of the Treaty, it must be remembered that the Court has consistently stated that it is by no means certain that all the objectives of the Treaty can be simultaneously pursued in their entirety and in all circumstances. In a manifest crisis caused by a sharp decline in demand, where it is necessary to spread equitably between all the undertakings the consequences of the adjustment of production to the requirements of the market, it is particularly difficult to ensure that the necessary amortization can be achieved and to pursue the objectives set out in Article 3 (g), which were formulated with a view to a situation of economic expansion. With regard to paragraph (a) of Article 3, the Commission has rightly pointed out that that provision concerns the orderly supply of the common market and not supply by an individual undertaking to its traditional customers.

28 It follows that the submission must be dismissed.

The alleged breach of the principles of solidarity and proportionality

29 According to the applicant, Decision No 234/84 breaches the principle of solidarity and the requirement of proportionality between the advantages obtained from, and the sacrifices imposed by, membership of the European Coal and Steel Community. That decision prevents the applicant from using its present production capacity, something which ought to be guaranteed at least up to the level of a

quota corresponding to the consumption on its natural market, namely Italy. Thus, unlike steel undertakings in other Member States and in particular, the German undertakings, the applicant is paying the price of the overall surplus of capacity in the ECSC, and that is also an infringement of Article 3 (g) of the ECSC Treaty.

30 In the Commission's view, it is incorrect to claim that the applicant has been penalized because it has not been able to reserve its national market for itself. If the applicant obtained quotas which were insufficient to meet the needs of the Italian market, that is due to the fact that during the reference period its production was lower than that of competing undertakings. Moreover, between 1981 and 1983, the utilization rates of hot wide-strip rolling mills increased in Italy as a result of the additional quotas granted to the applicant. During the same period, the German industry's rate of utilization declined.

31 It must be stated that this submission is not in fact directed against the absence of a provision in Decision No 234/84 permitting reference production to be adjusted in respect of the bringing into service of new plant, but against the criterion which is the basis of the method for sharing out quotas under the system in general. That method is based on the actual production of each undertaking during a reference period. In its judgment of 3 March 1982 (Case 14/81, *Alpha Steel* v *Commission*, [1982] ECR 749), the Court held that there were no reasonable grounds for denying that the Commission's choice of the criterion based on undertakings' actual production may constitute an equitable basis within the meaning of Article 58, inasmuch as it constitutes an objective basis of assessment and enables total production to be reduced without altering the position of undertakings on the market as between each other.

32 It would be totally contrary to that criterion, which seeks to share the quotas equitably between all the undertakings in the Community, having regard to the situation in the common market as a whole, to grant adjustments of those quotas on the basis of the situation of the undertaking in question on the national market alone, and to seek to reserve for that undertaking the production of the steel consumed on that market.

33 This submission must therefore be dismissed without its being necessary to consider the statistics relating to the applicant's market share which were advanced by both parties, either in support of or in opposition to the submission.

Breach of the law

34 The applicant claims that, by refusing to grant additional quotas for the new plant at Bagnoli, Decision No 234/84 introduced a prohibition upon production and, consequently, upon the construction of new plant; such a prohibition, however, is not in any way provided for by the ECSC Treaty and, in particular, by Articles 54 and 58.

35 This submission corresponds essentially to the one dealt with above under the heading 'alleged infringement of the applicant's right to engage in economic activity'. Since the Court has already considered the legal questions connected with the latter submission and dismissed it as being without foundation, the present submission, alleging a breach of the ECSC Treaty, must also be dismissed.

Failure to give an adequate statement of the reasons on which Decision No 234/84 is based

36 Finally, the applicant claims that Decision No 234/84 is unlawful inasmuch as it does not give an adequate statement of the reasons on which it is based, contrary to Articles 5 and 15 of the ECSC Treaty. It contains no statement of the reasons why the possibility of granting an adjustment of reference production to undertakings bringing new plant into service was withdrawn or was not considered.

37 The Commission emphasizes that that possibility had already been withdrawn by Decision No 2177/83, so that there was no need to refer again to that withdrawal in the statement of reasons for Decision No 234/84. Moreover, the draft of Decision No 2177/83 was the subject of many discussions and meetings, particularly with the representatives of Eurofer, of which the applicant is a member. On those occasions, as in the memorandum addressed to the Council with a view to obtaining its assent, the Commission expressly set out the reasons for not carrying over Article 15 (2) of the previous decision.

38 This submission must also be dismissed. The objection of illegality raised by the applicant concerns Decision No 234/84 and not Decision No 2177/83, which withdrew the possibility of granting the adjustment sought by the applicant. With regard to the latter decision, it must also be pointed out that, according to numerous decisions of the Court, it is sufficient if the statement of reasons on which a measure of general application is based explains the essential features of the measures adopted by the institutions; a specific statement of reasons for all the details that such a measure may include cannot be required, as long as those details fall within the general framework of the measure in question. The preamble to Decision No 2177/83 explains in detail the increasing seriousness of the crisis and the need to further reinforce the quota system.

39 It is therefore necessary to dismiss as unfounded all the submissions purporting to show that Decision No 234/84 is void and advanced in support of the objection of illegality which the applicant has raised with a view to obtaining a declaration that the individual decision of 18 April 1984 is void. Since the applicant's claim for compensation for the loss suffered by it presupposes that the decisions at issue must be declared unlawful, it follows that the application must be dismissed in its entirety.

Costs

40 Article 69 (2) of the Rules of Procedure provides that 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

hereby:

(1) Dismisses the application;

(2) Orders the applicant to pay the costs.

Mackenzie Stuart Bosco Due Pescatore

Koopmans Everling Bahlmann Galmot Joliet

Delivered in open court in Luxembourg on 19 September 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President