interest cannot be required whilst debtors have not been informed of their position as such.

3. The recommendations drawn up by the Council upon the giving of an assent cannot have the effect of restricting or modifying the express powers conferred by the decision which is the subject of that assent. The legality of decisions taken in implementation of a general decision which has been the subject of an assent can therefore be examined only on the basis of the actual provisions of that general decision.
4. The inevitable and inherent disadvantages in the equalization scheme which of its nature necessitates *a posteriori* calculations for the fixing of the rate do not constitute damage giving a right to compensation.
5. The existence of frauds does not alone suffice to prove that the administration has failed in its duties of supervision and consequently is guilty of a wrongful act or omission.

In Case 67/69

SOCIETÀ INDUSTRIALE METALLURGICA DI NAPOLI (SIMET) S.P.A., with its registered office at 16 Via Stefano Barbato, Naples-Barra, represented first by Arturo Cottrau, and then by Giorgio Cottrau, of the Turin Bar, with an address for service in Luxembourg at the Chambers of Georges Margue, 20 rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Antonino Abate, acting as Agent, with an address for service in Luxembourg at the office of Émile Reuter, 4 boulevard Royal,

defendant,

Application for

— the annulment of the individual decision of the Commission of the European Communities of 9 October 1969, requiring the Simet undertaking to pay the sums due under the provisions concerning the equalization scheme for imported ferrous scrap and scrap treated as such;

— compensation for damage caused by a wrongful act or omission of the defendant.

THE COURT

composed of: R. Lecourt, President, A. M. Donner (Rapporteur) and A. Trabucchi, Presidents of Chambers, R. Monaco, J. Mertens de Wilmars, P. Pescatore and H. Kutscher, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

1 — Facts

The facts on which the proceedings are based may be summarized as follows:
By Decision No 7/63 of 3 April 1963 (OJ No 54 of 6.4.1963) concerning the drawing up of statements of account relating to ferrous scrap and scrap treated as such, the High Authority of the ECSC provided for a regrouping of movements of funds in respect of the Brussels Fund (CPFI) and the Luxembourg Fund, and the provisional closure on 31 May 1963 of the accounts of each undertaking subject to the equalization scheme.
On 11 February 1965 the High Authority took two individual decisions in respect of Simet, one concerning an assessment made by the institution on its own authority of the tonnage of bought ferrous scrap consumed by that undertaking during the period from 1 June 1956 to 30 November 1958 (37 668 metric tons), and the other fixing the contributions due from Simet at Lit. 252 974 228 on 31 May 1968 (the total resulting from the application of the provisions of Decision No 7/63 to the tonnage adopted by the first decision). On an application by the addressee these decisions were annulled by the judgment of the Court of 2 March 1967, because the High Authority provided no justification for the fact that it resorted to an exceptional assessment procedure. (Joined Cases 25 and 26/65, [1967] ECR 33 *et seq.*)
General Decision No 19/65 of the High Authority of 15 December 1965 (OJ No 224 of 30. 12. 1965), on the drawing up of final statements of account relating to the equalization of imported ferrous scrap and scrap treated as such, provides for the final fixing on the one hand of the rates of equalization contributions and on the other hand of the rates in respect of interest charges (Articles 4 and 2) and furthermore lays down in particular:
— that the capital balance of each undertaking (constituted by its credits and its payments on the one hand and contributions due on the other hand) was to bear interest at 5% from 31 May 1963 until the date on which payment is made and in no case later than 31 December 1965 (Article 5(1));
— that a complete statement of account drawn up as at 31 December 1965, taking into consideration in respect of each accounting period all debits and credits of principal and of interest was to be sent to all undertakings concerned (Article 6);
— that as from 1 January 1966, the credit or debit balance in accordance with this statement of account was to bear interest at 5% p.a. which was to be converted into capital (Article 5(3));
— that after 31 December 1965 receipts from actions for recovery of wrongfully charged equalization amounts and bad debts were to be divided among all the undertakings affiliated to the equalization scheme in proportion to the basis of the assessment to contribution.

In execution of the judgment of the Court quoted above and pursuant to Decision No 19/65, the Commission of

the EC, on 9 October 1969, adopted an individual decision by which the basis of assessment of contribution of the Simet company for scrap purchased from 1 January 1956 to 30 November 1958 was fixed at 17 737 metric tons and the amount of the contributions due from it by way of equalization was fixed at Lit. 140 594 449. The present application, directed against that individual decision, was lodged at the Court Registry on 14 November 1969.

II — Conclusions of the parties

The *applicant* claims that the Court should:

'1. Order the defendant in accordance with Article 23 of the Protocol to produce to the Court all documents relative to the question at issue in the application and in particular reports of checks made by its heads of mission at the applicant's premises;
2. Declare Decisions Nos 7/63 and 19/65 on which is based the individual Decision of 9 October 1969 to be illegal (Article 36, last paragraph);
3. Consequently annul the contested individual decision for the reasons set out in the application (first paragraph Article 33);
4. Hold the defendant liable for the wrongful act (Article 40) constituted by the fact that it notified Simet "validly for the first time on 18 October 1969 only" of the amount of equalization contributions for the period from 1 April 1954 to 30 November 1958 (with an average delay of more than thirteen years) and for having compelled it, thereby causing it damage, to publish its own price list without knowing the amount, even approximately, of the equalization rates which in the meanwhile had undergone very large increases;
5. Calculate the damage suffered by the applicant, by reason of the complaints put forward in the previous paragraph, to the extent of 15% of the total sales of steel during the period when the equalization scheme was in force or failing that, ask an expert to be appointed, to establish the exact amount;
6. Hold the defendant responsible for the secret conclusion of an "agreement" with the Council of Ministers of the Community, by which it undertook to commit a serious breach of the duty of supervision which is imposed upon it by the Treaty and in consequence of the normal diligence which any public administration should show, thus making easy the practice of large-scale frauds within the framework of the compulsory ferrous scrap equalization scheme.

.....

The applicant states that it would be fully in agreement with an ... extra-judicial solution of the determination of the amount of the damage;
7. Order the defendant to pay the costs.'

The defendant contends that the Court should:

'Reject all the requests made by the Società Industriale Metallurgica di Napoli (Simet) in its Application No 67/69 of 14 November 1969 and order the applicant to pay the costs.'

In its rejoinder the defendant further contends that the Court should:

'Join the present case to Case 70/69, brought by the Company "Acciaieria e Ferriera di Roma" (Feram).'

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

A — *The application for annulment*

1. Illegality of the individual decision of 9 October 1969

The applicant states that the individual decision of 9 October 1969 is illegal in

that, on the one hand it is vitiated by lack of a statement of reasons and that on the other hand without justification it imposes the payment of (capitalized) interest on overdue payments.

(a) Lack of grounds

The applicant states that the contested decision wrongly fixed the basis of its assessment of contribution to the equalization scheme at 17 737 metric tons, since it had never declared more than a total of 15 469 metric tons (as appears from a letter of the Directorate-General for Steel of the High Authority of 18 August 1964).

In its statement of defence the *defendant* mentions that although in fact the applicant had 'declared only a total of 15 469 tons for the period between 1 January 1957 and 30 November 1958, the supplementary 2 268 tons are warranted by the invoices concerning the purchase of scrap made in 1956 which the undertaking produced on the occasion of the checks made from 21 to 25 March 1960 by inspectors of the Societé Anonyme Fiduciaire Suisse (SAFS). Furthermore that is what the statement of the reasons for the decision clearly showed.

The *applicant* replies by denying the existence of these invoices relating to the 2 268 tons of scrap. The only fact upon which the defendant could rely in that respect is a general point in the report made by the inspectors of the SAFS, without any specific details whatever. It is in fact a question of quite general allegations, made furthermore, by private investigators who made the checks in disregard of the procedures laid down in that respect by the Italian rules. Such statements cannot prevail over the presumably trustworthy proof constituted by Simet's accounts which are subject to strict legal rules of publicity and accordingly by the statements concerning the purchases of scrap which agree with those accounts.

Although stating that in the present case the burden of proof is on the applicant, the *defendant* recalls, with the support of documents, facts likely, according to it, to invalidate the argument of the applicant, that is to say:

— the Simet undertaking itself declared stocks of scrap on 1 January 1957 amounting to 1 625 metric tons which clearly implies scrap purchase in 1956;

— the installation in February 1956 of an electric furnace with a capacity of 4 to 5 metric tons;

— the consumption of electric energy by this furnace, especially during the second half of 1956;

— the consumption of scrap by Simet;

— the tonnages of own resources of scrap;

— the stocks of semi-finished products, of finished products and of scrap determined as at 1 January 1957;

— the consumption of raw materials in 1956;

— the balance sheet and the profit and loss account of Simet as at 31 December 1956.

The defendant again points out that these facts have already been mentioned by the Comimssion in Case 26/65 without their being disputed by Simet.

As to the qualifications of the SAFS inspectors and the methods of checking made at Simet the defendant states that within the framework of Article 47 of the Treaty—the only basis of the checks made by the SAFS—no objection could be raised in that respect.

During the oral procedure the parties disputed in particular the meaning of the balance sheet and profit and loss accounts of Simet for the year 1956 as well as certain internal documents of the undertaking which had been shown in the past to the SAFS inspector.

The applicant alleged that from the said documents there appeared nothing to indicate that there had been iron and steel activity by Simet in the year 1956 and the defendant observed that several facts such in particular as the large sums appearing in the balance sheet in con-

nexion with goods, credit extended to clients, staff, etc. support the opposite argument.

(b) Interest on overdue payments

The *applicant* states that the decision of 9 October 1969 is still illegal in that it imposes on *Simet* the payment of interest on overdue payments (which has furthermore been capitalized) without this ever having been preceded by formal notification. In fact it was only by the contested decision itself that the applicant was informed of the exact amount of its contribution due to the equalization scheme and was given formal notification of it for the first time.

The *defendant* replies that the applicant had certainly been kept informed regularly and in a detailed manner of its position as a debtor in relation to the equalization scheme, particularly by equalization accounts of 8 April 1963 and 23 December 1965 and by an extract of an account of 12 January 1967.

In its reply the *applicant* disputes first the legality of capitalizing interest (compound interest), the introduction of which by Decision No 19/65 is contrary to the fundamental principles relating to interest. Furthermore it emphasizes the illegality in the present case of any imposition of interest, for whatever reason, having regard to the fact that before the contested decision the debt had never become due or been the subject of formal notification.

In its rejoinder the *defendant* alleges in particular:

— as concerns compound interest,
  — that the amount demanded under this head amounts to lit. 877 402 and not to lit. 12 753 152, as the applicant states;
  — that the charging of compound interest is permissible, albeit on certain conditions, by Italian, French and German national law;
  — that more precisely within the framework of scrap equalization, the rules of Decision No 19/65 which introduced compound interest take account of the situation arising from the possibility of determining simultaneously from that time onwards the credit or debit situation of each undertaking on the basis of the final rates of equalization contributions;
  — that these new rules which furthermore have as their consequence a system of interest less burdensome than that provided for by Decision No 7/61, accords with the principles to which the equalization scheme is subject, particularly that of a balance between the amounts repaid and the contributions claimed;
— as regards the interest charges in the present case,
  — that in the system established by Decision No 19/65 the basis of the obligation to pay interest and the date as from which it is calculated are fixed by that very decision;
  — that on such an argument it is of less importance to give formal notice to the debtor to pay than to inform him of the amount of his debt;
  — consequently the letters and detailed accounts addressed to the applicant may be classified as notices to pay, and because of this justify the claim for compound interest.

2. Illegality of General Decisions Nos 7/63 and 19/63

The applicant again alleged the invalidity of the decision of 9 October 1969 by pleading the illegality of general Decisions Nos 7/63 and 19/65 on which the contested decision is based.

In this respect it states:

(a) that these regulations produce discrimination by excluding from scrap equalization scrap from steel alloys and scrap intended for integrated foundries;

(b) that the High Authority (Commission) disregarded the recommendations which the Council made when giving its assent to Decision No 14/55, including particularly:

'. . . . . .

3. To avoid increasing the cost prices in the whole of the Community and in particular increasing the net burden borne in the working of the fund by certain regions of the Community, the equalization levies must not be increased without a very serious reason.

4. The effort made to assist imports and a reasonable price level must not encourage either in existing plant or by the creation of new plant, an ill-considered expansion in the consumption of scrap . . .' (Third General Report on the activities of the Communities, p. 106);

(c) that the amount of the equalization rates was decided in an incorrect manner, the average weighted costs of internal recovered scrap being priced at too low a level and those of imported scrap at too high a level;

(d) that the High Authority (Commission) has always failed to justify the management of the Equalization Fund by a detailed account of the factors to be taken into account;

The *defendant* replied to these complaints:

(a) that this argument has already been rejected by the Court in Case 18/62 [1963] ECR 259;

(b) that even supposing that the recommendations put forward were mandatory, on the one hand the increase in contributions is due essentially to the interest charges resulting from Decision No 7/61, the legality of which the Court has accepted (Case 111/63, [1965] ECR 677), and on the other hand the increase in consumption of scrap is due only to the increase in production of steel during the years 1954 to 1958;

(c) that in fixing the average weighted price of imported scrap, the High Authority based itself on the contracts of purchase laid down by the Joint Bureau of Ferrous Scrap Consumers and that as concerns internal recovered scrap, the Court in Case 30/65 [1966] ECR 35 rejected the complaints made in that respect;

(d) that within the limits imposed upon it by Article 47 of the Treaty the High Authority has given a full statement of the reasons for the decisions in question.

B — *The action for damages*

The *applicant* has based its action on two complaints:

1. It states that by taxing highly transactions carried out fifteen years previously—which makes it impossible to recover such taxation in sales prices—the Commission has committed a wrongful act or omission in regard to the applicant.

The *defendant* alleges that a similar complaint was rejected by the Court in Case 20/60 (Rec. 1961, p. 319 et seq.). In fact the delay with which the final detailed account was communicated to the applicant is only the inescapable consequence of a system necessarily implying *a posteriori* calculations and consequently cannot amount to a wrongful act or omission. If the applicant at the time of the fixing of sales prices for the period 1954 to 1958 was not able to take account of the exact cost of equalization, this was a normal inconvenience of the system, which cannot be classified as damage capable of being attributed to the Community.

2. Furthermore the *applicant* considers that the behaviour of the defendant in respect of the frauds committed in respect of scrap equalization, amounts to an unlawful act or omission in regard to the applicant.

(a) *Admissibility*

According to the *defendant* this head of the application is inadmissible because, on the one hand it is not stated what are the irregularities constituting the unlawful acts or omissions of the Community, so that the requirements of Article 22 of the Protocol on the Statute of the Court and Article 38(1) of the Rules of Procedure are not satisfied and because on the other hand the action is premature, since the amount of the possible damage flowing from the said frauds depends essentially on the result of actions for recovery currently pending.

The *applicant* did not express its views on the admissibility of its request.

(b) *On the substance of the case*

Relying in particular on the opinions of the Advocates-General of the Court in Case 33/59 ([1962] ECR 381), on the one hand and in the Joined Cases 9 and 25/64 ([1965] ECR 311), on the other hand the *applicant* states that the High Authority has failed in its duties of supervision in respect of equalization of scrap and that consequently the frauds which took place may be imputed to a wrongful act or omission of the Community. These frauds contributed to increasing the rates of contribution imposed on the undertakings subject to the equalization scheme so that they directly caused damage to these undertakings, including the applicant. As to the exact evaluation of the damage, the applicant considers that it can be made on the basis of the facts which are at the disposal of the Commission and the production of which it asks the Court to order.

The *defendant* denies the existence of a wrongful act or omission on its part, alleging in particular:

— that the 'Brussels organizations' (the Joint Bureau of Ferrous Scrap Consumers and the Imported Ferrous Scrap Equalization Fund), which carried out the management of the scrap equalization scheme during the period when the frauds were committed, were not part of the High Authority, but were entirely distinct from the latter and were furthermore governed by private law (cf. Judgment of the Court in Case 9/56, Rec. 1958, p. 42);

— that consequently a wrongful act or omission can originate only in the management of the scheme, which devolved on the High Authority;

— that in respect of the supervision of activities governed by private law by public authorities, Community law provides no rules, so that it may be useful to consider the solutions reached by the national laws of the Member States;

— that whilst Italian law excludes any responsibility by the administration in this respect, French law accepts it only in case of 'gross malfeasance';

— that even supposing the management of the equalization scheme devolved directly upon the High Authority, its responsibility can be raised only in case of 'gross malfeasance'—a solution also accepted by French case-law (cf. Opinion of Mr Advocate-General Lagrange in Case 23/59, Rec. 1958-1959, pp. 525 and 526).

Furthermore the applicant cannot claim to have suffered actual and existing damage when on the one hand it has still not paid the whole of its contributions and on the other hand, the damage itself is only future and uncertain, since action for recovery are still pending.

IV — Procedure

The written procedure followed the normal course.

Because of the connexion between the present case and Case 70/69, the Court by order of 8 July 1970 decided to join them for the purposes of the oral procedure.

By order of 8 July 1970, the Court decided to hear Maurice Chaudat, a former inspector of the High Authority of the ECSC, as a witness on the following questions:

1. What was the character of the invoices which mentioned in your report on the further check made from 21 to 25 March 1960 at Simet?
2. In what circumstances were these invoices produced?

By order of 28 October 1970 the Court decided also to hear as witnesses on these questions:

1. Alfredo Lucchini, a former inspector of the SAFS.
2. Henry Davier, Vice-President of the SAFS.

The First Chamber to which these hearings were assigned heard the evidence of these witnesses at the hearing on 17 December 1970.

After the witnesses Mr Lucchini had mentioned when giving evidence the accounting computation in the statement of account of the quantities of scrap found to have been purchased when the additional check at the Simet Company was carried out, this document, kept in the archives of the SAFS, was lodged during the hearing at the request of the Chamber and with the agreement of the parties.

On the other hand the Chamber asked the Commission to produce certain handwritten documents relating to the check made from 21 to 25 March 1960 at Simet, which had been kept in the archives of the SAFS.

On hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided not to order further preparatory inquiries.

The parties presented oral argument at the hearing on 12 January 1971.

The Advocate-General delivered his opinion at the hearing on 2 February 1971.

Grounds of judgment

1 By an application of 12 November 1969 lodged at the Court Registry on 14 November 1969 the Simet undertaking of Naples brought before the Court

(a) an application for the annulment under Article 33 of the Treaty establishing the European Coal and Steel Community, of the decision of the Commission of the European Communities of 9 October 1969, taken in implementation of the provisions concerning the equalization of imported ferrous scrap and scrap treated as such and fixing in the applicant's case the tonnage of bought scrap assessable and the sums due by way of equalization contributions; and

(b) an action for damages under Article 40 of the same Treaty.

The application for annulment

2 The applicant disputes the contested decision on the grounds of infringement of essential procedural requirements, particularly for an insufficient statement of reasons, and for infringement of the Treaty or of rules of law relating to its application and raises further an objection of illegality against General Decisions Nos 7/63 and 19/65 of the High Authority on which the contested decision is based.

The submission of infringement of essential procedural requirements

[3] Under this heading the applicant complains that the contested decision lacks an adequate statement of reasons because it fixed the basis of its contribution at 17 737 metric tons without justifying sufficiently the difference between that quantity and the 15 469 metric tons in all of bought scrap which it declared. In confining itself to stating that on the occasion of the checks carried out from 21 to 25 March 1960 the undertaking produced invoices concerning purchases of scrap made in 1956 to the extent of 2 268 metric tons, the decision is said not to have sufficiently justified in law the increase of that quantity in relation to the tonnage during the years 1957 and 1958 resulting from the monthly declarations of the undertaking. It says that the invoices relied upon were never produced and furthermore do not exist. It is a matter therefore of wholly unfounded allegations of a general nature.

[4] In order to establish the character of the invoices mentioned and the circumstances in which these invoices were produced, the Court ordered the hearing of Mr Chaudat, Mr Lucchini and Mr Davier who had visited the undertaking on the occasion of the checks in question. At the hearing on 17 November 1970 by the First Chamber to which this hearing had been assigned it appeared that on the occasion of that check the witnesses Chaudat and Davier took part only in a formal manner in order to introduce the witness Lucchini, who carried out the work of checking, and in order to ensure the supervision of the checks made.

[5] The witness Lucchini stated that from 21 to 25 March 1960 at the office of the company he made a check of the consumption of electric current by the undertaking during the year 1956. In the course of his work, according to his evidence, he discovered by chance a bundle of invoices relating to the purchase of scrap for the year 1956 which were at his request handed to him by the employee whom the undertaking had put at his disposal to produce for him the documents which he needed. These were invoices in good order showing the supplier, the date of delivery, the type of scrap, its weight and the prices paid.

[6] The witness stated that he added up on a machine the weights and the amounts of the invoices for each month of 1956. The paper roll from the adding machine was deposited at the Court Registry. The content of that evidence was not disputed by the applicant which confined itself, by invoking Article 86 of the Treaty, to casting doubt upon the qualifications of the employees of the S.A. Fiduciaire Suisse to make checks within the meaning of the Treaty and consequently the right of the Commission to utilize as evidence the results of these checks.

7 In this respect Article 47, which governs the matter in question, empowers the High Authority to have checks made. The instructions which it gave for the carrying out of the check constituted the actual exercise of its own powers and not a delegation of them. The forms and the publicity required for a delegation of powers were thus not applicable in the present case. Further, the expression 'have ... made' shows clearly that the High Authority was not required to carry out the checks mentioned exclusively by means of its own servants, but that it could have them carried out by any person whom it considered competent for this work.

8 The company has in no way called in question the competence or the objectivity of the person entrusted with the checks. It did not, furthermore, object to the measures.

9 The evidence of the witness Lucchini is confirmed by other facts relied upon by the defendant, in particular the existence of an electric furnace with a capacity of four to five tons installed in February 1956, the consumption of elecrtic current by this furnace, the stocks of semi-finished products, of finished products and of scrap determined as at 1 January 1957, the report for the financial year, the balance sheet and the profit and loss account for 1956. These facts sufficiently prove in law the correctness of the data on which the Commission based its decision.

10 These data were obtained by means of a procedure which conformed to Article 47 of the Treaty. The contested decision set out these data in a sufficiently clear and plain manner. Consequently the submission based on an inadequate statement of the reasons for the decision must be rejected.

The submission of infringement of the Treaty

11 The applicant also alleges the illegality of the contested decision to the extent to which this provides for payment of interest on the sum due by way of contribution to the equalization scheme. It says that on the one hand this debt was not the subject of any formal demand before the applicant was informed by the contested decision of its exact amount. Further a system of capitalized interest such as that introduced by Decision No 19/65 is illegal as contrary to the fundamental principles of law concerning interest. The contested decision is thus said to infringe the Treaty and the rules of law concerning its application, particularly the legal principles relating to the charging of interest for delayed payment as enshrined in the legal systems of the Member States.

12 The interest prescribed by the decision in question is in accordance with the provisions of General Decision No 19/65, which replaced numerous previous

decisions which had already instituted and laid down details with regard to the obligation to pay legal interest on the amounts due by way of equalization contributions. The submission raised therefore amounts in substance to an objection of illegality directed against General Decision No 19/65.

13 That decision provides in Article 5 that as from 31 May 1963 the credit or debit balances of undertakings subject to the scheme shall bear interest at 5% per annum until the date on which payment is made. Under the same provision, as from 1 January 1966, interest accrued over the year is to be converted into capital every thirty-first of December.

14 The decisions relating to the working of the equalization scheme have properly provided that credits and debits resulting from its application shall carry interest. In particular, the undertakings which, having purchased imported ferrous scrap or scrap treated as such, had a right to the benefit of equalization, were justfied in asking to be indemnified for dalays in the payment of what was due to them. Consequently the necessary balance in the management of the scheme, equality of treatment and the interdependence of payments required that this supplementary charge should be set off by the application of the same rate of interest on the sums owing by undertakings liable to contribute to the scheme.

15 A rate of interest of 5% per annum does not appear to be of an excessive nature. Further, contrary to the allegations of the applicant, it does not appear that the legal systems of the Member States include in general a fundamental principle opposed to the charging of compound interest. In order to facilitate the winding-up of the scheme, the decisions mentioned above were thus able to introduce compound interest which furthermore applies equally to the credit balances of the undertakings.

16 Although, by the introduction of the system of interest in dispute, the decisions in question infringed neither the Treaty nor the rules of law concerning its application, it would nevertheless be improper to require the payment of interest, particularly of capitalized interest, whilst the debtors had not been informed of their position as such. However the question whether that condition was satisfied must be considered taking into account the peculiarities of the equalization scheme, particularly the fact that in such a scheme the balances of those subject to it in account with the Equalization Fund would not be accepted as final before the closing of the accounts of the scheme. In these circumstances the extracts of accounts provided to the undertakings could only be of a provisional nature and as long as this was so capitalization could not be justified.

17 As has been stated however, this compound interest was introduced only as from 1 January 1966, that is to say, after the entry into force of Decision No 19/65, which makes provision for the final closure of the accounts. It is not disputed that the applicant was properly informed of its position as a debtor by equalization accounts or extracts from accounts which enabled it to know the extent of its obligations.

18 Although it is true that these accounts were based on monthly statements provided by the applicant itself, the latter cannot complain of the increase in the amount of interest following the correction of its incorrect declarations.

Consequently the submission must be rejected as unfounded.

The objection of illegality raised against General Decisions Nos 7/63 and 19/65

19 The applicant challenges General Decisions Nos 7/63 and 19/65 as applied by the contested decision, on the basis of several objections of illegality.

20 A — These decisions are said to be discriminatory to the extent to which they exclude from the obligation to pay contributions and from the right to receive equalization payments, the tonnages of purchased alloy steel scrap and, in the case of undertakings having a steel foundry, the proportion of bought scrap consumed corresponding to the proportion of production of crude steel for castings.

21 The defendant has argued that the exemption of alloy steel scrap is justified by the difference between the alloy scrap market and that of ordinary scrap, the price of alloy scrap depending rather on the proportion of noble metals found in it than on that of ferrous scrap. The inclusion of alloy scrap in the equalization scheme had, according to the defendant, an undoubted influence on the market in non-ferrous metals which do not fall within the ECSC Treaty. The defendant has given as a reason for the exclusion of scrap intended for integrated foundries, the necessity not to change the normal conditions of competition between them and the independent foundries.

22 These explanations, which are not disputed by the applicant, in substance appear acceptable. The High Authority, by adopting General Decisions Nos 7/63 and 19/65, which furthermore only re-enacted previous provisions, was entitled to take the view that a proper application of the principles of the Treaty required the exclusion of the said scrap from the equalization scheme and there is nothing to show that in doing this it distorted the scheme and made it discriminatory.

23 Consequently the complaint must be rejected.

24 B — Further, according to the applicant, the competent authorities disregarded the recommendations which the Council of the ECSC made when giving its assent to Decision No 14/55 of the High Authority of 26 March 1955 establishing financial machinery designed to ensure a regular flow of scrap for the Common Market (OJ No 8 of 30.3.1955, p. 685).

25 Recommendations drawn up by the Council upon the giving of an assent such as that prescribed in Articles 28 and 53 of the Treaty cannot have the effect of restricting or modifying the express powers conferred by the decision which is the subject of that assent. The legality of decisions taken in implementation of a general decision which has been the subject of an assent can therefore be examined only on the basis of the actual provisions of that general decision. Consequently even if it were established, which the defendant denies, that in the exercise of the powers conferred by Decision No 14/55 the competent authorities disregarded the recommendations of the Council, this would have consequences only as regards the relations between those authorities and the Council, but could not invalidate decisions taken in conformity with the provision in respect of which the assent was given.

26 Furthermore Decision No 14/55 was supplemented and amended by several later decisions which also obtained the requisite assent of the Council, particularly Decision No 16/58 of the High Authority of 24 July 1958 (OJ No 10 of 30.7.1958, p. 275), by which the scheme was renewed. There is nothing to indicate that on these occasions the Council found that its initial recommendations had been disregarded.

27 The complaint must therefore be rejected.

28 C — The applicant goes on to allege that the data used as the basis of the average weighted equalization prices fixed by Decisions Nos 7/63 and 19/65 are incorrect. It says that the average weighted costs of internal recovered scrap were excessively reduced whilst the average costs of imported scrap were increased so that the equalization rate was raised to an unnecessarily high level. According to the experience of the applicant itself the prices of internal recovered scrap were consistently higher than the average prices adopted by Decisions Nos 7/63 and 19/65.

29 The defendant replies that the basic data for fixing average prices of imported scrap were taken directly from contracts of purchase made by the Joint Bureau of Ferrous Scrap Consumers, the only body competent to make purchases of scrap on the international market on behalf of undertakings which

requested it to do so and that this fixing of prices consequently cannot attract any criticism. As regards the average prices of scrap bought within the market, the necessary data were derived from the monthly declarations of the undertakings containing information concerning the prices paid. These declarations were strictly supervised by the checking of purchase invoices. The defendant further states that it is in the nature of the scrap market to cause, particularly on the basis of the location of consuming undertakings, price differences which are in themselves compatible with the unity of the market.

30 The applicant has submitted nothing capable of constituting even the beginnings of proof of its allegations. In particular it has failed to prove that the price differences in the market were changed through the functioning of the equalization scheme or that the functioning of the scheme aggravated the disadvantages which it suffered in comparison with better situated undertakings.

31 The complaint must therefore be rejected.

32 D — The applicant lastly alleges that the reasons for Decisions Nos 7/63 and 19/65 are inadequately stated. In its reply it stated that by this complaint it did not intend to require that the documents justifying the various figures laid down by these decisions should be annexed to the decisions or published, but asks that the defendant should submit the books of account relating to the equalization scheme to an official auditor of accounts or to a committee of representatives of undertakings and that the defendant should publish the resulting report.

33 The reasons for the provisions of Decisions Nos 7/63 and 19/65 are given in both the preambles and annexes to those decisions. The requirement of a final check of the accounting of the equalization scheme is concerned not with the supervision of the legality of the decisions in question but with the efficiency of the working of this scheme which is a matter for other institutions and authorities of the Community and particularly the Parliament and the auditor.

34 Further, the defendant has stated that all the figures set out in the annexes to Decisions Nos 7/63 and 19/65 were submitted by its officers to repeated examinations and checks and that the auditor of the ECSC always exercised his supervision over the management and the annual accounts of the equalization scheme.

35 The complaint must consequently be rejected.

36 It follows that the objection of illegality raised against these decisions must be rejected.

The application for damages

[37] In its originating application the applicant asks the Court to hold the defendant liable for wrongful acts or omissions within the meaning of Article 40 of the Treaty. A first unlawful act or omission is said to be constituted by the fact that on the one hand the Commission validly notified it for the first time on 18 October 1969 of the amount of its equalization contributions whilst on the other hand the applicant was obliged to publish its price lists for the period subject to equalization (April 1954 to November 1958) without knowing the amount of those contributions. The damage suffered by the applicant under this head amounts to 15% of its total sales of steel during the contribution period.

[38] A second wrongful act or omission is said to be constituted by the fact that because of its commitments to the Council, the High Authority was seriously in breach of the duty of supervision which is imposed upon it by the Treaty and grossly failed to exercise the normal diligence which any public administration must show, thus facilitating the perpetration of large-scale frauds within the framework of the equalization scheme. In its conclusions the applicant stated lastly that it would accept any solution capable of fixing the amount of damage which it had suffered.

[39] As concerns the first head of the claim, the very nature of any equalization scheme which could legally have been established by the general decisions of the High Authority necessarily implied *a posteriori* calculations. In fact the equalization rate could be fixed only following consideration of a series of factors such, in particular, as the prices and the respective total quantities of imported scrap and of scrap purchased within the market.

[40] In order to ascertain these factors the competent authorities depended particularly on the care with which the undertakings concerned carried out their duty to make the necessary declarations. It is common knowledge and furthermore proved by this very case that certain undertakings have not always shown all the care required. The applicant has not however alleged that the administration was guilty of negligence by failing to use the requisite vigour in reminding those subject to its administration of their duties.

[41] In fact the disadvantages complained of were inevitable and inherent in the equalization scheme. Such disadvantages cannot amount to damage giving rise to a right to compensation especially as they affect all iron and steel undertakings in the Community and equalization has on the other hand brought considerable benefits to users of scrap as a whole.

42 In the present case it has not been established that the disadvantage suffered by the applicant exceeded that normally inherent in the chosen scheme or those suffered by its competitors. It cannot be disputed, furthermore, that while the scheme was functioning the applicant was regularly informed of the amount of its contributions as appeared on the one hand from provisional calculations by the administration and on the other hand from declarations made by itself regarding its purchases of scrap. In December 1965 at the latest it received its virtually definitive statement of account which was of course subject to its obligation to pay interest which was legally due from it.

43 Since neither the existence of a wrongful act or omission nor of damage special to the applicant has been established, the first head of the action for damages must be dismissed.

44 As regards the second head of the action it appears from the originating application that by the commitments which it mentions the applicant has in mind the recommendation of the Council, formulated at the time of the assent to Decision No 14/55 mentioned above, that the High Authority should limit very strictly the action taken by it in respect of and supervision exercised over the measures adopted by the Brussels organizations and their national offices. Acting in accordance with that recommendation the High Authority is stated to have failed in its duty to ensure the achievement of the objectives both of the Treaty and of the financial arrangement.

45 The possible existence of the alleged commitments is in any event irrelevant in the present case, since the responsibility of the Community authorities must be considered in the light of the established rules and the valid principles applying to the matter. The High Authority, furthermore, has never sought to exonerate itself by relying on such recommendations of the Council, nor could it do so.

46 The applicant based its complaints of lack of supervision and of care on nothing more than the fact that very serious frauds took place in the management of the equalization scheme.

47 The defendant considers the claim to be inadmissible on the ground that it is not possible to see exactly which facts the applicant intends to rely upon, as the basis of its right to compensation.

48 The mere fact that frauds took place does not by itself prove that the administration failed in its duties of supervision and consequently was guilty of a wrongful act or omission. The Commission has stated that the tonnages of scrap wrongfully accepted for equalization amount to approximately 2% of the total tonnage accepted and that the frauds complained of, although they amount to a serious disadvantage, were not of such a character as to distort

the equalization scheme or throw it out of balance. It has stated also that at present four-fifths of the wrongly paid sums have been recovered and that, as to the rest, proceedings for recovery are still pending.

49 Having regard to these observations, which were not disputed during the proceedings, the complaints put forward must be supported by much more precise particulars than the general assertions to which the applicant has confined itself, in order to be taken into consideration as proof of the existence of a wrongful act or omission.

This head of the action for damages must consequently also be rejected.

Costs

50 Under Article 67(2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

The applicant has failed in its submissions.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Coal and Steel Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

hereby:

1. **Dismisses the application;**
2. **Orders the applicant to bear the costs.**

Lecourt Donner Trabucchi

Monaco Mertens de Wilmars Pescatore Kutscher

Delivered in open court in Luxembourg on 16 March 1971.

A. Van Houtte
Registrar

R. Lecourt
President