for the right to grant aids, the adoption of measures to reduce production capacity in an industrial sector, whilst it leaves a margin of discretion with regard to the manner of its implementation and in particular with regard to the choice of the factories to be closed, cannot be regarded as being of direct and individual concern to the municipalities with which the undertakings affected, by virtue of the location of their factories, are connected.

In Case 222/83

(1) THE MUNICIPALITY OF DIFFERDANGE,

(2) THE MUNICIPALITY OF DUDELANGE,

(3) THE MUNICIPALITY OF PÉTANGE,

(4) THE MUNICIPALITY OF ESCH-SUR-ALZETTE,

(5) THE MUNICIPALITY OF SANEM,

all represented by André Elvinger, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers,

applicants,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Marie-José Jonczy, a member of its Legal Department, with an address for service in Luxembourg at the office of Manfred Beschel, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

OBJECTION, at the present stage of the proceedings, that the application for a declaration of the nullity of Commission Decision 83/397/EEC, ECSC of 29 June 1983 concerning the aids that the Luxembourg Government proposes to grant to the steel industry (Official Journal L 227, p. 29), is inadmissible,

THE COURT (Fifth Chamber)

composed of: Y. Galmot, President of Chamber, O. Due, U. Everling, C. Kakouris and R. Joliet, Judges,

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

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

1. On 29 June 1983 the Commission adopted Decision 83/397/EEC, ECSC concerning the aids that the Luxembourg Government proposes to grant to the steel industry (Official Journal L 227, p. 29). It thereby declared that certain aids referred to therein which the Luxembourg Government planned to grant to the steel undertakings Arbed and Métallurgique et Minière de Rodange-Athus (MMRA) were compatible with the orderly functioning of the Common Market to the extent to which the conditions and requirements also referred to therein were satisfied (Article 1).

Those conditions include in particular the requirement that the recipient undertakings are to carry out net reductions in their production capacity in return for the aids (Article 2 (1)).

A list of the plants to be closed, giving the closure dates, and a report of increases in capacity resulting from investment were to be sent to the Commission by 31 January 1984 and the closures were to be effected by 31 December 1985 (Article 2 (2)).

2. By an application lodged at the Court Registry on 3 October 1983, the applicants, five Luxembourg municipalities in whose territory the plants of the steel undertakings affected were located, instituted the present proceedings under Article 173 of the EEC Treaty and, "to the extent necessary", under Article 31 of the ECSC Treaty for a declaration that the aforementioned Decision 83/397 was void.

3. By a document lodged at the Court Registry on 4 November 1983 the Commission raised an objection of inadmissibility under Article 91 (1) of the Rules of Procedure.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided, by order of 14 March 1984, to assign the case to the Fifth Chamber pursuant to Article 95 of the Rules of Procedure and to open the oral procedure with regard to the objection of inadmissibility without any preparatory inquiry.

II — Conclusions of the parties

The *Commission* claims that the Court should:

Declare the application inadmissible;

Order the applicants to pay the costs.

The *applicants* contend that the Court should:

Reserve the decision concerning the objection of inadmissibility for the final judgment and order the parties to proceed with the written procedure of the substantive proceedings;

In any event, dismiss the objection of inadmissibility as unfounded.

III — Submissions and arguments of the parties

1. The *Commission* states in the first place that the applicants are not undertakings or associations of undertakings within the meaning of Article 48 of the ECSC Treaty. They therefore have no right to institute proceedings under the second paragraph of Article 33 of that Treaty. Accordingly the action for a declaration of nullity is inadmissible to the extent to which it is based on the ECSC Treaty.

Secondly the Commission contends that in addition the applicants do not satisfy the requirements of the second paragraph of Article 173 of the EEC Treaty. The applicants, by arguing in that respect that the capacity reductions imposed by the decision affect the undertakings and plants located in their respective territories, show that the decision can be of direct and individual concern only to the steel undertakings themselves and not to the municipalities in whose territory the undertakings are established. Accordingly the action is also inadmissible to the extent to which it is based on the EEC Treaty.

2. The *applicants* point out first that consideration of the admissibility of the action cannot be undertaken without consideration of its substance unless the objection is based on compelling grounds and there are precise and conclusive reasons for giving a preliminary decision regarding it.

As the Court held in its judgment of 10 February 1983 (Case 230/81) *Grand Duchy of Luxembourg* v *European Parliament* [1983] ECR 255) where the contested measure relates simultaneously to the spheres of more than one Treaty it is sufficient, as a foundation for the Court's jurisdiction to consider the whole of the contested measure, if the action is admissible under one of the Treaties. In this case it suffices to refer to Article 173 of the EEC Treaty from which it is clear that the alleged inadmissibility is neither evident nor based on compelling grounds.

The applicants next examine the criteria of individual and direct concern laid down by Article 173 of the Treaty.

With regard to individual concern reference must be made to the judgment of 15 July 1963 (Case 25/62 *Plaumann and Co* v *Commission of the European Economic Community* [1963] ECR 95) and to that of 1 July 1965 (Joined Cases 106 and 107/63 *Alfred Töpfer and Getreide-Import Gesellschaft* v *Commission of the European Economic Community* [1965] ECR 405 in which the Court interpreted the expression "of ... individual concern" as meaning that the decision must affect the applicants "by reason of certain attributes which are peculiar to them, or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually just as in the case of the person addressed". In this case the contested decision refers by name to the two steel undertakings concerned.

The question which therefore arises and which is new in the Court's case-law is whether the action may also be brought by the municipalities with which the undertakings concerned are connected by virtue of the location of their factories.

In that respect it is necessary to examine the powers and purposes of municipalities which are legal persons governed by public law having their own primary and delegated powers in a given territory. Accordingly under the law of several Member States, including that of France, the Netherlands and the Federal Republic of Germany, a municipality may seek the annulment of administrative measures even if it cannot claim that its own powers have been affected. In particular the Netherlands Law of 20 June 1963 concerning administrative actions provided that the interests with which collective persons or authorities governed by public law are vested are to be regarded as their own interests. The same must apply in Community law.

In this case, the applicants are some of the municipalities in which the undertakings affected are established and where the workers personally affected by the closures reside. The applicants levy taxes on the undertakings and their employees residing in their territory and, in exchange, provide public services of an administrative, economic, social and cultural nature. They are therefore vested with their own powers in relation to living and working conditions and employment so that a reduction in the production capacity of their principal industry is of direct concern to them at a human and financial level.

With regard moreover to the directness of the municipalities' concern it must be recalled that the Luxembourg State has in the meantime granted the aids authorized by the Law of 1 July 1983 concerning measures to assist the restructuring and modernization of the steel industry and the maintenance of the general competitiveness of the economy. In those circumstances there is an obligation to effect the closures according to the timetable fixed by the decision, that is to say 31 December 1985, and there is no need for any supplementary decision.

Finally the applicants note that the system of legal proceedings is based on an equilibrium inasmuch as the restrictive scope of Article 173 is counterbalanced by the possibility of instituting proceedings before a national court which, in turn, may refer a question to the Court of Justice for a preliminary ruling under Article 177 of the Treaty. In fact in this case no remedy under national law is available to the applicants since the aforementioned statute is not open to judicial review under Luxembourg law. Therefore, if the objection of inadmissibility were accepted they would be deprived of any legal redress, which is contrary to general principles of law and to Article 6 of the European Convention on Human Rights.

IV — Oral procedure

At the sitting on 15 May 1984 the parties presented oral argument.

The Advocate General delivered his opinion at the sitting on 19 June 1984.

Decision

1 By application lodged at the Court Registry on 3 October 1983 five Luxembourg municipalities, that is to say the municipalities of Differdange, Dudelange, Pétange, Esch-sur-Alzette and Sanem, brought an action under Article 173 of the EEC Treaty and, "to the extent necessary", under Article 31 of the ECSC Treaty for a declaration that Commission Decision 83/397/EEC, ECSC of 29 June 1983 concerning the aids that the Luxembourg Government proposes to grant to the steel industry (Official Journal L 227, p. 29), was void.

2 By that decision addressed to the Grand Duchy of Luxembourg the Commission declared that certain aids which the Luxembourg Government proposed to grant to the steel undertakings Arbed and Métallurgique et Minière de Rodange-Athus (MMRA) were compatible with the orderly functioning of the Common Market provided that the recipient undertakings, as justification for the aids, carried out specific reductions in their production capacity, which might also be contributed by other undertakings. The contested decision stated that a list of the factories to be closed, giving the closure dates, was to be sent to the Commission by 31 January 1984 and that the closures envisaged were to be implemented by 31 December 1985.

3 The Luxembourg Government made use of the authorization contained in the contested decision by the Law of 1 July 1983 concerning measures to assist the restructuring and modernization of the steel industry and the maintenance of the general competitiveness of the economy *(Mémorial* [Official Gazette of the Grand Duchy of Luxembourg] of 1. 7. 1983, p. 1133). That Law *inter alia* authorizes the Luxembourg Government to grant Luxembourg steel undertakings an extraordinary aid for 1983 and 1984, to underwrite convertible debentures or stock and to acquire shares in Luxembourg steel undertakings.

4 The Commission has raised an objection of inadmissibility under Article 91 (1) of the Rules of Procedure claiming that the action is not admissible either under the ECSC Treaty or under the EEC Treaty. As the applicants are not

undertakings or associations of undertakings within the meaning of Article 48 of the ECSC Treaty the action is not admissible under that Treaty. The position is the same with regard to the EEC Treaty because the contested decision is not of direct and individual concern to the applicants within the meaning of the second paragraph of Article 173 of the EEC Treaty.

5 The applicants contend that the objection of inadmissibility should be dismissed. In their opinion it is sufficient to show that the requirements of the EEC Treaty are satisfied. Although the contested decision is addressed to the Grand Duchy of Luxembourg it is, from two points of view, of direct and individual concern to the applicants within the meaning of the second paragraph of Article 173 of the EEC Treaty. In the first place the reduction of production capacity and the closure of factories located in their municipal territory results, they claim, in a reduction of the yield from local taxes. In the second place, they contend that according to a principle of administrative law known to several Member States, which also applies in Community law, the interests of the inhabitants of a municipality and the interests of the undertakings established in the municipal territory must be regarded as the municipalities' own interests.

6 It must be stated first that the contested decision is based both on the EEC Treaty, in particular Article 93 (2) thereof, and on the ECSC Treaty and on Commission Decisions Nos 257/80 (Official Journal L 29, p. 5) and 2320/81 (Official Journal L 228, p. 14) which were adopted under the latter Treaty. In its judgment of 10 February 1983 (Case 230/81 *Grand Duchy of Luxembourg* v *European Parliament* [1983] ECR 255) the Court held in essence that if the contested measure relates simultaneously and indivisibly to the spheres of more than one Treaty, an action is admissible to the extent to which the jurisdiction of the Court and the remedies provided for by the relevant provisions of one of the Treaties are applicable to the measure in question.

7 With regard, first, to the provisions of the ECSC Treaty conferring jurisdiction on the Court, it is sufficient to note that Article 33 of the Treaty provides that, in certain circumstances, actions for a declaration that a decision or recommendation of the High Authority is void may be brought by a Member State, the Council or undertakings and associations of undertakings within the meaning of Article 48 of the ECSC Treaty.

8 That article provides an exclusive enumeration of the persons entitled to bring an action for a declaration that a measure is void. Since local authorities such as municipalities are not referred to therein it follows that they may not validly institute such proceedings under the ECSC Treaty.

9 With regard, secondly, to the admissibility of the action under the EEC Treaty it must be recalled that the second paragraph of Article 173 of the Treaty makes the admissibility of an action brought by a natural or legal person other than the person to whom a Council or Commission decision is addressed, for a declaration that the measure in question is void, subject to the requirement that the contested decision is of direct and individual concern to him. The purpose of that provision is to ensure that legal protection is also available to a person who, whilst not the person to whom the contested measure is addressed, is in fact affected by it in the same way as is the addressee.

10 In this case the contested measure, which is addressed to the Grand Duchy of Luxembourg, authorizes it to grant certain aids to the undertakings named therein provided that they reduce their production capacity by a specified amount. However, it neither identifies the establishments in which the production must be reduced or terminated nor the factories which must be closed as a result of the termination of production. In addition, the decision states that the Commission was to be notified of the closure dates only by 31 January 1984 so that the undertakings affected were free until that date to fix, where necessary with the agreement of the Luxembourg Government, the detailed rules for the restructuring necessary to comply with the conditions laid down in the decision.

11 That conclusion is, moreover, confirmed by Article 2 of the decision according to which the capacity reductions may also be carried out by other undertakings.

12 It follows that the contested decision left to the national authorities and undertakings concerned such a margin of discretion with regard to the manner of its implementation and in particular with regard to the choice of the factories to be closed, that the decision cannot be regarded as being of direct and individual concern to the municipalities with which the undertakings affected, by virtue of the location of their factories, are connected.

13 Since the action is therefore inadmissible also to the extent to which it is based on the provisions of the EEC Treaty, it must be dismissed.

Costs

14 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. As the applicants have failed in their action, they must be ordered to pay the costs jointly and severally.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Dismisses the application as inadmissible;**

2. **Orders the applicants to pay the costs jointly and severally.**

Galmot Due

Everling Kakouris Joliet

Delivered in open court in Luxembourg on 11 July 1984.

P. Heim
Registrar

Y. Galmot
President of the Fifth Chamber